

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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BROWNE, FEBRUARY 1, 2011

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, DECEMBER
12, 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.

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24 § 9101. Scope of chapter.
25 This chapter relates to public-private transportation
26 partnerships.
27 § 9102. Findings and declaration of policy.
28 (a) Legislative findings and declarations.--The General
29 Assembly finds, determines and declares as follows:
30 (1) There is urgent public need to reduce congestion,



1 increase capacity, improve safety and enhance economic
2 efficiency of transportation facilities throughout this
3 Commonwealth.

4 (2) The public entities have limited resources to fund
5 the maintenance and expansion of their respective
6 transportation facilities.

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

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

15 (5) The imposition of user fees and the development,
16 operation, maintenance, construction and improvement of toll
17 roads is a proprietary function which may be delegated to a
18 private entity consistent with section 31 of Article III of
19 the Constitution of Pennsylvania.

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

27 (7) Assuring that public-private transportation projects
28 are developed, operated and financed in a cost-effective
29 manner is an important factor in promoting the health, safety
30 and welfare of the citizens of this Commonwealth.

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

2 (1) To encourage private entities to invest in this
3 Commonwealth by participating in the development, operation
4 or financing of transportation facilities.

5 (2) To provide public entities and private entities with
6 the authority and flexibility in contracting for the
7 development, operation and financing of transportation
8 facilities.

9 (3) To authorize public entities to contract with
10 private and other public entities to provide transportation
11 facilities and related services.

12 § 9103. Definitions.

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

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

17 "Board." The Public-Private Transportation Partnership
18 Board.

19 "Department." The Department of Transportation of the
20 Commonwealth.

21 "Development entity." An entity which is a party to a
22 public-private transportation partnership agreement and which is
23 any of the following:

24 (1) A private entity.

25 (2) A public entity, other than the public entity
26 providing or improving its own transportation facilities.

27 "Electronic toll." A system of collecting tolls or charges
28 which is capable of charging an account holder for the
29 prescribed toll by electronic transmission of information. The
30 term includes open road tolls, video tolls or other similar

structural or technological enhancements pertaining to tolls.

"Offeror." A person that submits a proposal or a response in answer to a request for proposals or transportation projects.

"Private entity." A person, entity, group or organization that is not the Federal Government, the Commonwealth or a municipal authority.

"Proprietary public entity." A public entity which owns a public-private transportation project and which is a party to a public-private transportation partnership agreement.

"Public entity." The Commonwealth ~~or a municipal authority,~~ A MUNICIPAL AUTHORITY OR AN AUTHORITY CREATED BY STATUTE which owns a transportation facility. THE TERM INCLUDES THE PENNSYLVANIA TURNPIKE COMMISSION. The term does not include the General Assembly and its members, officers or agencies or any court or other office or agency of the Pennsylvania judicial system.

"Public-private transportation partnership agreement." A contract for a transportation project which transfers the rights for the use or control, in whole or in part, of a transportation facility by a public entity to a development entity for a definite term during which the development entity will provide the transportation project to the public entity in return for the right to receive all or a portion of the revenue generated from the use of the transportation facility, or other payment, such as the following transportation-related services:

(1) Operations and maintenance.

(2) Revenue collection.

(3) User fee collection or enforcement.

(4) Design.

(5) Construction.

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

5 (7) Financing.

6 "Public-private transportation project." A transportation
7 project undertaken by a development entity pursuant to a public-
8 private transportation partnership agreement.

9 "REQUEST FOR TRANSPORTATION PROJECTS." A SOLICITED OR
10 UNSOLICITED PLAN FOR A TRANSPORTATION PROJECT SUBMITTED TO THE
11 BOARD BY A PUBLIC ENTITY.

12 "Responsible offeror." An offeror that has submitted a
13 responsive proposal and that possesses the capability to fully
14 perform the public-private transportation partnership agreement
15 requirements in all respects and the integrity and reliability
16 to assure good faith performance.

17 "Responsive proposal." A proposal that conforms in all
18 material aspects to the requirements and criteria in the request
19 for proposals.

20 ~~"Right to Know Law." The act of February 14, 2008 (P.L.6,~~
21 ~~No.3), known as the Right to Know Law.~~

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

24 "Transportation facility." A proposed or existing road,
25 bridge, tunnel, overpass, ferry, busway, guideway, public
26 transportation facility, vehicle parking facility, port
27 facility, multimodal transportation facility, airport, station,
28 hub, terminal or similar facility used or to be used for the
29 transportation of persons, animals or goods, together with any
30 buildings, structures, parking areas, appurtenances, intelligent

1 transportation systems and other property needed to operate OR
2 RELATED TO THE OPERATION OF the transportation facility. The
3 term includes any improvements or substantial enhancements or
4 modifications to an existing transportation facility.

5 "Transportation project." An undertaking by a private entity
6 or a public entity, other than the public entity providing or
7 improving its own transportation facilities, to provide or
8 improve a transportation facility or transportation-related
9 service which is totally or partially located within this
10 Commonwealth.

11 § 9104. Public-Private Transportation Partnership Board.

