

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3

Session of
2011

INTRODUCED BY GEIST, MCGEEHAN, AUMENT, BAKER, BENNINGHOFF, BOYD, CALTAGIRONE, CAUSER, CHRISTIANA, CLYMER, P. COSTA, CUTLER, DENLINGER, ELLIS, J. EVANS, EVERETT, FARRY, FLECK, GIBBONS, GILLESPIE, GINGRICH, GRELL, GROVE, HALUSKA, HARHAI, HARHART, HARPER, HARRIS, HESS, HICKERNELL, HORNAMAN, HUTCHINSON, KAUFFMAN, M. K. KELLER, W. KELLER, MAHER, MARSHALL, MARSICO, MILLER, MILNE, MUSTIO, OBERLANDER, PAYNE, PAYTON, PICKETT, PYLE, QUINN, RAPP, REED, REICHLEY, SAYLOR, SCHRODER, K. SMITH, SONNEY, STERN, STEVENSON, TALLMAN, TURZAI, VULAKOVICH, WATSON, EVANKOVICH, TRUITT, KILLION, HARKINS AND BARBIN, FEBRUARY 14, 2011

SENATOR RAFFERTY, TRANSPORTATION, IN SENATE, AS AMENDED MAY 23, 2012

AN ACT

1 ~~Amending Title 74 (Transportation) of the Pennsylvania~~ ←
2 ~~Consolidated Statutes, providing for public private~~
3 ~~transportation partnerships; and making a related repeal.~~
4 AMENDING TITLE 74 (TRANSPORTATION) OF THE PENNSYLVANIA ←
5 CONSOLIDATED STATUTES, PROVIDING FOR PUBLIC-PRIVATE
6 TRANSPORTATION PARTNERSHIPS; AND MAKING A RELATED REPEAL.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 ~~Section 1. Title 74 of the Pennsylvania Consolidated~~ ←
10 ~~Statutes is amended by adding a part to read:~~

11 PART V

12 TRANSPORTATION INFRASTRUCTURE

13 Chapter

14 91. Public Private Transportation Partnership

1 CHAPTER 91

2 PUBLIC PRIVATE TRANSPORTATION PARTNERSHIP

3 Sec.

4 9101. Scope of chapter.

5 9102. Findings and declaration of policy.

6 9103. Definitions.

7 9104. Public Private Transportation Partnership Board.

8 9105. Duties of board.

9 9106. Operation of board.

10 9107. Solicitations for transportation projects.

11 9108. Transportation projects.

12 9109. Requests.

13 9110. Selection of development entities.

14 9111. Public private transportation partnership agreement.

15 9112. Records of requests.

16 9113. Use of intellectual property.

17 9114. Police powers and violations of law.

18 9115. Environmental and other authorizations.

19 9116. Taxation of development entity.

20 9117. Power of eminent domain.

21 9118. Sovereign immunity.

22 9119. Specific performance.

23 9120. Applicability of other laws.

24 9121. Adverse interest.

25 9122. Federal, State, local and private assistance.

26 9123. Public Private Transportation Account.

27 9124. Pennsylvania Turnpike Commission.

28 9125. Regulations.

29 § 9101. Scope of chapter.

30 This chapter relates to public private transportation

1 ~~partnerships.~~

2 ~~§ 9102. Findings and declaration of policy.~~

3 ~~(a) Legislative findings and declarations. The General~~
4 ~~Assembly finds, determines and declares as follows:~~

5 ~~(1) There is urgent public need to reduce congestion,~~
6 ~~increase capacity, improve safety and enhance economic~~
7 ~~efficiency of transportation facilities throughout this~~
8 ~~Commonwealth.~~

9 ~~(2) The public entities have limited resources to fund~~
10 ~~the maintenance and expansion of their respective~~
11 ~~transportation facilities.~~

12 ~~(3) To ensure the needs of the public are adequately~~
13 ~~addressed, alternative funding mechanisms and strategies must~~
14 ~~be developed to supplement existing public revenue sources.~~

15 ~~(4) The imposition of user fees establishes an~~
16 ~~additional funding source for transportation infrastructure~~
17 ~~needs that spreads the costs across those who most benefit~~
18 ~~from the Commonwealth's system of roads, highways and~~
19 ~~bridges.~~

20 ~~(5) The imposition of user fees and the development,~~
21 ~~operation, maintenance, construction and improvement of toll~~
22 ~~roads is a proprietary function which may be delegated to a~~
23 ~~private entity consistent with section 31 of Article III of~~
24 ~~the Constitution of Pennsylvania.~~

25 ~~(6) Authorizing public entities to enter into~~
26 ~~transportation partnership agreements with private entities~~
27 ~~and other public entities for the development, operation and~~
28 ~~financing of transportation facilities can result in greater~~
29 ~~availability of transportation facilities to the public in a~~
30 ~~timely, efficient and less costly fashion, thereby serving~~

1 ~~the public safety and welfare.~~

2 ~~(7) Assuring that public private transportation projects~~
3 ~~are developed, operated and financed in a cost effective~~
4 ~~manner is an important factor in promoting the health, safety~~
5 ~~and welfare of the citizens of this Commonwealth.~~

6 ~~(b) Intent. It is the intent of this chapter:~~

7 ~~(1) To encourage private entities to invest in this~~
8 ~~Commonwealth by participating in the development, operation~~
9 ~~or financing of transportation facilities.~~

10 ~~(2) To provide public entities and private entities with~~
11 ~~the authority and flexibility in contracting for the~~
12 ~~development, operation and financing of transportation~~
13 ~~facilities.~~

14 ~~(3) To authorize public entities to contract with~~
15 ~~private and other public entities to provide transportation~~
16 ~~facilities and related services.~~

17 ~~§ 9103. Definitions.~~

18 ~~The following words and phrases when used in this chapter~~
19 ~~shall have the meanings given to them in this section unless the~~
20 ~~context clearly indicates otherwise:~~

21 ~~"Account." The Public Private Transportation Account.~~

22 ~~"Board." The Public Private Transportation Partnership~~
23 ~~Board.~~

24 ~~"Department." The Department of Transportation of the~~
25 ~~Commonwealth.~~

26 ~~"Development entity." An entity which is a party to a~~
27 ~~public private transportation partnership agreement and which is~~
28 ~~any of the following:~~

29 ~~(1) A private entity.~~

30 ~~(2) A public entity, other than the public entity~~

1 ~~providing or improving its own transportation facilities.~~
2 ~~"Electronic toll." A system of collecting tolls or charges~~
3 ~~which is capable of charging an account holder for the~~
4 ~~prescribed toll by electronic transmission of information. The~~
5 ~~term includes open road tolls, video tolls or other similar~~
6 ~~structural or technological enhancements pertaining to tolls.~~

7 ~~"Offeror." A person that submits a proposal or a response in~~
8 ~~answer to a request for proposals or transportation projects.~~

9 ~~"Private entity." A person, entity, group or organization~~
10 ~~that is not the Federal Government, the Commonwealth or a~~
11 ~~municipal authority.~~

12 ~~"Proprietary public entity." A public entity which owns a~~
13 ~~public private transportation project and which is a party to a~~
14 ~~public private transportation partnership agreement.~~

15 ~~"Public entity." The Commonwealth, a municipal authority or~~
16 ~~an authority created by statute which owns a transportation~~
17 ~~facility. The term does not include the General Assembly and its~~
18 ~~members, officers or agencies or any court or other office or~~
19 ~~agency of the Pennsylvania judicial system.~~

20 ~~"Public private transportation partnership agreement." A~~
21 ~~contract for a transportation project which transfers the rights~~
22 ~~for the use or control, in whole or in part, of a transportation~~
23 ~~facility by a public entity to a development entity for a~~
24 ~~definite term during which the development entity will provide~~
25 ~~the transportation project to the public entity in return for~~
26 ~~the right to receive all or a portion of the revenue generated~~
27 ~~from the use of the transportation facility, or other payment,~~
28 ~~such as the following transportation related services:~~

29 ~~(1) Operations and maintenance.~~

30 ~~(2) Revenue collection.~~

1 ~~(3) User fee collection or enforcement.~~

2 ~~(4) Design.~~

3 ~~(5) Construction.~~

4 ~~(6) Development and other activities with respect to~~
5 ~~existing or new transportation facilities that enhance~~
6 ~~traffic throughput, reduce congestion, improve safety or~~
7 ~~otherwise manage or improve a transportation facility.~~

8 ~~(7) Financing.~~

9 ~~"Public private transportation project." A transportation~~
10 ~~project undertaken by a development entity pursuant to a public~~
11 ~~private transportation partnership agreement.~~

12 ~~"Request for transportation projects." A solicited or~~
13 ~~unsolicited plan for a transportation project submitted to the~~
14 ~~board by a public entity.~~

15 ~~"Responsible offeror." An offeror that has submitted a~~
16 ~~responsive proposal and that possesses the capability to fully~~
17 ~~perform the public private transportation partnership agreement~~
18 ~~requirements in all respects and the integrity and reliability~~
19 ~~to assure good faith performance.~~

20 ~~"Responsive proposal." A proposal that conforms in all~~
21 ~~material aspects to the requirements and criteria in the request~~
22 ~~for proposals.~~

23 ~~"State Adverse Interest Act." The act of July 19, 1957~~
24 ~~(P.L.1017, No.451), known as the State Adverse Interest Act.~~

25 ~~"Transportation facility." A proposed or existing road,~~
26 ~~bridge, tunnel, overpass, ferry, busway, guideway, public~~
27 ~~transportation facility, vehicle parking facility, port~~
28 ~~facility, multimodal transportation facility, airport, station,~~
29 ~~hub, terminal or similar facility used or to be used for the~~
30 ~~transportation of persons, animals or goods, together with any~~

~~1 buildings, structures, parking areas, appurtenances, intelligent
2 transportation systems and other property needed to operate or
3 related to the operation of the transportation facility. The
4 term includes any improvements or substantial enhancements or
5 modifications to an existing transportation facility.~~

~~6 "Transportation project." An undertaking by a private entity
7 or a public entity, other than the public entity providing or
8 improving its own transportation facilities, to provide or
9 improve a transportation facility or transportation related
10 service which is totally or partially located within this
11 Commonwealth.~~

~~12 § 9104. Public Private Transportation Partnership Board.~~

~~13 (a) Establishment. There is established a board to be known
14 as the Public Private Transportation Partnership Board.~~

~~15 (b) Composition. The board shall be composed of the
16 following members:~~

~~17 (1) The Secretary of Transportation, who shall be the
18 chairperson of the board, or a designee who shall be an
19 employee of the department.~~

~~20 (2) The Secretary of the Budget or a designee who shall
21 be an employee of the Office of the Budget.~~

~~22 (3) Four members appointed by the General Assembly under
23 subsection (c).~~

~~24 (4) One member appointed by the Governor under
25 subsection (d).~~

~~26 (c) Legislative appointments.~~

~~27 (1) Appointments of members by the General Assembly
28 shall be made as follows:~~

~~29 (i) One individual appointed by the President pro
30 tempore of the Senate.~~

1 ~~(ii) One individual appointed by the Minority Leader~~
2 ~~of the Senate.~~

3 ~~(iii) One individual appointed by the Speaker of the~~
4 ~~House of Representatives.~~

5 ~~(iv) One individual appointed by the Minority Leader~~
6 ~~of the House of Representatives.~~

7 ~~(2) Legislative appointees shall serve at the pleasure~~
8 ~~of the appointing authority.~~

9 ~~(3) Legislative appointees shall:~~

10 ~~(i) Be residents of this Commonwealth, of mature~~
11 ~~judgment and broad experience.~~

12 ~~(ii) Have expertise or substantial experience in one~~
13 ~~or more of the following areas:~~

14 ~~(A) Transportation.~~

15 ~~(B) Finance.~~

16 ~~(C) Law.~~

17 ~~(D) Land use and public planning.~~

18 ~~(4) Legislative appointees may not hold any other~~
19 ~~position as an elected official or employee of the~~
20 ~~Commonwealth.~~

21 ~~(d) Gubernatorial appointment. A member appointed under~~
22 ~~subsection (b) (4):~~

23 ~~(1) May not hold any other position as an elected~~
24 ~~official or employee of the Commonwealth.~~

25 ~~(2) Shall have expertise or substantial experience in~~
26 ~~one or more of the following areas:~~

27 ~~(i) Transportation.~~

28 ~~(ii) Finance.~~

29 ~~(iii) Law.~~

30 ~~(iv) Land use and public planning.~~

1 ~~(3) Shall serve at the pleasure of the Governor.~~

2 ~~(e) Quorum. Five members of the board shall constitute a~~
3 ~~quorum. The adoption of a resolution or other action of the~~
4 ~~board shall require a majority vote of the members of the board.~~

5 ~~(f) Compensation. The members of the board shall be~~
6 ~~entitled to no compensation for their services as members of the~~
7 ~~board but shall be entitled to reimbursement by the department~~
8 ~~for all necessary and reasonable expenses incurred in connection~~
9 ~~with the performance of their duties as members of the board.~~

10 ~~(g) Initial appointment and vacancy. Appointing authorities~~
11 ~~shall appoint initial board members within 30 days of the~~
12 ~~effective date of this section. Whenever a vacancy occurs on the~~
13 ~~board, the appointing authority shall appoint a successor member~~
14 ~~within 30 days of the vacancy.~~

15 ~~(h) Financial interests. No member of the board, during his~~
16 ~~term of office shall directly or indirectly own, have any~~
17 ~~significant financial interest in, be associated with or receive~~
18 ~~any fee, commission, compensation or anything of value from any~~
19 ~~public entity or private entity seeking to engage in a public~~
20 ~~private transportation partnership agreement.~~

21 ~~(i) Applicability. The following acts shall apply to the~~
22 ~~board:~~

23 ~~(1) The act of February 14, 2008 (P.L.6, No.3), known as~~
24 ~~the Right to Know Law.~~

25 ~~(2) The State Adverse Interest Act.~~

26 ~~(3) The provisions of 65 Pa.C.S. Chs. 7 (relating to~~
27 ~~open meetings) and 11 (relating to ethics standards and~~
28 ~~financial disclosure).~~

29 ~~§ 9105. Duties of board.~~

30 ~~(a) Duties. The board shall do all of the following:~~

1 ~~(1) Meet as often as necessary but at least annually.~~

2 ~~(2) Adopt guidelines establishing the procedure by which~~
3 ~~a public entity may submit a request for a transportation~~
4 ~~project or a private entity may submit an unsolicited plan~~
5 ~~for a transportation project to the board.~~

6 ~~(3) Consult with persons affected by proposed~~
7 ~~transportation projects.~~

8 ~~(4) Evaluate and, where the board finds that the~~
9 ~~requests or plans for transportation projects are in the best~~
10 ~~interests of the Commonwealth and a public entity, approve~~
11 ~~the requests or plans for transportation projects. The board~~
12 ~~shall approve a proposed transportation project by adopting a~~
13 ~~resolution. A copy of the resolution shall be delivered to~~
14 ~~the chairman and minority chairman of the Transportation~~
15 ~~Committee of the Senate and the chairman and minority~~
16 ~~chairman of the Transportation Committee of the House of~~
17 ~~Representatives.~~

18 ~~(5) Submit an annual report to the General Assembly~~
19 ~~detailing all transportation projects evaluated and~~
20 ~~resolutions adopted.~~

21 ~~(b) Actions. Actions by the board are a determination of~~
22 ~~public policy and public interest and shall not be considered~~
23 ~~adjudications under 2 Pa.C.S. Chs. 5 Subch. A (relating to~~
24 ~~practice and procedure of Commonwealth agencies) and 7 Subch. A~~
25 ~~(relating to judicial review of Commonwealth agency action) and~~
26 ~~shall not be appealable to the department or a court of law.~~

27 ~~(c) General Assembly. The following shall apply:~~

28 ~~(1) The General Assembly may, within 20 calendar days or~~
29 ~~9 legislative days, whichever is longer, of delivery of the~~
30 ~~resolution under subsection (a) (4), pass a concurrent~~

1 ~~resolution rescinding the approval of a transportation~~
2 ~~project if the transportation facility which is the subject~~
3 ~~of the transportation project is owned by the Commonwealth.~~

4 ~~(2) If the General Assembly adopts the concurrent~~
5 ~~resolution within the time period under paragraph (1) by~~
6 ~~majority vote in both the Senate and the House of~~
7 ~~Representatives, the transportation project shall be deemed~~
8 ~~disapproved.~~

9 ~~(3) If the General Assembly fails to adopt the~~
10 ~~concurrent resolution by majority vote in both the Senate and~~
11 ~~the House of Representatives within the time period under~~
12 ~~paragraph (1), the transportation project shall be deemed~~
13 ~~approved.~~

14 ~~§ 9106. Operation of board.~~

15 ~~(a) Technical assistance. The department shall supply all~~
16 ~~necessary assistance to assist the board in carrying out its~~
17 ~~duties and responsibilities, including retention of legal,~~
18 ~~financial and technical consultants to assist with this role.~~

19 ~~(b) Analysis. The department shall develop a detailed~~
20 ~~analysis of a request or recommendation prior to approval by the~~
21 ~~board.~~

22 ~~(c) Oversight. If a transportation project becomes a~~
23 ~~public private transportation project, the department shall~~
24 ~~retain oversight and monitor the public private transportation~~
25 ~~project, including periodic reports to the board, as necessary.~~

26 ~~§ 9107. Solicitations for transportation projects.~~

27 ~~A public entity may solicit transportation projects through a~~
28 ~~request for transportation projects. The public entity shall~~
29 ~~give public notice of a request for transportation projects~~
30 ~~consistent with section 9110(c) (relating to selection of~~

~~1 development entities). Offerors shall submit their responses to
2 the public entity in the form and manner required by the request
3 for transportation projects. A public entity shall evaluate each
4 response to determine if the response is in the best interest of
5 the public entity. Upon being satisfied, the public entity may
6 prepare and submit a request to the board to review the
7 transportation project in accordance with this chapter.~~

~~8 § 9108. Transportation projects.~~

~~9 A public entity which seeks to undertake a transportation
10 project which has not been previously approved by the board
11 shall submit a request for the transportation project to the
12 board.~~

