

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2113 Session of 2015

INTRODUCED BY EVANKOVICH, MILLARD, CUTLER, WARD, SAYLOR AND ZIMMERMAN, MAY 27, 2016

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 28, 2016

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, establishing the Public-Private Partnership Pilot
3 Program and the State Public-Private Partnership Board.

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

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

8 CHAPTER 47

9 PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM

10 Sec.

11 4701. Definitions.

12 4702. State Public-Private Partnership Board.

13 4703. Public-Private Partnership Pilot Program.

14 4704. Solicitation and unsolicited submission of eligible
15 projects for consideration as pilot projects.

16 4705. Solicitation of proposals for public-private partnership
17 agreements.

18 4706. Evaluation and selection of public-private partnership

- 1 agreement proposal.
- 2 4707. Implementation of public-private partnership agreement.
- 3 4708. Service contracts.
- 4 4709. Affected local jurisdictions.
- 5 4710. Dedication of public property.
- 6 4711. Powers and duties of operator.
- 7 4712. Federal, State and local assistance.
- 8 4713. Material default and remedies.
- 9 4714. Utility crossing.
- 10 4715. Governmental immunity.
- 11 4716. Special approval.
- 12 4717. Exclusivity.
- 13 4718. Use of intellectual property.
- 14 4719. Applicability.
- 15 4720. Pennsylvania Public Utility Commission.
- 16 § 4701. 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 "Affected local jurisdiction." A local agency in which all
21 or a portion of an eligible project is located.

22 "Authorized pilot project." A pilot project that is the
23 subject of a public-private partnership agreement.

24 "Board." The State Public-Private Partnership Board
25 established by this chapter.

26 "Department." The Department of Community and Economic
27 Development of the Commonwealth.

28 "Eligible project." Any of the following:

29 (1) An educational facility. This paragraph includes:

30 (i) A school building.

1 (ii) A facility that is functionally related and
2 subordinate to a school building, including a stadium or
3 other facility primarily used for school events.

4 (iii) Land that is functionally related and
5 subordinate to a school building.

6 (iv) Depreciable property provided for use in an
7 educational facility operated as part of the public
8 school system or as an institution of higher education.

9 (2) A building or facility for ~~principal~~ use by a <--
10 government agency.

11 (3) A building or facility used for public water supply
12 or treatment, storm water disposal or waste treatment <--
13 TREATMENT OR DISPOSAL OR WASTEWATER TREATMENT OR DISPOSAL or <--
14 used for public parking facilities.

15 (4) An improvement, together with equipment, necessary
16 to enhance public safety and security of a building to be
17 principally used by a government agency.

18 (5) Telecommunications and other communications
19 infrastructure.

20 (6) Utility infrastructure.

21 (7) A STRUCTURE OR FACILITY FULLY OR PARTIALLY OWNED BY <--
22 A GOVERNMENT AGENCY.

23 "Government agency." As defined in section 3102 (relating to
24 definitions).

25 "Lease payment." A form of payment, including a land lease,
26 by a local agency to the operator for the use of an eligible
27 project.

28 "Local agency." A county, city, borough, incorporated town,
29 township, SCHOOL DISTRICT, county institution, local authority <--
30 or a joint or cooperative body of local agencies or an

1 instrumentality, authority or corporation thereof which has
2 authority to enter into a contract.

3 "Material default." A default by the operator in the
4 performance of the operator's duties under section 4711(e)
5 (relating to powers and duties of operator) that jeopardizes
6 adequate service to the public from an eligible project.

7 "Offeror." A private entity that submits a proposal under
8 this chapter.

9 "Operator." The private entity that is responsible for an
10 eligible project or a portion of an eligible project, including
11 acquisition, design, construction, improvement, renovation,
12 expansion, equipping, maintenance and operation.

13 "Pilot project." An eligible project approved as a pilot
14 project under section 4702(1)(6) (relating to State Public-
15 Private Partnership Board).

16 "Private entity." An individual, corporation, limited
17 liability company, partnership, joint venture or other private
18 business entity.

19 "Public-private partnership agreement." An agreement between
20 a government agency and a private entity that involves the
21 development or operation, or combination thereof, of an eligible
22 project by the private entity. The agreement may consist of the
23 following:

24 (1) A predevelopment agreement leading to an
25 implementing agreement.

26 (2) A design-build agreement.

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

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

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

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

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

2 (8) An operate-maintain agreement.

3 (9) A concession providing for the private entity to
4 design, build, operate, maintain, manage or lease an eligible
5 project.

6 (10) Any other delivery method or agreement or
7 combination of methods or agreements that the government
8 agency determines will address the needs of the Commonwealth
9 and the government agency and serve the public interest.

