

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1280 Session of
2008

INTRODUCED BY GORDNER, M. WHITE, CORMAN, EARLL, EICHELBERGER AND
ORIE, FEBRUARY 12, 2008

REFERRED TO TRANSPORTATION, FEBRUARY 12, 2008

AN ACT

1 Amending Titles 74 (Transportation) and 75 (Vehicles) of the
2 Pennsylvania Consolidated Statutes, adding provisions
3 relating to turnpike public-private partnership agreements;
4 further providing for special revenue bonds and preliminary
5 or interim financing; and making repeals.

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

8 Section 1. Sections 1506, 1513(e), 8105, 8106 and 8116(a) of
9 Title 74 of the Pennsylvania Consolidated Statutes are amended
10 to read:

11 [§ 1506. Fund.

12 (a) Establishment.--A special fund is established within the
13 State Treasury to be known as the Public Transportation Trust
14 Fund. Money in the fund is hereby appropriated, upon approval of
15 the Governor, to the department for the purposes set forth under
16 this chapter.

17 (b) Deposits to fund by department.--

18 (1) The following apply:

19 (i) Except as provided under subparagraph (ii), upon

1 receipt, the department shall deposit into the fund the
2 revenues received by the department under 75 Pa.C.S. Ch.
3 89 (relating to Pennsylvania Turnpike) and the lease
4 agreement executed between the department and the
5 Pennsylvania Turnpike Commission under 75 Pa.C.S. §
6 8915.3 (relating to lease of Interstate 80; related
7 agreements) as follows:

8 (A) For fiscal year 2007-2008, \$250,000,000.

9 (B) For fiscal year 2008-2009, \$250,000,000.

10 (C) For fiscal year 2009-2010, \$250,000,000.

11 (D) For fiscal year 2010-2011 and each fiscal
12 year thereafter, the amount calculated for the
13 previous fiscal year, increased by 2.5%.

14 (ii) The deposits made to the fund under this
15 subsection shall equal \$250,000,000 annually for each
16 fiscal year commencing after the expiration of the
17 conversion period if the conversion notice is not
18 received by the secretary prior to expiration of the
19 conversion period as set forth under 75 Pa.C.S. §
20 8915.3(3).

21 (2) Upon receipt, the department shall deposit the
22 amount made available to the department as an executive
23 authorization and any appropriation for the 2007-2008 fiscal
24 year and each fiscal year thereafter from the State Lottery
25 Fund for fixed route transit and for the Free Transit Program
26 for Senior Citizens established under the act of August 26,
27 1971 (P.L.351, No.91), known as the State Lottery Law. The
28 funds deposited under this paragraph shall only be used as
29 permitted by the State Lottery Law, except that:

30 (i) funds may be used to pay estimated transit

1 losses resulting from providing free service for senior
2 passengers during the provider's regular hours of
3 service; and

4 (ii) fares for senior citizens on commuter rail
5 service shall be limited to \$1 per trip and shall be
6 extended to all hours of commuter rail service.

7 (c) Other deposits.--The following shall be deposited into
8 the fund annually:

9 (1) 4.4% of the amount collected under Article II of the
10 Tax Reform Code. Revenues under this paragraph shall be
11 deposited into the fund by the 20th day of each month for the
12 preceding month. The amount deposited under this paragraph is
13 estimated to be equivalent to the money available to the
14 department from the following sources:

15 (i) The Supplemental Public Transportation Account
16 established under former section 1310.1 (relating to
17 supplemental public transportation assistance funding).

18 (ii) The amount appropriated annually by the
19 Commonwealth from the General Fund for mass transit
20 programs pursuant to a General Appropriations Act.

21 (2) An amount of proceeds of Commonwealth capital bonds
22 as determined annually by the Secretary of the Budget.

23 (3) Revenue in the Public Transportation Assistance Fund
24 established under Article XXIII of the Tax Reform Code not
25 otherwise dedicated pursuant to law.

26 (4) Other appropriations, deposits or transfers to the
27 fund.

28 (d) Use of revenues.--Money in the fund shall be used by the
29 department as follows:

30 (1) to provide financial assistance through the programs

1 established under this chapter;

2 (2) for costs incurred directly by the department in the
3 administration of public passenger transportation programs,
4 including under this chapter; and

5 (3) for all other purposes enumerated under this
6 chapter.

7 (e) Program funding amounts.--Subject to available funds,
8 the programs established under this chapter shall be funded
9 annually as follows:

10 (1) For the program established under section 1513
11 (relating to operating program), the following amounts shall
12 be allocated from the fund:

13 (i) All revenues deposited in the fund under
14 subsection (b)(1).

15 (ii) All revenues deposited in the fund under
16 subsection (b)(2).

17 (iii) 69.99% of the revenues deposited in the fund
18 under subsection (c)(1).

19 (iv) All revenues deposited into the fund under
20 subsection (c)(3).

21 (2) (i) Except as provided under subparagraph (ii), for
22 the program established under section 1514 (relating to
23 asset improvement program):

24 (A) By the proceeds of Commonwealth capital
25 bonds deposited into the fund under subsection
26 (c)(2).

27 (A.1) For fiscal year 2007-2008, \$50,000,000
28 from the revenues received by the department under 75
29 Pa.C.S. Ch. 89 and the lease agreement executed
30 between the department and the Pennsylvania Turnpike

1 Commission under 75 Pa.C.S. § 8915.3. The amount
2 received by the department under this section shall
3 be deposited into the fund prior to distribution and
4 shall be in addition to the amounts received under
5 subsection (b)(1).

6 (B) For fiscal year 2008-2009, \$100,000,000 from
7 the revenues received by the department under 75
8 Pa.C.S. Ch. 89 and the lease agreement executed
9 between the department and the Pennsylvania Turnpike
10 Commission under 75 Pa.C.S. § 8915.3. The amount
11 received by the department under this section shall
12 be deposited into the fund prior to distribution and
13 shall be in addition to the amounts received under
14 subsection (b)(1).

