

## **MTA Legislation**

# NY CLS Pub A § 550

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

## § 550. Short title

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This title may be cited as the “Triborough bridge and tunnel authority act”.

## History

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Add, L 1939, ch 870; amd, L 1946, ch 954, eff Apr 22, 1946.

Annotations

## Notes to Decisions

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### 1. Generally

Metropolitan Transportation Authority (MTA) was estopped from challenging the notice of injury and the service of process made by a plaintiff who claimed that he slipped and fell on a defective stairway at a subway station, on the grounds that the facility was owned and operated by the MTA's affiliate, the New York City Transportation Authority (NYCTA). The MTA had not rejected the notice sent from the plaintiff's attorney, had forwarded the notice to the NYCTA, had made blended references to the MTA and the NYCTA, was represented by the NYCTA's general counsel, and had engaged in conduct that would lead plaintiff's counsel to believe that notice and service of process would not be raised as defenses. *Delacruz v Metropolitan Tr. Auth.*, 828 N.Y.S.2d 856, 14 Misc. 3d 886, 2007 N.Y. Misc. LEXIS 51 (N.Y. Sup. Ct.), rev'd, 45 A.D.3d 482, 846 N.Y.S.2d 160, 2007 N.Y. App. Div. LEXIS 12087 (N.Y. App. Div. 1st Dep't 2007).

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 551

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

## § 551. Definitions

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As used or referred to in this title, unless a different meaning clearly appears from the context,

1. The term “authority” shall mean the Triborough bridge and tunnel authority, the corporation organized pursuant to section five hundred fifty-two of this chapter as consolidated pursuant to section five hundred fifty-two-a of this chapter;
2. The term “city” shall mean the city of New York;
3. The term “bonds” shall mean bonds issued by the authority pursuant to this title or by authorities consolidated with the authority;
4. The term “board” shall mean the members of the authority;
5. The term “comptroller” shall mean the comptroller of the city;
6. The term “the project” shall mean any project or one or more or all of the projects described in subdivision nine of section five hundred fifty-three or in section five hundred fifty-three-a of this chapter;
7. The term “parkway” shall include elevated, surface or subsurface parkways and parking fields and other facilities connected therewith, and any bridge, viaduct, embankment or other structure that is part thereof or crosses the same;
8. The term “highway” shall mean any road, street, avenue or boulevard, whether elevated, surface or subsurface, and includes any parking fields and other facilities connected therewith and any bridge, viaduct, embankment or other structure that is a part thereof or crosses the same.
9. The term “metropolitan transportation authority” shall mean the corporation created by section twelve hundred sixty-three of this chapter.
10. The term “New York city transit authority” shall mean the corporation created by section twelve hundred one of this chapter.

## History

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Add, L 1939, ch 870; amd, L 1939, ch 874; L 1940, ch 6; L 1946, ch 954, eff Apr 22, 1946; L 1955, ch 806, § 1, eff Apr 28, 1955; L 1967, ch 717, § 61, eff March 1, 1968.

Annotations

## Notes to Decisions

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### 1. Generally

Chapters 806–809 of the Laws of 1955 providing for Throgs Neck Bridge connecting Bronx and Queens and bridge over Narrows connecting Brooklyn and Staten Island and second deck to George Washington Bridge between New York and New Jersey are not invalid under the Home Rule provisions of the State Constitution. The Home Rule provisions were not applicable. The Port Authority is engaged in matters of State concern and therefore the matters over which the Authority has jurisdiction are not within the Home Rule provisions. *Whalen v Wagner*, 4 N.Y.2d 575, 176 N.Y.S.2d 616, 152 N.E.2d 54, 1958 N.Y. LEXIS 875 (N.Y. 1958).

The Port of New York Authority is a matter of State concern and legislative enactments affecting the Authority are not within the home rule provisions of the State Constitution. Thus, an attack on Chapters 806, 809 of the Laws of 1955, on the grounds that no city message to the Legislature accompanied their enactment, was unsuccessful. *Whalen v Wagner*, 4 N.Y.2d 575, 176 N.Y.S.2d 616, 152 N.E.2d 54, 1958 N.Y. LEXIS 875 (N.Y. 1958).

## Research References & Practice Aids

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### Codes, Rules and Regulations:

Definitions used in regulations of Triborough Bridge and Tunnel Authority. 21 NYCRR § 1020.1.

### Hierarchy Notes:

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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## NY CLS Pub A § 552

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

### **§ 552. Triborough bridge and tunnel authority**

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1. A board, to be known as “Triborough bridge and tunnel authority” is hereby created. Such board shall be a body corporate and politic constituting a public benefit corporation. It shall consist of seventeen members, all serving ex officio. Those members shall be the persons who from time to time shall hold the offices of chairman and members of metropolitan transportation authority. The chairman of such board shall be the chairman of metropolitan transportation authority, serving ex officio, and, provided that there is an executive director of the metropolitan transportation authority, the executive director of the authority shall be the executive director of the metropolitan transportation authority, serving ex officio. Notwithstanding any provision of law to the contrary, the chairman shall be the chief executive officer of the authority and shall be responsible for the discharge of the executive and administrative functions and powers of the authority. The chairman and executive director, if any, each shall be empowered to delegate his or her functions and powers to the executive officer of the Triborough bridge and tunnel authority or to such person as may succeed to the powers and duties of said executive officer. The chairman and other members of the board hereby created, and the executive director, if any, shall not be entitled to compensation for their services hereunder but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their official duties.

2. A majority of the whole number of members of the authority then in office shall constitute a quorum for the transaction of any business or the exercise of any power of the authority. Except as otherwise specified in this title for the transaction of any business or the exercise of any power of the authority, the authority shall have the power to act by a majority vote of the members present at any meeting at which a quorum is in attendance and except further, that in the event of a tie vote the chairman shall cast one additional vote. For the purposes of the voting and quorum requirements of this subdivision, the voting and quorum requirements set forth in subdivision three of section twelve hundred sixty-three of this chapter and in any by-law of the metropolitan transportation authority adopted pursuant to the provisions of such subdivision shall be applicable hereto. Such board and its corporate existence shall continue only for a period of five years and thereafter until all its liabilities have been met and its bonds, notes and other obligations have been paid in full or such liabilities or bonds, notes or other obligations have otherwise been discharged, including bonds, notes or other obligations issued by the metropolitan transportation authority that are payable in whole or in part by revenues of the authority. When all liabilities incurred by the authority of every kind and character have been met and all its bonds, notes and other obligations have been paid in full, including bonds, notes or other obligations issued by the metropolitan transportation authority that are payable in whole or in part by revenues of the authority, or such liabilities or bonds, notes or other obligations have otherwise been discharged, all rights and properties of the authority shall pass to and be vested in the city, except those rights and properties held by it relating to the convention center which shall pass to and be vested in the state. The authority shall retain full jurisdiction and control over all its projects, with the right and duty, subject to the limitations of subdivision nine of section five hundred fifty-two-a of this title, to charge tolls and collect revenues therefrom, for the benefit of the holders of any of its bonds, notes or other obligations or other liabilities, even if not issued or incurred in connection with the project. Upon the

authority's ceasing to exist all its remaining rights and properties shall pass to the city, except those rights and properties held by it relating to the convention center which shall pass to the state.

3. Notwithstanding any inconsistent provisions of this or any other law, general, special or local, no officer or employee of the state or of any public corporation as defined in the general corporation law shall be deemed to have forfeited or shall forfeit his office or employment or any benefits provided under the retirement and social security law or under any public retirement system maintained by the state or any of its subdivisions by reason of being a member or the chairman of the authority.

## History

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Add, L 1939, ch 870; amd, L 1946, ch 954; L 1957, ch 547, eff Apr 15, 1957; L 1967, ch 717, § 62, eff March 1, 1968; L 1979, ch 35, § 10, ch 727, § 5, ch 735, § 11; L 1979, ch 275, § 2, ch 727, § 4; L 1981, ch 314, § 4, eff June 29, 1981; L 1983, ch 531, § 1, eff July 19, 1983; L 1986, ch 929, § 15, eff Dec 31, 1986, 16, eff Dec 31, 1986; L 2000, ch 61, § 1 (Part O), eff May 15, 2000; L 2005, ch 766, § 5, eff Jan 13, 2006; L 2009, ch 25, § 7 (Part H); L 2009, ch 506, § 25, eff March 1, 2010.

Annotations

## Notes

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### Editor's Notes:

**Laws 2005, ch 766, §§ 1 and 31**, eff Jan 13, 2006, provide as follows:

Section 1. Short title. This act shall be known and may be cited as the "public authorities accountability act of 2005".

§ 31. This act shall take effect immediately and shall apply to the public authority fiscal year beginning on or after January 1, 2006, provided however that section twenty-seven of this act shall take effect April 1, 2006.

**Laws 2009, ch 25, §§ 1, 21(b) (Part H)**, eff May 7, 2009, provide as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

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

(b) the amendments to subdivision 4 of section 1263 of the public authorities law made by section five of this act, subdivision 2 of section 1201 of the public authorities law made by section six of this act, subdivision 1 of section 552 of the public authorities law made by section seven of this act, and subdivision 5 of section 1266 of the public authorities law made by section eight of this act, shall take effect upon the date of the appointment by the governor with the advice and consent of the senate of a chair to the new term of office created pursuant to section three of this act. The governor's office of appointments shall notify the legislative bill drafting commission upon the appointment of a chairman to the new term provided for in section three of this act in order that the legislative bill drafting commission may maintain an accurate and timely effective database of the original text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law; and.

## Notes to Decisions

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### 1. Generally

### 2. Public benefit

### 3. Tolls

### 4. Examination of records

### 5. Governmental immunity

#### 1. Generally

In action by plaintiff who was injured while participating in 5-borough bicycle tour, Triborough Bridge and Tunnel Authority was entitled to summary judgment although release signed by plaintiff did not specifically name it as entity exempted from liability, where release named Metropolitan Transportation Authority (MTA) and "any other involved...representatives of the foregoing"; Triborough Bridge and Tunnel Authority is affiliated representative of MTA. *Tedesco v Triborough Bridge & Tunnel Auth.*, 250 A.D.2d 758, 673 N.Y.S.2d 181, 1998 N.Y. App. Div. LEXIS 5801 (N.Y. App. Div. 2d Dep't 1998).

It was not the intent of the legislature either by the Civil Service Law or this law to require the employment of only civil service employees in the construction of a project. *Meadows v Moses*, 44 N.Y.S.2d 697, 1938 N.Y. Misc. LEXIS 2396 (N.Y. Sup. Ct. 1938).

#### 2. Public benefit

The legislature has characterized the Triborough Bridge Authority as a "public benefit corporation." *Kennedy v Fehlhaber Pile Co.*, 263 A.D. 819, 31 N.Y.S.2d 376, 1941 N.Y. App. Div. LEXIS 5135 (N.Y. App. Div. 1941).

Triborough Bridge and Tunnel Authority, as public benefit corporation under CLS Pub A § 552(1), is "public corporation" within meaning of CLS Gen Mun § 50-e(1)(a), and thus is required to be served with notice of claim founded on tort within 90 days. *Guillan v Triborough Bridge & Tunnel Auth.*, 202 A.D.2d 472, 609 N.Y.S.2d 38, 1994



N.Y. App. Div. LEXIS 2405 (N.Y. App. Div. 2d Dep't), app. denied, 84 N.Y.2d 809, 621 N.Y.S.2d 518, 645 N.E.2d 1218, 1994 N.Y. LEXIS 4145 (N.Y. 1994).

### **3. Tolls**

The Triborough Bridge and Tunnel Authority has unlimited toll-fixing power and is empowered to raise tolls without any obligation to provide notice or to hold any hearings before doing so, and any interference with the authority of the Triborough Bridge and Tunnel Authority (TBTA) to charge or increase tolls effectively undermines the TBTA's statutory assurances to its bondholders; trial court's order requiring the TBTA to roll back certain toll increases and refund amounts it had collected in excess of the previous tolls constituted an impermissible impairment of the TBTA's authority and its bondholders' rights. N.Y. Pub. Interest Research Group Straphangers Campaign, Inc. v Metro. Transp. Auth., 309 A.D.2d 127, 763 N.Y.S.2d 13, 2003 N.Y. App. Div. LEXIS 8336 (N.Y. App. Div. 1st Dep't), app. denied, 100 N.Y.2d 513, 767 N.Y.S.2d 394, 799 N.E.2d 617, 2003 N.Y. LEXIS 2540 (N.Y. 2003).

### **4. Examination of records**

There is no provision in the Public Authorities Law which authorizes a tollpayer or citizen to examine the records and papers of an authority such as the Triborough Bridge and Tunnel Authority. New York Post Corp. v Moses, 10 N.Y.2d 199, 219 N.Y.S.2d 7, 176 N.E.2d 709, 1961 N.Y. LEXIS 1088 (N.Y. 1961).

### **5. Governmental immunity**

In §§ 552(2), 553(1) and 561(1), the legislature has intentionally insulated the state treasury from any liabilities that Triborough might incur; thus Triborough is not alter ego of the state and is thus not immune from suit. Raymond International, Inc. v The M/T Dalzelleagle, 336 F. Supp. 679, 1971 U.S. Dist. LEXIS 10939 (S.D.N.Y. 1971).

## **Opinion Notes**

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### **Agency Opinions**

#### **1. Generally**

The provisions of Public Officers Law § 63 do not apply to employees of the Triborough Bridge and Tunnel Authority. 1977 NY Ops Atty Gen Nov 23.

#### **2. Mortgage recording taxes**

Recording of leasehold mortgages granted by Triborough Bridge and Tunnel Authority (TBTA) to lenders on its leasehold interest in leased property under lease of property by Metropolitan Transit Authority to TBTA, and assignment of rents in such mortgages, under specific terms and conditions where TBTA was named mortgagor, was exempt from mortgage recording taxes. NY Adv Op Comm T & F TSB-A-97-(4)R.

In accordance with CLS Tax §§ 250 and 253, assignment by Triborough Bridge and Tunnel Authority (TBTA) to trustee of its rights (if any), and assumption by trustee of TBTA's obligations, under leasehold mortgages granted by TBTA to lenders on its leasehold interest in leased property under lease of property by Metropolitan Transit Authority to TBTA, and assignment of rents in such mortgages, were not events which would cause mortgage recording taxes to be imposed. NY Adv Op Comm T & F TSB-A-97-(4)R.

Funding of loan and execution and delivery of loan certificates to trustee only after assignment were not subject to mortgage recording taxes in situation where execution, delivery or recording by Triborough Bridge and Tunnel Authority (TBTA) of 2 mortgages granted by TBTA to lenders on its leasehold interest in leased property under lease of leased property by Metropolitan Transportation Authority (MTA) to TBTA and assignment of rents in said mortgages and in loan agreement under sublease of leased property by TBTA to MTA where (a) TBTA was named

mortgagor, (b) loan secured in part by leasehold mortgage and assignment of rents would be provided by one or more persons or entities other than, and unrelated to, MTA, (c) documents for and securing loan were executed by TBTA, but loan was funded only after either (x) assignment of all of TBTA's right, title, and interest in lease, sublease, support assets purchase option, loan documents, leasehold mortgage and assignment of rents, and collateral assignment to trustee under trust agreement with grantor and assumption by trustee of all of TBTA's obligations (and release of TBTA) under lease, sublease, loan documents, leasehold mortgage and assignment of rents, and collateral assignment or (y) on satisfaction of certain conditions and authorizations relating to possibility of funding loan prior to assignment, which conditions and authorizations were not expected to occur, and (d) proceeds of loan were used by trustee (as successor in interest to TBTA) to fund portion of lump sum payment to MTA, which sum constituted prepaid rent under lease and cost for option giving trustee right to extend initial lease term. NY Adv Op Comm T & F TSB-A-97-(4)R.

Payment and performance by trustee of its obligations under, holding by lenders of, and/or enforcement by lenders of their rights and remedies under or as to loan certificates, loan documents, loan agreement, leasehold mortgage and assignment of rents, or fee mortgage were not subject to mortgage recording taxes in situation where execution, delivery or recording by Triborough Bridge and Tunnel Authority (TBTA) of 2 mortgages granted by TBTA to lenders on its leasehold interest in leased property under lease of leased property by Metropolitan Transportation Authority (MTA) to TBTA and assignment of rents in said mortgages and in loan agreement under sublease of leased property by TBTA to MTA where (a) TBTA was named mortgagor, (b) loan secured in part by leasehold mortgage and assignment of rents would be provided by one or more persons or entities other than, and unrelated to, MTA, (c) documents for and securing loan were executed by TBTA, but loan was funded only after either (x) assignment of all of TBTA's right, title, and interest in lease, sublease, support assets purchase option, loan documents, leasehold mortgage and assignment of rents, and collateral assignment to trustee under trust agreement with grantor and assumption by trustee of all of TBTA's obligations (and release of TBTA) under lease, sublease, loan documents, leasehold mortgage and assignment of rents, and collateral assignment or (y) on satisfaction of certain conditions and authorizations relating to possibility of funding loan prior to assignment, which conditions and authorizations were not expected to occur, and (d) proceeds of loan were used by trustee (as successor in interest to TBTA) to fund portion of lump sum payment to MTA, which sum constituted prepaid rent under lease and cost for option giving trustee right to extend initial lease term. NY Adv Op Comm T & F TSB-A-97-(4)R.

Recording of fee mortgage (where Metropolitan Transportation Authority was mortgagor and Triborough Bridge and Tunnel Authority was mortgagee) was exempt from mortgage recording taxes since at least one party to mortgage at time of recording was agency or instrumentality of New York State. NY Adv Op Comm T & F TSB-A-97-(4)R.

Further assignment by Triborough Bridge and Tunnel Authority (TBTA) to trustee of TBTA's rights and assumption by trustee of TBTA's obligations (if any) under fee mortgage and collateral assignment were not subject to mortgage recording taxes. NY Adv Op Comm T & F TSB-A-97-(4)R.

### **3. Transfer tax**

Metropolitan Transportation Authority's entering into lease (which included contingent purchase option with Triborough Bridge and Tunnel Authority) was exempt from transfer tax under CLS Tax § 1405(b)(1) since grantee was agency or instrumentality of New York State. NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

Triborough Bridge and Tunnel Authority's entering into sublease with Metropolitan Transportation Authority was not conveyance subject to transfer tax under CLS Tax § 1401(e) since sublease term was less than 49 years; further, if sublease was conveyance subject to transfer tax, it would be exempt since grantee was agency or instrumentality of New York State. NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

Metropolitan Transportation Authority's issuance of support assets purchase option to Triborough Bridge and Tunnel Authority (TBTA), as well as TBTA's reassignment (subject to reversionary interest) of all of TBTA's right, title, and interest in support assets purchase option back to Metropolitan Transportation Authority (MTA), and MTA's

subsequent further assignment of all of its right, title, and interest in support assets purchase option to TBTA was exempt from transfer tax under CLS Tax § 1405(b)(1); in event that MTA was obligated to assign support assets purchase option to trustee, no transfer tax would be due since there was no consideration for conveyance. NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

Triborough Bridge and Tunnel Authority's assignment to trustee of all of its right, title, and interest in, and assumption by trustee of all of Authority's obligations under lease and sublease and Authority's reversionary interest in support assets purchase option were conveyances which would not incur transfer tax since there was no consideration for such conveyances; Authority's assignment to trustee of loan documents, leasehold mortgage and assignment of rents, and collateral assignment were not conveyances of real property under CLS Tax § 1401(e). NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 551, 552-a, 1200, 1261.

As to financing, construction, and operation of American Stock Exchange Office/Facility, see CLS Unconsol Law Ch. 252-D.

### Codes, Rules and Regulations:

Regulations of Triborough Bridge and Tunnel Authority, generally. 21 NYCRR §§ 1020.1 et seq.

### Jurisprudences:

62A NY Jur 2d Government Tort Liability § 311.

2 Am Jur 2d, Administrative Law §§ 221–226.

1 Am Jur 2d, Administrative Law §§ 60–68.

39 Am Jur 2d, Highways, Streets, and Bridges §§ 13–21.

40 Am Jur 2d, Highways, Streets, and Bridges §§ 616, 617.

### Hierarchy Notes:

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# NY CLS Pub A § 552-a

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## **§ 552-a. Consolidation**

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1.

(a) Triborough bridge authority, the corporation created pursuant to section five hundred fifty-two of this chapter, as originally enacted, and the New York city parkway authority, the corporation created by section two hundred seventy-seven\* of this chapter, are hereby consolidated into a single corporation to be known as Triborough bridge authority, which shall be a continuance of the corporate existence of the authorities so consolidated.

(b) Triborough bridge authority, the corporation as consolidated pursuant to paragraph one-a of this section, and New York city tunnel authority, the corporation created pursuant to section six hundred twenty-seven\* of this chapter, are hereby consolidated into a single corporation to be known as Triborough bridge and tunnel authority, which shall be a continuance of the corporate existence of the authorities so consolidated.

2. In this section the words “original authorities” refer to authorities which are consolidated pursuant to subsection one of this section before their consolidation, and the words “consolidated authority” refer to the single authority resulting from consolidation.
3. The board created by section five hundred fifty-two of this chapter shall be the board of the consolidated authority and all powers of the consolidated authority shall be vested in and exercised by said board.
4. All property, rights and powers of each of the original authorities are hereby vested in and shall be exercised by the consolidated authority, subject, however, to all pledges, covenants, agreements and trusts made or created by the original authorities, respectively.
5. All debts, liabilities, obligations, agreements and covenants of the original authorities are hereby imposed upon the consolidated authority.
6. All bondholders and other creditors of the original authorities and persons having claims against or contracts with the original authorities of any kind or character may enforce such debts, claims and contracts against the consolidated authority in the same manner as they might have against the original authorities respectively, and the rights and remedies of such bondholders, creditors and persons having claims or contracts shall not be limited or restricted in any manner by this title.
7. In continuing the functions and carrying out the contracts, obligations and duties of any of the original authorities, the consolidated authority is hereby authorized to act in its own name or in the name of the original authorities as may be convenient or advisable.
8. All employees of the original authorities shall become employees of the consolidated authority. Nothing in this title shall affect the civil service status of such employees or their rights, privileges, obligations or status with respect to any pension or retirement system.

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\* Repealed by L 1956, ch 557, §§ 4, 7.

9. The foregoing provisions of this section and of all other sections of this title are subject to the following limitation: that the consolidated authority, after the consolidation effected by subdivision one-b of this section, shall not apply any tolls or revenues derived from projects which before such consolidation were under control of one of the original authorities to the payment of bonds, or interest thereon, either issued, or for the issuance of which a contract has been made, before such consolidation by the other of the original authorities, or to the payment of any certificate of indebtedness issued, at any time, for unpaid interest on such bonds; but this shall not limit the application of tolls or revenues from any project to the payment of bonds (including refunding bonds) authorized by the consolidated authority after consolidation.

## History

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Add, L 1940, ch 6; amd, L 1946, ch 954, eff Apr 22, 1946; L 1967, ch 717, § 63, eff March 1, 1968.

Annotations

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 551, 552, 553, 561.

### Hierarchy Notes:

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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### § 553. Powers of the authority.

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The authority shall have power

1. to sue and be sued;
2. To have a seal and alter the same at pleasure;
3. [Eff until April 1, 2024] To acquire, hold and dispose of personal property for its corporate purposes, including, the power to dispose of personal property with a value of five hundred thousand dollars or less by public auction in accordance with guidelines adopted by the authority pursuant to title five-A of article nine of this chapter. The board shall adopt guidelines that shall provide for advertising and such other safeguards as the authority may deem appropriate in the public interest.
3. [Eff April 1, 2024] To acquire, hold and dispose of personal property for its corporate purposes;
4. To acquire, in the name of the city, by purchase or condemnation real property or rights or easements therein necessary or convenient for its corporate purposes, and, except as may otherwise be provided herein, to use the same so long as its corporate existence shall continue;
  - 4-a. Whenever any real property is determined by the authority to be unnecessary for its corporate purpose.
    - (a) to surrender such real property to the board of estimate of the city for other public use or purpose of such city, or
    - (b) to sell and convey or lease in behalf of such city any real property acquired by the city at the expense of the authority. The proceeds of any such sale or lease shall be paid to the authority and applied to its corporate purpose. Any such lease shall run for a term not to exceed ten years, and a renewal thereof for a term not to exceed ten years.
  - 4-b. To apply for and receive and accept grants of property, money and services and other assistance offered or made available to it by any person, government or agency whatever, which it may use to meet capital or operating expenses and for any other use within the scope of its powers, and to negotiate for the same upon such terms and conditions as the authority may determine to be necessary, convenient or desirable. Subject to the rights of the holders of any outstanding bonds, notes or other obligations of the authority, metropolitan transportation authority, and New York city transit authority, and to facilitate the efficient financial management of the authority, metropolitan transportation authority, its subsidiary corporations, and New York city transit authority and its subsidiary corporations (the “affiliated entities”), the authority may, and may permit and direct any affiliated entity to, transfer revenues, subsidies and other monies or securities to one or more funds or accounts of another affiliated entity for use by such other affiliated entity, provided at the time of such transfer it is reasonably anticipated that the monies and securities so transferred will be reimbursed, repaid or otherwise provided for by the end of the next succeeding calendar year if reimbursement or repayment is required by law or by any agreement to which any of the affected affiliated entities is subject. Any revenues of an affiliated entity that are transferred to another affiliated entity, which

transfer was not authorized by a provision of law other than this subdivision, shall be considered to be required to be repaid to the affiliated entity which was the source of such revenues by the end of the next succeeding calendar year following such transfer.

**5.** To make by-laws for the management and regulation of its affairs, and subject to agreements with bondholders, rules and regulations for the regulation of the use of the project and the establishment and collection of tolls thereon. Violation of such rules and regulations shall be a misdemeanor punishable by a fine of not exceeding fifty dollars or by imprisonment for not longer than thirty days, or both, except that violation of any rule or regulation governing or regulating traffic on the projects of the authority shall be a traffic infraction as the same is defined in the vehicle and traffic law and shall be punishable as such;

**6.** With the consent of the city to use agents, employees and facilities of the city, paying its proper proportion of the compensation or cost, and to use the corporation counsel as legal adviser;

**7.** To appoint officers, agents and employees and fix their compensation; subject, however, to the provisions of the civil service law, as hereinafter provided;

**7-a.** Notwithstanding any inconsistent provision of law, the bridge and tunnel officers employed by the authority shall have the power to issue simplified traffic informations for traffic infractions as defined in section one hundred fifty-five of the vehicle and traffic law, committed on the sites owned, operated and maintained by the triborough bridge and tunnel authority, such informations to be administered pursuant to the provisions of title A of chapter forty of the administrative code of the city of New York or article two-A of the vehicle and traffic law, as applicable and also shall have the power to issue notices of violation for transit infractions committed in and about any or all of the facilities, equipment or real property owned, occupied or operated by the metropolitan transportation authority or its subsidiaries and the New York city transit authority and its subsidiaries, as provided and in accordance with section twelve hundred nine-a of this chapter. Nothing set forth in this subdivision shall be construed to impede, infringe or diminish the rights and benefits that accrue to employees and employers through collective bargaining agreements, or impact or change an employee's membership in a bargaining unit.

**7-b.** [Repealed]

**8.** To make contracts, and to execute all instruments necessary or convenient;

**9.** To acquire, design, construct, maintain, operate, improve and reconstruct, so long as its corporate existence shall continue, the following projects,

**(a)** a bridge heretofore constructed, known as Robert F. Kennedy bridge, over the East river from the borough of Queens to the boroughs of Manhattan and the Bronx, over and across Ward's island and Randall's island in said river, together with such incidental bridges and structures as shall be necessary or convenient in order to give access from the bridge to both of said islands, together with approaches to said bridges (herein collectively referred to as the "Robert F. Kennedy bridge project"); and

**(b)** a bridge heretofore constructed, known as Bronx-Whitestone bridge, over the East river from a point at or near Whitestone in the borough of Queens to the borough of the Bronx, together with approaches to such bridge (herein collectively referred to as the "Whitestone bridge project"); and

**(c)** a bridge heretofore constructed, known as Henry Hudson bridge, across the Harlem river ship canal together with approaches to such bridge and together with so much of the parkway known as Henry Hudson parkway as extends southerly from said bridge through Inwood Hill park to the northerly end of Riverside drive, (as it was before the construction of said parkway) (herein collectively referred to as the "Henry Hudson bridge project"); and

**(d)** a bridge heretofore constructed, known as Marine parkway bridge, to be known hereafter as the Marine parkway—Gil Hodges memorial bridge, from the borough of Brooklyn across the waters of Rockaway inlet to Jacob Riis park in the borough of Queens, together with the approaches to

such bridge and together with the parkway of which said bridge is a part, (and the parking field connected therewith), from and including the toll plaza north of said bridge extending eastwardly from said bridge to the easterly boundary of Jacob Riis park (herein collectively referred to as the "Marine parkway bridge project"); and

**(e)** a bridge heretofore constructed known as Cross Bay parkway bridge, to be known hereafter as the Cross Bay Veterans Memorial bridge, from Big Egg marsh in Jamaica bay in the borough of Queens across the waters of Beach channel to Rockaway peninsula in said borough, together with the parkway known as Cross Bay parkway, of which said bridge is a part, from and including the toll plaza north of said bridge southerly to the right of way of the Long Island railroad on Rockaway peninsula (herein collectively referred to as the "Cross Bay parkway bridge project"); and

**(f)** a vehicular tunnel or tunnels heretofore constructed, known as Queens Midtown tunnel, under the East river from the borough of Manhattan to the borough of Queens, together with such incidental bridges and tunnels, including but not limited to, a tunnel or tunnels or bridge across Newtown creek from the borough of Queens to the borough of Brooklyn and such other structures, appurtenances, facilities and approaches as shall be necessary or convenient; and

**(g)** a vehicular tunnel or tunnels under construction, known as tunnel, under the East river from the southerly end of the borough of Manhattan to the general vicinity of Hamilton avenue in the borough of Brooklyn, together with such incidental tunnels and such other structures, appurtenances, facilities and approaches as shall be necessary or convenient; and

**(h)** a vehicular tunnel or tunnels or bridge, herein called the Brooklyn Richmond project, under or across New York bay from the borough of Richmond to the borough of Brooklyn, together with such incidental tunnels, bridges and such other structures, appurtenances, facilities and approaches as shall be necessary or convenient; and

**(i)** a vehicular tunnel or tunnels or arterial highway across the borough of Manhattan connecting the Queens Midtown tunnel with the Lincoln (Midtown Hudson) tunnel, together with such incidental tunnels and such other structures, appurtenances, facilities and approaches as shall be necessary or convenient; and

**(j)** Bus stations or terminals or automobile parking garages at or in the vicinity of the Columbus circle in the borough of Manhattan and of the Manhattan plazas of the Queens Midtown and Hugh L. Carey tunnels. Any such project may, subject to zoning restrictions, include space and facilities for any or all of the following: public recreation, business, trade and other exhibitions, sporting and athletic events, public meetings, conventions and all kinds of assemblages, and in order to obtain additional revenues, space and facilities for business and commercial purposes. Whenever the authority deems it to be in the public interest, the authority may lease any such project or any part or parts thereof or contract for the management and operation thereof or of any part or parts thereof. Any such lease or contract may be for a period of not exceeding ten years, or, if any of the revenues therefrom are or are to be pledged to secure bonds then such lease or contract may be for a period extending not later by more than one year than the last maturity of such bonds.

**(k)** Subject to and in accordance with all contract provisions with respect to any bonds and the rights of the holders of bonds, a vehicular bridge across the East river between the boroughs of the Bronx and Queens, east of the Bronx-Whitestone bridge, together with such incidental bridges and other structures, appurtenances, facilities and approaches as shall be necessary or convenient (herein collectively referred to as the "Throgs Neck bridge project"). With the consent of the United States of America, the Throgs Neck bridge project or a portion thereof, if deemed necessary or convenient by the authority, may be constructed upon or pass over any part of the military reservation known as Fort Schuyler and owned by the United States of America. No lands, easements or rights in land shall be acquired by the authority for the purposes of this paragraph without the prior consent of the board of estimate of the city.



**(l)** Subject to section five hundred fifty-three-b of this title, a convention and exhibition center, including facilities ancillary or functionally related thereto, to be built in New York county at a location generally bounded by thirty-ninth street on the north, thirtieth street on the south, eleventh avenue on the east and twelfth avenue on the west (herein referred to as the convention center).

**(m)** Subject to section five hundred fifty-three-c of this title, the acquisition of new rapid transit cars and the transfer of the same to the New York city transit authority for a nominal consideration. The authority shall have no obligation to operate, repair, maintain or reconstruct such cars subsequent to their acquisition and transfer nor shall it be liable to the New York city transit authority by reason of any warranty, express or implied, in respect to such cars. Manufacturers or other warranties furnished to the authority in connection with the purchase of such cars shall be assigned to the New York city transit authority for enforcement.

**(n)** Subject to section five hundred fifty-three-c of this title, the rehabilitation of existing rapid transit cars of the New York city transit authority upon such terms and conditions as shall be agreed to by the parties. The authority shall have no obligation to operate, repair, maintain or reconstruct such cars subsequent to the rehabilitation and transfer back to the New York city transit authority nor shall it be liable to the New York city transit authority by reason of any warranty, express or implied, in respect to such cars. Manufacturers or other warranties furnished to the authority in connection with the purchase of parts or materials for such cars shall be assigned to the New York city transit authority for enforcement.

**(o)** Subject to section five hundred fifty-three-c of this title, the acquisition of new diesel self-propelled railroad passenger cars and the transfer of the same to the metropolitan transportation authority, for a nominal consideration, for use on commuter railroads owned or controlled by the metropolitan transportation authority. The authority shall have no obligation to operate, repair, maintain or reconstruct such cars subsequent to their acquisition and transfer, nor shall it be liable to the metropolitan transportation authority by reason of any warranty, express or implied, in respect of such cars. Manufacturers or other warranties furnished to the authority in connection with the purchase of such cars shall be assigned to the metropolitan transportation authority for enforcement.

**(p)** Subject to section five hundred fifty-three-c of this title, the acquisition of land in the name of the authority in the vicinity of Penn Station in the city of New York and/or the improvement of such land for the benefit of the Long Island Rail Road for a lay-up yard and other railroad purposes and the transfer of the said land and any improvements thereon to the metropolitan transportation authority, parent corporation of the said railroad, for a nominal consideration. The authority shall have no obligation to operate, repair, maintain or reconstruct such land or its improvements subsequent to such transfer.

**(q)** [Repealed]

**(r)** In its discretion and subject to and in accordance with all contract provisions with respect to any bonds and the rights of the holders of bonds, at the request of the New York city transit authority or the metropolitan transportation authority, (i) the planning for and the design, acquisition, construction, improvement, reconstruction or rehabilitation, in the name of the authority, of any capital asset, whether in the nature of personal or real property (or any interest therein) which is used or useful for a transit or transportation purpose other than a marine or aviation purpose of the requesting authority or its designated subsidiary (and in the case of such assets then owned, operated by or under lease to the requesting authority or its designated subsidiary, the receipt by the authority of the use, occupancy, control or possession of such assets for the purpose of planning, designing, constructing, improving, reconstructing or rehabilitating the same) and the transfer or transfer back of such asset to the requesting authority, its designated subsidiary or other designee for a nominal consideration upon its acquisition or upon the completion of such improvement, construction, reconstruction or rehabilitation; or, alternatively or in combination with the foregoing, (ii) the making of capital grants to the requesting authority or its designated

subsidiary to permit it to undertake and to finance such planning, design, acquisition, improvement, construction, reconstruction or rehabilitation, or, alternatively or in combination with the foregoing, (iii) the financing of all or any part of the costs to the authority or to any other person or entity, public or private, of such planning, design, acquisition, construction, improvement, reconstruction or rehabilitation of any such capital asset through or accompanied by a leasing of the asset by such person or entity to the authority or through or accompanied by a sale by the authority to any such person or entity and leaseback to the authority, in each case for subleasing to the requesting authority, its designated subsidiary or other designee for a nominal rental, except that such leasing or leaseback from such person or entity may be directly to the requesting authority or its designated subsidiary or other designee, for consideration, with the consent and at the expense of the authority. The foregoing authorization shall extend to and include the continuation of projects enumerated in paragraphs (m), (n), (o) and (p) of this subdivision without regard to any limitations set forth in section five hundred fifty-three-c of this title. The authority shall have no obligation to operate or, except as may otherwise be provided in any lease to which it may be a party as aforesaid, repair or maintain any capital asset after its acquisition, construction, improvement, reconstruction or rehabilitation and subsequent transfer, lease or sublease, nor shall it be liable to the transferee, lessee or sublessee by reason of any warranty, express or implied, in respect thereof. Warranties furnished in connection with such acquisition, improvement, construction, reconstruction or rehabilitation shall be assignable and assigned as directed by the requesting authority and approved by the authority.

The word "approaches" shall include all structures necessary or convenient to give access to the project from connecting streets and roads;

(s) The central business district tolling program to the extent specified in article forty-four-C of the vehicle and traffic law and in this title.

**10.** In its discretion

(a) in the case of the Robert F. Kennedy bridge project and the Whitestone bridge project to pay to the city not exceeding thirty-five per centum of the cost (including awards for damages and expenses) of the acquisition of land for the widening of existing roads, streets, parkways or avenues and for new roads, streets, parkways or avenues, connecting with the approaches.

(b) to purchase from the persons, partnerships, associations or corporations who were the owners of any land acquired for the widening of existing roads, streets, parkways or avenues or for new roads, streets, parkways or avenues connecting with the approaches or of any interest in such land at the date title to such land was vested in the city in any proceeding heretofore or hereafter instituted for the acquisition thereof by condemnation, or from their successors in interest or legal representatives, their right, title, interest and/or claim in and to the award or awards or any part thereof to be made in such proceeding after the date of such purchase, and to take an assignment thereof to the authority, provided, however, that in the case of the Robert F. Kennedy bridge project and the Whitestone bridge project the aggregate amount expended by the authority on account of all such purchases together with the aggregate amount paid to the city in accordance with paragraph (a) of this subdivision, shall not exceed thirty-five per centum of the cost (including awards for damages and expenses) of the acquisition of land for the widening of existing roads, streets, parkways or avenues, and for new roads, streets, parkways or avenues, connecting with the approaches,

(c) to construct, in whole or in part, an elevated parkway in the borough of Brooklyn from the southerly terminus of the Gowanus creek bridge project to a point at or near Owls Head park connecting with the Gowanus creek bridge project, and

(d) with the consent of the city to construct and develop for the purpose of public parks so much of the area of lands, selected as in this title provided, or otherwise acquired or to be acquired and used in connection with the project and with new or existing roads, streets, parkways or avenues

connecting with such projects, and so much of the area of lands now owned by the city to be used in connection with such projects or with new or existing roads, streets, parkways or avenues connecting with such projects, as shall be agreed upon under a contract or contracts hereby authorized to be entered into between the authority and the city, at the sole expense of the authority and done under construction contracts let and supervised by the authority, pursuant to plans and specifications prepared by the authority, the commissioner of parks and recreation of the city or other agency.

The city shall maintain such connecting roads, streets, parkways and avenues as provided by law. The public parks and the parkways herein referred to as connecting with the approaches, any part of the cost of which is paid by the authority, shall be under the jurisdiction of the department of parks and recreation of the city and shall be maintained by that department. Service roads appurtenant to said parkways shall be under the jurisdiction of the city commissioner of transportation and shall be maintained by him;

**11.** To design and with the consent of the city, to construct new parks, parkways or highways or improvements to existing parks, parkways or highways either connecting directly or indirectly with the project or for the purpose of attracting or facilitating traffic or improving approaches to and connections with the project. The authority shall have no jurisdiction or control over any new parks, parkways or highways constructed by it pursuant to the provisions of this paragraph eleven after the completion of the construction thereof. The general powers conferred in this subdivision eleven shall include the power heretofore conferred on the parkway authority to construct a northerly extension of Cross Bay parkway in the borough of Queens, as authorized in sections two hundred seventy-eight, two hundred eighty-two-a and two hundred eighty-two-b of this chapter, and such general powers shall not be construed to be limited by the provisions of this act granting the power to construct any particular improvement, but shall be construed as an extension of the powers of the authority.

**12.** To charge tolls, fees or rentals for the use of the project, subject to and in accordance with such agreement with bondholders as may be made as hereinafter provided. The toll rates charged for the use of either the Triborough or Whitestone bridge project shall, however, never be less than the toll rates charged for the use of the other, and this clause shall be deemed an obligation to the holders of any and all bonds at any time issued secured by the revenues of said projects. Subject to contracts with bondholders, all tolls and other revenues derived from any project shall be applied to the payment of operating, administration and other necessary expenses of the authority properly chargeable to such project and thereafter to the payment of interest or principal of bonds or for making sinking fund payments for bonds, not otherwise adequately provided for, whether issued in connection with such project or any other project. It is the intention hereof that surplus funds from any project remaining after providing for the payment of all operating, administration and other necessary expenses of the authority and all contract provisions with respect to any bonds, may be used to meet obligations incurred for other projects and if not so used or reserved for such use shall, at the discretion of metropolitan transportation authority, be transferred to metropolitan transportation authority or New York city transit authority pursuant to section five hundred sixty-nine-c of this title. Subject to contracts with bondholders, the authority may treat one or more projects as a single enterprise in respect of revenues, expenses, the issuance of bonds, maintenance, operation or other purposes;

**12-a.** To establish and charge variable tolls, fees and other charges for vehicles entering or remaining within the central business district and to make rules and regulations for the collection of such tolls, fees and other charges, subject to and in accordance with such agreement with bondholders and applicable federal law as may be made as hereinafter provided. Subject to agreements with bondholders and applicable federal law, all tolls, fees and other revenues derived from the central business district tolling program shall be applied to the payment of operating, administration, and other necessary expenses of the authority properly allocable to such program, including the capital costs of such program, and to the payment of interest or principal of bonds, notes or other obligations of the authority or the metropolitan transportation authority issued for transit and commuter projects as provided in section five hundred fifty-three-j of this title, and shall not be subject to distribution under

section five hundred sixty-nine-c of this title or section twelve hundred nineteen-a of this chapter. The provisions of section twenty-eight hundred four of this chapter shall not be applicable to the tolls and fees established by the authority pursuant to this subdivision. Any such fares, tolls, and other charges shall be established and changed only if approved by resolution of the authority adopted by not less than a majority vote of the whole number of members of the authority then in office, with the chairman having one additional vote in the event of a tie vote, and only after a public hearing.

**13.** To construct and maintain over, under, along or across the project telephone, telegraph, or electric wires and cables, gas mains, water mains and other mechanical equipment not inconsistent with the appropriate use of the project, to contract for such construction and to lease the right to construct and/or use the same on such terms and for such considerations as it shall determine, provided, however, that no lease shall be made except with the approval of the board of estimate of the city, or for a period of more than twenty years from the date when it is made;

**14.** To construct and maintain facilities for the public, not inconsistent with the use of the project, to contract for such construction, and to lease the right to construct and/or use such facilities on such terms and for such considerations as it shall determine, provided, however, that no lease shall be made for a period of more than five years from the date when it is made except with the approval of the board of estimate of the city;

**15.** To issue negotiable bonds and to provide for the rights of the holders thereof;

**16.** To enter on any lands, waters, and premises for the purpose of making surveys, soundings and examinations;

**16-a.** With the consent of the city and notwithstanding any other provision of law, whenever real property having dwellings or other structures thereon has been acquired by the authority or the city for the purpose of constructing any project authorized by this title, (a) to acquire real property by purchase, gift, devise or condemnation in the manner provided in this title, and as the agent of the city, for the purpose of providing new sites on which such dwellings or other structures may be relocated; (b) to sell such dwellings or other structures or to provide for the removal, relocation and improvement of such dwellings or other structures on new foundations at such new sites by contract or by its own labor force or by a combination of methods; (c) to contract for the installation of water, sewer, gas and electrical facilities and other necessary appurtenances required for the completion and restoration of such dwellings or other structures; (d) to landscape such new sites; (e) to contract with any person, firm or corporation or with the city for the improvement or installation of streets, sewers, water lines or other facilities in connection with the relocation of such dwellings or other structures and to pay the cost thereof; (f) to contract with the several owners of such property for the conveyance of the new sites with improvements thereon to such owner in settlement in part or in whole of the compensation and damage to which they are entitled; and (g) to sell such sites with or without dwellings or other structures and improvements thereon.

The authority may agree with the owners of property acquired, in settlement in part or in whole of the damages to which they are entitled, to compensate such owners for the cost of acquiring new sites, removing dwellings thereto on new foundations, the installation of water, sewer, gas and electrical facilities and other necessary appurtenances required for the complete restoration of such dwellings or other structures and landscaping of the new site.

For the purposes of this subdivision, the term "structures" shall mean and include buildings used as and for hospitals, schools, community and religious institutions, cultural and recreational and other neighborhood and community facilities, but shall exclude retail stores, factories and commercial and industrial establishments of any kind.

**17.** To do all things necessary or convenient to carry out the powers expressly given in this title and to assist and cooperate with the metropolitan transportation authority to carry out the powers of the metropolitan transportation authority in furtherance of the purposes and powers of the authority as

provided in this article, including, without limitation, the transactions described in sections twelve hundred sixty-six-c, twelve hundred sixty-nine, and twelve hundred seventy-d of this chapter.

**18.** A copy of any report submitted by the authority pursuant to sections twenty-eight hundred, twenty-eight hundred one and twenty-eight hundred two of this chapter shall be submitted contemporaneously to the mayor of the city.

**19.** To acquire in its own name certain real or personal property, or any interest therein, including leasehold interests, air and subsurface rights, easements and lands under water at a site located in New York county and generally bounded by thirty-third street on the north, thirtieth street on the south, tenth avenue on the east and eleventh avenue on the west, such property or any interest therein to be acquired for railroad or other corporate purposes, and in the event such real or personal property or any interest therein is determined by the authority to be unnecessary for railroad or other corporate purposes, to sell, convey or lease in its own name such real or personal property or any interest therein.

**20.** Prior to the adoption after January first, nineteen hundred eighty-seven by the authority of a general resolution pursuant to which it is authorized to issue any general or special obligation bonds or notes to finance a project pursuant to the authorization contained in paragraph (r) of subdivision nine of this section, not including any series resolution or resolutions, and prior to the adoption of any amendment to a general resolution, whenever adopted, pursuant to which it is authorized to issue any general or special obligation bonds or notes for such purpose, not including a series resolution or resolutions, the authority shall submit a copy of such proposed resolution to the metropolitan transportation authority capital program review board (hereinafter referred to as the "board"). Within fifteen days of such submission, the board may notify the authority of its unanimous approval of the same by the members entitled to vote thereon, or if the resolution is not approved and no individual member of the board who is entitled to vote on such resolution has notified the authority in writing of his disapproval, the resolution shall be deemed to have been approved. Neither the board nor any member thereof shall disapprove a proposed resolution by reason of any covenant requiring the authority to charge and fix tolls, rentals and other charges sufficient to pay its operating expenses and the debt service, including the funding of requisite reserves, on the bonds and notes authorized by such resolution. If the board or any member thereof entitled to vote thereon shall disapprove a proposed resolution, the authority may, at any time, resubmit a reformulated resolution. Within ten days of the submission of such reformulated resolution the board may notify the authority of its unanimous approval of the same by the members entitled to vote thereon, or, if the reformulated resolution is not approved and no individual member of the board who is entitled to vote thereon has notified the authority in writing of his disapproval within such period, the reformulated resolution shall have been deemed to have been approved. Any individual member of the board who votes against a resolution or a reformulated resolution or who notifies the authority of his disapproval shall state his reasons therefor. The member appointed on the recommendation of the mayor of the city of New York shall participate in the action of the board with respect to any resolution of the authority submitted pursuant to this subdivision. The authority shall not adopt a resolution or any amendment to a resolution disapproved by the board as herein provided.

**21.** To invest any funds, accounts or other monies not required for immediate use or disbursement, at the discretion of the authority, in any of the investments in which the metropolitan transportation authority is permitted to invest its monies pursuant to subdivision four of section twelve hundred sixty-five of this chapter.

**22.** [Expires and repealed April 1, 2024] Section twenty-eight hundred seventy-nine of this chapter shall apply to the authority's acquisition of goods or services of any kind, in the actual or estimated amount of fifteen thousand dollars or more, provided that (i) a contract for services in the actual or estimated amount of less than one hundred thousand dollars shall not require approval by the board of the authority regardless of the length of the period over which the services are rendered, and provided further that a contract for services in the actual or estimated amount of one hundred thousand dollars or

more shall require approval by the board of the authority regardless of the length of the period over which the services are rendered unless such a contract is awarded to the lowest responsible bidder after obtaining sealed bids and (ii) the board of the authority may by resolution adopt guidelines that authorize the award of contracts to small business concerns, to service disabled veteran owned businesses certified pursuant to article seventeen-b of the executive law, or minority or women-owned business enterprises certified pursuant to article fifteen-a of the executive law, or purchases of goods or technology that are recycled or remanufactured, in an amount not to exceed four hundred thousand dollars without a formal competitive process and without further board approval. The board of the authority shall adopt guidelines which shall be made publicly available for the awarding of such contract without a formal competitive process.

## History

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Add, L 1939, ch 870, eff June 15, 1939; amd, L 1939, ch 874; L 1940, ch 6; L 1946, ch 954, eff April 22, 1946; L 1948, ch 854, eff April 6, 1948; L 1955, ch 806, § 2, eff April 28, 1955; L 1957, ch 619, eff Apr 17, 1957; L 1963, ch 626, eff April 23, 1963; L 1964, ch 576; L 1967, ch 717, §§ 64–66, eff March 1, 1968; L 1969, ch 407, §§ 72, 73; L 1970, ch 775; L 1970, ch 1033, eff Sept 1, 1970; L 1973, ch 769, eff Sept 1, 1973; L 1973, ch 1032; L 1974, ch 281, eff May 31, 1974; L 1978, ch 28, eff April 4, 1978; L 1978, ch 655, § 76, eff July 25, 1978; L 1979, ch 35, § 8, eff April 3, 1979; L 1979, ch 369, §§ 9, 10 effective upon approval by the people at the general election held Nov 6, 1979; L 1979, ch 560, § 1, eff July 10, 1979; L 1979, ch 735, § 9; L 1981, ch 314, §§ 3, 5, eff June 29, 1981; L 1983, ch 838, § 4, eff Aug 3, 1983; L 1986, ch 929, § 17, eff Dec 31, 1986; L 2000, ch 61, §§ 2–5 (Part O), eff May 15, 2000; L 2008, ch 453, §§ 2, 3, eff Aug 5, 2008; L 2010, ch 558, §§ 2, 3, eff Dec 10, 2010; L 2016, ch 54, §§ 7, 12 (Part OO), effective April 4, 2016; L 2019, ch 59, §§ 3, 4 (Part ZZZ, Subpart A), effective April 12, 2019; L 2019, ch 59, § 7 (Part ZZZ, Subpart B), effective April 12, 2019.

Annotations

## Notes

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### Editor's Notes

§ 278 of this chapter, repealed by L 1956, ch 557, § 4.

Laws 1979, ch 369, § 12(b) provides as follows:

§ 12. (b) Sections two, four, five, six, seven, eight, nine, ten and eleven of this act shall take effect only in the event that the energy conservation through improved transportation bond act of nineteen hundred seventy-nine, constituting section one of this act, is approved by the people at the general election held in November, nineteen hundred seventy-nine. Upon such approval, such sections two, four, five, six, seven, eight, nine, ten and eleven shall take effect immediately.

**Laws 2008, ch 453, §§ 1, 13**, eff Aug 5, 2008, provide as follows:

Section 1. Legislative findings and intent. The legislature hereby recognizes Robert F. Kennedy, in this fortieth year following his tragic assassination, by naming after him the Triborough bridge, as a tribute befitting his historic contribution to the State of New York and the nation. Robert F. Kennedy represented the State of New York in the United States Senate with great distinction, from 1965 until his untimely death in 1968, working tirelessly to improve the lives of New Yorkers, fighting poverty and advancing the civil rights movement. The state of New York and our entire nation were further enriched by Robert F. Kennedy's prior service as the sixty-fourth Attorney General of the United States, and trusted advisor to the President. Common throughout his many works was an effort to bridge the gaps among persons of diverse racial, ethnic and economic backgrounds. Accordingly, the legislature hereby

names the Triborough bridge a complex of spans connecting three boroughs of New York City, thereby bridging the gaps dividing diverse populations the Robert F. Kennedy bridge.

§ 13. Terms occurring in laws, regulations, contracts and other documents. Whenever Triborough bridge is referred to or designated in any law, regulation, contract or document, such reference or designation shall be deemed to refer to Robert F. Kennedy bridge, and no such laws, regulations, contracts or other documents shall be thereby impaired in any way.

**Laws 2010, ch 558, § 1**, eff Dec 10, 2010, provides as follows:

Section 1. Legislative findings and intent. The legislature hereby recognizes Hugh L. Carey, by naming after him the Brooklyn Battery Tunnel, as a tribute befitting his historic contribution to the state of New York. Hugh L. Carey served the people of New York state as a member of the United States House of Representatives for fourteen years, and as the fifty-first Governor of New York state for twelve years. He served as Governor during a time of great challenge for New York state, and significantly advanced the state's fiscal well-being and economic development. He brought the city of New York back from the brink of bankruptcy, and was instrumental in the development of the South Street Seaport, Battery Park City and the Jacob Javits Convention Center. He greatly improved the services provided to the mentally ill and developmentally disabled, by entering into the Willowbrook consent decree and through other initiatives. Hugh L. Carey served with distinction as a member of the New York National Guard in Europe during the Second World War, receiving the Combat Infantryman Badge, the Bronze Star and the Croix de Guerre, and leaving active duty with the rank of colonel. His decades of service to this state and nation fully merit the honor bestowed upon him by this bill.

**Laws 2016, ch 54, § 15 (Part OO)**, eff April 4, 2016, provides:

§ 15. This act shall take effect immediately, and shall expire and be deemed repealed April 1, 2024 (Amd, L 2021, ch 55, § 1 (Part YY), eff April 19 2021).

**Laws 2019, ch 59, § 1 (Part ZZZ)**, eff April 12, 2019, provides:

§ 1. This act shall be known and may be cited as the "MTA reform and traffic mobility act".

### **Amendment Notes**

**The 2016 amendment by ch 54, §§ 7, 12 (Part OO)**, in 3, added "including, the power to dispose of personal property with a value of five hundred thousand dollars or less by public auction in accordance with guidelines adopted by the authority pursuant to title five-A of article nine of this chapter" in the first sentence and added the second sentence and added 22.

**The 2019 amendments by ch 59, §§ 3, 4 (Part ZZZ, Subpart A)**, added 9(s); and added 12-a.

**The 2019 amendment by ch 59, § 7 (Part ZZZ, Subpart B)**, in 7-a, added "and also shall have the power to issue notices of violation for transit infractions committed in and about any or all of the facilities, equipment or real property owned, occupied or operated by the metropolitan transportation authority or its subsidiaries and the New York city transit authority and its subsidiaries, as provided and in accordance with section twelve hundred nine-a of this chapter" at the end of the first sentence and added the second sentence.

### **Repeal Notes**

[1981, ch 314] Paragraph (q) of subdivision nine of section five hundred fifty-three and section five hundred fifty-three-d of the public authorities law, repealed by this act, related to the financing of an American stock exchange office facility.

## **Notes to Decisions**

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**1. Generally**

**2. Home rule provisions**

**3. Sale of real property**

**4. Rules and regulations**

**5. Employees**

**6. Tolls**

**7. Governmental immunity**

**1. Generally**

The agreements with bondholders referred to in this section are those made by the Authority, or by the State, for the protection of the financial security of the holders of bonds of the original or the consolidated authorities and they have nothing to do with the regulation of traffic on the project under the Authority's control. *People v Malmud*, 4 A.D.2d 86, 164 N.Y.S.2d 204, 1957 N.Y. App. Div. LEXIS 5255 (N.Y. App. Div. 2d Dep't 1957).

It was error to annul determination terminating petitioner's employment as bridge and tunnel officer on ground that he was not given notice that his approved absences could ultimately be considered "excessive," and thus misconduct, where Triborough Bridge and Tunnel Authority's rules clearly stated that "excessive absence ... will be cause for dismissal," governing collective bargaining agreement guaranteed employees only 12 days sick leave per year, termination letter specifically noted serious negative impact petitioner's absences had on budgetary and personnel matters, as well as employee morale, and petitioner's 80 percent absentee rate over 19-month period, albeit approved and medically justified, was excessive under any standard. *Cicero v Triborough Bridge & Tunnel Auth.*, 264 A.D.2d 334, 694 N.Y.S.2d 51, 1999 N.Y. App. Div. LEXIS 8660 (N.Y. App. Div. 1st Dep't 1999), app. dismissed, 94 N.Y.2d 931, 708 N.Y.S.2d 350, 729 N.E.2d 1149, 2000 N.Y. LEXIS 533 (N.Y. 2000).

Judgment denying a bridge authority's petition to vacate an arbitration award directing the bridge authority to cease and desist from requiring bridge and tunnel officers (BTOs) to take a certain break between regular and overtime shifts was proper because, *inter alia*, N.Y. Pub. Auth. Law § 553 did not expressly empower the bridge authority to decide how long BTOs could safely work without a break, or otherwise prohibit, in an absolute sense, an arbitrator from making that decision.. *Matter of Triborough Bridge & Tunnel Auth. v Triborough Bridge & Tunnel Auth. Bridge & Tunnel Officers Benevolent Assn.*, 51 A.D.3d 452, 857 N.Y.S.2d 116, 2008 N.Y. App. Div. LEXIS 3973 (N.Y. App. Div. 1st Dep't 2008).

Proper venue of action brought by Borough President of Richmond County against Triborough Bridge and Tunnel Authority to invalidate decision to raise tolls on Verrazano Narrows Bridge, and to enjoin collection of increased tolls, was Richmond County where tolls were collected, not New York County where authority's principal office was located, since CLS CPLR § 505(a) permits suit against public authority to be maintained in county where authority "has facilities involved in the action." *Molinari v Triborough Bridge & Tunnel Authority*, 146 Misc. 2d 580, 551 N.Y.S.2d 767, 1990 N.Y. Misc. LEXIS 52 (N.Y. Sup. Ct. 1990).

In the absence of a showing of special injury a motor carrier could not maintain an action for a declaratory judgment that an increase of bridge tolls and rates was void. *G. T. McGovern Trucking Co. v Moses*, 16 Misc. 2d 72, 92 N.Y.S.2d 550, 1949 N.Y. Misc. LEXIS 1648 (N.Y. Sup. Ct. 1949), *aff'd*, 277 A.D. 758, 97 N.Y.S.2d 395, 1950 N.Y. App. Div. LEXIS 3165 (N.Y. App. Div. 1950).

Rights granted to Triborough Bridge and Tunnel Authority under this section and §§ 561 and 564 hereof, to charge tolls to citizens of Staten Island in reaching the seat of government of the City of New York did not infringe upon a constitutionally protected right. *Goodman v New York*, 46 Misc. 2d 432, 260 N.Y.S.2d 274, 1965 N.Y. Misc. LEXIS 1902 (N.Y. Sup. Ct. 1965).



Unions whose members were sergeants and lieutenants and bridge and tunnel officers in employ of Triborough Bridge and Tunnel Authority could not bring Article 78 proceeding against police commissioner of city of New York and district attorneys for mandamus to compel recognition of employees as peace officers and allowing them to carry weapons including firearms while at work and to enjoin arrest and criminal prosecution for possessing weapons. *Triborough Bridge & Tunnel Authority v Cawley*, 76 Misc. 2d 930, 352 N.Y.S.2d 371, 1974 N.Y. Misc. LEXIS 1980 (N.Y. Sup. Ct. 1974).

Action brought by Borough President of Richmond County against Triborough Bridge and Tunnel Authority to invalidate decision to raise tolls on Verrazano Narrows Bridge, and to enjoin collection of increased tolls, which was properly maintained in Richmond County by virtue of CLS CPLR § 505(a), would not be converted into Article 78 proceeding, making New York County only proper venue under CLS CPLR § 506(b) as county “where material events” took place, since plaintiff was well within rights in seeking injunctive relief through declaratory judgment action. *Molinari v Triborough Bridge & Tunnel Authority*, 146 Misc. 2d 580, 551 N.Y.S.2d 767, 1990 N.Y. Misc. LEXIS 52 (N.Y. Sup. Ct. 1990).

## **2. Home rule provisions**

The Port of New York Authority is a matter of State concern and legislative enactments affecting the Authority are not within the home rule provisions of the State Constitution. Thus, an attack on Chapters 806, 809 of the Laws of 1955, on the grounds that no city message to the Legislature accompanied their enactment, was unsuccessful. *Whalen v Wagner*, 4 N.Y.2d 575, 176 N.Y.S.2d 616, 152 N.E.2d 54, 1958 N.Y. LEXIS 875 (N.Y. 1958).

## **3. Sale of real property**

Triborough Bridge and Tunnel Authority (TBTA) was not required to adhere to competitive bidding requirements of New York City Charter § 384 in selling property it had acquired at its own expense (New York Coliseum at Columbus Circle); conveyance by TBTA included both its interest and New York City’s statutory contingent reversionary interest, conveyed by TBTA “in behalf of” New York City. *Jo & Wo Realty Corp. v New York*, 76 N.Y.2d 962, 563 N.Y.S.2d 727, 565 N.E.2d 476, 1990 N.Y. LEXIS 3492 (N.Y. 1990).

Sale of obsolete building constructed by Triborough Bridge and Tunnel Authority (TBTA) 30 years earlier pursuant to urban renewal plan was governed by Public Authorities Law, and TBTA could sell building without competitive bidding although site on which it was built was acquired in name of New York City since (1) TBTA statutorily held property for duration of its corporate existence, pursuant to CLS Pub A §§ 553(4) and 557, (2) city, as grantor, had only contingent reversionary interest, and (3) TBTA’s payment of \$2.2 million to city was used to reduce initial acquisition costs, thereby bringing original purchase within CLS Pub A § 553(4-a). *Jo & Wo Realty Corp. v New York*, 157 A.D.2d 205, 555 N.Y.S.2d 271, 1990 N.Y. App. Div. LEXIS 5093 (N.Y. App. Div. 1st Dep’t), *aff’d*, 76 N.Y.2d 962, 563 N.Y.S.2d 727, 565 N.E.2d 476, 1990 N.Y. LEXIS 3492 (N.Y. 1990).

New York City’s proposed sale of site of obsolete building constructed by Triborough Bridge and Tunnel Authority (TBTA) 30 years earlier pursuant to urban renewal plan could proceed without formal competitive bidding since CLS Pub A § 553(4-a) authorizes TBTA to sell any property which was acquired by city at TBTA expense when such property is determined by TBTA to be unnecessary for its corporate purpose, and nothing in statutory provisions governing TBTA requires it to sell its real property interests through competitive bidding; unless specifically mandated, public authorities such as TBTA are not required to utilize competitive bidding. *Jo & Wo Realty Corp. v New York*, 157 A.D.2d 205, 555 N.Y.S.2d 271, 1990 N.Y. App. Div. LEXIS 5093 (N.Y. App. Div. 1st Dep’t), *aff’d*, 76 N.Y.2d 962, 563 N.Y.S.2d 727, 565 N.E.2d 476, 1990 N.Y. LEXIS 3492 (N.Y. 1990).

## **4. Rules and regulations**

This section was not invalid for the failure of the Legislature to give the Authority standards for its guidance in the exercise of the delegated power to adopt rules. It is this section enacted by the Legislature and not a rule adopted by the Authority which defines the substantive criminal offense and makes a violation of the Authority’s rules a

misdeemeanor. *People v Malmud*, 4 A.D.2d 86, 164 N.Y.S.2d 204, 1957 N.Y. App. Div. LEXIS 5255 (N.Y. App. Div. 2d Dep't 1957).

## 5. Employees

The authority has power to hear and pass on charges against its employees and to issue subpoenas to compel the attendance of witnesses. *Reynolds v Triborough Bridge & Tunnel Authority*, 276 A.D. 388, 94 N.Y.S.2d 841, 1950 N.Y. App. Div. LEXIS 4869 (N.Y. App. Div. 1950).

Employee of Triborough Bridge and Tunnel Authority was not entitled to hearing on issue of whether he was, in fact, guilty of infractions for which he was terminated where, in exchange for having disciplinary charges dropped, he knowingly and voluntarily consented to be placed on probation for one-year period, during which time Authority had sole discretion to dismiss him "without the necessity of affording [employee] the right to a further hearing"; thus, it was error for Supreme Court to grant Article 78 petition to extent of remanding matter for hearing. *Montiel v Kiley*, 147 A.D.2d 402, 538 N.Y.S.2d 2, 1989 N.Y. App. Div. LEXIS 1883 (N.Y. App. Div. 1st Dep't 1989), *aff'd*, *People v Vespucci*, 75 N.Y.2d 434, 554 N.Y.S.2d 417, 553 N.E.2d 965, 1990 N.Y. LEXIS 229 (N.Y. 1990).

It was not the intent of the legislature either by the Civil Service Law or this law to require the employment of only Civil Service employees in the construction of a project. *Meadows v Moses*, 44 N.Y.S.2d 697, 1938 N.Y. Misc. LEXIS 2396 (N.Y. Sup. Ct. 1938).

## 6. Tolls

Despite contention that bridge tolls or charges must be related to physical use of facilities, Triborough Bridge and Tunnel Authority, in fixing toll rates for use of its facilities, was empowered to distinguish between what it denominated and defined as general purpose franchised omnibus operations and special purpose franchised bus operations, and, based on this decision to charge higher tolls for special purpose buses. *Carey Transp. v Triborough Bridge & Tunnel Authority*, 38 N.Y.2d 545, 381 N.Y.S.2d 811, 345 N.E.2d 281, 1976 N.Y. LEXIS 2264 (N.Y.), *cert. denied*, 429 U.S. 830, 97 S. Ct. 90, 50 L. Ed. 2d 93, 1976 U.S. LEXIS 2533 (U.S. 1976).

The complaint would be dismissed in an action against the Triborough Bridge and Tunnel Authority (TBTA), in which plaintiff sought to compel the TBTA to honor toll tickets which were purchased in discount books in various denominations before the TBTA increased the toll rates on the bridges and tunnels it operated in and around the City of New York, and to refund the differential which such ticket holders were required to pay after the effective date of the increases; no promise of a "right of passage for 75 cents" could reasonably be read into the legend "Good for Passage of Motor Vehicle" appearing on the ticket with the price of 75 cents, nor was plaintiff entitled to rely upon any assumption that those tickets allowed passage at that price over or through any of TBTA's facilities where the toll then in force exceeded, or was subsequently raised to more than, 75 cents. *D'Angelo v Triborough Bridge & Tunnel Authority*, 106 A.D.2d 128, 484 N.Y.S.2d 574, 1985 N.Y. App. Div. LEXIS 42549 (N.Y. App. Div. 1st Dep't), *aff'd*, 65 N.Y.2d 714, 492 N.Y.S.2d 6, 481 N.E.2d 546, 1985 N.Y. LEXIS 15115 (N.Y. 1985).

The Triborough Bridge and Tunnel Authority has unlimited toll-fixing power and is empowered to raise tolls without any obligation to provide notice or to hold any hearings before doing so, and any interference with the authority of the Triborough Bridge and Tunnel Authority (TBTA) to charge or increase tolls effectively undermines the TBTA's statutory assurances to its bondholders; trial court's order requiring the TBTA to roll back certain toll increases and refund amounts it had collected in excess of the previous tolls constituted an impermissible impairment of the TBTA's authority and its bondholders' rights. *N.Y. Pub. Interest Research Group Straphangers Campaign, Inc. v Metro. Transp. Auth.*, 309 A.D.2d 127, 763 N.Y.S.2d 13, 2003 N.Y. App. Div. LEXIS 8336 (N.Y. App. Div. 1st Dep't), *app. denied*, 100 N.Y.2d 513, 767 N.Y.S.2d 394, 799 N.E.2d 617, 2003 N.Y. LEXIS 2540 (N.Y. 2003).

## 7. Governmental immunity

In §§ 552(2), 553(1) and 561(1), the legislature has intentionally insulated the state treasury from any liabilities that Triborough might incur; thus Triborough is not alter ego of the state and is thus not immune from suit. *Raymond International, Inc. v The M/T Dalzelleagle*, 336 F. Supp. 679, 1971 U.S. Dist. LEXIS 10939 (S.D.N.Y. 1971).

The fact that Triborough has been expressly authorized “to sue and be sued” is a strong indication that the state did not intend to clothe it with sovereign immunity. *Raymond International, Inc. v The M/T Dalzelleagle*, 336 F. Supp. 679, 1971 U.S. Dist. LEXIS 10939 (S.D.N.Y. 1971).

## Opinion Notes

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### Agency Opinions

#### 1. Generally

Recording of leasehold mortgages granted by Triborough Bridge and Tunnel Authority (TBTA) to lenders on its leasehold interest in leased property under lease of property by Metropolitan Transit Authority to TBTA, and assignment of rents in such mortgages, under specific terms and conditions where TBTA was named mortgagor, was exempt from mortgage recording taxes. NY Adv Op Comm T & F TSB-A-97-(4)R.

In accordance with CLS Tax §§ 250 and 253, assignment by Triborough Bridge and Tunnel Authority (TBTA) to trustee of its rights (if any), and assumption by trustee of TBTA's obligations, under leasehold mortgages granted by TBTA to lenders on its leasehold interest in leased property under lease of property by Metropolitan Transit Authority to TBTA, and assignment of rents in such mortgages, were not events which would cause mortgage recording taxes to be imposed. NY Adv Op Comm T & F TSB-A-97-(4)R.

Funding of loan and execution and delivery of loan certificates to trustee only after assignment were not subject to mortgage recording taxes in situation where execution, delivery or recording by Triborough Bridge and Tunnel Authority (TBTA) of 2 mortgages granted by TBTA to lenders on its leasehold interest in leased property under lease of leased property by Metropolitan Transportation Authority (MTA) to TBTA and assignment of rents in said mortgages and in loan agreement under sublease of leased property by TBTA to MTA where (a) TBTA was named mortgagor, (b) loan secured in part by leasehold mortgage and assignment of rents would be provided by one or more persons or entities other than, and unrelated to, MTA, (c) documents for and securing loan were executed by TBTA, but loan was funded only after either (x) assignment of all of TBTA's right, title, and interest in lease, sublease, support assets purchase option, loan documents, leasehold mortgage and assignment of rents, and collateral assignment to trustee under trust agreement with grantor and assumption by trustee of all of TBTA's obligations (and release of TBTA) under lease, sublease, loan documents, leasehold mortgage and assignment of rents, and collateral assignment or (y) on satisfaction of certain conditions and authorizations relating to possibility of funding loan prior to assignment, which conditions and authorizations were not expected to occur, and (d) proceeds of loan were used by trustee (as successor in interest to TBTA) to fund portion of lump sum payment to MTA, which sum constituted prepaid rent under lease and cost for option giving trustee right to extend initial lease term. NY Adv Op Comm T & F TSB-A-97-(4)R.

Payment and performance by trustee of its obligations under, holding by lenders of, and/or enforcement by lenders of their rights and remedies under or as to loan certificates, loan documents, loan agreement, leasehold mortgage and assignment of rents, or fee mortgage were not subject to mortgage recording taxes in situation where execution, delivery or recording by Triborough Bridge and Tunnel Authority (TBTA) of 2 mortgages granted by TBTA to lenders on its leasehold interest in leased property under lease of leased property by Metropolitan Transportation Authority (MTA) to TBTA and assignment of rents in said mortgages and in loan agreement under sublease of leased property by TBTA to MTA where (a) TBTA was named mortgagor, (b) loan secured in part by leasehold mortgage and assignment of rents would be provided by one or more persons or entities other than, and unrelated to, MTA, (c) documents for and securing loan were executed by TBTA, but loan was funded only after either (x) assignment of all of TBTA's right, title, and interest in lease, sublease, support assets purchase option,

loan documents, leasehold mortgage and assignment of rents, and collateral assignment to trustee under trust agreement with grantor and assumption by trustee of all of TBTA's obligations (and release of TBTA) under lease, sublease, loan documents, leasehold mortgage and assignment of rents, and collateral assignment or (y) on satisfaction of certain conditions and authorizations relating to possibility of funding loan prior to assignment, which conditions and authorizations were not expected to occur, and (d) proceeds of loan were used by trustee (as successor in interest to TBTA) to fund portion of lump sum payment to MTA, which sum constituted prepaid rent under lease and cost for option giving trustee right to extend initial lease term. NY Adv Op Comm T & F TSB-A-97-(4)R.

Recording of fee mortgage (where Metropolitan Transportation Authority was mortgagor and Triborough Bridge and Tunnel Authority was mortgagee) was exempt from mortgage recording taxes since at least one party to mortgage at time of recording was agency or instrumentality of New York State. NY Adv Op Comm T & F TSB-A-97-(4)R.

Further assignment by Triborough Bridge and Tunnel Authority (TBTA) to trustee of TBTA's rights and assumption by trustee of TBTA's obligations (if any) under fee mortgage and collateral assignment were not subject to mortgage recording taxes. NY Adv Op Comm T & F TSB-A-97-(4)R.

## **2. Transfer tax**

Metropolitan Transportation Authority's entering into lease (which included contingent purchase option with Triborough Bridge and Tunnel Authority) was exempt from transfer tax under CLS Tax § 1405(b)(1) since grantee was agency or instrumentality of New York State. NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

Triborough Bridge and Tunnel Authority's entering into sublease with Metropolitan Transportation Authority was not conveyance subject to transfer tax under CLS Tax § 1401(e) since sublease term was less than 49 years; further, if sublease was conveyance subject to transfer tax, it would be exempt since grantee was agency or instrumentality of New York State. NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

Metropolitan Transportation Authority's issuance of support assets purchase option to Triborough Bridge and Tunnel Authority (TBTA), as well as TBTA's reassignment (subject to reversionary interest) of all of TBTA's right, title, and interest in support assets purchase option back to Metropolitan Transportation Authority (MTA), and MTA's subsequent further assignment of all of its right, title, and interest in support assets purchase option to TBTA was exempt from transfer tax under CLS Tax § 1405(b)(1); in event that MTA was obligated to assign support assets purchase option to trustee, no transfer tax would be due since there was no consideration for conveyance. NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

Triborough Bridge and Tunnel Authority's assignment to trustee of all of its right, title, and interest in, and assumption by trustee of all of Authority's obligations under lease and sublease and Authority's reversionary interest in support assets purchase option were conveyances which would not incur transfer tax since there was no consideration for such conveyances; Authority's assignment to trustee of loan documents, leasehold mortgage and assignment of rents, and collateral assignment were not conveyances of real property under CLS Tax § 1401(e). NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

## **Research References & Practice Aids**

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### **Cross References:**

This section referred to in §§ 551, 553-c, 553-d, 553-e, 569-c, 1219-a, 1269-b, 2560.

Special Triborough bridge and tunnel authority special obligation bonds and notes, § 553-d.

Freshwater wetlands, CLS ECL Art 24 §§ 24-0101 et seq.

Rule making procedure, CLS St Adm P Act § 202.

As to financing, construction, and operation of American Stock Exchange Office/Facility, see CLS Unconsol Law Ch. 252-D.

**Codes, Rules and Regulations:**

Definitions used in regulations of Triborough Bridge and Tunnel Authority. 21 NYCRR § 1020.1.

Toll rates and vehicle limitations. 21 NYCRR §§ 1021.1 et seq.

Types of traffic excluded from vehicular crossings. 21 NYCRR §§ 1022.1 et seq.

Operation of vehicles. 21 NYCRR §§ 1023.1 et seq.

Transportation of explosives and other dangerous articles over the Triborough Bridge, Bronx-Whitestone Bridge, Throgs Neck Bridge, Henry Hudson Bridge, Marine Parkway Bridge, Crossbay Bridge, and Verrazano-Narrows Bridge upper level. 21 NYCRR §§ 1024.1 et seq.

Transportation of explosives and other dangerous articles to the Queens Midtown and Brooklyn-Battery tunnels and Verrazano-Narrows bridge lower level. 21 NYCRR §§ 1025.1 et seq.

**Federal Aspects:**

Toll-roads, bridges, and tunnels under the federal-aid highways program, 23 USCS § 129, 301.

Special replacement program under Federal-Aid Highways Act, 23 USCS § 144.

Federal-state relationships under the federal-aid highways program, 23 USCS § 145.

Bridges over navigable waters, generally, 33 USCS §§ 491 et seq.

Regulation of tolls on bridges over navigable waters, 33 USCS §§ 503 to 507, 526, 535d.

Transfer to state authorities of bridges over navigable waters, 33 USCS § 534.

**Jurisprudences:**

1 Am Jur 2d, Administrative Law §§ 69–84.

8 Am Jur Legal Forms 2d, Garages, Service Stations, and Parking Facilities, Forms 128:201 et seq.

**Law Reviews:**

Short constitutional history of entities known as authorities. 56 Cornell L. Rev. 521.

**Hierarchy Notes:**

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

# NY CLS Pub A § 553-a

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

## **§ 553-a. Additional powers in relation to Brooklyn Richmond project**

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1. If and when the Port of New York authority (herein called the “port authority”) is authorized to make agreements with the authority relating to the construction, ownership, maintenance and operation of the Brooklyn Richmond project as a bridge (herein sometimes collectively referred to as the “Narrows bridge project”) and to acquire land, easements and rights in land necessary or convenient therefor, the authority shall have power, in its discretion and subject to and in accordance with all contract provisions with respect to any bonds and the rights of the holders of bonds to make such agreements with the port authority on such terms and conditions and with such payments and considerations as the authority and the port authority shall deem in the public interest, as to any one or more of the following:

(a) the acquisition of such land, easements and rights in land for, and the design, construction and financing of, the Narrows bridge project by the port authority, including the payment therefor by the authority and the transfer of title thereto and the right of possession and use thereof, provided, however, that the agreement shall contain provisions as to the land, easements and rights in land to be acquired, and that such provisions of such agreement shall be subject to the approval of the mayor of the city, and provided further that such agreement shall provide that no other land, easements or rights in land will be acquired for Narrows bridge purposes by the port authority,

(b) the construction, with the consent of the city, either by the authority or the port authority, of new parks, parkways, highways, or improvements to existing parks, parkways or highways, either connecting directly or indirectly with the Narrows bridge project, for the purpose of attracting or facilitating traffic or improving approaches to and connections with such project, and the acquisition of land, easements and rights in land therefor,

(c) leasing the Narrows bridge project, in whole or in part, by the authority from the port authority and the payment by the authority of rents or other payments therefor, and for the operation, maintenance, construction and reconstruction thereof by the authority pursuant to and to the extent provided by the terms of such agreement for leasing,

(d) charging and fixing tolls, fees and rentals for the use of such project, sufficient to provide for the payment by the authority of the costs of construction, maintenance and operation thereof and all rents and other payments under any such agreement for leasing, for the payment of the principal of and interest on any bonds or other obligations to be issued by the authority to pay the cost of such project and all other payments to be made by the authority including reserves and sinking funds therefor, in accordance with any such agreement for leasing or other agreement made between the port authority and the authority in connection with such project,

(e) securing the payment of rents and other payments under any such agreement for leasing, or other agreement made between the port authority and the authority in connection with such project, by pledging such tolls, fees, rentals and revenues of such project and providing for the use and disposition of such tolls, fees, rentals and revenues, and for the setting aside of reserves or sinking funds and the regulation and disposition thereof, and, subject to and in accordance with all contract provisions with

respect to any bonds, by pledging for such security tolls, fees, rentals and revenues of any or all of the projects,

- (f) limiting the construction by the authority of vehicular crossings between Brooklyn and Richmond,
- (g) acquiring from the port authority all or any part of the right, title and interest of the port authority in such project and the lands, easements and rights in land acquired for such project by the port authority,
- (h) defining events of default under such agreement, fixing periods of grace and providing rights and remedies of the parties in case of default thereunder including the right to terminate and fix the terms and conditions for the termination of the same, and
- (i) any other matters of like or different character for the protection of the interest of the port authority or the authority or the respective holders of bonds thereof or the public with respect to the acquisition, construction, reconstruction, improvement, operation or maintenance of the Narrows bridge project.

2. The authority shall have power to do any acts or things, transfer such rights or interests and execute and deliver such papers as the authority may deem necessary or desirable to carry out any of the foregoing.

3. The authority, so long as its corporate existence shall continue, shall have power to operate, maintain, construct, improve and reconstruct the Narrows bridge project and to exercise all of the powers herein granted to the authority with respect to the Narrows bridge project in connection with any agreements between the port authority and the authority or otherwise, and subject to any such agreements shall have the use and occupancy of any lands, easements or rights in land acquired in the name of the city for such project. The powers conferred in this section shall be in addition to and shall not limit the other powers conferred in this title.

## History

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Add, L 1955, ch 806, § 3, eff Apr 28, 1955; amd, L 1964, ch 576, § 65, eff Apr 16, 1964.

Annotations

## Notes to Decisions

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### 1. Generally

Chapters 806–809 of the Laws of 1955 providing for Throgs Neck Bridge connecting Bronx and Queens and bridge over Narrows connecting Brooklyn and Staten Island and second deck to George Washington Bridge between New York and New Jersey under the Home Rule provisions of the State Constitution. The Home Rule provisions were not applicable. The Port Authority is engaged in matters of State concern and therefore the matters over which the Authority has jurisdiction are not within the Home Rule provisions. *Whalen v Wagner*, 4 N.Y.2d 575, 176 N.Y.S.2d 616, 152 N.E.2d 54, 1958 N.Y. LEXIS 875 (N.Y. 1958).

The Port of New York Authority is a matter of State concern and legislative enactments affecting the Authority are not within the home rule provisions of the State Constitution. Thus, an attack on Chapters 806, 809 of the Laws of 1955, on the grounds that no city message to the Legislature accompanied their enactment, was unsuccessful. *Whalen v Wagner*, 4 N.Y.2d 575, 176 N.Y.S.2d 616, 152 N.E.2d 54, 1958 N.Y. LEXIS 875 (N.Y. 1958).

## Research References & Practice Aids

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Cross References:

This section referred to in § 551.

**Hierarchy Notes:**

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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## NY CLS Pub A § 553-b

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

### **§ 553-b. Additional powers and provisions in relation to convention center**

1. In relation to the convention center and for the purpose of effectuating the development of the same, the authority shall have power, in its discretion and subject to and in accordance with all contract provisions with respect to any bonds and the rights of the holders of bonds, to:

(a) Finance all or any part of the costs of and incidental to studies, the site acquisition, planning, design, construction and development of the convention center, through the issuance of its negotiable notes or bonds or other obligations;

(b) Lease in its own name the convention center from the subsidiary of New York state urban development corporation (such subsidiary being herein referred to as the development corporation) created pursuant to a chapter of the laws of nineteen hundred seventy-nine for studies, site acquisition, planning, design, construction and development of the convention center, and sublease its interest therein to the state (acting by and through the commissioner of general services), each of such lease and sublease to be upon such terms and conditions as the parties thereto shall agree, provided that (i) such lease shall (a) provide for an initial lump-sum rental in the amount of the aggregate of those costs of and incidental to the studies, site acquisition, planning, design, construction and development of the convention center theretofore temporarily financed by the State and for a nominal rental thereafter, (b) provide to the lessee the option to purchase for a nominal price the leased property in its own name at the expiration or earlier termination of the term of the lease, and (c) relieve the development corporation of any obligation to operate, repair, maintain or reconstruct the convention center, and (ii) such sublease shall (a) provide for rental payments equal to the amount needed to pay debt service on said notes, bonds or other obligations as the same becomes due, (b) provide that the obligations of the state to make such rental payments shall not constitute a debt of the state within the meaning of any constitutional or statutory provision and shall be deemed executory only to the extent of moneys made available to the state, and that no liability on account thereof shall be incurred by the state beyond the moneys available for the purpose thereof, (c) provide to the sublessee the option to purchase for a nominal price any interest of the authority in the subleased property at the expiration or earlier termination of the term of the sublease, and (d) relieve the authority of any obligation to operate, repair, maintain or reconstruct the convention center;

(c) Agree with the development corporation (in the lease referred to in paragraph (b) above or by separate agreement) to make payments to the development corporation from the proceeds of the sale of the obligations referred to in paragraph (a) above upon requisition therefor by the development corporation, in an aggregate amount equal to the costs of and incidental to the studies, site acquisition, planning, design, construction and development of the convention center less the amount theretofore paid to the development corporation as rentals under the lease referred to in paragraph (b) above; and

(d) Additionally participate in the site acquisition, planning, design, construction and development of the convention center through representation on the board of directors of the development corporation.

2. Bonds, notes or other obligations issued for the purposes enumerated in paragraph (a) of subdivision one of this section shall be issued in the manner provided in section five hundred sixty-one of this chapter, subject only to the following limitations:

(a) The aggregate principal amount of such bonds, notes or other obligations shall not exceed three hundred seventy-five million dollars (\$375,000,000), excluding bonds, notes or other obligations issued to refund or otherwise repay bonds, notes or other obligations theretofore issued for such purposes; provided, however, that upon any such refunding or repayment the total aggregate principal amount of outstanding bonds, notes or other obligations may be greater than three hundred seventy-five million dollars (\$375,000,000) only if the present value of the aggregate debt service of the refunding or repayment bonds, notes or other obligations to be issued shall not exceed the present value of the aggregate debt service of the bonds, notes or other obligations so to be refunded or repaid. For purposes hereof, the present values of the aggregate debt service of the refunding or repayment bonds, notes or other obligations and of the aggregate debt service of the bonds, notes or other obligations so refunded or repaid, shall be calculated by utilizing the effective interest rate of the refunding or repayment bonds, notes or other obligations, which shall be that rate arrived at by doubling the semi-annual interest rate (compounded semi-annually) necessary to discount the debt service payments on the refunding or repayment bonds, notes or other obligations from the payment dates thereof to the date of issue of the refunding or repayment bonds, notes or other obligations and to the price bid including estimated accrued interest or proceeds received by the authority including estimated accrued interest from the sale thereof; and

(b) Bonds issued for such purposes may be issued as a single issue or in series from time to time provided that (i) such issue or each such series shall be scheduled to mature over a term of not less than twenty and not more than forty years, (ii) with respect to bonds issued prior to the date of completion of the convention center, as estimated by the authority, any principal payments or principal installments to be made or provided for shall commence not later than two years following the estimated date of such completion, (iii) with respect to bonds issued on or after the date of completion of the convention center, as certified by the authority, any principal payments or principal installments to be made or provided for shall commence not later than one year following the date of issue of such bonds, and (iv) the aggregate amount of principal and interest or principal installments and interest payable in each year during which such principal payments or installments are made or provided for shall, (1) with respect to such issue, or (2) with respect to each such series or the aggregate of all such series, as the authority shall elect, be as nearly equal as practicable.

3. The authority shall have power to enter into such other agreements with the city, the state, New York state urban development corporation and the development corporation to effectuate the provisions of this article, and to perform any act or thing, transfer such rights or interests and execute and deliver such instruments, documents or papers as it may deem necessary, convenient or desirable to carry out any of the foregoing. The powers conferred in this section shall be in addition to and not in limitation of the other powers conferred in this title.

## History

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Add, L 1979, ch 35, § 9, eff Apr 3, 1979; amd, L 1985, ch 249, § 1, eff June 20, 1985.

Annotations

## Notes

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Editor's Note:

**Laws 1979, ch 35, § 13**, provides as follows:

§ 13. Notwithstanding the provisions of any general, special or local law, the state, acting by and through the commissioner of general services, is hereby authorized to lease from Triborough bridge and tunnel authority its interest in the convention center and to sublease such interest to the operating corporation, each such lease and sublease to be for such term as the parties thereto shall agree, and on such other terms and conditions as the parties thereto shall agree in accordance with the provisions of paragraph (b) of subdivision one of section five hundred fifty-three-b of the public authorities law as added by section nine of this act.

## **Research References & Practice Aids**

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### **Cross References:**

This section referred to in § 553.

### **Hierarchy Notes:**

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 553-c

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)*

## § 553-c. Additional powers and provisions in relation to railroad and rapid transit projects

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1. The authority shall have the power to finance all or any part of the costs of railroad and rapid transit costs enumerated in paragraphs m, n, o and p of subdivision nine of section five hundred fifty-three of this article through the issuance of its negotiable bonds, notes or other obligations in the manner provided in section five hundred sixty-one of this chapter subject only to the following limitations:

(a) The aggregate principal amount of such bonds, notes or other obligations shall not exceed three hundred million dollars (\$300,000,000) excluding (i) bonds issued to fund any reasonably required debt service reserve fund, and (ii) bonds, notes or other obligations issued to refund or otherwise repay bonds, notes or other obligations theretofore issued for any of the purposes set forth in this subdivision, and

(b) Bonds issued for such purposes may be issued as a single issue or in series from time to time provided that (i) such issue or each such series shall be scheduled to mature over a term of not less than twenty and not more than thirty years, (ii) the aggregate amount of principal and interest or principal installments and interest payable in each year during which such principal payments or installments are made or provided for shall not exceed twenty-six million dollars, and (1) with respect to such issue, or (2) with respect to each such series or the aggregate of all such series, as the authority shall elect, be as nearly equal as practicable.

2. Moneys expended pursuant to subdivision one of this section shall be utilized insofar as practical to: (a) purchase at least one hundred twenty-four new subway cars for the New York city transit authority, (b) rehabilitate at least two hundred eighty existing subway cars for the New York city transit authority, (c) acquire at least fifteen new diesel self-propelled railroad passenger cars for the metropolitan transportation authority commuter service area and (d) provide a passenger car lay-up yard and other facilities for the Long Island Rail Road in Manhattan. The authority shall either apply for or make reasonable effort to secure federal assistance in support of each of the programs herein authorized and to the extent such federal assistance is forthcoming and/or other cost savings are realized with respect to any such program shall have the power to expand the size of that or any of the foregoing programs.

## History

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Add, L 1979, ch 369, § 11, effective upon approval by the people at the general election held Nov 6, 1979; amd, L 1980, ch 273, § 1, eff June 18, 1980.

Annotations

## Notes

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**Editor's Note:**

**Laws 1979, ch 369, § 12(b)** in part provides as follows:

(b) . . . . section one of this act, is approved by the people at the general election held in November, nineteen hundred seventy-nine. Upon such approval, such sections two, four, five, six, seven, eight, nine, ten and eleven shall take effect immediately.

## **Research References & Practice Aids**

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**Cross References:**

This section referred to in § 553.

**Hierarchy Notes:**

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 553-d

Current through 2023 released Chapter 1

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## § 553-d. Special Triborough bridge and tunnel authority special obligation bonds and notes

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In addition to the powers contained elsewhere in this title with respect to the projects authorized by paragraphs (m), (n), (o), (p) and (r) of subdivision nine of section five hundred fifty-three of this title, and subject to the application of the revenues and other monies and assets of the authority pursuant to section twelve hundred seventy-d of this chapter, the authority may issue its bonds and notes to finance such projects payable from and secured by all or any part of the moneys received by the authority from the metropolitan transportation authority special assistance fund established under section twelve hundred seventy-a of this chapter, provided however that such bonds and notes may also be payable from and secured by any other moneys, securities and funds designated by the authority as additional security therefor. Debt service on bonds and notes issued by the authority pursuant to this section which is paid or reimbursed from moneys received by the authority from the metropolitan transportation authority special assistance fund shall not be deemed to constitute debt service incurred by the authority for purposes of subdivision three of section twelve hundred nineteen-a of this chapter. Such bonds or notes shall be issued in the manner provided in section five hundred sixty-one of this title.

### History

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Add, L 1986, ch 929, § 18; amd, L 1987, ch 13, § 1, eff Mar 31, 1987; L 2000, ch 61, § 6 (Part O), eff May 15, 2000.

Annotations

### Notes

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#### Repeal Notes:

[1981, ch 314] Section five hundred fifty-three-d of the public authorities law, repealed by this act, related to the financing of an American stock exchange office facility.

#### Prior Law:

Former § 553–d, add, L 1979, ch 735, § 10; repealed, L 1981, ch 314, § 3, eff June 29, 1981.

### Research References & Practice Aids

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**Cross References:**

This section referred to in § 1270-a.

Metropolitan transportation authority special assistance fund, § 1270-a.

**Hierarchy Notes:**

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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## NY CLS Pub A § 553-e

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### **§ 553-e. Laws applicable to certain activities**

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1.

(a) In its performance of any project authorized by paragraph (m), (n), (o), (p) or (r) of subdivision nine of section five hundred fifty-three of this title, the authority shall not be deemed the agent or instrumentality of any other public benefit or municipal corporation notwithstanding the fact that title to any real or personal property (or any interest therein) which is the subject of or is a part of such project is held by, or upon completion of such project is to be transferred to, any such entity, and the provisions of section five hundred fifty-nine of this title shall not be applicable with respect to any such project. In its performance of any such project for the New York city transit authority, however, the provisions of section twelve hundred nine of this chapter shall apply to the authority as if it were the “authority” referred to therein.

(b) Neither the provisions of section one hundred ninety-seven-c of the New York city charter, relating to a uniform land use review procedure, nor the provisions of any other local law of the city of New York of like or similar tenor or import shall apply (i) to the acquisition of any real property (or any interest therein) for the purposes of any such project by the city or by the New York city transit authority or any of its subsidiaries; (ii) to the subsequent transfer of any real property (or interest therein) so acquired to the authority or its designee for the purposes of such project or to the transfer to the authority or its designee for such purposes of any real property (or interest therein) then owned by the city or by the New York city transit authority or any such subsidiary; nor (iii) to the transfer to the authority or its designee for such purposes of the right of use, occupancy, control or possession of any real property (or interest therein), whether presently owned or hereafter acquired by the city or by the New York city transit authority or any such subsidiary; provided in each such case, however, that if at the time of such proposed acquisition or transfer the real property which is the subject of such acquisition or transfer is not then being utilized for a transit or transportation purpose or is not an insubstantial addition to such property contiguous thereto; (a) the authority proposing to acquire or receive such property shall, unless a submission with respect to such property has previously been made and approved as herein provided, submit to the community board for the community district in which such property is located, data with respect to the proposed use of such property and to the design of any facility proposed to be constructed thereon; (b) such community board shall inform the board of estimate of the city of New York, with copies to the city planning commission of the city of New York and the proposing authority, of its views and recommendations with respect thereto within forty-five days of such submission, and if the community board shall fail to so inform the board of estimate within such period it shall be deemed to have recommended the proposal; and (c) the board of estimate shall, within forty-five days of the recommendation of the community board, approve or disapprove such acquisition or transfer, and if the board of estimate shall fail to act within such period it shall be deemed to have approved the same.

2. After the transfer, transfer back, lease or sublease by the authority of any such project or part thereof, actions for damages to real or personal property or for the destruction thereof, or for personal injuries or death, based upon the use, condition or state of such project or part thereof may not be instituted against



the authority, which shall have no liability or responsibility to the transferee, lessee or sublessee or to third parties therefor.

- 3.** If any property, real or personal (or any interest therein), needed or useful for or in connection with any such project is owned by any municipal corporation, such corporation may transfer the same, with or without consideration, to the authority for such purpose, and if such property is owned by the city of New York, such transfer may be by action of its mayor alone.
- 4.** The authority, upon suitable notice to and an offer to consult with an officer designated by the city of New York, may occupy the streets of the city of New York for the purpose of doing any work over or under the same in connection with any such project without the consent of or payment to the city of New York.
- 5.** The providing of any such project for the use or benefit of the New York city transit authority or any of its subsidiaries shall not relieve the city of its obligations under law or by lease to pay the capital costs of the said authority or of its subsidiaries.
- 6.** Except as the authority shall otherwise agree, title to any such project or any part thereof or interest therein which shall have been transferred, leased or subleased to the New York city transit authority or its designated subsidiary, shall remain in such transferee, lessee or sublessee, any provisions of title nine of article five of this chapter or of any lease or other agreement entered into under the provisions of that title to the contrary notwithstanding.
- 7.** The metropolitan transportation authority, the New York city transit authority and the designated subsidiaries of each of them are each hereby authorized (i) to request the authority to undertake any such project; (ii) to acquire in its own name by gift, purchase or condemnation, and, additionally, in the case of the metropolitan transportation authority, by appropriation pursuant to section twelve hundred sixty-seven-a of this chapter, any real or personal property (or any interest therein), which is needed or useful for or in connection with such project, the provisions of any lease or other agreement with the city to the contrary notwithstanding, and to surrender the use, occupancy, control or possession of or to transfer the same, or of any other such real or personal property (or any interest therein) which it owns, leases, operates or controls, to the authority; (iii) to accept a transfer, transfer back, lease or sublease of any such project or part thereof upon its completion; (iv) to undertake any such project itself, or to finance, through loans, leases or otherwise, any other person or entity, public or private, to do so, in each case using funds granted by the authority to pay all or any part of the costs thereof (such undertaking, in the case of the New York city transit authority and its subsidiary, the Manhattan and Bronx surface transit operating authority, being free of any restriction set forth in subparagraph (ii) of paragraph b of subdivision one of section twelve hundred three or in paragraph (c) of subdivision five of section twelve hundred three-a of this chapter); and (v) to make its agents, employees and facilities available to the authority in connection therewith.
- 8.** No such project to be constructed upon real property theretofore used for a transit or transportation purpose, or on an insubstantial addition to such property contiguous thereto, which will not change in a material respect the general character of such prior transit or transportation use, nor any acts or activities in connection with such project, shall be subject to the provisions of article eight, nineteen, twenty-four or twenty-five of the environmental conservation law, or to any local law or ordinance adopted pursuant to any such article. Nor shall any project or acts or activities in connection therewith taken by any person or entity, public or private, pursuant to paragraph (m), (n), (o), (p), or (r) of subdivision nine of section five hundred fifty-three of this title be subject to the provisions of article eight of the environmental conservation law if such project, acts or activities to be taken in connection therewith require the preparation of a statement under or pursuant to any federal law or regulation as to the environmental impact thereof.
- 9.** In connection with the negotiation, award and implementation of contracts of the authority relating to any project hereafter initiated pursuant to paragraphs (m), (n), (o), (p) and (r) of subdivision nine of section five hundred fifty-three of this title, the provisions of paragraphs (a), (b), (c) and (d) of subdivision thirteen of section twelve hundred sixty-six-c of this chapter shall apply to the authority as if it were the "authority" referred to therein, and the officer designated by the metropolitan transportation authority pursuant to

paragraph (e) of that subdivision shall perform the duties therein described with respect to such contracts of the authority.

**10.** The financing of any such project through the issuance of bonds or notes of the authority shall be subject to the provisions of section twelve hundred sixty-nine-b of this chapter.

**11.** The aggregate principal amount of bonds and notes issued and outstanding at any time to finance projects authorized by paragraphs (m), (n), (o), (p) and (r) of subdivision nine of section five hundred fifty-three of this title shall not exceed one billion one hundred million dollars through December thirty-first, nineteen hundred eighty-six and three billion two hundred million dollars thereafter, provided however that such latter amount shall not exceed two billion two hundred million dollars for all bonds and notes other than those issued pursuant to section five hundred fifty-three-d of this title. This limitation shall not include (i) bonds and notes issued to refund or otherwise repay bonds or notes theretofore issued for such purposes, (ii) bonds issued to fund any reasonably required debt service reserve fund for bonds and notes, and (iii) an amount equal to any original issue discount from the principal [principal]<sup>\*</sup> amount of any bonds or notes issued and then outstanding. From the proceeds of the bonds and notes provided for in the first sentence of this subdivision, other than bonds or notes authorized by section five hundred fifty-three-d of this title, the authority shall not expend more than one billion three hundred twenty million dollars for transit projects as defined in section twelve hundred sixty-six-c of this chapter nor more than eight hundred eighty million dollars for transportation facilities as such term is defined in subdivision fourteen of section twelve hundred sixty-one of this chapter other than marine or aviation facilities. For the purposes of this subdivision, facilities under the jurisdiction of the Staten Island rapid transit operating authority shall be considered transit projects.

## History

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Add, L 1981, ch 314, § 6, eff June 29, 1981; amd, L 1981, ch 558, § 1, eff June 29, 1981; L 1981, ch 978, § 1; L 1981, ch 1036, § 1; L 1984, ch 602, § 1; L 1986, ch 929, § 19, eff Dec 31, 1986; L 1993, ch 2, § 1, eff Jan 26, 1993, deemed eff Jan 30, 1993.

Annotations

## Research References & Practice Aids

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### Cross References:

This section referred to in § 1269-b.

This section referred to in § 553-d.

Special Triborough bridge and tunnel authority special obligation bonds and notes, § 553-d.

Environmental quality review, CLS ECL Art 8 §§ 8-0101 et seq.

Air pollution control, CLS ECL Art 19 §§ 19-0101 et seq.

Tidal wetlands, CLS ECL Art 25 §§ 25-0101 et seq.

### Hierarchy Notes:

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\* Bracketed language inserted by the Publisher.

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# NY CLS Pub A § 553-f

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***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

## § 553-f. Tokens.

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Notwithstanding any inconsistent provision of law, but subject to agreements with noteholders and bondholders, the authority shall offer for sale tokens with respect to residents of the county of Richmond and may, except as otherwise provided herein, regulate the use thereof. Tokens for residents of the county of Richmond shall entitle the purchaser to crossings over the Verrazzano-Narrows bridge at a reduced cost of eighty per centum of the regular crossing fare imposed on nonresidents of the county of Richmond. In the event the authority shall impose a surcharge in addition to the regular toll for crossings over the Verrazzano-Narrows bridge, such surcharge shall not be deemed a part of the regular crossing fare for purposes of this section, and the tokens offered for sale to the residents of the county of Richmond as herein provided shall also entitle the purchaser to a permanent exemption from the payment of any such surcharge in an amount equal to the amount of any such surcharge imposed during calendar year nineteen hundred ninety-three. Application for such tokens or other payment devices shall be made in such manner as prescribed by the authority and shall contain such information as the authority may reasonably require.

## History

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Add, L 1983, ch 350, § 1, eff July 22, 1983; amd, L 1983, ch 272, § 1; L 1993, ch 2, § 2, eff Jan 26, 1993, deemed eff Jan 30, 1993,3, eff Jan 26, 1993, deemed eff Jan 30, 1993; L 2018, ch 288, § 8, effective October 1, 2018.

Annotations

## Notes

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### Amendment Notes

**The 2018 amendment by ch 288, § 8**, substituted “Verrazzano-Narrows bridge” for “Verrazano-Narrows bridge” in the second and third sentences.

## Research References & Practice Aids

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### Hierarchy Notes:

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## § 553-g. Fire training

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All persons appointed to the position of bridge and tunnel officer and maintenance division employees of the Triborough bridge and tunnel authority on or after the effective date of this section shall participate in a training course of at least twenty-eight hours on the subject of fire prevention and control. The training courses shall be conducted by the Fire Academy of the New York city fire department. Such academy shall also administer any retraining or refresher courses attended by personnel of the authority. Any costs incurred by the city of New York for the aforementioned training shall be reimbursed by the authority.

## History

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Add, L 1990, ch 899, § 1, eff Jan 1, 1991; amd, L 1992, ch 14, § 1, eff March 13, 1992.

Annotations

## Research References & Practice Aids

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### Hierarchy Notes:

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# NY CLS Pub A § 553-h

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## § 553-h. Tokens

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Notwithstanding any inconsistent provision of law, but subject to agreements with noteholders and bondholders, the authority shall offer for sale tokens and may, except as otherwise provided herein, regulate the use thereof. Such tokens shall entitle the purchaser to crossings over the Cross-Bay Veteran's Memorial bridge at a reduced cost of sixty-six and two-thirds per centum of the regular crossing fare imposed. In the event the authority shall impose a surcharge in addition to the regular toll for crossings over the Cross-Bay Veteran's Memorial bridge, such surcharge shall not be deemed a part of the regular crossing fare for purposes of this section, and the tokens or other payment devices offered for sale shall also entitle purchasers who are residents of Broad Channel or the Rockaway peninsula to a permanent exemption from the payment of any such surcharge in an amount equal to the amount of any such surcharge imposed during calendar year nineteen hundred ninety-three. Application for such tokens or other payment devices shall be made in such manner as prescribed by the authority and shall contain such information as the authority may reasonably require.

## History

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Formerly § 553–e, add, L 1981, ch 978, § 1; amd, L 1983, ch 768, § 1, eff Aug 28, 1983; L 1993, ch 2, § 1, eff Jan 26, 1993, deemed eff Jan 30, 1993.

Annotations

## Research References & Practice Aids

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### Hierarchy Notes:

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# NY CLS Pub A § 553-i

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## **§ 553-i. Marine Parkway Bridge; tokens**

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Notwithstanding any inconsistent provision of law, but subject to agreements with noteholders and bondholders, the authority shall offer for sale tokens and may, except as otherwise provided herein, regulate the use thereof. Such tokens shall entitle the purchaser to crossings over the Marine Parkway Bridge at a reduced cost of sixty-six and two-thirds percentum of the regular crossing fare. In the event the authority shall impose a surcharge in addition to the regular toll for crossings over the Marine Parkway Bridge, such surcharge shall not be deemed a part of the regular crossing fare for purposes of this section, and the tokens or other payment devices offered for sale shall also entitle purchasers who are residents of Broad Channel or the Rockaway Peninsula to a permanent exemption from the payment of any such surcharge in an amount equal to the amount of any such surcharge imposed during calendar year nineteen hundred ninety-three. Application for such tokens or other payment devices shall be made in such manner as prescribed by the authority and shall contain such information as the authority may reasonably require.

## **History**

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Formerly § 553–f, add, L 1983, ch 772, § 1, eff Aug 28, 1983; amd, L 1993, ch 2, § 3, eff Jan 26, 1993, deemed eff Jan 30, 1993.

Annotations

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

NY CLS Pub A, Art. 3

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# NY CLS Pub A § 553-j

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## **§ 553-j. Additional powers and provisions in relation to central business district tolling program.**

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1. The authority shall establish a fund to be known as the central business district tolling capital lockbox fund which shall be kept separate from and shall not be commingled with any other monies of the authority. The fund shall consist of all monies received by the authority pursuant to article forty-four-C of the vehicle and traffic law, subdivision twelve-a of section five hundred fifty-three of this title, and revenues of the real estate transfer tax deposited pursuant to subdivision (b) of section fourteen hundred twenty-one of the tax law, and sales tax pursuant to subdivision (c) of section eleven hundred forty-eight of the tax law, subparagraph (B) of paragraph five of subdivision (c) of section twelve hundred sixty-one of the tax law, and funds appropriated from the central business district trust fund established pursuant to section ninety-nine-ff of the state finance law.
2. [Eff until April 3, 2022] Monies in the fund shall be applied, subject to agreements with bondholders and applicable federal law, to the payment of operating, administration, and other necessary expenses of the authority, or to the city of New York subject to the memorandum of understanding executed pursuant to subdivision two-a of section seventeen hundred four of the vehicle and traffic law properly allocable to such program, including the planning, designing, constructing, installing or maintaining of the central business district tolling program, including, without limitation, the central business district tolling infrastructure, the central business district tolling collection system and the central business district tolling customer service center, and the costs of any metropolitan transportation authority capital projects included within the 2020 to 2024 MTA capital program or any successor programs. Monies in the fund may be: (a) pledged by the authority to secure and be applied to the payment of the bonds, notes or other obligations of the authority to finance the costs of the central business district tolling program, including, without limitation, the central business district tolling infrastructure, the central business district tolling collection system and the central business district tolling customer service center, and the costs of any metropolitan transportation authority capital projects included within the 2020 to 2024 MTA capital program or any successor programs, including debt service, reserve requirements, if any, the payment of amounts required under bond and note facilities or agreements related thereto, the payment of federal government loans, security or credit arrangements or other agreements related thereto; or (b) used by the authority for the payment of such capital costs of the central business district tolling program and the costs of any metropolitan transportation authority capital projects included within the 2020 to 2024 MTA capital program or any successor programs; or (c) transferred to the metropolitan transportation authority and (1) pledged by the metropolitan transportation authority to secure and be applied to the payment of the bonds, notes or other obligations of the metropolitan transportation authority to finance the costs of any metropolitan transportation authority capital projects included within the 2020 to 2024 MTA capital program or any successor programs, including debt service, reserve requirements, if any, the payment of amounts required under bond and note facilities or agreements related thereto, the payment of federal government loans, security or credit arrangements or other agreements related thereto, or (2) used by the metropolitan transportation authority for the payment of the costs of any metropolitan transportation authority capital projects included within the 2020 to 2024 MTA capital program or any successor programs, or (3) subject to approval by the board of

the metropolitan transportation authority and the director of the budget, used by the metropolitan transportation authority in all or any of the fiscal years of the authority beginning in 2020 through 2021 to offset decreases in revenue, including but not limited to, lost taxes, fees, charges, fares and tolls, due in whole or in part, or increases in operating costs due in whole to the state disaster emergency caused by the novel coronavirus, COVID-19. Such revenues shall only supplement and shall not supplant any federal, state, or local funds expended by the authority or the metropolitan transportation authority, or such authority's or metropolitan transportation authority's affiliates or subsidiaries for such respective purposes. Central business district toll revenues may be used as required to obtain, utilize, or maintain federal authorization to collect tolls on federal aid highways. Provided further that, in the event the authority or metropolitan transportation authority receives funds or reimbursements, including without limitation from the federal government or insurance maintained by the authority or metropolitan transportation authority, due in whole or in part to the novel coronavirus, COVID-19, any monies from the fund used to offset decreases in revenue or increases in operating costs due in whole or in part to the state disaster emergency caused by the novel coronavirus, COVID-19, shall be repaid after the authority or the metropolitan transportation authority fully repays any public or private borrowings, draws on any lines of credit, issuances of revenue anticipation notes, any internal loans, and use of corpus of OPEB Trust to pay current retiree healthcare cost necessitated by COVID-19 revenue shortfall. Such obligation to repay shall be limited to the availability of any excess monies, and any such funds or reimbursements in excess of the amounts needed to fully repay such amounts shall be transferred to the fund and used for the purposes originally intended for such fund.

2. [Eff April 3, 2022] Monies in the fund shall be applied, subject to agreements with bondholders and applicable federal law, to the payment of operating, administration, and other necessary expenses of the authority, or to the city of New York subject to the memorandum of understanding executed pursuant to subdivision two-a of section seventeen hundred four of the vehicle and traffic law properly allocable to such program, including the planning, designing, constructing, installing or maintaining of the central business district tolling program, including, without limitation, the central business district tolling infrastructure, the central business district tolling collection system and the central business district tolling customer service center, and the costs of any metropolitan transportation authority capital projects included within the 2020 to 2024 MTA capital program or any successor programs. Monies in the fund may be: (a) pledged by the authority to secure and be applied to the payment of the bonds, notes or other obligations of the authority to finance the costs of the central business district tolling program, including, without limitation, the central business district tolling infrastructure, the central business district tolling collection system and the central business district tolling customer service center, and the costs of any metropolitan transportation authority capital projects included within the 2020 to 2024 MTA capital program or any successor programs, including debt service, reserve requirements, if any, the payment of amounts required under bond and note facilities or agreements related thereto, the payment of federal government loans, security or credit arrangements or other agreements related thereto; or (b) used by the authority for the payment of such capital costs of the central business district tolling program and the costs of any metropolitan transportation authority capital projects included within the 2020 to 2024 MTA capital program or any successor programs; or (c) transferred to the metropolitan transportation authority and (1) pledged by the metropolitan transportation authority to secure and be applied to the payment of the bonds, notes or other obligations of the metropolitan transportation authority to finance the costs of any metropolitan transportation authority capital projects included within the 2020 to 2024 MTA capital program or any successor programs, including debt service, reserve requirements, if any, the payment of amounts required under bond and note facilities or agreements related thereto, the payment of federal government loans, security or credit arrangements or other agreements related thereto, or (2) used by the metropolitan transportation authority for the payment of the costs of any metropolitan transportation authority capital projects included within the 2020 to 2024 MTA capital program or any successor programs. Such revenues shall only supplement and shall not supplant any federal, state, or local funds expended by the authority or the metropolitan transportation authority, or such authority's or metropolitan transportation authority's affiliates or subsidiaries for such respective purposes. Central business district toll revenues may be used as required to obtain, utilize, or maintain federal authorization to collect tolls on federal aid highways.

**3.** Any monies deposited in the fund shall be held in the fund free and clear of any claim by any person arising out of or in connection with article forty-four-C of the vehicle and traffic law and subdivision twelve-a of section five hundred fifty-three of this title. Without limiting the generality of the foregoing, no person paying any amount that is deposited into the fund shall have any right or claim against the authority or the metropolitan transportation authority, any of their bondholders, any of the authority's or the metropolitan transportation authority's subsidiaries or affiliates to any monies in or distributed from the fund or in respect of a refund, rebate, credit or reimbursement of monies arising out of or in connection with article forty-four-C of the vehicle and traffic law and subdivision twelve-a of section five hundred fifty-three of this title.

**3-a.** Of the capital project costs paid by this fund: eighty percent shall be capital project costs of the New York city transit authority and its subsidiary, Staten Island Rapid Transit Operating Authority, and MTA Bus with priority given to the subway system, new signaling, new subway cars, track and car repair, accessibility, buses and bus system improvements and further investments in expanding transit availability to areas in the outer boroughs that have limited mass transit options; ten percent shall be capital project costs of the Long Island Rail Road, including but not limited to, parking facilities, rolling stock, capacity enhancements, accessibility, and expanding transit availability to areas in the Metropolitan Commuter Transportation District that have limited mass transit options; and ten percent shall be capital project costs of the Metro-North Commuter Railroad Company, including but not limited to, parking facilities, rolling stock, capacity enhancements, accessibility, and expanding transit availability to areas in the Metropolitan Commuter Transportation District that have limited mass transit options.

**4.** The authority shall report annually on all receipts and expenditures of the fund. The report shall detail operating expenses of the central business district tolling program and all fund expenditures including capital projects. If, during the period of the report, any monies in the fund were used by the authority or the metropolitan transportation authority to offset decreases in revenue lost in whole or in part due to the state disaster emergency caused by novel coronavirus, COVID-19, or increases in operating costs in whole due to the novel coronavirus, COVID-19, the report shall also provide: (a) details of such decreases in revenue in whole, (b) details of such decreases in revenue in part, (c) details of such increases in costs, (d) the methodology used by the authority or metropolitan transportation authority to calculate such changes, and (e) explanation for attributing a particular increase in cost or a particular decrease in revenue, to the state disaster emergency caused by coronavirus, COVID-19. The report shall be readily available to the public, and shall be posted on the authority's website and be submitted to the governor, the temporary president of the senate, the speaker of the assembly, the comptroller, the director of the budget, the mayor and council of the city of New York, the metropolitan transportation authority board, and the metropolitan transportation authority capital program review board.

**5.** Any operating funding used for the purposes of a central business district tolling program from this fund shall be approved, annually, in a plan of expenditures, by the director of the budget.

## History

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L 2019, ch 59, § 5 (Part ZZZ, Subpart A), effective April 12, 2019; L 2020, ch 58, § 1 (Part MMM), effective April 3, 2020.

Annotations

## Notes

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### Editor's Notes

**Laws 2019, ch 59, § 1 (Part ZZZ)**, eff April 12, 2019, provides:

§ 1. This act shall be known and may be cited as the “MTA reform and traffic mobility act”.

**Laws 2020, ch 58, § 2 (Part MMM)**, eff April 3, 2020, provides:

§ 2. This act shall take effect immediately; provided, however, that the amendments to subdivision 2 of section 553-j of the public authorities law made by section one of this act shall expire and be deemed repealed two years after such effective date; and provided further, that such repeal shall not affect the terms of any bonds, notes, or other obligations issued prior to such repeal.

#### **Amendment Notes**

**The 2020 amendment by ch 58, § 1 (Part MMM)**, in 2, added “or (3) subject to approval by the board of the metropolitan transportation authority and the director of the budget, used by the metropolitan transportation authority in all or any of the fiscal years of the authority beginning in 2020 through 2021 to offset decreases in revenue, including but not limited to, lost taxes, fees, charges, fares and tolls, due in whole or in part, or increases in operating costs due in whole to the state disaster emergency caused by the novel coronavirus, COVID-19” at the end of the second sentence, and added the last two sentences; and in 4, added the third sentence, and added “the comptroller, the director of the budget” in the last sentence.

## **Research References & Practice Aids**

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#### **Hierarchy Notes:**

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 553-k

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

## **§ 553-k. Traffic mobility review board.**

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1. The authority's board shall establish the "traffic mobility review" board (board), which shall consist of a chair and five members, that shall be made up of regional representation, one of whom shall be recommended by the mayor of the city of New York, one of whom shall reside in the Metro North Region, and one of whom shall reside in the Long Island Rail Road Region. Members of the board must have experience in at least one of the following areas: public finance; transportation; mass transit; or management. The chair and the members of the board shall be appointed by the authority.
2. The board shall make a recommendation regarding the central business district toll amounts to be established pursuant to article forty-four-C of the vehicle and traffic law, which shall include a variable-pricing structure, no sooner than November fifteenth, two thousand twenty and no later than December thirty-first, two thousand twenty, or no later than thirty days before a central business district tolling program is initiated, whichever is later. Such recommendation shall be submitted to the board of the Triborough bridge and tunnel authority for consideration before the Triborough bridge and tunnel authority board may approve central business district toll amounts that may be established and adopted.
3. For purposes of recommending a central business district toll or tolls in addition to the goal of reducing traffic within the central business district, the board shall, at minimum, ensure that annual revenues and fees collected under such program, less costs of such program, provide for revenues into the central business district tolling capital lockbox fund, established pursuant to section five hundred fifty-three-j of this chapter, necessary to fund fifteen billion dollars for capital projects for the 2020 to 2024 capital program, and any additional revenues above that amount to be available for any successor program. The board shall consider for purposes of its recommendations, factors including but not limited to, traffic patterns, traffic mitigation measures, operating costs, public impact, public safety, hardships, vehicle type, discounts for motorcycles, peak and off-peak rates and environmental impacts, including but not limited to air quality and emissions trends. The board shall recommend a plan for credits, discounts, and/or exemptions for tolls paid on bridges and crossings which shall be informed by a traffic study associated with the impact of any such credits, discounts and/or exemptions on the recommended toll. The board shall recommend a plan for credits, discounts, and/or exemptions for for-hire vehicles defined, and subject to a surcharge imposed by, article twenty-nine-C of the tax law for a for-hire transportation trip based on factors including, but not limited to, initial market entry costs associated with licensing and regulation, comparative contribution to congestion in the central business district, and general industry impact. The board shall produce a detailed report that provides information regarding the board's review and analysis for purposes of establishing its recommendations, including but not limited to, all of the considerations referred to in this subdivision. The board shall not recommend a toll that provides for charging passenger vehicles registered pursuant to subdivision six of section four hundred one of the vehicle and traffic law more than once per day.
4. The authority, its subsidiaries, affiliates, and subsidiaries of affiliates, the city of New York, and any state agency or authority shall provide any assistance necessary to assist in the completion of the board's work and promptly respond to any requests for information or consultation consistent with the purposes of this section.

5. The Metropolitan Transportation Authority capital plan shall be reviewed by the traffic mobility review board.
6. Members of the board shall serve without compensation.

## History

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L 2019, ch 59, § 8 (Part ZZZ, Subpart A), effective April 12, 2019.

Annotations

## Notes

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### Editor's Notes

**Laws 2019, ch 59, § 1 (Part ZZZ)**, eff April 12, 2019, provides:

§ 1. This act shall be known and may be cited as the "MTA reform and traffic mobility act".

## Research References & Practice Aids

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### Hierarchy Notes:

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# NY CLS Pub A § 554

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)*

## § 554. Transfer of officers and employees

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1. Officers and employees of any board or department in or of the city may be transferred to the authority, and shall be eligible for such transfer and appointment without examination to offices and positions under the authority. Notwithstanding the provisions of this title, the officers and employees of the city, who are members or beneficiaries of any existing pension or retirement system, shall continue to have the rights, privileges, obligations and status with respect to such system or systems, as are now prescribed by law; and all such employees, who have been appointed to positions in the service of the city under the rules and classifications of the municipal civil service commission shall have the same status with respect thereto after transfer to the authority as they had under their original appointments. Any person appointed by the authority under the rules and classifications of the municipal civil service commission of the city, originally or by transfer or otherwise, including persons employed or eligible for appointment under the board of education of the city or of any agency of any kind whatsoever subject to the rules and classifications of the municipal civil service commission of the city, shall have and shall continue to have all the rights, privileges, obligations and status with respect to such pension or retirement systems, including not only the right to admission therein, but continuance and reinstatement therein, to the same extent and in like manner as though he had been appointed, transferred or restored to the civil service of the city, the board of education or any other agency of any kind whatsoever subject to the rules and classifications of the municipal civil service commission of the city. The appointment and promotion of all employees of the authority shall be made in accordance with the provisions of the civil service law under the jurisdiction of the municipal civil service commission of the city.

2. Notwithstanding any inconsistent provision of this section, no person shall be eligible for original appointment to a position of bridge and tunnel officer with the authority, unless such person has earned a high school diploma recognized as valid by the department of education.

## History

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Add, L 1939, ch 870, eff June 15, 1939; amd, L 1984, ch 1011, § 1, eff Dec 21, 1984.

Annotations

## Notes to Decisions

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1. Generally

2. Transfer

1. Generally

Where laborer's three previous complaints concerning prevailing wage rates had been settled with city comptroller without filing of complaint with Industrial Commission, laborer's fourth complaint, filed with the comptroller, was valid complaint. *Petrocchi v Ronan*, 81 Misc. 2d 741, 367 N.Y.S.2d 178, 1975 N.Y. Misc. LEXIS 2464 (N.Y. Civ. Ct. 1975).

It was not the intent of the legislature either by the Civil Service Law or this law to require the employment of only Civil Service employees in the construction of a project. *Meadows v Moses*, 44 N.Y.S.2d 697, 1938 N.Y. Misc. LEXIS 2396 (N.Y. Sup. Ct. 1938).

## 2. Transfer

Where bridge and tunnel authority, a public benefit corporation, had approved its employee's application for transfer to sanitation department, authority was estopped to deny equal pay for equal performance by providing, after his transfer, that higher wage rate for period beginning before his transfer would apply only to persons still employed by authority. *Petrocchi v Ronan*, 81 Misc. 2d 741, 367 N.Y.S.2d 178, 1975 N.Y. Misc. LEXIS 2464 (N.Y. Civ. Ct. 1975).

## Research References & Practice Aids

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### Codes, Rules and Regulations:

Regulations of Triborough Bridge and Tunnel Authority, generally. 21 NYCRR §§ 1020.1 et seq.

### Hierarchy Notes:

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 555

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

## **§ 555. Selection of site**

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Notwithstanding any provisions of any other statute, the authority in conjunction with the commissioner of parks of the city or his successor, the commissioner of parks and recreation, and with the approval of the board of estimate of such city and with the separate approval of the mayor thereof, is hereby authorized to select sites in the boroughs of the Bronx and Queens of the city for the Whitestone bridge project and parkways connecting therewith, which sites may be in or through existing public parks, and to select sites for new public parks contiguous to such project or contiguous to the roads, streets, parkways or avenues connecting with such project. A site or sites may be selected for any or all of the aforementioned purposes and thereafter the use thereof shall be allocated by the commissioner of parks and recreation as herein provided. The property so selected solely for such project, not already owned by the city, shall be acquired at the sole expense of the authority in the manner provided for under this title. The property so selected solely for new public parks shall be acquired by the city at its sole expense. The cost of the property so selected for such project, combined with any other aforementioned purposes the use of which is to be thereafter determined, shall be divided between the city and the authority as may be determined by a contract or contracts hereby authorized to be entered into between the city and the authority, subject to the approval of the board of estimate of the city. So much of the sites so selected and acquired or such easements or rights of way therein as may be necessary or convenient for the corporate purposes of the authority may be assigned by the commissioner of parks and recreation of the city to the authority for its use so long as its corporate existence shall continue.

## **History**

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Add, L 1939, ch 870; amd, L 1978, ch 655, § 77, eff July 25, 1978.

Annotations

## **Research References & Practice Aids**

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### **Cross References:**

This section referred to in § 557-a.

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# NY CLS Pub A § 556

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*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)*

## § 556. Acquisition of lands by the city for the project

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The city shall have power to acquire by purchase, or by condemnation in the manner provided by chapter twenty-one of the Greater New York charter, title in the name of the city to any lands, easements, or rights in land not owned by the city on the seventh day of April, nineteen hundred thirty-three, which may be required for the project, and payment therefor, and for any lands theretofore acquired but not paid for by the city, shall be made by the authority. The power hereby conferred upon the city shall not limit or restrict the power of the authority itself to acquire lands, easements, or rights in land in the name of the city.

## History

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Add, L 1939, ch 870, eff June 15, 1939.

Annotations

## Research References & Practice Aids

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### Cross References:

This section referred to in § 557-a.

### Jurisprudences:

26 Am Jur 2d, Eminent Domain §§ 17–19.

63A Am Jur 2d, Public Funds §§ 36–38.

### Hierarchy Notes:

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# NY CLS Pub A § 557

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*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)*

## § 557. Grant of land by the city to the authority

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The city shall have power and authority by resolution of the board of estimate of the city to assign to the authority, without consideration, any land owned by the city on the seventh day of April, nineteen hundred thirty-three, or thereafter acquired by it, needed or convenient for the project, including lands released or to be released by the state to the city pursuant to chapter three hundred seventy-nine of the laws of nineteen hundred twenty-nine as amended.

## History

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Add, L 1939, ch 870; amd, L 1964, ch 576, § 66, eff Apr 16, 1964.

Annotations

## Notes to Decisions

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### 1. Generally

Sale of obsolete building constructed by Triborough Bridge and Tunnel Authority (TBTA) 30 years earlier pursuant to urban renewal plan was governed by Public Authorities Law, and TBTA could sell building without competitive bidding although site on which it was built was acquired in name of New York City since (1) TBTA statutorily held property for duration of its corporate existence, pursuant to CLS Pub A §§ 553(4) and 557, (2) city, as grantor, had only contingent reversionary interest, and (3) TBTA's payment of \$2.2 million to city was used to reduce initial acquisition costs, thereby bringing original purchase within CLS Pub A § 553(4-a). *Jo & Wo Realty Corp. v New York*, 157 A.D.2d 205, 555 N.Y.S.2d 271, 1990 N.Y. App. Div. LEXIS 5093 (N.Y. App. Div. 1st Dep't), *aff'd*, 76 N.Y.2d 962, 563 N.Y.S.2d 727, 565 N.E.2d 476, 1990 N.Y. LEXIS 3492 (N.Y. 1990).

## Research References & Practice Aids

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### Cross References:

This section referred to in § 557-a.

### Jurisprudences:

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 549–554.