10 The term shall not include the acquisition of an eligible
11 project by a public utility under 66 Pa.C.S. § 102 (relating to
12 definitions).

13 "Request for proposals." All documents, including those
14 either attached or incorporated by reference, used for
15 soliciting proposals.

16 "Responsible offeror." An offeror that:

17 (1) Has submitted a responsive proposal.

18 (2) Possesses the capability to fully perform the
19 contract requirements in all respects.

20 (3) Has the integrity and reliability to assure good
21 faith performance.

22 "Responsive proposal." A proposal that conforms in all
23 material respects to the requirements and criteria in a request
24 for proposals.

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 "Sealed proposal." A proposal, the contents of which are not

1 disclosed until the proposal receipt date.

2 "Secretary." The Secretary of Community and Economic
3 Development of the Commonwealth.

4 "Service payment." Payment to the operator of an eligible
5 project pursuant to a public-private partnership agreement.

6 "User fee." A rate or other charge imposed by the operator
7 of an eligible project for use of the eligible project pursuant
8 to a public-private partnership agreement.

9 § 4702. State Public-Private Partnership Board.

10 (a) Establishment.--The State Public-Private Partnership
11 Board is established.

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

14 (1) The secretary, who shall be the chairperson of the
15 board, or a designee who must be an employee of the
16 department.

17 (2) Four members appointed by the General Assembly under
18 subsection (c).

19 (3) One member appointed by the Governor under
20 subsection (d).

21 (4) One member from each of the following organizations:

22 (i) The Pennsylvania Municipal League.

23 (ii) The Pennsylvania State Association of Boroughs.

24 (iii) The Pennsylvania State Association of Township
25 Supervisors.

26 (iv) The County Commissioners Association of
27 Pennsylvania.

28 (v) The Pennsylvania Municipal Authorities
29 Association.

30 (vi) The Pennsylvania School Boards Association.

1 (vii) The Pennsylvania Chamber of Business and
2 Industry.

3 (c) Legislative appointments.--

4 (1) Members appointed by the General Assembly under
5 subsection (b) (2) shall be as follows:

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

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

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

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

14 (2) Legislative appointees must be residents of this
15 Commonwealth and shall serve at the pleasure of the
16 appointing authority.

17 (3) Legislative appointees must have expertise or
18 substantial experience in one or more of the following areas:

19 (i) Local government.

20 (ii) Finance.

21 (iii) Law.

22 (iv) Public school administration.

23 (v) Public works construction.

24 (vi) Wastewater or storm water treatment and
25 disposal or public water supply and treatment.

26 (d) Gubernatorial appointments.--A member appointed by the
27 Governor under subsection (b) (3):

28 (1) Must be a resident of this Commonwealth and have
29 expertise or substantial experience in one or more of the
30 following areas:

- 1 (i) Local government.
2 (ii) Finance.
3 (iii) Law.
4 (iv) Public school administration.
5 (v) Public works construction.
6 (vi) Wastewater or storm water treatment and
7 disposal or public water supply and treatment.

8 (2) Shall serve at the pleasure of the Governor.

9 (e) Organization appointments.--

10 (1) The members under subsection (b)(4) shall be
11 appointed by the secretary from a list of nominees submitted
12 by each organization or from the name of at least one
13 individual submitted by each organization.

14 (2) Appointees must be residents of this Commonwealth
15 and shall serve at the pleasure of the secretary.

16 (f) Quorum.--Seven members of the board shall constitute a
17 quorum. The adoption of a resolution or other action of the
18 board shall require a majority vote of the members of the board.

19 (g) Compensation.--The members of the board shall be
20 entitled to no compensation for their services as members of the
21 board, but shall be entitled to reimbursement by the department
22 for all necessary and reasonable expenses incurred in connection
23 with the performance of their duties as members of the board.

24 (h) Initial appointment and vacancy.--Appointing authorities
25 shall appoint initial board members within 30 days of the
26 effective date of this section. Whenever a vacancy occurs on the
27 board, the appointing authority shall appoint a successor member
28 within 30 days of the vacancy.

29 (i) Financial interests.--

30 (1) No member of the board, during the member's term of

1 office, shall directly or indirectly own, have any
2 significant financial interest in, be associated with or
3 receive any fee, commission, compensation or anything of
4 value from any government agency or private entity seeking to
5 engage in a public-private partnership agreement. This
6 subsection shall not apply to the salary of an employee of a
7 government agency.

8 (j) Technical assistance.--The department shall supply all
9 necessary assistance to the board in carrying out the board's
10 duties and responsibilities under this chapter, including
11 retention of legal, financial and technical consultants and
12 staff to assist with this role.