12 (a) Establishment.--There is established a board to be known
13 as the Public-Private Transportation Partnership Board.

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

16 (1) The Secretary of Transportation, who shall be the
17 chairperson of the board, or a designee who shall be an
18 employee of the department.

19 (2) The Secretary of the Budget or a designee who shall
20 be an employee of the Office of the Budget.

21 (3) Four members appointed by the General Assembly under
22 subsection (c).

23 (4) One member appointed by the Governor under
24 subsection (d).

25 (c) Legislative appointments.--

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

28 (i) One individual appointed by the President pro
29 tempore of the Senate.

30 (ii) One individual appointed by the Minority Leader

1 of the Senate.

2 (iii) One individual appointed by the Speaker of the
3 House of Representatives.

4 (iv) One individual appointed by the Minority Leader
5 of the House of Representatives.

6 (2) Legislative appointees shall BE RESIDENTS OF THIS ←
7 COMMONWEALTH AND serve at the pleasure of the appointing
8 authority.

9 (3) Legislative appointees shall have expertise or
10 substantial experience in one or more of the following areas:

11 (i) Transportation.

12 (ii) Finance.

13 (iii) Law.

14 (iv) Land use and public planning.

15 (d) Gubernatorial appointment.--A member appointed under
16 subsection (b) (4):

17 (1) May not hold any other position as an elected
18 official or employee of the Commonwealth.

19 (2) Shall BE A RESIDENT OF THIS COMMONWEALTH AND have ←
20 expertise or substantial experience in one or more of the
21 following areas:

22 (i) Transportation.

23 (ii) Finance.

24 (iii) Law.

25 (iv) Land use and public planning.

26 (3) Shall serve at the pleasure of the Governor.

27 (e) Quorum.--Five members of the board shall constitute a
28 quorum. The adoption of a resolution or other action of the
29 board shall require a majority vote of the members of the board.

30 (f) Compensation.--The members of the board shall be

1 entitled to no compensation for their services as members of the
2 board but shall be entitled to reimbursement by the department
3 for all necessary and reasonable expenses incurred in connection
4 with the performance of their duties as members of the board.

5 (g) Initial appointment and vacancy.--Appointing authorities
6 shall appoint initial board members within 30 days of the
7 effective date of this section. Whenever a vacancy occurs on the
8 board, the appointing authority shall appoint a successor member
9 within 30 days of the vacancy.

10 (h) Financial interests.--No member of the board, during his
11 term of office shall directly or indirectly own, have any
12 significant financial interest in, be associated with or receive
13 any fee, commission, compensation or anything of value from any
14 public entity or private entity seeking to engage in a public-
15 private transportation partnership agreement.

16 (i) Applicability.--The following acts shall apply to the
17 board:

18 ~~(1) The Right to Know Law.~~ ←

19 (1) THE ACT OF FEBRUARY 14, 2008 (P.L.6, NO.3), KNOWN AS ←
20 THE RIGHT-TO-KNOW LAW.

21 (2) The State Adverse Interest Act.

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

25 § 9105. Duties of board.

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

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

28 (2) Adopt guidelines establishing the procedure by which
29 a public entity may submit a request for a transportation
30 project or a private entity may submit an unsolicited plan

1 for a transportation project to the board.

2 (3) Consult with persons affected by proposed
3 transportation projects.

4 (4) Evaluate and, where the board finds that the
5 requests or plans for transportation projects are in the best
6 interests of the Commonwealth and a public entity, approve
7 the requests or plans for transportation projects. The board
8 shall approve a proposed transportation project by adopting a
9 resolution.

10 (5) Submit an annual report to the General Assembly
11 detailing all transportation projects evaluated and
12 resolutions adopted.

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

19 (c) General Assembly.--The following shall apply:

20 (1) The General Assembly may, within ~~30~~ 20 calendar days ←
21 or ~~12~~ NINE legislative days, whichever is longer, of the ←
22 adoption of the resolution under subsection (a)(4), pass a
23 concurrent resolution rescinding the approval of a
24 transportation project if the transportation facility which
25 is the subject of the transportation project is owned by the
26 Commonwealth.

27 (2) If the General Assembly adopts the concurrent
28 resolution within the time period under paragraph (1) by
29 majority vote in both the Senate and the House of
30 Representatives, the transportation project shall be deemed

1 disapproved.

2 (3) If the General Assembly fails to adopt the
3 concurrent resolution by majority vote in both the Senate and
4 the House of Representatives within the time period under
5 paragraph (1), the transportation project shall be deemed
6 approved.

7 § 9106. Operation of board.

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

12 (b) Analysis.--The department shall develop a detailed
13 analysis of a request or recommendation prior to approval by the
14 board.

15 (c) Oversight.--If a transportation project becomes a
16 public-private transportation project, the department shall
17 retain oversight and monitor the public-private transportation
18 project, including periodic reports to the board, as necessary.

19 § 9107. Solicitations for transportation projects.