**Hierarchy Notes:**

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 557-a

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## **§ 557-a. Lands, easements and rights in land**

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1. Lands in fee simple, easements and rights in land, including the right to cut off light, air and access (any and all of which are in this section referred to as “lands”) shall after January first, nineteen hundred forty be acquired as provided in this section for the project and other authorized purposes, and the provisions of sections five hundred fifty-five, five hundred fifty-six and five hundred fifty-seven of this chapter shall not apply.
2. The authority may acquire lands for said project in the name of the city at the cost and expense of the authority by purchase or condemnation pursuant to the condemnation law. The authority shall have the use and occupancy of such lands so long as its corporate existence shall continue.
3. The city may, by resolution of the board of estimate, or by deed authorized by such a resolution, convey, with or without consideration, to the authority for the project the use and occupancy, for so long as its corporate existence shall continue, of any lands then owned by the city including lands which, by any other law, are inalienable by the city, and such conveyance may reserve to the city such rights as shall not restrict the authority in the construction, reconstruction, operation and maintenance of the project.
4. The city may acquire lands in the name of the city for the project or for the widening of existing roads, streets, parkways, avenues or elevated highway or for new roads, streets, parkways, avenues or elevated highways connecting with said project, or partly for such purposes and partly for other city purposes, by purchase or condemnation in the manner provided by law for the acquisition of land by the city. Contracts may be entered into between the city and the authority providing for the lands to be acquired by the city, and the part or proportion of the cost and expense to be paid by the authority, the balance to be paid by the city, and terms and conditions of payment to be made by the authority. Such contracts may also determine the improvements and construction to be done by the authority. Such roads, streets, parkways, avenues and elevated highways connecting with the project shall be operated, maintained, and reconstructed by the city, and except for the original construction and improvement thereof by the authority, the city shall have exclusive jurisdiction over them.
5. The mayor may authorize a contract between the city and the authority and no other authorization on the part of the city for such a contract shall be necessary. Any such contract may be so authorized and entered into by the city and the payments required to be made by the city may be made and financed notwithstanding that no provision therefor shall have first been made in the capital budget of the city. All contractual or other obligations of the city incurred in carrying out the provisions of this title shall be included in and provided for by such capital budget of the city thereafter made, to the extent that they may appropriately be included therein.

## **History**

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Add, L 1939, ch 874, eff June 15, 1939; amd, L 1940, ch 6, eff Feb 8, 1940; L 1946, ch 954; L 1964, ch 576, § 67, eff Apr 16, 1964.

Annotations

## Notes to Decisions

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### 1. Generally

Triborough Bridge and Tunnel Authority (TBTA) was not required to adhere to competitive bidding requirements of New York City Charter § 384 in selling property it had acquired at its own expense (New York Coliseum at Columbus Circle); conveyance by TBTA included both its interest and New York City's statutory contingent reversionary interest, conveyed by TBTA "in behalf of" New York City. *Jo & Wo Realty Corp. v New York*, 76 N.Y.2d 962, 563 N.Y.S.2d 727, 565 N.E.2d 476, 1990 N.Y. LEXIS 3492 (N.Y. 1990).

## Research References & Practice Aids

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### Jurisprudences:

26 Am Jur 2d, Eminent Domain §§ 17–24, 73–87.

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 193–195, 549–554.

63A Am Jur 2d, Public Funds §§ 36–47, 51.

### Hierarchy Notes:

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# NY CLS Pub A § 558

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

## § 558. Consent of state

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1. The state of New York does hereby agree (a) to the use by the authority, so long as its corporate existence shall continue, of any lands necessary or convenient for the project in which the state has any right, title or interest situate, lying or being on Randall's island or Ward's island or in the waters adjacent thereto, provided, however, that no buildings used by or for the state, shall be razed or removed until the same have been vacated and (b) to the use by the authority, so long as its corporate existence shall continue, of any lands under water necessary or convenient for the project.
2. The state of New York does hereby agree to the use by the authority of any lands, lands under water or the air space over any of such lands in which the state has any right, title or interest and which are necessary or convenient for the Throgs Neck bridge project and, after title to the Narrows bridge project shall vest in the authority, for the Narrows bridge project.

## History

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Add, L 1939, ch 870; amd, L 1939, ch 874; L 1940, ch 6, eff Feb 8, 1940; L 1955, ch 806, § 4, eff Apr 28, 1955.

Annotations

## Notes to Decisions

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### 1. Generally

Chapters 806–809 of the Laws of 1955 providing for Throgs Neck Bridge connecting Bronx and Queens and bridge over Narrows connecting Brooklyn and Staten Island and second deck to George Washington Bridge between New York and New Jersey under the Home Rule provisions of the State Constitution. The Home Rule provisions were not applicable. The Port Authority is engaged in matters of State concern and therefore the matters over which the Authority has jurisdiction are not within the Home Rule provisions. *Whalen v Wagner*, 4 N.Y.2d 575, 176 N.Y.S.2d 616, 152 N.E.2d 54, 1958 N.Y. LEXIS 875 (N.Y. 1958).

The Port of New York Authority is a matter of State concern and legislative enactments affecting the Authority are not within the home rule provisions of the State Constitution. Thus, an attack on Chapters 806, 809 of the Laws of 1955, on the grounds that no city message to the Legislature accompanied their enactment, was unsuccessful. *Whalen v Wagner*, 4 N.Y.2d 575, 176 N.Y.S.2d 616, 152 N.E.2d 54, 1958 N.Y. LEXIS 875 (N.Y. 1958).

## Research References & Practice Aids

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**Hierarchy Notes:**

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 559

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)*

## § 559. Construction contracts

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The authority shall do all construction pursuant to a contract or contracts in the manner, so far as practicable, provided in the charter of the city for contracts of such city except that where the estimated expense of a contract does not exceed ten thousand dollars such contract may be entered into without public letting, but failure to comply with this section shall not invalidate such contracts.

## History

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Add, L 1939, ch 870; amd, L 1940, ch 6, eff Feb 8, 1940.

Annotations

## Notes to Decisions

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### 1. Generally

The authority may enter into a modification of a contract previously made with the plaintiff after public letting without compliance with the Greater New York Charter where it appears that the modifications are necessary and the parties are acting in good faith. *Taylor-Fichter Const. Co. v Tri-Borough Bridge Authority*, 241 A.D. 75, 271 N.Y.S. 399, 1934 N.Y. App. Div. LEXIS 8172 (N.Y. App. Div. 1934).

## Opinion Notes

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### Agency Opinions

#### 1. Generally

Section 135 of the State Finance Law relating to separate bidding upon a State building does not apply to the Power Authority. 1955 N.Y. AG LEXIS 102.

## Research References & Practice Aids

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Cross References:

This section referred to in § 553-e.

Housing, CLS NY Const Art XVIII §§ 1 et seq.

**Jurisprudences:**

64 Am Jur 2d, Public Works and Contracts §§ 41, 42.

**Hierarchy Notes:**

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 560

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)*

## § 560. Moneys of the authority

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All moneys of the authority from whatever source derived shall be deposited as soon as practicable in banks or trust companies to be designated by the authority. All deposits of such moneys shall, if required by the authority, be secured by obligations of the United States or of the state of New York or of the city of New York of a market value equal at all times to the amount of the deposit and all banks and trust companies are authorized to give such security for such deposits. The comptroller and his legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its financial standing. The authority shall have power notwithstanding the provisions of this section, to contract with the holders of any of its bonds as to the custody, collection, securing, investment and payment of any moneys of the authority, or any moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds, and to carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. Moneys held in trust or otherwise for the payment of bonds or any way to secure bonds and deposits of such moneys may be secured in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such deposits.

## History

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Add, L 1939, ch 870; amd, L 1939, ch 874; L 1967, ch 717, § 67; L 1972, ch 798, eff June 2, 1972.

Annotations

## Notes to Decisions

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### 1. Generally

There is no provision in the Public Authorities Law which authorizes a tollpayer or citizen to examine the records and papers of an authority such as the Triborough Bridge and Tunnel Authority. *New York Post Corp. v Moses*, 10 N.Y.2d 199, 219 N.Y.S.2d 7, 176 N.E.2d 709, 1961 N.Y. LEXIS 1088 (N.Y. 1961).

## Research References & Practice Aids

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Codes, Rules and Regulations:

Toll rates and vehicle limitations. 21 NYCRR §§ 1021.1 et seq.

**Jurisprudences:**

63A Am Jur 2d, Public Funds §§ 7–32.

**Hierarchy Notes:**

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 561

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

## **§ 561. Bonds of the authority**

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1. The authority shall have the power and is hereby authorized from time to time to issue its negotiable bonds in conformity with applicable provisions of the uniform commercial code for any corporate purpose or power. The authority shall have power from time to time and whenever it deems refunding advantageous or desirable, to refund, redeem or otherwise pay, including by purchase or tender any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose or power. The refunding bonds may be exchanged for the bonds to be refunded, with such cash adjustments as may be agreed, or may be sold and the proceeds applied to the purchase or payment of the bonds to be refunded. The authority may issue general or special obligation bonds. Every issue of general obligation bonds shall be payable out of any moneys or revenues of the authority, subject only to any agreements with the holders of particular bonds pledging any particular tolls or revenues. Every issue of special obligation bonds shall be payable out of any revenues, receipts, monies or assets of the authority, the metropolitan transportation authority and its subsidiary corporations and the New York city transit authority and its subsidiary corporations identified for such purposes in accordance with agreements with the holders of particular bonds.
2. The bonds 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, bear interest at such rate or rates, be payable at such time or times, 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, as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the authority shall determine. Notwithstanding the foregoing provisions, such bonds as may be authorized by resolution of the board and issued on or before June thirtieth, nineteen hundred sixty-five, shall bear interest at such rate or rates as such resolution may provide.
3. The bonds may be issued for any corporate purpose of the authority.
4. Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds thereby authorized, as to

  - (a) pledging all or any part of the tolls and revenues of the project or of all or any part of any or all such projects to secure the payment of the bonds or of any issue of the bonds subject to such agreements with bondholders as may then exist;
  - (b) the rates of the tolls to be charged, and the amounts to be raised in each year by tolls, and the use and disposition of the tolls and other revenues;
  - (c) the setting aside of reserves or sinking funds, and the regulation and disposition thereof;
  - (d) limitations on the right of the authority to restrict and regulate the use of the project in connection with which such bonds are issued;

(e) limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or of any issue of the bonds;

(f) limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; the refunding of outstanding or other bonds;

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

(h) limitations on the amount of moneys derived from any project to be expended for operating, administrative or other expenses of the authority;

(i) vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to section five hundred sixty-seven hereof, and limiting or abrogating the right of the bondholders to appoint a trustee under section five hundred sixty-seven hereof or limiting the rights, duties and powers of such trustee;

(j) any other matters, of like or different character, which in any way affect the security or protection of the bonds.

**4-a.** Any resolution or resolutions authorizing any bonds or any issue of bonds maturing in not exceeding ten years from their date (hereafter in this subdivision four-a referred to as "short term obligations") may contain, in addition to all other provisions authorized by this title, provisions, which shall be a part of the contract with the holders of the short term obligations thereby authorized, as to

(a) refunding the short term obligations and, if so provided, outstanding bonds by the issuance of bonds of the authority either by the sale of bonds and the application of the proceeds to the payment of the short term obligations and outstanding bonds or by the exchange of bonds for the short term obligations and outstanding bonds; provided, however, that the authority shall make no covenant to refund which shall require it to issue bonds, the aggregate principal amount of which shall exceed by more than ten per centum the aggregate principal amount of the short term obligations and outstanding bonds to be refunded thereby;

(b) satisfying, paying or discharging the short term obligations, at the election of the authority, by the tender or delivery of bonds of the authority in exchange therefor; provided, however, that the aggregate principal amount of bonds shall not exceed by more than ten per centum the aggregate principal amount of the short term obligations to satisfy, pay or discharge which the bonds are tendered or delivered;

(c) exchanging or converting the short term obligations, at the election of the holder thereof, for or into bonds of the authority; provided, however, that the aggregate principal amount of the bonds shall not exceed by more than ten per centum the aggregate principal amount of the short term obligations to be exchanged for or converted into bonds;

(d) pledging bonds of the authority as collateral to secure payment of the short term obligations and providing for the terms and conditions of the pledge and manner of enforcing the pledge, which terms and conditions may provide for the delivery of the bonds in satisfaction of the short term obligations; provided, however, that the aggregate principal amount of the bonds pledged shall not exceed by more than ten per centum the aggregate principal amount of the short term obligations to secure which they are pledged;

(e) depositing bonds in escrow or in trust with a trustee or fiscal agent or otherwise providing for the issuance and disposition of the bonds as security for carrying out any provisions in any resolution adopted pursuant to the foregoing paragraphs (a), (b), (c) and (d) hereof and providing for the powers

and duties of the trustee or fiscal agent or other depository and the terms and conditions on which the bonds are to be issued, held and disposed of;

(f) any other matters of like or different character which relate to any provision or provisions of any resolution adopted pursuant to the foregoing paragraphs (a), (b), (c), (d) and (e) hereof.

In computing the amount of bonds of the authority which may be outstanding at any one time, short term obligations shall be excluded to the extent that the resolution authorizing the issuance of such short term obligations shall provide for the issuance of bonds pursuant to paragraphs (a), (b), (c) or (d) of this section, but the bonds provided to be issued by such resolution shall be included in making such computation whether or not such bonds are outstanding.

The authority shall have power to make contracts for the future sale from time to time of short term obligations, by which the purchasers shall be committed to purchase short term obligations from time to time on the terms and conditions stated in such contracts, and the authority shall have power to pay such consideration as it shall deem proper for such commitments.

**4-b.** The authority shall have power from time to time to issue notes (herein referred to as notes) for any corporate purpose or power and from time to time to issue renewal notes maturing not later than five years, from their respective dates whenever the authority shall determine that payment thereof can be made in full from any moneys or revenues which the authority expects to receive from any source. The authority may pledge such moneys or revenues (subject to any other pledge thereof) for the payment of the notes and may in addition secure the notes in the same manner as herein provided for bonds or otherwise. The notes shall be issued in the same manner as bonds. The authority shall have power to make contracts for the future sale from time to time of the notes, by which the purchasers shall be committed to purchase the notes from time to time on terms and conditions stated in such contracts, and the authority shall have power to pay such consideration as it shall deem proper for such commitments.

**4-c.** It is the intention hereof that any pledge of tolls or other revenues or other moneys made by the authority shall be valid and binding from the time when the pledge is made; that the tolls or 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 that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

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

**6.** The authority shall have power out of any funds available therefor to purchase bonds. The authority may hold, cancel or resell such bonds, subject to and in accordance with agreements with bondholders.

## History

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Add, L 1939, ch 870, eff June 15, 1939; amd, L 1939, ch 874; L 1940, ch 6; L 1945, ch 90; L 1946, ch 594; L 1946, ch 954; L 1948, ch 854; L 1955, ch 806, §§ 5, 6; L 1960, ch 497; L 1962, ch 552; L 1969, ch 972, § 21, eff May 26, 1969; L 1980, ch 476, § 1, eff June 23, 1980; L 1993, ch 56, § 9, eff April 15, 1993; L 2000, ch 61, § 7 (Part O), eff May 15, 2000.

Annotations

## Notes

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Editor's Notes:



**Laws 1993, ch 56, § 134**, eff April 15, 1993, provides as follows:

§ 134. This act shall take effect immediately. (Amd, L 1994, ch 710, § 1, eff Aug 2, 1994, L 1995, ch 128, § 1, eff July 5, 1995, L 1996, ch 303, § 1, eff July 10, 1996, L 1997, ch 222, § 1, eff July 18, 1997, L 1998, ch 108, § 1, eff June 16, 1998, L 2000, ch 61, § 8 (Part O), eff May 15, 2000.).

## Notes to Decisions

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### 1. Generally

### 2. Governmental immunity

#### 1. Generally

The Port of New York Authority is a matter of State concern and legislative enactments affecting the Authority are not within the home rule provisions of the State Constitution. Thus, an attack on Chapters 806, 809 of the Laws of 1955, on the grounds that no city message to the Legislature accompanied their enactment, was unsuccessful. *Whalen v Wagner*, 4 N.Y.2d 575, 176 N.Y.S.2d 616, 152 N.E.2d 54, 1958 N.Y. LEXIS 875 (N.Y. 1958).

Chapters 806–809 of the Laws of 1955 providing for Throgs Neck Bridge connecting Bronx and Queens and bridge over Narrows connecting Brooklyn and Staten Island and second deck to George Washington Bridge between New York and New Jersey under the Home Rule provisions of the State Constitution. The Home Rule provisions were not applicable. The Port Authority is engaged in matters of State concern and therefore the matters over which the Authority has jurisdiction are not within the Home Rule provisions. *Whalen v Wagner*, 4 N.Y.2d 575, 176 N.Y.S.2d 616, 152 N.E.2d 54, 1958 N.Y. LEXIS 875 (N.Y. 1958).

Rights granted to Triborough Bridge and Tunnel Authority under this section and §§ 553 and 564 hereof, to charge tolls to citizens of Staten Island in reaching the seat of government of the City of New York did not infringe upon a constitutionally protected right. *Goodman v New York*, 46 Misc. 2d 432, 260 N.Y.S.2d 274, 1965 N.Y. Misc. LEXIS 1902 (N.Y. Sup. Ct. 1965).

#### 2. Governmental immunity

In §§ 552(2), 553(1) and 561(1), the legislature has intentionally insulated the state treasury from any liabilities that Triborough might incur; thus Triborough is not alter ego of the state and is thus not immune from suit. *Raymond International, Inc. v The M/T Dalzelleagle*, 336 F. Supp. 679, 1971 U.S. Dist. LEXIS 10939 (S.D.N.Y. 1971).

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 553-b, 553-c.

This section referred to in § 553-d.

Special Triborough bridge and tunnel authority special obligation bonds and notes, § 553-d.

Requirements of negotiable instruments, CLS UCC § 3-104.

Investment securities, CLS UCC §§ 8-101 et seq.

### Jurisprudences:

NY CLS Pub A § 561

64 Am Jur 2d, Public Securities and Obligations §§ 75–90.

8 Am Jur Legal Forms 2d, Escrow, Forms 100:11 et seq., 100:51 et seq., 100:121–100:125.

9 Am Jur Pl and Pr Forms (Rev ed), Escrow, Forms 1 et seq.

**Law Reviews:**

Public authority bond issues—the need for legislative reform. 21 N.Y.L. Sch. L. Rev. 183.

**Hierarchy Notes:**

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 562

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

## **§ 562. Redemption of bonds**

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Notwithstanding and in addition to any provisions for the redemption of bonds which may be contained in any contract with the holders of the bonds, either the state of New York or the city may, upon furnishing sufficient funds therefor, require the authority to redeem as a whole any issue of the bonds issued before January first, nineteen hundred thirty-nine on any semi-annual interest payment date after January first, nineteen hundred forty-seven at one hundred and five per centum of their face value and accrued interest, or at such lower redemption price as may then be provided by contract, on not exceeding sixty days' notice by publication in such manner as may be provided by the authority upon the issuance of such bonds. Either the state of New York or the city may, upon furnishing sufficient funds therefor, require the authority to redeem as a whole any issue of bonds issued after January first, nineteen hundred thirty-nine (provided such bonds are subject to redemption) at the time and at the price and in accordance with the terms upon which such bonds are redeemable.

All bonds issued for the Narrows bridge project or for the Throgs Neck bridge project shall be redeemable on such dates and on such terms as the authority shall determine, but shall, in any event, be redeemable as a whole on any interest payment date fifteen or more years after their date at not more than one hundred four per centum of their face value and accrued interest.

## **History**

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Add, L 1939, ch 870; amd, L 1939, ch 874; L 1955, ch 806, § 7, eff Apr 28, 1955.

Annotations

## **Notes to Decisions**

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### **1. Generally**

Chapters 806–809 of the Laws of 1955 providing for Throgs Neck Bridge connecting Bronx and Queens and bridge over Narrows connecting Brooklyn and Staten Island and second deck to George Washington Bridge between New York and New Jersey under the Home Rule provisions of the State Constitution. The Home Rule provisions were not applicable. The Port Authority is engaged in matters of State concern and therefore the matters over which the Authority has jurisdiction are not within the Home Rule provisions. *Whalen v Wagner*, 4 N.Y.2d 575, 176 N.Y.S.2d 616, 152 N.E.2d 54, 1958 N.Y. LEXIS 875 (N.Y. 1958).

The Port of New York Authority is a matter of State concern and legislative enactments affecting the Authority are not within the home rule provisions of the State Constitution. Thus, an attack on Chapters 806, 809 of the Laws of

1955, on the grounds that no city message to the Legislature accompanied their enactment, was unsuccessful. *Whalen v Wagner*, 4 N.Y.2d 575, 176 N.Y.S.2d 616, 152 N.E.2d 54, 1958 N.Y. LEXIS 875 (N.Y. 1958).

## Research References & Practice Aids

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### Jurisprudences:

64 Am Jur 2d, Public Securities and Obligations § 391.

### Hierarchy Notes:

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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## NY CLS Pub A § 563

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

### **§ 563. Agreement of the state**

---

1. The state of New York does pledge to and agree with (a) the holders of the bonds that the state will not limit or alter the rights hereby vested in the authority to maintain, reconstruct and operate the project, to establish and collect such charges and tolls as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation and to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until the bonds, together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged, and (b) the holders of any bonds of the port authority issued in accordance with the terms of any agreement with the authority authorized hereby to finance the Narrows bridge project or secured in whole or in part by a pledge of the revenues thereof or both so issued and so secured until title to the Narrows bridge is vested in the authority or the city, that the state will not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements authorized hereby and made with the port authority respecting the Narrows bridge project or in any way impair the rights and remedies of the port authority thereunder until the obligations of the authority thereunder are fully met and discharged.

2. The state of New York does covenant and agree with the holders of any bonds issued after January first, nineteen hundred forty that no tunnel, bridge, parkway, causeway, street, road, highway or other connection for vehicular traffic (other than one of the projects), which will be competitive with the Robert F. Kennedy bridge project or the Whitestone bridge project or the Throgs Neck bridge project or the Marine parkway bridge project or the Cross Bay parkway bridge project will be constructed or maintained until the bonds together with interest thereon, interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged; provided that a tunnel, bridge, parkway, causeway, street, road, highway or other connection for vehicular traffic shall be considered as competitive with the Robert F. Kennedy bridge project or Whitestone bridge project or the Throgs Neck bridge project only if it shall form a connection for vehicular traffic over, under, or across the East river north of an extension to the east of the center line of Seventy-third street in the borough of Manhattan, and shall be considered as competitive with the Marine parkway bridge project or Cross Bay parkway bridge project only if such tunnel, bridge, parkway, causeway, street, road, highway or other connection for vehicular traffic shall form a connection for vehicular traffic with Rockaway peninsula across any part of the waters of Jamaica bay or Rockaway inlet west of seventy-three degrees, forty-six minutes of west longitude. The covenant herein contained restricting competitive traffic connections with any project or projects shall be only for the benefit of the holders of bonds secured in whole or in part by the pledge of the revenues of such project or projects. All covenants of the state made with the holders of bonds issued before January first, nineteen hundred and forty, are hereby confirmed and shall not be affected hereby.

3. The state of New York does pledge to and agree with the holders of any bonds that no tunnel, bridge, parkway, causeway, street, road, highway or other connection for vehicular traffic, which will be competitive with the Queens Midtown tunnel or the Hugh L. Carey tunnel or the Brooklyn Richmond tunnel or the Narrows bridge will be constructed; provided that a tunnel, bridge, parkway, causeway, street, road,

highway or other connection for vehicular traffic shall be considered as competitive if it shall form a connection for vehicular traffic over, under or across the East river south of Queensboro bridge, or, if it shall form a connection for vehicular traffic between the boroughs of Manhattan, Brooklyn or Richmond over, under or across New York bay. The covenant herein contained restricting competitive traffic connections with any project or projects shall be only for the benefit of the holders of bonds secured in whole or in part by the pledge of the revenues of such project or projects and subject to and in accordance with all contract provisions with respect to any bonds outstanding on January first, nineteen hundred fifty-five and the rights of the holders of such bonds, the covenant herein contained shall not be deemed to prevent the construction of any bridge or tunnel exclusively for railway rapid transit purposes.

## History

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Add, L 1939, ch 870; amd, L 1939, ch 874; L 1940, ch 6, eff Feb 8, 1940; L 1946, ch 954, eff April 22, 1946; L 1955, ch 806, § 8, eff April 28, 1955; L 2008, ch 453, § 4, eff Aug 5, 2008; L 2010, ch 558, § 4, eff Dec 10, 2010.

Annotations

## Notes

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### Editor's Notes:

**Laws 2008, ch 453, § 1**, eff Aug 5, 2008, provides as follows:

Section 1. Legislative findings and intent. The legislature hereby recognizes Robert F. Kennedy, in this fortieth year following his tragic assassination, by naming after him the Triborough bridge, as a tribute befitting his historic contribution to the State of New York and the nation. Robert F. Kennedy represented the State of New York in the United States Senate with great distinction, from 1965 until his untimely death in 1968, working tirelessly to improve the lives of New Yorkers, fighting poverty and advancing the civil rights movement. The state of New York and our entire nation were further enriched by Robert F. Kennedy's prior service as the sixty-fourth Attorney General of the United States, and trusted advisor to the President. Common throughout his many works was an effort to bridge the gaps among persons of diverse racial, ethnic and economic backgrounds. Accordingly, the legislature hereby names the Triborough bridge a complex of spans connecting three boroughs of New York City, thereby bridging the gaps dividing diverse populations the Robert F. Kennedy bridge.

**Laws 2010, ch 558, § 1**, eff Dec 10, 2010, provides as follows:

Section 1. Legislative findings and intent. The legislature hereby recognizes Hugh L. Carey, by naming after him the Brooklyn Battery Tunnel, as a tribute befitting his historic contribution to the state of New York. Hugh L. Carey served the people of New York state as a member of the United States House of Representatives for fourteen years, and as the fifty-first Governor of New York state for twelve years. He served as Governor during a time of great challenge for New York state, and significantly advanced the state's fiscal well-being and economic development. He brought the city of New York back from the brink of bankruptcy, and was instrumental in the development of the South Street Seaport, Battery Park City and the Jacob Javits Convention Center. He greatly improved the services provided to the mentally ill and developmentally disabled, by entering into the Willowbrook consent decree and through other initiatives. Hugh L. Carey served with distinction as a member of the New York National Guard in Europe during the Second World War, receiving the Combat Infantryman Badge, the Bronze Star and the Croix de Guerre, and leaving active duty with the rank of colonel. His decades of service to this state and nation fully merit the honor bestowed upon him by this bill.

## Notes to Decisions

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## **1. Generally**

### **2. Tolls**

#### **1. Generally**

Chapters 806–809 of the Laws of 1955 providing for Throgs Neck Bridge connecting Bronx and Queens and bridge over Narrows connecting Brooklyn and Staten Island and second deck to George Washington Bridge between New York and New Jersey under the Home Rule provisions of the State Constitution. The Home Rule provisions were not applicable. The Port Authority is engaged in matters of State concern and therefore the matters over which the Authority has jurisdiction are not within the Home Rule provisions. *Whalen v Wagner*, 4 N.Y.2d 575, 176 N.Y.S.2d 616, 152 N.E.2d 54, 1958 N.Y. LEXIS 875 (N.Y. 1958).

The Port of New York Authority is a matter of State concern and legislative enactments affecting the Authority are not within the home rule provisions of the State Constitution. Thus, an attack on Chapters 806, 809 of the Laws of 1955, on the grounds that no city message to the Legislature accompanied their enactment, was unsuccessful. *Whalen v Wagner*, 4 N.Y.2d 575, 176 N.Y.S.2d 616, 152 N.E.2d 54, 1958 N.Y. LEXIS 875 (N.Y. 1958).

#### **2. Tolls**

The Triborough Bridge and Tunnel Authority has unlimited toll-fixing power and is empowered to raise tolls without any obligation to provide notice or to hold any hearings before doing so, and any interference with the authority of the Triborough Bridge and Tunnel Authority (TBTA) to charge or increase tolls effectively undermines the TBTA's statutory assurances to its bondholders; trial court's order requiring the TBTA to roll back certain toll increases and refund amounts it had collected in excess of the previous tolls constituted an impermissible impairment of the TBTA's authority and its bondholders' rights. *N.Y. Pub. Interest Research Group Straphangers Campaign, Inc. v Metro. Transp. Auth.*, 309 A.D.2d 127, 763 N.Y.S.2d 13, 2003 N.Y. App. Div. LEXIS 8336 (N.Y. App. Div. 1st Dep't), app. denied, 100 N.Y.2d 513, 767 N.Y.S.2d 394, 799 N.E.2d 617, 2003 N.Y. LEXIS 2540 (N.Y. 2003).

## **Opinion Notes**

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### **Agency Opinions**

#### **1. Generally**

Triborough Bridge and Tunnel Authority is public benefit corporation subject to bond issuance charge in connection with issuance of Series P Bonds, as although TBTA revenues may initially be pledged to bondholders, such revenues are ultimately released from the pledge of the resolution and may be used by the authority for its corporate purposes without regard to restrictions in favor of the bondholders, and the authority has ample unrestricted funds with which to pay the bond issuance charge imposed upon it by CLS Pub A Law §§ 2975–2977, such that the payment of such charge in no way impairs the obligations of the authority's bondholders or violates the statutory covenants. 1989 N.Y. Op. Att'y Gen. No. 89-F10, 1989 N.Y. AG LEXIS 82.

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 564

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

## **§ 564. State and city not liable on bonds**

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The bonds and other obligations of the authority shall not be a debt of the state of New York or city, and neither the state nor the city shall be liable thereon, nor shall they be payable out of any funds other than those of the authority.

## **History**

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Add, L 1939, ch 870, eff June 15, 1939.

Annotations

## **Notes to Decisions**

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### **1. Generally**

Rights granted to Triborough Bridge and Tunnel Authority under this section and §§ 553 and 561 hereof, to charge tolls to citizens of Staten Island in reaching the seat of government of the City of New York did not infringe upon a constitutionally protected right. *Goodman v New York*, 46 Misc. 2d 432, 260 N.Y.S.2d 274, 1965 N.Y. Misc. LEXIS 1902 (N.Y. Sup. Ct. 1965).

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

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# NY CLS Pub A § 565

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

## **§ 565. Bonds legal investments for fiduciaries**

---

The bonds are hereby made securities in which all public officers and bodies of this state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and saving associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. The bonds are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

## **History**

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Add, L 1939, ch 870, eff June 15, 1939.

Annotations

## **Research References & Practice Aids**

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### **Cross References:**

Authorized investment of state funds, CLS St Fin Law § 98(11)(c).

Deposits in banks, CLS St Fin Law § 105(2)(b)(6).

### **Jurisprudences:**

67 NY Jur 2d Infants and Other Persons Under Legal Disability § 230.

31 Am Jur 2d, Executors and Administrators § 229.

63 Am Jur 2d, Public Officers and Employees §§ 328–335.

76 Am Jur 2d, Trusts § 398.

### **Hierarchy Notes:**

NY CLS Pub A, Art. 3

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# NY CLS Pub A § 566

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

## **§ 566. Exemptions from taxation**

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It is hereby found, determined and declared that the creation of the authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state of New York, for the improvement of their health, welfare and prosperity, and, in the case of some of the said purposes, for the promotion of their traffic, and is a public purpose, and that, in the case of those purposes which consist of vehicular bridges, vehicular tunnels and approaches thereto, the project is an essential part of the public highway system, and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this title, and the state of New York covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision or upon its activities in the operation and maintenance of the project or any tolls, revenues or other income received by the authority and that the bonds of the authority and the income therefrom shall at all times be exempt from taxation, except for transfer and estate taxes. This section shall constitute a covenant and agreement with the holders of all bonds issued prior to January first, nineteen hundred thirty-nine.

## **History**

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Add, L 1939, ch 870; amd, L 1939, ch 874; L 1979, ch 35, § 11, eff Apr 3, 1979.

Annotations

## **Notes to Decisions**

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### **1. Generally**

The Queens-Midtown Tunnel Exit Roadway, as part of the public highway system, is to be deemed a "street" for purposes of determining whether a particular building site is a "corner lot" within the meaning of § 4 of the Multiple Dwelling Law. Application of Triborough Bridge & Tunnel Authority, 34 Misc. 2d 870, 230 N.Y.S.2d 873, 1962 N.Y. Misc. LEXIS 3354 (N.Y. Sup. Ct.), aff'd, 17 A.D.2d 811, 233 N.Y.S.2d 120, 1962 N.Y. App. Div. LEXIS 7341 (N.Y. App. Div. 1st Dep't 1962).

The bridge authority is a subdivision of the state within the meaning of the Revenue Act provision excluding from gross income interest on bonds of a state or political subdivision. Commissioner v White's Estate, 144 F.2d 1019, 1944 U.S. App. LEXIS 2987 (2d Cir. 1944), cert. denied, 323 U.S. 792, 65 S. Ct. 433, 89 L. Ed. 632, 1945 U.S. LEXIS 2580 (U.S. 1945).

## **Opinion Notes**

## Agency Opinions

### 1. Mortgage recording taxes

Recording of leasehold mortgages granted by Triborough Bridge and Tunnel Authority (TBTA) to lenders on its leasehold interest in leased property under lease of property by Metropolitan Transit Authority to TBTA, and assignment of rents in such mortgages, under specific terms and conditions where TBTA was named mortgagor, was exempt from mortgage recording taxes. NY Adv Op Comm T & F TSB-A-97-(4)R.

In accordance with CLS Tax §§ 250 and 253, assignment by Triborough Bridge and Tunnel Authority (TBTA) to trustee of its rights (if any), and assumption by trustee of TBTA's obligations, under leasehold mortgages granted by TBTA to lenders on its leasehold interest in leased property under lease of property by Metropolitan Transit Authority to TBTA, and assignment of rents in such mortgages, were not events which would cause mortgage recording taxes to be imposed. NY Adv Op Comm T & F TSB-A-97-(4)R.

Funding of loan and execution and delivery of loan certificates to trustee only after assignment were not subject to mortgage recording taxes in situation where execution, delivery or recording by Triborough Bridge and Tunnel Authority (TBTA) of 2 mortgages granted by TBTA to lenders on its leasehold interest in leased property under lease of leased property by Metropolitan Transportation Authority (MTA) to TBTA and assignment of rents in said mortgages and in loan agreement under sublease of leased property by TBTA to MTA where (a) TBTA was named mortgagor, (b) loan secured in part by leasehold mortgage and assignment of rents would be provided by one or more persons or entities other than, and unrelated to, MTA, (c) documents for and securing loan were executed by TBTA, but loan was funded only after either (x) assignment of all of TBTA's right, title, and interest in lease, sublease, support assets purchase option, loan documents, leasehold mortgage and assignment of rents, and collateral assignment to trustee under trust agreement with grantor and assumption by trustee of all of TBTA's obligations (and release of TBTA) under lease, sublease, loan documents, leasehold mortgage and assignment of rents, and collateral assignment or (y) on satisfaction of certain conditions and authorizations relating to possibility of funding loan prior to assignment, which conditions and authorizations were not expected to occur, and (d) proceeds of loan were used by trustee (as successor in interest to TBTA) to fund portion of lump sum payment to MTA, which sum constituted prepaid rent under lease and cost for option giving trustee right to extend initial lease term. NY Adv Op Comm T & F TSB-A-97-(4)R.

Payment and performance by trustee of its obligations under, holding by lenders of, and/or enforcement by lenders of their rights and remedies under or as to loan certificates, loan documents, loan agreement, leasehold mortgage and assignment of rents, or fee mortgage were not subject to mortgage recording taxes in situation where execution, delivery or recording by Triborough Bridge and Tunnel Authority (TBTA) of 2 mortgages granted by TBTA to lenders on its leasehold interest in leased property under lease of leased property by Metropolitan Transportation Authority (MTA) to TBTA and assignment of rents in said mortgages and in loan agreement under sublease of leased property by TBTA to MTA where (a) TBTA was named mortgagor, (b) loan secured in part by leasehold mortgage and assignment of rents would be provided by one or more persons or entities other than, and unrelated to, MTA, (c) documents for and securing loan were executed by TBTA, but loan was funded only after either (x) assignment of all of TBTA's right, title, and interest in lease, sublease, support assets purchase option, loan documents, leasehold mortgage and assignment of rents, and collateral assignment to trustee under trust agreement with grantor and assumption by trustee of all of TBTA's obligations (and release of TBTA) under lease, sublease, loan documents, leasehold mortgage and assignment of rents, and collateral assignment or (y) on satisfaction of certain conditions and authorizations relating to possibility of funding loan prior to assignment, which conditions and authorizations were not expected to occur, and (d) proceeds of loan were used by trustee (as successor in interest to TBTA) to fund portion of lump sum payment to MTA, which sum constituted prepaid rent under lease and cost for option giving trustee right to extend initial lease term. NY Adv Op Comm T & F TSB-A-97-(4)R.

Recording of fee mortgage (where Metropolitan Transportation Authority was mortgagor and Triborough Bridge and Tunnel Authority was mortgagee) was exempt from mortgage recording taxes since at least one party to mortgage at time of recording was agency or instrumentality of New York State. NY Adv Op Comm T & F TSB-A-97-(4)R.

Further assignment by Triborough Bridge and Tunnel Authority (TBTA) to trustee of TBTA's rights and assumption by trustee of TBTA's obligations (if any) under fee mortgage and collateral assignment were not subject to mortgage recording taxes. NY Adv Op Comm T & F TSB-A-97-(4)R.

## 2. Transfer tax

Metropolitan Transportation Authority's entering into lease (which included contingent purchase option with Triborough Bridge and Tunnel Authority) was exempt from transfer tax under CLS Tax § 1405(b)(1) since grantee was agency or instrumentality of New York State. NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

Triborough Bridge and Tunnel Authority's entering into sublease with Metropolitan Transportation Authority was not conveyance subject to transfer tax under CLS Tax § 1401(e) since sublease term was less than 49 years; further, if sublease was conveyance subject to transfer tax, it would be exempt since grantee was agency or instrumentality of New York State. NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

Metropolitan Transportation Authority's issuance of support assets purchase option to Triborough Bridge and Tunnel Authority (TBTA), as well as TBTA's reassignment (subject to reversionary interest) of all of TBTA's right, title, and interest in support assets purchase option back to Metropolitan Transportation Authority (MTA), and MTA's subsequent further assignment of all of its right, title, and interest in support assets purchase option to TBTA was exempt from transfer tax under CLS Tax § 1405(b)(1); in event that MTA was obligated to assign support assets purchase option to trustee, no transfer tax would be due since there was no consideration for conveyance. NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

## Research References & Practice Aids

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### Cross References:

Exemption from service charges, CLS Real P Tax § 400(1)(c).

Exemption of real property of public authorities, CLS Real P Tax § 412.

Inapplicability to taxes on estates of decedents dying prior to April 1 1963, of other provisions as to exemptions, CLS Tax §§ 249-i, 249-kk.

### Jurisprudences:

64 Am Jur 2d, Public Securities and Obligations § 28.

71 Am Jur 2d, State and Local Taxation § 346.

### Hierarchy Notes:

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 566-a

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)*

## § 566-a. Tax contract by the state.

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1. It is hereby found, determined and declared that the authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state of New York, for the improvement of their health, welfare and prosperity, and, in the case of some of the said purposes, for the promotion of their traffic, and that said purposes are public purposes and, in the case of those purposes which consist of vehicular bridges, vehicular tunnels and approaches thereto and the central business district tolling program, the project is an essential part of the public highway system and the authority will be performing an essential governmental function in the exercise of the powers conferred by this title, and the state of New York covenants with the purchasers and with all subsequent holders and transferees of bonds issued after January first, nineteen hundred thirty-nine by the authority pursuant to this title, in consideration of the acceptance of any payment for the bonds that the bonds of the authority issued after January first, nineteen hundred thirty-nine pursuant to this title and the income therefrom, and all moneys, funds, tolls and other revenues pledged to pay or secure the payment of such bonds, shall at all times be free from taxation except for estate taxes and taxes on transfers by or in contemplation of death.

2. Nothing herein shall be construed to repeal or supersede any tax exemptions heretofore or hereafter granted by general or other laws.

## History

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Add, L 1939, ch 874, eff June 15, 1939; amd, L 1979, ch 35, § 12, eff Apr 3, 1979; L 2019, ch 59, § 12 (Part ZZZ, Subpart A), effective April 12, 2019.

Annotations

## Notes

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### Editor's Notes

**Laws 2019, ch 59, § 1 (Part ZZZ)**, eff April 12, 2019, provides:

§ 1. This act shall be known and may be cited as the “MTA reform and traffic mobility act”.

### Amendment Notes

The 2019 amendment by ch 59, § 12 (Part ZZZ, Subpart A), added “and the central business district” in 1.

## Opinion Notes

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## Agency Opinions

### 1. Generally

Triborough Bridge and Tunnel Authority is public benefit corporation subject to bond issuance charge in connection with issuance of Series P Bonds, as although TBTA revenues may initially be pledged to bondholders, such revenues are ultimately released from the pledge of the resolution and may be used by the authority for its corporate purposes without regard to restrictions in favor of the bondholders, and the authority has ample unrestricted funds with which to pay the bond issuance charge imposed upon it by CLS Pub A Law §§ 2975–2977, such that the payment of such charge in no way impairs the obligations of the authority’s bondholders or violates the statutory covenants. 1989 N.Y. Op. Att’y Gen. No. 89-F10, 1989 N.Y. AG LEXIS 82.

## Research References & Practice Aids

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### Hierarchy Notes:

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# NY CLS Pub A § 567

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)*

## § 567. Remedies of bondholders

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1. In the event that the authority shall default in the payment of principal of or interest on any issue 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 authority shall fail or refuse to comply with the provisions of this title, or shall default in any agreement made with the holders of any issue of the bonds the holders of twenty-five per centum in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county of New York, or Queens or the Bronx or Kings and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purposes herein provided.
2. Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such bonds then outstanding shall, in his or its own name
  - (a) by suit, action or special proceeding enforce all rights of the bondholders, including the right to require the authority and 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 authority and the board to carry out any other agreements with the holders of such bonds and to perform its and their duties under this title;
  - (b) bring suit upon such bonds;
  - (c) by action or suit in equity, require the authority to account as if it were the trustee of an express trust for the holders of such bonds;
  - (d) by action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds;
  - (e) declare all such 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 such bonds then outstanding, to annul such declaration and its consequences.
3. The supreme court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of bondholders. The venue of any such suit, action or proceeding shall be laid in the county of New York, Queens, the Bronx, or Kings.
4. Before declaring the principal of all such bonds due and payable the trustee shall first give thirty days' notice in writing to the authority.
5. Any such trustee whether or not the issue of bonds represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of the project the tolls or other revenues of which are pledged for the security of the bonds of such issue and such receiver may enter and take possession of such part or parts of the project and subject to any pledge or agreement with bondholders shall take possession of all moneys and other property derived from or applicable to the construction, operation, maintenance and reconstruction of such part or parts of the project and proceed with any construction thereon which the authority is under obligation to do and to operate, maintain and reconstruct such part or parts of the project and collect and receive all tolls and other

revenues thereafter arising therefrom subject to any pledge thereof or agreement with bondholders relating thereto and perform the public duties and carry out the agreements and obligations of the authority under the direction of the court. 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 project.

6. 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 bondholders in the enforcement and protection of their rights.

## History

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Add, L 1939, ch 870, eff June 15, 1939; amd, L 1939, ch 874, eff June 15, 1939; L 1962, ch 310, § 328, eff Sept 1, 1963.

Annotations

## Research References & Practice Aids

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### Cross References:

This section referred to in § 561.

Injunctions, CLS CPLR § 6301 et seq.

Appointment and powers of temporary receiver, CLS CPLR § 6401.

Mandamus, CLS CPLR § 7801.

### Jurisprudences:

64 Am Jur 2d, Public Securities and Obligations §§ 477–499.

### Hierarchy Notes:

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# NY CLS Pub A § 568

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***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

## **§ 568. Continuity of jurisdiction**

---

The authority shall be deemed and held to constitute a continuation, as to matters within its jurisdiction, of the department of plant and structures of the city for the purpose of succession to all such of the rights, powers, duties and obligations of the city and of the department of plant and structures of the city as relate to the designing and construction of the project.

## **History**

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Add, L 1939, ch 870, eff June 15, 1939.

Annotations

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

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# NY CLS Pub A § 569

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*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)*

## § 569. Protection of prior bondholders

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Nothing in this title contained shall be deemed in any way to limit or alter the rights vested in the authority to establish and collect such charges and tolls as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation and to fulfill the terms of any agreements made with the holders of bonds issued or authorized to be issued prior to January first, nineteen hundred forty-six, or in any way to impair the rights and remedies thereunder of the holders of such bonds.

## History

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Add, L 1939, ch 870; amd, L 1946, ch 954, eff Apr 22, 1946.

Annotations

## Research References & Practice Aids

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### Jurisprudences:

64 Am Jur 2d, Public Securities and Obligations § 405.

### Hierarchy Notes:

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# NY CLS Pub A § 569-a

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

## § 569-a. Actions against the authority

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1. In every action against the authority for damages, for injuries to real or personal property, or for the destruction thereof, or for personal injuries or death, the complaint shall contain an allegation that at least thirty days have elapsed since the demand, claim or claims upon which such action is founded were presented to a member of the authority, or to its secretary, or to its chief executive officer and that the authority has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment.
2. Except in an action for wrongful death, an action against the authority for damages for injuries to real or personal property, or for the destruction thereof, or for personal injuries, alleged to have been sustained, shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued, nor unless a notice of claim shall have been filed within the time limit established by and in compliance with section fifty-e of the general municipal law. An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of this chapter.

## History

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Add, L 1939, ch 872, eff June 15, 1939; amd, L 1990, ch 804, § 3, eff Aug 24, 1990; L 2012, ch 500, § 11, eff June 15, 2013.

Annotations

## Notes

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### Prior Law:

Another § 569-a add, L 1939, ch 874, repealed, L 1940, ch 6, L 1940, ch 29, § 14 renumbered this section to be § 569-b, effective Feb 22, 1940, but ch 29, § 14 was repealed by L 1940, ch 370, effective April 11, 1940, due to the fact that § 569-a had been repealed as noted.

### Editor's Notes:

**Laws 1990, ch 804, § 126**, eff Aug 24, 1990, provides as follows:

§ 126. This act shall take effect on the thirtieth day after it shall have become a law, and shall apply to actions accruing on or after such date.

**Laws 2012, ch 500, §§ 1 and 79**, eff June 15, 2013, provide as follows:

Section 1. Short title. This act shall be known and may be cited as the “uniform notice of claim act”.

§ 79. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to all actions and proceedings accruing on or after such date; provided, however, that section four of this act shall take effect two hundred ten days after this act shall have become a law; and provided, further, that section seventy-eight of this act shall take effect upon the enactment into law by the state of New Jersey of legislation having an identical effect as section seventy-eight of this act, but if the state of New Jersey shall have enacted such legislation into law prior to the first day of January next succeeding the date upon which this act shall have become a law, section seventy-eight of this act shall take effect on the one hundred eightieth day from the date upon which it shall have become a law; provided further, that the state of New Jersey shall notify the legislative bill drafting commission upon the occurrence of the enactment of the provisions provided for in this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effecting the provisions of section 44 of the legislative law and section 70-b of the public officers law; and provided further that section nine of this act shall take effect upon the concurrence by members of the Delaware River Basin Water Commission. (Amd, L 2013, ch 24, § 7, eff June 15, 2013.).

## Notes to Decisions

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### 1. Generally

### 2. Complaint

### 3. Time limitations

### 4. Summary judgment

#### 1. Generally

Evidence supported jury’s determination that Triborough Bridge and Tunnel & Authority (TBTA) was 65 percent at fault, and plaintiff driver was 35 percent at fault for personal injuries where plaintiffs were in car driving behind 18-wheel truck, plaintiff driver changed lanes to right and became aware of TBTA tow truck stopped on bridge in that lane to aid disabled car, but was unable to timely stop since driver of tow truck had neither set cones in lane nor illuminated directional arrow on tow truck; trial court properly refused to dismiss action, even though plaintiffs did not prove that tow truck driver had violated TBTA rule promulgated pursuant to legislative mandate, since TBTA did not prove existence of such mandate or rule. *Ramos v Triborough Bridge & Tunnel Authority*, 179 A.D.2d 471, 578 N.Y.S.2d 181, 1992 N.Y. App. Div. LEXIS 207 (N.Y. App. Div. 1st Dep’t 1992).

Triborough Bridge and Tunnel & Authority (TBTA) tow truck driver should not be held to same professional judgement standard as firefighter since TBTA driver and firefighter face different levels of risk in jobs. *Ramos v Triborough Bridge & Tunnel Authority*, 179 A.D.2d 471, 578 N.Y.S.2d 181, 1992 N.Y. App. Div. LEXIS 207 (N.Y. App. Div. 1st Dep’t 1992).

#### 2. Complaint

In action by city against bridge and tunnel authority for property damage sustained during construction of bridge approach, city was entitled to amend its complaint to assert 2 additional breach of contract causes of action where those claims were based on facts already alleged, and there was no prejudice to authority. *City of New York v Triborough Bridge & Tunnel Auth.*, 273 A.D.2d 157, 710 N.Y.S.2d 823, 2000 N.Y. App. Div. LEXIS 7498 (N.Y. App. Div. 1st Dep’t 2000).

Appellate Division would amend, sua sponte, complaint against Triborough Bridge and Tunnel & Authority (TBTA) which failed to plead that 30 days had elapsed since claim was presented to TBTA, where record included verified notice of claim, admission of service, and date thereafter of commencement of action. *Ramos v Triborough Bridge*

& Tunnel Authority, 179 A.D.2d 471, 578 N.Y.S.2d 181, 1992 N.Y. App. Div. LEXIS 207 (N.Y. App. Div. 1st Dep't 1992).

### 3. Time limitations

90-day notice of claim period prescribed in CLS Gen Mun § 50-e supersedes 6-month period prescribed in CLS Pub A § 569-a(2). *Guillan v Triborough Bridge & Tunnel Auth.*, 202 A.D.2d 472, 609 N.Y.S.2d 38, 1994 N.Y. App. Div. LEXIS 2405 (N.Y. App. Div. 2d Dep't), app. denied, 84 N.Y.2d 809, 621 N.Y.S.2d 518, 645 N.E.2d 1218, 1994 N.Y. LEXIS 4145 (N.Y. 1994).

In action by plaintiff who was allegedly injured in fall from parkway bridge, it was error to permit service of late notice of claim on Triborough Bridge & Tunnel Authority on basis that authority acquired actual knowledge of essential facts when bridge operator employed by authority reported incident to United States Coast Guard, since plaintiff's proof did not establish that incident was reported to bridge operator's supervisor or other authority employee with duty to investigate, and thus did not satisfy plaintiff's burden of demonstrating that authority had actual knowledge of essential facts of claim. *Levette v Triborough Bridge & Tunnel Auth.*, 207 A.D.2d 330, 615 N.Y.S.2d 421, 1994 N.Y. App. Div. LEXIS 8090 (N.Y. App. Div. 2d Dep't 1994).

Provisions of general municipal law providing for time in which claim must be filed in action upon tort supersedes provisions of Public Authorities Law, and notice was untimely where served more than 90 days after accident. *Allmeroth v Triborough Bridge & Tunnel Authority*, 133 N.Y.S.2d 777, 206 Misc. 529, 1954 N.Y. Misc. LEXIS 2435 (N.Y. Sup. Ct. 1954).

Applicable statute of limitations for personal injury actions against the Triborough Bridge and Tunnel Authority was the one-year period found in N.Y. Pub. Auth. Law § 569-a(2), and not the one-year and 90-day period found in N.Y. Gen. Mun. Law § 50-i(1) since the Authority was not a not a N.Y. Gen. Mun. Law § 50-i(1) entity. *Arcuri v Ramos*, 7 A.D.3d 741, 776 N.Y.S.2d 895, 2004 N.Y. App. Div. LEXIS 7292 (N.Y. App. Div. 2d Dep't 2004).

### 4. Summary judgment

In action against New York City and Triborough Bridge & Tunnel Authority (TBTA) for injuries sustained by pedestrian when she tripped and fell on pedestrian overpass, court properly denied motions by pedestrian and city for renewal of motion for summary judgment after TBTA was granted summary judgment on showing that it had transferred ownership of overpass to city in contract providing that overpass was to be maintained by city, notwithstanding affidavits of engineer who attributed hole in pavement in which pedestrian tripped to poor design, since no reason was given for lack of diligence in producing engineer's affidavits on TBTA's summary judgment motion, especially where engineer had examined overpass some 2 months before motion was made. *Martin v Triborough Bridge & Tunnel Authority*, 180 A.D.2d 596, 580 N.Y.S.2d 305, 1992 N.Y. App. Div. LEXIS 2920 (N.Y. App. Div. 1st Dep't 1992).

Bridge and tunnel authority was not entitled to summary judgment dismissing breach of contract cause of action by city for property damage sustained during construction of bridge approach where there was triable issue of fact as to existence of contractual relationship between parties; given viability of contract cause of action, authority did not prove applicability of notice of claim requirements of CLS Gen Mun § 50-e and CLS Pub A § 569-a. *City of New York v Triborough Bridge & Tunnel Auth.*, 273 A.D.2d 157, 710 N.Y.S.2d 823, 2000 N.Y. App. Div. LEXIS 7498 (N.Y. App. Div. 1st Dep't 2000).

## Research References & Practice Aids

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### Jurisprudences:

62A NY Jur 2d Government Tort Liability § 350.



75 NY Jur 2d Limitations and Laches § 198.

1 Am Jur 2d, Actions §§ 80, 81.

2 Am Jur 2d, Administrative Law §§ 798–804.

51 Am Jur 2d, Limitation of Actions §§ 48–60.

**Matthew Bender's New York Practice Guides:**

LexisNexis AnswerGuide New York Negligence § 6.03 Identifying Statutes That Provide for Shortened Time for Commencement of Action.

LexisNexis AnswerGuide New York Negligence § 6.05 Examining Consequences of Bringing Action or Filing Notice Against Wrong Defendant.

**Hierarchy Notes:**

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 569-b

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)*

## § 569-b. Restrictions on signs and billboards

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1. No outdoor advertising sign or device which refers to any subject other than the business actually conducted on the premises or to sale or rental of such premises and no such outdoor advertising sign or device exceeding ten feet in height above the sidewalk adjacent to the property on which such sign or device is located, shall be erected, reconstructed, painted, or repainted, after the applicable date hereinafter specified in this section, within five hundred feet of the Whitestone bridge project, the Throgs Neck bridge project, the Narrows bridge project or the Hugh L. Carey tunnel project or the approaches and connections of such projects, if within view thereof.
2. In the case of the Whitestone bridge project, the applicable date shall be April three, nineteen hundred thirty-nine, except that with respect to reconstruction, painting or repainting of any such sign or device within view of such bridge project, the applicable date shall be the effective date of this subdivision two.
3. In the case of the Throgs Neck bridge project, the Narrows bridge project and the Hugh L. Carey tunnel project, the applicable date shall be the effective date of this subdivision three.
4. A violation of any of the provisions of this section may be restrained at the suit of the authority.

## History

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Add, L 1939, ch 874; amd, L 1960, ch 543, eff April 12, 1960; L 2010, ch 558, § 5, eff Dec 10, 2010.

Annotations

## Notes

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### Editor's Notes:

L 1940, ch 29, § 15 renumbered this section to be § 569-c, effective Feb 22, 1940, but ch 29, § 15 was repealed by L 1940, ch 370, effective Apr 11, 1940, due to the fact that § 569-a (L 1939, ch 874) was repealed prior to being renumbered § 569-b by L 1940, ch 29, § 14, thereby removing the necessity of renumbering this section as § 569-c.

**Laws 2010, ch 558, § 1**, eff Dec 10, 2010, provides as follows:

Section 1. Legislative findings and intent. The legislature hereby recognizes Hugh L. Carey, by naming after him the Brooklyn Battery Tunnel, as a tribute befitting his historic contribution to the state of New York. Hugh L. Carey served the people of New York state as a member of the United States House of Representatives for fourteen years, and as the fifty-first Governor of New York state for twelve years. He served as Governor during a time of great challenge for New York state, and significantly advanced the state's fiscal well-being and economic development. He brought the city of New York back from the brink of bankruptcy, and was instrumental in the

development of the South Street Seaport, Battery Park City and the Jacob Javits Convention Center. He greatly improved the services provided to the mentally ill and developmentally disabled, by entering into the Willowbrook consent decree and through other initiatives. Hugh L. Carey served with distinction as a member of the New York National Guard in Europe during the Second World War, receiving the Combat Infantryman Badge, the Bronze Star and the Croix de Guerre, and leaving active duty with the rank of colonel. His decades of service to this state and nation fully merit the honor bestowed upon him by this bill.

## Notes to Decisions

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### 1. Generally

There is no “Brooklyn-Battery bridge” as referred to in this section. The provisions of this section prohibiting the maintenance of advertising signs within 500’ of the approaches to the “bridge” could not be interpreted as referring to signs on the approaches to the Brooklyn-Battery tunnel. *Triborough Bridge & Tunnel Authority v B. Crystal & Son*, 2 A.D.2d 37, 153 N.Y.S.2d 387, 1956 N.Y. App. Div. LEXIS 4820 (N.Y. App. Div. 1st Dep’t 1956), *aff’d*, 2 N.Y.2d 961, 162 N.Y.S.2d 362, 142 N.E.2d 426, 1957 N.Y. LEXIS 1132 (N.Y. 1957).

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 569-c

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

## **§ 569-c. Transfer and receipt of surplus funds**

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Notwithstanding any provision of this title or any other provision of law, general, special or local, the authority shall, at the direction of the metropolitan transportation authority, from time to time transfer and pay over all or any part of its surplus funds to (a) metropolitan transportation authority or (b) New York city transit authority, all in accordance with the provisions of subdivision twelve of section five hundred fifty-three of this title and the determination of the proportional allocation of such amounts of surplus funds so deposited as between the New York city transit authority and the commuter railroads operated by metropolitan transportation authority shall be governed by the provisions of section twelve hundred nineteen-a of this chapter and the authority may accept and use any moneys transferred and paid over to it by metropolitan transportation authority or New York city transit authority.

## **History**

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Add, L 1967, ch 717, § 68, eff March 1, 1968; amd, L 2000, ch 61, § 9 (Part O), eff May 15, 2000.

Annotations

## **Research References & Practice Aids**

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### **Cross References:**

This section referred to in § 553.

### **Jurisprudences:**

63A Am Jur 2d, Public Funds §§ 47, 51.

### **Hierarchy Notes:**

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 569-d

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)*

## § 569-d. Protection of bondholders

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Nothing in this title contained shall be deemed to limit or alter in any way the rights and obligations of the authority to establish and collect such tolls, fees, rentals and other charges as may be necessary or required to produce sufficient revenues to meet and to fulfill the terms and provisions of the contracts made with the holders and registered owners of the bonds or in any way impair the constitutional rights of the holders and registered owners of the bonds.

## History

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Add, L 1967, ch 717, § 68, eff March 1, 1968.

Annotations

## Research References & Practice Aids

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### Hierarchy Notes:

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# NY CLS Pub A § 570

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)*

## § 570. Title not affected if in part unconstitutional or ineffective

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

## History

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Add, L 1939, ch 870, eff June 15, 1939.

Annotations

## Research References & Practice Aids

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### Jurisprudences:

16 Am Jur 2d, Constitutional Law §§ 260–276.

73 Am Jur 2d, Statutes § 381.

### Hierarchy Notes:

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NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 571

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 3 Bridge and Tunnel Authorities (Titles 1 — 9) > Title 3 Triborough Bridge Authority (§§ 550 — 571)***

## **§ 571. Inconsistent provisions in other acts superseded**

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

### **History**

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Add, L 1939, ch 870, eff June 15, 1939.

Annotations

### **Notes to Decisions**

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#### **1. Generally**

A traffic rule promulgated by the Authority acting pursuant to a State statute which provides that a violation of the rule shall be a misdemeanor prevails over any inconsistent provisions of the Vehicle and Traffic Law. *People v Malmud*, 4 A.D.2d 86, 164 N.Y.S.2d 204, 1957 N.Y. App. Div. LEXIS 5255 (N.Y. App. Div. 2d Dep't 1957).

### **Research References & Practice Aids**

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#### **Jurisprudences:**

73 Am Jur 2d, Statutes § 381.

#### **Hierarchy Notes:**

NY CLS Pub A, Art. 3

NY CLS Pub A, Art. 3, Title 3

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# NY CLS Pub A § 1200

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)***

## § 1200. Definitions

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Unless expressly otherwise provided, whenever used in this title, the following terms shall mean or include:

1. "Authority." The corporation created by section eighteen hundred one<sup>\*</sup> of this title.
2. "Board." The members of the authority.
3. "Board of estimate." The board of estimate of the city.
4. "City." The city of New York.
5. "Comptroller." The comptroller of the city.
6. "Devices and appurtenances." Devices and appurtenances deemed necessary by the authority, to secure the greatest efficiency, public convenience and safety, including the number, location, description and plans and specifications for the stations, suitable supports, turnouts, switches, sidings, connections, landing places, garages, repair shops, buildings, structures, platforms, stairways, elevators, telephone, telegraph and signal devices, facilities for access to the surface, and other suitable appliances incidental and requisite to what such authority may approve as the best and most efficient system of rapid transit in view of the public needs and requirements, including in its discretion, operation of a transit facility or some portion thereof by any device or means, other than separate cars or trains, in the construction of which stationary means for guiding a conveyance in a definite path and means for propelling such conveyance are necessary elements.
7. "Equipment." Rolling stock, omnibuses, vehicles, motors, boilers, engines, wires, ways, conduits and mechanisms, machinery, tools, implements, materials, supplies and devices of every nature whatsoever used for the generation or transmission of motive power and including all power houses, and all apparatus and all devices for signalling and ventilation as may be required for the operation of a transit facility.
8. "Facilities." Routes, tracks, extensions, connections, terminals or facilities.
9. "Fiscal year." A period commencing the first day of January in each year and ending on the succeeding December thirty-first of such year.
10. "Governor." The governor of the state of New York.
11. "Mayor." The mayor of the city.
12. "Person." A natural person, firm or corporation.
13. "Property" or "property rights." Real estate, real property, lands, rights, terms, interests, privileges, franchises or easements of owners, abutting owners or others.

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<sup>\*</sup> Renumbered § 1201, L 1957, ch 914, § 3.

14. "Revenues." All monies received by the authority or its subsidiaries from whatever source, derived directly or indirectly from or in connection with their operations.
15. "Transit facility." A rapid transit railroad, omnibus line or any other facility or any railroad in the city used for local service in the transportation of passengers as common carriers for hire or in the transportation of the United States mail or personal property, and any portion thereof and the rights, leaseholds or other interests therein, together with the devices and appurtenances, facilities and equipment thereof and power plants and other instrumentalities used or useful therefor or in connection therewith.
16. "Street." A public street, marginal street, avenue, road, bridge, viaduct, highway, boulevard, driveway, park, parkway, dock, wharf, pier, ground, river, water, square, place or land within the city.
17. "Metropolitan transportation authority." The corporation created by section twelve hundred sixty-three of this chapter.
18. "Triborough bridge and tunnel authority." The corporation created by section five hundred fifty-two of this chapter.

## History

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Formerly § 1800, add, L 1953, ch 200; renumbered § 1200, L 1957, ch 914, § 3; L 1953, ch 201, § 1; L 1956, ch 883, § 1; L 1967, ch 717, § 69, eff March 1, 1968; L 1982, ch 929, § 1, eff Dec 23, 1982; L 2000, ch 61, § 10 (Part O), eff May 15, 2000.

Annotations

## Notes

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### Prior Law:

Former § 1200, add, L 1939, ch 870; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 400.

## Notes to Decisions

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Where the New York City Transit Authority had cancelled an existing collective bargaining agreement with a union on the ground that there was a breach by the union, and no reply was served and the allegations of new matter by way of defense were not put in issue, the union failed to establish a clear legal right to compel the authority to continue to deal with it during the short period of time which elapsed between the date of the order appealed from and the expiration date of the contract. *Bering v Patterson*, 2 A.D.2d 820, 155 N.Y.S.2d 514, 1956 N.Y. App. Div. LEXIS 4374 (N.Y. App. Div. 2d Dep't 1956).

Grant of summary judgment to a transit authority was reversed because plaintiff submitted evidence demonstrating that the transit authority was equitably estopped from asserting failure to timely serve a notice of claim defense under General Municipal Law § 50-e(1)(a) since it wrongfully or negligently engaged in conduct that misled plaintiff to justifiably believe that service of the notice of claim upon a separate transit authority was of no consequence. *Konner v New York City Tr. Auth.*, 143 A.D.3d 774, 39 N.Y.S.3d 475, 2016 N.Y. App. Div. LEXIS 6583 (N.Y. App. Div. 2d Dep't 2016).

Employees of New York City Transit Authority were not entitled to strike since the operation of transit facilities is a governmental function. Court had the power and duty to enjoin such a strike. *New York City Transit Authority v*

Loos, 2 Misc. 2d 733, 154 N.Y.S.2d 209, 1956 N.Y. Misc. LEXIS 1690 (N.Y. Sup. Ct. 1956), aff'd, 3 A.D.2d 740, 161 N.Y.S.2d 564, 1957 N.Y. App. Div. LEXIS 6125 (N.Y. App. Div. 1st Dep't 1957).

Petitioner for injunction against further operation of subways in violation of general standards of noise control was insufficient on its face in the absence of allegation that the action or inaction of the transportation authority was arbitrary or illegal. *Abrams v New York City Transit Authority (NYCTA)*, 78 Misc. 2d 938, 358 N.Y.S.2d 842, 1974 N.Y. Misc. LEXIS 1529 (N.Y. Sup. Ct. 1974), aff'd, 48 A.D.2d 69, 368 N.Y.S.2d 165, 1975 N.Y. App. Div. LEXIS 9544 (N.Y. App. Div. 1st Dep't 1975).

The New York City Transit Authority, in establishing a higher fare on one part of the City's Rapid Transit System, did not deny residents in the affected area of the constitutional guarantee of equal protection of the laws. *Application of Love*, 155 N.Y.S.2d 266, 1956 N.Y. Misc. LEXIS 2338 (N.Y. Sup. Ct. 1956).

In a civil rights organization's suit against the New York City Transit Authority challenging the legality of the policy that governed the public's access to the hearings conducted by New York City's Transit Adjudication Bureau (TAB), a federal district court held that the organization met its burden under Fed. R. Civ. P. 65(a) of showing entitlement to a preliminary injunction to enjoin the Authority's hearing policy of excluding the public because a qualified First Amendment, U.S. Const. amend. I, right of public access attached to the authority's hearings. The organization demonstrated that the Authority's TAB hearings were not afforded a per se immunity from First Amendment scrutiny; that under the Richmond Newspapers' experience and logic test, a qualified First Amendment right of access attached to the TAB hearings; and the Authority's blanket stance that it controlled the public access policy was not narrowly tailored to serve an appropriate governmental interest. *New York Civ. Liberties Union v New York City Transit Auth.*, 675 F. Supp. 2d 411, 2009 U.S. Dist. LEXIS 120470 (S.D.N.Y. 2009), aff'd, 684 F.3d 286, 2011 U.S. App. LEXIS 26087 (2d Cir. N.Y. 2011), aff'd, 652 F.3d 247, 2011 U.S. App. LEXIS 14768 (2d Cir. N.Y. 2011).

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1207-a, 1207-b, 1207-m, 1225-b, 1266.

### Codes, Rules and Regulations:

Definitions and construction of regulations of New York City Transit Authority. 21 NYCRR §§ 1050.2, 1050.3.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1201

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)***

## **§ 1201. New York city transit authority**

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1. A board, to be known as “New York City Transit Authority” is hereby created. Such board shall be a body corporate and politic constituting a public benefit corporation. It shall consist of seventeen members, all serving ex officio. Those members shall be the persons who from time to time shall hold the offices of chairman and members of metropolitan transportation authority.
2. The chairman of such board shall be the chairman of metropolitan transportation authority, serving ex officio, and, provided that there is an executive director of the metropolitan transportation authority, the executive director of the authority shall be the executive director of the metropolitan transportation authority, serving ex officio. Notwithstanding any provision of law to the contrary, the chairman shall be the chief executive officer of the authority and shall be responsible for the discharge of the executive and administrative functions and powers of the authority. The chairman and executive director, if any, each shall be empowered to delegate his or her functions and powers to one or more officers or employees designated by him or her.
3. The chairman, other members of the board and the executive director shall not be entitled to compensation for their services but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their official duties.
4. Notwithstanding any inconsistent provisions of this or any other law, general, special or local, no officer or employee of the state or any public corporation, as defined in the general corporation law<sup>\*</sup>, shall be deemed to have forfeited or shall forfeit his office or employment or any benefits provided under the retirement and social security law or under any public retirement system maintained by the state or any of its subdivisions by reason of his being a member or the chairman of the authority.
5. A majority of the whole number of members of the authority then in office shall constitute a quorum for the transaction of any business or the exercise of any power of the authority. Except as otherwise specified in this title, for the transaction of any business or the exercise of any power of the authority, the authority shall have the power to act by a majority vote of the members present at any meeting at which a quorum is in attendance. In the event of a tie vote the chairman shall cast one additional vote. For the purposes of the voting and quorum requirements of this subdivision, the voting and quorum requirements set forth in subdivision three of section twelve hundred sixty-three of this article and in any by-law of the metropolitan transportation authority adopted pursuant to the provisions of such subdivision shall be applicable hereto.
6. The authority and its corporate existence shall continue until terminated by law, provided however, that no such law shall take effect so long as the authority or any of its subsidiaries, the metropolitan transportation authority or the Triborough bridge and tunnel authority shall have outstanding any notes or bonds or lease, sublease or other contractual obligations issued or incurred pursuant to section twelve hundred seven-m of this title or issued or incurred in connection with the transfer of its interest in and the lease from the transferee of any property furnished to it pursuant to chapter twelve of the laws of nineteen

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<sup>\*</sup> Repealed, L 1973, ch 451, § 2; see, now General Construction Law §§ 65 et seq.

hundred seventy-nine or section fifteen of chapter three hundred fourteen of the laws of nineteen hundred eighty-one, or section twelve hundred sixty-six-c or twelve hundred seventy-d of this article, unless adequate provision has been made for the payment or satisfaction of such outstanding notes, bonds, lease, sublease or other contractual obligations.

## History

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Formerly § 1801, add, L 1955, ch 579, § 1; renumbered § 1201, L 1957, ch 914, § 3; L 1956, ch 504; L 1957, ch 547, § 3; L 1957, ch 714; L 1964, ch 431; L 1967, ch 717, § 70, eff March 1, 1968; L 1979, ch 275, § 3, eff July 1, 1979; L 1979, ch 727, § 6,7; L 1980, ch 280, § 1; L 1981, ch 1038, § 1; L 1986, ch 929, § 20, eff Dec 31, 1986; L 2000, ch 61, § 11 (Part O), eff May 15, 2000; L 2005, ch 766, § 8, eff Jan 13, 2006 (see 2005 note below); L 2009, ch 25, § 6 (Part H), eff as stated in 2009 note below; L 2009, ch 506, § 26, eff March 1, 2010.

Annotations

## Notes

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### Prior Law:

Former § 1201, add, L 1939, ch 870; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 401.

### Editor's Notes:

**Laws 2005, ch 766, §§ 1 and 31**, eff Jan 13, 2006, provide as follows:

Section 1. Short title. This act shall be known and may be cited as the “public authorities accountability act of 2005”.

§ 31. This act shall take effect immediately and shall apply to the public authority fiscal year beginning on or after January 1, 2006, provided however that section twenty-seven of this act shall take effect April 1, 2006.

**Laws 2009, ch 25, §§ 1, 21(b) (Part H)**, eff May 7, 2009, provide as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district (“MTA district”) are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state’s residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

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

(b) the amendments to subdivision 4 of section 1263 of the public authorities law made by section five of this act, subdivision 2 of section 1201 of the public authorities law made by section six of this act, subdivision 1 of section 552 of the public authorities law made by section seven of this act, and subdivision 5 of section 1266 of the public authorities law made by section eight of this act, shall take effect upon the date of the appointment by the governor with the advice and consent of the senate of a chair to the new term of office created pursuant to section three of this act. The governor's office of appointments shall notify the legislative bill drafting commission upon the appointment of a chairman to the new term provided for in section three of this act in order that the legislative bill drafting commission may maintain an accurate and timely effective database of the original text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law; and

#### **Amendment Notes:**

**2009.** Chapter 506, § 26 amended:

Sub 2, by deleting "subdivision three of section twenty-eight hundred twenty-four of this chapter or" and "other".

## **Notes to Decisions**

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The New York City Transit Authority was created by the Legislature as a "body corporate and politic constituting a public benefit corporation". *Lerner v Casey*, 2 N.Y.2d 355, 161 N.Y.S.2d 7, 141 N.E.2d 533, 1957 N.Y. LEXIS 1210 (N.Y. 1957), *aff'd*, 357 U.S. 468, 78 S. Ct. 1311, 2 L. Ed. 2d 1423, 1958 U.S. LEXIS 666 (U.S. 1958).

Executive officer for labor relations and personnel, whom chairman of city transit authority had granted the authority to appoint, discipline and remove transit employees, had the authority to discharge patrolman employed by transit authority police department. *McQueen v New York City Transit Authority*, 34 N.Y.2d 343, 357 N.Y.S.2d 482, 313 N.E.2d 779, 1974 N.Y. LEXIS 1477 (N.Y. 1974).

The New York City Transit Authority had the power to make a collective bargaining agreement with a union, reserving to its employees all rights under Civil Rights Law and the Civil Service laws. *Civil Service Forum v New York City Transit Authority*, 3 Misc. 2d 346, 151 N.Y.S.2d 402, 1956 N.Y. Misc. LEXIS 2121 (N.Y. Sup. Ct. 1956), *rev'd*, 4 A.D.2d 117, 163 N.Y.S.2d 476, 1957 N.Y. App. Div. LEXIS 5412 (N.Y. App. Div. 2d Dep't 1957).

In the absence of appropriate legislative authorization, the city of New York has no legal right or power to pay cash subsidies to its transit authority in order to enable the latter to maintain the present rate of fare and the transit authority has no power or authority to use any such payment for that purpose. *New York v New York City Transit Authority*, 53 Misc. 2d 627, 279 N.Y.S.2d 278, 1967 N.Y. Misc. LEXIS 1614 (N.Y. Sup. Ct. 1967).

Petitioners were not entitled under N.Y. Pub. Auth. Law § 1204(15) to challenge a decision of public transportation authorities to effectuate mass closings of subway station token booths and customer assistant kiosks because questions as to the extent and manner in which the public transportation authorities operated and managed the transit facilities were within the purview of those agencies and not subject to judicial review; the relief sought would have involved the judiciary in the management and operation of the transit system, a task the courts were not designated to perform. *Samuelson v Walder*, 907 N.Y.S.2d 784, 29 Misc. 3d 225, 243 N.Y.L.J. 116, 2010 N.Y. Misc.

LEXIS 3098 (N.Y. Sup. Ct. 2010), rev'd, dismissed, 88 A.D.3d 587, 932 N.Y.S.2d 30, 2011 N.Y. App. Div. LEXIS 7334 (N.Y. App. Div. 1st Dep't 2011).

The New York City Transit Authority has the power to establish varying and multiple rates of fare for passengers on the city rapid transit system, or each of its separate facilities. Application of Love, 155 N.Y.S.2d 266, 1956 N.Y. Misc. LEXIS 2338 (N.Y. Sup. Ct. 1956).

Where a student was injured on a New York City Transit Authority (NYCTA) bus when other students tossed a firecracker at the student, claims against the New York City Department of Education (DOE) were dismissed because the school's duty terminated when the students boarded the bus, and the NYCTA was a distinct entity from the DOE. Banks v New York City Dep't of Educ., 235 N.Y.L.J. 34, 2006 N.Y. Misc. LEXIS 4072 (N.Y. Sup. Ct. Feb. 21, 2006), rev'd, 39 A.D.3d 787, 832 N.Y.S.2d 812, 2007 N.Y. App. Div. LEXIS 5222 (N.Y. App. Div. 2d Dep't 2007).

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 551, 1207-a, 1207-b, 1225-b, 1261; referred to (as § 1801) in § 1200.

### Jurisprudences:

2 Am Jur 2d, Administrative Law §§ 55–62.

13 Am Jur 2d, Carriers §§ 27–33.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1202

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)*

## § 1202. Purposes of the authority

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1. The purposes of the authority shall be the acquisition of the transit facilities operated by the board of transportation of the city, the operation of transit facilities in accordance with the provisions of this title for the convenience and safety of the public on a basis which will enable the operations thereof, exclusive of capital costs, to be self-sustaining, and, in coordination with the metropolitan transportation authority and the Triborough bridge and tunnel authority, the continuance, further development and improvement of commuter transportation and other services related thereto within the metropolitan commuter transportation district and the development and implementation of a unified mass transportation policy for such district.

2. It is hereby found and declared that such purposes are in all respects for the benefit of the people of the state of New York and the authority shall be regarded as performing a governmental function in carrying out its corporate purpose and in exercising the powers granted by this title.

## History

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Formerly § 1802, add, L 1953, ch 200; renumbered § 1202, L 1957, ch 914, § 3, eff April 24, 1957; L 2000, ch 61, § 12 (Part O), eff May 15, 2000.

Annotations

## Notes

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### Prior Law:

Former § 1202, add, L 1947, ch 579, § 1; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 402.

## Notes to Decisions

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Provision of CLS Pub A Law § 1202 that New York City Transit Authority, in carrying out its corporate purpose, shall be regarded as performing governmental function, was not meant to abrogate provision of CLS Pub A Law § 1212 that Authority is responsible for negligence of its employees in operation of subway system. *Crosland v New York City Transit Authority*, 68 N.Y.2d 165, 506 N.Y.S.2d 670, 498 N.E.2d 143, 1986 N.Y. LEXIS 19771 (N.Y. 1986).

Board's order rescinding transit authority's dual employment standards was confirmed because record was inadequate to support transit authority's argument that dual employment standards at issue were in furtherance of its core mission of public safety for purposes of Civil Service Law § 209-a(1)(d) and not subject to collective



bargaining; the transit authority did not rely on particular safety studies when it imposed the new standards. Moreover, the transit authority did not explain why it chose to impose the more restrictive dual employment standards on certain safety-sensitive employees—train conductors, train operators and tower operators—while exempting others—bus operators and train dispatchers—who shared similar job functions. *Matter of Matter of New York City Tr. Auth. v New York State Pub. Empl. Relations Bd.*, 19 N.Y.3d 876, 948 N.Y.S.2d 842, 972 N.E.2d 83, 2012 N.Y. LEXIS 1313 (N.Y. 2012).

In view of, *inter alia*, provision of Public Authorities Law that purpose of New York City Transit Authority was to acquire transit facilities of city and that Transit Authority was to be regarded as performing a governmental function, sufficient nexus existed between city and Transit Authority to warrant legislature in treating Transit Authority as an arm of the city and in subjecting it to the same fiscal restrictions as those imposed on the city by the Financial Emergency Act for the City of New York. *Subway-Surface Supervisors Asso. v New York City Transit Authority*, 56 A.D.2d 53, 392 N.Y.S.2d 460, 1977 N.Y. App. Div. LEXIS 10016 (N.Y. App. Div. 2d Dep't 1977), modified, 44 N.Y.2d 101, 404 N.Y.S.2d 323, 375 N.E.2d 384, 1978 N.Y. LEXIS 1900 (N.Y. 1978).

With regard to the December 2005 mass transit labor union strike, the union had no Sixth Amendment right to a jury trial in connection with a contempt hearing wherein it was adjudged in contempt for striking as the proceeding had a civil and criminal component—in that the violation of the injunction was a civil matter and the fine of \$1 million per day was criminal in nature. No right to a jury trial existed with regard to the civil portion of the proceeding and the daily fine of \$1 million was not a serious penalty that required a jury trial before imposition. *New York City Tr. Auth. v Transport Workers Union of Am., AFL-CIO*, 35 A.D.3d 73, 822 N.Y.S.2d 579, 2006 N.Y. App. Div. LEXIS 11904 (N.Y. App. Div. 2d Dep't 2006).

Any alleged injuries a passenger sustained in a fall on a track bed arose from the New York City Transit Authority's (NYCTA's) discretionary decision to evacuate passengers from a subway train onto the track bed, not from its proprietary function in maintaining the track bed in a safe condition for passenger egress. Governmental immunity barred her negligence suit against the NYCTA, as she did not show that the NYCTA had actual or constructive knowledge that she specifically required assistance in traversing the track bed such that the NYCTA's employees had knowledge that their inaction could lead to harm. *Kadymir v New York City Tr. Auth.*, 55 A.D.3d 549, 865 N.Y.S.2d 269, 2008 N.Y. App. Div. LEXIS 7529 (N.Y. App. Div. 2d Dep't 2008).

Grant of summary judgment to a transit authority was reversed because plaintiff submitted evidence demonstrating that the transit authority was equitably estopped from asserting failure to timely serve a notice of claim defense under General Municipal Law § 50-e(1)(a) since it wrongfully or negligently engaged in conduct that misled plaintiff to justifiably believe that service of the notice of claim upon a separate transit authority was of no consequence. *Konner v New York City Tr. Auth.*, 143 A.D.3d 774, 39 N.Y.S.3d 475, 2016 N.Y. App. Div. LEXIS 6583 (N.Y. App. Div. 2d Dep't 2016).

The New York City Transit Authority is performing a governmental function in the operation of its facilities. *New York City Transit Authority v Loos*, 2 Misc. 2d 733, 154 N.Y.S.2d 209, 1956 N.Y. Misc. LEXIS 1690 (N.Y. Sup. Ct. 1956), *aff'd*, 3 A.D.2d 740, 161 N.Y.S.2d 564, 1957 N.Y. App. Div. LEXIS 6125 (N.Y. App. Div. 1st Dep't 1957).

The New York City Transit Authority is engaged in performance of a governmental function, must furnish transportation seven days a week and abide by certain seniority rules in the assignment of duties to employees, and hence, with respect to a civil service employee who was a Seventh Day Adventist and had refused to work on Saturdays because of his religious beliefs, such employee was subject to dismissal and the dismissal did not violate his rights to free exercise of religion. *Andrews v O'Grady*, 44 Misc. 2d 28, 252 N.Y.S.2d 814, 1964 N.Y. Misc. LEXIS 1452 (N.Y. Sup. Ct. 1964).

The New York City Transit Authority is entitled to a preliminary injunction under Condon-Wadlin Act to enjoin a strike by its employees, and even in the absence of such a statute the strike would be enjoined as unlawful and contrary to the public policy of the state. *New York City Transit Authority v Quill*, 48 Misc. 2d 940, 266 N.Y.S.2d 296, 1965 N.Y. Misc. LEXIS 1210 (N.Y. Sup. Ct. 1965).

It is the intent of the Legislature that the New York City Transit Authority be self-sustaining, and the Authority has the power to adjust its rates when necessary to maintain its operation on a self-sustaining basis. Therefore, the petitioner may not ask the court to review the provisions of a proposed local law and to command the City to turn over \$84.3 million to the Transit Authority and to command the Authority to receive that money and to restore the subway fare to 15 cents. *Weiss v New York*, 52 Misc. 2d 391, 275 N.Y.S.2d 557, 1966 N.Y. Misc. LEXIS 1531 (N.Y. Sup. Ct. 1966).

In the absence of appropriate legislative authorization, the city of New York has no legal right or power to pay cash subsidies to its transit authority in order to enable the latter to maintain the present rate of fare and the transit authority has no power or authority to use any such payment for that purpose. *New York v New York City Transit Authority*, 53 Misc. 2d 627, 279 N.Y.S.2d 278, 1967 N.Y. Misc. LEXIS 1614 (N.Y. Sup. Ct. 1967).

The Metropolitan Transportation Authority and the New York City Transit Authority would not be required to pay refunds, equal to token expenditures, to a passenger for alleged breach of contract of carriage in the form of late service and unsanitary conditions on the routes he traveled, since, as public benefit corporations engaged in a governmental function pursuant to Pub A Law §§ 1202, 1266, the authorities are in the same posture as the State, city or any municipality providing essential services, and no cause of action may exist for failure of a municipality to provide such services. *Leeds v Metropolitan Transp. Authority*, 114 Misc. 2d 797, 452 N.Y.S.2d 551, 1982 N.Y. Misc. LEXIS 3568 (N.Y. Civ. Ct. 1982), *aff'd*, 117 Misc. 2d 329, 460 N.Y.S.2d 219, 1983 N.Y. Misc. LEXIS 3158 (N.Y. App. Term 1983).

A complaint alleging that by providing untimely service and unsanitary conditions metropolitan and city transit authorities had breached implied contracts to transport plaintiff would be dismissed for failure to state a cause of action, where the transport authorities, as public benefit corporations, rendered services to and for the benefit of the public as a whole, and absent a special relationship or a showing that a private obligation existed, those services were not owed to any specific individual and thus individual relief could not be granted, where it was not the court's function to reorder governmental priorities, and where the ultimate public remedy for poor government management was through the electoral process. *Leeds v Metropolitan Transp. Auth.*, 117 Misc. 2d 329, 460 N.Y.S.2d 219, 1983 N.Y. Misc. LEXIS 3158 (N.Y. App. Term 1983).

Petitioners were not entitled under N.Y. Pub. Auth. Law § 1204(15) to challenge a decision of public transportation authorities to effectuate mass closings of subway station token booths and customer assistant kiosks because questions as to the extent and manner in which the public transportation authorities operated and managed the transit facilities were within the purview of those agencies and not subject to judicial review; the relief sought would have involved the judiciary in the management and operation of the transit system, a task the courts were not designated to perform. *Samuelsen v Walder*, 907 N.Y.S.2d 784, 29 Misc. 3d 225, 243 N.Y.L.J. 116, 2010 N.Y. Misc. LEXIS 3098 (N.Y. Sup. Ct. 2010), *rev'd*, dismissed, 88 A.D.3d 587, 932 N.Y.S.2d 30, 2011 N.Y. App. Div. LEXIS 7334 (N.Y. App. Div. 1st Dep't 2011).

The New York City Transit Authority has the power to establish varying and multiple rates of fare for passengers on the city rapid transit system, or each of its separate facilities. *Application of Love*, 155 N.Y.S.2d 266, 1956 N.Y. Misc. LEXIS 2338 (N.Y. Sup. Ct. 1956).

## Opinion Notes

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### Agency Opinions

The New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, Triborough Bridge and Tunnel Authority, Port of New York Authority and New York City Housing Authority are exempt from paying fees to county clerks under CPLR 8017 and 8019(d). 1975 NY Ops Atty Gen March 17.

## Research References & Practice Aids

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**Cross References:**

This section referred to in §§ 1207-a, 1207-b.

**Federal Aspects:**

Public transportation under the Federal-Aid Highways Act, 23 USCS § 142.

Public transportation, 49 USCS §§ 5301 et seq.

**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1203

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)*

## **§ 1203. Transfer of transit facilities by the city to the authority**

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1.

a. On or before June first, nineteen hundred fifty-three, the city may, by resolution of the board of estimate or by instruments authorized by any such resolution, enter into an agreement with the authority for the transfer to the authority, for use in the execution of its corporate purposes, of the transit facilities now owned or hereafter acquired or constructed by the city and any other materials, supplies and property incidental to or necessary for the operation thereof. Any such agreement shall provide for transfer of such facilities by deed, lease, license or other arrangement, provided the term thereof shall not be less than ten years and authorize the authority to take jurisdiction, control, possession and supervision of such transit facilities, materials, supplies and property on or before June fifteenth, nineteen hundred fifty-three.

b.

(i) Such agreement shall provide that capital costs of a nature not heretofore charged as operating expenses shall be paid by the city, or at the option of the authority may be paid in the first instance by the authority but in such event, the authority shall be entitled to recover from the city the amount of such costs; provided, however, that the total amount of such capital costs which the authority may incur without the approval of the mayor in any city fiscal year shall not exceed five million dollars and that no other such capital costs shall be incurred by the authority without such approval. Where the city is required to reimburse the authority for the amount of any capital costs pursuant to such agreement, serial bonds or capital notes may be issued by the city, pursuant to the local finance law, to finance any such reimbursement in the same manner and to the same extent as if such costs were to be paid directly by the city.

The authority shall submit annually to the city planning commission and the mayor of the city on or before October fifteenth in each year an estimate of all such capital costs for inclusion in the capital budget of the city.

(ii) From and after March first, nineteen hundred sixty-eight, the authority shall also have the right to incur capital costs of such nature in its own name to the extent that capital funds are available to it for expenditures of such nature pursuant to the provisions of section twelve hundred nineteen-a of this chapter or of any other provision of law, which capital costs shall not be payable by the city; provided, however, that no project to be financed by the use of such capital funds which is estimated by the authority to involve an expenditure in excess of one million dollars shall be commenced unless the mayor and the board of estimate shall each have been notified in writing by the authority of the intent of the authority to undertake such project and of the nature thereof. No such project shall be commenced if and to the extent that either the mayor or a majority in voting power of the members of the board of estimate shall find that it is incompatible with sound planning for the development or redevelopment of the city, provided such finding, together with the reasons therefor, is set forth in a writing delivered to the authority within thirty days of the receipt by the mayor or the board of estimate, as the case may be, of the notification of the authority relating to

such project. If any such project is not so disapproved, it may nevertheless not be commenced unless and until the city shall have been given an opportunity to include the same in the capital budget of the city for the first fiscal year of the city commencing not less than six months after receipt of such notification. If and to the extent that such project is included in such capital budget, the authority may not thereafter incur capital costs for the same in its own name. If or to the extent such project is not included in such capital budget, the authority may incur capital costs for the same in its own name. The operation of sections twenty, twenty-one and twenty-two of the rapid transit law shall be suspended with respect to any project financed with the capital funds referred to in this subparagraph.

**c.** Such agreement shall provide that the authority shall have the use and possession of all property owned or leased by the city and used or occupied by the board of transportation on March fifteenth, nineteen hundred fifty-three in connection with or incidental to the operation of such transit facilities.

**d.** No provision in such agreement shall purport to limit or restrict or have the effect of limiting or restricting, the power granted the authority to manage, control or direct the maintenance and operation of such transit facilities or the fares or service thereof.

**2.** Such agreement shall provide for payment by the city of:

**a.** Capital costs for projects connected with such transit facilities included in the capital budget of the city for periods prior to December thirty-first, nineteen hundred fifty-three, except that the authority shall not require payment of, and the city shall not pay, capital costs of such projects without prior approval of the board of estimate.

**b.** Liabilities of the city or the board of transportation for:

**(1)** Pension or retirement contributions on behalf of persons who were employed on transit facilities heretofore acquired by the city.

**(2)** Contributions to the New York City employees' retirement system on behalf of officers or employees whose compensation has been paid out of the operating revenues of the board of transportation of the city, which contributions have or shall hereafter become due or payable for fiscal years of the city ending on or before June thirtieth, nineteen hundred fifty-three.

**c.** All other liabilities of the board of transportation on the date of the conveyance.

**d.** Ten million dollars derived from any funds of the city (but not from borrowed funds), or from the operating fund of the board of transportation at the time of such transfer, for use by the authority as initial working capital (1) in partial consideration of the acceptance by the authority of the initial transfer, in which case the sum shall not be repaid, or (2) as a loan, in which case such sum shall be repaid in not less than five nor more than ten equal annual installments, commencing July first, nineteen hundred fifty-four.

**3.**

**a.** Such agreement may contain provisions relating to the use and occupancy by the authority of real property (in addition to that transferred pursuant to subdivision one of this section) now or hereafter owned or leased by the city, on such terms as may be mutually agreed upon by the city and the authority, and may provide for or authorize surrenders to the city of property no longer required by the authority.

**b.** The authority shall be entitled to utilize the officers, employees, agents, facilities and services of the city on the same terms and conditions as were applicable to or provided to the board of transportation on March fifteenth, nineteen hundred fifty-three.

**4.** The city and the authority are hereby authorized and empowered to make or enter into any contracts, agreements, deeds, leases, conveyances or other instruments as may be necessary or appropriate to effectuate the purposes of this title and they shall have complete power and authority to do and to authorize the doing of all things, incidental, desirable or necessary to implement the provisions of this section.

5. Upon the filing by the authority with the clerk of the city and the secretary of state of a copy of the instruments or documents effectuating the transfer, the authority shall take possession and control of the transit facilities and other property transferred thereby together with all contracts, books, maps, plans, papers and records of or in the possession of the board of transportation of whatever description, incidental to or necessary for the operation of the facilities transferred by such agreement or the performance of the duties of the authority as provided by this title.

6. When in the discretion of the authority there is available a supply of electric power adequate for the efficient and proper operation of the transit facilities either from a private utility or otherwise at rates and under circumstances deemed by the authority to be reasonable, the authority may make such provisions for the utilization of such electric power as it may see fit and surrender to the city the power plants presently leased by the authority from the city pursuant to the provisions of this title. The foregoing provisions of this subdivision shall be applicable only to actions of the authority undertaken prior to February first, nineteen hundred and sixty.

7. Notwithstanding the aforesaid provisions of this section the city may transfer to the authority title and ownership to the materials, supplies and property incidental to or necessary for the operation of the transit facilities which were heretofore leased to the authority, and the authority and the city may enter into an agreement, modifying the agreement of lease dated June first, nineteen hundred fifty-three, as amended, renewed and supplemented, to provide for such transfer of title and ownership and containing such further terms and conditions, not inconsistent with law, as may be agreed upon between the parties.

## History

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Formerly § 1803, add, L 1953, ch 200; renumbered § 1203, L 1957, ch 914, § 3, eff April 24, 1957; L 1953, ch 201, §§ 4, 5; L 1953, ch 880, §§ 1, 2; L 1959, ch 857, § 2, eff April 24, 1959; L 1964, ch 513, § 1, eff April 10, 1964; L 1964, ch 576, § 68, eff April 16, 1964; L 1967, ch 717, § 71, eff March 1, 1968; L 1982, ch 929, § 3, eff Dec 23, 1982.

Annotations

## Notes to Decisions

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The New York City Transit Authority may avail itself of the services of officers and agencies of the city, including those of the Commissioner of Investigation. *Lerner v Casey*, 2 N.Y.2d 355, 161 N.Y.S.2d 7, 141 N.E.2d 533, 1957 N.Y. LEXIS 1210 (N.Y. 1957), *aff'd*, 357 U.S. 468, 78 S. Ct. 1311, 2 L. Ed. 2d 1423, 1958 U.S. LEXIS 666 (U.S. 1958).

New York City Transit Authority (NYCTA) was entitled to summary judgment in action arising from alleged failure to properly maintain or repair bus shelter where plaintiff tripped and fell, as responsibility for maintenance and creation of bus shelters lay with New York City and had not been transferred to NYCTA, and plaintiff's conclusory allegations that NYCTA made special use of bus shelter, and actually created defect that caused her injury, was insufficient to defeat summary judgment. *Blakeney v City of New York*, 222 A.D.2d 390, 634 N.Y.S.2d 521, 1995 N.Y. App. Div. LEXIS 12589 (N.Y. App. Div. 2d Dep't 1995).

A taxpayer was not entitled to enjoin the sale and transfer of transit power plants to utility company, merely because, the city comptroller held stock in two companies doing business, not with the city of New York, but with the purchaser of the transit power plants. *Gilmartin v New York*, 20 Misc. 2d 235, 190 N.Y.S.2d 967, 1959 N.Y. Misc. LEXIS 3203 (N.Y. Sup. Ct. 1959).

It is the intent of the Legislature that the New York City Transit Authority be self-sustaining, and the Authority has the power to adjust its rates when necessary to maintain its operation on a self-sustaining basis. Therefore, the

petitioner may not ask the court to review the provisions of a proposed local law and to command the City to turn over \$84.3 million to the Transit Authority and to command the Authority to receive that money and to restore the subway fare to 15 cents. *Weiss v New York*, 52 Misc. 2d 391, 275 N.Y.S.2d 557, 1966 N.Y. Misc. LEXIS 1531 (N.Y. Sup. Ct. 1966).

The city, as owner of rapid transit facilities leased to transit authority, had a proprietary interest in preserving such facilities from sabotage or destruction. *Lerner v Casey*, 138 N.Y.S.2d 777, 1955 N.Y. Misc. LEXIS 2681 (N.Y. Sup. Ct. 1955), *aff'd*, 2 A.D.2d 1, 154 N.Y.S.2d 461, 1956 N.Y. App. Div. LEXIS 4853 (N.Y. App. Div. 2d Dep't 1956).

## **Research References & Practice Aids**

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### **Cross References:**

This section referred to in §§ 553-e, 1207-a, 1207-b, 1219-a; referred to (as § 1803) in §§ 1207, 1214, 1218, 1219; CLS Gen Mun § 3-b.

Board of transportation to determine necessity for railroads; routes; plan; consents; streets excepted, CLS Rap Tr § 20.

### **Jurisprudences:**

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 506–512.

### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1203-a

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)***

## **§ 1203-a. Subsidiary corporation**

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- 1.** Notwithstanding the provisions of this title or of any general, special or local law to the contrary, the city and the transit authority may enter into an agreement which shall provide that any omnibus lines hereafter acquired by the city may be leased by the city for operation and maintenance to a public benefit corporation which shall be a subsidiary of the transit authority. The status of such officers and employees as shall be taken into the service of such subsidiary corporation, including those who had been employed by the former owner of any such omnibus lines, shall be governed exclusively by the provisions of this section.
- 2.** A public benefit corporation entitled Manhattan and Bronx surface transit operating authority (hereinafter referred to as the subsidiary corporation) is hereby created. The purpose of said subsidiary corporation shall be to operate, pursuant to the powers conferred hereunder and for a temporary period, the omnibus lines hereafter acquired by the city, until the said omnibus lines shall be sold or otherwise disposed of to private or public operation. The directors of such subsidiary corporation shall be the persons holding the offices of chairman and members of the transit authority or their successors. The provisions of this title concerning the number of members of the authority, the number thereof required for a quorum and to transact business, the powers and functions of the chairman and his authority to delegate the same, and the effect which the tenure of the members and chairman has upon the holding of other public office shall all be applicable with like force and effect to the directors of such subsidiary corporation.
- 3.** The subsidiary corporation shall have all of the powers vested in the transit authority by section twelve hundred four of this title except those contained in subdivisions five, six, eight, nine, fourteen and sixteen thereof. In addition, such subsidiary corporation shall have the following powers:
  - (a)** pursuant to the provisions of this section, to maintain and operate the omnibus lines transferred to it by the city;
  - (b)** to appoint officers and employees, assign powers and duties to them and fix their compensation. Said officers and employees shall not become, for any purpose, employees of the city or of the transit authority and shall not acquire civil service status or become members of the New York city employees' retirement system but, shall, for purposes of subparagraph (i) of paragraph three of subsection (c) of section six hundred twelve of the tax law be deemed to be officers and employees of a subdivision of the state;
  - (c)** to improve, maintain and operate such buildings, structures and facilities as may be necessary or convenient;
  - (d)** with the consent of the transit authority, to use officers, employees, agents and facilities of transit authority and to reimburse the transit authority therefor;
  - (e)** to utilize business methods and efficient procedures to promote the safety and convenience of the traveling public, in the carrying out of its corporate purposes;
  - (f)** to operate omnibus lines on those routes in the city of New York where on February twenty-eighth, nineteen hundred sixty-two, omnibus lines were operated under franchises or temporary certificates of



convenience and necessity which have been revoked, terminated, rescinded or condemned, or acquired by any other means, and to extend such routes so as to provide the complete service operated on February twenty-eighth, nineteen hundred sixty-two; and such operation, together with the necessary extensions, shall be deemed to constitute operation over approved routes with the same force and effect as if the said routes had been duly approved by the board of estimate of the city, as provided by law; and to operate on such other routes as the board may authorize by resolution adopted only after a public hearing held after notice thereof, and of the proposed route, and the proposed resolutions authorizing the same, have been published in full for at least fifteen days, except Sundays and legal holidays, immediately prior thereto in the City Record, and at least twice in two newspapers published in the borough or boroughs affected, to be designated by the board.

4. Such subsidiary corporation and any of its property, functions and activities shall have all of the privileges, immunities, tax exemptions and other exemptions of the transit authority.

5. The agreement between the city and the subsidiary corporation by which the said omnibus lines are leased shall provide as follows:

(a) for the rate or rates of fare to be charged on such omnibus lines, provided, however, that from and after March first, nineteen hundred sixty-eight, the subsidiary corporation shall have full and exclusive control over the setting of such rate or rates of fare;

(b) the subsidiary corporation shall be entitled to utilize the officers, employees, agents, facilities and services of the city on the same terms and conditions as are applicable to or provided to the transit authority;

(c) capital costs not now charged by the transit authority as operating expenses shall be paid by the city; provided, however, that from and after March first, nineteen hundred sixty-eight, the subsidiary corporation shall also have the right to incur capital costs in its own name to the extent that capital funds are available to it pursuant to the provisions of sections twelve hundred nineteen-a and twelve hundred three-b of this chapter or of any other law, which capital costs shall not be payable by the city; and provided, further, that no project to be financed by the use of such capital funds which is estimated by the subsidiary corporation to involve an expenditure in excess of one million dollars shall be commenced unless the mayor and the board of estimate shall each have been notified in writing by the subsidiary corporation of the intent of the subsidiary corporation to undertake such project and of the nature thereof. No such project shall be commenced if and to the extent that either the mayor or a majority in voting power of the members of the board of estimate shall find that it is incompatible with sound planning for the development or redevelopment of the city, provided such finding, together with the reasons therefor, is set forth in a writing delivered to the subsidiary corporation within thirty days of the receipt by the mayor or the board of estimate, as the case may be, of the notification of the subsidiary corporation relating to such project. Where the city is required to pay the capital costs of the subsidiary corporation pursuant to such agreement, serial bonds or capital notes may be issued by the city, pursuant to the local finance law, to finance any such costs. The subsidiary corporation shall submit timely requests for the necessary capital funds to the city planning commission and the mayor of the city;

(d) The [the]\* initial working capital of the subsidiary corporation shall be advanced by the city from any funds of the city (but not from borrowed funds) in the form of a grant or a loan in such amount as the parties shall deem necessary but in no event shall the said amount exceed five million dollars. If in the form of a grant, the advance shall be deemed to be in partial consideration of the acceptance by the subsidiary corporation of the initial transfer, in which case the sum shall not be repaid, but if in the form of a loan, the amount of the advance shall be repaid under such terms and conditions as shall be mutually agreed upon by the parties.

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\* The bracketed word has been inserted by the Publisher.

6. The provisions of section twelve hundred seven, subdivision one, sections twelve hundred eight, twelve hundred nine, twelve hundred eleven, twelve hundred twelve, twelve hundred twelve-a, twelve hundred thirteen, twelve hundred fifteen, twelve hundred sixteen, twelve hundred twenty and twelve hundred twenty-one of this title, shall apply to the subsidiary corporation in the same manner as to the transit authority and the term "authority", as used in such sections shall be deemed to apply to the subsidiary corporation.
7. Upon the written request of the mayor the subsidiary corporation shall permit reduced fares for one or more classes of omnibus line users designated by the mayor upon the agreement of the city to assume the burden of the resulting differential, together with the attendant administrative costs of the subsidiary corporation, pursuant to procedures satisfactory to the subsidiary corporation.
8. From and after March first, nineteen hundred sixty-eight, no substantial or general change in the levels of service furnished upon the facilities of the subsidiary corporation shall be instituted except upon not less than thirty days' written notice to the mayor and to the board of estimate.
9. The subsidiary corporation shall establish and publish or cause to be published schedules for all passenger transportation services under its operation. Such schedules shall include the estimated departure and arrival time at each terminal point of each route except that, on lines where the headway time during the period between six A. M. and seven P. M. is less than ten minutes, such headway time alone may be listed for that period. Such schedules shall also show the elapsed running time between the terminal and each station. Schedules shall be made available on each omnibus operated on the line to which the schedule applies.
10. No acts or activities taken or proposed to be taken by the subsidiary corporation pursuant to the provisions of paragraph (a) of subdivision five or subdivision seven of this section shall be deemed to be "actions" for the purposes or within the meaning of article eight of the environmental conservation law.
11. The subsidiary corporation and its corporate existence shall continue until terminated by law, provided however, that no such law shall take effect so long as the subsidiary corporation or the transit authority or any other of its subsidiaries shall have outstanding any notes or bonds or lease, sublease or other contractual obligations issued or incurred pursuant to section twelve hundred seven-m of this title or issued or incurred in connection with the transfer of its interest in and the lease from the transferee of any property furnished to it pursuant to chapter twelve of the laws of nineteen hundred seventy-nine or section fifteen of chapter three hundred fourteen of the laws of nineteen hundred eighty-one, unless adequate provision has been made for the payment or satisfaction of such outstanding notes, bonds, lease, sublease or other contractual obligations.

## History

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Add, L 1962, ch 163; amd, L 1962, ch 791, eff April 24, 1962; L 1964, ch 576, § 69, eff April 16, 1964; L 1967, ch 717, §§ 72, 73, eff March 1, 1968; L 1976, ch 792, eff Jan 1, 1977; L 1981, ch 314, § 10, eff June 29, 1981; L 1981, ch 1038, § 2, eff Nov 11, 1981; L 1997, ch 312, § 1, eff July 29, 1997 (see 1997 note below).

Annotations

## Notes

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### Editor's Notes:

**Laws 1997, ch 312, § 11**, eff July 29, 1997, provides as follows:

§ 11. This act shall take effect immediately and shall apply to contributions to, and distributions from, the Manhattan and Bronx surface transportation authority pension plan made in taxable years beginning on or after January 1,

1997, provided that the amendments made to any provision of law by this act shall not affect the expiration and repeal of such provision and shall expire therewith as provided by law.

## Notes to Decisions

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### 1. In general

### 2. Employment matters

### 3. Environmental matters

### 4. Tort liability

### 5.—Procedural matters

### 6.—Governmental immunity

#### 1. In general

In a personal injury action against a city transit authority and others, a judgment in favor of a minor injured by a bus inappropriately included interest at the rate of 6% rather than 3% under N.Y. Pub. Auth. Law §§ 1212(6), 1203-a(6). *Bello v New York City Tr. Auth.*, 50 A.D.3d 511, 856 N.Y.S.2d 577, 2008 N.Y. App. Div. LEXIS 3588 (N.Y. App. Div. 1st Dep't 2008).

Public Authorities Law § 1203-a is valid and does not contravene provisions of the New York Constitution, Article 6, § 6. *Lorelli v Manhattan & Bronx Surface Transit Operating Authority*, 48 Misc. 2d 944, 266 N.Y.S.2d 223, 1966 N.Y. Misc. LEXIS 2345 (N.Y. Sup. Ct. 1966).

Transit authority designated as “public benefit corporation” was separate and judicially distinct from state, its political subdivisions and municipal corporations. *Bell v Manhattan & Bronx Surface Transit Operating Authority*, 81 Misc. 2d 162, 364 N.Y.S.2d 274, 1974 N.Y. Misc. LEXIS 1943 (N.Y. Sup. Ct. 1974).

New York City was justified in limiting half-fare privileges on its mass transit system during non-peak hours to the elderly who were residents of New York City since the program was funded by the city from tax revenues derived from its residents. *County of Westchester v Koch*, 108 Misc. 2d 764, 438 N.Y.S.2d 951, 1981 N.Y. Misc. LEXIS 2289 (N.Y. Sup. Ct. 1981), *aff'd*, 88 A.D.2d 514, 450 N.Y.S.2d 388, 1982 N.Y. App. Div. LEXIS 16644 (N.Y. App. Div. 1st Dep't 1982).

In an action for declaratory judgment and permanent injunction concerning New York City's policy of limiting half-fare privileges on its mass transit system during non-peak hours to the elderly who were residents of New York City, plaintiff county official had standing to maintain the action pursuant to Pub Serv Law § 109, which grants standing for “any court in any action” as long as the matter affects either the municipal corporation or “any of its residents,” where there were a significant number of county residents who used the city's mass transit facilities. *County of Westchester v Koch*, 108 Misc. 2d 764, 438 N.Y.S.2d 951, 1981 N.Y. Misc. LEXIS 2289 (N.Y. Sup. Ct. 1981), *aff'd*, 88 A.D.2d 514, 450 N.Y.S.2d 388, 1982 N.Y. App. Div. LEXIS 16644 (N.Y. App. Div. 1st Dep't 1982).

#### 2. Employment matters

An action to enjoin a city transit authority from making appointments and promotions except from eligible lists promulgated on the basis of competitive examinations and to require that the authority comply with Const art V § 6 and specified sections of the Civil Service Law was properly dismissed, even though the authority's discontinuance of the practice may have estopped it from reinstating it, since appointments and promotions by a public authority are not appointments and promotions in the civil service of the state or a civil division thereof within the meaning of Const art V § 6, and such appointments and promotions are not governed by the Civil Service Law unless the

legislature in establishing the particular authority so provides, or unless the only purpose of entrusting the function to be performed to an authority is evasion of the constitutional requirement applicable to the state and its civil divisions, and since the fact that an authority exempted from civil service requirements by the legislature has promoted on the basis of competitive examinations in the past does not estop it from abandoning that practice. *Collins v Manhattan & Bronx Surface Transit Operating Auth.*, 62 N.Y.2d 361, 477 N.Y.S.2d 91, 465 N.E.2d 811, 1984 N.Y. LEXIS 4351 (N.Y. 1984).

An employee of a public transit authority was not entitled to reinstatement to his position, even though he claimed that his termination violated his constitutional rights of due process and free speech, since the transit authority was not required by Const Art V § 6 to make appointments and promotions on the basis of merit and fitness, since Pub A Law § 1203-a expressly provided that employees of the authority had no civil service status and could therefore be terminated at any time without a hearing and without a statement of reasons, unless doing so would be violative of some other provision of the state constitution, a statute other than that the Civil Service Law, or the provisions of a collective bargaining agreement, since no issue of free speech or stigma had been pleaded, since the employee had not pleaded that there would be public disclosure constituting dissemination resulting in stigma, and since the employee did not claim that the authority had set forth any procedure from which could be implied a limitation on the authority's right to terminate its employees at will. *Bergamini v Manhattan & Bronx Surface Transit Operating Authority*, 62 N.Y.2d 897, 478 N.Y.S.2d 857, 467 N.E.2d 521, 1984 N.Y. LEXIS 4431 (N.Y. 1984).

Arbitrator exceeded his powers in granting transit workers' union's grievance for breach of seniority rights, based on attempt by Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) to "rationalize and improve" bus service by extending one route and merging 2 others, thus reducing number of work assignments from which members could choose, since MABSTOA had clear right under collective bargaining agreement to change routes, and there was no allegation or finding of past practice limiting route changes to those which would not decrease work assignments available; further, giving precedence to employees' seniority rights over MABSTOA's statutory mandate to change routes for public benefit violated public policy. *Manhattan & Bronx Surface Transit Operating Auth. v Transport Workers Union, Local 100*, 182 A.D.2d 626, 582 N.Y.S.2d 227, 1992 N.Y. App. Div. LEXIS 5647 (N.Y. App. Div. 2d Dep't), app. denied, 80 N.Y.2d 755, 588 N.Y.S.2d 823, 602 N.E.2d 231, 1992 N.Y. LEXIS 3129 (N.Y. 1992).

Motion court erred in dismissing a union's complaint as not having stated a cause of action because a memorandum of understanding and a consolidation agreement had the effect of conferring on one transit authority's workers the qualities of employment by another transit authority, which violated N.Y. Pub. Auth. Law § 1203-a(3)(b). *Samuelsen v New York City Tr. Auth.*, 101 A.D.3d 537, 957 N.Y.S.2d 27, 2012 N.Y. App. Div. LEXIS 8709 (N.Y. App. Div. 1st Dep't 2012).

Employees of the New York City Transit Authority who were on a promotion list for the position of Surface Line Dispatcher were not entitled to compel the respondent to make appointments from that list. *Lorelli v Manhattan & Bronx Surface Transit Operating Authority*, 48 Misc. 2d 944, 266 N.Y.S.2d 223, 1966 N.Y. Misc. LEXIS 2345 (N.Y. Sup. Ct. 1966).

Statute providing that transit authority, a "public benefit corporation," had power to appoint employees, who should not become for any purpose employees of City of New York or New York City transit authority and should not acquire civil service status, was not violative of constitutional provision requiring appointments in civil service to be made according to merit or fitness to be ascertained as far as practicable by examination. *Bell v Manhattan & Bronx Surface Transit Operating Authority*, 81 Misc. 2d 162, 364 N.Y.S.2d 274, 1974 N.Y. Misc. LEXIS 1943 (N.Y. Sup. Ct. 1974).

Plaintiffs' allegations that the Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) promoted employees to supervisory positions without competitive examinations and laid off supervisory employees without regard to seniority would state a cause of action since MABSTOA must comply with the provision of New York Const art V, § 6 relating to the hiring and firing of employees. MABSTOA, a public benefit corporation, is not an autonomous or independent entity and does constitute a civil division of the State for purposes of New York Const art V, § 6 since it is a subsidiary of the Transit Authority, its employees are public employees under the Taylor Law,

Workers' Compensation Law, Human Rights Law and State Administrative Procedure Act, it transacts business in, of and for the City of New York and is financed by the city and the Transit Authority. *Collins v Manhattan & Bronx Surface Transit Operating Auth.*, 116 Misc. 2d 6, 453 N.Y.S.2d 289, 1981 N.Y. Misc. LEXIS 3503 (N.Y. Sup. Ct. 1981).

Plaintiffs' cause of action alleging that MABSTOA's procedures utilized in promoting and laying off employees are improper due to lack of compliance with the Civil Service Law would be dismissed where, although the Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) is a civil division of the State, its employees are not municipal employees due to its exemption from the provisions of the Civil Service Law provided in Pub A Law § 1203-a. *Collins v Manhattan & Bronx Surface Transit Operating Auth.*, 116 Misc. 2d 6, 453 N.Y.S.2d 289, 1981 N.Y. Misc. LEXIS 3503 (N.Y. Sup. Ct. 1981).

Plaintiffs' contention that Manhattan and Bronx Surface Transit Operating Authority's (MABSTOA) failure to follow the provisions of Civ S Law §§ 75, 80 in filling employee positions as a result of its exemption under Pub A Law § 1203-a constituted a violation of the due process and equal protection clauses of the state and federal constitutions on the asserted ground that the Transit Authority (of which MABSTOA is a subsidiary) filled similar positions in accordance with the sections would be without merit since the two entities were created for substantially different purposes, which the Legislature took into account in making MABSTOA a subsidiary of the Transit Authority, so that for purposes of later sale or disposal the former would retain a separate identity, and there thus exists a reasonable relationship and basis for the Legislature's refusal to subject MABSTOA to the provisions of the Civil Service Law. *Collins v Manhattan & Bronx Surface Transit Operating Auth.*, 116 Misc. 2d 6, 453 N.Y.S.2d 289, 1981 N.Y. Misc. LEXIS 3503 (N.Y. Sup. Ct. 1981).

Employees of Manhattan and Bronx Surface Transit Operating Authority were employees of state, its subdivisions, and agencies within meaning and intent of CLS Pub A § 1203-a and CLS Tax § 612 prior to enactment of L 1997, ch 312, amending CLS Pub A § 1203-a. NY Tax Appeals Tribunal TSB-D-98-(7)l.

Petitioner, as employee of Manhattan and Bronx Surface Transit Operating Authority, was employee of state, or one of its subdivisions or agencies, thereby satisfying requirements of CLS Tax § 612(c)(3)(i) and entitling him to pension exemption. NY Tax Appeals Tribunal TSB-D-98-(5)l.

### **3. Environmental matters**

By specifying in CLS Pub Auth §§ 1205(1) and (6), 1203-a(10), and 1266(3) that fare alterations made by certain metropolitan area transit authorities are not "actions" subject to State Environmental Quality Review Act (SEQRA), legislature intended that entire SEQRA be inapplicable to such activity; thus, fare increases were not unlawful due to failure of transit authorities to have considered alternatives that would minimize or avoid adverse environmental impacts, as normally required by CLS ECL § 8-0109(1). *All Peoples Congress v Metropolitan Transp. Authority*, 147 Misc. 2d 1020, 559 N.Y.S.2d 462, 1990 N.Y. Misc. LEXIS 349 (N.Y. Sup. Ct. 1990).

Exemptions provided by CLS Pub Auth §§ 1205(1) and (6), 1203-a(10), and 1266(3) to certain metropolitan transit authorities from CLS ECL Art 8 requirement of filing of environmental impact statements in connection with fare alterations did not violate equal protection. *All Peoples Congress v Metropolitan Transp. Authority*, 147 Misc. 2d 1020, 559 N.Y.S.2d 462, 1990 N.Y. Misc. LEXIS 349 (N.Y. Sup. Ct. 1990).

Rational basis, rather than strict scrutiny, was proper standard for determining whether exemptions from filing environmental impact statement under CLS Pub A §§ 1205, 1203-a, and 1266 were violative of equal protection since challenged legislation did not result in intentional discrimination against class of persons grouped together by reason of personal characteristics. *All Peoples Congress v Metropolitan Transp. Authority*, 147 Misc. 2d 1020, 559 N.Y.S.2d 462, 1990 N.Y. Misc. LEXIS 349 (N.Y. Sup. Ct. 1990).

### **4. Tort liability**

Evidence was sufficient to support jury's apportionment of 30 percent liability to Manhattan & Bronx Surface Transit Operating Authority (MABSTOA) for injuries sustained when plaintiff slipped on ice after alighting from bus where

parked buses blocked designated bus stop, and plaintiff was therefore compelled to alight from bus in roadway and to attempt to squeeze between parked buses to reach sidewalk; MABSTOA breached its duty to stop at place where plaintiff could safely disembark. *Hickey v Manhattan & Bronx Surface Transit Operating Authority*, 163 A.D.2d 262, 558 N.Y.S.2d 543, 1990 N.Y. App. Div. LEXIS 8936 (N.Y. App. Div. 1st Dep't 1990).

Defendants, New York City Transit Authority (NYCTA), Manhattan and Bronx Service Transit Operating Authority, and bus driver, should have been granted summary judgment where they showed that driver of vehicle which collided with bus proceeded through intersection governed by stop sign without stopping or yielding to bus, which had right of way; defendants' internal post-accident investigative report, which noted that in violation of NYCTA internal rule, bus driver failed to take his foot off gas pedal to cover brake as he proceeded through intersection, did not create fact issue inasmuch as report and NYCTA internal rule imposed duty of care higher than that imposed by law. *Hines v New York City Transit Auth.*, 264 A.D.2d 506, 694 N.Y.S.2d 473, 1999 N.Y. App. Div. LEXIS 8915 (N.Y. App. Div. 2d Dep't), app. denied, 94 N.Y.2d 756, 703 N.Y.S.2d 73, 724 N.E.2d 769, 1999 N.Y. LEXIS 3999 (N.Y. 1999).

Defendants, New York City Transit Authority and Manhattan and Bronx Service Transit Operating Authority, were properly granted summary judgment in action alleging that shooting of plaintiff's decedent by another passenger aboard one of defendants' buses was attributable to bus driver's negligence since defendants assumed no special duty to assure decedent's safety from criminal acts of third parties; even if defendants had had duty to plaintiff's decedent and had been in breach thereof, armed assault on decedent constituted intervening and superseding cause of decedent's harm. *Maynard v New York City Transit Auth.*, 267 A.D.2d 37, 699 N.Y.S.2d 377, 1999 N.Y. App. Div. LEXIS 12690 (N.Y. App. Div. 1st Dep't 1999).

#### **5. —Procedural matters**

Court should have granted plaintiff's motion to set aside verdict finding that neither bus driver nor taxicab of driver had been negligent in operation of his vehicle where there was no evidence that some intervening factor caused accident or that accident was unavoidable, and neither driver appeared at trial, leaving jury without any explanation whatsoever of how or why accident actually happened. *Edwards v Manhattan & Bronx Surface Transit Operating Auth.*, 252 A.D.2d 410, 676 N.Y.S.2d 87, 1998 N.Y. App. Div. LEXIS 8234 (N.Y. App. Div. 1st Dep't 1998).

Defendants, hospital and general contractor of construction site, were improperly granted summary judgment in action for injuries sustained when bus plaintiff was driving went into trench located adjacent to construction site for new wing of hospital where plaintiff's deposition described "craters" in area of construction, deposition testimony of general contractor's employee stated that general contractor had "some trenches" or "a trench" on avenue in question, and affidavit plaintiff's friend, who, while not witness to accident itself, gave firsthand information as to his observations of area where accident occurred both on day of accident as well as several weeks earlier. *Walsh v Turner Constr. Co.*, 252 A.D.2d 470, 676 N.Y.S.2d 157, 1998 N.Y. App. Div. LEXIS 8669 (N.Y. App. Div. 1st Dep't 1998).

In action arising from collision between vehicle and bus, verdict finding Manhattan and Bronx Surface Transit Operating Authority 10 percent negligent, and driver of vehicle in which plaintiff was passenger 90 percent negligent, was improperly set aside on ground that testimony of bus passenger was wholly dispositive and compelled finding of 100 percent liability as to vehicle driver and complete exoneration of bus driver where jury had before it numerous and varying eyewitness accounts as to where each vehicle was, and whether and at what speed each was moving, immediately before and at time of collision, and aspects of various witnesses' testimony both conflicted and confirmed accounts of others. *Berry v Metropolitan Transp. Auth.*, 256 A.D.2d 271, 683 N.Y.S.2d 30, 1998 N.Y. App. Div. LEXIS 13947 (N.Y. App. Div. 1st Dep't 1998).

Court improperly granted petition for pre-action discovery under CLS CPLR § 3102(c) where petitioner had failed to allege any facts supporting his bare claim that respondents were negligent and that such negligence caused his injury as he was exiting from rear doors of respondents' bus, especially since petitioner had sufficient information to frame his complaint, in that he could identify defendants, bus route, and time and place of accident, information as to extent of his injuries was presumably within his control, notice of claim charged respondents with negligent

operation of bus, and inspection would reveal no facts relevant to such allegation; under circumstances, only purpose of inspection would be to allow petitioner to determine whether facts supported alternative theories of liability, such as defect in bus, which was not appropriate use of statute. *Holzman v Manhattan & Bronx Surface Transit Operating Auth.*, 271 A.D.2d 346, 707 N.Y.S.2d 159, 2000 N.Y. App. Div. LEXIS 4578 (N.Y. App. Div. 1st Dep't 2000).

Civil Court would grant motion by Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) to change venue from Queens County to Kings County, notwithstanding that motion was served after joinder of issue in violation of CLS NYC Civil Ct Act § 306, since (1) it was clear, at time issue was joined, that MABSTOA claimed that venue was improper, as evidenced from demand served with answer, (2) it was undisputed that cause of action arose in Kings County, which was proper place for trial under CLS NYC Civil Ct Act § 304(b) and CLS CPLR § 505(b), (3) plaintiff would suffer no prejudice from venue change, (4) there was no claim that any witness would be inconvenienced, (5) only connection with Queens county was fact that plaintiff's attorneys were located there, and (6) under CLS NYC Civil Ct Act § 306, Civil Court "may of its own motion" transfer action or proceeding to proper county where venue is improper. *Modern Thermographic Testing, Inc. v Mabstoa Ins. Co.*, 141 Misc. 2d 617, 533 N.Y.S.2d 839, 1988 N.Y. Misc. LEXIS 657 (N.Y. Civ. Ct. 1988).

## 6. —Governmental immunity

Failure of state agencies to properly maintain premises in violation of local administrative code and fire department rules was proprietary, rather than governmental, in nature; thus, state agencies would be as liable as any other landlord under CLS Gen Mun § 205-a when alleged violation had reasonable connection to injury sustained by firefighter. *Dempsey v Manhattan & Bronx Surface Transit Operating Auth.*, 214 A.D.2d 334, 625 N.Y.S.2d 133, 1995 N.Y. App. Div. LEXIS 3689 (N.Y. App. Div. 1st Dep't 1995).

## Opinion Notes

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### Agency Opinions

#### 1. In general

The New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, Triborough Bridge and Tunnel Authority, Port of New York Authority and New York City Housing Authority are exempt from paying fees to county clerks under CPLR 8017 and 8019(d). 1975 NY Ops Atty Gen March 17.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 553-e, 1207-a, 1207-b.

Environmental quality review, CLS ECL §§ 8-0101 et seq.

### Codes, Rules and Regulations:

New York city transit authority, Manhattan and Bronx Surface Transit Operating Authority and Staten Island Rapid Transit Operating Authority paratransit rules. 21 NYCRR §§ 1035.1 et seq.

Metropolitan transportation authority: unauthorized sale of transportation services. 21 NYCRR §§ 1040.13, 1050.13, 1085.16, 1097.16.

**Jurisprudences:**

2 Am Jur 2d, Administrative Law §§ 214–224.

13 Am Jur 2d, Carriers § 30.

**Matthew Bender's New York Practice Guides:**

LexisNexis AnswerGuide New York Negligence § 6.05 Examining Consequences of Bringing Action or Filing Notice Against Wrong Defendant.

**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1203-b

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)*

## § 1203-b. Transfer of funds

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The authority and its subsidiary corporation, the Manhattan and Bronx surface transit operating authority, may each transfer to the other from time to time such available funds as they may jointly determine to be necessary or desirable, including funds accepted by the authority pursuant to the provisions of section twelve hundred nineteen-a of this title. Subject to the rights of the holders of any outstanding bonds, notes or other obligations of the authority, metropolitan transportation authority and Triborough bridge and tunnel authority, and to facilitate the efficient financial management of the authority, its subsidiary corporations, metropolitan transportation authority and its subsidiary corporations, and Triborough bridge and tunnel authority (the “affiliated entities”), the authority may, and shall at the direction of metropolitan transportation authority, transfer revenues, subsidies and other monies or securities to one or more funds or accounts of another affiliated entity for use by such other affiliated entity, provided at the time of such transfer it is reasonably anticipated that the monies and securities so transferred will be reimbursed, repaid or otherwise provided for by the end of the next succeeding calendar year if reimbursement or repayment is required by law or by any agreement to which any of the affected affiliated entities is subject. Any revenues of an affiliated entity that are transferred to another affiliated entity, which transfer was not authorized by a provision of law other than this section, shall be considered to be required to be repaid to the affiliated entity which was the source of such revenues by the end of the next succeeding calendar year following such transfer.

## History

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Add, L 1967, ch 717, § 74; amd, L 2000, ch 61, § 13 (Part O), eff May 15, 2000.

Annotations

## Notes

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### Prior Law:

Former § 1203–b, add, L 1965, ch 187; repealed, L 1967, ch 717, § 74, eff March 1, 1968.

## Research References & Practice Aids

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Cross References:

NY CLS Pub A § 1203-b

This section referred to in §§ 1203-a, 1207-a, 1207-b.

**Jurisprudences:**

63C Am Jur 2d, Public Funds § 6.

