

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2239 Session of 2014

INTRODUCED BY EVANKOVICH, BLOOM, C. HARRIS, EVERETT, GINGRICH, AUMENT, SAYLOR, TALLMAN, TURZAI, DUNBAR, R. MILLER, CUTLER, OBERLANDER, WATSON, MCGINNIS, SWANGER, GROVE, MOUL AND LAWRENCE, MAY 5, 2014

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 25, 2014

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, providing for public-private partnerships, for
3 prerequisite for operation, for approval by responsible local
4 agency, for service contracts, for affected local
5 jurisdictions, for dedication of public property, for powers
6 and duties of operator, for comprehensive PUBLIC-PRIVATE <--
7 PARTNERSHIP agreement, for Federal, State and local
8 assistance, for material default and remedies, for
9 condemnation and for utility crossing; imposing duties on the
10 Pennsylvania Public Utility Commission; and providing for
11 governmental immunity, for procurement, AND for use of <--
12 intellectual property and for regulations. <--

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Title 62 of the Pennsylvania Consolidated
16 Statutes is amended by adding a chapter to read:

CHAPTER 47

LOCAL AGENCY PUBLIC-PRIVATE PARTNERSHIPS

FOR WATER AND SEWER PROJECTS

20 Sec.

21 4701. Definitions.

1 4702. Unsolicited submission of public-private partnership
2 agreement proposals to local agency.

3 4703. Solicitation of proposals for public-private partnership
4 agreements.

5 4704. Evaluation and selection of public-private partnership
6 agreement proposal.

7 4705. Implementation of public-private partnership agreement.

8 4706. Service contracts.

9 4707. Affected local jurisdictions.

10 4708. Dedication of public property.

11 4709. Powers and duties of operator.

12 4710. Federal, State and local assistance.

13 4711. Material default and remedies.

14 4712. Utility crossing.

15 4713. Governmental immunity.

16 4714. Special approval.

17 4715. Exclusivity.

18 4716. Use of intellectual property.

19 4717. Applicability.

20 ~~4718. Regulations.~~ <--

21 4718. PUBLIC UTILITY COMMISSION. <--

22 § 4701. Definitions.

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

26 "Affected local jurisdiction." A ~~political subdivision~~ LOCAL <--
27 AGENCY in which all or a portion of a ~~qualifying~~ AN ELIGIBLE <--
28 project is located.

29 "Commission." The Pennsylvania Public Utility Commission.

30 ~~"Department." The Department of General Services of the~~ <--

1 Commonwealth.

2 "Eligible project." A building or facility used for public
3 water supply or treatment, storm water treatment and disposal or
4 waste WATER treatment and disposal. <--

5 "Lease payment." A form of payment, including a land lease,
6 by a local agency to the operator for the use of an eligible
7 project.

8 "Local agency." A county, city, borough, incorporated town,
9 township, county institution, local authority or a joint or
10 cooperative body of local agencies or an instrumentality,
11 authority or corporation thereof which has authority to enter
12 into a contract.

13 "Material default." A default by the operator in the
14 performance of its duties under section 4709(e) (relating to
15 powers and duties of operator) which jeopardizes adequate
16 service to the public from a ~~qualifying project~~ AN ELIGIBLE <--
17 PROJECT.

18 "OFFEROR." A PRIVATE ENTITY THAT SUBMITS A PROPOSAL UNDER <--
19 THIS CHAPTER.

20 "Operator." The private entity that is responsible for an
21 eligible project or a portion of an eligible project, including
22 acquisition, design, construction, improvement, renovation,
23 expansion, equipping, maintenance and operation.

24 "Private entity." An individual, corporation, limited
25 liability company, partnership, joint venture or other private
26 business entity.

27 "Public-private partnership agreement." An agreement between
28 a local agency and a private entity which involves the
29 development or operation, or combination thereof, of an eligible
30 project by the private entity. The agreement may consist of the

1 following:

2 (1) Predevelopment agreements leading to other
3 implementing agreements.

4 (2) A design-build agreement.

5 (3) A design-build-operate agreement.

6 (4) A design-build-maintain agreement.

7 (5) A design-build-finance-operate agreement.

