
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 119 Session of
1989

INTRODUCED BY SCHULER, BRANDT, JACKSON, GODSHALL, MERRY, NOYE,
DEMPSEY AND BARLEY, JANUARY 25, 1989

REFERRED TO COMMITTEE ON TRANSPORTATION, JANUARY 25, 1989

AN ACT

1 Providing for the organization of corporations for the purpose
2 of constructing and operating toll roads; providing for the
3 supervision of same by the Public Utility Commission and the
4 Department of Transportation; and establishing the Toll Road
5 Improvement Fund.

6 The General Assembly finds that there is a compelling public
7 need for rapid construction of safe and efficient highways for
8 the purpose of travel within this Commonwealth, and that it is
9 in the public interest to encourage the construction of
10 additional safe, convenient and economic highway facilities by
11 private parties, for a reasonable rate of return, provided that
12 adequate safeguards are provided against default in the
13 construction and operation obligations of the operators of such
14 roadways.

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20 The General Assembly of the Commonwealth of Pennsylvania

21 hereby enacts as follows:

22 CHAPTER 1

23 PRELIMINARY PROVISIONS

24 Section 101. Short title.

25 This act shall be known and may be cited as the Highway
26 Corporation Law.

27 Section 102. Definitions.

28 The following words and phrases when used in this chapter
29 shall have the meanings given to them in this section unless the
30 context clearly indicates otherwise:

1 "Certificate." The certificate of authority awarded under
2 this act which allows operation of a roadway.

3 "Commission." The Pennsylvania Public Utility Commission.

4 "Department." The Department of Transportation of the
5 Commonwealth.

6 "Fund." The Toll Road Improvement Fund.

7 "Highway." The entire width between the boundary lines of
8 every way or place of whatever nature open to the use of the
9 public under the provisions of this act for purposes of
10 vehicular travel in this Commonwealth.

11 "Operation." All functions and pursuits of the operator of
12 any roadway under this chapter which are directly or indirectly
13 related to acquisition, approval, construction, enlargement,
14 maintenance, patrolling, toll collections, or connections of the
15 roadway or highway with any other highway or with any street,
16 road or alley. The term shall also include, without limitation,
17 management and administrative functions attendant to actual
18 physical operation of the roadway and management of the affairs
19 of the operator.

20 "Operator." The corporation which submits to the commission
21 an application for authority to construct, operate or enlarge a
22 roadway, and which, after issuance of a certificate of
23 authority, is responsible for operation of any roadway under the
24 provisions of this act.

25 "Person." Any natural person, corporation, partnership,
26 joint venture and any other business entity. The term shall not
27 include the State or any local government or agency thereof, or
28 any municipal corporation or other corporate body.

29 "Roadway." That portion of a highway improved, designed or
30 ordinarily used for vehicular travel, exclusive of the shoulder.

1 A highway may include two or more roadways if divided by a
2 physical barrier or barriers or unpaved areas. "Roadway," as
3 used in this act, shall include only privately owned or operated
4 highways for use of which a toll or similar single-use charge is
5 imposed.

6 "Toll." The fee charged by the operator for a single use of
7 all or a portion of the roadway.

8 CHAPTER 3

9 CONSTRUCTION AND OPERATION

10 Section 301. Prerequisite for construction and operation.

11 No person may construct, operate or enlarge any roadway,
12 within this Commonwealth without first having obtained a
13 certificate of authority from the commission authorizing such
14 construction, operation or enlargement.

15 Section 302. Certificate of authority.

16 Any person may apply to the commission for a certificate of
17 authority to construct or operate a roadway, or to extend or
18 enlarge a roadway for which a certificate has been issued under
19 this act. If the commission determines in writing, after notice
20 and opportunity for a hearing, that the application is complete,
21 that approval of the application is in the public interest and
22 that the applicant has complied with the provisions of this act,
23 it shall approve the application, with or without modification,
24 unless it receives a duly adopted resolution of the governing
25 body of any jurisdiction through which the roadway passes, which
26 requests that the commission deny the application, in which case
27 the commission shall do so. If the application is approved, the
28 operator shall construct the roadway. Upon completion of
29 construction and the opening of the roadway to the public, the
30 roadway shall be kept open at all times for use by the public

1 and made accessible to the public, upon payment of the toll
2 established by the operator, provided that the roadway may be
3 partially or completely closed, temporarily, with the
4 concurrence of the department, to protect the public safety or
5 for reasonable construction or maintenance procedures.

