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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 369      Session of  
1997

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INTRODUCED BY SCHULER, BELARDI, HERSHEY, TRUE, JAROLIN, TRELLO,  
WAUGH, STERN AND LEH, FEBRUARY 10, 1997

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REFERRED TO COMMITTEE ON TRANSPORTATION, FEBRUARY 10, 1997

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AN ACT

1 Providing for the organization of corporations for the purpose  
2 of constructing and operating toll roads; providing for the  
3 supervision of same by the Department of Transportation; and  
4 establishing the Toll Road Improvement Fund.

5 The General Assembly finds that there is a compelling public  
6 need for rapid construction of safe and efficient highways for  
7 the purpose of travel within this Commonwealth, and that it is  
8 in the public interest to encourage the construction of  
9 additional safe, convenient and economic highway facilities by  
10 private parties, for a reasonable rate of return, provided that  
11 adequate safeguards are provided against default in the  
12 construction and operation obligations of the operators of such  
13 roadways.

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20 The General Assembly of the Commonwealth of Pennsylvania

21 hereby enacts as follows:

22 CHAPTER 1

23 PRELIMINARY PROVISIONS

24 Section 101. Short title.

25 This act shall be known and may be cited as the Highway  
26 Corporation Law.

27 Section 102. Definitions.

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

1 "Certificate." The certificate of authority awarded under  
2 this act which allows operation of a roadway.

3 "Department." The Department of Transportation of the  
4 Commonwealth.

5 "Fund." The Toll Road Improvement Fund established in  
6 section 316.

7 "Highway." The entire width between the boundary lines of  
8 every way or place of whatever nature open to the use of the  
9 public under the provisions of this act for purposes of  
10 vehicular travel in this Commonwealth.

11 "Operation." All functions and pursuits of the operator of  
12 any roadway under this chapter which are directly or indirectly  
13 related to acquisition, approval, construction, enlargement,  
14 maintenance, patrolling, toll collections, or connections of the  
15 roadway or highway with any other highway or with any street,  
16 road or alley. The term shall also include, without limitation,  
17 management and administrative functions attendant to actual  
18 physical operation of the roadway and management of the affairs  
19 of the operator.

20 "Operator." The corporation which submits to the Department  
21 of Transportation an application for authority to construct,  
22 operate or enlarge a roadway, and which, after issuance of a  
23 certificate of authority, is responsible for operation of any  
24 roadway under the provisions of this act.

25 "Person." Any natural person, corporation, partnership,  
26 joint venture and any other business entity. The term shall not  
27 include the State or any local government or agency thereof, or  
28 any municipal corporation or other corporate body.

29 "Roadway." That portion of a highway improved, designed or  
30 ordinarily used for vehicular travel, exclusive of the shoulder.

1 A highway may include two or more roadways if divided by a  
2 physical barrier or barriers or unpaved areas. "Roadway," as  
3 used in this act, shall include only privately owned or operated  
4 highways for which a toll or similar single-use charge is  
5 imposed prior to usage.

6 "Toll." The fee charged by the operator for a single use of  
7 all or a portion of the roadway.

### 8 CHAPTER 3

#### 9 CONSTRUCTION AND OPERATION

10 Section 301. Prerequisite for construction and operation.

11 No person may construct, operate or enlarge any roadway,  
12 within this Commonwealth without first having obtained a  
13 certificate of authority from the department authorizing such  
14 construction, operation or enlargement.

15 Section 302. Certificate of authority.

16 Any person may apply to the department for a certificate of  
17 authority to construct or operate a roadway, or to extend or  
18 enlarge a roadway for which a certificate has been issued under  
19 this act. If the department determines in writing, after notice  
20 and opportunity for a hearing, that the application is complete,  
21 that the applicant has obtained the approval in the form of a  
22 duly adopted resolution from the governing body of every  
23 municipality through which the proposed roadway will pass, that  
24 approval of the application is in the public interest and that  
25 the applicant has complied with the provisions of this act, it  
26 shall approve the application, with or without modification. If  
27 the department receives a duly adopted resolution of the  
28 governing body of any municipality through which the roadway  
29 passes, which requests that the department deny the application,  
30 the department shall deny that application. If the application

1 is approved, the operator shall construct the roadway. Upon  
2 completion of construction and the opening of the roadway to the  
3 public, the roadway shall be kept open at all times for use by  
4 the public and made accessible to the public, upon payment of  
5 the toll established by the operator, provided that the roadway  
6 may be partially or completely closed, temporarily, with the  
7 concurrence of the department, to protect the public safety or  
8 for reasonable construction or maintenance procedures.

