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August 1995

# **NIAGARA FALLS BRIDGE COMMISSION**

## **Audit of Capital Development Efforts and Selected Financial Practices**

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United States  
General Accounting Office  
Washington, D.C. 20548

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**Resources, Community, and  
Economic Development Division**

B-260182

September 7, 1995

The Honorable John J. LaFalce  
House of Representatives

Mr. Samuel S. Sansone  
Chairman  
Niagara Falls Bridge Commission  
Main P.O. Box 1031  
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This joint report by the U.S. General Accounting Office and the New York State Office of the State Comptroller responds to a request for information on certain operations of the Niagara Falls Bridge Commission. We jointly reviewed the implementation and financing of the Commission's 30-year capital program, as well as selected internal controls to determine whether the Commission's business affairs were conducted in a prudent manner. We also reviewed the responsibility for governmental oversight of the Commission.

Please contact Kenneth M. Mead on (202) 512-6192 or David R. Hancox, Audit Director, Division of Management Audit, New York State Office of the State Comptroller on (518) 486-5874 if you have any questions about this report.

A handwritten signature in black ink, appearing to read 'Kenneth M. Mead'.

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# Executive Summary

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## Purpose

The Niagara Falls Bridge Commission (Commission) owns and operates three of four international bridges across the Niagara River linking the roadways between New York State and the Province of Ontario. Because the Commission's operations have never been independently reviewed by a governmental body, Representative LaFalce asked the U.S. General Accounting Office (GAO) and the New York State Office of the State Comptroller (OSC) to review the Commission's operations. This report addresses the Commission's (1) efforts to finance and administer its 30-year capital program and (2) internal controls used to ensure that its business affairs were appropriately conducted. The report also discusses the extent of authority for governmental oversight of the Commission.

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## Background

The Commission was established in 1938 by a joint resolution of the U.S. Congress to construct and operate a bridge across the Niagara River. The Commission now owns and operates three bridges across this river: the Rainbow, Whirlpool Rapids, and Lewiston-Queenston bridges. The Commission is administered by eight commissioners: four appointed by the Governor of New York and four appointed by the Premier of the Province of Ontario. The Commission derives its revenues from bridge operations; it does not receive any appropriations from U.S. federal, state, or local governments or from the Canadian government. To meet projected traffic needs through the year 2020, the Commission developed a 30-year capital program in September 1990 to improve its bridges and their administrative areas, including approaches, toll booths, and customs and immigration facilities. The Commission had planned to complete major renovations at all three of its bridges between 1993 and 1997. Legislation passed in December 1991 allows the Commission to issue bonds that are exempt from U.S. federal income taxes.

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## Results in Brief

The Commission's capital program is a complex undertaking that required extensive coordination and agreements with several federal and state entities, as well as entry into the capital bond market. The Commission began efforts to obtain agreements on historic preservation and environmental assessment as early as 1990, but its projects have been delayed in part because of misunderstandings about approvals or agreements needed and the sources from whom they needed to be obtained. In 1992, the Commission financed its capital program, issuing over \$120 million in tax-exempt bonds and refinancing this debt a year later to take advantage of lower interest rates. The Internal Revenue Code requires that bond issuers have reasonable expectations of spending bond

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proceeds within certain time frames. However, the delays in implementing the Commission's major projects have resulted in it not expending the tax-exempt bond proceeds in the time frames it had originally planned, and the majority of the bond proceeds remain unspent.

GAO and OSC found that the Commission had new policies in place to guide procurement and the remuneration of commissioners but that in some instances it had not followed these policies consistently. Specifically, GAO and OSC found errors in payments made in both procurement and commissioner remuneration, and some attorneys' fees were not supported by detailed billings.

There are no federal or state laws that explicitly provide authority for governmental oversight of the Commission. Some of the Commission's difficulties in coordinating and implementing its capital program might have been alleviated if it had had the benefit of oversight and help from an appropriate governmental body. The Commission has requested that members of its congressional delegation seek legislation that would provide for periodic governmental audits of its operations.

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## Principal Findings

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### Commission Experienced Delays in Implementing Its Capital Program

The Commission's major capital projects have been delayed or postponed. The Commission's first project—the U.S. plaza at the Rainbow Bridge—has been delayed about 2 years in large part because it experienced difficulties coordinating with federal and state entities to obtain the historic preservation, environmental impact, and land exchange agreements required to implement the project. Part of the difficulty occurred because the Commission did not obtain required input by the New York State Historic Preservation Officer until well into the process on the mistaken assumption that contacts with another New York State official would suffice. Concerns about the visual impact of the Commission's original design for the U.S. plaza at the Rainbow Bridge on the historic natural setting of Niagara Falls led to its redesign at an added cost of about \$300,000. Agreement with federal and state agencies on the process needed to proceed with the project was not finalized until May 1995.

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Similarly, the Commission planned to transform the Whirlpool Rapids Bridge from a local traffic route to a commercial truck corridor. The Commission, however, had to reconsider its plans because of evolving findings of regional transportation studies that indicate that this expansion would not likely be needed before the year 2000. In addition, agreements were needed with New York State and the Province of Ontario for road connections needed to make the project viable. Environmental studies and a land option for this postponed project have cost the Commission about \$1.4 million. Both projects were to be completed in 1996, but the Rainbow Bridge project is not expected to be completed before the end of 1997 or mid-1998, and the Whirlpool Rapids Bridge project, the most costly of the three bridge projects, has been postponed until the state and province take certain actions related to future road connections to this bridge.

The Commission issued \$121 million in tax-exempt bonds to fund its capital program in May 1992 but was not in position to begin implementing the major parts of its capital program. The Commission refinanced its debt with a second bond issuance of \$133 million in July 1993 to take advantage of lower interest rates. As of August 31, 1994, the Commission had paid consultants over \$5 million and had incurred other costs of almost \$6 million related to its two bond issuances. The Internal Revenue Code requires that for bonds to be exempt from federal income taxation bond issuers must have a reasonable expectation of spending bond proceeds in certain time frames. To address this requirement, the Commission stated in its bond offering statement in May 1992 that it reasonably expected at least 85 percent of the spendable proceeds of its bonds would be expended within 3 years. While project delays have caused the Commission to not expend the bond proceeds as it anticipated, the key question from a tax administration standpoint is whether it had a reasonable expectation of doing so at the time the bonds were issued. Since this determination is within the jurisdiction of the Internal Revenue Service (IRS), it would be inappropriate for GAO and OSC to offer opinions on the application of these laws and regulations.

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## Certain Commission Operations Could Be Improved

GAO and OSC found that the Commission did not consistently follow good business practices in its procurement and in reimbursing commissioners for their travel and related expenses. In procuring goods and services, the Commission did not consistently require or document competition, prepare written contracts, or ensure adequate review of ordering, receiving, and paying for goods and services. In providing remuneration to commissioners, it did not consistently follow its policies for obtaining

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approvals and proper documentation prior to payment, and errors occurred. For example, in reviewing expense reimbursements to commissioners, GAO and OSC found that over half of the claims were not approved or were not fully supported by documentation. Recognizing that some improvements may be needed, the Commission in May 1995 took action to initiate a contract for a comprehensive review of its management and internal controls.

State and federal law do not provide for authority for overseeing or explicit responsibility for auditing the Commission by any governmental entity. Consequently, no governmental entity, federal or state, has overseen the activities of the Commission since it was established. The absence of explicit authority to audit the Commission affected GAO and OSC's audit. Specifically, the Commission's independent audit firm denied GAO and OSC access to workpapers of its audits on the basis that neither entity has authority over the Commission, and in October 1994, the Commission's chairperson terminated the GAO and OSC audit. The Commission itself has recognized this lack of oversight authority and has requested that members of its congressional delegation seek legislation that would provide for periodic governmental audits of its operations. Given its increasing revenues and the complexity of its capital plan, some type of oversight could be helpful.

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## Observations

If it is determined that governmental oversight by a state or federal entity is appropriate, the enabling federal legislation for the Commission would need to be modified. The Governor of New York currently appoints four of the commissioners, and the bridges are to be conveyed to the state of New York and Canada once the bonds and the related interest are paid off. If the state of New York is to have oversight authority, that state's law would have to be modified as well.

In addition, GAO and OSC identified a number of areas that the Commission may wish to consider to improve its operations, including (1) taking steps to identify and comply with all applicable federal and state requirements in implementing future phases of its capital program; (2) updating its capital program and retiring unneeded bonds; (3) developing formal policies on per diem and travel reimbursement to commissioners; and (4) ensuring that existing procurement policies for competitive bidding, written contracts, authorization of payments, and documentation of expenses are consistently followed.

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## Agency Comments

GAO provided a copy of a draft of this report to the Commission for its review and comment. The Commission provided extensive comments. Most significantly, the Commission objected to the discussion of the tax-exempt status of its bonds and disagreed with the draft report's characterization of the project delays. With regard to the discussion of the relationship of IRS rules to the Commission's tax-exempt bonds, the Commission and its consultants said that raising questions about the tax-exempt status of the bonds could potentially have negative effects on the bondholders and suggested that any discussion of this issue should be withdrawn from the report. We disagree. It was not GAO and OSC's intent to create a perception that the tax-exempt status of the bonds is in jeopardy. Clearly, any decision related to this issue is properly within the purview of the IRS, and it would be inappropriate for GAO and OSC to speculate on the application of these laws and regulations. The report has been clarified to make it clear that GAO and OSC are not offering an opinion on this issue. However, the standards under which GAO and OSC conduct their work require a review of compliance with laws and regulations that are significant to the audit objectives, one of which was the financing of the capital program. In light of the fact that the Commission has experienced delays in expending its tax-exempt proceeds as it had projected in its bond offering statement, GAO and OSC believe that they would have been remiss not to include a discussion of this issue in the report.

The Commission also objected to GAO and OSC characterization of the cause of delays in gaining the approvals necessary to move forward with the construction of the Rainbow Bridge project and said that the many approvals needed to proceed with this project are virtually completed. The discussion of this issue has been expanded to more clearly show the chronology of events and the Commission's misunderstandings of the types and sources of agreements required to proceed with this project. The Commission entered into a memorandum of agreement with appropriate federal and state entities in May 1995 (after the draft report had been provided to the Commission) that establishes the framework for moving forward with this project. The agreement is a positive step toward project implementation, and GAO and OSC believe that such an agreement earlier in the process could have precluded the delays the Commission experienced on this project.

The Commission said that it has taken GAO and OSC's specific observations on ways to improve its operation under advisement. The Commission has also taken some actions to implement the suggestions. For example, the Commission said that it is contracting for a comprehensive management



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and internal control review and intends to review its capital program and to consider capital program options, including the possibility of retiring unneeded bonds. GAO and OSC believe that these steps, as well as other recent developments (such as completing the memorandum of agreement in May 1995 with several federal and state agencies for the Rainbow Bridge project) are positive actions that address a number of the issues raised in this report.

Because of their voluminous nature, the Commission's comments are not reprinted in their entirety in this final report. GAO and OSC have, however, considered all of the comments in preparing this final report and have updated and revised the report as appropriate. The Commission's cover letter and separate comments from the Canadian commissioners are included, along with GAO and OSC's responses to them, in appendixes I and II.