13 (k) Applicability of other statutes.--The following acts
14 shall apply to the board:

15 (1) The act of February 14, 2008 (P.L.6, No.3), known as
16 the Right-to-Know Law.

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

19 (3) 65 Pa.C.S. Chs. 7 (relating to open meetings) and 11
20 (relating to ethics standards and financial disclosure).

21 (l) Duties of board.--The board shall:

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

23 (2) Administer the Public-Private Partnership Pilot
24 Program.

25 (3) Adopt guidelines establishing the procedure by which
26 a government agency may submit to the board an eligible
27 project for consideration as a pilot project.

28 (4) Establish a reasonable fee to cover the costs of
29 processing, reviewing and evaluating proposals, including
30 reasonable attorney fees and fees for financial and other

1 necessary advisers or consultants.

2 (5) Consult with persons affected by proposed public-
3 private partnership agreements.

4 (6) Evaluate and, where the board finds that an eligible
5 project submitted to the board under section 4704(d)
6 (relating to solicitation and unsolicited submission of
7 eligible projects for consideration as pilot projects) is in
8 the best interest of the Commonwealth and the government
9 agency and meets the criteria in section 4703(d) (relating to
10 Public-Private Partnership Pilot Program), approve the
11 eligible project for a pilot project. The board shall approve
12 a pilot project by adopting a resolution.

13 (7) Submit an annual report to the General Assembly
14 detailing all eligible projects evaluated and pilot project
15 resolutions adopted for that year.

16 (m) Actions.--Actions by the board shall be determinations
17 of public policy and shall not be considered adjudications under
18 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of
19 Commonwealth agencies) and 7 Subch. A (relating to judicial
20 review of Commonwealth agency action) and shall not be
21 appealable to the department or a court of law.

22 § 4703. Public-Private Partnership Pilot Program.

23 (a) Establishment.--The Public-Private Partnership Pilot
24 Program is established to expand the usage of public-private
25 partnership agreements for the development and operation of
26 eligible projects across this Commonwealth.

27 (b) Duration.--The Public-Private Partnership Pilot Program
28 shall expire as of the latest expiration date of a public-
29 private partnership agreement that is entered into under the
30 pilot program.

1 ~~(c) Program description. The Public Private Partnership~~ <--
2 ~~Pilot Program shall consist of 12 authorized pilot projects.~~
3 ~~There may be no more than two authorized pilot projects within~~
4 ~~each of six regions established by the department.~~

5 (C) PROGRAM DESCRIPTION.--THE PUBLIC-PRIVATE PARTNERSHIP <--
6 PILOT PROGRAM SHALL CONSIST OF 16 AUTHORIZED PILOT PROJECTS, AS
7 FOLLOWS:

8 (1) FOUR AUTHORIZED PILOT PROJECTS FOR A BUILDING OR
9 FACILITY USED FOR PUBLIC WATER SUPPLY OR TREATMENT, STORM
10 WATER TREATMENT OR DISPOSAL OR WASTEWATER TREATMENT OR
11 DISPOSAL, EACH OF WHICH IS PROPOSED AND SUBMITTED TO THE
12 BOARD BY MORE THAN ONE LOCAL AGENCY.

13 (2) TWELVE AUTHORIZED PILOT PROJECTS TO WHICH THE
14 FOLLOWING SHALL APPLY:

15 (I) THERE MAY BE NO MORE THAN TWO AUTHORIZED PILOT
16 PROJECTS WITHIN EACH OF SIX REGIONS ESTABLISHED BY THE
17 DEPARTMENT; AND

18 (II) THREE OF THE AUTHORIZED PILOT PROJECTS SHALL BE
19 SET ASIDE FOR ELIGIBLE PROJECTS PROPOSED AND SUBMITTED TO
20 THE BOARD BY A LOCAL AGENCY.

21 (d) Criteria.--

22 (1) ~~Only~~ EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3), <--
23 ONLY eligible projects valued at \$25,000,000 or more are
24 eligible for consideration and approval as a pilot project.

25 (2) THE \$25,000,000 THRESHOLD UNDER PARAGRAPH (1) IS <--
26 WAIVED FOR CONSIDERATION AND APPROVAL OF A PROPOSED PILOT
27 PROJECT UNDER SUBSECTION (C) (2) (II).

28 (3) ONLY ELIGIBLE PROJECTS VALUED AT \$75,000,000 OR MORE
29 ARE ELIGIBLE FOR CONSIDERATION AND APPROVAL AS A PILOT
30 PROJECT UNDER SUBSECTION (C) (1).