20 A public entity may solicit transportation projects through a
21 request for transportation projects. The public entity shall
22 give public notice of a request for transportation projects
23 consistent with section 9110(c) (relating to selection of
24 development entities). Offerors shall submit their responses to
25 the public entity in the form and manner required by the request
26 for transportation projects. A public entity shall evaluate each
27 response to determine if the response is in the best interest of
28 the public entity. Upon being satisfied, the public entity may
29 prepare and submit a request to the board to review the
30 transportation project in accordance with this chapter.

1 § 9108. Transportation projects.

2 (a) Submission.--Except as provided under subsection (b), a
3 public entity which seeks to undertake a transportation project
4 which has not been previously approved by the board shall submit
5 a request for the transportation project to the board.

6 ~~(b) Exception. This section shall not apply to a~~ ←
7 ~~transportation project which a public entity is authorized to~~
8 ~~undertake prior to the effective date of this subsection.~~

9 (B) EXCEPTION.--THIS CHAPTER SHALL NOT APPLY TO A ←
10 TRANSPORTATION PROJECT WHICH A PUBLIC ENTITY IS AUTHORIZED UNDER
11 LAW TO UNDERTAKE ON THE EFFECTIVE DATE OF THIS SUBSECTION.

12 § 9109. Requests.

13 A request may be solicited or unsolicited and may provide for
14 the development or operation of transportation facilities using
15 a variety of project delivery methods and forms of agreement.
16 The methods may include:

17 (1) Predevelopment agreements leading to other
18 implementing agreements.

19 (2) A design-build agreement.

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

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

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

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

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

25 (8) An operate-maintain agreement.

26 (9) A concession providing for the development entity to
27 design, build, operate, maintain, manage or lease a
28 transportation facility.

29 (10) Any other innovative or nontraditional project
30 delivery method or agreement or combination of methods or

agreements that the public entity determines will address the transportation needs of the Commonwealth and the public entity and serve the public interest.

§ 9110. Selection of development entities.

(a) Conditions for use.--If a transportation project is approved under section 9105 (relating to duties of board), the public entity may enter into a contract for the transportation project by competitive sealed proposals.

(b) Request for proposals.--After receiving the determination required by subsection (a), a public entity shall solicit proposals through a request for proposals.

(c) Public notice.--A public entity shall give public notice of a request for proposals consistent with regulations adopted by the department. The notice shall be given a reasonable time prior to the date set for the close of receipt of the proposals. The method of public notice may include any of the following:

(1) Electronic publication which is accessible to the general public.

(2) Advertisement as provided for in 45 Pa.C.S. § 306 (relating to use of trade publications).

(3) Issuance of request for proposals to offerors on the mailing list of the public entity.

(4) Publication in a newspaper of general circulation.

(5) Where prequalification is a requirement of submitting a proposal, notification to all private entities who have been prequalified by the public entity.

(d) Copies of request for proposal.--Copies of a request for proposals shall be made available to any interested person upon request to the public entity. A public entity may establish procedures for the distribution of a request for proposals,

1 including the imposition of a fee to reimburse the public entity
2 for the costs of photocopying and mailing.

3 (e) Receipt of proposals.--Offerors shall submit their
4 proposals to ensure that their proposals are received prior to
5 the time and date established for receipt of the proposals.
6 Proposals shall be submitted in the format required by the
7 request for proposals. Proposals shall be opened so as to avoid
8 disclosure of their contents to competing offerors.

9 (f) Evaluation.--A public entity shall evaluate each
10 proposal to determine which proposal has the best value for and
11 is in the best interest of the public entity. In making this
12 determination, a public entity may consider any of the
13 following:

14 (1) Cost.

15 (2) Price.

16 (3) Financial commitment.

17 (4) Innovative financing.

18 (5) Bonding.

19 (6) Technical, scientific, technological or
20 socioeconomic merit.

21 (7) Financial strength and viability.

22 (8) Design, operation and feasibility of the
23 transportation project.

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

26 (10) The ability of the transportation project to
27 improve economic growth, to improve public safety, to reduce
28 congestion, to increase capacity or to rehabilitate,
29 reconstruct or expand an existing transportation facility.

30 (11) The compatibility of the proposal with existing

1 local and regional land use plans.

2 (12) The commitment of local communities to approve land
3 use plans in preparation for the transportation project.

4 (13) Other factors deemed appropriate by the public
5 entity.

6 (g) Weighted consideration.--The relative importance of each
7 evaluation factor shall be fixed prior to opening the proposals.

8 (h) Participation in evaluation.--If the public entity is
9 the Commonwealth, the department is required to invite its
10 comptroller to participate in the evaluation as a nonvoting
11 member of any evaluation committee. No individual who has been
12 employed by an offeror within the last two years may participate
13 in the evaluation of proposals.

14 (i) Discussion with responsible offerors and revision of
15 proposals.--As provided in the request for proposals,
16 discussions and negotiations may be conducted with responsible
17 offerors for the purpose of clarification and of obtaining best
18 and final offers. Responsible offers shall be accorded fair and
19 equal treatment with respect to any opportunity for discussion
20 and revision of proposals. In conducting discussions, there
21 shall be no disclosure of any information derived from proposals
22 submitted by competing offerors.

23 (j) Selection for negotiation.--The responsible offeror
24 whose proposal is determined in writing to be the best value for
25 and in the best interests of the public entity, taking into
26 consideration all evaluation factors, shall be selected for
27 contract negotiation.

