

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 555 Session of 2007

INTRODUCED BY GEIST, MARKOSEK, PERZEL, McCALL, GERBER, BEAR, BENNINGHOFF, BEYER, BIANCUCCI, BOYD, CALTAGIRONE, CAPPELLI, CARROLL, CIVERA, COX, CURRY, DENLINGER, DePASQUALE, DERMODY, FRANKEL, GALLOWAY, GERGELY, GRELL, HENNESSEY, KILLION, LEACH, MARSICO, R. MILLER, MOYER, MUSTIO, PAYNE, PICKETT, PYLE, RAPP, REICHLLEY, ROEBUCK, ROHRER, RUBLEY, SAYLOR, SCHRODER, SIPTROTH, SONNEY, SWANGER AND TURZAI, MARCH 19, 2007

REFERRED TO COMMITTEE ON TRANSPORTATION, MARCH 19, 2007

AN ACT

1 Amending Title 74 (Transportation) of the Pennsylvania
 2 Consolidated Statutes, establishing public-private
 3 transportation partnerships; conferring powers and duties on
 4 the Pennsylvania Public Utility Commission, the State
 5 Transportation Commission and the Department of
 6 Transportation; and establishing the Public-Private
 7 Transportation Partnership Fund.

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

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

12 PART V

13 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIPS

14 Chapter

15 91. Preliminary Provisions

16 92. Public-Private Transportation Partnerships

17 CHAPTER 91

18 PRELIMINARY PROVISIONS

1 Sec.

2 9101. Scope of part.

3 9102. Declaration of policy.

4 9103. Construction of part.

5 § 9101. Scope of part.

6 This part relates to public-private transportation
7 partnerships.

8 § 9102. Declaration of policy.

9 (a) Legislative findings.--The General Assembly finds and
10 declares as follows:

11 (1) There exists a public need for the timely
12 development and operation of transportation facilities within
13 this Commonwealth which address the needs of Commonwealth,
14 regional or local transportation by improving safety,
15 reducing congestion, abating environmental pollution,
16 advancing energy efficiency or conservation, improving
17 homeland security and increasing capacity or enhancing
18 economic efficiency.

19 (2) This public need may not be wholly satisfied through
20 the use of currently existing methods of financing and
21 procurement in which transportation facilities are developed
22 or operated.

23 (3) Authorizing private entities to develop and operate
24 transportation facilities may result in the availability of
25 these transportation facilities to the public in a more
26 timely, more efficient or less costly fashion, thereby
27 -serving the public safety and welfare.

28 (b) Intent.--It is the intent of this part:

29 (1) to encourage investment in this Commonwealth by
30 private entities to assist in the development and operation

1 of transportation facilities; and
2 (2) to accomplish the goal under paragraph (1), to
3 provide public entities and private entities with the
4 greatest possible flexibility in contracting with each other
5 for the provision of the public services which are the
6 subject of this title.

7 § 9103. Construction of part.

8 (a) Liberal construction.--This part shall be liberally
9 construed in conformity with and to accomplish section 9102
10 (relating to declaration of policy).

11 (b) Sole authority.--This part provides public-private
12 transportation partnership opportunities to public entities and
13 private entities and shall be construed as the sole statutory
14 authority enabling a public entity to participate with a private
15 entity in a transportation-related contract, project or activity
16 governed by this part.

17 CHAPTER 92

18 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIPS

19 Sec.

20 9201. Definitions.

21 9202. Prerequisite for operation.

22 9203. Approval.

23 9204. Service contracts.

24 9205. Transfer and dedication of public property.

25 9206. Powers, duties and liability of private entity.

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27 9208. Comprehensive agreement.

28 9209. Multiple affected public entities.

29 9210. Federal, Commonwealth and local assistance.

30 9211. Financing.

1 9212. Material default; remedies.

2 9213. Eminent domain.

3 9214. Public utility crossings.

4 9215. Police powers; violations of law.

5 9216. Transfer of assets.

6 9217. Procurement.

7 9218. Public-Private Transportation Partnership Fund.

8 § 9201. Definitions.

9 Subject to additional definitions contained in subsequent
10 provisions of this part which are applicable to specific
11 provisions of this part, the following words and phrases when
12 used in this part shall have the meanings given to them in this
13 section unless the context clearly indicates otherwise:

14 "Affected jurisdiction." A county, city, borough,
15 incorporated town, township or local, regional or metropolitan
16 transportation organization:

17 (1) in which all or a portion of a qualifying
18 transportation facility is located; or

19 (2) which is directly affected by the qualifying
20 transportation facility.

21 "Affected public entity." A public entity which owns a
22 proposed qualifying transportation facility or a qualifying
23 transportation facility, including, but not limited to:

24 (1) A metropolitan transportation authority under 74
25 Pa.C.S. Ch. 17 (relating to metropolitan transportation
26 authorities).

27 (2) The Delaware River Port Authority.

28 (3) The Delaware River Joint Toll Bridge Commission.

29 (4) A second class county port authority.

30 (5) The Pennsylvania Turnpike Commission.

1 The term does not include a Commonwealth agency unless
2 specifically enumerated in this definition.

3 "Commission." The Pennsylvania Public Utility Commission.

4 "Comprehensive agreement." The comprehensive agreement
5 entered into between a private entity and the responsible public
6 entity or the affected public entity under section 9208
7 (relating to comprehensive agreement).

8 "Department." The Department of Transportation of the
9 Commonwealth.

10 "Develop." To plan, design, finance, lease, install,
11 construct or expand.

12 "Development." Planning, designing, financing, leasing,
13 installing, constructing or expanding.

14 "Fund." The Public-Private Transportation Partnership Fund
15 established in section 9218 (relating to Public-Private
16 Transportation Partnership Fund).

17 "Highway." A way or place open to the use of the public for
18 purposes of vehicle traffic.

19 "Interim agreement." An agreement, including a memorandum of
20 understanding or binding preliminary agreement, between a
21 private entity and the responsible public entity or the affected
22 public entity under section 9207 (relating to interim agreement)
23 which provides for completion of studies and any other
24 activities to advance the development or operation of a
25 qualifying transportation facility.

26 "Law enforcement officer." An individual authorized by law
27 to make arrests for violations of law.

28 "Material default." A default by a private entity in the
29 performance of its duties under section 9206 (relating to
30 powers, duties and liability of private entity) which:

1 (1) jeopardizes adequate service to the public from a
2 qualifying transportation facility; and

3 (2) remains unremedied after the responsible public
4 entity or the affected public entity has provided notice to
5 the private entity and a reasonable cure period has elapsed.

6 "Multimodal transportation facility." A transportation
7 facility consisting of multiple modes of transportation.

8 "Operate." To finance, maintain, improve, equip, modify,
9 repair, manage, run or control functioning.

10 "Operation." The act of financing, maintaining, improving,
11 equipping, modifying, repairing, managing, running or
12 controlling functioning.

13 "Private entity." Any individual, corporation, partnership,
14 limited liability company, limited partnership, joint venture,
15 business trust, public utility, nonprofit corporation or other
16 business entity authorized to conduct business in this
17 Commonwealth.

18 "Procurement Code." The provisions of 62 Pa.C.S. Pt. I
19 (relating to Commonwealth Procurement Code).

20 "Public entity." The Commonwealth; any department, board,
21 commission, authority or agency of the Commonwealth, whether or
22 not subject to the policy supervision and control of the
23 Governor; a political subdivision; and a local, regional or
24 metropolitan transportation authority. The term does not include
25 any court or other officer or agency of the unified judicial
26 system or the General Assembly and its officers and agencies.