1 ~~(2)~~ (4) The board shall consider and approve a pilot <--
2 project based on one or more of the following factors:

3 (i) The project's benefits to public health.

4 (ii) The project's benefits to public safety.

5 (iii) The project's benefits to the environment.

6 (iv) The contribution to and impact of the project
7 on economic development.

8 (v) Whether the project improves the ability of a
9 government agency to come into compliance with Federal
10 and State statutes, regulations and standards.

11 (vi) The cost effectiveness of the project.

12 ~~(3)~~ (5) The board may approve pilot projects from among <--
13 requests submitted by government agencies under section
14 4704(d) (relating to solicitation and unsolicited submission
15 of eligible projects for consideration as pilot projects),
16 including requests resulting from solicitations under section
17 4704(a) and requests resulting from unsolicited submissions
18 made under section 4704(b).

19 § 4704. Solicitation and unsolicited submission of eligible
20 projects for consideration as pilot projects.

21 (a) Procedure.--

22 (1) A government agency may solicit eligible projects
23 for consideration as a pilot project through a request for
24 pilot projects.

25 (2) The government agency shall give public notice of a
26 request for pilot projects consistent with this section.

27 (3) Offerors must submit their responses to the
28 government agency in the form and manner required by the
29 request for pilot projects. Each response shall be
30 accompanied by the material and information listed in

1 subsection (c).

2 (b) Private entities.--A private entity may request
3 consideration of an eligible project for a pilot project. The
4 request may be submitted to the applicable government agency.

5 (c) Material and information.--A response under subsection
6 (a) or a request under subsection (b) shall be accompanied by
7 the following material and information:

8 (1) A topographic map on a scale of 1:2,000 or other
9 appropriate scale indicating the location of the eligible
10 project.

11 (2) A description of the eligible project, including the
12 conceptual design of the facility or a conceptual plan for
13 the provision of services and a schedule for the initiation
14 of and completion of the eligible project to include the
15 proposed major responsibilities and timeline for activities
16 to be performed by both the government agency and private
17 entity.

18 (3) A statement of the method by which the private
19 entity proposes to secure the necessary property interests
20 required for the eligible project. The statement shall
21 include the following:

22 (i) The names and addresses, if known, of the
23 current owners of the property needed for the eligible
24 project.

25 (ii) The nature of the property interests to be
26 acquired.

27 (4) Information relating to the current plans, if any,
28 for development of facilities to be used by a government
29 agency that are similar to the eligible project being
30 proposed by the private entity.

1 (5) A list of all permits and approvals required for the
2 eligible project from the Federal and State local and <--
3 political subdivisions FEDERAL, STATE AND LOCAL AGENCIES and <--
4 a projected schedule for obtaining the permits and approvals.

5 (6) A list of any utility facilities known to the
6 private entity that may be crossed or affected by the
7 eligible project and a statement of the plans of the operator
8 to accommodate the crossings or affected facilities.

9 (7) A statement of the private entity's general plans
10 for financing the eligible project, including the sources of
11 the private entity's funds.

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

14 (9) User fees, lease payments and other service payments
15 proposed in the public-private partnership agreement,
16 including frequency of assessments and the methodology and
17 circumstances for changes to the user fees, lease payments
18 and other service payments.

19 (d) Evaluation of responses and requests.--

20 (1) A government agency shall evaluate each response
21 under subsection (a) or a request under subsection (b) to
22 determine if the response or request is in the best interest
23 of the government agency.

24 (2) If the government agency concludes that a response
25 or request is in the best interest of the government agency,
26 the government agency may prepare and submit a request to the
27 board to review the eligible project for consideration and
28 approval as a pilot project.

29 § 4705. Solicitation of proposals for public-private
30 partnership agreements.

1 (a) Discretion to government agency.--

2 (1) If an eligible project is approved by the board as a
3 pilot project under section 4702(1)(6) (relating to State
4 Public-Private Partnership Board), the government agency may
5 enter into a public-private partnership agreement under this
6 chapter.

7 (2) After receiving approval for a pilot project under
8 section 4702(1)(6), a government agency may issue a request
9 for proposals for a public-private partnership agreement for
10 an eligible project.

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

18 (c) Receipt of proposals.--Offerors shall submit their
19 sealed proposals to ensure that they are received prior to the
20 time and date established for receipt of the proposals. Sealed
21 proposals shall be submitted in the format required by the
22 government agency. All sealed proposals shall be opened at the
23 time, date and place designated in the request for proposals.

24 (d) Fee.--The government agency may charge a reasonable fee
25 to cover the costs of processing, reviewing and evaluating the
26 proposal, including reasonable attorney fees and fees for
27 financial and other necessary advisers or consultants.