6 Section 303. Application.

7 The commission may charge a reasonable application fee to
8 cover the costs of processing, reviewing and approving or
9 denying the application. The application for a certificate of
10 authority shall contain the following material and information:

11 (1) The geographic area to be served by the roadway and
12 a survey indicating the route of the roadway.

13 (2) A list of the property owners through whose property
14 the roadway or highway will pass or whose property will abut
15 the roadway or highway.

16 (3) The method by which the operator will secure all
17 rights-of-way required for the roadway, including a
18 description of the nature of the interest in the lands to be
19 acquired, which shall provide, at a minimum, for permanent
20 dedication so long as the lands are used for transportation
21 purposes.

22 (4) The comprehensive plan or plans for all
23 municipalities through which the roadway will pass and an
24 analysis which shows that the roadway conforms to these
25 comprehensive plans. To the extent that the roadway conforms
26 to such plans, the fact that the operator is a corporation,
27 as opposed to the Commonwealth, shall not affect the
28 construction and operation of the roadway.

29 (5) The operator's plan for financing the proposed
30 construction or enlargement of the roadway, including

1 proposed tolls to be charged for use of the roadway,
2 projected amounts to be collected from such tolls and
3 anticipated traffic volume and detailed plans for
4 distribution of funds, including the priority in which
5 necessary expenditures will be made.

6 (6) The operator's plan for operation of the proposed
7 roadway or enlargement thereof.

8 (7) A list of all permits and approvals required for
9 construction of the roadway from Federal, State or local
10 agencies and a schedule for securing such approvals.

11 (8) An overall description of the project, the project
12 design and all proposed interconnections with the State
13 highway system, including any interstate highway, or
14 secondary system of highways or the streets or roads of any
15 municipality not within the State highway system, accompanied
16 by a copy of the approval of the project, the roadway design
17 and interconnections from the department, as well as the
18 municipality for connection with a street or road not under
19 State control.

20 (9) A list of public utility facilities to be crossed
21 and plans for such crossings or relocations of such
22 facilities.

23 (10) A certificate of the operator that the roadway will
24 be designed and constructed to meet department standards, and
25 substantially in accordance with a proposed timetable which
26 is agreeable to the department, and that the operator will
27 provide a design, review and inspection agreement with the
28 department which shall provide that the department shall
29 authorize construction upon review and approval of the plans
30 and specifications for the roadway and its interconnection

1 with other roads, and that it shall inspect periodically the
2 progress of the construction work to ensure its compliance
3 with the department standards.

4 (11) Completion and performance bonds in form and amount
5 satisfactory to the commission, which amounts shall be set
6 after consultation with the department.

7 Section 304. Incorporation and eminent domain.

8 The applicant shall be incorporated under the laws of this
9 Commonwealth relating to business corporations. Eminent domain
10 shall not be exercised by the operator for the purpose of
11 acquiring any lands or estates or interests therein, nor any
12 other property used by the operator for the construction or
13 enlargement of a roadway pursuant to this act.

14 Section 305. Powers of the commission.

15 The commission shall have the power, and be charged with the
16 duties of reviewing and approving or denying the application, of
17 supervising and controlling the operator in the performance of
18 its duties under this act and of correcting any abuse in the
19 performance of the operator's public duties. The commission
20 shall require, from the operator, a verified report describing
21 the nature of its contractual and other relationships with
22 individuals or entities contracting with the operator for the
23 provision of significant financial, construction or maintenance
24 services. The commission shall review the report and such other
25 materials as it shall deem necessary for the purpose of
26 determining improper or excessive costs, and shall exclude from
27 the operator's costs any amounts which it finds are improper or
28 excessive. The commission also shall have the duty and authority
29 to approve or revise the toll rates charged by the operator.

