

STATE HIGHWAY DEPARTMENT LAW
Act of May 31, 1911, P.L. 468, No. 193
AN ACT

Cl. 36

Providing for the establishment of a State Highway Department, by the appointment of a State Highway Commissioner, two Deputy State Highway Commissioners, chief engineer, chief draughtsman, superintendents of highways, and a staff of assistants and employes; defining their duties and the jurisdiction of the State Highway Department, and fixing salaries of commissioner and deputies and other appointees; providing for taking over from the counties or townships of the Commonwealth certain existing public roads connecting county-seats, principal cities, and towns and extending to the State line; describing and defining same by route numbers as the State Highways of the Commonwealth; providing for the improvement, maintenance and repair of said State Highways solely at the expense of the Commonwealth, and relieving the several townships or counties from any further obligation and expense to improve or maintain the same, and relieving said townships or counties of authority over same; requiring boroughs and incorporated towns to maintain certain State Highways wholly and in part; requiring the State Highway Commissioner to make maps to be complete records thereof; conferring authority on the State Highway Commissioner; providing for the payment of damages in taking of property, or otherwise, in the improvement thereof; providing for purchase or acquiring of turnpikes or toll-roads forming all or part of any State Highway, and procedure therein; providing for work of improvement of State Highways to be done by contract, except where the State Highway Commissioner decides the work be done by the State; providing aid by the State to counties and townships desiring the same in the improvement of township or county roads; defining highways and State-aid highways; providing method of application for State aid in the improvement, maintenance and repair of township or county roads and prescribing the contents of township, county, borough, or incorporated town petitions; providing for percentage of cost of improvement or repairs to be paid by State, county, township, borough, or incorporated town, and requiring contracts by counties, townships, boroughs, and incorporated towns with Commonwealth governing same; providing for the minimum width of State Highways and State-aid highways, and kind of materials to be used in the improvement; providing for payment of cost of improvement and repairs; providing penalty for injuring or destroying State Highways; making appropriations to carry out the provisions of the act; and providing for the repeal of certain acts relating to Highway Department and improvement of roads, and of all acts or parts of acts inconsistent herewith; and providing that existing contracts are not affected by provisions of this act.

Section 1. Be it enacted, &c., That from and after the first day of June, Anno Domini one thousand nine hundred and eleven, there shall be established a State Highway Department, by the appointment by the Government of the Commonwealth of a State Highway Commissioner, who shall serve for a term of four years, and shall give his entire time and attention to the duties of his office. He shall receive a salary of ten thousand dollars per annum, and shall furnish a bond to the Commonwealth, in the sum of two hundred thousand dollars, to be approved by the Governor, conditioned for the faithful performance of his duties.

(1 amended Mar. 10, 1921, P.L.18, No.6)

Section 2. (2 repealed June 7, 1923, P.L.498, No.274)

Section 3. The State Highway Commissioner is hereby empowered to make and adopt rules and regulations for conducting the business and work of the department, not otherwise expressly provided in this act, and to prescribe the duties of all appointees and employes. All appointees or employes of the department shall be subject to removal or discharge by the State Highway Commissioner.

He is hereby authorized and empowered to purchase all machinery, implements, tools, and materials, of any and every kind, incident to or necessary in the construction, building, rebuilding, and maintenance of the State Highways hereinafter described, including the right to employ all necessary labor; and, if in the judgment of the commissioner it is necessary in order to expedite and more efficiently carry out the work of the department, he may purchase and maintain, at the expense of the department, wagons and other vehicles, including horses, mules, and harness, and provide for their keeping and maintenance, which shall be used only in connection with the work of the department.

The State Highway Commissioner is hereby further authorized and empowered to purchase and acquire land or lands, in the name of the Commonwealth and situated anywhere therein, containing stone suitable for use in the construction or maintenance of highways, and to quarry and prepare the stone thereon for use in the construction and maintenance of the State Highways or State-aid highways, and to manufacture any other material used in the construction or maintenance thereof, and to use such stone and material, so quarried, prepared, and manufactured, in such construction and maintenance, or to sell, furnish, and supply the same to contractors engaged in building or maintaining the State Highways or State-aid highways, upon such terms and conditions, and for such price, as he shall deem best for the interests of the Commonwealth.

And he is hereby further authorized and empowered to erect such buildings and purchase such machinery, utensils, tools, and equipment, as may be necessary or essential for the proper prosecution of the work of quarrying and preparing stone and manufacturing material, pursuant to the foregoing provision, for use in the construction and maintenance of State Highways and State-aid highways, and to employ all labor required for the operation thereof.