28 § 4706. Evaluation and selection of public-private partnership
29 agreement proposal.

30 (a) Evaluation criteria.--A government agency shall evaluate

1 each responsive proposal to determine which one, if any, has the
2 best value for and is in the best interest of the government
3 agency. In making the evaluation, a government agency may
4 consider any of the following:

5 (1) Cost.

6 (2) Price.

7 (3) Financial commitment.

8 (4) Innovative financing.

9 (5) Bonding.

10 (6) Technical, scientific, technological or
11 socioeconomic merit.

12 (7) Financial strength and viability.

13 (8) Design, operation and feasibility of the eligible
14 project.

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

17 (10) The compatibility of the proposal with existing
18 local and county land use plans.

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

21 (12) Other factors deemed appropriate by the government
22 agency.

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

25 (c) Discussion with responsible offerors and revision of
26 proposals.--As provided in the request for proposals,
27 discussions and negotiations may be conducted with responsible
28 offerors for the purpose of clarification and of obtaining best
29 and final offers. Responsible offerors shall be accorded fair
30 and equal treatment with respect to any opportunity for

1 discussion and revision of proposals. In conducting discussions,
2 there shall be no disclosure of any information derived from
3 proposals submitted by competing offerors.

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

9 (e) Cancellation.--A request for proposals may be canceled
10 at any time prior to the time a public-private partnership
11 agreement is executed by all parties when it is in the best
12 interest of the government agency.

13 (f) Award.--

14 (1) Upon reaching an agreement with a responsible
15 offeror, the government agency shall enter into a public-
16 private partnership agreement with the responsible offeror.
17 The public-private partnership agreement shall be consistent
18 with the requirements of this chapter.

19 (2) (i) If agreement cannot be reached with the
20 responsible offeror, then negotiations shall be formally
21 terminated with the responsible offeror.

22 (ii) If proposals were submitted by one or more
23 other responsible offerors, negotiations may be conducted
24 with the other responsible offeror or offerors in the
25 order of their respective qualification ranking.

26 (iii) The public-private partnership agreement may
27 be awarded to the responsible offeror whose proposal is
28 then ranked as providing the best value.

29 (g) Resolution of controversies.--

30 (1) If a private entity is aggrieved by a selection

1 under this section, a responsible offeror may, in the case of
2 a government agency other than a Commonwealth agency, file a
3 claim with the court of common pleas where the government
4 agency is located or, in the case of a Commonwealth agency,
5 file a claim with the Commonwealth Court.

6 (2) The process for the filing and resolution of claims,
7 including rights, contents, timing, evaluation, determination
8 and remedies, which are established in Chapter 17 (relating
9 to legal and contractual remedies) shall apply insofar as
10 practicable.

11 § 4707. Implementation of public-private partnership agreement.

12 (a) Final approval.--Approval of the government agency is
13 contingent upon the private entity's agreement to enter into a
14 public-private partnership agreement with the government agency.

15 (b) Contents.--Prior to designing, constructing, improving,
16 renovating, expanding, equipping, maintaining or operating the
17 eligible project, the private entity shall enter into a public-
18 private partnership agreement with the government agency. The
19 public-private partnership agreement shall provide for all of
20 the following:

21 (1) Delivery of maintenance, performance and payment
22 bonds or letters of credit in connection with the
23 acquisition, design, construction, improvement, renovation,
24 expansion, equipping, maintenance or operation of the
25 eligible project, in the forms and amounts satisfactory to
26 the government agency.

27 (2) Review of plans and specifications for the eligible
28 project by the government agency and approval by the
29 government agency if the plans and specifications conform to
30 standards acceptable to the government agency, except that

1 nothing in this paragraph shall be construed as requiring the
2 private entity to complete design of an eligible project
3 prior to the execution of a public-private partnership
4 agreement.

5 (3) Inspection of the eligible project by the government
6 agency to ensure that the operator's activities are
7 acceptable to the government agency in accordance with the
8 public-private partnership agreement.

9 (4) Maintenance of policies of liability insurance,
10 copies of which shall be filed with the government agency
11 accompanied by proofs of coverage and self-insurance in form
12 and amount satisfactory to the government agency and
13 reasonably sufficient to insure coverage of tort liability to
14 the public and employees and to enable the continued
15 operation of the eligible project.

16 (5) Monitoring of the practices of the operator by the
17 government agency to ensure that the eligible project is
18 properly maintained.

19 (6) Reimbursement to be paid to the government agency
20 for services provided by the government agency.

21 (7) Filing of appropriate financial statements on a
22 periodic basis.