~~13 § 9109. Requests.~~

~~14 A request may be solicited or unsolicited and may provide for
15 the development or operation of transportation facilities using
16 a variety of project delivery methods and forms of agreement.
17 The methods may include:~~

~~18 (1) Predevelopment agreements leading to other
19 implementing agreements.~~

~~20 (2) A design build agreement.~~

~~21 (3) A design build operate agreement.~~

~~22 (4) A design build maintain agreement.~~

~~23 (5) A design build finance operate agreement.~~

~~24 (6) A design build operate maintain agreement.~~

~~25 (7) A design build finance operate maintain agreement.~~

~~26 (8) An operate maintain agreement.~~

~~27 (9) A concession providing for the development entity to
28 design, build, operate, maintain, manage or lease a
29 transportation facility.~~

~~30 (10) Any other innovative or nontraditional project~~

~~delivery method or agreement or combination of methods or agreements that the public entity determines will address the transportation needs of the Commonwealth and the public entity and serve the public interest.~~

~~§ 9110. Selection of development entities.~~

~~(a) Conditions for use. If a transportation project is approved under section 9105 (relating to duties of board), the public entity may enter into a contract for the transportation project by competitive sealed proposals.~~

~~(b) Request for proposals. After receiving the determination required by subsection (a), a public entity shall solicit proposals through a request for proposals.~~

~~(c) Public notice. A public entity shall give public notice of a request for proposals consistent with regulations adopted by the department. The notice shall be given a reasonable time prior to the date set for the close of receipt of the proposals. The method of public notice may include any of the following:~~

~~(1) Electronic publication which is accessible to the general public.~~

~~(2) Advertisement as provided for in 45 Pa.C.S. § 306 (relating to use of trade publications).~~

~~(3) Issuance of request for proposals to offerors on the mailing list of the public entity.~~

~~(4) Publication in a newspaper of general circulation.~~

~~(5) Where prequalification is a requirement of submitting a proposal, notification to all private entities who have been prequalified by the public entity.~~

~~(d) Copies of request for proposal. Copies of a request for proposals shall be made available to any interested person upon request to the public entity. A public entity may establish~~

1 ~~procedures for the distribution of a request for proposals,~~
2 ~~including the imposition of a fee to reimburse the public entity~~
3 ~~for the costs of photocopying and mailing.~~

4 ~~(e) Receipt of proposals. Offerors shall submit their~~
5 ~~proposals to ensure that their proposals are received prior to~~
6 ~~the time and date established for receipt of the proposals.~~
7 ~~Proposals shall be submitted in the format required by the~~
8 ~~request for proposals. Proposals shall be opened so as to avoid~~
9 ~~disclosure of their contents to competing offerors.~~

10 ~~(f) Evaluation. A public entity shall evaluate each~~
11 ~~proposal to determine which proposal is in the best interest of~~
12 ~~the public entity. In making this determination, a public entity~~
13 ~~may consider any of the following:~~

14 ~~(1) Cost.~~

15 ~~(2) Price.~~

16 ~~(3) Financial commitment.~~

17 ~~(4) Innovative financing.~~

18 ~~(5) Bonding.~~

19 ~~(6) Technical, scientific, technological or~~
20 ~~socioeconomic merit.~~

21 ~~(7) Financial strength and viability.~~

22 ~~(8) Design, operation and feasibility of the~~
23 ~~transportation project.~~

24 ~~(9) Public reputation, qualifications, industry~~
25 ~~experience and financial capacity of the private entity.~~

26 ~~(10) The ability of the transportation project to~~
27 ~~improve economic growth, to improve public safety, to reduce~~
28 ~~congestion, to increase capacity or to rehabilitate,~~
29 ~~reconstruct or expand an existing transportation facility.~~

30 ~~(11) The compatibility of the proposal with existing~~

1 ~~local and regional land use plans.~~

2 ~~(12) The commitment of local communities to approve land~~
3 ~~use plans in preparation for the transportation project.~~

4 ~~(13) Other factors deemed appropriate by the public~~
5 ~~entity.~~

6 ~~(g) Weighted consideration. The relative importance of each~~
7 ~~evaluation factor shall be fixed prior to opening the proposals~~
8 ~~and the public entity shall give substantial weight and priority~~
9 ~~to the following factors:~~

10 ~~(1) The offeror commits to using American made~~
11 ~~construction materials.~~

12 ~~(2) The offeror commits to using Pennsylvania made~~
13 ~~steel.~~

14 ~~(3) The offeror's principal place of business is located~~
15 ~~in the United States.~~

16 ~~(4) The offeror's principal place of business is located~~
17 ~~in this Commonwealth.~~

18 ~~(5) The offeror has or will create a physical presence~~
19 ~~in this Commonwealth.~~

20 ~~(h) Participation in evaluation. If the public entity is~~
21 ~~the Commonwealth, the department is required to invite its~~
22 ~~comptroller to participate in the evaluation as a nonvoting~~
23 ~~member of any evaluation committee. No individual who has been~~
24 ~~employed by an offeror within the last two years may participate~~
25 ~~in the evaluation of proposals.~~

26 ~~(i) Discussion with responsible offerors and revision of~~
27 ~~proposals. As provided in the request for proposals,~~
28 ~~discussions and negotiations may be conducted with responsible~~
29 ~~offerors for the purpose of clarification and of obtaining best~~
30 ~~and final offers. Responsible offers shall be accorded fair and~~

~~1 equal treatment with respect to any opportunity for discussion
2 and revision of proposals. In conducting discussions, there
3 shall be no disclosure of any information derived from proposals
4 submitted by competing offerors.~~

~~5 (j) Selection for negotiation. The responsible offeror
6 whose proposal is determined in writing to be in the best
7 interests of the public entity, taking into consideration all
8 evaluation factors, shall be selected for contract negotiation.~~

~~9 (k) Cancellation. A request for proposals may be canceled
10 at any time prior to the time a public private transportation
11 partnership agreement is executed by all parties when it is in
12 the best interests of the public entity.~~

~~13 (l) Award. Upon reaching an agreement with a responsible
14 offeror, a public entity shall enter into a public private
15 transportation partnership agreement with the responsible
16 offeror. The public private transportation partnership agreement
17 shall be consistent with the requirements of this chapter. If
18 agreement cannot be reached with the best qualified responsible
19 offeror, then negotiations will be formally terminated with the
20 offeror. If proposals were submitted by one or more other
21 responsible offerors, negotiations may be conducted with the
22 other responsible offeror or responsible offerors in the order
23 of their respective qualification ranking. The contract may be
24 awarded to the responsible offeror then ranked as best
25 qualified.~~

~~26 (m) Resolution of controversies involving the
27 Commonwealth. If a prospective offeror, offeror or development
28 entity is aggrieved by a selection under this section and the
29 public entity or proprietary public entity in the invitation or
30 contract is the Commonwealth, the prospective offeror, offeror~~

1 ~~or development entity may file a protest or a claim, as~~
2 ~~appropriate, in accordance with 62 Pa.C.S. Ch. 17 (relating to~~
3 ~~legal and contractual remedies).~~

4 ~~(n) Resolution of controversies not involving the~~
5 ~~Commonwealth. If a development entity is aggrieved by a~~
6 ~~selection under this section and the proprietary public entity~~
7 ~~in the contract is an entity other than the Commonwealth, a~~
8 ~~development entity may file a claim with the court of common~~
9 ~~pleas where the proprietary public entity is located. The~~
10 ~~processes for the filing and resolution of claims, including~~
11 ~~rights, contents, timing, evaluation, determination and~~
12 ~~remedies, which are established in 62 Pa.C.S. Ch. 17, shall~~
13 ~~apply insofar as they are practicable.~~

14 ~~§ 9111. Public private transportation partnership agreement.~~

15 ~~(a) Agreement provisions. A public private transportation~~
16 ~~partnership agreement shall include the following provisions:~~

17 ~~(1) A description of any planning, development, design,~~
18 ~~leasing, acquisition or interest in, financing, installation,~~
19 ~~construction, reconstruction, replacement, expansion,~~
20 ~~operation, maintenance, improvement, equipping, modification,~~
21 ~~expansion, enlargement, management, running, control and~~
22 ~~operation of the public private transportation project.~~

23 ~~(2) The term of the public private transportation~~
24 ~~partnership agreement.~~

25 ~~(3) The type of property interest or other relationship~~
26 ~~the development entity will have in or with respect to the~~
27 ~~public private transportation partnership project, including~~
28 ~~acquisition of rights of way and other property interests~~
29 ~~that may be required.~~

30 ~~(4) Authorization for the proprietary public entity or~~

1 ~~its authorized representatives to inspect all assets and~~
2 ~~properties of the public private transportation project and~~
3 ~~all books and records of the development entity relating to~~
4 ~~the public private transportation project to review the~~
5 ~~development entity's performance under the public private~~
6 ~~transportation partnership agreement.~~

7 ~~(5) Grounds for termination of the public private~~
8 ~~transportation partnership agreement by the parties.~~

9 ~~(6) Procedures for amendment of the public private~~
10 ~~transportation partnership agreement.~~

11 ~~(7) The rights and remedies available in the event of~~
12 ~~breach, default or delay.~~

13 ~~(8) Requirements for a development entity to provide~~
14 ~~performance and payment bonds, parent company guarantees,~~
15 ~~letters of credit or other acceptable forms of security in an~~
16 ~~amount acceptable to the proprietary public entity.~~

17 ~~(9) A requirement that ownership of a transportation~~
18 ~~facility acquired or constructed go to or remain with the~~
19 ~~proprietary public entity.~~

20 ~~(10) Standards for construction, maintenance and~~
21 ~~operation of the public private transportation project if the~~
22 ~~activities are to be performed by the development entity.~~

23 ~~(11) Standards for capital improvement or modification~~
24 ~~of the public private transportation project if they are to~~
25 ~~be made by the development entity.~~

26 ~~(12) Standards relating to how payments, if any, are to~~
27 ~~be made by the proprietary public entity to the development~~
28 ~~entity, including availability payments, performance based~~
29 ~~payment and payments of money and revenue sharing with the~~
30 ~~development entity.~~

1 ~~(13) Standards relating to how the parties will allocate~~
2 ~~and share management of the risks of the public private~~
3 ~~transportation project.~~

4 ~~(14) Standards relating to how the parties will allocate~~
5 ~~costs of development of the public private transportation~~
6 ~~project, including any cost overruns.~~

7 ~~(15) Standards relating to damages to be assessed for~~
8 ~~nonperformance, specifying remedies available to the parties~~
9 ~~and dispute resolution procedures.~~

10 ~~(16) Standards relating to performance criteria and~~
11 ~~incentives.~~

12 ~~(17) A requirement that upon termination of the public~~
13 ~~private transportation partnership agreement, a~~
14 ~~transportation facility that was the subject of the public~~
15 ~~private transportation partnership agreement must be in a~~
16 ~~state of proper maintenance and repair and shall be returned~~
17 ~~to the proprietary public entity in satisfactory condition at~~
18 ~~no further cost to the proprietary public entity.~~

19 ~~(18) Provisions for law enforcement related to the~~
20 ~~public private transportation project.~~

21 ~~(19) An obligation of the development entity to offer~~
22 ~~employment to any employee of the proprietary public entity~~
23 ~~who would lose employment due to the execution of the public~~
24 ~~private transportation partnership agreement and who is in~~
25 ~~good standing at the time of execution of the public private~~
26 ~~transportation partnership agreement, including salary,~~
27 ~~retirement, health and welfare and benefits which are~~
28 ~~substantially identical to the benefits received by the~~
29 ~~employees immediately prior to execution of the public~~
30 ~~private transportation partnership agreement for the term of~~

1 ~~the collective bargaining agreement of those employees in~~
2 ~~effect.~~

3 ~~(20) Other terms and provisions as required under this~~
4 ~~chapter or agreed to by the development entity and the~~
5 ~~proprietary public entity.~~

6 ~~(21) An employee covered under a collective bargaining~~
7 ~~agreement affected by a public private transportation~~
8 ~~partnership agreement shall be reassigned, without loss of~~
9 ~~seniority, to another equal to, but not less than, position~~
10 ~~within the same worksite where applicable or within a~~
11 ~~remaining proximate worksite of other transportation~~
12 ~~facilities. In the case of the department, this would mean a~~
13 ~~position held within the same county maintenance district or,~~
14 ~~in the case of regional transit authority, a position held~~
15 ~~within that regional transit authority as applicable. Nothing~~
16 ~~in this paragraph shall prevent an employee from choosing~~
17 ~~employment with the private entity.~~

18 ~~(22) Provisions under which the development entity~~
19 ~~agrees to develop, adopt and implement binding policies or~~
20 ~~guidelines to ensure the following:~~

21 ~~(i) That all persons are accorded equal opportunity~~
22 ~~in employment.~~

23 ~~(ii) That disadvantaged businesses, as certified and~~
24 ~~listed by the Department of General Services in~~
25 ~~accordance with 62 Pa.C.S. Ch. 21 (relating to small and~~
26 ~~disadvantaged businesses), are accorded equal opportunity~~
27 ~~in purchasing, contracting and subcontracting associated~~
28 ~~with a public private transportation partnership~~
29 ~~agreement. This paragraph includes a development entity's~~
30 ~~contractors, subcontractors, assignees, lessees, agents,~~

1 ~~vendors and suppliers.~~

2 ~~(b) Term. The proprietary public entity may enter into a~~
3 ~~public private transportation partnership agreement with any~~
4 ~~development entity that includes the provisions under subsection~~
5 ~~(a) for a term not to exceed 99 years.~~

6 ~~(c) Public partner. Nothing in this chapter shall prohibit~~
7 ~~the department from entering into a public private~~
8 ~~transportation partnership agreement with another Commonwealth~~
9 ~~agency in accordance with this chapter.~~

10 ~~(d) Public entity. Nothing in this chapter shall prohibit a~~
11 ~~public entity from entering into a public private transportation~~
12 ~~partnership agreement with one or more public entities in~~
13 ~~accordance with this chapter.~~

14 ~~(e) Environmental costs.~~

15 ~~(1) A proprietary public entity may provide in a public~~
16 ~~private transportation partnership agreement that it will pay~~
17 ~~or reimburse, on terms that it deems appropriate, the~~
18 ~~development entity for actual costs associated with necessary~~
19 ~~remediation for existing environmental contaminants located~~
20 ~~on, under or emanating from the real property associated with~~
21 ~~a public private transportation project as of the date the~~
22 ~~development entity assumes responsibility for the public~~
23 ~~private transportation project. If the public private~~
24 ~~transportation partnership agreement provides for~~
25 ~~environmental remediation, the public private transportation~~
26 ~~partnership agreement shall require that the proprietary~~
27 ~~public entity be given:~~

28 ~~(i) Prompt notice of any claim against the~~
29 ~~proprietary public entity or a third party pertaining to~~
30 ~~the contaminants.~~

1 ~~(ii) The right to elect to undertake the necessary~~
2 ~~remediation.~~

3 ~~(iii) The right to participate in the defense of or~~
4 ~~response to any claim.~~

5 ~~(iv) The right of prior approval before the~~
6 ~~development entity may settle any claim.~~

7 ~~(2) No payment by a proprietary public entity under this~~
8 ~~section may be for anything other than actual costs incurred~~
9 ~~by a development entity to remediate the environmental~~
10 ~~contamination on, under or emanating from the real property~~
11 ~~associated with the public private transportation project as~~
12 ~~of the date the development entity assumes responsibility for~~
13 ~~the public private transportation project.~~

14 ~~(f) User fees. A provision establishing whether user fees~~
15 ~~will be imposed for use of the public private transportation~~
16 ~~project and the basis by which any user fees will be imposed and~~
17 ~~collected shall be determined in the public private~~
18 ~~transportation partnership agreement. If a user fee is proposed~~
19 ~~as part of the public private transportation project, a~~
20 ~~proprietary public entity shall include provisions in the~~
21 ~~agreement that authorize the collection of user fees, tolls,~~
22 ~~fares or similar charges, including provisions that:~~

23 ~~(1) Specify technology to be used in the public private~~
24 ~~transportation project.~~

25 ~~(2) Establish circumstances under which the proprietary~~
26 ~~public entity may receive a share of revenues from the~~
27 ~~charges.~~

28 ~~(3) Govern the enforcement of electronic tolls,~~
29 ~~including provisions for use of available technology.~~

30 ~~(4) Establish payment collection standards, including~~

1 ~~provisions for enforcement of nonpayment and penalties.~~

2 ~~(5) In the event an operator of a vehicle fails to pay~~
3 ~~the prescribed toll or user fee at any location on a public~~
4 ~~private transportation project where tolls or user fees are~~
5 ~~collected by means of an electronic or other automated or~~
6 ~~remote form of collection, the collection provisions of~~
7 ~~section 8117 (relating to electronic toll collection) shall~~
8 ~~apply except that the development entity shall possess all of~~
9 ~~the rights, roles, limitations and responsibilities of the~~
10 ~~Pennsylvania Turnpike Commission.~~

11 ~~(g) Amounts received under a public private transportation~~
12 ~~partnership agreement. The net proceeds received by the~~
13 ~~proprietary public entity under a public private transportation~~
14 ~~partnership agreement shall be available exclusively to provide~~
15 ~~funding for transportation needs in this Commonwealth. The use~~
16 ~~of the proceeds or other revenues from the public private~~
17 ~~transportation project shall comply with Federal or State law~~
18 ~~restricting or limiting the use of revenue from the public~~
19 ~~private transportation project based on its public funding.~~

20 ~~(h) Definitions. The following words and phrases when used~~
21 ~~in this section shall have the meanings given to them in this~~
22 ~~subsection unless the context clearly indicates otherwise:~~

23 ~~"Disadvantaged business." A small business which is owned or~~
24 ~~controlled by a majority of persons, not limited to members of~~
25 ~~minority groups, who:~~

26 ~~(1) Have been deprived of the opportunity to develop and~~
27 ~~maintain a competitive position in the economy because of~~
28 ~~social disadvantages.~~

29 ~~(2) Are veterans, including service disabled veterans.~~

30 ~~"Service disabled veterans." A veteran who possesses either~~

1 ~~an adjudication letter from the United States Veterans~~
2 ~~Administration establishing a service connected disability~~
3 ~~rating or a disability determination from the United States~~
4 ~~Department of Defense.~~