(3 amended June 7, 1919, P.L.428, No.212)

Compiler's Note: Section 2901 of Act 274 of 1923 provided that section 3 is repealed insofar as it is inconsistent with Act 274.

Section 4. (4 repealed June 7, 1923, P.L.498, No.274)

Section 5. The highways designated in this act as State Highways shall be taken over by the State Highway Department from the several counties or townships of the State, and when so taken over shall thereafter be constructed, improved, and maintained by the State Highway Department, at the expense of the Commonwealth. Said highways shall be taken over in whole or in part, from time to time, as circumstances and conditions will permit: Provided, That, all township roads, abandoned and condemned turnpikes, or turnpikes that may hereafter be abandoned or which may hereafter be condemned and paid for by the county in which the same may be located, and which form a part of any such highways, shall be taken over by the State Highway Department before the first day of June, one thousand nine hundred and twelve. The State Highway Commissioner shall, before taking over any highway under the provisions of this act, give notice in writing to the proper officers of the county or township in which said highway shall lie of his intention so to do, and of the date when the State Highway Department will assume the maintenance and care thereof. The work of maintenance, repair, and construction of said State Highways shall be commenced and carried on as equally and uniformly in the several counties as conditions will allow: Provided, That any county, township, or borough, or incorporated town which may have in contemplation, or under contract or construction, the improvement of any portion of any highway designated herein as a State Highway, shall, upon notice from the State Highway Commissioner of his intention to take over such highway as herein provided, immediately notify the State Highway Commissioner of their intention to make said improvements; and thereupon the status of such highway shall remain the same as it was previous to the passage of this act; and the county commissioners, or the commissioners or supervisors of the township, or councils of the borough or incorporated town, as the case may be, are authorized to complete the improvements of said highway at the expense of the county or township, or borough or town, as the case may be; or the same may be reconstructed as a State-aid highway as is hereinafter provided for: Provided, That upon the completion of any improvement aforesaid, or at the expiration of a period not exceeding eighteen months after the passage of this act, the said highway shall become a State Highway, as herein provided: And be it further provided, That where an agreement or contract exists between any street railway company, or other firm or corporation, and any county, township, or borough, the terms of which require said street railway company, or other firm or corporation, to maintain any highway which is designated under this act as a State Highway, the said agreement shall remain in force, and the State shall succeed to and take over to itself all the rights of said county, township, or borough existing under said agreement or contract. The said street railway

company, or other firm or corporation, shall be bound to carry out all of the requirements, and comply with all the terms and conditions, of said agreement with the State, the same as though the said contract or agreement had been originally made between the State and said street railway company or other firm or corporation.

Section 6. From and after the adoption of this act, all those certain existing public roads, highways, turnpikes, and toll-roads, or any parts or portions thereof, subject to the provisions hereinafter made in the case of turnpikes and toll-roads, forming and being main traveled roads or routes between the county-seats of the several counties of the Commonwealth, and main traveled roads or routes leading to the State line, and between principal cities, boroughs, and towns, shall be known, marked, built, rebuilt, constructed, repaired, and maintained by and at the sole expense of the Commonwealth; and shall be under the exclusive authority and jurisdiction of the State Highway Department, and shall constitute a system of State Highways, the same being more particularly described and defined.

Section 7. (7 repealed June 1, 1945, P.L.1242, No.428)

Section 8. (8 repealed June 1, 1945, P.L.1242, No.428)

Section 9. (9 repealed June 1, 1945, P.L.1242, No.428)

Section 10. (10 repealed June 1, 1945, P.L.1242, No.428)

Section 11. (11 repealed June 1, 1945, P.L.1242, No.428)

Section 12. (12 repealed June 1, 1945, P.L.1242, No.428)

Section 13. (13 repealed June 1, 1945, P.L.1242, No.428)

Section 14. (14 repealed June 1, 1945, P.L.1242, No.428)

Section 15. (15 repealed June 1, 1945, P.L.1242, No.428)

Section 16. (16 repealed June 1, 1945, P.L.1242, No.428)

Section 17. (17 repealed June 1, 1945, P.L.1242, No.428)

Section 18. (18 repealed June 1, 1945, P.L.1242, No.428)

Section 19. (19 repealed June 1, 1945, P.L.1242, No.428)

Section 20. (20 repealed June 1, 1945, P.L.1242, No.428)

Section 21. (21 repealed June 1, 1945, P.L.1242, No.428)

Section 22. (22 repealed June 1, 1945, P.L.1242, No.428)

Section 23. (23 repealed June 1, 1945, P.L.1242, No.428)

Section 24. (24 repealed June 1, 1945, P.L.1242, No.428)