15 (C) For fiscal year 2009-2010, \$150,000,000 from
16 the revenues received by the department under 75
17 Pa.C.S. Ch. 89 and the lease agreement executed
18 between the department and the Pennsylvania Turnpike
19 Commission under 75 Pa.C.S. § 8915.3. The amount
20 received by the department under this section shall
21 be deposited into the fund prior to distribution and
22 shall be in addition to the amounts received under
23 subsection (b)(1).

24 (D) For fiscal year 2010-2011 and each fiscal
25 year thereafter, the amount calculated for the prior
26 fiscal year increased by 2.5% from the revenues
27 received by the department under 75 Pa.C.S. Ch. 89
28 and the lease agreement executed between the
29 department and the Pennsylvania Turnpike Commission
30 under 75 Pa.C.S. § 8915.3. The amount received by the

department under this section shall be deposited into the fund prior to distribution and shall be in addition to the amounts received under subsection (b)(1).

(ii) If the conversion notice is not received by the secretary prior to the end of the conversion period as set forth in 75 Pa.C.S. § 8915.3(3), no additional allocation shall be made under subparagraph (i).

(3) For the program established under section 1516 (relating to programs of Statewide significance), 13.24% of the revenues deposited in the fund under subsection (c)(1) shall be allocated from the fund.

(4) For the program established under section 1517 (relating to capital improvements program), 16.77% of the revenues deposited in the fund under subsection (c)(1). Additional funds for this program may be provided from the funds allocated but not distributed based on the limitation set forth under section 1513(c)(3).]

§ 1506. Fund.

(a) Establishment.--A special fund is established within the State Treasury to be known as the Public Transportation Trust Fund. Money in the fund is hereby appropriated to the department for the purposes set forth under this chapter.

(b) Deposits.--

(1) The following apply:

(i) Upon receipt by the department, the following amounts from the scheduled annual State Transportation Commission contribution shall be deposited in the Public Transportation Trust Fund:

(A) For fiscal year 2008-2009, \$250,000,000.

1 (B) For fiscal year 2009-2010, \$250,000,000.

2 (C) For fiscal year 2010-2011 and each fiscal
3 year thereafter, the amount calculated for the
4 previous fiscal year, increased by 2.5%.

5 (2) Upon receipt, the department shall deposit the
6 amount made available to the department as an executive
7 authorization and any appropriation for the 2007-2008 fiscal
8 year and each fiscal year thereafter from the State Lottery
9 Fund for fixed route transit and for the Free Transit Program
10 for Senior Citizens established under the act of August 26,
11 1971 (P.L.351, No.91), known as the State Lottery Law. The
12 funds deposited under this paragraph shall only be used as
13 permitted by the State Lottery Law, except that:

14 (i) funds may be used to pay estimated transit
15 losses resulting from providing free service for senior
16 passengers during the provider's regular hours of
17 service; and

18 (ii) fares for senior citizens on commuter rail
19 service shall be limited to \$1 per trip and shall be
20 extended to all hours of commuter rail service.

21 (c) Other deposits.--The following shall be deposited into
22 the fund annually:

23 (1) 4.4% of the amount collected under Article II of the
24 Tax Reform Code. Revenues under this paragraph shall be
25 deposited into the fund by the 20th day of each month for the
26 preceding month. The amount deposited under this paragraph is
27 estimated to be equivalent to the money available to the
28 department from the following sources:

29 (i) The Supplemental Public Transportation Account
30 established under former section 1310.1 (relating to

1 supplemental public transportation assistance funding).

2 (ii) The amount appropriated annually by the
3 Commonwealth from the General Fund for mass transit
4 programs pursuant to a general appropriations act.

5 (2) An amount of proceeds of Commonwealth capital bonds,
6 as determined annually by the Secretary of the Budget.

7 (3) Revenue in the Public Transportation Assistance Fund
8 established under Article XXIII of the Tax Reform Code not
9 otherwise dedicated pursuant to law.

10 (4) Other appropriations, deposits or transfers to the
11 fund.

12 (d) Use of revenues.--Money in the fund shall be used by the
13 department as follows:

14 (1) to provide financial assistance through the programs
15 established under this chapter;

16 (2) for costs incurred directly by the department in the
17 administration of public passenger transportation programs,
18 including under this chapter; and

19 (3) for all other purposes enumerated under this
20 chapter.

21 (e) Program funding amounts.--Subject to available funds,
22 the programs established under this chapter shall be funded
23 annually as follows:

24 (1) For the programs established under section 1513
25 (relating to operating program), the following amounts shall
26 be allocated from the fund:

27 (i) All revenues deposited into the fund under
28 subsection (b)(1).

29 (ii) All revenues deposited into the fund under
30 subsection (b)(2).

1 (iii) 69.99% of the revenues deposited into the fund
2 under subsection (c)(1).

3 (iv) All revenues deposited into the fund under
4 subsection (c)(3).

5 (2) For the program established under section 1516
6 (relating to programs of Statewide significance), 13.24% of
7 the revenues deposited in the fund under subsection (c)(1)
8 shall be allocated from the fund.

9 (3) For the program established under section 1517
10 (relating to capital improvements program), 16.77% of the
11 revenues deposited in the fund under subsection (c)(1) shall
12 be allocated from the fund. Additional funds for this program
13 may be provided from the funds allocated but not distributed
14 based on the limitation set forth under section 1513(c)(3).

15 § 1513. Operating program.

16 * * *

17 (e) Performance reviews.--

18 (1) The department [may] shall conduct performance
19 reviews of an award recipient under this section to determine
20 the effectiveness of the financial assistance. Reviews shall
21 be conducted [at regular intervals as established by the
22 department in consultation with the management of the award
23 recipient] annually. After completion of a review, the
24 department shall issue a report that:

25 (i) highlights exceptional performance and
26 identifies any problems that need to be resolved;

27 (ii) assesses performance, efficiency and
28 effectiveness of the use of the financial assistance;

29 (iii) makes recommendations on follow-up actions
30 required to remedy any problem identified; and

(iv) provides an action plan documenting who should perform the recommended actions and a time frame within which they should be performed.