**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1204

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)***

## **§ 1204. General powers of the authority.**

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1. To sue and be sued.
2. To have a seal and alter the same at pleasure.
3. [Eff until April 1, 2024] To acquire, hold, use and dispose of equipment, devices and appurtenances, and other property for its corporate purposes, including, the power to dispose of personal property with a value of five hundred thousand dollars or less by public auction in accordance with guidelines adopted by the metropolitan transportation authority pursuant to section twelve hundred sixty-five of this article and title five-A of article nine of this chapter.
3. [Eff April 1, 2024] To acquire, hold, use and dispose of equipment, devices and appurtenances, and other property for its corporate purposes.
  - 3-a. To acquire by purchase or condemnation pursuant to the provisions of the condemnation law real property or rights or easements therein necessary or convenient for the corporate purposes of the authority, and to use the same so long as its corporate existence shall continue.
  - 3-b. To apply for and receive and accept grants of property, money and services and other assistance offered or made available to it by any person, government or agency whatever, which it may use to meet capital or operating expenses and for any other use within the scope of its powers, and to negotiate for the same upon such terms and conditions as the authority may determine to be necessary, convenient or desirable.
4. To make rules and regulations for its organization and internal management.
5. To appoint officers, assign powers and duties to them, and fix their compensation.
  - 5-a. To make, amend and repeal rules governing the conduct and safety of the public as it may deem necessary, convenient or desirable for the use and operation of the transit facilities under its jurisdiction, including without limitation rules relating to the protection or maintenance of such facilities, the conduct and safety of the public, the payment of fares or other lawful charges for the use of such facilities, the presentation or display of documentation permitting free passage, reduced fare passage or full fare passage on such facilities and the protection of the revenue of the authority. Violations of such rules shall be an offense punishable by a fine of not exceeding twenty-five dollars or by imprisonment for not longer than ten days, or both, or may be punishable by the imposition by the transit adjudication bureau established pursuant to the provisions of this title of a civil penalty in an amount for each violation not to exceed one hundred dollars (exclusive of interest or costs assessed thereon), in accordance with a schedule of such penalties as may from time to time be established by rules of the authority. Such schedule of penalties may provide for the imposition of additional penalties, not to exceed a total of fifty dollars for each violation, upon the failure of a respondent in any proceeding commenced with respect to any such violation to make timely response to or appearance in connection with a notice of violation of such rule or to any subsequent notice or order issued by the authority in such proceeding. There shall be no penalty or increment in fine by virtue of a respondent's timely exercise of his right to a hearing or appeal. The rules

may provide, in addition to any other sanctions, for the confiscation of tokens, tickets, cards or other fare media that have been forged, counterfeit, improperly altered or transferred, or otherwise used in a manner inconsistent with such rules.

- 6.** To appoint employees and fix their compensation subject to the provisions of the civil service law and to grant, in its discretion, cash payments to the surviving spouse or to the legal representatives of its deceased employees, equal to the current monetary value of accumulated and unused vacation time, if any, and the monetary value of accumulated and unused overtime, if any, for overtime which was worked and credited subsequent to June fifteenth, nineteen hundred fifty-three, computed at the rate of salary in effect at the time the overtime was worked, standing to the credit of its employees as of the time of their death and, notwithstanding the provisions of section one hundred thirty-five of the civil service law or any other state or local law to the contrary, to grant, in its discretion, severance pay to surplus employees on separation from service.
- 7.** To retain and employ counsel, auditors, engineers and private consultants on a contract basis or otherwise for rendering professional or technical services and advice.
- 8.** Pursuant to the provisions of this title, to construct, reconstruct, improve, maintain and operate any transit facility, whether now existing, or constructed, acquired or provided in the future, and to fix fares on any such transit facilities.
- 9.** To construct, reconstruct, improve, maintain and operate buildings, structures and facilities as may be necessary or convenient and to maintain and operate, directly or enter into contracts or leases for the acquisition, maintenance, and operation of areas for the parking of motor vehicles in the vicinity of its transit facilities, and in its discretion to fix and charge for such parking a combination fee which shall include the established rate of fare for use of its transit facilities.
- 9-a.** To post signs notifying the public of the maximum fine for throwing, dumping, or causing to be thrown, dumped, deposited or placed any refuse, trash, garbage, rubbish, litter, or any nauseous or offensive matter on subway tracks or the right-of-way of a subway, pursuant to section fifty-two-e of the railroad law, to the extent that funds for such signs are available.
- 10.** With the consent of the city to use officers, employees, agents and facilities of the city paying to the city an agreed proportion or amount of the compensation or costs involved.
- 11.** To make or enter into contracts, agreements, deeds, leases, conveyances or other instruments necessary or convenient, and to assist and cooperate with the metropolitan transportation authority to carry out the powers of the metropolitan transportation authority in furtherance of the purposes and powers of the authority as provided in this article, including, without limitation, the transactions described in sections twelve hundred sixty-six-c, twelve hundred sixty-nine and twelve hundred seventy-d of this article. This power shall include the power to make contracts with other persons operating transit facilities for combined fares for the use of such facilities and the transit facilities operated by the authority and for the division of such fares, and the power to make contracts for the transportation of the United States mail or personal property.
- 12.** To surrender to the city property no longer required by the authority.
- 13.** To rent space and grant concessions on or in any transit or other facility under its jurisdiction, to fix and collect rentals, fees or other charges therefor, and to contract for the sale or disposition of waste, products or by-products incidental to its operations or in excess of its requirements.
- 13-a.** Notwithstanding the provisions of section fourteen hundred twenty-three of the penal law or the provisions of any general, special or local law, code, ordinance, rule or regulation to the contrary the authority may erect signs or other printed, painted or advertising matter on any property, including elevated structures, leased or operated by it or otherwise under its jurisdiction and control and may rent, lease or otherwise sell the right to do so to any person, private or public.

**14.** To make plans, surveys and studies of transit facilities in the city and prepare recommendations in regard thereto.

**15.** To exercise all requisite and necessary authority to manage, control and direct the maintenance and operation of transit facilities transferred to it for the convenience and safety of the public with power, in its discretion, to extend, modify, discontinue, curtail, or change routes or methods of transportation where the convenience and safety of the public would be served thereby or where existing routes or methods are inefficient or uneconomical; provided, however, that (except in cases of emergencies) at least thirty days prior to any proposed modification, discontinuance, curtailment or change of any transit route or method of transportation, the authority shall give notice of its intention to the board of estimate and shall, upon request of such board within such period, conduct a public hearing thereon.

**16.** In its discretion to provide and maintain a transit police department and a uniformed transit police force. Such department and force shall have the power and it shall be their duty, in and about transit facilities, to preserve the public peace, prevent crime, detect and arrest offenders, suppress riots, mobs and insurrections, disperse unlawful or dangerous assemblages and assemblages which obstruct free passage; protect the rights of persons and property; guard the public health; regulate, direct, control and restrict pedestrian traffic; remove all nuisances; enforce and prevent violation of all laws and ordinances; and for these purposes to arrest all persons guilty of violating any law or ordinance. Appointments to such transit police force shall be made in accordance with applicable provisions of the civil service law and only persons who shall be less than twenty-nine years of age at the date of the filing of an application for civil service examination, who have never been convicted of a felony, and who are citizens of the United States shall be appointed transit patrolmen on the transit police force. Each member of such force shall be a police officer as defined by paragraph (e) of subdivision thirty-four of section 1.20 of the criminal procedure law and shall possess all the powers of a police officer of a city in the execution of criminal process; and criminal process issued by any court or magistrate of a city may be directed to and executed by a member of such force, notwithstanding the provisions of any local or special act, ordinance or regulation.

The authority may appoint a chief and a deputy chief of the transit police department who, in the discretion of the authority, may be selected from the ranks of the transit police force, and assign powers and duties to them and fix their compensation. The chief shall be the head of such department. During the absence or disability of the chief, the deputy chief shall possess all the powers and perform all the duties of the chief. The transit police force shall consist of captains, lieutenants, sergeants and police officers. The authority may detail persons in the rank of captain of the transit police force to serve in higher ranks. A captain when so detailed to serve in a higher rank may be granted an increase in salary above the grade established for the rank of captain in the uniformed force. The authority may maintain a division for detective purposes to be known as the detective division and may, from time to time, detail to service in said division as many members of the force as it may deem necessary, and may at any time revoke any such detail. Any member of the force while so detailed may be granted an increase in salary above the grade established for his or her rank in the uniformed force, but shall retain his or her rank in the force and shall be eligible for promotion the same as if serving in the uniformed force, and the time during which he or she serves in such division shall count for all purposes as if served in his or her rank or grade in the uniformed force.

**16-a.** The authority shall establish and publish or cause to be published schedules for all passenger transportation services under its operation. Such schedules shall include the estimated departure and arrival time at each terminal point of each route except that, on lines where the headway time during the period between six A.M. and seven P.M. is less than ten minutes, such headway time alone may be listed for that period. Such schedules shall also show the elapsed running time between the terminal and each station. Schedules shall be made available at each facility on the applicable route at which tokens or tickets are sold and shall be posted at each appropriate station operated by the authority.

**17.** To do all things necessary or convenient to carry out its purposes and for the exercise of the powers granted in this title.

**18.** A copy of any report submitted by the authority pursuant to sections twenty-eight hundred, twenty-eight hundred one and twenty-eight hundred two of this chapter shall be submitted contemporaneously to the mayor.

**19.** To invest any funds, accounts or other monies not required for immediate use or disbursement, at the discretion of the authority, in any of the investments in which the metropolitan transportation authority is permitted to invest its monies pursuant to subdivision four of section twelve hundred sixty-five of this article.

## History

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Formerly § 1804, add, L 1953, ch 200, § 1; renumbered § 1204, L 1957, ch 914; amd, L 1953, ch 201, § 6; L 1956, ch 883, § 2; L 1958, ch 980, eff July 1, 1958; L 1959, ch 732, eff April 23, 1959; L 1959, ch 753, eff April 23, 1959; L 1960, ch 929, § 2; L 1961, ch 740; L 1961, ch 755; L 1963, ch 992, eff May 3, 1963; L 1967, ch 717, §§ 75–77, eff March 1, 1968; L 1971, ch 1024; L 1971, ch 1097, § 89; L 1976, ch 792, § 2, eff Jan 1, 1977; L 1983, ch 838, § 8, eff Aug 3, 1983; L 1984, ch 931, § 2, eff July 1, 1985; L 2000, ch 61, §§ 14, 15 (Part O), eff May 15, 2000; L 2000, ch 294, § 3, eff Nov 1, 2000; L 2016, ch 54, § 6 (Part OO), effective April 4, 2016; L 2018, ch 476, § 22, effective December 28, 2018.

Annotations

## Notes

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### Editor's Notes

**Laws 1960, ch 929, § 1**, provides:

Section 1. It is hereby found that the introduction of labor saving devices and the development of a more highly skilled and better disciplined work force in facilities under the jurisdiction of the New York city transit authority has eliminated the need for certain job classifications and has produced surplus employees in certain civil service categories. It is further found and declared to be the policy of the legislature to insure adequate, safe and efficient mass transportation to the people of the city of New York at the lowest possible cost and to this end, to offer such incentives as may be deemed reasonable and desirable to reduce operating expenses and promote administrative efficiency.

It is hereby further declared that nothing contained in this act, or in any actions taken by the authority pursuant to this act shall in any manner be or be construed to be a precedent for state or local civil service systems or for any branch of government, whether state, county or municipal.

See 1971 note under § 361.

**Laws 2016, ch 54, § 15 (Part OO)**, eff April 4, 2016, provides:

§ 15. This act shall take effect immediately, and shall expire and be deemed repealed April 1, 2024 (Amd, L 2021, ch 55, § 1 (Part YY), eff April 19, 2021).

### Amendment Notes

**The 2016 amendment by ch 54, § 6 (Part OO)**, added “including, the power to dispose of personal property with a value of five hundred thousand dollars or less by public auction in accordance with guidelines adopted by the metropolitan transportation authority pursuant to section twelve hundred sixty-five of this article and title five-A of article nine of this chapter” in 3.

The 2018 amendment by ch 476, § 22, in 16, substituted “police officer” for “policeman” in the last sentence of the first paragraph and “sergeants and police officers” for “sergeants, patrolmen and policewomen” in the fourth sentence of the second paragraph; and made stylistic changes.

## Notes to Decisions

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### 1. In general

### 2. Employment matters

### 3.—Discipline

### 4. Tort liability

#### 1. In general

New York City Transit Authority was entitled to dismissal of contractor’s plenary action for breach of contract and quantum meruit where contractor had failed to seek Article 78 review under contract providing that disputes were to be resolved by Authority’s Chief Engineer, with subsequent judicial review limited to whether determination was arbitrary, capricious or grossly erroneous. *Laquila Constr., Inc. v N.Y. City Transit Auth.*, 282 A.D.2d 331, 723 N.Y.S.2d 464, 2001 N.Y. App. Div. LEXIS 3865 (N.Y. App. Div. 1st Dep’t), app. denied, 96 N.Y.2d 721, 733 N.Y.S.2d 373, 759 N.E.2d 372, 2001 N.Y. LEXIS 3099 (N.Y. 2001).

A proceeding under Article 78 is the appropriate remedy to litigate complaints that the Transit Authority had illegally changed subway routes and arbitrarily and unlawfully caused substantial inconvenience to passengers by means of such changes without giving the required 30 days’ prior notice to the Board of Estimate, since in such a proceeding the complaining party need not show that he suffered any special injury different from that suffered by the public as a whole. *Lewis v New York City Transit Authority*, 55 Misc. 2d 972, 286 N.Y.S.2d 884, 1968 N.Y. Misc. LEXIS 1813 (N.Y. Sup. Ct. 1968).

Since the New York City Transit System constitutes an underground thoroughfare operated for the benefit of the community, the Transit Authority is prohibited from passing regulations which bar the distribution of handbills on subway platforms, although the Authority may make reasonable regulations to forbid distribution of purely commercial material and reasonable rules governing the method of circulating leaflets to avoid danger and interference with the safe functioning of the railroad. *People v St. Clair*, 56 Misc. 2d 326, 288 N.Y.S.2d 388, 1968 N.Y. Misc. LEXIS 1640 (N.Y. City Crim. Ct. 1968).

Taking of property by New York City Transit Authority comported with due process where landowner had notice of hearing and full opportunity to be heard before New York City Site Selection Board; landowner was not entitled to notice of transit authority’s site recommendations, not to a hearing prior to mayor’s approval of site, authority of Site Selection Board and mayor to choose site was not an illegal delegation of legislative power, members of Site Selection Board properly authorized deputies to act for them, and question of necessity and expediency of choice of site was not subject to judicial review. *6419 New Utrecht Realty Corp. v New York City Transit Authority*, 76 Misc. 2d 711, 351 N.Y.S.2d 589, 1974 N.Y. Misc. LEXIS 2006 (N.Y. Sup. Ct. 1974).

Petitioners were not entitled under N.Y. Pub. Auth. Law § 1204(15) to challenge a decision of public transportation authorities to effectuate mass closings of subway station token booths and customer assistant kiosks because questions as to the extent and manner in which the public transportation authorities operated and managed the transit facilities were within the purview of those agencies and not subject to judicial review; the relief sought would have involved the judiciary in the management and operation of the transit system, a task the courts were not designated to perform. *Samuelsen v Walder*, 907 N.Y.S.2d 784, 29 Misc. 3d 225, 243 N.Y.L.J. 116, 2010 N.Y. Misc. LEXIS 3098 (N.Y. Sup. Ct. 2010), rev’d, dismissed, 88 A.D.3d 587, 932 N.Y.S.2d 30, 2011 N.Y. App. Div. LEXIS 7334 (N.Y. App. Div. 1st Dep’t 2011).

Bus driver employed by the New York City Transportation Authority (NYCTA) was not exempt from prosecution for violating N.Y. Veh. & Traf. Law §§ 1146 or New York City, N.Y., Admin. Code § 19-190, because those laws did not attempt to regulate the use and operation of transit facilities and thus did not interfere with NYCTA's expansive rulemaking powers granted by this section. *People v Gallagher*, 50 Misc. 3d 317, 18 N.Y.S.3d 280, 2015 N.Y. Misc. LEXIS 3644 (N.Y. City Crim. Ct. 2015).

Even if begging and panhandling constitute protected expressive conduct, regulation that restricts such activities in city subway (21 NYCRR § 1050.6) does not violate First Amendment since it advances substantial government interest in limiting “alarmingly harmful” conduct that cannot be accommodated in subway, government interests furthered by regulation are unrelated to suppression of free expression, and exigencies created by such activities warrant their complete prohibition. *Young v New York City Transit Authority*, 903 F.2d 146, 1990 U.S. App. LEXIS 7992 (2d Cir. N.Y.), cert. denied, 498 U.S. 984, 111 S. Ct. 516, 112 L. Ed. 2d 528, 1990 U.S. LEXIS 6109 (U.S. 1990).

Amendment of transit authority regulation prohibiting begging and panhandling in city subway to permit organizations to solicit funds (21 NYCRR § 1050.6) did not transform subway into designated “public forum” which would permit begging and panhandling where authority’s clear intent, through its enforcement efforts, was to continue its long-standing prohibition in order to safeguard subway and to honor First Amendment. *Young v New York City Transit Authority*, 903 F.2d 146, 1990 U.S. App. LEXIS 7992 (2d Cir. N.Y.), cert. denied, 498 U.S. 984, 111 S. Ct. 516, 112 L. Ed. 2d 528, 1990 U.S. LEXIS 6109 (U.S. 1990).

New York City Transit Authority has statutory authority to place advertisements on subway system property or to rent right to do so to another person; subway passageways and platforms are appropriate forums for public expressive activity and, having made subway system designated public forum for display of paid public advertising, authority cannot discriminate among advertisements they will display on basis of content except for further compelling state interest and then only by regulations that are narrowly drawn to effectuate that interest. *Penthouse International, Ltd. v Koch*, 599 F. Supp. 1338, 1984 U.S. Dist. LEXIS 21040 (S.D.N.Y. 1984).

In a civil rights organization’s suit against the New York City Transit Authority challenging the legality of the policy that governed the public’s access to the hearings conducted by New York City’s Transit Adjudication Bureau (TAB), a federal district court held that the organization met its burden under Fed. R. Civ. P. 65(a) of showing entitlement to a preliminary injunction to enjoin the Authority’s hearing policy of excluding the public because a qualified First Amendment, U.S. Const. amend. I, right of public access attached to the authority’s hearings. The organization demonstrated that the Authority’s TAB hearings were not afforded a per se immunity from First Amendment scrutiny; that under the Richmond Newspapers’ experience and logic test, a qualified First Amendment right of access attached to the TAB hearings; and the Authority’s blanket stance that it controlled the public access policy was not narrowly tailored to serve an appropriate governmental interest. *New York Civ. Liberties Union v New York City Transit Auth.*, 675 F. Supp. 2d 411, 2009 U.S. Dist. LEXIS 120470 (S.D.N.Y. 2009), aff’d, 684 F.3d 286, 2011 U.S. App. LEXIS 26087 (2d Cir. N.Y. 2011), aff’d, 652 F.3d 247, 2011 U.S. App. LEXIS 14768 (2d Cir. N.Y. 2011).

## **2. Employment matters**

Board’s order rescinding transit authority’s dual employment standards was confirmed because record was inadequate to support transit authority’s argument that dual employment standards at issue were in furtherance of its core mission of public safety for purposes of Civil Service Law § 209-a(1)(d) and not subject to collective bargaining; the transit authority did not rely on particular safety studies when it imposed the new standards. Moreover, the transit authority did not explain why it chose to impose the more restrictive dual employment standards on certain safety-sensitive employees (train conductors, train operators and tower operators) while exempting others, such as bus operators and train dispatchers, who shared similar job functions. *Matter of Matter of New York City Tr. Auth. v New York State Pub. Empl. Relations Bd.*, 19 N.Y.3d 876, 948 N.Y.S.2d 842, 972 N.E.2d 83, 2012 N.Y. LEXIS 1313 (N.Y. 2012).

Power of transit authority to grant, in its discretion, cash payments to surviving spouse or estate of deceased employee representing monetary value of accumulated and unused vacation time at employee’s time of death does



not constitute statutory authority to pay amount equivalent to monetary value of accrued vacation time to employee upon dismissal; in absence of statutory or contractual authority, public employee whose employment has terminated may not recover monetary value of unused vacation time that had accrued as of date of termination. *Rubinstein v Simpson*, 109 A.D.2d 885, 487 N.Y.S.2d 77, 1985 N.Y. App. Div. LEXIS 47405 (N.Y. App. Div. 2d Dep't 1985).

Court improperly granted preliminary injunction prohibiting New York City Transit Authority from deploying transit police officers at 2 of its facilities on ground that dangerous conditions existed in violation of right to safe workplace under CLS Labor § 27-a, since matter involved political question beyond scope of judicial review and plaintiffs did not demonstrate that specific conditions, ranging in severity from lack of emergency exits to insufficient locker space, were "extraordinary or emergency circumstances" warranting judicial intervention. *McKechnie v New York City Transit Police Dep't of New York City Transit Authority*, 130 A.D.2d 466, 515 N.Y.S.2d 48, 1987 N.Y. App. Div. LEXIS 46437 (N.Y. App. Div. 2d Dep't 1987).

Arbitrator exceeded his powers in granting transit workers' union's grievance for breach of seniority rights, based on attempt by Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) to "rationalize and improve" bus service by extending one route and merging 2 others, thus reducing number of work assignments from which members could choose, since MABSTOA had clear right under collective bargaining agreement to change routes, and there was no allegation or finding of past practice limiting route changes to those which would not decrease work assignments available; further, giving precedence to employees' seniority rights over MABSTOA's statutory mandate to change routes for public benefit violated public policy. *Manhattan & Bronx Surface Transit Operating Auth. v Transport Workers Union, Local 100*, 182 A.D.2d 626, 582 N.Y.S.2d 227, 1992 N.Y. App. Div. LEXIS 5647 (N.Y. App. Div. 2d Dep't), app. denied, 80 N.Y.2d 755, 588 N.Y.S.2d 823, 602 N.E.2d 231, 1992 N.Y. LEXIS 3129 (N.Y. 1992).

Court improperly granted New York City Transit Authority's application to permanently stay arbitration of labor grievance, despite Authority's assertion that grievance was not arbitrable because it was merely performing its statutory obligation to enforce Vehicle and Traffic Law, and that performance thereof was not subject to arbitration under parties' collective bargaining agreement (CBA), since arbitration provision of CBA was broad, and resolution of grievance required type of exacting interpretation of precise scope of substantive provisions of CBA that was for arbitrator. *N.Y. City Transit Auth. v Amalgamated Transit Union of Am., Local 1056*, 284 A.D.2d 466, 726 N.Y.S.2d 694, 2001 N.Y. App. Div. LEXIS 6359 (N.Y. App. Div. 2d Dep't 2001), app. denied, 97 N.Y.2d 610, 740 N.Y.S.2d 694, 767 N.E.2d 151, 2002 N.Y. LEXIS 159 (N.Y. 2002).

The New York City Transit Authority had the power to make a collective bargaining agreement with a union, reserving to its employees all rights under Civil Rights Law and the Civil Service laws. *Civil Service Forum v New York City Transit Authority*, 3 Misc. 2d 346, 151 N.Y.S.2d 402, 1956 N.Y. Misc. LEXIS 2121 (N.Y. Sup. Ct. 1956), rev'd, 4 A.D.2d 117, 163 N.Y.S.2d 476, 1957 N.Y. App. Div. LEXIS 5412 (N.Y. App. Div. 2d Dep't 1957).

Since this section gives the Transit Authority power to appoint employees and fix their compensation, salaries are paid in whatever amount is fixed by the Career and Salary Plan, and they are paid by the Transit Authority from its operating funds, not by the City of New York, the Transit Authority is an indispensable party-respondent in proceedings relating to salary classification of one of its employees. *Myerson v Schechter*, 25 Misc. 2d 291, 204 N.Y.S.2d 895, 1960 N.Y. Misc. LEXIS 3066 (N.Y. Sup. Ct. 1960).

The petitioner, a private citizen and taxpayer, could maintain an action for an order restraining, prohibiting, and enjoining as illegal the offering or paying by the Civil Service Commission of the City of New York to striking transit authority workers any amount in excess of their compensation in effect prior to the strike. *Weinstein v New York City Transit Authority*, 49 Misc. 2d 170, 267 N.Y.S.2d 111, 1966 N.Y. Misc. LEXIS 2209 (N.Y. Sup. Ct. 1966).

Court held that Transit Authority had power to change method of compensating employees, subject only to provisions of the Civil Service Law, and the remedy for relief therefrom is by injunction. *Baldwin v Casey*, 133 N.Y.S.2d 867, 1954 N.Y. Misc. LEXIS 2463 (N.Y. Sup. Ct. 1954).

State law, allowing appointments of officers to serve in detective division of city transit authority without regard to merit or fitness examination and providing for compensation for detectives over and above that to which they were entitled by virtue of competitive examinations, did not violate either state or federal Constitutions. *Koch v Yunich*, 533 F.2d 80, 1976 U.S. App. LEXIS 12004 (2d Cir. N.Y. 1976).

### **3. —Discipline**

Transit authorities failed to show that their statutory powers to manage transportation services in the public interest required the application of the public policy exception to support the setting aside of arbitration awards that modified the discipline imposed on transit workers for safety violations to something less than dismissal. *N.Y. City Transit Auth. v Transp. Workers Union of Am., Local 100*, 99 N.Y.2d 1, 750 N.Y.S.2d 805, 780 N.E.2d 490, 2002 N.Y. LEXIS 2840 (N.Y. 2002).

Court would prohibit New York City Transit Authority (NYCTA) from remitting disciplinary matter to trial board hearing referee for development of more complete record since such remittitur violated NYCTA's own rules requiring that any modification of referee's decision be made within 15 days after filing of record and recommendation with its president. *Treadway v Del Castillo*, 149 A.D.2d 711, 540 N.Y.S.2d 505, 1989 N.Y. App. Div. LEXIS 5412 (N.Y. App. Div. 2d Dep't), app. denied, 74 N.Y.2d 615, 549 N.Y.S.2d 960, 549 N.E.2d 151, 1989 N.Y. LEXIS 3191 (N.Y. 1989).

Court properly vacated arbitration award which modified penalty imposed by New York City Transit Authority on employee from dismissal to time-served suspension since employee's misconduct, which occurred while he was operating subway train, jeopardized safety of passengers; directing employee's reinstatement under circumstance was contrary to public policy and Authority's important statutory responsibility to operate transit system for public's safety (CLS Pub A § 1204). *New York City Transit Auth. v Transp. Workers Union of Am., Local 100*, 243 A.D.2d 567, 663 N.Y.S.2d 114, 1997 N.Y. App. Div. LEXIS 9851 (N.Y. App. Div. 2d Dep't 1997), app. denied, 91 N.Y.2d 812, 672 N.Y.S.2d 848, 695 N.E.2d 717, 1998 N.Y. LEXIS 1034 (N.Y. 1998).

### **4. Tort liability**

Although the transit authority was subject to the same duty of care as any other potential tortfeasor concerning the maintenance of its escalators, its violation of a city building code was merely evidence of negligence; the trial court's jury charge precluded consideration of a central issue upon which the injured invitee's claim of liability was founded. *Huerta v N.Y. City Transit Auth.*, 290 A.D.2d 33, 735 N.Y.S.2d 5, 2001 N.Y. App. Div. LEXIS 12136 (N.Y. App. Div. 1st Dep't 2001), app. dismissed, 98 N.Y.2d 643, 744 N.Y.S.2d 758, 771 N.E.2d 831, 2002 N.Y. LEXIS 1018 (N.Y. 2002).

Broad powers bestowed on the transit authority did not protect it from possible negligence liability where a patron's injuries were caused by the authority's failure to comply with city building code regulations governing safety features for escalators in subway stations. *Huerta v N.Y. City Transit Auth.*, 290 A.D.2d 33, 735 N.Y.S.2d 5, 2001 N.Y. App. Div. LEXIS 12136 (N.Y. App. Div. 1st Dep't 2001), app. dismissed, 98 N.Y.2d 643, 744 N.Y.S.2d 758, 771 N.E.2d 831, 2002 N.Y. LEXIS 1018 (N.Y. 2002).

## **Opinion Notes**

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### **Agency Opinions**

#### **1. Employment matters**

New York City Transit Authority violated CLS Civ S § 109-a(1)(d) by unilaterally implementing random drug, controlled substances, and alcohol testing policy for unit employees in safety-sensitive positions. *Re Amalgamated Transit Union, Division 1056, AFL-CIO*, 1992 PERB No. U-12982.

The Permanent Citizens Advisory Committee to the MTA may not seek federal designation as a tax-exempt organization, solicit donations directly from the public, or apply to state agencies for direct funding. 2014 N.Y. Op. Att'y Gen. No. 2014-F2, 2014 N.Y. AG LEXIS 87.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1203-a, 1207-a, 1209-a, 1207-b.

Extra salary or compensation prohibited, CLS Civ S § 135.

Rule making procedure, CLS St Adm P Act § 202.

### Codes, Rules and Regulations:

New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority and Staten Island Rapid Transit Operating Authority paratransit rules. 21 NYCRR §§ 1035.1 et seq.

Metropolitan transportation authority: unauthorized sale of transportation services. 21 NYCRR §§ 1040.13, 1050.13, 1085.16, 1097.16.

Definitions and construction of regulations of New York City Transit Authority. 21 NYCRR §§ 1050.1 et seq.

### Jurisprudences:

2 Am Jur 2d, Administrative Law §§ 63–76.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1204-a

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)*

## § 1204-a. Rapid transit noise code

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1. As used in this section, unless another meaning is indicated by the context:
  - a. “Authority” means the New York City Transit Authority.
  - b. “Subways” means all rail rapid transit systems operated by the authority including but not limited to rolling stock, track and track beds, passenger stations, tunnels, elevated structures, yards, depots, and shops.
  - c. “New cars” means all those cars the purchase and/or construction of which is contracted for subsequent to the enactment of this section.
  - d. “Screech” means any noise generated by wheel-track interactions on curves or by brake application and which is a prominent discreet [discrete]\* tone above 1000 Hertz as defined by the American National Standards Institute specifications (ANSI S1.13—1971).
  - e. “Sound pressure level” means twenty times the logarithm to the base ten of the ratio of the root mean squared pressure of a sound to a reference pressure of twenty micropascals. The unit applied to this measure shall be the decibel (dB).
  - f. “A-weighted sound level or (dBA)” means the sound pressure level measured by the use of an instrument with the metering characteristics and A-weighting frequency response prescribed for sound level meters. The sound level measurement system must meet or exceed the requirements of the American National Standard Institute Specification for Sound Level Meters ANSI S1.4—1971, approved April twenty-seventh, nineteen hundred seventy-one, throughout the applicable frequency range for either:
    - (a) A Type 1 sound level meter; or
    - (b) A Type 2 sound level meter; or
    - (c) A Type S sound level meter which has:
      - (1) an A-weighting frequency response; and
      - (2) a fast dynamic characteristic which complies with section 5.3 of ANSI S1.4—1971; and
      - (3) a relative response level tolerance consistent with that of either a Type 1 or Type 2 sound level meter, as specified in section 3.2 of ANSI S1.4—1971.
  - g. “Equivalent sound level” means the energy-average of the integrated A-weighted sound level over a specified observation time T and is identified by the symbol Leg.
2. The authority shall undertake a rail rapid transit noise abatement study, incorporating a comprehensive review of the results of noise abatement studies and projects done for or by the Urban Mass Transportation

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\* The bracketed word has been inserted by the Publisher.

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Administration of the United States Department of Transportation and other mass transit systems. Such study shall evaluate the range of strategies available for meeting the sound levels set forth in the following sound level table, propose strategies and indicate the approximate time and necessary cost for meeting such sound levels, and indicate the expected dBA reduction of each proposed strategy. Such study shall be submitted to the governor and the legislature, and made available to the public, within one year of enactment of this section.

NY CLS Pub A § 1204-a

SOUND LEVEL TABLE

a.

EQUIVALENT SOUND  
LEVEL

PERCENT COMPLIANCE

within 4 years  
of the  
effective date  
of this section

within 8 years  
of the  
effective date  
of this section

within 12 years  
of the  
effective date  
of this section

NY CLS Pub A § 1204-a

I. CAR INTERIOR

A. new cars	80dBA	100%	100%	100%
B. old cars	85dBA	20%	40%	70%

II. CURVE AND BRAKE SCREECH

A. new cars	No Screech	100%	100%	100%
B. old cars	No Screech	20%	60%	100%

III. STATION TRAINS ENTERING, LEAVING OR PASSING THROUGH

105dBA	85%	90%	100%
90dBA	70%	80%	95%
85dBA	50%	60%	80%
80dBA	5%	15%	60%

IV. ELEVATED STRUCTURES

Sound level to be established	10%	30%	60%
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**b.** In all cases noise levels shall be measured so as to reflect accurately the worst case of noise exposure at a specific location where a noise abatement strategy has been implemented, to which a subway passenger, employee, or any person who is within range of subway noise could reasonably be exposed under normal operating conditions. Noise measurements shall be made under the following conditions:

Car interior: when the car is in motion at a speed of forty miles per hour during normal operation with measurements in the center of the car and the microphone five feet above the floor.

Station: (express) when the train is in motion and passing in front of the on-platform measuring point.

(local) when the train is in motion and any part of it is within the station.

Car exterior (elevated tracks) when the train is in motion and is passing in front of the point from which noise measurements are being made.

**c.** All measurements shall be taken with fast dynamic characteristic of the sound level measurement system. Energy equivalent measurements shall normally be used; provided, however, alternative measures may be proposed to incorporate new instrumentation or analyses that may become available.

**3.** Within six months of the completion of the study conducted pursuant to subdivision two of this section, the authority shall report to the governor and the legislature which strategies or portions of strategies proposed by such study it has chosen to implement, and the schedule for such implementation.

To the extent, if any, that the authority's plan fails to meet the standards specified in the sound table, the authority shall so state and provide the reasons for its inability to meet such standards.

**4.** The authority shall submit to the governor and the legislature annual reports detailing the authority's progress to date in abating subway noise. The report shall include, but not be limited to an itemized summary of all monies spent, bids requested and received, contracts let, and actual work done on noise

abatement programs during the previous period. Any and all subway noise measurements made during the previous period shall be included, with, whenever possible, analyses of such measurements.

Such annual report shall also include a detailed analysis of all future noise abatement activities planned for the upcoming twelve months. These reports shall also include comprehensive statements of progress made on all planned noise abatement activities included in the previous annual report.

Nothing herein shall preclude such report from being incorporated in the authority's annual capital report submitted pursuant to the "capital financing and services system act of nineteen hundred eighty-one," so long as it is maintained as a separate, distinct and identifiable component in such report.

## History

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Add, L 1982, ch 736, § 3, eff July 27, 1982; L 2021, ch 488, § 1, effective October 22, 2021.

Annotations

## Notes

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### Prior Law

Another § 1204-a, renumbered § 1204-e by L 2009, ch 25, § 2 (Part H), eff May 7, 2009.

### Editor's Notes

**Laws 1982, ch 736, §§ 1 and 2**, eff July 27, 1982, provides as follows:

Section 1. Legislative findings. The legislature hereby finds that excessive noise may present a substantial threat to the health, safety, and welfare of the people of this state.

One major source of excessive noise in New York city is the rail rapid transit system. Subway noise daily affects millions of riders, thousands of transit workers, and hundreds of thousands of people who live or work in the vicinity of elevated subway lines. Excessive noise may subject people to possible hearing impairments, physiological damage, psychological stresses, adverse cardiovascular system responses, and everyday emotional strain and physical discomfort.

The legislature further finds that excessive noise has been a contributing factor in the loss of subway ridership decline and thus has contributed to the Metropolitan Transportation Authority's operating deficit.

The legislature further finds that there are reasonable, economic and technologically feasible strategies which can be implemented to abate subway noise, such as wheel-trueing, track grinding, rail butt welding, acoustical retrofitting of subway facilities, and the installation of resilient track pads. If implemented, these strategies would promote the health and safety of New Yorkers, encourage subway ridership, thereby helping to reduce the operating deficit, and improve the overall condition of the system.

Therefore, the legislature hereby enacts a rapid transit noise code as a prudent and necessary action to promote the health and welfare of a substantial number of the state's residents and directs that a rail rapid transit noise abatement study be undertaken for the purpose of planning capital improvements in conformance with the Rapid Transit Noise Code.

§ 2. Short title. This act shall be known and may be cited as the "Rapid Transit Noise Code Act".

### Amendment Notes



**The 2021 amendment by ch 488, § 1**, in 4, in the first paragraph, rewrote the first sentence, which formerly read: “Within twelve months of the completion of the study conducted pursuant to subdivision two of this section, and at twelve month intervals thereafter, the authority shall submit to the governor and the legislature comprehensive reports detailing the authority’s progress to date in abating subway noise” and in the second paragraph, in the first sentence, substituted “Such annual report” for “Such report,” “future noise abatement” for “noise abatement” and “upcoming twelve months” for “next twelve months” and substituted “These reports” for “Following the first twelve month interval these reports” in the second sentence.

## Opinion Notes

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### Agency Opinions

Court would likely hold that Long Island Railroad Commuter’s Council, Metro-North Rail Commuter Council and New York City Transit Authority Advisory Council, albeit advisory in nature, are “public bodies” subject to Open Meetings Law, as they are created by statutes (CLS Pub A §§ 1204-a, 1266-d and 1266-e), they have statutory powers and duties, and they continue to exist until legislation that created them is repealed or amended. Comm on Open Gov’t OML-AO-2752.

## Research References & Practice Aids

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### Jurisprudences:

Gerrard, Ruzow, Weinberg, Environmental Impact Review in New York (Matthew Bender) § 5.12[6].

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1204-c

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)***

## **§ 1204-c. Receipt of line of duty pay**

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1. A member of the New York city transit authority police force in the rank of police officer or a member of such force who is detailed or designated as a detective or who holds the position of sergeant or any position of higher rank, shall be entitled pursuant to this section to the full amount of his or her regular salary for the period of any incapacity due to illness or injury incurred in the performance and discharge of duty as a member of the force, as determined by the authority, only in the event that a collective bargaining agreement granting such entitlement pursuant to this section has been entered into by the authority and the certified employee organization representing such member. The first entitlement of any such member of the New York city transit authority police force to the full amount of regular salary under this section shall commence on the date of execution of the collective bargaining agreement providing for such entitlement with respect to such member.
2. Nothing in this section shall be construed to affect the rights, powers and duties of the authority pursuant to any other provision of law, including, but not limited to, the right to discipline a police officer by termination, reduction of salary, or any other appropriate measure; the power to terminate an appointee who has not completed his or her probationary term; and the power to apply for ordinary or accident disability retirement for a police officer.
3. Nothing in this section shall be construed to require payment of salary to a member of the New York city transit authority police force who has been terminated, retired, suspended or otherwise separated from service by reason of death, retirement or any other cause.
4. A decision as to eligibility for benefits pursuant to this section shall not be binding on the medical board or the board of trustees of any pension fund in the determination of eligibility for an accident disability or accidental death benefit.
5. As used in this section the term “incapacity” shall mean the inability to perform full, limited, or restricted duty.

## **History**

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Add, L 1990, ch 493, § 1, eff July 18, 1990 (see 1990 note below).

Annotations

## **Notes**

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### **Editor’s Notes:**

**Laws 1990, ch 493, § 2**, eff July 18, 1990, provides as follows:

§ 2. This act shall take effect immediately, provided however, that subdivisions 2, 3, 4 and 5 of section 1204-c of the public authorities law, as added by section one of this act, shall be deemed to have been in full force and effect as of the date of execution of any collective bargaining agreement providing for entitlement to the salary described in subdivision 1 of such section.

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1204-d

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)***

## **§ 1204-d. Special powers of the authority**

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1. The authority may enter into a joint service arrangement with a bi-state agency, the state of New Jersey, any state agency, authority, municipality or instrumentality of the state of New Jersey, the federal government and any common carrier for the purpose of establishing bus transportation between the borough of Staten Island and locations in the state of New Jersey. A joint service arrangement between the authority and such entities shall mean an agreement or agreements relating to property, buildings, structures, facilities, services, rates, classifications, fares, divisions, allowances, charges, rules and regulations pertaining to or incidental to establishing and maintaining such bus transportation.
2. Any such joint service arrangement shall be authorized only by resolution of the authority approved by not less than a majority vote of the whole number of members of the board of the authority then in office, except that in the event of a tie vote the chairman shall cast one additional vote.
3. All general powers of the authority shall be applicable to joint service arrangements.

## **History**

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Add, L 2006, ch 530, § 1, eff Aug 16, 2006.

Annotations

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1204-e

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)***

## **§ 1204-e. New York city transit authority advisory council.**

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1. There is hereby created the New York city transit authority advisory council, to study, investigate, monitor and make recommendations with respect to the maintenance and operation of the New York city transit authority, its subsidiaries and the Staten Island rapid transit operating authority. Such council shall study and investigate all aspects of the day to day operations of such authority, its subsidiaries and the Staten Island rapid transit operating authority, monitor their performance and recommend changes to improve the efficiency of the operation thereof. Such council shall study and make recommendations in regard to improving bicycle and pedestrian access on trains and buses, and at bridges, stations and other facilities operated by the authority, its affiliates and subsidiaries and the Staten Island rapid transit operating authority and submit such recommendations to the metropolitan transportation authority on or before June first, two thousand twenty-two and every five years thereafter.
2. Such council shall consist of sixteen members who shall be commuters who regularly use the transportation services of such authorities. Six of such members shall be appointed by the governor upon the recommendation of the mayor of the city of New York; five upon the recommendation of the president of the city council of the city of New York; and five other members appointed upon the recommendation one by each of the borough presidents of the boroughs of the city of New York. Provided, however, that one member recommended by the mayor of New York shall have a demonstrated expertise or interest in the promotion and development of improved bicycle and pedestrian access at bridges, stations and other facilities operated by the metropolitan transportation authority, as created by section twelve hundred sixty-three of this article, and such authority's affiliates and subsidiaries. The chairman shall be a member selected by the membership of the committee. Each of the members shall serve for a term of two years, provided, however, that of the first appointments, two appointed upon the recommendation of the mayor and two appointed upon the recommendation of the president of the city council shall serve for a term of one year. Vacancies occurring other than by expiration of term shall be filled in the same manner as the original appointments for the balance of the unexpired term.
3. The members of the council shall receive no compensation for their services but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.
4. The council may request and shall receive from any department, division, board, bureau, commission, agency, public authority of the state or any political subdivision thereof such assistance and data as will enable it properly to carry out its activities hereunder and effectuate the purposes set forth herein.
5. [Repealed]

## **History**

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Formerly § 1204-a, add, L 1981, ch 483, § 1, eff July 11, 1981; renumbered § 1204-e, L 2009, ch 25, § 2 (Part H), § 2, eff May 7, 2009; L 2021, ch 776, § 1, effective December 22, 2021; L 2021, ch 802, § 5, effective December 28, 2021; L 2022, ch 62, § 2, effective December 22, 2021; L 2022, ch 125, § 5, effective December 28, 2021.

Annotations

## Notes

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### Editor's Notes:

**Laws 2009, ch 25, § 1**, eff May 7, 2009, provides as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

**Laws 2022, ch 62, § 3**, eff December 22, 2021, provides:

§ 3. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the public authorities law relating to requiring the New York city transit authority advisory council to investigate, report and make recommendations on instructing the public on how to react when an individual falls onto authority facility tracks, as proposed in legislative bills numbers S. 3160-A and A. 935-A, takes effect.

**Laws 2022, ch 125, § 6**, eff December 28, 2021, provides:

§ 6. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the public authorities law relating to requiring the metropolitan transportation authority to develop a strategic action plan to improve bicycle and pedestrian access at its bridges and passenger stations, as proposed in legislative bills numbers S. 4943-B and A. 6235-B, takes effect.

### Amendment Notes

**The 2021 amendment by ch 776, § 1**, added 5.

**The 2021 amendment by ch 802, § 5**, added the last sentence of 1; and in 2, substituted “eighteen members” for “fifteen members” in the first sentence, substituted “Eight” for “Five” in the second sentence and added the third sentence.

**The 2022 amendment by ch 62, § 2**, deleted former 5, which read: “On or before December thirty-first, two thousand twenty-two, the council shall investigate, report and make recommendations to the authority board related to signage to instruct the public on how to react when an individual falls onto authority facility tracks. Such report and recommendations shall include, but not be limited to, consideration of an educational campaign for the public including public service announcements within and without subway cars and subway stations, the costs of signage for all transit facilities, and any other issues the council deems relevant, such as potential liability issues for the authority, instructions for the public on how to react to other emergencies and alternative methods of alerting the public on how to react when an individual falls on transit facility tracks. Such investigation, report and recommendations shall be made public by posting on the council website and any other method the council deems appropriate.”

**The 2022 amendment by ch 125, § 5**, added “and submit such recommendations to the metropolitan transportation authority on or before June first, two thousand twenty-two and every five years thereafter” in the last sentence of 1; in 2, substituted “sixteen members” for “eighteen members” in the first sentence, “Six of such members” for “Eight of such members” in the second sentence, and “one member” for “three members” in the third sentence.

## Opinion Notes

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### Agency Opinions

#### 1. In general

The Permanent Citizens Advisory Committee to the MTA may not seek federal designation as a tax-exempt organization, solicit donations directly from the public, or apply to state agencies for direct funding. 2014 N.Y. Op. Att’y Gen. No. 2014-F2, 2014 N.Y. AG LEXIS 87.

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1204-f

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)*

## § 1204-f. Subway track safety.

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The authority shall include instructions on how to react safely, timely, and effectively when a person falls onto the subway tracks as part of its ongoing safety education campaigns.

## History

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L 2022, ch 62, § 1, effective December 22, 2021.

Annotations

## Notes

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### Editor's Notes

**Laws 2022, ch 62, § 3**, eff December 22, 2021, provides:

§ 3. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the public authorities law relating to requiring the New York city transit authority advisory council to investigate, report and make recommendations on instructing the public on how to react when an individual falls onto authority facility tracks, as proposed in legislative bills numbers S. 3160-A and A. 935-A, takes effect.

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

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# NY CLS Pub A § 1205

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)***

## **§ 1205. Rates of fare and levels of service**

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1. Notwithstanding the provisions of any other law, the terms of any contract or franchise, the authority shall have the power at all times to fix or adjust the rate or rates of fare to be charged for the use of any transit facility operated by the authority as may in the judgment of the authority be necessary to maintain the operations of the authority on a self-sustaining basis. The operations of the authority shall be deemed to be on a self-sustaining basis, as required by this title, when the authority is able to pay from revenue, from any funds granted or transferred to the authority pursuant to any provision of law, including funds granted pursuant to the provisions of section ninety-eight-b of the general municipal law, and from any other funds actually available to the authority, including the proceeds of borrowings for working capital purposes, the expenses of operation of the authority as the same shall become due.
2. Upon the written request of the mayor the authority shall permit reduced fares for one or more classes of transit facility users designated by the mayor upon the agreement of the city to assume the burden of the resulting differential, together with the attendant administrative costs of the authority, pursuant to procedure satisfactory to the authority.
3. Notwithstanding the provisions of subdivision one of this section, no zonal system of fares proposed to be instituted on or after March first, nineteen hundred sixty-eight for the use of the whole or any part of a rapid transit facility or of an omnibus line facility operated by the authority and no general revision of the system of transfers applicable to the use of all such facilities in effect as of that date shall be established without the written approval of the mayor. For the purposes of this subdivision the term “zonal system of fares” shall mean any system whereby the fare payable for the use of a rapid transit facility or an omnibus line facility or of any part thereof varies according to distance traveled or to the location of the point of entry or departure by the user, but the creation or elimination of free transfer points shall not be regarded as the institution of such a system.
4. From and after March first, nineteen hundred sixty-eight, no substantial or general change in the levels of service furnished upon the rapid transit facilities or the omnibus line facilities of the authority shall be instituted except upon not less than thirty days' written notice to the mayor and to the board of estimate.
5.
  - (a) Any complete or partial closing of a passenger station within the city of New York, or any means of public access to such facility, except for purposes of repair or renovation or in case of emergency shall be accomplished only if approved by resolution of the authority adopted by not less than a majority of the whole number of members of the authority then in office, and only after a public hearing. Such hearing shall be held not less than thirty days after notice of such proposed closing has been given to, and comments solicited from, the community board as established pursuant to section eighty-four of the New York city charter whose area of jurisdiction includes the station proposed to be closed or otherwise affected.
  - (b) In the case of a planned complete closure of a passenger station for purposes of repair or renovation, where such station will be out of service for sixty days or longer the MTA board shall adopt

a policy, within ninety days of the effective date of the chapter of the laws of two thousand nineteen which amended this subdivision, that will ensure adequate communication of such work to impacted stakeholders where such passenger station is located including but not limited to: elected representatives, senate and assembly representatives, and community boards at least forty-five days prior to such closure. Such policy shall require the authority to notify the community board or boards whose district contains a passenger station subject to a planned complete closure or is contiguous to a district that contains a passenger station subject to a planned complete closure located on the same line of service as the passenger station subject to closure in writing. Such written notice shall provide such board or boards with an option to request a presentation from the authority regarding such planned complete closure. Upon request from such board or boards the authority shall, at a date convenient to such board or boards prior to such closure, present information regarding such closure and related service alternatives and also allow for public comment. The policy shall also require that the authority provide notice to the public at least thirty days prior to such closure by: (i) posting notice in the passenger stations that are scheduled for closure; and (ii) posting notice on the authority's website and social media accounts; providing information about the planned complete closure, service alternatives, and directions on how the public can provide comment to the authority regarding such closure. This subdivision shall not apply to emergency station closures resulting from unforeseen circumstances where such closure is necessary to ensure public health, safety and welfare.

**6.** No acts or activities taken or proposed to be taken by the authority pursuant to the provisions of subdivision one or two of this section shall be deemed to be "actions" for the purposes or within the meaning of article eight of the environmental conservation law.

**7.** Whenever the authority causes notices of hearings on proposed changes in services or fares to be posted pursuant to this section or any statute, regulation, or authority policy, or where it voluntarily posts such notices, such notices shall: (a) be written in a clear and coherent manner using words with common and every day meaning; (b) be captioned in large point type bold lettering with a title that fairly and accurately conveys the basic nature of such change or changes; (c) where such change involves a proposed change in levels of fare, include in its title the range of amounts of fare changes under consideration; (d) contain, to the extent practicable, a concise description of the specific nature of the change or changes, including but not limited to a concise description of those changes that affect the largest number of passengers; (e) where such change involves a change in the nature of a route, contain, to the extent practicable, a clear graphic illustration of such change or changes; and (f) where such change involves a partial or complete station closing, such notice shall be posted at the affected station with a clear graphic illustration depicting the nature of any closing for such station.

**8.** Notwithstanding any other provision of law, the authority and any of its subsidiary corporations shall establish and implement a half fare rate program for persons with serious mental illness who are eligible to receive supplemental security income benefits as defined pursuant to title sixteen of the federal social security act and section two hundred nine of the social services law. The half fare rate program established and implemented pursuant to this subdivision shall be in operation during all hours in which such authority provides railroad, subway and/or omnibus services, and such program shall not be limited in operation to off-peak hours or to any other hours designated by the authority or its subsidiary corporations.

## History

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Formerly § 1805, add, L 1953, ch 200; renumbered § 1205, L 1957, ch 914, § 3; amd, L 1964, ch 513, § 2; L 1967, ch 717, § 78, eff March 1, 1968; L 1977, ch 930, § 1, eff Aug 11, 1977; L 1981, ch 314, § 11, eff June 29, 1981; L 1991, ch 464, § 1, eff Sept 1, 1991; L 2000, ch 24, § 2; L 2000, ch 25, § 2, eff July 16, 2000; L 2019, ch 224, § 2, eff Aug 30, 2019.

### Annotations

## Notes

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### Editor's Notes

**Laws 2019, ch 224, § 3**, eff August 30, 2019, provides:

§ 3. This act shall take effect immediately and shall apply to any passenger station closings that occur no sooner than 90 days after such effective date.

### Amendment Notes

The 2019 amendment by ch 224, § 2, added the 5(a) designation; and added 5(b).

## Notes to Decisions

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In Article 78 proceeding to annul state human rights commissioner's decision that State Division of Human Rights lacked subject matter jurisdiction over complaint alleging that Metropolitan Transit Authority (MTA) denied advantage to petitioner by reason of disability of mental illness, equitable relief sought might have been rendered moot by 1999 and 2000 amendments to Public Authorities Law requiring MTA to establish half-fare program for mentally ill persons on its mass transit system. *Staten Island Alliance for the Mentally Ill v Mercado*, 273 A.D.2d 36, 708 N.Y.S.2d 402, 2000 N.Y. App. Div. LEXIS 6319 (N.Y. App. Div. 1st Dep't 2000).

Notice, hearing, and board approval requirements were applicable as the token booth closings were contemplated by the transit authority; it could not arbitrarily close subway stations or restrict access without notice to the public. *Matter of N.Y. Pub. Interest Research Group Straphangers Campaign v Reuter*, 293 A.D.2d 160, 739 N.Y.S.2d 127, 2002 N.Y. App. Div. LEXIS 2320 (N.Y. App. Div. 1st Dep't 2002).

Notice of a public hearing regarding financial plans of the Metropolitan Transportation Authority (MTA) and the New York City Transit Authority (NYCTA) did not have to state that cost savings from one fiscal year would be allocated to the next two fiscal years, rather than to just one fiscal year; neither N.Y. Pub. Auth. Law § 1205(7) nor N.Y. Pub. Auth. Law § 1263(9) required such detailed financial disclosures by the MTA and the NYCTA in a notice of public hearing regarding proposed changes in fares. *N.Y. Pub. Interest Research Group Straphangers Campaign, Inc. v Metro. Transp. Auth.*, 309 A.D.2d 127, 763 N.Y.S.2d 13, 2003 N.Y. App. Div. LEXIS 8336 (N.Y. App. Div. 1st Dep't), app. denied, 100 N.Y.2d 513, 767 N.Y.S.2d 394, 799 N.E.2d 617, 2003 N.Y. LEXIS 2540 (N.Y. 2003).

It is the intent of the Legislature that the New York City Transit Authority be self-sustaining, and the Authority has the power to adjust its rates when necessary to maintain its operation on a self-sustaining basis. Therefore, the petitioner may not ask the court to review the provisions of a proposed local law and to command the City to turn over \$84.3 million to the Transit Authority and to command the Authority to receive that money and to restore the subway fare to 15 cents. *Weiss v New York*, 52 Misc. 2d 391, 275 N.Y.S.2d 557, 1966 N.Y. Misc. LEXIS 1531 (N.Y. Sup. Ct. 1966).

In the absence of appropriate legislative authorization, the city of New York has no legal right or power to pay cash subsidies to its transit authority in order to enable the latter to maintain the present rate of fare and the transit authority has no power or authority to use any such payment for that purpose. *New York v New York City Transit Authority*, 53 Misc. 2d 627, 279 N.Y.S.2d 278, 1967 N.Y. Misc. LEXIS 1614 (N.Y. Sup. Ct. 1967).

The New York City Transit Authority is not a "subsidiary" of the Metropolitan Transit Authority within the scope and intent of the provision of § 1206, subd 3, Public Authorities Law, which mandates a prior public hearing before the increase of fares. *Glen v Rockefeller*, 61 Misc. 2d 942, 307 N.Y.S.2d 46, 1970 N.Y. Misc. LEXIS 1991 (N.Y. Sup. Ct.), *aff'd*, 34 A.D.2d 930, 313 N.Y.S.2d 938, 1970 N.Y. App. Div. LEXIS 4450 (N.Y. App. Div. 1st Dep't 1970).

NY CLS Pub A § 1205

The New York City Transit Authority has legislative sanction to adjust rates of fares as, in its judgment alone and without public hearing, it deems necessary to maintain the transit operations on a self-sustaining basis. *Glen v Rockefeller*, 61 Misc. 2d 942, 307 N.Y.S.2d 46, 1970 N.Y. Misc. LEXIS 1991 (N.Y. Sup. Ct.), *aff'd*, 34 A.D.2d 930, 313 N.Y.S.2d 938, 1970 N.Y. App. Div. LEXIS 4450 (N.Y. App. Div. 1st Dep't 1970).

New York City was justified in limiting half-fare privileges on its mass transit system during non-peak hours to the elderly who were residents of New York City since the program was funded by the city from tax revenues derived from its residents. *County of Westchester v Koch*, 108 Misc. 2d 764, 438 N.Y.S.2d 951, 1981 N.Y. Misc. LEXIS 2289 (N.Y. Sup. Ct. 1981), *aff'd*, 88 A.D.2d 514, 450 N.Y.S.2d 388, 1982 N.Y. App. Div. LEXIS 16644 (N.Y. App. Div. 1st Dep't 1982).

In an action for declaratory judgment and permanent injunction concerning New York City's policy of limiting half-fare privileges on its mass transit system during non-peak hours to the elderly who were residents of New York City, plaintiff county official had standing to maintain the action pursuant to Pub Serv Law § 109, which grants standing for "any court in any action" as long as the matter affects either the municipal corporation or "any of its residents," where there were a significant number of county residents who used the city's mass transit facilities. *County of Westchester v Koch*, 108 Misc. 2d 764, 438 N.Y.S.2d 951, 1981 N.Y. Misc. LEXIS 2289 (N.Y. Sup. Ct. 1981), *aff'd*, 88 A.D.2d 514, 450 N.Y.S.2d 388, 1982 N.Y. App. Div. LEXIS 16644 (N.Y. App. Div. 1st Dep't 1982).

Holder of obsolete transit tokens had right to recover money paid for them, notwithstanding expiration of period of redemption declared by New York City Transit Authority; restitution was available since authority had been unjustly enriched and neither CLS Pub A § 1205 nor authority's implied powers under that section enabled authority to shorten periods of limitation contained in CLS CPLR Art 2. *Tobet v New York City Transit Authority*, 134 Misc. 2d 919, 512 N.Y.S.2d 770, 1987 N.Y. Misc. LEXIS 2129 (N.Y. Civ. Ct. 1987).

By specifying in CLS Pub Auth §§ 1205(1) and (6), 1203-a(10), and 1266(3) that fare alterations made by certain metropolitan area transit authorities are not "actions" subject to State Environmental Quality Review Act (SEQRA), legislature intended that entire SEQRA be inapplicable to such activity; thus, fare increases were not unlawful due to failure of transit authorities to have considered alternatives that would minimize or avoid adverse environmental impacts, as normally required by CLS ECL § 8-0109(1). *All Peoples Congress v Metropolitan Transp. Authority*, 147 Misc. 2d 1020, 559 N.Y.S.2d 462, 1990 N.Y. Misc. LEXIS 349 (N.Y. Sup. Ct. 1990).

Exemptions provided by CLS Pub Auth §§ 1205(1) and (6), 1203-a(10), and 1266(3) to certain metropolitan transit authorities from CLS ECL Art 8 requirement of filing of environmental impact statements in connection with fare alterations did not violate equal protection. *All Peoples Congress v Metropolitan Transp. Authority*, 147 Misc. 2d 1020, 559 N.Y.S.2d 462, 1990 N.Y. Misc. LEXIS 349 (N.Y. Sup. Ct. 1990).

Rational basis, rather than strict scrutiny, was proper standard for determining whether exemptions from filing environmental impact statement under CLS Pub A §§ 1205, 1203-a, and 1266 were violative of equal protection since challenged legislation did not result in intentional discrimination against class of persons grouped together by reason of personal characteristics. *All Peoples Congress v Metropolitan Transp. Authority*, 147 Misc. 2d 1020, 559 N.Y.S.2d 462, 1990 N.Y. Misc. LEXIS 349 (N.Y. Sup. Ct. 1990).

Public transportation authorities were enjoined from effectuating mass closings of subway station token booths and customer assistant kiosks because the decision to reimplement the closings and concomitant layoffs was subject to the public hearing requirement of N.Y. Pub. Auth. Law § 1205(5), and earlier hearings did not fulfill the statutory mandate. *Samuelson v Walder*, 907 N.Y.S.2d 784, 29 Misc. 3d 225, 243 N.Y.L.J. 116, 2010 N.Y. Misc. LEXIS 3098 (N.Y. Sup. Ct. 2010), *rev'd*, dismissed, 88 A.D.3d 587, 932 N.Y.S.2d 30, 2011 N.Y. App. Div. LEXIS 7334 (N.Y. App. Div. 1st Dep't 2011).

The New York City Transit Authority has the power to establish varying and multiple rates of fare for passengers on the city rapid transit system, or each of its separate facilities. *Application of Love*, 155 N.Y.S.2d 266, 1956 N.Y. Misc. LEXIS 2338 (N.Y. Sup. Ct. 1956).

## Research References & Practice Aids

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### **Cross References:**

This section referred to in §§ 1207-a, 1207-b, 1207-i.

Environmental quality review, CLS ECL §§ 8-0101 et seq.

### **Jurisprudences:**

13 Am Jur 2d, Carriers §§ 211, 212, 214.

64 Am Jur 2d, Public Utilities §§ 67–72.

### **Texts:**

Gerrard, Ruzow, Weinberg, Environmental Impact Review in New York (Matthew Bender) § 8.02.

### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1205-a

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## § 1205-a. Surrender of power plants

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Notwithstanding any other provision of law, in the event the authority shall surrender power plants to the city in connection with the sale thereof by the city to a third party, the city shall establish a fund out of the purchase price or the installments of purchase price, from which it shall pay to the authority for a period of ten years the sum of five million dollars a year in semi-annual installments of two million five hundred thousand dollars each. The first such payment shall be made six months after the date when possession of the power plants is transferred to the purchaser of such plants. Such moneys shall be used by the authority to pay, in part, for the cost of electricity purchased by the authority for the operation of transit facilities.

Notwithstanding the foregoing provisions, the city may, from time to time, at the request of the authority, prepay to the authority any and all of the remaining semi-annual installments due it as aforesaid, when the city and the authority have determined that such prepayment will serve the financial needs of the authority. In the event that said fund is not sufficient for the prepayment of any such installments, then the city may make up any insufficiency through a budgetary appropriation or may issue serial bonds and notes, pursuant to the local finance law, to finance such insufficiency. The maximum period of probable usefulness for such object or purpose is hereby determined to be three years.

## History

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Add, L 1959, ch 361; amd, L 1964, ch 513, § 3, eff April 10, 1964.

Annotations

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1207-a, 1207-b.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1206

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*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)*

## § 1206. Omnibus operations

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1. The authority, as soon as practicable and not later than July first, nineteen hundred fifty-five, shall prepare a plan for the sale and transfer of omnibus facilities under its jurisdiction to private ownership. Any such plan shall provide that the proceeds of such sale and transfer shall be paid to the city. No such plan shall apply or relate to, or have any effect upon, any facilities, property or franchises, used and usable in the operation of omnibus lines, acquired by condemnation under subdivision two of section twenty or section twenty-d of the general city law.
2. The authority shall have power to take such action and execute such instruments as may be required of it to execute such plan or any modification thereof.

## History

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Formerly § 1806, add, L 1953, ch 200; renumbered § 1206, L 1957, ch 914, § 3; L 1953, ch 201, § 7; L 1962, ch 161, § 3; L 1962, ch 262, § 3, eff March 31, 1962.

Annotations

## Notes

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### Editor's Notes:

**Laws 1962, ch 161, § 1**, provides:

Section 1. Legislative declaration. It is hereby declared that the continued uninterrupted adequate, efficient and safe operation of omnibus lines in cities of one million or more inhabitants is essential to the health, welfare and safety of the inhabitants of such cities. In order to ensure such operation, such cities should have the right, whenever the governing body of such cities determines that the public convenience and necessity so requires, to acquire and take possession of the property of any omnibus line by condemnation in the manner hereinafter prescribed. It is hereby further declared that the provisions hereinafter enacted relate to the protection of the public health, welfare and safety and are for a public purpose.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1207-a, 1207-b.



**Hierarchy Notes:**

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## § 1206-a. Transit construction fund

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In addition to the powers provided elsewhere in this title, and to effectuate the purposes of the transit construction fund act, constituting title nine-a of article five of this chapter, the authority or any subsidiary may: (a) acquire and use any transit facility in accordance with the terms and conditions of any sublease or other agreement with the transit construction fund; (b) authorize the use by the transit construction fund, either with or without compensation to the authority, of the agents, employees and facilities of the authority; (c) make and execute contracts, leases, subleases and all other instruments or agreements deemed necessary or convenient including agreements with the metropolitan transportation authority and the transit construction fund; and (d) do any and all other things deemed necessary or convenient.

## History

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Add, L 1972, ch 576, § 2, eff May 24, 1972.

Annotations

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1207-a, 1207-b.

### Federal Aspects:

Public transportation, 49 USCS §§ 5301 et seq.

### Hierarchy Notes:

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# NY CLS Pub A § 1207

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## **§ 1207. Notes and equipment trusts**

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1. The authority may issue notes in conformity with applicable provisions of the uniform commercial code in anticipation of the receipt of revenues provided that the aggregate principal amount of such revenue anticipation notes outstanding at any time shall not exceed ten per cent of the average annual revenues of the authority. All such revenue anticipation notes shall mature within two years of the date of issue and an installment or installments of not less than fifty per cent of the principal amount of such notes shall mature in the first fiscal year succeeding the fiscal year in which such notes are issued. Such notes may be sold at public or private sale and the city shall have power to purchase the same from any revenues or funds of the city other than moneys derived from borrowings.

2. The authority shall have power to purchase pursuant to conditional sales agreements or equipment trust agreements, to lease and otherwise to acquire subject to a lien for the purchase price, such equipment as it deems desirable including cars and rolling stock, electric and other motive power vehicles, automobiles, buses, and other motor vehicles, provided, however, that the amount of liabilities which the authority may incur under this subdivision shall be governed by the limitations contained in paragraph b of subdivision one of section eighteen hundred three\* of this law and shall in no event exceed such sum of five million dollars in any one fiscal year without the approval of the mayor. Payment for such equipment, or rentals therefor, may be made in installments to a trustee in trust to secure payment of equipment trust certificates, and provision may be made that title to such equipment shall not vest in the authority until the equipment trust certificates are paid, or that such equipment shall be subject to a lien to secure equipment trust certificates. Any such agreements, leases and equipment trust certificates shall contain such covenants, conditions and provisions as it deems necessary or desirable to insure payment of the equipment trust certificates.

3. The authority may also issue its promissory notes from time to time in conformity with applicable provisions of the uniform commercial code for the purpose of raising working capital to pay its expenses of operation. Such promissory notes shall be general obligations of the authority, may be secured or unsecured as the authority shall determine, subject to the prior rights, if any, of the holders of other obligations of the authority, shall mature not later than five years from the date of issue and shall at no time be outstanding in an unpaid principal amount in excess of two hundred million dollars. Such promissory notes may be sold at public or private sale.

## **History**

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Formerly § 1807, add, L 1953, ch 200; renumbered § 1207, L 1957, ch 914, § 3, eff April 24, 1957; L 1953, ch 880, § 3; L 1964, ch 576, § 70, eff April 16, 1964; L 1967, ch 717, § 79; L 1969, ch 810; L 1969, ch 972, § 40, eff May 26, 1969, 79; L 1973, ch 647, § 1, eff June 11, 1973.

### Annotations

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\* Renumbered § 1203, L 1957, ch 914, § 3.

## Research References & Practice Aids

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### **Cross References:**

This section referred to in §§ 1203-a, 1207-a, 1207-b.

### **Hierarchy Notes:**

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# NY CLS Pub A § 1207-a

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## **§ 1207-a. Purchase of cars by the authority and disposition thereof**

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1. Notwithstanding the provisions of sections twelve hundred through twelve hundred twenty-one, inclusive, of this title or of any other provisions of law to the contrary, but subject to the provisions of section twelve hundred seven-j of this title, the authority shall have power to purchase no more than seven hundred twenty-four cars for the rapid transit lines under the jurisdiction of the authority and to finance the purchase price thereof by the issuance of bonds and notes of the authority in accordance with the provisions of section twelve hundred seven-b of this title. Any purchase contract for the purchase of such cars shall be made by the authority only upon public letting founded on sealed bids in accordance with the requirements of subdivision two of section twelve hundred nine of this title.

2. Title to all cars purchased by the authority pursuant to subdivision one of this section shall vest in the authority; provided, that, subject to such agreements with the holders of bonds and notes of the authority as may then exist, the authority may from time to time sell at negotiated sale and transfer to the city, for such consideration as the authority shall determine and approve, any or all of such cars so purchased by the authority as provided in section twelve hundred seven-k.

## **History**

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Add, L 1962, ch 655, § 2, eff April 19, 1962.

Annotations

## **Notes**

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### **Editor's Note:**

**Laws 1962, ch 655, § 1**, provides:

Section 1. Legislative findings and intent. It is hereby found that the continued use of obsolete and over-age cars on the New York city transit system jeopardizes the efficient operation of the system, has increased the frequency of breakdowns, has resulted in increased maintenance costs and is contrary to the interest of the people of the city. It is hereby further found that the planning commission of such city, which under existing law, is responsible for meeting the capital needs of the transit system, states that there are insufficient capital funds available to finance the entire cost of an immediate car replacement program, as well as to provide such additional cars as are needed for the improvement of rapid transit system.

It is hereby declared to be the intent of the legislature to make available to the transit authority an immediate and expeditious means of acquiring the seven hundred twenty-four cars which, together with the cars which have been or will be provided by the city of New York out of its capital budget, it is now estimated are needed to improve

service, increase passenger convenience and contribute to the overall operating efficiency of the transit system. It is hereby further declared that the need for the new powers herein granted arise solely from a cumulative pre-existing situation which the instant legislation is designed to remedy and that such powers are designed to supplement the present borrowing power of the city rather than to relieve such city of its obligation.

## **Research References & Practice Aids**

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### **Cross References:**

This section referred to in §§ 1207-b, 1207-j, 1207-k, 1207-l.

### **Hierarchy Notes:**

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# NY CLS Pub A § 1207-b

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## **§ 1207-b. Issuance of bonds and notes by the authority**

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1. Notwithstanding the provisions of sections twelve hundred through twelve hundred twenty-one, inclusive, of this title or of any other provisions of law to the contrary, but subject to the provisions of section twelve hundred seven-j of this title, the authority shall have the power and is hereby authorized to borrow money and to issue negotiable bonds and notes therefor in conformity with applicable provisions of the uniform commercial code in such principal amount as, in the opinion of the authority, shall be necessary to provide funds sufficient to pay the purchase price of no more than seven hundred twenty-four cars for the rapid transit lines under the jurisdiction of the authority purchased pursuant to section twelve hundred seven-a of this title, to pay interest on the bonds and notes of the authority, to establish reserves to secure such bonds and notes, and to pay all other expenditures of the authority incident to or incurred in connection with the purchase of such cars and the authorization, issuance and sale of said bonds and notes. In no event shall there be outstanding at any one time more than ninety-two million dollars (\$92,000,000) in such bonds and notes.

**1-a.** The authority may also issue its bonds, notes or other obligations in such principal amounts as shall be necessary to finance the construction, purchase, lease or acquisition of, or an equity interest in, an office building located or to be constructed in the borough of Brooklyn in the city, provided that (i) all or a portion of such building is intended to be occupied by the authority and that the board shall, by resolution, have made findings that the sum of the capitalized value of all payments due from the authority under such bonds, notes or other obligations (not including any amounts attributable to principal repayment) together with any rent payments for the space in such building to be occupied by the authority and of all payments required of the authority under any related agreement does not exceed the capitalized value of those payments which would be made in a conventional commercial lease transaction for comparable space with an unrelated party and (ii) not more than an insubstantial portion of any real property so financed with the proceeds of bonds, notes, or other obligations is utilized by other than the New York city transit authority or its designated subsidiary. The term “capitalized value” for the purposes of this subdivision shall be computed in the manner set forth in subdivision four of section twelve hundred seven-m of this title. The metropolitan transportation authority is hereby additionally authorized from time to time to issue bonds for the purposes of refunding, redeeming or otherwise paying, including paying by purchase or tender, bonds issued by the authority for such purposes and to secure such bonds in the manner set forth in section twelve hundred sixty-nine of this article.

2. The authority shall have the power from time to time to renew notes or to issue renewal notes for such purpose, to issue bonds to pay notes, and whenever it deems refunding expedient, to refund bonds by the issuance of new bonds and to issue bonds partly to refund bonds and notes then outstanding and partly for the purposes authorized by subdivision one of this section. The refunding bonds may be exchanged for bonds to be refunded, with such cash adjustments as may be agreed, or may be sold and the proceeds applied to the purchase or payment of the bonds to be refunded. In no event shall the maturity date of the refunding bonds be a date beyond thirty-five years from the date the first bond was issued.

- 3.** Every issue of bonds and notes of the authority shall be special obligations of the authority payable solely from the moneys and revenues of the authority derived from the operation of the transit facilities under its jurisdiction, subject to any agreement with the holders of particular bonds or notes pledging any particular moneys or revenues.
- 4.** The bonds and notes shall be authorized by resolution of the authority and shall bear such date or dates and shall mature at such time or times as such resolution or resolutions may provide, except that no note or any renewal thereof shall mature more than five years after the date of issue of the original note and no bond shall mature more than thirty-five years from the date of issue. Bonds and notes shall bear interest at such rate or rates, 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 and to such other terms and conditions as such resolution or resolutions may provide. The bonds and notes may be sold at public or private sale for such price or prices as the authority shall determine. Pending preparation of definitive bonds, the authority may issue interim receipts which shall be exchanged for such bonds.
- 5.** Any resolution or resolutions authorizing any bonds or notes or any issue of bonds or notes may contain provisions, which shall be a part of the contract with the holders of the bonds, or notes thereby authorized, as to

  - (a)** pledging all or any part of the revenues or other monies of the authority to secure the payment of the bonds or notes or of any issue of the bonds or notes, subject to such agreements with bondholders or noteholders as may then exist;
  - (b)** the rate or rates of fare to be charged and the amounts to be raised in each year from revenues and the use and disposition of the revenues;
  - (c)** the setting aside of reserves or sinking funds, and the regulation and disposition thereof;
  - (d)** limitations on the rights of the authority with respect to the use and disposition of the cars for which such bonds or notes are issued and with respect to all other transit facilities of the authority;
  - (e)** limitations on the purpose to which the proceeds of sale of any issue of bonds or notes then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or notes or of any issue of the bonds or notes;
  - (f)** limitations on the issuance of additional bonds and notes; the terms upon which additional bonds and notes may be issued and secured, and the funding or refunding of outstanding or other bonds and notes;
  - (g)** the procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto, and the manner in which such consent may be given;
  - (h)** vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders or noteholders pursuant to section twelve hundred seven-h hereof, and limiting or abrogating the right of the bondholders to appoint a trustee under section twelve hundred seven-h hereof, or limiting the rights, duties and powers of such trustee;
  - (i)** defining the acts or omissions to act which shall constitute a default in the duties of the authority to the holders of its bonds and notes and providing the rights and remedies of such holders in the event of default;
  - (j)** any other matters, of like or different character, which in any way affect the security or protection of the bonds and notes.
- 6.** It is the intention hereof that any pledge of revenues or other moneys made by the authority shall be valid and binding from the time when the pledge is made; that the 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 that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

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

8. Subject to such agreements with bondholders or noteholders as may then exist, the authority shall have power out of any funds available therefor to purchase bonds or notes. The authority may hold, cancel or resell such bonds and notes, subject to and in accordance with agreements with bondholders and noteholders.

## History

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Add, L 1962, ch 655, § 2, eff April 19, 1962; amd, L 1964, ch 830, § 21; L 1969, ch 972, § 42, eff May 26, 1969, 43, eff May 26, 1969; L 1986, ch 929, § 21; L 2000, ch 61, § 16 (Part O), eff May 15, 2000.

Annotations

## Notes

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### Editor's Notes:

See 1962 note under § 1207-a.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1207-a, 1207-i, 1207-j, 1207-l.

Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note", CLS UCC § 3-104.

Investment securities, CLS UCC §§ 8-101 et seq.

### Jurisprudences:

64 Am Jur 2d, Public Securities and Obligations §§ 74–88.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1207-c

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*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)*

## § 1207-c. Required redemption of bonds

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Notwithstanding and in addition to any provisions for the redemption of bonds which may be contained in any contract with the holders of bonds, either the state of New York or the city may, upon furnishing sufficient funds therefor, require the authority to redeem as a whole any issue of the bonds at the time or times and at the place or places and in accordance with the terms upon which such bonds are redeemable.

## History

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Add, L 1962, ch 655, eff April 19, 1962.

Annotations

## Notes

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### Editor's Notes:

See 1962 note under § 1207-a.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1207-a, 1207-b, 1207-j, 1207-l.

### Jurisprudences:

64 Am Jur 2d, Public Securities and Obligations § 330.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

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## § 1207-d. Agreement of the state

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The state of New York does hereby pledge to and agree with the holders of the bonds and notes of the authority that the state will not limit or alter the rights and powers hereby vested in the authority by this title to fulfill the terms of any contract made by the authority with such holders or in any way impair the rights and remedies of such holders until such bonds and notes, together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any contract with the holders of bonds or notes.

## History

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Add, L 1962, ch 655, eff April 19, 1962.

Annotations

## Notes

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### Editor's Notes:

See 1962 note under § 1207-a.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1207-a, 1207-b, 1207-j, 1207-l.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1207-e

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## § 1207-e. State and city not liable on bonds or notes

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The bonds and notes of the authority shall not be a debt of the state of New York or the city, and neither the state nor the city shall be liable thereon, nor shall they be payable out of any funds other than those of the authority.

### History

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Add, L 1962, ch 655, eff April 19, 1962.

Annotations

### Notes

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#### Editor's Notes:

See 1962 note under § 1207-a.

### Research References & Practice Aids

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#### Cross References:

This section referred to in §§ 1207-a, 1207-b, 1207-j, 1207-l.

#### Hierarchy Notes:

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# NY CLS Pub A § 1207-f

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## § 1207-f. Bonds and notes legal investments for fiduciaries

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

## History

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Add, L 1962, ch 655, eff April 19, 1962.

Annotations

## Notes

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### Editor's Notes:

See 1962 note under § 1207-a.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1207-a, 1207-b, 1207-j, 1207-l.

### Jurisprudences:

63C Am Jur 2d, Public Officers and Employees §§ 466–473.



**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1207-g

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)***

## § 1207-g. Exemptions from taxation

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1. It is hereby found, determined and declared that the authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state of New York, and the authority will be performing an essential governmental function in the exercise of the powers conferred by this title, and the state of New York covenants with the purchasers and with all subsequent holders and transferees of bonds and notes of the authority issued pursuant to this title, in consideration of the acceptance of any payments for such bonds and notes, that such bonds and notes of the authority issued pursuant to this title and the income therefrom, and all moneys, funds, fares and other revenues pledged to pay or secure the payment of such bonds and notes, shall at all times be free from taxation except for estate taxes and taxes on transfers by or in contemplation of death.
2. Nothing herein shall be construed to repeal or supersede any tax exemptions heretofore or hereafter granted by general or other laws.

## History

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Add, L 1962, ch 655, § 2, eff April 19, 1962.

Annotations

## Notes

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### Editor's Notes:

See 1962 note under § 1207-a.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1207-a, 1207-b, 1207-j, 1207-l.

Public authorities, CLS Real P Tax § 412.

### Jurisprudences:

64 Am Jur 2d, Public Securities and Obligations § 27.

71 Am Jur 2d, State and Local Taxation §§ 267–282.

**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1207-h

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)***

## **§ 1207-h. Remedies of bondholders and noteholders**

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1. In the event that the authority shall default in the payment of principal of or interest on any issue of the bonds or notes 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 authority shall fail or refuse to comply with the provisions of this title, or shall default in any agreement made with the holders of any issue of bonds or notes, the holders of twenty-five per centum in aggregate principal amount of the bonds or notes of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county of New York, or Queens or the Bronx or Kings and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds or notes for the purposes herein provided.
2. Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such bonds or notes then outstanding shall, in his or its own name
  - (a) by a proceeding under article seventy-eight of the civil practice act or other suit, action or proceeding at law or in equity enforce all rights of the bondholders or noteholders, including the right to require the authority and the board to collect fares and revenues adequate to carry out any agreement as to, or pledge of, such fares and revenues, and to require the authority and the board to carry out any other agreements with the holders of such bonds or notes and to perform its and their duties under this title;
  - (b) bring suit upon such bonds or notes;
  - (c) by action or suit in equity, require the authority to account as if it were the trustee of an express trust for the holders of such bonds or notes;
  - (d) by action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds or notes;
  - (e) declare all such bonds or notes 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 such bonds or notes then outstanding, to annul such declaration and its consequences.
3. The Supreme Court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of bondholders or noteholders. The venue of any such suit, action or proceeding shall be laid in the county of New York, Queens, the Bronx, or Kings.
4. Before declaring the principal of all such bonds or notes due and payable the trustee shall first give thirty days' notice in writing to the authority and the city.
5. Any such trustee, whether or not the issue of bonds or notes represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of the fares or other revenues which are pledged for the security of the bonds or notes of such issue, and such receiver may enter and take possession of such part or parts of the transit facilities of the authority and, subject to any pledge or agreement with bondholders or noteholders, shall take possession of all

moneys and other property derived from or applicable to the maintenance and operation of the transit facilities operated by the authority and operate, maintain and reconstruct such part or parts of said transit facilities and collect and receive all fares and other revenues thereafter arising therefrom, subject to any pledge thereof or agreement with bondholders or noteholders relating thereto, and perform the public duties and carry out the agreements and obligations of the authority under the direction of the court. 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 fares and other revenues derived from such transit facilities.

6. 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 bondholders or noteholders in the enforcement and protection of their rights.

## History

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Add, L 1962, ch 655, eff April 19, 1962.

Annotations

## Notes

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### Editor's Notes:

See 1962 note under § 1207-a.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1207-a, 1207-b, 1207-j, 1207-l, 1207-m.

Injunction, CLS CPLR 6301 et seq.

Appointment and powers of temporary receiver, CLS CPLR 6401.

Nature of proceeding, CLS CPLR 7801.

### Jurisprudences:

64 Am Jur 2d, Public Securities and Obligations §§ 407–429.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1207-i

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)*

## § 1207-i. Rates of fare while bonds, notes and other obligations are outstanding

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Notwithstanding the provisions of section twelve hundred five of this title or the provisions of any other law to the contrary, so long as the authority shall have outstanding and unpaid bonds, notes or other obligations issued pursuant to section twelve hundred seven-b of this title, or the metropolitan transportation authority or Triborough bridge and tunnel authority shall have outstanding and unpaid bonds, notes or other obligations secured by or payable from, in whole or in part, the revenues, assets or other monies of the authority or its subsidiary corporations, the authority shall have the power at all times to fix or adjust the rate or rates of fare to be charged for the use of any transit facility operated by the authority as may, in the judgment of the board, be necessary to produce sufficient revenues to pay, as the same shall become due, the principal of and interest on such bonds, notes and other obligations of the authority, metropolitan transportation authority and Triborough bridge and tunnel authority, together with the maintenance of proper reserves therefor, in addition to paying as the same shall become due the expenses of operation of the authority. The authority, metropolitan transportation authority and Triborough bridge and tunnel authority, shall be authorized to contract with the holders of such bonds[,] \* notes and other obligations with respect to the exercise of the power authorized by this section. In furtherance of the mandate of the metropolitan transportation authority to develop and implement a unified mass transportation policy for the metropolitan commuter transportation district and the exercise of its powers, including the power to issue notes, bonds and other obligations secured in whole or in part by the revenues of the authority and its subsidiaries, metropolitan transportation authority and its subsidiaries, and the Triborough bridge and tunnel authority, the authority shall join with the metropolitan transportation authority in connection with the establishment, levy and collection of fares, tolls, rentals, rates, charges and other fees for the transportation of passengers on any transit facilities operated by authority and its subsidiaries, including any changes thereto.

## History

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Add, L 1962, ch 655; amd, L 2000, ch 61, § 17 (Part O), eff May 15, 2000.

Annotations

## Notes

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### Editor's Notes:

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\* The bracketed punctuation has been inserted by the Publisher.

See 1962 note under § 1207-a.

## **Research References & Practice Aids**

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### **Cross References:**

This section referred to in §§ 1207-a, 1207-b, 1207-j, 1207-l.

### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

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# NY CLS Pub A § 1207-j

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*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)*

## **§ 1207-j. Limitation on the exercise of powers by authority and lease renewal**

1. The powers granted and conferred upon the authority by section twelve hundred seven-a of this title to purchase cars for the rapid transit lines of the authority, and by section twelve hundred seven-b of this title to issue bonds and notes of the authority, shall not be exercised by the authority unless and until the authority and the city shall have entered into an agreement for the renewal and extension of the existing agreement of lease between the city and the authority, dated June first, nineteen hundred fifty-three, for a term of years. Any such renewal agreement may contain such revisions of the existing agreement and such additional terms and conditions, not inconsistent with law, as may be approved by the city and the authority.
2. The city, by resolution of the board of estimate or by instruments authorized by such resolution, and the authority shall be authorized to enter into an agreement for the renewal and extension of the existing agreement of lease between the city and the authority for such term of years as shall be agreed upon and in any such renewal and extension agreement the authority may agree to such limitations upon the exercise of the powers conferred upon it by sections twelve hundred seven-a through twelve hundred seven-i, inclusive, as the authority in its discretion shall approve.

## **History**

Add, L 1962, ch 655, § 2, eff April 19, 1962.

Annotations

## **Notes**

### **Editor's Notes:**

See 1962 note under § 1207-a.

## **Research References & Practice Aids**

### **Cross References:**

This section referred to in §§ 1207-a, 1207-b, 1207-l.

### **Hierarchy Notes:**

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## **§ 1207-k. Purchase, financing and lease of cars and rolling stock by city**

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1. Notwithstanding the provisions of any other law, the city may purchase from the authority, by negotiation and without competitive bidding, from time to time, all or any part of the cars acquired by the authority pursuant to section twelve hundred seven-a of this title, and to pay therefor such price or prices as shall be agreed upon by the city and the authority provided, however, that such funds paid to the authority by the city shall be used only for the reimbursement of principal and interest on the bonds and notes issued by the authority to finance the cost of such cars.
2. Serial bonds and notes may be issued by the city, pursuant to the local finance law, to finance the cost of all cars purchased from the authority pursuant to subdivision one of this section. The maximum period of probable usefulness of such object or purpose is hereby determined to be twenty-five years.
3. All cars purchased by the city from the authority pursuant to subdivision one of this section may be leased by the city to the authority under the then existing agreement of lease.

## **History**

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Add, L 1962, ch 655, § 2, eff April 19, 1962.

Annotations

## **Notes**

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### **Editor's Notes:**

See 1962 note under § 1207-a.

## **Research References & Practice Aids**

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### **Cross References:**

This section referred to in §§ 1207-a, 1207-b, 1207-l.

### **Jurisprudences:**

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 534.

### **Hierarchy Notes:**

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# NY CLS Pub A § 1207-I

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*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)*

## § 1207-I. Inconsistent provisions of other acts superseded

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Insofar as the provisions of section twelve hundred seven-a through twelve hundred seven-k, inclusive, are inconsistent with any other provisions of this title or of any other act, general or special, or of any local law of the city, the provisions of sections twelve hundred seven-a through twelve hundred seven-k, inclusive, shall be controlling.

### History

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Add, L 1962, ch 655, § 2, eff April 19, 1962.

Annotations

### Notes

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#### Editor's Notes:

See 1962 note under § 1207-a.

### Research References & Practice Aids

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#### Cross References:

This section referred to in §§ 1207-a, 1207-b.

#### Jurisprudences:

73 Am Jur 2d, Statutes § 268.

#### Hierarchy Notes:

NY CLS Pub A, Art. 5

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# NY CLS Pub A § 1207-m

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***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)***

## **§ 1207-m. Transit projects**

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1. The term “transit project” as used in this section shall have the meaning given to such term from time to time in section twelve hundred sixty-six-c of this article. The provisions of this section shall be controlling and the authority and its subsidiaries shall have the powers provided in this section notwithstanding any contrary provision of this title or of local law or of any lease or other agreement with the city.

2.

(a) The authority is hereby authorized to request the metropolitan transportation authority to undertake any transit project and the authority and its designated subsidiaries are each hereby authorized (i) to enter into agreements with the metropolitan transportation authority concerning transit projects; (ii) to acquire in its own name by gift, purchase or condemnation any real or personal property (or any interest therein) which is needed or useful for or in connection with such project, and to surrender the use, occupancy, control or possession of or to transfer the same, or any other such real or personal property (or any interest therein) which it owns, leases, operates or controls, to the metropolitan transportation authority or its designee; (iii) to accept a transfer, transfer back, lease or sublease of any such project or part thereof upon its completion; and (iv) to make its agents, employees and facilities available to the metropolitan transportation authority in connection therewith.

(b) The authority and its subsidiary corporation is each hereby authorized to sell or transfer, without regard as to how or from whom acquired, all or part of its interest in any equipment which is deemed to be a mass commuting vehicle under the United States internal revenue code or the regulations thereunder, including, without limitation, any of the same obtained as transit projects or obtained from or financed with money received from the Triborough bridge and tunnel authority, for such consideration and on such terms or conditions as it may deem appropriate, and to obtain a lease from the transferee on such terms and conditions and for such period as it may deem appropriate pursuant to which it may operate, use, control or possess such mass commuting vehicle in furtherance of the statutory purposes of the authority and its subsidiaries, provided (i) such lease contains an option to the authority or its subsidiary corporation to repurchase its interest at the expiration of the scheduled lease term for nominal consideration, and (ii) the aggregate of the regularly scheduled rental payments which the authority or its subsidiary corporation is obligated to make pursuant to such lease during each twelve month period of the lease term shall not exceed the aggregate amount receivable, whether by principal or interest, by the authority or its subsidiary corporation from its transferee during each such twelve month period. Without limitation of the foregoing, any lease entered into pursuant hereto may also contain provisions requiring the authority or its subsidiary corporation to indemnify the transferee for any loss resulting from the loss or destruction of any mass commuting vehicle which is the subject of such lease, or any loss arising out of any misrepresentation, act, or omission of the authority or its subsidiary in connection with such lease, and requiring the authority or its subsidiary corporation to undertake to replace, repair or restore any such mass commuting vehicle, but such obligations shall not be deemed regularly scheduled rental payments for purposes of the preceding sentence. Rental payments and other payments or costs incurred by the authority or its subsidiary corporation in discharge of its obligations under any lease entered into as hereinabove provided shall not be deemed

capital costs for the purposes of section twelve hundred three or twelve hundred three-a of this title, and the considerations received by the authority or its subsidiary corporation in connection with any transactions entered into pursuant to the authorization of this paragraph may be expended free of any restriction set forth in subparagraph (ii) of paragraph (b) of subdivision one of section twelve hundred three or in paragraph (c) of subdivision five of section twelve hundred three-a of this title.

**(c)** Neither the authority nor its subsidiary shall enter into any transaction authorized by paragraph (b) of this subdivision unless the following standards and procedures have been met:

**(i)** notice of intention to negotiate shall be published in at least one newspaper of general circulation, and a copy thereof shall be mailed to all parties who have requested notification from the authority or its subsidiary to engage in transactions of this type. Such notice shall describe the nature of the proposed transaction and the factors subject to negotiation, which shall include, but not be limited to, the price to be paid to the authority or its subsidiary;

**(ii)** the authority or its subsidiary shall negotiate with those respondents whose response complies with the requirements set forth in the notice;

**(iii)** the board of the authority or its subsidiary shall resolve on the basis of particularized findings relevant to the factors negotiated that such transaction will provide maximum available financial benefits, consistent with other defined objectives and requirements.

**(d)** The authority and its subsidiary shall provide to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly, notice of each lease entered into pursuant to paragraph (b) of this subdivision and supporting documentation of compliance by the authority and its subsidiary with subparagraphs (i), (ii) and (iii) of paragraph (c) of this subdivision.

**(e)** Paragraphs (c) and (d) of this subdivision shall be of no force and effect with respect to any lease transaction entered into pursuant to a commitment approved prior to January first, nineteen hundred eighty-five by the board of the authority or its subsidiary or the board of the metropolitan transportation authority.

**3.** The authority and its designated subsidiaries are hereby authorized, in connection with any transit project, to pay or agree to pay, in a manner and on terms and conditions satisfactory to the metropolitan transportation authority, any portion of the costs to the metropolitan transportation authority of such transit project and the financing thereof which is not paid to the metropolitan transportation authority from any federal, state or local aid or assistance or from any other moneys made available or payable to the metropolitan transportation authority by others for such project.

**4.**

**(a)** Such agreements with the metropolitan transportation authority may, without limitation, contain provisions obligating the authority or its designated subsidiary to:

**(i)** issue its notes or bonds, or execute and deliver its lease, sublease and other such contractual obligations, in payment for a transfer, lease or sublease of a transit project to any of them, provided, however, that in no event shall the aggregate principal amount of all notes and bonds together with the capitalized value of all lease, sublease and other such contractual obligations, exceed the sum of one billion six hundred million dollars, excluding from such limitation (A) the principal amount of any bonds or notes of the authority to the extent the amount thereof is paid, is payable or has been agreed to be paid by the federal government or any agency or instrumentality thereof to the authority or to the holders of such bonds or notes, (B) the principal amount of any bonds or notes of the authority issued to refund or otherwise repay other obligations issued for such transit projects, (C) the principal amount of any bonds or notes and the capitalized value of any lease, sublease or other such contractual obligation, to the extent such obligations are paid or agreed to be paid, subject to annual appropriation, under service contracts issued by the state to the metropolitan transportation authority for the benefit of the authority or its subsidiaries pursuant



to the provisions of section sixteen of the transportation systems assistance and financing act of 1981, or under any similar contract of the metropolitan transportation authority or the authority with any other governmental entity for the benefit of the authority or its subsidiaries, (D) the principal amount of any bonds or notes of the authority issued to the metropolitan transportation authority in connection with the funding of any debt service reserve fund required by any resolution of the metropolitan transportation authority pursuant to which special obligation bonds of that authority to fund a transit project were issued, and (E) a principal amount of any bonds or notes of the authority equal to the amount of any original issue discount from the principal amount of the special obligation bonds or notes issued by the metropolitan transportation authority in connection with the financing of a transit project by that authority;

(ii) give security for the payment of such notes, bonds, lease, sublease or other contractual obligations, including a pledge of all or any part of its revenues or other moneys, which pledge may contain covenants with respect to the charging and fixing of fares, fees and rentals, the use and disposition of such fares, fees, rentals and other charges, and the setting aside of reserves therefrom.

(b) Such agreements, and any notes, bonds, lease, sublease or other contractual obligations issued or entered into by the authority or its designated subsidiary pursuant thereto, may, without limitation, also contain provisions as to:

(i) limitations with respect to the use and disposition of transit projects and with respect to any other transit facilities;

(ii) limitations on the issuance of additional bonds, notes, lease, sublease or other contractual obligations, the terms upon which they may be secured and the funding or refunding thereof;

(iii) with respect to bonds or notes, vesting in a trustee or trustees such property rights, powers and duties in trust as it may determine, which rights, powers and duties may include, but shall not be limited to, those set forth in section twelve hundred seven-h of this title;

(iv) defining the acts or omissions to act which shall constitute a default and providing rights and remedies in the event of default;

(v) any other matters, of like or different character, which in any way affect the security or protection of the metropolitan transportation authority of any lessor; and

(vi) consenting to the extending or assignment by the metropolitan transportation authority or by any lessor to the holders of any of its bonds, notes or lease obligations of all of the benefits and rights of the metropolitan transportation authority or of such lessor provided by any such agreement or other instrument.

(c) The term "revenues" as used in this subdivision shall include all those moneys referred to in section twelve hundred of this article, as well as all operating subsidies provided by any public benefit corporation or by any governmental entity, federal, state or local.

(d) The term "capitalized value" as used in this subdivision shall mean the present value of all future payments required under a lease, sublease and other such contractual obligation discounted at a rate of interest determined on the basis of the net interest cost of the last metropolitan transportation authority's special obligation bonds issued prior to the execution of any such lease, sublease or other contractual obligation or, if no such bonds have been issued, on the basis of the net interest cost of the last bonds issued by the Triborough bridge and tunnel authority, issued in payment for the transfer, lease or sublease of any such transit projects.

5. It is the intention hereof that, subject to such agreements with bondholders or noteholders as may then exist, any pledge of revenues or other moneys made by the authority or its subsidiaries shall be valid and binding from the time when the pledge is made; that the revenues or other moneys so pledged and thereafter received by the authority or its subsidiaries shall immediately be subject to the lien of such

pledge without any physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority or its subsidiaries irrespective of whether such parties have notice thereof. Neither the agreement nor any other instrument by which a pledge is created need be recorded.

**6.** So long as the authority or any of its subsidiaries shall have any outstanding and unpaid obligation in connection with a transit project, the authority and such subsidiaries shall have the power at all times to fix or adjust the rate or rates of fares, fees, rentals or other charges to be charged for the use of their transit facilities as may, together with all other lawfully available moneys, be necessary in their judgment to produce sufficient revenues to pay such obligations as the same become due, in addition to paying as the same shall become due expenses of operation of the transit facilities and satisfying all other obligations of the authority and such subsidiaries. No acts or activities taken or proposed to be taken by the authority pursuant to this subdivision shall be deemed to be "actions" for the purposes or within the meaning of article eight of the environmental conservation law.

**7.**

**(a)** In connection with (i) the lease between the city and the authority dated June first, nineteen hundred fifty-three, and (ii) the lease between the city and the Manhattan and Bronx surface transit operating authority dated March twentieth, nineteen hundred sixty-two (such leases, as heretofore supplemented, amended or renewed, and the tenancies originally created thereby, being referred to in this section as "the existing leases"), the city, acting either by the mayor alone or by resolution of the board of estimate, or by instruments authorized by such resolution, and the authority are authorized to enter into agreements for renewal or extension of the existing leases, or for new leases, for such terms of years and upon such other terms and conditions as the parties thereto shall agree and the metropolitan transportation authority shall approve, provided that under the terms thereof, the rights, privileges and obligations of the parties are not inconsistent with the provisions of, or in derogation of the powers of the authority all as provided in title nine of article five of this chapter, and provided further that such agreements shall in no way impair the rights or powers of the authority or the Manhattan and Bronx surface transit operating authority to fulfill the terms of any contract made by either of them with the holders of any of their then outstanding bonds or notes, and such agreements shall provide that such leases may not be terminated or permitted to expire or be amended in any way inconsistent with the provisions of any agreement, bond, note, lease, sublease or other contractual obligation given or made by either of them in connection with a transit project. Neither the provisions of section one hundred ninety-seven-c of the New York city charter, relating to a uniform land use review procedure, nor the provisions of any other local law of like or similar import shall apply to the renewal or extension of the existing leases or to the making of new leases as herein provided.

**(b)** Notwithstanding the provisions of any other law, general, special or local, or the provisions of the existing leases, if either of the agreements authorized by paragraph (a) above is not entered into, but a note, bond, lease, sublease or other contractual obligation for a transit project has been issued or entered into, then (i) no party to an existing lease may terminate the same, serve any notice of termination pursuant thereto, exercise any option to terminate reserved therein or permit the expiration thereof, (ii) the city shall not in any way limit or disturb any right of the tenant to use, occupy, control and possess any of the properties, facilities or revenues which are the subject of such existing lease, and (iii) the city shall not seek to enforce such existing lease in any way inconsistent with or contrary to the manner in which such existing lease had been administered prior to the enactment of this section or inconsistent with or contrary to the interests of the metropolitan transportation authority or any lessor under any agreement, notes, bonds, lease, sublease or other contractual obligations of the authority or any of its subsidiaries issued or entered into in connection with a transit project (and to the extent the provisions of such leases conflict at any time or in any manner with the provisions of any such note, bond, lease, sublease or other contractual obligation, the provisions of such note, bond, lease, sublease or other contractual obligation shall be controlling and conflicting provisions of the leases with the city shall be disregarded), unless prior thereto the city has satisfied all of such outstanding notes, bonds or other contractual obligations and provided for the termination of all such agreements, leases

and subleases, all in accordance with their terms. If and to the extent moneys are paid by the city to the authority or its subsidiaries to satisfy their obligations to the metropolitan transportation authority under such instruments, the authority and such subsidiaries shall remit such moneys to the metropolitan transportation authority, which shall, in turn, apply the same to the satisfaction and termination of its own notes, bonds and leases issued or entered into in connection with a transit project in accordance with their terms.

(c) Upon termination or expiration of a new lease or of a renewed or extended existing lease as permitted in paragraph (a) of this subdivision, or upon satisfaction of the requirements of paragraph (b) of this subdivision, title to any real or personal property (or any interest therein) constituting all or any part of a transit project then vested in the authority or any of its subsidiaries or the metropolitan transportation authority pursuant to the provisions of this chapter shall be transferred without further consideration or payment to the city.

**8.** The state of New York does hereby pledge to and agree with the authority and its subsidiaries and the metropolitan transportation authority and the holders of bonds or notes or lease, sublease or other contractual obligations issued by any of them in connection with a transit project or in connection with the transfer of the interest of any of them in and the lease from the transferee of any property furnished to it pursuant to chapter twelve of the laws of nineteen hundred seventy-nine or section fifteen of chapter three hundred fourteen of the laws of nineteen hundred eighty-one, or in connection with any transaction entered into pursuant to the authorization of paragraph (b) of subdivision two of this section, that the state will not limit or alter the denial of authority under subdivision eleven of this section, or the rights and powers vested in the authority and its subsidiaries by this title to fulfill the terms of any agreement made by any of them with the metropolitan transportation authority or with such holders, or in any way impair their rights and remedies until such agreements, bonds, notes, and obligations, together with the interest thereon and all costs and expenses in connection with any action or proceedings by or on behalf of the metropolitan transportation authority or such holders, are fully met and discharged. The authority and its subsidiaries are each authorized to include this pledge and the agreement of the state in any agreement with the holders of such bonds or notes or lease, sublease or other obligations and in any agreement with the metropolitan transportation authority relating to a transit project which may extend the same to the holders of its bonds, notes and lease obligations.

**9.** The provisions of this section and of all agreements undertaken by the authority or any of its subsidiaries in accordance therewith shall in all respects be subject to the rights of the holders of any outstanding bonds or notes of the authority and its subsidiaries.

**10.** In connection with the negotiation, award and implementation of contracts of the authority relating to transit projects, the provisions of paragraphs (a), (b), (c) and (d) of subdivision thirteen of section twelve hundred sixty-six-c of this article shall apply to the authority as if it were the "authority" referred to therein, and the officer designated by the metropolitan transportation authority pursuant to paragraph (e) of such subdivision shall perform the duties therein described with respect to such contracts of the authority.

**11.** So long as the authority or any of its subsidiaries, or metropolitan transportation authority, shall have outstanding any notes, bonds, lease, sublease or other contractual obligations authorized by this section or section twelve hundred sixty-six-c or twelve hundred sixty-nine of this article, or which have been issued or incurred in connection with the transfer of the interest of any of them in and the lease from the transferee of any property furnished pursuant to chapter twelve of the laws of nineteen hundred seventy-nine or section fifteen of chapter three hundred fourteen of the laws of nineteen hundred eighty-one, neither the authority nor any of its subsidiaries shall have the authority to file a voluntary petition under chapter nine of the federal bankruptcy code, or such corresponding chapter, chapters, or sections as may, from time to time, be in effect, and neither any public officer nor any organization, entity or other person shall authorize the authority or any of its subsidiaries to be or become a debtor under said chapter nine or said corresponding chapter, chapters or sections during any such period.

**12.** A project financed by the authority's issuance of its bonds, notes or other obligations, pursuant to subdivision one-a of section twelve hundred seven-b of this title shall be deemed to constitute a transit

project for the purposes of this section and any notes, bonds, lease, sublease or other contractual obligations with respect to such project shall, for purposes of this section, be deemed to have been authorized by this section; provided, however, that such project shall not be deemed to constitute part of any capital program plan for the purposes of section twelve hundred sixty-nine-b of this article nor shall the principal amounts of any bonds or notes, nor the capitalized value of any lease, sublease, or other contractual obligation of the authority, issued or entered into by the authority pursuant to such subdivision one-a, be included in any computation pursuant to subdivision four of this section.

## History

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Add, L 1981, ch 314, § 12, eff June 29, 1981; amd, L 1981, ch 558, § 8,9, eff June 29, 1981; L 1981, ch 1038, § 3; L 1984, ch 602, § 2, eff July 27, 1984; L 1984, ch 988, § 1, eff Dec 12, 1984,2, eff Dec 12, 1984; L 1986, ch 929, § 22, eff Dec 31, 1986; L 2000, ch 61, § 18 (Part O), eff May 15, 2000.

Annotations

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1201, 1203-a, 1269-b.

Environmental quality review, CLS ECL §§ 8-0101 et seq.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1208

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)*

## § 1208. Revenue and accounts

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1. The authority shall establish and maintain a system of accounts to show at all times the cost of the several classes of property used in operation and the sources of funds used in the acquisition of such property; the several classes of operating revenue and other income; maintenance expenses, interest, and all other charges. To the extent consistent with this title, such accounts shall be kept in accordance with the appropriate uniform system of accounts prescribed by the public service commission and shall be published monthly in the city record.
2. The moneys of the authority shall be deposited daily in banks to be designated by the authority. Deposits may be secured by obligations of or guaranteed by the United States, the state, or any municipal corporation of the state or in such other manner as the authority may provide, and all banks and trust companies are authorized to give such security for such deposits. The comptroller shall have the power from time to time, to examine the accounts, books and any other records or papers relating to the financial condition of the authority, which examination shall not preclude examination of such matters by any other authorized officer or body.
3. Payments or withdrawals of moneys of the authority shall be made by checks drawn and signed by a member or an officer of the authority, duly authorized by resolution of the board.

## History

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Formerly § 1808, add, L 1953, ch 200; renumbered § 1208, L 1957, ch 914, § 3, eff April 24, 1957.

Annotations

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1203-a, 1207-a, 1207-b.

### Federal Aspects:

Public transportation, 49 USCS §§ 5301 et seq.

### Jurisprudences:

63C Am Jur 2d, Public Funds §§ 8, 12.

**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1209

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)***

## **§ 1209. Contracts.**

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1. Any contract for public work, except where there is an emergency involving danger to life or property, the estimated cost of which exceeds twenty thousand dollars shall be made by the authority only upon public letting founded on sealed bids. Notice of the invitation for such bidding shall state the time and place of the receipt and opening of bids and shall be published once a week for two successive weeks in two of the daily newspapers published in the city, and in the city records. The authority may reject all such bids and readvertise for new bids if it shall deem it for the public interest so to do. If not, it shall award the contract to the lowest responsible bidder.
2. Any purchase contract, including but not limited to contracts for the purchase of equipment, materials or supplies, the estimated cost of which exceeds the sum of ten thousand dollars, shall be made by the authority only upon public letting founded on sealed bids, except in a case where the authority, by resolution, declares the existence of an emergency or the existence of other circumstances making competitive bidding impracticable or inappropriate, except in no instance other than in circumstances such as described in paragraph (g) hereof, shall the authority declare that competitive bidding is inappropriate with respect to purchase contracts for omnibuses. In each instance when the authority declares competitive bidding inappropriate it shall state the reasons therefor. Competitive bidding may be declared inappropriate by the authority in instances (a) where the item to be purchased is available only from a single source; or (b) where professional engineering or architectural services are solicited; or (c) where only a single bid is received in response to an invitation for competitive bids; or (d) where the authority has chosen to standardize a component on the basis of compatibility or maintenance reliability; or (e) where the apparent low bidder is declared by the authority to be not qualified to perform the terms of the contract; or (f) where the authority wishes to experiment with or test a new product or technology or evaluate the service or reliability of a new source for a particular product or component; or (g) where the authority by a vote of two-thirds of its members then in office determines that its prior experience with a potential source or contractor has been such as to require, in the public interest, that such source or contractor not be considered eligible to bid and that after the elimination of said source or contractor from the bidding process there would effectively remain only a single source for the item to be purchased and the authority purchases the item from such source; or (h) where the authority by a two-thirds vote of its members determines, on the basis of its analysis of the competitive situation among potential sources for the item to be purchased, is such that it is in the public interest to encourage new sources of manufacture or supply by awarding a contract by negotiation and without competitive bidding. Notice of the invitation for such bidding shall state the time and place of the receipt and opening of bids and shall be published in the city record in five successive issues at least ten days preceding such opening. The authority may reject all such bids and readvertise for new bids if it shall deem it for the public interest so to do. If not, it shall award the contract to the lowest responsible bidder unless the authority, by unanimous vote, shall determine that it is for the public interest that a bid other than that of the lowest responsible bidder shall be accepted.
3. [Expired]

4. Notwithstanding the provisions of subdivision two of this section, a contract for the purchase of omnibuses or components of omnibuses in furtherance or implementation of a capital program plan approved pursuant to section twelve hundred sixty-nine-b of this article may also be awarded by the authority by negotiation without competitive bidding provided the following standards and procedures are complied with:

**(a)** The authority, by a vote of not less than two-thirds of its members then in office, shall issue a notice of intention to solicit competitive offerings to furnish omnibuses or components thereof, and to negotiate the conditions of a final purchase award. Such notice shall be published in at least one newspaper of general circulation, and a copy thereof shall be mailed to all known vendors of such omnibuses or components. Such notice shall describe or identify the omnibuses or particular components so to be purchased, the factors subject to negotiation, insofar as practicable prior to such negotiation, the form and content of the response, and any other matter which the authority deems relevant. The factors subject to negotiation shall include, but need not be limited to, financing, cost, delivery schedules, and performance of all or a portion of the contract at sites within the state of New York or using goods produced and services provided with the state of New York. Such notice shall require a respondent to submit as part of the response and in such detail as the authority may require, information relating to the experience of the respondent on the basis of which said respondent purports to be qualified to fulfill a contract relating to the subject matter and including the factors identified in the notice.

**(b)** The authority shall evaluate the responses to such notice, and shall negotiate with those respondents whose responses comply with all the requirements set forth in the notice, including the qualification requirements.

**(c)** A public hearing shall be held by the authority upon not less than fifteen days notice. Such notice shall state the purpose of the hearing, and shall be published in at least one newspaper of general circulation and shall be mailed to all vendors from whom offers to negotiate were received. At such hearing, summaries of all final offers received and of all negotiations shall be presented. Public comment shall be heard with respect to such offers and negotiations after which the authority by a vote of not less than eleven of its members, shall resolve, on the basis of particularized findings relevant to the factors negotiated, that the award of the contract on the basis of negotiation for the purchase of omnibuses or any components thereof will result in savings or other benefits to the authority, and that such award is in the public interest.

In no event, however, shall the authority award a contract for omnibuses to a manufacturer whose final offer, as expressed in unit cost per omnibus, is more than ten per cent higher than the unit cost of any qualified competing final offer, if the sole basis for such award is that the higher priced offer includes more favorable provision for the performance of the contract within the state of New York or the use of goods produced or services provided within the state of New York. Provided, however, the authority's directors to award a contract to any manufacturer shall not be so limited if a basis for such award, as determined by the authority, is superior financing, delivery schedule, life cycle cost, reliability, or any other factor the authority deems relevant to its operation.

As soon as practicable after the adoption of such resolution, the authority shall file such resolution and the contract which is the subject thereof with the New York state public authorities control board, created by section fifty of this chapter, and with the individual members thereof. The authority shall provide the public authorities control board with any information concerning the decision to award the contract as such board may request, including, but not limited to financing, delivery schedule, life cycle cost, and reliability of the omnibus offers made by all manufacturers competing for the award. No such contract shall be awarded by the authority if within fifteen days following such filing the public authorities control board has disapproved the award of such contract; provided, however, if the contract is not approved by the board within the fifteen day period and no individual member of the board has certified to the authority in writing of his disapproval within such period, the contract shall be deemed to have been approved.



**(d)** The notice provided in paragraph (c) of this subdivision shall not be issued until forty-five days after issuance of the notice of intention to negotiate referred to in paragraph (a) of this subdivision.

**5.**

**(a)** Notwithstanding that funds of the authority may be used therefor, a contract for all or a portion of work involving the alteration, expansion or rehabilitation of a passenger station may be awarded by the authority, by negotiation without competitive bidding, to a private entity or the designee of a private entity where the authority by vote of not less than eleven of its members approves written findings that such award is expected to permit the alteration, expansion or rehabilitation to be carried out in the most efficient and cost effective manner, that such private entity has agreed to pay at least one million dollars toward the cost of the work, that such payment represents not less than fifty percent of the total cost of the work, and that the authority has complied with the procedures provided in paragraph (b) of this subdivision. Notwithstanding the foregoing, a contract for all or a portion of work involving the alteration, expansion or rehabilitation of the passenger station located at the western terminus of the forty-second street shuttle may be awarded by the authority, by negotiation without competitive bidding, to a private entity or the designee of a private entity where the authority by vote of not less than eleven of its members approves written findings that such award is expected to permit the alteration, expansion or rehabilitation to be carried out in the most efficient and cost effective manner, and that the authority has complied with the procedures provided in paragraph (b) of this subdivision.

**(b)** Not less than fifteen days prior to the consideration by the board of the authority of a contract to be let pursuant to this subdivision, a notice shall be published in at least one newspaper of general circulation. Such notice shall identify the parties to the proposed contract and summarize its terms and conditions. Such notice shall also invite written public comment concerning the proposed contract, including, to the extent appropriate, the submission of alternatives for the authority's consideration. Such information shall be considered by the board of authority prior to the approval of any contract proposed to be awarded pursuant to this subdivision.

**(c)** Any contract entered into pursuant to this subdivision shall comply with the requirements of subdivision thirteen of section twelve hundred sixty-six-c of this article.

**6.** The provisions of subdivisions one, two, three and four of this section shall not be applicable to any procurement by the authority commenced during the period from the effective date of this subdivision until December thirty-first, nineteen hundred ninety-one or during the period from December sixteenth, nineteen hundred ninety-three until June thirtieth, two thousand twenty-three; and the provisions of subdivisions seven, eight, nine, ten, eleven, twelve and thirteen of this section shall only apply to procurements by the authority commenced during such periods. The provisions of such subdivisions one, two, three and four shall apply to procurements by the authority commenced during the period from December thirty-first, nineteen hundred ninety-one until December sixteenth, nineteen hundred ninety-three, and to procurements by the authority commenced on and after July first, two thousand twenty-three. Notwithstanding the foregoing, the provisions of such subdivisions one, two, three and four shall apply to (i) the award of any contract of the authority if the bid documents for such contract so provide and such bid documents are issued within sixty days of the effective date of this subdivision or within sixty days of December sixteenth, nineteen hundred ninety-three, or (ii) for a period of one hundred eighty days after the effective date of this subdivision, or for a period of one hundred eighty days after December sixteenth, nineteen hundred ninety-three, the award of any contract for which an invitation to bid, solicitation, request for proposal, or any similar document has been issued by the authority prior to the effective date of this subdivision or during the period from January first, nineteen hundred ninety-two until December fifteenth, nineteen hundred ninety-three.

**7.** [Eff until April 1, 2024]

**(a)** Except as otherwise provided in this section, all purchase contracts for supplies, materials or equipment involving an estimated expenditure in excess of one million dollars and all contracts for public work involving an estimated expenditure in excess of one million dollars shall be awarded by the

authority to the lowest responsible bidder after obtaining sealed bids in the manner hereinafter set forth. The aforesaid shall not apply to contracts for personal, architectural, engineering or other professional services. The authority may reject all bids and obtain new bids in the manner provided by this section when it is deemed in the public interest to do so or, in cases where two or more responsible bidders submit identical bids which are the lowest bids, award the contract to any of such bidders or obtain new bids from such bidders. Nothing in this paragraph shall obligate the authority to seek new bids after the rejection of bids or after cancellation of an invitation to bid. Nothing in this section shall prohibit the evaluation of bids on the basis of costs or savings including life cycle costs of the item to be purchased, discounts, and inspection services so long as the invitation to bid reasonably sets forth the criteria to be used in evaluating such costs or savings. Life cycle costs may include but shall not be limited to costs or savings associated with installation, energy use, maintenance, operation and salvage or disposal.

**(b)** Section twenty-eight hundred seventy-nine of this chapter shall apply to the authority's acquisition of goods or services of any kind, in the actual or estimated amount of fifteen thousand dollars or more, provided that (i) a contract for services in the actual or estimated amount of one million dollars or less shall not require approval by the board of the authority regardless of the length of the period over which the services are rendered, and provided further that a contract for services in the actual or estimated amount in excess of one million dollars shall require approval by the board of the authority regardless of the length of the period over which the services are rendered unless such a contract is awarded to the lowest responsible bidder after obtaining sealed bids and (ii) the board of the authority may by resolution adopt guidelines that authorize the award of contracts to small business concerns, to service disabled veteran owned businesses certified pursuant to article seventeen-B of the executive law, or minority or women-owned business enterprises certified pursuant to article fifteen-A of the executive law, or purchases of goods or technology that are recycled or remanufactured, in an amount not to exceed one million five hundred thousand dollars without a formal competitive process and without further board approval. The board of the authority shall adopt guidelines which shall be made publicly available for the awarding of such contract without a formal competitive process.

7. [Eff April 1, 2024]

**(a)** Except as otherwise provided in this section, all purchase contracts for supplies, materials or equipment involving an estimated expenditure in excess of fifteen thousand dollars and all contracts for public work involving an estimated expenditure in excess of twenty-five thousand dollars shall be awarded by the authority to the lowest responsible bidder after obtaining sealed bids in the manner hereinafter set forth. The aforesaid shall not apply to contracts for personal, architectural, engineering or other professional services. The authority may reject all bids and obtain new bids in the manner provided by this section when it is deemed in the public interest to do so or, in cases where two or more responsible bidders submit identical bids which are the lowest bids, award the contract to any of such bidders or obtain new bids from such bidders. Nothing herein shall obligate the authority to seek new bids after the rejection of bids or after cancellation of an invitation to bid. Nothing in this section shall prohibit the evaluation of bids on the basis of costs or savings including life cycle costs of the item to be purchased, discounts, and inspection services so long as the invitation to bid reasonably sets forth the criteria to be used in evaluating such costs or savings. Life cycle costs may include but shall not be limited to costs or savings associated with installation, energy use, maintenance, operation and salvage or disposal.

**(b)** Section twenty-eight hundred seventy-nine of this chapter shall apply to the authority's acquisition of goods or services of any kind, in the actual or estimated amount of fifteen thousand dollars or more, provided that a contract for personal services in the actual or estimated amount of less than twenty thousand dollars shall not require approval by the board of the authority regardless of the length of the period over which the services are rendered, and provided further that a contract for personal services in the actual or estimated amount of twenty thousand dollars or more shall require approval by the board of the authority regardless of the length of the period over which the services are rendered, and provided further that a contract for services in the actual or estimated amount of one hundred thousand dollars or more shall require approval by the board of the authority regardless of the length of the

period over which the services are rendered unless such a contract is awarded to the lowest responsible bidder after obtaining sealed bids and (ii) the board of the authority may by resolution adopt guidelines that authorize the award of contracts to small business concerns, to service disabled veteran owned businesses certified pursuant to article seventeen-B of the executive law, or minority or women-owned business enterprises certified pursuant to article fifteen-A of the executive law, or purchases of goods or technology that are recycled or remanufactured, in an amount not to exceed four hundred thousand dollars without a formal competitive process and without further board approval. The board of the authority shall adopt guidelines which shall be made publicly available for the awarding of such contract without a formal competitive process.

**8.**

**(a)** Advertisement for bids, when required by this section, shall be published at least once in a newspaper of general circulation in the area served by the authority and in the procurement opportunities newsletter published pursuant to article four-C of the economic development law provided that, notwithstanding the provisions of article four-C of the economic development law, an advertisement shall only be required when required by this section. Publication in a newspaper of general circulation in the area served or in the procurement opportunities newsletter shall not be required if bids for contracts for supplies, materials or equipment are of a type regularly purchased by the authority and are to be solicited from a list of potential suppliers, if such list is or has been developed consistent with the provisions of subdivision eleven of this section. Any such advertisement shall contain a statement of: (i) the time and place where bids received pursuant to any notice requesting sealed bids will be publicly opened and read; (ii) the name of the contracting agency; (iii) the contract identification number; (iv) a brief description of the public work, supplies, materials, or equipment sought, the location where work is to be performed, goods are to be delivered or services provided and the contract term; (v) the address where bids or proposals are to be submitted; (vi) the date when bids or proposals are due; (vii) a description of any eligibility or qualification requirement or preference; (viii) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture, or co-production arrangement; (ix) any other information deemed useful to potential contractors; and (x) the name, address, and telephone number of the person to be contacted for additional information. At least fifteen business days shall elapse between the first publication of such advertisement or the solicitation of bids, as the case may be, and the date of opening and reading of bids.

**(b)** The authority may designate any officer or employee to open the bids at the time and place bids are to be opened and may designate an officer to award the contract to the lowest responsible bidder. Such designee shall make a record of all bids in such form and detail as the authority shall prescribe. All bids received shall be publicly opened and read at the time, place and in the manner specified in the advertisement or specified at the time of solicitation, or to which the opening and reading or posting have been adjourned by the authority, provided that any sealed bid may be received and secured through an electronic platform as permitted by the authority, and that any sealed bid received electronically is made public at the same time as any competing paper bid. The authority shall, at minimum, provide the same opportunity and time for submitting sealed bids physically as for sealed bids submitted electronically, and shall provide the opportunity for bidders to submit sealed bids physically any time that it provides the opportunity to submit sealed electronic bids. In addition, the authority shall establish a process for accommodating force majeure events that prevent the submission of a sealed electronic bid, including but not limited to internet and power outage events, and for automatically confirming receipt of any sealed electronic bid received. All bidders shall be notified of the time and place of any such adjournment.

**9.** Notwithstanding the foregoing, the authority may, by resolution approved by a two-thirds vote of its members then in office or by a majority vote of its members with respect to contracts proposed to be let pursuant to paragraph (a) of this subdivision, declare that competitive bidding is impractical or inappropriate because of the existence of any of the circumstances hereinafter set forth and thereafter the authority may proceed to award contracts without complying with the requirements of subdivision seven or eight of this

section. In each case where the authority declares competitive bidding impractical or inappropriate, it shall state the reason therefor in writing and summarize any negotiations that have been conducted. Except for contracts awarded pursuant to paragraphs (a), (b), (c) and (e) of this subdivision, the authority shall not award any contract pursuant to this subdivision earlier than thirty days from the date on which the authority declares that competitive bidding is impractical or inappropriate. Competitive bidding may only be declared impractical or inappropriate where:

**(a)** the existence of an emergency involving danger to life, safety or property requires immediate action and cannot await competitive bidding or the item to be purchased is essential to efficient operation or the adequate provision of service and as a consequence of an unforeseen circumstance such purchase cannot await competitive bidding;

**(b)** the item to be purchased is available only from a single responsible source, provided that if bids have not been solicited for such item pursuant to subdivision seven of this section within the preceding twelve months, public notice shall first be given pursuant to subdivision eight of this section;

**(c)** the authority receives no responsive bids or only a single responsive bid in response to an invitation for competitive bids;

**(d)** the authority wishes to experiment with or test a product or technology or new source for such product or technology or evaluate the service or reliability of such product or technology;

**(e)** the item is available through an existing contract between a vendor and (i) another public authority provided that such other authority utilized a process of competitive bidding or a process of competitive requests for proposals to award such contract, (ii) the United States general services administration provided that such administration utilized a process of competitive bidding or a process of competitive requests for proposals to award such contract, (iii) Nassau county or (iv) the state of New York or the city of New York, provided that in any case when the authority under this paragraph determines that obtaining such item thereby would be in the public interest and sets forth the reasons for such determination. Such rationale shall include, but need not be limited to, a determination of need, a consideration of the procurement method by which the contract was awarded, an analysis of alternative procurement sources including an explanation why a competitive procurement or the use of a centralized contract let by the commissioner of the office of general services is not in the best interest of the authority, and the reasonableness of cost. The authority shall accept sole responsibility for any payment due the vendor as a result of the authority's order; or

**(f)** the authority determines that it is in the public interest to award contracts pursuant to a process for competitive request for proposals as hereinafter set forth. For purposes of this section, a process for competitive request for proposals shall mean a method of soliciting proposals and awarding a contract on the basis of a formal evaluation of the characteristics, such as quality, cost, delivery schedule and financing of such proposals against stated selection criteria. Public notice of the requests for proposals shall be given in the same manner as provided in subdivision eight of this section and shall include the selection criteria. In the event the authority makes a material change in the selection criteria from those previously stated in the notice, it will inform all proposers of such change and permit proposers to modify their proposals.

**(i)** [Eff until April 1, 2024] Except for a contract with a value of one hundred million dollars or less that is awarded pursuant to this paragraph to the proposer whose proposal is the lowest cost, the authority may award a contract pursuant to this paragraph only after a resolution approved by a two-thirds vote of its members then in office at a public meeting of the authority with such resolution (A) disclosing the other proposers and the substance of their proposals, (B) summarizing the negotiation process including the opportunities, if any, available to proposers to present and modify their proposals, and (C) setting forth the criteria upon which the selection was made provided however that for purposes of this subparagraph the board may, at its discretion, require such a resolution be approved for contracts with a value of one hundred million dollars or less.

(i) [Eff April 1, 2024] The authority may award a contract pursuant to this paragraph only after a resolution approved by a two-thirds vote of its members then in office at a public meeting of the authority with such resolution (A) disclosing the other proposers and the substance of their proposals, (B) summarizing the negotiation process including the opportunities, if any, available to proposers to present and modify their proposals, and (C) setting forth the criteria upon which the selection was made.

(ii) Nothing in this paragraph shall require or preclude (A) negotiations with any proposers following the receipt of responses to the request for proposals, or (B) the rejection of any or all proposals at any time. Upon the rejection of all proposals, the authority may solicit new proposals or bids in any manner prescribed in this section.

(g) the authority issues a competitive request for proposals pursuant to the procedures of paragraph (f) of this subdivision for the purchase or rehabilitation of rapid transit cars and omnibuses. Any such request may include among the stated selection criteria the performance of all or a portion of the contract at sites within the state of New York or the use of goods produced or services provided within the state of New York, provided however that in no event shall the authority award a contract to a manufacturer whose final offer, as expressed in unit cost is more than ten percent higher than the unit cost of any qualified competing final offer, if the sole basis for such award is that the higher priced offer includes more favorable provision for the performance of the contract within the state of New York or the use of goods produced or services provided within the state of New York, and further provided that the authority's discretion to award a contract to any manufacturer shall not be so limited if a basis for such award, as determined by the authority, is superior financing, delivery schedule, life cycle, reliability, or any other factor the authority deems relevant to its operations.

(i) [Eff until April 1, 2024] Except for a contract with a value of one hundred million dollars or less that is awarded pursuant to this paragraph to the proposer whose proposal is the lowest cost, the authority may award a contract pursuant to this paragraph only after a resolution approved by a vote of not less than two-thirds of its members then in office at a public meeting of the authority with such resolution (A) disclosing the other proposers and the substance of their proposals, (B) summarizing the negotiation process including the opportunities, if any, available to proposers to present and modify their proposals, and (C) setting forth the criteria upon which the selection was made provided however that for purposes of this subparagraph the board may, at its discretion, require such a resolution be approved for contracts with a value of one hundred million dollars or less.

(i) [Eff April 1, 2024] The authority may award a contract pursuant to this paragraph only after a resolution approved by a vote of not less than two-thirds of its members then in office at a public meeting of the authority with such resolution (A) disclosing the other proposers and the substance of their proposals, (B) summarizing the negotiation process including the opportunities, if any, available to proposers to present and modify their proposals, and (C) setting forth the criteria upon which the selection was made.

(ii) Nothing in this paragraph shall require or preclude (A) negotiations with any proposers following the receipt of responses to the request for proposals, or (B) the rejection of any or all proposals at any time. Upon the rejection of all proposals, the authority may solicit new proposals or bids in any manner prescribed in this section.