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**Abbreviations**

ACHP	Advisory Council on Historic Preservation
GAO	General Accounting Office
GSA	General Services Administration
IRS	Internal Revenue Service
OSC	New York State Office of the State Comptroller
SHPO	State Historic Preservation Officer

# Introduction

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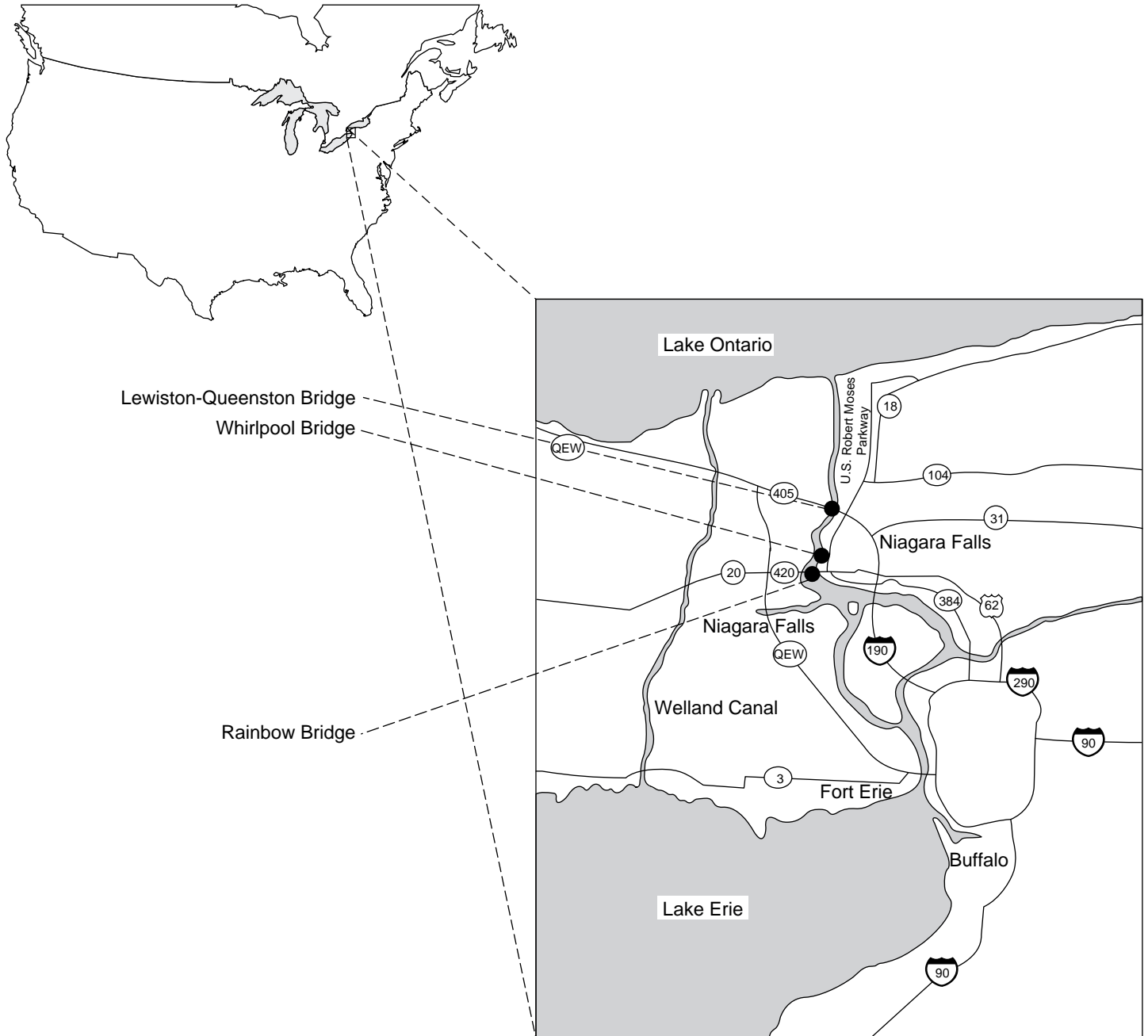
The Niagara Falls Bridge Commission (Commission) owns and operates three of the four international bridges across the Niagara River that link the roadways of New York State and the Province of Ontario in Canada. The Commission is administered by a board of eight commissioners, four of whom are appointed by the Governor of New York and the other four by the Premier of the Province of Ontario. In 1990, the Commission adopted a plan for a long-term capital program to make improvements at its bridges and relieve delays and traffic congestion at them.

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## The Niagara Falls Bridge Commission

The U.S. Congress created the Commission by a joint resolution in 1938 “to construct, maintain, and operate” a single international bridge across the Niagara River. The Commission was given authority over two additional bridges in congressional amendments in 1946, 1949, and 1953 and now manages the Rainbow, Whirlpool Rapids, and Lewiston-Queenston bridges. (Fig. 1.1 shows the location of these three bridges.)

Figure 1.1: Location of the Bridges Under the Jurisdiction of the Niagara Falls Bridge Commission



The joint resolution also established relationships between the Commission and the U.S. federal, New York State, and Canadian governments. The resolution has no counterpart in Canadian or New York State legislation. The resolution's provisions are to be enforced by either the New York State Attorney General, the appropriate U.S. district attorney, or the Solicitor General of Canada. The resolution also provides for the eventual conveyance of the bridges under the Commission's control to the state of New York and Canada.

The Congress provided authority for the Commission to operate and finance bridge operations. The Commission is administered by a board of eight commissioners. Under the terms of the joint resolution, the state of New York has authority to appoint four commissioners, and Canada—through its designee, the Premier of the Province of Ontario—appoints the other four. The Commission employs about 110 staff, of which 86 are toll collectors and maintenance staff, while the remainder are administrative staff, including the general manager. In addition to the Commission's employees, Canadian and U.S. customs and immigration officials also work on Commission properties.

The Commission derives its revenues from bridge operations. The resolution gives the Commission the authority to fix and charge tolls for transit over the bridges and to use these funds to maintain, repair, and operate the bridges. The Commission's audited financial statements for the fiscal year ending October 31, 1993, show revenues of \$24.3 million, consisting of tolls (\$10.6 million), interest (\$7.2 million), rent from leasing space in its buildings (\$5.5 million), and other sources. Expenses were \$17.6 million, including \$7.4 million in interest, \$5.7 million in salary and fringe benefits, and \$4.5 million in other expenses.

The Commission does not receive any revenue or appropriations from U.S. federal, state, or local governments or from the Canadian provincial government. The Commission does, however, receive rent for space used by the U.S. Customs Service and the Immigration and Naturalization Service for inspecting people and goods entering the United States. Although the Commission does not receive direct appropriations, it does benefit from the ability to issue tax-exempt bonds.

The joint resolution further states that any liability or obligation incurred by the Commission is to be paid solely from the funds provided for under the joint resolution; no resulting indebtedness is to be considered an indebtedness of the United States. The joint resolution also gives the

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Commission the authority to issue bonds to help pay for the cost of the bridges and other necessary expenses. The Intermodal Surface Transportation Efficiency Act of 1991 states that “the Commission shall be deemed for purposes of all Federal law to be a public agency or public authority of the State of New York, notwithstanding any other provision of law.” The essence of this provision is that interest on any bonds that the Commission issued after 1991 could be considered exempt from federal income tax. Once the bonds issued for the bridges and the related interest are paid off, the bridges are to be conveyed to the state of New York and Canada. Subsequently, the Commission is to be dissolved by order of the State Comptroller of New York.

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## The Commission’s Long-Term Capital Improvement Program

In the late 1980s, the Commission was faced with several concerns related to its bridge crossings. At peak periods during the summers and on weekends, severe traffic congestion on the Commission’s bridges resulted in long lines of cars and significant delays. The delays were not caused by insufficient bridge capacity, but rather by the time required for customs and immigration inspections at international border crossings. In response to projections of further traffic increases, the Commission undertook a long-term capital improvement program entitled A Thirty-Year Plan (the Plan). In addition, officials from the U.S. Customs Service and the Immigration and Naturalization Service had said that they needed improved working facilities because the space that they leased from the Commission was antiquated, unsafe, and insufficient.

This Plan, published in September 1990, set forth capital projects to meet projected traffic needs through the year 2020. The Plan called for expanding the capacity for collecting tolls and conducting inspections and for improving working facilities at the Commission’s three bridges. These projects, estimated in 1990 to cost \$122 million, were to be financed through long-term bonds and accumulated Commission revenues. The Plan also called for the possible future construction of a new bridge to handle traffic volumes expected to exceed the capacity of the existing bridges. The Commission updated its cost and construction schedules when it issued bonds to fund work on the existing bridges in 1992. (See table 1.1 for an overview of the proposed bridge projects and their updated costs and schedules.)

**Table 1.1: Capital Improvement Projects Identified in the 1992 Bond Offering Statement**

U.S. Dollars in millions

<b>Bridge</b>	<b>Estimated cost in 1991-1992 dollars</b>	<b>Description of project<sup>a</sup></b>	<b>Construction schedule</b>
Rainbow	\$46.5	Widening bridge approaches, installing new toll and inspection booths, and constructing new operations and other buildings	1993-1996
Whirlpool Rapids	\$118.3	Redecking upper level of bridge, constructing new terminal facilities, relocating railroad tracks, and reconfiguring highway approaches	1994-1996
Lewiston-Queenston	\$12.1	Adding toll and inspection booths, expanding existing building and support facilities	1995-1997
Proposed new bridge	\$102	Constructing four-lane bridge near existing Whirlpool Rapids Bridge, enlarging terminal facilities, and reconfiguring highway approaches	2001-2004 <sup>b</sup>

<sup>a</sup>Project descriptions were obtained from the Niagara Falls Bridge Commission's A Thirty-Year Plan. The remainder of the information in table 1.1 was obtained from the Official Statement of the Niagara Falls Bridge Commission \$121,000,000 Toll Bridge System Revenue Bonds, Series 1992.

<sup>b</sup>These dates derive from the Commission's A Thirty-Year Plan. The bond offering statement did not specify a date for this project.

## Rainbow Bridge Improvements

Located within sight of Niagara Falls, the Rainbow Bridge is reportedly the second busiest point of entry to the United States, serving a mix of tourist and local traffic. Rainbow Bridge carries vehicles, as well as the greatest number of pedestrians of the Commission's three bridges. (See table 1.2 for traffic statistics for the Commission's bridges.) Currently, this bridge has four toll booths in New York and five in Canada, in addition to eight primary inspection lanes in New York and eight inspection lanes in Canada. The new construction will expand the bridge plaza to provide 6 toll booths and 20 primary inspection lanes on the U.S. side. The construction will provide for one-way tolls, after which toll booths will no longer be needed in Canada. Canada will have fewer inspection lanes—16—because it processes cars faster.



**Table 1.2: Traffic Statistics for the Commission's Bridges for the Year Ended October 31, 1993**

(Statistics in thousands)

	<b>Rainbow Bridge</b>	<b>Whirlpool Rapids Bridge</b>	<b>Lewiston-Queenston Bridge</b>
Automobiles	4,299	1,710	3,954
Trucks	4	12	649
Buses	48	2	22
Other vehicles	18	6	31
Total vehicles	4,368	1,730	4,656
Pedestrians	590	52	1

Note: These traffic statistics were for the most recent fiscal year available when our audit ended.

Source: GAO's presentation of traffic statistics reported by the Commission.

Improvements planned for the Rainbow Bridge also include major updating and expansion of the bridge plaza's facilities to include new buildings for customs and immigration operations and for bridge maintenance, as well as a duty-free store. The new operations building was originally designed as a three-story structure sheathed in reflective glass, rising 75 feet over the road surface and arching 600 feet across the bridge apron. The design would require the use of about half an acre of Niagara Reservation State Park land adjacent to the bridge plaza. To prevent any overall loss of parkland, the Commission proposes exchanging two land parcels—an unneeded portion of its own easement on the south side of the Rainbow Bridge plaza and land near the Whirlpool Rapids Bridge—for the needed parkland on the north side of the Rainbow Bridge.