(2) The department shall deliver the report to the Governor, to the chairman and minority chairman of the Transportation Committee of the Senate and to the chairman and minority chairman of the Transportation Committee of the House of Representatives. The department's regulations shall contain a description of the impact on both the amount of, and future eligibility for, financial assistance under this chapter based upon the degree to which the local transportation organization complies with the recommendations in the report. The department shall develop a list of best practices revealed by the reports issued under this subsection and shall post them on the department's Internet website.

* * *

[§ 8105. Commission.

(a) (Reserved).

(b) Vacancies and terms.--

(1) Notwithstanding any other law, any vacancy in the membership of the commission shall be filled by appointment of the Governor by and with the advice and consent of two-thirds of the members elected to the Senate.

(2) The appointed member shall serve for a term of four years. Upon the expiration of this term, the appointed member may continue to hold office until his successor shall be duly appointed and qualified.

(c) (Reserved).

(d) Secretary.--The provisions of subsection (a) shall not

1 apply to the appointment of the secretary, who shall continue to
2 be appointed and to serve as a member of the commission ex
3 officio in accordance with law.

4 (e) Chairman.--A majority of the members of the commission
5 shall elect a member of the commission to serve as chairman.
6 Upon the appointment and qualification of any new member to
7 serve on the commission, the office of chairman and the
8 positions of all other officers created by law shall be deemed
9 vacant, and a new chairman and other officers shall be elected
10 by a majority of the members of the commission.

11 (f) Actions by the commission.--Notwithstanding any other
12 law, court decision, precedent or practice to the contrary, any
13 and all actions by or on behalf of the commission shall be taken
14 solely upon the approval of a majority of the members to the
15 commission. The term "actions by or on behalf of the
16 commission," as used in this subsection, means any action
17 whatsoever of the commission, including, but not limited to, the
18 hiring, appointment, removal, transfer, promotion or demotion of
19 any officers and employees; the retention, use or remuneration
20 of any advisors, counsel, auditors, architects, engineers or
21 consultants; the initiation of any legal action; the making of
22 any contracts, leases, agreements, bonds, notes or covenants;
23 the approval of requisitions, purchase orders, investments and
24 reinvestments; and the adoption, amendment, revision or
25 rescission of any rules and regulations, orders or other
26 directives. The chairman, vice chairman or any other officer or
27 employee of the commission may take no action by or on behalf of
28 the commission except as expressly authorized by a majority of
29 the members of the commission.

30 (g) Compensation.--The annual salary of the Chairman of the

1 Pennsylvania Turnpike Commission shall be \$28,500, and the
2 annual salary of the remaining members of the Pennsylvania
3 Turnpike Commission shall be \$26,000. These salaries shall be
4 paid in equal installments every other week.]

5 § 8105.1. Transfer of commission obligations.

6 All personnel, allocations, appropriations, agreements,
7 leases, claims, demands and causes of action of any nature,
8 whether or not subject to litigation on the effective date of
9 this section, equipment, files, records, classified data files,
10 plans, maps, air photographs, and all other materials which are
11 used, employed or expended in connection with the duties, powers
12 or functions of the Pennsylvania Turnpike Commission are hereby
13 transferred by this section to the State Transportation
14 Commission with the same force and effect as if the
15 appropriations had been made to and said items had been the
16 property of the State Transportation Commission in the first
17 instance and if said contracts, agreements, leases and
18 obligations had been incurred or entered into by the State
19 Transportation Commission. Whenever in any law, reference is
20 made to the Pennsylvania Turnpike Commission, such reference
21 shall be deemed to refer to and include the State Transportation
22 Commission. Whenever in any law, reference is made to the
23 Chairman of the Pennsylvania Turnpike Commission, such reference
24 shall be deemed to refer to and include the chairman of the
25 State Transportation Commission.

26 § 8106. Exercise of commission powers.

27 [The exercise by the commission of the powers conferred by
28 this chapter in the construction, operation and maintenance of
29 the turnpikes and in effecting toll road conversions shall be
30 deemed and held to be an essential governmental function of the

1 Commonwealth.]

2 (a) Transfer of commission powers.--There are hereby
3 transferred to the State Transportation Commission all of the
4 functions, powers and duties of the Pennsylvania Turnpike
5 Commission.

6 (b) Essential governmental function.--The exercise by the
7 State Transportation Commission of the powers conferred under
8 this chapter in the construction, operation and maintenance of
9 the turnpikes shall be deemed and held to be an essential
10 governmental function of the Commonwealth.

11 (c) Effect of public-private partnership agreement.--The
12 State Transportation Commission shall exercise such functions,
13 powers and duties which are deemed necessary prior to the
14 execution of a turnpike public-private partnership agreement or
15 agreements under Chapter 84 (relating to turnpike public-private
16 partnership agreements). Following the execution of a public-
17 private partnership agreement, the State Transportation
18 Commission shall only exercise those functions, powers and
19 duties which are not transferred or assigned to an authorized
20 partnership entity as defined by section 8402 (relating to
21 definitions) and remain an essential governmental function.

22 § 8116. Collection and disposition of tolls and other revenue.

23 (a) Establishment and changes in toll amounts.--Subject to
24 the terms of any trust indenture entered into by the commission
25 or any resolution authorizing the issuance of any bonds, notes
26 or other obligations of the commission, the commission is
27 authorized to fix and to revise tolls for the use of the
28 Pennsylvania Turnpike System and the different parts or sections
29 of the system, including the turnpike, the turnpike extensions
30 and improvements and the toll road conversions authorized by

1 this chapter. The commission is further authorized to charge and
2 collect tolls; to contract with any person, partnership,
3 association or corporation desiring the use of any part thereof,
4 including the right-of-way adjoining the paved portion, for
5 placing thereon telephone, telegraph, electric light or power
6 lines, gas stations, garages, stores, hotels, restaurants and
7 advertising signs or for any other purpose[, except for service
8 plazas in the right-of-way along Interstate 80] and for tracks
9 for railroad or railway use; and to fix the terms, conditions,
10 rents and rates of charges for use. Tolls shall be fixed and
11 adjusted as to provide funds at least sufficient with other
12 revenues of the Pennsylvania Turnpike System, if any, to pay all
13 of the following:

14 (1) The cost of the turnpikes. This paragraph includes
15 the cost of constructing, reconstructing, widening,
16 expanding, extending, maintaining, repairing and operating
17 the Pennsylvania Turnpike System and the different parts and
18 sections of the system.