9 Section 303. Application.

10 The department may charge a reasonable application fee to  
11 cover the costs of processing, reviewing and approving or  
12 denying the application. The application for a certificate of  
13 authority shall contain the following material and information:

14 (1) The geographic area to be served by the roadway and  
15 a survey indicating the route of the roadway.

16 (2) A list of the property owners through whose property  
17 the roadway or highway will pass or whose property will abut  
18 the roadway or highway.

19 (3) The method by which the operator will secure all  
20 rights-of-way required for the roadway, including a  
21 description of the nature of the interest in the lands to be  
22 acquired, which shall provide, at a minimum, for permanent  
23 dedication so long as the lands are used for transportation  
24 purposes.

25 (4) The comprehensive plan or plans for all  
26 municipalities through which the roadway will pass and an  
27 analysis which shows that the roadway conforms to these  
28 comprehensive plans. To the extent that the roadway conforms  
29 to such plans, the fact that the operator is a corporation,  
30 as opposed to the Commonwealth, shall not affect the

1 construction and operation of the roadway.

2 (5) The operator's plan for financing the proposed  
3 construction or enlargement of the roadway, including  
4 proposed tolls to be charged for use of the roadway,  
5 projected amounts to be collected from such tolls and  
6 anticipated traffic volume and detailed plans for  
7 distribution of funds, including the priority in which  
8 necessary expenditures will be made.

9 (6) The operator's plan for operation of the proposed  
10 roadway or enlargement thereof.

11 (7) A list of all permits and approvals required for  
12 construction of the roadway from Federal, State or local  
13 agencies and a schedule for securing such approvals.

14 (8) An overall description of the project, the project  
15 design and all proposed interconnections with the State  
16 highway system, including any interstate highway, or  
17 secondary system of highways or the streets or roads of any  
18 municipality not within the State highway system, accompanied  
19 by a copy of the approval of the project, the roadway design  
20 and interconnections from the department, as well as the  
21 municipality for connection with a street or road not under  
22 State control.

23 (9) A list of public utility facilities to be crossed  
24 and plans for such crossings or relocations of such  
25 facilities.

26 (10) A copy of a resolution of approval adopted by the  
27 governing body of every municipality through which the  
28 proposed roadway will pass.

29 (11) A certificate of the operator that the roadway will  
30 be designed and constructed to meet department standards, and

1 substantially in accordance with a proposed timetable which  
2 is agreeable to the department, and that the operator will  
3 provide a design, review and inspection agreement with the  
4 department which shall provide that the department shall  
5 authorize construction upon review and approval of the plans  
6 and specifications for the roadway and its interconnection  
7 with other roads, and that it shall inspect periodically the  
8 progress of the construction work to ensure its compliance  
9 with the department standards.

10 (12) Completion and performance bonds in form and amount  
11 satisfactory to the department, which amounts shall be set by  
12 the department after consultation with the department.

13 Section 304. Incorporation and eminent domain.

14 The applicant shall be incorporated under the laws of this  
15 Commonwealth relating to business corporations. Eminent domain  
16 shall not be exercised by the operator for the purpose of  
17 acquiring any lands or estates or interests therein, nor any  
18 other property used by the operator for the construction or  
19 enlargement of a roadway pursuant to this act.

