

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 344 Session of  
2011

INTRODUCED BY RAFFERTY, SCARNATI, PILEGGI, D. WHITE, YAW, ORIE,  
ERICKSON, BAKER, FONTANA, PIPPY, BRUBAKER, ALLOWAY, BOSCOLA,  
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FEBRUARY 1, 2011

SENATOR RAFFERTY, TRANSPORTATION, AS AMENDED, FEBRUARY 8, 2011

## AN ACT

1 Amending Title 74 (Transportation) of the Pennsylvania  
2 Consolidated Statutes, providing for public-private  
3 transportation partnerships; and making a related repeal.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

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

8 PART V

9 TRANSPORTATION INFRASTRUCTURE

10 Chapter

11 91. Public-Private Transportation Partnership

12 CHAPTER 91

13 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP

14 Sec.

15 9101. Scope of chapter.

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16 9118. Federal, Commonwealth, local and private assistance.  
17 9119. Public-Private Transportation Account.  
18 9120. Public-Private Transportation Partnership Board.  
19 9121. Duties and powers of board.  
20 9122. Role of department in operation of board.  
21 § 9101. Scope of chapter.  
22 This chapter relates to public-private transportation  
23 partnerships.  
24 § 9102. Findings and declaration of policy.  
25 (a) Legislative findings and declarations.--The General  
26 Assembly finds, determines and declares as follows:  
27 (1) There is urgent public need to reduce congestion,  
28 increase capacity, improve safety and enhance economic  
29 efficiency of transportation facilities throughout this  
30 Commonwealth.

1       (2) The Commonwealth has limited resources to fund the  
2       maintenance and expansion of its transportation facilities.

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

6       (4) The imposition of user fees establishes an  
7       additional funding source for transportation infrastructure  
8       needs that spreads the costs across those who most benefit  
9       from the Commonwealth's system of roads, highways and  
10      bridges.

11      (5) The imposition of user fees and the development,  
12      operation, maintenance, construction and improvement of toll  
13      roads is a proprietary function which may be delegated to a  
14      private entity consistent with section 31 of Article 3 of the  
15      Constitution of Pennsylvania.

16      (6) Authorizing public entities to enter into  
17      transportation development agreements with private entities  
18      and other public entities for the development, operation and  
19      financing of transportation facilities can result in greater  
20      availability of transportation facilities to the public in a  
21      timely, efficient and less costly fashion, thereby serving  
22      the public safety and welfare.

23      (7) Assuring that qualifying transportation projects are  
24      developed, operated and financed in a cost-effective manner  
25      is an important factor in promoting the health, safety and  
26      welfare of the citizens of this Commonwealth.

27      (b) Intent.--It is the intent of this chapter:

28      (1) To encourage private entities to invest in this  
29      Commonwealth by participating in the development, operation  
30      and/or financing of transportation facilities.

1       (2) To accomplish the goals under subsection (a) and  
2       paragraph (1), and to provide the policies set forth in this  
3       chapter to provide public entities and private entities with  
4       the flexibility in contracting with each other for and in  
5       providing of the public services that are the subject of this  
6       title.

7       (3) To accomplish the goals under subsection (a) and  
8       paragraph (1), and provide the policies set forth in this  
9       chapter to make clear that public entities are authorized and  
10       empowered to contract with private entities for and in  
11       providing the public services which are the subject of this  
12       title.

13       (4) To establish a board with the authority to authorize  
14       the charging of user fees consistent with the goals under  
15       subsection (a) and paragraph (1).

16   § 9103. Definitions.

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

20       "Account." The Public-Private Transportation Account.

21       "Board." The Public-Private Transportation Partnership  
22       Board.

23       "Department." The Department of Transportation of the  
24       Commonwealth.

25       "Development entity." Any of the following:

26           (1) A private entity.

27           (2) A public entity, other than the proprietary public  
28           entity.

29           (3) A partnership of entities proposing, bidding or  
30           responding to a solicitation by the department or a

1     proprietary public entity.

2     "Electronic toll." A system of collecting tolls or charges  
3 that is capable of charging an account holder for the prescribed  
4 toll by electronic transmission of information, including E-Z  
5 Pass, open road tolling, video tolling or other similar  
6 structural or technological enhancements pertaining to tolling.

7     "Private entity." A person, entity or organization that is  
8 not the Federal Government, a state, a political subdivision of  
9 this Commonwealth or a unit of government.

10    "Proprietary public entity." A public entity that owns the  
11 eligible transportation facility that is subject to a public-  
12 private transportation partnership agreement.

13    "Public entity." The Commonwealth or any of its departments,  
14 commissions, authorities, agencies or a unit of government. The  
15 term includes the department and the Pennsylvania Turnpike  
16 Commission. The term does not include the General Assembly and  
17 its members, officers or agencies or any court or other office  
18 or agency of the Pennsylvania judicial system.

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

28        (1) Operations and maintenance.

29        (2) Revenue collection.

30        (3) User fee collection or enforcement.

1       (4) Design.

2       (5) Construction.

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

7       "Public-private transportation project." A project for the  
8       safe transport of people or goods via one or more modes of  
9       transport.