28 (k) Cancellation.--A request for proposals may be canceled
29 at any time prior to the time a public-private transportation
30 partnership agreement is executed by all parties when it is in

1 the best interests of the public entity.

2 (l) Award.--Upon reaching an agreement with a responsible
3 offeror, a public entity shall enter into a public-private
4 transportation partnership agreement with the responsible
5 offeror. The public-private transportation partnership agreement
6 shall be consistent with the requirements of this chapter. If
7 agreement cannot be reached with the best qualified responsible
8 offeror, then negotiations will be formally terminated with the
9 offeror. If proposals were submitted by one or more other
10 responsible offerors, negotiations may be conducted with the
11 other responsible offeror or responsible offerors in the order
12 of their respective qualification ranking. The contract may be
13 awarded to the responsible offeror then ranked as best
14 qualified.

15 (m) Resolution of controversies involving the
16 Commonwealth.--If a prospective offeror, offeror or development
17 entity is aggrieved by a selection under this section and the
18 public entity or proprietary public entity in the invitation or
19 contract is the Commonwealth, the prospective offeror, offeror
20 or development entity may file a protest or a claim, as
21 appropriate, in accordance with 62 Pa.C.S. Ch. 17 (relating to
22 legal and contractual remedies).

23 ~~(n) Resolution of controversies not involving the~~ ←
24 ~~Commonwealth. If a prospective offeror, offeror or development~~
25 ~~entity is aggrieved by a selection under this section and the~~
26 ~~public entity or proprietary public entity in the invitation or~~
27 ~~contract is an entity other than the Commonwealth, a prospective~~
28 ~~offeror, offeror or development entity may file a protest or a~~
29 ~~claim, as appropriate, with the court of common pleas where the~~
30 ~~public entity or proprietary public entity is located. The~~



~~processes for the filing and resolution of protests and the~~
(N) RESOLUTION OF CONTROVERSIES NOT INVOLVING THE
COMMONWEALTH.--IF A DEVELOPMENT ENTITY IS AGGRIEVED BY A
SELECTION UNDER THIS SECTION AND THE PROPRIETARY PUBLIC ENTITY
IN THE CONTRACT IS AN ENTITY OTHER THAN THE COMMONWEALTH, A
DEVELOPMENT ENTITY MAY FILE A CLAIM WITH THE COURT OF COMMON
PLEAS WHERE THE PROPRIETARY PUBLIC ENTITY IS LOCATED. THE
PROCESS FOR THE filing and resolution of claims, including
rights, contents, timing, evaluation, determination and
remedies, which are established in 62 Pa.C.S. Ch. 17, shall
apply insofar as they are practicable.

§ 9111. 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 public-private transportation project.

(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
public-private transportation partnership project, including
acquisition of rights-of-way and other property interests
that may be required.

(4) Authorization for the proprietary public entity or
its authorized representatives to inspect all assets and
properties of the public-private transportation project and

1 all books and records of the development entity relating to
2 the public-private transportation project to review the
3 development entity's performance under the public-private
4 transportation partnership agreement.

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

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

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

11 (8) Requirements for a private development entity to
12 provide performance and payment bonds, parent company
13 guarantees, letters of credit or other acceptable forms of
14 security in an amount acceptable to the proprietary public
15 entity.

16 (9) A requirement that ownership of a transportation
17 facility acquired or constructed go to or remain with the
18 proprietary public entity.

19 (10) Standards for construction, maintenance and
20 operation of the public-private transportation project if the
21 activities are to be performed by the development entity.

22 (11) Standards for capital improvement or modification
23 of the public-private transportation project if they are to
24 be made by the development entity.

25 (12) Standards relating to how payments, if any, are to
26 be made by the proprietary public entity to the development
27 entity, including availability payments, performance-based
28 payment and payments of money and revenue-sharing with the
29 development entity.

30 (13) Standards relating to how the parties will allocate

1 and share management of the risks of the public-private
2 transportation project.

3 (14) Standards relating to how the parties will allocate
4 costs of development of the public-private transportation
5 project, including any cost overruns.

6 (15) Standards relating to damages to be assessed for
7 nonperformance, specifying remedies available to the parties
8 and dispute resolution procedures.

9 (16) Standards relating to performance criteria and
10 incentives.

11 (17) A requirement that upon termination of the public-
12 private transportation partnership agreement, a
13 transportation facility that was the subject of the public-
14 private transportation partnership agreement must be in a
15 state of proper maintenance and repair and shall be returned
16 to the proprietary public entity in satisfactory condition at
17 no further cost to the proprietary public entity.

18 (18) Provisions for law enforcement related to the
19 public-private transportation project.