19 (2) Any of the following:

20 (i) The commission's bonds, notes or other
21 obligations and the interest on them.

22 (ii) Sinking fund requirements of the commission.

23 (iii) Other requirements provided for by any
24 resolution authorizing the issuance of the bonds, notes
25 or other obligations by the commission, or by any trust
26 indenture to which the commission is a party, as they
27 become due.

28 (3) Amounts due to the department [under 75 Pa.C.S. Ch.
29 89 (relating to Pennsylvania Turnpike) and pursuant to the
30 lease agreement under 75 Pa.C.S. § 8915.3 (relating to lease

of Interstate 80; related agreements).] under Chapters 15
(relating to sustainable mobility options) and 84 (relating
to turnpike public-private partnership agreements).

(4) The cost of repayment to the Federal Government of
funds required to be repaid pursuant to Federal legislation
authorizing the conversion of toll-free roads to toll roads.

(5) Any other amounts payable to the Commonwealth or to
the department.

* * *

Section 2. Title 74 is amended by adding a chapter to read:

CHAPTER 84

TURNPIKE PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

Sec.

8401. Scope of chapter.

8402. Definitions.

8403. Turnpike public-private partnership agreements.

8404. Proposals for public-private partnership agreements.

8405. Review and selection of proposals.

8406. Terms and conditions of public-private partnership
agreements.

8407. Material default; remedies.

8408. Imposition of user fees.

8409. Power of eminent domain.

8410. Police powers; motor vehicle laws.

8411. Taxation of authorized development entity.

8412. Pennsylvania Transportation Development Fund.

§ 8401. Scope of chapter.

This chapter relates to turnpike public-private partnership
agreements.

§ 8402. Definitions.

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

"Authorized partnership entity." A private entity or any partnership of private entities with its principal place of business in the United States having majority ownership by private entities or a partnership of private entities with principal places of business in the United States and authorized by the State Transportation Commission to assume responsibility for the use or control, in whole or in part, of a turnpike from the Commonwealth.

"Develop" or "development." The term includes, but is not limited to, the acts or functions of planning, designing, financing, constructing, purchasing, installing, adding, extending or other activities relating to the improvement of a turnpike.

"Fund." The Pennsylvania Transportation Development Fund.

"Material default." Failure of an authorized partnership entity to perform any duties under a public-private partnership agreement which jeopardizes delivery of adequate service to the public and remains unsatisfied after a reasonable period of time and after the authorized partnership entity has received written notice from the State Transportation Commission of failure.

"Metropolitan planning organization." The policy board of an organization created and designated to carry out the metropolitan transportation planning process.

"Operate" or "operation." The term includes, but is not limited to, the acts or functions of managing, controlling, maintaining, repairing, conducting financial proceedings and other day-to-day activities of an enterprise.

1 "Partnership." An organization structured as a partnership
2 or joint venture comprised of any combination of private
3 entities or public entities, or both.

4 "Private entity." A natural person, sole proprietorship,
5 corporation, partnership, company, business trust, public
6 benefit, corporation, nonprofit entity or any other entity not
7 specifically listed in this definition entering into a public-
8 private partnership agreement with the Commonwealth for a
9 qualifying public-private partnership project.

10 "Public entity." The Commonwealth or any department,
11 commission, authority or agency thereof. The term shall
12 specifically include the State Transportation Commission, the
13 Department of Transportation and the Department of General
14 Services. For purposes of this chapter, the term does not
15 include the General Assembly and its members, officers or
16 agencies or any court or other office or agency of the
17 Pennsylvania judicial system.

18 "Public-private partnership agreement." A lease, license,
19 franchise, easement, concession or other binding agreement
20 transferring rights for the use or control, in whole or in part,
21 of a turnpike by the Commonwealth to an authorized partnership
22 entity for a definite term during which the authorized
23 partnership entity will provide transportation-related services,
24 including, but not limited to, any one of the following:
25 operations and maintenance, revenue collection, toll collection
26 enforcement, design, construction, development and other
27 activities with respect to existing or new transportation
28 facilities that enhance throughput, reduce congestion, improve
29 safety or otherwise manage or improve a turnpike in return for
30 the right to receive all or a portion of the revenues of the

1 turnpike.

2 "Public Transportation Trust Fund." A separate and distinct
3 fund as defined by section 1506 (relating to fund).

4 "Qualifying public-private partnership project." For
5 purposes of this chapter, a proposed undertaking by an
6 authorized partnership entity for the development or operation
7 of all or part of the turnpike.

8 "Request for proposals." All materials and documents
9 prepared by or on behalf of a public entity to solicit proposals
10 from public or private entities to enter into a public-private
11 partnership agreement for a qualifying public-private
12 partnership project as set forth in this chapter.

13 "Right-to-Know Law." The act of June 21, 1957 (P.L.390,
14 No.212), referred to as the Right-to-Know Law.

15 "Rural planning organization." The organization of counties
16 with populations of less than 50,000 created and designated as
17 local development districts and which carry out the rural
18 transportation planning process.

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

21 "State advisor." An entity as defined in section 2 of the
22 act of July 19, 1957 (P.L.1017, No.451), known as the State
23 Adverse Interest Act.

24 "State consultant." An entity as defined in section 2 of the
25 act of July 19, 1957 (P.L.1017, No.451), known as the State
26 Adverse Interest Act.

27 "Transportation Commission." The State Transportation
28 Commission of the Commonwealth.

29 "Transportation partnership revenues." Money generated from
30 or received in support of the development or operation of a

1 qualified public-private partnership project, including, but not
2 limited to, user fees, service payments, surcharges, lease
3 payments, governmental appropriations or grants, proceeds of
4 debt or equity issuance, income from operations and earnings on
5 investments.