10      "Right-to-Know Law." The act of February 14, 2008 (P.L.6,  
11      No.3), known as the Right-to-Know Law.

12      "Solicitation." The process by which the department or a  
13      proprietary public entity may elect to procure services under  
14      section 9106(b) (relating to approval).

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

17      "Transportation facility." A proposed or existing road,  
18      bridge, tunnel, overpass, ferry, busway, guideway, public  
19      transportation facility, vehicle parking facility, port  
20      facility, multimodal transportation facility, airport, station,  
21      hub, terminal or similar facility used or to be used for the  
22      transportation of persons, animals or goods, together with any  
23      buildings, structures, parking areas, appurtenances and other  
24      property needed to operate the transportation facility. The term  
25      includes any improvements or substantial enhancements or  
26      modifications to an existing transportation facility.

27      "Unit of government." Any of the following:

28           (1) An agency, office or department of the Commonwealth.

29           (2) A city, county, district, commission, authority,  
30      entity, port or other public corporation organized and

1 existing under statutory law, voter-approved charter or  
2 initiative.

3 (3) An intergovernmental entity.

4 § 9104. Regulations.

5 (a) Promulgation.--In order to facilitate the implementation  
6 of this chapter, the department may promulgate regulations or  
7 publish guidelines that include any of the following:

8 (1) The process for review of request for solicitations  
9 or responses to requests for solicitations issued by the  
10 department or a proprietary public entity.

11 (2) The process for receipt and review of and response  
12 to competing responses to requests for solicitations.

13 (3) The type and amount of information that is necessary  
14 for adequate review of and response to each state of review  
15 of a solicitation.

16 (4) The process for submission and review of requests to  
17 the department and the board by public entities for approval  
18 of a public-private transportation project under this  
19 chapter.

20 (5) Any other provisions which are required under this  
21 chapter or which the department determines are appropriate  
22 for implementation of this chapter.

23 (b) Temporary regulations.--Notwithstanding any other  
24 provision of law and in order to facilitate the prompt  
25 implementation of this chapter, any regulation promulgated by  
26 the department under this chapter during the two years following  
27 the effective date of this section shall be deemed temporary  
28 regulations which shall expire no later than three years  
29 following the effective date of this section or upon  
30 promulgation of final regulations. The temporary regulations

1 shall not be subject to any of the following:

2 (1) Sections 201, 202, 203 and 204 of the act of July  
3 31, 1968 (P.L.769, No.240), referred to as the Commonwealth  
4 Documents Law.

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

7 § 9105. Project delivery methods.

8 The department shall provide for the development or operation  
9 of eligible facilities using a variety of project delivery  
10 methods and forms of agreement. The methods may include:

11 (1) Predevelopment agreements leading to other  
12 implementing agreements.

13 (2) A design-build agreement.

14 (3) A design-build-maintain agreement.

15 (4) A design-build-finance-operate agreement.

16 (5) A design-build-operate-maintain agreement.

17 (6) A design-build-finance-operate-maintain agreement.

18 (7) A concession providing for the private entity to  
19 design, build, operate, maintain, manage or lease an eligible  
20 transportation facility.

21 (8) Any other project delivery method or agreement or  
22 combination of methods or agreements that the department  
23 determines will serve the public interest.

24 § 9106. Approval.

25 (a) Authorization.--The department or a proprietary public  
26 entity, upon approval by the board, is authorized to enter into  
27 an agreement with a development entity for the purpose of  
28 forming a public-private transportation partnership in  
29 accordance with this chapter.

30 (b) Solicitation.--The department or a proprietary public



1 entity may procure services under this chapter using any or all  
2 of the following:

3 (1) Request for project proposals in which is described  
4 a class of transportation facilities or a geographic area in  
5 which development entities are invited to submit proposals to  
6 develop transportation facilities.

7 (2) Solicitations using requests for qualifications,  
8 short-listing of qualified proposers, requests for proposals,  
9 negotiations, best and final offers or other procurement  
10 procedures.

11 (3) Procurements seeking development and finance plans  
12 most suitable for the project.

13 (4) Best value selection procurements based on price,  
14 financial proposals, or both, or other factors determined to  
15 be relevant to a decision that is in the best interest of the  
16 Commonwealth or the proprietary public entity.

17 (5) Other procedures that the department determines may  
18 further the implementation of this chapter.

19 (6) Unsolicited proposals as recommended by the board if  
20 the board, in consultation with the department, determines  
21 there is sufficient merit to pursue the proposal, a  
22 reasonable opportunity for other entities to submit competing  
23 proposals for consideration and a possible contract award.

24 (c) Notice.--The department or a proprietary public entity  
25 must give adequate public notice of any request for  
26 qualifications, request for proposal or other solicitation in a  
27 reasonable amount of time prior to any deadline date for  
28 submission. The solicitation shall generally set forth the  
29 factors that will be evaluated and the manner in which responses  
30 will be evaluated.

1     (d) Costs.--

2         (1) The department and a proprietary public entity and  
3     their respective advisers shall not be responsible for any  
4     costs or damages incurred by a private party in connection  
5     with any requests for qualifications, requests for proposals  
6     or other solicitations.