5 ~~"Small business." The term shall have the meaning given to~~
6 ~~it in 62 Pa.C.S. § 2102 (relating to definitions).~~

7 ~~"Veteran." An individual who:~~

8 ~~(1) Served in the active United States military in any~~
9 ~~of the four current branches and all previous branches,~~
10 ~~including a reserve component or the National Guard.~~

11 ~~(2) Was released or discharged from active military~~
12 ~~service under conditions other than dishonorable.~~

13 ~~(3) Possesses a certificate of release or discharge from~~
14 ~~active duty.~~

15 ~~§ 9112. Records of requests.~~

16 ~~The following shall apply:~~

17 ~~(1) Upon the selection of a development entity to be a~~
18 ~~party to a public private transportation partnership~~
19 ~~agreement, the identity of the development entity selected,~~
20 ~~the contents of the response of the development entity to the~~
21 ~~request for proposals, the final proposal submitted by the~~
22 ~~development entity and the form of the public private~~
23 ~~transportation partnership agreement shall be made public.~~
24 ~~Any financial information of a development entity that was~~
25 ~~requested in the request for proposals or during discussions~~
26 ~~and negotiations to demonstrate the economic capability of a~~
27 ~~development entity to fully perform the requirements of the~~
28 ~~public private transportation partnership agreement shall not~~
29 ~~be subject to public inspection.~~

30 ~~(2) A proprietary public and a development entity may~~

1 ~~agree, in their discretion, to make public any information~~
2 ~~described under paragraph (1) that would not otherwise be~~
3 ~~subject to public inspection.~~

4 ~~(3) If a proprietary public entity terminates a public~~
5 ~~private transportation partnership agreement for default,~~
6 ~~rejects a private entity on the grounds that the private~~
7 ~~entity is not responsible or suspends or debars a development~~
8 ~~entity, the private entity or development entity, as~~
9 ~~appropriate, shall, upon written request, be provided with a~~
10 ~~copy of the information contained in the file of the private~~
11 ~~entity or development entity maintained by the proprietary~~
12 ~~public entity under a contractor responsibility program.~~

13 ~~(4) The following information shall not be public:~~

14 ~~(i) Information relating to proprietary information,~~
15 ~~trade secrets, patents or exclusive licenses,~~
16 ~~architectural and engineering plans and information~~
17 ~~relating to competitive marketing materials and~~
18 ~~strategies.~~

19 ~~(ii) Security information, including risk prevention~~
20 ~~plans, detection and countermeasures, emergency~~
21 ~~management plans, security and surveillance plans,~~
22 ~~equipment and usage protocols and countermeasures.~~

23 ~~(iii) Records considered nonpublic matters or~~
24 ~~information by the Securities and Exchange Commission~~
25 ~~under 17 CFR 200.80 (relating to commission records and~~
26 ~~information).~~

27 ~~(iv) Any financial information deemed confidential~~
28 ~~by the proprietary public entity upon a showing of good~~
29 ~~cause by an offeror or development entity.~~

30 ~~(v) Records prepared or utilized to evaluate a~~

1 ~~proposal.~~

2 ~~§ 9113. Use of intellectual property.~~

3 ~~Unless otherwise agreed and except to the extent not~~
4 ~~transferable by law, the department or a proprietary public~~
5 ~~entity shall have the right to use all or a portion of a~~
6 ~~submitted proposal, including the technologies, techniques,~~
7 ~~methods, processes and information contained in the proposal.~~
8 ~~Notice of nontransferability by law shall be given to the~~
9 ~~department and the proprietary public entity in response to the~~
10 ~~request for proposals.~~

11 ~~§ 9114. Police powers and violations of law.~~

12 ~~(a) Enforcement of traffic laws. To the extent the public~~
13 ~~private transportation project is a highway, bridge, tunnel~~
14 ~~overpass or similar transportation facility for motor vehicles,~~
15 ~~75 Pa.C.S. (relating to vehicles) and other laws of this~~
16 ~~Commonwealth or, if applicable, any local jurisdiction shall be~~
17 ~~the same as those applying to conduct on similar transportation~~
18 ~~facilities in this Commonwealth or the local jurisdiction.~~
19 ~~Punishment for offenses shall be prescribed by law for conduct~~
20 ~~occurring on similar transportation facilities in this~~
21 ~~Commonwealth or the local jurisdiction.~~

22 ~~(b) Arrest powers. All officers authorized by law to make~~
23 ~~arrests for violations of law in this Commonwealth shall have~~
24 ~~the same powers, duties and jurisdiction within the limits of a~~
25 ~~public private transportation project as they have in their~~
26 ~~respective areas of jurisdiction. The grant of authority under~~
27 ~~this section shall not extend to the private offices, buildings,~~
28 ~~garages and other improvements of a development entity to any~~
29 ~~greater degree than the police power extends to any other~~
30 ~~private offices, buildings, garages and other improvements.~~

1 ~~§ 9115. Environmental and other authorizations.~~

2 ~~(a) The Administrative Code of 1929. Notwithstanding any~~
3 ~~other provision of law, neither soliciting nor approving a~~
4 ~~request for proposals, nor executing a public private~~
5 ~~transportation partnership agreement under this chapter shall~~
6 ~~constitute the submission of a preliminary plan or design to the~~
7 ~~department under section 2002(b) of the act of April 9, 1929~~
8 ~~(P.L.177, No.175), known as The Administrative Code of 1929.~~

9 ~~(b) Environmental authorizations. A public private~~
10 ~~transportation partnership agreement may require that prior to~~
11 ~~commencing any construction in connection with the development,~~
12 ~~operation or financing of any public private transportation~~
13 ~~project if the agreement requires environmental authorizations~~
14 ~~to be obtained, the development entity shall do any of the~~
15 ~~following:~~

16 ~~(1) Secure all necessary environmental permits and~~
17 ~~authorizations and, if specified under the act of May 19,~~
18 ~~1995 (P.L.4, No.2), known as the Land Recycling and~~
19 ~~Environmental Remediation Standards Act, obtain the approval~~
20 ~~of the Department of Environmental Protection.~~

21 ~~(2) Complete environmental remediation of the site on~~
22 ~~which the public private transportation project is to be~~
23 ~~located, including acts required under any agreement entered~~
24 ~~into with the Department of Environmental Protection for~~
25 ~~remediation of the site under the Land Recycling and~~
26 ~~Environmental Remediation Standards Act.~~

27 ~~§ 9116. Taxation of development entity.~~

28 ~~(a) General rule. To the extent that revenues or user fees~~
29 ~~received by a development entity pursuant to a public private~~
30 ~~transportation partnership agreement are subject to a tax~~

1 ~~imposed by a political subdivision prior to the effective date~~
2 ~~of this section, the revenues or user fees shall continue to be~~
3 ~~subject to the tax and to future increases in the rate of the~~
4 ~~tax.~~

5 ~~(b) New taxation barred. After the effective date of this~~
6 ~~section, no new tax shall be imposed by a political subdivision~~
7 ~~or the Commonwealth on the revenues or user fees received by a~~
8 ~~development entity pursuant to a public private transportation~~
9 ~~partnership agreement.~~

10 ~~(c) Realty transfer tax. No public private transportation~~
11 ~~partnership agreement, lease, concession, franchise or other~~
12 ~~contract involving real property of a public private~~
13 ~~transportation project shall be subject to a Commonwealth or~~
14 ~~local realty transfer tax imposed under the act of December 31,~~
15 ~~1965 (P.L.1257, No.511), known as The Local Tax Enabling Act,~~
16 ~~the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform~~
17 ~~Code of 1971, or a successor statute.~~

18 ~~(d) Property. Property used in connection with a public~~
19 ~~private transportation project shall be considered public~~
20 ~~property and shall be exempt from ad valorem property taxes and~~
21 ~~special assessments levied against property by the Commonwealth~~
22 ~~or any political subdivision.~~

23 ~~§ 9117. Power of eminent domain.~~

24 ~~The exercise of the power of eminent domain by any condemnor~~
25 ~~to acquire property for public private transportation project~~
26 ~~purposes under a public private transportation partnership~~
27 ~~agreement shall be considered a taking for a public purpose and~~
28 ~~not for a private purpose or for private enterprise.~~

29 ~~§ 9118. Sovereign immunity.~~

30 ~~Under section 11 of Article 1 of the Constitution of~~

~~1 Pennsylvania, it is declared to be the intent of the General
2 Assembly that the Commonwealth, and its officials and employees
3 and a municipal authority, and its officials and employees,
4 acting within the scope of their duties, shall continue to enjoy
5 sovereign immunity and official immunity and remain immune from
6 suit except as provided in section 9119 (relating to specific
7 performance). A claim against the Commonwealth and its officials
8 and employees or municipal authority and its officials and
9 employees shall be brought only in such manner and in such
10 courts and in such cases as directed by the provision of section
11 9111(e) (relating to public private transportation partnership
12 agreement), 42 Pa.C.S. Ch. 85 (relating to matters affecting
13 government units), 62 Pa.C.S. Ch. 17 (relating to legal and
14 contractual remedies) or any procurement law applicable to a
15 municipal authority.~~

~~16 § 9119. Specific performance.~~

~~17 A proprietary public entity is authorized to agree that
18 specific performance shall be available to a development entity
19 as a remedy for a breach by the proprietary public entity of its
20 representations, covenants, warranties or other obligations
21 under the public private transportation partnership agreement to
22 the extent set forth in the public private transportation
23 partnership agreement.~~

~~24 § 9120. Applicability of other laws.~~

~~25 (a) General rule. Except as provided under subsections (b)
26 and (c), all provisions of existing law related to the
27 development, operation or financing of a transportation project
28 shall apply to a public private transportation partnership
29 agreement entered into between a proprietary public entity and a
30 development entity to the extent they are applicable on the date~~

1 ~~the public private transportation partnership agreement is fully~~
2 ~~executed. These provisions include:~~

3 ~~(1) The act of May 1, 1913 (P.L.155, No.104), referred~~
4 ~~to as the Separations Act.~~

5 ~~(2) The act of August 15, 1961 (P.L.987, No.442), known~~
6 ~~as the Pennsylvania Prevailing Wage Act.~~

7 ~~(b) Limitation. The following apply:~~

8 ~~(1) If the public entity or the proprietary public~~
9 ~~entity is the Commonwealth, 62 Pa.C.S. (relating to~~
10 ~~procurement) shall apply only to the extent provided under~~
11 ~~paragraph (2).~~

12 ~~(2) The following provisions shall apply if the public~~
13 ~~entity or the proprietary public entity is the Commonwealth:~~

14 ~~(i) 62 Pa.C.S. § 107 (relating to reciprocal~~
15 ~~limitations).~~

16 ~~(ii) 62 Pa.C.S. § 531 (relating to debarment or~~
17 ~~suspension).~~

18 ~~(iii) 62 Pa.C.S. § 541 (relating to approval of~~
19 ~~account system).~~

20 ~~(iv) 62 Pa.C.S. § 551 (relating to right to inspect~~
21 ~~plant).~~

22 ~~(v) 62 Pa.C.S. § 552 (relating to right to audit~~
23 ~~records).~~

24 ~~(vi) 62 Pa.C.S. § 563 (relating to retention of~~
25 ~~procurement records).~~

26 ~~(vii) 62 Pa.C.S. § Ch 17 (relating to legal and~~
27 ~~contractual remedies).~~

28 ~~(c) Exception. This chapter shall not apply to a~~
29 ~~transportation project which a public entity is authorized under~~
30 ~~law to undertake on the effective date of this subsection.~~

1 ~~§ 9121. Adverse interest.~~

2 ~~(a) Private entity adverse interests. The following shall~~
3 ~~apply:~~

4 ~~(1) Except as provided under paragraph (2), a private~~
5 ~~entity which submits a response to a request for proposals~~
6 ~~under section 9110 (relating to selection of development~~
7 ~~entities), a request for transportation projects under~~
8 ~~section 9107 (relating to solicitations for transportation~~
9 ~~projects) or an unsolicited proposal, and which is also a~~
10 ~~State adviser or a State consultant for the department or the~~
11 ~~Pennsylvania Turnpike Commission, shall not be deemed to be~~
12 ~~in violation of the State Adverse Interest Act while engaging~~
13 ~~in any of the following activities:~~

14 ~~(i) Preparing or submitting a response to a request~~
15 ~~for proposals or transportation projects.~~

16 ~~(ii) Participating in any activity with the~~
17 ~~department related to a request for proposals or~~
18 ~~transportation projects.~~

19 ~~(iii) Negotiating and entering into any contract~~
20 ~~lease or public private transportation partnership~~
21 ~~agreement which results from a request for proposals or~~
22 ~~transportation projects.~~

23 ~~(iv) Engaging in any other action taken in~~
24 ~~furtherance of the purposes of this chapter.~~

25 ~~(2) A private entity which submits a response to a~~
26 ~~request for proposals or transportation projects or acts as a~~
27 ~~consultant or an adviser to a private entity which submits a~~
28 ~~response to a request for proposals or transportation~~
29 ~~projects to the department shall be prohibited from~~
30 ~~consulting or providing advice to the department on the~~

~~review or approval of the response to the request for proposals or transportation projects as submitted.~~

~~(3) A private entity which submits a response to a request for proposals or transportation projects or acts as a consultant or an advisor to a private entity which submits a response to a request for proposals or transportation projects to the board shall be prohibited from consulting or providing advice to the department on the review or approval of the response to the request for proposals or transportation projects so submitted.~~

~~(b) Definitions. As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:~~

~~"State adviser." As defined in section 2(7) of the act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act.~~

~~"State consultant." As defined in section 2(9) of the act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act.~~

~~§ 9122. Federal, State, local and private assistance.~~

~~(a) Federal assistance. The following shall apply:~~

~~(1) The department or a proprietary public entity may accept from the United States or any of its agencies funds that are available to the Commonwealth for carrying out this chapter, whether the funds are made available by grant, loan, loan guarantee or otherwise.~~

~~(2) The department or a proprietary public entity is authorized to assent to any Federal requirements, conditions or terms of any Federal funding accepted by the department or a proprietary public entity under this section.~~

~~(3) The department or a proprietary public entity may enter into agreements or other arrangements with the United States or any of its agencies as may be necessary for carrying out the purposes of this chapter.~~

~~(b) Acceptance of grants and donations. The department or a proprietary public entity may accept from any source any grant, donation, gift or other form of conveyance of land, money or other real, personal or mixed property or other item of value for carrying out the purpose of this chapter.~~

~~(c) Contributions. Subject to acceptance and agreement between the development entity and a proprietary public entity, any public private transportation project may be financed, in whole or in part, by contribution of any funds or property made by a proprietary public entity, a development entity or an affected jurisdiction.~~

~~(d) Combination of funds. The department or proprietary public entity may combine Federal, State, local and private funds to finance a public private transportation project under this chapter.~~

~~§ 9123. Public Private Transportation Account.~~

~~(a) Establishment.~~

~~(1) There is established within the Motor License Fund a separate account to be known as the Public Private Transportation Account.~~

~~(2) Money in the account shall be used only for the purposes enumerated under subsection (c).~~

~~(b) Deposits to account. The following shall apply:~~

~~(1) The department shall deposit in the account the following:~~

~~(i) All money received by the department pursuant to~~

1 ~~the terms of a public private transportation partnership~~
2 ~~agreement under which the department is the proprietary~~
3 ~~public entity.~~

4 ~~(ii) Repayment of any loans from the account made~~
5 ~~under this chapter.~~

6 ~~(iii) Subject to the provisions of any public~~
7 ~~private transportation partnership agreement under which~~
8 ~~the department is the proprietary public entity, monetary~~
9 ~~damages and other amounts for failure by a development~~
10 ~~entity to comply with the terms of the public private~~
11 ~~transportation partnership agreement.~~

12 ~~(iv) Subject to the provisions of any public private~~
13 ~~transportation partnership agreement under which the~~
14 ~~department is the proprietary public entity, payments~~
15 ~~made from any insurance proceeds or reserve funds or~~
16 ~~performance or payment bonds in connection with a public~~
17 ~~private transportation project.~~

18 ~~(v) Earnings from the investment of the money in the~~
19 ~~account.~~

20 ~~(2) The Secretary of the Budget shall establish any~~
21 ~~restricted accounts within the account as the secretary deems~~
22 ~~necessary for the proper administration of the account.~~

23 ~~(3) All money related to any public private~~
24 ~~transportation partnership agreement in which the department~~
25 ~~is not the proprietary public entity shall not be held in the~~
26 ~~account, but shall be held by the proprietary public entity~~
27 ~~or its agent.~~

28 ~~(c) Appropriation. The funds in the account are~~
29 ~~continuously appropriated to the department for the following~~
30 ~~purposes:~~

1 ~~(1) Paying the amounts as the department may be required~~
2 ~~to repay the Federal funding agencies.~~

3 ~~(2) Paying all amounts designated by the department as~~
4 ~~required for repayment or defeasance of outstanding bonds.~~

5 ~~(3) Paying costs of maintenance, operating and financing~~
6 ~~of transportation facilities in this Commonwealth which are~~
7 ~~available for use by the public, including the costs of~~
8 ~~insurance or reserves against risks of contingencies.~~

9 ~~(4) Paying expenses incurred under or in connection with~~
10 ~~any public private transportation partnership agreement by~~
11 ~~the department, including professional fees and expenses.~~

12 ~~(5) Paying the costs of the department relating to~~
13 ~~performing and administering duties under this chapter.~~

14 ~~(6) Paying all expenses approved by the board for its~~
15 ~~costs incurred to perform its duties, including paying~~
16 ~~professional fees and expenses.~~

17 ~~(7) Paying costs of any purpose authorized under this~~
18 ~~chapter.~~

19 ~~(d) Amounts received. The net proceeds received under a~~
20 ~~public private transportation partnership agreement shall be~~
21 ~~available exclusively to provide funding for transportation~~
22 ~~needs in this Commonwealth. The use of the proceeds or other~~
23 ~~revenues from the public private transportation project shall be~~
24 ~~in accord with Federal or State law restricting or limiting the~~
25 ~~use of revenue from the public private transportation project~~
26 ~~based on its public funding.~~

