

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 344 Session of 2011

INTRODUCED BY RAFFERTY, SCARNATI, PILEGGI, D. WHITE, YAW, ORIE,
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FEBRUARY 1, 2011

REFERRED TO TRANSPORTATION, FEBRUARY 1, 2011

AN ACT

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

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

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

8 PART V

9 TRANSPORTATION INFRASTRUCTURE

10 Chapter

11 91. Public-Private Transportation Partnership

12 CHAPTER 91

13 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP

14 Sec.

15 9101. Scope of chapter.

16 9102. Findings and declaration of policy.

17 9103. Definitions.

1 9104. Regulations.
2 9105. Project delivery methods.
3 9106. Approval.
4 9107. Public-private transportation partnership agreement.
5 9108. Police powers and violations of law.
6 9109. Environmental and other authorizations.
7 9110. Taxation of authorized development entity or entities.
8 9111. Power of eminent domain.
9 9112. Sovereign immunity.
10 9113. Amounts payable by proprietary public entities and
11 specific performance.
12 9114. Design-build development and Separations Act.
13 9115. Additional procurement provisions.
14 9116. Adverse interest.
15 9117. Application of chapter.
16 9118. Federal, Commonwealth, local and private assistance.
17 9119. Public-Private Transportation Account.
18 9120. Public-Private Transportation Partnership Board.
19 9121. Duties and powers of board.
20 9122. Role of department in operation of board.
21 § 9101. Scope of chapter.
22 This chapter relates to public-private transportation
23 partnerships.
24 § 9102. Findings and declaration of policy.
25 (a) Legislative findings and declarations.--The General
26 Assembly finds, determines and declares as follows:
27 (1) There is urgent public need to reduce congestion,
28 increase capacity, improve safety and enhance economic
29 efficiency of transportation facilities throughout this
30 Commonwealth.

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

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

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

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

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

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

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

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

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

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

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

16 § 9103. Definitions.

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

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

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

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

25 "Development entity." Any of the following:

26 (1) A private entity.

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

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

1 proprietary public entity.

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

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

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

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

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

28 (1) Operations and maintenance.

29 (2) Revenue collection.

30 (3) User fee collection or enforcement.

1 (4) Design.

2 (5) Construction.

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

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

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

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

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

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

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

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

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

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

3 (3) An intergovernmental entity.

4 § 9104. Regulations.

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

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

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

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

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

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

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

1 shall not be subject to any of the following:

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

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

7 § 9105. Project delivery methods.

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

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

13 (2) A design-build agreement.

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

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

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

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

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

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

24 § 9106. Approval.

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

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

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

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

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

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

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

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

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

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

1 (d) Costs.--

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

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

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

20 (e) Modification and termination rights.--

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

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

1 be made a part of the file.

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

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

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

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

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

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

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

1 private transportation partnership agreement.

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

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

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

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

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

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

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

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

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

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

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

6 (i) Diversity.--

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

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

private transportation project and through employment opportunities.

§ 9107. Public-private transportation partnership agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (e) Environmental costs.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 § 9108. Police powers and violations of law.

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

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

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

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

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

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

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

§ 9110. Taxation of authorized development entity or entities.

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

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

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

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

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

25 § 9111. Power of eminent domain.

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

1 § 9112. Sovereign immunity.

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

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

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

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

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

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

1 agreement.

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

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

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

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

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

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

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

29 Notwithstanding any other provision of law:

30 (1) Any public-private transportation partnership

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

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

11 § 9115. Additional procurement provisions.

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

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

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

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

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

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

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

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

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

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

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

17 § 9116. Adverse interest.

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

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

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

30 (ii) Participating in any activity with the

1 department related to a request for solicitation.

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

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

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

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

21 (b) (Reserved).

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

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

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

29 § 9117. Application of chapter.

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

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

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

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

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

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

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

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

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

(3) The department or a proprietary public entity may

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

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

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

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

§ 9119. Public-Private Transportation Account.

(a) Establishment.--

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

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

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

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

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

1 public-private transportation partnership agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 § 9120. Public-Private Transportation Partnership Board.

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

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

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

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

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

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

1 subsection (c).

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

4 (c) Legislative appointments.--

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

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

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

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

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

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

17 (3) Legislative appointees shall:

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

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

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

25 (A) Transportation.

26 (B) Finance.

27 (C) Law.

28 (D) Land use and public planning.

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

1 shall:

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

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

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

8 (i) Transportation.

9 (ii) Finance.

10 (iii) Law.

11 (iv) Land use and public planning.

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

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

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

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

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

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

3 (1) The Right-to-Know Law.

4 (2) The State Adverse Interest Act.

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

8 § 9121. Duties and powers of board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 Section 2. Repeals are as follows:

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

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

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

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

11 (2) This section shall take effect immediately.

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