30 Initial rates shall be approved if they appear reasonable to the

1 user in relation to the benefit obtained, not likely to
2 materially discourage use of the roadway and to provide the
3 operator no more than a reasonable rate of return as determined
4 by the commission. Thereafter, the commission, upon application,
5 complaint or its own initiative, and after investigation, may
6 order substituted for any toll being charged by the operator a
7 toll which is set at a level which is reasonable to the user in
8 relation to the benefit obtained and which will not materially
9 discourage use of the roadway by the public and which will
10 provide the operator no more than a reasonable return as
11 determined by the commission.

12 Section 306. Powers and duties of roadway operator.

13 (a) Tolls and revenue.--The operator shall have the
14 authority to operate the roadway and charge tolls for the use
15 thereof, and shall pledge any revenue net of operational
16 expenses realized from tolls charged for the use of the roadway
17 in order to secure repayment of any obligations incurred for the
18 construction, enlargement or operation of such roadway. The
19 debts or obligations of the operator shall be limited to an
20 amount not to exceed the cost of construction plus an amount for
21 issuance cost and other financing expenses, and a reasonable
22 amount for reserve funds. The Commonwealth shall not obligate
23 its full faith and credit on any financing of the operator and
24 assumption of operation of the project shall not obligate the
25 Commonwealth to pay any obligation of the operator, whether
26 secured or otherwise, from sources other than toll revenue.
27 Subject to applicable permit requirements, the operator shall
28 have the authority to cross any canal or navigable watercourse
29 so long as the crossing does not unreasonably interfere with
30 navigation and use of the waterway. In operating the roadway,

1 the operator may:

2 (1) classify traffic according to reasonable categories
3 for assessment of tolls; and

4 (2) with the consent of the department, make and enforce
5 reasonable regulations, including regulations which:

6 (i) Set maximum and minimum speeds that shall
7 conform to department and Commonwealth practices.

8 (ii) Exclude undesirable vehicles or cargoes or
9 materials from the use of the roadway.

10 (iii) Establish commuter lanes for use during all or
11 any part of a day and limit the use of such lanes to
12 certain traffic, if deemed necessary by the department.

13 The enumeration of powers in this subsection shall not limit the
14 power of the operator to do anything it deems necessary and
15 appropriate in the operation of the roadway, provided that the
16 practice is reasonable and nondiscriminatory.

17 (b) Duties.--The operator shall have the following duties:

18 (1) It shall file and maintain at all times with the
19 commission an accurate schedule of rates charged to the
20 public for use of all or any portion of the roadway, and it
21 shall also file and maintain a statement that such rates will
22 apply uniformly to all users within any such reasonable
23 classification as the operator may elect to implement.

24 (2) It shall construct and maintain the roadway for
25 anticipated use according to appropriate standards of the
26 department for public highways operated and maintained by the
27 department, and enlarge or expand the road when unsatisfied
28 demand for use of the roadway makes it economically feasible
29 to do so. The operator shall agree with the department for
30 inspection of construction work by the department at

1 appropriate times during any construction or enlargement. In
2 addition, it shall cooperate fully with the department in
3 establishing any interconnection with the roadway that the
4 department may make.

5 (3) It shall contract with the Commonwealth for
6 enforcement of the traffic and public safety laws by State
7 authorities, and may similarly contract with appropriate
8 local authorities for those portions of the roadway within
9 the local jurisdiction.

10 Section 307. Approval of department.

11 (a) General rule.--The applicant for a certificate of
12 authority to construct or enlarge a roadway pursuant to this act
13 shall first secure the approval of the department for the
14 project, the project construction costs, the location and design
15 of the roadway, and its connection with any road under the
16 jurisdiction of the department, at proper and convenient places,
17 in order to provide for the convenience of the public. The
18 department shall approve or deny approval:

19 (1) 60 days following receipt of a description of the
20 proposed location and design of the roadway and its
21 connection with all other roads; or

22 (2) 45 days following the conduct of a hearing held
23 under Title 2 of the Pennsylvania Consolidated Statutes
24 (relating to administrative law and procedure).