## Whirlpool Rapids Bridge Improvements

The Whirlpool Rapids Bridge is an 1897 structure located 1.4 miles north of the Rainbow Bridge. The Whirlpool Rapids Bridge currently has two primary inspection lanes in the U.S. and three in Canada and two toll booths in Canada. The bridge has two levels, serving vehicles and pedestrians on the lower level and trains on the upper level. The bridge does not currently carry large commercial trucks because of its design and limited customs inspection facilities. The Commission planned to upgrade the bridge's upper level to accommodate vehicles including trucks, as well as trains; to design and construct highway approaches and bridge plazas; and to relocate railroad tracks. The Commission also planned to install four one-way toll booths and to expand the number of inspection lanes to allow four inspection booths in each direction. The additional vehicular lanes on the upper level and access for commercial trucks were intended

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to relieve pressure on the Lewiston-Queenston Bridge, currently one of only two commercial routes across the Niagara River.

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## Lewiston-Queenston Bridge Improvements

The most modern of the Commission's three bridges, the Lewiston-Queenston Bridge, was opened on June 28, 1963, and is about 7 miles north of Niagara Falls. The only one of the Commission's bridges that can accommodate all types of commercial vehicles, the Lewiston-Queenston Bridge directly connects the New York State Thruway with Canadian highways to Toronto. The only other commercial route across the Niagara River is the Peace Bridge in Buffalo, New York, which is operated by the Buffalo-Ft. Erie Bridge Authority. Currently, the Lewiston-Queenston Bridge has eight one-way toll booths located in Canada—four for cars and four for trucks or cars. This bridge's plazas currently house eight primary car inspection lanes and three primary truck inspection lanes in each direction. The Commission has considered adding two toll booths for cars and four additional primary inspection lanes on each side of the border for automobiles.

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## Proposed New Bridge

If traffic is sufficiently heavy, the Commission's 30-year Plan also proposed the construction of a new four-lane international bridge 200 feet north of the existing Whirlpool Rapids Bridge. To serve the new bridge, terminal facilities slated to be constructed earlier at the nearby Whirlpool Rapids Bridge would be enlarged and approach roadways widened and extended to connect major U.S. and Canadian highways with the new bridge. The old Whirlpool Rapids Bridge would continue to serve trains and small tourist buses.

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## Objectives, Scope, and Methodology

Because the operations of the Commission have not been reviewed by a governmental entity during its more than 50 years of existence, Representative LaFalce asked GAO and the New York State Office of the State Comptroller (OSC) to review its operations. Specifically, our objectives were to review

- the Commission's efforts to finance and administer its capital program and
- the Commission's internal controls used to ensure that its business affairs were appropriately conducted.

In the course of our work, we also reviewed responsibility for governmental oversight of the Commission.

To determine how the Commission financed and administered its capital program, we met with Commission officials and consultants to discuss their capital program. We also reviewed relevant Commission records. In addition, we met with officials from U.S. federal, New York State, and Canadian agencies affected by the capital program, federal agencies that oversee tax-exempt bonds, and individuals with expertise in municipal bond financing.

To assess the Commission's internal controls, we examined Commission records on selected administrative operations and discussed them with cognizant Commission staff. Specifically, we reviewed policies and practices on the procurement of goods and services and payments and reimbursements to commissioners. We also performed preliminary reviews of the Commission's investment functions and found no weaknesses in this area. We planned to rely on tests of the Commission's internal controls performed by the independent audit firm that conducted the Commission's most recent annual financial statement audit.

To review responsibility for governmental oversight of the Commission, we reviewed pertinent federal and state legislation and identified the relationship between federal and state governments and the Commission. We also determined what financial and other reviews of the Commission have been performed since its creation in 1938.

We conducted our work between May and October 1994. We experienced a number of impairments to the scope of our audit in the course of our review. Specifically, (1) we were not afforded the opportunity to ask individual commissioners about their rationale for key decisions, such as the amount and timing of the bond issuances; (2) the independent audit firm denied our request and similar requests by the Commission that we be granted access to its workpapers documenting its assessment of the Commission's internal controls; and (3) the chairperson of the Commission terminated our audit work at the Commission on October 2, 1994, before we had obtained complete details of issues under review. The chairperson objected to the nature of our questions, our alleged predetermined attitude, questioning of judgments within the sole prerogative of the Commission, and our request to interview individual commissioners. Because our audit work was terminated, we were unable to expand our review of internal controls and cannot comment on the degree to which the internal control issues we discuss in chapter 3 are representative of other operational areas at the Commission. Except as

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noted above, our work was conducted in accordance with generally accepted government auditing standards.

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## Agency Comments

The Commission provided detailed comments on a draft of this report. The comments included a letter from the Commission's general manager and 17 exhibits. Because of the voluminous nature of the comments, they have not all been included in this final report. However, we have reviewed and analyzed the comments and materials provided by the Commission and have revised and updated the report as appropriate. The executive summary of this report summarizes the Commission's most significant comments, and appendixes I and II include the general manager's letter, a memo prepared by the Canadian Commissioners, and our responses to them. In addition, at the end of chapters 2 and 3, we have summarized the Commission's response to our suggestions for improvements and our evaluation of their responses.

# The Commission Has Experienced Difficulties in Implementing Its Capital Program

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The Commission has experienced difficulties in implementing major projects in its capital plan that have resulted in delays and postponements. The Commission's bond offering statements projected completing major improvements at the Rainbow Bridge by January 1996, but it has yet to obtain all key agreements and clearances needed to proceed with this project and now expects to complete this project in late 1997 or 1998. In addition, the Commission had planned to convert the Whirlpool Rapids Bridge from a local traffic corridor to a major commercial truck and passenger vehicle route by July 1996, but plans for this project have been postponed. The Commission's plans to upgrade this bridge in the near term differed in important aspects from regional transportation plans for this bridge, and major road connections needed to make this route viable for commercial truck traffic have not been agreed to.

The Commission issued \$121 million in tax-exempt bonds in 1992 to finance its capital program and refinanced this debt by issuing \$133 million in bonds in 1993 to take advantage of the very favorable interest rates available at that time. The Internal Revenue Code requires that for a bond to be eligible for tax-exemption, bond issuers must have a reasonable expectation of using the proceeds of the bonds within certain time frames. To address this requirement, when the Commission issued its bonds in 1992, it stated that it reasonably expected to use 85 percent of the spendable proceeds of the bonds within 3 years. Because of delays in the capital program, this has not occurred. Since the application of tax laws and regulations is within the jurisdiction of the Internal Revenue Service (IRS), it would be inappropriate for us to offer opinions of the application of these laws and regulations to particular factual situations.

As of August 31, 1994, the Commission had spent over \$5 million for consultants to assist with its capital program and had incurred other costs of almost \$6 million to finance its two bond issuances.

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## Commission's Major Bridge Projects Have Been Delayed or Postponed

The Commission has encountered significant delays in implementing its capital program. The Commission has experienced difficulties in finalizing key agreements on historic preservation and environmental impact, as well as permission for a land exchange needed to move forward with construction of the U.S. plaza on the Rainbow Bridge. The Commission has also indefinitely postponed work on the Whirlpool Rapids Bridge—its most expensive project—because of questions raised by Canadian agencies from which agreements would be required and because of a downturn in traffic.

The nature and complexity of these projects meant that the Commission needed to meet numerous requirements for historic preservation and environmental assessment, obtain the agreement of the U.S. Department of the Interior for a land exchange, and coordinate with other entities on regional transportation plans. At least in part because it did not coordinate with other affected entities and obtain key agreements, the Commission's projects have been delayed.

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**Rainbow Bridge Project**  
**Has Undergone Major**  
**Design Changes to Gain**  
**Approval**

At least five federal and state agreements were needed in conjunction with the first segment of the capital program—work on the U.S. plaza of the Rainbow Bridge. Although the Commission began efforts to seek agreements as early as 1990, it did not enter into a formal agreement on the process for obtaining them until May 1995, in part because of misunderstandings about the types of approvals needed and the appropriate authorities from whom the approvals and agreements were needed. Hence, the Commission has incurred additional costs for the partial redesign of this project, and the Rainbow Bridge project has been delayed.

**Rainbow Bridge Project**  
**Triggers Federal and State**  
**Requirements**

The National Historic Preservation Act requires federal entities to take steps to protect National Historic landmarks from the potential adverse effects of proposed federal projects. Specifically, the act and its accompanying regulations require broad consultation among the independent federal Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Officer (SHPO), affected agencies, and the public, resulting in an agreement on actions to mitigate any adverse effects of the project. The act applies to the Rainbow Bridge project because (1) the Commission leases space in its buildings to federal agencies for customs and immigration activities; (2) the bridge and its related structures are eligible for listing on the National Register of Historic Places; and (3) the plaza is on an easement within the boundaries of the Niagara Reservation, which has been designated both an endangered National Historic Landmark and a National Natural Landmark.

The National Environmental Policy Act and the State Environmental Quality Review Act, like the National Historic Preservation Act, require that potential adverse impact be identified and mitigated and call for consultation with affected agencies. Federal guidelines require the entity undertaking a project to determine the appropriate level of environmental review, which can range from the completion of a checklist in response to plans for certain repairs or alterations, to an environmental assessment

that briefly analyzes a project's impact, to a full environmental impact statement for major undertakings. Federal guidelines include indicators to determine whether an area is environmentally significant and may require a full study. The Rainbow Bridge project met at least three of these indicators: it is located near a unique geological feature, lies within parklands, and is likely to affect historic properties.

Issues considered under the National Historic Preservation Act overlap with issues of the environmental analysis. The review processes for both the National Historic Preservation Act and for federal and state environmental laws are consultative processes designed to identify all adverse effects of proposed projects, to consider alternatives, and to identify measures that could be taken to mitigate any adverse effect of the project. While the review process under the National Historic Preservation Act is concerned with accommodating historic preservation concerns, federal and state environmental reviews are more broadly focused. Environmental reviews are designed to determine whether the project may affect its surroundings including, among many elements of consideration, historic places.

The results of the historic and environmental analyses are also considerations in the approval of a land exchange needed for the Rainbow Bridge project. The federal Land and Water Conservation Fund Act of 1965 provides that any lost parklands, including easements, must be replaced with land of equal or higher value. As planned, the Rainbow Bridge project required about half an acre of additional land to expand the U.S. plaza—land that is within the Niagara Reservation State Park. For the parcel of parkland adjacent to the Rainbow Bridge, the Commission proposed to exchange land near the Rainbow Bridge for which it now holds an easement and land near the Whirlpool Rapids Bridge. The exchange of this state parkland required agreement from the New York State Office of Parks, Recreation, and Historic Preservation. Because the Niagara Reservation had received funding from the Land and Water Conservation Fund, the exchange also requires the Department of the Interior's approval. A factor the two agencies consider in granting their approval for such exchanges would be the results of the historic preservation and environmental consultation processes for the project.

#### **Misunderstandings About Requirements Led to Delays**

Under federal regulations, the SHPO is a key participant in the historic preservation review process and must be consulted. Furthermore, the regulations require that the ACHP be involved in the consultation process when a National Historic Landmark may be adversely affected. The

regulations recommend that these consultations take place as early in the planning as possible to provide maximum flexibility in resolving any identified conflicts. In 1990, the Commission took two steps it regarded as initiating coordination for the historic review process. However, neither of these steps directly involved the SHPO or the ACHP. As a consequence, the views of key officials were not obtained until the process had been underway for 2-1/2 years.

The first step the Commission took to involve historic preservation interests in the project was to include an employee of the state's Office of Parks, Recreation, and Historic Preservation on the project's design selection committee in 1990. In New York, the SHPO is a designated official within the state's Office of Parks, Recreation, and Historic Preservation. The Commission has stated that it included the employee on the design selection panel for the purpose of ensuring input regarding historic preservation, and that since the design selection was unanimous, historic preservation interests were addressed. However, the state park's representative on the panel was not authorized to represent the state of New York in making decisions regarding the historical preservation of properties within the Niagara Reservation. Federal regulations specify that the SHPO is the appropriate official to represent the interests of the state in preserving its cultural heritage.