**10.** Upon the adoption of a resolution by the authority stating, for reasons of efficiency, economy, compatibility or maintenance reliability, that there is a need for standardization, the authority may establish procedures whereby particular supplies, materials or equipment are identified on a qualified products list. Such procedures shall provide for products or vendors to be added to or deleted from such list and shall include provisions for public advertisement of the manner in which such lists are compiled. The authority shall review such list no less than once a year for the purpose of making modifications thereto. Contracts for particular supplies, materials or equipment identified on a qualified products list may be awarded by the authority to the lowest responsible bidder after obtaining sealed bids in accordance with this section or

without competitive sealed bids in instances when the item is available from only a single source, except that the authority may dispense with advertising provided that it mails copies of the invitation to bid to all vendors of the particular item on the qualified products list.

**11.** The authority shall compile a list of potential sources of supplies, materials or equipment regularly purchased. The authority shall, by resolution, set forth the procedures it has established to identify new sources and to notify such new sources of the opportunity to bid for contracts for the purchase of supplies, materials or equipment. Such procedures shall include, but not be limited to: (a) advertising in trade journals; (b) cooperation with federal, state and local agencies within its area of operations; (c) publication in the state register quarterly; and (d) procedures established pursuant to subdivision thirteen of section twelve hundred sixty-six-c of this article.

**12.** The provisions of this section shall not supersede any other provisions of law relative to purchases of products or devices manufacturer or provided by the blind or other severely handicapped persons, to the invitation and acceptance of bids from small or minority business enterprises or to the purchases of supplies, materials or equipment through the office of general services. Except as may otherwise be provided by law or as more restrictively defined in the official policy or bid specifications of the authority, the term “small business” means a small business or similar term, under federal regulations applicable to projects of the authority which are federally assisted.

**13.** [Eff until April 1, 2024] Notwithstanding any other provisions in this section, the authority shall be allowed to use an electronic bidding system for the purchase of goods, materials, and commodities that may inform bidders whether their bid is the current low bid, and allow bidders to submit new bids before the date and time assigned for the opening of bids. Such procedure shall not constitute disclosure of bids in violation of section twenty-eight hundred seventy-eight of this chapter.

**13.** [Eff April 1, 2024] The provisions of this section shall not apply to any procurement made by any other public entity not otherwise required by law to award contracts for such purchases to the lowest responsible bidder if such purchases are made at the sole cost and expense of such entity.

**14.** [Repealed April 1, 2024] The provisions of this section shall not apply to any procurement made by any other public entity not otherwise required by law to award contracts for such purchases to the lowest responsible bidder if such purchases are made at the sole cost and expense of such entity.

**15.**

**(a)** Whenever the comptroller pursuant to section twenty-eight hundred seventy-nine-a of this chapter intends to require supervision in the form of prior review and approval of a contract or contract amendment to be awarded by the authority pursuant to this section, then such contract or contract amendment shall be submitted to the comptroller by the authority for approval and shall not be a valid enforceable contract unless it shall first have been approved by the comptroller but only if the comptroller has notified the authority of such determination within thirty days of having received written notice of such contract or contract amendment either in the authority’s annual report or any revised report;

**(b)** If the comptroller has timely notified the authority as provided in paragraph (a) of this subdivision that any contract or contract amendment shall be subject to comptroller prior review and approval, and such contract or contract amendment has been submitted to the comptroller, it shall become valid and enforceable without such approval if the comptroller has not approved or disapproved it within thirty days of submission to the comptroller.

## History

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Formerly § 1809, add, L 1953, ch 200; renumbered § 1209, L 1957, ch 914, § 3; L 1953, ch 881, § 2; L 1981, ch 314, § 13, eff June 29, 1981; L 1981, ch 558, § 10; L 1981, ch 1039, §§ 1, 2, eff Nov 11, 1981, expired Dec 31, 1982; L 1983, ch 430, § 1, eff July 11, 1983; L 1985, ch 383, § 1, eff July 19, 1985; L 1986, ch 929, § 23; L 1990, ch

494, §§ 1–3, eff July 18, 1990; L 1993, ch 725, §§ 3–7, eff Dec 27, 1993; L 1996, ch 637, § 15; L 1998, ch 256, § 1; L 2001, ch 334, § 1; L 2004, ch 745, § 10; L 2005, ch 136, § 1, eff June 30, 2005; L 2008, ch 135, § 1, eff June 30, 2008; L 2011, ch 98, § 1, eff June 28, 2011; L 2015, ch 30, § 1, effective June 30, 2015; L 2016, ch 54, §§ 1, 3, 4 (Part OO), effective April 4, 2016; L 2019, ch 59, §§ 1–3 (Part ZZZ, Subpart C), effective April 12, 2019; L 2021, ch 267, § 1, effective July 16, 2021; L 2022, ch 58, §§ 1–3, (Part I), effective April 9, 2022.

Annotations

## Notes

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### Editor’s Notes

**Laws 1982, ch 636, § 1**, eff July 22, 1982, amended Laws 1981, ch 1039, § 3, so as to change the expiration date of sub 3 from August 31, 1982 to December 31, 1982.

**Laws 2016, ch 54, § 15 (Part OO)**, eff April 4, 2016, provides:

§ 15. This act shall take effect immediately, and shall expire and be deemed repealed April 1, 2024 (Amd, L 2021, ch 55, § 1 (Part YY), eff April 19 2021).

**Laws 2019, ch 59, § 1 (Part ZZZ)**, eff April 12, 2019, provides:

Section 1. This act shall be known and may be cited as the “MTA reform and traffic mobility act”.

**Laws 2019, ch 59, § 5 (Part ZZZ, Subpart C)**, eff April 12, 2019, provide:

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

(a) the amendments to paragraphs (a) and (b) of subdivision 7 of section 1209 of the public authorities law made by section three of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith; and

(b) the amendments to paragraphs (a) and (b) of subdivision 2 of section 1265-a of the public authorities law made by section three-a of this act shall not affect the expiration of such paragraphs and shall be deemed to expire therewith.

**Laws 2022, ch 58, § 7 (Part I)**, eff September 4, 2022, provides:

§ 7. This act shall take effect immediately; provided, however, that the amendments to paragraph (b) of subdivision 7 of section 1209 of the public authorities law made by section one of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith; and provided further, however, that the amendments to paragraph (b) of subdivision 2 of section 1265-a of the public authorities law made by section four of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith.

### Amendment Notes

**2011.** Chapter 98, § 1 amended:

Sub 6 by deleting at figs 1 and 2 “eleven” and adding the matter in italics.

**The 2015 amendment by ch 30, § 1**, substituted “two thousand nineteen” for “two thousand fifteen” in the first and second sentences of 6.

**The 2016 amendment by ch 54, §§ 1, 3, 4 (Part OO)**, in the first sentence of 7(a), substituted “one hundred thousand dollars and” for “fifteen thousand dollars and” and “one hundred thousand dollars shall” for “twenty-five

thousand dollars shall”; in 7(b), in the first sentence, added the (i) designation, in (i), deleted “personal” following “contract for” twice, substituted “one hundred thousand dollars” for “twenty thousand dollars” twice, and added “unless such a contract is awarded to the lowest responsible bidder after obtaining sealed bids,” and added (ii), and added the second sentence; in 9(f)(i) and 9(g)(i), added “Except for a contract with a value of one hundred million dollars or less that is awarded pursuant to this paragraph to the proposer whose proposal is the lowest cost” and “provided however that for purposes of this subparagraph the board may, at its discretion, require such a resolution be approved for contracts with a value of one hundred million dollars or less”; added 13; and made related and stylistic changes.

**The 2019 amendments by ch 59, §§ 1, 2, 3 (Part ZZZ, Subpart C)**, substituted “two thousand twenty-three” for “two thousand nineteen” in the first and second sentences of 6; in 7, in (a), substituted “one million dollars” for “one hundred thousand dollars” twice in the first sentence and “in this paragraph” for “herein” in the fourth sentence, and in the first sentence of (b), substituted “one million dollars or less” for “less than one hundred thousand dollars,” “in excess of one million dollars” for “of one hundred thousand dollars or more” and “one million dollars” for “four hundred thousand dollars”; and added 15.

**The 2021 amendment by ch 267, § 1**, in 8(b), rewrote the third sentence, which formerly read: “All bids received shall be publicly opened and read at the time and place specified in the advertisement or specified at the time of solicitation, or to which the opening and reading have been adjourned by the authority,” and added the fourth and fifth sentences.

**The 2022 amendment by ch 58, §§ 1–3 (Part I)**, added “five hundred thousand” in the first sentence of 7(b); in 9(e), added “(ii) the United States general services administration provided that such administration utilized a process of competitive bidding or a process of competitive requests for proposals to award such contract, (iii) Nassau county,” substituted “(iv)” for “(ii)” in the first sentence, added the second sentence; and substituted “once” for “twice” in the third sentence of 10.

## Notes to Decisions

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A 15-year agreement for the operation of newsstands in the New York City subway system, having as its predominant focus the use of real property owned by the New York City Transit Authority and the operation of a specified business thereon, is not subject to the competitive bidding requirements of Pub A Law § 1209 by reason of the agreement’s provision that the licensee must construct certain improvements and rehabilitate or repair existing facilities in connection with its use of the property; notwithstanding the fact that an indirect expenditure of public money is involved, the total character of the arrangement is that of a license agreement for the maintenance and operation of newsstands and not that of a “contract for public work” within the meaning of the statute. *Citiwide News, Inc. v New York City Transit Authority*, 62 N.Y.2d 464, 478 N.Y.S.2d 593, 467 N.E.2d 241, 1984 N.Y. LEXIS 4408 (N.Y. 1984).

Provisions mandating that public work contracts be awarded to lowest responsible bidder reflects purpose to guard against favoritism, improvidence, extravagance, fraud and corruption, and were intended to benefit taxpayers and be administered with sole reference to public interest. *Conduit & Foundation Corp. v Metropolitan Transp. Authority*, 66 N.Y.2d 144, 495 N.Y.S.2d 340, 485 N.E.2d 1005, 1985 N.Y. LEXIS 17168 (N.Y. 1985).

Although power to reject any or all bids may not be exercised arbitrarily or for purpose of forgoing public benefit intended to be served by competitive process, discretionary decision ought not to be disturbed by courts unless it is irrational, dishonest or otherwise unlawful; moreover, realistic expectation of obtaining lower contract prices upon second round of bidding constitutes reasonable, bona fide ground for rejecting all first round bids and serves public’s interest in economical use of public monies; nor is decision to reject all bids rendered arbitrary and capricious solely on basis of nondiscriminatory post bid changes in contract specifications or postbid communications with individual bidders for bona fide purpose of ascertaining how contract costs might be reduced.



Conduit & Foundation Corp. v Metropolitan Transp. Authority, 66 N.Y.2d 144, 495 N.Y.S.2d 340, 485 N.E.2d 1005, 1985 N.Y. LEXIS 17168 (N.Y. 1985).

In Article 78 proceeding to review award of contract by New York City Transit Authority for removal of scrap rail panels, Supreme Court properly declared contract void and directed all work under it to stop, notwithstanding contention of transit authority that removal of scrap rail did not constitute public work, and that contract was therefore not subject to competitive bidding, since removal of scrap was not one of enumerated exceptions in CLS Pub A § 1209(7). Railroad Maintenance Corp. v New York City Transit Authority, 146 A.D.2d 780, 537 N.Y.S.2d 261, 1989 N.Y. App. Div. LEXIS 867 (N.Y. App. Div. 2d Dep't), app. dismissed, 74 N.Y.2d 714, 543 N.Y.S.2d 400, 541 N.E.2d 429, 1989 N.Y. LEXIS 743 (N.Y. 1989).

Administrative approval of agreements with private developer for renovation of subway station complex did not violate CLS Pub § 1209(5)(a) by awarding contracts without benefit of competitive bidding since statute dispenses with need for competitive bidding where private entity has agreed to pay at least \$1 million toward cost of work, representing not less than 50 percent of total cost, and it was shown that after deducting certain disputed credits, private developer was obligated under agreements to pay construction costs of at least \$75.4 million, which exceeded 50 percent of estimated \$121.1 million total cost of project. Broadway Plus Corp. v Metropolitan Transp. Authority, 157 A.D.2d 453, 549 N.Y.S.2d 23, 1990 N.Y. App. Div. LEXIS 2 (N.Y. App. Div. 1st Dep't 1990), reh'g denied, 1990 N.Y. App. Div. LEXIS 3141 (N.Y. App. Div. 1st Dep't Mar. 20, 1990), app. denied, 76 N.Y.2d 702, 559 N.Y.S.2d 239, 558 N.E.2d 41, 1990 N.Y. LEXIS 1329 (N.Y. 1990).

Award of contract by New York City Transit Authority to petitioner's competitor was not so tainted as to require annulment of award, even though all initial bids for project—submitted pursuant to procedures set forth in CLS Pub A § 1209(9)(f) permitting bidders to submit better proposals after negotiating with public authority—became known to other bidders through “leak,” where petitioner continued to participate on expectancy that it would receive contract since its initial bid was lowest, and competitor's ultimate bid was lower because it proposed innovations in scope and performance of work; petitioner's continued participation after “leak” indicated that there had been no procedural unfairness. Fischbach & Moore, Inc. v New York City Transit Auth., 182 A.D.2d 533, 582 N.Y.S.2d 1013, 1992 N.Y. App. Div. LEXIS 6248 (N.Y. App. Div. 1st Dep't), app. denied, 80 N.Y.2d 758, 589 N.Y.S.2d 309, 602 N.E.2d 1125, 1992 N.Y. LEXIS 3384 (N.Y. 1992).

New York City Transit Authority's award of subject contract, which concededly was not required to be to “lowest responsible bidder” after sealed public bidding (CLS Pub A § 1209(1)), was matter within Authority's discretionary management of its operations, and thus was not justiciable absent indication that Authority disregarded its own guidelines. Municipal Testing Lab. v New York City Transit Auth., 233 A.D.2d 105, 649 N.Y.S.2d 426, 1996 N.Y. App. Div. LEXIS 11412 (N.Y. App. Div. 1st Dep't 1996).

Even if justiciable, New York City Transit Authority's award of contract had rational basis in its audit, which revealed that petitioner may have overcharged it in prior contract, had engaged in questionable bidding practices, and had employed certain individuals who lacked requisite certification and education; further, second lowest bidder, to whom contract was awarded, offered bid almost identical to petitioner's, had satisfactorily performed prior contracts, and had officers around world, giving Authority reason to believe that its travel-related expenses would be lower than petitioner's. Municipal Testing Lab. v New York City Transit Auth., 233 A.D.2d 105, 649 N.Y.S.2d 426, 1996 N.Y. App. Div. LEXIS 11412 (N.Y. App. Div. 1st Dep't 1996).

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1203-a, 1207-a, 1207-b, 1266-c.

### Jurisprudences:

64 Am Jur 2d, Public Works and Contracts §§ 41, 52, 53.

**Texts:**

4 Frumer & Biskind, Bender's New York Evidence—CPLR § 15.11.

**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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End of Document

## NY CLS Pub A § 1209-a

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)***

### **§ 1209-a. Transit adjudication bureau**

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1. Establishment. There is hereby created in the authority a transit adjudication bureau. The head of such bureau shall be the executive director, who shall be appointed by the president of the authority. The executive director may delegate the powers and duties conferred upon the executive director by this section to such qualified officers and employees of the bureau as he may designate.
2. Hearing officers. The president of the authority shall appoint hearing officers who shall preside at hearings for the adjudication of charges of transit infractions, as hereinafter defined and the adjudication of allegations of liability for violations of the rules and regulations of the triborough bridge and tunnel authority in accordance with section two thousand nine hundred eighty-five of this chapter, and who, as provided below, may be designated to serve on the appeals board of the bureau. Every hearing officer shall have been admitted to the practice of law in this state for a period of at least three years, and shall be compensated for his services on a per diem basis determined by the bureau.
3. Jurisdiction. The bureau shall have, with respect to acts or incidents in or on the transit facilities of the authority committed by or involving persons who are sixteen years of age or over, or with respect to acts or incidents occurring on omnibuses owned or operated by the metropolitan transportation authority or a subsidiary thereof, and with respect to violation of toll collection regulations of the triborough bridge and tunnel authority as described in section twenty-nine hundred eighty-five of this chapter, non-exclusive jurisdiction over violations of: (a) the rules which may from time to time be established by the authority under subdivision five-a of section twelve hundred four of this chapter; (b) article one hundred thirty-nine of the health code of the city of New York, as it may be amended from time to time, relating to public transportation facilities; (c) article four of the noise control code of the city of New York, as it may be amended from time to time, insofar as it pertains to sound reproduction devices; (d) the rules and regulations which may from time to time be established by the triborough bridge and tunnel authority in accordance with the provisions of section twenty-nine hundred eighty-five of this chapter; and (e) rules and regulations which may from time to time be established by the metropolitan transportation authority or a subsidiary thereof in accordance with the provisions of section twelve hundred sixty-six of this chapter. Matters within the jurisdiction of the bureau except violations of the rules and regulations of the triborough bridge and tunnel authority shall be known for purposes of this section as transit infractions. Nothing herein shall be construed to divest jurisdiction from any court now having jurisdiction over any criminal charge or traffic infraction relating to any act committed in a transit or toll facility, or to impair the ability of a police officer to conduct a lawful search of a person in a transit facility. The criminal court of the city of New York shall continue to have jurisdiction over any criminal charge or traffic infraction brought for violation of the rules of the authority, the triborough bridge and tunnel authority or the metropolitan transportation authority or a subsidiary thereof, as well as jurisdiction relating to any act which may constitute a crime or an offense under any law of the state of New York or any municipality or political subdivision thereof and which may also constitute a violation of such rules. The bureau shall have concurrent jurisdiction with the environmental control board and the administrative tribunal of the department of health over the aforesaid provisions of the health code and noise control code of the city of New York.

- 4. General powers.** The bureau shall have the following functions, powers and duties:
  - a.** To accept pleas (whether made in person or by mail) to, and to hear and determine, charges of transit infractions and allegations of civil liability pursuant to section two thousand nine hundred eighty-five of this chapter within its jurisdiction;
  - b.** To impose civil penalties not to exceed a total of one hundred fifty dollars for any transit infraction within its jurisdiction, in accordance with a penalty schedule established by the authority or the metropolitan transportation authority or a subsidiary thereof, as applicable, except that penalties for violations of the health code of the city of New York shall be in accordance with the penalties established for such violations by the board of health of the city of New York, and penalties for violations of the noise code of the city of New York shall be in accordance with the penalties established for such violations by law, and civil penalties for violations of the rules and regulations of the triborough bridge and tunnel authority shall be in accordance with the penalties established for such violations by section twenty-nine hundred eighty-five of this chapter;
  - c.** In its sole discretion, to suspend or forgive penalties or any portion of penalties imposed on the condition that the respondent voluntarily agrees to perform and actually does satisfactorily perform unpaid services on transit facilities as assigned by the authority, such as, without limitation, cleaning of rolling stock;
  - d.** To adopt, amend and rescind rules and regulations not inconsistent with any applicable provision of law to carry out the purposes of this section, including but not limited to rules and regulations prescribing the internal procedures and organization of the bureau, the manner and time of entering pleas, the conduct of hearings, and the amount and manner of payment of penalties;
  - e.** To enter judgments and enforce them, without court proceedings, in the same manner as the enforcement of money judgments in civil actions, as provided below;
  - f.** To compile and maintain complete and accurate records relating to all charges and dispositions, which records shall be deemed exempt from disclosure under the freedom of information law as records compiled for law enforcement purposes;
  - g.** To apply to a court of competent jurisdiction for enforcement of any decision or order issued by such bureau or of any subpoena issued by a hearing officer as provided in paragraph d of subdivision seven of this section;
  - h.** To enter into contracts with other government agencies, with private organizations, or with individuals to undertake on its behalf such functions as data processing, debt collections, mailing, and general administration, as the executive director deems appropriate, except that the conduct by hearing officers of hearings and of appeals may not be performed by outside contractors;
  - i.** To accept payment of penalties and to remit same to the authority or the metropolitan transportation authority or a subsidiary thereof, as applicable; and
  - j.** To adjudicate the liability of motor vehicle owners for violations of rules and regulations established in accordance with the provisions of section two thousand nine hundred eighty-five of this chapter.
- 5. Notices of violation.** The bureau shall prepare and distribute notices of violation in blank to the transit police and any other person empowered by law, rule and regulation to serve such notices. The form and wording of the notice of violation shall be prescribed by the executive director, and it may be the same as any other notice of violation or summons form already in use if said form meets the requirements hereof. The notice of violation may include provisions to record information which will facilitate the identification and location of respondents, including but not limited to name, address, telephone numbers, date of birth, social security number if otherwise permitted by law, place of employment or school, and name and address of parents or guardian if a minor. Notices of violation shall be issued only to persons who are sixteen years of age or over, and shall be served by delivering the notice within the state to the person to be served. A copy of each notice of violation served hereunder shall be filed and retained by said bureau, and shall be

deemed a record kept in the ordinary course of business, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein. Said notice of violation shall contain information advising the person charged of the manner and the time within which such person may either admit or deny the offense charged in the notice. Such notice of violation shall also contain a warning to advise the person charged that failure to plead in the manner and within the time stated in the notice may result in a default decision and order being entered against such person, and the imposition of supplemental penalties as provided in subdivision five-a of section twelve hundred four of this chapter. A notice of violation shall not be deemed to be a notice of liability issued pursuant to section two thousand nine hundred eighty-five of this chapter.

**6. Defaults.** Where a respondent has failed to plead to a notice of violation or to a notice of liability issued pursuant to section two thousand nine hundred eighty-five of this chapter within the time allowed by the rules of said bureau or has failed to appear on a designated hearing date or a subsequent date following an adjournment, such failure to plead or appear shall be deemed, for all purposes, to be an admission of liability and shall be grounds for rendering a default decision and order imposing a penalty in such amount as may be prescribed by the authority.

**7. Hearings.**

**a.**

**(1)** A person charged with a transit infraction returnable to the bureau or a person alleged to be liable in accordance with the provisions of section two thousand nine hundred eighty-five of this chapter who contests such allegation shall be advised of the date on or by which he or she must appear to answer the charge at a hearing. Notification of such hearing date shall be given either in the notice of violation or in a form, the content of which shall be prescribed by the executive director or in a manner prescribed in section two thousand nine hundred eighty-five of this chapter. Any such notification shall contain a warning to advise the person charged that failure to appear on or by the date designated, or any subsequent rescheduled or adjourned date, shall be deemed for all purposes, an admission of liability, and that a default judgment may be rendered and penalties may be imposed. Where notification is given in a manner other than in the notice of violation, the bureau shall deliver such notice to the person charged, either personally or by registered or certified mail.

**(2)** Whenever a person charged with a transit infraction or alleged to be liable in accordance with the provisions of section two thousand nine hundred eighty-five of this chapter returnable to the bureau requests an alternate hearing date and is not then in default as defined in subdivision six of this section, the bureau shall advise such person personally, or by registered or certified mail, of the alternate hearing date on or by which he or she must appear to answer the charge or allegation at a hearing. The form and content of such notice of hearing shall be prescribed by the executive director, and shall contain a warning to advise the person charged or alleged to be liable that failure to appear on or by the alternate designated hearing date, or any subsequent rescheduled or adjourned date, shall be deemed for all purposes an admission of liability, and that a default judgment may be rendered and penalties may be imposed.

**(3)** Whenever a person charged with a transit infraction or alleged to be liable in accordance with the provisions of section two thousand nine hundred eighty-five of this chapter returnable to the bureau appears at a hearing and obtains an adjournment of the hearing pursuant to the rules of the bureau, the bureau shall advise such person personally, or by registered or certified mail, of the adjourned date on which he or she must appear to answer the charge or allegation at a continued hearing. The form and content of such notice of a continued hearing shall be prescribed by the executive director, and shall contain a warning to advise the person charged or alleged to be liable that failure to appear on the adjourned hearing date shall be deemed for all purposes an admission of liability, and that a default judgment may be rendered and penalties may be imposed.

**b.** Every hearing for the adjudication of a charge of a transit infraction or an allegation of liability under section two thousand nine hundred eighty-five of this chapter hereunder shall be held before a hearing officer in accordance with the rules and regulations promulgated by the bureau.

- c.** The hearing officer shall not be bound by the rules of evidence in the conduct of the hearing, except rules relating to privileged communications.
  - d.** The hearing officer may, in his or her discretion, or at the request of the person charged or alleged to be liable on a showing of good cause and need therefor, issue subpoenas to compel the appearance of any person to give testimony, and issue subpoenas duces tecum to compel the production for examination or introduction into evidence of any book, paper or other thing relevant to the charges.
  - e.** In the case of a refusal to obey a subpoena, the bureau may make application to the supreme court pursuant to section twenty-three hundred eight of the civil practice law and rules, for an order requiring such appearance, testimony or production of materials.
  - f.** The bureau shall make and maintain a sound recording or other record of every hearing.
  - g.** After due consideration of the evidence and arguments, the hearing officer shall determine whether the charges or allegations have been established. No charge may be established except upon proof by clear and convincing evidence except allegations of civil liability for violations of triborough bridge and tunnel authority rules and regulations will be established in accordance with the provisions of section two thousand nine hundred eighty-five of this chapter. Where the charges have not been established, an order dismissing the charges or allegations shall be entered. Where a determination is made that a charge or allegation has been established or if an answer admitting the charge or allegation has been received, the hearing officer shall set a penalty in accordance with the penalty schedule established by the authority, or for allegations of civil liability in accordance with the provisions of section two thousand nine hundred eighty-five of this chapter and an appropriate order shall be entered in the records of the bureau. The respondent shall be given notice of such entry in person or by certified mail. This order shall constitute the final determination of the hearing officer, and for purposes of review it shall be deemed to incorporate any intermediate determinations made by said officer in the course of the proceeding. When no appeal is filed this order shall be the final order of the bureau.
- 8. Administrative and judicial review.**
- a.** There shall be appeals boards within the bureau which shall consist of three or more hearing officers, as the executive director shall determine. The executive director shall select a chairman for each appeals board from the members so appointed. No hearing officer may sit on an appeals board considering an appeal from a determination made by said hearing officer.
  - b.** A party aggrieved by a final determination of a hearing officer may obtain a review thereof by serving upon the bureau, within thirty days of the bureau's service of its notice of entry of such order a notice of appeal setting forth the reasons why the determination should be reversed or modified. There shall be no interlocutory appeals.
  - c.** An appeal from a final determination of a hearing officer shall be submitted to the appeals board, which shall have power to review the facts and the law, but shall not consider any evidence which was not presented to the hearing officer, and shall have power to reverse or modify any judgment appealed from for error of fact or law.
  - d.** Appeals shall be made without the appearance of the appellant and appellant's attorney unless the presence of either or both are requested by the appellant, appellant's attorney, appellant's parent or guardian if appellant is a minor, or the appeals board. Within twenty days after a request for an appearance, made by or for the appellant, appellant's attorney or the board, the bureau shall advise the appellant, either personally or by registered or certified mail, of the date on which he or she shall appear. The appellant shall be notified in writing of the decision of the appeals board.
  - e.** A party may request and obtain a record of the proceedings resulting in a determination for which an appeal is sought, but the party shall pay to the bureau the cost of providing such record. When a record is timely requested for the purpose of preparing an appeal, the bureau shall not thereafter cause the appeal to be heard or submitted less than ten days after the delivery or mailing of the record to appellant or appellant's attorney.

**f.** The service of a notice of appeal shall not stay the enforcement of an order appealed from unless the appellant shall have posted a bond in, or shall have paid, the amount of penalties imposed in the order appealed from within the time period established by rule of the bureau for payment of penalties following entry of such an order.

**g.** No determination of a hearing officer which is appealable under the provisions of this section shall be reviewed in any court unless an appeal has been filed and determined in accordance with this subdivision. When an appeal has been filed, the order of the appeals board shall be the final order of the bureau. Judicial review may be sought pursuant to article seventy-eight of the civil practice law and rules.

**9. Enforcement of judgments.**

**a.** The bureau shall have the power to enforce its final decisions and orders imposing civil penalties for violations of laws, rules and regulations enforced by it as if they were money judgments, without court proceedings, in the manner described herein.

**b.** Any final order of the bureau imposing a civil penalty, whether the adjudication was had by hearing or upon default or otherwise, shall constitute a judgment rendered by the bureau which may be entered in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state, and, provided that no proceeding for judicial review shall then be pending, may be enforced without court proceedings in the same manner as the enforcement of money judgments entered in civil actions. A final order against any person or persons shall be a bar to the criminal prosecution of, and in the case of a minor, juvenile offender proceedings against, said person or persons for conduct upon which the order was based.

**c.** Notwithstanding the foregoing provisions:

**(1)** Before a judgment based upon a default may be so entered the bureau must have attempted to notify the respondent by first class mail, in such form as the bureau may direct: (i) of the default decision and order and the penalty imposed; (ii) that a judgment will be entered in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state; and (iii) the entry of such judgments may be avoided by requesting a stay of default for good cause shown and either requesting a hearing or entering a plea pursuant to the rules of the bureau within thirty days of the mailing of such notice.

**(2)** Upon receipt by the bureau of a copy of an order to show cause in lieu of a notice of petition, or of a notice of petition, served upon it in a proceeding for judicial review of any final order of the bureau which constitutes a judgment which may be entered in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state, the bureau shall forthwith serve by first-class mail the attorney for the petitioner in such proceeding, or if the petitioner has initiated the proceeding pro se, the petitioner, with a notice stating whether or not a judgment was entered in any such court or other place provided for the entry of civil judgments within the state prior to the pendency of such proceeding for judicial review. If a judgment was so entered, such notice from the bureau also shall contain: (i) the name and address of the court or other place in which the judgment was entered, and (ii) identification of the judgment book, index number, docket number, date of entry, other information or combination of the foregoing, sufficient for the petitioner's attorney in such proceeding, or for the petitioner pro se, to locate such entry of judgment according to the indexing system utilized by the court or other place in which the judgment was entered. Proof of service of such notice from the bureau shall be filed by the bureau with the court in which the proceeding for judicial review is pending at the same time as the filing with the court of the bureau's first legal papers in such proceeding. The court in which the proceeding for judicial review is pending shall not accept for filing the bureau's first legal papers in such proceeding unless such legal papers are accompanied by such proof of service.

**10. Funds.** All penalties collected pursuant to the provisions of this section shall be paid to the authority to the credit of a transit crime fund which the authority shall establish. Any sums in this fund shall be used to

pay for programs selected by the board of the authority, in its discretion, to reduce the incidence of crimes and infractions on transit facilities, or to improve the enforcement of laws against such crimes and infractions. Such funds shall be in addition to and not in substitution for any funds provided by the state or the city of New York for such purposes.

## History

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Add, L 1984, ch 931, § 1; amd, L 1988, ch 319, § 1, eff Nov 22, 1988 (see 1988 note below); L 1992, ch 379, § 17, eff July 17, 1992 (see 1992 note below); L 2015, ch 460, §§ 1, 2, effective November 20, 2015.

Annotations

## Notes

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### Editor's Notes:

**Laws 1988, ch 319, § 3**, eff Nov 22, 1988, provides as follows:

§ 3. This act shall take effect on the one hundred twentieth day after it shall have become a law, provided however, that effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of section one of this act on its effective date are authorized and directed to be made and completed on or before such effective date.

**Laws 1992, ch 379, § 18**, eff July 17, 1992, provides as follows:

§ 18. This act shall take effect immediately; provided, however, that sections three and four of this act shall take effect upon the enactment into law by the state of New Jersey of legislation having an identical effect with section three of this act, but if the state of New Jersey has already enacted such legislation, sections three and four of this act shall take effect immediately; and provided further that nothing contained herein shall be deemed to affect the application, qualification, expiration or repeal of any other provision of law amended by any section of this act and such provision shall be applied or qualified or shall expire or be deemed repealed in the same manner, to the same extent and on the same date as the case may be as otherwise provided by law.

### Amendment Notes:

**The 2015 amendment by ch 460, §§ 1, 2**, in 3, in the first sentence, added "or with respect to acts or incidents occurring on omnibuses owned or operated by the metropolitan transportation authority or a subsidiary thereof" and "and (e) rules and regulations which may from time to time be established by the metropolitan transportation authority or a subsidiary thereof in accordance with the provisions of section twelve hundred sixty-six of this chapter" and added "or the metropolitan transportation authority or a subsidiary thereof" in the next to the last sentence; substituted "twenty-nine hundred eighty-five" for "two thousand nine hundred eighty-five" wherever it appears in the first sentence of 3 and in 4b; added "or the metropolitan transportation authority or a subsidiary thereof, as applicable" in 4b and 4i; and made related changes.

## Notes to Decisions

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Substantial evidence supported determination of Transit Adjudication Bureau that petitioner had entered premises of New York City Transit Authority without paying his fare where (1) notice of violation admitted into evidence constituted prima facie evidence of facts contained therein, (2) officer who issued notice testified that, although he had no independent recollection of incident, his practice was to include accurate information in notices and to



charge persons with fare evasion only when he actually observed them entering system without payment, and (3) petitioner's own testimony placed officer at location from which he could have seen unlawful entry. *Reape v Gunn*, 154 A.D.2d 682, 546 N.Y.S.2d 887, 1989 N.Y. App. Div. LEXIS 13763 (N.Y. App. Div. 2d Dep't 1989), app. dismissed, 75 N.Y.2d 1004, 557 N.Y.S.2d 310, 556 N.E.2d 1117, 1990 N.Y. LEXIS 1056 (N.Y. 1990), app. denied, 75 N.Y.2d 707, 554 N.Y.S.2d 476, 553 N.E.2d 1024, 1990 N.Y. LEXIS 560 (N.Y. 1990).

Records in possession of New York City Transit Adjudication Bureau, which were compiled in connection with charges and disposition involving 2 separate and unrelated bureau hearings, were exempt from disclosure under Freedom of Information Law by virtue of CLS Pub A § 1209-a(4)(f). *Reape v State Metro. Transp. Auth.*, 185 A.D.2d 275, 586 N.Y.S.2d 23, 1992 N.Y. App. Div. LEXIS 8905 (N.Y. App. Div. 2d Dep't 1992), app. denied, 81 N.Y.2d 710, 599 N.Y.S.2d 804, 616 N.E.2d 159, 1993 N.Y. LEXIS 1700 (N.Y. 1993).

First Amendment guaranteed a presumptive right of access at least to the administrative forum and the government could not simply dress up a criminal trial as a Transit Adjudication Bureau administrative hearing and thereby evade the well-established requirement that criminal proceedings be open to the public. *N.Y. Civ. Liberties Union v N.Y. City Transit Auth.*, 652 F.3d 247, 2011 U.S. App. LEXIS 14768 (2d Cir. N.Y. 2011).

Because public access plays a significant positive role in the functioning of the New York City Transit Adjudication Bureau (TAB) process, TAB proceedings are subject to a public right of access under the First Amendment. Thus, current TAB policies requiring third parties to obtain the consent of those contesting violation notices before the TAB to observe such hearings violated the First Amendment. *N.Y. Civ. Liberties Union v N.Y. City Transit Auth.*, 652 F.3d 247, 2011 U.S. App. LEXIS 14768 (2d Cir. N.Y. 2011).

In a civil rights organization's suit against the New York City Transit Authority challenging the legality of the policy that governed the public's access to the hearings conducted by New York City's Transit Adjudication Bureau (TAB), a federal district court held that the organization met its burden under Fed. R. Civ. P. 65(a) of showing entitlement to a preliminary injunction to enjoin the Authority's hearing policy of excluding the public because a qualified First Amendment, U.S. Const. amend. I, right of public access attached to the authority's hearings. The organization demonstrated that the Authority's TAB hearings were not afforded a per se immunity from First Amendment scrutiny; that under the *Richmond Newspapers'* experience and logic test, a qualified First Amendment right of access attached to the TAB hearings; and the Authority's blanket stance that it controlled the public access policy was not narrowly tailored to serve an appropriate governmental interest. *New York Civ. Liberties Union v New York City Transit Auth.*, 675 F. Supp. 2d 411, 2009 U.S. Dist. LEXIS 120470 (S.D.N.Y. 2009), *aff'd*, 684 F.3d 286, 2011 U.S. App. LEXIS 26087 (2d Cir. N.Y. 2011), *aff'd*, 652 F.3d 247, 2011 U.S. App. LEXIS 14768 (2d Cir. N.Y. 2011).

## Research References & Practice Aids

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### Cross References:

Disobedience of subpoena, CLS CPLR § 2308.

Proceeding against body or officer, CLS CPLR §§ 7801 et seq.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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End of Document

# NY CLS Pub A § 1210

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)***

## **§ 1210. Employees**

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1. Employees in the competitive and labor classes of the classified service in the employ of the board of transportation and performing services in respect to subjects or matters, jurisdiction of which was transferred to the authority, with the approval of the authority shall be transferred to comparable positions in the employ of the authority; and, any officers and other employees of such board of transportation may be so transferred and appointed by the authority.
2. The appointment, promotion and continuance of employment of all employees of the authority shall be governed by the provisions of the civil service law and the rules of the municipal civil service commission of the city. Employees of any board, commission or department of the city may be transferred to positions of employment under the authority in accordance with the provisions of the civil service law and shall be eligible for such transfer and appointment without examination to such positions of employment. Employees who have been appointed to positions in the service of the city under the rules of the municipal civil service commission of the city shall have the same status with respect thereto after transfer to positions of employment under the authority as they had under their original appointments. Employees of the authority shall be subject to the provisions of the civil service law.
3. Officers and employees of the city who are members or beneficiaries of any existing pension or retirement system shall continue to have the rights, privileges, obligations and status with respect to such system or systems as if they had continued in their city offices or employments. Employment by the authority shall constitute city service for the purposes of title B of chapter three of the administrative code of such city and the contributions required to be made by the authority pursuant to section B 3-20.0 of such code shall be an operating expense of the authority.
4. No assignment of, or power of attorney to collect or other instrument affecting, the whole or any part of his salary or earnings by an officer or employee of the authority, shall in any way operate to prevent the payment of such salary or earnings directly to such officer or employee unless approved in writing by a person duly designated by the authority for such purpose. In the event of the payment of such salary or earnings directly to such officer or employee, notwithstanding the existence of an assignment of, or power of attorney to collect or other instrument affecting, the whole or part thereof, not approved by such designated person, no person shall have any cause of action therefor against such authority for the recovery of any moneys by virtue of such unapproved assignment, power of attorney to collect or other instrument. Any such assignment, power of attorney or other instrument filed hereafter with the authority shall contain the name of the officer or employee affected thereby and his title or the position in which he is employed. The authority shall be entitled to receive a fee of two dollars upon the filing of such assignment, power of attorney or other instrument. In the event that such assignment, power of attorney or other instrument contains a provision to the effect that the same shall be ineffective unless subsequent written notice is given to the authority to make deductions, the filing fee shall be fifty cents; and the filing fee of any such subsequent written notice to make deductions in accordance with the terms of any such assignment, power of attorney or other instrument shall be one dollar and fifty cents. The filing fee of any other notice or paper relating to any such assignment, power of attorney or other instrument shall be one dollar.

## History

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Formerly § 1810, add, L 1953, ch 200; renumbered § 1210, L 1957, ch 914, § 3, eff April 24, 1957; L 1954, ch 349.

Annotations

## Notes

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### Prior Law:

Former § 1210, add, L 1939, ch 870; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 403.

## Notes to Decisions

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### 1. In general

### 2. Discipline of employees

### 3.—Grounds

### 4.—Evidence

### 5.—Procedural matters

### 6. Drug testing

### 7. Right of employee to back pay

### 1. In general

Individuals within grade of Transit Property Protection Supervisor may be assigned to duties at either Level I or Level II, and such assignment between levels constitutes neither promotion nor demotion under Civil Service Law, where one examination evaluates competency and tests basic knowledge and skill required for both levels, and difference in positions is Level II requirement of assumption of more responsibility and accountability accompanied by greater compensation; reassignment or consolidation of assignments under single title requiring completion of one single written competitive exam to be promoted to title, but no additional exams to move within title (termed "broadbanding"), is permissible. *Kitchings v Jenkins*, 85 N.Y.2d 694, 628 N.Y.S.2d 36, 651 N.E.2d 904, 1995 N.Y. LEXIS 1047 (N.Y. 1995).

New York City's proscription against sex discrimination cannot be construed as impairment of powers of New York City Transit Authority, despite fact that CLS Mun H R § 10(5) forbids adoption of local laws which impair powers of public corporation, since authority's powers as employer do not include right to discriminate on basis of gender. *Levy v City Comm'n on Human Rights*, 85 N.Y.2d 740, 628 N.Y.S.2d 245, 651 N.E.2d 1264, 1995 N.Y. LEXIS 1122 (N.Y. 1995).

Transit Authority employee's significantly poorer attendance record provided rational basis for denying him promotion in favor of applicant who scored below him on civil service examination in view of discretion afforded to transit authority to select one of 3 highest ranking candidates pursuant to CLS Pub A § 1210 and CLS Civ S § 61. *Schmitt v Kiley*, 124 A.D.2d 661, 507 N.Y.S.2d 907, 1986 N.Y. App. Div. LEXIS 61962 (N.Y. App. Div. 2d Dept 1986), app. denied, 69 N.Y.2d 612, 517 N.Y.S.2d 1027, 511 N.E.2d 86, 1987 N.Y. LEXIS 16891 (N.Y. 1987).

Substantial evidence supported determination of Public Employment Relations Board that there was no significant difference between duties of new position of assistant medical director and position of physician that was abolished by New York City Transit Authority since "additional" duties assigned to assistant medical directors did not establish lack of community interest between them and remaining physicians so as to take them out of bargaining unit. In re New York City Transit Authority, 154 A.D.2d 680, 546 N.Y.S.2d 884, 1989 N.Y. App. Div. LEXIS 13798 (N.Y. App. Div. 2d Dep't 1989), amended, 1989 N.Y. App. Div. LEXIS 14438 (N.Y. App. Div. 2d Dep't Nov. 20, 1989).

Substantial evidence supported determination of Public Employment Relations Board that reorganization of physicians within New York City Transit Authority violated CLS Civ S § 209-a(1)(a) and (c) where reorganization was initiated immediately on heels of implementation of first collective bargaining agreement and had effect of undermining and interfering with ability of certified employee organization to represent its bargaining unit members. In re New York City Transit Authority, 154 A.D.2d 680, 546 N.Y.S.2d 884, 1989 N.Y. App. Div. LEXIS 13798 (N.Y. App. Div. 2d Dep't 1989), amended, 1989 N.Y. App. Div. LEXIS 14438 (N.Y. App. Div. 2d Dep't Nov. 20, 1989).

The purpose of this statute in providing for "pension-for-increased-take-home-pay" was to provide an indirect method of increasing take-home pay without making a general salary increase. Neil v Wagner, 27 Misc. 2d 1053, 211 N.Y.S.2d 598, 1960 N.Y. Misc. LEXIS 2010 (N.Y. Sup. Ct. 1960).

A group of employees of the New York City Rapid Transit Authority, whose wages are paid on an hourly basis out of operating revenue and whose pay scales and privileges are fixed and determined by collective bargaining, is not entitled to complain of unjust discrimination and violation of their rights of equal protection of the laws where not granted benefits under this section, because certain other employees paid on a different basis have been accorded such benefits. Neil v Wagner, 27 Misc. 2d 1053, 211 N.Y.S.2d 598, 1960 N.Y. Misc. LEXIS 2010 (N.Y. Sup. Ct. 1960).

Nonunion managers' claim against the transit authority, wherein they challenged their entitlement to pension and retirement benefits under the equal pay statute, lacked merit because while it provided for equal compensation for certain employees, the managers were not state employees and their compensation was determined under a different statutory provision by the transit authority. Matter of Clark v Metropolitan Transp. Auth., 999 N.Y.S.2d 309, 46 Misc. 3d 344, 2013 N.Y. Misc. LEXIS 6679 (N.Y. Sup. Ct. 2013).

## **2. Discipline of employees**

Substantial evidence supported action of New York City Transit System in demoting employee to position of railroad clerk after finding that he had violated system's rules and regulations; demotion was not sanction which was shocking to one's sense of fairness. Shipman v New York City Transit Authority, 56 A.D.2d 934, 392 N.Y.S.2d 706, 1977 N.Y. App. Div. LEXIS 11335 (N.Y. App. Div. 2d Dep't 1977).

Employee discharged from his position as division engineer with New York City Transit Authority was not entitled to hearing under CLS Civ S § 75 since his status as noncompetitive employee did not afford him protections of that statute. Garner v Gunn, 131 A.D.2d 632, 516 N.Y.S.2d 718, 1987 N.Y. App. Div. LEXIS 48098 (N.Y. App. Div. 2d Dep't), app. denied, 70 N.Y.2d 608, 521 N.Y.S.2d 225, 515 N.E.2d 910, 1987 N.Y. LEXIS 18934 (N.Y. 1987).

Imposition of penalty of dismissal on car maintainer for New York City Transit Authority would be so disproportionate to offense as to be shocking to one's sense of fairness where only sustainable charges against him in 4 years were one official caution and charge of being away from his work station without authorization for approximately 30 minutes. Fiorenza v Gunn, 140 A.D.2d 295, 527 N.Y.S.2d 806, 1988 N.Y. App. Div. LEXIS 4636 (N.Y. App. Div. 2d Dep't 1988).

Court would affirm determination finding petitioner guilty of misconduct and terminating him from his employment with New York City Transit Authority (TA), but matter would be remanded for computation as to amount of back pay owed to petitioner for approximate 18-month period while he was suspended without pay prior to his dismissal, less 30 days authorized under CLS Civ S § 75(3) and any periods of delay attributable to him; existence of "substitute disciplinary procedure" in collective bargaining agreement between Transit Workers Union and TA, which petitioner

was required to follow until he was permitted to elect hearing under CLS Civ S § 75, did not serve to forestall TA's obligation as to back pay, since collective bargaining agreement contained no provision relating to that obligation. *Kemp v Gunn*, 143 A.D.2d 915, 533 N.Y.S.2d 513, 1988 N.Y. App. Div. LEXIS 10288 (N.Y. App. Div. 2d Dep't 1988).

Petitioner was discharged from his position as carpenter with New York City Transit Authority (NYCTA) in violation of CLS Exec § 296 where NYCTA failed to show that petitioner's vision impairment rendered him incapable of reasonably performing activities involved in position of carpenter. *Obas v Kiley*, 149 A.D.2d 422, 539 N.Y.S.2d 767, 1989 N.Y. App. Div. LEXIS 4393 (N.Y. App. Div. 2d Dep't 1989).

Determination of New York City Transit Authority to terminate employment of porter was not shockingly unfair where porter's disciplinary record revealed that, over 15-year period of employment, he had received 87 cautions, 4 suspensions and 2 "final warnings." *Copelin v New York City Transit Authority*, 184 A.D.2d 698, 585 N.Y.S.2d 89, 1992 N.Y. App. Div. LEXIS 8467 (N.Y. App. Div. 2d Dep't 1992).

Court properly vacated arbitration award which modified penalty imposed by New York City Transit Authority on employee from dismissal to time-served suspension since employee's misconduct, which occurred while he was operating subway train, jeopardized safety of passengers; directing employee's reinstatement under circumstance was contrary to public policy and Authority's important statutory responsibility to operate transit system for public's safety (CLS Pub A § 1204). *New York City Transit Auth. v Transp. Workers Union of Am., Local 100*, 243 A.D.2d 567, 663 N.Y.S.2d 114, 1997 N.Y. App. Div. LEXIS 9851 (N.Y. App. Div. 2d Dep't 1997), app. denied, 91 N.Y.2d 812, 672 N.Y.S.2d 848, 695 N.E.2d 717, 1998 N.Y. LEXIS 1034 (N.Y. 1998).

### **3. —Grounds**

It was not unduly harsh to dismiss petitioner from his position as bus operator for New York City Transit Authority based on his use of controlled substances without authorization, in violation of authority's regulations. *Phifer v Gunn*, 143 A.D.2d 992, 533 N.Y.S.2d 898, 1988 N.Y. App. Div. LEXIS 10782 (N.Y. App. Div. 2d Dep't 1988), app. denied, 74 N.Y.2d 608, 545 N.Y.S.2d 104, 543 N.E.2d 747, 1989 N.Y. LEXIS 2363 (N.Y. 1989).

Determination of arbitration panel, refusing to overturn dismissal of transit authority motorman, was not irrational since (1) panel was aware of motorman's contention that he was unfairly compelled to appear for work at same time that he was required to attend drug counseling session, but was not required to accept motorman's self-serving explanations for his failure to attend drug counseling session, and (2) panel also found that motorman missed other drug counseling sessions. *Akers v New York City Transit Authority*, 172 A.D.2d 749, 569 N.Y.S.2d 136, 1991 N.Y. App. Div. LEXIS 5493 (N.Y. App. Div. 2d Dep't 1991).

It was proper to dismiss New York City Transit Authority police officer for failing to report for medical examination on time, failing to take required urinalysis, and failing to report for duty for approximately one month without leave. *Morales v New York City Transit Auth.*, 230 A.D.2d 859, 646 N.Y.S.2d 571, 1996 N.Y. App. Div. LEXIS 8544 (N.Y. App. Div. 2d Dep't 1996).

New York City Transportation Authority properly dismissed employee who failed to report for duty as directed, failed to report his absence from duty, and submitted false reports in connection with such failures, especially since he had disciplinary history that included prior false report for which he was suspended. *Rodriguez v New York City Transit Auth.*, 247 A.D.2d 250, 668 N.Y.S.2d 603, 1998 N.Y. App. Div. LEXIS 1045 (N.Y. App. Div. 1st Dep't 1998).

It was appropriate to dismiss New York City Transit Authority police officer for having ingested cocaine. *Danese v New York City Transit Auth.*, 256 A.D.2d 464, 683 N.Y.S.2d 860, 1998 N.Y. App. Div. LEXIS 13490 (N.Y. App. Div. 2d Dep't 1998), app. denied, 93 N.Y.2d 811, 695 N.Y.S.2d 540, 717 N.E.2d 699, 1999 N.Y. LEXIS 1899 (N.Y. 1999).

### **4. —Evidence**

Dismissal of New York City Transit Authority bus driver, based on positive result for marijuana in urine test administered on day following his completion of 30-day drug rehabilitation program, was not supported by substantial evidence and would be annulled where (1) driver testified that he stopped using marijuana immediately after receiving positive result in first drug test on same day he entered drug program, (2) toxicology expert, who supervised transit authority's drug testing program, testified that it was possible for marijuana to remain in urine for considerable length of time which could vary widely from person to person, and (3) there was no evidence of driver's continued use of marijuana other than doubtful results of second test. *Hall on behalf of Canty v New York City Transit Authority*, 138 A.D.2d 350, 525 N.Y.S.2d 643, 1988 N.Y. App. Div. LEXIS 2126 (N.Y. App. Div. 2d Dep't), app. denied, 72 N.Y.2d 810, 534 N.Y.S.2d 938, 531 N.E.2d 658, 1988 N.Y. LEXIS 2944 (N.Y. 1988).

Directive to car maintainer for New York City Transit Authority to submit to blood and urine test was not predicated on reasonable suspicion, and thus his failure to comply did not constitute grounds for disciplinary action, where no witness had seen him drinking or taking drugs although superintendent had been observing him for 30 minutes, there was no evidence to link car maintainer with tool locker in which vodka bottle was found, and there was no evidence that car maintainer had been in accident, had bloodshot eyes, alcoholic breath or incoherent speech, or that he was staggering; car maintainer's mere presence in area allegedly used by employees for alcohol and drug consumption did not establish reasonable suspicion. *Fiorenza v Gunn*, 140 A.D.2d 295, 527 N.Y.S.2d 806, 1988 N.Y. App. Div. LEXIS 4636 (N.Y. App. Div. 2d Dep't 1988).

Substantial evidence supported determination of New York City Transit Authority which dismissed petitioner from his position as bus driver for illegal sale of transfer books where evidence adduced at hearing included audio and videotape of sale made by transit authority officer who personally observed sale and who testified at hearing. *Gellman v Gunn*, 143 A.D.2d 628, 533 N.Y.S.2d 113, 1988 N.Y. App. Div. LEXIS 9497 (N.Y. App. Div. 2d Dep't 1988).

##### **5. —Procedural matters**

Court properly vacated petitioner's dismissal from her position as New York City Transit Authority police officer and remitted matter for new determination of appropriate penalty where petitioner did not receive notice of hearing officer's intention to inspect her employment file prior to making his recommendation regarding appropriate penalty. *Ferguson v Meehan*, 141 A.D.2d 604, 529 N.Y.S.2d 525, 1988 N.Y. App. Div. LEXIS 6588 (N.Y. App. Div. 2d Dep't 1988).

Exhaustion doctrine did not bar proceeding to compel New York City Transit Authority (NYCTA) to reinstate petitioner to his position as carpenter where his failure to utilize appeal procedure of state Civil Service Commission was occasioned by NYCTA's failure to inform him of his procedural rights thereunder. *Obas v Kiley*, 149 A.D.2d 422, 539 N.Y.S.2d 767, 1989 N.Y. App. Div. LEXIS 4393 (N.Y. App. Div. 2d Dep't 1989).

Court correctly annulled determination by New York City Transit Authority terminating petitioner's employment on ground of misconduct where (1) all notices of hearing were sent to address from which petitioner had moved and were returned unopened with notation that petitioner had moved and left no new address, (2) it was uncontroverted that petitioner was never apprised of hearing, and (3) although petitioner was aware that transit authority could not notify him at address it had on record, transit authority undertook no other steps to notify petitioner of pending charges and hearing, and regarded petitioner's failure to receive notice as "his problem." *Delbello v New York City Transit Authority*, 151 A.D.2d 479, 542 N.Y.S.2d 270, 1989 N.Y. App. Div. LEXIS 7463 (N.Y. App. Div. 2d Dep't 1989).

Arbitration award modifying penalty of dismissal imposed on New York City Transit Authority employee for sexually harassing female co-worker, by reducing penalty to suspension without pay for 4-month period employee had not worked, did not violate public policy against sexual harassment in workplace, and would therefore be sustained as being within arbitrator's powers since (1) there is no legal requirement mandating discharge as punishment for employee found guilty of sexual harassment for first time, and (2) applicable collective bargaining agreement specifically gave arbitration board power to reduce any punishment imposed on employee except in case of assault.

New York City Transit Auth. v Transp. Workers Union of Am., Local 100, 159 Misc. 2d 1003, 606 N.Y.S.2d 510, 1993 N.Y. Misc. LEXIS 511 (N.Y. Sup. Ct. 1993).

## 6. Drug testing

Action of New York City Transit Authority, in requiring Authority police officer to provide urine sample, did not unreasonably intrude on officer's constitutional right to privacy; further, there was no merit to officer's contention that Authority violated his right of privacy pursuant to CLS Pub Health § 2803-c. *Crockett v Bratton*, 199 A.D.2d 1079, 607 N.Y.S.2d 505 (N.Y. App. Div. 4th Dep't 1993).

## 7. Right of employee to back pay

New York City Transit Authority bus operator was entitled to back pay for period beginning 30 days after his suspension and continuing until his subsequent dismissal, notwithstanding that his suspension was imposed pursuant to parties' collective bargaining agreement, since that agreement did not purport to alter or supersede CLS Civ S § 75(3) as to suspension without pay pending hearing and determination of charges against permanent civil service employees. *Phifer v Gunn*, 143 A.D.2d 992, 533 N.Y.S.2d 898, 1988 N.Y. App. Div. LEXIS 10782 (N.Y. App. Div. 2d Dep't 1988), app. denied, 74 N.Y.2d 608, 545 N.Y.S.2d 104, 543 N.E.2d 747, 1989 N.Y. LEXIS 2363 (N.Y. 1989).

Court improperly granted application by New York City Transit Authority (NYCTA) police officer for back pay for period between original effective date of his dismissal and date when NYCTA's vice-president for labor relations approved hearing referee's adherence to his original recommendation of dismissal since matter had been remitted to referee solely for redetermination of penalty, which was not reduced. *De Martino v Meehan*, 149 A.D.2d 703, 540 N.Y.S.2d 500, 1989 N.Y. App. Div. LEXIS 5354 (N.Y. App. Div. 2d Dep't 1989).

Public Employment Relations Board properly required New York City Transit Authority to reinstate all employees laid off from title of "Physician" with back pay, notwithstanding contention that those part-time positions were no longer available, since jobs were no longer available precisely because positions were improperly eliminated under reorganization which violated rights of physicians to be represented under collective bargaining agreement. In re New York City Transit Authority, 154 A.D.2d 680, 546 N.Y.S.2d 884, 1989 N.Y. App. Div. LEXIS 13798 (N.Y. App. Div. 2d Dep't 1989), amended, 1989 N.Y. App. Div. LEXIS 14438 (N.Y. App. Div. 2d Dep't Nov. 20, 1989).

## Opinion Notes

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### Agency Opinions

#### 1. Drug testing

New York City Transit Authority violated CLS Civ S § 109-a(1)(d) by unilaterally implementing random drug, controlled substances, and alcohol testing policy for unit employees in safety-sensitive positions. *Re Amalgamated Transit Union, Division 1056, AFL-CIO*, 1992 PERB No. U-12982.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1207-a, 1207-b.

Transition—election to withdraw from the metropolitan commuter transportation district, § 1279-b.



**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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End of Document

# NY CLS Pub A § 1210-a

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)***

## **§ 1210-a. Flexible benefits program**

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

a. “Code” shall mean the United States internal revenue code of nineteen hundred eighty-six, as amended, and regulations promulgated thereunder.

b. “Authority” shall mean (1) the New York city transit authority, (2) the Manhattan and Bronx surface transit operating authority, or (3) the Staten Island rapid transit operating authority.

c. “Employee” shall mean any officer or employee of any of the entities set forth in paragraph c of this subdivision who is not eligible to receive benefits from the New York city employee benefits program.

For purposes of this section, an independent contractor shall not be considered an employee.

d. “Flexible benefits program” shall mean the program established pursuant to this section, qualifying as a cafeteria plan as defined in section one hundred twenty-five of the code or any successor section thereto providing similar benefits, and provided as a part of an employee benefits program administered by the authority.

e. “Program administrator” shall mean that agent, as determined by the authority, responsible for the maintenance and management of the flexible benefits program as authorized in subdivision two of this section.

2. The authority is authorized to establish and implement a flexible benefits program for its employees who are not eligible to receive benefits from the New York city employee benefits program, consistent with applicable provisions of the code. It may enter into agreements with persons or entities to act as program administrators of the flexible benefits program. It shall establish regulations for the appropriate administration of such flexible benefits program.

3. At the request of an employee, the chief fiscal officer of the authority, or the officer responsible for the administration of the authority’s payroll, shall, by payroll deduction, adjust the payment of the compensation of such employee as provided in a written statement by the employee in connection with the establishment and maintenance of the flexible benefits program as authorized by subdivision two of this section, and shall transfer the amount so adjusted to the authorized program administrator.

4. Moneys held for employees in any accounts established pursuant to the flexible benefits program, as authorized in subdivision two of this section, shall be held by the program administrator as agent for the participating employee, shall be accounted for separately and shall remain the property of the authority to the extent required by the code. Notwithstanding any law to the contrary, moneys may be paid out of such accounts without any appropriation by law. Any unexpended balances in such accounts at the end of a plan year as that term is defined by the United States internal revenue service shall be returned to the control of the authority to the extent required by the code.

5. To the extent permitted by the code, any salary deduction or deferral to an employee under the flexible benefits program established pursuant to this section shall be considered part of such employee’s annual

compensation for the purpose of computing pension contributions and retirement benefits by any retirement system or plan to which the authority contributes on behalf of said employee. However, this subdivision shall in no way be construed to supersede the provisions of sections four hundred thirty-one, five hundred twelve and six hundred eight of the retirement and social security law or any other similar provision of law which limits the salary base for computing retirement benefits payable by a public retirement system.

## History

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Add, L 1991, ch 421, § 2, eff July 19, 1991.

Annotations

## Research References & Practice Aids

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### Federal Aspects:

Cafeteria plans. 26 USCS § 125.

### Jurisprudences:

63C Am Jur 2d, Public Officers and Employees §§ 516, 534, 535, 538.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1211

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)*

## **§ 1211. Members and employees not to be interested in contracts**

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It shall be a misdemeanor for any member, officer or employee of the authority to be in any way or manner interested, directly or indirectly, in any contract made by the authority.

### **History**

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Formerly § 1811, add, L 1953, ch 200; renumbered 1211, L 1957, ch 914, § 3, eff April 24, 1957.

Annotations

### **Notes**

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#### **Prior Law:**

Former § 1211, add, L 1939, ch 870; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 404.

### **Notes to Decisions**

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In a prosecution of a senior executive officer of the Transit Authority for improper receipt of meals, Pub A Law § 1211 would not preclude additional regulation by local authorities and the officer could therefore be prosecuted under the appropriate section of the New York City Charter. *People v De Roos*, 118 Misc. 2d 445, 462 N.Y.S.2d 99, 1983 N.Y. Misc. LEXIS 3334 (N.Y. Crim. Ct. 1983).

### **Research References & Practice Aids**

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#### **Cross References:**

This section referred to in §§ 1203-a, 1207-a, 1207-b.

#### **Jurisprudences:**

63C Am Jur 2d, Public Officers and Employees § 484.

64 Am Jur 2d, Public Works and Contracts § 25.

**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1212

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)***

## **§ 1212. Actions against the authority**

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1. In every action against the authority for damages, for injuries to real or personal property, or for the destruction thereof, or for personal injuries or death, the complaint shall contain an allegation that at least thirty days have elapsed since the demand, claim or claims upon which such action is founded were presented to a member of the authority, its general manager or other officer designated for such purpose and that the authority has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment.
2. Except in an action for wrongful death, an action against the authority founded on tort shall not be commenced more than one year and ninety days after the happening of the event upon which the claim is based, nor unless a notice of claim shall have been served on the authority within the time limited, and in compliance with all the requirements of section fifty-e of the general municipal law. An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of this chapter.
3. The authority shall be liable for, and shall assume the liability to the extent that it shall save harmless any duly appointed officer or employee of the authority for the negligence of such officer or employee, in the operation of a vehicle or other facility of transportation under the jurisdiction and control of the authority, upon the public streets, highways or railroads within the city, in the discharge of a duty imposed upon such officer or employee at the time of the accident, injury or damages complained of, while acting in the performance of his duties and within the scope of his employment.
4. No action shall be maintained against the authority or against such officer or employee on account of such negligence unless a notice of claim shall have been made and served on the authority within the time limited and in compliance with all the requirements of section fifty-e of the general municipal law; nor unless it shall appear by and as an allegation in the complaint that at least thirty days have elapsed since the service of such notice upon a member of the authority, its general manager or other officer designated for such purpose and that the authority has neglected or refused to make an adjustment or payment of the claim for thirty days after the service of such notice; nor unless such action shall be commenced within one year after the cause of action therefor shall have accrued.
5. The authority may require any person, presenting for settlement an account or claim for any cause whatever against the authority, to be sworn before a member, counsel or an attorney, officer or employee of the authority designated for such purpose, touching such account or claim and when so sworn to answer orally as to any facts relative to such account or claim. The authority shall have power to settle or adjust all claims in favor of or against the authority.
6. The rate of interest to be paid by the authority, or by its officers or employees whose liability has been assumed by the authority pursuant to subdivision three of this section, upon any judgment or accrued claim against the authority or such officer or employee, shall not exceed three per centum per annum.

## **History**

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Formerly § 1812, add, L 1953, ch 200; renumbered § 1212, L 1957, ch 914, § 3, eff April 24, 1957; L 1953 ch 881, § 3; L 1959, ch 366; L 1960, ch 306, eff March 29, 1960; L 1969, ch 618; L 1990, ch 804, § 25, eff Aug 24, 1990 (see 1990 note below).

Annotations

## Notes

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### Prior Law:

Former § 1212, add, L 1951, ch 334; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 443.

### Editor's Notes:

**Laws 1990, ch 804, § 126**, eff Aug 24, 1990, provides as follows:

This act shall take effect on the thirtieth day after it shall have become a law, and shall apply to actions accruing on or after such date.

## Notes to Decisions

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1. In general
2. Notice of claim
- 3.—Sufficiency
- 4.—Timeliness; late notice
- 5.—Service
6. Statute of limitations
- 7.—Applicable time period
- 8.—Accrual
- 9.—Tolling
10. Pleadings
- 11.—Amendment
12. Examination of claimant
13. Disclosure
14. Evidence
15. Jury instructions
16. Summary judgment

**17.Liability of authority**

**18.Particular acts or omissions**

**19.—Premises liability**

**20.—Vicarious liability; respondeat superior**

**21.— —Failure to act to prevent injury**

**22.Interest on award**

**1. In general**

CLS Gen Mun § 205-e(2) applies only to actions which accrued between January 1, 1987 and its effective date of July 12, 1989; thus, since police officer's action against New York City Transit Authority accrued on June 28, 1992, he was not exempt from notice of claim requirements under CLS Pub A § 1212 and CLS Gen Mun § 50-e. Huebner v New York City Transit Auth., 226 A.D.2d 678, 641 N.Y.S.2d 720, 1996 N.Y. App. Div. LEXIS 4600 (N.Y. App. Div. 2d Dep't 1996).

Court erred in denying New York City Transit Authority's motion for summary judgment dismissing so much of CLS Gen Mun § 205-e action as was based on violations of NYC Admin Code §§ 27-375 and 27-381 and NYC Health Code (24 RCNY) § 153.19 since those provisions were inapplicable to police officer's claim that he slipped on bottle on subway station's interior staircase. D'Arpa v New York City Transit Auth., 239 A.D.2d 126, 656 N.Y.S.2d 638, 1997 N.Y. App. Div. LEXIS 4464 (N.Y. App. Div. 1st Dep't 1997).

Court erred in confirming arbitration award which exceeded \$10,000 per person statutory limit of New York City Transit Authority's uninsured motorist coverage that was in effect at time of accident. Spears v New York City Transit Auth., 262 A.D.2d 493, 692 N.Y.S.2d 100, 1999 N.Y. App. Div. LEXIS 6671 (N.Y. App. Div. 2d Dep't 1999), app. denied, 94 N.Y.2d 761, 707 N.Y.S.2d 142, 728 N.E.2d 338, 2000 N.Y. LEXIS 232 (N.Y. 2000).

Court would dismiss action for judgment declaring that New York City Transit Authority (NYCTA) failed to meet its obligation to provide reasonable level of service, breached its duty as public common carrier, and breached its contract with plaintiff bus riders, since relief sought by plaintiffs would embroil judiciary in management and operation of NYCTA. Nemser v New York City Transit Authority, 140 Misc. 2d 369, 530 N.Y.S.2d 493, 1988 N.Y. Misc. LEXIS 387 (N.Y. Sup. Ct. 1988), aff'd, 150 A.D.2d 993, 542 N.Y.S.2d 1003, 1989 N.Y. App. Div. LEXIS 6258 (N.Y. App. Div. 1st Dep't 1989).

Plaintiff in action against Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) would not be required to sign transcript of pre-suit hearing conducted by MABSTOA pursuant to CLS Pub Auth § 1212(5), even though claimants against MABSTOA must generally comply with all requirements applicable to service of notices of claim against municipality found in CLS Gen Mun § 50-e, since CLS Pub Auth § 1212(5), unlike CLS Gen Mun § 50-h, does not direct that claimant execute copy of statutory hearing or even provide for hearing's admissibility at trial. Allen v Manhattan & Bronx Surface Transit Operating Authority, 147 Misc. 2d 469, 556 N.Y.S.2d 201, 1990 N.Y. Misc. LEXIS 276 (N.Y. Sup. Ct. 1990), aff'd, 170 A.D.2d 237, 565 N.Y.S.2d 1009, 1991 N.Y. App. Div. LEXIS 1369 (N.Y. App. Div. 1st Dep't 1991).

Former public employee's disability discrimination claims under state human rights law and Consolidated Omnibus Budget Reconciliation Act claims against his former public employer were not subject to the thirty-day demand rule of N.Y. Pub. Auth. Law § 1276(1) because those claims were not tort claims, and N.Y. Pub. Auth. Law § 1276(1) only applied to tort claims, similarly to claims under N.Y. Pub. Auth. Law § 1212(1). Treanor v Metro. Transp. Auth., 414 F. Supp. 2d 297, 2005 U.S. Dist. LEXIS 35861 (S.D.N.Y. 2005).

**2. Notice of claim**



Plaintiff's motion to amend notice of claim against New York City Transit Authority, made more than 6 years after accident, was properly denied where erroneous accident date supplied not only in notice of claim but also at CLS Gen Mun § 50-h hearing, in bill of particulars, and at examination before trial prejudiced Authority's investigation by preventing it from obtaining aided report until one of its attorneys, preparing for trial, surmised correct date from plaintiff's medical reports, and aided report indicated accident location different from that specified in notice of claim. *Siino v New York City Transit Auth.*, 248 A.D.2d 244, 671 N.Y.S.2d 216, 1998 N.Y. App. Div. LEXIS 2562 (N.Y. App. Div. 1st Dep't 1998).

While a summons and complaint were not a substitute for a notice of claim for wrongful death required by N.Y. Pub. Auth. Law §§ 1212(2) and 2980 and N.Y. Gen. Mun. Law § 50-e(1), § 50-e(6) permitted amendment of the claim if it would not prejudice a city transit authority, whose bus driver's negligence allegedly resulted in personal injuries and then the death of the wheelchair-bound decedent; because the wrongful death claim arose from the same facts as alleged in the timely notice of claim for personal injuries, the personal representative should have been granted leave to amend. *Ramos v New York City Tr. Auth.*, 60 A.D.3d 517, 876 N.Y.S.2d 13, 2009 N.Y. App. Div. LEXIS 1894 (N.Y. App. Div. 1st Dep't 2009).

Court would not rectify failure to file timely notice on New York City Transit Authority, where plaintiffs filed their notice of claim with city controller through mistake. *Phifer v New York City Transit Authority*, 4 Misc. 2d 802, 159 N.Y.S.2d 647, 1956 N.Y. Misc. LEXIS 1263 (N.Y. Sup. Ct. 1956).

By § 1212(2) of the Public Authorities Law, compliance with the requirements of General Municipal Law § 50-e is a condition precedent to the maintenance of an action against the Manhattan and Bronx Surface Transit Operating Authority in tort. *Ware v Manhattan & Bronx Surface Transit Operating Authority*, 49 Misc. 2d 704, 268 N.Y.S.2d 519, 1965 N.Y. Misc. LEXIS 1470 (N.Y. Sup. Ct. 1965).

In an action for wrongful death and conscious pain and suffering by the administratrix of the decedent's estate, the motion to strike the New York City Transit Authority's second affirmative defense, which alleged a failure to comply with the notice of claim provisions of Pub A Law § 1212, would be granted where the second affirmative defense only challenged the capacity of the administratrix to maintain the action in her individual capacity and where the Transit Authority failed to comply with the requirements of Gen Mun Law § 50-e(3)(c) that, if the notice served does not comply with its provisions, the defendant has an affirmative duty to return the notice specifying the defect within 30 days after the notice is received; the Transit Authority's cross-motion to dismiss the second cause of action would be granted to the extent of dismissing the claims of the administratrix in her individual capacity since, under EPTL §§ 5-4.1, 11-3.2, the actions for wrongful death and conscious pain and suffering are only maintainable by the personal representative of the decedent and not by an individual. *Vines v New York City Transit Authority*, 107 Misc. 2d 283, 433 N.Y.S.2d 959, 1980 N.Y. Misc. LEXIS 2862 (N.Y. Sup. Ct. 1980).

Claims for intentional and negligent infliction of emotional distress failed to survive summary judgment, because the employee failed to provide the employer with a separate notice of those claims, as required by N.Y. Pub. Auth. Law § 1212(2). *Parikh v New York City Transit Auth.*, 681 F. Supp. 2d 371, 2010 U.S. Dist. LEXIS 8599 (E.D.N.Y. 2010).

### **3. —Sufficiency**

No-fault claim form served on New York City Transit Authority was insufficient to satisfy notice of claim requirements of CLS Pub A § 1212 and CLS Gen Mun § 50-e. *Zydyk v New York City Transit Authority*, 151 A.D.2d 745, 542 N.Y.S.2d 768, 1989 N.Y. App. Div. LEXIS 9161 (N.Y. App. Div. 2d Dep't 1989).

New York City Transit Authority and its employee were entitled to summary judgment dismissing action for personal injuries sustained in accident that occurred at 117th Street in borough of Manhattan, since plaintiff's notice of claim stated that accident occurred at 117th Street in Queens county, and plaintiff did not seek leave to serve amended notice of claim until 3 ½ years after claim arose; even though original notice of claim was prepared and served in good faith, authority was clearly prejudiced by delay since it was unable to conduct proper investigation. *Illera v New York City Transit Authority*, 181 A.D.2d 658, 581 N.Y.S.2d 210, 1992 N.Y. App. Div. LEXIS 3028 (N.Y. App. Div. 2d Dep't 1992).

In action against New York City Transit Authority to recover for injuries sustained in fall on subway staircase, court properly denied plaintiff's motion for leave to file amended notice of claim where original notice misidentified staircase; prejudice to authority was not eliminated by plaintiff's production of color photographs purporting to show true accident site on eve of trial 5 years after accident. *Merino v New York City Transit Authority*, 184 A.D.2d 441, 585 N.Y.S.2d 404, 1992 N.Y. App. Div. LEXIS 8545 (N.Y. App. Div. 1st Dep't 1992).

New York City Transit Authority was entitled to summary judgment based on failure of notice of claim to describe accident location with sufficient particularity, and resulting prejudice, where (1) notice of claim erroneously described accident site as being "at the Atlantic Avenue Station for the #2 Train, more specifically, at stairway P-10," when actual location was adjacent Pacific Street subway station on stairway P-10, and (2) transit authority did not learn of correct location until 23 months after accident. *Charles v New York City Transit Auth.*, 205 A.D.2d 488, 613 N.Y.S.2d 35, 1994 N.Y. App. Div. LEXIS 5964 (N.Y. App. Div. 2d Dep't 1994), app. denied, 85 N.Y.2d 801, 624 N.Y.S.2d 371, 648 N.E.2d 791, 1995 N.Y. LEXIS 179 (N.Y. 1995).

Court improperly granted leave to amend notices of claim against Manhattan and Bronx Surface Transit Operating Authority where proposed "slippery seat" theory (essentially claim of design defect) was not alluded to in complaint or in original notices of claim which asserted only human error and defect in steering mechanism, and it was first sought to be interposed long after one year and 90-day limitation had passed. *Chipurnoi v Manhattan & Bronx Surface Transit Operating Auth.*, 216 A.D.2d 171, 628 N.Y.S.2d 666, 1995 N.Y. App. Div. LEXIS 6975 (N.Y. App. Div. 1st Dep't 1995).

Court would reverse jury verdict finding New York City Transit Authority 50 percent at fault when plaintiff fell onto subway track and was struck by oncoming train where Authority was unaware before plaintiff's deposition, which was conducted more than 18 months after accident, that plaintiff was claiming that he had fallen because he had slipped on portion of running board, and Authority was prejudiced because it could not show so many years after accident absence of defect in running board. *Mondert v New York City Transit Auth.*, 224 A.D.2d 500, 638 N.Y.S.2d 480, 1996 N.Y. App. Div. LEXIS 1115 (N.Y. App. Div. 2d Dep't), app. denied, 88 N.Y.2d 805, 646 N.Y.S.2d 985, 670 N.E.2d 226, 1996 N.Y. LEXIS 1708 (N.Y. 1996).

Court properly permitted injured plaintiff to amend her notice of claim to include her husband's claims for loss of consortium and medical expenses; in absence of prejudice, it is not improvident exercise of discretion to grant leave to amend notice of claim to assert derivative claims predicated on same facts already included in notice of claim. *Burgarella v City of New York*, 265 A.D.2d 361, 697 N.Y.S.2d 68, 1999 N.Y. App. Div. LEXIS 10241 (N.Y. App. Div. 2d Dep't 1999).

In personal injury action against Manhattan and Bronx Surface Transit Operating Authority (MABSTOA), court properly declined to "correct, supply or disregard" failure of plaintiffs' notice of claim to include manner in which claim arose and sufficient description of accident site, where there was no showing that "mistake, omission, irregularity or defect" was made in good faith, and that MABSTOA was not prejudiced thereby. *LaBorde v Most Serv. Co.*, 270 A.D.2d 462, 705 N.Y.S.2d 608, 2000 N.Y. App. Div. LEXIS 3204 (N.Y. App. Div. 2d Dep't 2000).

Action against New York City Transit Authority, based on alleged negligence of bus driver in stopping bus over hole, was properly dismissed where notice of claim failed to identify route number of bus involved in accident. *Raisner v City of New York*, 272 A.D.2d 460, 707 N.Y.S.2d 498, 2000 N.Y. App. Div. LEXIS 5604 (N.Y. App. Div. 2d Dep't 2000).

#### **4. —Timeliness; late notice**

Petitioner was not entitled to an order directing a city transit authority to accept a supplemental notice of claim for damages where (1) the notice was served more than 90 days after the claim arose; (2) circumstances negated a waiver by the authority of the statutory requirements as to the manner of service of an irregular but timely notice; (3) the authority did not examine the claimant; and (4) no showing was made that failure to serve was due to any disability and no explanation was given for claimant's failure to move for the order until more than 8 months after

she served the untimely claim. *Golden v New York City Transit Authority*, 4 A.D.2d 954, 167 N.Y.S.2d 874, 1957 N.Y. App. Div. LEXIS 4014 (N.Y. App. Div. 2d Dep't 1957).

Provision of Gen Mun L § 50-e, subd 5, granting discretion to court to grant adult claimant leave to serve notice of claim within reasonable time after the expiration of 90-day period where claimant "is mentally or physically incapacitated, and by reason of such disability fails to serve a notice of claim within the time specified," does not permit judicial extension for causes other than those described in plain words. *O'Neil v Manhattan & Bronx Surface Transit Operating Authority*, 23 A.D.2d 488, 255 N.Y.S.2d 903, 1965 N.Y. App. Div. LEXIS 4989 (N.Y. App. Div. 1st Dep't 1965).

Evidence that adult claimant was confined to hospital for approximately two weeks following accident and to his home approximately five weeks thereafter, failed to support finding that one-day lateness in filing claim was due to his physical incapacity where he failed to offer any information regarding his physical or mental condition during extensive time before filing after his home confinement ended. *O'Neil v Manhattan & Bronx Surface Transit Operating Authority*, 23 A.D.2d 488, 255 N.Y.S.2d 903, 1965 N.Y. App. Div. LEXIS 4989 (N.Y. App. Div. 1st Dep't 1965).

A motion by defendant New York City Transit Authority (NYCTA) for summary judgment in an action arising out of an injury sustained by plaintiff while endeavoring to board a bus operated by the Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) was properly granted where, despite notice requiring plaintiff to submit to an oral examination in which MABSTOA was named as the body corporate against which the claim was made, a stipulation containing a handwritten change in title from NYCTA to MABSTOA, and denials of ownership, operation and control contained in NYCTA's answer, plaintiff did nothing until after they had deposed a representative of NYCTA, when, some two years after accident, plaintiff moved to serve an amended notice of claim and amended summons and complaint, nunc pro tunc, substituting MABSTOA as defendant; application for permission to file late notice of claim must be made prior to the expiration of the period fixed by law within which the action must be brought, which period expired long before plaintiff made his motion, and the doctrine of estoppel is not applicable to agencies of the State acting in their governmental capacity. *Luka v New York City Transit Auth.*, 100 A.D.2d 323, 474 N.Y.S.2d 32, 1984 N.Y. App. Div. LEXIS 17009 (N.Y. App. Div. 1st Dep't), *aff'd*, 63 N.Y.2d 667, 479 N.Y.S.2d 524, 468 N.E.2d 706, 1984 N.Y. LEXIS 4523 (N.Y. 1984).

An infant in an action against a city transit authority to recover damages for personal injuries was entitled to serve a late notice of claim upon the authority, where the authority received actual notice within 90 days of the occurrence and conducted a hearing on the claim, where there was no evident prejudice to the city, and where the infant's motion for leave to file the late notice had been marked off-calendar due to the failure of his attorney to appear in support of the initial motion, but that failure did not bar a second motion; a derivative claim by an adult relative of infant was barred, however, since there was no basis for extending to the adult the toll for infancy contained in CPLR § 208. *Lewis v New York City Transit Authority*, 100 A.D.2d 896, 474 N.Y.S.2d 555, 1984 N.Y. App. Div. LEXIS 18021 (N.Y. App. Div. 2d Dep't 1984).

Court properly denied petitioner's application to serve late notice of claim on New York City Transit Authority where authority had no notice of incident until receipt of petitioner's motion papers some 9 months after occurrence. *Tully v New York City Transit Authority*, 180 A.D.2d 566, 580 N.Y.S.2d 268, 1992 N.Y. App. Div. LEXIS 2714 (N.Y. App. Div. 1st Dep't 1992).

In action by transit authority employees who were injured in accident in course of their employment, court properly dismissed claims asserted against transit authority, not for injuries received in accident (for which plaintiffs' sole remedy was workers' compensation benefits), but for independent tort of impairment of their ability to pursue claims against tortfeasor due to transit authority's failure to timely disclose board of inquiry report naming likely culprit, where plaintiffs failed to file notice of claim within 90 days and to pursue claim within one year and 90 days of date when period of limitations expired against tortfeasor. *Caban v New York City Transit Auth.*, 207 A.D.2d 287, 615 N.Y.S.2d 379, 1994 N.Y. App. Div. LEXIS 8254 (N.Y. App. Div. 1st Dep't 1994), *app. denied*, 85 N.Y.2d 801, 624 N.Y.S.2d 371, 648 N.E.2d 791, 1995 N.Y. LEXIS 177 (N.Y. 1995).

It was abuse of discretion to deny plaintiff's motion for leave to file late notice of claim against city transit authority for injury sustained on bus where plaintiff filed no-fault claim with transit authority within 90-day period under CLS Gen Mun § 50-e(1), claim contained all essential facts concerning claim, and transit authority was not prejudiced by delay. *Richardson v New York City Transit Auth.*, 210 A.D.2d 38, 619 N.Y.S.2d 711, 1994 N.Y. App. Div. LEXIS 12369 (N.Y. App. Div. 1st Dep't 1994).

It was improper to grant plaintiff's motion for leave to serve late notice of claim on New York City Transit Authority where plaintiff allegedly was injured on April 23, 1997, but she did not move for leave to serve late notice of claim until on or about August 21, 1998; thus, court lacked authority to allow service of late notice of claim or to deem late notice of claim timely nunc pro tunc. *Jackson v New York City Transit Auth.*, 274 A.D.2d 501, 712 N.Y.S.2d 377, 2000 N.Y. App. Div. LEXIS 8204 (N.Y. App. Div. 2d Dep't 2000).

As an injured person failed to serve a notice of claim on a transit authority in a timely fashion, and failed to move to deem the notice of claim served nunc pro tunc in a timely fashion, the trial court was without authority to deem the notice served nunc pro tunc. *Small v N.Y. City Tr. Auth.*, 14 A.D.3d 690, 789 N.Y.S.2d 229, 2005 N.Y. App. Div. LEXIS 776 (N.Y. App. Div. 2d Dep't 2005).

Order granting leave to serve a late notice of claim upon authorities was error because the authorities did not receive actual notice or acquire knowledge of the essential facts constituting the claim within 90 days after the occurrence, and respondent failed to demonstrate a reasonable excuse for his delay in commencing the proceeding; respondent's proffered excuses, that the respondent was unaware of the statutory time limit for serving a notice of claim and that an attorney whom he had previously contacted declined to take his case, were insufficient to excuse the delay. Furthermore, under the circumstances of this case, the authorities would have been prejudiced in their defense by the approximately six-month delay between the time the claim arose and the time respondent commenced the proceeding for leave to serve a late notice of claim. *Matter of Groves v New York City Tr. Auth.*, 44 A.D.3d 856, 843 N.Y.S.2d 452, 2007 N.Y. App. Div. LEXIS 10718 (N.Y. App. Div. 2d Dep't 2007).

Grant of summary judgment to a transit authority was reversed because plaintiff submitted evidence demonstrating that the transit authority was equitably estopped from asserting failure to timely serve a notice of claim defense under General Municipal Law § 50-e(1)(a) since it wrongfully or negligently engaged in conduct that misled plaintiff to justifiably believe that service of the notice of claim upon a separate transit authority was of no consequence. *Konner v New York City Tr. Auth.*, 143 A.D.3d 774, 39 N.Y.S.3d 475, 2016 N.Y. App. Div. LEXIS 6583 (N.Y. App. Div. 2d Dep't 2016).

Trial court properly denied an injured plaintiff's motion for leave to serve a late notice of claim upon a city's transportation authorities because the plaintiff did not provide a reasonable excuse for his failure to serve a timely notice of claim upon the authorities where he did not proffer any explanation for the six-month delay between the time that he discovered the error and the filing of his motion for leave to serve a late notice of claim, and he did not establish that the authorities received timely, actual knowledge of the essential facts constituting the claim. *Durand v MV Transp., Inc.*, 186 A.D.3d 564, 129 N.Y.S.3d 123, 2020 N.Y. App. Div. LEXIS 4538 (N.Y. App. Div. 2d Dep't 2020).

## 5. —Service

No general discretion is vested in the court to extend the time for serving a notice of claim, and discretion may only be exercised where the statutory conditions are shown to exist. *Martinez v New York City Transit Authority*, 33 A.D.2d 669, 305 N.Y.S.2d 34, 1969 N.Y. App. Div. LEXIS 2831 (N.Y. App. Div. 1st Dep't 1969) (holding that the fact that a service was only one day beyond the 90-day period was of no moment).

Requirement of General Municipal Law for service of notice of claim by registered mail was not satisfied by service by certified mail. *Harvell v New York City Transit Authority*, 49 A.D.2d 765, 373 N.Y.S.2d 14, 1975 N.Y. App. Div. LEXIS 10755 (N.Y. App. Div. 2d Dep't 1975).

New York City Transit Authority (NYCTA) was entitled to summary judgment dismissing negligence action for plaintiffs' failure to serve notices of claim within 90-day period required by CLS Gen Mun § 50-e, even though notices had been served on Metropolitan Transit Authority (MTA) within statutory period, since MTA was not proper recipient of service for NYCTA, and notices forwarded by MTA were not received by NYCTA until after expiration of 90-day period; while municipal corporation may, by its conduct, waive irregularity in notice of claim, requirements as to manner and time of service may not be so waived. *Adams v New York City Transit Authority*, 140 A.D.2d 572, 528 N.Y.S.2d 638, 1988 N.Y. App. Div. LEXIS 5631 (N.Y. App. Div. 2d Dep't 1988).

Claimant who failed to file a timely notice of personal injury claim as required by law was not granted leave to file a late claim on the theory that he had served a timely claim by registered mail on the corporation counsel of the City of New York and the corporation counsel had failed to notify him of his mistake in filing before the expiration of the statutory period. *Hayward v New York City Transit Authority*, 3 Misc. 2d 295, 148 N.Y.S.2d 317, 1955 N.Y. Misc. LEXIS 2088 (N.Y. Sup. Ct. 1955).

If plaintiff's attorney, with the properly executed notice of claim on his person, calls at the only office listed in the telephone directory for the respondent, and then and there makes a tender of notice of claim at the Authority's Personnel Department at its main office, and is prevented from effectuating such service by Authority employees on June 23, 1965, and thereafter serves the notice on June 24, 1965, one day after the expiration of the 90-day period, the Supreme Court will treat the notice of claim as validly filed. *Ware v Manhattan & Bronx Surface Transit Operating Authority*, 49 Misc. 2d 704, 268 N.Y.S.2d 519, 1965 N.Y. Misc. LEXIS 1470 (N.Y. Sup. Ct. 1965).

Former employee's common law claims against his former employer, a city transportation authority and two of its executives, were dismissed because he failed to serve notice of the claims on the authority prior to filing suit, as required by N.Y. Pub. Auth. Law § 1212(2) (2007). *Hargett v Metro. Transit Auth.*, 552 F. Supp. 2d 393, 2008 U.S. Dist. LEXIS 30599 (S.D.N.Y. 2008).

## **6. Statute of limitations**

A court lacks authority to extend the time for commencement of an action beyond the period prescribed in this section against the New York City Transit Authority for damages for personal injuries more than seven months after expiration of the specified time, notwithstanding a claimed agreement or understanding to extend time by reason of abortive settlement negotiations, no such agreement being shown. *Noisette v New York City Transit Authority*, 20 A.D.2d 925, 249 N.Y.S.2d 699, 1964 N.Y. App. Div. LEXIS 3947, 1964 N.Y. App. Div. LEXIS 3948 (N.Y. App. Div. 2d Dep't 1964).

A written stipulation staying suit upon the plaintiff's claim for trespass against the transit authority, which terminated long before expiration of the prescribed statute of limitations period, could not form the basis for an estoppel barring the transit authority from asserting the defense of limitations. *509 Sixth Ave. Corp. v New York City Transit Authority*, 24 A.D.2d 975, 265 N.Y.S.2d 429, 1965 N.Y. App. Div. LEXIS 2717 (N.Y. App. Div. 1st Dep't 1965).

Court does not have discretion to extend limitation period under CLS Pub A § 1212(2). *Reis v Manhattan & Bronx Surface Transit Operating Authority*, 161 A.D.2d 288, 555 N.Y.S.2d 61, 1990 N.Y. App. Div. LEXIS 5088 (N.Y. App. Div. 1st Dep't), app. denied, 76 N.Y.2d 707, 560 N.Y.S.2d 989, 561 N.E.2d 889, 1990 N.Y. LEXIS 3090 (N.Y. 1990)).

In a personal injury action against a city transit authority and others, a judgment in favor of a minor injured by a bus inappropriately included interest at the rate of 6% rather than 3% under N.Y. Pub. Auth. Law §§ 1212(6), 1203-a(6). *Bello v New York City Tr. Auth.*, 50 A.D.3d 511, 856 N.Y.S.2d 577, 2008 N.Y. App. Div. LEXIS 3588 (N.Y. App. Div. 1st Dep't 2008).

This section, unlike § 50-h of the General Municipal Law, contains no prohibition against commencement of an action until a demand for examination of claimant has been complied with, and accordingly an action against the New York City Transit Authority is barred by failure to commence action within the one-year period after injury sustained notwithstanding defendant's demand for examination of plaintiff during that time period. *Hernandez v*

New York City Transit Authority, 41 Misc. 2d 123, 245 N.Y.S.2d 43, 1963 N.Y. Misc. LEXIS 1385 (N.Y. Sup. Ct. 1963), *aff'd*, 20 A.D.2d 968, 251 N.Y.S.2d 415, 1964 N.Y. App. Div. LEXIS 5101 (N.Y. App. Div. 1st Dep't 1964).

A personal injury action against the New York City Transit Authority must be commenced within one year after the cause of action accrues, but is commenced in time if within that period summons is served. *Valle v New York City Transit Authority*, 41 Misc. 2d 231, 245 N.Y.S.2d 29, 1963 N.Y. Misc. LEXIS 1398 (N.Y. Sup. Ct. 1963).

### **7. —Applicable time period**

An action against the New York City Transit Authority for assault and battery would be governed by the one-year and 90-day limitation period contained in Pub A Law § 1212 (subd 2), rather than the one-year period provided for in CPLR 215 (subd 3). *Tharps v New York*, 59 N.Y.2d 1023, 466 N.Y.S.2d 960, 453 N.E.2d 1249, 1983 N.Y. LEXIS 3285 (N.Y. 1983).

The one-year and 90-day statute of limitations was applicable in wrongful death action against public authority. *Mikulka v New York City Transit Authority*, 56 A.D.2d 595, 391 N.Y.S.2d 464, 1977 N.Y. App. Div. LEXIS 10662 (N.Y. App. Div. 2d Dep't 1977).

Police officer's motion to amend his personal injury complaint against a public transit authority was properly denied, because the loss of consortium claim was derivative of the personal injury action and therefore governed by the one-year, 90-day statute of limitations of N.Y. Pub. Auth. Law § 1212(2). The claim was therefore time-barred. *Quinto v N.Y. City Transit Auth.*, 7 A.D.3d 689, 776 N.Y.S.2d 835, 2004 N.Y. App. Div. LEXIS 7042 (N.Y. App. Div. 2d Dep't 2004).

This section still requires that an action against a Transit Authority founded on tort be commenced not later than one year after accrual of the cause of action, unless notice of claim has been served within the time limited and in compliance with § 50-e of the General Municipal Law, and such limitation cannot be deemed as extended by the 1959 enactment of §§ 50-h and 50-i of the General Municipal Law. *Heeren v New York City Transit Authority*, 231 N.Y.S.2d 993, 1962 N.Y. Misc. LEXIS 4176 (N.Y. Sup. Ct. 1962).

### **8. —Accrual**

Plaintiffs' claim for damages arising from de facto appropriation by defendants, New York City Transit Authority and Metropolitan Transit Authority, accrued when contractor hired to expand railway yard fenced off plaintiffs' property in March 1983 and began construction; thus, court should have granted defendants' summary judgment motion dismissing action commenced in August 1993, as time-barred under CLS CPLR § 214(4), since defendants had continuously used property as part of their railway yard, and plaintiffs had been denied free access to property. *Sarnelli v City of New York*, 256 A.D.2d 399, 681 N.Y.S.2d 578, 1998 N.Y. App. Div. LEXIS 13443 (N.Y. App. Div. 2d Dep't 1998), *app. denied*, 93 N.Y.2d 804, 689 N.Y.S.2d 429, 711 N.E.2d 643, 1999 N.Y. LEXIS 689 (N.Y. 1999).

Action commenced in 1997, alleging that lengthy sidewalk closure which resulted in losses at plaintiffs' respective businesses was due to New York City Transit Authority's negligence in "planning, design and construction" of elevator project that necessitated closure of sidewalk, was time-barred under CLS Gen Mun § 50-i(1) and CLS Pub A § 1212(2) in that claim accrued at time of closure of sidewalk in 1994. *Princess Video, Inc. v City of New York*, 277 A.D.2d 300, 716 N.Y.S.2d 82, 2000 N.Y. App. Div. LEXIS 11714 (N.Y. App. Div. 2d Dep't 2000), *app. denied*, 96 N.Y.2d 705, 725 N.Y.S.2d 277, 748 N.E.2d 1073, 2001 N.Y. LEXIS 276 (N.Y. 2001).

The date of accrual of tort action against authority pursuant to Public Authorities Law § 1212 is the date of the accident, not 30 days from the date the notice of claim was served, even though the action cannot be brought until the expiration of such 30 days. *All-State Auto Rental Corp. v Manhattan & Bronx Surface Transit Operating Authority*, 57 Misc. 2d 222, 291 N.Y.S.2d 556, 1968 N.Y. Misc. LEXIS 1433 (N.Y. Civ. Ct. 1968).

### **9. —Tolling**

The statute of limitations for municipal tort liability is tolled from the time the plaintiff applies for permission to file a late notice of claim until the order granting that relief goes into effect, since an amendment to Gen Mun Law § 50-e that deleted the requirement that an application to file late notice be made prior to the commencement of an action and added a provision that an application for late notice would not be denied on the ground that it was made after the commencement of an action against a public corporation neither authorizes the practice of serving complaints before notice of claim nor eliminates the problems encountered by a plaintiff who has filed a premature complaint, and since the amendment simply eliminates the obstacle that prevented a plaintiff from applying for leave to file a late notice of claim once he had commenced the action and does not dispense with the requirement that the complaint alleged that the notice has been served and that more than thirty days have elapsed since the service. *Giblin v Nassau County Medical Center*, 61 N.Y.2d 67, 471 N.Y.S.2d 563, 459 N.E.2d 856, 1984 N.Y. LEXIS 3994 (N.Y. 1984).

Under this section and § 24 of the Civil Practice Act, an action founded on tort against the New York City Transit Authority must be commenced within a year and 30 days after the cause of action accrues, and prolonged illness of a claimant's attorney, of which fact claimant first became aware about six months after her accident, is not ground for an extension of time upon application made approximately one year and four months after sustaining the injuries. *Forstad v New York City Transit Authority*, 13 A.D.2d 836, 216 N.Y.S.2d 116, 1961 N.Y. App. Div. LEXIS 10552 (N.Y. App. Div. 2d Dep't 1961).

Where a 15-year-old infant was injured in a subway accident on May 30, 1961, but his attorney inadvertently served notice of claim on the City of New York instead of upon the New York City Transit Authority, an extension of time could be granted in the court's discretion by reason of the claimant's infancy. *Pandoliano v New York City Transit Authority*, 17 A.D.2d 951, 234 N.Y.S.2d 99, 1962 N.Y. App. Div. LEXIS 7233 (N.Y. App. Div. 2d Dep't 1962).

For purpose of section of General Municipal Law declaring the one year and 90-day period of limitations to be applicable "notwithstanding any inconsistent provisions of law," statute providing that where the commencement of an action is stayed by statutory prohibition, the statute of limitations affecting such action is tolled for the duration of the stay is an "inconsistent provision" and statute of limitations applicable to tort claims against a municipality are not extended by the statutory stays. *Serravillo v New York City Transit Authority*, 51 A.D.2d 1027, 381 N.Y.S.2d 308, 1976 N.Y. App. Div. LEXIS 11819 (N.Y. App. Div. 2d Dep't 1976), *aff'd*, 42 N.Y.2d 918, 397 N.Y.S.2d 1006, 366 N.E.2d 1360, 1977 N.Y. LEXIS 2250 (N.Y. 1977).

Where plaintiff had three months after termination of contractual stay to commence wrongful death action against transit authority, transit authority should not have been precluded from asserting defense of statute of limitations. *Mikulka v New York City Transit Authority*, 56 A.D.2d 595, 391 N.Y.S.2d 464, 1977 N.Y. App. Div. LEXIS 10662 (N.Y. App. Div. 2d Dep't 1977).

New York City Transit Authority's request for oral examination of plaintiff did not toll running of limitations period of CLS Pub A § 1212(2); while oral examination may be condition precedent to Transit Authority's right to determine whether it should settle or adjust claim by injured party, such condition precedent does not operate as statutory stay under CLS CPLR § 204(a) to extend limitations period until oral examination has occurred. *Pilgrim v New York City Transit Auth.*, 235 A.D.2d 527, 652 N.Y.S.2d 631, 1997 N.Y. App. Div. LEXIS 665 (N.Y. App. Div. 2d Dep't 1997).

Plaintiff's purported post-traumatic stress disorder did not constitute "insanity" for purposes of tolling provision of CLS CPLR § 208 where he testified coherently and effectively at claims examination during time he was supposedly incapacitated, and counsel, who was present, did not even mention insanity issue at that time. *Karczewicz v New York City Transit Auth.*, 244 A.D.2d 285, 664 N.Y.S.2d 300, 1997 N.Y. App. Div. LEXIS 11891 (N.Y. App. Div. 1st Dep't 1997).

Trial court erred in denying the New York City Transit Authority's motion to dismiss a complaint as time-barred as: (1) under N.Y. Pub. Auth. Law § 1212(4), the statute of limitations expired almost one month before the complaint was filed, (2) the plain meaning of the Governor's executive orders under N.Y. Comp. Codes R. & Regs. tit. 9, § 5.113 and N.Y. C.P.L.R. 201 was that any litigant who was affected by the World Trade Center attacks and whose statute of limitations period expired between September 11, 2001 and November 8, 2001, was given a grace period

of up until November 8, 2001, to satisfy the statute of limitations, and (3) the executive orders did not toll statutes of limitations that expired after the emergency period ended. *Scheja v Sosa*, 4 A.D.3d 410, 771 N.Y.S.2d 554, 2004 N.Y. App. Div. LEXIS 1343 (N.Y. App. Div. 2d Dep't 2004).

## 10. Pleadings

Court properly denied plaintiff's motion for default judgment against individual defendant (employee of public authority) where public authority defendants interposed answer in timely fashion and sufficiently demonstrated that they were not aware of pendency of action against their employee, whom they were bound under CLS Pub A § 1212 to indemnify; rigid adherence to requirement that there be affidavit of merit by individual defendant himself would be inappropriate. *Vines v Manhattan & Bronx Surface Transit Operating Authority*, 162 A.D.2d 229, 556 N.Y.S.2d 337, 1990 N.Y. App. Div. LEXIS 7250 (N.Y. App. Div. 1st Dep't 1990).

New York City Transit Authority employees injured in subway explosion would be granted leave to serve direct complaints against Authority based on allegations that Authority negligently or intentionally failed to disclose name of entity it found to be at least partially responsible for explosion until statute of limitations had expired, since plaintiffs could establish direct injury for impairment of right to sue third-party tortfeasor, to which workers compensation defense would not be bar, by showing that they were harmed by Authority's breach of obligation to disclose third-party whose negligence was proximate cause of explosion and that they acted diligently in seeking to learn of Authority's findings or otherwise learn of third-party's responsibility. *Caban v Gottlieb Iron Works*, 147 Misc. 2d 583, 558 N.Y.S.2d 810, 1990 N.Y. Misc. LEXIS 302 (N.Y. Sup. Ct. 1990), *aff'd sub nom. Caban v Bonoco Constr. Corp.*, 172 A.D.2d 377, 568 N.Y.S.2d 758, 1991 N.Y. App. Div. LEXIS 4962 (N.Y. App. Div. 1st Dep't 1991).

## 11. —Amendment

Where there was compliance in fact with procedures set forth in Public Authorities L § 1212, it was error to deny plaintiff's motion to amend his complaint so as to include therein a statement of said compliance. *Saint-Ile v New York City Transit Authority*, 42 A.D.2d 789, 346 N.Y.S.2d 461, 1973 N.Y. App. Div. LEXIS 3715 (N.Y. App. Div. 2d Dep't 1973).

Timely notice of claim which sets forth only claims for assault and battery is ineffectual in terms of notifying transit authority of causes of action for false arrest, imprisonment and malicious prosecution which appear for first time in claimant's amended complaint served well beyond time within which claim must be filed and complaint must be dismissed with respect to latter claims. *Mojica v New York City Transit Authority*, 117 A.D.2d 722, 498 N.Y.S.2d 448, 1986 N.Y. App. Div. LEXIS 52998 (N.Y. App. Div. 2d Dep't 1986).

In wrongful death action commenced on behalf of decedent nearly 2 years after he was struck and killed by bus owned by New York City Transit Authority and operated by its subsidiary Manhattan Bronx Surface Transit Operating Authority, court properly allowed authorities to amend their answer to add affirmative defense that plaintiff failed to comply with 1-year 90-day limitation period of CLS Pub A § 1212, since 2-year limitation period for wrongful death actions against municipalities under CLS Gen Mun § 50-i and CLS EPTL § 5-4.1 does not apply to defendant authorities. *Melendez v Manhattan & Bronx Surface Transit Operating Authority*, 137 A.D.2d 390, 529 N.Y.S.2d 95, 1988 N.Y. App. Div. LEXIS 6534 (N.Y. App. Div. 1st Dep't 1988).

In action against Manhattan and Bronx Surface Transit Operating Authority and Metropolitan Transportation Authority for injuries sustained by plaintiff in subway station, court erred in granting plaintiff's cross-motion to substitute New York City Transit Authority (NYCTA), which owned station, as proper defendant based on ground that it was estopped from challenging requested relief because, *inter alia*, it had been forwarded notice of claim and had conducted hearing, sent plaintiff copy of transcript and exchanged correspondence with her and her attorney, since (1) rather than misleading plaintiff, actions of NYCTA provided her with numerous indications that wrong entities had been sued, and (2) although plaintiff claimed that NYCTA agreed to be substituted as defendant, alleged promise was made after statute of limitations had expired. *Nowinski v City of New York*, 189 A.D.2d 674, 592 N.Y.S.2d 369, 1993 N.Y. App. Div. LEXIS 351 (N.Y. App. Div. 1st Dep't 1993).



Motion to amend pleadings in action against New York City Transit Authority was properly denied in absence of evidence to support newly advanced factual premise that plaintiffs' decedent was killed not when struck by train but when propelled from between cars of moving train by violent jerk in train's motion; moreover, amendment would violate notice of claim requirement where it was proposed 4 ½ years after event. *Dos Santos v New York City Transit Auth.*, 257 A.D.2d 468, 683 N.Y.S.2d 535, 1999 N.Y. App. Div. LEXIS 432 (N.Y. App. Div. 1st Dep't 1999).

## **12. Examination of claimant**

Plaintiff's compliance with defendant's demand for an oral examination pursuant to subdivisions 4 and 5 of § 1212 of Public Authorities Law is a statutory condition precedent to the commencement of an action against the New York City Transit Authority and an action brought without compliance therewith is prematurely commenced. *Lo Guercio v New York City Transit Authority*, 31 A.D.2d 759, 297 N.Y.S.2d 646, 1969 N.Y. App. Div. LEXIS 4748 (N.Y. App. Div. 2d Dep't 1969).

Complaint was improperly dismissed as time-barred in that interests of justice required that statute of limitations be tolled from date defendant notice plaintiff to appear for oral examination pursuant to CLS Pub A § 1212(5) and date examination was actually held, despite lack of express incorporation of CLS Gen Mun § 50-h into CLS Pub A § 1212, where transcript of examination itself referred to § 50-h, and defendant had been served with plaintiff's notice of claim within 22 days of underlying accident and thus had timely actual notice of nature of claim; once defendant chose to exercise its right to conduct oral examination of plaintiff, plaintiff could not successfully prosecute his claim until examination was completed. *Herrera v New York City Transit Auth.*, 234 A.D.2d 207, 651 N.Y.S.2d 50, 1996 N.Y. App. Div. LEXIS 12961 (N.Y. App. Div. 1st Dep't 1996).

CLS Pub A § 1212(5), which does not specify how transit authority must notify claimant when it requires claimant to appear for examination, did not require that pro se plaintiff be served by registered or certified mail pursuant to CLS Gen Mun § 50-h, where claimant concededly received notice of scheduled examination. *Williams v N.Y. City Transit Auth.*, 188 Misc. 2d 18, 724 N.Y.S.2d 830, 2001 N.Y. Misc. LEXIS 122 (N.Y. Civ. Ct. 2001).

Although plaintiff could not refuse to attend oral examination requested as of right by defendant transit authority under CLS Pub A § 1212(5), her compliance with demand was not condition precedent to commencing action, and thus motion to dismiss complaint on that basis was denied. *Williams v N.Y. City Transit Auth.*, 188 Misc. 2d 18, 724 N.Y.S.2d 830, 2001 N.Y. Misc. LEXIS 122 (N.Y. Civ. Ct. 2001).

Although subd 5 of this section provides that the New York City Transit Authority may require any claimant to be sworn and to answer questions concerning any facts relative to his claim or account, nothing is said about requiring a claimant to submit to a physical examination and no provision is made for service by defendant of a copy of any record upon plaintiff, and the Transit Authority is accordingly not required to furnish a copy of a physical examination taken of plaintiff by defendant's doctor before the commencement of action at a time when it did not have a copy of plaintiff's doctor's report and X-ray. *Redding v New York City Transit Authority*, 212 N.Y.S.2d 494 (N.Y. City Ct. 1961).

## **13. Disclosure**

Defendants, New York City Transit Authority and Manhattan and Bronx Service Transit Operating Authority, were properly granted summary judgment in action alleging that shooting of plaintiff's decedent by another passenger aboard one of defendants' buses was attributable to bus driver's negligence since defendants assumed no special duty to assure decedent's safety from criminal acts of third parties; even if defendants had had duty to plaintiff's decedent and had been in breach thereof, armed assault on decedent constituted intervening and superseding cause of decedent's harm. *Maynard v New York City Transit Auth.*, 267 A.D.2d 37, 699 N.Y.S.2d 377, 1999 N.Y. App. Div. LEXIS 12690 (N.Y. App. Div. 1st Dep't 1999).

Third-party defendant New York City Transit Authority was properly ordered to produce results of drug test performed on its employee and documents relating to Authority's post-accident investigation, despite Authority's assertion that documents were privileged physician-patient communications, and that Authority's post-accident

investigation, including routine administration of drug test, constituted “subsequent remedial measures,” since no physician-patient relationship was created when employee was made to provide urine sample for Authority’s investigation given that there was no medical, diagnostic, or treatment purpose for testing. *Drexler v Highlift, Inc.*, 284 A.D.2d 295, 725 N.Y.S.2d 378, 2001 N.Y. App. Div. LEXIS 5566 (N.Y. App. Div. 2d Dep’t 2001).

#### 14. Evidence

Weight of evidence supported verdict absolving New York City Transit Authority of liability for injuries sustained when plaintiff was hit by authority’s bus, even though plaintiff testified that he crossed street at corner, since bus driver stated that he did not see plaintiff, police officers arriving at scene measured location of impact as 17 feet east of crosswalk, and plaintiff also testified that he did not see bus because he was not paying attention. *Singh v New York City Transit Authority*, 143 A.D.2d 1001, 533 N.Y.S.2d 603, 1988 N.Y. App. Div. LEXIS 10506 (N.Y. App. Div. 2d Dep’t 1988).

In action against New York City Transit Authority (NYCTA) to recover for injuries sustained when plaintiff was shot by NYCTA police officer after officer intervened during course of assault perpetrated by plaintiff and others, it was not improper to allow jury to consider NYCTA’s 1982 and 1986 rules and regulations regarding use of deadly force since (1) NYCTA never objected to admission of 1982 regulations which, in any event, did not impose higher standard of care than CLS Penal § 35.30, and (2) court struck from record all reference to 1986 rules and regulations after plaintiff agreed to withdraw them from evidence, and court gave adequate curative instructions to jury. *McCummings v New York City Transit Auth.*, 177 A.D.2d 24, 580 N.Y.S.2d 931, 1992 N.Y. App. Div. LEXIS 2696 (N.Y. App. Div. 1st Dep’t 1992), reh’g denied, 585 N.Y.S.2d 1008, 1992 N.Y. App. Div. LEXIS 7247 (N.Y. App. Div. 1st Dep’t 1992), aff’d, 81 N.Y.2d 923, 597 N.Y.S.2d 653, 613 N.E.2d 559, 1993 N.Y. LEXIS 661 (N.Y. 1993).

Prima facie case of negligence was established against Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) where (1) pedestrian was found in crosswalk of intersection immediately after MABSTOA’s bus had completed turn through crosswalk, (2) bag of crushed groceries was found next to pedestrian, with some produce from bag was smeared in direction traveled by bus, whose right rear tires bore traces of same food particles, (3) fractures to pedestrian’s foot, which included bone at very top, were crush injuries that could not have been caused by typical fall, and (4) pedestrian suffered diffuse brain damage to 4 lobes of brain, and such injury could not have been caused by stroke or fall. *Brito v Manhattan & Bronx Surface Transit Operating Auth.*, 188 A.D.2d 253, 590 N.Y.S.2d 450, 1992 N.Y. App. Div. LEXIS 13488 (N.Y. App. Div. 1st Dep’t 1992), app. dismissed, 81 N.Y.2d 993, 599 N.Y.S.2d 798, 616 N.E.2d 153, 1993 N.Y. LEXIS 1218 (N.Y. 1993).

New York City Transit Authority was not liable for injuries sustained by plaintiff when he hoisted himself on top of subway stairway railing to allow group of youths to pass and fell from railing to sidewalk below, even though plaintiff’s experts opined that railing should have been higher or topped with spikes to keep people from climbing on it, and that stairway should have been enclosed in fencing to prevent falls, since transit authority established that plaintiff’s experts did not incorporate such features into their own designs in analogous locations, that railings in other major metropolitan subway systems did not have spikes on them, and that height of railing was required by city code to permit evacuation by ladder in case of emergency. *Cruz v New York City Transit Auth.*, 190 A.D.2d 651, 593 N.Y.S.2d 69, 1993 N.Y. App. Div. LEXIS 897 (N.Y. App. Div. 2d Dep’t), app. denied, 82 N.Y.2d 654, 602 N.Y.S.2d 803, 622 N.E.2d 304, 1993 N.Y. LEXIS 3057 (N.Y. 1993).

In action against New York City Transit Authority, it was improper to admit notice of claim into evidence to show that plaintiff had timely complied with filing requirements thereof, even though court redacted references contained therein which related to injuries and money damages, since notice of claim, even as redacted, contained descriptive and conclusory accusations of negligence. *Viera v New York City Transit Auth.*, 221 A.D.2d 625, 634 N.Y.S.2d 168, 1995 N.Y. App. Div. LEXIS 12465 (N.Y. App. Div. 2d Dep’t 1995).

In action against transit authority for injuries allegedly resulting from plaintiff’s being hit by train, testimony of plaintiff’s expert as to speed of train was based on speculation, lacked competent factual support, and was beyond proper scope of expert testimony where plaintiff never testified as to speed of train, there was no other evidence as to speed of train, and expert must have reached his conclusion by assuming material facts not in evidence. *Gathers*

v New York City Transit Auth., 242 A.D.2d 506, 662 N.Y.S.2d 493, 1997 N.Y. App. Div. LEXIS 9172 (N.Y. App. Div. 1st Dep't 1997), app. denied, 91 N.Y.2d 810, 671 N.Y.S.2d 714, 694 N.E.2d 883, 1998 N.Y. LEXIS 937 (N.Y. 1998).

Defendants, New York City Transit Authority (NYCTA), Manhattan and Bronx Service Transit Operating Authority, and bus driver, should have been granted summary judgment where they showed that driver of vehicle which collided with bus proceeded through intersection governed by stop sign without stopping or yielding to bus, which had right of way; defendants' internal post-accident investigative report, which noted that in violation of NYCTA internal rule, bus driver failed to take his foot off gas pedal to cover brake as he proceeded through intersection, did not create fact issue inasmuch as report and NYCTA internal rule imposed duty of care higher than that imposed by law. *Hines v New York City Transit Auth.*, 264 A.D.2d 506, 694 N.Y.S.2d 473, 1999 N.Y. App. Div. LEXIS 8915 (N.Y. App. Div. 2d Dep't), app. denied, 94 N.Y.2d 756, 703 N.Y.S.2d 73, 724 N.E.2d 769, 1999 N.Y. LEXIS 3999 (N.Y. 1999).

Defendant, New York City Transit Authority, should have been granted summary judgment where affidavit of plaintiff's decedent's son and affirmation of her treating physician, submitted in support of plaintiff's contention that decedent suffered "serious injury," were contradicted by decedent's own deposition testimony indicating that her injuries simply curtailed her usual activities somewhat, and decedent did not detail or even outline in general fashion her inability to perform substantially all of her customary daily activities. *Lebreton v New York City Transit Auth.*, 267 A.D.2d 211, 699 N.Y.S.2d 463, 1999 N.Y. App. Div. LEXIS 12633 (N.Y. App. Div. 2d Dep't 1999).

Although court properly allowed plaintiff's expert to testify that train should have entered station at 15 miles per hour, it was reversible error to allow expert to testify that train operator should have seen plaintiff, who was lying on tracks, sooner than he did and that train would have stopped more quickly if "deadman's feature" had been utilized since expert's opinions on those matters were speculative and unsupported by any facts or his personal observations. *Santiago v New York City Transit Auth.*, 271 A.D.2d 675, 706 N.Y.S.2d 721, 2000 N.Y. App. Div. LEXIS 4500 (N.Y. App. Div. 2d Dep't 2000).

## 15. Jury instructions

In action brought against Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) for injuries allegedly sustained by pedestrian when he was hit by MABSTOA bus, it was reversible error to instruct jury as to city traffic regulation stating that pedestrians in crosswalks have right of way, even though evidence established that pedestrian was found in right of way after bus turned through crosswalk, since there was no evidence that pedestrian was in crosswalk at time bus began to turn. *Brito v Manhattan & Bronx Surface Transit Operating Auth.*, 188 A.D.2d 253, 590 N.Y.S.2d 450, 1992 N.Y. App. Div. LEXIS 13488 (N.Y. App. Div. 1st Dep't 1992), app. dismissed, 81 N.Y.2d 993, 599 N.Y.S.2d 798, 616 N.E.2d 153, 1993 N.Y. LEXIS 1218 (N.Y. 1993).

Court did not err in refusing to charge jury that city traffic regulation prohibited buses from backing up where there was no evidence that transit authority bus driver should have or could have backed up to avoid forcing vehicle into intersection. *Fusco v Raneri*, 228 A.D.2d 644, 645 N.Y.S.2d 507, 1996 N.Y. App. Div. LEXIS 7420 (N.Y. App. Div. 2d Dep't 1996).

In action against New York City Transit Authority, court erred in denying plaintiff's request to charge that bus driver is charged with duty to see that which he should have seen by proper use of his senses where there was factual basis to conclude that bus driver was in position to see plaintiff before tire of bus ran over his foot; error was compounded by court's charge that plaintiff had duty to look out for his own safety and to see what there was to be seen and perceive what there was to be perceived. *Conradi v New York City Transit Auth.*, 249 A.D.2d 436, 671 N.Y.S.2d 506, 1998 N.Y. App. Div. LEXIS 4272 (N.Y. App. Div. 2d Dep't 1998).

In action against New York City Transit Authority, court erred in failing to charge that vehicle must yield to pedestrian lawfully in crosswalk where there was some evidence that plaintiff's foot was run over by bus in crosswalk, especially since court charged that pedestrian outside crosswalk must yield to vehicles in roadway. *Conradi v New York City Transit Auth.*, 249 A.D.2d 436, 671 N.Y.S.2d 506, 1998 N.Y. App. Div. LEXIS 4272 (N.Y. App. Div. 2d Dep't 1998).

## 16. Summary judgment

New York City Transit Authority was entitled to dismissal of action at close of plaintiff's case where evidence demonstrated that he was on sidewalk at curb in middle of block when, without turning his head to look for traffic, he stepped off curb and almost instantly collided with side of bus travelling at 10 to 15 miles per hour. *Splain v New York City Transit Authority*, 180 A.D.2d 454, 579 N.Y.S.2d 380, 1992 N.Y. App. Div. LEXIS 1311 (N.Y. App. Div. 1st Dep't), app. denied, 80 N.Y.2d 759, 589 N.Y.S.2d 309, 602 N.E.2d 1125, 1992 N.Y. LEXIS 3419 (N.Y. 1992).

New York City Transit Authority was not entitled to summary judgment in personal injury action in which passenger asserted that she tripped over protruding metal signpost base in sidewalk grating after being told by transit authority employee to board bus only in back; issue of fact existed as to whether transit authority "suggested" path that required plaintiff to navigate dangerously defective condition, and even if it did not, whether plaintiff had choice of path that was safe and direct. *Ausderan v City of New York*, 219 A.D.2d 562, 631 N.Y.S.2d 512, 1995 N.Y. App. Div. LEXIS 9642 (N.Y. App. Div. 1st Dep't 1995).

New York City Transit Authority was entitled to summary judgment in action for injuries sustained when passenger on subway train stuck his head outside window of empty motorman's cab while train was in motion and was struck by signal pole; even if Authority's employees were negligent in allowing cab door or cab window to remain open, such activity merely furnished condition or occasion for occurrence of event rather than being one of its causes. *Wright v New York City Transit Auth.*, 221 A.D.2d 431, 633 N.Y.S.2d 393, 1995 N.Y. App. Div. LEXIS 12013 (N.Y. App. Div. 2d Dep't 1995), app. denied, 88 N.Y.2d 806, 646 N.Y.S.2d 986, 670 N.E.2d 227, 1996 N.Y. LEXIS 1774 (N.Y. 1996).

New York City Transit Authority should have been granted summary judgment where plaintiff's decedent was found unconscious on subway platform, she died 5 days later, there were no witnesses to incident which caused injury, and only proof of Authority's involvement was bald conclusory statement from Medical Examiner's office that decedent was hit by train. *Byrd v New York City Transit Auth.*, 228 A.D.2d 537, 644 N.Y.S.2d 773, 1996 N.Y. App. Div. LEXIS 7164 (N.Y. App. Div. 2d Dep't 1996).

Manhattan and Bronx Surface Transit Operating Authority was properly granted summary judgment where only eyewitness evidence was that of onlooker who testified that Authority's bus was traveling at normal speed when plaintiff was suddenly pushed under its rear wheel by assailant, and plaintiff admitted that she was dazed and confused at time, and her testimony offered no evidence of negligence on part of Authority. *Stone v Manhattan & Bronx Surface Transit Operating Auth.*, 233 A.D.2d 121, 649 N.Y.S.2d 781, 1996 N.Y. App. Div. LEXIS 11407 (N.Y. App. Div. 1st Dep't 1996).

Court erred in granting plaintiff's motion to vacate her default in opposing New York City Transit Authority's motion for summary judgment in action for injuries allegedly sustained when plaintiff tripped and fell on defective portion of roadway within bus stop since City of New York, not Transit Authority, bore responsibility for maintenance of bus stops within City. *McFarlane v City of New York*, 243 A.D.2d 691, 663 N.Y.S.2d 292, 1997 N.Y. App. Div. LEXIS 10753 (N.Y. App. Div. 2d Dep't 1997), app. dismissed, 91 N.Y.2d 956, 671 N.Y.S.2d 716, 694 N.E.2d 885, 1998 N.Y. LEXIS 896 (N.Y. 1998).

Defendant, New York City Transit Authority, was improperly granted summary judgment on ground that it was not responsible for criminal acts of third person where fact issue existed as to whether object that struck and injured plaintiff was propelled from subway tracks as train passed by, rather than being thrown by person. *Karczewicz v New York City Transit Auth.*, 244 A.D.2d 285, 664 N.Y.S.2d 300, 1997 N.Y. App. Div. LEXIS 11891 (N.Y. App. Div. 1st Dep't 1997).

Neither party was entitled to summary judgment in action brought against New York City Transit Authority under CLS Labor § 241(6), despite Authority's assertion that plaintiff was engaged in routine maintenance, since negative equalization work that plaintiff was performing, under contract that called for, inter alia, communications and signal work, wires and cable, copper bars, miscellaneous iron and steel, galvanizing, construction of circuit breaker, was hazardous "construction" work under 12 NYCRR § 23-1.13(b)(4), and fact issues existed as to whether mats given

to plaintiff provided effective insulation, whether plaintiff was negligent in his placement of mats or otherwise, and proximate cause of his injuries. *Snowden v New York City Transit Auth.*, 248 A.D.2d 235, 670 N.Y.S.2d 32, 1998 N.Y. App. Div. LEXIS 2596 (N.Y. App. Div. 1st Dep't 1998).

Defendant, New York City Transit Authority, should have been granted summary judgment where plaintiff admitted that she did not know what caused her to fall in subway station, and although she further testified that after her fall she noticed newspapers on ground and grease on her clothes, she failed to adduce any evidence that anyone had seen papers or grease on ground before she fell. *Williams v New York City Transit Auth.*, 248 A.D.2d 462, 669 N.Y.S.2d 672, 1998 N.Y. App. Div. LEXIS 2310 (N.Y. App. Div. 2d Dep't 1998).

Defendant, New York City Transit Authority, was not entitled to summary judgment where it failed to tender admissible proof showing that alternative safe path was available and that plaintiff knowingly chose hazardous path; because it was dark, fact issues existed as to whether defendant provided plaintiff with reasonably safe place to alight. *Eisen v City of New York*, 254 A.D.2d 134, 679 N.Y.S.2d 297, 1998 N.Y. App. Div. LEXIS 11023 (N.Y. App. Div. 1st Dep't 1998).

Defendant, New York City Transit Authority, should have been granted summary judgment where injured plaintiff had no recollection of how accident occurred, and only evidence of causation was that provided by train motorman, who saw injured plaintiff dart out from behind column directly in front of moving train. *Serfaty v New York City Transit Auth.*, 254 A.D.2d 476, 679 N.Y.S.2d 629, 1998 N.Y. App. Div. LEXIS 11258 (N.Y. App. Div. 2d Dep't 1998), app. denied, 93 N.Y.2d 802, 687 N.Y.S.2d 626, 710 N.E.2d 273, 1999 N.Y. LEXIS 152 (N.Y. 1999).

Defendant, New York City Transit Authority, was improperly granted summary judgment where gravamen of plaintiff's claim was that plaintiff was severely injured as result of negligent failure by driver of defendant's bus to bring vehicle to stop to avoid striking plaintiff, who had been involved in fight and was lying on ground for 20 seconds before bus hit him, where bus driver testified that he had observed incident from time that fight was in progress, and plaintiff had testified as to length of time he was on ground before being struck by bus. *Herrera v New York City Transit Auth.*, 269 A.D.2d 212, 702 N.Y.S.2d 303, 2000 N.Y. App. Div. LEXIS 1511 (N.Y. App. Div. 1st Dep't 2000).

In claim against city transit authority on behalf of passenger who died in fall from moving subway train while trying to change cars, authority's post-trial motion for summary judgment was untimely where (1) it was not filed within 120 after January 1, 1997, as required by CLS CPLR § 3212(a) in cases in which note of issue was filed before that date, (2) plaintiff served notice of claim on authority in September 1990, (3) by early 1992, authority was in position to argue that plaintiff was barred from adding new theories of liability by her failure to seek to amend notice of claim within limitation period of one year and 90 days "after the happening of the event upon which the claim is based," (4) evidence on which authority relied in support of its motion consisted entirely of testimony of witnesses who were deposed in 1994, (5) authority could have moved for summary judgment at any time within period prescribed by § 3212(a) after note of issue was filed in 1995, and (6) thus, authority's excuse—that it could not have moved for summary judgment until it had received trial transcript, including judge's proof-limiting order—was invalid. *Barksdale v New York City Transit Auth.*, 273 A.D.2d 43, 709 N.Y.S.2d 531, 2000 N.Y. App. Div. LEXIS 6379 (N.Y. App. Div. 1st Dep't 2000).

New York City Transit Authority (NYCTA) was entitled to summary judgment in action for personal injuries resulting from collision of its bus with another vehicle where plaintiff failed to raise triable issue as to fault of bus driver after NYCTA showed that accident was caused by other vehicle proceeding through intersection against red light. *Casanova v New York City Transit Auth.*, 279 A.D.2d 495, 719 N.Y.S.2d 125, 2001 N.Y. App. Div. LEXIS 341 (N.Y. App. Div. 2d Dep't 2001).

## **17. Liability of authority**

Provision of CLS Pub A Law § 1202 that New York City Transit Authority, in carrying out its corporate purpose, shall be regarded as performing governmental function, was not meant to abrogate provision of CLS Pub A Law § 1212

that Authority is responsible for negligence of its employees in operation of subway system. *Crosland v New York City Transit Authority*, 68 N.Y.2d 165, 506 N.Y.S.2d 670, 498 N.E.2d 143, 1986 N.Y. LEXIS 19771 (N.Y. 1986).

New York City Transit Authority should have been granted summary judgment where there was no showing of special relationship between Authority and plaintiff, who was shot by unidentified assailant standing outside of bus while plaintiff was riding on bus, and there was no showing that Authority did not exercise reasonable care under circumstances. *Harrell v New York City Transit Auth.*, 221 A.D.2d 591, 634 N.Y.S.2d 172, 1995 N.Y. App. Div. LEXIS 12438 (N.Y. App. Div. 2d Dep't 1995).

Court would order new trial unless plaintiff stipulated to decrease verdict as to damages for past pain and suffering from \$5 million to \$900,000, for future pain and suffering from \$5 million to \$1,100,000, and for future medical expenses from \$23 million to \$2,500,000 where plaintiff was rendered quadriplegic after being struck by non-passenger revenue subway train operated by New York City Transit Authority. *Driscoll v New York City Transit Auth.*, 262 A.D.2d 271, 691 N.Y.S.2d 110, 1999 N.Y. App. Div. LEXIS 6064 (N.Y. App. Div. 2d Dep't 1999).