25 The department shall approve the project and its
26 interconnections with other roads if there is a public need for
27 a road project of the type proposed and the project and its
28 interconnections are compatible with the existing road network.
29 It shall approve the project construction costs if they are
30 reasonable. If interconnections with an interstate highway or

1 other Federal facility are contemplated, the department's
2 approval shall be conditioned upon ultimate approval of any
3 interconnection if such Federal approvals are required and have
4 not been obtained by the time the department acts. Approval of
5 the roadway design shall not be withheld if it conforms
6 materially with department practices for toll facilities of
7 similar size and with similar usage patterns. In making its
8 determinations, the department shall keep in mind the public
9 interest, which may include, without limitation, such
10 considerations as the relative speed of the construction of the
11 project and the allocation of the technical, financial and human
12 resources of the department. The approval granted by the
13 department shall be conditioned upon subsequent compliance by
14 the applicant with the agreement contemplated by subsection (b).
15 If the roadway is to be built partially or completely along
16 existing State highway right-of-way, the department shall grant
17 the applicant authority to use such right-of-way only if deemed
18 necessary.

19 (b) Comprehensive agreement.--If approval of the project,
20 project design and connections of the roadway is granted by the
21 department, it shall thereafter enter into a comprehensive
22 agreement with the applicant which provides, inter alia, that
23 the department shall review and approve plans and specifications
24 for the roadway if they conform to Commonwealth practices; that
25 the department will inspect and approve construction of the
26 roadway if it conforms to the plans and specifications or
27 Commonwealth construction and engineering standards; that the
28 department will, throughout the life of the roadway project,
29 monitor the maintenance practices of the operator and take such
30 actions as are appropriate to ensure the performance of

1 maintenance obligations; and that the department shall be
2 reimbursed for its direct project costs, by the operator, for
3 the services performed by the department. The agreement shall
4 also provide, inter alia, that the operator will establish and
5 fund accounts which shall ensure that funds are available to
6 meet the obligations of the operator, including reasonable
7 reserves for contingencies and maintenance replacement
8 activities. The approval of plans and specifications and
9 construction may be undertaken in phases, but no construction
10 may commence until approval of plans which include that phase of
11 construction. The services for which the department shall be
12 reimbursed include project development costs, such as those
13 attendant to preparation of environmental impact statements,
14 which are necessary for the construction of the roadway by a
15 private operator but have been performed by the department. The
16 agreement may include a provision that the department will
17 perform services necessary for project development on behalf of
18 the operator, and in such a case, the department shall be fully
19 reimbursed by the operator for its direct costs.

20 Section 308. Insurance and sovereign immunity.

21 Any operator who constructs, operates or enlarges a roadway
22 pursuant to this act shall secure and maintain a policy or
23 policies of public liability insurance in form and amount
24 satisfactory to the commission and sufficient to insure coverage
25 of tort liability to the public and employees, and to enable the
26 continued operation of the roadway. Proofs of coverage and
27 copies of policies shall be filed with the commission. Nothing
28 in this act shall be construed as or deemed a waiver of the
29 sovereign immunity of the Commonwealth with respect to its
30 participation or approval of all or any part of the roadway

1 application or operation, including, but not limited to,
2 interconnection of the roadway with the State Highway System.
3 Municipalities through which a roadway passes shall possess
4 governmental immunity with respect to roadway construction and
5 operation.

6 Section 309. Local approval.

7 (a) General rule.--Prior to the issuance of a certificate of
8 authority by the commission and contemporaneously with the
9 filing of any application materials with the commission, the
10 applicant shall provide the local governing body of each
11 municipality through which any part of the roadway passes,
12 information and materials required by section 303 and an overall
13 description of the project and its benefits. The governing body
14 of the municipality may participate in procedures conducted by
15 the department or the commission concerning the application.

16 (b) Lands, existing roads, etc.--When the operator wishes to
17 occupy lands owned by any municipality, including streets,
18 alleys or roads, it shall first obtain a franchise allowing such
19 occupancy or it may obtain the necessary interests through grant
20 or other appropriate conveyance of the operator for a period of
21 time not to exceed the term of the certificate.