6 "Turnpike." The turnpike, turnpike extensions and turnpike
7 improvements as defined under section 8102 (relating to
8 definitions).

9 "Turnpike-east." The tolled road and related properties as
10 defined under section 8102 (relating to definitions) from
11 milepost 247 on Interstate 76 east to the Commonwealth's border
12 with the State of New Jersey, including Interstate 276.

13 "Turnpike-northeast extension." The tolled road and related
14 properties as defined under section 8102 (relating to
15 definitions) from milepost 20 to milepost 131 on Interstate 476.

16 "Turnpike-west." The tolled road and related properties as
17 defined under section 8102 (relating to definitions) from
18 milepost 247 on Interstate 76 west to the Commonwealth's border
19 with the State of Ohio.

20 "User fees." Rates, tolls, fees or other charges imposed or
21 collected by an authorized partnership entity for use of all or
22 a portion of a turnpike pursuant to the public-private
23 partnership agreement.

24 § 8403. Turnpike public-private partnership agreements.

25 (a) Authorization and approval.--Subject to the provisions
26 of this chapter and the approval of the Transportation
27 Commission, the Department of General Services has full
28 authority to enter into public-private partnership agreements
29 with authorized partnership entities governing the operation and
30 development of turnpike-east, turnpike-northeast extension and

1 turnpike-west.

2 (b) Project activities authorized.--Subject to the
3 requirements of this chapter, a public-private partnership
4 agreement may provide for the authorized partnership entity to
5 be partially or entirely responsible for any one or more of the
6 following activities: planning, design, development,
7 construction, reconstruction, improvement, extension or
8 expansion, operation, repair, maintenance, management, revenue
9 collection or financing of a turnpike.

10 (c) Repository for materials.--The Department of General
11 Services shall serve as the primary repository for all materials
12 relating to the review and approval of turnpike public-private
13 partnership agreements.

14 § 8404. Proposals for public-private partnership agreements.

15 (a) Solicited proposals.--Before entering into a public-
16 private partnership agreement, the Transportation Commission
17 shall issue a request for proposals as set forth under this
18 subsection. Any request for proposals shall use a competitive
19 procurement process that selects the authorized partnership
20 entity which is the highest responsible bidder. Notice of any
21 such request for proposals shall be published in the
22 Pennsylvania Bulletin. A request for proposals issued under this
23 subsection shall include the following:

24 (1) The minimum scope and content of the information to
25 be provided by the respondent.

26 (2) The factors or criteria that will be used by the
27 Transportation Commission in evaluating the proposals and the
28 deadline for submitting the proposals.

29 (3) A statement concerning the scope and location of the
30 project.

1 (4) A statement concerning any other information that
2 the Transportation Commission may consider in evaluating the
3 proposals.

4 (5) A statement indicating that if clarification is
5 needed in the evaluation of the proposals, the Transportation
6 Commission may negotiate specific provisions with the
7 prospective authorized partnership entity that submitted the
8 proposal pursuant to the request for proposals.

9 (b) Discussions and negotiations with proposing entities.--
10 The Transportation Commission may conduct discussions and
11 negotiations with public or private entities which have
12 submitted solicited proposals for the purpose of clarification
13 to assure full understanding of the proposals or the
14 responsiveness of solicited proposals to solicitation
15 requirements.

16 (c) Federal credit assistance.--The Transportation
17 Commission may apply for, execute or endorse applications by
18 prospective authorized partnership entities to obtain Federal
19 credit assistance for a qualifying transportation project.

20 (d) Adverse interests of proposing private entity.--

21 (1) Except as provided under paragraph (2), a private
22 entity which is a State advisor or State consultant for the
23 Transportation Commission, the Department of General
24 Services, the Pennsylvania Turnpike Commission or any other
25 department, commission, authority, agency or local government
26 entity of the Commonwealth shall not be deemed to be in
27 violation of the State Adverse Interest Act if the private
28 entity:

29 (i) prepares a response to a request for proposals
30 under this section;

1 (ii) negotiates or enters into a public-private
2 partnership agreement; or
3 (iii) engages in other activities in furtherance of
4 the provisions or purposes of this chapter.

5 (2) A private entity which submits a response to a
6 request for proposals shall be prohibited from providing
7 further advice to the Department of General Services, the
8 Department of Transportation or the Transportation
9 Commission.

10 (e) Confidentiality of records.--To encourage public and
11 private entities to submit proposals under subsection (a), the
12 following information shall be considered confidential and shall
13 not be considered a public record subject to disclosure, public
14 inspection or copying under the Right-to-Know Law, or any other
15 act, until a final public-private partnership agreement for a
16 proposed qualifying public-private partnership project is
17 entered into:

18 (1) All or part of a solicited proposal, submitted by a
19 public or private entity or any partnership of the entities
20 for a proposed qualifying public-private partnership project,
21 except information regarding the scope, location and limits
22 of the project and information pertaining to a public or
23 private entity's qualifications, experience, technical
24 competence and capability to develop the project.

25 (2) Information and records created during any
26 deliberations, discussions or negotiations arising from the
27 process as described under subsection (b).

28 (f) Disclosure of records.--Notwithstanding subsection (e),
29 after a public-private partnership agreement has been entered
30 into, the selected proposal shall be considered public record

for purposes of disclosure under the Right-to-Know Law. After a public-private partnership agreement has been entered into, the Department of General Services and the Transportation Commission shall also make available for inspection and copying by the public a summary of the terms of the selected proposal and a written explanation of the basis upon which the selection was made. Proprietary information contained in the proposals not selected and records of negotiations with private entities or public entities not selected shall continue to be exempt from public disclosure.

§ 8405. Review and selection of proposals.

(a) Timing of review.--The following shall apply:

(1) The Transportation Commission shall issue a request for proposals under section 8404 (relating to proposals for public-private partnership agreements) no later than December 31, 2008.

(2) The request for proposals shall require responses no later than June 30, 2009.