20 Section 305. Powers of the department.

21 The department shall have the power, and be charged with the  
22 duties of reviewing and approving or denying the application, of  
23 supervising and controlling the operator in the performance of  
24 its duties under this act and of correcting any abuse in the  
25 performance of the operator's public duties. The department  
26 shall require, from the operator, a verified report describing  
27 the nature of its contractual and other relationships with  
28 individuals or entities contracting with the operator for the  
29 provision of significant financial, construction or maintenance  
30 services. The department shall review the report and such other

1 materials as it shall deem necessary for the purpose of  
2 determining improper or excessive costs, and shall exclude from  
3 the operator's costs any amounts which it finds are improper or  
4 excessive. The department also shall have the duty and authority  
5 to approve or revise the toll rates charged by the operator.  
6 Initial rates shall be approved if they appear reasonable to the  
7 user in relation to the benefit obtained, not likely to  
8 materially discourage use of the roadway and to provide the  
9 operator no more than a reasonable rate of return as determined  
10 by the department. Thereafter, the department, upon application,  
11 complaint or its own initiative, and after investigation, may  
12 order substituted for any toll being charged by the operator a  
13 toll which is set at a level which is reasonable to the user in  
14 relation to the benefit obtained and which will not materially  
15 discourage use of the roadway by the public and which will  
16 provide the operator no more than a reasonable return as  
17 determined by the department.

18 Section 306. Powers and duties of roadway operator.

19 (a) Tolls and revenue.--The operator shall have the  
20 authority to operate the roadway and charge tolls for the use  
21 thereof, and shall pledge any revenue net of operational  
22 expenses realized from tolls charged for the use of the roadway  
23 in order to secure repayment of any obligations incurred for the  
24 construction, enlargement or operation of such roadway. The  
25 debts or obligations of the operator shall be limited to an  
26 amount not to exceed the cost of construction plus an amount for  
27 issuance cost and other financing expenses, and a reasonable  
28 amount for reserve funds. The Commonwealth shall not obligate  
29 its full faith and credit on any financing of the operator and  
30 assumption of operation of the project shall not obligate the



1 Commonwealth to pay any obligation of the operator, whether  
2 secured or otherwise, from sources other than toll revenue.  
3 Subject to applicable permit requirements, the operator shall  
4 have the authority to cross any canal or navigable watercourse  
5 so long as the crossing does not unreasonably interfere with  
6 navigation and use of the waterway. In operating the roadway,  
7 the operator may:

8 (1) classify traffic according to reasonable categories  
9 for assessment of tolls; and

10 (2) with the consent of the department, make and enforce  
11 reasonable regulations, including regulations which:

12 (i) Set maximum and minimum speeds that shall  
13 conform to department and Commonwealth practices.

14 (ii) Exclude undesirable vehicles or cargoes or  
15 materials from the use of the roadway.

16 (iii) Establish commuter lanes for use during all or  
17 any part of a day and limit the use of such lanes to  
18 certain traffic, if deemed necessary by the department.

19 The enumeration of powers in this subsection shall not limit the  
20 power of the operator to do anything it deems necessary and  
21 appropriate in the operation of the roadway, provided that the  
22 practice is reasonable and nondiscriminatory.

23 (b) Duties.--The operator shall have the following duties:

24 (1) It shall file and maintain at all times with the  
25 department an accurate schedule of rates charged to the  
26 public for use of all or any portion of the roadway, and it  
27 shall also file and maintain a statement that such rates will  
28 apply uniformly to all users within any such reasonable  
29 classification as the operator may elect to implement.

30 (2) It shall construct and maintain the roadway for

1 anticipated use according to appropriate standards of the  
2 department for public highways operated and maintained by the  
3 department, and enlarge or expand the road when unsatisfied  
4 demand for use of the roadway makes it economically feasible  
5 to do so. The operator shall agree with the department for  
6 inspection of construction work by the department at  
7 appropriate times during any construction or enlargement. In  
8 addition, it shall cooperate fully with the department in  
9 establishing any interconnection with the roadway that the  
10 department may make.

11 (3) It shall contract with the Commonwealth for  
12 enforcement of the traffic and public safety laws by State  
13 authorities, and may similarly contract with appropriate  
14 local authorities for those portions of the roadway within  
15 the local jurisdiction.