7         (2) The department or a proprietary public entity may,  
8     in their discretion, elect to pay a stipend to unsuccessful  
9     offerors who have submitted responsive proposals, bids and  
10    other materials in response to a request for proposals or  
11    other solicitation. Stipends may be made available solely to  
12    defray the costs of proposal or response preparation. The  
13    availability of a stipend and the conditions necessary to  
14    qualify for payment shall be included in the request for  
15    proposals or other solicitation.

16        (3) The department or a proprietary public entity may  
17    charge and retain an administrative fee for the evaluation of  
18    a public-private transportation partnership proposal as  
19    recommended by the board.

20     (e) Modification and termination rights.--

21        (1) The department or a proprietary public entity may  
22    modify a solicitation request if it determines the  
23    modification to be in the best interest of the Commonwealth  
24    or proprietary public entity.

25        (2) A solicitation request may be canceled at any time  
26    prior to the time a public-private transportation partnership  
27    agreement is executed, if the department or the proprietary  
28    public entity determines, on a case-by-case basis, that the  
29    action is in the best interest of the Commonwealth or the  
30    proprietary public entity. The reasons for cancellation shall

1 be made a part of the file.

2 (3) A submission and offer made in response to the  
3 solicitation request may be rejected at any time prior to the  
4 time a public-private transportation partnership agreement is  
5 executed, if the department or the proprietary public entity  
6 determines, on a case-by-case basis, that the action is in  
7 the best interest of the Commonwealth or the proprietary  
8 public entity. The reasons for rejection shall be made part  
9 of the file.

10 (4) A decision to modify, cancel or reject any request  
11 for solicitation shall be final and unreviewable.

12 (5) The issuance for a request for solicitation in no  
13 way shall obligate the department or a proprietary public  
14 entity to enter into a public-private transportation  
15 partnership agreement or a contract of any kind with a party.

16 (f) Selection criteria, evaluation and award by the  
17 department or a proprietary public entity.--

18 (1) In evaluating proposals, the department or a  
19 proprietary public entity shall obtain the best value for the  
20 Commonwealth or the proprietary public entity and may accord  
21 relative weight to factors such as cost, financial  
22 commitment, innovative financing, technical, scientific,  
23 technological or socioeconomic merit, financial strength and  
24 viability and other factors as deemed appropriate.

25 (2) The department or a proprietary public entity may  
26 conduct discussions with development entities to assure  
27 understanding of and responsiveness to the requirements of a  
28 request for qualifications.

29 (3) The department or a proprietary public entity shall  
30 conduct a public and competitive process to award a public-

1 private transportation partnership agreement.

2 (4) The department or a proprietary public entity shall  
3 accept for contract negotiation the responsive and  
4 responsible development entity whose proposal is determined  
5 in writing to be the most advantageous to the Commonwealth or  
6 the proprietary public entity, taking into consideration  
7 price and all evaluation factors.

8 (5) The department or a proprietary public entity may  
9 require that any bid or proposal submitted to enter into a  
10 public-private transportation partnership agreement be  
11 accompanied by security in the form of cash, letters of  
12 credit or other financial security acceptable to the  
13 department or the proprietary public entity.

14 (6) The department or a proprietary public entity may  
15 retain financial, technical, legal and other consultants and  
16 experts to assist in the evaluation, negotiation and  
17 development of eligible facilities under this chapter.

18 (g) Use of intellectual property.--Unless otherwise agreed  
19 and except to the extent not transferable by law, the department  
20 or a proprietary public entity shall have the right to use all  
21 or a portion of a response to a solicitation, including the  
22 technologies, techniques, methods, processes and information  
23 contained in the response. Notice of nontransferability by law  
24 shall be given to the department in response to the request for  
25 qualifications.

26 (h) Records of solicitation requests.--Notwithstanding the  
27 Right-to-Know Law, the following shall apply:

28 (1) Upon the selection of a development entity to be a  
29 party to a public-private transportation partnership  
30 agreement, the identity of the development entity selected,

1 the contents of the response of the development entity to the  
2 request for qualifications, the final bid or proposal  
3 submitted by the development entity and the form of the  
4 public-private transportation agreement shall be made public.  
5 Any financial information of a development entity that was  
6 requested in a request for qualifications or a solicitation  
7 to demonstrate the economic capability of a development  
8 entity to fully perform the requirements of the public-  
9 private transportation partnership agreement and which is  
10 contained in a response to a request for qualifications shall  
11 not be subject to public inspection.

12 (2) The department or a proprietary public entity may,  
13 in its discretion, make public any information described  
14 under paragraph (1) that would not otherwise be subject to  
15 public inspection.

16 (3) If the department or a proprietary public entity  
17 terminates a public-private transportation partnership  
18 agreement for default, rejects a development entity or a  
19 person on the grounds that the development entity is not  
20 responsible or suspends or debars a development entity or a  
21 person, the development entity or person shall, upon written  
22 request, be provided with a copy of the information contained  
23 in the file of the development entity or person maintained by  
24 the department, the Office of the Budget and the Department  
25 of General Services or a proprietary public entity under a  
26 contractor responsibility program.

27 (4) A record, material or data received, prepared, used  
28 or retained by the department or a proprietary public entity  
29 or their employees, consultants or agents in connection with  
30 the evaluation of requests for qualifications shall not

1 constitute a public record subject to public inspection under  
2 the Right-to-Know Law if, in the reasonable judgment of the  
3 department or the proprietary public entity, the inspection  
4 would cause substantial competitive harm to the entity or  
5 person from whom the information was received.

6 (i) Diversity.--

7 (1) It is the intent and goal of the General Assembly  
8 that the department and proprietary public entities promote  
9 and ensure diversity in all aspects of development and  
10 operation of a public-private transportation project  
11 authorized under this chapter. The department and proprietary  
12 public entities shall work to enhance the representation of  
13 diverse groups in the development and operation by private  
14 entities of any public-private transportation project through  
15 the participation of business enterprises utilized by  
16 development entities and through the provision of goods and  
17 services utilized by development entities in the development  
18 and operation of any public-private transportation project  
19 authorized under this chapter.

20 (2) The department is authorized to investigate and  
21 conduct periodic studies to ascertain whether effective and  
22 meaningful action has been taken or will be taken to enhance  
23 the representation of diverse groups in the development and  
24 operation by development entities of any public-private  
25 transportation project in this Commonwealth through the  
26 participation of business enterprises utilized by development  
27 entities in the development and operating of any public-  
28 private transportation project under this chapter and through  
29 the provision of goods and services utilized by development  
30 entities in the development and operation of any public-

private transportation project and through employment opportunities.

§ 9107. Public-private transportation partnership agreement.

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

(1) A description of any planning, development, design, leasing, acquisition or interest in, financing, installation, construction, reconstruction, replacement, expansion, operation, maintenance, improvement, equipping, modification, expansion, enlargement, management, running, control and operation of the transportation facility.

(2) The term of the public-private transportation partnership agreement.

(3) The type of property interest or other relationship the development entity will have in or with respect to the project, including acquisition of rights-of-way and other property interests that may be required.

(4) Authorization for the department and the proprietary public entity, or their authorized representatives, to inspect all assets and properties of the transportation facility and all books and records of the development entity relating to the eligible transportation facility to review the development entity's performance under the public-private transportation partnership agreement.

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

(6) Procedures for amendment of the public-private transportation partnership agreement.

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

1       (8) Requirements for a private development entity to  
2 provide performance and payment bonds, parent company  
3 guarantees, letters of credit or other acceptable forms of  
4 security in an amount acceptable to the proprietary public  
5 entity.

6       (9) A requirement that the transportation facility  
7 acquired or constructed is public property that is leased to  
8 the development entity and belongs to the proprietary public  
9 entity.

10       (10) Standards for construction, maintenance and  
11 operation of the transportation facility if the activities  
12 are to be performed by the development entity.

13       (11) Standards for capital improvement or modification  
14 of the transportation facility if they are to be made by the  
15 development entity.

16       (12) Standards relating to how payments, if any, are to  
17 be made by the proprietary public entity to the development  
18 entity, including availability payments, performance-based  
19 payment and payments of money and revenue-sharing with the  
20 development entity.

21       (13) Standards relating to how the parties will allocate  
22 and share management of the risks of the project.

23       (14) Standards relating to how the parties will allocate  
24 costs of development of the project, including any cost  
25 overruns.

26       (15) Standards relating to damages to be assessed for  
27 nonperformance, specifying remedies available to the parties  
28 and dispute resolution procedures.

29       (16) Standards relating to performance criteria and  
30 incentives.



1       (17) A requirement that upon termination of the public-  
2 private transportation partnership agreement, the  
3 transportation facility must be in a state of proper  
4 maintenance and repair and shall be returned to the  
5 proprietary public entity in satisfactory condition at no  
6 further cost to the proprietary public entity.

7       (18) Provisions for law enforcement of the public  
8 transportation facility.

9       (19) An obligation of the private entity to offer  
10 employment to any employee of the department or proprietary  
11 public entity who would lose employment due to the execution  
12 of the public-private partnership agreement and who is in  
13 good standing at the time of execution of the partnership  
14 agreement, including salary, retirement, health and welfare,  
15 and benefits which are substantially identical to the  
16 benefits received by the employees immediately prior to  
17 execution of the partnership agreement.

18       (20) Other terms and provisions as required under this  
19 chapter.

20       (21) Other terms and conditions as may be agreed between  
21 the private entity and the department or the proprietary  
22 public entity.

23       (b) Term.--The department or a proprietary public entity may  
24 enter into a public-private transportation partnership agreement  
25 with any development entity that includes the provisions under  
26 subsection (a) for a term not to exceed 99 years.

27       (c) Public partner.--Nothing in this chapter shall prohibit  
28 the department from entering into a partnership agreement with  
29 another Commonwealth agency for purposes of forming a  
30 transportation partnership in accordance with this chapter.

1 (d) Propriety public entity.--Nothing in this chapter shall  
2 prohibit any propriety public entity from entering into a  
3 public-private transportation partnership agreement with one or  
4 more public entities for purposes of forming a transportation  
5 partnership in accordance with this chapter.

6 (e) Environmental costs.--

7 (1) The department or any other proprietary public  
8 entity may provide in a public-private transportation  
9 partnership agreement that it will pay or reimburse, on terms  
10 that it deems appropriate, the development entity for actual  
11 costs associated with necessary remediation, including  
12 investigation activities, for existing environmental  
13 contaminants if any are on, under or emanating from the real  
14 property associated with a transportation facility as of the  
15 date the development entity assumes responsibility for the  
16 transportation facility. If provision is made under this  
17 paragraph, the public-private transportation partnership  
18 agreement shall require that the proprietary public entity be  
19 given:

20 (i) Prompt notice of any claim against the third  
21 party pertaining to the contaminants.

22 (ii) The right to elect to undertake the necessary  
23 remediation.

24 (iii) The right to participate in the defense of or  
25 response to any claim.

26 (iv) The right of prior approval before the  
27 development entity may settle any claim.

28 (2) No payment by the department or any other  
29 proprietary public entity under this section may be for  
30 anything other than, or extend beyond, actual losses,

1 liabilities, damages, penalties, charges, costs and expenses  
2 incurred by a private entity to remediate the environmental  
3 contamination on, under or emanating from the real property  
4 associated with the transportation facility as of the date  
5 the development entity assumes responsibility for the  
6 transportation facility.

7 (f) User fees.--A provision establishing whether user fees  
8 will be collected for use of the transportation facility and the  
9 basis by which any user fees shall be determined in the public-  
10 private transportation partnership agreement. If a user fee is  
11 proposed as part of the public-private transportation  
12 partnership project, the department or a proprietary public  
13 entity shall include provisions in the agreement that authorize  
14 the collection of user fees, tolls, fares or similar charges,  
15 including provisions that:

16 (1) Specify technology to be used in the transportation  
17 facility.

18 (2) Establish circumstances under which the department  
19 or the proprietary public entity may receive a share of  
20 revenues from the charges.

21 (3) Govern the enforcement of electronic tolls,  
22 including provisions for use of available technology.

23 (4) Establish payment collection standards, including  
24 provisions for enforcement of nonpayment and penalties.

25 (5) In the event an operator of a vehicle fails to pay  
26 the prescribed toll or user fee at any location on a  
27 transportation facility where tolls or user fees are  
28 collected by means of an electronic or other automated or  
29 remote form of collection, the collection provisions of  
30 section 8117 (relating to electronic toll collection) shall

1 apply except that the private entity shall possess all of the  
2 rights, roles, limitations and responsibilities of the  
3 Pennsylvania Turnpike Commission.

4 (g) Amounts received under a public-private transportation  
5 partnership agreement.--The net proceeds received by the  
6 department or the proprietary public entity under a public-  
7 private transportation partnership agreement shall be available  
8 exclusively to provide funding for transportation needs in this  
9 Commonwealth. The use of the proceeds or other revenues from the  
10 transportation facility shall comply with Federal or State law  
11 restricting or limiting the use of revenue from the  
12 transportation facility based on its public funding.

13 § 9108. Police powers and violations of law.

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

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

greater degree than the police power extends to any other private offices, buildings, garages and other improvements.  
§ 9109. Environmental and other authorizations.

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

(b) Environmental authorizations.--A public-private transportation partnership agreement may require that prior to commencing any construction in connection with the development, operation or financing of any eligible transportation facility if the agreement requires environmental authorizations are obtained, the development entity shall do any of the following:

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

(2) Complete environmental remediation of the site on which the eligible transportation facility is or is to be located, including acts required under any agreement entered into with the Department of Environmental Protection for remediation of the site under the Land Recycling and Environmental Remediation Standards Act.

§ 9110. Taxation of authorized development entity or entities.

(a) General rule.--To the extent that revenues or user fees

1 received by a development entity or entities pursuant to a  
2 public-private transportation partnership agreement are subject  
3 to a tax imposed by a political subdivision prior to the  
4 effective date of this section, the revenues or user fees shall  
5 continue to be subject to the tax and to future increases in the  
6 rate of the tax.

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

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

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

25 § 9111. Power of eminent domain.

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

1 § 9112. Sovereign immunity.

2 (a) General rule.--The General Assembly, under section 11 of  
3 Article I of the Constitution of Pennsylvania, reaffirms  
4 sovereign immunity and, except as otherwise provided under  
5 subsection (b), no provision of this chapter shall constitute a  
6 waiver of sovereign immunity for the purpose of 1 Pa.C.S. § 2310  
7 (relating to sovereign immunity reaffirmed; specific waiver) or  
8 otherwise.

9 (b) Exemption.--The General Assembly, under section 11 of  
10 Article I of the Constitution of Pennsylvania, waives sovereign  
11 immunity as a bar to claims against the department and any other  
12 department, commission, authority or agency of the Commonwealth  
13 or any authority or political subdivision brought in accordance  
14 with sections 9107(e) (relating to public-private transportation  
15 partnership agreement) and 9113 (relating to amounts payable by  
16 proprietary public entities and specific performance), but only  
17 to the extent set forth under this chapter.

18 § 9113. Amounts payable by proprietary public entities and  
19 specific performance.

20 (a) Authorization for payments.--The department or any other  
21 proprietary public entity is authorized to agree to make  
22 payments to a development entity pursuant to a public-private  
23 transportation partnership agreement under any of the following:

24 (1) Upon a breach by the proprietary public entity of  
25 its representations, covenants, warranties or other  
26 obligations under the public-private transportation  
27 partnership agreement.

28 (2) If the proprietary public entity takes adverse  
29 actions against the development entity in violation of the  
30 terms of the public-private transportation partnership

1 agreement.

2 (3) Upon the occurrence of force majeure or other events  
3 that have a material adverse effect on the ability of the  
4 development entity to perform its obligations under the  
5 public-private transportation partnership agreement or to  
6 obtain the benefits of the public-private transportation  
7 partnership agreement.

8 (b) Reason for payments.--The payments made by a proprietary  
9 public entity pursuant to a public-private transportation  
10 partnership agreement may be for:

11 (1) Losses, liabilities, damages, penalties, costs and  
12 expenses of the development entity.

13 (2) Amounts necessary to restore the development entity  
14 to the same after-tax economic position it would have been in  
15 had the event in question not occurred.

16 (3) Amounts necessary to pay the fair market value of  
17 the interest, benefits and rights of the development entity  
18 and the rights and obligations of the development entity  
19 created and made under the public-private transportation  
20 partnership agreement.

21 (c) Specific performance.--A proprietary public entity is  
22 authorized to agree that specific performance shall be available  
23 to a development entity as a remedy for a breach by the  
24 proprietary public entity of its representations, covenants,  
25 warranties or other obligations under the public-private  
26 transportation partnership agreement to the extent set forth in  
27 the public-private transportation partnership agreement.

28 § 9114. Design-build development and Separations Act.

29 Notwithstanding any other provision of law:

30 (1) Any public-private transportation partnership



1 project undertaken under this chapter may provide design-  
2 build, design-build-operate, design-build-operate-maintain,  
3 and operate-maintain procurements and other innovative or  
4 nontraditional competitive procurement methods for  
5 transportation-related infrastructure development.

6 (2) A development entity or entities shall be subject to  
7 the requirements of the act of May 1, 1913 (P.L.155, No.104),  
8 referred to as the Separations Act, in connection with the  
9 development or operation of a public-private transportation  
10 project authorized under this chapter.

11 § 9115. Additional procurement provisions.

12 To the extent applicable to the proprietary public entity,  
13 the following provisions shall apply to a contract entered into  
14 between the department or a proprietary public entity and an  
15 authorized development entity related to the development,  
16 operation or financing of a public-private transportation  
17 project under this chapter:

18 (1) The act of August 15, 1961 (P.L.987, No.442), known  
19 as the Pennsylvania Prevailing Wage Act.

20 (2) The act of July 23, 1968 (P.L.686, No.226),  
21 entitled, "An act equalizing trade practices in public works  
22 procurement; authorizing the purchase by the Commonwealth,  
23 its political subdivisions, and all public agencies, of  
24 aluminum and steel products produced in a foreign country,  
25 provided the foreign country does not prohibit or  
26 discriminate against the importation to, sale or use in the  
27 foreign country of supplies, material or equipment  
28 manufactured in this Commonwealth; establishing procedures  
29 for determining whether foreign countries discriminate  
30 against supplies, materials or equipment manufactured in this

1 Commonwealth; and imposing penalties and providing for relief  
2 for violation of this act."

3 (3) The act of March 3, 1978 (P.L.6, No.3), known as the  
4 Steel Products Procurement Act.

5 (4) 62 Pa.C.S. § 107 (relating to reciprocal  
6 limitations).

7 (5) 62 Pa.C.S. § 531 (relating to debarment or  
8 suspension).

9 (6) 62 Pa.C.S. § 541 (relating to approval of accounting  
10 system).

11 (7) 62 Pa.C.S. § 551 (relating to right to inspect  
12 plant).

13 (8) 62 Pa.C.S. § 552 (relating to right to audit  
14 records).

15 (9) 62 Pa.C.S. § 563 (relating to retention of  
16 procurement records).

17 § 9116. Adverse interest.

18 (a) Private entity adverse interests.--The following shall  
19 apply:

20 (1) Except as provided under paragraph (2), a private  
21 entity which submits a response to a request for solicitation  
22 under section 9106(b) (relating to approval) or an  
23 unsolicited proposal and which is also a State adviser or a  
24 State consultant for the department or the Pennsylvania  
25 Turnpike Commission shall not be deemed to be in violation of  
26 the State Adverse Interest Act while engaging in any of the  
27 following activities:

28 (i) Preparing or submitting a response to a request  
29 for qualifications.

30 (ii) Participating in any activity with the

1 department related to a request for solicitation.

2 (iii) Negotiating and entering into any contract  
3 lease or public-private transportation partnership  
4 agreement which results from a request for solicitation.

5 (iv) Engaging in any other action taken in  
6 furtherance of the purposes of this chapter.