27 "Public utility." As defined in 66 Pa.C.S. § 102 (relating
28 to definitions).

29 "Qualifying transportation facility." A transportation
30 facility developed or operated by a private entity under this

1 part. The term includes a multimodal transportation facility.

2 "Responsible public entity." The Department of
3 Transportation of the Commonwealth.

4 "Revenue." Money generated from or received in support of
5 the development or operation of a qualifying transportation
6 facility. The term includes: income; earnings; user fees; lease
7 payments; allocations; Federal, Commonwealth and political
8 subdivision appropriations; proceeds of bonds or notes; equity
9 investments; service payments; Federal grants; and money from a
10 Federal agency or instrumentality.

11 "Service contract." A contract entered into between a public
12 entity and a private entity under section 9204 (relating to
13 service contracts).

14 "Service payments." Payments to a private entity pursuant to
15 a service contract.

16 "Transportation commission." The State Transportation
17 Commission created in section 468 of the act of April 9, 1929
18 (P.L.177, No.175), known as The Administrative Code of 1929.

19 "Transportation facility." Any highway, bridge, tunnel,
20 overpass, ferry, airport, mass transportation facility, vehicle
21 parking facility, port facility, railroad, guideway, street
22 railway or similar facility used for the transportation of
23 persons or goods. The term:

24 (1) Includes:

25 (i) A substantial enhancement, an improvement or an
26 increase in capacity made to a facility listed in this
27 definition.

28 (ii) Any building, structure, parking area,
29 appurtenance and other property needed to operate a
30 facility listed in this definition.

1 (iii) A substantial enhancement, an improvement or
2 an increase in capacity to a facility excluded under
3 paragraph (2).

4 (2) Does not include a facility listed in this
5 definition:

6 (i) which is available for use by the public on the
7 effective date of this definition; and

8 (ii) for the use of which no toll, fee or charge is
9 imposed on the public.

10 "Transportation organization." Any mass transportation,
11 port, bridge, rail, regional planning or airport authority or
12 commission organized under the laws of this Commonwealth or
13 under an interstate compact or otherwise empowered to render,
14 contract for or assist in the rendering of transportation
15 service or transportation planning in a limited area in this
16 Commonwealth, even though it may also render or assist in
17 rendering transportation service or transportation planning in
18 adjacent states.

19 "User fees." Rates, tolls, fees or other charges imposed by
20 a private entity for use of all or a portion of a qualifying
21 transportation facility pursuant to an interim agreement or a
22 comprehensive agreement.

23 "Vehicle." A conveyance in or on which persons or property
24 may be carried.

25 § 9202. Prerequisite for operation.

26 A private entity seeking authorization under this part to
27 develop or operate a transportation facility must obtain written
28 approval from the responsible public entity and the affected
29 public entity or written approval from the responsible public
30 entity and deemed approval from the affected public entity under

1 section 9203 (relating to approval). A private entity may
2 initiate the approval process by requesting approval under
3 section 9203(a), or the responsible public entity, on its own
4 initiative or jointly with the affected public entity, may
5 request proposals under section 9203(b).

6 § 9203. Approval.

7 (a) Submission of proposals by private entities.--The
8 following shall apply to the submission of proposals by private
9 entities:

10 (1) A private entity may submit a proposal to the
11 responsible public entity for approval to develop or operate
12 a transportation facility. The proposal shall be accompanied
13 by the following material and information unless waived by
14 the responsible public entity as provided in regulations
15 adopted under subsection (f):

16 (i) A topographic map of 1:2,000 or other
17 appropriate scale indicating the location of the
18 transportation facility or facilities.

19 (ii) A description of the transportation facility or
20 facilities, including the conceptual design of the
21 facility and all proposed interconnections with other
22 transportation facilities.

23 (iii) The proposed date for development or operation
24 of the transportation facility along with an estimate of
25 the life cycle cost of the transportation facility as
26 proposed.

27 (iv) A statement setting forth the method by which
28 the private entity proposes to secure any real, personal
29 or mixed property interests required for the
30 transportation facility.

1 (v) Information relating to the current
2 transportation plans of each affected jurisdiction.

3 (vi) A list of all permits and approvals required
4 for developing or operating improvements to the
5 transportation facility from Federal, Commonwealth or
6 local agencies and a projected schedule for obtaining the
7 permits and approvals.

8 (vii) A list of public utility, railroad and cable
9 television provider facilities that will be crossed by
10 the transportation facility and a statement of the plans
11 of the private entity to accommodate the crossings.

12 (viii) A statement setting forth the private
13 entity's general plans for developing or operating the
14 transportation facility, including identification of
15 revenue or proposed debt or equity investment proposed by
16 the private entity.

17 (ix) The names and addresses of the persons who may
18 be contacted for further information concerning the
19 proposal.

20 (x) Information on how the private entity's proposal
21 will address the needs of Commonwealth, regional or local
22 transportation by improving safety, reducing congestion,
23 abating environmental pollution, advancing energy
24 efficiency or conservation, improving homeland security,
25 increasing capacity or enhancing economic efficiency.

26 (xi) A summary of the proposal.

27 (xii) Additional material and information as may
28 reasonably be requested under regulations promulgated
29 under subsection (f).

30 (2) Within five days following receipt of a proposal,

1 the responsible public entity shall provide a copy of the
2 proposal to the transportation commission. Within 45 days
3 following receipt of a proposal, the transportation
4 commission may submit its comments on the proposal to the
5 responsible public entity, which shall provide a copy of the
6 commission's comments to the affected public entity and to
7 each affected jurisdiction.

8 (3) The following shall apply:

9 (i) The responsible public entity shall determine if
10 the proposal includes an affected public entity and
11 shall, within five days following receipt of the
12 proposal, provide each affected public entity with a copy
13 of the summary submitted by the private entity, together
14 with a written request for the affected public entity's
15 comments and recommendations on the proposal.

16 (ii) The affected public entity's comments shall
17 include whether the proposed qualifying transportation
18 facility will address the needs of Commonwealth, regional
19 or local transportation by improving safety, reducing
20 congestion, abating environmental pollution, advancing
21 energy efficiency or conservation, improving homeland
22 security, increasing capacity or enhancing economic
23 efficiency. The comments and recommendations of the
24 affected public entity shall utilize the criteria
25 provided in subsection (d) and any additional criteria
26 specified in regulations promulgated under subsection (f)
27 and shall be submitted to the responsible public entity
28 and the transportation commission within 45 days
29 following receipt of the responsible public entity's
30 request for comments and recommendations.

1 (iii) If the affected public entity fails to provide
2 its comments and recommendations to the responsible
3 public entity within the 45-day period specified in this
4 paragraph or if there are multiple affected public
5 entities, the affected public entity shall be deemed to
6 have approved the proposal and, if the responsible public
7 entity approves the proposal, shall cooperate fully in
8 the completion, execution and implementation of any
9 interim agreement or comprehensive agreement related to
10 the proposal.

11 (4) The following shall apply:

12 (i) Within 10 days following receipt of a proposal,
13 the responsible public entity shall provide a copy of the
14 summary submitted by the private entity, together with a
15 written notification of receipt of the proposal, to each
16 affected jurisdiction. As part of its written
17 notification, the responsible public entity shall
18 identify each affected public entity and shall request
19 that comments on the proposal be submitted by each
20 affected jurisdiction. Within 30 days following receipt
21 of a request from the responsible public entity, each
22 affected jurisdiction shall submit its comments to the
23 responsible public entity, each affected public entity
24 and the transportation commission.