In 1990, the Commission took the second step by initiating coordination with the Deputy Commissioner for Planning and Development of the state's Office of Parks, Recreation, and Historic Preservation. This official consulted with the Commission regarding the land exchange necessitated by the project. Commission officials cited an October 1990 letter from this official as signifying his intent to guide them in their historic preservation and environmental consultation processes and to act as their liaison to the state agency. This letter commented on land use matters and cited concerns about the Commission's plans and notes that the Rainbow Bridge proposal represented an adverse effect on a National Historic Landmark. The letter directed the Commission to contact and consult with specified agencies and individuals, including the SHPO and the ACHP. However, this official told us that his role was principally limited to land acquisition and usage and that he was not responsible for the historic preservation review process. The official could not explain why the Commission had the impression that he was coordinating the historic preservation aspects of the Rainbow Bridge project for the state since he was not the SHPO. The Commission's mistaken reliance continued for 2-1/2 years, during which time it had no contact with the SHPO or the ACHP.



The SHPO was aware of the Rainbow Bridge project but said that she had not been consulted by the Commission in accordance with federal regulations. The SHPO maintains that, due to the large number of projects requiring historic preservation determinations, those initiating a project have the responsibility under federal and state law to consult with her office before any final decision is made to proceed.

In November 1990, Commission consultants together with various representatives from the state's Office of Parks, Recreation, and Historic Preservation agreed that an environmental assessment would be the appropriate level of analysis for the Rainbow Bridge project. While an environmental assessment may have been an appropriate first step, the project had at least three features that suggested a full environmental impact statement might be needed.

Acting on this agreement, the Commission's consultants began an environmental assessment in late 1990. The first product of the assessment process was a November 1991 report on the effect of the proposed project on historic properties that concluded that although the project would directly affect the National Historic Landmark Niagara Reservation, it would have no significant adverse impact. However, this report was prepared without input from either the SHPO or the ACHP. The Commission's consultants then produced a draft environmental assessment and issued it for comment in December 1992. The draft assessment concluded that the proposed project would have no significant adverse impact. During the subsequent comment process, the SHPO's concerns surfaced about the project's visual impact on the Niagara Reservation. In March 1993, the SHPO disagreed with the finding of no significant impact. Both the SHPO and the Commission told us that this was the first instance in which the Commission was notified of such concerns.

The SHPO urged the General Services Administration (GSA), which leases space from the Commission to house federal customs and immigration operations at the bridge and which was familiar with historic preservation and environmental reviews, to take the lead in seeking the needed agreements. GSA officially assumed responsibility for coordinating the historic preservation and environmental reviews for the Rainbow Bridge project in June 1993 and has begun to obtain the needed agreements. As required by the National Historic Preservation Act, GSA formally notified the SHPO and the ACHP of the project on June 30, 1993. ACHP then requested assistance from its consulting agency, the National Park Service, to assess the project's potential impact on the Niagara Reservation. In December

1993, the National Park Service concluded that the proposed project was incompatible with the setting. Subsequent to this report, the Commission decided to amend its design for the Rainbow Bridge plaza. In April 1994, GSA announced that it would require a full environmental impact statement for the Rainbow Bridge project. A preliminary draft of this document was available for public comment in December 1994. The final draft of the document was delayed to allow consultation under the historic preservation review process, which was largely completed in May 1995. GSA expects to announce the availability of the final draft of the environmental impact statement by the end of July 1995, and, if no further substantive comments are received, it expects to complete the environmental review process with a record of decision in late August.

On several occasions, the Commission's general manager told us that the Commission and its consultants had relied on the Deputy Commissioner for Planning and Development in their decision to perform an environmental assessment instead of a full environmental impact statement and relied on him to conduct their coordination with other units within the Office of Parks, Recreation, and Historic Preservation. In commenting on a draft of this report, the Commission said that the advice received from that state official was from the person whom they thought to be the "person in charge of" the Office of Parks, Recreation, and Historic Preservation. However, federal regulations clearly require consultation with the SHPO and ACHP, and the Deputy Commissioner told us that he could not explain why the Commission misunderstood the requirements.

#### **Redesign Is in Progress to Allay Concerns About Visual Impact**

With 80 percent of the project's design completed, the Commission, in January 1994, resolved to make substantial changes to the proposed design. As a result, the Commission incurred redesign costs that it estimates at about \$300,000. In May 1995, the Commission, GSA, ACHP, the SHPO, and the National Park Service signed a memorandum of agreement as required by federal regulations implementing the National Historic Preservation Act. The parties agreed that further design of the project will be reviewed at specific points, as well as on processes to resolve any differences of opinion concerning the project.

The May 1995 agreement also indicated that the SHPO would recommend to the New York State Office of Parks, Recreation, and Historic Preservation that it seek approval from the National Park Service to execute the land exchange required for completion of the project. The agreement further indicated that the National Park Service would expeditiously approve the

land transfer upon such request from the state. The Commission's May 1992 bond offering stated that the Rainbow Bridge project would be completed in January 1996, but the Commission now expects to resume construction at the Rainbow Bridge at the end of 1995 and to complete it by the end of 1997 to mid-1998.

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### **Whirlpool Rapids Bridge Plans Postponed**

Capacity improvements at the Whirlpool Rapids Bridge, at an estimated cost of \$118 million, were to have been the most expensive of the three projects funded by the Commission's bonds. The improvements would permit use of the bridge for the first time by large commercial trucks and included the construction of warehouse and inspection facilities for commercial vehicles. This expanded usage would be accomplished by altering the bridge's upper deck for use by large trucks with access to that level from roadways and plazas to be constructed by the Commission. The new approaches to the bridge would be connected to local roads for the near term and later to major highways. The bond offering statements show that construction was to have occurred from June 1994 to July 1996. The improvements required coordination with other agencies and a number of agreements before project initiation. Specifically, the Commission needed approvals for road connections to make the project viable, environmental analyses in both the U.S. and Canada, and additional land acquisitions in both countries.

While the Commission moved forward with plans for improving Whirlpool Rapids Bridge, New York State and Province of Ontario agencies were conducting ongoing studies—one of which included Commission representatives—to assess regional transportation needs. The findings of these studies differed somewhat with Commission plans for this bridge. In light of the issues raised by these two transportation studies and a downturn in traffic volume, the Commission and its consultants reviewed the status of its capital program in July 1994 and postponed the Whirlpool Rapids Bridge project. As a result, the Commission may have incurred expenses that may have limited value if and when this project is resumed.

### **Commission Incurred Expenses for Agreements and Approvals Needed for the Whirlpool Rapids Bridge Project**

In proceeding with its plans to upgrade the Whirlpool Rapids Bridge, the Commission incurred expenses for environmental impact studies and an option to purchase land that would be needed to upgrade this bridge. First, the Commission anticipated the need for full environmental impact studies in both countries because the project would cause some major changes in land use. The studies were begun in mid-1992. As of August 31, 1994, the Commission had spent about \$500,000 on environmental studies, which

have been suspended. While the work done thus far may be usable if the project eventually proceeds as planned, it may be of limited value if the major improvements at the Whirlpool Rapids Bridge are not needed in the near future.

Additionally, the Commission purchased an option on land that would be needed when the Whirlpool Rapids Bridge project got under way. The project as originally planned required about 50 acres of land owned by the Canadian National Railway for the construction of approach roadways and inspection facilities. Rather than purchase the land outright, the Commission purchased an option in June 1993 to maintain flexibility for phasing in the capital program. As payment, the Commission placed \$15.5 million in Canadian currency in escrow, with the interest accruing to Canadian National. Because of uncertainties about the future of the Whirlpool Rapids corridor and concerns about potentially high environmental cleanup costs, the Commission terminated the option in June 1994. We estimate that interest foregone by the Commission was about \$875,000 when converted to U.S. currency.

#### Transportation Studies Conflict With Plans for Whirlpool Rapids Bridge

After the Commission issued its Thirty-Year Plan, two studies were conducted by regional transportation agencies which resulted in recommendations for the Whirlpool Rapids corridor that conflicted in some way with the Commission's plans. One study questioned the routing of large commercial trucks over the Whirlpool Rapids Bridge and construction of the related commercial vehicle warehouse inspection facilities in the bridge plaza areas, while the other study questioned highway connections the Commission had planned. The resulting uncertainty about fundamental elements of the planned project was a major factor in postponing the project.

A joint U.S.-Canadian study of Niagara River bridges, initiated in November 1990, resulted in recommendations for the Whirlpool Rapids Bridge that differed from the Commission's plans. The Niagara Frontier U.S.-Canada Bridge Study was jointly sponsored by transportation planning agencies of New York State and the Province of Ontario to assess regional transportation needs. Issued in March 1993, the study recommended short-, medium-, and long-range plans for the Commission's three bridges, as well as for the Peace Bridge in Buffalo. The study disagreed with the Commission's plans to route large commercial trucks across the bridge, and for the near term, the study recommended smaller changes in contrast to the Commission's major construction plans.

For the period prior to the year 2000, the study recommended only changes to the Whirlpool Rapids Bridge plazas and approaches in contrast to the Commission's plans to construct roadways, truck inspection stations, and warehouse facilities by 1996. For the period after 2000, the study recommended upgrading the bridge's upper level as one alternative to be explored for relieving anticipated congestion. However, in contrast to the Commission's plans, this study did not envision the use of the upper level by large commercial trucks. The study recommended that use of the bridge be restricted, as it currently is, to open bed and single commodity trucks, and the plan specified that provision for commercial vehicle warehouse inspection facilities, planned by the Commission, not be made.

While the bridge study was under way, another study was started that drew into question the major highway linkages that were needed to make this project feasible. The Commission's Thirty-Year Plan called for it to acquire land and construct roadways from the bridge out to major local streets by 1996. In the longer term, connection would be made by U.S. and Canadian agencies to major highways in each country. The second study, TransFocus 2021, was issued in draft for comment by the Province of Ontario in April 1994 and finalized in April 1995. The study called for an environmental assessment as well as a study of the feasibility and timing of linking the Whirlpool Rapids Bridge with highway 420 in Canada, rather than the linkage with Canadian highway 405 which the Commission had planned. This change would impact the land required by the Commission in Canada. Canadian officials expect resolution of the question concerning highway routes by mid-1996, at which time an environmental assessment could be initiated to determine the impact of expansion of the bridge corridor.

Agreements would also be required in New York before the Whirlpool Rapids corridor could be upgraded. New York State's area transportation planning organization approved the project for its long-range plan in December 1993. This process recognizes plans for road connections to the interstate highway system sometime after 1999 but does not identify any funding for these connections. State transportation officials told us the Commission began coordinating with them when they initiated the environmental impact study on this project; this study would have identified all needed agreements and clearances. However, that effort was halted in January 1994.

In light of the recommendations of these two transportation studies, a downturn in the volume of bridge traffic, and other issues, the

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Commission in July 1994 postponed the project, the completion of which was scheduled for mid-1996. In conjunction with this decision, the Commission also discussed, but did not resolve, the issue of early retirement of some of the Commission's debt.

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**Planned Work on  
Lewiston-Queenston  
Bridge Has Been  
Postponed**

As a result of the questions raised about the future of the Whirlpool Rapids Bridge, work planned by the Commission for the Lewiston-Queenston Bridge has also been postponed. Although some work has been completed on this bridge, the Commission has begun to explore alternatives for reconfiguring the Lewiston-Queenston Bridge to increase its capacity beyond that envisioned by the original plan. The revisions would permit this bridge to absorb some of the traffic that the upgraded Whirlpool Rapids Bridge would have handled.

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**Project Delays Have  
Limited Expenditure  
of Bond Proceeds**

In May 1992, the Commission financed its capital program with \$121 million in tax-exempt bonds, and in July 1993, the Commission refinanced this debt by issuing \$133 million in such bonds. In 1992, the Commission stated that it reasonably expected at least 85 percent of the spendable proceeds of its bonds would be expended within 3 years of May 20, 1992, the date of release of the Commission's original bond issuance statement. Because of delays in implementing the capital program, the Commission has not achieved this level of expenditures. The Internal Revenue Code requires that bond issuers have a reasonable expectation, at the time of bond issuance, that the bond proceeds will be spent within certain time frames.