16 Section 307. Approval of department.

17 (a) General rule.--The applicant for a certificate of  
18 authority to construct or enlarge a roadway pursuant to this act  
19 shall first secure the approval of the department for the  
20 project, the project construction costs, the location and design  
21 of the roadway, and its connection with any road under the  
22 jurisdiction of the department, at proper and convenient places,  
23 in order to provide for the convenience of the public. The  
24 department shall approve or deny approval:

25 (1) 60 days following receipt of a description of the  
26 proposed location and design of the roadway and its  
27 connection with all other roads; or

28 (2) 45 days following the conduct of a hearing held  
29 under Title 2 of the Pennsylvania Consolidated Statutes  
30 (relating to administrative law and procedure).

1 The department shall approve the project and its  
2 interconnections with other roads if there is a public need for  
3 a road project of the type proposed and the project and its  
4 interconnections are compatible with the existing road network.  
5 It shall approve the project construction costs if they are  
6 reasonable. If interconnections with an interstate highway or  
7 other Federal facility are contemplated, the department's  
8 approval shall be conditioned upon ultimate approval of any  
9 interconnection if such Federal approvals are required and have  
10 not been obtained by the time the department acts. Approval of  
11 the roadway design shall not be withheld if it conforms  
12 materially with department practices for toll facilities of  
13 similar size and with similar usage patterns. In making its  
14 determinations, the department shall keep in mind the public  
15 interest, which may include, without limitation, such  
16 considerations as the relative speed of the construction of the  
17 project and the allocation of the technical, financial and human  
18 resources of the department. The approval granted by the  
19 department shall be conditioned upon subsequent compliance by  
20 the applicant with the agreement contemplated by subsection (b).  
21 If the roadway is to be built partially or completely along  
22 existing State highway right-of-way, the department shall grant  
23 the applicant authority to use such right-of-way only if deemed  
24 necessary.

25 (b) Comprehensive agreement.--If approval of the project,  
26 project design and connections of the roadway is granted by the  
27 department, it shall thereafter enter into a comprehensive  
28 agreement with the applicant which provides, inter alia, that  
29 the department shall review and approve plans and specifications  
30 for the roadway if they conform to Commonwealth practices; that

1 the department will inspect and approve construction of the  
2 roadway if it conforms to the plans and specifications or  
3 Commonwealth construction and engineering standards; that the  
4 department will, throughout the life of the roadway project,  
5 monitor the maintenance practices of the operator and take such  
6 actions as are appropriate to ensure the performance of  
7 maintenance obligations; and that the department shall be  
8 reimbursed for its direct project costs, by the operator, for  
9 the services performed by the department. The agreement shall  
10 also provide, inter alia, that the operator will establish and  
11 fund accounts which shall ensure that funds are available to  
12 meet the obligations of the operator, including reasonable  
13 reserves for contingencies and maintenance replacement  
14 activities. The approval of plans and specifications and  
15 construction may be undertaken in phases, but no construction  
16 may commence until the approval of plans which include that  
17 phase of construction. The services for which the department  
18 shall be reimbursed include project development costs, such as  
19 those attendant to preparation of environmental impact  
20 statements, which are necessary for the construction of the  
21 roadway by a private operator but have been performed by the  
22 department. The agreement may include a provision that the  
23 department will perform services necessary for project  
24 development on behalf of the operator, and in such a case, the  
25 department shall be fully reimbursed by the operator for its  
26 direct costs.

27 Section 308. Insurance and sovereign immunity.

28 Any operator who constructs, operates or enlarges a roadway  
29 pursuant to this act shall secure and maintain a policy or  
30 policies of public liability insurance in form and amount

1 satisfactory to the department and sufficient to insure coverage  
2 of tort liability to the public and employees, and to enable the  
3 continued operation of the roadway. Proofs of coverage and  
4 copies of policies shall be filed with the department. Nothing  
5 in this act shall be construed as or deemed a waiver of the  
6 sovereign immunity of the Commonwealth with respect to its  
7 participation or approval of all or any part of the roadway  
8 application or operation, including, but not limited to,  
9 interconnection of the roadway with the State Highway System.  
10 Municipalities through which a roadway passes shall possess  
11 governmental immunity with respect to roadway construction and  
12 operation.