25 (ii) The affected jurisdiction's comments shall
26 include whether the proposed qualifying transportation
27 facility will address the needs of Commonwealth, regional
28 or local transportation by improving safety, reducing
29 congestion, abating environmental pollution, advancing
30 energy efficiency or conservation, improving homeland

1 security, increasing capacity or enhancing economic
2 efficiency.

3 (5) A written approval or rejection of the proposal
4 shall be submitted by the responsible public entity to the
5 private entity within 30 days following the end of all review
6 periods provided under paragraphs (2), (3) and (4).

7 (6) The following shall apply:

8 (i) If the responsible public entity approves the
9 private entity's proposal, the responsible public entity,
10 or the affected public entity and the responsible public
11 entity, jointly, may issue a request for proposals under
12 section 9217 (relating to procurement) from other private
13 entities for the development or operation of the
14 transportation facility. The request for proposals shall
15 include a requirement that a summary of the response be
16 submitted.

17 (ii) Within five days following receipt of a
18 response to a request for proposals, the responsible
19 public entity shall submit the summary of the response to
20 the transportation commission and to each affected
21 jurisdiction, which shall have 15 days following receipt
22 of the summary within which to provide comments to the
23 responsible public entity and the affected public entity.

24 (iii) Within 30 days following the expiration of the
25 transportation commission and affected jurisdiction
26 review period, the responsible public entity shall
27 provide written notification of its acceptance or
28 rejection of the initial proposal and each response to
29 the request for proposals to the private entity which
30 submitted the initial proposal, each private entity which

1 responded to the request for proposals, the
2 transportation commission, the affected public entity and
3 each affected jurisdiction.

4 (7) The responsible public entity and the affected
5 public entity may provide for payment to a private entity
6 whose proposal or response to any subsequent request for
7 proposals is not approved of an amount as reimbursement or
8 partial reimbursement for costs incurred by the private
9 entity in preparing the proposal or response, and, in return
10 for this payment, the private entity shall grant to the
11 responsible public entity and the affected public entity the
12 right to use all or any portion of the proposal or the
13 response, including the technologies, techniques, methods,
14 processes and information contained in the project design.

15 (b) Issuance of request for proposals.--The following shall
16 apply to issuance of request for proposals:

17 (1) The responsible public entity may, on its own
18 initiative or at the request of an affected public entity,
19 issue a request for proposals from private entities for the
20 development or operation of transportation facilities. An
21 affected public entity may only issue a request for proposals
22 from private entities for the development or operation of
23 transportation facilities jointly with the responsible public
24 entity. The responsible public entity or the affected public
25 entity shall not charge a fee to cover the costs of
26 processing, reviewing and evaluating responses received to a
27 request for proposals issued under this subsection.

28 (2) The following shall apply:

29 (i) The responsible public entity shall, on the date
30 of issuance of a request for proposals, provide a copy of

1 the request for proposals to the transportation
2 commission and to each affected jurisdiction. As part of
3 the request for proposals, the responsible public entity
4 shall require a private entity submitting a response to
5 simultaneously submit a written summary of its response
6 to the responsible public entity, to the affected public
7 entity, to the transportation commission and to each
8 affected jurisdiction identified in the request for
9 proposals.

10 (ii) Within 30 days of receipt of a summary of a
11 response from a private entity, each affected
12 jurisdiction shall submit its written comments on the
13 response to the responsible public entity, the affected
14 public entity and the transportation commission. Any
15 comments submitted by an affected jurisdiction must
16 include an indication of whether the affected
17 jurisdiction believes the proposed qualifying
18 transportation facility will address the needs of
19 Commonwealth, regional or local transportation by
20 improving safety, reducing congestion, abating
21 environmental pollution, advancing energy efficiency or
22 conservation, improving homeland security, increasing
23 capacity or enhancing economic efficiency.

24 (iii) The transportation commission shall have 15
25 days following the expiration of the 30-day affected
26 jurisdiction comment period provided in this paragraph
27 within which to submit written comments on the response
28 to the responsible public entity and the affected public
29 entity.

30 (3) If a private entity's response is not approved, the

responsible public entity and the affected public entity may provide for payment of an amount as reimbursement or partial reimbursement for costs incurred by the private entity in preparing the response, and, in return for this payment, the private entity shall grant to the responsible public entity and the affected public entity the right to use all or a portion of the response, including the technologies, techniques, methods, processes and information contained in the project design.

(c) Private entity adverse interests.--The following shall apply:

(1) Except as provided in paragraph (2), a private entity which submits a proposal or a response to a request for proposals under subsection (a) or which submits a response to a request for proposals under subsection (b) and which is also a State advisor or a State consultant for the responsible public entity or an affected public entity shall not be deemed to be in violation of the act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act, while engaging in any of the following activities:

(i) Preparing or submitting the proposal or response to a request for proposals.

(ii) Participating in any activities with the responsible public entity or the affected public entity related to the proposal or response to request for proposals.

(iii) Negotiating and entering into any contract, lease, interim agreement or comprehensive agreement with the responsible public entity or the affected public entity which results from the proposal or response to

1 request for proposals.

2 (iv) Engaging in other actions taken in furtherance
3 of the purposes of this part.

4 (2) A private entity which submits a proposal or a
5 response to a request for proposals shall be prohibited from
6 providing advice to the responsible public entity and the
7 affected public entity under subsection (d) on its proposal
8 or a request for proposals for which it has submitted a
9 response.

10 (d) Criteria for review.--The responsible public entity and
11 the affected public entity may grant approval of the development
12 or operation of the transportation facility as a qualifying
13 transportation facility if both the responsible public entity
14 and the affected public entity determine that it serves the
15 public purpose of this part. The responsible public entity and
16 the affected public entity may determine that the development or
17 operation of the transportation facility as a qualifying
18 transportation facility serves such public purpose if all of the
19 following apply:

20 (1) There is a public need for the transportation
21 facility the private entity proposes to develop or operate as
22 a qualifying transportation facility.

23 (2) The transportation facility and the proposed
24 interconnections with existing transportation facilities and
25 the private entity's plans for development or operation of
26 the qualifying transportation facility are, in the opinion of
27 the responsible public entity and the affected public entity,
28 reasonable and will address the needs of Commonwealth,
29 regional or local transportation by improving safety,
30 reducing congestion, addressing environmental concerns,

1 advancing energy efficiency or conservation, improving
2 homeland security, increasing capacity or enhancing economic
3 efficiency.

4 (3) The estimated cost of the transportation facility is
5 reasonable in relation to similar facilities.

6 (4) The private entity's plans will result in the timely
7 development, operation or more efficient operation of the
8 transportation facility.

9 (5) The private entity will agree to honor any existing
10 collective bargaining agreement related to the qualifying
11 transportation facility for the term of the agreement and
12 will comply with the act of August 15, 1961 (P.L.987,
13 No.442), known as the Pennsylvania Prevailing Wage Act, with
14 regard to the development or operation of the qualifying
15 transportation facility. In evaluating a proposal or response
16 to a request for proposals, the responsible public entity and
17 the affected public entity may rely upon internal staff
18 reports prepared by personnel familiar with the operation of
19 similar facilities or the advice of outside advisors or
20 consultants having relevant experience. The responsible
21 public entity and the affected public entity may request the
22 advice and assistance of other public entities in the
23 performance of their duties under this part.