27 ~~§ 9124. Pennsylvania Turnpike Commission.~~

28 ~~The Pennsylvania Turnpike Commission may not enter into a~~
29 ~~public private transportation partnership agreement in the~~
30 ~~capacity of a proprietary public entity with respect to granting~~

~~1 substantial oversight and control over the Turnpike Mainline to
2 another entity unless specific authority is granted through an
3 act of law passed by the General Assembly. However, this shall
4 not restrict the Pennsylvania Turnpike Commission from entering
5 into a public private transportation partnership agreement under
6 this chapter or under other statutes which does not involve
7 granting substantial oversight and control over the Turnpike
8 Mainline to another entity.~~

~~9 § 9125. Regulations.~~

~~10 (a) Department. In order to facilitate the implementation
11 of this chapter, the department is authorized to promulgate
12 regulations or publish guidelines that include the following:~~

~~13 (1) The process for review of a request for proposals or
14 transportation projects or responses to requests for
15 proposals or transportation projects issued by a public
16 entity.~~

~~17 (2) The process for receipt and review of and response
18 to competing responses to requests for proposals or
19 transportation projects.~~

~~20 (3) The type and amount of information that is necessary
21 for adequate review of and response to each stage of review
22 of a proposal or transportation project.~~

~~23 (4) The process and procedures to ensure that a
24 development entity that enters into a public private
25 transportation partnership agreement with a proprietary
26 public entity for a public private transportation project
27 develops, adopts and implements binding policies or
28 guidelines to ensure that all persons are accorded equal
29 opportunity in employment, contracting, subcontracting and
30 purchasing associated with the public private transportation~~

1 ~~project.~~

2 ~~(5) Any other provisions which are required under this~~
3 ~~chapter or which the department determines are appropriate~~
4 ~~for implementation of this chapter.~~

5 ~~(b) Temporary regulations. Notwithstanding any other~~
6 ~~provision of law, any regulation promulgated by the department~~
7 ~~under this chapter during the two years following the effective~~
8 ~~date of this section shall be deemed temporary regulations which~~
9 ~~shall expire no later than three years following the effective~~
10 ~~date of this section or upon promulgation of final regulations.~~
11 ~~The temporary regulations shall not be subject to any of the~~
12 ~~following:~~

13 ~~(1) Sections 201, 202, 203 and 204 of the act of July~~
14 ~~31, 1968 (P.L.769, No.240), referred to as the Commonwealth~~
15 ~~Documents Law.~~

16 ~~(2) The act of June 25, 1982 (P.L.633, No.181), known as~~
17 ~~the Regulatory Review Act.~~

18 ~~Section 2. Repeals are as follows:~~

19 ~~(1) The General Assembly declares that the repeal under~~
20 ~~paragraph (2) is necessary to effectuate the addition of 74-~~
21 ~~Pa.C.S. Ch. 91.~~

22 ~~(2) Section 3 of the act of May 29, 1945 (P.L.1108,~~
23 ~~No.402), referred to as the Limited Access Highway Law, is~~
24 ~~repealed insofar as it is inconsistent with the addition of~~
25 ~~74 Pa.C.S. Ch. 91.~~

26 ~~Section 3. This act shall take effect as follows:~~

27 ~~(1) The addition of 74 Pa.C.S. §§ 9103, 9104, 9105, 9106-~~
28 ~~and 9125 shall take effect immediately.~~

29 ~~(2) This section shall take effect immediately.~~

30 ~~(3) The remainder of this act shall take effect in 60-~~

1 ~~days.~~

2 SECTION 1. TITLE 74 OF THE PENNSYLVANIA CONSOLIDATED
3 STATUTES IS AMENDED BY ADDING A PART TO READ:

4 PART V
5 TRANSPORTATION INFRASTRUCTURE

6 CHAPTER

7 91. PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP

8 CHAPTER 91

9 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP

10 SEC.

11 9101. SCOPE OF CHAPTER.

12 9102. FINDINGS AND DECLARATION OF POLICY.

13 9103. DEFINITIONS.

14 9104. PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP BOARD.

15 9105. DUTIES OF BOARD.

16 9106. OPERATION OF BOARD.

17 9107. SOLICITATIONS FOR TRANSPORTATION PROJECTS.

18 9108. TRANSPORTATION PROJECTS.

19 9109. REQUESTS.

20 9110. SELECTION OF DEVELOPMENT ENTITIES.

21 9111. PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT.

22 9112. RECORDS OF REQUESTS.

23 9113. USE OF INTELLECTUAL PROPERTY.

24 9114. POLICE POWERS AND VIOLATIONS OF LAW.

25 9115. ENVIRONMENTAL AND OTHER AUTHORIZATIONS.

26 9116. TAXATION OF DEVELOPMENT ENTITY.

27 9117. POWER OF EMINENT DOMAIN.

28 9118. SOVEREIGN IMMUNITY.

29 9119. SPECIFIC PERFORMANCE.

30 9120. APPLICABILITY OF OTHER LAWS.

1 9121. ADVERSE INTEREST.
2 9122. FEDERAL, STATE, LOCAL AND PRIVATE ASSISTANCE.
3 9123. PUBLIC-PRIVATE TRANSPORTATION ACCOUNT.
4 9124. PENNSYLVANIA TURNPIKE COMMISSION.
5 9125. REGULATIONS.
6 § 9101. SCOPE OF CHAPTER.

7 THIS CHAPTER RELATES TO PUBLIC-PRIVATE TRANSPORTATION
8 PARTNERSHIPS.

9 § 9102. FINDINGS AND DECLARATION OF POLICY.

10 (A) LEGISLATIVE FINDINGS AND DECLARATIONS.--THE GENERAL
11 ASSEMBLY FINDS, DETERMINES AND DECLARES AS FOLLOWS:

12 (1) THERE IS URGENT PUBLIC NEED TO REDUCE CONGESTION,
13 INCREASE CAPACITY, IMPROVE SAFETY AND ENHANCE ECONOMIC
14 EFFICIENCY OF TRANSPORTATION FACILITIES THROUGHOUT THIS
15 COMMONWEALTH.

16 (2) THE PUBLIC ENTITIES HAVE LIMITED RESOURCES TO FUND
17 THE MAINTENANCE AND EXPANSION OF THEIR RESPECTIVE
18 TRANSPORTATION FACILITIES.

19 (3) TO ENSURE THE NEEDS OF THE PUBLIC ARE ADEQUATELY
20 ADDRESSED, ALTERNATIVE FUNDING MECHANISMS AND STRATEGIES MUST
21 BE DEVELOPED TO SUPPLEMENT EXISTING PUBLIC REVENUE SOURCES.

22 (4) (RESERVED).

23 (5) THE IMPOSITION OF USER FEES AND THE DEVELOPMENT,
24 OPERATION, MAINTENANCE, CONSTRUCTION AND IMPROVEMENT OF TOLL
25 ROADS IS A PROPRIETARY FUNCTION WHICH MAY BE DELEGATED TO A
26 PRIVATE ENTITY CONSISTENT WITH SECTION 31 OF ARTICLE III OF
27 THE CONSTITUTION OF PENNSYLVANIA.

28 (6) AUTHORIZING PUBLIC ENTITIES TO ENTER INTO
29 TRANSPORTATION PARTNERSHIP AGREEMENTS WITH PRIVATE ENTITIES
30 AND OTHER PUBLIC ENTITIES FOR THE DEVELOPMENT, OPERATION AND

1 FINANCING OF TRANSPORTATION FACILITIES CAN RESULT IN GREATER
2 AVAILABILITY OF TRANSPORTATION FACILITIES TO THE PUBLIC IN A
3 TIMELY, EFFICIENT AND LESS COSTLY FASHION, THEREBY SERVING
4 THE PUBLIC SAFETY AND WELFARE.

5 (7) ASSURING THAT PUBLIC-PRIVATE TRANSPORTATION PROJECTS
6 ARE DEVELOPED, OPERATED AND FINANCED IN A COST-EFFECTIVE
7 MANNER IS AN IMPORTANT FACTOR IN PROMOTING THE HEALTH, SAFETY
8 AND WELFARE OF THE CITIZENS OF THIS COMMONWEALTH.

9 (B) INTENT.--IT IS THE INTENT OF THIS CHAPTER:

10 (1) TO ENCOURAGE PRIVATE ENTITIES TO INVEST IN THIS
11 COMMONWEALTH BY PARTICIPATING IN THE DEVELOPMENT, OPERATION
12 OR FINANCING OF TRANSPORTATION FACILITIES.

13 (2) TO PROVIDE PUBLIC ENTITIES AND PRIVATE ENTITIES WITH
14 THE AUTHORITY AND FLEXIBILITY IN CONTRACTING FOR THE
15 DEVELOPMENT, OPERATION AND FINANCING OF TRANSPORTATION
16 FACILITIES.

17 (3) TO AUTHORIZE PUBLIC ENTITIES TO CONTRACT WITH
18 PRIVATE AND OTHER PUBLIC ENTITIES TO PROVIDE TRANSPORTATION
19 FACILITIES AND RELATED SERVICES.

20 § 9103. DEFINITIONS.

21 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
22 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
23 CONTEXT CLEARLY INDICATES OTHERWISE:

24 "ACCOUNT." THE PUBLIC-PRIVATE TRANSPORTATION ACCOUNT.

25 "BOARD." THE PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP
26 BOARD.

27 "DEPARTMENT." THE DEPARTMENT OF TRANSPORTATION OF THE
28 COMMONWEALTH.

29 "DEVELOPMENT ENTITY." AN ENTITY WHICH IS A PARTY TO A
30 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT AND WHICH IS

1 ANY OF THE FOLLOWING:

2 (1) A PRIVATE ENTITY.

3 (2) A PUBLIC ENTITY, OTHER THAN THE PUBLIC ENTITY
4 PROVIDING OR IMPROVING ITS OWN TRANSPORTATION FACILITIES.

5 "ELECTRONIC TOLL." A SYSTEM OF COLLECTING TOLLS OR CHARGES
6 WHICH IS CAPABLE OF CHARGING AN ACCOUNT HOLDER FOR THE
7 PRESCRIBED TOLL BY ELECTRONIC TRANSMISSION OF INFORMATION. THE
8 TERM INCLUDES OPEN ROAD TOLLS, VIDEO TOLLS OR OTHER SIMILAR
9 STRUCTURAL OR TECHNOLOGICAL ENHANCEMENTS PERTAINING TO TOLLS.

10 "OFFEROR." A PERSON THAT SUBMITS A PROPOSAL OR A RESPONSE IN
11 ANSWER TO A REQUEST FOR PROPOSALS OR TRANSPORTATION PROJECTS.

12 "PRIVATE ENTITY." A PERSON, ENTITY, GROUP OR ORGANIZATION
13 THAT IS NOT THE FEDERAL GOVERNMENT, THE COMMONWEALTH OR A
14 MUNICIPAL AUTHORITY.

15 "PROPRIETARY PUBLIC ENTITY." A PUBLIC ENTITY WHICH OWNS A
16 PUBLIC-PRIVATE TRANSPORTATION PROJECT AND WHICH IS A PARTY TO A
17 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT.

18 "PUBLIC ENTITY." THE COMMONWEALTH, A MUNICIPAL AUTHORITY OR
19 AN AUTHORITY CREATED BY STATUTE WHICH OWNS A TRANSPORTATION
20 FACILITY. THE TERM INCLUDES THE PENNSYLVANIA TURNPIKE
21 COMMISSION. THE TERM DOES NOT INCLUDE THE GENERAL ASSEMBLY AND
22 ITS MEMBERS, OFFICERS OR AGENCIES OR ANY COURT OR OTHER OFFICE
23 OR AGENCY OF THE PENNSYLVANIA JUDICIAL SYSTEM.

24 "PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT." A
25 CONTRACT FOR A TRANSPORTATION PROJECT WHICH TRANSFERS THE RIGHTS
26 FOR THE USE OR CONTROL, IN WHOLE OR IN PART, OF A TRANSPORTATION
27 FACILITY BY A PUBLIC ENTITY TO A DEVELOPMENT ENTITY FOR A
28 DEFINITE TERM DURING WHICH THE DEVELOPMENT ENTITY WILL PROVIDE
29 THE TRANSPORTATION PROJECT TO THE PUBLIC ENTITY IN RETURN FOR
30 THE RIGHT TO RECEIVE ALL OR A PORTION OF THE REVENUE GENERATED

1 FROM THE USE OF THE TRANSPORTATION FACILITY, OR OTHER PAYMENT,
2 SUCH AS THE FOLLOWING TRANSPORTATION-RELATED SERVICES:

3 (1) OPERATIONS AND MAINTENANCE.

4 (2) REVENUE COLLECTION.

5 (3) USER FEE COLLECTION OR ENFORCEMENT.

6 (4) DESIGN.

7 (5) CONSTRUCTION.

8 (6) DEVELOPMENT AND OTHER ACTIVITIES WITH RESPECT TO
9 EXISTING OR NEW TRANSPORTATION FACILITIES THAT ENHANCE
10 TRAFFIC THROUGHPUT, REDUCE CONGESTION, IMPROVE SAFETY OR
11 OTHERWISE MANAGE OR IMPROVE A TRANSPORTATION FACILITY.

12 (7) FINANCING.

13 "PUBLIC-PRIVATE TRANSPORTATION PROJECT." A TRANSPORTATION
14 PROJECT UNDERTAKEN BY A DEVELOPMENT ENTITY PURSUANT TO A PUBLIC-
15 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT.

16 "REQUEST FOR TRANSPORTATION PROJECTS." A SOLICITED OR
17 UNSOLICITED PLAN FOR A TRANSPORTATION PROJECT SUBMITTED TO THE
18 BOARD BY A PUBLIC ENTITY.

19 "RESPONSIBLE OFFEROR." AN OFFEROR THAT HAS SUBMITTED A
20 RESPONSIVE PROPOSAL AND THAT POSSESSES THE CAPABILITY TO FULLY
21 PERFORM THE PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT
22 REQUIREMENTS IN ALL RESPECTS AND THE INTEGRITY AND RELIABILITY
23 TO ASSURE GOOD FAITH PERFORMANCE.

24 "RESPONSIVE PROPOSAL." A PROPOSAL THAT CONFORMS IN ALL
25 MATERIAL ASPECTS TO THE REQUIREMENTS AND CRITERIA IN THE REQUEST
26 FOR PROPOSALS.

27 "STATE ADVERSE INTEREST ACT." THE ACT OF JULY 19, 1957
28 (P.L.1017, NO.451), KNOWN AS THE STATE ADVERSE INTEREST ACT.

29 "TRANSPORTATION FACILITY." A PROPOSED OR EXISTING ROAD,
30 BRIDGE, TUNNEL, OVERPASS, FERRY, BUSWAY, GUIDEWAY, PUBLIC

1 TRANSPORTATION FACILITY, VEHICLE PARKING FACILITY, PORT
2 FACILITY, MULTIMODAL TRANSPORTATION FACILITY, AIRPORT, STATION,
3 HUB, TERMINAL OR SIMILAR FACILITY USED OR TO BE USED FOR THE
4 TRANSPORTATION OF PERSONS, ANIMALS OR GOODS, TOGETHER WITH ANY
5 BUILDINGS, STRUCTURES, PARKING AREAS, APPURTENANCES, INTELLIGENT
6 TRANSPORTATION SYSTEMS AND OTHER PROPERTY NEEDED TO OPERATE OR
7 RELATED TO THE OPERATION OF THE TRANSPORTATION FACILITY. THE
8 TERM INCLUDES ANY IMPROVEMENTS OR SUBSTANTIAL ENHANCEMENTS OR
9 MODIFICATIONS TO AN EXISTING TRANSPORTATION FACILITY.

10 "TRANSPORTATION PROJECT." AN UNDERTAKING BY A PRIVATE ENTITY
11 OR A PUBLIC ENTITY, OTHER THAN THE PUBLIC ENTITY PROVIDING OR
12 IMPROVING ITS OWN TRANSPORTATION FACILITIES, TO PROVIDE OR
13 IMPROVE A TRANSPORTATION FACILITY OR TRANSPORTATION-RELATED
14 SERVICE WHICH IS TOTALLY OR PARTIALLY LOCATED WITHIN THIS
15 COMMONWEALTH.

16 § 9104. PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP BOARD.

17 (A) ESTABLISHMENT.--THERE IS ESTABLISHED A BOARD TO BE KNOWN
18 AS THE PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP BOARD.

19 (B) COMPOSITION.--THE BOARD SHALL BE COMPOSED OF THE
20 FOLLOWING MEMBERS:

21 (1) THE SECRETARY OF TRANSPORTATION, WHO SHALL BE THE
22 CHAIRPERSON OF THE BOARD, OR A DESIGNEE WHO SHALL BE AN
23 EMPLOYEE OF THE DEPARTMENT.

24 (2) THE SECRETARY OF THE BUDGET OR A DESIGNEE WHO SHALL
25 BE AN EMPLOYEE OF THE OFFICE OF THE BUDGET.

26 (3) FOUR MEMBERS APPOINTED BY THE GENERAL ASSEMBLY UNDER
27 SUBSECTION (C).

28 (4) ONE MEMBER APPOINTED BY THE GOVERNOR UNDER
29 SUBSECTION (D).

30 (C) LEGISLATIVE APPOINTMENTS.--

1 (1) APPOINTMENTS OF MEMBERS BY THE GENERAL ASSEMBLY
2 SHALL BE MADE AS FOLLOWS:

3 (I) ONE INDIVIDUAL APPOINTED BY THE PRESIDENT PRO
4 TEMPORE OF THE SENATE.

5 (II) ONE INDIVIDUAL APPOINTED BY THE MINORITY LEADER
6 OF THE SENATE.

7 (III) ONE INDIVIDUAL APPOINTED BY THE SPEAKER OF THE
8 HOUSE OF REPRESENTATIVES.

9 (IV) ONE INDIVIDUAL APPOINTED BY THE MINORITY LEADER
10 OF THE HOUSE OF REPRESENTATIVES.

11 (2) LEGISLATIVE APPOINTEES SHALL BE RESIDENTS OF THIS
12 COMMONWEALTH AND SERVE AT THE PLEASURE OF THE APPOINTING
13 AUTHORITY.