Defendant, New York City Transit Authority, was properly denied summary judgment, despite its assertion that tracks in question had been owned, operated, and maintained by entirely separate corporate entity, where documentary evidence showed that Authority had assumed responsibility for tracks. *Tikotzky v City of New York*, 286 A.D.2d 493, 729 N.Y.S.2d 525, 2001 N.Y. App. Div. LEXIS 8254 (N.Y. App. Div. 2d Dep't), dismissed, *Congregation Gates of Prayer of Far Rockaway v N.Y. City Sch. Constr. Auth.*, 97 N.Y.2d 637, 735 N.Y.S.2d 493, 760 N.E.2d 1289, 2001 N.Y. LEXIS 3349 (N.Y. 2001).

Because the cutting of a store's storm drainpipe by a transit authority and its subcontractors interfered with a store's easement and right of access to a sewer, it constituted a continuing trespass and resulted in successive causes of action that were timely under N.Y. Gen. Mun. Law §§ 50-e, 50-i, N.Y. Pub. Auth. Law § 1212, and N.Y. C.P.L.R. 214. *Bloomingtons, Inc. v New York City Tr. Auth.*, 52 A.D.3d 120, 859 N.Y.S.2d 22, 2008 N.Y. App. Div. LEXIS 4153 (N.Y. App. Div. 1st Dep't 2008), *aff'd*, 13 N.Y.3d 61, 886 N.Y.S.2d 663, 915 N.E.2d 608, 2009 N.Y. LEXIS 1846 (N.Y. 2009).

### **18. Particular acts or omissions**

New York City Transit Authority was entitled to summary judgment dismissing action for injuries sustained in assault by unknown persons allegedly due to authority's negligent failure to maintain lock on exit near site of assault, since complaint did not implicate proprietary function of transit authority, and no special relationship between parties was shown. *Genovese v New York City Transit Auth.*, 204 A.D.2d 116, 611 N.Y.S.2d 542, 1994 N.Y. App. Div. LEXIS 5101 (N.Y. App. Div. 1st Dep't 1994).

New York City Transit Authority was 45 percent at fault where plaintiff was driving behind Authority's bus as both vehicles approached intersection, whereupon bus, which had green traffic light, began to execute wide right turn, and driver of vehicle which was stopped at red light pulled forward into intersection to accommodate bus and collided with plaintiff's vehicle. *Fusco v Raneri*, 228 A.D.2d 644, 645 N.Y.S.2d 507, 1996 N.Y. App. Div. LEXIS 7420 (N.Y. App. Div. 2d Dep't 1996).

Evidence was insufficient to support finding of transit authority's negligence in operation of train, where plaintiff's case rested on expert's speculative opinion, which lacked probative value, there were no eyewitnesses to alleged incident even though it allegedly occurred during rush hour, no train operator reported incident, no crew member had any knowledge of it, and although plaintiff testified at trial that train hit him, he had previously testified at deposition that he did not remember train ever coming into contact with him and that he could only guess that it did. *Gathers v New York City Transit Auth.*, 242 A.D.2d 506, 662 N.Y.S.2d 493, 1997 N.Y. App. Div. LEXIS 9172 (N.Y. App. Div. 1st Dep't 1997), *app. denied*, 91 N.Y.2d 810, 671 N.Y.S.2d 714, 694 N.E.2d 883, 1998 N.Y. LEXIS 937 (N.Y. 1998).

Defendants, New York City Transit Authority and Bronx Surface Transit Operating Authority, were improperly granted summary judgment where fact issues existed as to whether requiring prospective passengers to navigate

full traffic lane, in busy Times Square area, in order to board bus presented foreseeable risk of injury, whether side of bus on which door was open was “available to moving traffic” within meaning of CLS Veh & Tr § 1214, and whether driver, by stopping bus one lane away from curb, violated Department of Transportation Traffic Rules and Regulations (34 RCNY) § 4-10(c)(1), and thus whether such violations also constituted evidence of negligence; further, there was no showing as to what precautions plaintiff took, or failed to take, on approaching bus, that she failed to take such precautions that were so obviously necessitated by situation that her failure to take them was extraordinary and unforeseeable act of recklessness, and, assuming that she did fail to take such precautions, that accident could have been avoided had she behaved differently. *Gross v New York City Transit Auth.*, 256 A.D.2d 128, 681 N.Y.S.2d 513, 1998 N.Y. App. Div. LEXIS 13761 (N.Y. App. Div. 1st Dep’t 1998).

New York City Transit Authority was properly granted summary judgment dismissing personal injury action since Authority had no general duty to maintain or repair city roadway situated beneath its elevated train station, and plaintiffs offered only speculation to support their belief that defect in roadway may have been caused by Authority’s routing of surface water from train station to street below. *Woodard v City of New York*, 262 A.D.2d 405, 692 N.Y.S.2d 407, 1999 N.Y. App. Div. LEXIS 6338 (N.Y. App. Div. 2d Dep’t 1999).

Defendants, New York City Transit Authority and individual who operated Authority’s vehicle, should have been granted summary judgment where plaintiff, by her own sworn testimony, was responsible for causing accident between her vehicle and defendants’ vehicle, while defendants were in no position to take any steps to either reasonably foresee or to avoid collision. *Peralta v Moore*, 272 A.D.2d 458, 707 N.Y.S.2d 666, 2000 N.Y. App. Div. LEXIS 5612 (N.Y. App. Div. 2d Dep’t 2000).

#### **19. —Premises liability**

Appellate Division properly reversed judgment which awarded damages to plaintiff who was hit by New York City Transit Authority train after having consumed several beers, which made him dizzy, as plaintiff failed to show that defendant transit authority breached any duty owed to him in lighting accident site; moreover, even if plaintiff had proven breach of duty, he failed to show that alleged negligence was substantial factor in causing his injury. *Merino v New York City Transit Auth.*, 89 N.Y.2d 824, 653 N.Y.S.2d 270, 675 N.E.2d 1222, 1996 N.Y. LEXIS 3169 (N.Y. 1996).

In action by pedestrian against New York City, New York City Transit Authority (NYCTA), and other transportation agencies, to recover for injuries resulting from defendants’ alleged negligent failure to maintain and repair stairway between passenger train platform and pedestrian overhead bridge spanning railroad tracks, NYCTA was not entitled to summary judgment in absence of evidence that it had no connection with maintenance and repair of stairway. *Nilsen v New York*, 138 A.D.2d 581, 526 N.Y.S.2d 163, 1988 N.Y. App. Div. LEXIS 3091 (N.Y. App. Div. 2d Dep’t 1988).

New York City Transit Authority was not entitled to summary judgment in personal injury action brought by passenger who allegedly tripped over protruding metal signpost base in sidewalk grating while boarding bus, since clear issue existed as to whether transit authority enjoyed special use of sidewalk where purpose of pole that was affixed to hazardous metal base was to display sign for bus route. *Ausderan v City of New York*, 219 A.D.2d 562, 631 N.Y.S.2d 512, 1995 N.Y. App. Div. LEXIS 9642 (N.Y. App. Div. 1st Dep’t 1995).

Court properly dismissed complaint against New York City Transit Authority (NYCTA) for injuries suffered when plaintiff fell on stump of pole protruding from sidewalk, even if stump were remnant of bus-stop sign, since (1) responsibility for maintaining bus stops within New York City rests with city or with owner or lessee of abutting property, (2) NYCTA could not be held liable on theory that it put area to special use, and (3) there was no allegation that NYCTA created condition that caused plaintiff’s injuries. *Gall v City of New York*, 223 A.D.2d 622, 636 N.Y.S.2d 837, 1996 N.Y. App. Div. LEXIS 436 (N.Y. App. Div. 2d Dep’t 1996).

New York City Transit Authority was properly granted summary judgment since it did not have reasonably adequate opportunity after snow storm ended to take protective measures where plaintiff allegedly slipped and fell on icy and snow-covered stairway while descending from elevated train platform at 9:20 A.M., after some 10 inches of snow

had fallen overnight, and Authority submitted climatological reports from nearby areas showing that precipitation had ended at 8:00 A.M. that morning. *Fuks v New York City Transit Auth.*, 243 A.D.2d 678, 663 N.Y.S.2d 639, 1997 N.Y. App. Div. LEXIS 10734 (N.Y. App. Div. 2d Dep't 1997).

New York City Transit Authority was properly granted summary judgment where it showed that turnstile area where plaintiff alleged that he slipped and fell on puddle of vomit had been cleaned no more than one hour and 45 minutes before accident, and plaintiff failed to present evidence as to how long vomit had been there, or at least that it was there long enough for Authority to have discovered it and cleaned it up; it was irrelevant that Authority may have had general awareness of dangerous slippery conditions frequently created by vagrants in area. *Ginsberg v New York City Transit Auth.*, 247 A.D.2d 307, 668 N.Y.S.2d 464, 1998 N.Y. App. Div. LEXIS 1597 (N.Y. App. Div. 1st Dep't 1998).

Defendant, New York City Transit Authority, was properly granted summary judgment, even assuming that Authority had notice of icy condition when storm ceased, since Authority did not have reasonably sufficient time to remedy condition prior to plaintiff's accident at 8:00 a.m. given that storm ended around 4:00 a.m. and particular station entrance was not opened until 6:30 a.m. *Urena v New York City Transit Auth.*, 248 A.D.2d 377, 669 N.Y.S.2d 662, 1998 N.Y. App. Div. LEXIS 2169 (N.Y. App. Div. 2d Dep't 1998).

New York City Transit Authority's "general awareness" of homeless people in area and associated debris was insufficient to defeat Authority's summary judgment motion dismissing action for injuries allegedly sustained when plaintiff slipped and fell in puddle of urine in Authority's subway station where there otherwise was no proof that Authority had actual notice of such condition. *Durney v New York City Transit Auth.*, 249 A.D.2d 213, 671 N.Y.S.2d 262, 1998 N.Y. App. Div. LEXIS 4669 (N.Y. App. Div. 1st Dep't 1998).

Defendant, New York City Transit Authority, was properly granted summary judgment where there was no evidence that anyone, including injured plaintiff, observed accumulation of water on floor of subway car prior to when plaintiff slipped and fell, and it was undisputed that it was still raining at time of occurrence. *Alatief v New York City Transit Auth.*, 256 A.D.2d 371, 681 N.Y.S.2d 562, 1998 N.Y. App. Div. LEXIS 13418 (N.Y. App. Div. 2d Dep't 1998).

New York City Transit Authority was entitled to summary judgment in action for injuries from slip and fall caused by puddle of water in subway car, since there was no evidence that defendant had actual or constructive notice of puddle, which could have been caused by water dripping from clothing or umbrellas of other passengers during ongoing storm. *Duncan v New York City Transit Auth.*, 260 A.D.2d 213, 686 N.Y.S.2d 702, 1999 N.Y. App. Div. LEXIS 3962 (N.Y. App. Div. 1st Dep't 1999).

Defendant, New York City Transit Authority, should have been granted summary judgment in action alleging that plaintiff slipped on "slimy" substance in underground passageway in subway station, where there was no evidence that defendant created or had actual notice of alleged dangerous condition, or that condition was visible, apparent, and existed for sufficient time to constitute constructive notice; further, evidence was insufficient to infer that defendant should have had constructive notice of condition which plaintiffs alleged to be recurring hazard. *Ortega v New York City Transit Auth.*, 262 A.D.2d 470, 692 N.Y.S.2d 131, 1999 N.Y. App. Div. LEXIS 6626 (N.Y. App. Div. 2d Dep't 1999).

Defendant, New York City Transit Authority, should have been granted summary judgment where evidence showed that Authority did not have actual or constructive notice of potentially dangerous condition caused by some type of slippery substance on bus step, there was no evidence that plaintiff's injuries resulted from any restriction on her free movement due to alleged overcrowded conditions on bus, and there was no showing as to causal relationship between allegedly dim lighting on bus and accident. *Gordon v New York City Transit Auth.*, 267 A.D.2d 201, 699 N.Y.S.2d 449, 1999 N.Y. App. Div. LEXIS 12604 (N.Y. App. Div. 2d Dep't 1999).

Defendant, New York City Transit Authority, was improperly granted summary judgment in action for injuries allegedly sustained when plaintiff slipped and fell on snow and ice situated on sidewalk near stairs leading to elevated subway platform where defendant did not provide proof in admissible form that its employees did not create subject snow condition, plaintiff's affidavit stated that she saw uniformed man shoveling and piling up snow



at accident site few days earlier, and defendant failed to support, through affidavits or other sworn testimony, its contention that plaintiff's affidavit raised only feigned issue or contradicted her CLS Gen Mun § 50-h testimony. *Beltran v New York City Transit Auth.*, 271 A.D.2d 230, 705 N.Y.S.2d 357, 2000 N.Y. App. Div. LEXIS 3843 (N.Y. App. Div. 1st Dep't 2000).

**20. —Vicarious liability; respondeat superior**

New York City Transit Authority could not be held liable for injuries sustained by subway rider as result of unprovoked attack by authority token booth clerk. *Adams v New York City Transit Auth.*, 88 N.Y.2d 116, 643 N.Y.S.2d 511, 666 N.E.2d 216, 1996 N.Y. LEXIS 687 (N.Y. 1996).

Court properly granted summary judgment in favor of New York City Transit Authority where improper actions taken by Authority police officer were not in furtherance of Authority business. *Burchette v New York City Transit Auth.*, 224 A.D.2d 569, 639 N.Y.S.2d 46, 1996 N.Y. App. Div. LEXIS 1407 (N.Y. App. Div. 2d Dep't 1996).

New York City Transit Authority was properly granted summary judgment dismissing negligence action where plaintiff provided no evidentiary basis for his claim that Authority's employees had knowingly permitted bicycle to be carried on subway train in violation of Authority's rules, nor was mere presence of someone carrying bicycle within subway sufficiently indicative of any negligence by Authority. *Yeboah v New York City Transit Auth.*, 249 A.D.2d 30, 671 N.Y.S.2d 46, 1998 N.Y. App. Div. LEXIS 3802 (N.Y. App. Div. 1st Dep't 1998).

Defendant, New York City Transit Authority, should not have been granted summary judgment where plaintiff's complaint alleged that token booth clerk attempted to put out flames on plaintiff's body using fire extinguisher, but was prevented from doing so by another Transit Authority employee, and that clerk retrieved another fire extinguisher only again to be prevented from using it to assist plaintiff, and Authority's reply admitted that clerk, "contrary to the standing directives of his own employer, did in fact, come out of his booth, with a fire extinguisher, to try to put out the flames on at least one plaintiff." *Lee v New York City Transit Auth.* (1998, 1st Dept) 249 App Div 2d 93, 671 NYS2d 86, app dismd, motion den (1998) 92 NY2d 944, 681 NYS2d 472, 704 NE2d 225 and subsequent app sub nom *Flynn v N.Y. City Transit Auth.* (2002, 1st Dept) 292 App Div 2d 171, 739 NYS2d 358, app den (2002) 98 NY2d 611, 749 NYS2d 2, 778 NE2d 553 and app den (Sep 10, 2002).

Judgment against New York City Transit Authority would be reversed where plaintiff, who was accidentally shot in back by off-duty Authority police officer, failed to show that officer was acting within scope of his employment with Authority Police Department at time of shooting. *Valentin v Candy Corner*, 254 A.D.2d 272, 678 N.Y.S.2d 382, 1998 N.Y. App. Div. LEXIS 10096 (N.Y. App. Div. 2d Dep't 1998).

Defendant, New York City Transit Authority, was properly granted summary judgment where its employee, token booth clerk, was instructed and trained to deal with problems such as panhandling in front of booth by activating emergency communications system connecting token booth with personnel in station command, from whom clerk was to take instructions, and clerk's assault on plaintiff, in effort to make him stop panhandling in front of booth, was such wide departure from normal method of performance as not to be reasonably anticipated by defendant. *Flowers v New York City Transit Auth.*, 267 A.D.2d 132, 700 N.Y.S.2d 27, 1999 N.Y. App. Div. LEXIS 13254 (N.Y. App. Div. 1st Dep't 1999), app. denied, 94 N.Y.2d 763, 708 N.Y.S.2d 52, 729 N.E.2d 709, 2000 N.Y. LEXIS 557 (N.Y. 2000).

**21. — Failure to act to prevent injury**

New York City Transit Authority (TA) was entitled to summary judgment dismissing action for injuries sustained when plaintiff was pushed to ground by unidentified person while waiting for bus since (1) there was no evidence that plaintiff enjoyed any special relationship with TA so as to impose liability for failure to provide adequate police protection, (2) plaintiff's own testimony belied her allegation that TA had created overcrowded condition by directing rail passengers to bus stop due to interruption of rail service, and (3) there was no evidence that plaintiff's freedom of movement was unduly restricted or that she was unable to find safe place to stand; under circumstances, TA could not be held liable for careless actions of third person. *Palermo v New York City Transit Auth.*, 141 A.D.2d 809, 530 N.Y.S.2d 25, 1988 N.Y. App. Div. LEXIS 7140 (N.Y. App. Div. 2d Dep't 1988).

In wrongful death action pertaining to 16-year-old boy, who fell or jumped from subway train and was run over by train, New York City Transit Authority was entitled to summary judgment as to claim that transit authority police officer, who had contact with boy shortly before he entered train, had duty to prevent boy, who was obviously intoxicated, from boarding train, since officer had no duty to protect boy from injury where no evidence was set forth to show establishment of special relationship between boy and officer. *Serrano v New York*, 150 A.D.2d 297, 541 N.Y.S.2d 803, 1989 N.Y. App. Div. LEXIS 7123 (N.Y. App. Div. 1st Dep't 1989).

In action by plaintiff who had been hit by subway train, court properly set aside jury's verdict which found that New York City Transit Authority (NYCTA) was negligent in failing to take appropriate action when its employees observed plaintiff on platform in apparently intoxicated condition, and also found that neither plaintiff nor motorman were negligent, since (1) plaintiff was owed no duty other than duty of ordinary care under circumstances, (2) while plaintiff contended on appeal that he was not intoxicated at time of accident, in effort to uphold jury's finding that he was not negligent, he had admitted in his bill of particulars and at trial that he was intoxicated, and (3) court's error in permitting plaintiff to introduce in evidence portion of internal rule which imposed higher standard of care on NYCTA than required by law may have improperly affected jury's consideration of comparative negligence issue. *Merino v New York*, 183 A.D.2d 458, 583 N.Y.S.2d 397, 1992 N.Y. App. Div. LEXIS 6797 (N.Y. App. Div. 1st Dep't 1992).

New York City Transit Authority could not be held liable when woman committed suicide by jumping into side of moving subway train while carrying her infant son, even though action of transit authority police officer involved exercise of his professional judgment and was in furtherance of authority's governmental activities, where no special relationship was shown, in that (1) woman and her son were found by authority personnel on roadbed of train track near platform of elevated subway station, (2) at request of authority personnel, she left roadbed and ascended to platform, (3) officer arrived and questioned woman, and ascertained that she was all right, that she had had argument with her husband, and that she wished to return home, and (4) officer escorted her to stairway and watched her walk down stairs, after which she returned to platform and jumped at train. *Figueroa v New York City Transit Auth.*, 213 A.D.2d 586, 624 N.Y.S.2d 260, 1995 N.Y. App. Div. LEXIS 3228 (N.Y. App. Div. 2d Dep't 1995).

New York City Transit Authority owes no duty to protect person on its premises from assault by third person absent facts showing special relationship between Authority and person assaulted; if special relationship is found to exist, plaintiff must show that Authority did not exercise reasonable care in protecting plaintiff under circumstances. *Harrell v New York City Transit Auth.*, 221 A.D.2d 591, 634 N.Y.S.2d 172, 1995 N.Y. App. Div. LEXIS 12438 (N.Y. App. Div. 2d Dep't 1995).

Manhattan and Bronx Surface Transit Operating Authority was properly granted summary judgment since plaintiff, passenger on Authority's bus who was stabbed by another passenger, was owed no special duty of care by Authority to protect her from such sudden and unforeseeable assault, notwithstanding assailant's disorderly behavior prior to assault. *Katz v Manhattan & Bronx Surface Transit Operating Auth.*, 233 A.D.2d 231, 650 N.Y.S.2d 7, 1996 N.Y. App. Div. LEXIS 11996 (N.Y. App. Div. 1st Dep't 1996).

A personal injury complaint would be dismissed against the New York City Transit Authority seeking damages for personal injuries sustained when plaintiff was struck by a beer bottle thrown from an elevated subway structure, despite the fact that the Authority had notice of prior similar incidences and that the fence enclosing the platform was only four feet high, since the Authority is immune from liability when an individual is attacked by a third party except when a special relationship exists between the Authority and the person assaulted, and the Authority is not liable for a claim that is essentially one involving or growing directly out of the failure to allocate police resources. *Giamboi v New York City Transit Auth.*, 124 Misc. 2d 810, 479 N.Y.S.2d 929, 1984 N.Y. Misc. LEXIS 3341 (N.Y. App. Term 1984).

In action brought against New York City Transit Authority by infant plaintiff injured when his mother committed suicide by throwing herself, with plaintiff in her arms, under wheels of moving subway train, court would vacate verdict finding negligence on part of Authority police officer, who noticed mother on roadbed near tracks, asked her if she was all right and wanted to go home, to which she responded yes, and then observed her appear to leave, since officer did not, under circumstances, assume affirmative duty to act on plaintiff's behalf or have knowledge

that inaction could lead to harm. *Figuroa v New York City Transit Authority*, 152 Misc. 2d 948, 579 N.Y.S.2d 831, 1991 N.Y. Misc. LEXIS 755 (N.Y. Sup. Ct. 1991), *aff'd*, *Figuroa v New York City Transit Auth.*, 213 A.D.2d 586, 624 N.Y.S.2d 260, 1995 N.Y. App. Div. LEXIS 3228 (N.Y. App. Div. 2d Dep't 1995).

## 22. Interest on award

In wrongful death action against city, city transit authority, and metropolitan transit authority, proper interest rate on judgment was 3 percent, even though higher rates would have been chargeable against city and metropolitan transit authority, where 3 percent was maximum rate chargeable against city transit authority under CLS Pub A § 1212(6), and judgment was collectible against city transit authority in whole or in part. *Klos v New York City Transit Auth.*, 240 A.D.2d 635, 659 N.Y.S.2d 97, 1997 N.Y. App. Div. LEXIS 6857 (N.Y. App. Div. 2d Dep't), *app. dismissed*, 91 N.Y.2d 846, 667 N.Y.S.2d 680, 690 N.E.2d 489, 1997 N.Y. LEXIS 4078 (N.Y. 1997).

Interest on a damages award against a bus driver in a wrongful death case was reduced to 3 percent because the entirety of the judgment was collectible against both the driver and a transit authority in whole or in part. *Keenan v Molloy*, 137 A.D.3d 868, 27 N.Y.S.3d 73, 2016 N.Y. App. Div. LEXIS 1638 (N.Y. App. Div. 2d Dep't), *app. denied*, 27 N.Y.3d 908, 56 N.E.3d 902, 36 N.Y.S.3d 622, 2016 N.Y. LEXIS 1668 (N.Y. 2016).

This section is controlling as to the rate of interest to be paid by a public authority, such as the New York City Transit Authority, as against the 4% rate allowed by § 3-a of the General Municipal Law. *Feldman v New York City Transit Authority*, 44 Misc. 2d 35, 252 N.Y.S.2d 878, 1964 N.Y. Misc. LEXIS 1444 (N.Y. Sup. Ct.), *rev'd*, 22 A.D.2d 872, 254 N.Y.S.2d 398, 1964 N.Y. App. Div. LEXIS 2562 (N.Y. App. Div. 1st Dep't 1964).

Pub Auth L § 1212, subd 6, relating to three percent interest, conflicts with the philosophy residing in CPLR 1401, which calls for an equitable division of expenses entailed by a judgment against joint tortfeasors. *Jones v All Boro Car Leasing, Inc.*, 67 Misc. 2d 567, 325 N.Y.S.2d 535, 1971 N.Y. Misc. LEXIS 1402 (N.Y. Civ. Ct. 1971).

Defendant, a “public benefit corporation”, which cannot be required to pay more than 4% annual interest “upon any judgment for which it is liable” (Public Authorities Law, § 1276, subd 5), likewise, is required to pay no more than 4% interest on an accrued claim for wrongful death for which interest is allowable from the date of decedent’s death to the entry of judgment (EPTL 5-4.3), rather than 6% prejudgment interest in death cases municipalities are required to pay (General Municipal Law, § 3-a), since chapter 585 of the Laws of 1939, a catchall enactment, highly consistent with subdivision 5 of section 1276 of the Public Authorities Law, prescribing a 4% rate to be paid on both accrued claims and judgments by public corporations, which includes “public benefit corporations”, is controlling over the provisions of the General Municipal Law. Defendant is more akin to the New York City Transit Authority which pays only 3% interest in such cases (Public Authorities Law, § 1212, subd 6) and it would be incongruous to require defendant to pay far more than the Transit Authority when both entities perform similar governmental functions and have similar privileges and rights. *McGale v Metropolitan Transp. Authority*, 97 Misc. 2d 20, 410 N.Y.S.2d 751, 1978 N.Y. Misc. LEXIS 2744 (N.Y. Sup. Ct. 1978), *modified*, 76 A.D.2d 38, 429 N.Y.S.2d 418, 1980 N.Y. App. Div. LEXIS 11726 (N.Y. App. Div. 1st Dep't 1980).

## Opinion Notes

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### Agency Opinions

#### 1. In general

Former employee of New York City Transit Authority may work as expert witness in cases brought against transit authority, Metropolitan Transportation Authority, and its other affiliates and subsidiaries, provided lawsuit has been commenced. State Ethics Comm Adv Op No. 01-4.

## Research References & Practice Aids

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**Cross References:**

This section referred to in §§ 1203-a, 1207-a, 1207-b.

**Jurisprudences:**

1 Am Jur 2d, Actions § 73.

2 Am Jur 2d, Administrative Law § 423.

63C Am Jur 2d, Public Officers and Employees §§ 432, 433.

**Matthew Bender's New York Practice Guides:**

LexisNexis AnswerGuide New York Negligence § 6.03 Identifying Statutes That Provide for Shortened Time for Commencement of Action.

LexisNexis AnswerGuide New York Negligence § 6.05 Examining Consequences of Bringing Action or Filing Notice Against Wrong Defendant.

**Hierarchy Notes:**

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# NY CLS Pub A § 1212-a

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## § 1212-a. Security by authority

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1. Each provision of statute or rule requiring a party to give security for the purpose of procuring an order of arrest, an injunction order, or a warrant of attachment, or as a condition of obtaining any other relief, or taking any proceeding; or allowing the court or a judge to require such security to be given, is to be construed as excluding an action brought by the authority; except where the security to be given in such an action is specially regulated by the provision in question.
2. In any action in which the authority shall be excused by statute from giving security on procuring an order of arrest, an order of injunction or a warrant of attachment, the authority shall be liable for all damages that may be sustained by the opposite party by reason of such order of arrest, attachment or injunction, in the same case and to the same extent as sureties to an undertaking would have been if such an undertaking had been given.
3. Upon an appeal taken by the authority, the service of the notice of appeal perfects the appeal and stays the execution of the judgment or order appealed from, without an undertaking or other security.

## History

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Formerly § 1812-a, add, L 1957, ch 716; renumbered § 1212-a, L 1957, ch 914, § 22, eff April 19, 1957.

Annotations

## Notes to Decisions

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Public Authorities L § 1212-a, subd 3 does not provide for an automatic stay if appeal is taken by officers of authority individually. In re Ronan, 73 Misc. 2d 35, 341 N.Y.S.2d 176, 1973 N.Y. Misc. LEXIS 2212 (N.Y. Sup. Ct.), aff'd, 42 A.D.2d 10, 344 N.Y.S.2d 624, 1973 N.Y. App. Div. LEXIS 4198 (N.Y. App. Div. 3d Dep't 1973).

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1203-a, 1207-a, 1207-b.

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# NY CLS Pub A § 1213

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## § 1213. Report

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Copies of the annual report required to be made and submitted pursuant to section twenty-eight hundred of this chapter also shall be submitted to the mayor, comptroller and board of estimate.

## History

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Formerly § 1813, add, L 1953, ch 200; renumbered § 1213, L 1957, ch 914, § 3; L 1983, ch 838, § 9, eff Aug 3, 1983.

Annotations

## Notes

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### Prior Law:

Former § 1213, add, L 1952, ch 224; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 444.

## Notes to Decisions

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Borough president who also sat on board of estimates and had, as borough president, received copy of all reports on the Public Authority Law supplied to the board of estimate failed to establish any right to directive that he be furnished additional detailed reports. *Abrams v New York City Transit Authority (NYCTA)*, 48 A.D.2d 69, 368 N.Y.S.2d 165, 1975 N.Y. App. Div. LEXIS 9544 (N.Y. App. Div. 1st Dep't 1975), *aff'd*, 39 N.Y.2d 990, 387 N.Y.S.2d 235, 355 N.E.2d 289, 1976 N.Y. LEXIS 2935 (N.Y. 1976).

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1203-a, 1207-a, 1207-b.

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# NY CLS Pub A § 1214

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*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)*

## § 1214. Rapid transit law

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During any period when the transfer, or any renewal thereof, authorized by section eighteen hundred three\* of this title shall be in effect:

1. Articles five and eight and sections ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen, thirty, thirty-two, thirty-six, thirty-six-a, thirty-seven, and thirty-eight of the rapid transit law shall be suspended.
2. Articles one, three, six, seven and nine and sections sixteen, sixteen-a, thirty-one, thirty-three, thirty-four and thirty-five of the rapid transit law shall continue in force and effect and the authority shall have and exercise all the functions, powers and duties heretofore exercised by the board of transportation, or any members or officers thereof, under such articles and sections, provided, however, that where the provisions of this title shall be inconsistent with any of the provisions of such articles or sections of such law, the provisions of this title shall govern and control.

## History

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Formerly § 1814, add, L 1953, ch 200; renumbered § 1214, L 1957, ch 914, § 3, eff April 24, 1957.

Annotations

## Notes

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### Prior Law:

Former § 1214, add, L 1951, ch 144; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 445.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1207-a, 1207-b.

### Hierarchy Notes:

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\* Renumbered § 1203, L 1957, ch 914, § 3.

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## § 1215. Construction of terms

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Whenever the term public service commission, or board of rapid transit railroad commissioners, or transit construction commissioner, or transit commission or board of transportation, occurs in any law, contract or document relating to facilities conveyed to the authority or their operation or any other duty imposed upon the authority pursuant to this title, or when in any law, contract or document reference is made to such commission, board, commissioner, or board of transportation in connection with such facilities, operations or duties whereof was so conveyed, such term or reference shall be deemed to refer to and include the authority, to the extent consistent with the provisions of such law, contract or document. For the purposes of subdivision four of section fifty of the workers' compensation law, the term other political subdivision of the state shall be deemed to refer to and include the authority. For the purposes of section three hundred twenty-one of the vehicle and traffic law, the term any political subdivision shall be deemed to refer to and include the authority. For the purposes of subparagraph (i) of paragraph three of subsection (c) of section six hundred twelve of the tax law, the term subdivisions, referring to subdivisions of the state, shall be deemed to refer to and include the Manhattan and Bronx surface transportation authority.

## History

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Formerly § 1815, add, L 1953, ch 200; renumbered § 1215, L 1957, ch 914, § 3; L 1953, ch 881, § 4; L 1957, ch 556; L 1997, ch 312, § 2, eff July 29, 1997 (see 1997 note below).

Annotations

## Notes

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### Prior Law:

Former § 1215, add, L 1951, ch 33; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 447.

### Editor's Notes:

**Laws 1997, ch 312, § 11**, eff July 29, 1997, provides as follows:

§ 11. This act shall take effect immediately and shall apply to contributions to, and distributions from, the Manhattan and Bronx surface transportation authority pension plan made in taxable years beginning on or after January 1, 1997, provided that the amendments made to any provision of law by this act shall not affect the expiration and repeal of such provision and shall expire therewith as provided by law.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1203-a, 1207-a, 1207-b.

Security for payment of compensation, CLS Work Comp § 50.

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# NY CLS Pub A § 1216

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## § 1216. Exemption from taxation and fees

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It is hereby found, determined and declared that the creation of the authority and the carrying out of its purposes is in all respects for the benefit of the people of the state of New York and for the improvement of their health, welfare and prosperity and is a public purpose, and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this title. Without limiting the generality of the following provisions of this section, property owned by the authority, and property leased by the authority and used for any of its authorized purposes shall be exempt from taxation and special ad valorem levies. The authority shall be required to pay no fees, taxes or assessments, whether state or local, including but not limited to fees, taxes or assessments on real estate, franchise taxes, sales taxes or other excise taxes, upon any of its property, or upon the use thereof, or upon its activities in the operation and maintenance of its facilities or on any fares, tolls, rentals, rates, charges or other fees, revenues or other income received by the authority and the bonds and notes of the authority and the income therefrom shall at all times be exempt from taxation, except for gift and estate taxes and taxes on transfers. This section shall constitute a covenant and agreement with the holders of all bonds and notes issued by the authority. The terms "taxation" and "special ad valorem levy" shall have the same meanings as defined in section one hundred two of the real property tax law.

## History

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Formerly § 1816, add, L 1953, ch 200; renumbered § 1216, L 1957, ch 914, § 3; L 1953, ch 881, § 5; L 1986, ch 929, § 24, eff Dec 31, 1986.

Annotations

## Notes

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### Prior Law:

Former § 1216, add, L 1951, ch 332; repealed L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 446.

## Opinion Notes

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Agency Opinions

Section 1816 [former law] of the transit authority law is to be construed as exempting the New York City Transit Authority from paying court fees for filing, docketing or entering papers and orders. 1953 NY Ops Atty Gen July 16 (informal).

Niagara Frontier Transportation Authority is not exempt from fees charged by sheriffs under Article 80 of the CPLR for execution of judgments. 1987 NY Ops Atty Gen No. 87-88. (Informal).

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1203-a, 1207-a, 1207-b.

Exemption from taxation § 1207-g.

United States, CLS Real P Tax § 400.

### Jurisprudences:

71 Am Jur 2d, State and Local Taxation §§ 267—282.

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## § 1217. Records; prima facie evidence

---

The record of the proceedings of the authority and of the board of transportation, the records and printed minutes of the transit commission, of the former transit construction commissioner, of the former public service commission for the first district, and of the former board of rapid transit railroad commissioners, transferred to the authority, or certified copies thereof, shall be prima facie evidence of the proceedings of the authority, of the board of transportation, of the transit commission, of the former transit construction commissioner, of the former public service commission for the first district, or of the former board of rapid transit railroad commissioners, as the case may be, in respect to matters concerning which such records or minutes relate. Certified copies of such records or papers shall in like manner constitute prima facie evidence.

## History

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Formerly § 1817, add, L 1953, ch 200; renumbered § 1217, L 1957, ch 914, § 3, eff April 24, 1957.

Annotations

## Notes

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### Prior Law:

Former § 1217, add, L 1952, ch 208; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 448.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1207-a, 1207-b.

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## § 1218. Pending actions and proceedings

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1. Provision shall be made in the agreement described in section eighteen hundred three\* of this title for the assumption by the city of the payment of judgments or claims based upon a cause of action arising prior to the date of transfer of transit facilities.
2. This title shall not affect any action or proceeding brought by or against the board of transportation, transit commission, or the former transit construction commissioner, public service commission for the first district, or the board of rapid transit railroad commissioners, and, upon application by the authority to the court, the authority shall be substituted as a party in such pending action or proceeding and such action or proceeding may be prosecuted or defended in the name of the authority. Any investigation, examination or hearing undertaken, commenced or instituted by the board of transportation, transit commission or the former transit construction commissioner or the public service commission for the first district or the board of rapid transit railroad commissioners before the time this title takes effect, and relating to subject or matter, jurisdiction whereof was conveyed to the authority, may be conducted to final determination by the authority.

## History

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Formerly § 1818, add, L 1953, ch 200; renumbered § 1218, L 1957, ch 914, § 3, eff April 24, 1957.

Annotations

## Notes

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### Prior Law:

Former § 1218, add, L 1952, ch 386; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 449.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1207-a, 1207-b.

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\* Renumbered § 1203, L 1957, ch 914, § 3.

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## § 1219. Continuity of jurisdiction

---

The authority shall be deemed and held to constitute a continuation, as to matters within its jurisdiction, of the board of transportation for the purpose of succession to the rights, powers, duties and obligations of the board of transportation transferred to such authority. Upon the termination of the agreement of transfer provided for in section eighteen hundred three<sup>\*</sup> of this title or of any renewal thereof, all the rights and properties of the authority shall pass to the city and the city shall succeed to the rights, powers, duties and obligations of the authority.

## History

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Formerly § 1819, add, L 1953, ch 200; renumbered § 1219, L 1957, ch 914, § 3, eff April 24, 1957; L 1953, ch 201, § 8.

Annotations

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1207-a, 1207-b.

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<sup>\*</sup> Renumbered § 1203, L 1957, ch 914, § 3.

# NY CLS Pub A § 1219-a

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## **§ 1219-a. Transfer and receipt of surplus funds**

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1. Notwithstanding any provision of this title or any other provision of law, general, special or local, the authority may from time to time transfer and pay over to metropolitan transportation authority or triborough bridge and tunnel authority all or any part of its surplus funds; and may accept and use any moneys transferred and paid over to it by metropolitan transportation authority or triborough bridge and tunnel authority.
2. Notwithstanding the provisions of the preceding subdivision of this section:
  - (a) If the city shall have provided in its capital budget for its fiscal year beginning July first, nineteen hundred sixty-eight the amount of one hundred million dollars, or such lesser amount as shall have been requested by the authority for inclusion in such budget, for the payment of the capital cost of projects requested by the authority pursuant to section twelve hundred three of this title, then upon the written request of the mayor made within thirty days after the commencement of such fiscal year, triborough bridge and tunnel authority shall transfer to the authority, by lump sum payment or installments at such time or times and in such amounts as the mayor shall elect, all or such part of the surplus funds of triborough bridge and tunnel authority on hand as of the last day of its last fiscal year ending prior to such request as the mayor shall specify, which funds shall be applied by the authority solely to the payment of its expenses of operation. If the city shall have provided in its capital budget for any of its next four fiscal years, commencing with the fiscal year beginning July first, nineteen hundred sixty-nine, the amount of one hundred million dollars, or such lesser amount as shall have been requested by the authority for inclusion in such budget, for the payment of the capital cost of projects requested by the authority pursuant to section twelve hundred three of this title, then upon the written request of the mayor made within thirty days after the commencement of such fiscal year, triborough bridge and tunnel authority shall transfer to the authority solely for application to the payment of expenses of operation of the authority the operating surplus of triborough bridge and tunnel authority for its last fiscal year ending prior to such request, which transfer shall also be by lump sum payment or installments at such time or times and in such amounts as the mayor shall elect. Projects shall be eligible for inclusion in a computation made hereunder only if included in a capital budget on the first day of the fiscal year for which it is adopted. A carry-over project shall not be eligible for inclusion unless it was first included in a capital budget by way of an amendment thereto, in which event it shall be eligible for inclusion in a computation made hereunder with respect to the first fiscal year of the city commencing after the adoption of the amendment.
  - (b) Promptly upon the making of the certification of its operating surplus, if any, for its fiscal year ending December thirty-first, nineteen hundred seventy-two and for each of its subsequent fiscal years, triborough bridge and tunnel authority, at the direction of metropolitan transportation authority, shall transfer such operating surplus (1) to the metropolitan transportation authority for deposit into one or more funds or accounts to be used as contemplated by section twelve hundred seventy-d of this article, or (2) to the authority and the metropolitan transportation authority solely for application to the payment of the expenses of operation. For purposes of determining the proportional allocation of the operating

surplus as between the authority and the metropolitan transportation authority, the following formula shall apply: (i) twenty-four million dollars plus fifty percentum of the balance of such operating surplus shall be allocable to the authority, and (ii) the remainder shall be allocable to metropolitan transportation authority on behalf of the commuter railroads operated by it, by its subsidiary corporations or by others under joint arrangements.

**(c)** Triborough bridge and tunnel authority is authorized, at the direction of the metropolitan transportation authority, from time to time to make advances from available funds on account of the operating surplus it anticipates will or may be certified and transferred as provided in this subdivision to (1) the metropolitan transportation authority for deposit into one or more funds or accounts to be used as contemplated by section twelve hundred seventy-d of this article, or (2) the authority and the metropolitan transportation authority solely for application to the payment of the expenses of operation. In the event that advances so made in respect of any fiscal year including the year in which the surpluses are being earned exceed the amounts required to be transferred to the authority and metropolitan transportation authority pursuant to the provisions of this subdivision, then the amount of any such excess shall be refunded to triborough bridge and tunnel authority by the authority or metropolitan transportation authority, as the case may be, within thirty days of the making by triborough bridge and tunnel authority of its certification of operating surplus for such fiscal year.

**(d)** For the purposes of this subdivision, the existence and the amount of surplus funds and operating surplus of triborough bridge and tunnel authority shall be determined in accordance with the provisions of subdivision twelve of section five hundred fifty-three of this chapter.

**(e)** Triborough bridge and tunnel authority shall certify to the mayor and to the chairman of metropolitan transportation authority within ninety days after the end of its fiscal year ending December thirty-first, nineteen hundred sixty-seven, and within forty-five days after the end of each of its subsequent fiscal years, the amount of its operating surplus for that year and, in the case of the fiscal year ending December thirty-first, nineteen hundred sixty-seven, the amount of all of its surplus funds on hand as of the last day of such fiscal year.

**(f)** No transfer of funds shall be made to the authority pursuant to any provision of this section at any time when there shall have been pending and not acted upon by the mayor for ninety days any request of the authority for permission to expend or contract to expend funds for a project included in a capital budget for transit facility purposes. There shall be excluded from such ninety-day period any time during which the mayor is prevented from acting by order of court or by operation of law.

**3.** Notwithstanding the preceding subdivisions of this section, for purposes of determining the proportional allocation of the operating surplus of the Triborough bridge and tunnel authority between the authority and the metropolitan transportation authority the following formula shall be used: An amount equal to the debt service incurred in such year as a result of the bonds issued to provide facilities pursuant to paragraphs (m), (n), (o), (p) and (r) of subdivision nine of section five hundred fifty-three of this chapter shall be added to the operating surplus of the Triborough bridge and tunnel authority, as certified by that authority. The sum of these figures shall then be allocated to the authority and the commuter railroads operated by metropolitan transportation authority or by its subsidiary corporations, pursuant to the formula contained in paragraph (b) of subdivision two of this section as if this amount were the operating surplus of the Triborough bridge and tunnel authority. The amounts so allocated to the authority and the commuter railroads operated by metropolitan transportation authority or by its subsidiary corporations, shall then be reduced respectively by the proportional amount of the debt service, incurred in such year by the Triborough bridge and tunnel authority pursuant to paragraphs (m), (n), (o), (p) and (r) of subdivision nine of section five hundred fifty-three of this chapter, reasonably attributable to the payments for transit projects undertaken for the authority and its subsidiaries and transportation facility projects undertaken for the commuter railroads operated by the metropolitan transportation authority or by its subsidiary corporations. The remaining amounts shall constitute the respective allocation of operating surplus for the authority and the commuter railroads operated by the metropolitan transportation authority or by its subsidiary corporations.

## History

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Add, L 1967, ch 717, § 80; amd, L 1972, ch 6, § 1, eff Jan 5, 1972; L 1981, ch 314, § 14; L 1981, ch 558, § 11; L 2000, ch 61, § 19 (Part O), eff May 15, 2000.

Annotations

## Notes

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### Editor's Notes:

**Laws 1981, ch 314, § 18**, eff June 29, 1981, provides as follows:

§ 18. Notwithstanding the provisions of section twelve hundred nineteen-a of the public authorities law, in the event that the board of the Triborough bridge and tunnel authority determines that its insurance and operating reserves are not then reasonably necessary or required, the entire amount of additional surplus created by the dissolution of said reserves shall be paid to the metropolitan transportation authority. In the event that the board of the Triborough bridge and tunnel authority determines at anytime to re-establish the insurance and operating reserves then, notwithstanding the provisions of section twelve hundred nineteen-a of the public authorities law, the Triborough bridge and tunnel authority shall not reduce its operating surplus by the amount necessary to re-establish such reserves and shall withhold from the operating surplus otherwise distributable to the metropolitan transportation authority an amount, not exceeding the amount paid to the metropolitan transportation authority as a result of the dissolution of such reserves, necessary to re-establish the same.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 553-d, 569-c, 1203, 1203-a, 1203-b, 1207-a, 1207-b, 1269.

Special Triborough bridge and tunnel authority special obligation bonds and notes, § 553-d.

### Jurisprudences:

63C Am Jur 2d, Public Funds §§ 45, 51.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1220

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)*

## § 1220. Separability

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

## History

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Formerly § 1820, add, L 1953, ch 200; renumbered § 1220, L 1957, ch 914, § 3, eff April 24, 1957.

Annotations

## Notes

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### Prior Law:

Former § 1220, add, L 1939, ch 870; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 405.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1203-a, 1207-a, 1207-b.

### Jurisprudences:

16A Am Jur 2d, Constitutional Law §§ 134–151.

73 Am Jur 2d, Statutes § 268.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1221

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 9 New York City Transit Authority (§§ 1200 — 1222)*

## § 1221. Inconsistent provisions in other acts superseded

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In so far as the provisions of this title are inconsistent with the provisions of any other act, general or special, or of any local law of the city, the provisions of this title shall be controlling.

### History

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Formerly § 1821, add, L 1953, ch 200; renumbered § 1221, L 1957, ch 914, § 3, eff April 24, 1957.

Annotations

### Notes

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#### Prior Law:

Former § 1221, add, L 1939, ch 870; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 406.

### Notes to Decisions

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The statutory prohibition imposed by the Public Service Law, prohibiting discrimination by a common carrier, does not apply to the New York City Transit Authority. Application of Love, 155 N.Y.S.2d 266, 1956 N.Y. Misc. LEXIS 2338 (N.Y. Sup. Ct. 1956).

### Research References & Practice Aids

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#### Cross References:

This section referred to in §§ 1203-a, 1207-a, 1207-b.

#### Jurisprudences:

73 Am Jur 2d, Statutes § 268.

#### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 9

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# NY CLS Pub A § 1260

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*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## § 1260. Short title

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This title may be cited as the “Metropolitan Transportation Authority Act.”

## History

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Add, L 1965, ch 324, § 3; amd, L 1967, ch 717, § 81, eff March 1, 1968.

Annotations

## Notes

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### Prior Law:

Former § 1260, add, L 1959, ch 789; renumbered § 1240, L 1965, ch 324, § 2, eff June 1, 1965.

Prior § 1260, add, L 1942, ch 11; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 411.

### Editor’s Note:

See 1965 note under Title 11.

## Notes to Decisions

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The statutes creating the Metropolitan Transportation Authority are constitutional. *Metropolitan Transp. Authority v County of Nassau*, 28 N.Y.2d 385, 322 N.Y.S.2d 228, 271 N.E.2d 213, 1971 N.Y. LEXIS 1244 (N.Y. 1971).

Metropolitan Transportation Authority (MTA) was estopped from challenging the notice of injury and the service of process made by a plaintiff who claimed that he slipped and fell on a defective stairway at a subway station, on the grounds that the facility was owned and operated by the MTA’s affiliate, the New York City Transportation Authority (NYCTA). The MTA had not rejected the notice sent from the plaintiff’s attorney, had forwarded the notice to the NYCTA, had made blended references to the MTA and the NYCTA, was represented by the NYCTA’s general counsel, and had engaged in conduct that would lead plaintiff’s counsel to believe that notice and service of process would not be raised as defenses. *Delacruz v Metropolitan Tr. Auth.*, 828 N.Y.S.2d 856, 14 Misc. 3d 886,

2007 N.Y. Misc. LEXIS 51 (N.Y. Sup. Ct.), rev'd, 45 A.D.3d 482, 846 N.Y.S.2d 160, 2007 N.Y. App. Div. LEXIS 12087 (N.Y. App. Div. 1st Dep't 2007).

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1261

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-I)***

## § 1261. Definitions

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As used or referred to in this title, unless a different meaning clearly appears from the context:

1. "Authority" shall mean the corporation created by section twelve hundred sixty-three of this title.
2. "Authority facilities" shall mean the authority's railroad, omnibus, marine and aviation facilities and operations pursuant to joint service arrangements.
3. "Budget" shall mean the preliminary, final proposed and adopted final plans of the authority, and each of its agencies.
4. "Comptroller" shall mean the comptroller of the state of New York.
5. "Equipment" shall mean rolling stock, omnibuses, vehicles, air, marine or surface craft, motors, boilers, engines, wires, ways, conduits and mechanisms, machinery, tools, implements, materials, supplies, instruments and devices of every nature whatsoever used or useful for transportation purposes or for the generation or transmission of motive power including but not limited to all power houses, and all apparatus and all devices for signalling, communications and ventilation as may be necessary, convenient or desirable for the operation of a transportation facility.
6. "Federal government" shall mean the United States of America, and any officer, department, board, commission, bureau, division, corporation, agency or instrumentality thereof.
7. "Gap" shall mean the difference between projected revenues and expenses for any given fiscal year based on the existing fare structure.
8. "Gap-closing initiative" shall mean any action to reduce a projected gap.
9. "Governor" shall mean the governor of the state of New York.
10. "Joint service arrangements" shall mean agreements between or among the authority and any common carrier or freight forwarder, the state, any state agency, the federal government, any other state or agency or instrumentality thereof, any public authority of this or any other state, or any political subdivision or municipality of the state, relating to property, buildings, structures, facilities, services, rates, fares, classifications, divisions, allowances or charges (including charges between operators of railroad, omnibus, marine and aviation facilities), or rules or regulations pertaining thereto, for or in connection with or incidental to transportation in part in or upon railroad, omnibus, marine or aviation facilities located within the district and in part in or upon railroad, omnibus, marine or aviation facilities located outside the district.
11. "Marine and aviation facilities" shall mean equipment and craft for the transportation of passengers, mail and cargo between points within the district or pursuant to joint service arrangements, by marine craft and aircraft of all types including but not limited to hydrofoils, ferries, lighters, tugs, barges, helicopters, amphibians, seaplanes or other contrivances now or hereafter used in navigation or movement on waterways or in the navigation of or flight in airspace. It shall also mean any marine port

or airport facility within the transportation district but outside the port of New York district as defined in chapter one hundred fifty-four of the laws of nineteen hundred twenty-one, including but not limited to terminals, docks, piers, bulkheads, ramps or any facility or real property necessary, convenient or desirable for the accommodation of passengers and cargo or the docking, sailing, landing, taking off, accommodation or servicing of such marine craft or aircraft.

**12.** "Omnibus facilities" shall mean motor vehicles, of the type operated by carriers subject to the jurisdiction of the public service commission, engaged in the transportation of passengers and their baggage, express and mail between points within the district or pursuant to joint service arrangements, and equipment, property, buildings, structures, improvements, loading or unloading areas, parking areas or other facilities, necessary, convenient or desirable for the accommodation of such motor vehicles or their passengers, including but not limited to buildings, structures and areas notwithstanding that portions may not be devoted to any omnibus purpose other than the production of revenues available for the costs and expenses of all or any facilities of the authority.

**13.** "Railroad facilities" shall mean right of way and related trackage, rails, cars, locomotives, other rolling stock, signal, power, fuel, communication and ventilation systems, power plants, stations, terminals, storage yards, repair and maintenance shops, yards, equipment and parts, offices and other real estate or personalty used or held for or incidental to the operation, rehabilitation or improvement of any railroad operating or to operate between points within the district or pursuant to joint service arrangements, including but not limited to buildings, structures, and areas notwithstanding that portions thereof may not be devoted to any railroad purpose other than the production of revenues available for the costs and expenses of all or any facilities of the authority.

**14.** "Real property" shall mean lands, structures, franchises and interests in land, waters, lands under water, riparian rights and air rights and any and all things and rights included within said term and includes not only fees simple absolute but also any and all lesser interests including but not limited to easements, rights of way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise.

**15.** "State" shall mean the state of New York.

**16.** "State agency" shall mean any officer, department, board, commissioner, bureau, division, public benefit corporation, agency or instrumentality of the state.

**17.** "Transportation facility" shall mean any transit, railroad, omnibus, marine or aviation facility and any person, firm, partnership, association or, corporation which owns, leases or operates any such facility or any other facility used for service in the transportation of passengers, United States mail or personal property as a common carrier for hire and any portion thereof and the rights, leaseholds or other interest therein together with routes, tracks, extensions, connections, parking lots, garages, warehouses, yards, storage yards, maintenance and repair shops, terminals, stations and other related facilities thereof, the devices, appurtenances, and equipment thereof and power plants and other instrumentalities used or useful therefor or in connection therewith.

**18.** "Transportation district" and "district" shall mean the metropolitan commuter transportation district created by section twelve hundred sixty-two of this title.

**18-a.** "Transportation purpose" shall mean a purpose that directly supports the missions or purposes of the authority, any of its subsidiaries, New York city transit authority or its subsidiary, including the realization of revenues derived from property that is, or is to be used as, a transportation facility.

**19.** "New York city transit authority" shall mean the corporation created by section twelve hundred one of this chapter.

**20.** "Triborough bridge and tunnel authority" shall mean the corporation created by section five hundred fifty-two of this chapter.

21. "Inspector general" shall mean the metropolitan transportation authority inspector general.
22. "Revenues." All monies received by the authority or its subsidiaries, or New York city transit authority or its subsidiaries, or Triborough bridge and tunnel authority, as the case may be, from whatever source, derived directly or indirectly from or in connection with the operations of the respective entity.
23. "Transit facility." Transit facility as defined in subdivision fifteen of section twelve hundred of this article.
24. "Utilization" shall mean public usage of the subway, bus, railroad and paratransit services, and bridge and tunnel crossings, of the authority and its affiliates and subsidiaries as reflected in empirical data.

## History

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Add, L 1965, ch 324, § 3, eff June 1, 1965; amd, L 1966, ch 415, § 1, eff May 23, 1966, deemed eff Jan 20, 1966; L 1967, ch 717, § 82, eff March 1, 1968; L 1973, ch 569, § 1, eff June 5, 1973; L 1983, ch 427, § 2, eff July 11, 1983; L 2000, ch 61, §§ 20, 21 (Part O), eff May 15, 2000; L 2009, ch 25, § 1 (Part H), eff May 7, 2009; L 2016, ch 54, § 1 (Part PP), effective April 4, 2016; L 2017, ch 58, § 1 (Part PP), effective April 20, 2017.

Annotations

## Notes

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### Prior Law:

Former § 1261, add, L 1959, ch 789; renumbered § 1241, L 1965, ch 324, § 2, eff June 1, 1965.

### Editor's Notes:

See 1965 note under Title 11.

**Laws 2009, ch 25, § 1**, eff May 7, 2009, provides as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

### **Amendment Notes**

**The 2016 amendment by ch 54, § 1 (Part PP)**, added 18-a.

**The 2017 amendment by ch 58, § 1 (Part PP)**, in 18-a, substituted “supports the missions” for “or indirectly supports all or any of the missions” and “derived from property that is, or is to be used as, a transportation facility” for “available for the costs and expenses of all or any transportation facilities.”

## **Notes to Decisions**

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The Metropolitan Transportation Authority was created by a special act and the implementation of its powers, including the right to build bridges, was a valid exercise of legislative authority. *Rye v Metropolitan Transp. Authority*, 24 N.Y.2d 627, 301 N.Y.S.2d 569, 249 N.E.2d 429, 1969 N.Y. LEXIS 1330 (N.Y. 1969).

The construction of high level platforms for passenger access facilities for a commuter line was encompassed within the definition of a “railroad facility,” as defined in Public Authorities Law § 1261, subd 10. *Metropolitan Transp. Authority v Tuckahoe*, 67 Misc. 2d 895, 325 N.Y.S.2d 718, 1971 N.Y. Misc. LEXIS 1235 (N.Y. Sup. Ct.), aff'd, 38 A.D.2d 570, 328 N.Y.S.2d 615, 1971 N.Y. App. Div. LEXIS 2831 (N.Y. App. Div. 2d Dep't 1971).

Metropolitan Transit Authority may restrict newspaper’s right to distribute its newspapers through newsracks in MTA stations, and may impose licensing fees as permissible manner restrictions because they are content-neutral, leave open alternative means to distribute newspapers and are the least restrictive means of serving MTA’s interest in raising revenue for the efficient, self-sufficient operation of the commuter lines. *Gannett Satellite Information Network, Inc. v Metropolitan Transp. Authority*, 745 F.2d 767, 1984 U.S. App. LEXIS 18110 (2d Cir. N.Y. 1984).

## **Research References & Practice Aids**

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### **Cross References:**

This section referred to in § 553-e.

Compact creating Port of New York District and establishing Port Authority of New York and New Jersey, CLS Unconsol L Ch 151.

### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11



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# NY CLS Pub A § 1262

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## § 1262. Metropolitan commuter transportation district

---

There is hereby created and established a commuter transportation district to be known as the metropolitan commuter transportation district which shall embrace the city of New York and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester, provided, however, that the district shall not include a county that has withdrawn from the district pursuant to section twelve hundred seventy-nine-b of this article.

### History

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Add, L 1965, ch 324, § 3; amd, L 1986, ch 669, § 1, eff July 26, 1986.

Annotations

### Notes

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#### Prior Law:

Former § 1262, add, L 1959, ch 789; renumbered § 1242, L 1965, ch 324, § 2, eff June 1, 1965.

#### Editor's Notes:

See 1965 note under Title 11.

## NOTES TO DECISIONS

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Grant of summary judgment to a transit authority was reversed because plaintiff submitted evidence demonstrating that the transit authority was equitably estopped from asserting failure to timely serve a notice of claim defense under General Municipal Law § 50-e(1)(a) since it wrongfully or negligently engaged in conduct that misled plaintiff to justifiably believe that service of the notice of claim upon a separate transit authority was of no consequence. *Konner v New York City Tr. Auth.*, 143 A.D.3d 774, 39 N.Y.S.3d 475, 2016 N.Y. App. Div. LEXIS 6583 (N.Y. App. Div. 2d Dep't 2016).

### Opinion Notes

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## Agency Opinions

County withdrawing from Metropolitan Commuter Transportation District under CLS Pub A § 1279-b may retain additional proceeds of mortgage recording tax under CLS Tax § 253 and sales and use tax revenues under alternate provisions of CLS Tax § 1210 only where revenues from these taxes are applied to mass transportation purposes. 1987 NY Ops Atty Gen No. 87-56 (Informal).

The geographical area of employment of police officers of a village lying partially within two counties does not extend to all of both counties. N.Y. Op. Att'y Gen. No. 2011-4, 2011 N.Y. AG LEXIS 5.

## Research References & Practice Aids

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### Cross References:

This section referred to in § 1261; CLS State Fin § 88-a; CLS Tax §§ 183-a, 184-a, 186-a, 186-c, 209-B, 261, 1455-B, 1505-a.

### Jurisprudences:

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 11.

### Texts:

New York Insurance Law (Matthew Bender's New York Practice Series) § 6.06[1].

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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## NY CLS Pub A § 1263

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

### **§ 1263. Metropolitan transportation authority.**

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1.

(a) [Eff until June 30, 2024]

(1) There is hereby created the “metropolitan transportation authority.” The authority shall be a body corporate and politic constituting a public benefit corporation. The authority shall consist of a chairman, sixteen other voting members, and two non-voting and four alternate non-voting members, as described in subparagraph two of this paragraph appointed by the governor by and with the advice and consent of the senate. Any member appointed to a term commencing on or after June thirtieth, two thousand nine shall have experience in one or more of the following areas: transportation, public administration, business management, finance, accounting, law, engineering, land use, urban and regional planning, management of large capital projects, labor relations, or have experience in some other area of activity central to the mission of the authority. Four of the sixteen voting members other than the chairman shall be appointed on the written recommendation of the mayor of the city of New York; and each of seven other voting members other than the chairman shall be appointed after selection from a written list of three recommendations from the chief executive officer of the county in which the particular member is required to reside pursuant to the provisions of this subdivision. Of the members appointed on recommendation of the chief executive officer of a county, one such member shall be, at the time of appointment, a resident of the county of Nassau, one a resident of the county of Suffolk, one a resident of the county of Westchester, one a resident of the county of Dutchess, one a resident of the county of Orange, one a resident of the county of Putnam and one a resident of the county of Rockland, provided that the term of any member who is a resident of a county that has withdrawn from the metropolitan commuter transportation district pursuant to section twelve hundred seventy-nine-b of this title shall terminate upon the effective date of such county’s withdrawal from such district. Of the five voting members, other than the chairman, appointed by the governor without recommendation from any other person, three shall be, at the time of appointment, residents of the city of New York and two shall be, at the time of appointment, residents of such city or of any of the aforementioned counties in the metropolitan commuter transportation district. Provided however, notwithstanding the foregoing residency requirement, one of the five voting members appointed by the governor without recommendation from any other person, other than the chairman, may be the director of the New York state division of the budget, and provided further that, in the event of such appointment, the budget director’s membership in the authority shall be deemed ex-officio. The chairman and each of the members shall be appointed for a term of six years, provided however, that the chairman first appointed shall serve for a term ending June thirtieth, nineteen hundred eighty-one, provided that thirty days after the effective date of the chapter of the laws of two thousand nine which amended this subparagraph, the term of the chairman shall expire; provided, further, that such chairman may continue to discharge the duties of his or her office until the position of chairman is filled by appointment by the governor upon the advice and consent of the senate and the term of such new

chairman shall terminate June thirtieth, two thousand fifteen. The sixteen other members first appointed shall serve for the following terms: The members from the counties of Nassau and Westchester shall each serve for a term ending June thirtieth, nineteen hundred eighty-five; the members from the county of Suffolk and from the counties of Dutchess, Orange, Putnam and Rockland shall each serve for a term ending June thirtieth, nineteen hundred ninety-two; two of the members appointed on recommendation of the mayor of the city of New York shall each serve for a term ending June thirtieth, nineteen hundred eighty-four and, two shall each serve for a term ending June thirtieth, nineteen hundred eighty-one; two of the members appointed by the governor without the recommendation of any other person shall each serve for a term ending June thirtieth, nineteen hundred eighty-two, two shall each serve for a term ending June thirtieth, nineteen hundred eighty and one shall serve for a term ending June thirtieth, nineteen hundred eighty-five. The two non-voting and four alternate non-voting members shall serve until January first, two thousand one. The members from the counties of Dutchess, Orange, Putnam and Rockland shall cast one collective vote.

**(2)** There shall be two non-voting members and four alternate non-voting members of the authority, as referred to in subparagraph one of this paragraph.

The first non-voting member shall be a regular mass transit user of the facilities of the authority and be recommended to the governor by the New York city transit authority advisory council. The first alternate non-voting member shall be a regular mass transit user of the facilities of the authority and be recommended to the governor by the Metro-North commuter council. The second alternate non-voting member shall be a regular mass transit user of the facilities of the authority and be recommended to the governor by the Long Island Rail Road commuter's council.

The second non-voting member shall be recommended to the governor by the labor organization representing the majority of employees of the Long Island Rail Road. The third alternate non-voting member shall be recommended to the governor by the labor organization representing the majority of employees of the New York city transit authority. The fourth alternate non-voting member shall be recommended to the governor by the labor organization representing the majority of employees of the Metro-North Commuter Railroad Company. The chairman of the authority, at his direction, may exclude such non-voting member or alternate non-voting member from attending any portion of a meeting of the authority or of any committee established pursuant to paragraph (b) of subdivision four of this section held for the purpose of discussing negotiations with labor organizations.

The non-voting member and the two alternate non-voting members representing the New York city transit authority advisory council, the Metro-North commuter council, and the Long Island Rail Road commuter's council shall serve eighteen month rotating terms, after which time an alternate non-voting member shall become the non-voting member and the rotation shall continue until each alternate member has served at least one eighteen month term as a non-voting member. The other non-voting member and alternate non-voting members representing the New York city transit authority, Metro-North Commuter Railroad Company, and the Long Island Rail Road labor organizations shall serve eighteen month rotating terms, after which time an alternate non-voting member shall become the non-voting member and the rotation shall continue until each alternate member has served at least one eighteen month term as a non-voting member. The transit authority and the commuter railroads shall not be represented concurrently by the two non-voting members during any such eighteen month period.

**(a)** [Eff June 30, 2024] There is hereby created the "metropolitan transportation authority." The authority shall be a body corporate and politic constituting a public benefit corporation. The authority shall consist of a chairman and sixteen other members appointed by the governor by and with the advice and consent of the senate. Any member appointed to a term commencing on or after June thirtieth, two thousand nine shall have experience in one or more of the following areas of expertise: transportation, public administration, business management, finance, accounting, law, engineering,

land use, urban and regional planning, management of large capital projects, labor relations, or have experience in some other area of activity central to the mission of the authority. Four of the sixteen members other than the chairman shall be appointed on the written recommendation of the mayor of the city of New York; and each of seven other members other than the chairman shall be appointed after selection from a written list of three recommendations from the chief executive officer of the county in which the particular member is required to reside pursuant to the provisions of this subdivision. Of the members appointed on recommendation of the chief executive officer of a county, one such member shall be, at the time of appointment, a resident of the county of Nassau; one a resident of the county of Suffolk; one a resident of the county of Westchester; and one a resident of the county of Dutchess, one a resident of the county of Orange, one a resident of the county of Putnam and one a resident of the county of Rockland, provided that the term of any member who is a resident of a county that has withdrawn from the metropolitan commuter transportation district pursuant to section twelve hundred seventy-nine-b of this title shall terminate upon the effective date of such county's withdrawal from such district. Of the five members, other than the chairman, appointed by the governor without recommendation from any other person, three shall be, at the time of appointment, residents of the city of New York and two shall be, at the time of appointment, residents of such city or of any of the aforementioned counties in the metropolitan commuter transportation district. Provided however, notwithstanding the foregoing residency requirement, one of the five voting members appointed by the governor without recommendation from any other person, other than the chairman, may be the director of the New York state division of the budget, and provided further that, in the event of such appointment, the budget director's membership in the authority shall be deemed ex-officio. The chairman and each of the members shall be appointed for a term of six years, provided however, that the chairman first appointed shall serve for a term ending June thirtieth, nineteen hundred eighty-one, provided that thirty days after the effective date of the chapter of the laws of two thousand nine which amended this paragraph, the term of the chairman shall expire; provided, further, that such chairman may continue to discharge the duties of his office until the position of chairman is filled by appointment by the governor upon the advice and consent of the senate and the term of such new chairman shall terminate June thirtieth, two thousand fifteen. The sixteen other members first appointed shall serve for the following terms: The members from the counties of Nassau and Westchester shall each serve for a term ending June thirtieth, nineteen hundred eighty-five; the members from the county of Suffolk and from the counties of Dutchess, Orange, Putnam and Rockland shall each serve for a term ending June thirtieth, nineteen hundred ninety-two; two of the members appointed on recommendation of the mayor of the city of New York shall each serve for a term ending June thirtieth, nineteen hundred eighty-four and, two shall each serve for a term ending June thirtieth, nineteen hundred eighty-one; two of the members appointed by the governor without the recommendation of any other person shall each serve for a term ending June thirtieth, nineteen hundred eighty-two, two shall each serve for a term ending June thirtieth, nineteen hundred eighty and one shall serve for a term ending June thirtieth, nineteen hundred eighty-five. The members from the counties of Dutchess, Orange, Putnam and Rockland shall cast one collective vote.

**(a-1)** The mayor of the city of New York shall, no later than April first, nineteen hundred ninety-one, develop and submit to the governor, the temporary president of the senate and the speaker of the assembly, a plan detailing how the four appointments to the metropolitan transportation authority board made by the governor upon the written recommendation of the mayor can be utilized to ensure that each county within the city of New York is represented on such board.

**(b)** Vacancies occurring otherwise than by expiration of term shall be filled in the same manner as original appointments for the balance of the unexpired term, provided, however, that in the event of a vacancy caused by the death, resignation, removal, or disability of the chairman, the vacancy shall be filled by the governor by and with the advice and consent of the senate for the unexpired term. Notwithstanding any other provision of law to the contrary, the governor shall designate an acting chairman for a period not to exceed six months or until a successor chairman has been confirmed by the senate, whichever comes first. Upon the expiration of the six-month term, if the governor has nominated a successor chairman, but the senate has not acted upon the nomination, the acting chair

can continue to serve as acting chair for an additional ninety days or until the governor's successor chair nomination is confirmed by the senate, whichever comes first.

**(c)**

**(i)** Notwithstanding any inconsistent provision of this section, the term of any member shall expire upon the expiration of the term in office being served by the county elected official upon whose recommendation they were appointed; provided, however, that in such circumstance such member may serve as a holdover appointee for sixty days, or until such time as a new member is appointed, whichever is less. The term of any member appointed to replace such a holdover appointee shall expire at the end of the term in office of the county elected official upon whose recommendation such member was appointed. If a county elected official leaves office because of death, resignation, removal or disability, however, a member appointed upon such official's recommendation shall continue to serve until such time as such county elected office is filled, at which time such member will become a holdover appointee and may serve for sixty days, or until such time as a new member is appointed, whichever is less.

**(ii)** Notwithstanding any inconsistent provision of this section, the term of any chairman or any member shall expire upon the expiration of the term in office being served by the city or state elected official upon whose recommendation they were appointed; provided, however, that in such circumstance the chairman or such member may serve as a holdover appointee until such time as a new chairman or member is appointed. The term of any chairman or member appointed to replace such a holdover appointee shall expire at the end of the term in office of the city or state elected official upon whose recommendation such chairman or member was appointed.

**2.** The chairman and the first vice chairman shall be paid a salary in the amount determined by the authority; the other members shall not receive a salary or other compensation. Each member, including the chairman and the first vice chairman, shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of his or her official duties.

**3.**

**(a)** A majority of the whole number of members of the authority then in office shall constitute a quorum for the transaction of any business or the exercise of any power of the authority. Except as otherwise specified in this title, for the transaction of any business or the exercise of any power of the authority, the authority shall have power to act by a majority vote of the members present at any meeting at which a quorum is in attendance and except further, that in the event of a tie vote the chairman shall cast one additional vote.

**(b)** For purposes of determining the presence of a quorum, and for purposes of participation on any committee or subcommittee, those members who collectively cast a single vote pursuant to the provisions of paragraph (a) of subdivision one of this section shall be considered to be a single member, and the presence of such member shall be determined as provided in this subdivision. Except as otherwise provided in a by-law adopted as hereinafter provided, such single member constituting those members entitled to a collective vote shall be deemed present as a single member for purposes of a quorum if one or more of the members then in office entitled to cast such collective vote is present, and such collective vote shall be cast in accordance with the majority agreement of the members entitled to a collective vote who are present or in the event a single member entitled to a collective vote is present it shall be cast by that member. To evidence the existence of such majority agreement among the members entitled to a collective vote, each such member shall be polled as to his vote and such poll shall be recorded in the minutes. In the event a majority vote is not achieved by the members entitled to a collective vote who are present, then the vote shall not be cast. Nothing herein shall limit the right of an individual member to participate in board meetings or in other activities of the authority when the other members then in office entitled to collectively cast a vote are not present. At any meeting of the authority at which there is a quorum including all the members then in office entitled to cast a collective vote, the authority may adopt a by-law or by-laws regulating the casting of such

collective vote, provided all members then in office entitled to cast a collective vote affirmatively approve such by-law or by-laws. Any action taken by the authority in accordance with any such by-law or by-laws adopted pursuant to the provisions of this paragraph shall take effect in the same manner as any other action of the authority. Any such by-law or by-laws shall not provide for the casting of any fractional vote. Nor shall such a by-law or by-laws provide for the amendment, repeal or adoption in the future of such a by-law or by-laws in a manner other than that set forth in this paragraph.

**(c)** No provision of paragraph (b) of this subdivision relating to the adoption of certain by-laws by the authority shall affect the manner in which by-laws of the authority are adopted concerning any subject other than the voting and presence for quorum purposes of the members from the counties of Dutchess, Putnam, Orange and Rockland.

**(d)** Notwithstanding the provisions of paragraph (a) of subdivision one of this section, any member appointed from the county of Dutchess, Orange, Putnam or Rockland prior to the increase in the number of members of the authority to include a member from each such county shall continue in office as the member from such counties pursuant to section five of the public officers law until the appointment and confirmation of all of the new members from such counties pursuant to the provisions of this section, and no individual member exercising a collective vote appointed and confirmed pursuant to paragraph (a) of subdivision one of this section shall take office until all such new members are appointed and confirmed.

**4.**

**(a)** Notwithstanding any provision of law to the contrary, the chairman shall be the chief executive officer of the authority and shall be responsible for the discharge of the executive and administrative functions and powers of the authority. The chairman may appoint an executive director and such other officials and employees as shall in his or her judgment be needed to discharge the executive and administrative functions and powers of the authority.

**(b)** [Eff until June 30, 2024] The chairman shall establish committees to assist him in the performance of his duties and shall appoint members of the authority to such committees. Among such committees, there shall be a committee on operations of the New York city transit authority, the Manhattan and Bronx surface transit operating authority and the Staten Island rapid transit operating authority; a committee on operations of the Long Island Rail Road and the metropolitan suburban bus authority; a committee on operations of the Metro-North commuter railroad; a committee on operations of the Triborough bridge and tunnel authority; a committee on finance; a committee on capital program oversight; and a committee on safety. In addition to such appointed members, each of the non-voting members referred to in subparagraph two of paragraph (a) of subdivision one of this section shall serve on the committee on capital program oversight, the committee on finance, the committee on safety, the committee on operations of the Triborough bridge and tunnel authority, and the operations committee relevant to the commuter council that recommended such member. The alternate non-voting members shall each serve on the respective operations committee relevant to the commuter council that recommended each member. The committee on capital program oversight and the committee on safety shall include not less than three members, and shall include the chairpersons of the committee on operations of the New York city transit authority, the Manhattan and Bronx surface transit operating authority and the Staten Island rapid transit operating authority, the committee on operations of the Long Island Rail Road and the metropolitan suburban bus authority, and the committee on operations of the Metro-North commuter railroad. The committee on safety shall convene at least once annually and each committee chairperson, that is a member of the committee on safety, shall report to the committee on safety any and all initiatives, concerns, improvements, or failures involving the safety of: (1) customers; (2) employees; and (3) the public at large, in relation to authority facilities and services. The capital program committee shall, with respect to any approved or proposed capital program plans, (i) monitor the current and future availability of funds to be utilized for such plans approved or proposed to be submitted to the metropolitan transportation capital program review board as provided in section twelve hundred sixty-nine-b of this title; (ii) monitor the contract awards of the metropolitan



transportation authority and the New York city transit authority to insure that such awards are consistent with (A) provisions of law authorizing United States content and New York state content; (B) collective bargaining agreements; (C) provisions of law providing for participation by minority and women-owned businesses; (D) New York state labor laws; (E) competitive bidding requirements including those regarding sole source contracts; and (F) any other relevant requirements established by law; (iii) monitor the award of contracts to determine if such awards are consistent with the manner in which the work was traditionally performed in the past provided, however, that any such determination shall not be admissible as evidence in any arbitration or judicial proceeding; (iv) review the relationship between capital expenditures pursuant to each such capital program plan and current and future operating budget requirements; (v) monitor the progress of capital elements described in each capital program plan approved as provided in section twelve hundred sixty-nine-b of this title; (vi) monitor the expenditures incurred and to be incurred for each such element; and (vii) identify capital elements not progressing on schedule, ascertain responsibility therefor and recommend those actions required or appropriate to accelerate their implementation. The capital program committee shall issue a quarterly report on its activities and findings, and shall in connection with the preparation of such quarterly report, consult with the state division of the budget, the state department of transportation, the members of the metropolitan transportation authority capital program review board and any other group the committee deems relevant, including public employee organizations, and, at least annually, with a nationally recognized independent transit engineering firm. Such report shall be made available to the members of the authority, to the members of the metropolitan transportation authority capital program review board, and the directors of the municipal assistance corporation for the city of New York.

**(b)** [Eff June 30, 2024] The chairman shall establish committees to assist him in the performance of his duties and shall appoint members of the authority to such committees. Among such committees, there shall be a committee on operations of the New York city transit authority, the Manhattan and Bronx surface transit operating authority and the Staten Island rapid transit operating authority; a committee on operations of the Long Island Rail Road and the metropolitan suburban bus authority; a committee on operations of the Metro-North commuter railroad; a committee on operations of the Triborough bridge and tunnel authority; a committee on finance; a committee on capital program oversight; and a committee on safety. The committee on capital program oversight shall include not less than four members, and shall include the chairpersons of the committee on operations of the New York city transit authority, the Manhattan and Bronx surface transit operating authority and the Staten Island rapid transit operating authority, the committee on operations of the Long Island Rail Road and the metropolitan suburban bus authority, the committee on operations of the Metro-North commuter railroad, and the committee on safety. The committee on safety shall convene at least once annually and each committee chairperson, that is a member of the committee on safety, shall report to the committee on safety any and all initiatives, concerns, improvements, or failures involving the safety of: (1) customers; (2) employees; and (3) the public at large, in relation to authority facilities and services. The capital program committee shall, with respect to any approved or proposed capital program plans, (i) monitor the current and future availability of funds to be utilized for such plans approved or proposed to be submitted to the metropolitan transportation capital program review board as provided in section twelve hundred sixty-nine-b of this title; (ii) monitor the contract awards of the metropolitan transportation authority and the New York city transit authority to insure that such awards are consistent with (A) provisions of law authorizing United States content and New York state content; (B) collective bargaining agreements; (C) provisions of law providing for participation by minority and women-owned businesses; (D) New York state labor laws; (E) competitive bidding requirements including those regarding sole source contracts; and (F) any other relevant requirements established by law; (iii) monitor the award of contracts to determine if such awards are consistent with the manner in which the work was traditionally performed in the past provided, however, that any such determination shall not be admissible as evidence in any arbitration or judicial proceeding; (iv) review the relationship between capital expenditures pursuant to each such capital program plan and current and future operating budget requirements; (v) monitor the progress of capital elements described in each capital program plan approved as provided in section twelve hundred sixty-nine-b of this title; (vi) monitor the

expenditures incurred and to be incurred for each such element; and (vii) identify capital elements not progressing on schedule, ascertain responsibility therefor and recommend those actions required or appropriate to accelerate their implementation. The capital program committee shall issue a quarterly report on its activities and findings, and shall in connection with the preparation of such quarterly report, consult with the state division of the budget, the state department of transportation, the members of the metropolitan transportation authority capital program review board and any other group the committee deems relevant, including public employee organizations, and, at least annually, with a nationally recognized independent transit engineering firm. Such report shall be made available to the members of the authority, to the members of the metropolitan transportation authority capital program review board, and the directors of the municipal assistance corporation for the city of New York.

**(c)** The chairman shall ensure that at every meeting of the board and at every meeting of each committee the public shall be allotted a period of time, not less than thirty minutes, to speak on any topic on the agenda.

**(d)** Notwithstanding paragraph (c) of subdivision one of section twenty-eight hundred twenty-four of this chapter or any other provision of law to the contrary, the chairman shall not participate in establishing authority policies regarding the payment of salary, compensation and reimbursement to, nor establish rules for the time and attendance of, the chief executive officer. The salary of the chairman, as determined pursuant to subdivision two of this section, shall also be compensation for all services performed as chief executive officer.

- 5.** The authority shall be a "state agency" for the purposes of sections seventy-three and seventy-four of the public officers law.
- 6.** Notwithstanding any inconsistent provisions of this or any other law, general, special or local, no officer or employee of the state, or of any public corporation as defined in the general corporation law, shall be deemed to have forfeited or shall forfeit his office or employment or any benefits provided under the retirement and social security law or under any public retirement system maintained by the state or any of its subdivisions by reason of his acceptance of membership on or chairmanship of the authority; provided, however, a member or chairman who holds such other public office or employment shall receive no additional compensation for services rendered pursuant to this title, but shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of such services.
- 7.** The governor may remove any member for inefficiency, neglect of duty, breach of fiduciary duty or misconduct in office after giving the member a copy of the charges against the member and an opportunity to be heard, in person or by counsel in the member's defense, upon not less than ten days' notice. If any member shall be so removed, the governor shall file in the office of the department of state a complete statement of charges made against such member, and his findings thereon, together with a complete record of the proceedings.
- 8.** The authority shall continue so long as it shall have bonds or other obligations outstanding and until its existence shall be terminated by law. Upon the termination of the existence of the authority, all its rights and properties shall pass to and be vested in the state.
- 9.** Whenever the authority causes notices of hearings on proposed changes in services or fares to be posted pursuant to this section or any statute, regulation, or authority policy, or where it voluntarily posts such notices, such notices shall: (a) be written in a clear and coherent manner using words with common and every day meaning; (b) be captioned in large point type bold lettering with a title that fairly and accurately conveys the basic nature of such change or changes; (c) where such change involves a proposed change in levels of fare, include in its title the range of amounts of fare changes under consideration; (d) contain, to the extent practicable, a concise description of the specific nature of the change or changes, including but not limited to a concise description of those changes that affect the largest number of passengers; (e) where such change involves a change in the nature of a route, contain, to the extent practicable, a clear graphic illustration of such change or changes; and (f) where such change

involves a partial or complete station closing, such notice shall be posted at the affected station with a clear graphic illustration depicting the nature of any closing for such station.

## History

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Add, L 1965, ch 324, § 3, eff June 1, 1965; amd, L 1967, ch 717, § 83, eff March 1, 1968; L 1968, ch 420, § 185; L 1970, ch 139, § 1; L 1979, ch 275, § 1, eff July 1, 1979; L 1979, ch 727, §§ 1, 2, eff Nov 2, 1979; L 1980, ch 278, § 1; L 1984, ch 999, § 13; L 1986, ch 669, § 2; L 1986, ch 900, § 1; L 1986, ch 929, §§ 25–27, eff Dec 31, 1986; L 1990, ch 247, § 1, eff Sept 1, 1990; L 1990, ch 367, § 1, eff July 2, 1990; L 1990, ch 494, § 5; L 1991, ch 464, § 2, eff Sept 1, 1991; L 1992, ch 55, § 199, eff May 10, 1992; L 1994, ch 549, §§ 1, 2, eff Jan 1, 1995; L 2005, ch 766, § 9, eff Jan 13, 2006; L 2006, ch 14, § 1, eff March 28, 2006; L 2009, ch 25, § 5 (Part H); L 2009, ch 25, §§ 3, 4, 7–a (Part H), eff May 7, 2009; L 2009, ch 506, § 27, eff March 1, 2010; L 2018, ch 425, §§ 1, 2, effective December 21, 2018; L 2019, ch 39, §§ 1, 2 (Part E), effective June 24, 2019; L 2019, ch 59, §§ 3, 9 (Part ZZZ, Subpart B), effective April 12, 2019.

Annotations

## Notes

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### Prior Law:

Former § 1263, add, L 1959, ch 789; renumbered § 1243, L 1965, ch 324, § 2, eff June 1, 1965.

### Editor's Notes

See 1965 note under Title 11.

**Laws 1994, ch 549, § 3**, eff Jan 1, 1995, provides:

§ 3. This act shall take effect January 1, 1995 and shall expire and be deemed repealed on June 30, 2024 and upon such date the provisions of law amended by this act shall revert to and be read as if the provisions of this act had not been enacted (Amd, L 2000, ch 516, § 1; L 2005, ch 427, § 1; L 2007, ch 415, § 1, eff Aug 1, 2007; L 2010, ch 2, § 1, eff March 2, 2010, deemed eff on and after Jan 1, 2010; L 2011, ch 576, § 1, eff Sept 23, 2011; L 2016, ch 73, § 1 (Part J), eff June 23, 2016; L 2020, ch 58, § 1 (Part XXX, Subpart B, Item X), eff April 3, 2020).

**Laws 2005, ch 766, §§ 1 and 31**, eff Jan 13, 2006, provide as follows:

Section 1. Short title. This act shall be known and may be cited as the “public authorities accountability act of 2005”.

§ 31. This act shall take effect immediately and shall apply to the public authority fiscal year beginning on or after January 1, 2006, provided however that section twenty-seven of this act shall take effect April 1, 2006.

**Laws 2009, ch 25, §§ 1, 21 (a), (b) (Part H)**, eff May 7, 2009, provide as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district (“MTA district”) are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state’s residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

§ 21. This act shall take effect immediately; provided, however, that: (a) the amendments to subparagraph (1) of paragraph (a) of subdivision 1 of section 1263 of the public authorities law made by section three of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 3 of chapter 549 of the laws of 1994, as amended, when upon such date the provisions of section four of this act shall take effect;

(b) the amendments to subdivision 4 of section 1263 of the public authorities law made by section five of this act, subdivision 2 of section 1201 of the public authorities law made by section six of this act, subdivision 1 of section 552 of the public authorities law made by section seven of this act, and subdivision 5 of section 1266 of the public authorities law made by section eight of this act, shall take effect upon the date of the appointment by the governor with the advice and consent of the senate of a chair to the new term of office created pursuant to section three of this act. The governor's office of appointments shall notify the legislative bill drafting commission upon the appointment of a chairman to the new term provided for in section three of this act in order that the legislative bill drafting commission may maintain an accurate and timely effective database of the original text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law; and

**Laws 2010, ch 2, § 2**, eff March 2, 2010, deemed eff on and after Jan 1, 2010, provides as follows:

§ 2. Notwithstanding the provisions of article 5 of the general construction law, the provisions of paragraph (a) of subdivision 1 and paragraph (b) of subdivision 4 of section 1263 of the public authorities law, as repealed by section 3 of chapter 549 of the laws of 1994, are hereby revived and shall continue in full force and effect as such provisions existed on December 31, 2009.

**Laws 2018, ch 425, § 3**, eff December 21, 2018, provides:

§ 3. This act shall take effect immediately, provided that the amendments to paragraph (b) of subdivision 4 of section 1263 of the public authorities law made by section one of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 3 of chapter 549 of the laws of 1994, as amended, when upon such date the provisions of section two of this act shall take effect.

**Laws 2019, ch 39, § 3 (Part E)**, eff June 24, 2019, provides:

§ 3. This act shall take effect immediately, provided that the amendments to paragraph (a) of subdivision 1 of section 1263 of the public authorities law made by section one of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 3 of chapter 549 of the laws of 1994, as amended, when upon such date the provisions of section two of this act shall take effect.

**Laws 2019, ch 59, § 1 (Part ZZZ)**, eff April 12, 2019, provides:

§ 1. This act shall be known and may be cited as the “MTA reform and traffic mobility act”.

### **Amendment Notes**

**2009.** Chapter 25, § 3 (Part H) amended:

Sub 1, par (a) [first setout], subpar (1) by deleting at figs 1 and 2 a semicolon, at fig 3 “; and”, at fig 4 “and the” and adding the matter in italics.

**2009.** Chapter 25, § 4 (Part H) amended:

Sub 1, par (a) [second setout] by deleting at fig 1 “and the” and adding the matter in italics.

**2009.** Chapter 25, § 5 (Part H) amended:

By adding sub 4, par (d).

**2009.** Chapter 25, § 7-a (Part H) amended:

Sub 7 by deleting at figs 1 and 2 “him”, at fig 3 “his” and adding the matter in italics.

**2009.** Chapter 506, § 27 amended:

Sub 4, par (a) by deleted at fig 1 “subdivision three of section twenty-eight hundred twenty-four of this chapter or”, at fig 2 “other”, at fig 3 “judgement” and adding the matter in italics.

**1994.** Chapter 549, § 1 amended:

By adding sub 1, par (a), subpar (2).

**The 2018 amendment by ch 425, §§ 1, 2**, in 4(b) [first setout], added “and a committee on safety” in the second sentence, added “the committee on safety” on the third sentence, added “and the committee on safety” in the fifth sentence, added the sixth sentence, substituted “The capital program committee” for “Such committee” in the seventh sentence and added “capital program” preceding “committee shall” in the eighth sentence; in 4(b) [second setout], added “and a committee on safety” in the second sentence, in the third sentence, substituted “four members” for “three members” and added “and the committee on safety,” added the fourth sentence, substituted “The capital program committee” for “Such committee” in the fifth sentence and added “capital program” preceding “committee shall” in the sixth sentence; and made related changes.

**The 2019 amendment by ch 39, §§ 1, 2 (Part E)**, in 1(a)(1) first setout], substituted “this title” for “this article” in the sixth sentence and added the seventh sentence; in 1(a) [second setout], substituted “this title” for “this article” in the sixth sentence and added the seventh sentence.

**The 2019 amendment by ch 59, §§ 3, 9 (Part ZZZ, Subpart B)**, rewrote 1(b), which formerly read: “Vacancies occurring otherwise than by expiration of term shall be filled in the same manner as original appointments for the balance of the unexpired term”; and added 1(c).

## **Notes to Decisions**

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Notice of a public hearing regarding financial plans of the Metropolitan Transportation Authority (MTA) and the New York City Transit Authority (NYCTA) did not have to state that cost savings from one fiscal year would be allocated to the next two fiscal years, rather than to just one fiscal year; neither N.Y. Pub. Auth. Law § 1205(7) nor N.Y. Pub. Auth. Law § 1263(9) required such detailed financial disclosures by the MTA and the NYCTA in a notice of public

hearing regarding proposed changes in fares. *N.Y. Pub. Interest Research Group Straphangers Campaign, Inc. v Metro. Transp. Auth.*, 309 A.D.2d 127, 763 N.Y.S.2d 13, 2003 N.Y. App. Div. LEXIS 8336 (N.Y. App. Div. 1st Dep't), app. denied, 100 N.Y.2d 513, 767 N.Y.S.2d 394, 799 N.E.2d 617, 2003 N.Y. LEXIS 2540 (N.Y. 2003).

Metropolitan Transit Authority (MTA) was entitled to summary judgment on a pedestrian's personal injury claim because the functions of the MTA with respect to public transportation were limited to financing and planning, and did not include the operation, maintenance, and control of any facility, and there was no dispute that the MTA's liability was premised upon matters concerning the operation, maintenance, and control of a grating over a particular subway vent. *Fiero v City of New York*, 190 A.D.3d 822, 140 N.Y.S.3d 602, 2021 N.Y. App. Div. LEXIS 297 (N.Y. App. Div. 2d Dep't 2021).

The establishment of the Metropolitan Commuter Transportation Authority was essentially for a governmental purpose. *People v Witherspoon*, 52 Misc. 2d 320, 275 N.Y.S.2d 592, 1966 N.Y. Misc. LEXIS 1236 (N.Y. Dist. Ct. 1966).

State was entitled to dismissal of complaint alleging that claimant was assaulted by 2 Metro North Commuter Railroad police officers, as Court of Claims lacked subject matter jurisdiction; claim lay (if at all) against Metropolitan Transportation Authority and Metro North in courts of general jurisdiction pursuant to CLS Pub A §§ 1263, 1265 and 1267. *Hampton v State*, 168 Misc. 2d 1036, 646 N.Y.S.2d 66, 1995 N.Y. Misc. LEXIS 700 (N.Y. Ct. Cl. 1995).

## Opinion Notes

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### Agency Opinions

Upon enactment of chapter 900 of the Laws of 1986, the members of the Metropolitan Transportation Authority's board selected under prior law to represent the Counties of Dutchess, Orange, Putnam and Rockland cease to hold over in office. 1986 NY Ops Atty Gen No. 86-F13.

Proposed public/private joint venture to further implement and market automated fare collection network developed by Metropolitan Transportation Authority Card Company (MTACC), which was subsidiary of Metropolitan Transportation Authority (MTA), could be established without violating CLS Pub O §§ 73 and 74; salaried and uncompensated members of MTA board of directors and employees of MTA Group could serve without compensation on governing body of joint venture, as long as joint venture was not incorporated. State Ethics Comm Adv Op No. 95-4.

In connection with proposed public/private joint venture for further implementation and marketing of automated fare collection network developed by Metropolitan Transportation Authority Card Company (MTACC), which was subsidiary of Metropolitan Transportation Authority (MTA), 2-year bar provision of CLS Pub O § 73(8) would not prohibit MTACC employees from becoming employees of joint venture or appearing before MTA Group as MTACC was disbanded. State Ethics Comm Adv Op No. 95-4.

In connection with proposed public/private joint venture for further implementation and marketing of automated fare collection network developed by Metropolitan Transportation Authority Card Company (MTACC), which was subsidiary of Metropolitan Transportation Authority (MTA), lifetime bar of CLS Pub O § 73(8) would apply to those MTACC employees who would be rendering services for compensation for joint venture on any matter in which they personally participated or were directly concerned or which they actively considered while employee of MTA Group, with individual decisions to be made on case-by-case basis. State Ethics Comm Adv Op No. 95-4.

In connection with proposed public/private joint venture for further implementation and marketing of automated fare collection network developed by Metropolitan Transportation Authority Card Company (MTACC), which was subsidiary of Metropolitan Transportation Authority (MTA), neither CLS Pub O § 73 nor § 74 would prevent MTA Group from lending employees to joint venture. State Ethics Comm Adv Op No. 95-4.

Metropolitan Transportation Authority board members are not subject to CLS Pub O § 73(8). State Ethics Comm Adv Op No. 95-33.

For purposes of CLS Pub O § 73(8), officers other than Metropolitan Transportation Authority (MTA) board members, MTA employees other than certain senior employees, and officers and employees of any MTA affiliate or subsidiary, are officers or employees only of entity where such officer or employee works. State Ethics Comm Adv Op No. 95-33.

For purposes of CLS Pub O § 73(8), chair and first vice-chair of board of Metropolitan Transportation Authority (MTA) and executive director of MTA, by virtue of their statutory designations, are considered to be officers and employees of MTA and all MTA system affiliates and subsidiaries; any other officer or employee who holds title, whether by statute or otherwise, with another MTA entity and whose current responsibilities include actively and routinely managing significant projects or matters involving that MTA entity will be deemed to be officer or employee of each such MTA entity. State Ethics Comm Adv Op No. 95-33.

For purposes of CLS Pub O § 73(8), heads of 11 departments of Metropolitan Transportation Authority (MTA) and directors who are their immediate subordinates, whose current responsibilities include actively and routinely managing significant projects or matters involving one or more MTA affiliates or subsidiaries, may be considered to be employee of MTA and other MTA entity, with such determination being made on case-by-case basis. State Ethics Comm Adv Op No. 95-33.

At such time as senior staff member at Metropolitan Transportation Authority (MTA) were to leave his current position, 2-year bar of CLS Pub O § 73(8)(a)(i) would preclude his appearing, practicing or rendering services for compensation before MTA and all of MTA's affiliates and subsidiaries. State Ethics Comm Adv Op No. 95-33.

## **Research References & Practice Aids**

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### **Cross References:**

This section referred to in §§ 551, 1200, 1225-b.

Payment over and distribution of taxes, CLS Tax § 261.

### **Codes, Rules and Regulations:**

Public access to records of Metropolitan Transportation Authority. 21 NYCRR §§ 1001.1 et seq.

### **Jurisprudences:**

2 Am Jur 2d, Administrative Law §§ 55–61.

13 Am Jur 2d, Carriers §§ 27–33.

### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1264

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-I)*

## § 1264. Purposes of the authority

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1. The purposes of the authority shall be the continuance, further development and improvement of commuter transportation and other services related thereto within the metropolitan commuter transportation district, including but not limited to such transportation by railroad, omnibus, marine and air, in accordance with the provisions of this title. It shall be the further purpose of the authority, consistent with its status as the ex officio board of both the New York city transit authority and the triborough bridge and tunnel authority, to develop and implement a unified mass transportation policy for such district in an efficient and cost-effective manner that includes the use of design-build contracting on all projects over two hundred million dollars in cost for new construction and all projects over four hundred million dollars in cost for projects that are predominantly rehabilitation or replacement of existing assets except where a waiver is granted by the New York state budget director pursuant to a request in writing from the metropolitan transportation authority. For purposes of granting a waiver pursuant to this section, such review shall consider whether the design build contracting method is appropriate for the project that such waiver is sought for, and the amount of savings and efficiencies that could be achieved using such method. The determination for such waiver shall be made in writing within forty-five days from request or shall be deemed granted.
2. It is hereby found and declared that such purposes are in all respects for the benefit of the people of the state of New York and the authority shall be regarded as performing an essential governmental function in carrying out its purposes and in exercising the powers granted by this title.

## History

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Add, L 1965, ch 324, § 3, eff June 1, 1965; amd, L 1967, ch 717, § 84, eff March 1, 1968; L 2019, ch 59, § 2 (Part ZZZ, Subpart B), effective April 12, 2019; L 2022, ch 58, § 1 (Part H), effective April 9, 2022.

Annotations

## Notes

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### Prior Law:

Former § 1264, add, L 1959, ch 789; renumbered § 1244, L 1965, ch 324, § 2, eff June 1, 1965.

### Editor's Notes:

See 1965 note under Title 11.

**Laws 2019, ch 59, § 1 (Part ZZZ)**, eff April 12, 2019, provides:

§ 1. This act shall be known and may be cited as the “MTA reform and traffic mobility act”.

### **Amendment Notes**

**The 2019 amendment by ch 59, § 2 (Part ZZZ, Subpart B)**, in 1, added “in an efficient and cost-effective manner that includes the use of design-build contracting on all projects over twenty-five million dollars in cost except where a waiver is granted by the New York state budget director pursuant to a request in writing from the metropolitan transportation authority” in the second sentence and added the third and fourth sentences.

**The 2022 amendment by ch 58, § 1 (Part H)**, substituted “over two hundred million dollars in cost for new construction and all projects over four hundred million dollars in cost for projects that are predominantly rehabilitation or replacement of existing assets except” for “over twenty-five million dollars in cost except” in the second sentence of 1.

## **Notes to Decisions**

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FELA (45 USCS §§ 51 et seq.) claim of Metropolitan Transit Authority (MTA) police officer may proceed, where examination of New York law creating MTA (Pub A §§ 1264 et seq.) and its actual operations reveals that it offers transportation services to public at large, because MTA is common carrier and suable under FELA at least by its employees who are engaged in interstate common carrier operations of its commuter rails. *Greene v Long Island R.R.*, 99 F. Supp. 2d 268, 2000 U.S. Dist. LEXIS 7930 (E.D.N.Y. 2000), aff'd, 280 F.3d 224, 2002 U.S. App. LEXIS 2212 (2d Cir. N.Y. 2002).

The Metropolitan Transportation Authority is immune from town zoning and building regulations in its ownership and operation of a commuter railroad station for the governmental purpose of public transportation. 1985 Op St Compt. No. 85-14.

## **Opinion Notes**

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### **Agency Opinions**

Recording of leasehold mortgages granted by Triborough Bridge and Tunnel Authority (TBTA) to lenders on its leasehold interest in leased property under lease of property by Metropolitan Transit Authority to TBTA, and assignment of rents in such mortgages, under specific terms and conditions where TBTA was named mortgagor, was exempt from mortgage recording taxes. NY Adv Op Comm T & F TSB-A-97-(4)R.

In accordance with CLS Tax §§ 250 and 253, assignment by Triborough Bridge and Tunnel Authority (TBTA) to trustee of its rights (if any), and assumption by trustee of TBTA's obligations, under leasehold mortgages granted by TBTA to lenders on its leasehold interest in leased property under lease of property by Metropolitan Transit Authority to TBTA, and assignment of rents in such mortgages, were not events which would cause mortgage recording taxes to be imposed. NY Adv Op Comm T & F TSB-A-97-(4)R.

Funding of loan and execution and delivery of loan certificates to trustee only after assignment were not subject to mortgage recording taxes in situation where execution, delivery or recording by Triborough Bridge and Tunnel Authority (TBTA) of 2 mortgages granted by TBTA to lenders on its leasehold interest in leased property under lease of leased property by Metropolitan Transportation Authority (MTA) to TBTA and assignment of rents in said mortgages and in loan agreement under sublease of leased property by TBTA to MTA where (a) TBTA was named mortgagor, (b) loan secured in part by leasehold mortgage and assignment of rents would be provided by one or more persons or entities other than, and unrelated to, MTA, (c) documents for and securing loan were executed by

TBTA, but loan was funded only after either (x) assignment of all of TBTA's right, title, and interest in lease, sublease, support assets purchase option, loan documents, leasehold mortgage and assignment of rents, and collateral assignment to trustee under trust agreement with grantor and assumption by trustee of all of TBTA's obligations (and release of TBTA) under lease, sublease, loan documents, leasehold mortgage and assignment of rents, and collateral assignment or (y) on satisfaction of certain conditions and authorizations relating to possibility of funding loan prior to assignment, which conditions and authorizations were not expected to occur, and (d) proceeds of loan were used by trustee (as successor in interest to TBTA) to fund portion of lump sum payment to MTA, which sum constituted prepaid rent under lease and cost for option giving trustee right to extend initial lease term. NY Adv Op Comm T & F TSB-A-97-(4)R.

Payment and performance by trustee of its obligations under, holding by lenders of, and/or enforcement by lenders of their rights and remedies under or as to loan certificates, loan documents, loan agreement, leasehold mortgage and assignment of rents, or fee mortgage were not subject to mortgage recording taxes in situation where execution, delivery or recording by Triborough Bridge and Tunnel Authority (TBTA) of 2 mortgages granted by TBTA to lenders on its leasehold interest in leased property under lease of leased property by Metropolitan Transportation Authority (MTA) to TBTA and assignment of rents in said mortgages and in loan agreement under sublease of leased property by TBTA to MTA where (a) TBTA was named mortgagor, (b) loan secured in part by leasehold mortgage and assignment of rents would be provided by one or more persons or entities other than, and unrelated to, MTA, (c) documents for and securing loan were executed by TBTA, but loan was funded only after either (x) assignment of all of TBTA's right, title, and interest in lease, sublease, support assets purchase option, loan documents, leasehold mortgage and assignment of rents, and collateral assignment to trustee under trust agreement with grantor and assumption by trustee of all of TBTA's obligations (and release of TBTA) under lease, sublease, loan documents, leasehold mortgage and assignment of rents, and collateral assignment or (y) on satisfaction of certain conditions and authorizations relating to possibility of funding loan prior to assignment, which conditions and authorizations were not expected to occur, and (d) proceeds of loan were used by trustee (as successor in interest to TBTA) to fund portion of lump sum payment to MTA, which sum constituted prepaid rent under lease and cost for option giving trustee right to extend initial lease term. NY Adv Op Comm T & F TSB-A-97-(4)R.

Recording of fee mortgage (where Metropolitan Transportation Authority was mortgagor and Triborough Bridge and Tunnel Authority was mortgagee) was exempt from mortgage recording taxes since at least one party to mortgage at time of recording was agency or instrumentality of New York State. NY Adv Op Comm T & F TSB-A-97-(4)R.

Metropolitan Transportation Authority's entering into lease (which included contingent purchase option with Triborough Bridge and Tunnel Authority) was exempt from transfer tax under CLS Tax § 1405(b)(1) since grantee was agency or instrumentality of New York State. NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

Triborough Bridge and Tunnel Authority's entering into sublease with Metropolitan Transportation Authority was not conveyance subject to transfer tax under CLS Tax § 1401(e) since sublease term was less than 49 years; further, if sublease was conveyance subject to transfer tax, it would be exempt since grantee was agency or instrumentality of New York State. NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

Metropolitan Transportation Authority's issuance of support assets purchase option to Triborough Bridge and Tunnel Authority (TBTA), as well as TBTA's reassignment (subject to reversionary interest) of all of TBTA's right, title, and interest in support assets purchase option back to Metropolitan Transportation Authority (MTA), and MTA's subsequent further assignment of all of its right, title, and interest in support assets purchase option to TBTA was exempt from transfer tax under CLS Tax § 1405(b)(1); in event that MTA was obligated to assign support assets purchase option to trustee, no transfer tax would be due since there was no consideration for conveyance. NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

## **Research References & Practice Aids**

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**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1264-a

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## **§ 1264-a. State of emergency; boarding of a commuter transportation by domestic companion animals**

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1. For the purposes of this section:

(a) “Commuter transportation” means commuter transportation, and other related services and facilities, operated by the authority or any of its subsidiaries, including but not limited to such transportation by railroad, omnibus, marine and air, in accordance with this title.

(b) “Domestic companion animal” means a companion animal or pet as defined in section three hundred fifty of the agriculture and markets law and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal. “Pet” or “companion animal” shall not include a “farm animal”, as defined in section three hundred fifty of the agriculture and markets law.

2.

(a) In the event that a state of emergency has been declared and an evacuation of any region of the state is in progress, the owner of a domestic companion animal shall be permitted to board any commuter transportation with such domestic companion animal so long as that animal is under the owner’s control by use of a leash or tether, or is properly confined in an appropriate container or by other suitable means, provided that such boarding is authorized by and consistent with the provisions of state disaster emergency plans or local state of emergency plans pertaining to the needs of animals and individuals with an animal under their care. The provisions of this section shall only apply to the owners of domestic companion animals who are evacuating from a region of the state affected by an emergency or disaster, or a local state of emergency, as defined in section twenty-four of the executive law.

(b) A domestic companion animal may be refused permission to board any commuter transportation, even if the animal is under the owner’s control or properly confined in accordance with this subdivision if there is reasonable cause to believe that, due to attendant circumstances, permitting the animal to board would pose a health or safety hazard.

3. All passengers with service animals shall be given priority seating on all means of transportation regulated by this title in accordance with the federal “Americans with Disabilities Act of 1990” (42 U.S.C. s.12101 et seq.). For the purposes of this section, “service animal” shall have the same meaning as set forth in the federal “Americans with Disabilities Act of 1990” (42 U.S.C. s.12101 et seq.) and any regulations under such act.

4. All passengers on any commuter transportation shall be provided seating before a domestic companion animal may be placed in a seat.

5. The authority is authorized to promulgate and enforce such rules and regulations as shall be necessary for the implementation of this section.

## History

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L 2017, ch 378, § 1, effective November 22, 2017.

Annotations

## Notes

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### Editor's Notes

Laws 2017, ch 378, § 2, eff Nov 22, 2017, provides:

§ 2. This act shall take effect on the thirtieth day after it shall have become a law.

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1265

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## **§ 1265. General powers of the authority.**

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Except as otherwise limited by this title, the authority shall have power:

1. To sue and be sued;
2. To have a seal and alter the same at pleasure;
3. To borrow money, to issue negotiable notes, bonds or other obligations and to provide for the rights of the holders thereof, and to finance or refinance all or any part of the costs to the authority or to any other person or entity, public or private, of the planning, design, acquisition, construction, improvement, reconstruction or rehabilitation of any transportation facility;

**3-a.**

(a) [Repealed April 3, 2023] To borrow money, to issue negotiable notes, bonds or other obligations and to provide for the rights of the holders thereof, in the fiscal years of the authority beginning in two thousand twenty through two thousand twenty-two to offset decreases in revenue, including but not limited to, lost taxes, fees, charges, fares and tolls, or increases in operating costs of the authority and its subsidiary corporations, the New York city transit authority and its subsidiary corporations and the Triborough bridge and tunnel authority due in whole or in part to the state disaster emergency caused by the novel coronavirus, COVID-19; provided, that such notes, bonds or other obligations shall be issued in accordance with the provisions of section twelve hundred sixty-nine of this title, except that the last sentence of subdivision two thereof relating to the approval of the comptroller or the director of the budget, as applicable, for private sales, and subdivision twelve thereof, and the provisions of section twelve hundred sixty-nine-b of this title, shall not be applicable with respect to notes, bonds or other obligations issued for such purposes. No sale of such notes, bonds or other obligations of the authority may be sold by the authority, however, prior to the earlier of (i) seven days following the receipt by the state comptroller of notice by the authority of such proposed sale and the terms thereof or (ii) the receipt by the authority of the state comptroller's comments on such proposed sale and the terms thereof. Additionally, no sale of such notes, bonds or other obligations of the authority may be sold by the authority, however, unless such sale and the terms thereof have been approved in writing by the director of the budget. The proceeds of the sale of such notes, bonds or other obligations shall be taken into consideration as "revenue and any other funds or property actually available to the authority and its subsidiary corporations" within the meaning of subdivision three of section twelve hundred sixty-six of this title. The aggregate principal amount of bonds, notes or other obligations issued pursuant to this subdivision shall not exceed ten billion dollars.

(b) The authority shall report on any issuances or obligations incurred related to paragraph (a) of this subdivision. Such report shall include, but not be limited to, an explanation of each note, bond, or obligation and their respective values issued by the authority pursuant to decreases in revenue in whole or in part due to the state disaster emergency caused by novel coronavirus, COVID-19.

The report shall also provide: (i) details of such decreases in revenue in whole, (ii) details of such decreases in revenue in part, (iii) details of such increases in costs, (iv) the methodology used by the authority or metropolitan transportation authority to calculate such changes, (v) an explanation for attributing a particular increase in cost or a particular decrease in revenue, to the state disaster emergency caused by coronavirus, COVID19, and (vi) how the authority determined that the particular note, bond, or obligation issued was its most desired option. Such report shall be posted on the authority's website and be submitted to the governor, the temporary president of the senate, the speaker of the assembly, the mayor and council of the city of New York, the metropolitan transportation authority board, and the metropolitan transportation authority capital program review board.

4. To invest any funds, accounts or other monies not required for immediate use or disbursement, at the discretion of the authority, in (a) obligations of the state or the United States government, (b) obligations the principal and interest of which are guaranteed by the state or the United States government, (c) certificates of deposit of banks or trust companies in this state, secured, if the authority shall so require, by obligations of the United States or of the state of New York of a market value equal at all times to the amount of the deposit, (d) banker's acceptances with a maturity of ninety days or less which are eligible for purchase by the Federal Reserve Banks and whose rating at the time of purchase is in the highest rating category of two nationally recognized independent rating agencies, provided, however, that the amount of banker's acceptances of any one bank shall not exceed two hundred fifty million dollars, (e) obligations of any bank or corporation created under the laws of either the United States or any state of the United States maturing within two hundred seventy days, provided that such obligations receive the highest rating of two nationally recognized independent rating agencies and, provided further, that no more than two hundred fifty million dollars may be invested in such obligations of any one bank or corporation, (f) as to any such moneys held in reserve and sinking funds, other securities in which the trustee or trustees of any public retirement system or pension fund has the power to invest the monies thereof pursuant to article four-a of the retirement and social security law, each such reserve and sinking fund being treated as a separate fund for the purposes of article four-a of the retirement and social security law, (g) notes, bonds, debentures, mortgages and other evidences of indebtedness, issued or guaranteed at the time of the investment by the United States Postal Service, the federal national mortgage association, the federal home loan mortgage corporation, the student loan marketing association, the federal farm credit system, or any other United States government sponsored agency, provided that at the time of the investment such agency or its obligations are rated and the agency receives, or its obligations receive, the highest rating of all independent rating agencies that rate such agency or its obligations, provided, however, that no more than two hundred fifty million dollars or such greater amount as may be authorized for investment for the state comptroller by section ninety-three of the state finance law may be invested in the obligations of any one agency, (h) general obligation bonds and notes of any state other than the state, provided that such bonds and notes receive the highest rating of at least one independent rating agency, and bonds and notes of any county, town, city, village, fire district or school district of the state, provided that such bonds and notes receive either of the two highest ratings of at least two independent rating agencies, (i) mutual funds registered with the United States securities and exchange commission whose investments are limited to obligations of the state described in paragraph (a) of this subdivision, obligations the principal and interest of which are guaranteed by the state described in paragraph (b) of this subdivision, and those securities described in paragraph (h) of this subdivision and that have received the highest rating of at least one independent rating agency, provided that the aggregate amount invested at any one time in all such mutual funds shall not exceed ten million dollars, and, provided further, that the authority shall not invest such funds, accounts or other monies in any mutual fund for longer than thirty days, and (j) financial contracts in a foreign currency entered into for the purpose of minimizing the foreign currency exchange risk of the purchase price of a contract with a vendor chosen through competitive process for the acquisition of capital assets for the benefit of the capital program of the Triborough bridge and tunnel authority or either the transit or transportation capital programs;



5. To make and alter by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under this title;

6.

(a) To enter into contracts and leases and to execute all instruments necessary or convenient;

(b) With respect to any lease transaction entered into pursuant to section 168 (f) (8) of the United States internal revenue code or any successor provisions, the authority shall meet the following standards and procedures:

(i) notice of intention to negotiate shall be published in at least one newspaper of general circulation, and a copy thereof shall be mailed to all parties who have requested notification from the authority to engage in transactions of this type. Such notice shall describe the nature of the proposed transaction and the factors subject to negotiation, which shall include, but not be limited to, the price to be paid to the authority;

(ii) the authority shall negotiate with those respondents whose response complies with the requirements set forth in the notice;

(iii) the board of the authority shall resolve on the basis of particularized findings relevant to the factors negotiated that such transaction will provide maximum available financial benefits, consistent with other defined objectives and requirements.

(c) The authority shall provide to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly, notice of each lease entered into pursuant to paragraph (b) of this subdivision and supporting documentation of compliance by the authority with subparagraphs (i), (ii) and (iii) of paragraph (b) of this subdivision;

(d) Paragraphs (b) and (c) of this subdivision shall be of no force and effect with respect to any lease transaction entered into pursuant to a commitment approved prior to January first, nineteen hundred eighty-five by the board of the authority.

7. [Eff until April 1, 2024] To acquire, hold and dispose of real or personal property in the exercise of its powers, including, the power to dispose of personal property with a value of five hundred thousand dollars or less by public auction in accordance with guidelines adopted by the authority pursuant to title five-A of article nine of this chapter. The board shall adopt guidelines that shall provide for advertising and such other safeguards as the authority may deem appropriate in the public interest.

7. [Eff April 1, 2024] To acquire, hold and dispose of real or personal property in the exercise of its powers;

8. To appoint such officers and employees as it may require for the performance of its duties, and to fix and determine their qualifications, duties, and compensation and to retain or employ counsel, auditors, engineers and private consultants on a contract basis or otherwise for rendering professional or technical services and advice;

9.

(a) Notwithstanding section one hundred thirteen of the retirement and social security law or any other general or special law, the authority and any of its subsidiary corporations may continue or provide to its affected officers and employees any retirement, disability, death or other benefits provided or required for railroad personnel pursuant to federal or state law;

(b) The authority and any of its public benefit subsidiary corporations may be a "participating employer" in the New York state employees' retirement system with respect to one or more classes of officers and employees of such authority or any such public benefit subsidiary corporation, as may be provided by resolution of such authority or any such public benefit subsidiary corporation, as the case may be, or any subsequent amendment thereof, filed with the comptroller and

accepted by him pursuant to section thirty-one of the retirement and social security law. In taking any action pursuant to this paragraph (b), the authority and any of its public benefit subsidiary corporations shall consider the coverages and benefits continued or provided pursuant to paragraph (a) of this subdivision;

- 10.** To make plans, surveys, and studies necessary, convenient or desirable to the effectuation of the purposes and powers of the authority and to prepare recommendations in regard thereto;
- 11.** To enter upon such lands, waters or premises as in the judgment of the authority may be necessary, convenient or desirable for the purpose of making surveys, soundings, borings and examinations to accomplish any purpose authorized by this title, the authority being liable for actual damage done;
- 12.** The authority may conduct investigations and hearings in the furtherance of its general purposes, and in aid thereof have access to any books, records or papers relevant thereto; and if any person whose testimony shall be required for the proper performance of the duties of the authority shall fail or refuse to aid or assist the authority in the conduct of any investigation or hearing, or to produce any relevant books, records or other papers, the authority is authorized to apply for process of subpoena, to issue out of any court of general original jurisdiction whose process can reach such person, upon due cause shown;
- 13.** A copy of any report submitted by the authority pursuant to sections twenty-eight hundred, twenty-eight hundred one and twenty-eight hundred two of this chapter shall be forwarded to the mayor of the city of New York and to the chairman of the board of supervisors and to the county executive, if any, of each county within the district.
- 14.** To do all things necessary, convenient or desirable to carry out its purposes and for the exercise of the powers granted in this title.

## History

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Add, L 1965, ch 324, § 3, eff June 1, 1965; amd, L 1965, ch 634, §§ 1, 2; L 1966, ch 415, § 2, eff May 23, 1966, deemed eff Jan 20, 1966; L 1970, ch 516; L 1983, ch 838, § 10, eff Aug 3, 1983; L 1984, ch 988, § 3, eff Dec 12, 1984; L 2000, ch 61, § 22 (Part O), eff May 15, 2000; L 2010, ch 538, § 1, eff Oct 1, 2010; L 2016, ch 54, § 5 (Part OO), effective April 4, 2016; L 2020, ch 58, § 1 (Part LLL), effective April 3, 2020.

Annotations

## Notes

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### Prior Law

Former § 1265, add, L 1959, ch 789; renumbered § 1245, L 1965, ch 324, § 2, eff June 1, 1965.

### Editor's Notes

See 1965 note under Title 11.

**Laws 2016, ch 54, § 15 (Part OO)**, eff April 4, 2016, provides:

§ 15. This act shall take effect immediately, and shall expire and be deemed repealed April 1, 2024 (Amd, L 2021, ch 55, § 1 (Part YY), eff April 19 2021).

**Laws 2020, ch 58, § 2 (Part LLL)**, eff April 3, 2020, provides:

§ 2. This act shall take effect immediately, provided that paragraph (a) of subdivision 3-a of section 1265 of the public authorities law as added by section one of this act shall expire and be deemed repealed three years after such effective date, provided that such repeal shall not affect the terms of any notes, bonds, or other obligations issued prior to such repeal.

### Amendment Notes

**2010.** Chapter 538, § 1 amended:

Sub 9, par (a) by deleting at fig 1 “. Notwithstanding any provisions of the civil service law, no officer or employee of a subsidiary corporation of the authority, other than a public benefit subsidiary corporation, shall be a public officer or a public employee”.

**The 2016 amendment by ch 54, § 5 (Part OO),** in 7, added “including, the power to dispose of personal property with a value of five hundred thousand dollars or less by public auction in accordance with guidelines adopted by the authority pursuant to title five-A of article nine of this chapter” in the first sentence and added the second sentence.

**The 2020 amendment by ch 58, § 1 (Part LLL),** added 3-a.

### Notes to Decisions

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Court took judicial notice of fact that metropolitan transportation authority took over ownership of all stock of railroad under powers granted by statute. *Bujosa v Metropolitan Transp. Authority*, 44 A.D.2d 849, 355 N.Y.S.2d 800, 1974 N.Y. App. Div. LEXIS 4908 (N.Y. App. Div. 2d Dep't 1974).

In an action by the lessee of a parking garage against the Metropolitan Transportation Authority (“MTA”) seeking a declaration that the lessee had a valid and binding five-year lease, arising from a lease solicitation in which the MTA solicited bids from 13 garage companies for the five-year lease, the lessee submitted the most favorable bid, but another bidder offered to purchase the entire leasehold interest held by the MTA, and the MTA decided that it needed more time to consider sale of its leasehold interest and accordingly determined to reject all bids for the five-year lease and to solicit new bids for a two-year lease, the trial court properly dismissed the lessee’s complaint since the MTA was required to obtain the terms most beneficial to the public, the delay in approving any bid until an appropriate study was made was proper, the original solicitation for bids by the MTA expressly reserved to itself the right to reject bids without assigning any reason therefor, and the MTA could not be faulted for deciding to reject all bids and to seek a shorter lease for the garage when it found that the time was too short to determine whether lease or sale would be the most beneficial. *Square Parking Sys. v Metropolitan Transp. Auth.*, 92 A.D.2d 782, 459 N.Y.S.2d 774, 1983 N.Y. App. Div. LEXIS 17149 (N.Y. App. Div. 1st Dep't), app. dismissed, 60 N.Y.2d 586, 1983 N.Y. LEXIS 5769 (N.Y. 1983), app. dismissed, 59 N.Y.2d 608, 1983 N.Y. LEXIS 4801 (N.Y. 1983).

A town zoning ordinance which regulated, but did not prohibit per se written advertising signs was applicable to one who subleased advertising space from the Metropolitan Commuter Transportation Authority, since such use of the Authority’s property constituted a proprietary rather than a governmental function. Pointing out that the ordinance required the procurement of a permit and the payment of a fee for such permit, the court held that any possible conflict between the fee requirement and § 1275 of the Public Authorities Law might well be resolved by the Town waiving payment of the fee so that the regulation of signs in accordance with established standards could be maintained. *People v Witherspoon*, 52 Misc. 2d 320, 275 N.Y.S.2d 592, 1966 N.Y. Misc. LEXIS 1236 (N.Y. Dist. Ct. 1966).

Borough president who also sits on board of estimate is not entitled to receive more reports of city transportation authority or metropolitan transportation authority than supplied to any other member of board of estimate. *Abrams v New York City Transit Authority (NYCTA)*, 78 Misc. 2d 938, 358 N.Y.S.2d 842, 1974 N.Y. Misc. LEXIS 1529 (N.Y. Sup. Ct. 1974), aff'd, 48 A.D.2d 69, 368 N.Y.S.2d 165, 1975 N.Y. App. Div. LEXIS 9544 (N.Y. App. Div. 1st Dep't 1975).

Nonunion managers' claim against the transit authority, wherein they challenged their entitlement to pension and retirement benefits under the equal pay statute, lacked merit because while it provided for equal compensation for certain employees, the managers were not state employees and their compensation was determined under a different statutory provision by the transit authority. Matter of Clark v Metropolitan Transp. Auth., 999 N.Y.S.2d 309, 46 Misc. 3d 344, 2013 N.Y. Misc. LEXIS 6679 (N.Y. Sup. Ct. 2013).

## Opinion Notes

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### Agency Opinions

There is no provision of State law prohibiting the MTA from complying with the United States Department of Transportation minority business enterprise contract set-aside regulations. 1981 NY Ops Atty Gen Sept 9 (Formal).

## Research References & Practice Aids

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### Cross References:

Rule making procedure, CLS St Adm P Act § 202.

### Codes, Rules and Regulations:

Public access to records of Metropolitan Transportation Authority. 21 NYCRR §§ 1001.1 et seq.

Rules governing the conduct and safety of the public in the use of the facilities of the Staten Island rapid transit operating authority. 21 NYCRR §§ 1040.1 et seq.

Rules and regulations governing the conduct and safety of the public in the use of the Metro-North Commuter Railroad Company terminals, stations and trains. 21 NYCRR §§ 1085.1 et seq.

Rules and regulations governing the conduct and safety of the public and use of the Long Island Rail Road Company terminals, stations and trains. 21 NYCRR §§ 1097.1 et seq.

### Jurisprudences:

2 Am Jur 2d, Administrative Law §§ 63–76.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1265-a

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)***

## **§ 1265-a. Contracts.**

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1. The provisions of this section shall only apply to procurements by the authority commenced during the period from April first, nineteen hundred eighty-seven until December thirty-first, nineteen hundred ninety-one, and during the period from December sixteenth, nineteen hundred ninety-three until June thirtieth, two thousand twenty-three; provided, however, that the provisions of this section shall not apply to (i) the award of any contract of the authority if the bid documents for such contract so provide and such bid documents are issued within sixty days of the effective date of this section or within sixty days of December sixteenth, nineteen hundred ninety-three, or (ii) for a period of one hundred eighty days after the effective date of this section or for a period of one hundred eighty days after December sixteenth, nineteen hundred ninety-three, the award of any contract for which an invitation to bid, solicitation, request for proposal, or any similar document has been issued by the authority prior to the effective date of this section or during the period from January first, nineteen hundred ninety-two until December sixteenth, nineteen hundred ninety-three.

2.

(a) [Eff until April 1, 2024] Except as otherwise provided in this section, all purchase contracts for supplies, materials or equipment involving an estimated expenditure in excess of one million dollars and all contracts for public work involving an estimated expenditure in excess of one million dollars shall be awarded by the authority to the lowest responsible bidder after obtaining sealed bids in the manner hereinafter set forth. For purposes hereof, contracts for public work shall exclude contracts for personal, engineering and architectural, or professional services. The authority may reject all bids and obtain new bids in the manner provided by this section when it is deemed in the public interest to do so or, in cases where two or more responsible bidders submit identical bids which are the lowest bids, award the contract to any of such bidders or obtain new bids from such bidders. Nothing in this paragraph shall obligate the authority to seek new bids after the rejection of bids or after cancellation of an invitation to bid. Nothing in this section shall prohibit the evaluation of bids on the basis of costs or savings including life cycle costs of the item to be purchased, discounts, and inspection services so long as the invitation to bid reasonably sets forth the criteria to be used in evaluating such costs or savings. Life cycle costs may include but shall not be limited to costs or savings associated with installation, energy use, maintenance, operation and salvage or disposal.

(a) [Eff April 21, 2024] Except as otherwise provided in this section, all purchase contracts for supplies, materials or equipment involving an estimated expenditure in excess of fifteen thousand dollars and all contracts for public work involving an estimated expenditure in excess of twenty-five thousand dollars shall be awarded by the authority to the lowest responsible bidder after obtaining sealed bids in the manner hereinafter set forth. For purposes hereof, contracts for public work shall exclude contracts for personal, engineering and architectural, or professional services. The authority may reject all bids and obtain new bids in the manner provided by this section when it is deemed in the public interest to do so or, in cases where two or more responsible bidders submit identical bids which are the lowest bids,

award the contract to any of such bidders or obtain new bids from such bidders. Nothing herein shall obligate the authority to seek new bids after the rejection of bids or after cancellation of an invitation to bid. Nothing in this section shall prohibit the evaluation of bids on the basis of costs or savings including life cycle costs of the item to be purchased, discounts, and inspection services so long as the invitation to bid reasonably sets forth the criteria to be used in evaluating such costs or savings. Life cycle costs may include but shall not be limited to costs or savings associated with installation, energy use, maintenance, operation and salvage or disposal.

**(b)** [Eff until April 1, 2024] Section twenty-eight hundred seventy-nine of this chapter shall apply to the authority's acquisition of goods or services of any kind, in the actual or estimated amount of fifteen thousand dollars or more, provided (i) that a contract for services in the actual or estimated amount of one million dollars or less shall not require approval by the board of the authority regardless of the length of the period over which the services are rendered, and provided further that a contract for services in the actual or estimated amount in excess of one million dollars shall require approval by the board of the authority regardless of the length of the period over which the services are rendered unless such a contract is awarded to the lowest responsible bidder after obtaining sealed bids, and (ii) the board of the authority may by resolution adopt guidelines that authorize the award of contracts to small business concerns, to service disabled veteran owned businesses certified pursuant to article seventeen-B of the executive law, or minority or women-owned business enterprises certified pursuant to article fifteen-A of the executive law, or purchases of goods or technology that are recycled or remanufactured, in an amount not to exceed one million five hundred thousand dollars without a formal competitive process and without further board approval. The board of the authority shall adopt guidelines which shall be made publicly available for the awarding of such contract without a formal competitive process.

**(b)** [Eff April 1, 2024] Section twenty-eight hundred seventy-nine of this chapter shall apply to the authority's acquisition of goods or services of any kind, in the actual or estimated amount of fifteen thousand dollars or more, provided that a contract for personal services in the actual or estimated amount of less than twenty thousand dollars shall not require approval by the board of the authority regardless of the length of the period over which the services are rendered, and provided further that a contract for personal services in the actual or estimated amount of twenty thousand dollars or more shall require approval by the board of the authority regardless of the length of the period over which the services are rendered.