24 (e) Fees.--The following shall apply to fees:

25 (1) The responsible public entity may charge a
26 reasonable fee to cover the costs of processing, reviewing
27 and evaluating a proposal submitted by a private entity or a
28 subsequent response to a request for proposals under
29 subsection (a), including reasonable attorney fees and fees
30 for financial and other necessary advisors or consultants.

1 The fee to be charged by the responsible public entity shall
2 include a reasonable reimbursement for costs incurred by the
3 affected public entity for its review of a proposal or a
4 response to a request for proposals. The responsible public
5 entity shall annually publish a notice in the Pennsylvania
6 Bulletin of the fee schedule for the review of proposals and
7 responses to requests for proposals submitted by private
8 entities under subsection (a).

9 (2) All fees collected under paragraph (1) shall be
10 retained by the responsible public entity and the affected
11 public entity and used as provided under paragraph (1) or for
12 other purposes permitted under this part.

13 (3) No fee shall be imposed by the responsible public
14 entity or any affected public entity for the cost of
15 processing, reviewing and evaluating responses to any request
16 for proposals under subsection (b).

17 (f) Regulations.--The following shall apply to regulations:

18 (1) In order to facilitate the implementation of this
19 part and to provide one uniform procedure for submission and
20 review of proposals submitted, issuance of a request for
21 proposals and submission and review of responses to a request
22 for proposals under subsection (a) and responses to requests
23 for proposals under subsection (b), the responsible public
24 entity shall promulgate regulations that include all of the
25 following:

26 (i) A specific schedule for review of proposals or
27 responses to requests for proposals by the responsible
28 public entity and the affected public entity.

29 (ii) A process for alteration of that schedule by
30 the responsible public entity and the affected public

1 entity if changes are necessary because of the scope or
2 complexity of proposals or responses received.

3 (iii) The process for receipt and review of
4 competing proposals and responses to requests for
5 proposals.

6 (iv) The type and amount of information that is
7 necessary for adequate review of proposals or responses
8 to requests for proposals in each stage of review.

9 (v) A prioritized documentation, review and
10 selection process for qualifying transportation
11 facilities that have approved or pending Federal and
12 Commonwealth clearances, have secured significant right-
13 of-way, have previously been allocated significant
14 Federal or Commonwealth funding or exhibit other
15 circumstances that could reasonably reduce the amount of
16 time to develop or operate the qualifying transportation
17 facility in accordance with the purpose of this part.

18 (vi) Action to be taken to protect confidential and
19 proprietary information required under subsection (i).

20 (vii) Any other provisions which are required under
21 this part or which the responsible public entity
22 determines are necessary for implementation of this part.

23 (2) Within 120 days following the effective date of this
24 subsection, the responsible public entity shall publish draft
25 interim regulations in the Pennsylvania Bulletin for comment.
26 The draft interim regulations shall have a 60-day public
27 comment period. Within 90 days following the close of the
28 public comment period on the draft interim regulations, the
29 responsible public entity shall publish final interim
30 regulations in the Pennsylvania Bulletin implementing this

1 part. The draft interim regulations and the final interim
2 regulations shall not be subject to section 201 of the act of
3 July 31, 1968 (P.L.769, No.240), referred to as the
4 Commonwealth Documents Law, nor to review or approval under
5 the act of June 25, 1982 (P.L.633, No.181), known as the
6 Regulatory Review Act. The final interim regulations shall
7 expire on the earlier of the following:

8 (i) Two years after their publication in the
9 Pennsylvania Bulletin.

10 (ii) The publication of final regulations pursuant
11 to the Commonwealth Documents Law and the Regulatory
12 Review Act.

13 (g) Requirement for interim agreement or comprehensive
14 agreement.--The approval of the responsible public entity and
15 the affected public entity shall be subject to the private
16 entity's entering into an interim agreement or a comprehensive
17 agreement with the responsible public entity and the affected
18 public entity.

19 (h) Date for beginning construction or improvements.--In
20 connection with approval of the development or operation of the
21 transportation facility as a qualifying transportation facility,
22 the responsible public entity and the affected public entity
23 shall establish a date for the beginning of construction of or
24 improvements to the qualifying transportation facility. The
25 responsible public entity and the affected public entity may
26 extend this date.

27 (i) Confidential and proprietary information.--The following
28 shall apply:

29 (1) In the regulations promulgated under subsection (f),
30 the responsible public entity shall specify appropriate

1 action to be taken by the responsible public entity, the
2 affected public entity, the affected jurisdiction and the
3 transportation commission to protect confidential and
4 proprietary information provided by the private entity.

5 (2) A proposal or a response to a request for proposals
6 submitted by a private entity under subsection (a), a
7 response submitted by a private entity to a request for
8 proposals under subsection (b) and the summary of the
9 proposal or response shall be confidential and, until a
10 comprehensive agreement under section 9208 (relating to
11 comprehensive agreement) is entered into by the private
12 entity and the responsible public entity or the affected
13 public entity, the proposal, the response and the summary
14 shall not be subject to disclosure under the act of June 21,
15 1957 (P.L.390, No.212), referred to as the Right-to-Know Law,
16 or any other act. Upon the execution of a comprehensive
17 agreement under section 9208, information contained in the
18 proposal, the response and the summary shall be considered to
19 be a public record for purposes of disclosure under the
20 Right-to-Know Law.

21 (j) Federal credit assistance.--The responsible public
22 entity and the affected public entity may also apply for,
23 execute or endorse applications submitted by private entities to
24 obtain Federal credit assistance for qualifying transportation
25 facilities developed or operated under this part.

26 (k) Taxes.--All of the following shall apply:

27 (1) Revenue received by a private entity and all user
28 fees shall continue to be subject to any tax, and to future
29 increases in the rate of any tax, which was imposed by a
30 political subdivision prior to the effective date of this

1 subsection and which was otherwise applicable to the revenue
2 and user fees.

3 (2) No new tax may be imposed by a political subdivision
4 on the revenue received by a private entity or on user fees.

5 (1) Definitions.--As used in this section, the following
6 words and phrases shall have the meanings given to them in this
7 subsection:

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

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

14 § 9204. Service contracts.

15 In addition to any authority otherwise conferred by law, a
16 public entity may contract with a private entity for
17 transportation services to be provided by a qualifying
18 transportation facility in exchange for service payments and
19 other consideration as the public entity may deem appropriate.

20 § 9205. Transfer and dedication of public property.

21 (a) Powers.--Except for an ownership interest and subject to
22 the provisions of this part, a public entity may transfer a
23 real, personal or mixed property interest it has in a qualifying
24 transportation facility to a private entity for such
25 consideration as the public entity and the private entity may
26 agree upon.

27 (b) Consideration.--Consideration under subsection (a) may
28 include the agreement of the private entity to operate the
29 qualifying transportation facility.

30 (c) Interests.--Except for an ownership interest, the real,

1 personal or mixed property interests that the public entity may
2 transfer to the private entity under this section may include
3 licenses, leaseholds, franchises, easements or any other right
4 or interest in the qualifying transportation facility which the
5 public entity deems appropriate.

6 (d) Additional property.--Subject to the provisions of this
7 part, the private entity may acquire, construct and purchase
8 additional real, personal and mixed property and incorporate the
9 additional property into the qualifying transportation facility
10 if, upon the incorporation, all ownership interests in the
11 property are transferred and dedicated to and vested in the
12 public entity, for such consideration as the public entity and
13 the private entity may agree, with the private entity retaining
14 the property interests other than an ownership interest.