20 (19) An obligation of the development entity to offer
21 employment to any employee of the proprietary public entity
22 who would lose employment due to the execution of the public-
23 private transportation partnership agreement and who is in
24 good standing at the time of execution of the public-private
25 transportation partnership agreement, including salary,
26 retirement, health and welfare and benefits which are
27 substantially identical to the benefits received by the
28 employees immediately prior to execution of the public-
29 private transportation partnership agreement for the term of
30 the collective bargaining agreement of those employees in

effect. AN EMPLOYEE OF THE PROPRIETARY PUBLIC ENTITY WHO DOES
NOT ACCEPT EMPLOYMENT WITH THE DEVELOPMENT ENTITY SHALL BE
REASSIGNED TO AN EQUIVALENT POSITION, WITHOUT LOSS OF
SENIORITY, WITHIN A WORKSITE IN AS CLOSE PROXIMITY TO THE
PUBLIC-PRIVATE TRANSPORTATION PROJECT AS FEASIBLE. NOTHING IN
THIS PARAGRAPH SHALL IMPAIR PROVISIONS RELATED TO FURLOUGHS
AND LAYOFFS OF THE COLLECTIVE BARGAINING AGREEMENT OF THOSE
EMPLOYEES IN EFFECT.

(20) Other terms and provisions as required under this
chapter or agreed to by the development entity and the
proprietary public entity.

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

(c) Public partner.--Nothing in this chapter shall prohibit
the department from entering into a public-private
transportation partnership agreement with another Commonwealth
agency in accordance with this chapter.

(d) Public entity.--Nothing in this chapter shall prohibit a
public entity from entering into a public-private transportation
partnership agreement with one or more public entities in
accordance with this chapter.

(e) Environmental costs.--

(1) A proprietary public entity may provide in a public-
private transportation partnership agreement that it will pay
or reimburse, on terms that it deems appropriate, the
development entity for actual costs associated with necessary
remediation for existing environmental contaminants located
on, under or emanating from the real property associated with

1 a public-private transportation project as of the date the
2 development entity assumes responsibility for the public-
3 private transportation project. If the public-private
4 transportation partnership agreement provides for
5 environmental remediation, the public-private transportation
6 partnership agreement shall require that the proprietary
7 public entity be given:

8 (i) Prompt notice of any claim against the
9 proprietary public entity or a third party pertaining to
10 the contaminants.

11 (ii) The right to elect to undertake the necessary
12 remediation.

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

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

17 (2) No payment by a proprietary public entity under this
18 section may be for anything other than actual costs incurred
19 by a development entity to remediate the environmental
20 contamination on, under or emanating from the real property
21 associated with the public-private transportation project as
22 of the date the development entity assumes responsibility for
23 the public-private transportation project.

24 (f) User fees.--A provision establishing whether user fees
25 will be ~~collected~~ IMPOSED for use of the public-private ←
26 transportation project and the basis by which any user fees will
27 be IMPOSED AND collected shall be determined in the public- ←
28 private transportation partnership agreement. If a user fee is
29 proposed as part of the public-private transportation project, a
30 proprietary public entity shall include provisions in the

agreement that authorize the collection of user fees, tolls, fares or similar charges, including provisions that:

(1) Specify technology to be used in the public-private transportation project.

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

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

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

(5) In the event an operator of a vehicle fails to pay the prescribed toll or user fee at any location on a public-private transportation project where tolls or user fees are collected by means of an electronic or other automated or remote form of collection, the collection provisions of section 8117 (relating to electronic toll collection) shall apply except that the development entity shall possess all of the rights, roles, limitations and responsibilities of the Pennsylvania Turnpike Commission.

(g) Amounts received under a public-private transportation partnership agreement.--The net proceeds received by the proprietary public entity under a public-private transportation partnership agreement shall be available exclusively to provide funding for transportation needs in this Commonwealth. The use of the proceeds or other revenues from the public-private transportation project shall comply with Federal or State law restricting or limiting the use of revenue from the public-private transportation project based on its public funding.
§ 9112. Records of requests.

~~Notwithstanding the Right to Know Law, the~~ THE following
shall apply:

(1) Upon the selection of a development entity to be a party to a public-private transportation partnership agreement, the identity of the development entity selected, the contents of the response of the development entity to the request for proposals, the final proposal submitted by the development entity and the form of the public-private transportation partnership agreement shall be made public. Any financial information of a development entity that was requested in the request for proposals or during discussions and negotiations to demonstrate the economic capability of a development entity to fully perform the requirements of the public-private transportation partnership agreement shall not be subject to public inspection.

(2) A proprietary public and a private development entity may agree, in their discretion, to make public any information described under paragraph (1) that would not otherwise be subject to public inspection.

(3) If a proprietary public entity terminates a public-private transportation partnership agreement for default, rejects a private entity on the grounds that the private entity is not responsible or suspends or debars a development entity, the private entity or development entity, as appropriate, shall, upon written request, be provided with a copy of the information contained in the file of the private entity or development entity maintained by the proprietary public entity under a contractor responsibility program.

(4) The following information shall not be ~~subject to~~
~~the Right to Know Law~~ PUBLIC:

1 (i) Information relating to proprietary information,
2 trade secrets, patents or exclusive licenses,
3 architectural and engineering plans and information
4 relating to competitive marketing materials and
5 strategies.

6 (ii) Security information, including risk prevention
7 plans, detection and countermeasures, emergency
8 management plans, security and surveillance plans,
9 equipment and usage protocols and countermeasures.