14 (3) LEGISLATIVE APPOINTEES SHALL HAVE EXPERTISE OR
15 SUBSTANTIAL EXPERIENCE IN ONE OR MORE OF THE FOLLOWING AREAS:

16 (I) TRANSPORTATION.

17 (II) FINANCE.

18 (III) LAW.

19 (IV) LAND USE AND PUBLIC PLANNING.

20 (D) GUBERNATORIAL APPOINTMENT.--A MEMBER APPOINTED UNDER
21 SUBSECTION (B) (4):

22 (1) MAY NOT HOLD ANY OTHER POSITION AS AN ELECTED
23 OFFICIAL OR EMPLOYEE OF THE COMMONWEALTH.

24 (2) SHALL BE A RESIDENT OF THIS COMMONWEALTH AND HAVE
25 EXPERTISE OR SUBSTANTIAL EXPERIENCE IN ONE OR MORE OF THE
26 FOLLOWING AREAS:

27 (I) TRANSPORTATION.

28 (II) FINANCE.

29 (III) LAW.

30 (IV) LAND USE AND PUBLIC PLANNING.

1 (3) SHALL SERVE AT THE PLEASURE OF THE GOVERNOR.

2 (E) QUORUM.--FIVE MEMBERS OF THE BOARD SHALL CONSTITUTE A
3 QUORUM. THE ADOPTION OF A RESOLUTION OR OTHER ACTION OF THE
4 BOARD SHALL REQUIRE A MAJORITY VOTE OF THE MEMBERS OF THE BOARD.

5 (F) COMPENSATION.--THE MEMBERS OF THE BOARD SHALL BE
6 ENTITLED TO NO COMPENSATION FOR THEIR SERVICES AS MEMBERS OF THE
7 BOARD BUT SHALL BE ENTITLED TO REIMBURSEMENT BY THE DEPARTMENT
8 FOR ALL NECESSARY AND REASONABLE EXPENSES INCURRED IN CONNECTION
9 WITH THE PERFORMANCE OF THEIR DUTIES AS MEMBERS OF THE BOARD.

10 (G) INITIAL APPOINTMENT AND VACANCY.--APPOINTING AUTHORITIES
11 SHALL APPOINT INITIAL BOARD MEMBERS WITHIN 30 DAYS OF THE
12 EFFECTIVE DATE OF THIS SECTION. WHENEVER A VACANCY OCCURS ON THE
13 BOARD, THE APPOINTING AUTHORITY SHALL APPOINT A SUCCESSOR MEMBER
14 WITHIN 30 DAYS OF THE VACANCY.

15 (H) FINANCIAL INTERESTS.--NO MEMBER OF THE BOARD, DURING HIS
16 TERM OF OFFICE SHALL DIRECTLY OR INDIRECTLY OWN, HAVE ANY
17 SIGNIFICANT FINANCIAL INTEREST IN, BE ASSOCIATED WITH OR RECEIVE
18 ANY FEE, COMMISSION, COMPENSATION OR ANYTHING OF VALUE FROM ANY
19 PUBLIC ENTITY OR PRIVATE ENTITY SEEKING TO ENGAGE IN A PUBLIC-
20 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT. THE PROVISIONS OF
21 THIS SUBSECTION DO NOT APPLY TO THE SALARY OF A COMMONWEALTH
22 EMPLOYEE.

23 (I) APPLICABILITY.--THE FOLLOWING ACTS SHALL APPLY TO THE
24 BOARD:

25 (1) THE ACT OF FEBRUARY 14, 2008 (P.L.6, NO.3), KNOWN AS
26 THE RIGHT-TO-KNOW LAW.

27 (2) THE STATE ADVERSE INTEREST ACT.

28 (3) THE PROVISIONS OF 65 PA.C.S. CHS. 7 (RELATING TO
29 OPEN MEETINGS) AND 11 (RELATING TO ETHICS STANDARDS AND
30 FINANCIAL DISCLOSURE).

1 § 9105. DUTIES OF BOARD.

2 (A) DUTIES.--THE BOARD SHALL DO ALL OF THE FOLLOWING:

3 (1) MEET AS OFTEN AS NECESSARY BUT AT LEAST ANNUALLY.

4 (2) ADOPT GUIDELINES ESTABLISHING THE PROCEDURE BY WHICH
5 A PUBLIC ENTITY MAY SUBMIT A REQUEST FOR A TRANSPORTATION
6 PROJECT OR A PRIVATE ENTITY MAY SUBMIT AN UNSOLICITED PLAN
7 FOR A TRANSPORTATION PROJECT TO THE BOARD.

8 (3) CONSULT WITH PERSONS AFFECTED BY PROPOSED
9 TRANSPORTATION PROJECTS.

10 (4) EVALUATE AND, WHERE THE BOARD FINDS THAT THE
11 REQUESTS OR PLANS FOR TRANSPORTATION PROJECTS ARE IN THE BEST
12 INTERESTS OF THE COMMONWEALTH AND A PUBLIC ENTITY, APPROVE
13 THE REQUESTS OR PLANS FOR TRANSPORTATION PROJECTS. THE BOARD
14 SHALL APPROVE A PROPOSED TRANSPORTATION PROJECT BY ADOPTING A
15 RESOLUTION.

16 (5) SUBMIT AN ANNUAL REPORT TO THE GENERAL ASSEMBLY
17 DETAILING ALL TRANSPORTATION PROJECTS EVALUATED AND
18 RESOLUTIONS ADOPTED.

19 (B) ACTIONS.--ACTIONS BY THE BOARD ARE A DETERMINATION OF
20 PUBLIC POLICY AND PUBLIC INTEREST AND SHALL NOT BE CONSIDERED
21 ADJUDICATIONS UNDER 2 PA.C.S. CHS. 5 SUBCH. A (RELATING TO
22 PRACTICE AND PROCEDURE OF COMMONWEALTH AGENCIES) AND 7 SUBCH. A
23 (RELATING TO JUDICIAL REVIEW OF COMMONWEALTH AGENCY ACTION) AND
24 SHALL NOT BE APPEALABLE TO THE DEPARTMENT OR A COURT OF LAW.

25 (C) GENERAL ASSEMBLY.--THE FOLLOWING SHALL APPLY:

26 (1) THE GENERAL ASSEMBLY MAY, WITHIN 20 CALENDAR DAYS OR
27 NINE LEGISLATIVE DAYS, WHICHEVER IS LONGER, OF THE ADOPTION
28 OF THE RESOLUTION UNDER SUBSECTION (A) (4), PASS A CONCURRENT
29 RESOLUTION RESCINDING THE APPROVAL OF A TRANSPORTATION
30 PROJECT IF THE TRANSPORTATION FACILITY WHICH IS THE SUBJECT

1 OF THE TRANSPORTATION PROJECT IS OWNED BY THE COMMONWEALTH.

2 (2) IF THE GENERAL ASSEMBLY ADOPTS THE CONCURRENT
3 RESOLUTION WITHIN THE TIME PERIOD UNDER PARAGRAPH (1) BY
4 MAJORITY VOTE IN BOTH THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES, THE TRANSPORTATION PROJECT SHALL BE DEEMED
6 DISAPPROVED.

7 (3) IF THE GENERAL ASSEMBLY FAILS TO ADOPT THE
8 CONCURRENT RESOLUTION BY MAJORITY VOTE IN BOTH THE SENATE AND
9 THE HOUSE OF REPRESENTATIVES WITHIN THE TIME PERIOD UNDER
10 PARAGRAPH (1), THE TRANSPORTATION PROJECT SHALL BE DEEMED
11 APPROVED.

12 § 9106. OPERATION OF BOARD.

13 (A) TECHNICAL ASSISTANCE.--THE DEPARTMENT SHALL SUPPLY ALL
14 NECESSARY ASSISTANCE TO ASSIST THE BOARD IN CARRYING OUT ITS
15 DUTIES AND RESPONSIBILITIES, INCLUDING RETENTION OF LEGAL,
16 FINANCIAL AND TECHNICAL CONSULTANTS TO ASSIST WITH THIS ROLE.

17 (B) ANALYSIS.--THE DEPARTMENT SHALL DEVELOP A DETAILED
18 ANALYSIS OF A REQUEST OR RECOMMENDATION PRIOR TO APPROVAL BY THE
19 BOARD.

20 (C) OVERSIGHT.--IF A TRANSPORTATION PROJECT BECOMES A
21 PUBLIC-PRIVATE TRANSPORTATION PROJECT, THE DEPARTMENT SHALL
22 RETAIN OVERSIGHT AND MONITOR THE PUBLIC-PRIVATE TRANSPORTATION
23 PROJECT, INCLUDING PERIODIC REPORTS TO THE BOARD, AS NECESSARY.

24 § 9107. SOLICITATIONS FOR TRANSPORTATION PROJECTS.

25 A PUBLIC ENTITY MAY SOLICIT TRANSPORTATION PROJECTS THROUGH A
26 REQUEST FOR TRANSPORTATION PROJECTS. THE PUBLIC ENTITY SHALL
27 GIVE PUBLIC NOTICE OF A REQUEST FOR TRANSPORTATION PROJECTS
28 CONSISTENT WITH SECTION 9110(C) (RELATING TO SELECTION OF
29 DEVELOPMENT ENTITIES). OFFERORS SHALL SUBMIT THEIR RESPONSES TO
30 THE PUBLIC ENTITY IN THE FORM AND MANNER REQUIRED BY THE REQUEST

1 FOR TRANSPORTATION PROJECTS. A PUBLIC ENTITY SHALL EVALUATE EACH
2 RESPONSE TO DETERMINE IF THE RESPONSE IS IN THE BEST INTEREST OF
3 THE PUBLIC ENTITY. UPON BEING SATISFIED, THE PUBLIC ENTITY MAY
4 PREPARE AND SUBMIT A REQUEST TO THE BOARD TO REVIEW THE
5 TRANSPORTATION PROJECT IN ACCORDANCE WITH THIS CHAPTER.

6 § 9108. TRANSPORTATION PROJECTS.

7 (A) SUBMISSION.--EXCEPT AS PROVIDED UNDER SUBSECTION (B), A
8 PUBLIC ENTITY WHICH SEEKS TO UNDERTAKE A TRANSPORTATION PROJECT
9 WHICH HAS NOT BEEN PREVIOUSLY APPROVED BY THE BOARD SHALL SUBMIT
10 A REQUEST FOR THE TRANSPORTATION PROJECT TO THE BOARD.

11 (B) EXCEPTION.--THIS CHAPTER SHALL NOT APPLY TO A
12 TRANSPORTATION PROJECT WHICH A PUBLIC ENTITY IS AUTHORIZED UNDER
13 LAW TO UNDERTAKE ON THE EFFECTIVE DATE OF THIS SUBSECTION.

14 § 9109. REQUESTS.

15 A REQUEST MAY BE SOLICITED OR UNSOLICITED AND MAY PROVIDE FOR
16 THE DEVELOPMENT OR OPERATION OF TRANSPORTATION FACILITIES USING
17 A VARIETY OF PROJECT DELIVERY METHODS AND FORMS OF AGREEMENT.
18 THE METHODS MAY INCLUDE:

19 (1) PREDEVELOPMENT AGREEMENTS LEADING TO OTHER
20 IMPLEMENTING AGREEMENTS.

21 (2) A DESIGN-BUILD AGREEMENT.

22 (3) A DESIGN-BUILD-OPERATE AGREEMENT.

23 (4) A DESIGN-BUILD-MAINTAIN AGREEMENT.

24 (5) A DESIGN-BUILD-FINANCE-OPERATE AGREEMENT.

25 (6) A DESIGN-BUILD-OPERATE-MAINTAIN AGREEMENT.

26 (7) A DESIGN-BUILD-FINANCE-OPERATE-MAINTAIN AGREEMENT.

27 (8) AN OPERATE-MAINTAIN AGREEMENT.

28 (9) A CONCESSION PROVIDING FOR THE DEVELOPMENT ENTITY TO
29 DESIGN, BUILD, OPERATE, MAINTAIN, MANAGE OR LEASE A
30 TRANSPORTATION FACILITY.

1 (10) ANY OTHER INNOVATIVE OR NONTRADITIONAL PROJECT
2 DELIVERY METHOD OR AGREEMENT OR COMBINATION OF METHODS OR
3 AGREEMENTS THAT THE PUBLIC ENTITY DETERMINES WILL ADDRESS THE
4 TRANSPORTATION NEEDS OF THE COMMONWEALTH AND THE PUBLIC
5 ENTITY AND SERVE THE PUBLIC INTEREST.

6 § 9110. SELECTION OF DEVELOPMENT ENTITIES.

7 (A) CONDITIONS FOR USE.--IF A TRANSPORTATION PROJECT IS
8 APPROVED UNDER SECTION 9105 (RELATING TO DUTIES OF BOARD), THE
9 PUBLIC ENTITY MAY ENTER INTO A CONTRACT FOR THE TRANSPORTATION
10 PROJECT BY COMPETITIVE SEALED PROPOSALS.

11 (B) REQUEST FOR PROPOSALS.--AFTER RECEIVING THE
12 DETERMINATION REQUIRED BY SUBSECTION (A), A PUBLIC ENTITY SHALL
13 SOLICIT PROPOSALS THROUGH A REQUEST FOR PROPOSALS.

14 (C) PUBLIC NOTICE.--A PUBLIC ENTITY SHALL GIVE PUBLIC NOTICE
15 OF A REQUEST FOR PROPOSALS CONSISTENT WITH REGULATIONS ADOPTED
16 BY THE DEPARTMENT. THE NOTICE SHALL BE GIVEN A REASONABLE TIME
17 PRIOR TO THE DATE SET FOR THE CLOSE OF RECEIPT OF THE PROPOSALS.
18 THE METHOD OF PUBLIC NOTICE MAY INCLUDE ANY OF THE FOLLOWING:

19 (1) ELECTRONIC PUBLICATION WHICH IS ACCESSIBLE TO THE
20 GENERAL PUBLIC.

21 (2) ADVERTISEMENT AS PROVIDED FOR IN 45 PA.C.S. § 306
22 (RELATING TO USE OF TRADE PUBLICATIONS).

23 (3) ISSUANCE OF REQUEST FOR PROPOSALS TO OFFERORS ON THE
24 MAILING LIST OF THE PUBLIC ENTITY.

25 (4) PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION.

26 (5) WHERE PREQUALIFICATION IS A REQUIREMENT OF
27 SUBMITTING A PROPOSAL, NOTIFICATION TO ALL PRIVATE ENTITIES
28 WHO HAVE BEEN PREQUALIFIED BY THE PUBLIC ENTITY.

29 (D) COPIES OF REQUEST FOR PROPOSAL.--COPIES OF A REQUEST FOR
30 PROPOSALS SHALL BE MADE AVAILABLE TO ANY INTERESTED PERSON UPON

1 REQUEST TO THE PUBLIC ENTITY. A PUBLIC ENTITY MAY ESTABLISH
2 PROCEDURES FOR THE DISTRIBUTION OF A REQUEST FOR PROPOSALS,
3 INCLUDING THE IMPOSITION OF A FEE TO REIMBURSE THE PUBLIC ENTITY
4 FOR THE COSTS OF PHOTOCOPYING AND MAILING.

5 (E) RECEIPT OF PROPOSALS.--OFFERORS SHALL SUBMIT THEIR
6 PROPOSALS TO ENSURE THAT THEIR PROPOSALS ARE RECEIVED PRIOR TO
7 THE TIME AND DATE ESTABLISHED FOR RECEIPT OF THE PROPOSALS.
8 PROPOSALS SHALL BE SUBMITTED IN THE FORMAT REQUIRED BY THE
9 REQUEST FOR PROPOSALS. PROPOSALS SHALL BE OPENED SO AS TO AVOID
10 DISCLOSURE OF THEIR CONTENTS TO COMPETING OFFERORS.

11 (F) EVALUATION.--A PUBLIC ENTITY SHALL EVALUATE EACH
12 PROPOSAL TO DETERMINE WHICH PROPOSAL HAS THE BEST VALUE FOR AND
13 IS IN THE BEST INTEREST OF THE PUBLIC ENTITY. IN MAKING THIS
14 DETERMINATION, A PUBLIC ENTITY MAY CONSIDER ANY OF THE
15 FOLLOWING:

16 (1) COST.

17 (2) PRICE.

18 (3) FINANCIAL COMMITMENT.

19 (4) INNOVATIVE FINANCING.

20 (5) BONDING.

21 (6) TECHNICAL, SCIENTIFIC, TECHNOLOGICAL OR
22 SOCIOECONOMIC MERIT.

23 (7) FINANCIAL STRENGTH AND VIABILITY.

24 (8) DESIGN, OPERATION AND FEASIBILITY OF THE
25 TRANSPORTATION PROJECT.

26 (9) PUBLIC REPUTATION, QUALIFICATIONS, INDUSTRY
27 EXPERIENCE AND FINANCIAL CAPACITY OF THE PRIVATE ENTITY.

28 (10) THE ABILITY OF THE TRANSPORTATION PROJECT TO
29 IMPROVE ECONOMIC GROWTH, TO IMPROVE PUBLIC SAFETY, TO REDUCE
30 CONGESTION, TO INCREASE CAPACITY OR TO REHABILITATE,

1 RECONSTRUCT OR EXPAND AN EXISTING TRANSPORTATION FACILITY.

2 (11) THE COMPATIBILITY OF THE PROPOSAL WITH EXISTING
3 LOCAL AND REGIONAL LAND USE PLANS.

4 (12) THE COMMITMENT OF LOCAL COMMUNITIES TO APPROVE LAND
5 USE PLANS IN PREPARATION FOR THE TRANSPORTATION PROJECT.

6 (13) OTHER FACTORS DEEMED APPROPRIATE BY THE PUBLIC
7 ENTITY.

8 (G) WEIGHTED CONSIDERATION.--THE RELATIVE IMPORTANCE OF EACH
9 EVALUATION FACTOR SHALL BE FIXED PRIOR TO OPENING THE PROPOSALS.