(3) The Department of General Services, with the approval of the Transportation Commission, shall execute a public-private partnership agreement or agreements with an authorized partnership entity or entities no later than December 31, 2009.

(b) Asset evaluation.--In evaluating any submitted proposal, the Transportation Commission may rely on internal reports prepared by staff familiar with the operation of similar transportation facilities or may engage the services of private consultants, engineers and other experts as the Transportation Commission determines as necessary or desirable for the purposes of performing the evaluations. As part of each evaluation of any

1 submitted proposal, the Transportation Commission shall be
2 required to obtain a financial and valuation assessment with
3 respect to the proposed qualifying public-private partnership
4 project from a qualified independent advisor with experience and
5 expertise with similar transportation facilities.

6 (c) Factors for review and selection of proposals.--The
7 Transportation Commission may consider the following factors in
8 reviewing and selecting a proposal to enter into a public-
9 private partnership agreement:

10 (1) the ability of the qualifying public-private
11 partnership project to improve safety, reduce congestion,
12 increase capacity and promote economic growth;

13 (2) the proposed cost of and financial plan for the
14 qualifying public-private partnership project;

15 (3) the general reputation, qualifications, industry
16 experience and financial capacity of the entity submitting
17 the proposal;

18 (4) benefits to the Commonwealth and the public;

19 (5) the safety record of the entity submitting the
20 proposal; and

21 (6) other criteria the Transportation Commission deems
22 appropriate.

23 § 8406. Terms and conditions of public-private partnership
24 agreements.

25 (a) Commonwealth and authorized partnership entity
26 negotiations.--The Department of General Services, with the
27 approval of the Transportation Commission, may enter into a
28 public-private partnership agreement with an authorized
29 partnership entity without regard to the provisions of 62
30 Pa.C.S. Pt. 1 (relating to Commonwealth Procurement Code). The

1 Transportation Commission and authorized partnership entity are
2 expressly authorized to negotiate the provisions of a public-
3 private partnership agreement.

4 (b) Required provisions.--A public-private partnership
5 agreement entered into under this chapter shall provide for all
6 of the following:

7 (1) A process by which the authorized partnership entity
8 implements, sets and adjusts user fees on any turnpike.

9 (2) The methodologies, indexes or other factors for the
10 setting and adjusting of user fees.

11 (3) The original term of the public-private partnership
12 agreement, which may not exceed 50 years.

13 (4) The turnpike subject to a public-private partnership
14 agreement is public property that is leased to the authorized
15 partnership entity and belongs to the Commonwealth.

16 (5) That upon termination of the public-private
17 partnership agreement, the turnpike must be in a state of
18 proper maintenance and repair and shall be returned to the
19 Commonwealth in satisfactory condition at no further cost to
20 the Commonwealth.

21 (6) Maintenance of a policy or policies of liability
22 insurance, copies of which shall be filed with the Department
23 of General Services and the Transportation Commission
24 accompanied by proof of coverage, or self-insurance, each in
25 a form and amount satisfactory to the Transportation
26 Commission and reasonably sufficient to insure coverage of
27 tort liability to the public and employees and to enable the
28 continued operation of the turnpike.

29 (7) That the authorized partnership entity shall comply
30 with the act of August 15, 1961 (P.L.987, No.442), known as

1 the Pennsylvania Prevailing Wage Act, and 62 Pa.C.S. § 107
2 (relating to reciprocal limitations).

3 (8) That an authorized partnership entity shall, during
4 the first ten-year period of operating a turnpike, set aside
5 the following amounts for the purpose of turnpike
6 development:

7 (i) The sum of \$850,000,000 for the development of
8 turnpike-east.

9 (ii) The sum of \$850,000,000 for the development of
10 turnpike-northeast extension.

11 (iii) The sum of \$850,000,000 for the development of
12 turnpike-west.

13 (iv) The amounts set aside during the first ten-year
14 period for turnpike development shall be set aside for
15 each ten-year period thereafter and shall be increased by
16 a cost-of-living factor which shall be determined by
17 increasing \$850,000,000 by the percentage change over the
18 previous ten years in the Consumer Price Index for All
19 Urban Consumers (CPI-U) for the Pennsylvania, New Jersey,
20 Delaware and Maryland area, officially reported by the
21 United States Department of Labor, Bureau of Labor
22 Statistics.

23 § 8407. Material default; remedies.

24 (a) General rule.--Upon the occurrence and during the
25 continuation of a material default of a public-private
26 partnership agreement by an authorized partnership entity, the
27 Department of General Services, in response to a decision by the
28 Transportation Commission, shall terminate the public-private
29 partnership agreement and exercise any other rights and remedies
30 that may be available.

1 (b) Termination and takeover.--In the event that the
2 Transportation Commission decides to terminate a public-private
3 partnership agreement with an authorized partnership entity
4 under subsection (a), the Transportation Commission shall take
5 over the turnpike subject to the terminated public-private
6 partnership agreement, including the succession of all right,
7 title and interest in the turnpike, subject to any liens on
8 revenues previously granted by the authorized partnership
9 entity.

10 (c) Takeover by Transportation Commission.--In the event
11 that the Transportation Commission decides to terminate a
12 public-private partnership agreement, the Transportation
13 Commission:

14 (1) Shall collect and pay any revenues that are subject
15 to lien to satisfy any obligation.

16 (2) May develop and operate the turnpike, impose user
17 fees for the use of the turnpike and comply with any service
18 contracts.

19 (d) Solicitation of request for proposals.--The
20 Transportation Commission shall solicit proposals under section
21 8404 (relating to proposals for public-private partnership
22 agreements) following the termination of a public-private
23 partnership agreement with an authorized partnership entity.

24 § 8408. Imposition of user fees.

25 (a) User fees.--

26 (1) The Transportation Commission shall increase user
27 fees for the use of the turnpike by 25% as of January 1,
28 2009.

29 (2) Each public-private partnership agreement shall
30 authorize the authorized partnership entity to impose user

1 fees for use of the turnpike.

2 (3) The following shall apply to user fee increases:

3 (i) As of January 1, 2010, and every year
4 thereafter, an authorized partnership entity may annually
5 increase user fees on a qualifying public-private
6 partnership project up to 3% over the previous year.