23 (8) Policies and procedures governing the rights and
24 responsibilities of the government agency and the operator in
25 the event the public-private partnership agreement is
26 terminated or there is a material default by the operator.
27 The policies and procedures shall include conditions
28 governing assumption of the duties and responsibilities of
29 the operator by the government agency and the transfer or
30 purchase of property or other interests of the operator by

1 the government agency.

2 (c) Fees.--

3 (1) The public-private partnership agreement may provide
4 for a user fee, lease payment or service payment. A copy of a
5 service contract must be filed with the government agency.

6 (2) When negotiating a user fee under this subsection,
7 the parties shall establish payments or fees that are the
8 same for a person using the facility under like conditions
9 and that will not materially discourage use of the eligible
10 project.

11 (3) The execution of the public-private partnership
12 agreement or an amendment to the public-private partnership
13 agreement constitutes conclusive evidence that any user fee,
14 lease payment or service payment complies with this chapter.

15 (4) A user fee or lease payment established in the
16 public-private partnership agreement as a source of revenue
17 may be in addition to or in lieu of a service payment.

18 (d) Grants or loans.--The government agency may agree in the
19 public-private partnership agreement to make a grant, if the
20 terms of the grant allow, or loan to the operator from an amount
21 received from the Federal or State local or a political <--
22 subdivision or from one of their agencies or instrumentalities A <--
23 FEDERAL, STATE OR LOCAL AGENCY OR INSTRUMENTALITY.

24 (e) Duties.--

25 (1) The public-private partnership agreement shall
26 incorporate the duties of the operator under this chapter and
27 may contain other terms and conditions that the government
28 agency determines serve the public purpose under section
29 4706(d) (relating to evaluation and selection of public-
30 private partnership agreement proposal).

1 (2) The public-private partnership agreement may contain
2 any of the following:

3 (i) Provisions under which the government agency
4 agrees to provide notice of default and right to cure for
5 the benefit of the operator and the persons specified in
6 the notice as providing financing for the eligible
7 project.

8 (ii) Other lawful terms and conditions to which the
9 operator and the government agency mutually agree,
10 including provisions regarding unavoidable delays or
11 provisions providing for a loan of public funds to the
12 operator to acquire, design, construct, improve,
13 renovate, expand, equip, maintain or operate one or more
14 eligible projects.

15 (iii) Provisions under which the authority and
16 duties of the operator under this chapter shall cease and
17 the eligible project shall be dedicated to the government
18 agency or, if the eligible project is initially dedicated
19 by an affected local jurisdiction, to the affected local
20 jurisdiction for public use.

21 (f) Amendments.--Change in the terms of the public-private
22 partnership agreement, as may be agreed upon by the parties,
23 shall be added only by written amendment.

24 (g) Date.--In connection with its approval of the eligible
25 project, the government agency shall establish a date for the
26 commencement of activities related to the eligible project. The
27 government agency may extend the date.

28 (h) Public access.--

29 (1) Any documents created by or provided to a government
30 agency under this chapter shall be subject to inspection and

1 copying only to the extent required under the act of February
2 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

3 (2) Nothing in this chapter shall be construed to
4 abrogate the provisions of the act of November 29, 2006
5 (P.L.1435, No.156), known as the Public Utility Confidential
6 Security Information Disclosure Protection Act.

7 (i) Debt capacity.--No public-private partnership agreement
8 entered into under this chapter may enlarge, diminish or affect
9 the authority otherwise possessed by the government agency to
10 take action that would impact the debt capacity of the
11 Commonwealth or any of its political subdivisions LOCAL AGENCY. <--

12 § 4708. Service contracts.

13 In addition to any authority conferred by statute, a
14 government agency may contract with an operator for the delivery
15 of services to be provided as part of an eligible project in
16 exchange for service payment and other consideration as the
17 government agency may deem appropriate.

18 § 4709. Affected local jurisdictions.

19 (a) Notification.--

20 (1) Prior to entering into a public-private partnership
21 agreement with a responsible offeror in accordance with
22 section 4706 (relating to evaluation and selection of public-
23 private partnership agreement proposal), the government
24 agency shall notify each affected local jurisdiction by
25 furnishing a copy of the proposal to each affected local
26 jurisdiction.

27 (2) The responsible offeror shall reimburse the
28 government agency for costs incurred by the agency in
29 furnishing a copy of the proposal to each affected local
30 jurisdiction.

1 (b) Comments.--Each affected local jurisdiction that is not
2 the applicable government agency for the respective eligible
3 project shall, within 30 days after receiving the notice, submit
4 any comments the local jurisdiction may have in writing on the
5 proposed eligible project to the applicable government agency
6 and indicate whether the eligible project is compatible with the
7 local ordinance requirements and other local requirements. The
8 comments shall be given consideration by the government agency
9 prior to entering a public-private partnership agreement with
10 the private entity.