**(c)**

**(1)** Notwithstanding the provisions of paragraph (a) of this subdivision, the authority shall establish guidelines governing the qualifications of bidders entering into contracts for its project to bring the Long Island Rail Road into Grand Central Terminal ("East Side Access Project"). The bidding may be restricted to those who have qualified prior to the receipt of bids according to standards fixed by the authority; provided, however, that the award of contracts shall, to the extent not inconsistent with this paragraph, be in accordance with paragraph (a) of this subdivision.

**(2)** In determining whether a prospective bidder qualifies for the inclusion on a list of prequalified bidders for the East Side Access Project, the authority shall consider: (i) the experience and past performance of the prospective bidder; (ii) the prospective bidder's ability to undertake work, including but not limited to whether it participates in state approved apprenticeship programs and whether it utilizes employees who are represented by labor organizations; (iii) the financial capability and responsibility of the prospective bidder; and (iv) the records of the prospective bidder in complying with existing labor standards. The authority may also consider such other factors as it deems appropriate.

**3.**

**(a)** Advertisement for bids, when required by this section, shall be published at least once in a newspaper of general circulation in the area served by the authority and in the procurement

opportunities newsletter published pursuant to article four-C of the economic development law provided that, notwithstanding the provisions of article four-C of the economic development law, an advertisement shall only be required for a purchase contract for supplies, materials or equipment when required by this section. Publication in a newspaper of general circulation in the area served or in the procurement opportunities newsletter shall not be required if bids for contracts for supplies, materials or equipment are of a type regularly purchased by the authority and are to be solicited from a list of potential suppliers, if such list is or has been developed consistent with the provisions of subdivision six of this section. Any such advertisement shall contain a statement of: (i) the time and place where bids received pursuant to any notice requesting sealed bids will be publicly opened and read; (ii) the name of the contracting agency; (iii) the contract identification number; (iv) a brief description of the public work, supplies, materials, or equipment sought, the location where work is to be performed, goods are to be delivered or services provided and the contract term; (v) the address where bids or proposals are to be submitted; (vi) the date when bids or proposals are due; (vii) a description of any eligibility or qualification requirement or preference; (viii) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture, or co-production arrangement; (ix) any other information deemed useful to potential contractors; and (x) the name, address, and telephone number of the person to be contacted for additional information. At least fifteen business days shall elapse between the first publication of such advertisement or the solicitation of bids, as the case may be, and the date of opening and reading of bids.

**(b)** The authority may designate any officer or employee to open the bids at the time and place bids are to be opened and may designate an officer to award the contract to the lowest responsible bidder. Such designee shall make a record of all bids in such form and detail as the authority shall prescribe. All bids received shall be publicly opened and read at the time, place and in the manner specified in the advertisement or at the time of solicitation, or to which the opening and reading or posting have been adjourned by the authority, provided that any sealed bid may be received and secured through an electronic platform as permitted by the authority, and that any sealed bid received electronically is made public at the same time as any competing paper bid. The authority shall, at minimum, provide the same opportunity and time for submitting sealed bids physically as for sealed bids submitted electronically, and shall provide the opportunity for bidders to submit sealed bids physically any time that it provides the opportunity to submit sealed electronic bids. In addition, the authority shall establish a process for accommodating force majeure events that prevent the submission of a sealed electronic bid, including but not limited to internet and power outage events, and for automatically confirming receipt of any sealed electronic bid received. All bidders shall be notified of the time and place of any such adjournment.

**4.** Notwithstanding the foregoing, the authority may, by resolution approved by a two-thirds vote of its members then in office, or by a majority vote of its members with respect to contracts proposed to be let pursuant to paragraph (a) of this subdivision declare that competitive bidding is impractical or inappropriate because of the existence of any of the circumstances hereinafter set forth and thereafter the authority may proceed to award contracts without complying with the requirements of subdivision two or three of this section. In each case where the authority declares competitive bidding impractical or inappropriate, it shall state the reason therefor in writing and summarize any negotiations that have been conducted. Except for contracts awarded pursuant to paragraphs (a), (b), (c) and (e) of this subdivision, the authority shall not award any contract pursuant to this subdivision earlier than thirty days from the date on which the authority declares that competitive bidding is impractical or inappropriate. Competitive bidding may only be declared impractical or inappropriate where:

**(a)** the existence of an emergency involving danger to life, safety or property requires immediate action and cannot await competitive bidding or the item to be purchased is essential to efficient operation or the adequate provision of service and as a consequence of unforeseen circumstance such purchase cannot await competitive bidding;

- (b)** the item to be purchased is available only from a single responsible source, provided that if bids have not been solicited for such item pursuant to subdivision two of this section within the preceding twelve months public notice shall first be given pursuant to subdivision three of this section;
- (c)** the authority receives no responsive bids or only a single responsive bid in response to an invitation for competitive bids;
- (d)** the authority wishes to experiment with or test a product or technology or new source for such product or technology or evaluate the service or reliability of such product or technology;
- (e)** the item is available through an existing contract between a vendor and (i) another public authority provided that such other authority utilized a process of competitive bidding or a process of competitive requests for proposals to award such contracts, (ii) Nassau county, (iii) the state of New York, (iv) the city of New York or (v) the United States general services administration provided that such administration utilized a process of competitive bidding or a process of competitive requests for proposals to award such contract, provided that in any case when under this paragraph the authority determines that obtaining such item thereby would be in the public interest and sets forth the reasons for such determination. Such rationale shall include, but need not be limited to, a determination of need, a consideration of the procurement method by which the contract was awarded, an analysis of alternative procurement sources including an explanation why a competitive procurement or the use of a centralized contract let by the commissioner of the office of general services is not in the best interest of the authority, and the reasonableness of cost. The authority shall accept sole responsibility for any payment due the vendor as a result of the authority's order; or
- (f)** the authority determines that it is in the public interest to award contracts pursuant to a process for competitive requests for proposals as hereinafter set forth. For purposes of this section, a process for competitive requests for proposals shall mean a method of soliciting proposals and awarding a contract on the basis of a formal evaluation of the characteristics, such as quality, cost, delivery schedule and financing of such proposals against stated selection criteria. Public notice of the requests for proposals shall be given in the same manner as provided in subdivision three of this section and shall include the selection criteria. In the event the authority makes a material change in the selection criteria from those previously stated in the notice, it will inform all proposers of such change and permit proposers to modify their proposals.
- (i)** [Eff until April 1, 2024] Except for a contract with a value of one hundred million dollars or less that is awarded pursuant to this paragraph to the proposer whose proposal is the lowest cost, the authority may award a contract pursuant to this paragraph only after a resolution approved by a two-thirds vote of its members then in office at a public meeting of the authority with such resolution (A) disclosing the other proposers and the substance of their proposals, (B) summarizing the negotiation process including the opportunities, if any, available to proposers to present and modify their proposals, and (C) setting forth the criteria upon which the selection was made provided however that for purposes of this subparagraph the board may, at its discretion, require such a resolution be approved for contracts with a value of one hundred million dollars or less.
- (i)** [Eff April 21, 2024] The authority may award a contract pursuant to this paragraph only after a resolution approved by a two-thirds vote of its members then in office at a public meeting of the authority with such resolution (A) disclosing the other proposers and the substance of their proposals, (B) summarizing the negotiation process including the opportunities, if any, available to proposers to present and modify their proposals, and (C) setting forth the criteria upon which the selection was made.
- (ii)** Nothing in this paragraph shall require or preclude (A) negotiations with any proposers following the receipt of responses to the request for proposals, or (B) the rejection of any or all proposals at any time. Upon the rejection of all proposals, the authority may solicit new proposals or bids in any manner prescribed in this section.



**(g)** the authority issues a competitive request for proposals pursuant to the procedures of paragraph (f) of this subdivision for the purchase or rehabilitation of rail cars and omnibuses. Any such request may include among the stated selection criteria the performance of all or a portion of the contract at sites within the state of New York or the use of goods produced or services provided within the state of New York, provided however that in no event shall the authority award a contract to a manufacturer whose final offer, as expressed in unit cost is more than ten percent higher than the unit cost of any qualified competing final offer, if the sole basis for such award is that the higher priced offer includes more favorable provision for the performance of the contract within the state of New York or the use of goods produced or services provided within the state of New York, and further provided that the authority's discretion to award a contract to any manufacturer shall not be so limited if a basis for such award, as determined by the authority, is superior financing, delivery schedule, life cycle, reliability, or any other factor the authority deems relevant to its operations.

**(i)** [Eff until April 1, 2024] Except for a contract with a value of one hundred million dollars or less that is awarded pursuant to this paragraph to the proposer whose proposal is the lowest cost, the authority may award a contract pursuant to this paragraph only after a resolution approved by a vote of not less than a two-thirds vote of its members then in office at a public meeting of the authority with such resolution (A) disclosing the other proposers and the substance of their proposals, (B) summarizing the negotiation process including the opportunities, if any, available to proposers to present and modify their proposals, and (C) setting forth the criteria upon which the selection was made provided however that for purposes of this subparagraph the board may, at its discretion, require such a resolution be approved for contracts with a value of one hundred million dollars or less.

**(i)** [Eff April 1, 2024] The authority may award a contract pursuant to this paragraph only after a resolution approved by a vote of not less than a two-thirds vote of its members then in office at a public meeting of the authority with such resolution (A) disclosing the other proposers and the substance of their proposals, (B) summarizing the negotiation process including the opportunities, if any, available to proposers to present and modify their proposals, and (C) setting forth the criteria upon which the selection was made.

**(ii)** Nothing in this paragraph shall require or preclude (A) negotiations with any proposers following the receipt of responses to the request for proposals, or (B) the rejection of any or all proposals at any time. Upon the rejection of all proposals, the authority may solicit new proposals or bids in any manner prescribed in this section.

**5.** Upon the adoption of a resolution by the authority stating, for reasons of efficiency, economy, compatibility or maintenance reliability, that there is a need for standardization, the authority may establish procedures whereby particular supplies, materials or equipment are identified on a qualified products list. Such procedures shall provide for products or vendors to be added to or deleted from such list and shall include provisions for public advertisement of the manner in which such lists are compiled. The authority shall review such list no less than once a year for the purpose of making such modifications. Contracts for particular supplies, materials or equipment identified on a qualified products list may be awarded by the authority to the lowest responsible bidder after obtaining sealed bids in accordance with this section or without competitive sealed bids in instances when the item is available from only a single source, except that the authority may dispense with advertising provided that it mails copies of the invitation to bid to all vendors of the particular item on the qualified products list.

**6.** The authority shall compile a list of potential sources of supplies, materials or equipment regularly purchased. The authority shall, by resolution, set forth the procedures it has established to identify new sources and to notify such new sources of the opportunity to bid for contracts for the purchase of supplies, materials or equipment. Such procedures shall include, but not be limited to: (a) advertising in trade journals; (b) cooperation with federal, state and local agencies within its area of operations; (c) publication in the state register quarterly; and (d) procedures established pursuant to subdivision thirteen of section twelve hundred sixty-six-c of this article.

7. The provisions of this section shall not supersede any other provisions of law relative to purchases of products or devices manufactured or provided by the blind or other severely handicapped persons, to the invitation and acceptance of bids from small or minority business enterprises or to the purchases of supplies, materials or equipment through the office of general services. Except as may otherwise be provided by law or as more restrictively defined in the official policy or bid specifications of the authority, the term “small business” means a small business or similar term, under federal regulations applicable to projects of the authority which are federally assisted.
8. [Eff until April 1, 2024] Notwithstanding any other provisions in this section, the authority shall be allowed to use an electronic bidding system for the purchase of goods, materials, and commodities that may inform bidders whether their bid is the current low bid, and allow bidders to submit new bids before the date and time assigned for the opening of bids. Such procedure shall not constitute disclosure of bids in violation of section twenty-eight hundred seventy-eight of this chapter.
8. [Eff April 1, 2024] The provisions of this section shall not apply to any procurement made by any other public entity not otherwise required by law to award contracts for such purchases to the lowest responsible bidder if such purchases are made at the sole cost and expense of such entity.
9. [Repealed April 1, 2024] The provisions of this section shall not apply to any procurement made by any other public entity not otherwise required by law to award contracts for such purchases to the lowest responsible bidder if such purchases are made at the sole cost and expense of such entity.
- 10.
- (a) Whenever the comptroller pursuant to section twenty-eight hundred seventy-nine-a of this chapter intends to require supervision in the form of prior review and approval of a contract or contract amendment to be awarded by the authority pursuant to this section, then such contract or contract amendment shall be submitted to the comptroller by the authority for approval and shall not be a valid enforceable contract unless it shall first have been approved by the comptroller but only if the comptroller has notified the authority of such determination within thirty days of having received written notice of such contract or contract amendment either in the authority’s annual report or any revised report;
- (b) If the comptroller has timely notified the authority as provided in paragraph (a) of this subdivision that any contract or contract amendment shall be subject to comptroller prior review and approval, and such contract or contract amendment has been submitted to the comptroller, it shall become valid and enforceable without such approval if the comptroller has not approved or disapproved it within thirty days of submission to the comptroller.

## History

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Add, L 1986, ch 929, § 28, eff Dec 31, 1986; amd, L 1990, ch 494, §§ 6–8; L 1993, ch 725, § 8; L 1996, ch 637, § 16; L 1998, ch 256, § 2; L 2000, ch 164, § 1, eff July 18, 2000; L 2001, ch 334, § 2; L 2004, ch 745, § 11; L 2005, ch 136, § 2, eff June 30, 2005; L 2008, ch 135, § 2, eff June 30, 2008; L 2011, ch 98, § 2, eff June 28, 2011; L 2015, ch 30, § 2, effective June 30, 2015; L 2016, ch 54, §§ 8, 9, 11 (Part OO), effective April 4, 2016; L 2019, ch 59, §§ 1-a, 2-a, 3-a (Part ZZZ, Subpart C), effective April 12, 2019; L 2021, ch 267, § 2, effective July 16, 2021; L 2022, ch 58, §§ 4–6, (Part I), effective April 9, 2022.

Annotations

## Notes

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Editor’s Notes

NY CLS Pub A § 1265-a

**Laws 2016, ch 54, § 15 (Part OO)**, eff April 4, 2016, provides:

§ 15. This act shall take effect immediately, and shall expire and be deemed repealed April 1, 2024 (Amd, L 2021, ch 55, § 1 (Part YY), eff April 19, 2021).

**Laws 2019, ch 59, § 1 (Part ZZZ)**, eff April 12, 2019, provides:

Section 1. This act shall be known and may be cited as the “MTA reform and traffic mobility act”.

**Laws 2019, ch 59, § 5 (Part ZZZ, Subpart C)**, eff April 12, 2019, provides:

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

(a) the amendments to paragraphs (a) and (b) of subdivision 7 of section 1209 of the public authorities law made by section three of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith; and

(b) the amendments to paragraphs (a) and (b) of subdivision 2 of section 1265-a of the public authorities law made by section three-a of this act shall not affect the expiration of such paragraphs and shall be deemed to expire therewith.

**Laws 2022, ch 58, § 7 (Part I)**, eff September 4, 2022, provides:

§ 7. This act shall take effect immediately; provided, however, that the amendments to paragraph (b) of subdivision 7 of section 1209 of the public authorities law made by section one of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith; and provided further, however, that the amendments to paragraph (b) of subdivision 2 of section 1265-a of the public authorities law made by section four of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith.

### **Amendment Notes**

**2011.** Chapter 98, § 2 amended:

Sub 1 by deleting at fig 1 “eleven” and adding the matter in italics.

**The 2015 amendment by ch 30, § 2**, substituted “two thousand nineteen” for “two thousand fifteen” in 1.

**The 2016 amendment by ch 54, §§ 8, 9, 11 (Part OO)**, in the first sentence of 2(a), substituted “one hundred thousand dollars and” for “fifteen thousand dollars and” and “one hundred thousand dollars shall” for “twenty-five thousand dollars shall”; in 2(b), in the first sentence, added the (i) designation, in (i), deleted “personal” following “contract for” twice, substituted “one hundred thousand dollars” for “twenty thousand dollars” twice, and added “unless such a contract is awarded to the lowest responsible bidder after obtaining sealed bids,” and added (ii), and added the second sentence; in 4(f)(i) and 4(g)(i), added “Except for a contract with a value of one hundred million dollars or less that is awarded pursuant to this paragraph to the proposer whose proposal is the lowest cost” and “provided however that for purposes of this subparagraph the board may, at its discretion, require such a resolution be approved for contracts with a value of one hundred million dollars or less”; added 8; and made related and stylistic changes.

**The 2019 amendments by ch 59, §§ 1-a, 2-a, 3-a (Part ZZZ, Subpart C)**, substituted “two thousand twenty-three” for “two thousand nineteen” in 1; in 2, in (a), substituted “one million dollars” for “one hundred thousand dollars” twice in the first sentence and “in this paragraph” for “herein” in the fourth sentence, and in the first sentence of (b), substituted “one million dollars or less” for “less than one hundred thousand dollars,” “in excess of one million dollars” for “of one hundred thousand dollars or more” and “one million dollars” for “four hundred thousand dollars”; and added 10.

**The 2021 amendment by ch 267, § 2**, in 3(b), rewrote the third sentence, which formerly read: “All bids received shall be publicly opened and read at the time and place and specified in the advertisement or at the time of solicitation, or to which the opening and reading have been adjourned by the authority” and added the fourth and fifth sentences.

**The 2022 amendment by ch 58, §§ 4–6 (Part I)**, added “five hundred thousand” in the first sentence of 2(b); in 4(e), added “or (v) the United States general services administration provided that such administration utilized a process of competitive bidding or a process of competitive requests for proposals to award such contract” and added the second sentence; substituted “once” for “twice” in the third sentence of 5; and made related changes.

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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## NY CLS Pub A § 1265-b

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

### **§ 1265-b. Metropolitan transportation authority small business mentoring program. [Expires and repealed Dec 31, 2029]**

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1. Definitions. As used in this section, unless the context requires otherwise:

(a) “authority” means the metropolitan transportation authority and its subsidiaries consisting of the Long Island rail road company, Metro-North commuter railroad company, metropolitan suburban bus authority, Staten Island rapid transit operating authority, MTA bus, MTA capital construction company, and first mutual transportation assurance company, and its affiliates consisting of the New York City transit authority, triborough bridge and tunnel authority, and Manhattan and Bronx surface transit operating authority;

(b) “chairman” means the chairman of the authority and its subsidiaries and affiliates;

(c) “small business” means a business in the construction trades which (i) is independently owned and operated; (ii) has annual revenues not exceeding a fiscal limitation of five million dollars or such lesser amount as established by the authority pursuant to these provisions; and (iii) meets additional criteria as otherwise established by the chairman in consultation with the members of the MTA small business mentoring program advisory committee. The chair of the committee shall be the chief diversity officer of the MTA. The authority shall establish a detailed definition in general and specific to different segments of the construction industry to the extent necessary to reflect differing characteristics of such segments based on the criteria used by the United States small business administration for loans to small businesses as set forth in Sections 121.301 through 121.305, or for awarding government procurements as set forth in Sections 121.401 through 121.413, of Subpart A of Part 121 of Chapter I of Title 13 of the Code of Federal Regulations as amended, and such other criteria as determined by the authority;

(d) “small business mentoring program” is a program established by the authority pursuant to these provisions to provide small businesses accepted into the program with the opportunity:

(i) for up to four years, to compete for and, where awarded, to perform certain authority public work contracts to be designated by the authority for inclusion in this program under this subparagraph, with the assistance of an authority-provided mentor, which shall be a firm competitively selected by the authority that has extensive construction management and mentoring experience, with the mentor to provide the small business with advice and assistance in competing for and managing authority public work contracts; and

(ii) for a small business mentoring program participant which the authority has determined has successfully completed the program under subparagraph (i) of this paragraph, for up to four additional years, (A) additional opportunities to compete with other designated small businesses in the program for certain public work contracts to be designated for inclusion under this subparagraph and, where awarded, to perform such authority public work contracts, with the further assistance of an authority-provided mentor, which shall be a firm competitively selected by the

authority that has extensive construction management and mentoring experience, with the mentor to provide the small business with advice and technical assistance in competing for and managing authority public work contracts, and (B) authority-provided assistance, as determined by the authority, for such a small business to obtain bonding for public work contracts that are competitively awarded pursuant to provisions of law other than this section.

**(e)** “small business mentoring program contract” means a non-federally funded authority public work contract designated by the authority, in an estimated amount of not more than one million dollars for contracts under subparagraph (i) of paragraph (d) of this subdivision and three million dollars for contracts under subparagraph (ii) of paragraph (d) of this subdivision, for which bids or proposals are to be invited and accepted only from businesses that are enrolled in the small business mentoring program and have been selected by the authority to compete for the contract.

**2. Small business mentoring program.**

**(a)** Pursuant to these provisions, the authority may establish a small business mentoring program. In connection therewith, the authority may determine the criteria pursuant to which a small business shall be eligible for and selected to participate in the program under subparagraphs (i) and (ii) of paragraph (d) of subdivision one of this section, the number of participants to participate in each such components of the program, the criteria for the competitive selection of the firms that will provide small businesses with mentoring services, the assignment of a mentor to a specific small business in the small business mentoring program, and the funding for the program.

**(b)** Under the small business mentoring program, the chairman or the chairman’s designee is authorized, notwithstanding any other provision of law:

**(i)** to designate which eligible public work contracts shall be small business mentoring program contracts under subparagraphs (i) and (ii) of paragraph (d) of subdivision one of this section, respectively;

**(ii)** to establish standards for qualifying small business mentoring program participants to compete for a small business mentoring program contract, provided that no less than three qualified small businesses in the program must submit responsive offers to perform the contract;

**(iii)** to determine when bids or proposals for a small business mentoring program contract should be restricted to small business mentoring program participants which, prior to the receipt of bids or proposals, have been qualified by the authority for such competition;

**(iv)** to competitively select, designate and contract with one or more experienced construction management firms that, under the general supervision of the authority, will provide mentoring services to the small businesses participating in the small business mentoring program, and to assign such mentors one or more designated small businesses participating in the program;

**(v)** for small business mentoring program contracts, except as set forth herein, to waive requirements for the solicitation and award of a public work contract pursuant to sections twelve hundred nine, twelve hundred sixty-five-a and twenty-eight hundred seventy-nine of this chapter and any other provision of law;

**(vi)** to assist only small business mentoring program participants that have been awarded small business mentoring program contracts to obtain any surety bond or contract of insurance required of them in connection with such contract only notwithstanding any provision of section two thousand five hundred four of the insurance law to the contrary; and

**(vii)** for small businesses that have been accepted into the small business mentoring program under subparagraph (ii) of paragraph (d) of subdivision one of this section, in addition to the benefits of such program and notwithstanding any other provision of law, to provide technical assistance in obtaining bid, payment and performance bonding for authority public work contracts

that are not small business mentoring program contracts, for which the small business is otherwise qualified.

3. Withdrawal of designation of small business mentoring program contracts.
  - (a) If the total number of qualified small business mentoring program participants that respond to a competition and are considered capable of meeting the specifications and terms of the invitation to compete is less than three, or if the chairman or the chairman's designee determines that acceptance of the best offer will result in the payment of an unreasonable price, the authority may reject all offers and withdraw the designation of the contract as a small business mentoring program contract.
  - (b) If the authority withdraws the designation of contract as a small business mentoring program contract, the firms, if any, that made offers shall be notified. Invitations to compete containing the same or rewritten specifications and terms shall then be re-issued as a small business mentoring program contract for one or more additional contract period.
4. Construction manager mentors. A mentor shall provide services and assistance to a small business as designated by the authority, which may include the following:
  - (a) provide business training in the skills necessary to operate a successful construction business and to compete for and perform a public work contract;
  - (b) provide technical assistance to the small business to assess the outcome if the small business competes for but is not awarded a contract;
  - (c) if the small business mentoring program contract is awarded to the small business, provide guidance, advice and technical assistance to the small business in the performance of the contract;
  - (d) provide other technical assistance to the small business to facilitate learning, training and other issues which may arise.
5. The authority may delegate to the chairman or the chairman's designee, the authority's responsibilities set forth herein.
6. The small business mentoring program contracts authorized by this legislation shall, for the initial year of the program, be in an aggregate amount of not less than ten million dollars, and shall not exceed one hundred million dollars, with the maximum amount in future years to be set by the chairman.

## History

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Add, L 2010, ch 206, § 2, eff July 15, 2010.

Annotations

## Notes

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### Editor's Notes:

**Laws 2010, ch 206, § 1**, eff July 15, 2010, provides as follows:

Section 1. Legislative findings. Historically, in the construction industry, there have been significant obstacles to the ability of small businesses to compete for public work contracts. These include the lack of sufficient construction management expertise to compete for and perform public work contracts and prime contractor and statutory public work contracting requirements that may present insurmountable obstacles to a small, inexperienced business including requirements with respect to bonding, insurance and competitive bidding.

It is hereby declared that there is a public purpose in initiating a mentoring program to be implemented by the metropolitan transportation authority for itself and its affiliates and subsidiaries that will afford participating small businesses with the opportunity to obtain public work construction management experience and training by providing the small businesses with the mentoring services of an experienced construction firm and with the opportunity to compete with certain other small businesses in the program for the award of designated public work contracts.

It is also hereby declared to be in the public interest of the state of New York to authorize the metropolitan transportation authority and its affiliates and subsidiaries to allocate a portion of their funds for the purpose of retaining on a competitive basis successful construction management firms to act as mentors to small businesses participating in the mentoring program, to provide such small businesses training to facilitate their growth into successful bidders and performers on public work contracts. It is also in the public interest for the state of New York to provide for certain exceptions to the provisions of the public authorities law, the state finance law, and the insurance law to enable the metropolitan transportation authority and its affiliates and subsidiaries to designate specific public work contracts for award through the mentoring program to competing small businesses participating in the program and to waive or modify otherwise applicable requirements for advertised and sealed competitive bidding, bonding, and insurance for such designated public work contracts.

**Laws 2010, ch 206, § 3**, eff eff July 15, 2010, provides as follows:

§ 3. This act shall take effect immediately and shall expire December 31, 2029 when upon such date the provisions of this act shall be deemed repealed; provided that such expiration shall not apply to pending and awarded public work contracts and provided further that effective immediately, the addition, amendment or repeal of any rule, regulation or standard necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date (Amd, L 2019, ch 234, § 1, eff Aug 30, 2019).

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1266

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)***

## **§ 1266. Special powers of the authority**

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In order to effectuate the purposes of this title:

1. The authority may acquire, by purchase, gift, grant, transfer, contract or lease, any transportation facility other than a transit facility or, subject to subdivision two of this section or any transportation facility constituting a transit facility, wholly or partially within the metropolitan commuter transportation district, or any part thereof, or the use thereof, and may enter into any joint service arrangements as hereinafter provided. Any such acquisition or joint service arrangement shall be authorized only by resolution of the authority approved by not less than a majority vote of the whole number of members of the authority then in office, except that in the event of a tie vote the chairman shall cast one additional vote.
2. The authority may on such terms and conditions as the authority may determine necessary, convenient or desirable itself plan, design, acquire, establish, construct, effectuate, operate, maintain, renovate, improve, extend, rehabilitate or repair (a) any transportation facility other than a transit project, or (b) upon the request of the New York city transit authority, and upon such terms and conditions as shall be agreed to by the authority or any transportation facility constituting a transit facility (a "transportation assistance project"), or may provide for such planning, design, acquisition, establishment, construction, effectuation, operation, maintenance, renovation, improvement, extension, rehabilitation or repair by contract, lease or other arrangement on such terms as the authority may deem necessary, convenient or desirable with any person, including but not limited to any common carrier or freight forwarder, the state, any state agency, the federal government, any other state or agency or instrumentality thereof, any public authority of this or any other state, the port of New York authority or any political subdivision or municipality of the state. In connection with the operation of any transportation facility, the authority may plan, design, acquire, establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair or may provide by contract, lease or other arrangement for the planning, design, acquisition, establishment, construction, effectuation, operation, maintenance, renovation, improvement, extension or repair of any related services and activities it deems necessary, convenient or desirable, including but not limited to the transportation and storage of freight and the United States mail, feeder and connecting transportation, parking areas, transportation centers, stations and related facilities. Upon the completion of any such transportation assistance project or any part thereof or the termination of any contract, lease or other arrangement relating to such transportation assistance project, the authority shall cause the same to be transferred, leased or subleased to the New York city transit authority or its designated subsidiary, as appropriate, with or without consideration.
3. The authority may establish, levy and collect or cause to be established, levied and collected and, in the case of a joint service arrangement, join with others in the establishment, levy and collection of such fares, tolls, rentals, rates, charges and other fees as it may deem necessary, convenient or desirable for the use and operation of any transportation facility and related services operated by the

authority or by a subsidiary corporation of the authority or under contract, lease or other arrangement, including joint service arrangements, with the authority. Any such fares, tolls, rentals, rates, charges or other fees for the transportation of passengers shall be established and changed only if approved by resolution of the authority adopted by not less than a majority vote of the whole number of members of the authority then in office, with the chairman having one additional vote in the event of a tie vote, and only after a public hearing, provided however, that fares, tolls, rentals, rates, charges or other fees for the transportation of passengers on any transportation facility which are in effect at the time that the then owner of such transportation facility becomes a subsidiary corporation of the authority or at the time that operation of such transportation facility is commenced by the authority or is commenced under contract, lease or other arrangement, including joint service arrangements, with the authority may be continued in effect without such a hearing. Such fares, tolls, rentals, rates, charges and other fees shall be established as may in the judgment of the authority be necessary to maintain the combined operations of the authority and its subsidiary corporations on a self-sustaining basis. The said operations shall be deemed to be on a self-sustaining basis as required by this title, when the authority is able to pay or cause to be paid from revenue and any other funds or property actually available to the authority and its subsidiary corporations (a) as the same shall become due, the principal of and interest on the bonds and notes and other obligations of the authority and of such subsidiary corporations, together with the maintenance of proper reserves therefor, (b) the cost and expense of keeping the properties and assets of the authority and its subsidiary corporations in good condition and repair, and (c) the capital and operating expenses of the authority and its subsidiary corporations. The authority may contract with the holders of bonds and notes with respect to the exercise of the powers authorized by this section. No acts or activities taken or proposed to be taken by the authority or any subsidiary of the authority pursuant to the provisions of this subdivision shall be deemed to be "actions" for the purposes or within the meaning of article eight of the environmental conservation law.

**3-a.** In furtherance of the authority's mandate to develop and implement a unified mass transportation policy for the metropolitan commuter transportation district and the exercise of its powers, including the power to issue notes, bonds and other obligations secured in whole or in part by the revenues of the authority and its subsidiaries, and New York city transit authority and its subsidiaries, the authority shall join with the New York city transit authority and its subsidiaries in connection with any change in the establishment, levy and collection of fares, tolls, rentals, rates, charges and other fees for the transportation of passengers on any transportation facilities operated by New York city transit authority and its subsidiaries. Such fares, tolls, rentals, charges and other fees on transit facilities shall be established in accordance with the requirements of sections twelve hundred five and twelve hundred seven-i of this article.

**4.** The authority may establish and, in the case of joint service arrangements, join with others in the establishment of such schedules and standards of operations and such other rules and regulations including but not limited to rules and regulations governing the conduct and safety of the public as it may deem necessary, convenient or desirable for the use and operation of any transportation facility and related services operated by the authority or under contract, lease or other arrangement, including joint service arrangements, with the authority. Such rules and regulations governing the conduct and safety of the public shall be filed with the department of state in the manner provided by section one hundred two of the executive law. In the case of any conflict between any such rule or regulation of the authority governing the conduct or the safety of the public and any local law, ordinance, rule or regulation, such rule or regulation of the authority shall prevail. Violation of any such rule or regulation of the authority governing the conduct or the safety of the public in or upon any facility of the authority shall constitute an offense and shall be punishable by a fine not exceeding fifty dollars or imprisonment for not more than thirty days or both or may be punishable by the imposition of a civil penalty by the transit adjudication bureau established pursuant to the provisions of title nine of this article.

**5.** The authority may acquire, hold, own, lease, establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair any transportation facilities through, and cause any one or more of

its powers, duties, functions or activities to be exercised or performed by, one or more wholly owned subsidiary corporations of the authority, or by New York city transit authority or any of its subsidiary corporations in the case of transit facilities and may transfer to or from any such corporations any moneys, real property or other property for any of the purposes of this title upon such terms and conditions as shall be agreed to and subject to such payment or repayment obligations as are required by law or by any agreement to which any of the affected entities is subject. The directors or members of each such subsidiary corporation of the authority shall be the same persons holding the offices of members of the authority. The chairman of the board of each such subsidiary shall be the chairman of the authority, serving ex officio and, provided that there is an executive director of the metropolitan transportation authority, the executive director of such subsidiary shall be the executive director of the metropolitan transportation authority, serving ex officio. Notwithstanding any provision of law to the contrary, the chairman shall be the chief executive officer of each such subsidiary and shall be responsible for the discharge of the executive and administrative functions and powers of each such subsidiary. The chairman and executive director, if any, shall be empowered to delegate his or her functions and powers to one or more officers or employees of each such subsidiary designated by him or her. Each such subsidiary corporation of the authority and any of its property, functions and activities shall have all of the privileges, immunities, tax exemptions and other exemptions of the authority and of the authority's property, functions and activities. Each such subsidiary corporation shall be subject to the restrictions and limitations to which the authority may be subject. Each such subsidiary corporation of the authority shall be subject to suit in accordance with section twelve hundred seventy-six of this title. The employees of any such subsidiary corporation, except those who are also employees of the authority, shall not be deemed employees of the authority.

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

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

**6.** Each of the authority and its subsidiaries, and the New York city transit authority and its subsidiaries, in its own name or in the name of the state, may apply for and receive and accept grants of property, money and services and other assistance offered or made available to it by any person, government or agency, which it may use to meet capital or operating expenses and for any other use within the scope of its powers, and to negotiate for the same upon such terms and conditions as the respective authority may determine to be necessary, convenient or desirable.

**6-a.** Subject to the rights of the holders of any outstanding bonds, notes or other obligations of the authority, New York city transit authority and Triborough bridge and tunnel authority, and to facilitate the efficient financial management of the authority, its subsidiary corporations, New York city transit authority and its subsidiary corporations, and Triborough bridge and tunnel authority (the "affiliated entities"), the authority may, and may permit and direct any affiliated entity to, transfer revenues, subsidies and other monies or securities to one or more funds or accounts of another affiliated entity for use by such other affiliated entity, provided at the time of such transfer it is reasonably anticipated that

the monies and securities so transferred will be reimbursed, repaid or otherwise provided for by the end of the next succeeding calendar year if reimbursement or repayment is required by law or by any agreement to which any of the affected affiliated entities is subject. Any revenues of an affiliated entity that are transferred to another affiliated entity, which transfer was not authorized by a provision of law other than this subdivision, shall be considered to be required to be repaid to the affiliated entity which was the source of such revenues by the end of the next succeeding calendar year following such transfer.

**7.** The authority may lease railroad cars for use in its passenger service pursuant to the provisions of chapter six hundred thirty-eight of the laws of nineteen hundred fifty-nine.

**8.** The authority may do all things it deems necessary, convenient or desirable to manage, control and direct the maintenance and operation of transportation facilities, equipment or real property operated by or under contract, lease or other arrangement with the authority and its subsidiaries, and New York city transit authority and its subsidiaries. Except as hereinafter specially provided, no municipality or political subdivision, including but not limited to a county, city, village, town or school or other district shall have jurisdiction over any facilities of the authority and its subsidiaries, and New York city transit authority and its subsidiaries, or any of their activities or operations. The local laws, resolutions, ordinances, rules and regulations of a municipality or political subdivision, heretofore or hereafter adopted, conflicting with this title or any rule or regulation of the authority or its subsidiaries, or New York city transit authority or its subsidiaries, shall not be applicable to the activities or operations of the authority and its subsidiaries, and New York city transit authority, or the facilities of the authority and its subsidiaries, and New York city transit authority and its subsidiaries, except such facilities that are devoted to purposes other than transportation or transit purposes. Each municipality or political subdivision, including but not limited to a county, city, village, town or district in which any facilities of the authority or its subsidiaries, or New York city transit authority or its subsidiaries are located shall provide for such facilities police, fire and health protection services of the same character and to the same extent as those provided for residents of such municipality or political subdivision.

The jurisdiction, supervision, powers and duties of the department of transportation of the state under the transportation law shall not extend to the authority in the exercise of any of its powers under this title. The authority may agree with such department for the execution by such department of any grade crossing elimination project or any grade crossing separation reconstruction project along any railroad facility operated by the authority or by one of its subsidiary corporations or under contract, lease or other arrangement with the authority. Any such project shall be executed as provided in article ten of the transportation law and the railroad law, respectively, and the costs of any such project shall be borne as provided in such laws, except that the authority's share of such costs shall be borne by the state.

**9.** Upon approval by the commissioner of transportation of the state of New York of detailed plans and specifications, which approval may be based upon considerations of relative need and the timing of construction, the authority is authorized to design, construct, maintain, operate, improve and reconstruct a highway bridge crossing Long Island sound, as follows:

**(a)** Upon (i) the enactment by the state of Connecticut of legislation having like effect as the provisions of this paragraph and the granting of the consent of the congress of the United States of America to the interstate compact thereby created, and (ii) in conformity with recommendations of the New York-Connecticut bi-state bridge study commission, the authority is authorized, in cooperation with any duly designated agency or agencies of the state of Connecticut, to design, construct, maintain, operate, improve and reconstruct a highway bridge crossing Long Island sound from a point in the vicinity of the city of Bridgeport in the state of Connecticut to a point in the vicinity of the village of Port Jefferson in the state of New York, together with approaches to such bridge; and to contract from time to time with such agency or agencies of the state of Connecticut with respect to all matters affecting these authorizations, including, without limitation, the sharing of all capital, operational and maintenance expense (except that the capital expense of the original

construction of such bridge, other than the expense of acquiring the needed real property, shall be in the ratio of fifty per-centum for the authority and fifty per-centum for such agency or agencies of the state of Connecticut), the manner and by whom the work of design, construction, reconstruction, improvement, maintenance and operation is to be performed or contracted to others for performance, the tolls, fees and other charges to be imposed from time to time for the use of such bridge, and the sharing of revenues derived from the imposition of such tolls, fees and charges (except that net revenues remaining after deduction of operational and maintenance expense of such bridge shall be in the ratio of fifty per-centum for the authority and fifty per-centum for the state of Connecticut or for such agency or agencies of the state of Connecticut. Subject to the limitations imposed upon the authority by the provisions of the said contracts, that portion of the said bridge and its approaches situate and lying within the territorial boundaries of the state of New York shall be deemed a "transportation facility" of the authority for all the purposes of this title, but tolls, fees and other charges imposed for the use of such bridge shall not be deemed to have been imposed "for the transportation of passengers" within the intendment of subdivision three of this section.

**(b)** If funds are made available by the authority for the payment of the cost and expense of the acquisition thereof, the commissioner of transportation of the state of New York, when requested by the authority, may acquire in the name of the state such real property lying within the territorial boundaries of the state as may be determined from time to time by the authority to be necessary, convenient or desirable to carry out the authorizations set forth in paragraphs (a) and (b) of this subdivision, may remove the owner or occupant thereof where necessary and obtain possession and, when requested by the authority, may dispose of any real property so acquired, all according to the procedure provided in section thirty of the highway law. The authority shall have the right to possess and use for its corporate purposes all such real property so acquired, all according to the procedure provided in section thirty of the highway law. The authority shall have the right to possess and use for its corporate purposes all such real property so acquired. Claims for the value of the property appropriated and for legal damages caused by any such appropriation shall be adjusted and determined by the commissioner of transportation with the approval of the authority or by the court of claims as provided in section thirty of the highway law. When a claim has been filed with the court of claims, the claimant shall cause a copy of such claim to be served upon the authority and the authority shall have the right to be represented and heard before such court. All awards and judgments arising from such claims shall be paid out of moneys of the authority.

**(c)** The authority, acting independently or jointly or in cooperation with such agency or agencies of the state of Connecticut, may also apply for and accept, upon condition or otherwise, from the duly authorized agencies of the federal government, and of the governments of the states of Connecticut and New York, such underwater and overwater grants of real property, licenses or permits as shall be necessary, convenient or desirable to carry out the authorizations set forth in paragraphs (a) and (b) of this subdivision.

**(d)** The provisions of chapter four hundred forty-two of the laws of nineteen hundred sixty-five (and of any agreement entered into in pursuance thereof) relating to the repayment of a loan made by the state to the authority for the purchase of the Long Island railroad shall be inapplicable to (i) the construction of such bridges and their approaches, (ii) bonds, notes or other obligations of the authority issued for or in connection with the financing of the cost of design, construction and reconstruction of such bridges and their approaches, or the proceeds realized upon such issuance; and (iii) revenues derived from the investment of such proceeds or of any part thereof, and from the imposition of tolls, fees or other charges for the use of such bridges.

**10.** Notwithstanding the provisions of any other law, general, special or local, or of any agreement entered into in pursuance thereof, relating to the repayment of any loan or advance made by the state to the authority or to the New York city transit authority, neither the authority nor the New York city transit authority shall be required to repay any such loan or advance heretofore made from or by reason of the issuance of bonds or notes of either of them or from the proceeds realized upon such

issuance or from any other funds received by either of them from any source whatever in aid or assistance of the project or projects for the financing of which such bonds or notes are issued.

**11.** No project to be constructed upon real property theretofore used for a transportation purpose, or on an insubstantial addition to such property contiguous thereto, which will not change in a material respect the general character of such prior transportation use, nor any acts or activities in connection with such project, shall be subject to the provisions of article eight, nineteen, twenty-four or twenty-five of the environmental conservation law, or to any local law or ordinance adopted pursuant to any such article. Nor shall any acts or activities taken or proposed to be taken by the authority or by any other person or entity, public or private, in connection with the planning, design, acquisition, improvement, construction, reconstruction or rehabilitation of a transportation facility, other than a marine or aviation facility, be subject to the provisions of article eight of the environmental conservation law, or to any local law or ordinance adopted pursuant to any such article if such acts or activities require the preparation of a statement under or pursuant to any federal law or regulation as to the environmental impact thereof.

**12.** The authority may, upon suitable notice to and an offer to consult with an officer designated by the city of New York, occupy the streets of the city of New York for the purpose of doing any work over or under the same in connection with the improvement, construction, reconstruction or rehabilitation of a transportation facility without the consent of or payment to such city.

**12-a.** [Expires and repealed Dec 31, 2025]

**(a)** Whenever the authority determines in consultation with the city of New York that it is necessary to obtain the temporary or permanent use, occupancy, control or possession of vacant or undeveloped or underutilized but replaceable real property, or any interest therein, or subsurface real property or any interest therein then owned by the city of New York for a project in the two thousand fifteen to two thousand nineteen or the two thousand twenty to two thousand twenty-four approved capital programs to (i) install one or more elevators to make one or more subway stations more accessible, (ii) construct or reconstruct an electrical substation to increase available power to the subway system to expand passenger capacity or reliability, or (iii) in connection with the capital project to construct four commuter railroad passengers stations in the borough of the Bronx known as Penn Station access, the authority upon approval by the board of the metropolitan transportation authority and upon suitable notice and with the consent of the city of New York may cause the title to such real property, or any interest therein, to be transferred to the authority by adding it to the agreement of lease dated June first, nineteen hundred fifty-three, as amended, renewed and supplemented, authorized by section twelve hundred three of this article, or may itself acquire title to such property from the city of New York, and any such transfer or acquisition of real property shall be subject to the provisions of subdivision five of section twelve hundred sixty-six-c of this title. Nothing in this subdivision shall be deemed to authorize any temporary or permanent transfer or acquisition of real property, or interest therein, that is dedicated parkland without separate legislative approval of such alienation.

**(b)**

**(i)** Upon the execution of any transfer or acquisition pursuant to this subdivision, which shall be final upon the approval by the board of the metropolitan transportation authority and consent of the city of New York, the fair market value shall be determined pursuant to this paragraph. The authority shall make a written offer to pay to the city of New York the fair market value of the authority's use, occupancy, control, possession or acquisition of such property. The offer by the authority shall be based on an appraisal of the value of such property and a copy of such appraisal shall be included with the offer. Such appraisal shall be done by an independent New York state licensed or certified appraiser, who may not be employed by the authority, selected at random from a panel of appraisers maintained by it for such purpose. Such appraisal and a second appraisal, if required pursuant to subparagraph (ii) of this paragraph, shall consider only the reasonably anticipated lawful use of the property and its zoning designation under the

zoning resolution of the city of New York at the time the authority notified the city of New York of its determination to use, occupy, control, possess or acquire such property.

(ii) Within thirty days of receipt of the offer by the authority, the city of New York may accept it, agree with the authority on another amount, or request a second appraisal by an independent New York state licensed or certified appraiser, who may not be employed by the city of New York, selected at random by the city of New York from a panel of appraisers maintained by it for such purpose. Such second appraisal shall be completed within thirty days. If the second appraisal produces an estimate of the fair market value of the property that is greater than that of the first appraisal, the authority shall have ten days to increase its offer to such higher amount, otherwise the two appraisers shall reconcile their valuations and agree on a final valuation within ten days, which shall be an amount not less than the first appraisal nor greater than the second appraisal.

(c) Nothing in this subdivision shall be construed to affect or limit the authority's power under subdivision twelve of this section.

**13.** The authority and each of its subsidiary corporations shall place on each transformer and substation which contains polychlorinated biphenyls (PCBs) a symbol so indicating the presence of PCBs. Use of a PCB mark illustrated in the rules and regulations promulgated pursuant to the federal Toxic Substances Control Act shall constitute compliance with the provisions of this subdivision.

**14.** Notwithstanding any other provisions of law or the terms of any contract, the authority, in consultation with the Long Island Rail Road, shall establish and implement a no fare program for transportation on the Long Island Rail Road for police officers employed by the city of New York, county of Nassau, Nassau county villages and cities, county of Suffolk, Suffolk county villages and towns, the division of state police, the port authority of New York and New Jersey, the Metro-North Commuter Railroad Company, the New York city housing authority and the New York city transit authority. In establishing such program, which has as its goal increased protection and improved safety for its commuters, the authority and the Long Island Rail Road shall, among other things, consider: (a) requiring police officers who ride without cost to register with the Long Island Rail Road as a condition of riding without cost; (b) requiring such officers to indicate during such registration process their regular working hours and the Long Island Rail Road trains that such officers expect to ride; and (c) periodically re-registering and re-validating such officers. The authority and the Long Island Rail Road shall also have the power to consider other matters necessary to carry out the goals and objectives of this section.

**15.**

(a) Notwithstanding any other provisions of law or the terms of any contract, the authority, in consultation with the New York city transit authority, the Long Island Rail Road and the Metro-North Commuter Railroad Company, shall establish and implement a no fare program for transportation on New York city transit authority systems, the Long Island Rail Road and the Metro-North Commuter Railroad Company for individuals serving as personal care attendants accompanying an Americans With Disabilities Act paratransit eligible individual.

(b) In order to be eligible for such no fare program the personal care attendant must show his or her community based personal care attendant agency issued identification card.

(c) In order to be considered accompanying an Americans With Disabilities Act paratransit eligible individual the personal care attendant shall have the same origin and destination as such paratransit eligible individual.

**16.** Notwithstanding any other provision of law, the authority and any of its subsidiary corporations shall establish and implement a half fare rate program for persons with serious mental illness who are eligible to receive supplemental security income benefits as defined pursuant to title sixteen of the federal social security act and section two hundred nine of the social services law.

**17.** Notwithstanding any conflicting provisions of general, special or local law, and pursuant to the authority's 2000-2004 capital program plans approved by the metropolitan transportation authority capital program review board, the authority or any of its subsidiaries, the New York city transit authority or any of its subsidiaries, or Triborough bridge and tunnel authority, shall provide, from funds identified in such approved 2000-2004 capital program plans, up to twelve million dollars for the financing of a bus and heavy duty vehicles emission research and testing facility and related equipment located in the state of New York, whether within or outside of the transportation district, which facility shall be operated by the department of environmental conservation and shall be available for use on a non-exclusive basis by the authority and any of its subsidiaries, the New York city transit authority and any of its subsidiaries, and Triborough bridge and tunnel authority.

**18.** The authority shall conduct a campaign of public outreach to inform the public of the provisions pertaining to assault on employees described in subdivision eleven of section 120.05 of the penal law.

**19.** In connection with their lawful responsibilities or functions, the authority and its subsidiaries, including Metro-North Commuter Railroad, the Long Island Rail Road, MTA bus and the Staten Island rapid transit operating authority, the Triborough bridge and tunnel authority, and the New York city transit authority and its subsidiary the Manhattan and Bronx surface transit operating authority, are authorized to request, receive and review criminal history information through the division of criminal justice services with respect to any person applying for a safety sensitive position. When requested, such applicant shall submit to the authority or the requesting affiliate or subsidiary his or her fingerprints in such form and in such manner as specified by the division, for the purpose of conducting a criminal history search identifying criminal convictions and pending criminal charges and returning a report thereon in accordance with the procedures and requirements established by the division pursuant to the provisions of article thirty-five of the executive law, which shall include the payment of the reasonable prescribed processing fee for the cost of the division's full search and retention procedures and a national criminal history record check. The authority or requesting affiliate or subsidiary shall submit such fingerprints and the processing fee to the division. The division shall forward to the authority or the requesting affiliate or subsidiary a report with respect to the applicant's previous criminal history, if any, or a statement that the applicant has no previous criminal history according to its files. Fingerprints submitted to the division pursuant to this subdivision may also be submitted to the federal bureau of investigation for a national criminal history record check. If additional copies of fingerprints are required, the applicant shall furnish them upon request. Upon receipt of such criminal history information, the authority or the requesting affiliate or subsidiary shall provide such applicant with a copy of such criminal history information, together with a copy of article twenty-three-A of the correction law, and inform such applicant of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to regulations and procedures established by the division of criminal justice services. The authority or the requesting affiliate or subsidiary shall ensure that adequate notice be provided to such applicant regarding the fact that state and national criminal history record checks may be conducted. This provision shall not preclude or alter the process by which a municipal civil service commission obtains and provides background information pursuant to subdivision four of section fifty of the civil service law relating to applicants for civil service appointments at the New York city transit authority and the Triborough bridge and tunnel authority.

## History

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Add, L 1965, ch 324, § 3, eff June 1, 1965; amd, L 1965, ch 634, § 3; L 1966, ch 415, §§ 3-6; L 1967, ch 717, §§ 85, 92; L 1968, ch 420, §§ 186, 187; L 1973, ch 657, §§ 4, 5, eff June 11, 1973; L 1973, ch 789, §§ 1-3, eff June 22, 1973; L 1980, ch 279, § 1; L 1981, ch 314, § 8, eff June 29, 1981; L 1986, ch 530, § 1, eff Sept 1, 1986; L 1995, ch 307, § 1, eff July 26, 1995; L 1999, ch 422, § 1; L 1999, ch 523, § 1, eff Jan 26, 2000; L 2000, ch 24, § 1, eff July 16, 2000; L 2000, ch 25, § 1, eff July 16, 2000; L 2000, ch 61, § 8 (Part N), eff May 15, 2000; L 2000, ch 61, § 23 (Part O), eff May 15, 2000; L 2002, ch 598, § 2; L 2003, ch 607, § 2, eff Sept 30, 2003; L 2009, ch 25, § 8 (Part H);



L 2009, ch 506, § 28, eff March 1, 2010; L 2013, ch 182, § 1, eff July 31, 2013; L 2015, ch 460, § 3, effective November 20, 2015; L 2020, ch 58, § 2 (Part VVV), effective April 3, 2020; L 2021, ch 261, § 1, effective July 16, 2021.

Annotations

## Notes

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### Prior Law:

Former § 1266, add, L 1959, ch 789; renumbered § 1246, L 1965, ch 324, § 2, eff June 1, 1965.

### Editor's Notes

See 1965 note under Title 11.

**Laws 1995, ch 307, § 2**, eff July 26, 1995, provides as follows:

§ 2. This act shall take effect immediately, provided, however, that the program shall be implemented on or before the one hundred twentieth day after this act shall have become a law and that a report containing the provisions of the program shall be made to the governor, the senate majority and minority leaders, the speaker of the assembly and the assembly minority leader, and the chairman of the senate and assembly transportation committees thirty days prior to implementing the program.

**Laws 1999, ch 523, § 2**, eff Jan 26, 2000, provides as follows:

§ 2. This act shall take effect on the one hundred twentieth day after it shall have become a law, provided, however, that any rules and regulations necessary for the timely implementation of this act on its effective date shall be promulgated on or before such date.

**Laws 2000, ch 61, § 12 (Part N)**, eff May 15, 2000, provides as follows:

This act shall take effect immediately, except that sections one through seven and nine through eleven of this act shall take effect only in the event that a chapter of the laws of 2000 entitled "AN ACT authorizing the creation of a state debt to the amount of three billion eight hundred million dollars, in relation to creating the Transportation Infrastructure Bond Act of 2000, to provide monies for the improvement, enhancement, preservation and restoration of the quality of the state's transportation infrastructure, and providing for the submission to the people of a proposition or question therefor to be voted upon at the general election in November 2000" is approved. Upon such approval, this act shall take effect immediately. Effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the implementation of the foregoing sections of this act are authorized and directed to be made and completed on or before such effective date.

**Laws 2009, ch 25, §§ 1, 21(b) (Part H)**, eff May 7, 2009, provide as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.
4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.
5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.
6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

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

(b) the amendments to subdivision 4 of section 1263 of the public authorities law made by section five of this act, subdivision 2 of section 1201 of the public authorities law made by section six of this act, subdivision 1 of section 552 of the public authorities law made by section seven of this act, and subdivision 5 of section 1266 of the public authorities law made by section eight of this act, shall take effect upon the date of the appointment by the governor with the advice and consent of the senate of a chair to the new term of office created pursuant to section three of this act. The governor's office of appointments shall notify the legislative bill drafting commission upon the appointment of a chairman to the new term provided for in section three of this act in order that the legislative bill drafting commission may maintain an accurate and timely effective database of the original text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law; and

**Laws 2020, ch 58, §§ 1, 3 (Part VVV)**, eff April 3, 2020, provide:

Section 1. It is hereby found and declared that it is a matter of substantial and imperative state concern that the metropolitan transportation authority be enabled to deliver as quickly and efficiently as practicable the capital projects included in its 2015 to 2019 and 2020 to 2024 approved capital programs, which together will make the subway, bus, and commuter rail systems it operates in the metropolitan transportation commuter district safer, more reliable, cleaner, more modern, and more accessible for all its customers. The people of the state through their legislature have made substantial commitments to ensure stable and reliable capital funding to repair and revitalize the metropolitan transportation authority's subway, bus, and commuter rail systems including most recently the program to establish tolls for vehicles entering or remaining in New York city's central business district, which is expected to fund fifteen billion dollars for capital projects.

The legislature further finds and declares that the metropolitan transportation authority anticipates that some projects in an approved capital program plan will require that it acquire from the city of New York through negotiation temporary and permanent interests in real property for transportation facilities or transit projects. So as not to unduly delay the commencement of such capital projects and to ensure that their cost is not undue, the city of New York must not unreasonably withhold its consent to such acquisitions nor must it try to use the metropolitan transportation authority's urgent need for the interests in real property unreasonably as a lever to obtain an undue price. Otherwise, the metropolitan transportation authority's efforts to make its transportation system more accessible and more reliable and efficient will be significantly impeded. Valuations of the property interests and negotiations to determine the fair market value shall be conducted only after the metropolitan transportation authority has identified the need for such property interests and the city of New York has consented to their transfer

or acquisition. Under the valuation procedure enacted herein, those negotiations will be swift and lead to a reasonable price. It is therefore the intent of the legislature to provide a means that fairly determines the fair market value of property interests to be acquired by the authority from the city of New York while at the same time ensuring that the metropolitan transportation authority be able to efficiently and cost-effectively deliver capital projects that will make the subway system more accessible and more reliable. In doing so, the legislature further finds and declares that it is acting on a matter of substantial state concern.

§ 3. This act shall take effect immediately and shall expire and be deemed repealed on December 31, 2025; provided, however, that the repeal of this act shall not affect any transfer or acquisition pursuant to all of the terms of section two of this act that has been approved by the board of the metropolitan transportation authority before such repeal date.

### **Amendment Notes**

**2013.** Chapter 182, § 1 amended:

Sub 14 by adding the matter in italics.

**2009.** Chapter 506, § 28 amended:

Sub 5, first undesignated par by deleting at fig 1 “subdivision three of section twenty-eight hundred twenty-four of this chapter or”, and at fig 2 “other”.

**The 2015 amendment by ch 460, § 3,** added “or may be punishable by the imposition of a civil penalty by the transit adjudication bureau established pursuant to the provisions of title nine of this article” in the last sentence of 4.

**The 2020 amendment by ch 58, § 2 (Part VVV)** added 12-a.

**The 2021 amendment by ch 261, § 1,** added 19.

## **Notes to Decisions**

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**1.In general**

**2.Actions against Authority**

**3.—Notice of claim**

**4.Employment matters**

**5.Building or zoning matters**

**6.Bus service**

**7.Construction projects**

**8.Aviation facilities**

**9.Newspapers**

**10.Radio and television**

**11.Applicability of environmental laws**

**1. In general**

Where railroad company had been granted privilege of using and occupying certain streets in consideration of paying sum to city annually, the fee paid by railroad was contractual in nature for privilege of carrying on its business, and metropolitan transportation authority, which purchased railroad, was required to pay sums to city pursuant to agreement. *New York v Long Island R. Co.*, 44 N.Y.2d 827, 406 N.Y.S.2d 450, 377 N.E.2d 982, 1978 N.Y. LEXIS 2017 (N.Y. 1978).

When state or one of its political subdivisions owns and operates railroad which is directly engaged in interstate commerce, it thereby subjects itself to commerce power and Congress can regulate its employment relationship; operation of railroad in interstate commerce is not integral part of state governmental activities which are protected from congressional impairment by principles of state sovereignty. *Staten Island Rapid Transit Operating Authority v International Brotherhood of Electrical Workers*, 57 A.D.2d 614, 393 N.Y.S.2d 773, 1977 N.Y. App. Div. LEXIS 11625 (N.Y. App. Div. 2d Dep't), app. denied, 42 N.Y.2d 804, 397 N.Y.S.2d 1028, 366 N.E.2d 1364 (N.Y. 1977), cert. denied, 434 U.S. 934, 98 S. Ct. 421, 54 L. Ed. 2d 293, 1977 U.S. LEXIS 3868 (U.S. 1977).

Railroad, a subsidiary of Metropolitan Transportation Authority, cannot operate without regard to health and safety of community, even though it is exempt from local enactments such as a sanitary code. *People v Long Island Railroad*, 90 Misc. 2d 269, 397 N.Y.S.2d 846, 1976 N.Y. Misc. LEXIS 2869 (N.Y. App. Term 1976), aff'd, 41 N.Y.2d 1039, 396 N.Y.S.2d 179, 364 N.E.2d 843, 1977 N.Y. LEXIS 2038 (N.Y. 1977).

Within section of Public Authorities Law granting Metropolitan Transportation Authority power to do all things necessary and convenient to manage the maintenance and operation of equipment, notwithstanding any conflicting ordinance, county sanitary code was in conflict with the section, since defendant railroad, a subsidiary of Authority, had obviously deemed it, at the very least, convenient to operate diesel trains, and railroad was exempt from the code. *People v Long Island Railroad*, 90 Misc. 2d 269, 397 N.Y.S.2d 846, 1976 N.Y. Misc. LEXIS 2869 (N.Y. App. Term 1976), aff'd, 41 N.Y.2d 1039, 396 N.Y.S.2d 179, 364 N.E.2d 843, 1977 N.Y. LEXIS 2038 (N.Y. 1977).

The Metropolitan Transportation Authority and the New York City Transit Authority would not be required to pay refunds, equal to token expenditures, to a passenger for alleged breach of contract of carriage in the form of late service and unsanitary conditions on the routes he traveled, since, as public benefit corporations engaged in a governmental function pursuant to Pub A Law §§ 1202, 1266, the authorities are in the same posture as the State, city or any municipality providing essential services, and no cause of action may exist for failure of a municipality to provide such services. *Leeds v Metropolitan Transp. Authority*, 114 Misc. 2d 797, 452 N.Y.S.2d 551, 1982 N.Y. Misc. LEXIS 3568 (N.Y. Civ. Ct. 1982), aff'd, 117 Misc. 2d 329, 460 N.Y.S.2d 219, 1983 N.Y. Misc. LEXIS 3158 (N.Y. App. Term 1983).

Commuter railroad company, as subsidiary of Metropolitan Transportation Authority, was exempt from prosecution under New York City ordinance regulating transportation of combustible liquids on city streets, since provisions of CLS Pub A Law § 1266 granted defendant power to "do all things it deems necessary, convenient or desirable to manage, control and direct the maintenance and operation of transportation facilities, equipment or real property" notwithstanding any conflicting local ordinances, and defendant had deemed it, at very least, convenient to transport fuel in truck through city streets. *People v Metro N. C. R. Co.*, 132 Misc. 2d 1072, 506 N.Y.S.2d 389, 1986 N.Y. Misc. LEXIS 2838 (N.Y. Crim. Ct. 1986).

Where a railway company became a subsidiary of the Metropolitan Transportation Authority on January 20, 1966, it was subject to Public Authorities Law § 1276 only with respect to causes of action accruing after January 1, 1967 and interest on a judgment based on a cause of action arising in 1962 was properly computed at six percent. *Grunenthal v Long Island R. Co.*, 418 F.2d 1234, 1969 U.S. App. LEXIS 9809 (2d Cir. N.Y. 1969).

## **2. Actions against Authority**

An action to recover damages for assault, false imprisonment, and breach of contract of carriage was properly dismissed as to the Metropolitan Transit Authority, even though liability was predicated on the acts of an employee of the Long Island Railroad and that railroad was a subsidiary corporation of the Metropolitan Transit Authority, since the railroad is a distinct legal entity for the purposes of suit under Pub A Law § 1266. *Wenthen v Metropolitan*

NY CLS Pub A § 1266

Transp. Authority, 95 A.D.2d 852, 464 N.Y.S.2d 212, 1983 N.Y. App. Div. LEXIS 18801 (N.Y. App. Div. 2d Dep't 1983).

Under Public Authorities Law § 1266, affording corporate subsidiary of Metropolitan Transportation Authority same privileges and immunities of parent authority, venue provisions of CLS CPLR § 505 are applicable in action against Long Island Railroad. Schaefer v Long Island Railroad, 112 A.D.2d 153, 490 N.Y.S.2d 840, 1985 N.Y. App. Div. LEXIS 56437 (N.Y. App. Div. 2d Dep't 1985).

Commuters could not maintain breach of contract of carriage action against Conrail to compel it to allocate its resources in particular manner, even though commuters regularly used Conrail's line, since it was performing essential government function for Metropolitan Transportation Authority (MTA), and commuters' claims were based on decisions of MTA, through its control of Conrail's budgets, as to allocation of resources for such function. Altro v Consolidated Rail Corp., 130 A.D.2d 612, 515 N.Y.S.2d 540, 1987 N.Y. App. Div. LEXIS 46625 (N.Y. App. Div. 2d Dep't 1987).

Commuters could not maintain breach of contract of carriage action directly against Metropolitan Transportation Authority (MTA) to compel it to allocate its resources in particular manner, even though commuters regularly used line operated by Conrail under service agreement with MTA, and matter was not within control of Conrail but was subject to control by MTA. Altro v Consolidated Rail Corp., 130 A.D.2d 612, 515 N.Y.S.2d 540, 1987 N.Y. App. Div. LEXIS 46625 (N.Y. App. Div. 2d Dep't 1987).

Metropolitan Transportation Authority (MTA) was entitled to summary judgment in action against it arising from incident in which plaintiff was injured while crossing tracks and property of wholly owned subsidiary of MTA since no property or employees of MTA were involved in incident. Noonan v Long Island Railroad, 158 A.D.2d 392, 551 N.Y.S.2d 232, 1990 N.Y. App. Div. LEXIS 1760 (N.Y. App. Div. 1st Dep't 1990).

CLS CPLR § 505(a) applied to determine venue where CLS Pub A § 1266(5) afforded defendant railroad, which was corporate subsidiary of metropolitan transportation authority, same privileges and immunities of parent authority. Seales v Metro N. Commuter R.R., 205 A.D.2d 751, 614 N.Y.S.2d 28, 1994 N.Y. App. Div. LEXIS 6678 (N.Y. App. Div. 2d Dep't 1994).

Liability of defendant New York City Transit Authority for plaintiff firefighter's injuries under N.Y. Gen. Mun. Law § 205-a was not affected by N.Y. Pub. Auth. Law § 1266(8) as there was no issue of "jurisdiction" and neither was there any conflict between the Authority's regulations and those of a local government; but even if the exemption applied to the Authority, it would not have applied to facilities that were devoted to purposes other than transit. The Authority could not have been exempt from liability with respect to the maintenance of its non-transportation facilities; the Authority was subject to the same duty of care as any other potential tortfeasor and, therefore, like any other landlord, was liable under N.Y. Gen. Mun. Law § 205-a when its failure to comply had a reasonable connection to the firefighter's injuries. Terranova v New York City Tr. Auth., 49 A.D.3d 10, 850 N.Y.S.2d 123, 2007 N.Y. App. Div. LEXIS 12901 (N.Y. App. Div. 2d Dep't 2007), app. denied, 11 N.Y.3d 708, 868 N.Y.S.2d 600, 897 N.E.2d 1084, 2008 N.Y. LEXIS 3263 (N.Y. 2008).

Motion to dismiss the Metropolitan Transportation Authority (MTA) as a defendant was denied as the MTA was the owner and operator of a railroad, a common carrier in interstate commerce, subject to Federal Employers' Liability Act (FELA), 45 U.S.C.S. § 51 et seq., actions; railroad employees could bring FELA actions to attempt to redress the wrongs of the railroad and its owner and operator and the MTA could not hide behind N.Y. Pub. Auth. Law § 1266(5) to avoid a FELA suit. Pappalardo v Long Is. R.R. Co., 813 N.Y.S.2d 883, 11 Misc. 3d 744, 235 N.Y.L.J. 43, 2006 N.Y. Misc. LEXIS 235 (N.Y. Sup. Ct. 2006), aff'd, 36 A.D.3d 878, 829 N.Y.S.2d 173, 2007 N.Y. App. Div. LEXIS 970 (N.Y. App. Div. 2d Dep't 2007).

Trial court had subject matter jurisdiction over plaintiff's discrimination suit against an employee of the New York City Transit Authority (NYCTA), as N.Y. Pub. Auth. Law § 1266(8) did not exempt the NYCTA or its employees from all local laws affecting its activities and operations, but only those conflicting with statute or any rule of regulation of

the NYCTA, and no conflict was shown to exist in the laws at issue. *Bumpus v New York City Tr. Auth.*, 66 A.D.3d 26, 883 N.Y.S.2d 99, 2009 N.Y. App. Div. LEXIS 5671 (N.Y. App. Div. 2d Dep't 2009).

N.Y. Pub. Auth. Law § 1266(8) will only exempt the New York City Transit Authority (NYCTA) from the reach of local laws which interfere with the accomplishment of the NYCTA's purpose, thus, compliance with local human rights laws in the context of a discrimination suit by a NYCTA employee will not interfere with the NYCTA's purpose. *Everson v N.Y. City Transit Auth.*, 216 F. Supp. 2d 71, 2002 U.S. Dist. LEXIS 15197 (E.D.N.Y. 2002).

### **3. —Notice of claim**

Under General Municipal Law § 50-e, subdivision 3, notice of claim in false imprisonment action, sent by certified and not registered mail, was deemed served on day of actual receipt thereof, over 90 days after claimant's release from confinement. *Montez v Metropolitan Transp. Authority*, 43 A.D.2d 224, 350 N.Y.S.2d 665, 1974 N.Y. App. Div. LEXIS 6027 (N.Y. App. Div. 1st Dep't 1974).

Where liability and false imprisonment action was predicated on acts of employee of railroad subsidiary of transit authority, notice of claim was improperly served on transit authority (Public Authority Law § 1266, subd 5) absent a factual showing that said employee had in some manner become an agent of the transit authority, and service on authority was further ineffective as to subsidiary railroad, a distinct legal entity for purposes of suit (Public Authorities Law § 1266, subd 5). *Montez v Metropolitan Transp. Authority*, 43 A.D.2d 224, 350 N.Y.S.2d 665, 1974 N.Y. App. Div. LEXIS 6027 (N.Y. App. Div. 1st Dep't 1974).

### **4. Employment matters**

Balancing minimal and tenuous connection to interstate commerce of transit operating authority, which was charged with operation of Staten Island's only commuter rail line, which was "public employer" as defined by Taylor Law, and which, at least literally, came within coverage of Railway Labor Act since it operated pursuant to ICC certificate and its employees had strong history of bargaining under that Act, and compelling interest in preventing strikes by public employees and ensuring continuation of commuter service, public employees employed by transit authority could be enjoined, under Taylor Law, from striking, notwithstanding judicial interpretation of Railway Labor Act permitting peaceful primary strikes. *Staten Island Rapid Transit Operating Authority v International Brotherhood of Electrical Workers*, 57 A.D.2d 614, 393 N.Y.S.2d 773, 1977 N.Y. App. Div. LEXIS 11625 (N.Y. App. Div. 2d Dep't), app. denied, 42 N.Y.2d 804, 397 N.Y.S.2d 1028, 366 N.E.2d 1364 (N.Y. 1977), cert. denied, 434 U.S. 934, 98 S. Ct. 421, 54 L. Ed. 2d 293, 1977 U.S. LEXIS 3868 (U.S. 1977).

Determination by Metropolitan Transportation Authority and Long Island Rail Road, excluding Fire Marshals employed by Bureau of Fire Investigations of New York City Fire Department from participation in "Police Ride Program," was improperly annulled on ground that all police officers as defined in CLS CPL § 1.20(34), including Fire Marshals, must be included because "(a)ll police officers in the State of New York derive their official status from the provision of section 1.20(34) of the Criminal Procedure Law"; court cited no authority for such proposition, and none exists. *Rossi v Metropolitan Transp. Auth.*, 249 A.D.2d 307, 670 N.Y.S.2d 904, 1998 N.Y. App. Div. LEXIS 3651 (N.Y. App. Div. 2d Dep't 1998).

In Article 78 proceeding to annul state human rights commissioner's decision that State Division of Human Rights lacked subject matter jurisdiction over complaint alleging that Metropolitan Transit Authority (MTA) denied advantage to petitioner by reason of disability of mental illness, equitable relief sought might have been rendered moot by 1999 and 2000 amendments to Public Authorities Law requiring MTA to establish half-fare program for mentally ill persons on its mass transit system. *Staten Island Alliance for the Mentally Ill v Mercado*, 273 A.D.2d 36, 708 N.Y.S.2d 402, 2000 N.Y. App. Div. LEXIS 6319 (N.Y. App. Div. 1st Dep't 2000).

*Unpublished decision:* Because compliance with local human rights laws did not interfere with the Metropolitan Transit Authority's (TA) purpose, the TA was not exempt from the New York City Human Rights Law pursuant to N.Y. Pub. Auth. Law § 1266. *Simmons v N.Y. City Transit Auth.*, 340 Fed. Appx. 24, 2009 U.S. App. LEXIS 17138 (2d Cir. N.Y. 2009).

Employee, an African-American, Muslim woman, was not precluded from alleging discrimination due to her gender, religion, and race against a city transportation authority under a city administrative code because N.Y. Pub. Auth. Law § 1266(8) did not exempt the authority from such lawsuits. *Muhammad v New York City Transit Auth.*, 450 F. Supp. 2d 198, 2006 U.S. Dist. LEXIS 68222 (E.D.N.Y. 2006).

## **5. Building or zoning matters**

A town zoning ordinance which regulated, but did not prohibit per se written advertising signs was applicable to one who subleased advertising space from the Metropolitan Commuter Transportation Authority, since such use of the Authority's property constituted a proprietary rather than a governmental function. Pointing out that the ordinance required the procurement of a permit and the payment of a fee for such permit, the court held that any possible conflict between the fee requirement and § 1275 of the Public Authorities Law might well be resolved by the Town waiving payment of the fee so that the regulation of signs in accordance with established standards could be maintained. *People v Witherspoon*, 52 Misc. 2d 320, 275 N.Y.S.2d 592, 1966 N.Y. Misc. LEXIS 1236 (N.Y. Dist. Ct. 1966).

The Metropolitan Transportation Authority was granted a temporary injunction enjoining a village from enforcing its building code as it would apply to the construction of a footbridge overpass connecting new high level platforms with passenger access facilities for a commuter line. *Metropolitan Transp. Authority v Tuckahoe*, 67 Misc. 2d 895, 325 N.Y.S.2d 718, 1971 N.Y. Misc. LEXIS 1235 (N.Y. Sup. Ct.), *aff'd*, 38 A.D.2d 570, 328 N.Y.S.2d 615, 1971 N.Y. App. Div. LEXIS 2831 (N.Y. App. Div. 2d Dep't 1971).

The Metropolitan Transportation Authority is immune from town zoning and building regulations in its ownership and operation of a commuter railroad station for the governmental purpose of public transportation. 1985 Op St Compt. No. 85-14.

## **6. Bus service**

Extension of service by suburban bus authority under contract with county to school bussing and charter services by ancillary use of personnel and equipment regularly used in operation of street line service was warranted under local law. *New York State School Bus Operators Ass'n v County of Nassau*, 79 Misc. 2d 352, 357 N.Y.S.2d 641, 1974 N.Y. Misc. LEXIS 1664 (N.Y. Sup. Ct. 1974), *modified*, 48 A.D.2d 671, 367 N.Y.S.2d 825, 1975 N.Y. App. Div. LEXIS 9692 (N.Y. App. Div. 2d Dep't 1975).

County subsidies to suburban bus authority under agreement with county was not a waste of public funds in view of public purposes implicit in mass transportation activity and extension of such activity to field of school and charter bus service. *New York State School Bus Operators Ass'n v County of Nassau*, 79 Misc. 2d 352, 357 N.Y.S.2d 641, 1974 N.Y. Misc. LEXIS 1664 (N.Y. Sup. Ct. 1974), *modified*, 48 A.D.2d 671, 367 N.Y.S.2d 825, 1975 N.Y. App. Div. LEXIS 9692 (N.Y. App. Div. 2d Dep't 1975).

Vehicles condemned by county and leased to suburban bus authority for a school and charter bus service, as well as for authority's accepted street line activity, came within definition of "omnibus facilities." *New York State School Bus Operators Ass'n v County of Nassau*, 79 Misc. 2d 352, 357 N.Y.S.2d 641, 1974 N.Y. Misc. LEXIS 1664 (N.Y. Sup. Ct. 1974), *modified*, 48 A.D.2d 671, 367 N.Y.S.2d 825, 1975 N.Y. App. Div. LEXIS 9692 (N.Y. App. Div. 2d Dep't 1975).

Bus driver employed by the New York City Transportation Authority (NYCTA) was not exempt from prosecution for violating N.Y. Veh. & Traf. Law § 1146 or New York City, N.Y., Admin. Code § 19-190, because this section did not automatically invalidate any law that affected the operation and activities of the NYCTA, but only those that interfered with the accomplishment of its transportation purposes. *People v Gallagher*, 50 Misc. 3d 317, 18 N.Y.S.3d 280, 2015 N.Y. Misc. LEXIS 3644 (N.Y. City Crim. Ct. 2015).

## **7. Construction projects**

Property owner failed to demonstrate a likelihood of success on the merits because in moving for injunctive relief to prevent interference with a construction fence on the sidewalk outside its property because it focused on whether the Metropolitan Transportation Authority (MTA) was authorized to occupy the sidewalk; the statute does not limit the MTA's exercise of the right to occupy city-owned streets based on the entity performing or funding an improvement or the event triggering it. *Matter of Trinity NYC Hotel, LLC v Metropolitan Transp. Auth.*, 191 A.D.3d 448, 142 N.Y.S.3d 482, 2021 N.Y. App. Div. LEXIS 633 (N.Y. App. Div. 1st Dep't 2021).

Where the defendant-metropolitan transportation authority moved to dismiss the complaint of the City of Rye and of an Oyster Bay civic association, alleging the effective repeal of legislation authorizing the construction of a bridge across Long Island Sound to the vicinity of Rye and Oyster Bay, the court accepted evidence from both parties and treated the motion under CPLR § 3211(c) as one for summary judgment. The contention that the repealing statute became effective through "constructive presentation" to the Governor without further action by him was untenable; so too, was the argument that the bill became law because of the delay in submitting the vetoed bill for reconsideration until it was too late to act before adjournment; and finally, a suggestion that the official Assembly Journal could be successfully attacked collaterally was rejected. *Rye v Ronan*, 67 Misc. 2d 972, 325 N.Y.S.2d 548, 1971 N.Y. Misc. LEXIS 1183 (N.Y. Sup. Ct. 1971), *aff'd*, 40 A.D.2d 950, 338 N.Y.S.2d 384, 1972 N.Y. App. Div. LEXIS 6366 (N.Y. App. Div. 1st Dep't 1972).

## **8. Aviation facilities**

Metropolitan Transportation Authority (MTA) could impose landing fees at general aviation facility used by light aircraft as well as some commercial and military aircraft, since MTA's statutory authority over air transportation facilities that can be used for commuter purposes does not restrict its control of entire facility nor limit it to charging fees only to those using facility specifically for commuter purposes. *New York State Dep't of Transp. v L.O.K. Aviation*, 134 Misc. 2d 136, 509 N.Y.S.2d 1016, 1986 N.Y. Misc. LEXIS 3070 (N.Y. Dist. Ct. 1986).

Landing fee imposed at aviation facility pursuant to CLS Pub A § 1266 did not violate airport tenants' fundamental right to travel, since there is compelling state interest to control and regulate mass transportation at aviation facilities and charge user fees for use of facilities. *New York State Dep't of Transp. v L.O.K. Aviation*, 134 Misc. 2d 136, 509 N.Y.S.2d 1016, 1986 N.Y. Misc. LEXIS 3070 (N.Y. Dist. Ct. 1986).

Landing fee imposed on tenants at general aviation facility was not discriminatory merely because no fee was imposed at commercial airport, since there was rational basis for differentiation of fees in that 2 airports had different projected purposes. *New York State Dep't of Transp. v L.O.K. Aviation*, 134 Misc. 2d 136, 509 N.Y.S.2d 1016, 1986 N.Y. Misc. LEXIS 3070 (N.Y. Dist. Ct. 1986).

Metropolitan Transportation Authority (MTA) could collect landing fee imposed on tenants at general aviation facility notwithstanding that fixed base operator, not tenant, leased facilities from MTA, since statutory provision authorizing levy and collection of fees by MTA is deemed incorporated into tenant's lease. *New York State Dep't of Transp. v L.O.K. Aviation*, 134 Misc. 2d 136, 509 N.Y.S.2d 1016, 1986 N.Y. Misc. LEXIS 3070 (N.Y. Dist. Ct. 1986).

## **9. Newspapers**

Metropolitan Transit Authority may restrict newspaper's right to distribute its newspapers through newsracks in MTA stations, and may impose licensing fees as permissible manner restrictions because they are content-neutral, leave open alternative means to distribute newspapers and are the least restrictive means of serving MTA's interest in raising revenue for the efficient, self-sufficient operation of the commuter lines. *Gannett Satellite Information Network, Inc. v Metropolitan Transp. Authority*, 745 F.2d 767, 1984 U.S. App. LEXIS 18110 (2d Cir. N.Y. 1984).

## **10. Radio and television**

Refusal of Metropolitan Transportation Authority to permit television coverage of hearings incident to contemplated rate increase on specified railroads did not infringe upon First Amendment rights or impair free discussion of



governmental affairs by the public. *Educational Broadcasting Corp. v Ronan*, 68 Misc. 2d 776, 328 N.Y.S.2d 107, 1972 N.Y. Misc. LEXIS 2309 (N.Y. Sup. Ct. 1972).

## 11. Applicability of environmental laws

Under CLS Pub A § 1266, portions of Metropolitan Authority's rail improvement project were not subject to State Environmental Quality Review Act (SEQRA), because they did not change general character of prior use or involve substantial additions of contiguous property, where transportation authority planned to modify existing railroad line to accommodate electrified trains, rather than those running on diesel fuel, and to enlarge parking facilities by adding less than 10 acres; however, those portions of project which involved increasing parking areas at certain stations by more than 10 acres did involve likelihood of significant environmental impact, and did require compliance with SEQRA. *Martin v Koppelman*, 124 A.D.2d 24, 510 N.Y.S.2d 881, 1987 N.Y. App. Div. LEXIS 40075 (N.Y. App. Div. 2d Dep't 1987).

By specifying in CLS Pub Auth §§ 1205(1) and (6), 1203-a(10), and 1266(3) that fare alterations made by certain metropolitan area transit authorities are not "actions" subject to State Environmental Quality Review Act (SEQRA), legislature intended that entire SEQRA be inapplicable to such activity; thus, fare increases were not unlawful due to failure of transit authorities to have considered alternatives that would minimize or avoid adverse environmental impacts, as normally required by CLS ECL § 8-0109(1). *All Peoples Congress v Metropolitan Transp. Authority*, 147 Misc. 2d 1020, 559 N.Y.S.2d 462, 1990 N.Y. Misc. LEXIS 349 (N.Y. Sup. Ct. 1990).

Exemptions provided by CLS Pub Auth §§ 1205(1) and (6), 1203-a(10), and 1266(3) to certain metropolitan transit authorities from CLS ECL Art 8 requirement of filing of environmental impact statements in connection with fare alterations did not violate equal protection. *All Peoples Congress v Metropolitan Transp. Authority*, 147 Misc. 2d 1020, 559 N.Y.S.2d 462, 1990 N.Y. Misc. LEXIS 349 (N.Y. Sup. Ct. 1990).

Rational basis, rather than strict scrutiny, was proper standard for determining whether exemptions from filing environmental impact statement under CLS Pub A §§ 1205, 1203-a, and 1266 were violative of equal protection since challenged legislation did not result in intentional discrimination against class of persons grouped together by reason of personal characteristics. *All Peoples Congress v Metropolitan Transp. Authority*, 147 Misc. 2d 1020, 559 N.Y.S.2d 462, 1990 N.Y. Misc. LEXIS 349 (N.Y. Sup. Ct. 1990).

## Opinion Notes

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### Agency Opinions

#### 1. In general

The Suffolk County Department of Health Services does not have authority to enforce the State Sanitary Code against the Long Island Railroad, a facility of the Metropolitan Transportation Authority. However, the State Commissioner of Health is authorized to do so. 1977 NY Ops Atty Gen July 6 (Informal), 1977 N.Y. AG LEXIS 85.

The Permanent Citizens Advisory Committee to the MTA may not seek federal designation as a tax-exempt organization, solicit donations directly from the public, or apply to state agencies for direct funding. 2014 N.Y. Op. Att'y Gen. No. 2014-F2, 2014 N.Y. AG LEXIS 87.

#### 2. Building or zoning matters

The Metropolitan Transportation Authority is subject to applicable town zoning ordinances in the construction of an office and industrial complex. 1979 Op St Compt No. 79-2, 1979 N.Y. Comp. LEXIS 244.

#### 3. Bus service

A transportation authority may enter into joint service arrangements under which bus service is provided to a location outside the district. The arrangement may be entered into with a county government. 1981 N.Y. Op. Att'y Gen. No. 44, 1981 N.Y. AG LEXIS 4.

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1267, 1267-a.

Environmental quality review, CLS ECL §§ 8-0101 et seq.

Air pollution control, CLS ECL §§ 19-0101 et seq.

Freshwater wetlands, CLS ECL §§ 24-0101 et seq.

Tidal wetlands, CLS ECL §§ 25-0101 et seq.

Acquisition by the state of property required for the construction and reconstruction of state highways and structures thereon, CLS High § 30.

Public transportation safety plans; filing, CLS Trans § 17-b.

Commuter railroad cars of the Port of New York Authority, CLS Unconsol Ch 176.

### Codes, Rules and Regulations:

New York city Transit Authority, Manhattan and Bronx Surface Transit Operating Authority and Staten Island Rapid Transit Operating Authority paratransit rules. 21 NYCRR §§ 1035.1 et seq.

Rules governing the conduct and safety of the public in the use of the facilities of the Staten Island rapid transit operating authority. 21 NYCRR §§ 1040.1 et seq.

Rules governing the conduct and safety of the public in the use of the facilities of the metropolitan suburban bus authority. 21 NYCRR §§ 1045.1 et seq.

Rules and regulations governing the conduct and safety of the public in the use of the Metro-North Commuter Railroad Company terminals, stations and trains. 21 NYCRR §§ 1085.1 et seq.

Rules and regulations governing the conduct and safety of the public and use of the Long Island Rail Road Company terminals, stations and trains. 21 NYCRR §§ 1097.1 et seq.

### Federal Aspects:

The Federal Toxic Substances Act, cited in statutory text, appears generally as 15 USCS §§ 2601 et seq.

Public transportation under the Federal-Aid Highways Act, 23 USCS § 142.

Title sixteen of the federal social security act, cited in statutory text, appears as 42 USCS §§ 1381 et seq.

Public transportation, 49 USCS §§ 5301 et seq.

### Texts:

Gerrard, Ruzow, Weinberg, Environmental Impact Review in New York (Matthew Bender) §§ 1.01[4], 2.01[5][d], 8.15.

**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1266-a

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)***

## **§ 1266-a. Medical emergency services**

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The authority is hereby authorized and directed to prepare and develop a medical emergency services program to be implemented at a time to be specified in such program for the benefit of persons utilizing transportation and other related services of the authority. Such program may include but not be limited to provision for the following: The training of designated employees in first aid, emergency techniques and procedures, handling and positioning of stricken commuters, and knowledge of procedures and equipment used for respiratory and cardiac emergencies. Such program shall be submitted to the legislature not later than one hundred eighty days next succeeding the effective date of this section.

## **History**

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Add, L 1977, ch 928, § 1, eff Aug 11, 1977.

Annotations

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1266-b

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## § 1266-b. Medical emergency services plan; implementation on Long Island Rail Road

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1.

a. The authority in consultation with the Long Island Rail Road is hereby authorized and directed to implement a comprehensive medical emergency services program, including an emergency response protocol, not later than September first, two thousand five, for the benefit of persons utilizing transportation and other related services of the Long Island Rail Road. Such program shall include but not be limited to provision for the following: The training of designated employees in first aid, emergency techniques and procedures, handling and positioning of stricken commuters, knowledge of procedures and equipment used for respiratory and cardiac emergencies and an emergency response protocol for all employees.

b. Such program and plan shall be submitted to the temporary president of the senate, the speaker of the assembly and the governor on or before September first, two thousand five, and shall be updated as necessary. The authority will issue an annual report on or before April first of each year beginning April first, two thousand six, which will include current updates, descriptions of medical emergencies, responses and outcomes since the most recent report, information regarding training of personnel, analysis of the current plan and any recommendations for improving the program.

2. Notwithstanding any inconsistent provision of any general, special or local law, a designated employee employed upon facilities of the Long Island Rail Road who has been trained in first aid, emergency techniques and procedures, handling and positioning of stricken commuters, and the applicable procedures and equipment used for respiratory and cardiac emergencies who voluntarily and without the expectation of monetary compensation renders any of the foregoing treatment in an emergency to a commuter upon facilities of the Long Island Rail Road who is unconscious, ill or injured shall not be liable for damages for injuries alleged to have been sustained by such commuter or for damages for the death of such commuter alleged to have occurred by reason of an act or omission in the rendering of such treatment in an emergency unless it is established that such injuries were or such death was caused by gross negligence on the part of such designated employee.

## History

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Add, L 1978, ch 370, § 1; amd, L 1979, ch 506, § 1, eff July 10, 1979; L 2005, ch 396, § 1, eff Aug 2, 2005.

Annotations

## Research References & Practice Aids

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**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1266-c

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)***

## **§ 1266-c. Transit projects**

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1. Subject to the provisions of this section, the authority is hereby authorized, upon the request of the New York city transit authority and upon such terms and conditions as shall be agreed to by the authority (i) to plan, design, acquire, construct, reconstruct, rehabilitate and improve facilities, equipment, devices and appurtenances, and property or property rights constituting or to constitute part of, or used or to be used in connection with the operation of any transit facility now or hereafter owned or operated by the New York city transit authority or any of its subsidiaries (each of the foregoing activities and programs being referred to in this section as a “transit project”), (ii) to finance the costs of a transit project by the issuance of its notes, bonds or lease obligations, (iii) upon the completion of any transit project or part thereof, to cause the same to be transferred, leased or subleased to the New York city transit authority or its designated subsidiary or other designee, for consideration. The terms “facilities”, “equipment”, “devices and appurtenances”, “property” or “property rights” and “transit facility” shall have the meanings given to such terms from time to time in section twelve hundred of this article. The authority shall have no obligation to operate or, except as may otherwise be provided in any lease to which it may be a party as hereinafter provided, repair or maintain any transit project or part thereof subsequent to its completion nor shall it be liable to the transferee, lessee or sublessee by reason of any warranty, express or implied, in respect thereof. Warranties furnished in connection with such transit project shall be assignable and assigned as directed by the New York city transit authority and approved by the authority.

2. In connection with any transit project, and in order to effectuate the purposes of this section, the authority shall, subject to the provisions of this section, have all of the powers provided elsewhere in this title, and, in addition, the authority may:

- (a) issue its notes or bonds to finance all or any part of the costs of a transit project;
- (b) finance all or any part of the costs to the authority or to any other person or entity, public or private, of such transit project through, or accompanied by, a leasing of such project or any part thereof by such person or entity to the authority or through or accompanied by a sale by the authority to any such person or entity and leaseback to the authority, in each case for subleasing to the New York city transit authority, its designated subsidiary or other designee for consideration, except that such leasing or leaseback from such person or entity may be directly to the New York city transit authority or its designated subsidiary or other designee with the consent of the authority;
- (c) issue its notes or bonds to defease the lien of, refund or otherwise repay any outstanding notes, bonds or other obligations of the New York city transit authority which in the judgment of the authority would otherwise delay, impede or prevent its financing a transit project;
- (d) accept the notes, bonds, lease, sublease and other contractual obligations of the New York city transit authority and any of its designated subsidiaries in payment for a transfer, lease or sublease of a transit project;

**(e)** accept from the New York city transit authority or its designated subsidiary or from the city of New York, acting by its mayor alone, a transfer of title to or the use, occupancy, control or possession of any real or personal property (or any interest therein) needed or useful for or in connection with any transit project;

**(f)** obtain security for the payment by the New York city transit authority or its designated subsidiary of its notes, bonds, lease, sublease or other contractual obligations, including a pledge of all or any part of any of their revenues, which pledge may contain covenants with respect to the charging and fixing of fares, fees and rentals, the use and disposition of such fares, fees, rentals and other revenues, and the setting aside of reserves therefrom;

**(g)** with the consent of the New York city transit authority or its designated subsidiary, use, with or without compensation, its agents, employees and facilities; and

**(h)** apply for, accept, enter into contracts for, administer and disburse any federal, state or local aid or assistance, subject to the terms and conditions thereof, which may be available for any transit project.

**3.** All of the provisions of this title not inconsistent with the provisions of this section shall be applicable with respect to any bonds, notes or lease obligations of the authority issued or entered into to finance any transit project, or to defease the lien of, refund or otherwise repay outstanding bonds, notes or other obligations of the New York city transit authority, subject to the following conditions:

**(a)** such bonds and notes shall be payable as to principal, redemption premium, if any, and interest and such other obligations shall be payable, all in the manner more particularly provided by the authority in the resolution under which the same shall be authorized to be issued;

**(b)** such lease obligations shall be non-recourse obligations limited to the recovery of the leased property by the lessor and as to the payments of sums of money coming due thereunder, to proceedings against the sublessee under any underlying sublease or pursuant to any pledge or assignment given to secure sums payable under such underlying sublease;

**(c)** no bonds or notes of the authority shall be issued for the purpose of defeasing the lien of, refunding or otherwise repaying outstanding bonds, notes or other obligations of the New York city transit authority unless (i) the city of [the]\* New York shall have entered into an agreement on terms satisfactory to the authority to make periodic payments to the New York city transit authority, and (ii) the New York city transit authority shall have entered into an agreement on terms satisfactory to the authority to make periodic payments to the authority, in each case sufficient to pay, when due, the principal, redemption premium, if any, and interest upon the bonds or notes of the authority issued to effect such defeasance, refunding or repayment;

**(d)** notwithstanding and in addition to any provisions for the redemption of such bonds or notes which may be contained in any contract with the holders thereof, the city of New York may, upon furnishing sufficient funds therefor, require the authority to redeem as a whole any issue of such bonds or notes at the time or times and at the place or places and in accordance with the terms upon which such bonds or notes are redeemable; and

**(e)** the city of New York shall not be liable on such bonds or notes, and such bonds or notes shall not be a debt of the city of New York, and shall contain on the face thereof a statement to such effect.

**4.** The authority shall not undertake any transit project unless the New York city transit authority or the subsidiary for whose benefit the transit project is to be undertaken, or both, shall pay or agree to pay, in the form of a bond, note, lease, sublease or other contractual obligation, in a manner and on terms and conditions satisfactory to the authority, any portion of the costs to the authority of such transit project and the financing thereof which is not paid to the authority from any federal, state or local aid or assistance or which is not payable from any other moneys made available or payable to the authority by others for such project.

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\* Brackets have been inserted around this word by the Publisher as it is superfluous.



**5.** Neither the provisions of section one hundred ninety-seven-c of the New York city charter, relating to a uniform land use review procedure, nor the provisions of any other local law of the city of New York of like or similar tenor or import shall apply (i) to the acquisition of any real property (or any interest therein) for the purposes of any transit project by the city or by the New York city transit authority or any of its subsidiaries; (ii) to the subsequent transfer of any real property (or interest therein) so acquired to the authority or its designee for the purposes of such project or to the transfer to the authority or its designee for such purposes of any real property (or interest therein) then owned by the city or by the New York city transit authority or any such subsidiary; nor (iii) to the transfer to the authority or its designee for such purposes of the right of use, occupancy, control or possession of any real property (or interest therein), whether presently owned or hereafter acquired by the city or by the New York city transit authority or any such subsidiary; provided in each such case, however, that if at the time of such proposed acquisition or transfer the real property which is the subject of such acquisition or transfer is not then being utilized for a transit or transportation purpose or is not an insubstantial addition to such property contiguous thereto; (a) the authority proposing to acquire or receive such property shall, unless a submission with respect to such property has previously been made and approved as herein provided, submit to the community board for the community district in which such property is located, data with respect to the proposed use of such property and to the design of any facility proposed to be constructed thereon; (b) such community board shall inform the board of estimate of the city of New York, with copies to the city planning commission of the city of New York and the proposing authority, of its views and recommendations with respect thereto within forty-five days of such submission, and if the community board shall fail to so inform the board of estimate within such period it shall be deemed to have recommended the proposal; and (c) the board of estimate shall, within forty-five days of the recommendation of the community board, approve or disapprove such acquisition or transfer, and if the board of estimate shall fail to act within such period it shall be deemed to have approved the same.

**6.** In its performance of any transit project, the authority shall not be deemed the agent or instrumentality of the city of New York or the New York city transit authority or any of its subsidiaries notwithstanding the fact that title to any real or personal property (or any interest therein) which is the subject of or is a part of such project is held by or upon completion of such project is to be transferred to such other entity. In its performance of any transit project, however, the provisions of section twelve hundred nine of this chapter shall apply to the authority as if it were the "authority" referred to therein.

**7.** The authority, in addition to the powers provided elsewhere in this title, shall possess all of the powers, rights and privileges of the New York city transit authority or its designated subsidiary in connection with the undertaking by the authority of any transit project. The authority, upon suitable notice to and an offer to consult with an officer designated by the city of the\* New York, may occupy the streets of the city of New York for the purpose of doing any work over or under the same in connection with any transit project without the consent of or payment to such city.

**8.** After the transfer, transfer back, lease or sublease to the New York city transit authority or its designated subsidiary or other designee of any transit project or part thereof, actions for damages for injuries to real or personal property or for the destruction thereof, or for personal injuries or death, based upon the use, condition or state of such project or part thereof may not be instituted against the authority, which shall have no liability or responsibility to the transferee, lessee or sublessee or to third parties therefor.

**9.** Except as the authority shall otherwise agree, title to any transit project or any part thereof or interest therein which shall have been transferred, leased or subleased to the New York city transit authority or its designated subsidiary, shall remain in such transferee, lessee or sublessee any provision of title nine of this article or of any lease or other agreement entered into under the provisions of that title to the contrary notwithstanding.

**10.** The providing of any transit project shall not relieve the city of New York of its obligations under law and by lease to pay the capital costs of the New York city transit authority or its subsidiaries.

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\* So in original

**11.** No transit project to be constructed upon real property theretofore used for a transit or transportation purpose, or on an insubstantial addition to such property contiguous thereto, which will not change in a material respect the general character of such prior transit or transportation use, nor any acts or activities in connection with such project, shall be subject to the provisions of article eight, nineteen, twenty-four or twenty-five of the environmental conservation law, or to any local law or ordinance adopted pursuant to any such article. Nor shall any transit project or any acts or activities in connection therewith taken by any person or entity, public or private, pursuant to this section be subject to the provisions of article eight of the environmental conservation law if such project, acts or activities require the preparation of a statement under or pursuant to any federal law or regulation as to the environmental impact thereof.

**12.** The provisions of this section and of all agreements undertaken by the New York city transit authority in accordance therewith shall in all respects be subject to the rights of the holders of any outstanding bonds or notes of such authority.

**13.**

**a.** All contracts for design, construction, services and materials pursuant to this title of whatever nature and all documents soliciting bids or proposals therefor shall contain or make reference to the following provisions:

**(i)** The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

**(ii)** At the request of the New York city transit authority, the metropolitan transportation authority, and their subsidiaries (hereinafter referred to as the authority), the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the authority to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder.

**(iii)** The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract with the authority, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

**(iv)** The contractor will include the provisions of subparagraphs (i) through (iii) of this paragraph in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract with the authority.

**b.** The authority shall establish procedures and guidelines to ensure that contractors and subcontractors undertake programs of affirmative action and equal employment opportunity as required by this subdivision. Such procedures may require after notice in a bid solicitation, the submission of an affirmative action program prior to the award of any contract, or at any time thereafter, and may require the submission of compliance reports relating to the operation and implementation of any affirmative action program adopted hereunder. The authority may take appropriate action including contractual sanctions for non-compliance to effectuate the provisions of this subdivision and shall be responsible for monitoring compliance with this title.

**14.**

**(a)**

(i) In the performance of projects pursuant to this title minority and women-owned business enterprises shall be given the opportunity for meaningful participation. The authority provided for in this title shall establish measures and procedures to secure meaningful participation and identify those contracts and items of work for which minority and women-owned business enterprises may best bid to actively and affirmatively promote and assist their participation in the projects, so as to facilitate the award of a fair share of contracts to such enterprises; provided, however, that nothing in this title shall be construed to limit the ability of the authority to assure that qualified minority and women-owned business enterprises may participate in the program. For purposes hereof, minority business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident noncitizens who are Black, Hispanic, Asian or American Indian, Pacific Islander or Alaskan natives and such ownership interest is real, substantial and continuing and have the authority to independently control the day to day business decisions of the entity for at least one year; and women-owned business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident noncitizens who are women, and such ownership interest is real, substantial and continuing and have the authority to independently control the day to day business decisions of the entity for at least one year.

The provisions of this paragraph shall not be construed to limit the ability of any minority or women-owned business enterprise to bid on any contract.

(ii) In the implementation of this subdivision, the authority shall consider compliance by any contractor with the requirements of any federal, state, or local law concerning minority and women-owned business enterprises, which may effectuate the requirements of this subdivision. If the authority determines that by virtue of the imposition of the requirements of any such law, in respect to capital project contracts, the provisions thereof duplicate or conflict with such law, the authority may waive the applicability of this subdivision to the extent of such duplication or conflict.

(iii) Nothing in this subdivision shall be deemed to require that overall state and federal requirements for participation of minority and women-owned business enterprises in programs authorized under this title be applied without regard to local circumstances to all projects or in all communities.

(b) In order to implement the requirements and objectives of this subdivision, the authority shall establish procedures to monitor the contractors' compliance with provisions hereof, provide assistance in obtaining competing qualified minority and women-owned business enterprises to perform contracts proposed to be awarded, and take other appropriate measures to improve the access of minority and women-owned business enterprises to these contracts.

**15.**

(a) In connection with the performance of projects pursuant to this section, the authority shall, to the extent practicable and not inconsistent with any federal law, regulation or requirement, promote the meaningful participation of small business and New York state business enterprises in the provision of goods and services that are produced or manufactured in New York state as part of procurements undertaken by the authority.

(b) The authority shall within one hundred eighty days after the effective date of this subdivision develop, and review annually thereafter, a plan to effect the purposes of this subdivision.

## History

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Add, L 1981, ch 314, § 7; amd, L 1981, ch 558, §§ 2–4, eff June 29, 1981; L 1986, ch 929, § 29, eff Dec 31, 1986; L 1987, ch 13, § 19, eff March 31, 1987; L 2000, ch 61, § 24 (Part O), eff May 15, 2000; L 2009, ch 25, § 20 (Part H), eff May 7, 2009 (see 2009 note below); L 2022, ch 669, § 61, effective December 9, 2022.

Annotations

## Notes

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### Editor's Notes:

**Laws 2009, ch 25, § 1**, eff May 7, 2009, provides as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

## Notes to Decisions

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Court would affirm determination finding that installation of fence on right-of-way of Staten Island Rapid Transit Operating Authority (SIRTOA) and adjacent property was not exempt from permit requirements of CLS ECL Art 24 where fence project was constructed on previously unused and undisturbed property, and fence project required clear-cutting of vegetation 9 feet outside of SIRTOA property line or right-of-way, affecting 6.9 acres of previously undisturbed and unimproved freshwater wetlands and adjacent areas. *Staten Island Rapid Transit Operating Auth. v Zagata*, 244 A.D.2d 340, 663 N.Y.S.2d 883, 1997 N.Y. App. Div. LEXIS 11014 (N.Y. App. Div. 2d Dep't 1997), app. denied, 91 N.Y.2d 815, 676 N.Y.S.2d 128, 698 N.E.2d 957, 1998 N.Y. LEXIS 1367 (N.Y. 1998).

## Research References & Practice Aids

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**Cross References:**

This section referred to in §§ 553-e, 1207-m, 1209, 1269, 1269-b.

**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1266-d

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)***

## **§ 1266-d. Long Island rail road commuter's council.**

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1. There is hereby created the Long Island rail road commuter's council, to study, investigate, monitor and make recommendations with respect to the maintenance and operation of the Long Island rail road. Such council shall study and investigate all aspects of the day to day operations of such railroad, monitor its performance and recommend changes to improve the efficiency of the operation thereof. Such council shall study and make recommendations in regard to improving bicycle and pedestrian access at bridges, stations and other facilities operated by the Long Island Railroad and submit such recommendations to the metropolitan transportation authority on or before June first, two thousand twenty-two and every five years thereafter.
2. Such council shall consist of thirteen members who shall be commuters who regularly use the transportation services of such railroad, and who shall be residents of Nassau, Suffolk, Queens or Brooklyn county. Members shall be appointed by the governor upon the recommendation of the county executive of each such county, provided, however, that such members shall be chosen from a list of ten names submitted by each such county executive and provided further however that no more than six members of such council shall be residents of either such county. Provided, however, that one member shall be appointed on the recommendation of the borough president of Queens and one member shall be appointed on the recommendation of the borough president of Brooklyn. Provided, however, that one member shall be appointed who has a demonstrated expertise or interest in the promotion and development of improved bicycle and pedestrian access at bridges, stations and other facilities operated by the authority and its affiliates and subsidiaries. Vacancies occurring in the membership of the council shall be filled in the same manner as original appointments, provided, however, that such vacancy shall be filled from a list of three names submitted by each such county executive.
3. The members of the council shall receive no compensation for their services but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties hereunder.
4. The council may request and shall receive from any department, division, board, bureau, commission, agency, public authority of the state or any political subdivision thereof such assistance and data as will enable it properly to carry out its activities hereunder and effectuate the purposes set forth herein.

## **History**

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Add, L 1981, ch 482, § 4, eff July 11, 1981; amd, L 1981, ch 483, § 2; L 1998, ch 396, § 1, eff July 22, 1998; L 2021, ch 802, § 4, effective December 28, 2021; L 2022, ch 125, § 4, effective December 28, 2021.

Annotations

## **Notes**

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## Editor's Notes

**Laws 2022, ch 125, § 6**, eff December 28, 2021, provides:

§ 6. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the public authorities law relating to requiring the metropolitan transportation authority to develop a strategic action plan to improve bicycle and pedestrian access at its bridges and passenger stations, as proposed in legislative bills numbers S. 4943-B and A. 6235-B, takes effect.

## Amendment Notes

**The 2021 amendment by ch 802, § 4**, added the last sentence of 1; and in 2, substituted “thirteen members” for “twelve members” in the first sentence and added the second to the last sentence.

**The 2022 amendment by ch 125, § 4**, added “and submit such recommendations to the metropolitan transportation authority on or before June first, two thousand twenty-two and every five years thereafter” in the last sentence of 1.

## Opinion Notes

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### Agency Opinions

If member of Long Island Rail Committee's Council (LIRRCC) is absent without good cause from 3 consecutive regular meetings, his or her position on LIRRCC may be deemed vacant by governor; any resulting vacancy shall be filled by appointment of governor on recommendation of county executive, under provisions of CLS Pub A § 1266-d(2). 1998 NY Ops Atty Gen F 98-5.

Court would likely hold that Long Island Railroad Commuter's Council, Metro-North Rail Commuter Council and New York City Transit Authority Advisory Council, albeit advisory in nature, are “public bodies” subject to Open Meetings Law, as they are created by statutes (CLS Pub A §§ 1204-a, 1266-d and 1266-e), they have statutory powers and duties, and they continue to exist until legislation that created them is repealed or amended. Comm on Open Gov't OML-AO-2752.

The Permanent Citizens Advisory Committee to the MTA may not seek federal designation as a tax-exempt organization, solicit donations directly from the public, or apply to state agencies for direct funding. 2014 N.Y. Op. Att'y Gen. No. 2014-F2, 2014 N.Y. AG LEXIS 87.

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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## NY CLS Pub A § 1266-e

Current through 2023 released Chapter 1

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### **§ 1266-e. Metro-North rail commuter council.**

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1. There is hereby created the Metro-North rail commuter council to study, investigate, monitor and make recommendations with respect to the maintenance and operation of those portions of, if any, the Hudson, Harlem, New Haven, Pascack Valley and Port Jervis commuter railroad lines remaining within the metropolitan commuter transportation district. Such council shall study and investigate all aspects of the day to day operation of such railroad lines, monitor their performance and recommend changes to improve the efficiency of the operation thereof. Such council shall study and make recommendations in regard to improving bicycle and pedestrian access at bridges, stations and other facilities operated by such railroad lines and submit such recommendations to the metropolitan transportation authority on or before June first, two thousand twenty-two and every five years thereafter.
2. Such council shall consist of twelve members and shall be commuters who regularly use the transportation services of such railroad lines. At least five of such members shall be residents of the county of Westchester. Of the other seven members, at least one of such members shall be a resident of each of the counties of Rockland, Putnam, Dutchess, Orange and Bronx, provided that such county has not withdrawn from the metropolitan commuter transportation district pursuant to section twelve hundred seventy-nine-b of this title; provided further, should only the county of Putnam remain in the metropolitan commuter transportation district then membership on such council shall consist of eight members, six of whom reside in the county of Westchester and two of whom reside in the county of Putnam. Members shall be appointed by the governor. In making such appointments the governor shall consult with and solicit recommendations from local officials and to the extent possible appoint members who represent the ridership of the several commuter railroad lines. Provided, however, that one member shall be appointed who has a demonstrated expertise or interest in the promotion and development of improved bicycle and pedestrian access at bridges, stations and other facilities operated by the authority and its affiliates and subsidiaries. Vacancies occurring in the membership of the council shall be filled in the same manner as original appointments.
3. The members of the council shall receive no compensation for their services but shall be reimbursed for their expenses actually and necessarily incurred by them in the performance of their duties hereunder from funds appropriated to the commissioner of transportation.
4. The council may request and shall receive from any department, division, board, bureau, commission, agency, public authority of the state or any political subdivision thereof such assistance and data as it requests and will enable it to properly carry out its activities for the purposes set forth herein.

### **History**

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Add, L 1981, ch 482, § 5, eff July 11, 1981; amd, L 1981, ch 483, § 3; L 1986, ch 669, § 3, eff July 26, 1986; L 1998, ch 396, § 2, eff July 22, 1998; L 2021, ch 802, § 3, effective December 28, 2021; L 2022, ch 125, § 3, effective December 28, 2021.

Annotations

## Notes

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### Editor's Notes

**Laws 2022, ch 125, § 6**, eff December 28, 2021, provides:

§ 6. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the public authorities law relating to requiring the metropolitan transportation authority to develop a strategic action plan to improve bicycle and pedestrian access at its bridges and passenger stations, as proposed in legislative bills numbers S. 4943-B and A. 6235-B, takes effect.

### Amendment Notes

**The 2021 amendment by ch 802, § 3**, added the second sentence of 1; and in 2, substituted “twelve members” for “eleven members” in the first sentence, substituted “seven members” for “six members,” “title” for “article” “eight members” for “seven members” and “six of whom” for “five of whom” in the third sentence and added the second to the last sentence.

**The 2022 amendment by ch 125, § 3**, added “and submit such recommendations to the metropolitan transportation authority on or before June first, two thousand twenty-two and every five years thereafter” in the last sentence of 1.

## Opinion Notes

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### Agency Opinions

Court would likely hold that Long Island Railroad Commuter’s Council, Metro-North Rail Commuter Council and New York City Transit Authority Advisory Council, albeit advisory in nature, are “public bodies” subject to Open Meetings Law, as they are created by statutes (CLS Pub A §§ 1204-a, 1266-d and 1266-e), they have statutory powers and duties, and they continue to exist until legislation that created them is repealed or amended. Comm on Open Gov’t OML-AO-2752.

The Permanent Citizens Advisory Committee to the MTA may not seek federal designation as a tax-exempt organization, solicit donations directly from the public, or apply to state agencies for direct funding. 2014 N.Y. Op. Att’y Gen. No. 2014-F2, 2014 N.Y. AG LEXIS 87.

## Research References & Practice Aids

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# NY CLS Pub A § 1266-f

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## **§ 1266-f. Medical emergency services plan; implementation on Metro-North Commuter Railroad Company**

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1. The authority is hereby authorized and directed to implement a medical emergency services program not later than April first, nineteen hundred eighty-six, for the benefit of persons utilizing transportation and other related services of the Metro-North Commuter Railroad Company. Such program shall include but not be limited to provision for the following: The training of conductors, trainmen and other designated employees in first aid, emergency techniques and procedures, handling and positioning of stricken commuters, and knowledge of procedures and equipment used for respiratory and cardiac emergencies.
2. Notwithstanding any inconsistent provision of any general, special or local law, a designated employee employed upon facilities of the Metro-North Commuter Railroad Company who has successfully completed a course in first aid, including instruction and training in cardiopulmonary resuscitation and who voluntarily and without expectation of monetary compensation renders first aid, emergency treatment or cardiopulmonary resuscitation at the scene of an accident or other emergency, in the course of his duties as an employee of the Metro-North Commuter Railroad Company to a person who is unconscious, ill or injured, shall not be liable for damages and injuries alleged to have been sustained by such person or for damages for death of such person alleged to have occurred by reason of an act or omission in the rendering of such first aid, emergency treatment or cardiopulmonary resuscitation unless it is established that such injuries were or such death was caused by gross negligence on the part of such designated employee.

## **History**

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Add, L 1985, ch 581, § 1, eff July 28, 1985.

Annotations

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

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# NY CLS Pub A § 1266-g

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## **§ 1266-g. Excess loss fund**

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1. Subject to the provisions of this section, the authority is authorized to issue bonds and notes, in accordance with section twelve hundred sixty-nine of this title, in such principal amounts not in excess of the seventy-five million dollar limitation established in subdivision four of this section as, in the opinion of the authority, shall be necessary to provide sufficient funds to meet the capital and reserve requirements of a trust, pooling arrangement or other entity established for the purpose of providing reimbursement and funding to the authority and its subsidiaries, the New York city transit authority and its subsidiaries and Triborough bridge and tunnel authority for excess or extraordinary losses for damages to real or personal property or for the destruction thereof or for personal injuries or death and for certain property damage losses which may be incurred or sustained by any of them in connection with the use and operation of their respective facilities and in the conduct of their respective activities (the trust, pooling arrangement or other entity established in order to provide such benefits to such participants being referred to in this section as the “excess loss fund”). Prior to the issuance of any bonds or notes, other than refunding bonds or notes, authorized by this section, the authority shall make a finding that such issue is expected to result, on a present value basis, in a lower effective cost to the participating authorities than funding the requirements of the excess loss fund solely through the payment of premiums and assessments by such participating authorities.
2. In order to effectuate the purposes of the excess loss fund, the authority shall, subject to the provisions of this section, have all the powers provided elsewhere in this title and may:
  - (a) accept the notes, bonds and other contractual obligations of the excess loss fund for funds provided to it by the authority;
  - (b) obtain security for the payment by the excess loss fund of its notes, bonds and other contractual obligations issued to the authority, including a pledge of all or any part of the assets and revenues of the excess loss fund, including its receipts and rights to receive premiums, assessments, reimbursements and other payments from the participants in the excess loss fund, which pledge may contain covenants with respect to the charging and fixing by actuarial estimates, where appropriate, of premiums, assessments, reimbursements and other payments and the use and disposition thereof; and
  - (c) enter into contracts with the excess loss fund and with the participants therein, on such terms and conditions as the parties may agree, with respect to the payment of premiums, assessments, reimbursements and other payments to the excess loss fund and the nature and extent of the benefits to be paid by the excess loss fund to such participants.
3. The bonds and notes of the authority authorized by this section shall not constitute general obligations of the authority, but shall be special obligations of the authority payable as to principal, redemption premium, if any, and interest solely from the security, sources of payment and funds obtained from or on behalf of the excess loss fund, all in the manner more particularly provided by the authority in the resolution under which such bonds and notes shall be authorized to be issued.

4. The aggregate principal amount of bonds and notes issued for the purposes enumerated in subdivision one of this section shall not exceed seventy-five million dollars, excluding: (a) bonds and notes issued to fund costs of issuance and any reasonably required debt service reserve fund for such bonds or notes; (b) an amount equal to any original issue discount from the principal amount of any bonds or notes issued; and (c) bonds and notes issued to refund or otherwise repay bonds or notes theretofore issued for such purposes, provided, however, that upon any such refunding or repayment the total aggregate principal amount of outstanding bonds and notes (including for purpose of such calculation the principal amount of the refunding bonds or notes then to be issued and excluding the principal amount of the bonds or notes so to be refunded or repaid and any amounts excluded under paragraph (a) or (b) of this subdivision) may be greater than seventy-five million dollars, only if the present value of the aggregate debt service of the refunding or repayment bonds or notes to be issued shall not exceed the present value of the aggregate debt service of the bonds or notes so to be refunded or repaid. For purposes of paragraph (c) of this subdivision, the present values of the aggregate debt service of the refunding or repayment bonds or notes and of the aggregate debt service of the bonds or notes so to be refunded or repaid, shall be calculated by utilizing the effective interest rate of the refunding or repayment bonds or notes, which shall be that rate arrived at by doubling the semi-annual interest rate (compounded semi-annually) necessary to discount the debt service payments on the refunding or repayment bonds or notes from the payment dates thereof to the date of issue of the refunding or repayment bonds or notes and to the price bid including estimated accrued interest or proceeds received by the authority including estimated accrued interest from the sale thereof.

5. The term “excess loss fund” as used in this section shall not include any trust, pooling arrangements or other entity (a) which provides or offers to provide reimbursement or funding for losses or liabilities to any entity other than the authority and its subsidiaries, the New York city transit authority and its subsidiaries and Triborough bridge and tunnel authority, or (b) in which any entity other than the authority and its subsidiaries, the New York city transit authority and its subsidiaries and Triborough bridge and tunnel authority holds an equity interest.

## History

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Add, L 1988, ch 646, § 1, eff Sept 1, 1988.

Annotations

## Research References & Practice Aids

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### Cross References:

Notes, bonds and other obligations of the authority § 1269.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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## NY CLS Pub A § 1266-h

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### **§ 1266-h. Authority police force.**

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1. The authority is hereby authorized and empowered, to provide and maintain an authority police department and a uniformed authority police force. Each member of such uniformed police force shall be a "police officer" for the purposes of the criminal procedure law, with all of the powers of such police officers thereunder and subject to the same jurisdictional provisions on the exercise of that power as set forth in such law. The geographical area of employment of such police officers for the purposes of the criminal procedure law shall embrace the metropolitan commuter transportation district as defined in section twelve hundred sixty-two of this title. Such department and force shall have the power, in and about any or all of the facilities owned, occupied and/or operated by the authority and its subsidiary corporations, the New York city transit authority and its subsidiaries, and the triborough bridge and tunnel authority, as determined in the discretion of the authority, to enforce and prevent violation of all laws and ordinances. Nothing herein shall confer upon the authority police force or upon their collective negotiations representatives exclusive jurisdiction or claim over the exercise of police power or security work on behalf of the authority and its subsidiary corporations, the New York city transit authority and its subsidiaries, and the triborough bridge and tunnel authority. Nothing herein shall limit the authority and its subsidiary corporations, the New York city transit authority and its subsidiaries, and the triborough bridge and tunnel authority from continuing to rely on local police for police services. However, traditional police functions previously performed by the Long Island Rail Road Company and/or the Metro-North Commuter Railroad Company police force shall continue to be performed by the authority police forces.

2. Initial appointments to such authority police force shall be all incumbent police officers from the Long Island Rail Road Company and/or the Metro-North Commuter Railroad Company at the time of such appointment. The executive director of the authority, through the chief of police, shall have the power and authority to appoint and employ such number of police officers as he deems necessary to act as police officers of the authority and to administer to the officers an oath or affirmation faithfully to perform the duties of their respective positions or offices. Unless, at the time of appointment, the person is a police officer of Long Island Rail Road Company or Metro-North Commuter Railroad Company, only persons who have never been convicted of a felony and are citizens of the United States shall be appointed police officers on the authority police force. After the initial appointments are made, selection of police officer candidates shall be made pursuant to an examination process to be determined at the discretion of the authority and candidates must receive a certificate attesting to satisfactory completion of an approved municipal police basic training program, as described in section two hundred nine-q of the general municipal law. No person shall be eligible for appointment unless such person is not less than twenty years of age as of the date of appointment nor more than thirty-five years of age as of the date when the applicant takes the written examination, provided, however, that time spent on military duty or on terminal leave, not exceeding a total of six years, shall be subtracted from the age of any applicant who has passed his or her thirty-fifth birthday as provided in subdivision ten-a of section two hundred forty-three of the military law. Upon appointments made by transferring an entire group of police officers into the authority police force, thereby eliminating such other group of police officers, the authority shall recognize any representative previously chosen by

the police officers for the purposes of collective negotiations consistent with the bargaining units already established and shall also assume and continue to observe any existing labor contracts covering these police officers including such provisions which relate to the grievance and disciplinary procedures and interest arbitration. Subsequent to the establishment of the consolidated police force the authority and the collective bargaining representatives shall be authorized to negotiate a merger of the separate bargaining units.

**3.** The authority may appoint a chief and one or more deputy chiefs of the authority police department who, in the discretion of the authority, may be selected from the ranks of the authority police force, and assign powers and duties to them and fix their compensation. The chief shall be the head of such department. The deputy chief designated by the chief shall possess all the powers and perform all the duties of the chief during his absence or disability. The authority police force shall consist of such divisions, supervisors and officers, including but not limited to police officers, detectives, sergeants, lieutenants and captains as designated by the authority. Notwithstanding any law or provision to the contrary, the members of the uniformed authority police force shall not acquire civil service status or become members of the New York state and local employees' retirement system, except as set forth below.

**4.** The authority shall provide for a twenty year retirement plan under the same terms and conditions as provided by section three hundred eighty-nine of the retirement and social security law as enacted by chapter six hundred twenty-eight of the laws of nineteen hundred ninety-one; except that:

**(a)** any benefit provided pursuant to such plan shall be subject to an offset, as defined in this paragraph, for any tier II benefit payable pursuant to the federal Railroad Retirement Act to or in the respect of a member. The offset provided for by this paragraph shall be the amount of the tier II benefit which would be payable to or in respect to such member pursuant to the federal Railroad Retirement Act multiplied by a fraction, the numerator of which is the member's years of credited service covered by the federal Railroad Retirement Act rendered to, or credited by, the authority or any subsidiary corporation of the authority, and the denominator of which is the member's total years of service covered by the federal Railroad Retirement Act;

**(b)** references to Long Island Rail Road shall be to the authority;

**(c)** the transfer of funds described in subdivision f of section three hundred eighty-nine of the retirement and social security law as enacted by chapter six hundred twenty-eight of the laws of nineteen hundred ninety-one shall include the Metro-North Commuter Railroad Company Defined Contribution Pension Plan for Agreement Employees;

**(d)** the provisions of subdivision g of section three hundred eighty-nine of the retirement and social security law as enacted by chapter six hundred twenty-eight of the laws of nineteen hundred ninety-one to the extent of requiring contributions for past service liability shall not be applicable; and

**(e)** when a police officer transferred from the Long Island Rail Road Company police force to the authority police force reaches age sixty-two the authority will offset the amount payable under this plan by the amount of tier II benefit payable from the Railroad Retirement Board for a service age annuity or disability payable at the participants age sixty-two.

**5.** The authority may, in its sole discretion, establish within the authority's defined benefit program, a retirement program consistent with the foregoing. If the authority has not so established such program in its defined benefit program within one hundred eighty days after enactment, then the authority shall elect to participate in article fourteen-B of the retirement and social security law.

**6.** If the authority elects to participate in the New York state and local employees' retirement system, such election to participate shall be made by resolution filed with the comptroller and accepted by him pursuant to section thirty-one of the retirement and social security law.

**7.** Nothing herein contained shall be deemed to diminish, suspend or abolish an existing benefit inured to a police officer, transferred from the Long Island Rail Road Company and/or Metro-North Commuter Railroad Company police force and subject to the provisions of this section in and to the rights, privileges or status



previously earned within a pension or retirement system of which they were a member immediately prior to the enactment of this section; and any such existing right, privilege or status shall survive the effect of any decisions or determinations lawfully made in accordance with the provisions hereof so long as such right, privilege or status is greater in benefit to that which would be imposed or imputed to any subject officer as a result of actions of the authority authorized herein.

**8.** [Expires and repealed Dec 31, 2024]

**(a)** Notwithstanding any other provision of this section or of any general, special or local law to the contrary, and solely for the purpose of determining eligibility for benefits under this section, where:

**(i)** a member reported in person to such member's usual place of public employment at the direction of such member's public employer or to any alternate worksite as directed by such public employer, on or after March first, two thousand twenty, provided that such alternate worksite was not such member's home or residence;

**(ii)** such member contracted COVID-19 within forty-five days after reporting to work pursuant to subparagraph (i) of this paragraph, as confirmed by a positive laboratory test or as diagnosed before or after such member's death by a licensed, certified, registered or authorized physician, nurse practitioner, or physician's assistant currently in good standing in any state or the District of Columbia, or a physician, nurse practitioner, or physician's assistant authorized to practice in New York by executive order during the declared COVID-19 state of emergency; and

**(iii)** Such member died on or before December thirty-first, two thousand twenty-four, and COVID-19 caused or contributed to such member's death, as documented on such member's death certificate, or as certified by a physician, nurse practitioner, or physician's assistant described in subparagraph (ii) of this paragraph who determines with a reasonable degree of medical certainty that COVID-19 caused or contributed to the member's death, such member's statutory beneficiary shall receive an accidental death benefit, unless such statutory beneficiary elects to receive an ordinary death benefit.

**(b)** Any amount payable as a result of this section shall be reduced by any amount paid by such member's retirement system to any recipient of ordinary death benefits pursuant to this section.

**(c)** Notwithstanding any provision of this section or of any general, special or local law to the contrary, and solely for the purpose of determining eligibility for benefits under this section, where a member:

**(1)** retired from his or her retirement system on or after March first, two thousand twenty, and before July first, two thousand twenty;

**(2)** on or after March first, two thousand twenty, reported in person to such member's usual place of public employment at the direction of such member's public employer or to any alternate worksite as directed by such public employer, provided that such alternate worksite was not such member's home or residence;

**(3)** contracted COVID-19 within forty-five days after any such date of reporting to work in person, as confirmed by a positive laboratory test or as diagnosed before or after such member's death by a licensed, certified, registered or authorized physician, nurse practitioner, or physician's assistant currently in good standing in any state or the District of Columbia, or a physician, nurse practitioner, or physician's assistant authorized to practice in New York by executive order during the declared COVID-19 state of emergency; and

**(4)** Such member died on or before December thirty-first, two thousand twenty, and COVID-19 caused or contributed to such member's death, as documented on such member's death certificate, or as certified by a physician, nurse practitioner, or physician's assistant described in subparagraph three of this paragraph who determines with a reasonable degree of medical certainty that COVID-19 caused or contributed to the member's death, such member's statutory

beneficiary shall receive an accidental death benefit if such statutory beneficiary elects conversion of the member's service or disability retirement benefit into an accidental death benefit.

**(d)** Such member's statutory beneficiary, as defined pursuant to this section, for purposes of accidental death benefits payable from such member's retirement system under this section, may, within ninety days of such member's retirement or September first, two thousand twenty, whichever is later, apply to such member's retirement system to request the conversion of such member's service or disability retirement benefit into an accidental death benefit. For purposes of the salary base upon which the accidental death benefit is calculated, such member shall be deemed to have died on the date of such member's retirement. At the time of such conversion, such statutory beneficiary shall relinquish all rights to the prospective benefits payable under the service or disability retirement statute, including any post-retirement death benefits, since such member's death. If the statutory beneficiary is not the only beneficiary receiving or entitled to receive a benefit under the service or disability retirement statute including, but not limited to, a postretirement death benefit or benefit paid or payable pursuant to the member's option selection, the accidental death benefit payments to the statutory beneficiary will be reduced by any amounts paid or payable to any other statutory beneficiary.

**(e)** In order to be eligible for the benefit described in this subdivision, the applicable retirement system or systems are authorized to promulgate rules and regulations to administer this benefit including, but not limited to, requiring a statement to be filed confirming the member contracted COVID-19 and the dates and locations of such member's employment.

## History

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Add, L 1997, ch 327, § 1, eff July 30, 1997; amd, L 2002, ch 586, § 1, eff Sept 24, 2002; L 2020, ch 89, § 7, effective May 30, 2020; L 2021, ch 78, § 7, effective March 12, 2021; L 2022, ch 783, § 7, effective December 23, 2022.