Section 25. (25 repealed June 1, 1945, P.L.1242, No.428)

Section 26. (26 repealed June 1, 1945, P.L.1242, No.428)

Section 27. (27 repealed June 1, 1945, P.L.1242, No.428)

Section 28. (28 repealed June 1, 1945, P.L.1242, No.428)

Section 29. The work of maintaining and repairing all State-aid highways, improved under the provisions of this act, or which shall have been previously reconstructed by State aid, shall be done by the Department of Highways; and fifty (50%) per centum of the cost thereof shall be paid by the several townships wherein such roads may lie; or by the county, when such roads have been improved upon the petition of such county without the co-operation of the township. Whenever the obligation of any township for the cost of constructing, reconstructing, or maintaining and repairing any State-aid highways, constructed or reconstructed pursuant to an agreement between the township and the Department of Highways, or reconstructed by State aid previous to the passage of the act to which this is an amendment, remains unpaid and has been referred

by the Department of Highways to the Department of Justice for collection, the Attorney General, on behalf of the Commonwealth, and with the approval of the Auditor General and State Treasurer, may enter into an agreement with the township against which the claim is outstanding for the payment of such claim in installments. Such agreement may be made whenever it appears that the township is unable to pay the claim at once by reason of its financial condition, and shall provide for the liquidation of such claim in definite payments over a period not exceeding five years. If it shall appear that the township by reason of its financial condition would be unable to pay the full amount of such claim in installments over a period of five years, the Attorney General, with the approval of the Auditor General and State Treasurer, may compound or settle such claim outstanding, before or after being reduced to judgment, for such portion thereof as such officers may find the township to be able to pay over a period of five years, and the agreement hereinbefore provided for shall be entered into on the basis of such settlement.

(29 amended June 25, 1937, P.L.2110, No.423)

Section 30. (30 repealed June 1, 1945, P.L.1242, No.428)

Section 31. (31 repealed June 1, 1945, P.L.1242, No.428)

Section 32. (32 repealed June 1, 1945, P.L.1242, No.428)

Section 33. (a) The total cost of the improvement and maintenance of the State-aid highways constructed under the provisions of this act, as provided by the terms of the contract, or otherwise as herein provided, when properly certified by the Secretary of Highways, shall be audited by the Auditor General, and when audited and allowed shall be paid out of moneys specifically appropriated for this purpose, by warrants drawn therefor by the Auditor General upon the State Treasurer.

(b) The share of the county shall be paid as provided by its contract, and, otherwise, by the provisions of this act, to the State Treasurer by the county treasurer, upon the warrant of the county commissioners, in such sum or sums as shall be certified by the Secretary of Highways, from time to time, during the performance of the work or contract, or as provided by the contract, and, otherwise, by the provisions hereof, after the same shall be completed.

(c) The share of the township or townships, or of any borough or boroughs, or of any incorporated town or towns, shall be paid to the State Treasurer by the township supervisors or commissioners, or by the borough treasurer, or by the town treasurer, as the case may be, in the manner and form as in the case of counties, and as other debts of said townships or boroughs are paid, when and as demanded by certificate of the Secretary of Highways during the performance of the work or contract, or, in like manner, after the same shall be completed.

(d) Upon the completion of any State-aid highway improvement, or upon the ascertainment of any additional improvement cost, or of any maintenance expense, incurred thereon thereafter by the Department of Highways, the Secretary of Highways shall certify the same to the State Treasurer, and to the county commissioners and township supervisors, or borough

or town authorities, as the case may be, the respective shares of said cost or expense for which the county, township, borough, or incorporated town is liable. If the said shares or amounts, so certified by the Secretary of Highways, of the cost and expense of the improvement, or of the subsequent maintenance thereof, as provided by contract and the provisions of this act, of the county, township, borough, or incorporated town, or all or either of them, shall not be paid to the State Treasurer within thirty days after being certified, then the said shares of the county, township, borough, or incorporated town, either or all of them, remaining unpaid, shall be charged by the State Treasurer against any funds of said county, township, borough, or incorporated town which may be in the hands of the State Treasurer, or which may thereafter come into his hands, excepting school funds, and may also be recovered by action at law or equity as any other debts of such counties, townships, boroughs, or incorporated towns are by law recoverable.

(e) The amounts paid under this act to the State Treasurer by the counties, townships, boroughs, and towns, shall be placed by him to the credit of the proper fund for highway construction or maintenance, and shall immediately be available for the use of the Department of Highways for construction or maintenance, as the case may be; and the Secretary of Highways is hereby authorized and empowered to apportion the said amounts, thus paid into the State Treasury by the counties, townships, boroughs, and incorporated towns, among the several counties as hereinbefore provided for.