11 § 4710. Dedication of public property.

12 A government agency may dedicate any property interest,
13 including land, improvements and tangible personal property,
14 that the government agency has for public use in an eligible
15 project if it finds that doing so serves the public purpose
16 under section 4706(a) (relating to evaluation and selection of
17 public-private partnership agreement proposal) by minimizing the
18 cost of an eligible project to the government agency or reducing
19 the delivery time of an eligible project. In connection with the
20 dedication, a government agency may convey any property interest
21 that the government agency has, subject to the conditions
22 imposed by law, to the operator, subject to the provisions of
23 this chapter, for consideration as the government agency may
24 determine.

25 § 4711. Powers and duties of operator.

26 (a) General rule.--The operator shall have the power to
27 acquire, design, construct, improve, renovate, maintain, expand,
28 equip or operate the eligible project and collect lease
29 payments, impose a user fee or enter into a service contract in
30 connection with the use of this power.

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

3 (c) Financing.--

4 (1) Notwithstanding paragraph (2), any financing of the
5 eligible project may be in an amount and upon such terms and
6 conditions as may be determined by the operator.

7 (2) The operator may issue debt, equity or other
8 securities or obligations, enter into sale and leaseback
9 transactions and secure any financing with a pledge of,
10 security interest in or lien on any or all of its property,
11 including all of its property interests in the eligible
12 project.

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

15 (1) Make classifications according to reasonable
16 categories for assessment of user fees.

17 (2) With the consent of the government agency, make and
18 enforce reasonable rules to the same extent that the
19 government agency may make and enforce rules with respect to
20 similar facilities.

21 (e) Duties.--The operator shall:

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

25 (2) Keep the eligible project open for use by members of
26 the public as appropriate based upon the use of the facility
27 after its initial opening upon payment of the applicable user
28 fee, lease payment or service payment. The eligible project
29 may be temporarily closed because of emergencies or, with the
30 consent of the government agency, to protect the safety of

1 the public or for reasonable construction or maintenance
2 procedures as specified in the public-private partnership
3 agreement.

4 (3) Maintain or provide by contract for the maintenance
5 of the eligible project, if required by the public-private
6 partnership agreement.

7 (4) Cooperate with the government agency in making best
8 efforts to establish any interconnection with the eligible
9 project requested by the government agency.

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

12 (f) Construction.--Nothing in this section shall be
13 construed to prohibit an operator from providing additional
14 services for the eligible project to private entities or
15 government agencies, other than the government agency that is
16 party to the public-private partnership agreement, if the
17 provision of additional service does not impair the operator's
18 ability to meet its commitments to the government agency under
19 the public-private partnership agreement.

20 § 4712. Federal, State and local assistance.

21 The government agency may obtain assistance from the Federal
22 or State Government or one of its political subdivisions A LOCAL <--
23 AGENCY for an eligible project in accordance with the purposes
24 under section 4706 (relating to evaluation and selection of
25 public-private partnership agreement proposal) and may enter
26 into a contract in order to receive the assistance. The
27 government agency may pay a portion of the costs of an eligible
28 project directly or indirectly from the proceeds of a grant or
29 loan made by the Federal or State local or one of its political <--
30 subdivisions A FEDERAL, STATE OR LOCAL AGENCY. <--

1 § 4713. Material default and remedies.

2 (a) General rule.--If there is a material default by the
3 operator, the government agency may assume the duties of the
4 operator, in which case it shall succeed to any right, title and
5 interest in the eligible project, subject to any liens on
6 revenue previously granted by the operator to any person
7 providing financing.

8 (b) Condemnation.--

9 (1) A government agency that is a party to a public-
10 private partnership agreement, and which has the power of
11 condemnation under State law, may exercise the power of
12 condemnation to acquire the eligible project in the event of
13 a material default by the operator.

14 (2) A person who has provided financing for the eligible
15 project, and the operator to the extent of its capital
16 investment, may participate in the condemnation proceedings
17 with the standing of a property owner.

18 (c) Termination.--The government agency may terminate, for
19 cause shown, the public-private partnership agreement and
20 exercise any other rights and remedies that may be available at
21 law or in equity.

22 (d) Claims.--The government agency may make or cause to be
23 made any appropriate claims under maintenance, performance or
24 payment bonds or lines of credit required under section 4707(b)
25 (1) (relating to implementation of public-private partnership
26 agreement).