15 (e) Definition.--As used in this section the term "ownership
16 interest" means fee simple title and reversionary interest in
17 the real property and similar title and rights in the personal
18 and mixed property constituting the qualifying transportation
19 facility.

20 § 9206. Powers, duties and liability of private entity.

21 (a) General powers.--A private entity shall have all power
22 allowed by law generally to a private entity having the same
23 form of organization as the private entity and shall have the
24 power to develop or operate the qualifying transportation
25 facility, impose user fees and enter into service contracts in
26 connection with the use of the qualifying transportation
27 facility. No tolls or user fees may be imposed by the private
28 entity without the necessary Federal, Commonwealth or local
29 approvals and as provided in the interim agreement or the
30 comprehensive agreement.

1 (b) Right to lease, use, develop or operate qualifying
2 transportation facility.--A private entity may lease or acquire
3 any other right to use or develop or operate the qualifying
4 transportation facility. No interim agreement, comprehensive
5 agreement, lease or contract involving real property of a
6 qualifying transportation facility shall be subject to the
7 realty transfer tax imposed under Article XI-C or XI-D of the
8 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
9 of 1971, or under the act of December 31, 1965 (P.L.1257,
10 No.511), known as The Local Tax Enabling Act.

11 (c) Canals and waterways.--Subject to applicable permit
12 requirements, a private entity shall have the authority to cross
13 any canal or navigable watercourse if the crossing does not
14 unreasonably interfere with then-current navigation and use of
15 the waterway.

16 (d) Operation of qualifying transportation facility.--In
17 operating the qualifying transportation facility, a private
18 entity may do all of the following:

19 (1) Make classifications according to reasonable
20 categories for assessment of user fees.

21 (2) Make and enforce, with the consent of the
22 responsible public entity or the affected public entity,
23 reasonable rules to the same extent that the responsible
24 public entity or the affected public entity may make and
25 enforce rules with respect to a similar transportation
26 facility.

27 (e) Duties.--The private entity shall do all of the
28 following:

29 (1) Develop or operate, in accordance with the
30 provisions of the interim agreement or the comprehensive

1 agreement, the qualifying transportation facility in a manner
2 that meets the standards of the responsible public entity or
3 the affected public entity for similar transportation
4 facilities operated and maintained by the responsible public
5 entity or the affected public entity.

6 (2) Keep the qualifying transportation facility open for
7 use by the members of the public, in accordance with the
8 terms and conditions of the interim or comprehensive
9 agreement, after its initial opening upon payment of the
10 applicable user fees or service payments. The qualifying
11 transportation facility may be temporarily closed because of
12 emergencies or, with the consent of the responsible public
13 entity or the affected public entity, to protect the safety
14 of the public or for reasonable construction or maintenance
15 procedures.

16 (3) Maintain or provide by contract for the maintenance
17 of the qualifying transportation facility.

18 (4) Cooperate with the responsible public entity or the
19 affected public entity in establishing any interconnection
20 with the qualifying transportation facility requested by the
21 responsible public entity or the affected public entity.

22 (5) Comply with the provisions of the interim or
23 comprehensive agreement and any service contract.

24 (f) Liability.--In recognition of the public benefit derived
25 from a private entity's development or operation of a qualifying
26 transportation facility, a private entity which develops or
27 operates a qualifying transportation facility shall not be
28 subject to civil liability that arises due to the injury or
29 death of an individual using the qualifying transportation
30 facility, unless the injury or death results from an act or

1 omission of the private entity constituting gross negligence,
2 recklessness or intentional misconduct.

3 § 9207. Interim agreement.

4 (a) Provisions.--Prior to or in connection with the
5 negotiation of the comprehensive agreement as provided under
6 section 9208 (relating to comprehensive agreement), the
7 responsible public entity or the affected public entity may
8 enter into an interim agreement with a private entity proposing
9 the development or operation of the proposed qualifying
10 transportation facility. The interim agreement shall require a
11 private entity, for the term of the interim agreement, to
12 provide the responsible public entity or the affected public
13 entity with periodic reports and audits related to disclosure,
14 internal control and performance and financial accounting. The
15 periodic reports and audits shall be prepared by an independent
16 consulting or certified public accounting firm engaged by the
17 private entity and shall be made available by the responsible
18 public entity or the affected public entity for public
19 inspection and copying under the act of June 21, 1957 (P.L.390,
20 No.212), referred to as the Right-to-Know Law. The interim
21 agreement may provide for all of the following:

22 (1) Permitting the private entity to commence activities
23 for which it may be compensated relating to the proposed
24 qualifying transportation facility, including project
25 planning and development, advance right-of-way acquisition,
26 design and engineering, environmental analysis and
27 mitigation, survey, conducting transportation and revenue
28 studies and ascertaining the availability of financing for
29 the proposed qualifying transportation facility or
30 facilities.

1 (2) Establishing the process and timing of the
2 negotiation of the comprehensive agreement.

3 (3) Containing any other provisions related to any
4 aspect of the development or operation of a qualifying
5 transportation facility that the parties may deem
6 appropriate.

7 (b) Multiple private entities.--Notwithstanding any other
8 provision of this part, the responsible public entity or the
9 affected public entity may enter into an interim agreement with
10 multiple private entities if the responsible public entity or
11 the affected public entity determines in writing that it is in
12 the public interest to do so. The written determination may not
13 take effect until a copy is provided to the transportation
14 commission and is published as a notice in the Pennsylvania
15 Bulletin.

16 § 9208. Comprehensive agreement.

17 (a) Provisions.--Prior to developing or operating the
18 qualifying transportation facility, a private entity shall enter
19 into a comprehensive agreement with the responsible public
20 entity or the affected public entity. The comprehensive
21 agreement shall, as appropriate, provide for all of the
22 following:

23 (1) Delivery of performance and payment bonds in
24 connection with the development or operation of the
25 qualifying transportation facility, in the forms and amounts
26 satisfactory to the responsible public entity or the affected
27 public entity.

28 (2) Review of plans for the development or operation of
29 the qualifying transportation facility by the responsible
30 public entity or the affected public entity and approval by

1 the responsible public entity or the affected public entity
2 if the plans conform to standards acceptable to the
3 responsible public entity or the affected public entity.

4 (3) Periodic inspection of construction of or
5 improvements to the qualifying transportation facility by the
6 responsible public entity or the affected public entity to
7 ensure that they conform to the standards acceptable to the
8 responsible public entity or the affected public entity.

9 (4) Maintenance of a policy of public liability
10 insurance, copies of which shall be filed with the
11 responsible public entity or the affected public entity,
12 accompanied by proofs of coverage, or self-insurance, each in
13 form and amount satisfactory to the responsible public entity
14 or the affected public entity and reasonably sufficient to
15 insure coverage of tort liability to the public and employees
16 and to enable the continued operation of the qualifying
17 transportation facility.

18 (5) Periodic monitoring of the maintenance practices of
19 the private entity by the responsible public entity or the
20 affected public entity and the taking of actions as the
21 responsible public entity or the affected public entity finds
22 appropriate to ensure that the qualifying transportation
23 facility is properly maintained.

24 (6) Reimbursement to be paid to the responsible public
25 entity or the affected public entity for services provided by
26 the responsible public entity or the affected public entity.

27 (7) Filing of appropriate financial statements in a form
28 acceptable to the responsible public entity or the affected
29 public entity on a periodic basis.