7 (ii) An authorized partnership entity may increase
8 user fees in excess of 3% annually subject to approval by
9 the Transportation Commission.

10 (iii) The Transportation Commission may consider the
11 following factors in reviewing a request by an authorized
12 partnership entity to increase user fees in excess of 3%
13 annually:

14 (A) Increases in motorist usage of the
15 qualifying public-private partnership project
16 resulting in increased maintenance and repair costs.

17 (B) Significant increases in the cost of
18 materials and labor.

19 (C) Other reasonable criteria the Transportation
20 Commission deems appropriate.

21 (4) The public-private partnership agreement may
22 authorize the authorized partnership entity to collect tolls
23 or user fees through both conventional methods and
24 nonconventional methods, including, but not limited to,
25 automatic vehicle identification systems, electronic toll
26 collection systems and, to the extent permitted by law,
27 video-based toll collection enforcement.

28 (5) After expiration of the original term of the public-
29 private partnership agreement, the Commonwealth may continue
30 to charge user fees for the use of the turnpike.

1 (6) User fees under a public-private partnership
2 agreement shall generally be uniform for similar persons and
3 vehicles traveling under like conditions.

4 (b) Bonding authority.--An authorized partnership entity may
5 authorize the issuance of debt, equity or other securities or
6 obligations to pay all or part of the costs of a qualifying
7 public-private partnership project and may secure any such
8 financing with a pledge of security interest in or lien on any
9 of the user fees charged and collected for the use of the
10 turnpike. However, any bonds, debt, other securities or other
11 financing issued for the purposes of this chapter shall be
12 limited obligations of the authorized partnership entity and
13 shall not be considered to constitute a debt of the Commonwealth
14 or a pledge of the full faith and credit of the Commonwealth.

15 § 8409. Power of eminent domain.

16 At the request of an authorized partnership entity, the
17 Department of Transportation may exercise the power of eminent
18 domain for the purpose of acquiring any real property or
19 interests therein deemed necessary to advance the development or
20 operation of a qualifying public-private partnership project.
21 Any amounts payable in any such eminent domain proceeding may be
22 paid by the authorized partnership entity.

23 § 8410. Police powers; motor vehicle laws.

24 (a) Powers and jurisdiction.--The Pennsylvania State Police
25 shall have the same powers of jurisdiction within the limits of
26 a qualifying public-private partnership project as the
27 Pennsylvania State Police had prior to the implementation of a
28 public-private partnership agreement and shall have access to
29 the qualifying public-private partnership project at any time
30 for the purpose of exercising its law enforcement powers and

1 jurisdiction.

2 (b) Enforcement of traffic laws.--To the extent the
3 qualifying public-private partnership project includes a
4 highway, bridge, tunnel, overpass or similar transportation
5 facility for motor vehicles, the traffic and motor vehicle laws
6 of this Commonwealth or, if applicable, any local jurisdiction
7 shall be the same as those applying to conduct on similar
8 transportation facilities in this Commonwealth or the local
9 jurisdiction.

10 (c) Payment of law enforcement costs.--The authorized
11 partnership entity shall be responsible for the payment of all
12 costs associated with the provisions of law enforcement services
13 pursuant to subsections (a) and (b) within the limits of a
14 qualifying public-private partnership project as stipulated by
15 the public-private partnership agreement.

16 (d) Fines.--Fines imposed by law enforcement officers for
17 violations occurring within the limits of a qualifying public-
18 private partnership project shall be imposed, collected,
19 distributed and governed as otherwise provided by applicable
20 law.

21 § 8411. Taxation of authorized development entity.

22 (a) General rule.--To the extent that revenues or user fees
23 received by an authorized partnership entity are subject to any
24 tax imposed by the Commonwealth or a political subdivision prior
25 to December 31, 2007, the revenues or user fees shall continue
26 to be subject to the tax and to future increases in the rate of
27 the tax.

28 (b) New taxation barred.--As of January 1, 2008, no new tax
29 shall be imposed by the Commonwealth or a political subdivision
30 on the revenues or user fees received by an authorized

1 partnership entity.

2 (c) Realty transfer tax.--No public-private partnership
3 agreement, lease, concession, franchise or other contract
4 involving real property of a qualifying public-private
5 partnership project shall be subject to any Commonwealth or
6 local realty transfer tax imposed under the act of December 31,
7 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act,
8 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
9 Code of 1971, or a successor statute.

10 (d) Property.--Property used in connection with a qualifying
11 public-private partnership project shall be considered public
12 property and is exempt from ad valorem property taxes and
13 special assessments levied against property by the Commonwealth
14 or any political subdivision.

15 § 8412. Pennsylvania Transportation Development Fund.

16 (a) Establishment of fund.--The Pennsylvania Transportation
17 Development Fund is hereby established separate and distinct
18 from the General Fund of the Commonwealth. Interest earned on
19 moneys held in the fund shall be credited to the fund. The
20 Transportation Commission shall hold, administer and manage the
21 fund, and expenses of administering the fund shall be paid from
22 moneys in the fund. The members of the Transportation Commission
23 shall be the trustees of the fund. Regardless of any other
24 provision of law governing the investments of funds under the
25 control of an administrative commission of the State government,
26 the trustees shall have exclusive control and management of the
27 fund and full power to invest the same, in accordance with the
28 provisions of this section, subject, however, to the exercise of
29 that degree of judgment, skill and care under the circumstances
30 then prevailing which persons of prudence, discretion and

1 intelligence who are familiar with such matters exercised in the
2 management of their own affairs not in regard to speculation,
3 but in regard to the permanent disposition of the fund,
4 considering the probable income to be derived therefrom as well
5 as the probable safety of their capital. The trustees shall have
6 the power to hold, purchase, sell, lend, assign, transfer or
7 dispose of any of the securities and investments in which any of
8 the moneys in the fund shall have been invested as well as any
9 of the proceeds of the investments, including any directed
10 commissions which have accrued to the benefit of the fund as a
11 consequence of the investments and of any moneys belonging to
12 the fund, subject in every case to meeting the standard of
13 prudence set forth in this subsection.