10 (H) PARTICIPATION IN EVALUATION.--IF THE PUBLIC ENTITY IS
11 THE COMMONWEALTH, THE DEPARTMENT IS REQUIRED TO INVITE ITS
12 COMPTROLLER TO PARTICIPATE IN THE EVALUATION AS A NONVOTING
13 MEMBER OF ANY EVALUATION COMMITTEE. NO INDIVIDUAL WHO HAS BEEN
14 EMPLOYED BY AN OFFEROR WITHIN THE LAST TWO YEARS MAY PARTICIPATE
15 IN THE EVALUATION OF PROPOSALS.

16 (I) DISCUSSION WITH RESPONSIBLE OFFERORS AND REVISION OF
17 PROPOSALS.--AS PROVIDED IN THE REQUEST FOR PROPOSALS,
18 DISCUSSIONS AND NEGOTIATIONS MAY BE CONDUCTED WITH RESPONSIBLE
19 OFFERORS FOR THE PURPOSE OF CLARIFICATION AND OF OBTAINING BEST
20 AND FINAL OFFERS. RESPONSIBLE OFFERS SHALL BE ACCORDED FAIR AND
21 EQUAL TREATMENT WITH RESPECT TO ANY OPPORTUNITY FOR DISCUSSION
22 AND REVISION OF PROPOSALS. IN CONDUCTING DISCUSSIONS, THERE
23 SHALL BE NO DISCLOSURE OF ANY INFORMATION DERIVED FROM PROPOSALS
24 SUBMITTED BY COMPETING OFFERORS.

25 (J) SELECTION FOR NEGOTIATION.--THE RESPONSIBLE OFFEROR
26 WHOSE PROPOSAL IS DETERMINED IN WRITING TO BE THE BEST VALUE FOR
27 AND IN THE BEST INTERESTS OF THE PUBLIC ENTITY, TAKING INTO
28 CONSIDERATION ALL EVALUATION FACTORS, SHALL BE SELECTED FOR
29 CONTRACT NEGOTIATION.

30 (K) CANCELLATION.--A REQUEST FOR PROPOSALS MAY BE CANCELED

1 AT ANY TIME PRIOR TO THE TIME A PUBLIC-PRIVATE TRANSPORTATION
2 PARTNERSHIP AGREEMENT IS EXECUTED BY ALL PARTIES WHEN IT IS IN
3 THE BEST INTERESTS OF THE PUBLIC ENTITY.

4 (L) AWARD.--UPON REACHING AN AGREEMENT WITH A RESPONSIBLE
5 OFFEROR, A PUBLIC ENTITY SHALL ENTER INTO A PUBLIC-PRIVATE
6 TRANSPORTATION PARTNERSHIP AGREEMENT WITH THE RESPONSIBLE
7 OFFEROR. THE PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT
8 SHALL BE CONSISTENT WITH THE REQUIREMENTS OF THIS CHAPTER. IF
9 AGREEMENT CANNOT BE REACHED WITH THE BEST QUALIFIED RESPONSIBLE
10 OFFEROR, THEN NEGOTIATIONS WILL BE FORMALLY TERMINATED WITH THE
11 OFFEROR. IF PROPOSALS WERE SUBMITTED BY ONE OR MORE OTHER
12 RESPONSIBLE OFFERORS, NEGOTIATIONS MAY BE CONDUCTED WITH THE
13 OTHER RESPONSIBLE OFFEROR OR RESPONSIBLE OFFERORS IN THE ORDER
14 OF THEIR RESPECTIVE QUALIFICATION RANKING. THE CONTRACT MAY BE
15 AWARDED TO THE RESPONSIBLE OFFEROR THEN RANKED AS BEST
16 QUALIFIED.

17 (M) RESOLUTION OF CONTROVERSIES INVOLVING THE
18 COMMONWEALTH.--IF A PROSPECTIVE OFFEROR, OFFEROR OR DEVELOPMENT
19 ENTITY IS AGGRIEVED BY A SELECTION UNDER THIS SECTION AND THE
20 PUBLIC ENTITY OR PROPRIETARY PUBLIC ENTITY IN THE INVITATION OR
21 CONTRACT IS THE COMMONWEALTH OR THE PENNSYLVANIA TURNPIKE
22 COMMISSION, THE PROSPECTIVE OFFEROR, OFFEROR OR DEVELOPMENT
23 ENTITY MAY FILE A PROTEST OR A CLAIM, AS APPROPRIATE, IN
24 ACCORDANCE WITH 62 PA.C.S. CH. 17 (RELATING TO LEGAL AND
25 CONTRACTUAL REMEDIES).

26 (N) RESOLUTION OF CONTROVERSIES NOT INVOLVING THE
27 COMMONWEALTH.--IF A DEVELOPMENT ENTITY IS AGGRIEVED BY A
28 SELECTION UNDER THIS SECTION AND THE PROPRIETARY PUBLIC ENTITY
29 IN THE CONTRACT IS AN ENTITY OTHER THAN THE COMMONWEALTH, A
30 DEVELOPMENT ENTITY MAY FILE A CLAIM WITH THE COURT OF COMMON

1 PLEAS WHERE THE PROPRIETARY PUBLIC ENTITY IS LOCATED. THE
2 PROCESS FOR THE FILING AND RESOLUTION OF CLAIMS, INCLUDING
3 RIGHTS, CONTENTS, TIMING, EVALUATION, DETERMINATION AND
4 REMEDIES, WHICH ARE ESTABLISHED IN 62 PA.C.S. CH. 17, SHALL
5 APPLY INSOFAR AS THEY ARE PRACTICABLE.

6 § 9111. PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT.

7 (A) AGREEMENT PROVISIONS.--A PUBLIC-PRIVATE TRANSPORTATION
8 PARTNERSHIP AGREEMENT SHALL INCLUDE THE FOLLOWING PROVISIONS:

9 (1) A DESCRIPTION OF ANY PLANNING, DEVELOPMENT, DESIGN,
10 LEASING, ACQUISITION OR INTEREST IN, FINANCING, INSTALLATION,
11 CONSTRUCTION, RECONSTRUCTION, REPLACEMENT, EXPANSION,
12 OPERATION, MAINTENANCE, IMPROVEMENT, EQUIPPING, MODIFICATION,
13 EXPANSION, ENLARGEMENT, MANAGEMENT, RUNNING, CONTROL AND
14 OPERATION OF THE PUBLIC-PRIVATE TRANSPORTATION PROJECT.

15 (2) THE TERM OF THE PUBLIC-PRIVATE TRANSPORTATION
16 PARTNERSHIP AGREEMENT.

17 (3) THE TYPE OF PROPERTY INTEREST OR OTHER RELATIONSHIP
18 THE DEVELOPMENT ENTITY WILL HAVE IN OR WITH RESPECT TO THE
19 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP PROJECT, INCLUDING
20 ACQUISITION OF RIGHTS-OF-WAY AND OTHER PROPERTY INTERESTS
21 THAT MAY BE REQUIRED.

22 (4) AUTHORIZATION FOR THE PROPRIETARY PUBLIC ENTITY OR
23 ITS AUTHORIZED REPRESENTATIVES TO INSPECT ALL ASSETS AND
24 PROPERTIES OF THE PUBLIC-PRIVATE TRANSPORTATION PROJECT AND
25 ALL BOOKS AND RECORDS OF THE DEVELOPMENT ENTITY RELATING TO
26 THE PUBLIC-PRIVATE TRANSPORTATION PROJECT TO REVIEW THE
27 DEVELOPMENT ENTITY'S PERFORMANCE UNDER THE PUBLIC-PRIVATE
28 TRANSPORTATION PARTNERSHIP AGREEMENT.

29 (5) GROUNDS FOR TERMINATION OF THE PUBLIC-PRIVATE
30 TRANSPORTATION PARTNERSHIP AGREEMENT BY THE PARTIES.

1 (6) PROCEDURES FOR AMENDMENT OF THE PUBLIC-PRIVATE
2 TRANSPORTATION PARTNERSHIP AGREEMENT.

3 (7) THE RIGHTS AND REMEDIES AVAILABLE IN THE EVENT OF
4 BREACH, DEFAULT OR DELAY.

5 (8) REQUIREMENTS FOR A PRIVATE DEVELOPMENT ENTITY TO
6 PROVIDE PERFORMANCE AND PAYMENT BONDS, PARENT COMPANY
7 GUARANTEES, LETTERS OF CREDIT OR OTHER ACCEPTABLE FORMS OF
8 SECURITY IN AN AMOUNT ACCEPTABLE TO THE PROPRIETARY PUBLIC
9 ENTITY.

10 (9) A REQUIREMENT THAT OWNERSHIP OF A TRANSPORTATION
11 FACILITY ACQUIRED OR CONSTRUCTED GO TO OR REMAIN WITH THE
12 PROPRIETARY PUBLIC ENTITY.

13 (10) STANDARDS FOR CONSTRUCTION, MAINTENANCE AND
14 OPERATION OF THE PUBLIC-PRIVATE TRANSPORTATION PROJECT IF THE
15 ACTIVITIES ARE TO BE PERFORMED BY THE DEVELOPMENT ENTITY.

16 (11) STANDARDS FOR CAPITAL IMPROVEMENT OR MODIFICATION
17 OF THE PUBLIC-PRIVATE TRANSPORTATION PROJECT IF THEY ARE TO
18 BE MADE BY THE DEVELOPMENT ENTITY.

19 (12) STANDARDS RELATING TO HOW PAYMENTS, IF ANY, ARE TO
20 BE MADE BY THE PROPRIETARY PUBLIC ENTITY TO THE DEVELOPMENT
21 ENTITY, INCLUDING AVAILABILITY PAYMENTS, PERFORMANCE-BASED
22 PAYMENT AND PAYMENTS OF MONEY AND REVENUE-SHARING WITH THE
23 DEVELOPMENT ENTITY.

24 (13) STANDARDS RELATING TO HOW THE PARTIES WILL ALLOCATE
25 AND SHARE MANAGEMENT OF THE RISKS OF THE PUBLIC-PRIVATE
26 TRANSPORTATION PROJECT.

27 (14) STANDARDS RELATING TO HOW THE PARTIES WILL ALLOCATE
28 COSTS OF DEVELOPMENT OF THE PUBLIC-PRIVATE TRANSPORTATION
29 PROJECT, INCLUDING ANY COST OVERRUNS.

30 (15) STANDARDS RELATING TO DAMAGES TO BE ASSESSED FOR

1 NONPERFORMANCE, SPECIFYING REMEDIES AVAILABLE TO THE PARTIES
2 AND DISPUTE RESOLUTION PROCEDURES.

3 (16) STANDARDS RELATING TO PERFORMANCE CRITERIA AND
4 INCENTIVES.

5 (17) A REQUIREMENT THAT UPON TERMINATION OF THE PUBLIC-
6 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT, A
7 TRANSPORTATION FACILITY THAT WAS THE SUBJECT OF THE PUBLIC-
8 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT MUST BE IN A
9 STATE OF PROPER MAINTENANCE AND REPAIR AND SHALL BE RETURNED
10 TO THE PROPRIETARY PUBLIC ENTITY IN SATISFACTORY CONDITION AT
11 NO FURTHER COST TO THE PROPRIETARY PUBLIC ENTITY.

12 (18) PROVISIONS FOR LAW ENFORCEMENT RELATED TO THE
13 PUBLIC-PRIVATE TRANSPORTATION PROJECT.

14 (19) AN OBLIGATION OF THE DEVELOPMENT ENTITY TO OFFER
15 EMPLOYMENT TO ANY EMPLOYEE OF THE PROPRIETARY PUBLIC ENTITY
16 WHO WOULD LOSE EMPLOYMENT DUE TO THE EXECUTION OF THE PUBLIC-
17 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT AND WHO IS IN
18 GOOD STANDING AT THE TIME OF EXECUTION OF THE PUBLIC-PRIVATE
19 TRANSPORTATION PARTNERSHIP AGREEMENT, INCLUDING SALARY,
20 RETIREMENT, HEALTH AND WELFARE AND BENEFITS WHICH ARE
21 SUBSTANTIALLY IDENTICAL TO THE BENEFITS RECEIVED BY THE
22 EMPLOYEES IMMEDIATELY PRIOR TO EXECUTION OF THE PUBLIC-
23 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT FOR THE TERM OF
24 THE COLLECTIVE BARGAINING AGREEMENT OF THOSE EMPLOYEES IN
25 EFFECT. AN EMPLOYEE OF THE PROPRIETARY PUBLIC ENTITY WHO DOES
26 NOT ACCEPT EMPLOYMENT WITH THE DEVELOPMENT ENTITY SHALL BE
27 REASSIGNED TO AN EQUIVALENT POSITION, WITHOUT LOSS OF
28 SENIORITY, WITHIN A WORKSITE IN AS CLOSE PROXIMITY TO THE
29 PUBLIC-PRIVATE TRANSPORTATION PROJECT AS FEASIBLE. NOTHING IN
30 THIS PARAGRAPH SHALL IMPAIR PROVISIONS RELATED TO FURLOUGHS

1 AND LAYOFFS OF THE COLLECTIVE BARGAINING AGREEMENT OF THOSE
2 EMPLOYEES IN EFFECT.

3 (20) OTHER TERMS AND PROVISIONS AS REQUIRED UNDER THIS
4 CHAPTER OR AGREED TO BY THE DEVELOPMENT ENTITY AND THE
5 PROPRIETARY PUBLIC ENTITY.

6 (B) TERM.--THE PROPRIETARY PUBLIC ENTITY MAY ENTER INTO A
7 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT WITH ANY
8 DEVELOPMENT ENTITY THAT INCLUDES THE PROVISIONS UNDER SUBSECTION
9 (A) FOR A TERM NOT TO EXCEED 99 YEARS.

10 (C) PUBLIC PARTNER.--NOTHING IN THIS CHAPTER SHALL PROHIBIT
11 THE DEPARTMENT FROM ENTERING INTO A PUBLIC-PRIVATE
12 TRANSPORTATION PARTNERSHIP AGREEMENT WITH ANOTHER COMMONWEALTH
13 AGENCY IN ACCORDANCE WITH THIS CHAPTER.

14 (D) PUBLIC ENTITY.--NOTHING IN THIS CHAPTER SHALL PROHIBIT A
15 PUBLIC ENTITY FROM ENTERING INTO A PUBLIC-PRIVATE TRANSPORTATION
16 PARTNERSHIP AGREEMENT WITH ONE OR MORE PUBLIC ENTITIES IN
17 ACCORDANCE WITH THIS CHAPTER.

18 (E) ENVIRONMENTAL COSTS.--

19 (1) A PROPRIETARY PUBLIC ENTITY MAY PROVIDE IN A PUBLIC-
20 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT THAT IT WILL PAY
21 OR REIMBURSE, ON TERMS THAT IT DEEMS APPROPRIATE, THE
22 DEVELOPMENT ENTITY FOR ACTUAL COSTS ASSOCIATED WITH NECESSARY
23 REMEDICATION FOR EXISTING ENVIRONMENTAL CONTAMINANTS LOCATED
24 ON, UNDER OR EMANATING FROM THE REAL PROPERTY ASSOCIATED WITH
25 A PUBLIC-PRIVATE TRANSPORTATION PROJECT AS OF THE DATE THE
26 DEVELOPMENT ENTITY ASSUMES RESPONSIBILITY FOR THE PUBLIC-
27 PRIVATE TRANSPORTATION PROJECT. IF THE PUBLIC-PRIVATE
28 TRANSPORTATION PARTNERSHIP AGREEMENT PROVIDES FOR
29 ENVIRONMENTAL REMEDIATION, THE PUBLIC-PRIVATE TRANSPORTATION
30 PARTNERSHIP AGREEMENT SHALL REQUIRE THAT THE PROPRIETARY

1 PUBLIC ENTITY BE GIVEN:

2 (I) PROMPT NOTICE OF ANY CLAIM AGAINST THE
3 PROPRIETARY PUBLIC ENTITY OR A THIRD PARTY PERTAINING TO
4 THE CONTAMINANTS.

5 (II) THE RIGHT TO ELECT TO UNDERTAKE THE NECESSARY
6 REMEDICATION.

7 (III) THE RIGHT TO PARTICIPATE IN THE DEFENSE OF OR
8 RESPONSE TO ANY CLAIM.

9 (IV) THE RIGHT OF PRIOR APPROVAL BEFORE THE
10 DEVELOPMENT ENTITY MAY SETTLE ANY CLAIM.

11 (2) NO PAYMENT BY A PROPRIETARY PUBLIC ENTITY UNDER THIS
12 SECTION MAY BE FOR ANYTHING OTHER THAN ACTUAL COSTS INCURRED
13 BY A DEVELOPMENT ENTITY TO REMEDIATE THE ENVIRONMENTAL
14 CONTAMINATION ON, UNDER OR EMANATING FROM THE REAL PROPERTY
15 ASSOCIATED WITH THE PUBLIC-PRIVATE TRANSPORTATION PROJECT AS
16 OF THE DATE THE DEVELOPMENT ENTITY ASSUMES RESPONSIBILITY FOR
17 THE PUBLIC-PRIVATE TRANSPORTATION PROJECT.

18 (F) USER FEES.--A PROVISION ESTABLISHING WHETHER USER FEES
19 WILL BE IMPOSED FOR USE OF THE PUBLIC-PRIVATE TRANSPORTATION
20 PROJECT AND THE BASIS BY WHICH ANY USER FEES WILL BE IMPOSED AND
21 COLLECTED SHALL BE DETERMINED IN THE PUBLIC-PRIVATE
22 TRANSPORTATION PARTNERSHIP AGREEMENT. IF A USER FEE IS PROPOSED
23 AS PART OF THE PUBLIC-PRIVATE TRANSPORTATION PROJECT, A
24 PROPRIETARY PUBLIC ENTITY SHALL INCLUDE PROVISIONS IN THE
25 AGREEMENT THAT AUTHORIZE THE COLLECTION OF USER FEES, TOLLS,
26 FARES OR SIMILAR CHARGES, INCLUDING PROVISIONS THAT:

27 (1) SPECIFY TECHNOLOGY TO BE USED IN THE PUBLIC-PRIVATE
28 TRANSPORTATION PROJECT.