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**Commission Took  
Advantage of Low Interest  
Rates**

To save bond issuance costs and lock in favorable interest rates, the Commission issued sufficient bonds to cover cash needs for work on all three existing bridges rather than financing each project separately. When the Commission refinanced its bonds in 1993, it obtained an average of a 5.4-percent interest rate, which is a historically low long-term rate over the last 30 years, according to the Commission's bond counsel. The bonds also include a provision that permits the redemption of most of the Commission's bonds at full face value if the Commission's engineers certify that all or part of the capital program cannot be carried out or has to be curtailed.

The Commission has spent funds for consulting fees, reconfigured truck lanes on one bridge, installed some automated toll equipment, and

widened the U.S. plaza on the Rainbow Bridge to accommodate additional toll and inspection booths. As of August 31, 1994, the Commission still had about \$43 million U.S. and \$64 million Canadian (a total of \$90 million if Canadian funds are converted to U.S. currency)<sup>1</sup> in bond proceeds available. However, because of questions about the planned upgrading of the Whirlpool Rapids Bridge, the Commission may not need all of these funds in the near term unless the cost of the work on its other bridges expands to require more funding.

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**IRS Requires That Bond Issuers Have Reasonable Expectations of Spending Bond Proceeds Within Specified Time Frames**

The Internal Revenue Code includes several restrictions on the usage of tax-exempt bonds. Among these rules are restrictions on hedge bonds enacted to prevent the early issuance of bonds to hedge against potential future increases in interest rates. Under the Internal Revenue Code, unless the bond issuer reasonably expects that 85 percent of the spendable proceeds of a bond issue will be spent in 3 years from the date of issuance, the bonds may be considered hedge bonds.<sup>2</sup> If the bonds are hedge bonds, the bonds will not be considered tax-exempt unless the issuer has a reasonable expectation of spending: 10 percent of the spendable proceeds of the issue within 1 year of issuance; 30 percent within 2 years; 60 percent within 3 years; and 85 percent within 5 years.<sup>3</sup> The Commission stated in its bond offering statement in May 1992 that it reasonably expected at least 85 percent of the spendable proceeds of its bonds would be expended within 3 years of May 20, 1992. However, due to delays in implementing the capital program, this has not occurred. The key question, however, is not whether the proceeds are actually spent within these time frames, but rather whether the bond issuer had a reasonable expectation of doing so at the time the bonds were issued.

During our work, we met with IRS officials to discuss generally the application of the hedge bond rules, as well as the Commission's financing circumstances. These officials told us that the IRS considers a number of factors in taking action in such situations but would not discuss the particular circumstances of the Commission's bonds. Since the application of tax laws and regulations is within the jurisdiction of the IRS, it is our policy not to offer opinions of the application of these laws and regulations to particular factual situations.

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<sup>1</sup>Bond proceeds were invested in both the United States and Canada because the capital program's costs will be incurred in both countries. Since the time of these investments, the Canadian dollar has decreased in value in relation to the U.S. dollar.

<sup>2</sup>26 U.S.C. §149(g)(3).

<sup>3</sup>26 U.S.C. §149(g)(2).

## Costs Associated With Financing and Implementing Commission Projects

Because the Commission lacked expertise on its own staff, it retained attorneys, engineers, architects, underwriters, and bond counsel to assist in coordinating with outside entities, obtaining needed agreements, designing its projects, and financing its capital program. The Commission had spent over \$5 million on consultants and other advisers as of August 31, 1994. (See table 2.1 for a listing of the Commission's costs for consultants and advisers.) Furthermore, in addition to payments to consultants, the Commission has incurred almost \$6 million in costs to finance the two bond issues for its projects. (See table 2.2 for a listing of bond issuance costs.)

**Table 2.1: Commission Payments to  
Consultants and Advisers as of  
August 31, 1994**

(Dollars in thousands)		
Type of consultant or adviser	U.S. dollars	Canadian dollars
Architectural/Engineering	\$4,122	\$688
Legal	570	68
Other (includes traffic consultants, lobbyists, etc.)	174	175
<b>Total</b>	<b>\$4,866</b>	<b>\$932</b>

Notes: Excludes costs for bond counsel and underwriters.  
Columns may not add due to rounding.

Source: OSC's analysis of Commission data.

**Table 2.2: Commission Costs for Bond  
Issuance**

(U.S. dollars in thousands)		
Cost item	1992 bond issuance	1993 bond issuance
Bond insurance	\$1,527	\$1,133
Underwriters' fees	1,534	819
Co-bond counsel fees	307	259
Other fees and charges	141	118
<b>Total issuance costs</b>	<b>\$3,509</b>	<b>\$2,329</b>

Source: OSC's analysis of Commission data.

In addition, each of the bond offerings sold at a discount, which had the effect of reducing the proceeds to the Commission. The discounts on the two bond issuances totalled over \$5 million (about \$3.67 million for the 1992 bonds and \$1.45 million for the 1993 bonds).

osc's municipal financing specialists evaluated the costs of the 1992 and 1993 bond issuances for their reasonableness. The specialists said that



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given the international nature of the Commission and its newness to the tax-exempt bond market, the costs of both the 1992 and 1993 issuances appeared to be reasonable. The specialists commented, however, that charges by the underwriter totaling about \$120,000 for clearance and for computer and communications are either not typically paid by issuers or, if paid, are charged at much lower levels than charged to the Commission. The specialists could not assess the reasonableness of the bond counsels' costs because these costs were not supported by detailed billings.

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## Conclusions

The Commission's capital program is a complex and sophisticated undertaking that required extensive coordination and agreements, as well as entry into the capital bond market. In May 1992, the Commission issued \$121 million of tax-exempt bonds. However, the majority of the bond proceeds remain unspent because each of the Commission's projects has been delayed or postponed. Delays at the Rainbow Bridge plaza project occurred largely because the Commission did not obtain needed governmental clearances.

In May 1995, the Commission entered into a memorandum of agreement for the Rainbow Bridge plaza with several federal and state agencies that identifies the roles and responsibilities of all parties and lays the groundwork for moving forward with this project. The future of the Commission's plans for the Whirlpool Rapids Bridge project, however, is less certain. In July 1994, the Commission deferred the schedule for the Whirlpool corridor until such time as the transportation plan being developed by the Canadian Ministry of Transportation is more firmly developed and the New York State Department of Transportation is ready to schedule a connection to the Commission's Whirlpool facilities.

IRS rules require that bond issuers have a reasonable expectation of spending tax-exempt bond proceeds within certain time frames. While project delays have caused the Commission to not expend the bond proceeds as it anticipated, the key question is whether it had a reasonable expectation of doing so at the time the bonds were issued. Because determinations on compliance with these requirements are within the jurisdiction of the IRS, we cannot speculate on whether the IRS would review the Commission's bonds.

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## Observations

Because neither GAO nor OSC has explicit audit authority over the Commission, we are not making any formal recommendations.

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Nevertheless, we identified a number of possible steps the Commission can take for improving the implementation of its capital improvement program. In order to ensure the orderly implementation and financing of its capital program, the Commission may wish to develop a formal update to its long-term capital program (A Thirty-Year Plan), including, as appropriate, plans to address the early retirement of debt resulting from funds derived from the 1992 and 1993 bond issues that may no longer be needed. It would be appropriate for this update to also include a strategy for obtaining the necessary input and/or agreements from appropriate transportation, environmental, historic preservation, and other involved agencies and associations before implementing its capital program.

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## Agency Comments and Our Evaluation

In commenting on a draft of this report, the Commission strongly objected to the inclusion in the report of any discussion of the tax-exempt status of its bonds and disagreed with the discussion of project delays for the Rainbow Bridge project. With regard to the discussion of the relationship of IRS rules to the Commission's tax-exempt bonds, the Commission and its consultants said that any discussion of the tax-exempt status of the bonds could potentially have negative effects on the bondholders, was not rooted in fact, and suggested that any discussion of this issue should be withdrawn from the report.

It was not our intent to create a perception that the tax-exempt status of the bonds is in jeopardy, and the report has been clarified to ensure that the reader is not led to this conclusion. However, the Commission certified that it reasonably expected to spend 85 percent of the bond proceeds within 3 years of issuance. Three years have passed since bond issuance, and less than one-third of the bond funds have been expended. Clearly, any decision related to this issue is properly within the purview of the IRS, and it would be inappropriate for us to speculate on the application of these laws and regulations. However, the standards under which we conduct our work require a review of compliance with laws and regulations that are significant to the audit objectives, one of which was the financing of the capital program. In light of the fact that the Commission has experienced delays in expending its tax-exempt proceeds as it had projected in its bond offering statement, we believe that we would have been remiss had we not included a discussion of this issue in the report.

The Commission also objected to our treatment of the cause of delays in gaining the approvals necessary to move forward with the construction of

the Rainbow Bridge project and said that the many approvals needed to proceed with this project are virtually completed. The discussion of this issue has been expanded to more clearly show the chronology of events and the Commission's misunderstandings of the types and sources of agreements required that led to delays in this project. The Commission entered into a memorandum of agreement with appropriate federal and state entities in May 1995 (after the draft report had been provided to the Commission for comment) that establishes the framework for moving forward with this project. While the agreement is certainly a positive step toward project implementation, we believe that completing such an agreement earlier in the process could have precluded the delays the Commission has experienced on this project.

On the other hand, the Commission said that it has taken our suggestions with respect to updating the Plan, the possible retirement of a portion of its debt, and the desirability of developing a strategy for obtaining necessary input and agreements from other agencies under advisement to the extent that these recommendations have not already been superseded by events. For example, the Commission said that it has largely completed the process of developing collaborative strategies with appropriate agencies involved in the environmental and historic preservation process. The Commission has recently taken steps, such as completing a memorandum of agreement in mid-May 1995 with several agencies regarding the renovation of the Rainbow Bridge plaza, that are moving this project closer to implementation. The overall theme of our suggestions, however, was not intended to be project specific, but rather to apply to the entire capital program. In this context, we continue to believe that the suggestions we made could be beneficial in the Commission's management of its overall capital program.

# Certain Commission Operations Could Be Improved

We performed a limited review of the Commission's internal controls over its business affairs. We found that the Commission had new policies in place to guide procurement and the remuneration of commissioners but that in some instances it had not ensured that these policies were consistently followed. For example, over half the commissioners' expense claims that we reviewed lacked proper approvals or were missing at least part of the required documentation. We found errors in payments made in both procurement and commissioner remuneration. The Commission has since taken action to recover the overpayments. Finally, because some attorneys' fees were not supported by detailed billings, we could not assess the nature or reasonableness of the cost of the legal services provided. Recognizing the need for a comprehensive assessment of its internal controls and practices, the Commission plans to contract for such a review.

No federal or New York State legislation specifically provides for oversight of the Commission. Because the Commission may benefit from periodic oversight by a governmental body, we have identified options for permanently designating a governmental entity to oversee the Commission's operations.

## Procurement Policies Were Not Always Followed

It is generally good business practice to obtain vendor competition for significant purchases of goods and services. To assess the Commission's procurement procedures, we selected 51 of the 238 purchase orders issued by the Commission from January 1, 1993, through June 16, 1994, for review. Although 28 (of the 51) purchase orders were for amounts that exceeded \$5,000, the Commission had no documentation in its files to indicate that it used vendor competition to obtain the goods and services in question. In responding to a draft of this report, Commission staff said that competition had not been used in 17 (of the 28) instances because of "unavoidable necessity." However, documentation of the unavoidable necessities was not present in the Commission's files. For the remaining 11 instances, Commission staff told us that vendor competition had been used but that it had not retained the quotations from the vendors that were not selected.