10 (iii) Records considered nonpublic matters or
11 information by the Securities and Exchange Commission
12 under 17 CFR 200.80 (relating to commission records and
13 information).

14 (iv) Any financial information deemed confidential
15 by the proprietary public entity upon a showing of good
16 cause by the offeror or development entity.

17 (V) RECORDS PREPARED OR UTILIZED TO EVALUATE A
18 PROPOSAL.

19 § 9113. Use of intellectual property.

20 Unless otherwise agreed and except to the extent not
21 transferable by law, the department or a proprietary public
22 entity shall have the right to use all or a portion of a
23 submitted proposal, including the technologies, techniques,
24 methods, processes and information contained in the proposal.
25 Notice of nontransferability by law shall be given to the
26 department and the proprietary public entity in response to the
27 request for proposals.

28 § 9114. Police powers and violations of law.

29 (a) Enforcement of traffic laws.--To the extent the public-
30 private transportation project is a highway, bridge, tunnel



overpass or similar transportation facility for motor vehicles,
75 Pa.C.S. (relating to vehicles) and other laws of this
Commonwealth or, if applicable, any local jurisdiction shall be
the same as those applying to conduct on similar transportation
facilities in this Commonwealth or the local jurisdiction.
Punishment for offenses shall be prescribed by law for conduct
occurring on similar transportation facilities in this
Commonwealth or the local jurisdiction.

(b) Arrest powers.--All officers authorized by law to make
arrests for violations of law in this Commonwealth shall have
the same powers, duties and jurisdiction within the limits of a
public-private transportation project as they have in their
respective areas of jurisdiction. The grant of authority under
this section shall not extend to the private offices, buildings,
garages and other improvements of a development entity to any
greater degree than the police power extends to any other
private offices, buildings, garages and other improvements.
§ 9115. Environmental and other authorizations.

(a) The Administrative Code of 1929.--Notwithstanding any
other provision of law, neither soliciting nor approving a
request for proposals, 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 public-private transportation
project if the agreement requires environmental authorizations

1 to be obtained, the development entity shall do any of the
2 following:

3 (1) Secure all necessary environmental permits and
4 authorizations and, if specified under the act of May 19,
5 1995 (P.L.4, No.2), known as the Land Recycling and
6 Environmental Remediation Standards Act, obtain the approval
7 of the Department of Environmental Protection.

8 (2) Complete environmental remediation of the site on
9 which the public-private transportation project is to be
10 located, including acts required under any agreement entered
11 into with the Department of Environmental Protection for
12 remediation of the site under the Land Recycling and
13 Environmental Remediation Standards Act.

14 § 9116. Taxation of development entity.

15 (a) General rule.--To the extent that revenues or user fees
16 received by a development entity pursuant to a public-private
17 transportation partnership agreement are subject to a tax
18 imposed by a political subdivision prior to the effective date
19 of this section, the revenues or user fees shall continue to be
20 subject to the tax and to future increases in the rate of the
21 tax.

22 (b) New taxation barred.--After the effective date of this
23 section, no new tax shall be imposed by a political subdivision
24 or the Commonwealth on the revenues or user fees received by a
25 development entity pursuant to a public-private transportation
26 partnership agreement.

27 (c) Realty transfer tax.--No public-private transportation
28 partnership agreement, lease, concession, franchise or other
29 contract involving real property of a public-private
30 transportation project shall be subject to a Commonwealth or

1 local realty transfer tax imposed under the act of December 31,
2 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act,
3 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
4 Code of 1971, or a successor statute.

5 (d) Property.--Property used in connection with a public-
6 private transportation project shall be considered public
7 property and shall be exempt from ad valorem property taxes and
8 special assessments levied against property by the Commonwealth
9 or any political subdivision.

10 § 9117. Power of eminent domain.

11 The exercise of the power of eminent domain by any condemnor
12 to acquire property for public-private transportation project
13 purposes under a public-private transportation partnership
14 agreement shall be considered a taking for a public purpose and
15 not for a private purpose or for private enterprise.

16 § 9118. Sovereign immunity.

17 Under section 11 of Article 1 of the Constitution of
18 Pennsylvania, it is declared to be the intent of the General
19 Assembly that the Commonwealth, and its officials and employees
20 and a municipal authority, and its officials and employees,
21 acting within the scope of their duties, shall continue to enjoy
22 sovereign immunity and official immunity and remain immune from
23 suit except as provided in section 9119 (relating to specific
24 performance). A claim against the Commonwealth and its officials
25 and employees or municipal authority and its officials and
26 employees shall be brought only in such manner and in such
27 courts and in such cases as directed by the provision of section
28 9111(e) (relating to public-private transportation partnership
29 agreement), 42 Pa.C.S. Ch. 85 (relating to matters affecting
30 government units), 62 Pa.C.S. Ch. 17 (relating to legal and

contractual remedies) or any procurement law applicable to a
municipal authority.

§ 9119. Specific performance.

A proprietary public entity is authorized to agree that
specific performance shall be available to a development entity
as a remedy for a breach by the proprietary public entity of its
representations, covenants, warranties or other obligations
under the public-private transportation partnership agreement to
the extent set forth in the public-private transportation
partnership agreement.