30 (8) Compensation to the private entity, which may

1 include one or a combination of a reasonable development fee,
2 a reasonable maximum rate of return on investment or
3 reimbursement of development expenses in the event of
4 termination for convenience by the responsible public entity
5 or the affected public entity, as agreed upon between the
6 responsible public entity or the affected public entity and
7 the private entity.

8 (9) The date of termination of the private entity's
9 authority and duties under this part and transfer to the
10 responsible public entity or the affected public entity.

11 (10) Guaranteed cost and completion guarantees related
12 to the development or operation of the qualifying
13 transportation facility and payment of damages for failure to
14 meet the completion guarantee.

15 (11) Submission, on at least an annual basis, by the
16 private entity to the responsible public entity or the
17 affected public entity of reports and audits related to
18 disclosure, internal control and performance and financial
19 accounting. The reports and audits shall be prepared by an
20 independent consulting or certified public accounting firm
21 engaged by the private entity and shall be made available by
22 the responsible public entity or the affected public entity
23 for public inspection and copying under the act of June 21,
24 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.

25 (b) User fees.--The following shall apply:

26 (1) The comprehensive agreement shall provide for user
27 fees as may be established by agreement of the parties.

28 (2) User fees shall be set at a level that takes into
29 account lease payments, service payments and compensation to
30 the private entity or as specified in the comprehensive

1 agreement.

2 (3) A copy of any service contract shall be filed with
3 the responsible public entity or the affected public entity.

4 (4) A schedule of the current user fees shall be
5 provided by the private entity to the responsible public
6 entity, the affected public entity and each affected
7 jurisdiction when initially imposed and whenever changed and
8 shall be made available by the private entity to any member
9 of the public on request.

10 (5) In negotiating user fees under this section, the
11 parties shall establish fees that are the same for persons
12 using the qualifying transportation facility under like
13 conditions, except as required by agreement between the
14 parties to preserve capacity and prevent congestion on the
15 qualifying transportation facility.

16 (6) The execution of the comprehensive agreement or any
17 amendment to the comprehensive agreement shall constitute
18 conclusive evidence that the user fees provided in the
19 comprehensive agreement comply with this part.

20 (7) User fees established in the comprehensive agreement
21 as a source of revenue may be in addition to or in lieu of
22 service payments.

23 (c) Grants and loans.--In the comprehensive agreement, the
24 responsible public entity or the affected public entity may
25 agree to make grants or loans to the private entity for the
26 development or operation of the qualifying transportation
27 facility from amounts received from the Federal Government or
28 any of its agencies or instrumentalities.

29 (d) Additional provisions.--The following shall apply:

30 (1) The comprehensive agreement shall incorporate the

1 duties of the private entity under this part and may contain
2 other terms and conditions as the responsible public entity
3 or the affected public entity determines serve the public
4 purpose of this part.

5 (2) The comprehensive agreement may contain provisions
6 under which the responsible public entity or the affected
7 public entity agrees to provide notice of default and cure
8 rights for the benefit of the private entity and the persons
9 specified in the comprehensive agreement as providing
10 financing for the qualifying transportation facility.

11 (3) The comprehensive agreement may contain other lawful
12 terms and conditions to which the private entity and the
13 responsible public entity or the affected public entity
14 mutually agree, including provisions regarding unavoidable
15 delays or provisions providing for a loan of public funds for
16 the development or operation of one or more qualifying
17 transportation facilities.

18 (e) Excess earnings.--The comprehensive agreement shall
19 provide for the distribution of any earnings in excess of the
20 maximum rate of return as negotiated in the comprehensive
21 agreement. Excess earnings may be distributed to the fund
22 established under section 9218 (relating to Public-Private
23 Transportation Partnership Fund) or to the private entity for
24 debt reduction.

25 (f) Amendment.--Any changes in the terms of the
26 comprehensive agreement as may be agreed upon by the parties
27 shall be added to the comprehensive agreement by written
28 amendment.

29 (g) Multiple private entities.--Notwithstanding any other
30 provision of this part, the responsible public entity or the

1 affected public entity may enter into a comprehensive agreement
2 with multiple private entities if the responsible public entity
3 or the affected public entity determines in writing that it is
4 in the public interest to do so. The written determination may
5 not take effect until a copy is provided to the transportation
6 commission and is published as a notice in the Pennsylvania
7 Bulletin.

8 (h) Phased development and operation.--The comprehensive
9 agreement may provide for the development or operation of phases
10 or segments of the qualifying transportation facility.

11 § 9209. Multiple affected public entities.

12 (a) Private entity proposals.--If a private entity submits a
13 proposal pursuant to section 9203(a) (relating to approval) to
14 develop or operate a qualifying transportation facility that may
15 require approval by the responsible public entity and more than
16 one affected public entity, representatives of each of the
17 affected public entities shall convene and determine which
18 affected public entity shall serve as the coordinating affected
19 public entity. The determination shall occur within ten days of
20 the receipt of the summary of the proposal by the respective
21 affected public entities. If the affected public entities cannot
22 reach agreement on which affected public entity will serve as
23 the coordinating affected public entity within the allotted ten-
24 day period, the responsible public entity shall designate one of
25 the affected public entities to serve as the coordinating
26 affected public entity.

27 (b) Comments and review.--The coordinating affected public
28 entity shall be subject to the requirements of section
29 9203(a)(3) for completion of its review and submission of its
30 comments and recommendations, except that the coordinating

1 affected public entity may submit a written request to the
2 responsible public entity requesting approval of an extension of
3 up to 20 days for completion of its review and submission of its
4 recommendations. If the coordinating affected public entity
5 fails to provide its comments and recommendations to the
6 responsible public entity within the 45-day period specified in
7 section 9203(a)(3) or any extension of that period granted by
8 the responsible public entity, all affected public entities on
9 whose behalf the coordinating affected public entity was
10 designated to act shall be deemed to have approved the proposal
11 and, if the responsible public entity approves the proposal,
12 shall cooperate fully in completion, execution and
13 implementation of any interim agreement or comprehensive
14 agreement related to the proposal.

15 (c) Request for proposals.--If a request for proposals is
16 issued pursuant to section 9203(b) and the issuance includes
17 more than one affected public entity, the responsible public
18 entity shall request that representatives of each of the
19 affected public entities convene and determine which affected
20 public entity shall serve as the coordinating affected public
21 entity. The determination of which affected public entity shall
22 serve as the coordinating affected public entity shall be made
23 prior to issuance of a request for proposals. If the affected
24 public entities cannot reach agreement on the designation of a
25 coordinating affected public entity within ten days of receipt
26 of a written request from the responsible public entity to
27 convene and make a designation, the responsible public entity
28 shall designate one of the affected public entities to serve as
29 the coordinating affected public entity.

30 (d) Action following determination.--Once a determination

1 has been made in accordance with subsection (a), (b) or (c), the
2 responsible public entity, the coordinating affected public
3 entity and the private entity shall proceed in accordance with
4 this part.

5 § 9210. Federal, Commonwealth and local assistance.

6 (a) Obtaining assistance.--The responsible public entity and
7 the affected public entity may take any action to obtain
8 Federal, Commonwealth or local assistance for a qualifying
9 transportation facility that serves the public purpose of this
10 part and may enter into any contracts required to receive
11 Federal assistance. Funds received from the Commonwealth, other
12 than grant or loan funds provided pursuant to statute, or from
13 the Federal Government or a Federal agency or instrumentality
14 shall be subject to appropriation by the General Assembly. The
15 responsible public entity and the affected public entity may
16 determine that it serves the public purpose of this part for all
17 or any portion of the costs of a qualifying transportation
18 facility to be paid, directly or indirectly, from the proceeds
19 of a grant or loan made by the Federal, Commonwealth or local
20 government or a government agency or instrumentality.