8 (6) A design-build-operate-maintain agreement.

9 (7) A design-build-finance-operate-maintain agreement.

10 (8) An operate-maintain agreement.

11 (9) A concession providing for the private entity to
12 design, build, operate, maintain, manage or lease an eligible
13 project.

14 (10) Any other delivery method or agreement or
15 combination of methods or agreements that the local agency
16 determines will address the needs of the Commonwealth and the
17 public entity LOCAL AGENCY and serve the public interest. <--

18 THE TERM SHALL NOT INCLUDE THE ACQUISITION OF AN ELIGIBLE <--
19 PROJECT BY A PUBLIC UTILITY UNDER 66 PA.C.S. § 102 (RELATING TO
20 DEFINITIONS).

21 "RESPONSIBLE OFFEROR." AN OFFEROR THAT HAS SUBMITTED A
22 RESPONSIVE PROPOSAL AND POSSESSES THE CAPABILITY TO FULLY
23 PERFORM THE CONTRACT REQUIREMENTS IN ALL RESPECTS AND THE
24 INTEGRITY AND RELIABILITY TO ASSURE GOOD FAITH PERFORMANCE.

25 "Revenue." Any of the following generated by an eligible
26 project:

27 (1) A user fee.

28 (2) A lease payment.

29 (3) A service payment.

30 "Service payment." Payment to the operator of an eligible

1 project pursuant to a public-private partnership agreement.

2 "User fee." The rate or other charge imposed by the operator
3 of an eligible project for use of the eligible project pursuant
4 to a public-private partnership agreement.

5 § 4702. Unsolicited submission of public-private partnership
6 agreement proposals to local agency.

7 ~~(a) Unsolicited request for approval.—A private entity may~~ <--
8 ~~request consideration and approval of a proposed public-private~~ <--
9 ~~partnership agreement for an eligible project. The request may~~
10 ~~be submitted to the applicable local agency, and any proposal~~
11 ~~under this section shall not be approved unless the local agency~~
12 ~~follows procedures outlined in sections 4703 (relating to~~
13 ~~solicitation of proposals for public-private partnership~~
14 ~~agreements) and 4704 (relating to evaluation and selection of~~
15 ~~public-private partnership agreement proposal). A request shall~~
16 ~~be accompanied by the following material and information unless~~ <--
17 ~~waived by the local agency:~~

18 (1) A topographic map of 1:2,000 or other appropriate
19 scale indicating the location of the ~~qualifying~~ ELIGIBLE <--
20 project.

21 (2) A description of the eligible project, including the
22 conceptual design of the facility or a conceptual plan for
23 the provision of services and a schedule for the initiation
24 of and completion of the eligible project to include the
25 proposed major responsibilities and timeline for activities
26 to be performed by both the local agency and private entity.

27 (3) A statement setting forth the method by which the
28 private entity proposes to secure a THE necessary property <--
29 interests required for the eligible project. The statement
30 shall include the following:

1 (i) The names and addresses, if known, of the
2 current owners of the property needed for the eligible
3 project.

4 (ii) The nature of the property interests to be
5 acquired.

6 (4) Information relating to the current plans, IF ANY, <--
7 for development of facilities to be used by a local agency
8 that are similar to the eligible project being proposed by
9 the private entity of each affected local jurisdiction. <--

10 (5) A list of all permits and approvals required for the
11 eligible project from Federal, State or political
12 subdivisions and a projected schedule for obtaining the
13 permits and approvals.

14 (6) A list of any ~~public~~ utility facilities KNOWN TO THE <--
15 PRIVATE ENTITY that may be crossed OR AFFECTED by the <--
16 eligible project and a statement of the plans of the operator
17 to accommodate the crossings OR AFFECTED FACILITIES. <--

18 (7) A statement setting forth the private entity's
19 general plans for financing the eligible project, including
20 the sources of the private entity's funds.

21 (8) The names and addresses of the persons who may be
22 contacted for further information concerning the request.

23 (9) User fees, lease payments and other service payments
24 ~~included~~ PROPOSED in the ~~comprehensive~~ PUBLIC-PRIVATE <--
25 PARTNERSHIP agreement, including frequency of assessments and
26 the methodology and circumstances for changes to the user
27 fees, lease payments and other service payments.