27 (e) Procedure after takeover.--

28 (1) If a government agency takes over an eligible
29 project under subsection (a), it may acquire, design,
30 construct, improve, renovate, operate, expand, equip or

1 maintain the eligible project, impose user fees, impose and
2 collect lease payments for the use of the eligible project
3 and comply with service contracts as if the government agency
4 were the operator.

5 (2) Revenue subject to a lien shall be collected for the
6 benefit of and paid to secured parties, as their interests
7 may appear, to the extent necessary to satisfy the operator's
8 obligations to secured parties, including the maintenance of
9 reserves. Liens shall be correspondingly reduced and released
10 when they are satisfied.

11 (3) Before a payment to or for the benefit of secured
12 parties, the government agency may use revenue to pay current
13 operation and maintenance costs of the eligible project,
14 including compensation to the responsible government agency
15 for its services in operating and maintaining the eligible
16 project. The right to receive payment, if any, shall be just
17 compensation for the eligible project.

18 (4) The full faith and credit of the government agency
19 may not be pledged to secure any financing of the operator by
20 the election to take over the eligible project.

21 (5) Assumption of operation of the eligible project may
22 not obligate the government agency to pay an obligation of
23 the operator from sources other than revenue.

24 § 4714. Utility crossing.

25 Notwithstanding any other provision of law:

26 (1) The operator and each public utility, railroad and
27 cable television provider whose facilities are to be crossed
28 or affected by an eligible project shall cooperate fully in
29 planning and arranging the manner of the crossing or
30 relocation of the facilities.

1 (2) All costs incurred by the public utility, railroad
2 or cable television provider in relocating, constructing or
3 reconstructing its facilities, including temporary
4 facilities, shall be paid by the operator.

5 (3) If the operator and a public utility, railroad or
6 cable television provider are unable to agree upon costs to
7 be paid by the operator under paragraph (2), the Pennsylvania
8 Public Utility Commission shall determine the amount of the
9 payment to be made by the operator.

10 § 4715. Governmental immunity.

11 This chapter shall not be construed or deemed to constitute a
12 waiver of the governmental immunity of a government agency or an
13 affected local jurisdiction with respect to participation in or
14 approval of an eligible project or its operation, including
15 interconnection of the eligible project with ~~another~~ AN EXISTING <--
16 infrastructure or AN EXISTING project. An affected local <--
17 jurisdiction shall continue to have governmental immunity with
18 respect to an eligible project's design, construction and
19 operation.

20 § 4716. Special approval.

21 A government agency may enter into a public-private
22 partnership agreement under this chapter only with the approval
23 of its governing body.

24 § 4717. Exclusivity.

25 The provisions of this chapter shall constitute the exclusive
26 method of procurement for public-private partnership agreements
27 entered into under THE PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM <--
28 ESTABLISHED UNDER this chapter, notwithstanding any other law.
29 In the event of a conflict between a provision of this chapter
30 and another statute or regulation, the provision of this chapter

1 shall govern.

2 § 4718. Use of intellectual property.

3 (a) General rule.--Unless otherwise agreed and except to the
4 extent not transferable by law, the government agency may use
5 all or a portion of a submitted proposal, including the
6 technologies, techniques, methods, processes and information
7 contained in the proposal.

8 (b) Notice of nontransferability.--Notice of
9 nontransferability by law shall be given to the government
10 agency in response to the request for proposals.

11 § 4719. Applicability.

12 Authorized pilot projects shall not be subject to the
13 requirements of the following:

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

16 (2) Section 1805 of act of June 24, 1931 (P.L.1206,
17 No.331), known as The First Class Township Code.

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

20 (4) Section 751 of the act of March 10, 1949 (P.L.30,
21 No.14), known as the Public School Code of 1949.

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

25 (6) Section 2517 of the act of July 28, 1953 (P.L.723,
26 No.230), known as the Second Class County Code.

27 (7) Section 2317 of the act of August 9, 1955 (P.L.323,
28 No.130), known as The County Code.

29 (8) 8 Pa.C.S. § 1405 (relating to separate bids for
30 plumbing, heating, ventilating and electrical work).

1 (9) 11 Pa.C.S. Pt. V (relating to third class cities).

2 § 4720. Pennsylvania Public Utility Commission.

3 Except as provided in section 4714 (relating to utility
4 crossing) nothing in this chapter shall be construed to affect
5 the duties and jurisdiction of the Pennsylvania Public Utility
6 Commission.

7 Section 2. Effective date.

8 This act shall take effect as follows:

9 (1) The following provisions shall take effect
10 immediately:

11 (i) The addition of 62 Pa.C.S. §§ 4701 and 4702.

12 (ii) This section.

13 (2) The remainder of this act shall take effect in 90
14 days.