21 (b) Use of grants and loans.--The responsible public entity
22 and the affected public entity may agree to make grants or loans
23 for the development or operation of the qualifying
24 transportation facility from amounts received from the Federal,
25 Commonwealth or local government or a government agency or
26 instrumentality.

27 (c) Pledge of Commonwealth full faith and credit.--Nothing
28 in this part or in an interim or comprehensive agreement entered
29 into pursuant to this part shall be deemed to enlarge, diminish
30 or affect the authority otherwise possessed by the responsible

1 public entity and the affected public entity to take action that
2 would impact the debt capacity of the Commonwealth or the
3 affected jurisdictions, except that in no event shall any debt
4 financing for a qualifying transportation facility pledge the
5 full faith and credit of the Commonwealth for the payment of
6 debt and that any debt incurred for financing of a qualifying
7 transportation facility shall be payable solely from one or a
8 combination of:

9 (1) revenue for the qualifying transportation facility;

10 (2) a pledge of, security interest in or lien on grants,
11 loans or other funds received by or provided by the private
12 entity, the affected public entity or an affected
13 jurisdiction; or

14 (3) a pledge of, security interest in or lien on real,
15 personal or mixed property owned by the private entity.

16 § 9211. Financing.

17 (a) General rule.--Except as provided in section 9210(c)
18 (relating to Federal, Commonwealth and local assistance), any
19 financing of a qualifying transportation facility may be in
20 amounts and upon terms and conditions as determined by the
21 parties to the interim or comprehensive agreement.

22 (b) Exception.--Without limiting the generality of
23 subsection (a), the private entity, the responsible public
24 entity, the affected public entity and an affected jurisdiction
25 may propose to utilize any and all money that may be available
26 to them and may, to the fullest extent permitted by applicable
27 law and subject to the limitations of section 9210(c), issue
28 debt, equity or other securities or obligations, enter into
29 leases and grant and loan agreements, access any designated
30 transportation trust funds, borrow or accept grants from any

1 Commonwealth program and secure any financing with a pledge of,
2 security interest in or lien on, any or all of the revenue from
3 the qualifying transportation facility, money from any grants,
4 loans or other funds received by or provided by the private
5 entity, the affected public entity or an affected jurisdiction,
6 and any real, personal or mixed property owned by the private
7 entity.

8 § 9212. Material default; remedies.

9 (a) Remedies.--Upon the occurrence and during the
10 continuation of material default, the responsible public entity
11 or the affected public entity may exercise the following
12 remedies:

13 (1) The responsible public entity or the affected public
14 entity may elect to take over the qualifying transportation
15 facility and shall succeed to all of the right, title and
16 interest in the qualifying transportation facility, subject
17 to liens on revenue previously granted by the private entity
18 to a person providing financing for the transportation
19 facility.

20 (2) The responsible public entity or the affected public
21 entity may terminate the interim or comprehensive agreement
22 and exercise any other rights and remedies which may be
23 available to it at law or in equity.

24 (3) The responsible public entity or the affected public
25 entity may make or cause to be made any appropriate claims
26 under the performance or payment bonds required by section
27 9208 (relating to comprehensive agreement).

28 (b) Exercise of remedies.--If the responsible public entity
29 or the affected public entity elects to take over a qualifying
30 transportation facility under subsection (a), the responsible

1 public entity or the affected public entity may develop or
2 operate the qualifying transportation facility, impose user fees
3 for the use of the facility and comply with service contracts as
4 if the responsible public entity or the affected public entity
5 were the private entity. Revenue subject to a lien shall be
6 collected for the benefit of, and paid to, secured parties as
7 their interests may appear and to the extent necessary to
8 satisfy the private entity's obligations to the secured parties,
9 including the maintenance of reserves, and the liens shall be
10 correspondingly reduced and, when paid off, released. Before any
11 payments to, or for the benefit of, secured parties, the
12 responsible public entity or the affected public entity may use
13 revenue to pay current operation and maintenance costs of the
14 qualifying transportation facility or facilities, including
15 compensation to the responsible public entity or the affected
16 public entity for its services in operating and maintaining the
17 qualifying transportation facility. Remaining revenue after all
18 payments for operation and maintenance of the qualifying
19 transportation facility and all payments to or for the benefit
20 of secured parties shall be paid to the private entity, subject
21 to the negotiated maximum rate of return. The right to receive
22 the payment shall be considered just compensation for the
23 qualifying transportation facility. The full faith and credit of
24 the Commonwealth shall not be pledged to secure any financing of
25 the private entity by the election to take over the qualifying
26 transportation facility. Assumption of operation of the
27 qualifying transportation facility shall not obligate the
28 responsible public entity or the affected public entity to pay
29 any obligation of the private entity from sources other than
30 revenue.

1 § 9213. Eminent domain.

2 (a) Exercise of eminent domain.--At the request of the
3 private entity, the responsible public entity and the affected
4 public entity may exercise the right of eminent domain for the
5 purpose of acquiring any lands or estates or interests therein
6 to the extent permitted by laws governing eminent domain and to
7 the extent that the responsible public entity or the affected
8 public entity finds that the action serves the public purpose of
9 this part. Any amounts to be paid in any such eminent domain
10 proceeding shall be paid by the private entity.

11 (b) Exercise against qualifying transportation facility.--
12 Except as provided in subsection (a), until the responsible
13 public entity or the affected public entity, after notice to the
14 private entity and the secured parties as may appear in the
15 private entity's records and an opportunity for hearing, has
16 obtained a final declaratory judgment that a material default
17 has occurred and is continuing, the power of eminent domain may
18 not be exercised against a qualifying transportation facility.

19 (c) Exercise following declaratory judgment.--After the
20 entry of a final declaratory judgment, the responsible public
21 entity or the affected public entity having the power of eminent
22 domain under the laws of this Commonwealth may exercise the
23 power of eminent domain, in lieu of or at any time after taking
24 over the qualifying transportation facility pursuant to section
25 9212(a)(1) (relating to material default; remedies), in order to
26 acquire the qualifying transportation facility or facilities.
27 Nothing in this part shall be construed to limit the exercise of
28 the power of eminent domain by the responsible public entity or
29 the affected public entity against a qualifying transportation
30 facility after the entry of a final declaratory judgment

1 pursuant to subsection (b). Any person that has provided
2 financing for the qualifying transportation facility and the
3 private entity, to the extent of its capital investment, may
4 participate in the eminent domain proceedings with the standing
5 of a property owner.

6 § 9214. Public utility crossings.