7 (2) A private entity which submits a response to a  
8 request for solicitation or acts as a consultant or an  
9 adviser to a private entity which submits a response to a  
10 request for solicitation to the department shall be  
11 prohibited from consulting or providing advice to the  
12 department on the review or approval of the response to the  
13 request for solicitations as submitted.

14 (3) A private entity which submits a response to a  
15 request for solicitation or acts as a consultant or an  
16 adviser to a private entity which submits a response to a  
17 request for solicitation to the board shall be prohibited  
18 from consulting or providing advice to the department on the  
19 review or approval of the response to the request for  
20 solicitations so submitted.

21 (b) (Reserved).

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

25 "State adviser." As the term "State advisor" is defined in  
26 the State Adverse Interest Act.

27 "State consultant." As defined in the State Adverse Interest  
28 Act.

29 § 9117. Application of chapter.

30 (a) Applicability.--This chapter shall apply to public-

private transportation partnership agreements between  
proprietary public entities, other public entities and  
development parties for public-private transportation projects  
and shall satisfy any applicable procurement laws unless  
otherwise or to the extent provided for under this chapter.

(b) Nonapplicability.--This chapter shall not apply to  
agreements entered into exclusively under 62 Pa.C.S. Pt. I  
(relating to Commonwealth Procurement Code) or any other  
Commonwealth law relating to the expenditure or receipt of funds  
by a public entity under contract for construction or services.

(c) Prohibition.--Nothing in this chapter shall prohibit a  
proprietary public entity from entering into a public-private  
transportation partnership agreement in the capacity of a  
proprietary public entity pursuant to powers granted exclusively  
under other Commonwealth statutes.

(d) Agreements.--If an agreement is entered into under this  
chapter, the public-private transportation partnership agreement  
shall be subject to the provisions of this chapter.

§ 9118. Federal, Commonwealth, local and private assistance.

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

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

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

(3) The department or a proprietary public entity may

1 enter into agreements or other arrangements with the United  
2 States, or any of its agencies, as may be necessary for  
3 carrying out the purposes of this chapter.

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

9 (c) Contributions.--Subject to acceptance and agreement  
10 between the private entity and the department or a proprietary  
11 public entity, any eligible transportation facility may be  
12 financed, in whole or in part, by contribution of any funds or  
13 property made by the department or a proprietary public entity,  
14 a private entity, a proprietary public entity or an affected  
15 jurisdiction.

16 (d) Combination of funds.--The department or proprietary  
17 public entity may combine Federal, State, local and private  
18 funds to finance an eligible transportation facility under this  
19 chapter.

20 § 9119. Public-Private Transportation Account.

21 (a) Establishment.--

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

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

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

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

30 (i) All money received pursuant to the terms of a

1 public-private transportation partnership agreement.

2 (ii) Repayment of any loans from the account made  
3 under this chapter.

4 (iii) Subject to the provisions of any public-  
5 private transportation partnership agreement, monetary  
6 damages and other amounts for failure by a development  
7 entity to comply with the terms of the public-private  
8 transportation partnership agreement.

9 (iv) Subject to the provisions of any public private  
10 transportation partnership agreement, payments made from  
11 any insurance proceeds or reserve funds or performance or  
12 payment bonds in connection with a transportation  
13 facility.

14 (v) Earnings from the investment of the money in the  
15 account.

16 (2) The Secretary of the Budget shall establish any  
17 restricted accounts within the account as the secretary deems  
18 necessary for the proper administration of the account.

19 (c) Appropriation.--The funds in the account are hereby  
20 continuously appropriated to the department for the following  
21 purposes:

22 (1) Paying the amounts as the department may be required  
23 to repay the Federal Highway Administration.

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

26 (3) Paying costs of maintenance, operating and financing  
27 of transportation facilities in this Commonwealth which are  
28 available for use by the public, including the costs of  
29 insurance or reserves against risks of contingencies.

30 (4) Paying expenses incurred under or in connection with

1 any public-private transportation partnership agreement by  
2 the department, including professional fees and expenses.

3 (5) Paying the costs of the department relating to  
4 performing and administering duties under this chapter.

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

8 (7) Paying costs of any purpose authorized under this  
9 chapter.

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

19 § 9120. Public-Private Transportation Partnership Board.

20 (a) Establishment.--There is established a Public-Private  
21 Transportation Partnership Board.

22 (b) Composition.--The board shall be composed of the  
23 following members:

24 (1) The Secretary of Transportation, who shall be the  
25 chairperson of the board as an ex officio member.

26 (2) The Secretary of the Budget, or a designee as an ex  
27 officio member.

28 (3) The Deputy Secretary of Planning of the department,  
29 or a designee as an ex officio member.

30 (4) Four members appointed by the General Assembly under

1 subsection (c).

2 (5) One member appointed by the Governor under  
3 subsection (d).

4 (c) Legislative appointments.--

5 (1) Appointments by members of the General Assembly  
6 shall be made as follows:

7 (i) One individual appointed by the President pro  
8 tempore of the Senate.

9 (ii) One individual appointed by the Minority Leader  
10 of the Senate.

11 (iii) One individual appointed by the Speaker of the  
12 House of Representatives.

13 (iv) One individual appointed by the Minority Leader  
14 of the House of Representatives.