~~§ 9120. Additional provisions.~~

~~To the extent applicable, all provisions of law shall apply
to a contract entered into between a proprietary public entity
and a development entity related to the development, operation
or financing of a public private transportation project under
this chapter. This section includes:~~

~~(1) 62 Pa.C.S. § 107 (relating to reciprocal
limitations).~~

~~(2) 62 Pa.C.S. § 531 (relating to debarment or
suspension).~~

~~(3) 62 Pa.C.S. § 541 (relating to approval of accounting
system).~~

~~(4) 62 Pa.C.S. § 551 (relating to right to inspect
plant).~~

~~(5) 62 Pa.C.S. § 552 (relating to right to audit
records).~~

~~(6) 62 Pa.C.S. § 563 (relating to retention of
procurement records).~~

~~(7) The act of August 15, 1961 (P.L.987, No.442), known
as the Pennsylvania Prevailing Wage Act.~~





1 § 9120. APPLICABILITY OF OTHER LAWS.

2 ALL PROVISIONS OF LAWS RELATED TO THE DEVELOPMENT,
3 CONSTRUCTION, OPERATION OR FINANCING OF A TRANSPORTATION PROJECT
4 IN EFFECT ON THE DATE THE PUBLIC-PRIVATE TRANSPORTATION
5 PARTNERSHIP AGREEMENT IS FULLY EXECUTED SHALL APPLY TO A PUBLIC-
6 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT ENTERED INTO
7 BETWEEN A PROPRIETARY PUBLIC ENTITY AND A DEVELOPMENT ENTITY.
8 THE PROVISIONS SHALL INCLUDE:

9 (1) THE ACT OF MAY 1, 1913 (P.L.155, NO.104), REFERRED
10 TO AS THE SEPARATIONS ACT.

11 (2) THE ACT OF AUGUST 15, 1961 (P.L.987, NO.442), KNOWN
12 AS THE PENNSYLVANIA PREVAILING WAGE ACT.

13 (3) 62 PA.C.S. § 107 (RELATING TO RECIPROCAL
14 LIMITATIONS).

15 (4) 62 PA.C.S. § 531 (RELATING TO DEBARMENT OF
16 SUSPENSION).

17 (5) 62 PA.C.S. § 541 (RELATING TO APPROVAL OF ACCOUNTING
18 SYSTEM).

19 (6) 62 PA.C.S. § 551 (RELATING TO RIGHT TO INSPECT
20 PLANT).

21 (7) 62 PA.C.S. § 552 (RELATING TO RIGHT TO AUDIT
22 RECORDS).

23 (8) 62 PA.C.S. § 563 (RELATING TO RETENTION OF
24 PROCUREMENT RECORDS).

25 (9) 62 PA.C.S. § CH. 17 (RELATING TO LEGAL AND
26 CONTRACTUAL REMEDIES).

27 § 9121. Adverse interest.

28 (a) Private entity adverse interests.--The following shall
29 apply:

30 (1) Except as provided under paragraph (2), a private

1 entity which submits a response to a request for proposals
2 under section 9110 (relating to selection of development
3 entities), a request for transportation projects under
4 section 9107 (relating to solicitations for transportation
5 projects) or an unsolicited proposal, and which is also a
6 State adviser or a State consultant for the department or the
7 Pennsylvania Turnpike Commission, shall not be deemed to be
8 in violation of the State Adverse Interest Act while engaging
9 in any of the following activities:

10 (i) Preparing or submitting a response to a request
11 for proposals or transportation projects.

12 (ii) Participating in any activity with the
13 department related to a request for proposals or
14 transportation projects.

15 (iii) Negotiating and entering into any contract
16 lease or public-private transportation partnership
17 agreement which results from a request for proposals or
18 transportation projects.

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

21 (2) A private entity which submits a response to a
22 request for proposals or transportation projects or acts as a
23 consultant or an adviser to a private entity which submits a
24 response to a request for proposals or transportation
25 projects to the department shall be prohibited from
26 consulting or providing advice to the department on the
27 review or approval of the response to the request for
28 proposals or transportation projects as submitted.

29 (3) A private entity which submits a response to a
30 request for proposals or transportation projects or acts as a

1 consultant or an advisor to a private entity which submits a
2 response to a request for proposals or transportation
3 projects to the board shall be prohibited from consulting or
4 providing advice to the department on the review or approval
5 of the response to the request for proposals or
6 transportation projects so submitted.

7 (b) Definitions.--As used in this section, the following
8 words and phrases shall have the meanings given to them in this
9 subsection unless the context clearly indicates otherwise:

10 "State adviser." As defined in section 2(7) of the act of
11 July 19, 1957 (P.L.1017, No.451), known as the State Adverse
12 Interest Act.

13 "State consultant." As defined in section 2(9) of the act of
14 July 19, 1957 (P.L.1017, No.451), known as the State Adverse
15 Interest Act.

16 § 9122. Federal, State, local and private assistance.

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

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

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

27 (3) The department or a proprietary public entity may
28 enter into agreements or other arrangements with the United
29 States or any of its agencies as may be necessary for
30 carrying out the purposes of this chapter.

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

6 (c) Contributions.--Subject to acceptance and agreement
7 between the development entity and a proprietary public entity,
8 any public-private transportation project may be financed, in
9 whole or in part, by contribution of any funds or property made
10 by a proprietary public entity, a development entity or an
11 affected jurisdiction.

12 (d) Combination of funds.--The department or proprietary
13 public entity may combine Federal, State, local and private
14 funds to finance a public-private transportation project under
15 this chapter.

16 (E) ITEMIZATION.--PURSUANT TO SECTION 7(A)(4) OF ARTICLE
17 VIII OF THE CONSTITUTION OF PENNSYLVANIA, A PUBLIC-PRIVATE
18 TRANSPORTATION PROJECT FUNDED, IN WHOLE OR IN PART, THROUGH THE
19 ISSUANCE OF DEBT WHERE THE CREDIT OF THE COMMONWEALTH IS PLEDGED
20 SHALL BE ITEMIZED IN A CAPITAL BUDGET ITEMIZATION ACT.

21 § 9123. Public-Private Transportation Account.

22 (a) Establishment.--

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

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

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

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



1 (i) All money received by the department pursuant to
2 the terms of a public-private transportation partnership
3 agreement under which the department is the proprietary
4 public entity.

5 (ii) Repayment of any loans from the account made
6 under this chapter.

7 (iii) Subject to the provisions of any public-
8 private transportation partnership agreement under which
9 the department is the proprietary public entity, monetary
10 damages and other amounts for failure by a development
11 entity to comply with the terms of the public-private
12 transportation partnership agreement.

13 (iv) Subject to the provisions of any public-private
14 transportation partnership agreement under which the
15 department is the proprietary public entity, payments
16 made from any insurance proceeds or reserve funds or
17 performance or payment bonds in connection with a public-
18 private transportation project.

19 (v) Earnings from the investment of the money in the
20 account.

21 (2) The Secretary of the Budget shall establish any
22 restricted accounts within the account as the secretary deems
23 necessary for the proper administration of the account.

24 (3) All money related to any public-private
25 transportation partnership agreement in which the department
26 is not the proprietary public entity shall not be held in the
27 account, but shall be held by the proprietary public entity
28 or its agent.

29 (c) Appropriation.--The funds in the account are
30 continuously appropriated to the department for the following

1 purposes:

2 (1) Paying the amounts as the department may be required
3 to repay the Federal Highway Administration FUNDING AGENCIES. ←

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

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

10 (4) Paying expenses incurred under or in connection with
11 any public-private transportation partnership agreement by
12 the department, including professional fees and expenses.

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

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

18 (7) Paying costs of any purpose authorized under this
19 chapter.

20 (d) Amounts received.--The net proceeds received under a
21 public-private transportation partnership agreement shall be
22 available exclusively to provide funding for transportation
23 needs in this Commonwealth. The use of the proceeds or other
24 revenues from the public-private transportation project shall be
25 in accord with Federal or State law restricting or limiting the
26 use of revenue from the public-private transportation project
27 based on its public funding.

28 § 9124. Pennsylvania Turnpike Commission.

29 The Pennsylvania Turnpike Commission may not enter into a
30 public-private transportation partnership agreement in the

capacity of a proprietary public entity with respect to granting substantial oversight and control over the Turnpike Mainline to another entity unless specific authority is granted through an act of law passed by the General Assembly. However, this shall not restrict the Pennsylvania Turnpike Commission from entering into a public-private transportation partnership agreement under this chapter or under other statutes which does not involve granting substantial oversight and control over the Turnpike Mainline to another entity.

§ 9125. Regulations.

(a) Department.--In order to facilitate the implementation of this chapter, the department is authorized to promulgate regulations or publish guidelines that include the following:

(1) The process for review of a request for proposals or transportation projects or responses to requests for proposals or transportation projects issued by a public entity.

(2) The process for receipt and review of and response to competing responses to requests for proposals or transportation projects.

(3) The type and amount of information that is necessary for adequate review of and response to each stage of review of a proposal or transportation project.

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

(b) Temporary regulations.--Notwithstanding any other provision of law, any regulation promulgated by the department under this chapter during the two years following the effective date of this section shall be deemed temporary regulations which

1 shall expire no later than three years following the effective
2 date of this section or upon promulgation of final regulations.
3 The temporary regulations shall not be subject to any of the
4 following:

5 (1) Sections 201, 202, 203 and 204 of the act of July
6 31, 1968 (P.L.769, No.240), referred to as the Commonwealth
7 Documents Law.

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

10 Section 2. Repeals are as follows:

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

14 (2) Section 3 of the act of May 29, 1945 (P.L.1108,
15 No.402), referred to as the Limited Access Highway Law, is
16 repealed insofar as it is inconsistent with the addition of
17 74 Pa.C.S. Ch. 91.

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

19 (1) The addition of 74 Pa.C.S. §§ 9103, 9104, 9105, 9106
20 and 9125 shall take effect immediately.

21 (2) This section shall take effect immediately.

22 (3) The remainder of this act shall take effect in 60
23 days.