22 (c) Interconnection plans.--Where the applicant wishes to
23 interconnect with the streets or road system of any
24 municipality, and the municipality is willing to allow the
25 interconnection, it shall submit appropriate plans for the
26 connection to the governing body of the municipality, which
27 shall approve the connection if it determines that the
28 connection meets all appropriate engineering requirements.

29 (d) Supplemental agreements, etc.--The operator and the
30 municipality may also agree on any supplemental or related

1 matters according to such terms and conditions as are
2 reasonable, appropriate and in the public interest, and any such
3 municipality is hereby authorized to enter into such an
4 agreement.

5 Section 310. Utility crossings.

6 The applicant shall include in the application a list of
7 public utility facilities and rights-of-way to be crossed or
8 otherwise affected in the construction of the roadway and a plan
9 and schedule for such crossings. The operator and each public
10 utility whose works are to be crossed or affected shall each
11 have the duty to cooperate fully with the other in the planning
12 and arranging of the manner of the crossing or relocation of the
13 facilities. Any public utility possessing the powers of eminent
14 domain is hereby expressly granted such powers in connection
15 with the moving or relocation of facilities to be crossed by the
16 roadway or which must be relocated to the extent that such
17 moving or relocation is made necessary by construction of the
18 roadway, which shall be construed to include construction of
19 temporary facilities for the purpose of providing service during
20 the period of construction. Should the applicant or operator and
21 the public utility whose facilities are to be crossed or
22 relocated not be able to agree upon a plan for such crossing or
23 any necessary relocation, either party may request the
24 commission to inquire into the need for the crossing or
25 relocation and to decide whether such crossing or relocation
26 should be compelled, and, if so, the manner in which such
27 crossing or relocation is to be accomplished and any damages due
28 either party arising out of the crossing or relocation. The
29 commission may, in its discretion, employ expert engineers who
30 shall examine the location and plans for such crossing or

1 relocation, hear any objections and consider modifications, and
2 make a recommendation to the commission. In such a case, the
3 cost of the experts is to be borne equally by the applicant and
4 the public utility, unless the commission determines that it
5 would be unjust, in which case the cost shall be borne as the
6 commission decides.

7 Section 311. Highway and roadway crossings.

8 No crossing of a railway, highway, street, road or alley
9 shall be at grade, but shall pass above or below the railway,
10 highway, street, road, or alley, and such crossings are hereby
11 permitted, subject to the provisions of this act.

12 Section 312. Default.

13 In the event of material and continuing default in the
14 performance of the operator's construction or operation duties
15 or failure of the operator to comply with the terms of its
16 agreement with the department, or in the event that construction
17 has not begun within two years of the issuance of a certificate,
18 the commission, after a hearing in which the applicant or
19 operator has notice and opportunity to participate, may revoke
20 the certificate of authority for the roadway, declare a default
21 in the construction or operation of the roadway, and make or
22 cause to be made the appropriate claim or claims under any
23 completion or performance bonds, or take such other action as it
24 may deem appropriate, under the circumstance. The department may
25 participate in or initiate such proceedings. In case of
26 revocation of a certificate, the applicant or operator shall
27 thereafter be without any authority to construct or operate the
28 roadway, and the department may take over construction and
29 operation of the roadway, and may proceed thereafter to take any
30 steps which are in the public interest, including completion of

1 construction or additions to the roadway, closing the roadway,
2 or any intermediate step. The department shall receive the full
3 proceeds of any payments due to claims against bonding companies
4 or sureties for this purpose. In addition, in such event, the
5 operator shall grant to the department all of its right, title
6 and interest in the assets of the corporation. Nothing herein
7 shall be construed to limit the department's exercise of the
8 power of eminent domain. In either case, the operator may obtain
9 compensation from the department for such assets, except that
10 the department shall first deduct from the value of such assets
11 all of the department's costs incurred in connection with
12 completion or fulfillment of the unperformed obligations of the
13 operator, and any other costs associated with the events
14 contemplated in this section. The department shall take into
15 account moneys received from the proceeds of any payment or
16 completion bond in calculating the amount due the operator.
17 Section 313. Police powers.

