

**TRANSPORTATION (74 PA.C.S.) - OMNIBUS AMENDMENTS AND RESCINDING,  
IN PART, A RESOLUTION OF THE PUBLIC-PRIVATE TRANSPORTATION  
PARTNERSHIP BOARD**

**Act of Jul. 11, 2022, P.L. 1566, No. 84**

**Cl. 74**

Session of 2022

No. 2022-84

SB 382

AN ACT

Amending Title 74 (Transportation) of the Pennsylvania Consolidated Statutes, in public-private transportation partnerships, further providing for definitions, for duties of board, for operation of board, for selection of development entities, for public-private transportation partnership agreement and for taxation of development entity and providing for prohibition on mandatory user fees; and rescinding, in part, a resolution of the Public-Private Transportation Partnership Board.

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

Section 1. The definition of "public-private transportation partnership agreement" in section 9102 of Title 74 of the Pennsylvania Consolidated Statutes is amended and the section is amended by adding a definition to read:

§ 9102. Definitions.

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

\* \* \*

"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.
- (6) Development and other activities with respect to existing or new transportation facilities that enhance traffic throughput, reduce congestion, improve safety or otherwise manage or improve a transportation facility.
- (7) Financing.]

\* \* \*

**"Transportation-related service." Only the following services:**

- (1) Operations and maintenance.**
- (2) Revenue collection.**
- (3) Optional user fee collection or enforcement.**
- (4) Design.**
- (5) Construction.**

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

(7) Financing.

Section 2. Section 9104(a)(2) and (4) and (c)(1) of Title 74 are amended to read:

§ 9104. Duties of board.

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

\* \* \*

(2) Adopt guidelines establishing the procedure by which a public entity may submit a request for a **proposed** transportation project or a private entity may submit an unsolicited plan for a **proposed** transportation project to the board.

\* \* \*

(4) Evaluate and, where the board finds that the requests or plans for **proposed** transportation projects are in the best interests of the Commonwealth and a public entity, approve the requests or plans for **proposed** transportation projects. **No proposed transportation project that provides for optional user fees may be approved by the board unless the board members approve such a project unanimously.** The board shall approve a proposed transportation project by adopting a resolution.

\* \* \*

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

(1) [The] **Upon receipt of the resolution from the board under section 9105(b.2),** the General Assembly may, within 20 calendar days or nine legislative days, whichever is longer, [of the adoption of the resolution under subsection (a)(4),] pass a concurrent resolution rescinding the approval of a transportation project if the transportation facility which is the subject of the transportation project is owned by the Commonwealth.

\* \* \*

Section 3. Section 9105(b) of Title 74 is amended and the section is amended by adding subsections to read:

§ 9105. Operation of board.

\* \* \*

(b) Analysis.--**The following shall apply:**

(1) The department shall develop a detailed analysis of a request or recommendation **for a proposed transportation project** prior to **requesting** approval by the board.

(2) The analysis shall include the following:

(i) The anticipated location of the proposed transportation project.

(ii) The type of transportation facility or transportation-related service to be improved.

(iii) The estimated costs of the proposed transportation project to the public entity.

(iv) The estimated length of the public-private transportation partnership agreement.

(v) The potential social, economic and environmental impacts of the proposed transportation project.

(vi) If the proposed transportation project proposes an optional user fee, include the estimated amount for each user group and type of user fee as described under section 9110(f) (relating to public-private transportation partnership agreement).

(vii) Applicable Federal and State laws.

(viii) Alternative courses of action to improve the transportation facility or transportation-related service without a public-private transportation partnership and the associated risks of improving the transportation facility or transportation-related service with a public-private transportation partnership.

(2.1) The department may conduct additional evaluations prior to the development of the analysis.

(3) The department shall post a copy of the analysis on the department's publicly accessible Internet website, submit the analysis to the board and the chairperson and minority chairperson of the Transportation Committee of the Senate and the chairperson and minority chairperson of the Transportation Committee of the House of Representatives and transmit notice of the analysis to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin for 60 days prior to any action by the board.