Prior to January 1994, the Commission did not have written procurement policies and procedures. In January 1994, the Commission formalized its procurement policies and procedures to require some form of vendor competition and written contracts. Specifically, the Commission's policy requires, when feasible, at least three written quotations for purchases

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greater than \$5,000 and written contracts for purchases of more than \$20,000 in one year from the same vendor. According to the Commission's general manager, the Commission had been using the policies and procedures that were formalized in January 1994 for some time prior to that date. However, in responding to the draft report, the Commission also indicated that staff could not determine exactly which policy was in effect on what dates.

Twenty-two of the 28 purchase orders that were for more than \$5,000 were issued prior to January 1994, when the Commission formalized its procurement policies. The remaining six were issued after the policies were formalized. We found, however, that the Commission did not have formal contracts for three purchase orders, ranging in amount from \$20,112 to \$48,000, that were issued after the Commission formalized its policies. The Commission said that there were unique circumstances associated with four of the six orders issued after the policies were formalized. In one instance, for example, verbal (instead of written) quotations were obtained because time was of the essence or other factors mitigated the use of written quotations. However, documentation of such mitigating factors was not maintained in the files.

During our work, we also noted that the Commission overpaid one vendor \$1,100 for uniforms. Our limited review of payments to consultants disclosed three similar overpayments totaling about \$2,300. The overpayments resulted from paying the same charges twice on separate account statements, not identifying an inaccurate invoice total, and paying an invoice credit balance. Commission staff informed us that the three overpayments have been or will be recovered from the vendors.

In responding to the draft report, Commission officials indicated that, because our audit uncovered some actual control problems, they had issued a request for proposal for a major management and control review that would address procurement issues.

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## Commissioner Remuneration Policies Were Not Consistently Followed

The Commission did not consistently follow its policies when providing remuneration to the commissioners. As a result, some expenses were not properly authorized and/or documented. The Intermodal Surface Transportation Efficiency Act of 1991 authorized reimbursement to commissioners for actual expenses incurred in the performance of official duties and a per diem allowance of \$150 when rendering service as a member. According to this federal legislation, the per diem is to be paid on

a fiscal-year basis and should not exceed \$10,000 for any commissioner in any fiscal year. Our review of the Commission's fiscal year 1993 payments to commissioners found some errors in payments of the per diem allowance and inadequate documentation and authorization for expense reimbursements.

Controls are in place to ensure that the per diem limit is not exceeded on payments to commissioners. Commission policy requires each commissioner to file a quarterly attendance report detailing the date and nature of the service rendered in order to receive an allowance. The quarterly reports are to be reviewed by the chairperson or vice chairperson of the Commission, one of whose signatures is required to authorize payment. The Commission has no written policy defining the circumstances in which a payment should be allowed. The general manager commented that the chairperson is familiar with the commissioners' duties; he or she uses best judgment when determining the duties eligible for payment of the per diem allowance.

We reviewed all per diem payments to commissioners during the Commission's 1993 fiscal year. In that year, a total of \$69,950 in per diem allowances was paid to the eight commissioners. In addition to being paid for Commission and committee meetings, per diem was paid for conferences, meetings, and public relations events. In no instance was a commissioner paid for an event that could not be construed as serving the Commission. Of the eight commissioners, three received the maximum allowable amount of \$10,000 for that year.

We found four errors in per diem payment amounts. Payments to one commissioner exceeded the maximum allowable by \$1,550 because the commissioner's expenses were tracked on a calendar-year basis instead of a fiscal-year basis as required by the 1991 act. This error had been recognized by the Commission before our review: part of the overpayment had already been deducted from this commissioner's per diem allowance payments at the time of our review, and the rest was to be deducted before the end of the fiscal year. In three instances in fiscal year 1993, commissioners were paid two per diem allowances for one day. In one of these instances, a duplicate claim was mistakenly paid, while in the other instances, more than one function was served on a single day. In response to our questions, the Commission clarified its policy so that only one per diem payment will be provided for a day, regardless of the number of services rendered. The general manager reported that he requested that

the commissioners adjust future per diem claims to provide for repayment to the Commission of the extra per diem amounts.

Commissioners may also be reimbursed for travel and other Commission-related expenses, but the guidelines on reimbursing commissioners for Commission-related expenditures are very general. Commission policy requires that all expenses be fully documented on an expense report accompanied by receipts and submitted for approval by the chairman or the vice chairman. The policy provides examples of reimbursable and nonreimbursable expenses and notes that excessive expenses will not be reimbursed. The general manager said that it is up to each commissioner to apply judgment when making travel arrangements. He also said that the Commission prefers not to establish written guidelines for travel and other reimbursements because it considers commissioners' requests for payment as generally reasonable and it wishes to maintain flexibility. We believe that a vague policy is undesirable because it is open to a wide range of interpretations.

We reviewed all expense reimbursements to commissioners made in fiscal year 1993, which amounted to \$12,328 U.S. and \$18,195 Canadian. The commissioners generally filed the required quarterly expense reports. Most of these expenses were for mileage, transportation, and meals. The expenses were related to a variety of events, including Commission or committee luncheon or dinner meetings; meetings with a variety of federal, state, and local representatives; and professional meetings. Most of the claims for expense reimbursement we reviewed were clearly connected to Commission business. However, we noted claims for registration at a San Diego conference, which included meals, for two commissioners' spouses. The Commission does not have a specific policy related to this issue, but the general manager said that it is common practice for public authorities to pay registration fees for spouses. The Commission did not pay for the wives' travel.

All required approvals and documentation were available for 45 percent of the commissioners' expense claims paid in fiscal year 1993. Of the remaining 55 percent of the expense claim payments, 18 percent lacked approval, 22 percent had no documentation, and 15 percent contained both documented and undocumented expenses. The general manager acknowledged that procedures might not have been followed in some instances.

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## Some Attorney Fees Were Not Supported by Detailed Billings

The Commission sought legal assistance in coordinating its capital program with outside entities, obtaining needed agreements, and issuing bonds. The costs for these services were not supported by detailed billings. In 1991, the Commission retained the services of an attorney to function as special counsel to represent the Commission and appear for it before any federal, state, or local agencies and provide any other legal and public affairs service the Commission might require. This attorney was retained under a \$100,000 annual retainer, which he received in quarterly payments in addition to expenses. His duties included serving as counsel for the 1992 bond offering, negotiating with federal and state agencies, and working to obtain authority for the Commission to issue bonds exempt from federal and state taxes. In addition to the \$100,000 the attorney was paid in 1993, his affiliated law firm was separately paid over \$61,000 for its work as counsel on the 1993 bonds. Fees paid to the attorney and his affiliated law firm totaled about \$450,000 through August 31, 1994.

Another law firm was also hired to assist with obtaining authority for the Commission to issue tax-exempt bonds and to serve as co-bond counsel. This firm was paid about \$200,000 for its work on each of the two bond issuances. The principal attorney involved said that billings were based on hourly rates; he noted that the cost of the second bond issuance was similar to that of the first because of the complexity of the second issuance.

We could not assess the nature or reasonableness of the cost of the legal services provided because neither the contracts for services nor the billings were sufficiently itemized. The municipal finance specialists with whom we consulted could not assess the reasonableness of these costs because the Commission did not enter into specific written agreements for the counsels' services on the bond issuances. These specialists said that such agreements should define the services to be provided and estimate the resulting fees. Our review of the cost of the legal services was further hampered by invoices that did not provide details on the actual time spent or the rates charged for bond issuance efforts. Without these documents, it is not possible to assess whether the counsel's billings were reasonable for the time and effort spent on the bond issuances.



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## Legislation Does Not Explicitly Authorize Governmental Oversight of the Commission

Since the Commission was created in 1938, it has grown from an operation managing one international bridge to one managing three bridges and a complex, long-term capital improvement program. As part of our work, we ascertained what external reviews of the Commission's operations are required and have been performed. Neither the joint resolution of the U.S. Congress that created the Commission in 1938 nor the six subsequent amendments to date assign responsibility for any governmental entity to oversee or audit the Commission. Furthermore, no New York State legislation provides for oversight of the Commission. A Canadian audit official said that the Province of Ontario has also not reviewed the Commission's operations. Consequently, no governmental entity has overseen the Commission's activities in more than 50 years.

The joint resolution did call for an accurate and publicly available record of bridge costs, expenses for operating and maintaining the bridge, and tolls collected. The Commission has submitted its books annually to Deloitte and Touche or its predecessor firm for review.

The Commission itself has recognized this lack of oversight authority. This joint review was performed with the consent of the Commission. The Commission has said on several occasions that it considers itself a federal entity and has requested that federal legislation be passed to give GAO permanent authority for overseeing the Commission. However, there are numerous links between the Commission and New York State, including the fact that the Governor of New York appoints the U.S. commissioners, and the state has a long-term ownership interest in the bridges.

Governmental oversight might also give the Commission access to advice on the planning, coordination, and financing of major capital projects, thereby helping it to avoid the kinds of problems the Commission has encountered. Advice on such issues as the timing and amount of bond financing and governmental requirements for major projects is available from some governmental entities that serve in this type of oversight capacity. New York State, for example, provides such advice on projects and their financing to similar state authorities and municipalities.

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## Possible Steps for Improving Certain Commission Operations

Because neither GAO nor OSC has the explicit authority to audit the Commission, we are not making formal recommendations for improving Commission operations. We believe, however, the Commission may wish to consider taking steps to strengthen its compliance with existing Commission policies and procedures in such areas as (1) obtaining and

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documenting sufficient price quotations where required, (2) preparing written contracts for multiple purchases from the same vendor that exceed \$20,000 within a year, (3) having the chairperson or vice chairperson review and approve all claims submitted by the commissioners, and (4) having commissioners adequately document claims for the reimbursement of travel expenses. To improve its internal controls over payments and ensure that commissioners receive remuneration only for appropriate expenses, the Commission may wish to consider developing formal policies and procedures to (1) preclude the duplicate payment of accounts payable balances, (2) ensure that totals shown on invoices and account statements have been calculated accurately, and (3) delineate clearly those expenses that will be covered by per diem and travel reimbursements to commissioners. Finally, to ensure reasonable payment of consultants for services rendered, it would be prudent for the Commission to

- require consultants to provide the Commission with detailed breakdowns of the amounts they bill it for professional services and
- establish the amounts and/or rates associated with specific professional services before such services are rendered and billed for.

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## Options for Overseeing the Commission

Several options are available for overseeing the Commission. One option would be to designate OSC as the permanent authority for overseeing the Commission. The state already audits similar state bridge commissions and is in a position to provide both audit oversight and advice on capital projects and financing. Additionally, the bridges will ultimately be conveyed to the state of New York and Canada once the bonds issued for the bridges and the related interest are paid off. The state's oversight would then be consistent with the state's responsibility for owning and operating the bridges. Another option would be to grant oversight authority to GAO or another federal entity. However, GAO's primary function is to oversee the auditing of federal agencies and programs that spend federal funds, which the Commission does not do.

If it is determined that governmental oversight by a state or federal entity is appropriate, the enabling federal legislation for the Commission would need to be modified. If the state of New York is to have oversight authority, that state's law would have to be modified as well.

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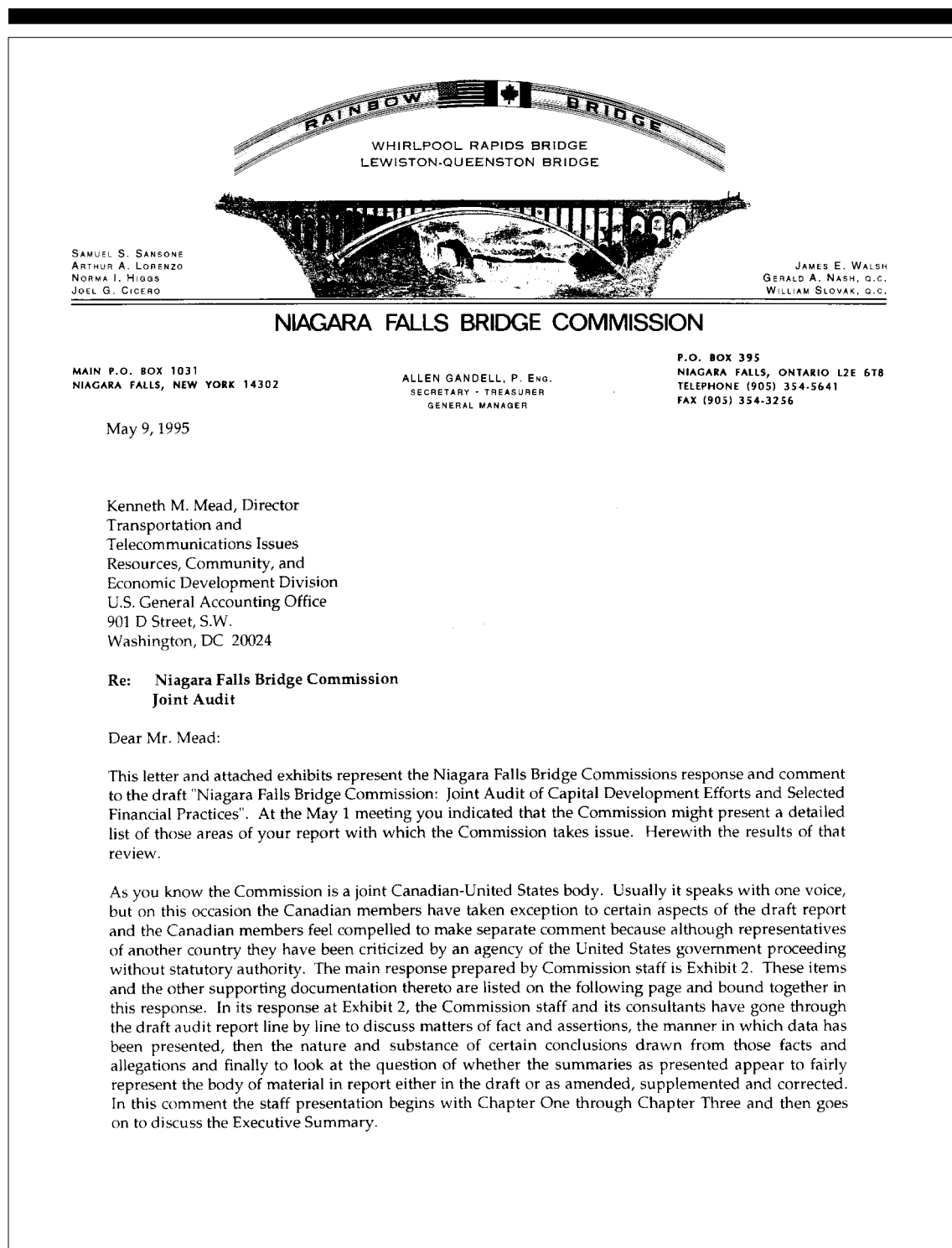
## Agency Comments and Our Evaluation

In commenting on a draft of the report, the Commission recognized that some improvements may be needed in its management and internal controls and has issued a request for proposal to perform a comprehensive management and control review. We believe that this is a positive step, particularly if the proposed study includes the issues we have raised earlier in this chapter on possible steps for improving certain Commission operations.

With regard to options for future oversight of the Commission, the Commission said its belief that the Office of the New York State Comptroller does not have jurisdiction over any entity similar to the Commission and also noted that it had previously requested that members of its congressional delegation seek legislation to give GAO authority to conduct periodic audits of its operations. While the Office of the New York State Comptroller does have experience auditing other entities similar to the Commission, such as the Peace Bridge in nearby Buffalo, New York, we believe that it would be inappropriate for us to specifically recommend whether OSC or GAO should be given permanent oversight authority over the Commission because such a decision is properly within the legislative purview of the federal and state governments. Nevertheless, we continue to believe that it may be beneficial for the Commission to receive periodic oversight from some appropriate governmental body.

# GAO's and OSC's Response to the Comments of the General Manager of the Niagara Falls Bridge Commission

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



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**Appendix I**  
**GAO's and OSC's Response to the**  
**Comments of the General Manager of the**  
**Niagara Falls Bridge Commission**

See comment 1.

It has been the custom of your agency in reports of this nature to publish the comments of the agency being audited in the final report. We certainly wish to have our comments included in any final report in this fashion. But, there may be areas in which GAO concurs with the points we have raised and may then want to amend the draft report. This could result in comments which related to items then no longer in the report. Accordingly, let me suggest if the final report fully reflects any point we make in this response that, in your final report, you simply delete any corresponding comment in our response which has been fully incorporated. We don't wish to unnecessarily lengthen the final report which should only include those of our comments which you chose not to fully incorporate. The Canadian Commissioners wish to have their comments published in full regardless of any changes which you make.

See comment 2.

Our primary concern in reviewing the report (beyond issues of accuracy) is its potential effects on the bondholders. One aspect of your audit comments are questions about the extent to which the Commission should have reasonably foreseen certain events which unfolded after the bonds were issued, another goes to the extent to which planning was prudent and a third to the manner and timing of the bond issues. In so doing, your audit has among other points raised doubts about the tax exempt status of the bonds even to the point of questioning whether IRS hedge rules could apply. As you will see in our comments, the Commission feels most strongly that the points you raise with respect to the tax exempt status of the bonds are groundless and that the question of the Commission's ability to foresee the events which transpired subsequent to issue contain very substantial elements of Monday morning quarterbacking. On this point we urge you to carefully read the comments of bond counsel attached in Exhibits 3, 4, 5 and most particularly 6. In view of bond counsel's comments in their letter of May 9, 1995 (Exhibit 6) we are deeply concerned about the speculative nature of some of GAO/OSC's comments in this area and their potential for unwarranted negative effects on the Commission's credit rating and its bondholders' investments.

To the extent that questions about the tax status of the bonds are not rooted in fact (and, indeed, we cannot see that they are), GAO/OSC should consider withdrawing them in total.

Beyond those issues the draft audit report focuses on the events surrounding delays in construction in a manner which presents only the adverse conditions leading to the delays which the Commission encountered in implementing its Plan and not the long history of involvement, accomplishments, advice and encouragement with the Office of State Parks and Recreation, their Historic Preservation Offices and the U.S. General Services Administration. This one sided reporting mistakenly conveys an impression of imprudence and tardiness which if left untempered by the addition of the remainder of the record would also have an adverse impact on the price of the Commission's bonds and inadvertently hurt innocent individual investors. The fact is that multi-agency coordination and contacts began well before the Thirty Year Plan was published.

The environmental, historic preservation and land transfer process steps needed to begin construction on the Rainbow Bridge Plaza portion of the projects in the Thirty Year Plan consists of a letter of understanding; development and circulation of a preliminary draft, a draft and a final environmental impact statement; an historic American building survey; archaeological survey and data recovery plans; a memorandum of agreement; and concurrence of parks agencies on proposed land transfers. All steps are now completed save for the printing and circulation of the final environmental impact statement and collecting the signatures on the memorandum of understanding the terms of which we believe to be agreed to. The Commission received on March 7, 1995 approval from the New York State Office of Parks, Recreation and Historic Preservation for their archaeological data recovery plan (letter enclosed). On April 12, 1995 the Commission received a concurrence from the U.S. Department of the Interior, National Park Service for land conversion of parcels 1 and 2 in connection with the Rainbow Plaza project. In short, the many approvals which the Bridge Commission had to obtain to meet the

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**Appendix I**  
**GAO's and OSC's Response to the**  
**Comments of the General Manager of the**  
**Niagara Falls Bridge Commission**

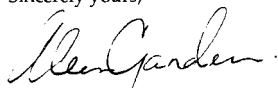
See comment 3.

environmental and historic preservation requirements of the National Historic Preservation Act and the Land and Water (MOA) Conservation Fund Act in order to implement the Rainbow Bridge initial phase of the Plan are virtually completed.

See comment 4.

The Commission hopes that between perfecting the presentation the final audit report reflects a full record of events and the omission of those items which raise unjustified, hypothetical questions about the tax status of the bonds, when coupled with the successful conclusion of negotiations on the environmental and historic preservation issues will avoid the adverse economic impacts for bondholders that we otherwise reasonably anticipate would result from the publication of the draft report in its present form. We would however ask that upon the completion of your review of these comments and prior to final publication, you consider drafting a note on the then most current status of progress towards getting memorandum of agreement signatures on the Rainbow project and add it to the report as appropriate.

Sincerely yours,



Allen Gandell, P.Eng.,  
General Manager.

The following are GAO's and OSC's comments on a May 9, 1995, letter from the general manager of the Niagara Falls Bridge Commission.

1. The Commission's response to our draft report included the general manager's May 9, 1995, letter and 17 exhibits. The general manager's letter and the comments of the Canadian commissioners are included in this final report. The remainder of the materials provided by the general manager have been considered in the preparation of this final report but are not appended to the report because of their voluminous nature.
2. It was not our intent to create a perception that the tax-exempt status of the bonds is in jeopardy, and we have clarified our report to ensure that the reader is not led to this conclusion. Clearly, any decision related to this issue is properly within the purview of the IRS, and it would be inappropriate for us to speculate on the application of these laws and regulations. However, the standards under which we conduct our work require that we review compliance with laws and regulations that are significant to the audit objectives, one of which was the financing of the capital program. In light of the fact that the Commission has experienced delays in expending its tax-exempt bond proceeds compared to the expectation it had stated in its bond offering statement, we believe that we would have been remiss had we not included a discussion of this issue in the report.
3. We have revised the report to note that the Commission began coordination with other agencies as early as 1990. In addition, our discussion of this issue has been expanded to more clearly show the chronology of events and the Commission's misunderstandings of the types and sources of agreements required that led to delays in this project. The Commission entered into a memorandum of agreement with appropriate federal and state entities in May 1995 that establishes the framework for moving forward with this project. The agreement is a step toward project implementation, but we believe that completing such an agreement earlier in the process could have precluded the delays the Commission has experienced on the Rainbow Bridge project.
4. The report has been updated to reflect that a memorandum of agreement on the Rainbow Bridge project was signed in May 1995.

# GAO's and OSC's Response to the Comments of the Canadian Commissioners

## COMMENTS ON DRAFT AUDIT REPORT MARCH 1995

Prepared for May 1, 1995 meeting  
with GAO and OSC Auditors



Office of the State Comptroller (OSC)  
United States General Accounting Office (GAO)

### RE: AUDIT REPORT - NIAGARA FALLS BRIDGE COMMISSION

The following are comments of the Canadian Commissioners with respect to the Draft Audit Report of March, 1995.

1. The Canadian members of the Niagara Falls Bridge Commission are appointed by the Government of Ontario, to whom we are responsible and accountable. The state and federal civil servants who completed this audit have no legislative or jurisdictional authority over the Canadian members of this Commission. The issue of non co-operation with individual members is inappropriate and invalid. We object most strenuously to any suggestion they can demand anything from Canadian members, and object to your declining a meeting with the Commissioners as a group during the course of the audit when so invited on several occasions.
2. The audit was agreed to only as a courtesy to the request of Congressman LaFalce, and was not intended to be the negative only, fault finding document, the report has now become. The Niagara Falls Bridge Commission has always been an international body that has functioned with careful, responsible, and conservative decision making in the best interests of the citizens of our two countries, and visitors from all over the world that use our bridges. The draft report fails to find one item worthy of note of a positive nature, outlining our achievements, but chooses to focus only on criticism, fault-finding, and negative findings. The report seems prejudiced in that direction, and that we find difficult to understand.