13 Section 309. Local approval.

14 (a) General rule.--Prior to the issuance of a certificate of  
15 authority by the department and prior to the filing of any  
16 application materials with the department, the applicant shall  
17 provide the local governing body of each municipality through  
18 which any part of the roadway passes, information and materials  
19 required by section 303 and an overall description of the  
20 project and its benefits. The governing body of the municipality  
21 may participate in procedures conducted by the department  
22 concerning the application.

23 (b) Lands, existing roads, etc.--When the operator wishes to  
24 occupy lands owned by any municipality, including streets,  
25 alleys or roads, it shall first obtain a franchise allowing such  
26 occupancy or it may obtain the necessary interests through grant  
27 or other appropriate conveyance of the operator for a period of  
28 time not to exceed the term of the certificate.

29 (c) Interconnection plans.--Where the applicant wishes to  
30 interconnect with the streets or road system of any

1 municipality, and the municipality is willing to allow the  
2 interconnection, the applicant shall submit appropriate plans  
3 for the connection to the governing body of that municipality,  
4 which shall approve the connection if it determines that the  
5 connection meets all appropriate engineering requirements.

6 (d) Supplemental agreements, etc.--The operator and the  
7 municipality may also agree on any supplemental or related  
8 matters according to such terms and conditions as are  
9 reasonable, appropriate and in the public interest, and any such  
10 municipality is hereby authorized to enter into such an  
11 agreement.

12 Section 310. Utility crossings.

13 The applicant shall include in the application a list of  
14 public utility facilities and rights-of-way to be crossed or  
15 otherwise affected in the construction of the roadway and a plan  
16 and schedule for such crossings. The operator and each public  
17 utility whose works are to be crossed or affected shall each  
18 have the duty to cooperate fully with the other in the planning  
19 and arranging of the manner of the crossing or relocation of the  
20 facilities. Any public utility possessing the powers of eminent  
21 domain is hereby expressly granted such powers in connection  
22 with the moving or relocation of facilities to be crossed by the  
23 roadway or which must be relocated to the extent that such  
24 moving or relocation is made necessary by construction of the  
25 roadway, which shall be construed to include construction of  
26 temporary facilities for the purpose of providing service during  
27 the period of construction. Should the applicant or operator and  
28 the public utility whose facilities are to be crossed or  
29 relocated not be able to agree upon a plan for such crossing or  
30 any necessary relocation, either party may request the

1 department to inquire into the need for the crossing or  
2 relocation and to decide whether such crossing or relocation  
3 should be compelled, and, if so, the manner in which such  
4 crossing or relocation is to be accomplished and any damages due  
5 either party arising out of the crossing or relocation. The  
6 department may, in its discretion, employ expert engineers who  
7 shall examine the location and plans for such crossing or  
8 relocation, hear any objections and consider modifications, and  
9 make a recommendation to the department. In such a case, the  
10 cost of the experts is to be borne equally by the applicant and  
11 the public utility, unless the department determines that it  
12 would be unjust, in which case the cost shall be borne as the  
13 department decides.

14 Section 311. Highway and roadway crossings.

15 No crossing of a railway, highway, street, road or alley  
16 shall be at grade, but shall pass above or below the railway,  
17 highway, street, road, or alley, and such crossings are hereby  
18 permitted, subject to the provisions of this act.

19 Section 312. Default.

20 In the event of material and continuing default in the  
21 performance of the operator's construction or operation duties  
22 or failure of the operator to comply with the terms of its  
23 agreement with the department, or in the event that construction  
24 has not begun within two years of the issuance of a certificate,  
25 the department, after a hearing in which the applicant or  
26 operator has notice and opportunity to participate, may revoke  
27 the certificate of authority for the roadway, declare a default  
28 in the construction or operation of the roadway, and make or  
29 cause to be made the appropriate claim or claims under any  
30 completion or performance bonds, or take such other action as it