Annotations

## Notes

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### Editor's Notes

**Laws 2020, ch 89, § 14**, eff May 30, 2020, provides:

§ 14. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after March 1, 2020; provided that the provisions of this act shall expire and be deemed repealed on December 31, 2020.

**Laws 2021, ch 78, § 14**, eff March 8, 2021, provides:

§ 14. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after March 1, 2020; provided that the provisions of this act shall expire and be deemed repealed on December 31, 2024 (Amd, L 2022, ch 783, § 12, eff Dec 23, 2022).

### Amendment Notes

The 2020 amendment by ch 89, § 7, added 8.

The 2021 amendment by ch 78, § 7, added 8.

## Research References & Practice Aids

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**Federal Aspects:**

The Federal Railroad Retirement Act, cited in statutory text, appears as 45 USCS §§ 231 et seq.

**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1266-i

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-I)*

## § 1266-i. The permanent citizens advisory committee

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There is hereby established a permanent citizens advisory committee. The members of the committee shall consist of the following members: the Long Island Rail Road commuter's council, the Metro-North commuter council, and the New York city transit authority advisory council, as defined in section twelve hundred four-e of this chapter.

### History

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Add, L 2009, ch 25, § 10 (Part H), eff May 7, 2009.

Annotations

### Notes

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#### Editor's Notes:

**Laws 2009, ch 25, § 1**, eff May 7, 2009, provides as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

## Opinion Notes

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### Agency Opinions

#### 1. In general

The Permanent Citizens Advisory Committee to the MTA may not seek federal designation as a tax-exempt organization, solicit donations directly from the public, or apply to state agencies for direct funding. 2014 N.Y. Op. Att'y Gen. No. 2014-F2, 2014 N.Y. AG LEXIS 87.

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1266-j

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## **§ 1266-j. Metropolitan transportation authority pledge to customers**

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1. A metropolitan transportation authority pledge to customers shall be created and adopted by the metropolitan transportation authority. A copy of such pledge shall be posted on the web site of the authority and shall be posted in stations where the authority makes regular postings. The authority shall post the pledge in the language or languages it deems necessary and appropriate.
2. The metropolitan transportation authority pledge to customers shall be in the form and manner as prescribed by the authority, include the contact information of the authority, and include, but not be limited to, the following:
  - (a) a description of the authority's commitment to provide safe and reliable services;
  - (b) a description of the authority's commitment to provide timely and accurate information on its services;
  - (c) a commitment that employees will provide service in a courteous manner;
  - (d) a description of the authority's commitment to maintain clean stations, facilities, subways and buses;
  - (e) a description of the authority's policies when it comes to arranging alternative transportation when service is interrupted;
  - (f) when service is interrupted, a description of the authority's policies when it comes to considering the comfort of inconvenienced customers;
  - (g) when service is interrupted due to weather conditions, a description of the authority's policies on notifying customers;
  - (h) when service is severely interrupted, a description of the authority's policies on service restoration.
3. The authority from time to time may,\* update and amend the metropolitan transportation authority pledge to customers as it deems necessary and proper and may adopt rules and regulations for the proper administration of this section.

## **History**

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L 2014, ch 482, § 1, effective March 17, 2015.

Annotations

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\* So in original. (comma inadvertently included)

## Notes

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### Editor's Notes

Laws 2014, ch 482, § 2, eff Mar 17, 2015, provides:

§ 2. This act shall take effect on the ninetieth day after it shall have become a law provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made and completed on or before such date.

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1266-k

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*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## **§ 1266-k. Expired fare transfer policy. [Expires and repealed Dec 31, 2029]**

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Notwithstanding any other provision of law to the contrary, the authority shall, within ninety days of the effective date of this section, establish an expired fare transfer policy that may be amended from time to time. Such policy shall provide any person who purchases a fare the ability to transfer any remaining balance for two years after such fare is deemed expired.

### **History**

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L 2017, ch 483, § 1, effective December 18, 2017.

Annotations

### **Notes**

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#### **Editor's Notes**

**Laws 2017, ch 483, § 2**, eff December 18, 2017, provides:

§ 2. This act shall take effect immediately and shall expire and be deemed repealed on December 31, 2029; provided, however, that the repeal of this act shall not impair or otherwise affect any of the outstanding obligations, responsibilities, functions, rights or liabilities of the corporation, unless adequate provisions have been made for the payment or exercise thereof (Amd, L 2022, ch 279, § 1, eff June 30, 2022).

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11



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# NY CLS Pub A § 1266-I

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## **§ 1266-I. Surveillance cameras; subway stations. [Effective March 21, 2023]**

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The authority shall install and reasonably maintain proper operation of surveillance cameras at all subway stations operated by the authority. Such surveillance cameras may be placed in all areas, including but not limited to, areas frequented by passengers and all train platforms.

### **History**

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L 2022, ch 603, § 2, effective March 21, 2023.

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# NY CLS Pub A § 1266-I

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## § 1266-I. Light duty for employees.

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1. Should any employee engaged in the service of any commuter rail service owned or operated by the authority or its subsidiary, who is pregnant be prevented by such pregnancy from performing the activities involved in her regular assigned duties due, but is able, as determined by the employee's medical provider, to perform specified types of light duty, the employer shall make available such light duty to the employee, provided, however, that such light duty shall enable her to continue to be entitled to her concurrent assignment earnings, including increases thereof and fringe benefits, to which she would have been entitled if she were able to perform her regular assigned duties.
2. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any collective bargaining agreement or employment contract.

## History

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L 2022, ch 668, § 1, effective December 9, 2022.

Annotations

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1267

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)***

## **§ 1267. Acquisition and disposition of real property**

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1. [Eff until June 24, 2025] In addition to the powers provided in section twelve hundred sixty-six of this title to acquire transportation facilities, equipment and real property, the authority may acquire, by condemnation pursuant to the eminent domain procedure law, any real property it may deem necessary, convenient or desirable to effectuate the purposes of this title, provided however, that any such condemnation proceedings shall be brought only in the supreme court and the compensation to be paid shall be ascertained and determined by the court without a jury, and provided further that the rate of interest paid upon any judgment or accrued claim against the authority arising out of such condemnation proceedings shall not exceed six per centum. Notwithstanding the foregoing provisions of this subdivision, no real property may be acquired by the authority by condemnation for purposes other than a transportation facility unless the governing body of the city, village or town in which such real property is located shall first consent to such condemnation.

1. [Eff June 24, 2025] In addition to the powers provided in section twelve hundred sixty-six of this title to acquire transportation facilities, equipment and real property, the authority may acquire, by condemnation pursuant to the condemnation law, any real property it may deem necessary, convenient or desirable to effectuate the purposes of this title, provided however, that any such condemnation proceedings shall be brought only in the supreme court and the compensation to be paid shall be ascertained and determined by the court without a jury. Notwithstanding the foregoing provisions of this subdivision one, no real property may be acquired by the authority by condemnation for purposes other than a transportation facility unless the governing body of the city, village or town in which such real property is located shall first consent to such condemnation.

2. Nothing herein contained shall be construed to prevent the authority from bringing any proceedings to remove a cloud on title or such other proceedings as it may, in its discretion, deem proper and necessary or from acquiring any such property by negotiation or purchase.

3. Where a person entitled to an award in the proceedings to condemn any real property for any of the purposes of this title remains in possession of such property after the time of the vesting of title in the condemnor, the reasonable value of his use and occupancy of such property subsequent to such time as fixed by agreement or by the court in such proceedings or by any court of competent jurisdiction shall be a lien against such award subject only to the liens of record at the time of vesting of title in the condemnor.

4. Subject to the provisions of sections twelve hundred sixty-six and twelve hundred sixty-six-c of this title, title to all property acquired under this act shall vest in the authority or one of its subsidiary corporations, or in the New York city transit authority or one of its subsidiary corporations as the authority directs.

5. The authority may, whenever it determines that it is in the interest of the authority, dispose of any real property or property other than real property, which it determines is not necessary, convenient or desirable for its purposes.

6. The authority may, whenever it shall determine that it is in the interest of the authority, rent, lease, or grant easements or other rights in, any land or property of the authority.

## History

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Add, L 1965, ch 324, § 3, eff June 1, 1965; amd, L 1965, ch 634, eff July 2, 1965; L 2000, ch 61, § 25 (Part O), eff May 15, 2000; L 2019, ch 39, § 1 (Part P), effective June 24, 2019.

Annotations

## Notes

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### Prior Law

Former § 1267, add, L 1959, ch 789; amd, L 1962, ch 310, § 340; renumbered § 1247, L 1965, ch 324, § 2, eff June 1, 1965.

### Editor's Notes

See 1965 note under Title 11.

**Laws 2019, ch 39, § 2 (Part P)**, eff June 24, 2019, provides:

§ 2. This act shall take effect immediately; provided that section one of this act shall be deemed repealed six years after such effective date, provided that any condemnation proceedings in process at the time of repeal shall not be affected by such repeal (Amd, L 2022, ch 278, § 1, eff June 30, 2022).

### Amendment Notes

**The 2019 amendment by ch 39, § 1 (Part P)**, in 1, in the first sentence, substituted “eminent domain procedure law” for “condemnation law” and added “and provided further that the rate of interest paid upon any judgment or accrued claim against the authority arising out of such condemnation proceedings shall not exceed six per centum” at the end and substituted “Notwithstanding the foregoing provisions of this subdivision” for “Notwithstanding the foregoing provisions of this subdivision one” in the second sentence.

## Opinion Notes

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### Agency Opinions

The Metropolitan Transportation Authority is subject to applicable town zoning ordinances in the construction of an office and industrial complex. 1979 Op St Compt No. 79-2, 1979 N.Y. Comp. LEXIS 244.

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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## NY CLS Pub A § 1267-a

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### § 1267-a. Acquisition and disposition of real property by department of transportation

---

If funds are made available by the authority for the payment of the cost and expense of the acquisition thereof, the commissioner of transportation of the state of New York, when requested by the authority, may acquire such real property in the name of the state as may be determined from time to time by the authority as being necessary, convenient or desirable to effectuate the purposes of this title, may remove the owner or occupant thereof where necessary and obtain possession and, when requested by the authority, may dispose of any real property so acquired, all according to the procedure provided in section thirty of the highway law. The authority shall have the right to possess and use for its corporate purposes all such real property so acquired. Claims for the value of the property appropriated and for legal damages caused by any such appropriation shall be adjusted and determined by such commissioner with the approval of the authority or by the court of claims as provided in section thirty of the highway law. When a claim has been filed with the court of claims, the claimant shall cause a copy of such claim to be served upon the authority and the authority shall have the right to be represented and heard before such court. All awards and judgments arising from such claims shall be paid out of moneys of the authority. No real property may be acquired pursuant to the provisions of this section for purposes other than a transportation facility unless the governing body of the city, village or town in which such real property is located shall first consent to such acquisition. The provisions of this section shall not be applicable to the acquisition or disposition of real property required for the construction of the two highway bridges crossing Long Island sound referred to in section twelve hundred sixty-six of this chapter. The authority shall be empowered to lease for such other purposes as the authority may determine any part or parts of Republic airport not needed for transportation purposes.

### History

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Add, L 1968, ch 731; amd, L 1977, ch 929, § 1, eff Aug 11, 1977.

Annotations

### Notes to Decisions

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The absence of any requirement in Public Authorities Law § 1267-a that notice be given to owners prior to the appropriation does not render the statute constitutionally infirm. *County of Orange v Metropolitan Transp. Authority*, 71 Misc. 2d 691, 337 N.Y.S.2d 178, 1971 N.Y. Misc. LEXIS 1193 (N.Y. Sup. Ct. 1971), *aff'd*, 39 A.D.2d 839, 332 N.Y.S.2d 420, 1972 N.Y. App. Div. LEXIS 7963 (N.Y. App. Div. 2d Dep't 1972).

The acquisition of property for the expansion and development of an airport did not require the consent of the towns and villages in which the real property was located and the lack of such consent did not invalidate the appropriation. *County of Orange v Metropolitan Transp. Authority*, 71 Misc. 2d 691, 337 N.Y.S.2d 178, 1971 N.Y. Misc. LEXIS 1193 (N.Y. Sup. Ct. 1971), *aff'd*, 39 A.D.2d 839, 332 N.Y.S.2d 420, 1972 N.Y. App. Div. LEXIS 7963 (N.Y. App. Div. 2d Dep't 1972).

## **Research References & Practice Aids**

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### **Cross References:**

This section referred to in § 553-e.

Acquisition by the state of property required for the construction and reconstruction of state highways and structures thereon, CLS High § 30.

### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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## NY CLS Pub A § 1267-b

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### **§ 1267-b. Transit facilities for transit construction fund**

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1. As used in this section, unless a different meaning clearly appears from the context:
  - a. “City” shall mean the city of New York.
  - b. “Transit construction fund act” shall mean title nine-a of article five of this chapter.
  - c. “Transit construction fund” shall mean the corporation created by section one thousand two hundred twenty-five-c of this chapter.
  - d. “Transit facility” shall mean such term as defined from time to time in section one thousand two hundred twenty-five-b of this chapter.
2. In addition to the powers provided elsewhere in this title, and to effectuate the purposes of the transit construction fund act, the authority may:
  - a. Plan, design, construct, acquire, extend, reconstruct, rehabilitate, modernize and otherwise improve transit facilities in accordance with the terms and conditions of any lease or other agreement with the transit construction fund;
  - b. Occupy the streets of the city of New York, without further consent or payment, in the course of constructing and thereafter owning a transit facility which consists of a rapid transit railroad or portion thereof, provided such construction is carried out in accordance with the terms of a lease or other agreement with the transit construction fund entered into pursuant to the provisions of the transit construction fund act;
  - c. Make and execute contracts, leases, subleases, and all other instruments or agreements deemed necessary or convenient;
  - d. Authorize the use by the transit construction fund, either with or without compensation to the authority or any subsidiary of the agents, employees and facilities of the authority or any subsidiary;
  - e. Undertake planning, design and feasibility studies in accordance with the terms and conditions of any agreement with the transit construction fund or the city; and
  - f. Do any and all other things deemed necessary or convenient.
3. All of the provisions of this title not inconsistent with the provisions of this section shall be applicable with respect to any bonds or notes of the authority issued to finance any purpose authorized under this section or the transit construction fund act, subject to the following conditions and exceptions:
  - a. Payment of the principal, redemption premium, if any, and interest on such bonds and notes shall be made only from monies payable to the authority from the transit construction fund under a lease or other agreement entered into pursuant to the provisions of the transit construction fund act, and any security given by the authority for the payment of such principal, redemption premium or interest on such bonds and notes shall be limited to the monies so payable from the transit construction fund. The

authority shall not grant any security interest in or otherwise encumber any transit facility leased to the transit construction fund.

**b.** The provisions of section one thousand two hundred seventy of this chapter, relating to the creation and establishment of and appropriations and payments to certain debt service reserve funds shall be inapplicable; provided that nothing herein contained shall be deemed to prohibit the creation and establishment of one or more reserve funds for debt service as authorized by section one thousand two hundred sixty-nine of this chapter;

**c.** In addition to the statement required by subdivision eight of section one thousand two hundred sixty-nine of this chapter, such bonds and notes shall contain on the face thereof a statement to the effect that the city shall not be liable thereon and that the same shall not be a debt of the city.

**4.** Notwithstanding [Notwithstanding]\* the provisions of any general or special law to the contrary, or of any agreement entered into in pursuance thereof relating to the repayment of any loan or advance made by the state to the authority, the authority shall not be required to repay any such loan or advance from or by reason of the issuance of (i) bonds or notes of the authority issued to finance any purpose authorized under this section or the transit construction fund act, or the proceeds realized upon such issuance, or from (ii) any other funds of the authority derived from the transit construction fund or from any other source whatever to effectuate the purposes of the transit construction fund act.

## History

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Add, L 1972, ch 576, eff May 24, 1972.

Annotations

## Research References & Practice Aids

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### Cross References:

Transit construction fund, §§ 1206-a, 1225-a et seq.

### Federal Aspects:

Public transportation under the Federal-Aid Highways Act, 23 USCS § 142.

Public transportation, 49 USCS §§ 5301 et seq.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1268

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*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## § 1268. Co-operation and assistance of other agencies

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1. To avoid duplication of effort and in the interests of economy, the authority may make use of existing studies, surveys, plans, data and other materials in the possession of any state agency or any municipality or political subdivision of the state. Each such agency, municipality or subdivision is hereby authorized to make the same available to the authority and otherwise to assist it in the performance of its functions. At the request of the authority, each such agency, municipality or subdivision which is engaged in highway or other transportation activities or in land use or development planning, or which is charged with the duty of providing or regulating any transportation facility or any other public facility, is further authorized to provide the authority with information regarding its plans and programs affecting the transportation district so that the authority may have available to it current information with respect thereto. The officers and personnel of such agencies, municipalities or subdivisions, and of any other government or agency whatever, may serve at the request of the authority upon such advisory committees as the authority shall determine to create and such officers and personnel may serve upon such committees without forfeiture of office or employment and with no loss or diminution in the compensation, status, rights and privileges which they otherwise enjoy.
2. The authority shall, at the request of any state agency, municipality or political subdivision of the state, engaged in highway or other transportation activities or in land use or development planning, provide said state agency, municipality or political subdivision with all current and relevant information regarding its plans or programs, so as to enable said agency, municipality or subdivision to properly effectuate said activities or planning.
3. To the extent that the provisions of this title authorize the authority to enter into any agreement or arrangement with, or undertake any other activity requiring the participation of, the New York city transit authority or any of its subsidiary corporations in furtherance of their respective purposes and powers or the Triborough bridge and tunnel authority in furtherance of its purposes and powers, such entities are hereby authorized and empowered to enter into and perform such contract or other arrangement and to undertake such activities.

## History

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Add, L 1965, ch 324, § 3, eff June 1, 1965; amd, L 1975, ch 258, § 1, eff June 24, 1975; L 2000, ch 61, § 26 (Part O), eff May 15, 2000.

Annotations

## Notes

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**Prior Law:**

Former § 1268, add, L 1959, ch 789; renumbered § 1248, L 1965, ch 324, § 2, eff June 1, 1965.

**Editor's Notes:**

See 1965 note under Title 11.

## **Research References & Practice Aids**

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**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1268-a

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## § 1268-a. Promotion of qualified transportation fringes

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The authority shall promote the broad use of qualified transportation fringes, under section 132(f) of the internal revenue code, in order to increase the number of participating companies and employees in such programs. The authority may also study and report on ways in which programs may be improved so as to increase public participation.

### History

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Add, L 2009, ch 25, § 11 (Part H), eff May 7, 2009 (see 2009 note below).

Annotations

### Notes

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#### Editor's Notes:

**Laws 2009, ch 25, § 1**, eff May 7, 2009, provides as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1269

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-I)*

## **§ 1269. Notes, bonds and other obligations of the authority**

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1.

(a) The authority shall have power and is hereby authorized from time to time to issue its bonds, notes and other obligations in such principal amount as, in the opinion of the authority, shall be necessary, convenient or desirable to effectuate any of its powers and purposes, including to provide sufficient funds for achieving its purposes, including the acquisition, establishment, construction, effectuation, operation, maintenance, renovation, improvement, extension, rehabilitation or repair of any transportation facility, the payment of principal, redemption premium and interest on bonds, notes and other obligations of the authority, establishment of reserves to secure such bonds[,] notes and other obligations, the provision of working capital and all other expenditures of the authority and its subsidiary corporations, and New York city transit authority and its subsidiary corporations incident to and necessary or convenient to carry out their purposes and powers. Such bonds, notes or other obligations may be issued for an individual transportation facility or issued on a consolidated basis for such groups or classes of facilities and projects as the authority in its discretion deems appropriate and be payable from and secured separately or on a consolidated basis by, among other things, all or any portion of such revenues and other monies and assets of the authority and its subsidiary corporations, and New York city transit authority and its subsidiary corporations as the authority determines in accordance with the provisions of section twelve hundred seventy-d of this title;

(b) The authority shall have power, from time to time, to issue renewal notes, to issue bonds to refund, redeem or otherwise pay, including by purchase or tender, notes of the authority and its subsidiary corporations, and New York city transit authority and its subsidiary corporations and whenever it deems refunding, redemption or payment expedient, to refund, redeem or otherwise pay, including by purchase or tender, any bonds of the authority and its subsidiary corporations, New York city transit authority and its subsidiary corporations and Triborough bridge and tunnel authority by the issuance of new bonds, whether the bonds to be refunded, redeemed or otherwise paid have or have not matured, and to issue bonds partly for such purpose and partly for any other purpose and to otherwise refund, redeem, acquire by purchase or tender, or in any other way repay any outstanding notes, bonds or other obligations of the authority, any of its subsidiary corporations, New York city transit authority, any of its subsidiary corporations and Triborough bridge and tunnel authority;

(c) Every issue of its notes, bonds or other obligations shall be general obligations or special obligations. Every issue of general obligations of the authority shall be payable out of any revenues or monies of the authority, subject only to any agreements with the holders of particular notes or bonds pledging any particular receipts or revenues. Every issue of special obligations shall be payable out of any revenues, receipts, monies or other assets of the authority and its subsidiary corporations, the New York city transit authority and its subsidiary corporations and the Triborough bridge and tunnel authority

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\* The bracketed punctuation has been inserted by the Publisher.

identified for such purposes in accordance with agreements with the holders of particular notes, bonds or other obligations. The authority may issue transportation revenue special obligation bonds, notes or other obligations as provided in section twelve hundred seventy-d of this title;

**1-a.** Pension obligation bonds. The authority may from time to time issue its bonds and notes in such principal amounts as, in the opinion of the authority, shall be necessary to finance the unfunded pension fund liabilities of the authority, its affiliates and subsidiaries, provided, however, that in no event shall the cumulative amounts of bonds and notes issued pursuant to the authority of this subdivision exceed one billion two hundred million dollars or sixty percent of such unfunded pension fund liabilities, whichever is less, and provided, further, that no bonds shall be issued under this subdivision for a term longer than twenty years. The authority may not issue bonds or notes in any twelve month period in a cumulative principal amount in excess of forty percent of the total amount permitted to be issued under this subdivision. Prior to the issuance of any bonds or notes, the authority shall make a finding that such issue is expected to result, on a present value basis, in a lower effective cost to the authority than funding the unfunded pension fund liability solely through the payment of annual amounts to the pension fund, assuming that the principal component of the unfunded liability will be amortized over the same number of years as the term of the bonds or notes and that the interest payable thereon is the actuarial rate of interest determined by the actuary for the pension fund at the time of the issuance of such bonds or notes. The aggregate principal amount of bonds and notes issued for such purposes may be increased to fund costs of issuance and [may]\* reasonably required debt service of [or]\* other reserve funds. Bonds and notes may be issued to refund or otherwise repay bonds or notes theretofore issued for such purposes; provided, however, that upon any such refunding or repayment (including for purpose of such calculation the principal amount of the refunding bonds or notes then to be issued and excluding the principal amount of the bonds or notes so to be refunded or repaid and also excluding any amounts used to pay costs of issuance and reasonably required debt service or other reserve funds) the present value of the aggregate debt service of the refunding or repayment bonds or notes to be issued shall not exceed the present value of the aggregate debt service of the bonds or notes so to be refunded or repaid. For purposes of the preceding sentence, the present values of the aggregate debt service of the refunding or repayment bonds or notes and of the aggregate debt service of the bonds or notes so to be refunded or repaid shall be calculated by utilizing the effective interest rate of the refunding or repayment bonds or notes, which shall be that rate arrived at by doubling the semi-annual interest rate (compounded semi-annually) necessary to discount the debt service payments on the refunding or repayment bonds or notes from the payment dates thereof to the date of issue of the refunding or repayment bonds or notes and to the price bid including estimated accrued interest or proceeds received by the authority including estimated accrued interest from the sale thereof. Debt service on the bonds or notes shall be structured so that the economic benefits thereof shall be relatively uniform for each full year throughout the term of the bonds or notes. Beginning with the date of first issuance of bonds under this section, the authority and its subsidiaries shall make annual payments into the pension fund in amounts at least equal to the current pension contribution liability applicable to such year. The net proceeds of the bonds or notes intended to be invested in non-debt securities may be invested by the recipient pension fund in a fiscally prudent manner in securities consistent with any trust indentures and all applicable state and federal law over a reasonable period of time not less than 30 days following the issuance of the bonds or notes. The operating budget savings associated with the issuance of pension obligation bonds during the period from April first, two thousand five, through March thirty-first, two thousand ten, pursuant to this subdivision shall be dedicated to reducing service eliminations projected to occur within that period.

**2.** The notes, bonds and other obligations shall be authorized by resolution approved by not less than a majority vote of the whole number of members of the authority then in office, except that in the event of a tie vote the chairman shall cast one additional vote. Such notes, bonds and other obligations shall bear such date or dates, and shall mature at such time or times, in the case of any such note or any renewals thereof

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\* The bracketed word was inadvertently added by the Legislators.

\* The bracketed word has been inserted by the Publisher.



not exceeding five years from the date of issue of such original note, and in the case of any such bond not exceeding fifty years from the date of issue, as such resolution or resolutions may provide. The notes, bonds and other obligations shall bear interest at such rate or rates, 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 as such resolution or resolutions may provide. The notes, bonds and other obligations of the authority may be sold by the authority, at public or private sale, at such price or prices as the authority shall determine. No notes or bonds of the authority may be sold by the authority at private sale, however, unless such sale and the terms thereof have been approved in writing by (a) the comptroller, where such sale is not to the comptroller, or (b) the director of the budget, where such sale is to the comptroller.

**3.** Any resolution or resolutions authorizing any notes, bonds or any issue thereof, or any other obligations of the authority, may contain provisions, which shall be a part of the contract with the holders thereof, as to:

**(a)** pledging all or any part of the revenues of the authority or of any of its subsidiary corporations or New York city transit authority or any of its subsidiary corporations or Triborough bridge and tunnel authority to secure the payment of the notes or bonds or of any issue thereof, or any other obligations of the authority, subject to such applicable agreements with bondholders, noteholders, or holders of other obligations of the authority, the New York city transit authority and its subsidiary corporations, and Triborough bridge and tunnel authority as may then exist;

**(b)** pledging all or any part of the assets of the authority or of any of its subsidiary corporations or New York city transit authority or any of its subsidiary corporations or Triborough bridge and tunnel authority to secure the payment of the notes or bonds or of any issue of notes or bonds, or any other obligations of the authority, subject to such agreements with noteholders, bondholders, or holders of other obligations of the authority, the New York city transit authority and its subsidiary corporations, and Triborough bridge and tunnel authority as may then exist;

**(c)** the use and disposition of revenues, including fares, tolls, rentals, rates, charges and other fees, made or received by the authority, any of its subsidiary corporations, New York city transit authority or any of its subsidiary corporations, or Triborough bridge and tunnel authority;

**(d)** the setting aside of reserves or sinking funds and the regulation and disposition thereof;

**(e)** limitations on the purpose to which the proceeds of sale of notes, bonds or other obligations of the authority may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof or of other obligations;

**(f)** limitations on the issuance of additional notes, bonds or other obligations of the authority; the terms upon which additional notes, bonds or other obligations of the authority may be issued and secured; the refunding of outstanding or other notes, bonds or other obligations of the authority;

**(g)** the procedure, if any, by which the terms of any contract with noteholders, bondholders, or holders of other obligations of the authority, may be amended or abrogated, the amount of notes, bonds or other obligations of the authority the holders of which must consent thereto, and the manner in which such consent may be given;

**(h)** limitations on the amount of monies to be expended by the authority or any of its subsidiary corporations or New York city transit authority or any of its subsidiary corporations or Triborough bridge and tunnel authority for operating, administrative or other expenses of the authority or any of its subsidiary corporations or New York city transit authority or any of its subsidiary corporations or Triborough bridge and tunnel authority;

**(i)** vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders, noteholders or holders of other obligations of the authority pursuant to this title, and limiting or abrogating the right of the bondholders, noteholders or holders of other obligations of the authority to appoint a trustee under this article or limiting the rights, powers and duties of such trustee;

**(j)** any other matters, of like or different character, which in any way affect the security or protection of the notes, bonds or other obligations of the authority.

- 4.** In addition to the powers herein conferred upon the authority to secure its notes, bonds and other obligations, the authority shall have power in connection with the issuance of notes, bonds and other obligations to enter into such agreements as the authority may deem necessary, convenient or desirable concerning the use or disposition of the monies or property of any of the authority, its subsidiary corporations, New York city transit authority, or any of its subsidiary corporations, or Triborough bridge and tunnel authority, including the mortgaging of any such property and the entrusting, pledging or creation of any other security interest in any such monies or property and the doing of any act (including refraining from doing any act) which the authority would have the right to do in the absence of such agreements. The authority shall have power to enter into amendments of any such agreements within the powers granted to the authority by this title and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the holders of the notes, bonds and other obligations of the authority.
- 5.** It is the intention hereof that any pledge, mortgage or security instrument made by the authority shall be valid and binding from the time when the pledge, mortgage or security instrument is made; that the monies or property so pledged, mortgaged and entrusted and thereafter received by the authority, or any of its subsidiary corporations shall immediately be subject to the lien of such pledge, mortgage or security instrument without any physical delivery thereof or further act; and that the lien of any such pledge, mortgage or security instrument shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, or any of its subsidiary corporations, irrespective of whether such parties have notice thereof. Neither the resolution nor any mortgage, security instrument or other instrument by which a pledge, mortgage lien or other security is created need be recorded or filed and neither the authority nor, any of its subsidiary corporations shall be required to comply with any of the provisions of the uniform commercial code.
- 6.** Neither the members of the authority, the New York city transit authority or the Triborough bridge and tunnel authority nor any person executing the notes, bonds or other obligations shall be liable personally on the notes, bonds or other obligations or be subject to any personal liability or accountability by reason of the issuance thereof.
- 7.** The authority, subject to such agreements with the holders of notes, bonds or other obligations as may then exist, shall have power out of any funds available therefor to purchase notes, bonds or other obligations of the authority. The authority may hold, cancel or sell such bonds, notes and other obligations, subject to and in accordance with agreements with such holders.
- 8.** Neither the state nor the city of New York shall be liable on notes, bonds or other obligations of the authority and such notes, bonds and other obligations shall not be a debt of the state or the city of New York, and such notes, bonds and other obligations shall contain on the face thereof, or in an equally prominent place, a statement to such effect.
- 9.** So long as the authority has outstanding any bonds, notes or other obligations issued pursuant to this section or any bonds, notes or other obligations issued or incurred pursuant to section twelve hundred sixty-six-c of this title, none of the authority or any of its subsidiary corporations, New York city transit authority or any of its subsidiary corporations, or Triborough bridge and tunnel authority shall have the authority to file a voluntary petition under chapter nine of the federal bankruptcy code or such corresponding chapter, chapters or sections as may, from time to time, be in effect, and neither any public officer nor any organization, entity or other person shall authorize the authority or any of its subsidiary corporations, New York city transit authority or any of its subsidiary corporations, or Triborough bridge and tunnel authority to be or become a debtor under chapter nine or said corresponding chapter, chapters or sections during any such period.
- 10.** The term "monies" as used in this section shall include, but not be limited to, all operating subsidies provided by (i) any public benefit corporation, including without limitation transfers of operating surplus by

Triborough bridge and tunnel authority pursuant to section twelve hundred nineteen-a of this article, or (ii) any governmental entity, federal, state or local.

**11.** Any resolution or agreement authorizing the issuance of bonds, notes or other obligations pursuant to this section may, in addition, authorize and provide for the issuance of lease obligations of the authority which may be issued for the purposes and on the terms and conditions under which the bonds, notes and other obligations authorized under this section may be issued, and may be secured in the same manner as such bonds, notes and other obligations, and which resolution with respect to such lease obligations, may contain such other provisions applicable to bonds, notes and other obligations not inconsistent with the provisions of this section, as the authority may determine.

**12.** The aggregate principal amount of bonds, notes or other obligations issued after the first day of January, nineteen hundred ninety-three by the authority, the Triborough bridge and tunnel authority and the New York city transit authority to fund projects contained in capital program plans approved pursuant to section twelve hundred sixty-nine-b of this title for the period nineteen hundred ninety-two through two thousand twenty-four shall not exceed ninety billion one hundred million dollars. Such aggregate principal amount of bonds, notes or other obligations or the expenditure thereof shall not be subject to any limitation contained in any other provision of law on the principal amount of bonds, notes or other obligations or the expenditure thereof applicable to the authority, the Triborough bridge and tunnel authority or the New York city transit authority. The aggregate limitation established by this subdivision shall not include (i) obligations issued to refund, redeem or otherwise repay, including by purchase or tender, obligations theretofore issued either by the issuer of such refunding obligations or by the authority, the New York city transit authority or the Triborough bridge and tunnel authority, (ii) obligations issued to fund any debt service or other reserve funds for such obligations, (iii) obligations issued or incurred to fund the costs of issuance, the payment of amounts required under bond and note facilities, federal or other governmental loans, security or credit arrangements or other agreements related thereto and the payment of other financing, original issue premiums and related costs associated with such obligations, (iv) an amount equal to any original issue discount from the principal amount of such obligations or to fund capitalized interest, (v) obligations incurred pursuant to section twelve hundred seven-m of this article, (vi) obligations incurred to fund the acquisition of certain buses for the New York city transit authority as identified in a capital program plan approved pursuant to chapter fifty-three of the laws of nineteen hundred ninety-two, (vii) obligations incurred in connection with the leasing, selling or transferring of equipment, and (viii) bond anticipation notes or other obligations payable solely from the proceeds of other bonds, notes or other obligations which would be included in the aggregate principal amount specified in the first sentence of this subdivision, whether or not additionally secured by revenues of the authority, or any of its subsidiary corporations, New York city transit authority, or any of its subsidiary corporations, or Triborough bridge and tunnel authority.

## History

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Add, L 1965, ch 324, § 3; amd, L 1966, ch 415, § 7; L 1967, ch 717, § 86; L 1969, ch 972, §§ 46, 47; L 1979, ch 727, § 3; L 1981, ch 1038, § 4; L 1983, ch 429, §§ 1, 2; L 1993, ch 56, § 6; L 1996, ch 637, § 12; L 2000, ch 61, § 27 (Part O), eff May 15, 2000; L 2005, ch 60, § 1 (Part B), eff April 12, 2005; L 2006, ch 59, § 1 (Part K), eff April 11, 2006; L 2010, ch 59, § 1 (Part NN), eff June 22, 2010; L 2012, ch 58, § 1 (Part E), eff March 30, 2012; L 2016, ch 54, § 4 (Part NN), effective April 4, 2016; L 2020, ch 58, § 1 (Part I), effective April 3, 2020.

Annotations

## Notes

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**Prior Law:**

Former § 1269, add, L 1959, ch 789; renumbered § 1249, L 1965, ch 324, § 2, eff June 1, 1965.

**Editor's Notes:**

See 1965 note under Title 11.

**Laws 2016, ch 54, § 6 (Part NN)**, eff April 4, 2016, provides:

§ 6. This act shall take effect immediately and be deemed to have been in full force and effect on and after April 1, 2016.

**Amendment Notes:**

**2012.** Chapter 58, § 1 (Part E) amended:

Sub 12 by deleting at fig 1 "article", at fig 2 "thirty-four", at fig 3 "eight hundred seventy-seven" and adding the matter in italics.

**The 2016 amendment by ch 54, § 4 (Part NN)**, in 12, substituted "two thousand nineteen shall not exceed fifty-five billion four hundred ninety-seven million dollars" for "two thousand fourteen shall not exceed thirty-seven billion two hundred eleven million dollars prior to January one, two thousand thirteen; shall not exceed thirty-nine billion five hundred forty-four million prior to January one, two thousand fourteen; and shall not exceed forty-one billion eight hundred seventy-seven million dollars thereafter" in the first sentence and added "original issue premiums" in the second sentence.

**The 2020 amendment by ch 58, § 1 (Part I)**, substituted "two thousand twenty-four shall not exceed ninety billion one hundred million dollars" for "two thousand nineteen shall not exceed fifty-five billion four hundred ninety-seven million dollars."

## Notes to Decisions

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Thruway Authority and Metropolitan Transportation Authority are public benefit corporations existing independently of state for purpose of contracting their own legally binding obligations; moreover, public authority bonds are not legal liabilities of state. *Schulz v State*, 84 N.Y.2d 231, 616 N.Y.S.2d 343, 639 N.E.2d 1140, 1994 N.Y. LEXIS 1430 (N.Y. 1994), reh'g denied, 84 N.Y.2d 851, 617 N.Y.S.2d 140, 641 N.E.2d 161, 1994 N.Y. LEXIS 2637 (N.Y. 1994), cert. denied, 513 U.S. 1127, 115 S. Ct. 936, 130 L. Ed. 2d 881, 1995 U.S. LEXIS 758 (U.S. 1995).

## Research References & Practice Aids

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**Cross References:**

This section referred to in §§ 1266-g, 1267-b, 1271.

Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note", CLS UCC § 3-104.

Investment securities, CLS UCC §§ 8-101 et seq.

**Jurisprudences:**

64 Am Jur 2d, Public Securities and Obligations §§ 74–88.

**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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## NY CLS Pub A § 1269-a

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*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

### **§ 1269-a. Metropolitan transportation authority capital program review board**

1. The metropolitan transportation authority capital program review board is hereby created to exercise the powers, duties and prerogatives as hereinafter provided in sections twelve hundred sixty-nine-b and twelve hundred sixty-nine-c of this title.
2. The voting membership of the board shall consist of four persons appointed by the governor of which one shall be upon the recommendation of the temporary president of the senate, one upon the recommendation of the speaker of the assembly and one upon the recommendation of the mayor of the city of New York. The member appointed upon the recommendation of the mayor of the city of New York shall participate and be entitled to vote only with respect to bond resolutions and the capital program plans and any amendments or modifications thereof for transit facilities operated by the New York city transit authority, its subsidiaries and the Staten Island rapid transit operating authority. Upon recommendation of the nominating party, the governor may replace any member in accordance with the provision contained herein for the appointment of members. The governor shall designate one of the members to serve as chairman. Any determination of the board shall be evidenced by a certification thereof executed by all the members entitled to vote on the matter so certified. Each member of the board shall be entitled to designate a representative to attend meetings of the board in his place and to vote or otherwise act on his behalf in his absence. Notice of such designation shall be furnished in writing to the board by the designating member. A representative shall serve at the pleasure of the designating member during the member's term of office. A representative shall not be authorized to delegate any of his duties or functions to any other person.
3. The governor shall also appoint two non-voting members to the metropolitan transportation authority capital program review board of which one shall be upon the recommendation of the minority leader of the senate and one upon the recommendation of the minority leader of the assembly. Each non-voting member shall be entitled to designate a representative to attend meetings of the board in his place.
4. The members of the metropolitan transportation authority capital program review board, and their representatives shall be deemed employees within the meaning of such term as provided for in section seventeen of the public officers law.

### **History**

Add, L 1981, ch 314, § 9; amd, L 1981, ch 558, § 5, eff June 29, 1981; L 1982, ch 47, § 1, eff April 5, 1982, deemed eff from and after June 29, 1981.

Annotations

### **Research References & Practice Aids**

**Cross References:**

Defense and indemnification of state officers and employees, CLS Pub O § 17.

**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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### **§ 1269-b. Capital program plans; approvals; effect of disapproval.**

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1.

(a) On or before October first, nineteen hundred eighty-one, and on or before October first of every fifth year thereafter, through and including October first, nineteen hundred ninety-one, the authority shall submit to the metropolitan transportation authority capital program review board two capital program plans for the five year period commencing January first of the following year;

(b) not later than ten days after the effective date of this paragraph the authority shall submit to the metropolitan transportation authority capital program review board two capital program plans for the five-year period commencing January first, nineteen hundred ninety-five; and

(c) on or before October first, nineteen hundred ninety-nine and every fifth year thereafter, the authority shall submit to the metropolitan transportation authority capital program review board two capital program plans for the five-year period commencing January first of the following year.

(d) [Expired]

For each of the periods described above, one such plan shall contain the capital program for the transit facilities operated by the New York city transit authority and its subsidiaries and for the Staten Island rapid transit operating authority; the other such plan shall contain the capital program for the railroad facilities, not including the Staten Island rapid transit operating authority, under the jurisdiction of the authority.

Each plan shall set system-wide goals and objectives for capital spending, establish standards for service and operations, and describe each capital element proposed to be initiated in each of the years covered by the plan and explain how each proposed element supports the achievement of the service and operational standards established in the plan. Each plan shall also set forth an estimate of the amount of capital funding required each year and the expected sources of such funding. Each plan subsequent to the first such plan and each proposed amendment or modification thereof shall also describe the current status of each capital element included in the previously approved plan, if any. Each plan shall be accompanied or supplemented by such supporting materials as the metropolitan transportation authority capital program review board shall require.

A capital element shall mean either a category of expenditure itemized in a plan, as hereinafter provided, for which a specified maximum dollar amount is proposed to be expended, or a particularly described capital project within one or more categories for which no maximum expenditure is proposed, but for which an estimate of expected cost is provided. A capital element shall be deemed to have been initiated for purposes of this section if in connection with such element the authority shall certify that (i) purchase or construction contracts have been entered into, obligating in the aggregate an amount exceeding ten percent of the maximum or estimated cost of the element as set forth in a plan, (ii) financing specific to the project has been undertaken, or (iii) in a case where such element is limited to design or engineering, a contract therefor has been entered into.



2. Each plan shall itemize the capital elements included in each section of the plan under the following categories of expenditure: (a) rolling stock and buses; (b) passenger stations; (c) track; (d) line equipment; (e) line structures; (f) signals and communications; (g) power equipment, emergency power equipment and substations; (h) shops, yards, maintenance facilities, depots and terminals; (i) service vehicles; (j) security systems; (k) electrification extensions; and (l) unspecified, miscellaneous and emergency.

**2-a.**

(a) A copy of any proposed capital program plan that has been distributed to one or more committees of the authority shall be simultaneously provided, for informational purposes, to the members of the metropolitan transportation authority capital program review board. Provision of such a proposed capital program plan to the capital program review board pursuant to this provision for informational purposes shall not constitute the submission of a capital program plan for capital program review board approval.

(b) A copy of any proposed capital program plan that has been distributed to one or more committees of the authority shall be simultaneously provided to the public by the metropolitan transportation authority, via its official or shared internet website.

(c) The authority shall publish data pertaining to capital programs of the authority and any amendments to such programs as required by this section on the authority's website in a common, machine readable format, as defined by executive order number ninety-five of two thousand thirteen, "Using Technology to Promote Transparency, Improve Government Performance and Enhance Citizen Engagement" or any successor order. Such data shall include, but not be limited to:

(i) all data required by paragraph (c) of subdivision one of this section, including estimates of capital budget required by element for an approved capital program and expected sources of such funding for the entire capital program; and

(ii) all data required by subdivision two of this section, including proposed annual commitments for individual capital elements required.

(d) At a minimum, individual capital project data for projects that are committed for construction shall be included in a capital program dashboard maintained by the authority on its website. Any summary views provided on the website shall include the original budgets at the time of project commitment when scope and budget are defined, project scopes, and schedules, in addition to current or amended budgets, project scopes, and schedules. Data pertaining to individual projects shall include, but not be limited to:

(i) the capital project identification number delineated by agency, category, element and project as used in the capital program;

(ii) the capital plan years;

(iii) the agency or authority undertaking the project;

(iv) a project description;

(v) the project location where appropriate;

(vi) the capital needs code of the project, such as state of good repair, normal replacement, system improvement, system expansion or other category;

(vii) budget information including the original budget at the time of project commitment when scope and budget are defined, all amendments, the current budget and planned annual allocations; and

(viii) a schedule for project delivery including original, amended and current start and completion dates as projects develop at each phase.

The status of projects shall be provided and state the current phase of the project, such as planning, design, construction or completion, and shall state how far the project has progressed as measured in percentage by expenditure. The dashboard shall measure progress based on original budgets at the time of project commitment when scope and budget are defined. At a minimum, all changes to planned budgets of greater than ten percent, significant project scope or a three month or more change in schedule shall be provided in narrative form and describe the reason for each change or amendment. The dashboard shall include a glossary or data dictionary which contains plain language descriptions of the data and information provided on the dashboard. The dashboard shall be updated, at a minimum, on a quarterly basis, and all data fields available on the dashboard shall be made available for download on the authority's website in a single tabular data file in a common, machine readable format. Capital dashboard data shall also be made available on the data.ny.gov website or such other successor website maintained by, or on behalf of, the state, as deemed appropriate by the New York state office of information technology services under executive order number ninety-five of two thousand thirteen, or any successor agency or order.

**(e)** The data required to be published pursuant to this subdivision shall be made in a single tabular data file in a common, machine readable format and shall be accessible on the authority's website and the website data.ny.gov or such other successor website maintained by, or on behalf of, the state, as deemed appropriate by the New York state office of information technology services under executive order number ninety-five of two thousand thirteen, or any successor agency or order.

**3.** A plan may only be approved in two ways: (i) a plan shall only be approved by the board by a unanimous vote of the members entitled to vote thereon and within ninety days or by September fifteenth, nineteen hundred ninety-six in the case of a plan submitted during the period described in paragraph (b) of subdivision one of this section, of the submission of a plan the metropolitan transportation authority capital program review board may notify the authority of its approval of the same; or (ii) if the plan is not approved by the board within such ninety day period or by September fifteenth, nineteen hundred ninety-six, as the case may be, and no individual member of the board who is entitled to vote thereon has notified the authority in writing of his or her disapproval with a written explanation of such disapproval including specific aspects of the plan that are of concern and what steps could be taken to address such concerns within such period, the plan shall be deemed to have been approved. Upon the receipt of a written disapproval, the authority shall be provided an opportunity to respond in writing within ten days of the receipt of such disapproval. Upon the receipt of such response, the disapproving member shall have ten days to reconsider and withdraw such written disapproval.

If the plan is not approved, the authority may thereafter reformulate and resubmit such plan at any time. Within thirty days of the submission of such reformulated plan the board may notify the authority of its approval of the same by the unanimous vote of the members entitled to vote thereon, or, if the reformulated plan is not approved and no individual member of the board who is entitled to vote on such reformulated plan has notified the authority in writing of his or her disapproval within such period, the reformulated plan shall be deemed to have been approved.

**4.** No general obligation bonds or notes of the authority, no special obligation bonds or notes of the authority to finance a transit project, as such term is defined in section twelve hundred sixty-six-c of this title, and no bonds or notes of the Triborough bridge and tunnel authority to finance a project pursuant to the authorization contained in paragraph (r) of subdivision nine of section five hundred fifty-three of this chapter shall be issued to finance the costs of a capital element unless such capital element and such source of funding was set forth in a plan submitted to and approved by the metropolitan transportation authority capital program review board.

**5.** The disapproval of a plan by the metropolitan transportation authority capital program review board shall not affect: (a) the right of the authority, of the Triborough bridge and tunnel authority, or of the New York city transit authority, or of the subsidiaries of any of them to initiate and complete any capital element which will be financed otherwise than through the issuance of the bonds or notes the issuance of which is prohibited under subdivision four of this section; (b) the right of the authority or the Triborough bridge and tunnel

authority to issue bonds or notes to finance a capital element which was initiated prior to such disapproval in conformity with a previously approved plan; (c) the right of the New York city transit authority to issue its bonds, notes, lease, sublease or other contractual obligations in payment for a transit project initiated prior to such disapproval in conformity with a previously approved plan; (d) the right of the authority or of the Triborough bridge and tunnel authority to issue bonds or notes to refund or otherwise repay any of its outstanding bonds or notes or to fulfill any of their obligations to the holders of any of their outstanding bonds or notes; or (e) the right of the New York city transit authority to issue its bonds, notes, lease, sublease or other contractual obligations to refund or otherwise repay any of its outstanding bonds or notes or to fulfill any of its obligations to the holders of any of its outstanding bonds or notes.

**6.** Notwithstanding the provisions of subdivision four of this section, if a source of funding described in an approved plan shall be unavailable or be available in a lesser amount than that set forth in such plan, the authority and the Triborough bridge and tunnel authority may issue bonds or notes as necessary to provide the requisite funding for the capital elements included in the plan to the extent that the aggregate amount of such bonds or notes to be issued in substitution for such unavailable amounts shall not exceed the greater of fifty million dollars or twenty percent of the total amount described in such plan for either the substitute funding source or the funding source being substituted for, subject to the limitations set forth in subdivision eleven of section five hundred fifty-three-e of this chapter and paragraph (a) of subdivision four of section twelve hundred seven-m of this article.

**7.**

**(a)** The authority may from time to time submit to the metropolitan transportation authority capital program review board amendments or modifications to any five-year plan theretofore submitted, and shall submit such an amendment or modification (i) if the estimated cost of any capital element for which a specified dollar amount was proposed to be expended exceeds the amount set forth in the approved plan for such element by more than ten percent, (ii) if with respect to a particularly described capital element for which only an estimate of projected cost has been provided in the plan there is a material change in the description of such element from that contained in the approved plan, (iii) if a capital element not previously included in the approved plan is proposed to be undertaken and its cost, together with the cost of other elements included in category (I) of the plan, exceeds by ten percent the amount provided for such category (I) elements, (iv) if the authority shall propose to change by more than one year the time when any capital element is proposed to be initiated or the effect of such change will be to increase the estimated amount of capital funding required in any year covered by the plan by more than twenty percent, or (v) if the availability of funding sources changes to the degree to which the authority or the Triborough bridge and tunnel authority are precluded from exercising the authorization provided in subdivision six of this section and the authority wishes to do so.

**(b)** An amendment or modification may only be approved in two ways: (i) an amendment or modification shall only be approved by the board by a unanimous vote of the members entitled to vote thereon and within thirty days of the submission of an amendment or modification the metropolitan transportation authority capital program review board may notify the authority of its approval of the same; or (ii) if the amendment or modification is not approved by the board within such thirty day period and no individual member of the board who is entitled to vote thereon, has notified the authority in writing of his disapproval within such period, the amendment or modification shall be deemed to have been approved.

**8.** In formulating its capital program plans, the authority shall give consideration to the physical condition and urgency of need of each of the several transportation and transit systems involved, to the needs of all of the communities and areas serviced by these systems, to the extent to which other capital aid or assistance may be available to each of these systems, and to the safety, comfort and convenience of its passengers. In determining the source or method of funding which the authority is to use to finance the cost of the capital elements included in its capital program plans, the authority shall, insofar as practicable, give consideration, among other things, to (i) the potential impact of each such source or method upon the level of passenger fares, (ii) the relative cost of the several funding alternatives, and (iii) the relative ability of

each source or method to provide funding at times and in amounts estimated to be required by the capital program plan. To the extent funding is proposed to be obtained through the issuance and sale of bonds or notes, the authority shall, insofar as practicable and consistent with the matters set forth in (i), (ii) and (iii) above, give preference to the use of funds appropriated or to be appropriated to the authority by virtue of service contracts with the director of the budget entered into pursuant to the provisions of the transportation systems assistance and financing act of 1981 for purposes of paying the annual cost of debt service for such bonds or notes.

**9.** Prior to the adoption by the authority or the New York city transit authority of its general resolution pursuant to which it is to issue any general or special obligation bonds or notes, not including any series resolution or resolutions, the authority shall submit a copy of such resolution to the metropolitan transportation authority capital program review board. Within fifteen days of such submission, the board may notify the authority of its unanimous approval of the same by the members entitled to vote thereon, or if the resolution is not approved and no individual member of the board who is entitled to vote on such resolution has notified the authority in writing of his disapproval, the resolution shall be deemed to have been approved. Neither the board nor any member thereof shall disapprove a proposed resolution by reason of any covenant requiring the authority, the New York city transit authority or their subsidiaries to charge and fix fares, fees and rentals sufficient to pay its operating expenses and the debt service, including the funding of requisite reserves, on the bonds and notes authorized by such resolution. If the board or any member thereof entitled to vote thereon shall disapprove a proposed resolution, the authority may, at any time, resubmit a reformulated resolution. Within ten days of the submission of such reformulated resolution the board may notify the authority of its unanimous approval of the same by the members entitled to vote thereon, or, if the reformulated resolution is not approved and no individual member of the board who is entitled to vote thereon has notified the authority in writing of his disapproval within such period, the reformulated resolution shall have been deemed to have been approved. Any individual member of the board who votes against a resolution or a reformulated resolution or who notifies the authority of his disapproval shall state his reasons therefor. The member appointed on the recommendation of the mayor of the city of New York shall not participate in the action of the board with respect to any bond resolution of the authority pursuant to which its general obligation bonds or notes may be issued. Neither the authority nor the New York city transit authority shall adopt a bond resolution disapproved by the board as herein provided.

**10.** In formulating its capital program plans, the authority shall develop criteria to determine how to best prioritize subway stations for accessibility improvements. Such criteria shall include, but not be limited to: citywide geographic coverage; transit transfer options; annual ridership volume; census tract data for senior and disabled populations and percentage of those populations in poverty; residential density of surrounding neighborhoods; and proximity to medical centers, schools, parks, business districts, cultural hubs and senior centers. Such criteria shall be made publicly available.

**11.** In formulating their capital program plans, the authority and its affiliates and subsidiaries shall consider bicycle and pedestrian accessibility.

## History

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Add, L 1981, ch 314, § 9, eff June 29, 1981; amd, L 1981, ch 558, § 6, eff June 29, 1981; L 1986, ch 929, § 30, eff Dec 31, 1986; L 1996, ch 637, §§ 13,14, eff Sept 11, 1996; L 2007, ch 384, §§ 7, 8, eff July 26, 2007; L 2009, ch 25, § 11–a, 12 (Part H), eff May 7, 2009; L 2017, ch 452, § 1, effective December 13, 2017; L 2019, ch 59, § 6 (Part ZZZ, Subpart B), effective April 12, 2019; L 2020, ch 309, § 1, effective December 2, 2020; L 2021, ch 35, § 1, effective December 2, 2020; L 2021, ch 802, § 2, effective December 28, 2021; L 2022, ch 58, § 1 (Part LLL), effective October 6, 2022; L 2022, ch 125, § 2, effective December 28, 2021.

## Notes

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### Editor's Notes

**Laws 2007, ch 384, § 10**, eff July 26, 2007, provides as follows:

§ 10. This act shall take effect immediately and shall expire and be deemed repealed on June 30, 2012; provided, however, that this act shall expire and be deemed repealed if the United States department of transportation does not commit at least two hundred fifty million dollars in funding prior to October 1, 2007; provided, that such expiration and repeal shall not occur if the United States department of transportation commits at least two hundred million dollars prior to October 1, 2007, and the city of New York commits, prior to December 31, 2007, an amount equal to the difference between two hundred fifty million dollars and the amount committed by the United States department of transportation; provided that the city of New York shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.

**Laws 2009, ch 25, §§ 1, 21(c) (Part H)**, eff May 7, 2009, provide as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

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

(c) paragraph c of subdivision 1 of section 1269-b of the public authorities law as amended by section twelve of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith.

**Laws 2019, ch 59, § 1 (Part ZZZ)**, eff April 12, 2019, provides:

§ 1. This act shall be known and may be cited as the “MTA reform and traffic mobility act”.

**Laws 2021, ch 35, § 2**, eff December 2, 2020, provides:

§ 2. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2020 amending the public authorities law relating to capital program plans of the metropolitan transportation authority, as proposed in legislative bills numbers S. 6430 and A. 8127, takes effect.

**Laws 2022, ch 125, § 6**, eff December 28, 2021, provides:

§ 6. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the public authorities law relating to requiring the metropolitan transportation authority to develop a strategic action plan to improve bicycle and pedestrian access at its bridges and passenger stations, as proposed in legislative bills numbers S. 4943-B and A. 6235-B, takes effect.

**Laws 2022, ch 58, § 2 (Part LLL)**, eff June 10, 2022, provides:

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.

### **Amendment Notes**

**The 2017 amendment by ch 452, § 1**, added the (a) designation and added (b).

**The 2019 amendment by ch 59, § 6 (Part ZZZ, Subpart B)**, in the first paragraph of 3, substituted “writing of his or her disapproval with a written explanation of such disapproval including specific aspects of the plan that are of concern and what steps could be taken to address such concerns within such period” for “writing of his disapproval within such period” in the first sentence and added the second sentence; and added “or her” in the second sentence of the second paragraph of 3.

**The 2020 amendment by ch 309, § 1**, added 10.

**The 2021 amendment by ch 35, § 1**, deleted “as well as the methodology used to establish the criteria” following “publicly available” in the third sentence of 10.

**The 2021 amendment by ch 802, § 2**, added 11.

**The 2022 amendment by ch 125, § 2**, in 11, deleted “the impact of any proposed plan, amendment or modification submitted pursuant to this section on” preceding “bicycle and pedestrian accessibility” in the first sentence, and deleted the second sentence, which read; “Such consideration shall be made in consultation with the Long Island rail road commuter’s council, the Metro-North rail commuter council and the New York city transit authority advisory council.”

**The 2022 amendment by ch 58, § 1 (Part LLL)**, added 2-a(c), 2-a(d), and 2-a(e).

## **Research References & Practice Aids**

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### **Cross References:**

This section referred to in §§ 1209, 1269-a, 1269-c.

### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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End of Document

## NY CLS Pub A § 1269-c

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### **§ 1269-c. Metropolitan transportation authority capital program review board; additional powers and duties**

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- a.** The metropolitan transportation authority capital program review board, consisting of voting and nonvoting members shall (1) monitor the progress of the capital elements described in each plan approved as provided in section twelve hundred sixty-nine-b of this title; (2) monitor the expenditures incurred and to be incurred for each such element; (3) identify capital elements not progressing on schedule; (4) ascertain responsibility therefor; and (5) recommend those actions required or appropriate to accelerate their implementation. The authority shall consult with the board upon its request and provide it with access to the records of the authority relating to such capital elements.
- b.** The authority shall submit to the review board within sixty days after the end of each calendar year (1) the actual commitments for the capital plan for the previous calendar year compared to planned commitments by capital element; (2) expenditures by funding source for each capital element in the previous calendar year; and (3) the proposed funding of capital elements in a plan for the current calendar year by funding source. Such submission shall be certified by the chairman of the authority and shall be entered into the permanent record of the minutes of the review board.
- c.** On or before October first, two thousand twenty-three, and on or before October first of every fifth year thereafter, the authority shall submit to the metropolitan transportation authority capital program review board a twenty-year capital needs assessment. Such assessment shall begin with the period commencing January first, two thousand twenty-five, and begin each assessment with every fifth year thereafter, and describe capital investments over the succeeding twenty years. Such assessment shall: (1) set forth broad long-term capital investments to be made throughout the district; and (2) establish a non-binding basis to be used by the authority in the planning of strategic investments involving capital elements in its five-year capital plans. Such assessment shall not require a vote of the metropolitan transportation authority capital program review board and shall be for informational purposes only. For purposes of this section, “broad long-term capital investments” shall include but not be limited to: system rebuilding, enhancement, and expansion needs; agency needs broken down by capital element or investment category; and projected future trends and network implications. Such assessment shall be certified by the chairman of the authority and shall be entered into the permanent record of the minutes of the review board.

### **History**

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Add, L 1981, ch 314, § 9; amd, L 1981, ch 558, § 7, eff June 29, 1981; L 1986, ch 929, § 31, eff Dec 31, 1986; L 2019, ch 59, § 1 (Part ZZZ, Subpart E), effective April 12, 2019.

Annotations



## Notes

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### Editor's Notes

**Laws 2019, ch 59, § 1 (Part ZZZ)**, eff April 12, 2019, provides:

§ 1. This act shall be known and may be cited as the “MTA reform and traffic mobility act”.

### Amendment Notes

The 2019 amendment by **ch 59, § 1 (Part ZZZ, Subpart E)**, added c.

## Research References & Practice Aids

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### Cross References:

This section referred to in § 1269-a.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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## NY CLS Pub A § 1269-d

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### **§ 1269-d. Submission of strategic operation plan**

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1. On or before July first nineteen hundred eighty-seven, the authority shall submit to the governor a strategic operation plan for the five year period commencing January first of the following year. One component of the plan shall be for the bus and subway services of the New York city transit authority and its subsidiaries and for the Staten Island rapid transit operating authority; the other component shall be for the commuter railroad services, not including the Staten Island rapid transit operating authority, under the jurisdiction of the authority. The plan may be amended as required but shall be updated at least annually. The plan shall include, but need not be limited to, the following:
  - a. Long-range goals and objectives for the operation of services and facilities;
  - b. Planned service and performance standards for each year of the period covered by the plan; including, in such plan submitted after July first, nineteen hundred eighty-eight, (a) standards for determining frequency of service at peak hours and off-peak hours, (b) frequency of service at peak and off-peak hours based on the application of such standards to the current period for each subway line, bus route or group of bus routes, and commuter rail lines, divisions or branches as appropriate, (c) projected performance for each subway line, bus route or group of bus routes, and commuter rail lines, divisions or branches as appropriate as measured by reliability indicators commonly utilized within the transit industry, including such measures as mean distance between failures for subway cars, planned number of vehicles with air conditioning and projected reliability of such equipment, planned standards for cleanliness of the interior and exterior of subway cars, commuter rail cars, buses, and passenger stations, and other appropriate measures of planned performance influencing the quality of services;
  - c. Level and structure of fares projected for each year of the period covered by the plan;
  - d. Estimated operating and capital resources anticipated to be available from internal sources as well as from federal, state, regional and local sources;
  - e. Estimated operating and capital costs to satisfy planned standards of performance and service;
  - f. Strategies to improve productivity; control cost growth; integrate and coordinate the delivery of services provided by the authority as well as other public and private transportation providers in the service area;
  - g. Specific allocation of operating and capital resources by mode and operation, including funds, personnel, and equipment;
  - h. Configuration by mode, operation and route of the services to be provided and the facilities to be operated, identifying major planned changes in services and routes; and
  - i. Identification of the operating and capital costs as compared to the revenues anticipated from system users for the metropolitan transportation authority and its subsidiaries and the New York city transit authority and its subsidiary.

- j. An analysis of the relationship between specific planned capital elements contained in approved capital program plans and the achievement of planned service and performance standards. Such analysis shall include the relationship of specific planned capital elements to the achievement of such service and performance standards for each subway line, bus route or group of bus routes, or commuter rail lines, divisions or branches as appropriate.
2. Each annual update of the plan shall include a status report summarizing the extent to which planned service and performance standards developed for the previous year were achieved, the causes of any failure to achieve projected standards of service, and corrective measures the authority intends to take to avoid non-achievement of projected standards in the next upcoming year.
3. The metropolitan transportation authority shall take into consideration any petitions from local officials for improved services, including how these service improvements relate to the service and performance standards described above, and shall consult with appropriate local officials in its preparation and periodic updates to the operation plan.

## History

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Add, L 1983, ch 427, § 3, eff July 11, 1983; amd, L 1986, ch 929, § 32, eff Dec 31, 1986.

Annotations

## Notes to Decisions

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Despite petitioners' claim that allocating all the cost savings in financial plan of the Metropolitan Transportation Authority (MTA) from one fiscal year to the next fiscal year, rather than to the next two fiscal years, would do away with the need to increase fare and toll increase in the next fiscal year, the MTA was not required to devise its budgets on a single-year basis; moreover, allocating savings to just one year appeared to run afoul of MTA's statutory obligation to establish five-year financial plans. *N.Y. Pub. Interest Research Group Straphangers Campaign, Inc. v Metro. Transp. Auth.*, 309 A.D.2d 127, 763 N.Y.S.2d 13, 2003 N.Y. App. Div. LEXIS 8336 (N.Y. App. Div. 1st Dep't), app. denied, 100 N.Y.2d 513, 767 N.Y.S.2d 394, 799 N.E.2d 617, 2003 N.Y. LEXIS 2540 (N.Y. 2003).

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

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# NY CLS Pub A § 1269-e

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## § 1269-e. Financial and operational reports

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The authority shall submit to the governor, the temporary president of the senate and the speaker of the assembly, no later than thirty days following the submission of the annual independent audit report pursuant to section twenty-eight hundred two of this chapter, a complete detailed report or reports setting forth, to the extent such matters are not fully addressed in the annual independent audit report, the following:

1. its financial reports, including:
  - a. audited financials in accordance with all applicable regulations and following generally accepted accounting principles as defined in subdivision ten of section two of the state finance law;
  - b. grant and subsidy programs;
  - c. operating and financial risks;
  - d. current ratings of its bonds issued by recognized municipal bond rating agencies and notice changes in such ratings; and
  - e. long-term liabilities, including leases and employee benefit plans; and
2. an assessment of the effectiveness of its internal control structure and procedures, including:
  - a. descriptions of the authority and its major units and subsidiaries;
  - b. the number of employees, and minority and women employees, for each;
  - c. an organizational chart;
  - d. its charter, if any and by-laws;
  - e. the extent of participation by minority and women owned enterprises in authority contracts and services in accordance with article fifteen-A of the executive law; and
  - f. a listing of material changes in internal operations and programs during the reporting year.

## History

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Add, L 2009, ch 25, § 13 (Part H), eff May 7, 2009 (see 2009 note below).

Annotations

## Notes

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**Editor's Notes:**

**Laws 2009, ch 25, § 1**, eff May 7, 2009, provides as follows:

- Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.
2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.
3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.
4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.
5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.
6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

## **Research References & Practice Aids**

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**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1269-f

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)***

## **§ 1269-f. Mission statement and measurement report**

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1. The authority shall submit to the governor, the temporary president of the senate and the speaker of the assembly, on or before October thirty-first, two thousand nine, a proposed authority mission statement and proposed measurements. The proposed mission statement and proposed measurements shall have the following components: a brief mission statement expressing the purpose and goals of the authority; a description of the stakeholders of the authority and their reasonable expectations from the authority, which stakeholders shall include at a minimum: the residents and taxpayers of the area of the state served by the authority, the persons that use the services provided by the authority, and the employees of the authority and any employee organization; the goals of the authority in response to the needs of each group of stakeholders; and a list of measures by which performance of the authority and the achievement of its goals may be evaluated.
2. The authority shall thereafter reexamine its mission statement and measurements on an annual basis, and publish on its website self evaluations based on the stated measures.

## **History**

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Add, L 2009, ch 25, § 13 (Part H), eff May 7, 2009 (see 2009 note below).

Annotations

## **Notes**

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### **Editor's Notes:**

**Laws 2009, ch 25, § 1**, eff May 7, 2009, provides as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1269-g

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## § 1269-g. Requirements for certain authority contracts and related subcontracts

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1. Any contractor or subcontractor subject to the posting requirements of paragraph a of subdivision three-a of section two hundred twenty of the labor law with respect to a public works contract of the authority shall:
  - (a) post information conforming to the provisions of subdivision two of this section in one or more conspicuous places at each major workplace site where persons who perform work on the contract or subcontract, including management, are most likely to see such postings; provided that, this requirement may be satisfied by the displaying of such information with other notices that inform persons of rights under federal or state laws or rules, human resource policies, or collective bargaining agreements;
  - (b) post information conforming to the provisions of subdivision two of this section on an internet and intranet website, if any, of that person or business organization; provided that, this requirement may be satisfied by providing on such website a conspicuous hyperlink to the authority website maintained pursuant to subdivision three of this section, which hyperlink shall be labeled "Protections for Reporting Fraud in New York";
  - (c) distribute information specified in subdivision two of this section to those persons, including employees and managers, who perform work on the contract; provided that, this requirement may be satisfied by distributing such information in an employee handbook or through a specific electronic communication containing the information to a known electronic mail address maintained by the person; and
  - (d) comply with the provisions of this subdivision, and provide to the authority satisfactory evidence of such compliance, within ninety days.
2. The disclosures required by subdivision one of this section shall:
  - (a) provide the telephone numbers and addresses to report information of fraud or other illegal activity to the appropriate officers of the inspector general of the authority and the attorney-general of the state;
  - (b) describe in detail conduct prohibited by section one hundred eighty-nine of the state finance law, and the role of that act in preventing and detecting fraud and abuse in work paid for by the authority or with funds originating from the authority;
  - (c) notify prospective qui tam plaintiffs on how to file a qui tam action, including the necessity to contact private counsel skilled in filing such actions and of the potential for cash rewards in such actions based on the percentage of the funds recovered by the government; and
  - (d) describe prohibitions on employer retaliation against persons who file or assist actions under article thirteen of the state finance law (the New York false claims act) pursuant to section one hundred



ninety-one of the state finance law, or who report illegal conduct that threatens the health or safety of the public pursuant to section seven hundred forty of the labor law.

3. No later than forty-five days after the effective date of this section, the authority shall establish and continuously maintain on its public website and its intranet site a page that shall provide the information specified in subdivision two of this section, and that shall also provide sample statements, displays and other materials suitable for insertion in employee handbooks or posting at workplaces or on websites that would satisfy the disclosure requirements of this section.
4. On and after the effective date of this section, the authority shall not enter into any contract described in subdivision one of this section that does not incorporate the terms of this section.
5. Material compliance by a covered person or business organization that has contracted with the authority under a contract that incorporates the terms of this section shall be a material condition of payment for the provision of goods or services.
6. The authority is authorized to adopt such rules and regulations as are necessary to effect the purposes of this section.

## History

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Add, L 2009, ch 25, § 13 (Part H), eff May 7, 2009 (see 2009 note below).

Annotations

## Notes

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### Editor's Notes:

**Laws 2009, ch 25, § 1**, eff May 7, 2009, provides as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request

that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1270

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## § 1270. Reserve funds and appropriations

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The authority may create and establish one or more reserve funds in accordance with agreements with bondholders, noteholders or the holders of other obligations of the authority and may pay into such reserve funds (a) any monies appropriated and made available by the state for the purposes of such funds, (b) any proceeds of sale of notes, bonds or other obligations to the extent provided in the resolution of the authority authorizing the issuance thereof, and (c) any other monies which may be made available to the authority for the purpose of such funds from any other source or sources. In lieu thereof, the authority may provide for the deposit therein of, or substitute for moneys on deposit therein, a liquidity or credit facility, surety bond or other similar agreement.

## History

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Add, L 1965, ch 324, § 3; amd, L 1976, ch 38, § 1, eff April 1, 1976; L 2000, ch 61, § 28 (Part O), eff May 15, 2000; L 2000 ch 61, § 28 (Part O), eff May 15, 2000; L 2000, ch 61, § 28 (Part O), eff May 15, 2000.

Annotations

## Notes

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### Repeal Notes:

[1976, ch 38] Former subdivision three of section twelve hundred seventy, repealed by this act, provided for the apportionment of state funds to the metropolitan transportation authority, for deposit in a debt service reserve fund of such amount as is certified by the chairman of the respective public authority or agency to the governor and the director of the budget as necessary to restore such debt service reserve fund to an amount equal to the amount provided therefor by the respective public authority or agency.

### Prior Law:

Former § 1270, add, L 1959, ch 789; renumbered § 1250, L 1965, ch 324, § 2, eff June 1, 1965.

Prior § 1270, add, L 1942, ch 12; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 412.

### Editor's Notes:

See 1965 note under Title 11.

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

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# NY CLS Pub A § 1270-a

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)***

## **§ 1270-a. Metropolitan transportation authority special assistance fund**

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1. The authority shall create and establish a fund to be known as the “metropolitan transportation authority special assistance fund” which shall be kept separate from and shall not be commingled with any other moneys of the authority. The special assistance fund shall consist of three separate accounts: (i) the “transit account”, (ii) the “commuter railroad account” and (iii) the “corporate transportation account”.

The authority shall make deposits in the transit account and the commuter railroad account of the moneys received by it pursuant to the provisions of subdivision one of section two hundred sixty-one of the tax law in accordance with the provisions thereof, and shall make deposits in the corporate transportation account of the moneys received by it pursuant to the provisions of subdivision two of section two hundred sixty-one of the tax law and section ninety-two-ff of the state finance law. The comptroller shall deposit, without appropriation, into the corporate transportation account the revenue fees, taxes, interest and penalties collected in accordance with paragraph (b-1) of subdivision two of section five hundred three of the vehicle and traffic law, paragraph (c-3) of subdivision two of section five hundred three of the vehicle and traffic law, article seventeen-C of the vehicle and traffic law, article twenty-nine-A of the tax law and section eleven hundred sixty-six-a of the tax law.

2. Moneys in the transit account may be pledged to the Triborough bridge and tunnel authority to secure bonds and notes and, if so pledged, shall be paid to the Triborough bridge and tunnel authority in such amounts and at such times as necessary to pay or to reimburse that authority for its payment of debt service and reserve requirements on that portion of special Triborough bridge and tunnel authority bonds and notes issued by that authority pursuant to section five hundred fifty-three-d of this chapter for transit projects undertaken for the New York city transit authority and its subsidiaries. Subject to the provisions of such pledge, any excess monies, or in the event there is no such pledge, any moneys in such account shall, at the direction of the metropolitan transportation authority, be (a) deposited into one or more funds or accounts and used as contemplated by section twelve hundred seventy-d of this title or (b) used for the payment of operating and capital costs of the New York city transit authority and its subsidiaries and the Staten Island rapid transit operating authority.

3. The authority shall transfer in nineteen hundred eighty-seven up to twenty million dollars of the moneys in the commuter railroad account to the suburban transportation fund in accordance with the terms of an agreement between the authority and the department of transportation with respect thereto, established herein, and pursuant to section eighty-eight-b of the state finance law. In subsequent years the authority shall transfer twenty million dollars of the moneys in the commuter railroad account to the suburban transportation fund in accordance with the terms of an agreement between the authority and the department of transportation with respect thereto, established herein, and pursuant to section eighty-eight-b of the state finance law.

In the event the transfer to the suburban transportation fund provided pursuant to this subdivision results in an operating deficit, as certified by the director of the division of the budget, in consultation with the authority, that portion of the deficit attributable to such transfer shall be appropriated from the general fund

to the authority for commuter railroad operating purposes, provided, however, that such appropriation shall not exceed twenty million dollars.

The remaining moneys in the commuter railroad account may be pledged to the Triborough bridge and tunnel authority to secure bonds and notes and, if so pledged, shall be paid to the Triborough bridge and tunnel authority in such amounts and at such times as necessary to pay or to reimburse that authority for its payment of debt service and reserve requirements on that portion of special Triborough bridge and tunnel authority bonds and notes issued by that authority pursuant to section five hundred fifty-three-d of this chapter for transportation facilities undertaken for the authority and its subsidiaries. Subject to the provisions of any such pledge, any excess monies, or in the event there is no such pledge, any moneys in such account shall, at the direction of the metropolitan transportation authority, be (a) deposited into one or more funds or accounts and used as contemplated by section twelve hundred seventy-d of this title or, (b) used for payment of operating and capital costs of the Long Island Rail Road company and the Metro-North commuter railroad company.

**4.**

**(a)** Moneys in the corporate transportation account shall first be used for payments to the metropolitan transportation authority Dutchess, Orange and Rockland fund established by section twelve hundred seventy-b of this title. The remaining moneys in the corporate transportation account may be pledged by the authority, or pledged to the Triborough bridge and tunnel authority, to secure bonds, notes or other obligations of the authority or the Triborough bridge and tunnel authority, as the case may be, and, if so pledged to the Triborough bridge and tunnel authority, shall be paid to the Triborough bridge and tunnel authority in such amounts and at such times as necessary to pay or to reimburse that authority for its payment of debt service and reserve requirements, if any, on that portion of special Triborough bridge and tunnel authority bonds and notes issued by that authority pursuant to section five hundred fifty-three-d of this chapter. Subject to the provisions of any such pledge, or in the event there is no such pledge, any excess moneys in the corporate transportation account may be used by the authority for payment of operating costs of, and capital costs, including debt service and reserve requirements, if any, of or for the authority, the New York city transit authority and their subsidiaries as the authority shall determine.

**(b)** Commencing in calendar year nineteen hundred eighty-nine, and in each subsequent year thereafter, the authority shall transfer in four equal quarterly amounts from the corporate transportation account to the metropolitan transportation authority Dutchess, Orange and Rockland fund created by section twelve hundred seventy-b of this title the following amounts: to the Dutchess account of such fund the sum of one million five hundred thousand dollars; to the Orange account of such fund the sum of one million five hundred thousand dollars; and to the Rockland account of such fund the sum of two million dollars.

**(c)** Commencing in calendar year nineteen hundred ninety, and each year thereafter, the authority shall transfer from the corporate transportation account to the Dutchess account, the Orange account and the Rockland account, respectively, an amount equal to the percent by which such county's payments to the authority in the preceding calendar year pursuant to the provisions of subdivisions one and two of section two hundred sixty-one of the tax law increased over such payments in nineteen hundred eighty-nine times one million five hundred thousand dollars for Dutchess county, one million five hundred thousand dollars for Orange county and two million dollars for Rockland county; provided, however, that in no event shall such amount reduce the amount that each county would receive pursuant to paragraph (b) of this subdivision be reduced by operation of this paragraph, and provided further, however, for purposes of calculating the percent by which such county's payments to the authority in the preceding calendar year pursuant to the provisions of subdivisions one and two of section two hundred sixty-one of the tax law increased over such payments in nineteen hundred eighty-nine, there shall be excluded the amount by which the payments in each such year increased as a result of the recording tax imposed pursuant to the provisions of subdivision one of section two hundred sixty-one of the tax law being in excess of twenty-five cents for each one hundred dollars.

**(d)**

**(1)** In the event the county of Dutchess, the county of Orange or the county of Rockland withdraws from the metropolitan transportation district, the authority shall not transfer from the corporate transportation account to the metropolitan transportation authority Dutchess, Orange and Rockland fund that portion of the moneys that would otherwise be transferred from such account to such fund to the credit of such withdrawing county or counties.

**(2)** For purposes of this subdivision, a county is deemed to have withdrawn if a resolution is adopted and filed by the county legislature of such county providing a public transportation plan pursuant to section twelve hundred seventy-nine-b of this title.

**(e)** Notwithstanding the foregoing provisions of this subdivision, any moneys in the corporate transportation account that are received by the authority: (i) without appropriation pursuant to subdivision one of this section, or (ii) pursuant to the provisions of section ninety-two-ff of the state finance law may be pledged by the authority, or pledged to the Triborough bridge and tunnel authority, to secure bonds, notes or other obligations of the authority or the Triborough bridge and tunnel authority, as the case may be, and, if so pledged to the Triborough bridge and tunnel authority, shall be paid to the Triborough bridge and tunnel authority in such amounts and at such times as necessary to pay or to reimburse that authority for its payment of debt service and reserve requirements, if any, on that portion of special Triborough bridge and tunnel authority bonds and notes issued by that authority pursuant to section five hundred fifty-three-d of this chapter. Subject to the provisions of any such pledge, or in the event there is no such pledge, any moneys in the corporate transportation account received by the authority: (i) without appropriation pursuant to subdivision one of this section, or (ii) pursuant to the provisions of section ninety-two-ff of the state finance law may be used by the authority for payment of operating costs of, and capital costs, including debt service and reserve requirements, if any, of or for the authority, the New York city transit authority and their subsidiaries as the authority shall determine. No moneys in the corporate transportation account that are reserved by the authority: (i) without appropriation pursuant to subdivision one of this section; or (ii) pursuant to the provisions of section ninety-two-ff of the state finance law may be used for making any payment to the Dutchess, Orange and Rockland fund created by section twelve hundred seventy-b of this title or considered in calculating the amounts required to be paid into such fund.

## History

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Add, L 1987, ch 13, § 2; amd, L 1988, ch 65, § 1, eff April 24, 1988; L 2000, ch 61, § 29 (Part O), eff May 15, 2000; L 2005, ch 61, § 1-a (Part X) (amd, L 2005, ch 63, § 2 (Part A), eff June 1, 2005), eff June 1, 2005; L 2009, ch 14 (Part H), eff May 7, 2009; L 2009, ch 25, §§ 14, 15 (Part H), eff May 7, 2009; L 2019, ch 58, § 7 (Part FF), effective April 12, 2019.

Annotations

## Notes

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### Editor's Notes:

**Laws 2009, ch 25, § 1**, eff May 7, 2009, provides as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.
3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.
4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.
5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.
6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

**Amendment Notes:**

**2009.** Chapter 25, § 14 (part h) amended:

Par by deleting “such”.

**The 2019 amendment by ch 58, § 7 (Part FF)**, added the second sentence of the second paragraph of 1; and in 4(e), substituted “authority: (i) without appropriation pursuant to subdivision one of this section, or (ii) pursuant to the provisions” for “authority pursuant to the provisions” three times in 4(e).

## **Research References & Practice Aids**

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**Cross References:**

This section referred to in § 553-d; CLS St Fin § 88-b; CLS Tax § 261.

Special Triborough bridge and tunnel authority special obligation bonds and notes, § 553-d.

Suburban transportation fund, CLS St Fin § 88-b.

Payment over and distribution of taxes, CLS Tax § 261.

**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11



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# NY CLS Pub A § 1270-b

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## § 1270-b. Metropolitan transportation authority Dutchess, Orange and Rockland fund

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1. The authority shall create and establish a fund to be known as the “metropolitan transportation authority Dutchess, Orange and Rockland fund” which shall be kept separate from and shall not be commingled with any other moneys of the authority. The Dutchess, Orange and Rockland fund shall consist of three separate accounts: (i) the “Dutchess account”; (ii) the “Orange account”; and (iii) the “Rockland account”.
2. The metropolitan transportation authority Dutchess, Orange and Rockland fund shall consist of moneys transferred by the authority pursuant to subdivision four of section twelve hundred seventy-a of this title.
3. Moneys in the Dutchess account, the Orange account, and the Rockland account shall on a quarterly basis be (i) paid to the counties of Dutchess, Orange and Rockland, respectively, for the purposes of providing mass transportation operating assistance, including debt service on bonds or notes issued for such purposes, or for providing the following types of capital projects within such county: capacity and infrastructure improvements to state, county, town, city, village roads, highways, parkways or bridges; or state, county, town, city, village mass transportation projects; or (ii) transferred to the suburban transportation fund pursuant to a resolution, which is irrevocable during the term of any outstanding bonds or notes issued, adopted by the county legislature of Dutchess county, the county legislature of Orange county or the county legislature of Rockland county directing the authority to make all such future transfers of funds from its respective account to the suburban transportation fund. The first quarterly payment or transfer shall occur during the quarter beginning January first, nineteen hundred eighty-nine.

## History

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Add, L 1988, ch 65, § 2, eff April 24, 1988; amd, L 2003, ch 460, § 1, eff Sept 9, 2003 (see 2003 note below).

Annotations

## Notes

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### Editor’s Notes:

**Laws 2003, ch 460, § 2**, eff Sept 9, 2003, provides as follows:

§ 2. This act shall take effect immediately; provided, however, that the provisions of this act shall remain in full force and effect until one year after such effective date when upon such date the provisions of this act shall revert to and be read as set out in law on the date immediately preceding the effective date of this act.

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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## NY CLS Pub A § 1270-c

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***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)***

### **§ 1270-c. Metropolitan transportation authority dedicated tax fund**

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1. The authority shall establish a fund to be known as the “metropolitan transportation authority dedicated tax fund” which shall be kept separate from and shall not be commingled with any other moneys of the authority. The fund shall consist of a “pledged amounts account” and an “operating and capital costs account” and such other accounts and subaccounts as the authority may determine.
2. There shall be deposited, pursuant to appropriation, into the fund the moneys deposited in the dedicated mass transportation trust fund for payment to the metropolitan transportation authority dedicated tax fund pursuant to the provisions of subdivision (d) of section three hundred one-j of the tax law, and any other moneys collected for or transferred to such fund pursuant to section eighty-eight-a of the state finance law and any other provision of law directing or permitting the deposit of moneys in such fund.
3. Moneys in the fund may be (a) pledged by the authority to secure and be applied to the payment of its bonds, notes or other obligations specified by the authority and issued to finance (i) transit projects undertaken for the New York city transit authority and its subsidiaries and (ii) transportation facilities undertaken for the authority and its subsidiaries and (b) used for payment of operating costs, and capital costs, including debt service, reserve requirements, if any, the payment of amounts required under bond and note facilities or agreements related thereto, the payment of federal government loans, security or credit arrangements or other agreements related thereto, and the payment of all costs related to such obligations, of or for the authority, the New York city transit authority and their subsidiaries as the authority shall determine. To the extent moneys in the fund have been pledged by the authority to secure and pay its bonds, notes or other obligations as herein provided, moneys deposited into the fund shall first be deposited into the pledged amounts account to the extent necessary to satisfy the requirements of any debt service or reserve requirements, if any, of the resolution authorizing such bonds, notes or other obligations. After satisfaction of such requirements of the resolution, or if the authority has not so pledged the moneys in the fund, moneys deposited in the fund shall be directly deposited into the operating and capital costs account and, subject to the provisions of any resolutions of the authority not secured by the pledged amounts account, transferred forthwith to or for the benefit of the New York city transit authority and its subsidiaries and the Staten Island rapid transit operating authority (the “TA”) and to and for the benefit of the Long Island Rail Road company and the Metro-North commuter rail road company (the “CRR”) as provided in this section.

Moneys in the operating and capital costs account which were deposited in the fund pursuant to appropriation from moneys deposited in the dedicated mass transportation trust fund for payment to the metropolitan transportation authority dedicated tax fund pursuant to subdivision (d) of section three hundred one-j of the tax law (the “remaining PBT amount”) shall be distributed by the authority as follows: an amount equal to the debt service incurred in such calendar year as a result of obligations issued and secured by moneys in the fund, to the extent such debt service is to be paid from money deposited in the fund pursuant to appropriation from moneys deposited in the dedicated mass transportation trust fund for payment to the metropolitan transportation authority dedicated tax fund pursuant to subdivision (d) of section three hundred

one-j of the tax law ("PBT debt service"), shall be added to the remaining PBT amount. The sum of these figures shall then be allocated as follows: eighty-five per centum of such sum shall be allocated to the TA and fifteen per centum of such sum shall be allocated to the CRR. The amounts so allocated shall then be reduced respectively by the proportional amount of PBT debt service attributable to the payments for transit projects undertaken for the TA and transportation facility projects undertaken for the CRR. The remaining amounts shall constitute the respective distributable shares of the remaining PBT amount and shall be distributed to or for the benefit of the TA and the CRR.

Moneys in the operating and capital costs account which were deposited in the fund pursuant to section eighty-eight-a of the state finance law (the "remaining MMTOA amount") shall be distributed by the authority as follows: an amount equal to the debt service incurred in such calendar year as a result of obligations issued and secured by money in the fund, to the extent such debt service is to be paid from money deposited in the fund pursuant to section eighty-eight-a of the state finance law ("MMTOA debt service"), shall be added to the remaining MMTOA amount. The sum of these figures shall then be allocated as follows: there shall be allocated (i) to the TA an amount of such sum which bears the same proportion to such sum as the amount appropriated and paid during such calendar year from the metropolitan mass transportation operating assistance account to the authority for the operating expenses of the TA bears to the total amounts so appropriated and paid from such operating assistance account during such calendar year to the TA and CRR combined and (ii) to the CRR an amount of such sum which bears the same proportion to such sum as the amount appropriated and paid during such calendar year from the metropolitan mass transportation operating assistance account to the CRR bears to the total amounts so appropriated and paid from such operating assistance account during such calendar year to the TA and CRR combined. The amounts so allocated shall then be reduced respectively by the proportional amount of MMTOA debt service attributable to the payments for transit projects undertaken for the TA and transportation facility projects undertaken for the CRR. The remaining amounts shall constitute the respective distributable shares of the remaining MMTOA amount and shall be distributed to or for the benefit of the TA and the CRR. In no event shall the authority utilize any measure or calculation for determining such distributable shares other than the formula prescribed herein nor shall the authority take any action which would result in the use of such money which is different from or inconsistent with the use prescribed in this section.

To the extent that amounts described in the preceding two paragraphs are distributed more frequently than annually, each such distribution shall be made as nearly as may be practicable in accordance with the allocations described above to the TA and the CRR. Within thirty days after the end of each calendar year, the authority shall certify to the director of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee, the amount of money deposited in the fund pursuant to appropriation from moneys deposited in the dedicated mass transportation trust fund for payment to the metropolitan transportation authority dedicated tax fund pursuant to subdivision (d) of section three hundred one-j of the tax law and section eighty-eight-a of the state finance law, the amounts expended from the pledged amounts account for the benefit of the TA and the CRR, and the amounts of the remaining PBT amount and the remaining MMTOA amount distributed during the prior calendar year to the TA and the CRR and specifying in each case the appropriation or appropriations which was the source of such amounts.

4. Any money deposited in the fund shall be held in the fund free and clear of any claim by any person arising out of or in connection with article thirteen-A of the tax law. Without limiting the generality of the foregoing and without limiting the rights and duties of the commissioner of taxation and finance under article thirteen-A of the tax law, no petroleum business, as defined in section three hundred of the tax law, or any other person, including the state, shall have any right or claim against the authority, any of its bondholders, the TA or the CRR to any moneys in or distributed from the fund or in respect of a refund, rebate, credit or reimbursement of taxes paid under article thirteen-A of the tax law.

## History

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Add, L 1993, ch 56, § 7, eff April 15, 1993; amd, L 2000, ch 61, § 30 (Part O), eff May 15, 2000.

Annotations

## Notes to Decisions

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By asserting voter standing, plaintiffs' only cognizable challenge to statute authorizing bond issue for state and local transportation improvements (L 1993, ch 56) was under CLS NY Const Art VII § 11 (constitutional mandate that state contracts for debt be submitted for public referendum); thus, plaintiffs lacked standing to challenge statute under CLS NY Const Art VII § 8 (lending of credit to public corporations) and CLS NY Const Art X § 5 (assumption of liability of debt obligation of public corporations). *Schulz v State*, 84 N.Y.2d 231, 616 N.Y.S.2d 343, 639 N.E.2d 1140, 1994 N.Y. LEXIS 1430 (N.Y. 1994), reh'g denied, 84 N.Y.2d 851, 617 N.Y.S.2d 140, 641 N.E.2d 161, 1994 N.Y. LEXIS 2637 (N.Y. 1994), cert. denied, 513 U.S. 1127, 115 S. Ct. 936, 130 L. Ed. 2d 881, 1995 U.S. LEXIS 758 (U.S. 1995).

Statute authorizing bond issue for state and local transportation improvements (L 1993, ch 56) imposed no moral obligation on state to continue appropriations or to be liable to bondholders, and thus statute did not violate referendum requirement of CLS NY Const Art VII § 11, since bonds are not labelled "moral obligation bonds" by legislature, statute requires statement on face of bonds that they are not debt of state and are payable only out of funds of issuing public benefit corporations, and statute disavows existence of moral obligation on part of state to appropriate revenues in future. *Schulz v State*, 84 N.Y.2d 231, 616 N.Y.S.2d 343, 639 N.E.2d 1140, 1994 N.Y. LEXIS 1430 (N.Y. 1994), reh'g denied, 84 N.Y.2d 851, 617 N.Y.S.2d 140, 641 N.E.2d 161, 1994 N.Y. LEXIS 2637 (N.Y. 1994), cert. denied, 513 U.S. 1127, 115 S. Ct. 936, 130 L. Ed. 2d 881, 1995 U.S. LEXIS 758 (U.S. 1995).

Statute authorizing bond issue for state and local transportation improvements (L 1993, c 56) does not create "debt" for which state would be liable, even though state might make appropriations to bond funds to be used in turn to service debt of public benefit corporations (Thruway Authority and Metropolitan Transportation Authority) which would provide such improvements, since (1) state is not bound to make such appropriations, (2) statute explicitly exempts state from liability to bondholders should it fail to make appropriations and should corporations default, and (3) because state does not become indebted, financing subject to appropriation does not constitute lending of credit or assumption of liability of public corporation, or indebtedness of state for purposes of constitutional limits on such debt; instead, such funds, if appropriated, constitute permissible gift of money to public corporations out of existing revenues, creating no debt. *Schulz v State*, 84 N.Y.2d 231, 616 N.Y.S.2d 343, 639 N.E.2d 1140, 1994 N.Y. LEXIS 1430 (N.Y. 1994), reh'g denied, 84 N.Y.2d 851, 617 N.Y.S.2d 140, 641 N.E.2d 161, 1994 N.Y. LEXIS 2637 (N.Y. 1994), cert. denied, 513 U.S. 1127, 115 S. Ct. 936, 130 L. Ed. 2d 881, 1995 U.S. LEXIS 758 (U.S. 1995).

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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## NY CLS Pub A § 1270-d

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)***

### **§ 1270-d. Consolidated financings**

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1. Notwithstanding any inconsistent provisions of this or any other law, general, special or local, the authority may issue its notes, bonds and other obligations to finance transportation facilities, including transit projects and Triborough bridge and tunnel authority projects, utilizing a consolidated pledge of all or any portion of the revenues and other monies and assets of the authority and its subsidiaries, New York city transit authority and its subsidiaries, and Triborough bridge and tunnel authority, together with those other sources of payment described in this section. In connection therewith, at its discretion, the authority, subject to the rights of the holders of notes, bonds or other obligations of the authority, New York city transit authority or Triborough bridge and tunnel authority, may (a) agree with the New York city transit authority or Triborough bridge and tunnel authority that any such entity will deposit all or any portion of the revenues, other monies and assets received by it or its subsidiaries into one or more funds or accounts, and (b) deposit or cause to be deposited into one or more funds and accounts (i) all or any portion of the revenues, other monies and assets received by the authority and its subsidiaries, (ii) all or any portion of the annual operating surplus of Triborough bridge and tunnel authority as certified pursuant to paragraph (b) of subdivision two of section twelve hundred nineteen-a of this article, (iii) all or any portion of the amounts from the operating and capital costs account of the metropolitan transportation authority dedicated tax fund required to be distributed to New York city transit authority and the commuter railroad subsidiaries of the authority under the provisions of section twelve hundred seventy-c of this title, (iv) all or any portion of the available monies in the transit account of the metropolitan transportation authority special assistance fund established under the provisions of section twelve hundred seventy-a of this title available for payment of operating and capital costs of New York city transit authority and its subsidiaries and Staten Island rapid transit operating authority as provided in subdivision two of section twelve hundred seventy-a of this title, (v) all or any portion of the available monies in the commuter railroad account of the metropolitan transportation authority special assistance fund established under the provisions of section twelve hundred seventy-a of this title available for payment of operating and capital costs of Long Island Rail Road company and Metro-North commuter railroad company as provided in subdivision three of section twelve hundred seventy-a of this title, (vi) all or any portion of the available monies in the corporate transportation account of the metropolitan transportation authority special assistance fund established under the provisions of section twelve hundred seventy-a of this title available for use by the authority for payment of operating costs of, and capital costs, including debt service and reserve requirements, if any, of or for the authority, the New York city transit authority and their subsidiaries as provided in paragraph (a) of subdivision four of section twelve hundred seventy-a of this title, and (vii) any other monies of the authority, its subsidiaries, the New York city transit authority and its subsidiaries, and the Triborough bridge and tunnel authority from any source whatsoever.

2. Amounts so deposited in such funds or accounts may be (a) pledged by the authority to secure, and be applied to, the payment of its bonds, notes or other obligations issued to finance transportation facilities undertaken for the authority and its subsidiaries, transportation facilities, including transit projects, undertaken for New York city transit authority and its subsidiaries, and Triborough bridge and tunnel

authority projects undertaken for Triborough bridge and tunnel authority, and (b) used for payment of operating costs, and capital costs, including debt service, reserve requirements, if any, the payment of amounts required under bond, note or other financing facilities or agreements, and the payment of all costs related to such obligations, of or for the authority and its subsidiaries, and the New York city transit authority and its subsidiaries as the authority in its full discretion shall determine. To the extent moneys so deposited have been pledged by the authority to secure and pay its bonds, notes or other obligations as herein provided, such moneys shall first be applied to satisfy the requirements of any debt service or reserve requirements of the resolution or resolutions or other contractual arrangements authorizing such bonds, notes or other obligations. After satisfaction of such requirements of any such resolution, resolutions, or other contractual arrangements or if the authority has not so pledged such moneys, such moneys so deposited, subject to the provisions of any other resolutions or contractual arrangements of the authority and the New York city transit authority and applicable provisions of law, may be transferred to or for the benefit of the authority and its subsidiaries and New York city transit authority and its subsidiaries. Revenues and other monies of the authority and its subsidiaries and New York city transit authority and its subsidiaries, respectively, which are deposited in the funds or accounts authorized by this section, as reduced by any application of such revenues or monies to the payment of debt service, reserve requirements, if any, and other costs attributable to the funding of the capital costs of such entity, shall be allocated, credited and distributed to such source entity. Any other revenues or monies which are deposited in the funds or accounts authorized by this section which are required by law to be allocated or paid to the authority or its subsidiaries or New York city transit authority or its subsidiaries, shall be allocated or paid to the entity to which it is required to be allocated or paid by law after reduction by an amount equal to the portion thereof applied to the payment of debt service, reserve requirements, if any, and other costs attributable to the funding of the capital costs of such entity. In determining the amount of debt service, reserve requirements, if any, and other costs attributable to the authority and its subsidiaries and the New York city transit authority and its subsidiaries, the authority shall make such calculation based upon the percentage of the proceeds of the bonds, notes and other obligations expended for the capital costs attributable to each such entity. The authority may utilize any interim allocation of such distributions, provided that within ninety days after the end of each calendar year, the authority shall certify to the director of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee, that the aggregate amount of monies transferred to each of the authority and its subsidiaries, and New York city transit authority and its subsidiaries in respect of such calendar year, taking into account any interagency repayments or reimbursements anticipated to be made in the next succeeding calendar year, is not less than the amounts required to be paid or transferred to such entities.

**3.** For the purpose of appropriately aligning and allocating the ultimate responsibility for debt service among and between the authority and its subsidiaries, New York city transit authority and its subsidiaries, or Triborough bridge and tunnel authority (each, an “affiliated group”), and except as otherwise authorized or required by law, in connection with the application of revenues, subsidies or other monies or securities of an affiliated group to pay the debt service attributable to bonds, notes or other obligations which provide funding of the capital costs of another affiliated group or to refund or redeem bonds, notes or other obligations the proceeds of which were used to fund the capital costs of another affiliated group, the affiliated group for whose benefit debt service is paid or obligations refunded or redeemed, shall repay, through payments, adjustments or other form of reconciliation, such amounts to the affiliated group that made such payments not later than the end of the next succeeding fiscal year, provided, however, that in connection with any refunding or redemption of bonds, notes or other obligations, such repayment, adjustments or other form of reconciliation shall be completed within the period of the applicable capital program plan.

## History

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Annotations

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

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## NY CLS Pub A § 1270-e

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*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

### § 1270-e. [See History below:] Implementation of the Transportation Infrastructure Bond Act of 2000

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1. In accordance with the provisions of the Transportation Infrastructure Bond Act of 2000 authorizing the creation of general obligation debt in the amount of three billion eight hundred million dollars (\$3,800,000,000), the moneys received by the state from the sale of the bonds and/or notes shall be expended for uses eligible pursuant to the Transportation Infrastructure Bond Act of 2000 pursuant to annual appropriations as follows:
  - (a) One billion nine hundred million dollars (\$1,900,000,000) as authorized by paragraph (a) of subdivision two of section four hundred seventy of the transportation law;
  - (b) Three hundred million dollars (\$300,000,000) as authorized by paragraph (b) of subdivision two of section four hundred seventy of the transportation law; and
  - (c) One billion six hundred million dollars (\$1,600,000,000) as authorized by subdivision two of this section.
2. One billion six hundred million dollars of moneys received by the state from the sale of bonds and/or notes sold pursuant to the Transportation Infrastructure Bond Act of 2000 for uses eligible pursuant to subdivision c of section four of the Transportation Infrastructure Bond Act of 2000 shall be expended pursuant to annual appropriations for the construction, reconstruction, replacement, improvement, reconditioning, rehabilitation and preservation including engineering, construction management, the preparation of designs, plans, specifications, estimates, environmental impact statements, appraisals and surveys, and the acquisition of real property and interests therein and site preparation and clearances, required or expected to be required in connection therewith, of urban and commuter passenger and freight rail, omnibus, mass transit and rapid transit systems, facilities and equipment, including acquisition, and including the full-length Second Avenue subway and the Long Island Rail Road East-Side access project, all of which are capital elements described in the two thousand—two thousand four capital program plans approved by the metropolitan transportation authority capital program review board.
3. All actions taken by the authority in connection with the receipt and expenditure of moneys received from the state from the sale of bonds pursuant to the Transportation Infrastructure Bond Act of 2000 shall be reviewed for consistency with provisions of the federal internal revenue code and regulations thereunder, in accordance with procedures established in connection with the issuance of any such tax exempt bonds, to preserve the tax exempt status of such bonds.

### History

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Add, L 2000, ch 61, § 2 (Part N), not effective due to defeat of the Transportation Bond Act of 2000.

Annotations

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

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# NY CLS Pub A § 1270-f

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## § 1270-f. Implementation of the rebuild and renew New York transportation bond act of two thousand five

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1. In accordance with the provisions of the rebuild and renew New York transportation bond act of two thousand five authorizing the creation of general obligation debt in the amount of two billion nine hundred million dollars (\$2,900,000,000), the moneys received by the state from the sale of the bonds and/or notes shall be expended for uses eligible pursuant to the rebuild and renew New York transportation bond act of two thousand five pursuant to annual appropriations as follows:

(a) One billion four hundred fifty million dollars (\$1,450,000,000) as authorized by subdivision two of section four hundred eighty of the transportation law;

(b) One billion four hundred fifty million dollars (\$1,450,000,000) as authorized by subdivision two of this section.

2. One billion four hundred fifty million dollars (\$1,450,000,000) of moneys received by the state from the sale of bonds and/or notes sold pursuant to the rebuild and renew New York transportation bond act of two thousand five for uses eligible pursuant to subdivision b of section four of the rebuild and renew New York transportation bond act of two thousand five shall be expended pursuant to annual appropriations for the construction, reconstruction, replacement, improvement, reconditioning, rehabilitation and preservation including engineering, construction, management, the preparation of designs, plans, specifications, estimates, environmental impact statements, appraisals and surveys, and the acquisition of real property and interests therein and site preparation and clearances, required or expected to be required in connection therewith, of urban and commuter passenger and freight rail, omnibus, mass transit and rapid transit systems, facilities and equipment, including acquisition, all of which are capital elements described in the two thousand five–two thousand nine capital program plans as submitted to and approved by the metropolitan transportation authority capital program review board, whether before, on, or after the effective date of the chapter of the laws of two thousand five which added this section.

3. All actions taken by the authority in connection with the receipt and expenditure of moneys received from the state from the sale of bonds pursuant to the rebuild and renew New York transportation bond act of two thousand five shall be reviewed for consistency with provisions of the federal internal revenue code and regulations thereunder, in accordance with procedures established in connection with the issuance of any such tax exempt bonds, to preserve the tax exempt status of such bonds.

## History

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Add, L 2005, ch 60, § 2 (Part A), eff Nov 8, 2005 (see 2005 note below).

Annotations

## Notes

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### Editor's Notes:

**Laws 2005, ch 60, § 11 (Part A)**, effective as stated below:

§ 11. This act shall take effect only in the event that a chapter of the laws of 2005 entitled "AN ACT authorizing the creation of a state debt to the amount of two billion nine hundred million dollars, in relation to creating the rebuild and renew New York transportation bond act of 2005, to provide monies for the improvement, enhancement, preservation and restoration of the quality of the state's transportation infrastructure, and providing for the submission to the people of a proposition or question therefor to be voted upon at the general election in November 2005" is approved. Upon such approval, this act shall take effect immediately. Effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the implementation of the foregoing sections of this act are authorized and directed to be made and completed on or before such effective date. [The Rebuild and Renew New York Transportation Bond Act of 2005 was approved by the electorate at the general election held in November 2005.].

## Research References & Practice Aids

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# NY CLS Pub A § 1270-g

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## § 1270-g. Regulation of certain authority expenditures

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The authority shall implement policies as appropriate to minimize unwarranted expenses and to protect against abuses in connection with (i) the granting of any privileges or benefits having financial value, other than wage payments or expense reimbursements, to members or staff of the authority, or any subsidiary or other authority created by the authority; and (ii) the full-time and part-time assignment and use of automobiles owned or leased by the authority, or any subsidiary or other authority created by the authority, and the use by authority employees and board members of livery vehicles, as defined in section one hundred twenty-one-e of the vehicle and traffic law.

### History

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Add, L 2009, ch 25, § 16 (Part H), eff May 7, 2009 (see 2009 note below).

Annotations

### Notes

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#### Editor's Notes:

**Laws 2009, ch 25, § 1**, eff May 7, 2009, provides as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

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# NY CLS Pub A § 1270-h

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## **§ 1270-h. Metropolitan transportation authority finance fund**

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1. The authority shall establish a fund to be known as the “metropolitan transportation authority finance fund” which shall be kept separate from and shall not be commingled with any other moneys of the authority.
2. The comptroller shall deposit into the metropolitan transportation authority finance fund (a) monthly, pursuant to appropriation, the moneys deposited in the mobility tax trust account of the metropolitan transportation authority financial assistance fund pursuant to any provision of law directing or permitting the deposit of moneys in such fund, and (b) without appropriation, the revenue including taxes, interest and penalties collected in accordance with article twenty-three of the tax law.
3. Moneys in the fund may be (a) pledged by the authority to secure and be applied to the payment of the bonds, notes or other obligations of the authority issued on or after the effective date of this section to finance capital projects of the authority and its subsidiaries and the New York city transit authority and any subsidiaries; or (b) used for payment of capital costs, including debt service, reserve requirements, if any, the payment of amounts required under bond and note facilities or agreements related thereto, the payment of federal government loans, security or credit arrangements or other agreements related thereto, and the payment of all costs related to such obligations, of or for the authority, the New York city transit authority and their subsidiaries as the authority shall determine. Subject to the provisions of any such pledge, or in the event there is no such pledge, any excess moneys in this fund may be used by the authority for payment of operating costs of, and capital costs, including debt service and reserve requirements, if any, of or for the authority, the New York city transit authority and their subsidiaries as the authority shall determine. To the extent moneys in the fund have been pledged by the authority to secure and pay the bonds, notes or other obligations of the authority issued to finance capital projects of the authority and its subsidiaries and the New York city transit authority and any subsidiaries as herein provided, monies deposited into the fund shall be deposited to the extent necessary to satisfy the requirements of any debt service or reserve requirements, if any, of the resolution authorizing such bonds, notes or other obligations.
4. Any monies deposited in the fund shall be held in the fund free and clear of any claim by any person arising out of or in connection with article twenty-three of the tax law. Without limiting the generality of the foregoing and without limiting the rights and duties of the commissioner of taxation and finance under article twenty-three of the tax law, no entity paying a mobility tax under article twenty-three of the tax law shall have any right or claim against the authority, any of their bondholders, any of the authority’s other subsidiaries or the New York city transit authority or any subsidiary to any moneys in or distributed from the fund or in respect of a refund, rebate, credit or reimbursement of taxes paid under article twenty-three of the tax law.

## **History**

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Add, L 2009, ch 25, § 16 (Part H), eff May 7, 2009 (see 2009 note below); L 2018, ch 59, § 13 (Part UU), effective April 1, 2018.

Annotations

## Notes

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### Editor's Notes:

**Laws 2009, ch 25, § 1**, eff May 7, 2009, provides as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

### Amendment Notes

**The 2018 amendment by ch 59, § 13 (Part UU)**, in 2, added "into the metropolitan transportation authority finance fund (a)," deleted "into the metropolitan transportation authority finance fund" preceding "the moneys deposited," substituted "any provision of law" for "article twenty-three of the tax law, and any other provision of law" and added "and (b) without appropriation, the revenue including taxes, interest and penalties collected in accordance with article twenty-three of the tax law."

## Research References & Practice Aids

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### Hierarchy Notes:

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# NY CLS Pub A § 1270-i

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## **§ 1270-i. New York city transportation assistance fund.**

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1. The authority shall create and establish a fund to be known as the “New York city transportation assistance fund” which shall be kept separate from and shall not be commingled with any other moneys of the authority. The New York city transportation assistance fund shall consist of three separate accounts: (i) the “subway action plan account”; (ii) the “outer borough transportation account”; and (iii) the “general transportation account”. The authority shall make deposits in the subway action plan account of the moneys received by it pursuant to the provisions of subdivision (c) of section twelve hundred ninety-nine-H of the tax law in accordance with the provisions thereof, shall make deposits in the outer borough transportation account of the moneys received by it pursuant to the provisions of subdivision (d) of section twelve hundred ninety-nine-H of the tax law in accordance with the provisions thereof, and shall make deposits in the general transportation account of the moneys received by it pursuant to the provisions of subdivision (e) of section twelve hundred ninety-nine-H of the tax law in accordance with the provisions thereof, and pursuant to the provisions of section eleven hundred eleven-C of vehicle and traffic law.
2. Moneys in the subway action plan account shall be used for the exclusive purpose of funding the operating and capital costs of the metropolitan transportation authority’s New York city subway action plan. Such funds may be used for infrastructure including construction, reconstruction, reconditioning and preservation of transportation systems, facilities and equipment, acquisition of property, and for operating costs including personal services, non-personal services, fringe benefits, and contractual services. Funds may also be used to pay or to reimburse the authority for its payment of debt service and reserve requirements on that portion of authority bonds and notes issued by the authority for capital costs of the metropolitan transportation authority’s New York city subway action plan.
3. Moneys in the outer borough transportation account shall be used for the exclusive purpose of funding the operating and capital costs of metropolitan transportation authority facilities, equipment and services in the counties of Bronx, Kings, Queens and Richmond, and any projects improving transportation connections from such counties to New York County. Such funds may be used for infrastructure including construction, reconstruction, reconditioning and preservation of transportation systems, facilities and equipment, acquisition of property, and for operating costs including personal services, non-personal services, fringe benefits, and contractual services. Funds may also be used to fund a toll reduction program for any crossings under the jurisdiction of the metropolitan transportation authority or its subsidiaries or affiliates. Funds may also be used to pay or to reimburse the authority for its payment of debt service and reserve requirements on that portion of authority bonds and notes that have been issued by the authority specifically for the authorized purpose of this account. Notwithstanding any law to the contrary, final approval of the use of any funds paid into the outer borough transportation account shall be unanimously approved by three members of the Metropolitan Transportation Authority Capital Program Review Board, established pursuant to section twelve hundred sixty-nine-a of this title so designated pursuant to this subdivision. For purposes of such final approvals the three voting members are: the member appointed upon recommendation by the temporary president of the senate; the member appointed upon recommendation of speaker of the assembly; and the member appointed by the governor.

4. Moneys in the general transportation account shall be used for funding the operating and capital costs of the metropolitan transportation authority. Such funds may be used for infrastructure including construction, reconstruction, reconditioning and preservation of transportation systems, facilities and equipment, acquisition of property, and for operating costs including personal services, non-personal services, fringe benefits, and contractual services. Funds may also be used to pay or to reimburse the authority for its payment of debt service and reserve requirements on that portion of authority bonds and notes that have been issued by the authority specifically for the purposes of this account.

5. Any revenues deposited in the subway action plan account, the outer borough transportation account, or the general transportation account pursuant to subdivision one of this section shall be used exclusively for the purposes described, respectively, in subdivisions two, three, and four of this section. Such revenues shall only supplement and shall not supplant any federal, state, or local funds expended by the metropolitan transportation authority, such authority's affiliates or subsidiaries for such respective purposes.

6. Any revenues deposited into the New York city transportation assistance fund pursuant to subdivision one of this section shall not be diverted into the general fund of the state, any other fund established by the chapter of the laws of two thousand eighteen which added this subdivision, any other fund maintained for the support of any other governmental purpose, or for any other purpose not authorized by subdivisions two, three and four of this section.

7. The authority shall report on the receipt and uses of all funds received by the New York city transportation assistance fund, and in each of its accounts, to the director of the budget, the temporary president of the senate, and the speaker of the assembly, on an annual basis no later than the first day of February.

## History

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L 2018, ch 59, § 4 (Part NNN), effective April 12, 2018.

Annotations

## Research References & Practice Aids

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# NY CLS Pub A § 1271

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## **§ 1271. Agreement of the state**

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The state does hereby pledge to and agree with the authority and its subsidiaries, New York city transit authority and its subsidiaries, and Triborough bridge and tunnel authority, and the holders of any notes, bonds or other obligations, including lease obligations, issued or incurred under this title, that the state will not limit or alter the denial of authority under subdivision nine of section twelve hundred sixty-nine of this title, or the rights and powers vested in the authority and its subsidiaries, New York city transit authority and its subsidiaries, and Triborough bridge and tunnel authority by this title to fulfill the terms of any agreements made by any of them with the holders thereof, or in any way impair the rights and remedies of such holders until such notes, bonds or other obligations, including lease obligations, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses for which the authority or its subsidiaries, New York city transit authority and its subsidiaries, and Triborough bridge and tunnel authority is liable in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority and its subsidiaries, New York city transit authority and its subsidiaries, and Triborough bridge and tunnel authority are each authorized to include this pledge and agreement of the state in any agreement with the holders of such notes, bonds or other obligations, including lease obligations.

## **History**

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Add, L 1965, ch 324, § 3; amd, L 1981, ch 1038, § 5; L 2000, ch 61, § 32 (Part O), eff May 15, 2000.

Annotations

## **Notes**

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### **Prior Law:**

Former § 1271, add, L 1959, ch 789; renumbered § 1251, L 1965, ch 324, § 2, eff June 1, 1965.

Prior § 1271, add, L 1942, ch 79; repealed, L 1957, ch 913 § 3, with substance transferred to Public Housing Law § 413.

### **Editor's Notes:**

See 1965 note under Title 11.

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1272

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## § 1272. Right of state to require redemption of bonds

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Notwithstanding and in addition to any provisions for the redemption of bonds which may be contained in any contract with the holders of the bonds, the state may, upon furnishing sufficient funds therefor, require the authority to redeem, prior to maturity, as a whole, any issue of bonds on any interest payment date not less than twenty years after the date of the bonds of such issue at one hundred five per centum of their face value and accrued interest or at such lower redemption price as may be provided in the bonds in case of the redemption thereof as a whole on the redemption date. Notice of such redemption shall be published in at least two newspapers publishing and circulating respectively in the cities of Albany and New York at least twice, the first publication to be at least thirty days before the date of redemption.

## History

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Add, L 1965, ch 324, § 3, eff June 1, 1965.

Annotations

## Notes

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### Prior Law:

Former § 1272, add, L 1959, ch 789; renumbered § 1252, L 1965, ch 324, § 2, eff June 1, 1965.

Prior § 1272, add, L 1942, ch 77; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 414.

### Editor's Notes:

See 1965 note under Title 11.

## Research References & Practice Aids

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### Jurisprudences:

64 Am Jur 2d, Public Securities and Obligations § 330.

**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1273

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## **§ 1273. Remedies of noteholders and bondholders**

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1. In the event that the authority shall default in the payment of principal of or interest on any issue of notes or 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 authority shall fail or refuse to comply with the provisions of this title or shall default in any agreement made with the holders of any issue of notes or bonds, the holders of twenty-five per centum in aggregate principal amount of the notes or bonds of such issue than [then]\* outstanding, by instrument or instruments filed in the office of the clerk of any county in which the authority operates and has an office and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes or bonds for the purposes herein provided.
2. Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such notes or bonds then outstanding shall, in his or its own name:
  - (a) by suit, action or proceeding in accordance with the civil practice law and rules, enforce all rights of the noteholders or bondholders, including the right to require the authority to collect fares, tolls, rentals, rates, charges and other fees adequate to carry out any agreement as to, or pledge of, such fares, tolls, rentals, rates, charges and other fees and to require the authority to carry out any other agreements with the holders of such notes or bonds and to perform its duties under this title;
  - (b) bring suit upon such notes or bonds;
  - (c) by action or suit, require the authority to account as if it were the trustee of an express trust for the holders of such notes or bonds;
  - (d) by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such notes or bonds;
  - (e) declare all such notes or 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 such notes or bonds then outstanding, to annul such declaration and its consequences.
3. 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 bondholders or noteholders in the enforcement and protection of their rights.
4. The supreme court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of such noteholders or bondholders. The venue of any such suit, action or proceeding shall be laid in the county in which the instrument or instruments are filed in accordance with subdivision one of this section.

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\* The bracketed word has been inserted by the Publisher.

5. Before declaring the principal of notes or bonds due and payable, the trustee shall first give thirty days' notice in writing to the governor, to the authority, to the comptroller and to the attorney general of the state.

## History

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Add, L 1965, ch 324, § 3, eff June 1, 1965.

Annotations

## Notes

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### Prior Law:

Former § 1273, add, L 1942, ch 387; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 415.

### Editor's Notes;

See 1965 note under Title 11.

## Research References & Practice Aids

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### Cross References:

Injunction, CLS CPLR 6301 et seq.

Appointment and powers of temporary receiver, CLS CPLR 6401.

Nature of proceeding, CLS CPLR 7801.

### Jurisprudences:

64 Am Jur 2d, Public Securities and Obligations §§ 407–429.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1274

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## § 1274. Notes and bonds as legal investment

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

## History

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Add, L 1965, ch 324, § 3, eff June 1, 1965.

Annotations

## Notes

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### Prior Law:

Former § 1274, add, L 1943, ch 628; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 416.

### Editor's Notes:

See 1965 note under Title 11.

## Research References & Practice Aids

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Cross References:

Deposits in banks, CLS St Fin § 105.

**Jurisprudences:**

63C Am Jur 2d, Public Officers and Employees §§ 69, 240, 258–260.

**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1275

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)***

## **§ 1275. Exemption from taxation**

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It is hereby found, determined and declared that the creation of the authority and the carrying out of its purposes is in all respects for the benefit of the people of the state of New York and for the improvement of their health, welfare and prosperity and is a public purpose, and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this title. Without limiting the generality of the following provisions of this section, property owned by the authority, property leased by the authority and used for transportation purposes, and property used for transportation purposes by or for the benefit of the authority exclusively pursuant to the provisions of a joint service arrangement or of a joint facilities agreement or trackage rights agreement shall all be exempt from taxation and special ad valorem levies. The authority shall be required to pay no fees, taxes or assessments, whether state or local, including but not limited to fees, taxes or assessments on real estate, franchise taxes, sales taxes or other excise taxes, upon any of its property, or upon the use thereof, or upon it [its]\* activities in the operation and maintenance of its facilities or on any fares, tolls, rentals, rates, charges or other fees, revenues or other income received by the authority and the bonds of the authority and the income therefrom shall at all times be exempt from taxation, except for gift and estate taxes and taxes on transfers. This section shall constitute a covenant and agreement with the holders of all bonds issued by the authority. The terms "taxation" and "special ad valorem levy" shall have the same meanings as defined in section one hundred two of the real property tax law and the term "transportation purposes" shall have the same meaning as used in titles two-a and two-b of article four of such law.

## **History**

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Add, L 1965, ch 324, § 3; amd, L 1965, ch 634; L 1966, ch 415, § 8, eff May 23, 1966, deemed eff Jan 20, 1966.

Annotations

## **Notes**

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### **Prior Law:**

Former § 1275, add, L 1946, ch 278; amd, L 1949, ch 220; repealed, L 1957, ch 913 § 3, with substance transferred to Public Housing Law § 417.

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\* The bracketed word has been inserted by the Publisher.

**Editor's Notes:**

See 1965 note under Title 11.

**Notes to Decisions**

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**1. In general**

**2. Exemption from particular taxes**

**3.—Property taxes**

**4. Effect on lease-related payments**

**1. In general**

Rail company's petition to obtain relief from imposition of tax assessments was properly dismissed as time barred where proceeding was not commenced within 4 months from time that assessment became final, regardless of whether company's claims were framed in proceeding pursuant to Article 78 or in declaratory judgment action. *New Jersey Transit Rail Operations v County of Rockland*, 187 A.D.2d 430, 589 N.Y.S.2d 549, 1992 N.Y. App. Div. LEXIS 12475 (N.Y. App. Div. 2d Dep't 1992).

A town zoning ordinance which regulated, but did not prohibit per se written advertising signs was applicable to one who subleased advertising space from the Metropolitan Commuter Transportation Authority, since such use of the Authority's property constituted a proprietary rather than a governmental function. Pointing out that the ordinance required the procurement of a permit and the payment of a fee for such permit, the court held that any possible conflict between the fee requirement and § 1275 of the Public Authorities Law might well be resolved by the Town waiving payment of the fee so that the regulation of signs in accordance with established standards could be maintained. *People v Witherspoon*, 52 Misc. 2d 320, 275 N.Y.S.2d 592, 1966 N.Y. Misc. LEXIS 1236 (N.Y. Dist. Ct. 1966).

Since real property owned by the Metropolitan Transportation Authority or its wholly owned subsidiaries is exempt from taxation and ad valorem levies, taxes levied on improvements made by a lessee under an agreement with the Long Island Railroad are illegal and should be cancelled. Tax payments previously made by the lessee may not be recovered or refunded since such payments were made voluntarily under a mistake of law. 1 Op Counsel, SBEA #86.

**2. Exemption from particular taxes**

Exemption from local assessments in CLS Pub A § 1275 extends to special benefit assessments. *Metropolitan Transp. Authority v Imholz*, 121 A.D.2d 724, 504 N.Y.S.2d 60, 1986 N.Y. App. Div. LEXIS 58707 (N.Y. App. Div. 2d Dep't 1986).

Metropolitan Transportation Authority is not exempt from special assessments imposed under County Law § 271. 5 Op Counsel, SBEA #96.

Real property owned by Metropolitan Transportation Authority is exempt from special assessments. (5 Op. Counsel SBEA No. 96 overruled) 10 Op. Counsel SBRPS No. 16.

**3. —Property taxes**

Where railroad company had been granted privilege of using and occupying certain streets in consideration for which it paid certain sums of money annually to the City of New York, and Metropolitan Transportation Authority subsequently purchased the railroad pursuant to section 1266 of the Public Authorities Law but refused to continue

payment on the basis that section 1275 of the Public Authorities Law exempted MTA from paying state or local fees, taxes or assessments upon any of its property, MTA was liable for annual payments to the city since such payments were contractual obligations rather than a liability to pay real property or franchise taxes and did not come within the meaning of section 1275. *New York v Long Island R. Co.*, 44 N.Y.2d 827, 406 N.Y.S.2d 450, 377 N.E.2d 982, 1978 N.Y. LEXIS 2017 (N.Y. 1978).

Real property owned by the Metropolitan Transportation Authority is exempt from taxation regardless of the fact that it is leased to private persons. 2 Op Counsel, SBEA #4.

Railroad's counterclaim contesting a town's withdrawal of a tax exemption for certain real property under N.Y. Pub. Auth. Law § 1275 was time-barred because (1) a four-month statute of limitations applicable to proceedings under N.Y. C.P.L.R. art. 78 applied, and (2) the counterclaim was not brought within that time. *Pinelawn Cemetery v Metropolitan Transp. Auth.*, 155 A.D.3d 1069, 66 N.Y.S.3d 20, 2017 N.Y. App. Div. LEXIS 8431 (N.Y. App. Div. 2d Dep't 2017).

Town was not entitled to summary judgment dismissing a railroad's counterclaim seeking a declaration that certain property was tax exempt, beginning in a certain year, because the property was tax exempt. *Pinelawn Cemetery v Metropolitan Transp. Auth.*, 155 A.D.3d 1069, 66 N.Y.S.3d 20, 2017 N.Y. App. Div. LEXIS 8431 (N.Y. App. Div. 2d Dep't 2017).

#### **4. Effect on lease-related payments**

Fact that Metropolitan Transit Authority took over railroad did not release railroad from obligation to pay rent called for by lease even though much of rent represented taxes. *New York v Long Island R. Co.*, 49 A.D.2d 540, 370 N.Y.S.2d 108, 1975 N.Y. App. Div. LEXIS 10381 (N.Y. App. Div. 1st Dep't 1975), *aff'd*, 43 N.Y.2d 780, 402 N.Y.S.2d 385, 373 N.E.2d 279, 1977 N.Y. LEXIS 2569 (N.Y. 1977).

Immunity from real property taxation granted to property acquired by the state does not attach to property which is leased to the state. 2 Op Counsel, SBEA #96.

## **Opinion Notes**

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### **Agency Opinions**

#### **1. Exemption from particular taxes**

#### **2. —Property taxes**

A town in Westchester County which “guarantees” payment of the tax levies of the county, school districts and villages is not obligated to pay such municipal corporations any amount for taxes levied against parcels which, because of their exempt status, cannot be taxed. 1983 Op St Compt File #83-42.

Funding of loan and execution and delivery of loan certificates to trustee only after assignment were not subject to mortgage recording taxes in situation where execution, delivery or recording by Triborough Bridge and Tunnel Authority (TBTA) of 2 mortgages granted by TBTA to lenders on its leasehold interest in leased property under lease of leased property by Metropolitan Transportation Authority (MTA) to TBTA and assignment of rents in said mortgages and in loan agreement under sublease of leased property by TBTA to MTA where (a) TBTA was named mortgagor, (b) loan secured in part by leasehold mortgage and assignment of rents would be provided by one or more persons or entities other than, and unrelated to, MTA, (c) documents for and securing loan were executed by TBTA, but loan was funded only after either (x) assignment of all of TBTA's right, title, and interest in lease, sublease, support assets purchase option, loan documents, leasehold mortgage and assignment of rents, and collateral assignment to trustee under trust agreement with grantor and assumption by trustee of all of TBTA's obligations (and release of TBTA) under lease, sublease, loan documents, leasehold mortgage and assignment of

rents, and collateral assignment or (y) on satisfaction of certain conditions and authorizations relating to possibility of funding loan prior to assignment, which conditions and authorizations were not expected to occur, and (d) proceeds of loan were used by trustee (as successor in interest to TBTA) to fund portion of lump sum payment to MTA, which sum constituted prepaid rent under lease and cost for option giving trustee right to extend initial lease term. NY Adv Op Comm T & F TSB-A-97-(4)R.

Recording of fee mortgage (where Metropolitan Transportation Authority was mortgagor and Triborough Bridge and Tunnel Authority was mortgagee) was exempt from mortgage recording taxes since at least one party to mortgage at time of recording was agency or instrumentality of New York State. NY Adv Op Comm T & F TSB-A-97-(4)R.

Metropolitan Transportation Authority's issuance of support assets purchase option to Triborough Bridge and Tunnel Authority (TBTA), as well as TBTA's reassignment (subject to reversionary interest) of all of TBTA's right, title, and interest in support assets purchase option back to Metropolitan Transportation Authority (MTA), and MTA's subsequent further assignment of all of its right, title, and interest in support assets purchase option to TBTA was exempt from transfer tax under CLS Tax § 1405(b)(1); in event that MTA was obligated to assign support assets purchase option to trustee, no transfer tax would be due since there was no consideration for conveyance. NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

### **3. Effect on lease-related payments**

Property leased by the MTA and used for transportation purposes is entitled to exemption by virtue of section 1275 of the Public Authorities Law rather than the provisions of the Real Property Tax Law applicable to subsidized railroad real property. The right to this exemption is not contingent upon the filing of an application. 6 Op Counsel SBEA #76, 1979 Jan. 14.

Recording of leasehold mortgages granted by Triborough Bridge and Tunnel Authority (TBTA) to lenders on its leasehold interest in leased property under lease of property by Metropolitan Transit Authority to TBTA, and assignment of rents in such mortgages, under specific terms and conditions where TBTA was named mortgagor, was exempt from mortgage recording taxes. NY Adv Op Comm T & F TSB-A-97-(4)R.