28 ~~(10) Any additional material and information as the <--~~
29 local agency may reasonably request.

30 § 4703. Solicitation of proposals for public-private

1 partnership agreements.

2 (a) Solicitation of proposals.--A local agency may issue a
3 request for proposals for public-private partnerships for an
4 eligible project. Subject to the provisions of this section, the
5 procedure for the request for proposals shall be the same
6 provisions of procurement law otherwise applicable to the local
7 agency.

8 (b) Availability to general public.--Copies of a request for
9 proposals shall be made available to any interested person
10 residing within the affected local jurisdiction upon request to
11 the local agency. A local agency may establish procedures for
12 the distribution of a request for proposals, including the
13 imposition of a fee to reimburse the ~~public entity~~ LOCAL AGENCY <--
14 for the costs of photocopying and mailing.

15 (c) Receipt of proposals.--Offerors shall submit their
16 sealed proposals to ensure that they are received prior to the
17 time and date established for receipt of the proposals. Sealed
18 proposals shall be submitted in the format required by the local
19 agency. ~~Sealed proposals shall be opened so as to avoid~~ <--
20 ~~disclosure of their contents to competing offerors.~~ ALL SEALED <--
21 PROPOSALS SHALL BE OPENED AT THE TIME, DATE AND PLACE DESIGNATED
22 IN THE REQUEST FOR PROPOSALS.

23 (d) Fee.--The local agency may charge a reasonable fee to
24 cover the costs of processing, reviewing and evaluating the
25 ~~request~~ PROPOSAL, including reasonable attorney fees and fees <--
26 for financial and other necessary advisers or consultants.
27 § 4704. Evaluation and selection of public-private partnership
28 agreement proposal.

29 (a) Evaluation criteria.--A local agency shall evaluate each
30 proposal to determine which one, if any, has the best value for

1 and is in the best interest of the local agency. In making this
2 determination, a local agency may consider any of the following:

3 (1) Cost.

4 (2) Price.

5 (3) Financial commitment.

6 (4) Innovative financing.

7 (5) Bonding.

8 (6) Technical, scientific, technological or
9 socioeconomic merit.

10 (7) Financial strength and viability.

11 (8) Design, operation and feasibility of the eligible
12 project.

13 (9) Public reputation, qualifications, industry
14 experience and financial capacity of the private entity.

15 (10) The compatibility of the proposal with existing
16 local and ~~regional~~ COUNTY land use plans. <--

17 (11) The commitment of local communities to approve land
18 use plans in preparation for the project.

19 (12) Other factors deemed appropriate by the local
20 agency.

21 (b) Weighted consideration.--The relative importance of each
22 evaluation factor shall be fixed prior to opening the proposals.

23 (c) Discussion with responsible offerors and revision of
24 proposals.--As provided in the request for proposals,
25 discussions and negotiations may be conducted with responsible
26 offerors for the purpose of clarification and of obtaining best
27 and final offers. Responsible offerors shall be accorded fair
28 and equal treatment with respect to any opportunity for
29 discussion and revision of proposals. In conducting discussions,
30 there shall be no disclosure of any information derived from

1 proposals submitted by competing offerors.

2 (d) Selection for negotiation.--The responsible offeror
3 whose proposal is determined in writing to be the best value for
4 and in the best interests of the local agency and the general
5 public, taking into consideration all evaluation factors, shall
6 be selected for contract negotiation.

7 (e) Cancellation.--A request for proposals may be canceled
8 at any time prior to the time a partnership contract is executed
9 by all parties when it is in the best interests of the local
10 agency.

11 (f) Award.--Upon reaching an agreement with a selected <--
12 RESPONSIBLE offeror, the local agency shall enter into a public- <--
13 private partnership agreement with the RESPONSIBLE offeror. The <--
14 public-private partnership agreement shall be consistent with
15 the requirements of this chapter. If agreement cannot be reached
16 with the ~~selected~~ RESPONSIBLE offeror, then negotiations shall <--
17 be formally terminated with the RESPONSIBLE offeror. If <--
18 proposals were submitted by one or more other responsible
19 offerors, negotiations may be conducted with the other
20 RESPONSIBLE offeror or offerors in the order of their respective <--
21 qualification ranking. The contract may be awarded to the
22 responsible offeror ~~then ranked as best qualified~~ WHOSE PROPOSAL <--
23 IS THEN RANKED AS PROVIDING THE BEST VALUE.