29 (2) ESTABLISH CIRCUMSTANCES UNDER WHICH THE PROPRIETARY
30 PUBLIC ENTITY MAY RECEIVE A SHARE OF REVENUES FROM THE

1 CHARGES.

2 (3) GOVERN THE ENFORCEMENT OF ELECTRONIC TOLLS,
3 INCLUDING PROVISIONS FOR USE OF AVAILABLE TECHNOLOGY.

4 (4) ESTABLISH PAYMENT COLLECTION STANDARDS, INCLUDING
5 PROVISIONS FOR ENFORCEMENT OF NONPAYMENT AND PENALTIES.

6 (5) IN THE EVENT AN OPERATOR OF A VEHICLE FAILS TO PAY
7 THE PRESCRIBED TOLL OR USER FEE AT ANY LOCATION ON A PUBLIC-
8 PRIVATE TRANSPORTATION PROJECT WHERE TOLLS OR USER FEES ARE
9 COLLECTED BY MEANS OF AN ELECTRONIC OR OTHER AUTOMATED OR
10 REMOTE FORM OF COLLECTION, THE COLLECTION PROVISIONS OF
11 SECTION 8117 (RELATING TO ELECTRONIC TOLL COLLECTION) SHALL
12 APPLY EXCEPT THAT THE DEVELOPMENT ENTITY SHALL POSSESS ALL OF
13 THE RIGHTS, ROLES, LIMITATIONS AND RESPONSIBILITIES OF THE
14 PENNSYLVANIA TURNPIKE COMMISSION.

15 (G) AMOUNTS RECEIVED UNDER A PUBLIC-PRIVATE TRANSPORTATION
16 PARTNERSHIP AGREEMENT.--THE NET PROCEEDS RECEIVED BY THE
17 PROPRIETARY PUBLIC ENTITY UNDER A PUBLIC-PRIVATE TRANSPORTATION
18 PARTNERSHIP AGREEMENT SHALL BE AVAILABLE EXCLUSIVELY TO PROVIDE
19 FUNDING FOR TRANSPORTATION NEEDS IN THIS COMMONWEALTH. THE USE
20 OF THE PROCEEDS OR OTHER REVENUES FROM THE PUBLIC-PRIVATE
21 TRANSPORTATION PROJECT SHALL COMPLY WITH FEDERAL OR STATE LAW
22 RESTRICTING OR LIMITING THE USE OF REVENUE FROM THE PUBLIC-
23 PRIVATE TRANSPORTATION PROJECT BASED ON ITS PUBLIC FUNDING.

24 § 9112. RECORDS OF REQUESTS.

25 THE FOLLOWING SHALL APPLY:

26 (1) UPON THE SELECTION OF A DEVELOPMENT ENTITY TO BE A
27 PARTY TO A PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP
28 AGREEMENT, THE IDENTITY OF THE DEVELOPMENT ENTITY SELECTED,
29 THE CONTENTS OF THE RESPONSE OF THE DEVELOPMENT ENTITY TO THE
30 REQUEST FOR PROPOSALS, THE FINAL PROPOSAL SUBMITTED BY THE

1 DEVELOPMENT ENTITY AND THE FORM OF THE PUBLIC-PRIVATE
2 TRANSPORTATION PARTNERSHIP AGREEMENT SHALL BE MADE PUBLIC.
3 ANY FINANCIAL INFORMATION OF A DEVELOPMENT ENTITY THAT WAS
4 REQUESTED IN THE REQUEST FOR PROPOSALS OR DURING DISCUSSIONS
5 AND NEGOTIATIONS TO DEMONSTRATE THE ECONOMIC CAPABILITY OF A
6 DEVELOPMENT ENTITY TO FULLY PERFORM THE REQUIREMENTS OF THE
7 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT SHALL NOT
8 BE SUBJECT TO PUBLIC INSPECTION.

9 (2) A PROPRIETARY PUBLIC AND A PRIVATE DEVELOPMENT
10 ENTITY MAY AGREE, IN THEIR DISCRETION, TO MAKE PUBLIC ANY
11 INFORMATION DESCRIBED UNDER PARAGRAPH (1) THAT WOULD NOT
12 OTHERWISE BE SUBJECT TO PUBLIC INSPECTION.

13 (3) IF A PROPRIETARY PUBLIC ENTITY TERMINATES A PUBLIC-
14 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT FOR DEFAULT,
15 REJECTS A PRIVATE ENTITY ON THE GROUNDS THAT THE PRIVATE
16 ENTITY IS NOT RESPONSIBLE OR SUSPENDS OR DEBARS A DEVELOPMENT
17 ENTITY, THE PRIVATE ENTITY OR DEVELOPMENT ENTITY, AS
18 APPROPRIATE, SHALL, UPON WRITTEN REQUEST, BE PROVIDED WITH A
19 COPY OF THE INFORMATION CONTAINED IN THE FILE OF THE PRIVATE
20 ENTITY OR DEVELOPMENT ENTITY MAINTAINED BY THE PROPRIETARY
21 PUBLIC ENTITY UNDER A CONTRACTOR RESPONSIBILITY PROGRAM.

22 (4) THE FOLLOWING INFORMATION SHALL NOT BE PUBLIC:

23 (I) INFORMATION RELATING TO PROPRIETARY INFORMATION,
24 TRADE SECRETS, PATENTS OR EXCLUSIVE LICENSES,
25 ARCHITECTURAL AND ENGINEERING PLANS AND INFORMATION
26 RELATING TO COMPETITIVE MARKETING MATERIALS AND
27 STRATEGIES.

28 (II) SECURITY INFORMATION, INCLUDING RISK PREVENTION
29 PLANS, DETECTION AND COUNTERMEASURES, EMERGENCY
30 MANAGEMENT PLANS, SECURITY AND SURVEILLANCE PLANS,

1 EQUIPMENT AND USAGE PROTOCOLS AND COUNTERMEASURES.

2 (III) RECORDS CONSIDERED NONPUBLIC MATTERS OR
3 INFORMATION BY THE SECURITIES AND EXCHANGE COMMISSION
4 UNDER 17 CFR 200.80 (RELATING TO COMMISSION RECORDS AND
5 INFORMATION).

6 (IV) ANY FINANCIAL INFORMATION DEEMED CONFIDENTIAL
7 BY THE PROPRIETARY PUBLIC ENTITY UPON A SHOWING OF GOOD
8 CAUSE BY THE OFFEROR OR DEVELOPMENT ENTITY.

9 (V) RECORDS PREPARED OR UTILIZED TO EVALUATE A
10 PROPOSAL.

11 § 9113. USE OF INTELLECTUAL PROPERTY.

12 UNLESS OTHERWISE AGREED AND EXCEPT TO THE EXTENT NOT
13 TRANSFERABLE BY LAW, THE DEPARTMENT OR A PROPRIETARY PUBLIC
14 ENTITY SHALL HAVE THE RIGHT TO USE ALL OR A PORTION OF A
15 SUBMITTED PROPOSAL, INCLUDING THE TECHNOLOGIES, TECHNIQUES,
16 METHODS, PROCESSES AND INFORMATION CONTAINED IN THE PROPOSAL.
17 NOTICE OF NONTRANSFERABILITY BY LAW SHALL BE GIVEN TO THE
18 DEPARTMENT AND THE PROPRIETARY PUBLIC ENTITY IN RESPONSE TO THE
19 REQUEST FOR PROPOSALS.

20 § 9114. POLICE POWERS AND VIOLATIONS OF LAW.

21 (A) ENFORCEMENT OF TRAFFIC LAWS.--TO THE EXTENT THE PUBLIC-
22 PRIVATE TRANSPORTATION PROJECT IS A HIGHWAY, BRIDGE, TUNNEL
23 OVERPASS OR SIMILAR TRANSPORTATION FACILITY FOR MOTOR VEHICLES,
24 75 PA.C.S. (RELATING TO VEHICLES) AND OTHER LAWS OF THIS
25 COMMONWEALTH OR, IF APPLICABLE, ANY LOCAL JURISDICTION SHALL BE
26 THE SAME AS THOSE APPLYING TO CONDUCT ON SIMILAR TRANSPORTATION
27 FACILITIES IN THIS COMMONWEALTH OR THE LOCAL JURISDICTION.
28 PUNISHMENT FOR OFFENSES SHALL BE PRESCRIBED BY LAW FOR CONDUCT
29 OCCURRING ON SIMILAR TRANSPORTATION FACILITIES IN THIS
30 COMMONWEALTH OR THE LOCAL JURISDICTION.

1 (B) ARREST POWERS.--ALL OFFICERS AUTHORIZED BY LAW TO MAKE
2 ARRESTS FOR VIOLATIONS OF LAW IN THIS COMMONWEALTH SHALL HAVE
3 THE SAME POWERS, DUTIES AND JURISDICTION WITHIN THE LIMITS OF A
4 PUBLIC-PRIVATE TRANSPORTATION PROJECT AS THEY HAVE IN THEIR
5 RESPECTIVE AREAS OF JURISDICTION. THE GRANT OF AUTHORITY UNDER
6 THIS SECTION SHALL NOT EXTEND TO THE PRIVATE OFFICES, BUILDINGS,
7 GARAGES AND OTHER IMPROVEMENTS OF A DEVELOPMENT ENTITY TO ANY
8 GREATER DEGREE THAN THE POLICE POWER EXTENDS TO ANY OTHER
9 PRIVATE OFFICES, BUILDINGS, GARAGES AND OTHER IMPROVEMENTS.
10 § 9115. ENVIRONMENTAL AND OTHER AUTHORIZATIONS.

11 (A) THE ADMINISTRATIVE CODE OF 1929.--NOTWITHSTANDING ANY
12 OTHER PROVISION OF LAW, NEITHER SOLICITING NOR APPROVING A
13 REQUEST FOR PROPOSALS, NOR EXECUTING A PUBLIC-PRIVATE
14 TRANSPORTATION PARTNERSHIP AGREEMENT UNDER THIS CHAPTER SHALL
15 CONSTITUTE THE SUBMISSION OF A PRELIMINARY PLAN OR DESIGN TO THE
16 DEPARTMENT UNDER SECTION 2002(B) OF THE ACT OF APRIL 9, 1929
17 (P.L.177, NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF 1929.

18 (B) ENVIRONMENTAL AUTHORIZATIONS.--A PUBLIC-PRIVATE
19 TRANSPORTATION PARTNERSHIP AGREEMENT MAY REQUIRE THAT PRIOR TO
20 COMMENCING ANY CONSTRUCTION IN CONNECTION WITH THE DEVELOPMENT,
21 OPERATION OR FINANCING OF ANY PUBLIC-PRIVATE TRANSPORTATION
22 PROJECT IF THE AGREEMENT REQUIRES ENVIRONMENTAL AUTHORIZATIONS
23 TO BE OBTAINED, THE DEVELOPMENT ENTITY SHALL DO ANY OF THE
24 FOLLOWING:

25 (1) SECURE ALL NECESSARY ENVIRONMENTAL PERMITS AND
26 AUTHORIZATIONS AND, IF SPECIFIED UNDER THE ACT OF MAY 19,
27 1995 (P.L.4, NO.2), KNOWN AS THE LAND RECYCLING AND
28 ENVIRONMENTAL REMEDIATION STANDARDS ACT, OBTAIN THE APPROVAL
29 OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.

30 (2) COMPLETE ENVIRONMENTAL REMEDIATION OF THE SITE ON

1 WHICH THE PUBLIC-PRIVATE TRANSPORTATION PROJECT IS TO BE
2 LOCATED, INCLUDING ACTS REQUIRED UNDER ANY AGREEMENT ENTERED
3 INTO WITH THE DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR
4 REMEDICATION OF THE SITE UNDER THE LAND RECYCLING AND
5 ENVIRONMENTAL REMEDIATION STANDARDS ACT.

6 § 9116. TAXATION OF DEVELOPMENT ENTITY.

7 (A) GENERAL RULE.--TO THE EXTENT THAT REVENUES OR USER FEES
8 RECEIVED BY A DEVELOPMENT ENTITY PURSUANT TO A PUBLIC-PRIVATE
9 TRANSPORTATION PARTNERSHIP AGREEMENT ARE SUBJECT TO A TAX
10 IMPOSED BY A POLITICAL SUBDIVISION PRIOR TO THE EFFECTIVE DATE
11 OF THIS SECTION, THE REVENUES OR USER FEES SHALL CONTINUE TO BE
12 SUBJECT TO THE TAX AND TO FUTURE INCREASES IN THE RATE OF THE
13 TAX.

14 (B) NEW TAXATION BARRED.--AFTER THE EFFECTIVE DATE OF THIS
15 SECTION, NO NEW TAX SHALL BE IMPOSED BY A POLITICAL SUBDIVISION
16 OR THE COMMONWEALTH ON THE REVENUES OR USER FEES RECEIVED BY A
17 DEVELOPMENT ENTITY PURSUANT TO A PUBLIC-PRIVATE TRANSPORTATION
18 PARTNERSHIP AGREEMENT.

19 (C) REALTY TRANSFER TAX.--NO PUBLIC-PRIVATE TRANSPORTATION
20 PARTNERSHIP AGREEMENT, LEASE, CONCESSION, FRANCHISE OR OTHER
21 CONTRACT INVOLVING REAL PROPERTY OF A PUBLIC-PRIVATE
22 TRANSPORTATION PROJECT SHALL BE SUBJECT TO A COMMONWEALTH OR
23 LOCAL REALTY TRANSFER TAX IMPOSED UNDER THE ACT OF DECEMBER 31,
24 1965 (P.L.1257, NO.511), KNOWN AS THE LOCAL TAX ENABLING ACT,
25 THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), KNOWN AS THE TAX REFORM
26 CODE OF 1971, OR A SUCCESSOR STATUTE.

27 (D) PROPERTY.--PROPERTY USED IN CONNECTION WITH A PUBLIC-
28 PRIVATE TRANSPORTATION PROJECT SHALL BE CONSIDERED PUBLIC
29 PROPERTY AND SHALL BE EXEMPT FROM AD VALOREM PROPERTY TAXES AND
30 SPECIAL ASSESSMENTS LEVIED AGAINST PROPERTY BY THE COMMONWEALTH

1 OR ANY POLITICAL SUBDIVISION.

2 § 9117. POWER OF EMINENT DOMAIN.

3 THE EXERCISE OF THE POWER OF EMINENT DOMAIN BY ANY CONDEMNOR
4 TO ACQUIRE PROPERTY FOR PUBLIC-PRIVATE TRANSPORTATION PROJECT
5 PURPOSES UNDER A PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP
6 AGREEMENT SHALL BE CONSIDERED A TAKING FOR A PUBLIC PURPOSE AND
7 NOT FOR A PRIVATE PURPOSE OR FOR PRIVATE ENTERPRISE.

8 § 9118. SOVEREIGN IMMUNITY.

9 UNDER SECTION 11 OF ARTICLE 1 OF THE CONSTITUTION OF
10 PENNSYLVANIA, IT IS DECLARED TO BE THE INTENT OF THE GENERAL
11 ASSEMBLY THAT THE COMMONWEALTH, AND ITS OFFICIALS AND EMPLOYEES
12 AND A MUNICIPAL AUTHORITY, AND ITS OFFICIALS AND EMPLOYEES,
13 ACTING WITHIN THE SCOPE OF THEIR DUTIES, SHALL CONTINUE TO ENJOY
14 SOVEREIGN IMMUNITY AND OFFICIAL IMMUNITY AND REMAIN IMMUNE FROM
15 SUIT EXCEPT AS PROVIDED IN SECTION 9119 (RELATING TO SPECIFIC
16 PERFORMANCE). A CLAIM AGAINST THE COMMONWEALTH AND ITS OFFICIALS
17 AND EMPLOYEES OR MUNICIPAL AUTHORITY AND ITS OFFICIALS AND
18 EMPLOYEES SHALL BE BROUGHT ONLY IN SUCH MANNER AND IN SUCH
19 COURTS AND IN SUCH CASES AS DIRECTED BY THE PROVISION OF SECTION
20 9111(E) (RELATING TO PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP
21 AGREEMENT), 42 PA.C.S. CH. 85 (RELATING TO MATTERS AFFECTING
22 GOVERNMENT UNITS), 62 PA.C.S. CH. 17 (RELATING TO LEGAL AND
23 CONTRACTUAL REMEDIES) OR ANY PROCUREMENT LAW APPLICABLE TO A
24 MUNICIPAL AUTHORITY.

25 § 9119. SPECIFIC PERFORMANCE.

26 A PROPRIETARY PUBLIC ENTITY IS AUTHORIZED TO AGREE THAT
27 SPECIFIC PERFORMANCE SHALL BE AVAILABLE TO A DEVELOPMENT ENTITY
28 AS A REMEDY FOR A BREACH BY THE PROPRIETARY PUBLIC ENTITY OF ITS
29 REPRESENTATIONS, COVENANTS, WARRANTIES OR OTHER OBLIGATIONS
30 UNDER THE PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT TO

1 THE EXTENT SET FORTH IN THE PUBLIC-PRIVATE TRANSPORTATION
2 PARTNERSHIP AGREEMENT.

3 § 9120. APPLICABILITY OF OTHER LAWS.

4 ALL PROVISIONS OF LAWS RELATED TO THE DEVELOPMENT,
5 CONSTRUCTION, OPERATION OR FINANCING OF A TRANSPORTATION PROJECT
6 IN EFFECT ON THE DATE THE PUBLIC-PRIVATE TRANSPORTATION
7 PARTNERSHIP AGREEMENT IS FULLY EXECUTED SHALL APPLY TO A PUBLIC-
8 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT ENTERED INTO
9 BETWEEN A PROPRIETARY PUBLIC ENTITY AND A DEVELOPMENT ENTITY.

10 THE PROVISIONS SHALL INCLUDE:

11 (1) THE ACT OF MAY 1, 1913 (P.L.155, NO.104), REFERRED
12 TO AS THE SEPARATIONS ACT.

13 (2) THE ACT OF AUGUST 15, 1961 (P.L.987, NO.442), KNOWN
14 AS THE PENNSYLVANIA PREVAILING WAGE ACT.

15 (3) 62 PA.C.S. § 107 (RELATING TO RECIPROCAL
16 LIMITATIONS).

17 (4) 62 PA.C.S. § 531 (RELATING TO DEBARMENT OF
18 SUSPENSION).

