

Edward J. McGee, PE  
Senior Vice President

DMJM HARRIS | AECOM

DMJM Harris  
Four Gateway Center, 19th Floor, Pittsburgh, PA 15222  
T 412.395.8888 F 412.395.8897 www.aecom.com

July 28, 2008

The Honorable Joseph F. Markosek  
314 Irvis Office Building  
PO Box 202025  
Harrisburg, PA 17120-2025

Subject: Review of Senate Bill 1158 and House Bill 555 – Public Private  
Partnerships

Dear Honorable Markosek:

I am pleased to submit comments on the proposed legislation for public-private partnerships under consideration by the Pennsylvania House and Senate.

Our attached comments currently address only Senate Bill 1158, Additional comments on House Bill 555 are being prepared and will be submitted to the House Transportation Committee by early August.

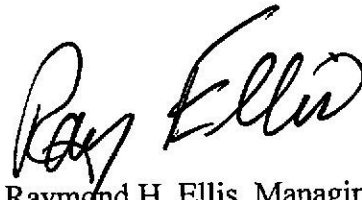
As a point of reference, AECOM is a world leader in transportation and infra-structure providing services in planning, design and construction and finance. We have been team members for U.S. private-public partnerships in Virginia, Texas, Indiana, Illinois, California, Florida, and Colorado as well as internationally in Europe and Australia.

We look forward to providing additional input on House Bill 555 as the public-private privatization legislation is finalized in Pennsylvania.

Respectfully submitted,



Edward J. McGee  
Senior Vice President  
Mid Atlantic Region



Raymond H. Ellis, Managing  
Director AECOM Public Private  
Practice Development Group

2. The Concession contracts should require that the profit from these financial restructurings be shared between the Concessionaire and the Public Sponsor.
3. The draft PPP legislation appears to be silent on this matter.
4. The legislation should required that the Concession Contract include a clause requiring at a minimum a periodic financial controls audit (annually, every two years) of the Concessionaire.
  1. The purpose of this financial controls audit is to ensure that the appropriate financial systems and controls are in place to ensure that all toll revenues are accounted for and reported.
  2. The draft PPP legislation appears to be silent on this matter.
5. The legislation should be carefully review by a very experienced tax attorney who is in a position to provide counsel on the conditions required for a concessionaire to have 'beneficial ownership' of an asset so that the concessionaire can depreciate the asset for purposes of Federal income tax compliance. Key considerations in establishing 'ownership' include:
  1. The length of the concession – the draft legislation states that the maximum concession period is 50 years. The length of the Indiana Toll Road concession is 75 years and it remains to be established whether is a 50 year concession is sufficiently long to allow the concessionaire to depreciate the asset.
  2. The transfer of risk to the concessionaire – the transfer of toll revenue risk to the concessionaire is generally viewed as sufficient to provide a transfer of risk.
6. The legislation should include a clause which allows the State or a local public body to pay for the environmental clearance of projects which are being publically procured.
  1. The legislation is currently silent on which party is responsible for the environmental clearance process.
  2. Recent experience in the United States strongly suggests that the public sector is best qualified to assume the schedule and cost risks of the environmental clearance process.
  3. The legislation should be revised to state that the Public Sponsor is responsible for the environmental clearance of the Project before the Request for Proposal for the PPP is issued.
7. The current draft requirement in the legislation that user fees be uniform for similar categories of traffic should be carefully reviewed in the context of evolving professional thought on using pricing signals to reduce congestion and achieve other public goals – as the private sector uses pricing signals to distribute demand and provide a product for all consumers and all pricing points. Current professional thought is increasingly considering the use of:
  1. Peak period prices and off-peak period discounts
  2. Pricing HOT lanes to ensure that traffic moves freely
  3. Considering commuter and weekend peaks

4. Pricing different categories of vehicles according to the cost of constructing and maintaining the facility to serve these different categories of vehicles
5. Pricing policies which encourage travelers to use electronic toll collection rather than manual toll collection
6. The draft legislation should be designed to support these applications of contemporary pricing strategies in PPP projects in Pennsylvania – implemented through Electronic Toll Collection (ETC)

Prepared by:

Raymond H. Ellis, Managing  
Director AECOM Public Private  
Practice Development Group