(f) The Secretary of Transportation may make partial payments to any contractor performing any highway improvement, under this act, at semi-monthly intervals, or more frequently from time to time, as the same progresses, upon estimate made by the Department of Transportation, beginning on the first estimate date established by the department following the date set forth in the notice to proceed or indicated in the special provisions. Five per centum (5%) of the amount due on partial payments or current estimates representing fifty per centum (50%) of the total contract price shall be withheld from the contractor pending completion: Provided, That the secretary may waive the withholding or reduce the amount of retainage if he is otherwise assured that the contract will be completed. Thereafter, no per centum of the amount due on partial payments or current estimates shall be withheld from the contractor pending completion: Provided, That the Secretary of Transportation may, in his discretion, make payments in excess of the percentages withheld when at least ninety-five per centum (95%) of the work contracted has been completed. If any amount is required by the secretary to be retained under this section, the amount retained under said contract for the work done and performed shall in all cases be sufficient to cover the contract price or estimated cost of the work remaining to be done to satisfactorily complete the contract. ((f) amended July 9, 1976, P.L.915, No.168)

(g) ((g) deleted Dec. 22, 1981, P.L.521, No.145)

(h) In addition to the payments herein authorized, the Secretary of Highways shall pay to the contractor interest at

the rate of five (5) per centum per annum on the amount retained, and on the final payment due the contractor beginning ninety (90) days after the work under the contract has been completed and accepted by the Department of Highways and running until the date when such amount retained and final payment are tendered to the contractor.

(i) At the option of the contractor and in lieu of the payment of any interest as hereinbefore provided in subsection (h), amounts withheld pending completion of any highway improvement under this act may, in whole or in part, be withdrawn by the contractor as soon as such amounts are credited to his account under either of the hereinbefore mentioned methods for making partial and final payments upon depositing with the Secretary of Transportation securities of a market value equal to the amount so withdrawn. Such securities shall be of a character approved by the Secretary of Transportation and shall include, but not be limited to, certificates of deposit issued by, or savings accounts in national or state banks authorized to do business in the Commonwealth, savings accounts in savings and loans, savings associations, building and loan associations and Federal savings and loan associations authorized to do business in the Commonwealth, bonds or notes of the United States of America, the Commonwealth of Pennsylvania, or any political subdivision thereof and, upon approval, such certificates of deposit, bonds, notes or other obligations as may be issued by any national or state bank, state savings association or Federal savings and loan association authorized to do business in the Commonwealth, authority, agency or instrumentality created by the United States of America, the Commonwealth of Pennsylvania, or any political subdivision thereof.

The Secretary of Transportation shall, from time to time, collect all interest or income on the securities so deposited and shall pay the same, when and as collected, to the contractor who deposited the securities. If the deposit be in the form of coupon bonds, the coupons as they respectively become due shall be delivered to the contractor. Upon default, the Secretary of Transportation may apply such securities, interest, coupons or income therefrom as may be necessary to correct said default and the contractor shall not be entitled to the balance thereof, if any, until the work remaining to be done under the contract has been satisfactorily completed. ((i) amended Dec. 27, 1974, P.L.1018, No.330)

(33 amended May 25, 1961, P.L.231, No.131)

Compiler's Note: Section 2 of Act 145 of 1981 provided that the provisions of section 1 of Act 145, deleting subsection (g) of section 33, shall not be construed as limiting the authority of the Department of Transportation to make payments for fabricated steel and prestressed beams prior to their delivery which authority the General Assembly has implicitly granted to the department in its contract making powers, but such deletion shall be construed as removing certain obsolete and cumbersome statutory provisions which serve only to inhibit the flexibility of the Department of

Transportation in making the most advantageous contracts
on behalf of the Commonwealth with its suppliers.

Section 34. (34 repealed June 1, 1945, P.L.1242, No.428)

Section 35. (35 repealed June 1, 1945, P.L.1242, No.428)

Section 36. (36 repealed June 1, 1945, P.L.1242, No.428)

Section 37. (37 repealed June 1, 1945, P.L.1242, No.428)

Section 38. (38 repealed June 1, 1945, P.L.1242, No.428)

Section 39. (39 repealed June 1, 1945, P.L.1242, No.428)

Section 41. All duties, responsibilities, powers, or
jurisdiction conferred upon the State Highway Commissioner, and
upon the State Highway Department as previously created, by acts
of Assembly now in force, and which do not conflict with the
provisions of this act, are therefore not repealed by this act,
and shall be assumed by, and are hereby conferred upon, the
State Highway Department and the State Highway Commissioner
created under this act.