24 (g) Resolution of controversies.--If a private entity is
25 aggrieved by a selection under this section and the ~~proprietary~~ <--
26 local agency in the contract is an entity other than the
27 Commonwealth, an, A RESPONSIBLE offeror may file a claim with <--
28 the court of common pleas where the ~~proprietary~~ local agency is <--
29 located. The process for the filing and resolution of claims,
30 including rights, contents, timing, evaluation, determination

1 and remedies, which are established in Chapter 17 shall apply
2 insofar as they are practicable.

3 § 4705. Implementation of public-private partnership agreement.

4 (a) Final approval.--The approval of the local agency is
5 contingent upon the private entity's agreement to enter into a
6 comprehensive partnership contract with the local agency. <--

7 (b) Partnership contracts CONTRACTS.--Prior to acquiring, <--
8 designing, constructing, improving, renovating, expanding,
9 equipping, maintaining or operating the eligible project, the
10 private entity shall enter into a comprehensive partnership <--
11 contract detailing the public-private partnership agreement with
12 the local agency. The partnership contract shall provide for all <--
13 of the following:

14 (1) Delivery of maintenance, performance and payment
15 bonds or letters of credit in connection with the
16 acquisition, design, construction, improvement, renovation,
17 expansion, equipping, maintenance or operation of the
18 eligible project, in the forms and amounts satisfactory to
19 the responsible local agency. <--

20 (2) Review of plans and specifications for the eligible
21 project by the local agency and approval by the local agency
22 if the plans and specifications conform to standards
23 acceptable to the local agency. This paragraph may not
24 require the private entity to complete design of an eligible
25 project prior to the execution of a comprehensive contract. <--

26 (3) Inspection of the eligible project by the
27 responsible local agency to ensure that the operator's <--
28 activities are acceptable to the local agency in accordance
29 with the comprehensive PUBLIC-PRIVATE PARTNERSHIP agreement. <--

30 (4) Maintenance of a policy POLICIES of liability <--

1 insurance, copies of which shall be filed with the local
2 agency accompanied by proofs of coverage, self-insurance, in
3 form and amount satisfactory to the ~~responsible~~ local agency <--
4 and reasonably sufficient to insure coverage of tort
5 liability to the public and employees and to enable the
6 continued operation of the ~~qualifying~~ ELIGIBLE project. <--

7 (5) Monitoring of the practices of the operator by the
8 local agency to ensure that the eligible project is properly
9 maintained.

10 (6) Reimbursement to be paid to the local agency for
11 services provided by the local agency.

12 (7) Filing of appropriate financial statements on a
13 periodic basis.

14 (8) Policies and procedures governing the rights and
15 responsibilities of the local agency and the operator in the
16 event the ~~comprehensive~~ contract is terminated or there is a <--
17 material default by the operator. The policies and procedures
18 shall include conditions governing assumption of the duties
19 and responsibilities of the operator by the local agency and
20 the transfer or purchase of property or other interests of
21 the operator by the local agency.

22 (c) Fees.--The ~~partnership~~ contract may provide for a user <--
23 fee, lease payment or service payment. A copy of a service
24 contract must be filed with the local agency. When negotiating a
25 user fee under this section, the parties shall establish
26 payments or fees that are the same for a person using the
27 facility under like conditions and that will not materially
28 discourage use of the eligible project. The execution of the
29 ~~partnership~~ contract or an amendment to the ~~partnership~~ contract <--
30 constitutes conclusive evidence that the user fee, lease payment

1 or service payment provided for complies with this chapter. A
2 user fee or lease payment established in the ~~partnership~~ <--
3 contract as a source of revenue may be in addition to or in lieu
4 of a service payment.

5 (d) Grants or loans.--In the ~~partnership~~ contract, the local <--
6 agency may agree to make a grant, IF THE TERMS OF THE GRANT <--
7 ALLOW, or loan to the operator from an amount received from the
8 Federal or State government or a political subdivision or from
9 one of their agencies or instrumentalities.

10 (e) Duties.--The ~~partnership~~ contract shall incorporate the <--
11 duties of the operator under this chapter and may contain other
12 terms and conditions that the local agency determines serve the
13 public purpose under section 4704(d) (relating to evaluation and
14 selection of public-private partnership agreement proposal). The
15 ~~partnership~~ contract may contain any of the following: <--

16 (1) Provisions under which the local agency agrees to
17 provide notice of default and right to cure for the benefit
18 of the operator and the persons specified in the notice as
19 providing financing for the eligible project.

20 (2) Other lawful terms and conditions to which the
21 operator and the local agency mutually agree, including
22 provisions regarding unavoidable delays or provisions
23 providing for a loan of public funds to the operator to
24 acquire, design, construct, improve, renovate, expand, equip,
25 maintain or operate one or more eligible projects.

26 (3) Provisions under which the authority and duties of
27 the operator under this chapter shall cease and the eligible
28 project is dedicated to the local agency or, if the eligible
29 project was initially dedicated by an affected local
30 jurisdiction, to the affected local jurisdiction for public

1 use.

2 (f) Amendments.--Change in the terms of the ~~partnership~~ <--
3 contract, as may be agreed upon by the parties, shall be added
4 by written amendment.

5 (g) Date.--In connection with its approval of the eligible
6 project, the ~~responsible~~ local agency shall establish a date for <--
7 the commencement of activities related to the eligible project.
8 The local agency may extend the date.

9 (h) Public access.--Any documents created by or provided to
10 a local agency under this chapter shall be subject to inspection
11 and copying only to the extent required under the act of
12 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.
13 NOTHING IN THIS CHAPTER SHALL BE CONSTRUED TO ABROGATE THE <--
14 PROVISIONS OF THE ACT OF NOVEMBER 29, 2006 (P.L.1435, NO.156),
15 KNOWN AS THE PUBLIC UTILITY CONFIDENTIAL SECURITY INFORMATION
16 DISCLOSURE PROTECTION ACT.

17 (i) Debt capacity.--A ~~partnership~~ contract entered into <--
18 under this chapter shall not enlarge, diminish or affect the
19 authority otherwise possessed by the local agency to take action
20 that would impact the debt capacity of the Commonwealth or any
21 of its political subdivisions.

22 § 4706. Service contracts.

23 In addition to any authority conferred by statute, a local
24 agency may contract with an operator for the delivery of
25 services to be provided as part of an eligible project in
26 exchange for service payment and other consideration as the
27 local agency may deem appropriate.

28 § 4707. Affected local jurisdictions.

29 ~~(a) Notification. A private entity submitting a proposal to <--~~
30 ~~a local agency under section 4703 (relating to solicitation of~~

1 ~~proposals for public private partnership agreements) shall~~
2 ~~notify each affected local jurisdiction by furnishing a copy of~~
3 ~~its request or proposal to each affected local jurisdiction.~~

4 (A) NOTIFICATION.--PRIOR TO ENTERING INTO A PUBLIC-PRIVATE <--
5 PARTNERSHIP AGREEMENT WITH A RESPONSIBLE OFFEROR IN ACCORDANCE
6 WITH SECTION 4704 (RELATING TO EVALUATION AND SELECTION OF
7 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT PROPOSAL), THE LOCAL AGENCY
8 SHALL NOTIFY EACH AFFECTED LOCAL JURISDICTION BY FURNISHING A
9 COPY OF THE PROPOSAL TO EACH AFFECTED LOCAL JURISDICTION. THE
10 RESPONSIBLE OFFEROR SHALL REIMBURSE THE LOCAL AGENCY FOR COSTS
11 INCURRED BY THE AGENCY IN FURNISHING A COPY OF THE PROPOSAL TO
12 EACH AFFECTED LOCAL JURISDICTION.

13 (b) Comments.--Each affected local jurisdiction that is not
14 the applicable local agency for the respective eligible project
15 shall, within ~~60~~ 30 days after receiving the notice, submit any <--
16 comments it may have in writing on the proposed eligible
17 project to the applicable local agency and indicate whether the
18 facility is compatible with the local ordinance requirements and
19 other local requirements. The comments shall be given
20 consideration by the local agency prior to entering a public-
21 private partnership agreement with a private entity.

22 § 4708. Dedication of public property.

23 A local agency may dedicate any property interest, including
24 land, improvements and tangible personal property, that it has
25 for public use in an eligible project if it finds that doing so
26 will serve the public purpose under section 4704(a) (relating to
27 evaluation and selection of public-private partnership agreement
28 proposal) by minimizing the cost of an eligible project to the
29 local agency or reducing the delivery time of a ~~qualifying AN~~ <--
30 ELIGIBLE project. In connection with the dedication, a local

1 agency may convey any property interest that it has, subject to
2 the conditions imposed by law, to the operator, subject to the
3 provisions of this chapter, for consideration as the local
4 agency may determine.

5 § 4709. Powers and duties of operator.

6 (a) Powers.--The operator shall have the power under <--
7 existing law to a private entity having the same form of
8 organization as the operator and shall have the power to
9 acquire, design, construct, improve, renovate, maintain, expand,
10 equip or operate the eligible project and collect lease
11 payments, impose a user fee or enter into a service contract in
12 connection with the use of its power.

13 (b) Right.--The operator may own, lease or acquire any other
14 right to use or operate the eligible project.

15 (c) Financing.--

16 (1) Notwithstanding paragraph (2), any financing of the
17 eligible project may be in an amount and upon terms and
18 conditions as may be determined by the operator.

19 (2) The operator may issue debt, equity or other
20 securities or obligations, enter into sale and leaseback
21 transactions and secure any financing with a pledge of,
22 security interest in or lien on any or all of its property,
23 including all of its property interests in the eligible
24 project.

25 (d) Operation.--In operating the eligible project, the
26 operator may do all of the following:

27 (1) Make classifications according to reasonable
28 categories for assessment of user fees.

29 (2) With the consent of the local agency, make and
30 enforce reasonable rules to the same extent that the local

1 agency may make and enforce rules with respect to similar
2 facilities.

3 (e) Duties.--The operator shall do the following:

4 (1) Acquire, design, construct, improve, renovate,
5 expand, equip, maintain or operate the eligible project in
6 accordance with the public-private partnership agreement.

7 (2) Keep the eligible project open for use by members of
8 the public ~~at all times or~~ as appropriate based upon the use <--
9 of the facility after its initial opening upon payment of the
10 applicable user fee, lease payment or service payment. ~~except~~ <--
11 ~~that the~~ THE eligible project may be temporarily closed <--
12 because of emergencies or with the consent of the local
13 agency, to protect the safety of the public or for reasonable
14 construction or maintenance procedures as set forth under the
15 public-private partnership agreement.

16 (3) Maintain or provide by contract for the maintenance
17 of the eligible project, if required by the public-private
18 partnership agreement.

19 (4) Cooperate with the local agency in making best
20 efforts to establish any interconnection with the eligible
21 project requested by the local agency.

22 (5) Comply with the public private-partnership agreement
23 and any service contract.

24 (f) Additional services.--This section does not prohibit an
25 operator of an eligible project from providing additional
26 services for the eligible project to PRIVATE ENTITIES OR local <--
27 agencies ~~or private entities,~~ other than the local agency THAT <--
28 IS PARTY TO THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT, if the
29 provision of additional service does not impair the operator's
30 ability to meet its commitments to the local agency under the

1 comprehensive PUBLIC-PRIVATE PARTNERSHIP agreement.

2 § 4710. Federal, State and local assistance.

3 The local agency may obtain assistance from the Federal or
4 State government or one of its political subdivisions for an
5 eligible project in accordance with the purposes under section
6 4704 (relating to evaluation and selection of public-private
7 partnership agreement proposal) and may enter into a contract in
8 order to receive the assistance. The local agency may pay a
9 portion of the costs of an eligible project directly or
10 indirectly from the proceeds of a grant or loan made by the
11 Federal or State government or one of its political
12 subdivisions.

13 § 4711. Material default and remedies.