(b.1) Public input.--The following shall apply:

(1) The department shall collect comments from the public on the proposed transportation project during a public comment period which shall commence with the publication of the notice in the Pennsylvania Bulletin of the analysis and shall continue for a period of not less than 30 days. Prior to any action by the board, the department shall post a copy of all submitted comments and a summary as provided under paragraph (2) on the department's publicly accessible Internet website and provide the submitted comments and summary to the board and the chairperson and minority chairperson of the Transportation Committee of the Senate and the chairperson and minority chairperson of the Transportation Committee of the House of Representatives.

(2) The summary under paragraph (1) shall include a description of the proposed transportation project, a copy of the notice that was published in the Pennsylvania Bulletin, the time period that the public was allowed to provide input and a chart or graph that accurately portrays all submitted comments, including the positive and negative public input, on the proposed transportation project.

(b.2) Evaluation and approval.--The following shall apply:

(1) After consideration of the analysis and public comment, if the board finds that the proposed transportation project is in the best interests of the Commonwealth, it may approve the proposed transportation project in the form of a resolution. For a proposed transportation project that may impose an optional user fee, unanimous approval of the board is required.

(2) Approval of a proposed transportation project, including a project with an optional user fee, shall be in the form of a resolution signed by the chairperson of the board. A copy of the resolution shall be posted on the department's publicly accessible Internet website and shall be transmitted by the department to the following entities within 48 hours after approval:

(i) The chairperson and minority chairperson of the Transportation Committee of the Senate and the chairperson and minority chairperson of the Transportation Committee of the House of Representatives.

(ii) The Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

\* \* \*

Section 4. Sections 9109(a), 9110(f) and 9115(a) and (b) of Title 74 are amended to read:

§ 9109. Selection of development entities.

(a) Conditions for use.--If a transportation project is approved under [section] **sections 9104** (relating to duties of board) **and 9105 (relating to operation of board)**, the public entity may enter into a contract for the transportation project by competitive sealed proposals.

\* \* \*

§ 9110. Public-private transportation partnership agreement.

\* \* \*

(f) [User] **Optional user** fees.--A provision establishing whether **optional** user fees will be imposed for use of the public-private transportation project and the basis by which any **optional** user fees will be imposed and collected shall be determined in the public-private transportation partnership agreement. If [a] **an optional** user fee is proposed as part of the public-private transportation project, a proprietary public entity shall include provisions in the agreement that authorize the collection of **optional** 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 **optional** 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] **optional** toll or user fee at any location on a public-private transportation project where **optional** 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.

\* \* \*

§ 9115. Taxation of development entity.

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

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

\* \* \*

Section 5. Title 74 is amended by adding a section to read:  
§ 9115.1. **Prohibition on mandatory user fees.**

**A user fee may not be imposed as part of a transportation project approved under this chapter, unless the user fee is imposed only on individuals who select optional means to transit the transportation facility, such as limited access lanes or similar programs that allow individuals multiple means to transit the same transportation facility.**

Section 6. The following shall apply:

(1) Except as provided under paragraphs (2) and (3), the resolution ratifying action of the Public-Private Transportation Partnership Board on November 12, 2020, approving the public-private partnership delivery model, including user fees, for interstate bridges or expressway bridges shall be rescinded.

(2) Notwithstanding any other provision of law and subject to paragraph (3), the Department of Transportation may continue work and proceed with the transportation project ratified by the resolution under paragraph (1), including any contract issued under a public-private partnership delivery model, but may not impose or collect optional user fees unless the department submits the transportation project for approval under 74 Pa.C.S. Ch. 91 after the effective date of this section.

(3) The transportation project ratified by the resolution under paragraph (1) shall only provide authority to the department for the following transportation facilities:

- (i) Allegheny County, bridge keys 855 and 858.
- (ii) Berks County, bridge key 4677.
- (iii) Clarion County, bridge keys 10944 and 10945.
- (iv) Dauphin County, bridge key 14257.
- (v) Jefferson County, bridge keys 19565 and 19566.
- (vi) Luzerne County, bridge keys 23645 and 23646.
- (vii) Luzerne and Carbon Counties, bridge keys 8972 and 8974.
- (viii) Philadelphia County, bridge keys 38533 and 38535.
- (ix) Susquehanna County, bridge keys 32209 and 32210.

Section 7. This act shall take effect immediately.

APPROVED--The 11th day of July, A.D. 2022.

TOM WOLF