7 A private entity and each public utility, railroad and cable
8 television provider whose facilities are to be crossed or
9 affected shall cooperate fully with each other in planning and
10 arranging the manner of the crossing or relocation of the
11 facilities. Any entity possessing the power of eminent domain is
12 expressly granted authority to utilize such powers to the extent
13 permitted by laws governing eminent domain in connection with
14 the moving or relocation of facilities to be crossed by the
15 qualifying transportation facility or that must be relocated to
16 the extent that such moving or relocation is made necessary or
17 desirable by construction of or improvements to the qualifying
18 transportation facility, which shall be construed to include
19 construction of or improvements to temporary facilities for the
20 purpose of providing service during the period of construction
21 or improvement. If the private entity and any public utility,
22 railroad and cable television provider are unable to agree upon
23 a plan for a crossing or relocation, the commission may
24 determine the manner in which the crossing or relocation shall
25 be accomplished and shall determine any damages due as a result
26 of the crossing or relocation. The commission may employ expert
27 engineers to examine the location and plans for the crossing or
28 relocation, hear objections, consider modifications and make
29 recommendations to the commission, in which case the cost of the
30 expert shall be borne by the private entity. Any amount to be

1 paid for a crossing or for construction of, moving or relocating
2 facilities shall be paid by the private entity or any other
3 person who is contractually responsible to make the payment
4 under an interim or comprehensive agreement or any other
5 contract, license or permit. The commission shall make a
6 determination within 90 days of notification by the private
7 entity that the qualifying transportation facility will cross
8 public utilities subject to the commission's jurisdiction.

9 § 9215. Police powers; violations of law.

10 (a) Powers and jurisdiction.--All law enforcement officers
11 of the Commonwealth and each affected jurisdiction shall have
12 the same powers and jurisdiction within the limits of a
13 qualifying transportation facility as they have in their
14 respective areas of jurisdiction, and law enforcement officers
15 shall have access to the qualifying transportation facility at
16 any time for the purpose of exercising their law enforcement
17 powers and jurisdiction. The grant of authority in this
18 subsection does not extend to the private offices, buildings,
19 garages and other improvements of the private entity to any
20 greater degree than the police power extends to any other
21 private buildings and improvements.

22 (b) Enforcement of traffic laws.--To the extent the
23 qualifying transportation facility is a highway, bridge, tunnel,
24 overpass or similar transportation facility for motor vehicles,
25 the traffic and motor vehicle laws of this Commonwealth or, if
26 applicable, any local jurisdiction shall be the same as those
27 applying to conduct on similar transportation facilities in this
28 Commonwealth or the local jurisdiction. Punishment for offenses
29 shall be as prescribed by law for conduct occurring on similar
30 transportation facilities in this Commonwealth or the local

1 jurisdiction.

2 (c) Payment of costs.--A private entity shall be responsible
3 for the payment of all costs associated with the provision of
4 law enforcement services pursuant to subsections (a) and (b)
5 within the limits of a qualifying transportation facility.

6 (d) Imposition, collection and disposition of fines.--Fines
7 imposed by law enforcement officers for violations occurring
8 within the limits of a qualifying transportation facility shall
9 be imposed, collected, distributed and governed as otherwise
10 provided by applicable law.

11 § 9216. Transfer of assets.

12 The responsible public entity or the affected public entity
13 shall terminate the private entity's authority and duties under
14 this part on the date set forth in the interim or comprehensive
15 agreement. Upon termination, the authority and duties of the
16 private entity under this part shall cease, and all property,
17 real, personal and mixed, constituting the qualifying
18 transportation facility shall be transferred to the responsible
19 public entity or the affected public entity, if any.

20 § 9217. Procurement.

21 (a) General rule.--The Procurement Code shall not apply to
22 this part or to development, operation, construction,
23 improvement, alteration or maintenance of a qualifying
24 transportation facility by a private entity. Contracts shall be
25 awarded and interim and comprehensive agreements shall be
26 entered into through use of a competitive process or by private
27 negotiation as provided in regulations promulgated pursuant to
28 section 9203(f) (relating to approval). Responsible public
29 entities and affected public entities shall not be required to
30 select the proposal with the lowest price offer or the highest

1 price offer, but may consider price as one factor in evaluating
2 the proposals received. Other factors that may be considered
3 include:

4 (1) proposed cost of the qualifying transportation
5 facility;

6 (2) general reputation, qualifications, industry
7 experience and financial capacity of the private entity;

8 (3) proposed design, operation and feasibility of the
9 qualifying transportation facility;

10 (4) eligibility of the qualifying transportation
11 facility for priority selection, review and documentation
12 time lines under the regulations promulgated pursuant to
13 section 9203(f);

14 (5) local citizen and public entity comments;

15 (6) benefits to the public;

16 (7) the private entity's compliance with a minority
17 business enterprise participation plan or good faith effort
18 to comply with the goals of a plan;

19 (8) the private entity's plans to employ local
20 contractors and residents;

21 (9) the safety record of the private entity;

22 (10) the ability of the qualifying transportation
23 facility to address the needs of Commonwealth, regional or
24 local transportation by improving safety, reducing
25 congestion, abating environmental pollution, advancing energy
26 efficiency or conservation, improving homeland security,
27 increasing capacity or enhancing economic efficiency; and

28 (11) other criteria that the responsible public entity
29 and the affected public entity deem appropriate.

30 (b) Specific exemption.--In no event shall a private entity,

1 a responsible public entity or an affected public entity be
2 subject to requirements of the act of May 1, 1913 (P.L.155,
3 No.104), referred to as the Separations Act, with regard to a
4 qualifying transportation facility which is the subject of an
5 interim agreement or a comprehensive agreement.

6 § 9218. Public-Private Transportation Partnership Fund.

7 (a) Establishment.--There is established within the State
8 Treasury a special fund to be known as the Public-Private
9 Transportation Partnership Fund for the purposes enumerated in
10 this section. Interest and investment earnings on money in the
11 fund shall be retained in the fund. Money in the fund shall be
12 used for the purposes enumerated in subsection (c). Money in the
13 fund shall not lapse and is appropriated upon approval of the
14 Governor for the purposes enumerated in subsection (c).

15 (b) Deposits to fund.--Money to be deposited in the fund
16 includes:

17 (1) excess earnings as provided in section 9208(e)
18 (relating to comprehensive agreement);

19 (2) monetary damages received by the responsible public
20 entity and the affected public entity for failure by the
21 private entity to comply with the terms of an interim
22 agreement or a comprehensive agreement;

23 (3) payments made to the responsible public entity and
24 the affected public entity from any performance or payment
25 bond; and

26 (4) any other money received by the responsible public
27 entity and the affected public entity and earmarked for
28 deposit into the fund pursuant to the terms of an interim
29 agreement or a comprehensive agreement.

30 (c) Authorized uses.--Money in the fund shall be allocated

1 by majority vote of the transportation commission and may, upon
2 allocation, be used:

3 (1) for maintenance, repair, construction,
4 reconstruction and operation of transportation facilities
5 available for use by the public and for which no toll, fee or
6 other charge is imposed for public use; or

7 (2) by an affected public entity for transportation-
8 related purposes under a written agreement with the
9 responsible public entity as approved by majority vote of the
10 transportation commission.

11 (d) Restrictions on transfers from fund.--Money in the fund
12 shall not be transferred to the General Fund or any other fund
13 or used for any purpose not specifically authorized in
14 subsection (c) unless the transfer or use is by statute approved
15 by a two-thirds vote of the General Assembly.

16 Section 2. All acts and parts of acts are repealed to the
17 extent they are inconsistent with the provisions of 74 Pa.C.S.
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19 Section 3. This act shall take effect as follows:

20 (1) The following provisions shall take effect
21 immediately:

22 (i) The addition of 74 Pa.C.S. § 9203(f) and (k).

23 (ii) This section.

24 (2) The remainder of this act shall take effect on the
25 earlier of:

26 (i) 120 days; or

27 (ii) the date of publication of draft interim
28 regulations under 74 Pa.C.S. § 9203(f).