14 (b) Deposits.--Subject to the provisions of a public-private
15 partnership agreement, the following moneys shall be deposited
16 into the fund by the Transportation Commission:

17 (1) Payments received from a qualifying authorized
18 development entity through the execution of a public-private
19 partnership agreement.

20 (2) Appropriations, if any, made by the General
21 Assembly.

22 (3) Interest, premiums, gains or other earnings on the
23 fund.

24 (4) Any other moneys from any sources, public or
25 private, that are received by donation, grant, contract, law
26 or other means transferred, allocated or appropriated to the
27 fund.

28 (c) Distribution of transportation partnership revenues.--
29 The following shall apply:

30 (1) The Transportation Commission shall transfer the

following amounts from the fund to the Department of
Transportation to be deposited into the Motor Vehicle License
Fund for the purposes set forth under this section:

(i) For fiscal year 2008-2009, \$750,000,000.

(ii) For fiscal year 2009-2010, \$750,000,000.

(iii) For fiscal year 2010-2011 and each fiscal year
thereafter, the amount calculated for the previous year
shall be increased by 2.5%.

(2) The Transportation Commission shall transfer the
following amounts from the fund to the Department of
Transportation to be deposited into the Public Transportation
Trust Fund for the purposes set forth in Chapter 15 (relating
to sustainable mobility options):

(i) For fiscal year 2008-2009, \$250,000,000.

(ii) For fiscal year 2009-2010, \$250,000,000.

(iii) For fiscal year 2010-2011 and each fiscal year
thereafter, the amount calculated for the previous fiscal
year increased by 2.5%.

(3) The Transportation Commission shall withdraw from
the fund the amounts necessary to fulfill the obligations
transferred to the Transportation Commission from the
Pennsylvania Turnpike Commission under section 8105.1
(relating to transfer of commission obligations).

(d) Deposit of transferred funds.--The following shall
apply:

(1) Upon receipt by the Department of Transportation,
the following amounts from the scheduled annual
Transportation Commission contribution shall be deposited
into the Motor Vehicle License Fund:

(i) For fiscal year 2008-2009, \$750,000,000.

1 (ii) For fiscal year 2009-2010, \$750,000,000.

2 (iii) For fiscal year 2010-2011, and each fiscal
3 year thereafter, the amount calculated for the previous
4 year shall be increased by 2.5%.

5 (2) The following shall apply to deposits by the
6 Transportation Commission to the Motor Vehicle License Fund:

7 (i) Annually, 15% of the amount deposited in any
8 fiscal year under paragraph (1) shall be distributed at
9 the discretion of the Secretary of Transportation.

10 (ii) Annually, \$7,500,000 of the amount deposited in
11 any fiscal year under paragraph (1) shall be distributed
12 to counties.

13 (A) The distribution shall be in the ratio of:

14 (I) the square footage of deck area of a
15 county's county-owned bridges; to

16 (II) the amount of square footage of deck
17 area of county-owned bridges throughout this
18 Commonwealth.

19 (B) The amount of square footage under clause

20 (A) shall be reported as part of the National Bridge
21 Inspection Standards Program.

22 (iii) Annually, \$45,000,000 of the amount deposited
23 in any fiscal year under paragraph (1) shall be
24 distributed to municipalities pursuant to the act of June
25 1, 1956 (1955 P.L.1944, No.655), referred to as the
26 Liquid Fuels Tax Municipal Allocation Law.

27 (iv) Any funds deposited under paragraph (1) but not
28 distributed under subparagraphs (i), (ii) and (iii) shall
29 be distributed in accordance with needs-based formulas
30 that are developed and subject to periodic revision based

1 on consultation and collaboration among metropolitan
2 planning organizations, rural planning organizations and
3 the Department of Transportation.

4 Section 3. Section 9511.4(a) of Title 75 is amended to read:

5 § 9511.4. Special revenue bonds and preliminary or interim
6 financing.

7 (a) Authorization.--The commission is authorized to provide,
8 by resolution, for the issuance of special revenue bonds of the
9 commission up to an aggregate principal amount not exceeding
10 \$5,000,000,000, exclusive of original issue discount, for the
11 purpose of paying the cost of the department and bond-related
12 expenses. The resolution must recite an estimate of the cost of
13 the department. No more than [\$600,000,000] \$1,000,000,000 in
14 aggregate principal amount of special revenue bonds, exclusive
15 of original issue discount, may be issued in any calendar year.
16 [No bond may be issued and outstanding under this section unless
17 the lease agreement authorized under section 8915.3 (relating to
18 lease of Interstate 80; related agreements) is in effect as of
19 the date of issuance. No bond may be outstanding beyond the term
20 of the lease.] Special revenue refunding bonds as set forth in
21 section 9511.9 (relating to special revenue refunding bonds)
22 shall not be deemed to count against the total or annual maximum
23 issuance volume. The principal and interest of the bond shall be
24 payable solely from pledged revenues.

25 * * *

26 Section 4. Repeals are as follows:

27 (1) The General Assembly declares that the repeals under
28 paragraph (2) are necessary to effectuate the provisions of
29 this act.

30 (2) The following acts or parts of acts are repealed

1 absolutely:

2 (i) 53 Pa.C.S. Ch. 86.

3 (ii) 75 Pa.C.S. § 8915.1.

4 (iii) 75 Pa.C.S. § 8915.2.

5 (iv) 75 Pa.C.S. § 8915.3.

6 (v) 75 Pa.C.S. § 8915.4.

7 (vi) 75 Pa.C.S. § 8915.5.

8 (vii) 75 Pa.C.S. § 8915.6.

9 (viii) 75 Pa.C.S. § 8915.7.

10 (ix) 75 Pa.C.S. § 8917.

11 (x) 75 Pa.C.S. § 8918.

12 Section 4.1. The lease under 75 Pa.C.S. § 8915.3 shall be
13 rescinded.

14 Section 5. This act shall take effect immediately.