19 (5) 62 PA.C.S. § 541 (RELATING TO APPROVAL OF ACCOUNTING
20 SYSTEM).

21 (6) 62 PA.C.S. § 551 (RELATING TO RIGHT TO INSPECT
22 PLANT).

23 (7) 62 PA.C.S. § 552 (RELATING TO RIGHT TO AUDIT
24 RECORDS).

25 (8) 62 PA.C.S. § 563 (RELATING TO RETENTION OF
26 PROCUREMENT RECORDS).

27 (9) 62 PA.C.S. § CH. 17 (RELATING TO LEGAL AND
28 CONTRACTUAL REMEDIES).

29 § 9121. ADVERSE INTEREST.

30 (A) PRIVATE ENTITY ADVERSE INTERESTS.--THE FOLLOWING SHALL

1 APPLY:

2 (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2), A PRIVATE
3 ENTITY WHICH SUBMITS A RESPONSE TO A REQUEST FOR PROPOSALS
4 UNDER SECTION 9110 (RELATING TO SELECTION OF DEVELOPMENT
5 ENTITIES), A REQUEST FOR TRANSPORTATION PROJECTS UNDER
6 SECTION 9107 (RELATING TO SOLICITATIONS FOR TRANSPORTATION
7 PROJECTS) OR AN UNSOLICITED PROPOSAL, AND WHICH IS ALSO A
8 STATE ADVISOR OR A STATE CONSULTANT FOR THE DEPARTMENT OR THE
9 PENNSYLVANIA TURNPIKE COMMISSION, SHALL NOT BE DEEMED TO BE
10 IN VIOLATION OF THE STATE ADVERSE INTEREST ACT WHILE ENGAGING
11 IN ANY OF THE FOLLOWING ACTIVITIES:

12 (I) PREPARING OR SUBMITTING A RESPONSE TO A REQUEST
13 FOR PROPOSALS OR TRANSPORTATION PROJECTS.

14 (II) PARTICIPATING IN ANY ACTIVITY WITH THE
15 DEPARTMENT RELATED TO A REQUEST FOR PROPOSALS OR
16 TRANSPORTATION PROJECTS.

17 (III) NEGOTIATING AND ENTERING INTO ANY CONTRACT
18 LEASE OR PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP
19 AGREEMENT WHICH RESULTS FROM A REQUEST FOR PROPOSALS OR
20 TRANSPORTATION PROJECTS.

21 (IV) ENGAGING IN ANY OTHER ACTION TAKEN IN
22 FURTHERANCE OF THE PURPOSES OF THIS CHAPTER.

23 (2) A PRIVATE ENTITY WHICH SUBMITS A RESPONSE TO A
24 REQUEST FOR PROPOSALS OR TRANSPORTATION PROJECTS OR ACTS AS A
25 CONSULTANT OR AN ADVISOR TO A PRIVATE ENTITY WHICH SUBMITS A
26 RESPONSE TO A REQUEST FOR PROPOSALS OR TRANSPORTATION
27 PROJECTS TO THE DEPARTMENT SHALL BE PROHIBITED FROM
28 CONSULTING OR PROVIDING ADVICE TO THE DEPARTMENT ON THE
29 REVIEW OR APPROVAL OF THE RESPONSE TO THE REQUEST FOR
30 PROPOSALS OR TRANSPORTATION PROJECTS AS SUBMITTED.

1 (3) A PRIVATE ENTITY WHICH SUBMITS A RESPONSE TO A
2 REQUEST FOR PROPOSALS OR TRANSPORTATION PROJECTS OR ACTS AS A
3 CONSULTANT OR AN ADVISOR TO A PRIVATE ENTITY WHICH SUBMITS A
4 RESPONSE TO A REQUEST FOR PROPOSALS OR TRANSPORTATION
5 PROJECTS TO THE BOARD SHALL BE PROHIBITED FROM CONSULTING OR
6 PROVIDING ADVICE TO THE DEPARTMENT ON THE REVIEW OR APPROVAL
7 OF THE RESPONSE TO THE REQUEST FOR PROPOSALS OR
8 TRANSPORTATION PROJECTS SO SUBMITTED.

9 (B) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
10 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
11 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

12 "STATE ADVISOR." AS DEFINED IN SECTION 2(7) OF THE ACT OF
13 JULY 19, 1957 (P.L.1017, NO.451), KNOWN AS THE STATE ADVERSE
14 INTEREST ACT.

15 "STATE CONSULTANT." AS DEFINED IN SECTION 2(9) OF THE ACT OF
16 JULY 19, 1957 (P.L.1017, NO.451), KNOWN AS THE STATE ADVERSE
17 INTEREST ACT.

18 § 9122. FEDERAL, STATE, LOCAL AND PRIVATE ASSISTANCE.

19 (A) FEDERAL ASSISTANCE.--THE FOLLOWING SHALL APPLY:

20 (1) THE DEPARTMENT OR A PROPRIETARY PUBLIC ENTITY MAY
21 ACCEPT FROM THE UNITED STATES OR ANY OF ITS AGENCIES FUNDS
22 THAT ARE AVAILABLE TO THE COMMONWEALTH FOR CARRYING OUT THIS
23 CHAPTER, WHETHER THE FUNDS ARE MADE AVAILABLE BY GRANT, LOAN,
24 LOAN GUARANTEE OR OTHERWISE.

25 (2) THE DEPARTMENT OR A PROPRIETARY PUBLIC ENTITY IS
26 AUTHORIZED TO ASSENT TO ANY FEDERAL REQUIREMENTS, CONDITIONS
27 OR TERMS OF ANY FEDERAL FUNDING ACCEPTED BY THE DEPARTMENT OR
28 A PROPRIETARY PUBLIC ENTITY UNDER THIS SECTION.

29 (3) THE DEPARTMENT OR A PROPRIETARY PUBLIC ENTITY MAY
30 ENTER INTO AGREEMENTS OR OTHER ARRANGEMENTS WITH THE UNITED

1 STATES OR ANY OF ITS AGENCIES AS MAY BE NECESSARY FOR
2 CARRYING OUT THE PURPOSES OF THIS CHAPTER.

3 (B) ACCEPTANCE OF GRANTS AND DONATIONS.--THE DEPARTMENT OR A
4 PROPRIETARY PUBLIC ENTITY MAY ACCEPT FROM ANY SOURCE ANY GRANT,
5 DONATION, GIFT OR OTHER FORM OF CONVEYANCE OF LAND, MONEY OR
6 OTHER REAL, PERSONAL OR MIXED PROPERTY OR OTHER ITEM OF VALUE
7 FOR CARRYING OUT THE PURPOSE OF THIS CHAPTER.

8 (C) CONTRIBUTIONS.--SUBJECT TO ACCEPTANCE AND AGREEMENT
9 BETWEEN THE DEVELOPMENT ENTITY AND A PROPRIETARY PUBLIC ENTITY,
10 ANY PUBLIC-PRIVATE TRANSPORTATION PROJECT MAY BE FINANCED, IN
11 WHOLE OR IN PART, BY CONTRIBUTION OF ANY FUNDS OR PROPERTY MADE
12 BY A PROPRIETARY PUBLIC ENTITY, A DEVELOPMENT ENTITY OR AN
13 AFFECTED JURISDICTION.

14 (D) COMBINATION OF FUNDS.--THE DEPARTMENT OR PROPRIETARY
15 PUBLIC ENTITY MAY COMBINE FEDERAL, STATE, LOCAL AND PRIVATE
16 FUNDS TO FINANCE A PUBLIC-PRIVATE TRANSPORTATION PROJECT UNDER
17 THIS CHAPTER.

18 (E) ITEMIZATION.--PURSUANT TO SECTION 7(A)(4) OF ARTICLE
19 VIII OF THE CONSTITUTION OF PENNSYLVANIA, A PUBLIC-PRIVATE
20 TRANSPORTATION PROJECT FUNDED, IN WHOLE OR IN PART, THROUGH THE
21 ISSUANCE OF DEBT WHERE THE CREDIT OF THE COMMONWEALTH IS PLEDGED
22 SHALL BE ITEMIZED IN A CAPITAL BUDGET ITEMIZATION ACT.

23 § 9123. PUBLIC-PRIVATE TRANSPORTATION ACCOUNT.

24 (A) ESTABLISHMENT.--

25 (1) THERE IS ESTABLISHED WITHIN THE MOTOR LICENSE FUND A
26 SEPARATE ACCOUNT TO BE KNOWN AS THE PUBLIC-PRIVATE
27 TRANSPORTATION ACCOUNT.

28 (2) MONEY IN THE ACCOUNT SHALL BE USED ONLY FOR THE
29 PURPOSES ENUMERATED UNDER SUBSECTION (C).

30 (B) DEPOSITS TO ACCOUNT.--THE FOLLOWING SHALL APPLY:

1 (1) THE DEPARTMENT SHALL DEPOSIT IN THE ACCOUNT THE
2 FOLLOWING:

3 (I) ALL MONEY RECEIVED BY THE DEPARTMENT PURSUANT TO
4 THE TERMS OF A PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP
5 AGREEMENT UNDER WHICH THE DEPARTMENT IS THE PROPRIETARY
6 PUBLIC ENTITY.

7 (II) REPAYMENT OF ANY LOANS FROM THE ACCOUNT MADE
8 UNDER THIS CHAPTER.

9 (III) SUBJECT TO THE PROVISIONS OF ANY PUBLIC-
10 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT UNDER WHICH
11 THE DEPARTMENT IS THE PROPRIETARY PUBLIC ENTITY, MONETARY
12 DAMAGES AND OTHER AMOUNTS FOR FAILURE BY A DEVELOPMENT
13 ENTITY TO COMPLY WITH THE TERMS OF THE PUBLIC-PRIVATE
14 TRANSPORTATION PARTNERSHIP AGREEMENT.

15 (IV) SUBJECT TO THE PROVISIONS OF ANY PUBLIC-PRIVATE
16 TRANSPORTATION PARTNERSHIP AGREEMENT UNDER WHICH THE
17 DEPARTMENT IS THE PROPRIETARY PUBLIC ENTITY, PAYMENTS
18 MADE FROM ANY INSURANCE PROCEEDS OR RESERVE FUNDS OR
19 PERFORMANCE OR PAYMENT BONDS IN CONNECTION WITH A PUBLIC-
20 PRIVATE TRANSPORTATION PROJECT.

21 (V) EARNINGS FROM THE INVESTMENT OF THE MONEY IN THE
22 ACCOUNT.

23 (2) THE SECRETARY OF THE BUDGET SHALL ESTABLISH ANY
24 RESTRICTED ACCOUNTS WITHIN THE ACCOUNT AS THE SECRETARY DEEMS
25 NECESSARY FOR THE PROPER ADMINISTRATION OF THE ACCOUNT.

26 (3) ALL MONEY RELATED TO ANY PUBLIC-PRIVATE
27 TRANSPORTATION PARTNERSHIP AGREEMENT IN WHICH THE DEPARTMENT
28 IS NOT THE PROPRIETARY PUBLIC ENTITY SHALL NOT BE HELD IN THE
29 ACCOUNT, BUT SHALL BE HELD BY THE PROPRIETARY PUBLIC ENTITY
30 OR ITS AGENT.

1 (C) APPROPRIATION.--THE FUNDS IN THE ACCOUNT ARE
2 CONTINUOUSLY APPROPRIATED TO THE DEPARTMENT FOR THE FOLLOWING
3 PURPOSES:

4 (1) PAYING THE AMOUNTS AS THE DEPARTMENT MAY BE REQUIRED
5 TO REPAY THE FEDERAL FUNDING AGENCIES.

6 (2) PAYING ALL AMOUNTS DESIGNATED BY THE DEPARTMENT AS
7 REQUIRED FOR REPAYMENT OR DEFEASANCE OF OUTSTANDING BONDS.

8 (3) PAYING COSTS OF MAINTENANCE, OPERATING AND FINANCING
9 OF TRANSPORTATION FACILITIES IN THIS COMMONWEALTH WHICH ARE
10 AVAILABLE FOR USE BY THE PUBLIC, INCLUDING THE COSTS OF
11 INSURANCE OR RESERVES AGAINST RISKS OF CONTINGENCIES.

12 (4) PAYING EXPENSES INCURRED UNDER OR IN CONNECTION WITH
13 ANY PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT BY
14 THE DEPARTMENT, INCLUDING PROFESSIONAL FEES AND EXPENSES.

15 (5) PAYING THE COSTS OF THE DEPARTMENT RELATING TO
16 PERFORMING AND ADMINISTERING DUTIES UNDER THIS CHAPTER.

17 (6) PAYING ALL EXPENSES APPROVED BY THE BOARD FOR ITS
18 COSTS INCURRED TO PERFORM ITS DUTIES, INCLUDING PAYING
19 PROFESSIONAL FEES AND EXPENSES.

20 (7) PAYING COSTS OF ANY PURPOSE AUTHORIZED UNDER THIS
21 CHAPTER.

22 (D) AMOUNTS RECEIVED.--THE NET PROCEEDS RECEIVED UNDER A
23 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT SHALL BE
24 AVAILABLE EXCLUSIVELY TO PROVIDE FUNDING FOR TRANSPORTATION
25 NEEDS IN THIS COMMONWEALTH. THE USE OF THE PROCEEDS OR OTHER
26 REVENUES FROM THE PUBLIC-PRIVATE TRANSPORTATION PROJECT SHALL BE
27 IN ACCORD WITH FEDERAL OR STATE LAW RESTRICTING OR LIMITING THE
28 USE OF REVENUE FROM THE PUBLIC-PRIVATE TRANSPORTATION PROJECT
29 BASED ON ITS PUBLIC FUNDING.

30 § 9124. PENNSYLVANIA TURNPIKE COMMISSION.

1 THE PENNSYLVANIA TURNPIKE COMMISSION MAY NOT ENTER INTO A
2 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT IN THE
3 CAPACITY OF A PROPRIETARY PUBLIC ENTITY WITH RESPECT TO GRANTING
4 SUBSTANTIAL OVERSIGHT AND CONTROL OVER THE TURNPIKE MAINLINE TO
5 ANOTHER ENTITY UNLESS SPECIFIC AUTHORITY IS GRANTED THROUGH AN
6 ACT OF LAW PASSED BY THE GENERAL ASSEMBLY. HOWEVER, THIS SHALL
7 NOT RESTRICT THE PENNSYLVANIA TURNPIKE COMMISSION FROM ENTERING
8 INTO A PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT UNDER
9 THIS CHAPTER OR UNDER OTHER STATUTES WHICH DOES NOT INVOLVE
10 GRANTING SUBSTANTIAL OVERSIGHT AND CONTROL OVER THE TURNPIKE
11 MAINLINE TO ANOTHER ENTITY.

12 § 9125. REGULATIONS.

13 (A) DEPARTMENT.--IN ORDER TO FACILITATE THE IMPLEMENTATION
14 OF THIS CHAPTER, THE DEPARTMENT IS AUTHORIZED TO PROMULGATE
15 REGULATIONS OR PUBLISH GUIDELINES THAT INCLUDE THE FOLLOWING:

16 (1) THE PROCESS FOR REVIEW OF A REQUEST FOR PROPOSALS OR
17 TRANSPORTATION PROJECTS OR RESPONSES TO REQUESTS FOR
18 PROPOSALS OR TRANSPORTATION PROJECTS ISSUED BY A PUBLIC
19 ENTITY.

20 (2) THE PROCESS FOR RECEIPT AND REVIEW OF AND RESPONSE
21 TO COMPETING RESPONSES TO REQUESTS FOR PROPOSALS OR
22 TRANSPORTATION PROJECTS.

23 (3) THE TYPE AND AMOUNT OF INFORMATION THAT IS NECESSARY
24 FOR ADEQUATE REVIEW OF AND RESPONSE TO EACH STAGE OF REVIEW
25 OF A PROPOSAL OR TRANSPORTATION PROJECT.

26 (4) ANY OTHER PROVISIONS WHICH ARE REQUIRED UNDER THIS
27 CHAPTER OR WHICH THE DEPARTMENT DETERMINES ARE APPROPRIATE
28 FOR IMPLEMENTATION OF THIS CHAPTER.

29 (B) TEMPORARY REGULATIONS.--NOTWITHSTANDING ANY OTHER
30 PROVISION OF LAW, ANY REGULATION PROMULGATED BY THE DEPARTMENT

1 UNDER THIS CHAPTER DURING THE TWO YEARS FOLLOWING THE EFFECTIVE
2 DATE OF THIS SECTION SHALL BE DEEMED TEMPORARY REGULATIONS WHICH
3 SHALL EXPIRE NO LATER THAN THREE YEARS FOLLOWING THE EFFECTIVE
4 DATE OF THIS SECTION OR UPON PROMULGATION OF FINAL REGULATIONS.
5 THE TEMPORARY REGULATIONS SHALL NOT BE SUBJECT TO ANY OF THE
6 FOLLOWING:

7 (1) SECTIONS 201, 202, 203 AND 204 OF THE ACT OF JULY
8 31, 1968 (P.L.769, NO.240), REFERRED TO AS THE COMMONWEALTH
9 DOCUMENTS LAW.

10 (2) THE ACT OF JUNE 25, 1982 (P.L.633, NO.181), KNOWN AS
11 THE REGULATORY REVIEW ACT.

12 SECTION 2. REPEALS ARE AS FOLLOWS:

13 (1) THE GENERAL ASSEMBLY DECLARES THAT THE REPEAL UNDER
14 PARAGRAPH (2) IS NECESSARY TO EFFECTUATE THE ADDITION OF 74
15 PA.C.S. CH. 91.

16 (2) SECTION 3 OF THE ACT OF MAY 29, 1945 (P.L.1108,
17 NO.402), REFERRED TO AS THE LIMITED ACCESS HIGHWAY LAW, IS
18 REPEALED INsofar AS IT IS INCONSISTENT WITH THE ADDITION OF
19 74 PA.C.S. CH. 91.

20 SECTION 3. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

21 (1) THE ADDITION OF 74 PA.C.S. §§ 9103, 9104, 9105, 9106
22 AND 9125 SHALL TAKE EFFECT IMMEDIATELY.

23 (2) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.

24 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
25 DAYS.