In accordance with CLS Tax §§ 250 and 253, assignment by Triborough Bridge and Tunnel Authority (TBTA) to trustee of its rights (if any), and assumption by trustee of TBTA's obligations, under leasehold mortgages granted by TBTA to lenders on its leasehold interest in leased property under lease of property by Metropolitan Transit Authority to TBTA, and assignment of rents in such mortgages, were not events which would cause mortgage recording taxes to be imposed. NY Adv Op Comm T & F TSB-A-97-(4)R.

Payment and performance by trustee of its obligations under, holding by lenders of, and/or enforcement by lenders of their rights and remedies under or as to loan certificates, loan documents, loan agreement, leasehold mortgage and assignment of rents, or fee mortgage were not subject to mortgage recording taxes in situation where execution, delivery or recording by Triborough Bridge and Tunnel Authority (TBTA) of 2 mortgages granted by TBTA to lenders on its leasehold interest in leased property under lease of leased property by Metropolitan Transportation Authority (MTA) to TBTA and assignment of rents in said mortgages and in loan agreement under sublease of leased property by TBTA to MTA where (a) TBTA was named mortgagor, (b) loan secured in part by leasehold mortgage and assignment of rents would be provided by one or more persons or entities other than, and unrelated to, MTA, (c) documents for and securing loan were executed by TBTA, but loan was funded only after either (x) assignment of all of TBTA's right, title, and interest in lease, sublease, support assets purchase option, loan documents, leasehold mortgage and assignment of rents, and collateral assignment to trustee under trust agreement with grantor and assumption by trustee of all of TBTA's obligations (and release of TBTA) under lease, sublease, loan documents, leasehold mortgage and assignment of rents, and collateral assignment or (y) on satisfaction of certain conditions and authorizations relating to possibility of funding loan prior to assignment, which conditions and authorizations were not expected to occur, and (d) proceeds of loan were used by trustee (as successor in interest to TBTA) to fund portion of lump sum payment to MTA, which sum constituted prepaid rent under lease and cost for option giving trustee right to extend initial lease term. NY Adv Op Comm T & F TSB-A-97-(4)R.



Metropolitan Transportation Authority's entering into lease (which included contingent purchase option with Triborough Bridge and Tunnel Authority) was exempt from transfer tax under CLS Tax § 1405(b)(1) since grantee was agency or instrumentality of New York State. NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

Triborough Bridge and Tunnel Authority's entering into sublease with Metropolitan Transportation Authority was not conveyance subject to transfer tax under CLS Tax § 1401(e) since sublease term was less than 49 years; further, if sublease was conveyance subject to transfer tax, it would be exempt since grantee was agency or instrumentality of New York State. NY Adv Op Comm T & F TSB-A-97-(4)R, 1997 N.Y. Tax LEXIS 218 (N.Y. Dep't of Tax'n & Fin.).

## **Research References & Practice Aids**

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### **Cross References:**

Public authorities, CLS Real P Tax § 412.

### **Jurisprudences:**

64 Am Jur 2d, Public Securities and Obligations § 27.

71 Am Jur 2d, State and Local Taxation §§ 267–282.

### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1276

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-I)***

## **§ 1276. Actions against the authority**

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1. As a condition to the consent of the state to such suits against the authority, in every action against the authority for damages, for injuries to real or personal property or for the destruction thereof, or for personal injuries or death, the complaint shall contain an allegation that at least thirty days have elapsed since the demand, claim or claims upon which such action is founded were presented to a member of the authority or other officer designated for such purpose and that the authority has neglected or refused to make an adjustment or payment thereof.
2. An action against the authority founded on tort, except an action for wrongful death, shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued, nor unless a notice of claim shall have been served on the authority within the time limited by and in compliance with all the requirements of section fifty-e of the general municipal law. An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of this chapter.
3. The authority shall be liable, and shall assume the liability to the extent that it shall save harmless any duly appointed officer or employee of the authority, for the negligence of such officer or employee, in the operation of a vehicle or other facility of transportation owned or otherwise under the jurisdiction and control of the authority in the discharge of a duty imposed upon such officer or employee at the time of the accident, injury or damages complained of, while otherwise acting in the performance of his duties and within the scope of his employment.
4. The authority may require any person, presenting for settlement an account or claim for any cause whatever against the authority, to be sworn before a member, counsel or an attorney, officer or employee of the authority designated for such purpose, concerning such account or claim and when so sworn to answer orally as to any facts relative to such account or claim. The authority shall have power to settle or adjust all claims in favor of or against the authority.
5. The rate of interest to be paid by the authority upon any judgment for which it is liable shall not exceed four per centum per annum.
6. The provisions of this section which relate to the requirement for service of a notice of claim shall not apply to a subsidiary corporation of the authority. In all other respects, each subsidiary corporation of the authority shall be subject to the provisions of this section as if such subsidiary corporation were separately named herein, provided, however, that a subsidiary corporation of the authority which is a stock corporation shall not be subject to the provisions of this section except with respect to those causes of action arising on and after the first day of the twelfth calendar month following that calendar month in which such stock corporation becomes a subsidiary corporation of the authority.

## **History**

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Add, L 1965, ch 324, § 3, eff June 1, 1965; amd, L 1966, ch 415, § 9; L 1976, ch 745, § 4, eff Sept 1, 1976; L 1990, ch 804, § 27, eff Aug 24, 1990 (see 1990 note below); L 2012, ch 500, § 27, eff June 15, 2013 (see 2012 note below).

Annotations

## Notes

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### Prior Law:

Former § 1276, add, L 1951, ch 8; repealed, L 1957, ch 913 § 3, with substance transferred to Public Housing Law § 453.

### Editor's Notes:

See 1965 note under Title 11.

**Laws 1990, ch 804, § 126**, eff Aug 24, 1990, provides as follows:

This act shall take effect on the thirtieth day after it shall have become a law, and shall apply to actions accruing on or after such date.

**Laws 2012, ch 500, §§ 1 and 79**, eff June 15, 2013, provide as follows:

Section 1. Short title. This act shall be known and may be cited as the “uniform notice of claim act”.

§ 79. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to all actions and proceedings accruing on or after such date; provided, however, that section four of this act shall take effect two hundred ten days after this act shall have become a law; and provided, further, that section seventy-eight of this act shall take effect upon the enactment into law by the state of New Jersey of legislation having an identical effect as section seventy-eight of this act, but if the state of New Jersey shall have enacted such legislation into law prior to the first day of January next succeeding the date upon which this act shall have become a law, section seventy-eight of this act shall take effect on the one hundred eightieth day from the date upon which it shall have become a law; provided further, that the state of New Jersey shall notify the legislative bill drafting commission upon the occurrence of the enactment of the provisions provided for in this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effecting the provisions of section 44 of the legislative law and section 70-b of the public officers law; and provided further that section nine of this act shall take effect upon the concurrence by members of the Delaware River Basin Water Commission. (Amd, L 2013, ch 24, § 7, eff June 15, 2013.).

### Amendment Notes:

**2012.** Chapter 500, § 27 amended:

Sub 2 by adding the matter in italics.

## Notes to Decisions

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### 1.In general

### 2.Demand requirement

**3. Notice of claim**

**4.—Exemption from requirement**

**5.—Late service or filing**

**6. Limitation of actions**

**7.—Applicability of particular periods**

**8.—Accrual**

**9.—Tolling**

**10.—Estoppel from asserting defense**

**11. Interest on award**

**1. In general**

“Stay” of 30 days as provided by CLS Pub A § 1276(1) was not extended 3 extra days by virtue of fact that plaintiff was injured on Friday night and could not present his claim until next Monday, since plaintiff was entitled to maximum of 30-day extension under CLS CPLR § 204(a). *Burgess v Long Island R. Authority*, 79 N.Y.2d 777, 579 N.Y.S.2d 631, 587 N.E.2d 269, 1991 N.Y. LEXIS 5093 (N.Y. 1991).

Subdivisions 2 and 6 of § 1276 of the Public Authorities Law are not unconstitutional for vagueness. *Orioles v Long Island R. R. Co.*, 35 A.D.2d 668, 315 N.Y.S.2d 95, 1970 N.Y. App. Div. LEXIS 3909 (N.Y. App. Div. 2d Dep't 1970).

In absence of special circumstances, separate corporate status of railroad, stock of which had been taken over by metropolitan transportation authority, could not be disregarded so as to hold authority liable for alleged negligence of railroad. *Bujosa v Metropolitan Transp. Authority*, 44 A.D.2d 849, 355 N.Y.S.2d 800, 1974 N.Y. App. Div. LEXIS 4908 (N.Y. App. Div. 2d Dep't 1974).

In personal injury action against public authority, plaintiffs' failure to plead compliance with CLS Pub A § 1276(1) was not jurisdictional defect, and court should have allowed plaintiffs to serve amended complaint in absence of demonstrable prejudice. *Tucker v Long Island R. Co.*, 128 A.D.2d 517, 512 N.Y.S.2d 450, 1987 N.Y. App. Div. LEXIS 44210 (N.Y. App. Div. 2d Dep't 1987).

Trial court erred in denying the metropolitan transit authority's (MTA) motion to dismiss claims of economic injury partly due to the MTA's improper negotiation tactics, which allegedly led to a transit strike, because the complaining businesses did not comply with the pleading and notice requirements of N.Y. Pub. Auth. Law § 1276(1) and (2). Contrary to the trial court's finding, the MTA adequately raised this point in its motion to dismiss, which provided the businesses the opportunity to respond and preserved the argument for appellate review. *Russian Samovar, Inc. v Transit Worker's Union of Am.*, 45 A.D.3d 499, 847 N.Y.S.2d 164, 2007 N.Y. App. Div. LEXIS 12240 (N.Y. App. Div. 1st Dep't 2007).

In action by passenger who was injured while disembarking from train, Metropolitan Transportation Authority and Metro-North Commuter Railroad were not equitably estopped from arguing that they were not municipal corporations for purposes of statute of limitations because their names contained words “metropolitan” and “metro,” connoting “a city,” where plaintiffs did not show that defendants acted wrongfully or negligently in any way; plaintiffs simply revealed their own failure to consult numerous cases that made it clear that defendants were public authorities, and that CLS Pub A § 1276 applied. *Celli v Metro-North Commuter R.R.*, 891 F. Supp. 124, 1995 U.S. Dist. LEXIS 8621 (S.D.N.Y. 1995), *aff'd*, 101 F.3d 108, 1996 U.S. App. LEXIS 39287 (2d Cir. N.Y. 1996).

**2. Demand requirement**

## NY CLS Pub A § 1276

In a negligence action against a subsidiary of the Metropolitan Transportation Authority in which plaintiffs failed to plead or comply with a demand requirement of Pub A Law § 1276, an order granting the subsidiary's motion for summary judgment dismissing the complaint and remitting the matter for a hearing on plaintiffs' contention that the subsidiary should be estopped from asserting plaintiffs' failure to comply with the statute would be affirmed, since the 30-day demand rule of Pub A Law § 1276(1) survived the 1976 amendment (L 1976, Ch 745, § 4) to Subd 6 of that section in actions against subsidiary corporations of public authorities, and the lack of the demand is not a matter required by CPLR § 3018 to be pleaded as an affirmative defense, in that the demand is a condition to consent of the State and the passage of 30 days since the demand is required to be alleged in the complaint. *Fleming v Long Island Railroad*, 59 N.Y.2d 895, 465 N.Y.S.2d 938, 452 N.E.2d 1266, 1983 N.Y. LEXIS 3221 (N.Y. 1983).

Provisions of CLS Pub A § 1276 requiring presentation of demand for settlement of claim against public authority do not constitute jurisdictional prerequisite; rather, they establish condition precedent, satisfaction of which must be alleged in action for personal injuries against public authority. *Fleming v Long Island Railroad*, 72 N.Y.2d 998, 534 N.Y.S.2d 371, 530 N.E.2d 1291, 1988 N.Y. LEXIS 2687 (N.Y. 1988).

CLS CPLR § 205 permits second action to be brought, although otherwise barred by statute of limitations, where first action was dismissed for failure to comply with provisions of CLS Pub A § 1276 requiring presentation of demand for settlement of claim to authority. *Fleming v Long Island Railroad*, 72 N.Y.2d 998, 534 N.Y.S.2d 371, 530 N.E.2d 1291, 1988 N.Y. LEXIS 2687 (N.Y. 1988).

In an action alleging that plaintiff decedent was injured while leaving a Long Island Railroad train, the railroad would be estopped from asserting the defense that plaintiffs failed to comply with the 30-day demand rule of Pub A Law § 1276(1) where the only affirmative defense contained in the railroad's answer was that of comparative negligence, and a conductor for the railroad testified at a deposition that he had filed an accident form, as was standard procedure, and if the plaintiffs could then proceed to establish the contention that the railroad, as a subsidiary of the Metropolitan Transportation Authority, wrongfully induced them to change their position to their prejudice. *Andersen v Long Island Railroad*, 88 A.D.2d 328, 453 N.Y.S.2d 203, 1982 N.Y. App. Div. LEXIS 17060 (N.Y. App. Div. 2d Dep't 1982), *aff'd*, 59 N.Y.2d 657, 463 N.Y.S.2d 407, 450 N.E.2d 213, 1983 N.Y. LEXIS 3051 (N.Y. 1983), *aff'd*, 59 N.Y.2d 895, 465 N.Y.S.2d 938, 452 N.E.2d 1266, 1983 N.Y. LEXIS 3221 (N.Y. 1983).

Dismissal for failure to plead compliance with 30-day demand rule set forth in CLS Pub A § 1276 was equivalent to dismissal for failure to state cause of action, not dismissal for jurisdictional defect, and thus extension provisions of CLS CPLR § 205 could be applied to permit commencement of second action within 6 months. *Fleming v Long Island Railroad*, 130 A.D.2d 59, 518 N.Y.S.2d 144, 1987 N.Y. App. Div. LEXIS 45064 (N.Y. App. Div. 2d Dep't 1987), *aff'd*, 72 N.Y.2d 998, 534 N.Y.S.2d 371, 530 N.E.2d 1291, 1988 N.Y. LEXIS 2687 (N.Y. 1988).

Former public employee's state disability discrimination claims, and Consolidated Omnibus Budget Reconciliation Act claims against his former public employer were not subject to the thirty-day demand rule of N.Y. Pub. Auth. Law § 1276(1) or the one year and thirty day limitations period under N.Y. Pub. Auth. Law § 1276(2) because those claims were not tort claims, rather, those claims were subject to the general three-year limitations period under N.Y. C.P.L.R. § 214(2), applicable through N.Y. C.P.L.R. § 201. *Treanor v Metro. Transp. Auth.*, 414 F. Supp. 2d 297, 2005 U.S. Dist. LEXIS 35861 (S.D.N.Y. 2005).

### **3. Notice of claim**

Injured party was precluded from maintaining an action for personal injuries against the Metropolitan Commuter Transportation Authority where there was a failure to serve a 90-day notice of claim pursuant to the statutes. *Conroy v Long Island Railroad*, 31 A.D.2d 834, 298 N.Y.S.2d 105, 1969 N.Y. App. Div. LEXIS 4526 (N.Y. App. Div. 2d Dep't 1969).

Where summons and complaint were served within 90 days after an accident, and summons contained all required information, plaintiff permitted to serve an amended notice of claim and an amended complaint so as to include in

the complaint plaintiff's post office address and her attorney's post office address. *Quintero v Long Island Railroad*, 31 A.D.2d 844, 298 N.Y.S.2d 109, 1969 N.Y. App. Div. LEXIS 4537 (N.Y. App. Div. 2d Dep't 1969).

Where liability and false imprisonment action was predicated on acts of employee of railroad subsidiary of transit authority, notice of claim was improperly served on transit authority (Public Authority Law § 1266, subd 5) absent a factual showing that said employee had in some manner become an agent of the transit authority, and service on authority was further ineffective as to subsidiary railroad, a distinct legal entity for purposes of suit (Public Authority Law § 1266, subd 5). *Montez v Metropolitan Transp. Authority*, 43 A.D.2d 224, 350 N.Y.S.2d 665, 1974 N.Y. App. Div. LEXIS 6027 (N.Y. App. Div. 1st Dep't 1974).

Trial court erred in denying a motion filed by a transportation authority (TA) and a railroad (RR) (jointly, the defendants) to dismiss the ticket holders' putative class action to recover damages for breach of contract and negligence because the holders failed to serve the TA with a notice of claim, the amended complaint did not allege that the holders presented the RR with a demand upon which their action was founded, and that 30 days had elapsed without resolution, and, assuming that the purchase of a monthly commutation ticket established a contractual relationship between the defendants and the holders, the documentary evidence submitted by the defendants conclusively established a defense to the allegations of breach of contract. *Jacobs v Metropolitan Transp. Auth.*, 180 A.D.3d 657, 115 N.Y.S.3d 702, 2020 N.Y. App. Div. LEXIS 903 (N.Y. App. Div. 2d Dep't 2020).

The Long Island Railroad, a private stock corporation, was neither a municipal nor public benefit corporation for whose protection General Municipal Law § 50-e was enacted, and only the acquisition of the railroad by the Metropolitan Transportation Authority and the subsequent amendment of the Public Authorities Law § 1276 by the addition of subd 6 made the notice provisions applicable to suits against the railroad. *Quintero v Long Island Railroad*, 55 Misc. 2d 813, 286 N.Y.S.2d 748, 1968 N.Y. Misc. LEXIS 1865 (N.Y. Sup. Ct. 1968), *aff'd*, 31 A.D.2d 844, 298 N.Y.S.2d 109, 1969 N.Y. App. Div. LEXIS 4537 (N.Y. App. Div. 2d Dep't 1969).

Since the necessity of filing a notice of claim with respect to accidents involving the Long Island Railroad is vague and certainly not apparent on the face of Public Authorities Law § 1276(6), the provision was too vague to be enforceable and defendant estopped from asserting reliance thereon in defense of an action promptly instituted by an injured passenger. *Belcastro v Long Island Railroad*, 55 Misc. 2d 837, 286 N.Y.S.2d 945, 1968 N.Y. Misc. LEXIS 1820 (N.Y. Sup. Ct. 1968).

#### **4. —Exemption from requirement**

In a wrongful death action brought against a subsidiary railroad of the Metropolitan Transportation Authority (MTA), the appellate court properly concluded that an amendment to Pub A Law § 1276(6) deleting the requirement of filing a formal notice of claim against a subsidiary of the MTA did not affect the prescription in subd 1 of said statute requiring that plaintiff allege that at least 30 days have elapsed since a claim or demand was presented to the authority and that no adjustment of payment thereof has been made, since the amendment, literally read, touches only those provisions of § 1276 relating to the requirement for service of a notice of claim contained in subd 2, such a reading of the amendment is proper in light of the legislative history thereof, and there are substantive differences between a notice of claim and a presentation of a demand or claim, the former serving to assure that the public authority will be given prompt notice after the accrual of the claim to permit effective investigation of its circumstances, and the latter serving to afford the authority an opportunity prior to incurring the expenses of litigation to evaluate the claim and to determine whether to attempt an adjustment or to pay the claim. *Andersen v Long Island Railroad*, 59 N.Y.2d 657, 463 N.Y.S.2d 407, 450 N.E.2d 213, 1983 N.Y. LEXIS 3051 (N.Y. 1983).

The 1976 amendments to Pub A Law § 1276(6) which abolished the requirement of filing a formal notice of claim against the Metropolitan Transportation Authority's subsidiary corporations, including the Long Island Railroad, as set forth in Subd 2, did not eliminate the requirement set forth in Subd 1 that a plaintiff allege in his complaint that at least 30 days have elapsed since a demand or a claim was presented to the Authority and that no adjustment or payment thereof has been made. *Andersen v Long Island Railroad*, 88 A.D.2d 328, 453 N.Y.S.2d 203, 1982 N.Y. App. Div. LEXIS 17060 (N.Y. App. Div. 2d Dep't 1982), *aff'd*, 59 N.Y.2d 657, 463 N.Y.S.2d 407, 450 N.E.2d 213,

1983 N.Y. LEXIS 3051 (N.Y. 1983), *aff'd*, 59 N.Y.2d 895, 465 N.Y.S.2d 938, 452 N.E.2d 1266, 1983 N.Y. LEXIS 3221 (N.Y. 1983).

Statutory amendment exempting subsidiary corporations of the Metropolitan Transportation Authority from the notice of claim requirement is remedial and will be applied retroactively so that failure to file notice of claim was not a bar to action against a subsidiary, even though the events giving rise to the action arose prior to the date of the amendment and even though the action was filed prior to the date of the amendment. *O'Connor v Long Island Railroad*, 89 Misc. 2d 225, 391 N.Y.S.2d 346, 1977 N.Y. Misc. LEXIS 1863 (N.Y. Sup. Ct. 1977), *aff'd*, 63 A.D.2d 1015, 406 N.Y.S.2d 502, 1978 N.Y. App. Div. LEXIS 12109 (N.Y. App. Div. 2d Dep't 1978).

Service of notice of claim within 90 days of accident upon Met. Trans. Auth. is not jurisdictional prerequisite to action maintained solely against its subsidiary, as CLS Pub Auth § 1276(6) has removed requirement of formal notice of claim and actions against subsidiary corporation. *Botjer v Long Island Railroad*, 131 Misc. 2d 860, 502 N.Y.S.2d 344, 1986 N.Y. Misc. LEXIS 2586 (N.Y. Sup. Ct. 1986).

### **5. —Late service or filing**

An order which granted plaintiff's motion for leave to file a late notice of claim and to serve an amended complaint was reversed, where plaintiff failed to comply with the requirements of Public Authorities Law § 1276(1) and § 50-e of the General Municipal Law. *Sudakin v Long Island R. R. Co.*, 32 A.D.2d 560, 300 N.Y.S.2d 371, 1969 N.Y. App. Div. LEXIS 4190 (N.Y. App. Div. 2d Dep't 1969).

Under General Municipal Law § 50-e, subdivision 3, notice of claim in false imprisonment action, sent by certified and not registered mail, was deemed served on day of actual receipt thereof, over 90 days after claimant's release from confinement. *Montez v Metropolitan Transp. Authority*, 43 A.D.2d 224, 350 N.Y.S.2d 665, 1974 N.Y. App. Div. LEXIS 6027 (N.Y. App. Div. 1st Dep't 1974).

Ignorance of statutory requirement for serving timely notice of claim is not acceptable excuse for delay. *Salahudeen Rashad Saafir v Metro-North Commuter R.R. Co.*, 260 A.D.2d 462, 688 N.Y.S.2d 224, 1999 N.Y. App. Div. LEXIS 3863 (N.Y. App. Div. 2d Dep't), *app. denied*, 93 N.Y.2d 816, 697 N.Y.S.2d 563, 719 N.E.2d 924, 1999 N.Y. LEXIS 2802 (N.Y. 1999).

Absence of acceptable excuse is not necessarily fatal to application for leave to serve late notice of claim, but its absence in combination with other factors may serve as basis for denying application. *Salahudeen Rashad Saafir v Metro-North Commuter R.R. Co.*, 260 A.D.2d 462, 688 N.Y.S.2d 224, 1999 N.Y. App. Div. LEXIS 3863 (N.Y. App. Div. 2d Dep't), *app. denied*, 93 N.Y.2d 816, 697 N.Y.S.2d 563, 719 N.E.2d 924, 1999 N.Y. LEXIS 2802 (N.Y. 1999).

Police aid report and daily activity log that failed to suggest any connection between happening of accident and any negligence on part of government defendants were not sufficient to furnish them with actual knowledge of essential facts underlying personal injury claim, and thus court properly denied plaintiffs' motion for leave to serve late notice of claim. *Salahudeen Rashad Saafir v Metro-North Commuter R.R. Co.*, 260 A.D.2d 462, 688 N.Y.S.2d 224, 1999 N.Y. App. Div. LEXIS 3863 (N.Y. App. Div. 2d Dep't), *app. denied*, 93 N.Y.2d 816, 697 N.Y.S.2d 563, 719 N.E.2d 924, 1999 N.Y. LEXIS 2802 (N.Y. 1999).

Delay of nearly one year in seeking to serve notice of claim prejudiced defendants' ability to maintain defense on merits, and thus court properly denied leave to serve late notice of claim. *Salahudeen Rashad Saafir v Metro-North Commuter R.R. Co.*, 260 A.D.2d 462, 688 N.Y.S.2d 224, 1999 N.Y. App. Div. LEXIS 3863 (N.Y. App. Div. 2d Dep't), *app. denied*, 93 N.Y.2d 816, 697 N.Y.S.2d 563, 719 N.E.2d 924, 1999 N.Y. LEXIS 2802 (N.Y. 1999).

Order granting leave to serve a late notice of claim upon authorities was error because the authorities did not receive actual notice or acquire knowledge of the essential facts constituting the claim within 90 days after the occurrence, and respondent failed to demonstrate a reasonable excuse for his delay in commencing the proceeding; respondent's proffered excuses, that the respondent was unaware of the statutory time limit for serving a notice of claim and that an attorney whom he had previously contacted declined to take his case, were insufficient to excuse the delay. Furthermore, under the circumstances of this case, the authorities would have been prejudiced

in their defense by the approximately six-month delay between the time the claim arose and the time respondent commenced the proceeding for leave to serve a late notice of claim. *Matter of Groves v New York City Tr. Auth.*, 44 A.D.3d 856, 843 N.Y.S.2d 452, 2007 N.Y. App. Div. LEXIS 10718 (N.Y. App. Div. 2d Dep't 2007).

Trial court should have permitted a vehicle driver to amend the complaint to add allegations of compliance with the statutory notice requirements in his vehicle/bus collision claim against a bus company (BC), as no prejudice to the BC and its driver was shown, and the BC had notice of the claim prior to the commencement of the action. *Lindo v Brett*, 149 A.D.3d 459, 52 N.Y.S.3d 308, 2017 N.Y. App. Div. LEXIS 2691 (N.Y. App. Div. 1st Dep't 2017).

Trial court properly denied an injured plaintiff's motion for leave to serve a late notice of claim upon a city's transportation authorities because the plaintiff did not provide a reasonable excuse for his failure to serve a timely notice of claim upon the authorities where he did not proffer any explanation for the six-month delay between the time that he discovered the error and the filing of his motion for leave to serve a late notice of claim, and he did not establish that the authorities received timely, actual knowledge of the essential facts constituting the claim. *Durand v MV Transp., Inc.*, 186 A.D.3d 564, 129 N.Y.S.3d 123, 2020 N.Y. App. Div. LEXIS 4538 (N.Y. App. Div. 2d Dep't 2020).

Where the defendant railroad investigated an accident immediately after its occurrence, received actual notice of the accident by means of a letter from plaintiff's attorney, and was served within 88 days of the accident with a summons and complaint; plaintiff's motion to file a late notice of claim was granted, and alternatively plaintiff's motion that service of a notice of claim could be dispensed with in view of the service of summons and complaint was granted and the defendant estopped from establishing any defense based upon the failure to file a notice of claim within 90 days. *Quintero v Long Island Railroad*, 55 Misc. 2d 813, 286 N.Y.S.2d 748, 1968 N.Y. Misc. LEXIS 1865 (N.Y. Sup. Ct. 1968), *aff'd*, 31 A.D.2d 844, 298 N.Y.S.2d 109, 1969 N.Y. App. Div. LEXIS 4537 (N.Y. App. Div. 2d Dep't 1969).

## 6. Limitation of actions

In action against public authority, 30-day "stay" of CLS Pub A § 1276(1) is not counted as part of one-year limitation period of CLS Pub A § 1276(2), and thus plaintiff may serve complaint at any time up to one year and 30 days after claim has accrued. *Burgess v Long Island R. Authority*, 79 N.Y.2d 777, 579 N.Y.S.2d 631, 587 N.E.2d 269, 1991 N.Y. LEXIS 5093 (N.Y. 1991).

Wrongful death action in regard to plaintiff's son, who was injured on October 17, 1968 when he came into contact with high tension wire on premises allegedly owned, maintained and controlled by defendants, and father's action for medical, hospital and funeral expenses arising from the wrongful death did not accrue until the December 1, 1969 date of death. *Pepitone v Smith*, 54 A.D.2d 754, 387 N.Y.S.2d 706, 1976 N.Y. App. Div. LEXIS 14413 (N.Y. App. Div. 2d Dep't 1976).

The statute of limitations provided in Pub A Law § 1276, like other limitations imposed on actions against the State, is a matter of legislative discretion, and is not amenable to an equal protection challenge. *Umansky v New York Metropolitan Transit Authority*, 111 A.D.2d 918, 491 N.Y.S.2d 33, 1985 N.Y. App. Div. LEXIS 50185 (N.Y. App. Div. 2d Dep't 1985).

It was error to deny defendant's motion to dismiss on ground that it failed to prove that it was subsidiary of Metropolitan Transit Authority (MTA) so as to benefit from one-year-and-30-day limitation period under CLS Pub A § 1276, since plaintiffs' complaint had alleged that defendant was "direct subsidiary" of MTA and there was no evidence to contradict that assertion; defendant had no need to prove, in its motion, that which plaintiffs themselves admitted in their complaint. *Petroccitto v Metro N. C. Railroad*, 140 A.D.2d 682, 529 N.Y.S.2d 328, 1988 N.Y. App. Div. LEXIS 6100 (N.Y. App. Div. 2d Dep't 1988).

Plaintiff failed to serve complaint within one-year-and-30-day limitation period provided for in CLS Pub A § 1276 where accident occurred on September 2, 1988 and complaint was served on October 3, 1989; fact that accident occurred on Friday evening did not entitle plaintiff to 3-day extension of limitation period since CLS Gen Const § 25-



a provides that extension is permitted only when limitation period “ends” on Saturday, Sunday or public holiday. *Burgess v Long Island R. Authority*, 172 A.D.2d 302, 568 N.Y.S.2d 385, 1991 N.Y. App. Div. LEXIS 4734 (N.Y. App. Div. 1st Dep't), *aff'd*, 79 N.Y.2d 777, 579 N.Y.S.2d 631, 587 N.E.2d 269, 1991 N.Y. LEXIS 5093 (N.Y. 1991).

Passenger should not have been granted leave to amend the complaint to add a subsidiary of the Metropolitan Transportation Authority (MTA) as a defendant as any claim against the subsidiary was time-barred since the passenger did not seek leave to amend the complaint until more than 1 year and 90 days after the alleged incident; the passenger’s claim that the proposed causes of action against the subsidiary related back to the causes of action asserted in the original complaint against the MTA was meritless. *Watkins-Bey v MTA Bus Co.*, 174 A.D.3d 553, 105 N.Y.S.3d 494, 2019 N.Y. App. Div. LEXIS 5363 (N.Y. App. Div. 2d Dep't 2019).

Although notice of wrongful death claim served on Long Island Railroad by deceased’s representative within 90 days following car-train collision, albeit prior to his appointment, satisfied one year limitation period contained in Public Authorities L § 1276, subd 2, representative’s failure to commence action by service of summons and complaint within 2 years following death as prescribed by EPTL § 5-4.1 barred wrongful death action against railroad. *Santaniello v De Francisco*, 73 Misc. 2d 934, 342 N.Y.S.2d 916, 1973 N.Y. Misc. LEXIS 2084 (N.Y. Sup. Ct. 1973), *disapproved*, *D'Andrea v Long Island R. R. Co.*, 117 A.D.2d 10, 501 N.Y.S.2d 891, 1986 N.Y. App. Div. LEXIS 51039 (N.Y. App. Div. 2d Dep't 1986).

Public Authorities Law § 1276, subd 1, when read together with CPLR § 204, subd a, brings about a 2 year, 30 day statute of limitations for wrongful death actions commenced against public authorities. *Santaniello v De Francisco*, 74 Misc. 2d 229, 344 N.Y.S.2d 589, 1973 N.Y. Misc. LEXIS 1877 (N.Y. Sup. Ct. 1973), *aff'd*, 44 A.D.2d 831, 355 N.Y.S.2d 569, 1974 N.Y. App. Div. LEXIS 5109 (N.Y. App. Div. 2d Dep't 1974).

Plaintiff’s personal injury action against a bus company was dismissed as time-barred, because the amendment to this section that increased the limitations period for filing such actions from one year to one year and 90 days did not apply to claims, like plaintiff’s, that accrued before the amendment’s effective date. *Williams v MTA Bus Co.*, 989 N.Y.S.2d 806, 44 Misc. 3d 673, 2014 N.Y. Misc. LEXIS 2716 (N.Y. Sup. Ct. 2014), *vacated in part*, *dismissed in part*, 2017 N.Y. Misc. LEXIS 1354 (N.Y. Sup. Ct. Apr. 13, 2017).

## 7. —Applicability of particular periods

Father, whose son died on December 1, 1969 subsequent to coming into contact with high tension wire on premises allegedly owned, maintained and controlled by defendants and who, in September 1970, served notice of claim on defendant metropolitan transportation authority in regard to father’s claim for wrongful death of son and for medical, hospital and funeral expenses incurred by father, was entitled to a 30-day extension of one-year statute of limitations for bringing an action against such authority. *Pepitone v Smith*, 54 A.D.2d 754, 387 N.Y.S.2d 706, 1976 N.Y. App. Div. LEXIS 14413 (N.Y. App. Div. 2d Dep't 1976).

In a personal injuries action arising out of an accident between plaintiff’s car and a bus owned by a Metropolitan Suburban Bus Authority, the court erred in applying the three-year period of limitations under CPLR § 214 as against the defendant bus driver without first resolving the question of indemnification, since the shorter one-year period under Pub A Law § 1276(2) would be applicable if the Metropolitan Suburban Bus Authority were required to indemnify the driver. *Albano v Hawkins*, 82 A.D.2d 871, 440 N.Y.S.2d 327, 1981 N.Y. App. Div. LEXIS 14563 (N.Y. App. Div. 2d Dep't 1981).

Wrongful death actions against the Metropolitan Transportation Authority and its subsidiary corporations, including the Long Island Railroad, commenced more than one year and thirty days after the cause of action accrued would be dismissed as time-barred, since the applicable statute of limitations is the one-year period set forth in Pub A Law § 1276(2), rather than the two-year period set forth in EPTL § 5-4.1. *Andersen v Long Island Railroad*, 88 A.D.2d 328, 453 N.Y.S.2d 203, 1982 N.Y. App. Div. LEXIS 17060 (N.Y. App. Div. 2d Dep't 1982), *aff'd*, 59 N.Y.2d 657, 463 N.Y.S.2d 407, 450 N.E.2d 213, 1983 N.Y. LEXIS 3051 (N.Y. 1983), *aff'd*, 59 N.Y.2d 895, 465 N.Y.S.2d 938, 452 N.E.2d 1266, 1983 N.Y. LEXIS 3221 (N.Y. 1983)).

Where liability alleged in complaint has genesis in contractual relationship between parties, and action seeks to recover for damage to property, 6 year contract statute of limitations under CPLR § 213 is applicable, rather than shorter tort statute applicable under Public Authorities Law § 1276. *King Kullen Grocery Co. v Long Island R. Co.*, 112 A.D.2d 194, 491 N.Y.S.2d 417, 1985 N.Y. App. Div. LEXIS 55944 (N.Y. App. Div. 2d Dep't 1985).

In personal injury action involving county-owned bus which had been leased to transportation authority, wherein plaintiff's action against authority was barred by one-year 30-day limitations period provided in CLS Pub A § 1276, court properly denied county's motion for dismissal on ground that same limitations period which applied to authority should apply to county because authority was "real party in interest" due to its contractual duty to indemnify county; pursuant to CLS County § 52, one-year 90-day limitations period set forth in CLS Gen Mun § 50-i was applicable to county, and county's contention—that authority's potential liability to county (if county did not have benefit of shorter statute) would circumvent operation of shorter statute as to authority—was irrelevant, because authority remained potentially liable in any event pursuant to third-party complaints interposed by other codefendants. *Orkin v County of Nassau*, 126 A.D.2d 618, 511 N.Y.S.2d 55, 1987 N.Y. App. Div. LEXIS 41751 (N.Y. App. Div. 2d Dep't 1987).

Plaintiff's complaint for injuries suffered when he fell between boarding platform and train at Long Island Railroad station was barred by statute of limitations where summons and complaint were served more than one year and 30 days after injury; pertinent statute was CLS Pub A § 1276 since railroad is subsidiary corporation of Metropolitan Transportation Authority. *Yasus v Metropolitan Transp. Authority*, 128 A.D.2d 389, 512 N.Y.S.2d 397, 1987 N.Y. App. Div. LEXIS 44102 (N.Y. App. Div. 1st Dep't 1987).

Insurer's claim against transit company for recovery of no-fault benefits paid to its insured did not require dismissal under CLS CPLR § 3211(a)(5) on ground that action was barred by statute of limitations for tort actions under CLS Pub A § 1276 where claim was for reimbursement of first-party benefits and therefore did not sound in tort. *Empire Ins. Co. v Metropolitan Suburban Bus Authority*, 159 A.D.2d 312, 552 N.Y.S.2d 591, 1990 N.Y. App. Div. LEXIS 2681 (N.Y. App. Div. 1st Dep't 1990).

Metropolitan Transportation Authority Office of the Inspector General (OIG) was part of Metropolitan Transportation Authority (MTA) for purpose of statute of limitations applicable to that agency (CLS Pub A § 1276(2)); thus, since employees of OIG are employees of MTA for that purpose, statute of limitations applicable to MTA was applicable to individual who was sued solely in her former, official capacity as OIG employee. *Best-Simpson v New York City Transit Auth.*, 221 A.D.2d 398, 633 N.Y.S.2d 535, 1995 N.Y. App. Div. LEXIS 11968 (N.Y. App. Div. 2d Dep't 1995).

Personal injury action against Metropolitan Suburban Bus Authority was time-barred under CLS Pub A § 1276(2) where it was commenced more than one year and 30 days after it accrued. *Jones v Metropolitan Suburban Bus Auth.*, 245 A.D.2d 265, 666 N.Y.S.2d 8, 1997 N.Y. App. Div. LEXIS 12094 (N.Y. App. Div. 2d Dep't 1997), app. denied, 92 N.Y.2d 803, 677 N.Y.S.2d 74, 699 N.E.2d 434, 1998 N.Y. LEXIS 1805 (N.Y. 1998).

In action against Metropolitan Transportation Authority (MTA) and Metro-North Commuter Railroad (Metro-North) by passenger who was injured while disembarking from train, court would apply limitation period under CLS Pub A § 1276 rather than period under CLS Gen Mun § 50-i, and thus action was time barred given fact that complaint was filed more than 130 days after date of alleged accident; MTA is public authority, and Metro-North is wholly owned subsidiary of MTA. *Celli v Metro-North Commuter R.R.*, 891 F. Supp. 124, 1995 U.S. Dist. LEXIS 8621 (S.D.N.Y. 1995), *aff'd*, 101 F.3d 108, 1996 U.S. App. LEXIS 39287 (2d Cir. N.Y. 1996).

Plaintiff's action against commuter railroad and transportation authority, seeking recovery for injuries received when disembarking train, is dismissed, where transportation authority is public authority and railroad is wholly owned subsidiary of it, because CLS Pub A Law § 1276 applies and since action was filed one year and 70 days after accident, it is time-barred. *Celli v Metro-North Commuter R.R.*, 891 F. Supp. 124, 1995 U.S. Dist. LEXIS 8621 (S.D.N.Y. 1995), *aff'd*, 101 F.3d 108, 1996 U.S. App. LEXIS 39287 (2d Cir. N.Y. 1996).

## 8. —Accrual

Cause of action to recover damages for wrongful death against metropolitan transit authority accrues upon death of decedent, and action must be commenced within one year of date of decedent's death. *D'Andrea v Long Island R. R. Co.*, 117 A.D.2d 10, 501 N.Y.S.2d 891, 1986 N.Y. App. Div. LEXIS 51039 (N.Y. App. Div. 2d Dep't 1986), *aff'd*, 70 N.Y.2d 683, 518 N.Y.S.2d 964, 512 N.E.2d 547, 1987 N.Y. LEXIS 17330 (N.Y. 1987).

### **9. —Tolling**

After claimant's service of notice of claim on Metropolitan Transit Authority and its subsidiary commuter railroad, their service of notice of oral examination on claimant did not operate to toll period to bring suit under either CLS Pub A § 1276 or CLS Gen Mun § 50-i. *Rose v Metro N. C. Railroad*, 143 A.D.2d 993, 533 N.Y.S.2d 629, 1988 N.Y. App. Div. LEXIS 10424 (N.Y. App. Div. 2d Dep't 1988), *app. dismissed*, 73 N.Y.2d 994, 540 N.Y.S.2d 1005, 538 N.E.2d 357, 1989 N.Y. LEXIS 266 (N.Y. 1989).

By operation of CLS CPLR § 204(a), statutory stay of CLS Pub A § 1276(1) tolls limitation period of CLS Pub A § 1276(2) for 30 days, so that net limitation period governing actions against Metropolitan Transit Authority and its subsidiaries is one year and 30 days. *Rose v Metro N. C. Railroad*, 143 A.D.2d 993, 533 N.Y.S.2d 629, 1988 N.Y. App. Div. LEXIS 10424 (N.Y. App. Div. 2d Dep't 1988), *app. dismissed*, 73 N.Y.2d 994, 540 N.Y.S.2d 1005, 538 N.E.2d 357, 1989 N.Y. LEXIS 266 (N.Y. 1989).

Limitations period under CLS Pub A § 1276 was not tolled from time notice to appear for oral deposition was served until time that examination was completed; statute does not require that plaintiff wait until oral examination has been completed before filing summons and complaint. *Stillman v New Jersey Transit*, 224 A.D.2d 348, 638 N.Y.S.2d 65, 1996 N.Y. App. Div. LEXIS 1473 (N.Y. App. Div. 1st Dep't 1996).

CLS Pub A § 1276 contemplates and requires only 30-day waiting period following service of notice of claim on public authority; thus, 30 days is maximum extension of time plaintiff is entitled to under CLS CPLR § 204(a). *Stillman v New Jersey Transit*, 224 A.D.2d 348, 638 N.Y.S.2d 65, 1996 N.Y. App. Div. LEXIS 1473 (N.Y. App. Div. 1st Dep't 1996).

Defendants' service of notice for oral examination of plaintiffs did not toll limitations period of CLS Pub A § 1276(2). *Impastato v Metropolitan Transp. Auth.*, 226 A.D.2d 587, 641 N.Y.S.2d 362, 1996 N.Y. App. Div. LEXIS 4309 (N.Y. App. Div. 2d Dep't 1996).

Court properly concluded that time within which action must be commenced under CLS Pub A § 1276(2) constitutes period of limitation which may be tolled or extended under CLS CPLR § 210(2). *Trepel v Metropolitan Suburban Bus Auth.*, 262 A.D.2d 552, 693 N.Y.S.2d 159, 1999 N.Y. App. Div. LEXIS 6949 (N.Y. App. Div. 2d Dep't 1999), *app. dismissed*, 95 N.Y.2d 887, 715 N.Y.S.2d 378, 738 N.E.2d 782, 2000 N.Y. LEXIS 3409 (N.Y. 2000).

Under Public Authorities Law § 1276, subd 1, and CPLR § 204, subd a, wrongful death action against public authority (Long Island Railroad) not commenced within 2 years, 30 days following date of death was time barred, and limitation period for commencing wrongful death action could not be extended by 90-day notice provision of General Municipal Law § 50-e. *Santaniello v De Francisco*, 74 Misc. 2d 229, 344 N.Y.S.2d 589, 1973 N.Y. Misc. LEXIS 1877 (N.Y. Sup. Ct. 1973), *aff'd*, 44 A.D.2d 831, 355 N.Y.S.2d 569, 1974 N.Y. App. Div. LEXIS 5109 (N.Y. App. Div. 2d Dep't 1974).

In action by estate of decedent who died from unrelated causes after he was struck by bus owned and operated by defendant metropolitan suburban bus authority, CLS CPLR § 210(a) did not toll 1 year and 30 day period for commencing action under CLS Pub A § 1276(2) as filing of action within specified period of limitations was jurisdictional condition precedent to suit, and to waiver of sovereign immunity and court's obtaining subject matter jurisdiction. *Cassandro v Metropolitan Suburban Bus Auth.*, 178 Misc. 2d 484, 679 N.Y.S.2d 523, 1998 N.Y. Misc. LEXIS 495 (N.Y. Sup. Ct. 1998).

### **10. —Estoppel from asserting defense**

Tort action against metropolitan transportation authority and Long Island Railroad must be commenced within one year and 30 days of accident, unless plaintiff establishes conduct on prior defendants which would estop them from interposing defense of statute of limitations. *Wenning v Metropolitan Transp. Authority*, 112 A.D.2d 220, 491 N.Y.S.2d 437, 1985 N.Y. App. Div. LEXIS 55966 (N.Y. App. Div. 2d Dep't 1985).

Bus authority is not estopped from asserting statute of limitations because of culpable conduct of employee in allegedly leaving scene of accident. *Di Geloromo v Metropolitan Suburban Bus Authority*, 116 A.D.2d 691, 498 N.Y.S.2d 8, 1986 N.Y. App. Div. LEXIS 51546 (N.Y. App. Div. 2d Dep't 1986).

As plaintiff's compliance with a demand for an examination before a bus company pursuant to this section was not a condition precedent to filing her personal injury suit, that the company postponed the examination until the limitations period expired did not equitably estop it from asserting the statute of limitations as a defense. *Williams v MTA Bus Co.*, 989 N.Y.S.2d 806, 44 Misc. 3d 673, 2014 N.Y. Misc. LEXIS 2716 (N.Y. Sup. Ct. 2014), vacated in part, dismissed in part, 2017 N.Y. Misc. LEXIS 1354 (N.Y. Sup. Ct. Apr. 13, 2017).

### **11. Interest on award**

Prejudgment interest rate on property condemned by Metropolitan Transportation Authority was presumptively 9 percent under L 1939, ch 585, as amended by L 1982, ch 681, § 4 (CLS Unconsol Ch 191 § 2), not 4 percent rate under CLS Pub A § 1276(5). *Metropolitan Transp. Auth. v American Pen Corp.*, 94 N.Y.2d 154, 701 N.Y.S.2d 301, 723 N.E.2d 50, 1999 N.Y. LEXIS 3734 (N.Y. 1999).

A 4% rate of interest must be applied in an action against the Long Island Railroad and the Metropolitan Transportation Authority to both the judgment and the period between the decedent's death, when the claim accrued, and entry of judgment since both defendants are public benefit corporations and the interest rate that can be assessed against public corporations has been restricted by statute to a 4% interest rate on "accrued claims and judgments" (L 1939, ch 585); although section 1276 of the Public Authorities Law requires the 4% rate only on judgments, an appropriate construction of these statutes indicates that the Legislature contemplated that accrued claim bears a 4% rate of interest prior to entry of final judgment pursuant to chapter 585 of the Laws of 1939. *McGale v Metropolitan Transp. Authority*, 76 A.D.2d 38, 429 N.Y.S.2d 418, 1980 N.Y. App. Div. LEXIS 11726 (N.Y. App. Div. 1st Dep't 1980), app. denied, 52 N.Y.2d 862, 437 N.Y.S.2d 79, 418 N.E.2d 672, 1981 N.Y. LEXIS 2184 (N.Y. 1981).

Defendant, a "public benefit corporation", which cannot be required to pay more than 4% annual interest "upon any judgment for which it is liable" (Public Authorities Law, § 1276, subd 5), likewise, is required to pay no more than 4% interest on an accrued claim for wrongful death for which interest is allowable from the date of decedent's death to the entry of judgment (EPTL 5-4.3), rather than 6% prejudgment interest in death cases municipalities are required to pay (General Municipal Law, § 3-a), since chapter 585 of the Laws of 1939, a catchall enactment, highly consistent with subdivision 5 of section 1276 of the Public Authorities Law, prescribing a 4% rate to be paid on both accrued claims and judgments by public corporations, which includes "public benefit corporations", is controlling over the provisions of the General Municipal Law. Defendant is more akin to the New York City Transit Authority which pays only 3% interest in such cases (Public Authorities Law, § 1212, subd 6) and it would be incongruous to require defendant to pay far more than the Transit Authority when both entities perform similar governmental functions and have similar privileges and rights. *McGale v Metropolitan Transp. Authority*, 97 Misc. 2d 20, 410 N.Y.S.2d 751, 1978 N.Y. Misc. LEXIS 2744 (N.Y. Sup. Ct. 1978), modified, 76 A.D.2d 38, 429 N.Y.S.2d 418, 1980 N.Y. App. Div. LEXIS 11726 (N.Y. App. Div. 1st Dep't 1980).

Where a railway company became a subsidiary of the Metropolitan Transportation Authority on January 20, 1966, it was subject to Public Authorities Law § 1276 only with respect to causes of action accruing after January 1, 1967 and interest on a judgment based on a cause of action arising in 1962 was properly computed at six percent. *Grunenthal v Long Island R. Co.*, 418 F.2d 1234, 1969 U.S. App. LEXIS 9809 (2d Cir. N.Y. 1969).

## **Research References & Practice Aids**

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**Cross References:**

This section referred to in § 1266.

**Jurisprudences:**

1 Am Jur 2d, Actions § 73.

2 Am Jur 2d, Administrative Law § 407.

44B Am Jur 2d, Interest and Usury § 57.

**Treatises**

**Matthew Bender's New York Practice Guides:**

LexisNexis AnswerGuide New York Negligence § 6.03 .Identifying Statutes That Provide for Shortened Time for Commencement of Action.

**Matthew Bender's New York Practice Guides:**

LexisNexis AnswerGuide New York Negligence § 6.05 .Examining Consequences of Bringing Action or Filing Notice Against Wrong Defendant.

**FORMS:**

LexisNexis Forms FORM 521-10-4.—Notice of Claim Against Transportation Authority and Railroad for Personal Injuries and Wrongful Death of Pedestrian Struck by Train.

**Texts:**

Turano & Radigan, New York Estate Administration (1999, Matthew Bender) § 20-4.

**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1276-a

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)***

## **§ 1276-a. Annual audit of authority**

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The comptroller shall conduct an annual audit of the books and records of the authority and its subsidiary corporations. Such audit shall include a complete and thorough examination of such authority's receipts, disbursements, revenues and expenses during the prior fiscal year in accordance with the categories or classifications established by such authority for its own operating and capital outlay purposes; assets and liabilities at the end of its last fiscal year including the status of reserve, depreciation, special or other funds and including the receipts and payments of these funds; schedule of bonds and notes outstanding at the end of its fiscal year and their redemption dates, together with a statement of the amounts redeemed and incurred during such fiscal year; operations, debt service and capital construction during the prior fiscal year.

The comptroller, upon completion of such audit, shall within sixty days thereafter, report to the governor and the legislature his findings, conclusions and recommendations thereof.

## **History**

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Add, L 1970, ch 968; amd, L 1971, ch 811, eff June 25, 1971.

Annotations

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

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# NY CLS Pub A § 1276-b

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## **§ 1276-b. Authority budget and financial plan**

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1. In addition to the requirements of section twenty-eight hundred two of this chapter, each authority budget and plan shall be posted on its website and shall: (a) present information relating to the authority and each of its agencies in a clear and consistent manner and format; (b) be prepared in accordance with generally accepted accounting principles, except as otherwise consented to by the comptroller upon good cause shown; (c) be based on reasonable assumptions and methods of estimation; (d) include estimates of projected operating revenues and expenses; (e) identify any planned transaction that would shift resources, from any source, from one fiscal year to another, and the amount of any reserves; and (f) contain a summary in plain English of the principal information in the budget and conclusions to be drawn from it.
2. Supporting documentation. The authority shall prepare and make available for public inspection on its website information that details the sources of data and the assumptions and methods of estimation used to calculate all operating and capital budget projections, consistent with generally accepted budgetary practices.
3. The authority shall establish at least annually the quarterly revenue and expense targets for the authority, and for each subsidiary or other authority created by the authority itself and for which it reports financial data.
4. Monitoring the budget and financial plan. The authority shall prepare and make available for public inspection on its website: (a) within sixty days of the release of the adopted budget and any updates to the budget (except updates released within ninety days of the close of the fiscal year), monthly projections for the current fiscal year of all revenues and expenses, staffing for the authority and each of its agencies, and utilization for each of the authority's agencies that operate transportation systems, including bridges and tunnels; (b) within sixty days after the close of each quarter, a comparison of actual revenues and expenses, actual staffing and actual utilization to planned or projected levels for each of the authority's agencies that operate transportation systems, including bridges and tunnels, with an explanation of each material variance and its budgetary impact; and (c) within ninety days after the close of each quarter, the status of each gap-closing initiative with a projected value greater than one million dollars in any given fiscal year; the status of capital projects by capital element, including but not limited to commitments, expenditures and completions; and an explanation of material variances from the plan, cost overruns and delays.
5. Strategic operation plan. Financial information required to be submitted by the authority pursuant to paragraphs d and e of subdivision one of section twelve hundred sixty-nine-c of this title shall be presented in a format consistent with the budget and plan, in downloadable, searchable format.

## **History**

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Add, L 2009, ch 25, § 17 (Part H), eff May 7, 2009 (see 2009 note below).

Annotations

## Notes

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### Editor's Notes:

**Laws 2009, ch 25, § 1**, eff May 7, 2009, provides as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

## Research References & Practice Aids

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### Hierarchy Notes:

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# NY CLS Pub A § 1276-c

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## § 1276-c. Independent audit of authority

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The independent auditor retained by the authority shall not provide to the authority, contemporaneously with the audit unless it shall have previously received written approval by the audit committee any non-audit service, including:

1. routine bookkeeping or other services;
2. financial information systems design and implementation;
3. appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
4. actuarial services;
5. outsourcing services;
6. authority management functions or human resources;
7. broker or dealer, investment advisor or investment banking services;
8. legal services and expert services unrelated to the audit.

## History

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Add, L 2009, ch 25, § 17 (Part H), eff May 7, 2009 (see 2009 note below).

Annotations

## Notes

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### Editor's Notes:

**Laws 2009, ch 25, § 1**, eff May 7, 2009, provides as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.
4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.
5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.
6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

## **Research References & Practice Aids**

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# NY CLS Pub A § 1276-d

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## § 1276-d. Independent audit by the legislature

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After the submission of the annual independent audit report to the legislature pursuant to section two thousand eight hundred two of this chapter, and after review of such report, the temporary president of the senate and the speaker of the assembly may commission an auditing firm, every two years, after the year two thousand nine, to conduct an independent audit of the authority, including its subsidiaries. The temporary president of the senate and the speaker of the assembly shall set the scope of such audit, and determine the terms of the request for proposal for such audit. Such audit shall be performed for the year two thousand nine. The authority shall fully cooperate with and assist in such an audit.

## History

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Add, L 2009, ch 25, § 17 (Part H), eff May 7, 2009 (see 2009 note below).

Annotations

## Notes

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### Editor's Notes:

**Laws 2009, ch 25, § 1**, eff May 7, 2009, provides as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

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# NY CLS Pub A § 1276-e

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## § 1276-e. Reporting

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The authority shall post on its website on or before the first of May, the law firms retained by the authority which in the past year received payment for services in such year.

## History

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Add, L 2009, ch 25, § 19 (Part H), eff May 7, 2009 (see 2009 note below).

Annotations

## Notes

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### Editor's Notes:

**Laws 2009, ch 25, § 1**, eff May 7, 2009, provides as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

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# NY CLS Pub A § 1276-f

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## § 1276-f. Metropolitan transportation authority transit performance metrics.

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

- (a) “additional platform time” means for the subways the average added time that customers spend waiting on the platform for a train, compared with their scheduled wait time.
- (b) “additional train time” means for the subways the average additional time customers spend onboard the train, compared with their scheduled on-train time.
- (c) “customer journey time performance” means for the subways the percentage of customer trips with an estimated total travel time within five minutes of the scheduled total travel time.
- (d) “elevator availability” means percentage of facilities that require the use of stairs and have an operational elevator.
- (e) “escalator availability” means percentage of facilities that require the use of stairs and have an operational escalator.
- (f) “additional journey time” means for the subways comparison of measured or estimated actual journey time compared to schedule.
- (g) “journey time” means for the subways time on platform and the time on train. Journey time is calculated as either actual journey times that customers experience, or as scheduled journey times. Journey time and its components may be based on a manual or an automatically generated sample.
- (h) “major incidents” mean (1) for the subway incidents that delay fifty or more trains where a train is considered delayed if it is more than five minutes late or skips planned stops, and (2) for the commuter railroads incidents that delay ten or more trains greater than five minutes and fifty-nine seconds.
- (i) “lost time accidents” means a job related incident that results in the inability of an employee to perform full job duties for at least one working day beyond the day of the incident. Rates are based on lost time accidents per one hundred employees.
- (j) “employees’ lost time days” means for the commuter railroads the total number of calendar days employees’ treating medical professionals have determined that they cannot work due to an occupation injury or illness.
- (k) “employee lost time rate” means for the commuter railroads the number of occupational injuries or illnesses per two hundred thousand employee hours worked.
- (l) “terminal on-time performance” means (1) for the subways the percentage of trains arriving at their destination terminals as scheduled with a train counted as on-time if it arrives at its destination early, on time, or no more than five minutes late, and has not skipped any planned stops, and (2) for the commuter railroads the percentage of trains arriving at their final destination terminals as scheduled with a train counted as on-time if it arrives at its destination early, on-time or no more than five minutes

and fifty-nine seconds late. Provided that the percentage of trains not arriving at their final destinations shall include unscheduled cancellations.

(m) "additional data" means (1) for the subways the percentage of trains arriving at their scheduled terminals between four and five minutes after their scheduled arrival time; (2) for the commuter railroads the percentage of trains arriving at their scheduled terminals between four and five minutes and fifty-nine seconds after their scheduled arrival time; and (3) for commuter rails the percentage of cancelled trains.

2. Reporting. The authority shall take all practicable measures to collect, compile and publish meaningful and informative performance metrics for all customer trips provided by the New York city transit authority subways, Long Island rail road and Metro-North commuter railroad on a monthly basis including all applicable performance metrics as defined in subdivision one of this section.

If the authority cannot practicably collect and compile any such performance metric for a customer trip type, it may, subject to the approval by the chairman of the metropolitan transportation authority, substitute an equivalent performance metric based on international public transport benchmarking and best practices that comparably measures system performance and service delivery.

3. International benchmarking.

(a) The authority shall publish an annual report presenting the authority's performance in comparison with other national and international peer agencies. This report shall include, but not be limited to, the following metrics:

- (i) total operating cost per car per mile;
- (ii) maintenance cost per car per mile;
- (iii) passenger journeys per total staff and contractor hours; and
- (iv) staff hours lost to accidents.

(b) The authority shall also provide an annual implementation report to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the assembly and senate, and the chairs and ranking members of the transportation and corporations, authorities and commissions committees on or before January thirty-first every year, and publish such report on its website.

## History

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L 2019, ch 39, § 1 (Part A), effective October 9, 2019; L 2019, ch 59, § 2 (Part ZZZ, Subpart D), effective October 9, 2019.

Annotations

## Notes

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### Editor's Notes

**Laws 2019, ch 39, § 2 (Part A)**, eff October 9, 2019, provides:

§ 2. This act shall take effect on the same date and in the same manner as section 1 of subpart A of part ZZZ of chapter 59 of the laws of 2019, takes effect.

**Laws 2019, ch 59, § 1 (Part ZZZ)**, eff April 12, 2019, provides:



Section 1. This act shall be known and may be cited as the “MTA reform and traffic mobility act”.

**Laws 2019, ch 59, § 1 (Part ZZZ, Subpart D)**, eff October 9, 2019, provides:

Section 1. The legislature finds and declares that performance metrics used by the Metropolitan Transportation Authority do not provide adequate information about the actual performance and delivery of the Authority's services, and that improved data collection and sharing on system performance and service delivery could yield significant improvements at the Authority.

**Laws 2019, ch 59, § 3 (Part ZZZ, Subpart D)**, eff October 9, 2019, provides:

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.

#### **Amendment Notes**

The 2019 amendment by ch 39, § 1 (Part A), rewrote the section.

## **Research References & Practice Aids**

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#### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1277

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)***

## **§ 1277. Station operation and maintenance.**

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1. The operation, maintenance and use of passenger stations shall be public purposes of the city of New York and the counties within the district. The total cost to the authority and each of its subsidiary corporations of operation, maintenance and use of each passenger station within the district serviced by one or more railroad facilities of the authority or of such subsidiary corporation, including the buildings, appurtenances, platforms, lands and approaches incidental or adjacent thereto, shall be borne by the city of New York if such station is located in such city or, if not located in such city, by such county within the district in which such station is located. On or before June first of each year, the authority shall, in accordance with the method specified herein, determine and certify to the city of New York and to each county within the district the respective allocation of costs related to the operation, maintenance and use of passenger stations within such city and each such other county, for the twelve month period ending the preceding March thirty-first.

a. For the year commencing April first, nineteen hundred ninety-nine, the total payment amount to be billed by the authority for the operation, maintenance and use of each passenger station within the city of New York and the counties of Nassau, Suffolk, Westchester, Dutchess, Putnam, Orange, and Rockland shall be calculated by summing the total amount listed in the base amount table plus an adjustment to such base year amount equal to the base amount times the increase or decrease in the Consumer Price Index for Wage Earners and Clerical Workers for the New York, Northeastern-New Jersey Standard Metropolitan Statistical Area for the twelve-month period being billed.

### BASE AMOUNT TABLE

County	Base Amount
Nassau	\$19,200,000
Suffolk	\$11,834,091
Westchester	\$13,269,310
Dutchess	\$ 1,581,880
Putnam	\$ 618,619
Orange	\$ 327,247
Rockland	\$ 34,791
City of New York	\$61,435,330

b. For each year thereafter, such total payment for each such county shall be the same amount as the total payment during the immediately prior year, plus an adjustment equal to the prior year amount times the increase or decrease in the Consumer Price Index for Wage Earners and Clerical Workers for the New York, Northeastern-New Jersey Standard Metropolitan Statistical Area for the twelve-month period being billed.

2. On or before the following September first, of each year, such city and each such county shall pay to the authority such cost or amount so certified to it on or before the preceding June first. Such city and each such county shall have power to finance such costs to it by the issuance of budget notes pursuant to section 29.00 of the local finance law. For the year beginning April first, two thousand four, the authority, the

city of New York and the counties of Nassau, Suffolk, Westchester, Dutchess, Putnam, Orange, and Rockland may, after having reached an agreement, recommend to the legislature modifications to the amounts set forth above based upon changes made to commuter services including but not limited to changes in the number of passenger stations within such counties or the level of commuter rail service provided to any such passenger stations. Failure between the authority and between the counties to reach agreement will be referred to the state comptroller for mediation. If the mediation is unsuccessful, each party and the state comptroller may submit a recommendation to the governor and the legislature for legislative action.

**3.** In the event that a city or county shall fail to make payment to the authority for station maintenance as required pursuant to this section, or any part thereof, the chief executive officer of the authority or such other person as the chairman shall designate shall certify to the state comptroller the amount due and owing the authority at the end of the state fiscal year and the state comptroller shall withhold an equivalent amount from the next succeeding state aid allocated to such county or city from the motor fuel tax and the motor vehicle registration fee distributed pursuant to former section one hundred twelve of the highway law, or amounts distributed pursuant to section ten-c of the highway law, or per capita local assistance pursuant to section fifty-four of the state finance law subject to the following limitations: prior to withholding amounts due the authority from such county or city, the comptroller shall pay in full any amount due the state of New York municipal bond bank agency, on account of any such county's or city's obligation to such agency; the city university construction fund pursuant to the provisions of the city university construction fund act; the New York city housing development corporation, pursuant to the provisions of the New York city housing development corporation act (article twelve of the private housing finance law); and the transit construction fund pursuant to the provisions of title nine-A of article five of this chapter. The comptroller shall give the director of the budget notification of any such payment. Such amount or amounts so withheld by the comptroller shall be paid to the authority and the authority shall use such amount for the repayment of the state advances hereby authorized. When such amount or amounts are received by the authority, it shall credit such amounts against any amounts due and owing by the city or county on whose account such amount was withheld and paid.

## History

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Add, L 1965, ch 324, § 3; amd, L 1966, ch 415, § 10; L 1981, ch 314, § 25; L 1981, ch 558, § 14, eff June 29, 1981; L 1995, ch 260, § 1, eff July 26, 1995, deemed eff April 1, 1994; L 2000, ch 161, § 2, eff July 18, 2000 (see 2000 note below); L 2018, ch 521, § 1, effective December 28, 2018; L 2019, ch 224, § 1, effective August 30, 2019.

Annotations

## Notes

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### Prior Law:

Former § 1277, add, L 1942, ch 655; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 418.

### Editor's Notes:

See 1965 note under Title 11.

**Laws 2000, ch 161, § 1**, eff July 18, 2000, repealed, L 1995, ch 191, which amended this section.

**Laws 2000, ch 161, § 3**, eff July 18, 2000, provides as follows:

§ 3. This act shall take effect immediately, provided, however, that nothing contained herein shall affect any existing obligations of any county or the city of New York with respect to any sums due and owing to the authority or any of its subsidiaries.

**Laws 2018, ch 521, § 2**, eff December 28, 2018, provides:

§ 2. This act shall take effect immediately and shall apply to any station closings that occur no sooner than six months after such effective date.

**Laws 2019, ch 224, § 3, eff August 30, 2019**, provides:

§ 3. This act shall take effect immediately and shall apply to any passenger station closings that occur no sooner than 90 days after such effective date.

### **Amendment Notes**

**The 2018 amendment by ch 521, § 1**, added the 1 through 1c designations; and added 2.

**The 2019 amendment by ch 224, § 1**, redesignated former 1(a) as 1; redesignated former 1(i) and 1(ii) as 1(a) and 1(b); redesignated former 1(b) and 1(c) as 2 and 3; and deleted former 2, which read: "A public hearing or hearings shall be held at least thirty days prior to the closure of any transportation facility due to construction, improvement, reconstruction or rehabilitation where such facility will be out-of-service for ninety days or longer. Public hearings required by this subdivision shall be held at one or more locations conveniently accessible to the persons who would be affected by such closure."

## **Notes to Decisions**

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### **1. In general**

### **2. Constitutional issues**

### **3. "Total cost" of station operation**

#### **1. In general**

There is no justification for interpreting the words "passenger station" in the statute to mean anything less than stations intended to be used in the passenger service of the road for the accommodation of passengers and includes those stations which may be merely used by passengers to change trains. *Metropolitan Transp. Authority v New York*, 32 A.D.2d 197, 301 N.Y.S.2d 245, 1969 N.Y. App. Div. LEXIS 3716 (N.Y. App. Div. 1st Dep't 1969), modified, 26 N.Y.2d 817, 309 N.Y.S.2d 352, 257 N.E.2d 898, 1970 N.Y. LEXIS 1541 (N.Y. 1970).

The statute makes the total cost to the Metropolitan Transportation Authority of the operation, maintenance and use of each passenger station of any railroad facility within the city a charge to be borne by the city. *Metropolitan Transp. Authority v New York*, 32 A.D.2d 197, 301 N.Y.S.2d 245, 1969 N.Y. App. Div. LEXIS 3716 (N.Y. App. Div. 1st Dep't 1969), modified, 26 N.Y.2d 817, 309 N.Y.S.2d 352, 257 N.E.2d 898, 1970 N.Y. LEXIS 1541 (N.Y. 1970).

Income from concession revenues at Grand Central Station, real estate income from property and portion of contribution of Connecticut Transportation Authority toward operating deficit allocable to operation of two stations should not be deducted from overall costs of station operation, maintenance, and use by Metropolitan Transportation Authority from New York City under section of Public Authorities Law making total cost of operation of passenger station of any railroad facility within city a charge to be borne by city. *Metropolitan Transp. Authority v New York*, 47 A.D.2d 10, 365 N.Y.S.2d 10, 1975 N.Y. App. Div. LEXIS 8705 (N.Y. App. Div. 1st Dep't 1975), *aff'd*, 39 N.Y.2d 953, 386 N.Y.S.2d 884, 353 N.E.2d 848, 1976 N.Y. LEXIS 2903 (N.Y. 1976).

In an action by a county seeking a declaration that defendant transportation authority was not entitled to payment of any portion of the costs demanded by defendant which was not properly a part of the cost of operation, maintenance and use of railroad stations in plaintiff county, the trial court erred in granting defendant's motion, pursuant to CPLR § 3211, to dismiss the complaint since Pub A Law § 1277 requires the payment by plaintiff to defendant of its bill for station maintenance costs regardless of whether plaintiff disagrees with the amount claimed by defendant to be due and owing. *County of Nassau v Metropolitan Transp. Authority*, 88 A.D.2d 580, 449 N.Y.S.2d 802, 1982 N.Y. App. Div. LEXIS 16744 (N.Y. App. Div. 2d Dep't 1982).

Provisions of CLS Pub A § 1277 (permitting state to withhold funds appropriated to county for mass transit subsidy in order to satisfy debt to Metropolitan Transportation Authority (MTA) for station maintenance) do not violate mandate of CLS St Fin § 43 (that money appropriated for specific purpose shall not be used for any other purpose) since legislature is presumed to be aware of and to act with knowledge of prior statutes in pari materia, and reading of both statutes indicates clear legislative intent that general per capita aid funds should be diverted to MTA in event that county fails to pay its station maintenance debt. *Purcell v Regan*, 126 A.D.2d 849, 510 N.Y.S.2d 772, 1987 N.Y. App. Div. LEXIS 41980 (N.Y. App. Div. 3d Dep't), app. denied, 69 N.Y.2d 613, 517 N.Y.S.2d 1029, 511 N.E.2d 88, 1987 N.Y. LEXIS 16930 (N.Y. 1987).

## 2. Constitutional issues

The statute is sufficiently "general" within the sense of the constitutional provisions, New York Constitution Article IX, § 2, subd [b] [¶ 2]. *Metropolitan Transp. Authority v County of Nassau*, 28 N.Y.2d 385, 322 N.Y.S.2d 228, 271 N.E.2d 213, 1971 N.Y. LEXIS 1244 (N.Y. 1971).

The statute governing the Metropolitan Transportation Authority is constitutionally valid. *Metropolitan Transp. Authority v County of Nassau*, 35 A.D.2d 739, 315 N.Y.S.2d 1002, 1970 N.Y. App. Div. LEXIS 3697 (N.Y. App. Div. 2d Dep't 1970), aff'd, 28 N.Y.2d 385, 322 N.Y.S.2d 228, 271 N.E.2d 213, 1971 N.Y. LEXIS 1244 (N.Y. 1971).

County had standing to bring action against state and Metropolitan Transportation Authority (MTA) challenging constitutionality of provisions of CLS Pub A § 1277 which permit state to withhold funds appropriated to county in order to satisfy debt owed to MTA for station maintenance, since county was not challenging one of its delegated governmental duties; furthermore, it was sufficient for standing that county be entitled to possession of fund which was in possession of another, since title in fund is not mandatory prerequisite to standing. *Purcell v Regan*, 126 A.D.2d 849, 510 N.Y.S.2d 772, 1987 N.Y. App. Div. LEXIS 41980 (N.Y. App. Div. 3d Dep't), app. denied, 69 N.Y.2d 613, 517 N.Y.S.2d 1029, 511 N.E.2d 88, 1987 N.Y. LEXIS 16930 (N.Y. 1987).

Doctrine of res judicata did not bar county's action seeking declaration that CLS Pub A § 1277 was unconstitutional, despite prior litigation between same parties regarding statute, where prior and current actions were too dissimilar in that certain withholding provision regarding funds for transit station maintenance at issue in current action was never pleaded nor involved in earlier actions and, in fact, had not even been enacted at time of prior litigation. *Purcell v Regan*, 126 A.D.2d 849, 510 N.Y.S.2d 772, 1987 N.Y. App. Div. LEXIS 41980 (N.Y. App. Div. 3d Dep't), app. denied, 69 N.Y.2d 613, 517 N.Y.S.2d 1029, 511 N.E.2d 88, 1987 N.Y. LEXIS 16930 (N.Y. 1987).

Special Term properly rejected county's contention that provisions of CLS Pub A § 1277 permitting state to withhold funds appropriated to county for mass transit subsidy (in order to satisfy debt owed to Metropolitan Transportation Authority for station maintenance) were in conflict with CLS NY Const Art VII § 8 and Art XVII § 1, since Art XVII § 1 does not set forth any specific method for state's compliance with duty to provide public assistance and thus legislature may determine how state distributes its public assistance responsibilities between itself and its localities. *Purcell v Regan*, 126 A.D.2d 849, 510 N.Y.S.2d 772, 1987 N.Y. App. Div. LEXIS 41980 (N.Y. App. Div. 3d Dep't), app. denied, 69 N.Y.2d 613, 517 N.Y.S.2d 1029, 511 N.E.2d 88, 1987 N.Y. LEXIS 16930 (N.Y. 1987).

Special Term correctly determined that only viable way by which county could claim that provisions of CLS Pub A § 1277 (permitting state to withhold funds appropriated to county for mass transit subsidy) impaired county's obligations to needy under CLS NY Const Art XVII § 1 was if county was at limit of its constitutional taxing power and could not generate sufficient revenues to meet its social services obligations. *Purcell v Regan*, 126 A.D.2d 849,

510 N.Y.S.2d 772, 1987 N.Y. App. Div. LEXIS 41980 (N.Y. App. Div. 3d Dep't), app. denied, 69 N.Y.2d 613, 517 N.Y.S.2d 1029, 511 N.E.2d 88, 1987 N.Y. LEXIS 16930 (N.Y. 1987).

### 3. "Total cost" of station operation

Lower courts erroneously deferred to Metropolitan Transit Authority's interpretation of CLS Pub A § 1277 in dismissing county's Article 78 challenge to agency's inclusion of negligence settlement cost as "total cost" of operating its passenger stations within county's borders, since case turned solely on statutory interpretation of phrase "total cost" and agency's specialized knowledge was not necessarily implicated. *Heimbach v Metropolitan Transp. Authority*, 75 N.Y.2d 387, 553 N.Y.S.2d 653, 553 N.E.2d 242, 1990 N.Y. LEXIS 628 (N.Y. 1990).

Salaries of employees whose work is in connection with use of Metropolitan Transit Authority's stations by passengers, as well as expenditures for cleaning tracks wholly within station, are within "total cost" of operating, maintaining, and using stations under CLS Pub A § 1277 for which agency may seek reimbursement from county; also, revenues derived by agency from its stations by way of concession fees, real estate income, and contributions from out-of-state transportation authorities may not be deducted from its "total cost." *Heimbach v Metropolitan Transp. Authority*, 75 N.Y.2d 387, 553 N.Y.S.2d 653, 553 N.E.2d 242, 1990 N.Y. LEXIS 628 (N.Y. 1990).

Metropolitan Transit Authority (MTA) acted arbitrarily and capriciously in charging county with costs incurred in settling negligence action brought by commuter who was injured on station platform, despite MTA's contention that settlement cost was part of "total cost" of operating, maintaining and using station under CLS Pub A § 1277, since costs of "operation, maintenance and use" refer to predictable cost framework based on previous years' cost of operation, maintenance and use, and on comparable station operations, while exposure to negligence awards and unilateral settlements of lawsuits would preclude prudent planning by municipalities. *Heimbach v Metropolitan Transp. Authority*, 75 N.Y.2d 387, 553 N.Y.S.2d 653, 553 N.E.2d 242, 1990 N.Y. LEXIS 628 (N.Y. 1990).

The cost of liability insurance and the expense of flagging crews whose operations were in connection with the safety of employees of contractors engaged in painting or other maintenance work on the passenger station were items within the total cost to the transportation authority and its subsidiary corporation of operation, maintenance and use of passenger stations in the county. *Metropolitan Transp. Authority v County of Nassau*, 35 A.D.2d 739, 315 N.Y.S.2d 1002, 1970 N.Y. App. Div. LEXIS 3697 (N.Y. App. Div. 2d Dep't 1970), aff'd, 28 N.Y.2d 385, 322 N.Y.S.2d 228, 271 N.E.2d 213, 1971 N.Y. LEXIS 1244 (N.Y. 1971).

Court properly dismissed Article 78 proceeding challenging determination of Metropolitan Transportation Authority (MTA) which certified \$25,070 charge for replacement lighting at railroad station as station maintenance cost to be borne by county within district in which station was located, since MTA had generally followed accepted accounting principles in treating station as unit of property for depreciating construction expenditures, and there was rational basis to treat replacement costs of station components (such as lighting) as operating expenses, as such costs did not increase useful life of property. *County of Nassau v Metropolitan Transp. Authority*, 166 A.D.2d 241, 564 N.Y.S.2d 103, 1990 N.Y. App. Div. LEXIS 11743 (N.Y. App. Div. 1st Dep't 1990), app. denied, 77 N.Y.2d 809, 570 N.Y.S.2d 489, 573 N.E.2d 577, 1991 N.Y. LEXIS 699 (N.Y. 1991).

Metropolitan Transportation Authority (MTA) was entitled to charge certain snow removal costs at train station to County, under CLS Pub A § 1277, where snow removal was integral part of station maintenance, and where bidding and contractual practices of MTA for snow removal had rational basis even though separate competitive bids for snow removal at each station were not solicited. *Pattison v Metropolitan Transp. Authority*, 133 Misc. 2d 592, 507 N.Y.S.2d 582, 1986 N.Y. Misc. LEXIS 2914 (N.Y. Sup. Ct. 1986), aff'd, 143 A.D.2d 191, 531 N.Y.S.2d 815, 1988 N.Y. App. Div. LEXIS 8455 (N.Y. App. Div. 2d Dep't 1988).

Metropolitan Transportation Authority (MTA) was not entitled to reimbursement from county for wrongful death settlement, under CLS Pub A § 1277, where decedent was killed as result of railroad functions involving switching train to another track outside station, and where there were no allegations that defects in station or station platform contributed to accident; switching operations conducted near station were not compensable costs of "operation, maintenance and use" of station under § 1277. *Pattison v Metropolitan Transp. Authority*, 133 Misc. 2d 592, 507

N.Y.S.2d 582, 1986 N.Y. Misc. LEXIS 2914 (N.Y. Sup. Ct. 1986), aff'd, 143 A.D.2d 191, 531 N.Y.S.2d 815, 1988 N.Y. App. Div. LEXIS 8455 (N.Y. App. Div. 2d Dep't 1988).

## Research References & Practice Aids

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### Cross References:

This section referred to in § 1279-b.

Consolidated local highway assistance programs, CLS High § 10-c.

New York City Housing Development Corporation, CLS Priv Hous Fin §§ 650 et seq.

Per capita state aid for the support of local governments, CLS St Fin § 54.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1277-a

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*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## § 1277-a. Transfer and receipt of surplus funds

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Notwithstanding any provision of this title or any other provision of law, general, special or local, the authority may from time to time transfer and pay over to New York city transit authority or triborough bridge and tunnel authority all or any part of its surplus funds; and may accept and use any moneys transferred and paid over to it by New York city transit authority or triborough bridge and tunnel authority.

### History

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Add, L 1967, ch 717, § 87; amd, L 2000, ch 61, § 33 (Part O), eff May 15, 2000.

Annotations

### Notes

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#### Prior Law:

Former § 1277-a, add, L 1952, ch 186; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 454.

### Research References & Practice Aids

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#### Cross References:

This section referred to in § 1219-a.

#### Jurisprudences:

63C Am Jur 2d, Public Funds § 8.

63C Am Jur 2d, Public Officers and Employees §§ 305–325.

#### Hierarchy Notes:

NY CLS Pub A, Art. 5



NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1278

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## **§ 1278. Title not affected if in part unconstitutional or ineffective**

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

## **History**

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Add, L 1965, ch 324, § 3, eff June 1, 1965.

Annotations

## **Notes**

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### **Prior Law:**

Former § 1278, add, L 1942, ch 433; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 419.

### **Editor's Notes:**

See 1965 note under Title 11.

## **Research References & Practice Aids**

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### **Jurisprudences:**

16A Am Jur 2d, Constitutional Law §§ 134–151.

73 Am Jur 2d, Statutes § 268.

### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1279

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## **§ 1279. Metropolitan transportation authority inspector general**

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1. There is hereby created in the metropolitan transportation authority an office of metropolitan transportation authority inspector general. The inspector general shall be appointed by the governor with the advice and consent of the senate. The inspector general shall, prior to his appointment, have had at least ten years experience in the management of transportation services, in auditing and investigation of governmental operations, or in services related to management and productivity improvement. The term of office of the inspector general shall be five years from the effective date of appointment, and he shall serve at the pleasure of the governor. The salary of the inspector general shall be determined by the authority board.
2. The inspector general shall annually submit to the board of the metropolitan transportation authority a budget request for the operation of the office. If the board disapproves any portion of such request and the commissioner of transportation determines such disapproval to be unreasonable, such commissioner shall withhold from payments due such authority, the amount so determined to be unreasonable and transfer such amount to the office of the metropolitan transportation authority inspector general.
3. The inspector general shall have full and unrestricted access to all records, information, data, reports, plans, projections, matters, contracts, memoranda, correspondence and any other materials of the authority and its subsidiaries, the Long Island railroad, metro-north railroad, metropolitan suburban bus authority and Staten Island rapid transit operating authority, of the Triborough bridge and tunnel authority, and of the New York city transit authority and its subsidiary, the Manhattan and Bronx surface transit operating authority, or any other agency that may come under the control of the authority, or within their custody or control.
4. The inspector general, notwithstanding the provisions of title nine of this article and this title, and of title three of article three, shall have the following functions, powers and duties:
  - (a) to receive and investigate complaints from any source or upon his own initiative concerning alleged abuses, frauds and service deficiencies, including deficiencies in the maintenance and operation of facilities, relating to the authority and its subsidiaries as listed in subdivision two above, the Triborough bridge and tunnel authority and the New York city transit authority and its subsidiary;
  - (a-1) to receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, use of excessive force, criminal activity, conflicts of interest or abuse by any police officer under the jurisdiction of the office of the metropolitan transportation authority and promptly inform the division of criminal justice services, in the form and manner as prescribed by the division, of such allegations and the progress of investigations related thereto unless special circumstances require confidentiality. Nothing in this paragraph shall require the division of criminal justice services to participate in the investigation of such allegations or take action or prevent the division of criminal justice services from taking action authorized pursuant to subdivision three of section eight hundred forty-five of the executive law in the time and manner determined by the commissioner of the division of criminal justice services.

- (b) to initiate such reviews as he may deem appropriate of the operations of the authority and its subsidiaries as listed in subdivision two above, the Triborough bridge and tunnel authority, or the New York city transit authority and its subsidiary, in order to identify areas in which performance might be improved and available funds used more effectively;
- (c) to recommend remedial actions to be taken by the authority and its subsidiaries as listed in subdivision two of this section, the Triborough bridge and tunnel authority, and the New York city transit authority and its subsidiary, to overcome or correct operating or maintenance deficiencies and inefficiencies that he determines to exist;
- (d) to make available to appropriate law enforcement officials information and evidence which relate to criminal acts that he may obtain in carrying out his duties;
- (e) to subpoena witnesses, administer oaths or affirmations, take testimony and compel the production of such books, papers, records and documents as he may deem to be relevant to any inquiry or investigation undertaken pursuant to this section and to delegate such powers to a duly authorized deputy inspector general;
- (f) to monitor the implementation by the authority and its subsidiaries, the Triborough [Triborough]\* bridge and tunnel authority and the New York city transit authority and its subsidiary of recommendations made by the inspector general or other audit agencies; and
- (g) to do all things necessary to carry out the functions, powers and duties set forth in this section.

5. The inspector general shall cooperate, consult and coordinate with the state public transportation safety board with regard to any activity concerning the operations of the metropolitan transportation authority. With respect to any accident on the facilities of the metropolitan transportation authority, the primary responsibility for investigation shall be that of the board which shall share its findings with the metropolitan transportation authority inspector general.

6. The inspector general shall make annual public reports on his findings and recommendations. Such a report shall be filed in the office of the governor and with the legislature on or before the first day of February for the preceding year. The metropolitan transportation authority and its applicable constituent agencies shall prepare a response to the annual report and to any and all other final reports made by the inspector general within thirty days of receipt, which time may be extended by the inspector general in his discretion, indicating whether such authority intends to implement the recommendations in such reports, and, if not, why not. In addition, the metropolitan transportation authority and its applicable constituent agencies shall give quarterly reports to the inspector general outlining the status of each of the recommendations made by the inspector general in his final reports. Copies of all of these reports shall be sent to the governor, the temporary president of the senate, the speaker of the assembly, the chairman of the senate transportation committee, the chairman of the senate finance committee, the chairman of the assembly corporations, authorities and commissions committee and the chairman of the assembly ways and means committee.

7. To effectuate the purposes of this section, the inspector general may request from any department, board, bureau, commission, office or other agency of the state, or of any of its political subdivisions, such cooperation, assistance, services and data as will enable him to carry out his functions, powers and duties hereunder, and they are authorized and directed to provide said cooperation, assistance, services and data.

## History

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\* The bracketed word has been inserted by the Publisher.

Add, L 1983, ch 427, § 4, eff July 11, 1983; amd, L 1984, ch 927, § 1, eff Sept 1, 1984; L 1985, ch 322, § 1, eff July 11, 1985; L 2020, ch 104, § 3, effective April 1, 2021; L 2021, ch 59, § 15 (Part BBB), effective October 16, 2021.

Annotations

## Notes

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### Prior Law:

Former § 1279, add, L 1943, ch 43; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law, § 420.

### Editor's Notes

**Laws 2020, ch 104, § 6**, eff April 1, 2021, provides:

§ 6. This act shall take effect on the first of April next succeeding the date on which it shall have become a law, provided however, that section four of this act shall take effect upon the enactment into law by the state of New Jersey of legislation having an identical effect with this act, but if the state of New Jersey shall have already enacted such legislation, this act shall take effect immediately; provided that the attorney general shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in section four of this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.

**Laws 2021, ch 59, § 1 (Part BBB)**, eff October 16, 2021, provides:

§ 1. This act shall be known and may be cited as the “New York state professional policing act of 2021”.

**Laws 2021, ch 59, § 18 (Part BBB)**, eff October 16, 2021, provides:

§ 18. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided however the addition of paragraphs (d) and (e) of subdivision 1 of section 846-h of the executive law made by section eleven of this act and the amendments to subdivision 34 of section 1.20 of the criminal procedure law made by section thirteen of this act pertaining to the required certification of police agencies, and the amendments to section fifty-eight of the civil service law made by section seventeen of this act shall take effect two years after such effective date.

### Amendment Notes

The 2020 amendment by ch 104, § 3, added 4(a-1).

The 2021 amendment by ch 59, § 15 (Part BBB), rewrote (4)(a-1).

## Notes to Decisions

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Metropolitan Transportation Authority Office of the Inspector General (OIG) was part of Metropolitan Transportation Authority (MTA) for purpose of statute of limitations applicable to that agency (CLS Pub A § 1276(2)); thus, since employees of OIG are employees of MTA for that purpose, statute of limitations applicable to MTA was applicable to individual who was sued solely in her former, official capacity as OIG employee. *Best-Simpson v New York City Transit Auth.*, 221 A.D.2d 398, 633 N.Y.S.2d 535, 1995 N.Y. App. Div. LEXIS 11968 (N.Y. App. Div. 2d Dep't 1995).

In a proceeding by a former Metropolitan Transit Authority (MTA) employee for a name-clearing hearing, reinstatement to his position, and damages under 42 U.S.C.S. § 1983 for failure to provide him due process, the MTA inspector general was entitled to dismissal from the action because, although the inspector general had authority to investigate alleged abuses and frauds in the maintenance and operation of MTA's facilities, he did not have the authority under N.Y. Pub. Auth. Law § 1279(4) to provide the former employee with the process requested or to reinstate him to his position as deputy director of security. *Matter of Casale v Metro. Transp. Auth.*, 47 A.D.3d 519, 850 N.Y.S.2d 79, 2008 N.Y. App. Div. LEXIS 402 (N.Y. App. Div. 1st Dep't 2008).

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1279-a

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## § 1279-a. Management advisory board

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1. There is hereby created in the office of the metropolitan transportation authority inspector general a management advisory board, consisting of thirteen members appointed by the governor, of whom two shall be appointed upon nomination by the temporary president of the senate, two upon nomination by the speaker of the assembly, one upon nomination by the minority leader of the senate and one upon nomination by the minority leader of the assembly. All members shall serve for a term of three years, except that, of the two members first appointed upon nomination by the temporary president of the senate, one shall serve for a term of two years and one shall serve for a term of one year; of the two members first appointed upon nomination by the speaker of the assembly, one shall serve for a term of two years and one shall serve for a term of one year; and, of two of the members first appointed by the governor without nomination by any other person, two shall each serve for a term of two years and two shall each serve for a term of one year. One of the members appointed to the management advisory board directly by the governor shall be designated by the governor to serve as its chairman.
2. All members of the management advisory board shall be residents of the metropolitan transportation district, and shall be persons with substantial experience in the management of private enterprise, in the delivery of public services, or in labor or labor-management relations.
3. The management advisory board shall assist the metropolitan transportation authority inspector general in identifying ways to improve services, reduce costs and increase the efficiency of the authority and its subsidiaries, the Triborough bridge and tunnel authority or the New York city transit authority and its subsidiary.
4. No later than April first, nineteen hundred eighty-four, and annually thereafter, the management advisory board shall submit to the governor and the legislature a report on its activities during the previous year.
5. The office of the metropolitan transportation authority inspector general shall provide the management advisory board with such staff support as may be required for the performance of its duties.
6. Members of the management advisory board shall serve without compensation, but shall be reimbursed for expenses reasonably incurred in the performance of their duties.

## History

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Add, L 1983, ch 427, § 5, eff July 11, 1983.

Annotations

## Notes

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**Prior Law:**

Former § 1279-a, add, L 1952, ch 207; repealed, L 1957, ch 913, § 3, with substance transferred to Public Housing Law § 459.

**Research References & Practice Aids**

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**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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## NY CLS Pub A § 1279-b

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*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

### **§ 1279-b. Transition—election to withdraw from the metropolitan commuter transportation district.**

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1. The counties of Dutchess, Orange and Rockland shall have an option to withdraw from the metropolitan commuter transportation district and have such withdrawal take effect on either:

(a) January first, nineteen hundred eighty-seven. If any such county plans to withdraw from the district on January first, nineteen hundred eighty-seven, it shall (i) no later than seventy-five days after the effective date of this section, furnish the commissioner of transportation, and chairman of the authority and the other counties which have an option to withdraw, a resolution adopted by the county legislature providing notice of intent to withdraw, (ii) on or before October first, nineteen hundred eighty-six, furnish to the commissioner of transportation, the chairman of the authority and other counties which have an option to withdraw, a resolution adopted by the county legislature providing for a public transportation plan. For the purposes of this section, a “public transportation plan” shall mean a plan that maintains adequate and continuous public transportation services from the withdrawing county to the city of New York or any terminus previously served, provides a reasonable level of rail passenger service, provides a schedule for implementing such service, protects the public investment in the rail transportation system and any other criteria deemed necessary by the commissioner of transportation. Prior to withdrawal pursuant to this paragraph or paragraph (b) of this subdivision, a county must receive approval of its public transportation plan pursuant to paragraph (c) of this subdivision, (iii) on or before December fifteenth, nineteen hundred eighty-six, furnish the commissioner of transportation, a copy of an agreement with the authority or an operator of rail passenger service for the provision of rail passenger service to and from such county and the city of New York or any terminus previously served.

If a county planning to withdraw on January first, nineteen hundred eighty-seven is unable to withdraw because it could not meet the requirements of this paragraph, it may elect to withdraw pursuant to paragraph (b) of this subdivision hereafter.

(b) January first, nineteen hundred eighty-eight or January first, nineteen hundred eighty-nine. If any such county plans to withdraw on either January first, nineteen hundred eighty-eight or January first, nineteen hundred eighty-nine, it shall (i) no later than ninety days after the first of January of the year immediately preceding the year in which such county plans to withdraw from the district, furnish the commissioner of transportation, the chairman of the authority and the other counties which have an option to withdraw, a resolution adopted by the county legislature providing notice of intent to withdraw from the district, (ii) no later than one hundred twenty days after the first of January of the year immediately preceding the year in which such county plans to withdraw from the district furnish to the commissioner of transportation, the chairman of the authority and the counties which have an option to withdraw a resolution adopted by the county legislature providing a public transportation plan as described in this section, (iii) on or before October first of the year immediately preceding the year in which such county plans to withdraw from the district, furnish to the commissioner a copy of an

agreement with the authority or an operator of rail passenger service for the provision of rail passenger service to and from such county and the city of New York or any terminus previously served.

**(c)** No later than thirty days after receipt of the public transportation plan the commissioner of transportation shall, in writing, either approve such plan as conforming with the requirements heretofore described or disapprove such plan as failing to meet such requirements and the reasons therefor. Disapproval of a plan shall not prohibit a county from resubmitting a public transportation plan and such resubmitted plan shall be approved or disapproved no later than fifteen days after receipt by the commissioner of transportation. The public transportation plan shall be subject to any state or federal public hearing requirements which the authority would be subject to if the authority made the changes proposed by such plan.

**(d)** Any such county which plans to withdraw from the district must meet the requirements of this section prior to the effective date of withdrawal, and no withdrawal for the purposes of this section shall take effect unless such county furnishes the resolutions and agreement prior to the effective date of withdrawal.

- 2.** The authority and any subsidiary corporation of the authority shall enter into an agreement or agreements with a county that plans to withdraw from the district to transfer and assign to such county all authority and subsidiary railroad facilities and operations, rights and obligations, and contract rights and obligations, including operating contract rights and obligations, which are owned, operated, maintained or used directly or by contract or which are otherwise involved in the provision of railroad services to such counties. Such agreement shall provide, in the event a facility, operation, right or obligation is necessary and material to the provision of rail passenger service in the district or is not assignable under applicable bond covenants or contracts or the parties agree that it should not be assigned, that the authority or subsidiary thereof shall continue to hold and be responsible for such facility, operation, right or obligation and that such county shall reimburse to the authority that portion of the cost to the authority or subsidiary of its retention of such facility, operation, right or obligation that is allocable to such county. If the parties agree that the authority or subsidiary thereof shall operate the railroad facilities in a county after the effective date of such county's withdrawal, the agreement also shall provide for the terms and conditions of the operation of such service.
- 3.** Within forty-five days of the effective date of this section, the authority and any subsidiary corporation of the authority shall provide to the counties of Dutchess, Orange and Rockland a written statement, including cost estimates and the useful life, if any, of all of its facilities, operations, rights and obligations relating to the provision of rail service in such counties.
- 4.** The authority and any subsidiary corporation of the authority is authorized to enter into an agreement or agreements with a county that plans to withdraw from the district, pursuant to which the authority or subsidiary thereof will provide technical assistance to such county prior to, during and after the withdrawal, with respect to the transfer of ownership, operation, maintenance and use of railroad facilities within such county. Such agreement may provide that the county reimburse the authority or its subsidiary for the cost to the authority and its subsidiary for the provision of such technical assistance.
- 5.** The authority shall have no obligation to undertake or continue any project or part thereof in a current or future capital program plan which pertains to railroad facilities within or services to a county that withdraws from the district on or after such date of withdrawal nor shall the authority enter into any contract for a project or part thereof which would increase liabilities pursuant to subdivision six of this section in a county after such county notifies the authority of its intent to withdraw as provided in subdivision one of this section, provided, however, that if the authority has executed a contract for the effectuation of a project or part thereof in a capital program plan in such county, it shall be assigned to such county in accordance with subdivision two of this section, unless the parties agree that it shall not be assigned and that the authority or its subsidiary shall continue to be responsible therefor, in which event the county shall reimburse the authority or its subsidiary in accordance with the provisions of subdivision two of this section.

6. Any county which withdraws from the district shall reimburse to the authority or its subsidiary, within the time period agreed to by the parties, any capital expenditures heretofore undertaken by the authority or its subsidiary for railroad facilities only within such county which were financed by commuter railroad revenue bonds issued by the metropolitan transportation authority pursuant to section twelve hundred sixty-nine of this article and are assigned to such county in accordance with the provisions of subdivision two of this section.

7. The obligations of a county that withdraws from the district to reimburse the authority and any subsidiary corporation of the authority for the costs of operation, maintenance and use of passenger stations pursuant to section twelve hundred seventy-seven of this article, shall continue for any such costs incurred up to the effective date of the county's withdrawal from the district and for costs incurred thereafter that result from acts preceding such withdrawal, and the applicability of the payment provisions and procedures of such section twelve hundred seventy-seven to such county shall continue thereafter with respect to the aforesaid costs.

8. In the event of a county's failure to make payment of any monies determined by the authority to be owed and due it or any subsidiary corporation of the authority pursuant to the terms of any agreement entered into pursuant to this section, the authority is authorized to recover such payments in the same manner as in section twelve hundred seventy-seven of this article and the state comptroller shall withhold and pay monies to the authority in accordance with the procedures set forth in that section.

9. The term of office of any resident of a county that withdraws from the district under this section, as a member of the board of the authority, the Metro-North rail commuter council or the management advisory board, which is based upon residence in such county, shall terminate upon the county's withdrawal and the office shall be deemed vacant and filled in the manner provided by law.

10. The provisions of this section and all agreements undertaken in accordance herewith shall be subject to the rights of the holders of any outstanding bonds or notes issued by the authority.

## History

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Add, L 1986, ch 669, § 4, eff July 26, 1986, deemed eff July 15, 1986 (see 1986 note below); amd, L 1986, ch 670, § 1, eff July 26, 1986, deemed eff July 15, 1986.

Annotations

## Notes

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### Editor's Notes:

**Laws 1986, ch 669, §§ 9, 10, 14,** provide as follows:

§ 9. Notwithstanding paragraph (b) of subdivision two of section two hundred fifty-three of the tax law or any other provision of law, if the county of Dutchess, Orange or Rockland submits a plan to withdraw from the metropolitan commuter transportation district pursuant to section twelve hundred seventy-nine-b of the public authorities law, it is hereby authorized and empowered through action by its local legislative body to suspend, as of the effective date of such county's withdrawal from the district, for a specified period of time or without limitation as to time, the additional mortgage recording tax imposed by paragraph (a) of subdivision two of section two hundred fifty-three of the tax law; provided, however, that such local law, ordinance or resolution shall not be excepted from the provisions of paragraph (b) of subdivision two of such section two hundred fifty-three unless a certified copy thereof is mailed by registered or certified mail to the state tax commission at its office in Albany at least sixty days prior to the effective date of the county's withdrawal. A certified copy of any such local law, ordinance or resolution adopted pursuant to this section shall also be filed with the state comptroller and the recording officer of the county so acting

within seven days after the date it is duly adopted. Except as provided herein, the provisions of the tax law shall apply to the suspension by any such county of the additional mortgage tax imposed by paragraph (a) of subdivision two of such section two hundred fifty-three.

§ 10. Notwithstanding section two hundred sixty-three of the tax law or any other provision of law, where a refund is payable under the additional mortgage recording tax imposed by subdivision two of section two hundred fifty-three of the tax law in the county of Dutchess, Orange or Rockland and:

(a) where the refund would be charged back to the metropolitan commuter transportation district under such section two hundred sixty-three but for the withdrawal of any such county from such district pursuant to section twelve hundred seventy-nine-b of the public authorities law, the order of refund issued by the state tax commission pursuant to such section two hundred sixty-three may be made to any recording officer of the state receiving money from such tax which may be charged back to such district, or.

(b) where the refund would be charged back to the county under section two hundred sixty-three but for the suspension of such tax in such county, the order of refund issued by the state tax commission pursuant to such section two hundred sixty-three shall be made to the county which has suspended such tax.

§ 14. This act shall take effect immediately, provided that if such date is later than July fifteenth, nineteen hundred eighty-six, section four of this act shall be deemed to have been in full force and effect on and after July fifteenth, nineteen hundred eighty-six (Amd, L 1986, CH 670, § 3, eff July 26, 1986, deemed eff July 15, 1986.).

## Opinion Notes

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### Agency Opinions

County withdrawing from Metropolitan Commuter Transportation District under CLS Pub A § 1279-b may retain additional proceeds of mortgage recording tax under CLS Tax § 253 and sales and use tax revenues under alternate provisions of CLS Tax § 1210 only where revenues from these taxes are applied to mass transportation purposes. 1987 NY Ops Atty Gen No. 87-56 (Informal).

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 1262, 1266-e; CLS Tax § 1223.

### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1279-c

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)*

## **§ 1279-c. The office of legislative and community input**

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1. The chairperson of the authority shall establish the office of legislative and community input for the purpose of communicating information to, and receiving comments, concerns and recommendations from, members of the legislature, and members of the permanent citizens advisory committee to the authority, as defined in section twelve hundred sixty-six-i of this chapter, on the following:
  - (a) the operations of the rapid transit, omnibus and commuter rail line facilities of the authority including, but not limited to:
    - (i) the quality of service provided on any rapid transit, omnibus, and commuter rail line or route;
    - (ii) the frequency of operating service on the authority's mass transit facilities;
    - (iii) the maintenance and condition of the authority's mass transit facilities including, but not limited to, rapid transit and commuter rail stations, railcars, buses, rail lines, fare collection systems and sound systems; and
    - (iv) proposed service changes, including any reductions or expansion of services, as it relates to the authority's mass transit facilities; and
  - (b) any proposed, submitted and/or approved capital program plan, its components, elements and projects, and associated expenditures. Any such comments, concerns and recommendations relating to the capital program plan, its components, elements and projects, and associated expenditures shall be taken into consideration in the development of the current and each successive capital program plan and/or any amendment to such plan.
2. The office shall establish a process to ensure timely notification of the receipt of, and response to, comments, concerns, and recommendations by members of the legislature or members of the permanent citizens advisory committee to the authority.
3. The chair and office shall prepare a report containing the following information:
  - (a) a compilation of the comments, concerns, and recommendations received by the office;
  - (b) how these comments, concerns or recommendations were or will be addressed, such as the authority's response by the incorporation or initiation of system and operational adjustments, improvements or expansions if applicable; and
  - (c) how these comments, concerns or recommendations were or will be addressed, such as the authority's response by changing or amending the capital plan, as well as providing status updates on the progress of such plan.
4. Such report shall on a biannual basis, commencing September first, two thousand nine, be submitted to the governor, the temporary president of the senate and the speaker of the assembly, be posted on the authority's website and also be made readily available to the public.

## History

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Add, L 2009, ch 25, § 18 (Part H), eff May 7, 2009 (see 2009 note below).

Annotations

## Notes

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### Editor's Notes:

**Laws 2009, ch 25, § 1**, eff May 7, 2009, provides as follows:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiyear capital program by October 1, 2009.

## Opinion Notes

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### Agency Opinions

#### 1. In general

The Permanent Citizens Advisory Committee to the MTA may not seek federal designation as a tax-exempt organization, solicit donations directly from the public, or apply to state agencies for direct funding. 2014 N.Y. Op. Att'y Gen. No. 2014-F2, 2014 N.Y. AG LEXIS 87.

## Research References & Practice Aids

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**Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1279-d

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)***

## **§ 1279-d. Supplemental revenue reporting program.**

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1. On or before January first, two thousand nineteen, the authority shall develop a supplemental revenue reporting program. Such program shall provide a detailed accounting of the amount spent from supplemental revenues on actions, measures or projects undertaken to reduce major incidents that have been found to cause delays to the New York city subway system, including but not limited to: track incidents; signal failure; persons on the track; police and medical activity; structural and electrical problems; and broken traincar equipment. The information described in this subdivision, including the spending details and the associated category of major incident, shall be updated quarterly and be prominently posted together on the authority's website.
2. Definitions. For purposes of this section, "supplemental revenues" shall include any funds appropriated by the state or the city of New York to support the NYC subway action plan approved by the board of the authority and any revenues received pursuant to section twelve hundred ninety-nine-H of the tax law.

## **History**

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L 2018, ch 59, § 5 (Part NNN), effective April 12, 2018.

Annotations

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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## NY CLS Pub A § 1279-e

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### **§ 1279-e. Assignment, transfer, sharing or consolidating powers, functions or activities.**

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1.

(a) Notwithstanding any provision of this title or any other provision of law, general, special or local, the authority shall develop and complete a personnel and reorganization plan no later than June thirtieth, two thousand nineteen which shall, in whole or in part, assign, transfer, share, or consolidate any one or more of its powers, duties, functions or activities or any department, division or office established therewith, or any of those of its subsidiaries, or affiliates or their subsidiaries, within or between itself, its subsidiaries or affiliates or their subsidiaries, including, but not limited to the New York City Transit Authority, the Long Island Rail Road, the Metro North Commuter Railroad Company, MTA Capital Construction, MTA New York City Bus, Triborough bridge and tunnel authority, and the MTA Staten Island Railway, in a manner consistent with the provisions of this section. Such plan shall identify common functions and assign, transfer, share or consolidate, in whole or in part, such functions between the authority and its subsidiaries, affiliates and subsidiaries of affiliates and shall be accompanied by an independent evaluation of existing personnel within or between itself, its subsidiaries, or affiliates or their subsidiaries in coordination with the authority's senior management. This plan shall be approved by the board of the authority by July thirtieth, two thousand nineteen. Upon such approval, the board shall also appoint a director of MTA transformation whose responsibilities shall include implementing the personnel and reorganization plan and reporting directly to the board regarding the director's activities.

(b) Upon receipt of the review pursuant to section twelve hundred seventy-nine-f of this title the authority shall revise the personnel and reorganization plan to consider and incorporate the findings of such review within ninety days of receipt. Such revised personnel and reorganization plan shall be approved by the board of the authority.

2. Such assignment, transfer, sharing, or consolidation pursuant to this section shall occur only if approved by resolution of the board of the authority, serving on behalf of the authority and any affected subsidiary or affiliate or their subsidiary, adopted by not less than a majority vote of the whole number of members of the authority then in office, with the chairman having one additional vote in the event of a tie vote.

3. Pursuant to this section, any such assigning, transferring, sharing, or consolidating of powers, duties, functions or activities shall not be authorized where it would impair any rights and remedies of any holders of notes, bonds or other obligations issued by the authority, its subsidiaries, or affiliates or their subsidiaries. Nothing set forth in this section shall be construed to impede, infringe or diminish the rights and benefits that accrue to employees and employers through collective bargaining agreements, or impact or change an employee's membership in a bargaining unit.

4. No consolidation shall result in the complete dissolution or merger within or between the authority or its subsidiaries, affiliates or their subsidiaries.

## History

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L 2019, ch 59, § 1 (Part ZZZ, Subpart B), effective April 12, 2019; L 2019, ch 39, § 1 (Part C), effective June 24, 2019.

Annotations

## Notes

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### Editor's Notes

**Laws 2019, ch 39, § 2 (Part C)**, eff June 24, 2019, provides:

§ 2. This act shall take effect immediately; and shall be deemed to have been in full force and effect on the same date and in the same manner as subpart B of part ZZZ of chapter 59 of the laws of 2019 took effect.

**Laws 2019, ch 59, § 1 (Part ZZZ)**, eff April 12, 2019, provides:

§ 1. This act shall be known and may be cited as the "MTA reform and traffic mobility act".

### Amendment Notes

**The 2019 amendment by ch 39, § 1 (Part C)**, added the third through last sentences of 1(a); and in 1(b), added "personnel and" in the first sentence and added the second sentence.

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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## NY CLS Pub A § 1279-f

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### **§ 1279-f. Independent forensic audit.**

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1. The authority shall contract with a certified public accounting firm for the provision of an independent, comprehensive, forensic audit of the authority. Such audit shall be performed in accordance with generally accepted government auditing standards. Such audit shall include, but is not limited to a complete and thorough examination and detailed accounting of the authority's capital elements, broken down by agency, including but not limited to: rolling stock and omnibuses, passenger stations, track, line equipment, line structures, signals and communications, power equipment, emergency power equipment and substations, shops, yards, maintenance facilities, depots and terminals, service vehicles, security systems, electrification extensions, and unspecified, miscellaneous and emergency.

The authority shall also contract with a financial advisory firm with a national practice for the provisions of a review of: (a) any fraud, waste, abuse, or conflicts or interest occurring within any department, division, or office of the authority, its subsidiaries, affiliates, and subsidiaries of affiliates; (b) any duplication of functions or duties between the departments, divisions or office of the authority, its subsidiaries, affiliates, and subsidiaries of affiliates; (c) options for potential cost efficiencies and savings that could be achieved through changes in internal controls and management reforms, functional and process streamlining, internal procurement process reforms; (d) the two thousand fifteen to two thousand nineteen capital plan for cost overages and duplication; (e) the development of standardized performance metrics for planning, design, approvals, change orders, project management and delivery; and (f) cash flow and accounting of expenditures of the authority, its subsidiaries, affiliates, and subsidiaries of affiliates for the preceding three fiscal years.

2. Such audit shall be completed and submitted to the board no later than January first, two thousand twenty and posted publicly on the authority's website within thirty days of submission to the board. Such reviews shall be completed and submitted to the board no later than July thirty-first, two thousand nineteen and posted publicly on the authority's website within thirty days of submission to the board.

3. The certified independent public accounting firm providing the authority's independent, comprehensive, forensic audit shall adhere to the requirements in paragraphs (a), (b) and (c) of this subdivision; provided, however, the authority may contract with an accounting firm notwithstanding paragraphs (a), (b) and (c) of this subdivision and notwithstanding section twelve hundred seventy-six-c of this title upon a written determination by the board of the authority which shall detail that such accounting firm was awarded such contract on the basis that no accounting firm meets the requirements set forth in paragraphs (a), (b) and (c) of this subdivision.

(a) Such certified independent public accounting firm shall be prohibited from providing audit services to the authority if the audit partner having primary responsibility for the audit or the audit partner responsible for reviewing the audit has performed audit services for the authority in any of the five previous fiscal years of the authority.

(b) Such certified independent public accounting firm shall be prohibited from performing any non-audit services to the authority contemporaneously with the audit, including: (1) bookkeeping or other services related to the accounting records or financial statements of such authority; (2) financial information systems design and implementation; (3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (4) actuarial services; (5) internal audit outsourcing services; (6) management functions or human services; (7) broker or dealer, investment advisor, or investment banking services; and (8) legal services and expert services unrelated to the audit.

(c) Such certified independent public accounting firm shall be prohibited from providing audit services to the authority if an employee assigned to the audit has performed audit services for the authority or has been employed by the authority in any of the three previous fiscal years of the authority.

## History

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L 2019, ch 59, § 4 (Part ZZZ, Subpart B), effective April 12, 2019.

Annotations

## Notes

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### Editor's Notes

**Laws 2019, ch 59, § 1 (Part ZZZ)**, eff April 12, 2019, provides:

§ 1. This act shall be known and may be cited as the “MTA reform and traffic mobility act”.

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1279-g

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)***

## **§ 1279-g. Major construction review unit.**

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The authority shall establish the major construction review unit within the authority that shall consist of a panel of internal and external experts appointed by the board. Panel members shall have extensive background or executive experience in at least one of the following areas: engineering; design; construction; or, project management. The major construction review unit shall review all large scale projects of the authority, its subsidiaries, affiliates and the subsidiaries of its affiliates before award and shall also review any plans involving signal system upgrades, including, but not limited to the use of communications based train control and ultra-wideband technology for use within the New York City subway system before they shall be implemented. The review of any project or system upgrade referred to the review unit shall be completed within thirty days from the submission of such project or system to the review unit.

## **History**

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L 2019, ch 59, § 5 (Part ZZZ, Subpart B), effective April 12, 2019.

Annotations

## **Notes**

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### **Editor's Notes**

**Laws 2019, ch 59, § 1 (Part ZZZ)**, eff April 12, 2019, provides:

§ 1. This act shall be known and may be cited as the “MTA reform and traffic mobility act”.

## **Research References & Practice Aids**

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### **Hierarchy Notes:**

NY CLS Pub A, Art. 5

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# NY CLS Pub A § 1279-h

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-l)***

## § 1279-h. Debarment.

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The authority shall establish, pursuant to regulation, a debarment process for contractors of the authority that prohibits such contractors from bidding on future contracts, after a debarment determination by such authority, for a period of five years from such determination. Such regulations must ensure notice and an opportunity to be heard before such debarment determination and provide as a defense acts such as force majeure. Such regulations shall only provide for a debarment in situations involving a contractor's failure to substantially complete the work within the time frame set forth in the contract, or in any subsequent change order, by more than ten percent of the contract term; or where a contractor's disputed work exceeds ten percent or more of the total contract cost where claimed costs are deemed to be invalid pursuant by the contractual dispute resolution process.

## History

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L 2019, ch 59, § 8 (Part ZZZ, Subpart B), effective April 12, 2019.

Annotations

## Notes

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### Editor's Notes

**Laws 2019, ch 59, § 1 (Part ZZZ)**, eff April 12, 2019, provides:

§ 1. This act shall be known and may be cited as the "MTA reform and traffic mobility act".

## Research References & Practice Aids

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### Hierarchy Notes:

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# NY CLS Pub A § 1279-i

Current through 2023 released Chapter 1

***New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-I)***

## **§ 1279-i. Open data reporting.**

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1. The metropolitan transportation authority and its subsidiaries and affiliates, including the New York city transit authority and the Triborough bridge and tunnel authority, shall fully comply with the provisions of Executive Order 95 of 2013, “Using Technology to Promote Transparency, Improve Government Performance and Enhance Citizen Engagement,” and shall provide the New York state office of information technology services and legislature all data as defined in this section.
2. For the purposes of this section, the following terms shall have the following meanings:
  - (a) “open data website” shall mean the website data.ny.gov or such other successor website maintained by, or on behalf of, the state, as deemed appropriate by the New York state office of information technology services under Executive Order 95 of 2013, or any successor agency or order;
  - (b) “data” shall mean final versions of statistical or factual information that (i) are in alphanumeric form reflected in a list, table, graph, chart or other non-narrative form, that can be digitally transmitted or processed; (ii) are regularly created or maintained by or on behalf of the metropolitan transportation authority, its subsidiaries and affiliates and are controlled by such entities; and (iii) record a measurement, transaction or determination related to the mission of the metropolitan transportation authority, its subsidiaries and affiliates. The term “data” shall not include image files, such as designs, drawings, photos or scanned copies of original documents; provided, however, that the term “data” shall include statistical or factual information about image files and geographic information system data;
  - (c) “data set” shall mean a named collection of related records maintained on a storage device, with the collection containing data organized or formatted in a specific or prescribed way, often in tabular form; and
  - (d) “publishable MTA data” shall mean data that is collected by the metropolitan transportation authority, its subsidiaries and affiliates where the authority, subsidiary or affiliate is permitted, required or able to make the data available to the public, consistent with any and all applicable laws, rules, regulations, ordinances, resolutions, policies or other restrictions, requirements or rights associated with the publishable MTA data, including but not limited to contractual or other legal orders, restrictions or requirements. Data shall not be publishable MTA data if making such data available on the open data website would violate statute or regulation, including, but not limited to, disclosures that would constitute an unwarranted invasion of personal privacy, endanger the public health, safety or welfare, hinder the operation of government, including criminal and civil investigations, or impose an undue financial, operational or administrative burden on the authority or its subsidiaries or affiliates.
3. As required by Executive Order 95 of 2013, the metropolitan transportation authority shall designate a data coordinator, who shall:
  - (a) have authority equivalent to that of a deputy commissioner or the head of a division or department;
  - (b) have knowledge of data and resources in use by the entity; and

- (c) be responsible for the compliance of the authority, its subsidiaries and affiliates with the order.
4. The authority and its subsidiaries and affiliates shall make their publishable MTA data available on its website and the open data website as follows:
- (a) The authority shall create a catalogue of publishable MTA data within one hundred eighty days of the effective date of this section;
  - (b) The metropolitan transportation authority shall within one hundred eighty days of the effective date of this section, submit to the legislature and publish on its shared internet website a schedule for making its publishable MTA data publicly available. Such schedule shall provide for updating the data catalogue as appropriate; and
  - (c) The metropolitan transportation authority shall create schedules for publishing all publishable MTA data within three years of the effective date of this section.
5. The metropolitan transportation authority, its subsidiaries and affiliates shall not be prevented from publishing data in advance of the dates set in their schedules.

## History

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L 2021, ch 482, § 3, effective October 19, 2021.

Annotations

## Notes

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### Editor's Notes

**Laws 2021, ch 482, § 1**, eff October 19, 2021, provides:

§ 1. This act shall be known and may be cited as the “metropolitan transportation authority open data act”.

**Laws 2021, ch 482, § 2**, eff October 19, 2021, provides:

§ 2. The legislature finds that the release of data, in a format that is easily accessible, understandable and usable by the public, can increase civic engagement with government. In addition, in an authority providing a public service and operating an enterprise as vast as that of the Metropolitan Transportation Authority, transparency in data is in the public's best interest. It is the intent of the legislature that the authority and its subsidiaries release as much data as is feasible in open formats, so that the public can access that data, analyze it, and engage with the authority with suggestions and solutions to improve its operations.

## Research References & Practice Aids

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### Hierarchy Notes:

NY CLS Pub A, Art. 5

NY CLS Pub A, Art. 5, Title 11

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# NY CLS Pub A § 1279-I

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 5 Public Utility Authorities (Titles 1 — 11-D) > Title 11 Metropolitan Commuter Transportation Authority (§§ 1260 — 1279-I)*

## § 1279-I. Right to share employees.

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1. It is hereby found and declared to be necessary and proper to authorize the authority, its subsidiaries, affiliates, and subsidiaries of affiliates, powers to effectuate and ensure such entities continued financial viability, which is at issue given sizable operating deficits and significant capital needs. Allowing wholesale internal management reforms will create savings, combat entrenched bureaucracies, create streamlined, uniform, and efficient services, ensure public accountability and reestablish public trust. In order to facilitate these necessary goals it is both reasonable and a legitimate public purpose to provide systematic authority for the sharing of employees within and between the respective entities.
2. Notwithstanding any provision of law to the contrary, the authority, its subsidiaries, affiliates, and subsidiaries of affiliates shall each have the right to share employees within and between such entities and to assign such employees to perform any operation or function subject only to a determination that they are substantially similar to any operation or function currently performed. Substantially similar operation or function shall be determined exclusively by the authority.
3. Nothing set forth in this subdivision shall be construed to impede, infringe or diminish the rights and benefits that accrue to employees and employers through collective bargaining agreements, or impact or change an employee's membership in a bargaining unit.

## History

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L 2019, ch 59, § 10 (Part ZZZ, Subpart B), effective April 12, 2019.

Annotations

## Notes

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### Editor's Notes

Laws 2019, ch 59, § 1 (Part ZZZ), eff April 12, 2019, provides:

§ 1. This act shall be known and may be cited as the "MTA reform and traffic mobility act".

## Research References & Practice Aids

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Hierarchy Notes:

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# NY CLS Econ Dev § 142

Current through 2023 released Chapter 1

*New York Consolidated Laws Service > Economic Development Law (Arts. 1 — 26) > Article 4-C  
Procurement Opportunities Newsletter (§§ 140 — 146)*

## **§ 142. Procurement opportunities newsletter.**

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1. The commissioner shall publish on a daily basis a procurement opportunities newsletter, which shall contain notices of procurement contract opportunities and any other information the commissioner deems necessary to effectuate the purposes of this article. Notices of procurement contract opportunities shall be available on the internet for at least fifteen days.
2. Notices of procurement contract opportunities shall mean:
  - (a) for procurement contracts to be awarded by the office of general services, (i) a description of the centralized commodity contracting program of such office and an explanation of how to apply for placement on any prequalified bidders list established as part of such program; (ii) a description of the centralized construction contracting program of such office and an explanation of how to subscribe to any bid notice publication established as part of such program; and (iii) for all other procurement contracts awarded by the office, the provisions of paragraph (c) of this subdivision shall apply.
  - (b) for procurement contracts in excess of ten thousand dollars and less than fifty thousand dollars to be awarded by the state university of New York or the city university of New York, (i) a quarterly listing of projected procurement purchases by commodity for each institution of the state university of New York or the city university of New York; (ii) an explanation of how to apply for placement on any bidder lists maintained by the state university of New York or the city university of New York; and (iii) a description of procedures for providing advance notification by mail to individuals or business entities on such bidder lists of any request for proposals, in accordance with rules and regulations promulgated by the state university or the city university; and
  - (c) for all other procurement contracts issued by agencies (i) the name of the contracting agency; (ii) the contract identification number; (iii) a brief description of the goods or services sought, the location where goods are to be delivered or services provided and the contract term; (iv) the address where bids or proposals are to be submitted; (v) the date when bids or proposals are due; (vi) a description of any eligibility or qualification requirement or preference; (vii) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture, or co-production arrangement; (viii) any other information deemed useful to potential contractors; (ix) the name, address, and telephone number of the person to be contacted for additional information; (x) a statement as to whether the goods or services sought had in the immediately preceding three year period been supplied by a foreign business enterprise; and (xi) the name of any individual or business enterprise that has been awarded an identical or substantially similar procurement contract as determined by the contracting agency, within the past five years; provided, however, that in the case of multiple award contracts only, the contracting agency may provide a link to a publicly accessible website listing the information required pursuant to this subparagraph. Such link shall be exclusive to each multiple award contract.
3. The commissioner shall provide for electronic publication, updated daily, accessible at no charge to the general public and may set subscription rates for enhanced access services, including, but not limited to, automated notification of bid opportunities based upon the amounts estimated to be necessary to defray the expenses of preparing, publishing, marketing and distributing the procurement opportunities newsletter. In

addition, the commissioner shall immediately make available, upon request, a printed copy of all notices from the date of such request and the fifteen days preceding, and if requested, make available on a weekly basis, the procurement opportunities newsletter, at a subscription rate determined by the commissioner based upon an estimated expense of producing and distributing such printed copy.

4. The commissioner may publish in the procurement opportunities newsletter (a) notices of procurement opportunities originating from political subdivisions of the state or business enterprises, and (b) notices from government or potential government contractors seeking subcontractors and suppliers, in such form and manner as the commissioner shall determine. The commissioner may charge a fee for the publication of such notices of procurement opportunities based upon the amounts estimated to be necessary to defray the expenses of preparing, publishing, marketing and distributing such additional notices of procurement opportunities.

5. In addition to any other notice of procurement contract opportunities required in this section, for procurement contracts in the amount of two hundred thousand dollars or more to be awarded by all state agencies, each agency shall prepare for inclusion in the procurement opportunities newsletter (a) a semi-annual listing of projected procurement purchases by category; (b) an explanation of how to apply for placement on any bidder list maintained by the agency; and (c) a description of procedures for providing advance notification by mail to individuals or business entities on such bidder lists of any request for proposals, in accordance with rules and regulations promulgated by the agency. The commissioner, in consultation with each agency, shall arrange a schedule for each agency's semi-annual listing.

6. The commissioner shall include in the procurement opportunities newsletter the procurement contract award information submitted by agencies pursuant to subdivision three of section one hundred forty-three of this article.

7. Upon receipt of an announcement that an agency has entered into a contract, as provided in subdivision five of section one hundred forty-three of this article, the commissioner shall publish such announcement in the procurement opportunities newsletter. The announcement shall identify the contract, specify the date of the award of the contract and provide the name and contact information for each recipient of the contract.

## History

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Add, L 1988, ch 564, § 1; amd, L 1992, ch 844, § 12, eff Feb 3, 1993; L 1993, ch 504, § 1, eff July 26, 1993; L 1994, ch 353, § 1, eff July 20, 1994; L 2008, ch 137, § 6, eff Dec 31, 2009; L 2012, ch 55, § 15 (Part L), eff March 30, 2012; L 2019, ch 448, § 1, effective December 8, 2019; L 2021, ch 662, § 1, effective March 10, 2022; L 2022, ch 82, § 1, effective March 10, 2022.

Annotations

## Notes

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### Editor's Notes:

See 1988 note under § 140.

**Laws 1992, ch 844, § 1**, eff Feb 3, 1993, provides as follows:

Section 1. Short title; statement of legislative findings and declaration.

(a) This act shall be known and may be cited as the "omnibus procurement act of 1992."

(b) The legislature hereby finds and declares that an increased share of the state's procurement contracts have been awarded to New York state businesses due in part to the promotional, informational, educational, and



technical assistance of the department of economic development, in cooperation with other state agencies, public authorities, and public benefit corporations.

It is further found and declared that with the economic downturn in the economies of New York and the nation, the state must redouble its efforts to ensure that it spends as much of its procurement dollars within New York as practically and legally possible and as fiscally responsible.

It is further found and declared that redoubling these efforts combined with assisting state businesses to participate in the enormous government procurement market of other states and foreign governments will assist in stimulating the economy of New York.

It is therefore found and declared that it is in the public interest for the state to expand opportunities for New York state businesses to participate in contracts let by state agencies, public authorities and public benefit corporations, as well as other states and foreign governments.

**Laws 2012, ch 55, § 39 (Part L)**, eff March 30, 2012, provides as follows:

§ 39. This act shall take effect immediately, provided, however, that procurement contracts for which bid solicitations have been issued prior to the effective date of this act shall be subject to the provisions of law in effect at the time of issuance; provided, however, that the amendments made to section 163 of the state finance law by sections two, three, four, five, seven, nine, ten, twelve and thirty-six of this act shall not affect the repeal of such section and shall be deemed to be repealed therewith; and provided, however, that the amendments to section 104 of the general municipal law made by section six of this act shall be subject to the expiration and reversion of such section pursuant to section 9 of subpart A of part C of chapter 97 of the laws of 2011, when upon such date the provisions of section twenty-seven of this act shall take effect; and provided, however, that the amendments to paragraph a of subdivision 5 of section 355 of the education law made by section thirty-one of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 4 of subpart B of part D of chapter 58 of the laws of 2011, when upon such date the provisions of section thirty-two of this act shall take effect; and provided that the amendments to subdivision a of section 6218 of the education law made by section thirty-three of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 4 of subpart B of part D of chapter 58 of the laws of 2011, as amended, when upon such date the provisions of section thirty-four of this act shall take effect.

**Laws 2019, ch 448, § 3**, eff December 8, 2019, provides:

§ 3. This act shall take effect on the thirtieth day after it shall have become a law. Effective immediately the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made on or before such date.

**Laws 2021, ch 662, § 2**, eff March 10, 2022, provides:

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.

**Laws 2022, ch 82, § 2**, eff March 10, 2022, provides:

§ 2. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the economic development law relating to including the name of the individual or business enterprise that has been awarded an identical or substantially similar procurement contract in certain notices of procurement contract opportunities, as proposed in legislative bills numbers S. 1878-B and A. 4913-A, takes effect.

**Amendment Notes:**

**2012.** Chapter 55, § 15 (Part L) amended:

Sub 2, par (b) by deleting at fig 1 “twenty” and adding the matter in italics.

**The 2019 amendment by ch 448, § 1**, added 7.

**The 2021 amendment by ch 662, § 1**, added “and (xi) the name of any individual or business enterprise that has been awarded an identical or substantially similar procurement contract as determined by the contracting agency, within the past five years” in 2(c).

**The 2022 amendment by ch 82, § 1**, in 2(c), added “provided, however, that in the case of multiple award contracts only, the contracting agency may provide a link to a publicly accessible website listing the information required pursuant to this subparagraph” in the first sentence, and added the second sentence.

## **Research References & Practice Aids**

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### **Cross References:**

This section referred to in §§ 143, 145; CLS Edn § 376.

### **Codes, Rules and Regulations:**

Fee for the procurement opportunities newsletter. 5 NYCRR Part 4.

### **Treatises**

#### **Matthew Bender’s New York Practice Guides:**

2 New York Practice Guide: Business and Commercial § 13.16.

### **Hierarchy Notes:**

NY CLS Econ Dev, Art. 4-C

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