15 (2) Legislative appointees shall serve at the pleasure  
16 of the appointing authority.

17 (3) Legislative appointees shall:

18 (i) Be reputable citizens of this Commonwealth, of  
19 mature judgment and broad experience.

20 (ii) ~~Not be a member of the General Assembly or~~  
21 ~~staff of a member of the General Assembly.~~

22 (iii) Have professional background expertise or  
23 substantial experience in one or more of the following  
24 areas:

25 (A) Transportation.

26 (B) Finance.

27 (C) Law.

28 (D) Land use and public planning.

29 (d) Gubernatorial appointment.--Appointments under  
30 subsection (b) (5) shall be made by the Governor. The member





1 shall:

2 (1) Be a reputable citizen of this Commonwealth, of  
3 mature judgment and broad business experience.

4 (2) Not hold any other position as an employee of the  
5 Commonwealth.

6 (3) Have professional background expertise or  
7 substantial experience in one or more of the following areas:

8 (i) Transportation.

9 (ii) Finance.

10 (iii) Law.

11 (iv) Land use and public planning.

12 (4) Serve at the pleasure of the Governor.

13 (e) Quorum.--Five members of the board shall constitute a  
14 quorum.

15 (f) Compensation.--The members of the board shall be  
16 entitled to no compensation for their services as members of the  
17 board but shall be entitled to reimbursement by the department  
18 for all necessary and reasonable expenses incurred in connection  
19 with the performance of their duties as members of the board.

20 (g) Initial appointment and vacancy.--Appointing authorities  
21 shall appoint initial board members within 30 days of the  
22 effective date of this section. Whenever a vacancy occurs on the  
23 board, the appointing authority shall appoint a successor member  
24 within 30 days of the vacancy.

25 (h) Financial interests.--No member of the board, during his  
26 term of office shall directly or indirectly own, have any  
27 significant financial interest in, be associated with or receive  
28 any fee, commission, compensation or anything of value from any  
29 public entity or private entity seeking to engage in a  
30 transportation development agreement.

1     (i) Applicability.--The following acts shall apply to the  
2 board:

3         (1) The Right-to-Know Law.

4         (2) The State Adverse Interest Act.

5         (3) The provisions of 65 Pa.C.S. Chs. 7 (relating to  
6 open meetings) and 11 (relating to ethics standards and  
7 financial disclosure).

8 § 9121. Duties and powers of board.

9     (a) Duties.--The board shall do all of the following:

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

11         (2) Adopt guidelines establishing the procedure by which  
12 a public entity or private entity may submit a request for  
13 evaluation of a solicited or unsolicited proposal to the  
14 board, including guidelines necessary for initial project  
15 approval and final project approval.

16         (3) Consult with persons affected by proposed public-  
17 private transportation partnership projects.

18         (4) Evaluate and approve or deny requests by the  
19 department and proprietary public entities to undertake  
20 transportation partnership projects and make recommendations  
21 to the department and proprietary public entities in the form  
22 of a resolution.

23         (5) Take all action by resolution. The affirmative vote  
24 of the majority of the members shall be necessary for the  
25 adoption of a resolution.

26         (6) Submit an annual report to the General Assembly  
27 detailing all transportation partnership projects evaluated  
28 and resolutions adopted.

29     (b) Powers.--The board may do all of the following:

30         (1) In evaluating proposals, accord relative weight to

1 factors such as cost, financial commitment, innovative  
2 financing, technical, scientific, technological or  
3 socioeconomic merit and other factors as the board deems  
4 appropriate to obtain the best value for the Commonwealth.

5 (2) Conduct discussions with private entities to assure  
6 understanding of and responsiveness to a request for  
7 evaluation.

8 (3) Seek technical assistance necessary to assist the  
9 board in carrying out its duties and powers, at the expense  
10 of the department.

11 (c) Actions.--Actions by the board are a determination of  
12 public policy and public interest and shall not be considered  
13 adjudications under 2 Pa.C.S. Chs. 5 Subch. A (relating to  
14 practice and procedure of Commonwealth agencies) and 7 Subch. A  
15 (relating to judicial review of Commonwealth agency action) and  
16 shall not be appealable to the department or a court of law.  
17 § 9122. Role of department in operation of board.

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

22 (b) Analysis.--Upon initial board approval of a public-  
23 private transportation project, the department shall develop a  
24 detailed analysis of the proposal prior to the final approval by  
25 the board.

26 (c) Oversight.--Upon final approval by the board of a  
27 transportation partnership project, the department shall retain  
28 oversight and monitor the project, including periodic reports to  
29 the board, as necessary.

30 Section 2. Repeals are as follows:

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

4           (2) Section 3 of the act of May 29, 1945 (P.L.1108,  
5 No.402), referred to as the Limited Access Highway Law, is  
6 repealed insofar as it is inconsistent with the addition of  
7 74 Pa.C.S. Ch. 91.

8 Section 3. This act shall take effect as follows:

9           (1) The addition of 74 Pa.C.S. §§ 9104 and 9120 shall  
10 take effect immediately.

11           (2) This section shall take effect immediately.

12           (3) The remainder of this act shall take effect in 60  
13 days.