14 (a) General rule.--If there is a material default by the
15 operator of an eligible project, the local agency may assume the
16 responsibilities and duties of the operator, in which case it
17 shall succeed to any right, title and interest in the eligible
18 project, subject to any liens on revenue previously granted by
19 the operator to any person providing financing.

20 (b) Condemnation.--A local agency which is a party to a
21 partnership contract, and which has the power of condemnation
22 under State law, may exercise the power of condemnation to
23 acquire the eligible project in the event of a material default
24 by the operator. A person who has provided financing for the
25 eligible project, and the operator to the extent of its capital
26 investment, may participate in the condemnation proceedings with
27 the standing of a property owner.

28 (c) Termination.--For cause shown, the local agency may
29 terminate the ~~comprehensive~~ PUBLIC-PRIVATE PARTNERSHIP agreement <--
30 and exercise any other rights and remedies that may be available

1 at law or in equity.

2 (d) Claims.--The local agency may make or cause to be made
3 any appropriate claims under maintenance, performance or payment
4 bonds or lines of credit required under section 4705(b) (1)
5 (relating to implementation of public-private partnership
6 agreement).

7 (e) Procedure after takeover.--If a local agency takes over
8 an eligible project pursuant to (a), it may acquire, design,
9 construct, improve, renovate, operate, expand, equip or maintain
10 the eligible project, impose user fees, impose and collect lease
11 payments for the use of the project and comply with service
12 contracts as if it were the operator. Revenue subject to a lien
13 shall be collected for the benefit of and paid to secured
14 parties, as their interests may appear, to the extent necessary
15 to satisfy the operator's obligations to secured parties,
16 including the maintenance of reserves. Liens shall be
17 correspondingly reduced and released when they are paid off.
18 Before a payment to or for the benefit of secured parties, the
19 local agency may use revenue to pay current operation and
20 maintenance costs of the ~~qualifying~~ ELIGIBLE project, including <--
21 compensation to the responsible local agency for its services in
22 operating and maintaining the ~~qualifying~~ ELIGIBLE project. The <--
23 right to receive payment, if any, is just compensation for the
24 eligible project. The full faith and credit of the local agency
25 may not be pledged to secure any financing of the operator by
26 the election to take over the eligible project. Assumption of
27 operation of the eligible project may not obligate the local
28 agency to pay an obligation of the operator from sources other
29 than revenue.
30 § 4712. Utility crossing.

<--

1 ~~(a) General rule. The operator and each public service~~
2 ~~company, public utility, railroad and cable television provider~~
3 ~~whose facilities are to be crossed or affected shall cooperate~~
4 ~~fully in planning and arranging the manner of the crossing or~~
5 ~~relocation of the facilities. An amount paid for the crossing,~~
6 ~~construction, moving or relocating facilities must be paid by~~
7 ~~the operator.~~

8 ~~(b) Disputes. If the operator and a public service company,~~
9 ~~public utility, railroad or cable television provider are unable~~
10 ~~to agree upon a plan for the crossing or relocation, the~~
11 ~~commission may determine the manner in which the crossing or~~
12 ~~relocation is to be accomplished and any damages due arising out~~
13 ~~of the crossing or relocation. The determination shall be made~~
14 ~~within 90 days of notification by the private entity that the~~
15 ~~project will cross utilities subject to the commission's~~
16 ~~jurisdiction. The commission may employ expert engineers who~~
17 ~~shall examine the location and plans for the crossing or~~
18 ~~relocation, hear any objections, consider modifications and make~~
19 ~~a recommendation to the commission. The cost of the experts must~~
20 ~~be borne by the operator.~~

<--

21 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE FOLLOWING
22 SHALL APPLY:

23 (1) THE OPERATOR AND EACH PUBLIC UTILITY, RAILROAD AND
24 CABLE TELEVISION PROVIDER WHOSE FACILITIES ARE TO BE CROSSED
25 OR AFFECTED BY AN ELIGIBLE PROJECT SHALL COOPERATE FULLY IN
26 PLANNING AND ARRANGING THE MANNER OF THE CROSSING OR
27 RELOCATION OF THE FACILITIES.