We do not understand your repeated and incorrect inference that the Commission was less than quick to respond to all concerns, environmental or otherwise.

See comment 1.



In fact, there is no greater example than our reaction to the protestations of Congressman LaFalce who was the prime mover behind the development of the Thirty Year Plan. We cannot imagine this report accurately representing events and motivations of the Commission without mention of the most crucial factors of political and social pressures to "get the job done as quickly as possible".

See comment 2.

3. The staff and members of the Niagara Falls Bridge Commission have gone out of our way to provide accommodation, co-operation, and full disclosure to all audit personnel, and the suggestion we in any way set out to hide or conceal any information is an insult to all of the Commissioners, management, and staff.

See comment 3.

4. The unauthorized, and indiscriminate, decision to interview Canadian civil servants of Ministries within Ontario is, in my view, a violation of international courtesy, and has created for the Canadian members, some unnecessary and unwarranted embarrassment. We would like to know where the audit personnel think they had any authority to make these inquiries within Canada, and in such a superficial manner as to force the Ministry of Transportation to disclaim and correct your interpretation of their comments.

See comment 4.

5. Your investigations fail to note the great number of Federal Agency representatives who passed judgement on the project without ever visiting the site. You have orally criticized the Commission and its consultants for having trusted information and directions provided by responsible representatives of Federal and State Agencies, most especially GSA and New York State Parks. This is not criticism for the Commission, but rather a sad commentary on the State of coordination within your own government bureaucracy. As Canadians we see an auditing of their procedures to be much more relevant than one of our own.

See comment 5.

6. The report often reaches speculative conclusions without supporting documentation or sighting relevant cases of precedent. In some cases these speculations are in opposition to documented expert legal opinion to the contrary.

See comment 6.

7. The most dangerously rash speculation pertains to the bond tax status and is so repetitively misleading as to create a perception that the bond's tax exempt status may be in jeopardy. The potential consequences of these inferences could potentially effect the financial viability of the entire project. The onus will fall on the Commission to explain to communities on both sides of the border that this vital public service project, thousands of jobs, and millions in new tax revenues could disappear based on your speculative possibilities.

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**Appendix II**  
**GAO's and OSC's Response to the**  
**Comments of the Canadian Commissioners**

See comment 7.

If the reputation and integrity of the Canadian members is in any way maligned or impugned by this report, it is our intention to vigorously defend our honourable actions through every appropriate public medium, in consultation with legal counsel, and in cooperation with appropriate Canadian Government Authorities.

In the meantime, we endorse the action of the entire Board in having commissioned an independent impartial management study and in-depth analysis of all the issues that have been raised, as well as those so conveniently omitted.

**Gerald A. Nash, Vice Chairman**  
**James E. Walsh, Commissioner**  
**William Slovak, Commissioner**  
**Niagara Falls Bridge Commission**

The following are GAO's and OSC's comments in response to the May 1, 1995, comments by the Canadian Commissioners of the Niagara Falls Bridge Commission.

1. GAO and OSC recognize that neither agency has jurisdictional authority over Canadian members of the Commission. In fact, neither agency has explicit audit authority over the Commission as a whole. However, prior to commencing our audit, we had received written permission from the Commission to conduct the audit, and at that time, the Commission agreed that it would cooperate and provide full disclosure of information we needed. During the course of our audit, we believed it was necessary to interview individual commissioners to ascertain their rationale for key decisions (such as the amount and timing of the bond issuances), as well as their understanding of the requirements and obstacles that would have to be addressed to bring various components of the Commission's capital plan to fruition. Our disclosure in the draft report that we were denied permission to interview the Commissioners was not intended to either criticize the Commissioners or imply that we had authority to demand such interviews. Rather, the disclosure was simply to explain the audit access limitation and its impact on our ability to thoroughly address our audit objectives. Moreover, the auditing standards under which we conduct our work require the disclosure of limitations (called impairments) encountered in the conduct of our work. With regard to meeting with the Commissioners as a group, the Commission Chairperson's August 29, 1994, letter to us that denied us permission to speak to the Commissioners individually also suggested that we contact the General Manager to arrange a meeting with the full board for the purpose of discussing the results of our audit work. However, our purpose in requesting meetings with the commissioners was to obtain information as part of our audit work rather than to discuss the results of our work. Contrary to the understanding of the Canadian commissioners, we were not invited on several occasions to meet with the commissioners as a group.

2. The scope of our audit entailed the financing and implementation of the capital plan and selected internal controls. We believe that the report fairly and accurately presents the results of our work in these areas. While the results of our work and the report identify problems in these areas, our intent is not to be negative, but rather to identify issues, problems, and possible corrective actions that can ameliorate such problems from recurring in the future. Along these lines, we have included observations at the end of chapters 2 and 3 that we believe are constructive suggestions

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the Commission may wish to consider to reduce the risk that the identified problems do not reoccur in the future.

The Commission believes that it is incorrect to imply that the Commission was less than quick to respond to all concerns. We have revised the report to more clearly point out that the Commission's projects have been delayed because agreements and approvals necessary to proceed with construction had not been obtained. Finally, with regard to the statement that the report does not recognize the political and social pressure to get the job done quickly, the scope of our work focused on the financing and implementation of the capital plans and the financial and environmental rules and regulations that were required to be followed to implement this project.

3. The report does not state nor did we intend to imply that the Commission hid or concealed information. However, as stated in comment 1, our auditing standards require that we disclose in our reports impairments encountered in our work. The statement that the Commission provided cooperation and full disclosure to all audit personnel warrants some discussion, however. On a number of occasions our requests for information were handled in a manner that was less cooperative than we normally experience in our audits. For example, on our requests for minutes of the Commission's meetings we experienced a delay while the Commission considered whether it would grant us access to these records. When access was granted, we were told we could not make copies of the minutes, but rather would have to take notes from them. In another case, we became aware of a document prepared by the Commission's special counsel on steps necessary to comply with historic presentation requirements. Even though such a document was directly related to the matters under review, we were denied access to it.

4. We regret any inconvenience we may have caused the Canadian commissioners by conducting these interviews. During the course of our work, we had four meetings with Canadian officials. The subjects of these meetings related to the Commission's 30-year plan and the potential effects of the proposed projects. The officials we met with readily agreed to have these meetings, and, at the time, we had no indication that these meetings were inappropriate in any way. For two of these meetings, we provided copies of our meeting notes to the Canadian officials with whom we met and asked them to review and provide any comments. None of the Canadian officials disclaimed our interpretation of their comments. Through written comments and subsequent telephone conversations, the

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Ministry of Transportation officials did, however, provide us with some additional information and clarification on the issues discussed.

5. We recognize that the international nature of the Commission and questions about its relationship to federal and state governments in the United States may have contributed to uncertainties about the procedures and requirements the Commission would have to meet to implement its capital program. Nevertheless, in undertaking its capital program, the Commission had the responsibility to identify and take steps necessary to comply with the requirements for implementing the capital program. While the Commission engaged consultants to help it work through various requirements, it continued to have difficulties in identifying and complying with all requirements, contributing to delays in project implementation. For example, the Commission's general manager told us that he believed he had received an oral commitment from an official of the New York State Office of Parks, Recreation, and Historic Preservation that the official would oversee the handling of the needed clearance for historic preservation issues. That official told us, however, that he was not the appropriate official for historic preservation issues but rather was responsible for only land use issues. As laid out in federal regulations, the State Historic Preservation Officer has responsibility for historic preservation issues. The official the general manager thought he had assurances from was not responsible for historic preservation issues. This type of misunderstanding illustrates the need for the Commission to develop a strategy for obtaining input and/or agreements from all appropriate officials as we suggest in the conclusion section at the end of chapter 2.

6. Because this point does not discuss specific issues, we are unable to provide a detailed response. Nevertheless, we believe that our conclusions are not speculative and are based on the facts and information gathered during our review. We have, in some instances, added information to the report to further support the points we are making.

7. It was not our intent to create a perception that the tax exempt status of the bonds is in jeopardy, and we have clarified our report to ensure that the reader is not lead to this conclusion. Clearly, any decision related to this issue is properly within the purview of the Internal Revenue Service, and it would be inappropriate for us to speculate on the application of these laws and regulations. However, the standards under which we conduct our work require that we review compliance with laws and regulations that are significant to the audit objectives, one of which was

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the financing of the capital program. In light of the fact that the Commission has experienced delays in expending its tax-exempt bond proceeds compared to the expectations it had stated in its bond offering statement, we feel we would have been remiss had we not included a discussion of this issue in the report.

# Federal Action With Regard to the Niagara Falls Bridge Commission

1938 Joint Resolution (P.L. 116): The Bridge Commission was created by a joint resolution of Congress on June 16, 1938, “to construct, maintain and operate” a single bridge across the Niagara River. The joint resolution also gave the Commission the authority to “purchase, maintain, and operate all or any existing bridges across the Niagara River.” The joint resolution gave the Commission the authority “to fix and charge tolls” for transit over the bridge which were to be used for “maintaining, repairing and operating” the bridge. The resolution gave the Commission the authority to issue bonds to help pay for the cost of the bridge and other necessary expenses. Interest on the bonds were not to exceed 6 percent per year. The bridge was deemed to be “an instrumentality for international commerce authorized by the Government of the United States,” and the income derived from the bridge as well as the bonds issued by the Commission were to be exempt from all federal, state, municipal, and local taxes. The joint resolution also provided for the eventual conveyance of the bridge by the Commission to New York and Canadian interests after the bonds and interest for constructing the bridge were paid off. Finally, the resolution stated that the members of the Commission would not be entitled to any compensation for their services.

The joint resolution that created the Niagara Falls Bridge Commission has been amended six times by the Congress. No comparable legislation was passed in Canada or New York.

1939 Amendment (P.L. 222): The amendment required that the contract made in relation to the sale of the bonds necessary for the construction of the bridge had to be approved by the Comptroller and the Attorney General of the state of New York. The amendment also repealed language from the joint resolution that characterized the bridge as “an instrumentality for international commerce authorized by the Government of the United States....” Finally, the amendment repealed language from the joint resolution that gave the bridge, income derived from the bridge, and any bonds that were issued by the Commission tax-exempt status from all federal, state, municipal, and local taxation.

1940 Amendment (P.L. 453): The amendment gave the Commission the exclusive right to operate the bridge and be entitled to receive and apply revenues from the operation of the bridge so long as any bonds or the interest thereon, payable out of such revenues, remain unpaid. The amendment stated that the bridge and its income should be taxed in the same manner as a public authority or a public agency of the state of New York.

1946 Amendment (P.L. 406): The amendment gave the Commission the authority to issue refunding bonds, if needed, to pay and retire any outstanding bonds of the Commission.

1949 Amendment P.L. 244: The amendment gave the Commission the authority to also purchase and reconstruct, repair, maintain, and operate, existing bridges across the Niagara River north of the city of Niagara Falls. The amendment also gave the Commission the authority to issue bonds to pay for the cost of acquiring a bridge.

1953 Amendment (P.L. 166): The amendment gave the Commission the authority to issue bonds for the construction of new bridges across the Niagara River. The amendment also stated that, once the payment of bonds and interest is complete, all bridges are to be conveyed to the state of New York and to the Canadian interests. Finally, the amendment gave the Commission the authority to replace any of its existing bridges with a new structure. The new structure would be subject to the same restrictions as the old bridges.

1991 Amendment (P.L. 102-240): The amendment eliminates language saying the Commission members cannot receive compensation. Reimbursement of commissioners is allowed for actual expenses incurred in the performance of their duties. A per diem allowance of \$150 per member (not to exceed \$10,000 in any fiscal year) is allowed. The amendment eliminates a 6-percent limitation on bond interest. The amendment also states that the Commission shall be deemed for all purposes of all federal law to be a public agency or public authority of the state of New York. This provision allows the Commission to issue bonds that are exempt from U.S. federal income taxes.



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