18 The roadway and highways constructed or operated under this
19 act may be policed in whole or in part by officers of the
20 Pennsylvania State Police, even though all or some portion of
21 any such projects lie within the corporate limits of a
22 municipality and just as if the roadway and highway were a part
23 of the State highway system. The operator and the State Police
24 shall agree upon reasonable terms and conditions pursuant to
25 which the activities contemplated in this section may take
26 place. Such officers shall be under the exclusive control and
27 direction of the Commissioner of the Pennsylvania State Police
28 and shall be responsible for the preservation of public peace,
29 prevention of crime, apprehension of criminals, protection of
30 the rights of persons and property, and enforcement of the laws

1 of this Commonwealth, within the limits of any highway and
2 roadway. All other police officers of the Commonwealth and of
3 each municipality or other political subdivision of this
4 Commonwealth through which any roadway, or portion thereof,
5 extends shall have the same powers and jurisdiction within the
6 limits of such roadways and highways as they have beyond such
7 limits and shall have access to the highway and road at any time
8 for the purpose of exercising such powers and jurisdiction. This
9 authority does not extend to the private offices, buildings,
10 garages and other improvements of the operator to any greater
11 degree than the police power extends to any other private
12 buildings and improvements.

13 Section 314. Traffic and motor vehicle laws.

14 The traffic and motor vehicle laws of this Commonwealth shall
15 apply to persons and motor vehicles on the roadway or highway,
16 and the powers of arrest of police officers shall be the same as
17 those applying to conduct on the State highway system.

18 Punishment for offenses shall be as prescribed by law for
19 conduct occurring on the State highway system.

20 Section 315. Termination of certificate.

21 Within 90 days of completion and closing of the original
22 permanent financing, the operator shall provide full details of
23 the financing, including the terms of all bonds, to the
24 commission; and shall certify the date on which all debt will be
25 retired. The commission may require that the operator provide
26 copies of any relevant documents, and shall review the financing
27 and determine the date on which all bonds or other debt
28 constituting the original permanent financing will be retired.
29 After establishing this date, the commission shall enter an
30 order terminating the operator's authority pursuant to the

1 certificate of authority on a date which shall be ten years from
2 the date on which all of the original permanent financing will
3 be completely retired. At the request of the operator or the
4 department, or on its own initiative, the commission may revise
5 its order to modify the date for termination of the certificate
6 of authority in order to take into account any refinancing of
7 the original permanent financing, where the refinancing or
8 modification is in the public interest, or any refinancing for
9 the purpose of expansion, or early retirement of the debt. Upon
10 the termination of the certificate of authority, the authority
11 and duties of the operator under this chapter shall cease, and
12 the highway assets and improvements of the operator shall be
13 dedicated to the Commonwealth for highway purposes.

14 Section 316. Toll Road Improvement Fund.

15 (a) Establishment.--There is hereby established a separate
16 account in the State Treasury to be known as the Toll Road
17 Improvement Fund. This fund shall be for the purpose of
18 providing moneys for transportation improvements which are
19 related to or affected by the toll roads operating under this
20 act. All moneys in the fund are hereby appropriated to the
21 commission on a continuing basis to carry out this section.

22 (b) Toll rates.--In setting toll rates, the commission shall
23 determine them in an amount which will:

24 (1) Meet the operators financial obligations under this
25 act.

26 (2) Provide a reasonable rate of return for the
27 operator.

28 (3) Provide a reasonable amount of revenues for the
29 fund.

30 (c) Assistance grants.--The commission shall, by regulation,

1 adopt a plan for the equitable allocation of grants from the
2 fund to municipalities for transportation projects relating to
3 toll roads.

4 CHAPTER 9

5 MISCELLANEOUS PROVISIONS

6 Section 901. Repeal.

7 All acts and parts of acts are repealed insofar as they are
8 inconsistent with this act.

9 Section 902. Effective date.

10 This act shall take effect in 60 days.