1 may deem appropriate, under the circumstance. The department may  
2 participate in or initiate such proceedings. In case of  
3 revocation of a certificate, the applicant or operator shall  
4 thereafter be without any authority to construct or operate the  
5 roadway, and the department may take over construction and  
6 operation of the roadway, and may proceed thereafter to take any  
7 steps which are in the public interest, including completion of  
8 construction or additions to the roadway, closing the roadway,  
9 or any intermediate step. The department shall receive the full  
10 proceeds of any payments due to claims against bonding companies  
11 or sureties for this purpose. In addition, in such event, the  
12 operator shall grant to the department all of its right, title  
13 and interest in the assets of the corporation. Nothing herein  
14 shall be construed to limit the department's exercise of the  
15 power of eminent domain. In either case, the operator may obtain  
16 compensation from the department for such assets, except that  
17 the department shall first deduct from the value of such assets  
18 all of the department's costs incurred in connection with  
19 completion or fulfillment of the unperformed obligations of the  
20 operator, and any other costs associated with the events  
21 contemplated in this section. The department shall take into  
22 account moneys received from the proceeds of any payment or  
23 completion bond in calculating the amount due the operator.

24 Section 313. Police powers.

25 The roadway and highways constructed or operated under this  
26 act may be policed in whole or in part by officers of the  
27 Pennsylvania State Police, even though all or some portion of  
28 any such projects lie within the corporate limits of a  
29 municipality and just as if the roadway and highway were a part  
30 of the State highway system. The operator and the Pennsylvania



1 State Police shall agree upon reasonable terms and conditions  
2 pursuant to which the activities contemplated in this section  
3 may take place. Such officers shall be under the exclusive  
4 control and direction of the Commissioner of the Pennsylvania  
5 State Police and shall be responsible for the preservation of  
6 public peace, prevention of crime, apprehension of criminals,  
7 protection of the rights of persons and property, and  
8 enforcement of the laws of this Commonwealth, within the limits  
9 of any highway and roadway. All other police officers of the  
10 Commonwealth and of each municipality or other political  
11 subdivision of this Commonwealth through which any roadway, or  
12 portion thereof, extends shall have the same powers and  
13 jurisdiction within the limits of such roadways and highways as  
14 they have beyond such limits and shall have access to the  
15 highway and road at any time for the purpose of exercising such  
16 powers and jurisdiction. This authority does not extend to the  
17 private offices, buildings, garages and other improvements of  
18 the operator to any greater degree than the police power extends  
19 to any other private buildings and improvements.

20 Section 314. Traffic and motor vehicle laws.

21 The traffic and motor vehicle laws of this Commonwealth shall  
22 apply to persons and motor vehicles on the roadway or highway,  
23 and the powers of arrest of police officers shall be the same as  
24 those applying to conduct on the State highway system.

25 Punishment for offenses shall be as prescribed by law for  
26 conduct occurring on the State highway system.

27 Section 315. Termination of certificate.

28 Within 90 days of completion and closing of the original  
29 permanent financing, the operator shall provide full details of  
30 the financing, including the terms of all bonds, to the

1 department; and shall certify the date on which all debt will be  
2 retired. The department may require that the operator provide  
3 copies of any relevant documents, and shall review the financing  
4 and determine the date on which all bonds or other debt  
5 constituting the original permanent financing will be retired.  
6 After establishing this date, the department shall enter an  
7 order terminating the operator's authority pursuant to the  
8 certificate of authority on a date which shall be ten years from  
9 the date on which all of the original permanent financing will  
10 be completely retired. At the request of the operator or on its  
11 own initiative, the department may revise its order to modify  
12 the date for termination of the certificate of authority in  
13 order to take into account any refinancing of the original  
14 permanent financing, where the refinancing or modification is in  
15 the public interest, or any refinancing for the purpose of  
16 expansion, or early retirement of the debt. Upon the termination  
17 of the certificate of authority, the authority and duties of the  
18 operator under this chapter shall cease, and the highway assets  
19 and improvements of the operator shall be dedicated to the  
20 Commonwealth for highway purposes.

21 Section 316. Toll Road Improvement Fund.

22 (a) Establishment.--There is hereby established a separate  
23 account in the State Treasury to be known as the Toll Road  
24 Improvement Fund. This fund shall be for the purpose of  
25 providing moneys for transportation improvements which are  
26 related to or affected by the toll roads operating under this  
27 act. All moneys in the fund are hereby appropriated to the  
28 department on a continuing basis to carry out this section.

29 (b) Toll rates.--In setting toll rates, the department shall  
30 determine them in an amount which will:

