
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1163 Session of
2018

INTRODUCED BY KILLION, RAFFERTY, BAKER, BARTOLOTTA, BROWNE,
FOLMER, MCGARRIGLE, MENSCH, SCARNATI, STEFANO, VOGEL, WARD
AND YUDICHAK, MAY 7, 2018

REFERRED TO COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT,
MAY 7, 2018

AN ACT

1 Establishing the Public-Private Partnership Infrastructure
2 Board; providing for solicitation of public-private projects
3 and for public-private agreements; and establishing the
4 Public-Private Account.

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

15 Section 1. Short title.

16 This act shall be known and may be cited as the Public-
17 Private Partnership Infrastructure Act.

18 Section 2. Definitions.

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

22 "Board." The Public-Private Partnership Infrastructure Board
23 established under section 3.

24 "Department." The Department of Community and Economic
25 Development of the Commonwealth.

26 "Development entity." An entity that is a party to a public-
27 private agreement and is any of the following:

28 (1) A private entity.

29 (2) A public entity, other than the public entity
30 providing or improving its own facilities or infrastructure

1 under the applicable public-private agreement.

2 "Offeror." A person that submits a proposal, unsolicited
3 proposal or a response in answer to a request for proposals or
4 request for infrastructure projects.

5 "Political subdivision." A county, city, borough,
6 incorporated town, township, school district, vocational school,
7 county institution district, and an authority, entity or body
8 organized by any of them in this Commonwealth.

9 "Predevelopment costs." Costs for planning or assessing the
10 viability of a public-private project, including costs
11 associated with:

12 (1) Developing and obtaining the approval from the board
13 for a public-private project.

14 (2) Project planning, feasibility studies, economic
15 assessments and cost-benefit analyses, and public benefit
16 studies and value-for-money analyses.

17 (3) Financial and legal planning, including the
18 identification of funding and financing options.

19 (4) Assessment of the impacts of potential projects on
20 the surrounding area, including the effect on communities,
21 the environment, the workforce, wages and benefits, and
22 assessment of infrastructure vulnerability and resilience.

23 (5) Public outreach and community engagement.

24 (6) Flexible staff, external advisors, convening
25 potential investment partners and legal costs.

26 "Preferred proposer." A responsible offeror selected by a
27 public entity to enter into a public-private agreement, interim
28 agreement or predevelopment agreement.

29 "Private entity." An individual, corporation, general
30 partnership, limited liability company, limited partnership,

1 joint venture, business trust, public benefit corporation,
2 nonprofit entity, or other business entity, group or
3 organization that is not the Federal Government, the
4 Commonwealth or a public entity.

5 "Proprietary public entity." A public entity that owns a
6 public-private project and is a party to a public-private
7 agreement.

8 "Public entity." A Commonwealth agency, a State-related
9 institution as defined in 62 Pa.C.S. § 103 (relating to
10 definitions), a political subdivision or an authority created by
11 statute and that owns public infrastructure. The term does not
12 include the General Assembly and its members, officers or
13 agencies.

14 "Public infrastructure." A building, facility or other
15 public infrastructure, including, but not limited to, a school,
16 college, library, court, hospital, health care facility,
17 laboratory, research facility, public safety facility, jail,
18 correction facility, office, dam, levee, water system, waste
19 treatment facility, energy generating facility or
20 telecommunication facility that a public entity chooses to
21 procure under this act, excluding any transportation project as
22 defined in 74 Pa.C.S. § 9102 (relating to definitions). The term
23 includes equipment or supplies, functionally related, and a
24 subordinate facility, or land and any real property rights
25 appurtenant to land with respect to the building, facility or
26 other public infrastructure.

27 "Public-private agreement." An agreement between a public
28 entity and a development entity establishing the obligations and
29 rights of both parties with respect to a public-private project.

30 "Public-private project." An undertaking by a development

1 entity under a public-private agreement to provide or improve
2 public infrastructure or a public infrastructure-related
3 service, and which undertaking is totally or partially located
4 within this Commonwealth. The term includes the following:

5 (1) Design.

6 (2) Construction.

7 (3) Financing.

8 (4) Operations.

9 (5) Maintenance.

10 (6) An infrastructure project provided to the public
11 entity by the development entity and in return for the right
12 to receive all or a portion of the revenue generated from the
13 use of the public infrastructure or other payment.

14 (7) User fee collection or enforcement.

15 (8) Brownfield acquisition, including a land swap or
16 value-capture project.

17 (9) Development and any other activity with respect to
18 an existing or new public infrastructure facility that
19 enhances and improves the public infrastructure facility.

20 (10) Private development and other activity procured in
21 connection with a public infrastructure project on public or
22 private property and procured by a public entity to further
23 the public entity's economic development goals.

24 "Request for infrastructure projects." A request by a public
25 entity to the board for approval of a public-private project.

26 "Responsible offeror." An offeror that has submitted a
27 responsive proposal and possesses the capability to fully
28 perform the public-private agreement requirements in good faith.

29 "Responsive proposal." A proposal or unsolicited proposal
30 that conforms in all material aspects to the requirements and

1 criteria in a request for unsolicited proposals or a request for
2 proposals issued by the department or a public entity.

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

5 "State-supported project." A public infrastructure project
6 that is funded or financed by the Commonwealth and exceeds
7 \$250,000,000 in total construction and life-cycle costs.

8 Section 3. Public-Private Partnership Infrastructure Board.

9 (a) Establishment.--The Public-Private Partnership
10 Infrastructure Board is established.

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

13 (1) The Secretary of Community and Economic Development,
14 who must be the chairperson of the board, or a designee who
15 must be an employee of the department.

16 (2) The Secretary of the Budget or a designee who must
17 be an employee of the Office of the Budget.

18 (3) Four members appointed by the General Assembly under
19 subsection (c).

20 (4) One member appointed by the Governor.

21 (c) Legislative appointments.--Appointments of members by
22 the General Assembly shall be made as follows:

23 (1) One individual shall be appointed by the President
24 pro tempore of the Senate.

25 (2) One individual shall be appointed by the Minority
26 Leader of the Senate.

27 (3) One individual may be appointed by the Speaker of
28 the House of Representatives.

29 (4) One individual may be appointed by the Minority
30 Leader of the House of Representatives.

(d) Requirements.--A member appointed by either the General Assembly or the Governor:

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

(2) Must be a resident of this Commonwealth and have expertise or substantial experience in any of the following areas:

(i) Public infrastructure.

(ii) Buildings or facilities development or management.

(iii) Infrastructure finance.

(iv) Infrastructure, real estate or environmental law.

(v) Land use and public planning.

(3) Shall serve at the pleasure of the appointing authority.

(e) Quorum.--A majority of the board shall constitute a quorum. The adoption of a resolution or other action of the board shall require a quorum.

(f) Compensation.--The members of the board may not receive compensation for their services as members of the board but shall be entitled to reimbursement by the department for all necessary and reasonable expenses incurred in connection with the performance of their duties as members of the board.

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

(h) Financial interests.--

1 (1) No member of the board, during the member's term of
2 office, may directly or indirectly own, have any significant
3 financial interest in, be associated with or receive a fee,
4 commission, compensation or anything of value from a public
5 entity or private entity seeking to engage in a public-
6 private agreement.

7 (2) The provisions of this subsection shall not apply to
8 the salary of a Commonwealth employee.

9 Section 4. Duties of board.

10 (a) Duties.--The board shall:

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

12 (2) Adopt guidelines establishing the procedure by which
13 a public entity may submit a request for a public-private
14 project or a private entity may submit an unsolicited
15 proposal for a public-private project to the department or a
16 public entity.

17 (3) Consult with persons affected by proposed public-
18 private projects.

19 (4) Evaluate and, where the board finds that the request
20 or plan for a public-private project is in the best interest
21 of this Commonwealth and a public entity, approve the request
22 or plan for the public-private project.

23 (5) The board shall approve a proposed public-private
24 project by adopting a resolution. The board may not revoke an
25 approval granted for a public-private project unless the
26 scope of the approved public-private project is materially
27 altered or modified prior to the public entity entering into
28 the public-private agreement.

29 (6) Submit an annual report to the General Assembly
30 detailing all infrastructure projects evaluated and

1 resolutions adopted.

2 (7) Provide support, funding and resources to public
3 entities to assist in analyzing and procuring public
4 infrastructure and funding predevelopment costs.

5 (8) Coordinate with, and obtain best practices from, the
6 Department of Transportation of the Commonwealth and the
7 Public-Private Transportation Partnership Board established
8 under 74 Pa.C.S. Ch. 91 (relating to public-private
9 transportation partnerships) for developing the guidelines
10 for procuring and approving public-private projects.

11 (b) 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 subject to appeal to the department or a court of
17 law.

18 (c) Review by General Assembly.--

19 (1) The General Assembly may, within 20 calendar days of
20 the board's approval of a public-private project owned by the
21 Commonwealth, pass a concurrent resolution rescinding the
22 approval of the public-private project.

23 (2) If the General Assembly adopts the concurrent
24 resolution within the time period under paragraph (1) by a
25 majority vote in both the Senate and the House of
26 Representatives, the public-private project shall be deemed
27 disapproved.

28 (3) If the General Assembly fails to adopt the
29 concurrent resolution by majority vote in both the Senate and
30 the House of Representatives within the time period under

paragraph (1), the public-private project shall be deemed approved.

(4) The General Assembly may not revoke adoption of a concurrent resolution of a public-private project under this subsection unless the scope of the approved public-private project is materially altered or modified prior to the public entity entering into the public-private agreement.

Section 5. Operation of board.

(a) Technical assistance.--The department shall supply all necessary assistance to the board in carrying out its duties and responsibilities, including retention of legal, financial and technical consultants and shall provide technical and procurement assistance or guidance to a public entity which receives approval from the department or the board to procure a public-private project.

(b) Analysis.--

(1) The department may receive all unsolicited proposals and requests for public-private projects on behalf of the board or a public entity.

(2) If the department receives unsolicited proposals and requests, the department shall, on behalf of the board, develop a detailed analysis of the proposed public-private project and make a recommendation for whether the proposed public-private project should be approved by the board within 120 days of receipt.

(3) For a non-State owned unsolicited proposal, the department shall first obtain approval and input from the relevant proprietary public entity before finalizing the department's analysis and submitting a recommendation to the board.

1 (c) Mandatory submittal of State-supported projects.--

2 (1) Before the department or a public entity procures a
3 State-supported project eligible for consideration under this
4 act, a public entity must submit the State-supported project
5 to the department for review and analysis to determine
6 whether the State-supported project should be procured under
7 this act.

8 (2) If the department determines that State-supported
9 project should be procured under this act, the public entity
10 shall procure the project in accordance with the department's
11 recommendation unless the board disapproves the State-
12 supported project or the public entity has a compelling
13 reason why procurement under this act would not be suitable.

14 (3) The department shall provide a public entity
15 reimbursement for predevelopment costs incurred in connection
16 with any procurement under this act if predevelopment costs
17 were preapproved by the department and the public entity
18 seeks reimbursement from the department.

19 Section 6. Solicitation for public-private partnership
20 projects.

21 (a) Procurement.--A public entity may procure public-private
22 projects through multistep procurements, including a one-step,
23 two-step or three-step procurement, which may include any of the
24 following outreach and procurement mechanisms:

25 (1) A request for information.

26 (2) Confidential or public informal market testing.

27 (3) Industry days

28 (4) A request for qualifications.

29 (5) A qualification-based short list.

30 (6) A request for proposals.

1 (7) Confidential, one-on-one meetings.

2 (8) Interim agreements.

3 (9) Predevelopment agreements.

4 (10) Best and final offer.

5 (11) Requests for unsolicited proposals.

6 (b) Unsolicited proposals.--A public entity or the
7 department may accept and issue requests for unsolicited
8 proposals. Offerors may also directly submit unsolicited
9 proposals to a public entity or the department in the form and
10 manner required by the request for unsolicited proposals or as
11 provided in the guidelines approved by the board.

12 (c) Request for board approval.--

13 (1) A public entity may not issue a request for
14 qualifications or request for proposals for a public-private
15 project prior to first receiving board approval.

16 (2) A public entity may request board approval of a
17 public-private project by submitting a request for an
18 infrastructure project to the department.

19 (3) The public entity shall give public notice of a
20 request for infrastructure projects consistent with the
21 guidelines adopted by the board.

22 Section 7. Public-private partnership projects.

23 (a) Submission.--Except as provided in subsection (b), a
24 public entity that seeks to undertake a public-private project
25 that has not been previously approved by the board shall submit
26 a request for a public-private project to the board.

27 (b) Applicability.--This act shall not apply to a public-
28 private project that a public entity is authorized under law to
29 undertake on the effective date of this act.

30 Section 8. Requests.

1 (a) Request details.--A request for a public-private project
2 may be solicited or unsolicited and may provide for any of the
3 following:

4 (1) Design.

5 (2) Construction.

6 (3) Development.

7 (4) Acquisition.

8 (5) Maintenance.

9 (6) Operation of a public-private project.

10 (b) Operational methods.--Operation of a public-private
11 project may be conducted using any of the following delivery
12 methods and forms of agreement:

13 (1) Predevelopment agreements or interim agreements
14 leading to other implementing agreements.

15 (2) A design-build agreement.

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

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

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

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

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

21 (8) An operate-maintain agreement.

22 (9) A property exchange or land swap.

23 (10) A development of a privately owned development on
24 privately owned or publicly owned property.

25 (11) A concession providing for the development entity
26 to design, build, operate, maintain, manage or lease a
27 public-private project.

28 (12) Any other innovative or nontraditional project
29 delivery method or agreement or combination of methods or
30 agreements that the public entity determines will address the

public infrastructure needs of the public entity and serve the public interest.

Section 9. Selection of development entities.

(a) Conditions for use.--If a public-private project is approved under section 4, the public entity may enter into a contract for the public-private project after complying with the provisions of the section.

(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 that is accessible to the general public.

(2) Advertisement as provided 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 that have been prequalified by the public entity.

(d) Copies of request for proposals.--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, including the imposition of a fee to reimburse the public entity

1 for the costs of photocopying and mailing.

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

8 (f) Evaluation.--

9 (1) A public entity shall evaluate each proposal to
10 determine which proposal has the best value for and is in the
11 best interest of the public entity. In making this
12 determination, a public entity may utilize a price-technical
13 trade-off analysis where a technical solution may outweigh
14 price considerations. If the public entity utilizes a price-
15 technical, trade-off analysis, the public entity shall not be
16 required to select the lowest price or the highest-scoring
17 technical solution. Evaluation criteria shall be set prior to
18 receipt of any proposals from responsible offerors.

19 (2) In making this determination, a public entity may
20 consider any of the following:

21 (i) Cost.

22 (ii) Price.

23 (iii) Financial commitment.

24 (iv) Innovative financing.

25 (v) Bonding.

26 (vi) Technical, scientific, technological or
27 socioeconomic merit.

28 (vii) Financial strength and viability.

29 (viii) Design, operation and feasibility of the
30 transportation project.

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

(x) The ability of the project to improve economic growth and improve public safety, reduce congestion, increase capacity or rehabilitate, reconstruct or expand an existing facility.

(xi) The compatibility of the proposal with existing regional and local and land use plans.

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

(xiii) Other factors deemed appropriate by the public entity.

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

(h) Participation in evaluation.--

(1) If the public entity is a Commonwealth agency, the department shall invite its comptroller to participate in the evaluation as a nonvoting member of an evaluation committee.

(2) No individual who has been employed, excluding a third-party subcontractor, contractor or advisory such as a legal, financial or technical advisor, by an offeror within the last two years may participate in the evaluation of proposals.

(i) Discussion with responsible offerors and revision of proposals.--

(1) If provided in the request for proposals, confidential or public meetings, discussions and negotiations may be conducted by the public entity with a responsible offeror at any time during the procurement process.

Responsible offers shall be accorded fair and equal treatment

1 with respect to any opportunity for discussion and revision
2 of proposals.

3 (2) Information derived from proposals submitted by
4 competing offerors may not be disclosed unless otherwise
5 permitted in the request for proposals or by law.

6 (j) Selection for negotiation.--A responsible offeror whose
7 proposal is determined in writing to be the best value for and
8 in the best interest of the public entity, taking into
9 consideration all evaluation factors in subsection (f), shall be
10 selected for contract negotiation.

11 (k) Cancellation.--

12 (1) A request for proposals or other initiated
13 procurement may be canceled at any time prior to the time a
14 public-private agreement is executed by all parties when in
15 the best interest of the public entity.

16 (2) (i) The public entity may provide under the
17 procurement documentation for the payment of a stipend to
18 unsuccessful responsible offerors that have submitted
19 responsive proposals.

20 (ii) If the public entity issues and cancels a
21 request for proposals at any time prior to the proposal
22 submission deadline or after the receipt of responsive
23 proposals, the public entity shall, if the termination
24 occurs prior to or after the proposal submission
25 deadline, pay the agreed upon stipend amount to
26 responsible offerors that have satisfied all related
27 conditions and requirements for receipt of the stipend.

28 (l) Award.--

29 (1) After reaching an agreement with a preferred
30 proposer or entering into an interim agreement or

1 predevelopment agreement with the preferred proposer and
2 subsequently reaching an agreement with the preferred
3 proposer, a public entity shall enter into a public-private
4 agreement with the preferred proposer. The public-private
5 agreement shall be consistent with the requirements of this
6 act and the guidelines approved by the board.

7 (2) If agreement cannot be reached with the initial
8 preferred proposer, negotiations shall be formally terminated
9 with the initial preferred proposer.

10 (3) If responsive proposals were submitted by one or
11 more other responsible offerors, negotiations may be
12 conducted with the next-highest-ranked responsible offeror or
13 responsible offerors in the order of their respective
14 qualification ranking.

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 a Commonwealth agency, the prospective offeror,
20 offeror 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 development entity is aggrieved by a
25 selection under this section and the proprietary public entity
26 in the contract is an entity other than the Commonwealth, a
27 development entity may file a claim with the court of common
28 pleas where the proprietary public entity is located. The
29 process for the filing and resolution of claims, including
30 rights, contents, timing, evaluation, determination and remedies

1 established in 62 Pa.C.S. Ch. 17, shall apply insofar as they
2 are practicable.

3 Section 10. Public-private agreement.

4 (a) Required provisions.--A public-private agreement shall
5 include the following provisions:

6 (1) The term of the public-private agreement may not
7 exceed 99 years.

8 (2) The proprietary public entity or its authorized
9 representatives shall have the right to inspect all assets
10 and properties of the public-private project and all books
11 and records of the development entity relating to the public-
12 private project to review the development entity's
13 performance under the public-private agreement.

14 (3) (i) Whether the proprietary public entity or public
15 entity designated by the proprietary public entity will
16 retain or acquire ownership of a public infrastructure
17 facility acquired or constructed.

18 (ii) This paragraph shall not apply to property
19 conveyed to a private entity for a land swap or value
20 capture project.

21 (4) Upon termination of the public-private agreement,
22 the facility that was the subject of the public-private
23 agreement shall be in a state of proper maintenance and
24 repair and returned to the applicable public entity in
25 satisfactory condition at no further cost to the applicable
26 public entity.

27 (5) The public entity shall have the right to assume
28 control of and remedy safety-related issues during the term
29 of the public-private agreement in paragraph (1).

30 (6) (i) The development entity shall offer employment

1 to employees of the public entity in good standing at the
2 time of execution of the public-private agreement who
3 would lose employment due directly and solely to the
4 execution of the public-private agreement.

5 (ii) The duty specified in subparagraph (i) includes
6 the offering of salary, retirement, health and welfare
7 benefits that are substantially identical to the benefits
8 received by the employees immediately prior to execution
9 of the public-private agreement for the term of the
10 collective bargaining agreement of those employees in
11 effect.

12 (iii) An employee of the proprietary public entity
13 who does not accept employment with the development
14 entity shall be reassigned to an equivalent position,
15 without loss of seniority, within a worksite in as close
16 proximity to the public-private project as feasible.

17 (iv) Nothing in this paragraph shall be construed to
18 impair provisions related to furloughs and layoffs of the
19 collective bargaining agreement of those employees in
20 effect.

21 (7) Other provisions required by this act or the
22 guidelines approved by the board.

23 (b) Optional provisions.--A public-private agreement may
24 include the following provisions, if they are consistent with
25 best practices in the public-private partnership industry:

26 (1) A description of any planning, development, design,
27 leasing, acquisition or interest in, financing, installation,
28 construction, reconstruction, replacement, expansion,
29 operation, maintenance, improvement, equipping, modification,
30 expansion, enlargement, management, running, control and

1 operation of the public-private project.

2 (2) Notwithstanding any other law to the contrary, the
3 public entity may convey property to a development entity as
4 part of the public-private project. The provision shall
5 describe the type of property interest or other relationship
6 the development entity will have in or with respect to the
7 public-private project, including acquisition of rights-of-
8 way and other property interests that may be required,
9 including whether the public entity is conveying any property
10 ownership to the development entity.

11 (3) The development entity may be required to provide
12 performance and payment bonds, parent company guarantees,
13 letters of credit or other acceptable forms of security in an
14 amount acceptable to the proprietary public entity.

15 (4) Standards for construction, maintenance and
16 operation of the public-private project if performed by the
17 development entity.

18 (5) Standards for capital improvement or modification of
19 the public-private project if made by the development entity.

20 (6) Standards relating to how payments, if any, are to
21 be made by the proprietary public entity to the development
22 entity, including availability payments, performance-based
23 payment and payments of money and revenue sharing with the
24 development entity.

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

28 (8) Standards relating to performance criteria and
29 incentives.

30 (9) Allowing the private entity to perform any right-of-

1 way acquisition on behalf of the public entity.

2 (10) Any other provisions agreed to between the parties
3 to the public-private agreement or are permitted by this act
4 or the guidelines approved by the board.

5 (c) Construction.--Nothing in this act shall be construed to
6 prohibit:

7 (1) The department from entering into a public-private
8 agreement with another Commonwealth agency in accordance with
9 this act.

10 (2) A public entity from entering into a public-private
11 agreement with one or more public entities in accordance with
12 this act.

13 (d) Environmental costs.--

14 (1) A public entity may provide in a public-private
15 agreement that it will pay or reimburse, on terms that it
16 deems appropriate, the development entity for actual costs
17 associated with necessary remediation for existing
18 environmental contaminants located on, under or emanating
19 from the real property associated with a public-private
20 project as of the date the development entity assumes
21 responsibility for the public-private project.

22 (2) If the public-private agreement provides for
23 environmental remediation, the public-private agreement shall
24 require that the public entity be given:

25 (i) Prompt notice of a claim against the public
26 entity or a third party pertaining to the contaminants.

27 (ii) The right to elect to undertake the necessary
28 remediation.

29 (iii) The right to participate in the defense of or
30 response to a claim.

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

(e) Actual costs.--No payment by a public entity under this section may be for a cost other than actual costs incurred by a development entity to remediate the environmental contamination on, under or emanating from the real property associated with the public-private project as of the date the development entity assumes responsibility for the public-private project.

(f) User fees.--

(1) The public-private agreement may provide for imposition of fees for use of the public-private project and the basis by which the fee will be imposed and collected.

(2) If a user fee is proposed as part of the public-private project, a public entity shall include provisions in the agreement that authorize the collection of user fees, tolls, fares, revenue or similar charges, including provisions that:

(i) Specify technology to be used in the public-private project and allow for exchanges or upgrades to the technology.

(ii) Establish circumstances, as applicable, under which the public entity may receive a share of revenues from the charges.

(iii) Govern the enforcement of user fee delinquencies, including provisions for use of available technology.

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

(v) In the event a user of a public-private project

1 fails to pay the prescribed user fee at a location on a
2 public-private project, the public entity may permit a
3 public authority to enforce payment of the user fee to
4 the private entity.

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

13 Section 11. Records of requests.

14 (a) Disclosure of information.--

15 (1) (i) Except as otherwise provided in subparagraph
16 (ii), upon the selection of a development entity to be a
17 party to a public-private agreement, the identity of the
18 development entity selected, the contents of the response
19 of the development entity to the request for proposals,
20 the final proposal submitted by the development entity
21 and the form of the public-private agreement shall be
22 made public.

23 (ii) Financial information of a development entity
24 that was requested in the request for proposals or during
25 discussions and negotiations to demonstrate the economic
26 capability of a development entity to fully perform the
27 requirements of the public-private agreement may not be
28 subject to public inspection.

29 (2) A proprietary public and a private development
30 entity may 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 agreement for default or rejects, suspends or debars a private entity on the grounds that the private entity is not responsible, the private entity or development entity 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.

(b) Confidential information.--The following information may not be disclosed to the public:

(1) Proprietary information, trade secrets, patents or exclusive licenses, architectural and engineering plans and information relating to competitive marketing materials and strategies.

(2) Security information, including risk prevention plans, detection and countermeasures, emergency management plans, security and surveillance plans, equipment and usage protocols and countermeasures.

(3) Records considered nonpublic matters or information by the Securities and Exchange Commission under 17 CFR 200.80 (relating to commission records and information).

(4) Financial information deemed confidential by the proprietary public entity upon a showing of good cause by the offeror or development entity.

(5) Records prepared or utilized to evaluate a proposal.
Section 12. Use of intellectual property.

The department or public entity may use all or a portion of information, materials and work product submitted to the public

entity, including the technologies, techniques, methods, processes and information contained in a proposal unless not transferable by law or otherwise agreed to. Notice of nontransferability by law shall be given to the department and the public entity in response to the request for proposals.

Section 13. Police powers and violations of law.

(a) Enforcement of traffic laws.--To the extent the public-private 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 facilities in this Commonwealth or the local jurisdiction.

(b) Arrest powers.--

(1) 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 project as they have in their respective areas of jurisdiction.

(2) 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.

Section 14. 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 agreement

1 under this act shall constitute the submission of a preliminary
2 plan or design to the department under section 2002(b) of the
3 act of April 9, 1929 (P.L.177, No.175), known as The
4 Administrative Code of 1929.

5 (b) Environmental authorizations.--A public-private
6 agreement may require that prior to commencing construction in
7 connection with the development, operation or financing of a
8 public-private project, if the agreement requires environmental
9 authorizations to be obtained, the development entity shall:

10 (1) secure all necessary environmental permits and
11 authorizations and, if specified under the act of May 19,
12 1995 (P.L.4, No.2), known as the Land Recycling and
13 Environmental Remediation Standards Act, obtain the approval
14 of the Department of Environmental Protection; or

15 (2) complete environmental remediation of the site on
16 which the public-private project is to be located, including
17 acts required under any agreement entered into with the
18 Department of Environmental Protection for remediation of the
19 site under the Land Recycling and Environmental Remediation
20 Standards Act.

21 Section 15. Taxation of development entity.

22 (a) General rule.--To the extent that revenues or user fees
23 received by a development entity under a public-private
24 agreement are subject to a tax imposed by a political
25 subdivision prior to the effective date of this section, the
26 revenues or user fees shall continue to be subject to the tax
27 and to future increases in the rate of the tax.

28 (b) New taxation barred.--After the effective date of this
29 section, no new tax may be imposed by a political subdivision or
30 the Commonwealth on the revenues or user fees received by a

1 development entity under a public-private agreement.

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

9 (d) Property.--Property used in connection with a public-
10 private project shall be considered public property and shall be
11 exempt from ad valorem property taxes and special assessments
12 levied against property by the Commonwealth or a political
13 subdivision.

14 Section 16. Power of eminent domain.

15 The exercise of the power of eminent domain by a condemnor to
16 acquire property for public-private project purposes under a
17 public-private agreement shall be considered a taking for a
18 public purpose and not for a private purpose or for private
19 enterprise.

20 Section 17. Sovereign immunity.

21 Under section 11 of Article I of the Constitution of
22 Pennsylvania, it is declared to be the intent of the General
23 Assembly that the Commonwealth, its officials and employees, and
24 a municipal authority, its officials and employees, acting
25 within the scope of their duties, shall continue to enjoy
26 sovereign immunity and official immunity and remain immune from
27 suit except as provided in section 18. A claim against the
28 Commonwealth and its officials and employees or municipal
29 authority and its officials and employees shall be brought only
30 in such manner and in such courts and in such cases as directed

1 by the provision of section 10(d), 42 Pa.C.S. Ch. 85 (relating
2 to matters affecting government units), 62 Pa.C.S. Ch. 17
3 (relating to legal and contractual remedies) or any procurement
4 law applicable to a municipal authority.

5 Section 18. Specific performance.

6 A proprietary public entity may agree in a public-private
7 agreement that specific performance shall be available to a
8 development entity as a remedy for a breach by the proprietary
9 public entity of its representations, covenants, warranties or
10 other obligations under the public-private agreement to the
11 extent specified in the public-private agreement.

12 Section 19. Applicability of other laws.

13 (a) General rule.--Except as provided under subsection (b),
14 a provision of law relating to the development, construction,
15 maintenance, procurement, operation or financing of a public-
16 private project in effect on the date a public-private agreement
17 is fully executed between a public entity and a development
18 entity, including the act of August 15, 1961 (P.L.987, No.442),
19 known as the Pennsylvania Prevailing Wage Act, shall apply to a
20 public-private agreement.

21 (b) Limitation.--If the public entity or proprietary public
22 entity is a Commonwealth agency, 62 Pa.C.S. (relating to
23 procurement) shall apply only to the extent provided under
24 subsection (c).

25 (c) Other acts.--If the public entity or proprietary public
26 entity is a Commonwealth agency:

27 (1) The act of May 1, 1913 (P.L.155, No.104), referred
28 to as the Separations Act, shall not apply.

29 (2) Any law enacted by a public entity that directly
30 conflicts with this act shall control over this act.

1 Section 20. Adverse interest.

2 (a) Private entity adverse interests.--

3 (1) Except as provided under paragraph (2), a private
4 entity which submits a response to a request for proposals
5 under this act, and which is also a State advisor or a State
6 consultant for the department or a public entity procuring a
7 public-private project under this act, shall not be deemed to
8 be in violation of the State Adverse Interest Act while
9 engaging in the following activities:

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

12 (ii) Participating in an activity with the
13 department or a public-entity related to a request for
14 proposals or infrastructure projects.

15 (iii) Negotiating and entering into a contract,
16 lease or public-private agreement that results from a
17 request for proposals or an infrastructure project.

18 (iv) Engaging in other action taken in furtherance
19 of the purposes of this act.

20 (2) A private entity and its consultants may not consult
21 or provide advice, excluding during any market testing or
22 request for information process, to the department or a
23 public entity on a public-private project procurement that
24 the private entity is an offeror.

25 (3) A private entity and its consultants may advise a
26 public entity or the department on an unrelated public-
27 private project where the private entity is not an offeror
28 or, with respect to the private entity's consultants, where
29 the consultants are not advising the private entity on the
30 public-private project.

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

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

"State consultant." As defined in section 2(9) of the State Adverse Interest Act.

Section 21. Federal, State, local and private assistance.

(a) Federal assistance.--

(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 act, whether the funds are made available by grant, loan, loan guarantee or otherwise.

(2) The department or a proprietary public entity may assent to Federal requirements, conditions or terms of Federal funding accepted by the department or a proprietary public entity 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 act.

(b) Acceptance of grants and donations.--The department or a proprietary public entity may accept from any source a 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 act.

(c) Contributions.--Subject to acceptance and agreement between the development entity and a proprietary public entity,

1 a public-private project may be financed, in whole or in part,
2 by contribution of funds or property made by a proprietary
3 public entity, a development entity or an affected jurisdiction.

4 (d) Combination of funds.--The department or proprietary
5 public entity may combine Federal, State, local and private
6 funds to finance a public-private project under this act.

7 (e) Itemization.--Pursuant to section 7(a)(4) of Article
8 VIII of the Constitution of Pennsylvania, a public-private
9 project funded, in whole or in part, through the issuance of
10 debt where the credit of the Commonwealth is pledged shall be
11 itemized in a capital budget itemization act.

12 Section 22. Public-private account.

13 (a) Establishment.--

14 (1) The public-private account is established as a
15 restricted account in the General Fund.

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

18 (b) Deposits to account.--

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

21 (i) All money received by the department under the
22 terms of a public-private agreement in which the
23 department is the proprietary public entity.

24 (ii) Repayment of loans from the account made under
25 this act.

26 (iii) Subject to the provisions of a public-private
27 agreement in which the department is the proprietary
28 public entity, monetary damages and other amounts for
29 failure by the development entity to comply with the
30 terms of the public-private agreement.

1 (iv) Subject to the provisions of a public-private
2 agreement in which the department is the proprietary
3 public entity, payments made from insurance proceeds or
4 reserve funds or performance or payment bonds in
5 connection with a public-private project.

6 (v) Earnings from the investment of the money in the
7 account.

8 (2) The Secretary of the Budget shall establish
9 restricted accounts within the account as the secretary deems
10 necessary for the proper administration of the account.

11 (3) Money related to a public-private agreement in which
12 the department is not the proprietary public entity may not
13 be held in the account, but shall be held by the proprietary
14 public entity or its agent.

15 (c) Continuing appropriation.--The money in the account is
16 hereby appropriated on a continuing basis to the department for
17 the following purposes:

18 (1) Paying the amounts as the department may be required
19 to repay the Federal funding agencies.

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

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

26 (4) Paying expenses incurred under or in connection with
27 a public-private agreement by the department, including
28 professional fees and expenses.

29 (5) Paying the costs of the department relating to
30 performing and administering duties under this act.

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

4 (7) Paying costs of any purpose authorized under this
5 act.

6 (d) Use of net proceeds.--The net proceeds received under a
7 public-private agreement shall be available exclusively to
8 provide funding for infrastructure needs in this Commonwealth.
9 The use of the proceeds or other revenues from the public-
10 private project shall be in accord with Federal or State law
11 restricting or limiting the use of revenue from the public-
12 private project based on its public funding.

13 Section 23. Regulations.

14 In order to facilitate the implementation of this act, the
15 department may promulgate regulations or publish guidelines that
16 include the following:

17 (1) The process for the department's review of a request
18 by a public entity to procure a public-private project and
19 the process for the department to review its own projects for
20 consideration.

21 (2) The process for receipt of unsolicited proposals.

22 (3) The process for evaluating infrastructure projects
23 to determine, based upon a value-for-money analysis, the
24 procurement structure and the methodology that will deliver
25 the best value for money for the project.

26 (4) The process for receipt and review of and response
27 to competing responses to requests for proposals or
28 infrastructure projects.

29 (5) The type and amount of information that is necessary
30 for adequate review of and response to each stage of review

1 of a proposal or public-private project.

2 (6) Any other provisions deemed necessary or appropriate
3 by the department or required under this act.

4 Section 24. Effective date.

5 This act shall take effect in 60 days.