28 (2) ALL COSTS INCURRED BY THE PUBLIC UTILITY, RAILROAD
29 OR CABLE TELEVISION PROVIDER IN RELOCATING, CONSTRUCTING OR
30 RECONSTRUCTING ITS FACILITIES, INCLUDING TEMPORARY

1 FACILITIES, SHALL BE PAID BY THE OPERATOR.

2 (3) IF THE OPERATOR AND A PUBLIC UTILITY, RAILROAD OR
3 CABLE TELEVISION PROVIDER ARE UNABLE TO AGREE UPON COSTS TO
4 BE PAID BY THE OPERATOR UNDER PARAGRAPH (2), THE COMMISSION
5 SHALL DETERMINE THE AMOUNT OF THE PAYMENT TO BE MADE BY THE
6 OPERATOR.

7 § 4713. Governmental immunity.

8 This chapter shall not be construed or deemed to constitute a
9 waiver of the governmental immunity of a local agency or an
10 affected local jurisdiction with respect to participation in or
11 approval of an eligible project or its operation, including
12 interconnection of the eligible project with another
13 infrastructure or project. ~~A political subdivision in which an~~ <--
14 ~~eligible project is located~~ AN AFFECTED LOCAL JURISDICTION has <--
15 governmental immunity with respect to ~~its~~ AN ELIGIBLE PROJECT'S <--
16 design, construction and operation.

17 § 4714. Special approval.

18 A local agency may enter into an agreement under this chapter
19 only with the approval of its governing body.

20 § 4715. Exclusivity.

21 The provisions of this chapter ~~and regulations adopted in~~ <--
22 ~~accordance with section 4718 (relating to regulations)~~ shall
23 constitute the exclusive method of procurement for agreements
24 entered into under this chapter, notwithstanding any other law.
25 In the event of a conflict with another statute or regulation,
26 ~~the provisions of this chapter and the regulations promulgated~~ <--
27 ~~under this chapter~~ shall govern.

28 § 4716. Use of intellectual property.

29 Unless otherwise agreed and except to the extent not
30 transferable by law, the local agency shall have the right to

1 use all or a portion of a submitted proposal, including the
2 technologies, techniques, methods, processes and information
3 contained in the proposal. Notice of nontransferability by law
4 shall be given to the local agency in response to the request
5 for proposals.

6 § 4717. Applicability.

7 Eligible projects that are subject to a public-private
8 partnership agreement under this chapter shall not be subject to
9 the requirements of the following:

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

12 (2) Section 1909 of the act of June 23, 1931 (P.L.932,
13 No.317), known as The Third Class City Code.

14 (3) Section 1805 of act of June 24, 1931 (P.L.1206,
15 No.331), known as The First Class Township Code.

16 (4) Section 3107 of the act of May 1, 1933 (P.L.103,
17 No.69), known as The Second Class Township Code.

18 (5) Section 751 of the act of March 10, 1949 (P.L.30,
19 No.14), known as the Public School Code of 1949.

20 (6) Section 5 of the act of May 27, 1953 (P.L.244,
21 No.34), entitled "An act relating to and regulating the
22 contracts of incorporated towns and providing penalties."

23 (7) Section 2517 of the act of July 28, 1953 (P.L.723,
24 No.230), known as the Second Class County Code.

25 (8) Section 2317 of the act of August 9, 1955 (P.L.323,
26 No.130), known as The County Code.

27 (9) Section 1405 of the act of February 1, 1966 (1965
28 P.L.1656, No.581), known as The Borough Code.

29 ~~§ 4718. Regulations.~~

<--

30 ~~The Department of General Services shall, within 12 months of~~

1 ~~the effective date of this section, promulgate proposed~~
2 ~~regulations which are necessary to implement the provisions of~~
3 ~~this chapter.~~

4 § 4718. PUBLIC UTILITY COMMISSION.

<--

5 EXCEPT AS PROVIDED IN SECTION 4712 (RELATING TO UTILITY
6 CROSSING) NOTHING IN THIS CHAPTER SHALL AFFECT THE EXISTING
7 DUTIES AND JURISDICTION OF THE PUBLIC UTILITY COMMISSION.

8 Section 2. This act shall take effect in 60 days.