

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# SENATE BILL

## No. 1158 Session of 2007

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INTRODUCED BY MADIGAN, STOUT, SCARNATI, PILEGGI, RAFFERTY,  
ERICKSON, D. WHITE, M. WHITE, WAUGH, ARMSTRONG, WASHINGTON,  
RHOADES, WONDERLING, REGOLA, CORMAN, BOSCOLA, C. WILLIAMS AND  
PIPPY, NOVEMBER 13, 2007

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SENATOR MADIGAN, TRANSPORTATION, AS AMENDED, JUNE 10, 2008

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## AN ACT

1 Amending Title 74 (Transportation) of the Pennsylvania  
2 Consolidated Statutes, providing for transportation  
3 infrastructure partnership and development.

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

6 Section 1. Title 74 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a part to read:

8 PART V

9 TRANSPORTATION INFRASTRUCTURE

10 Chapter

11 91. Partnership and Development

12 CHAPTER 91

13 PARTNERSHIP AND DEVELOPMENT

14 Sec.

15 9101. Scope of chapter.

16 9102. Findings and declaration of policy.

17 9103. Definitions.

1 9104. Transportation development agreements.  
2 9105. Proposals for transportation development agreements.  
3 9106. Review and selection of proposals.  
4 9107. Affected local jurisdictions.  
5 9108. Terms and conditions of transportation development  
6 agreements.  
7 9109. Material default; remedies.  
8 9110. Financing qualifying transportation projects.  
9 9111. Power of eminent domain.  
10 9112. Police powers; motor vehicle laws.  
11 9113. Taxation of authorized development entity or entities.  
12 9114. Pennsylvania Transportation Development Trust Fund.  
13 9115. Regional mobility account, etc.  
14 9116. Regional mobility authority.  
15 9117. Turnpike lease restricted.  
16 § 9101. Scope of chapter.

17 This chapter relates to transportation infrastructure  
18 partnership and development.

19 § 9102. Findings and declaration of policy.

20 The General Assembly finds, determines and declares as  
21 follows:

22 (1) There is urgent public need to reduce congestion,  
23 increase capacity, improve safety and enhance economic  
24 efficiency of transportation facilities throughout this  
25 Commonwealth.

26 (2) The Commonwealth has limited resources to fund the  
27 maintenance and expansion of its transportation facilities.

28 (3) To ensure that the needs of the public are  
29 adequately addressed, alternative funding mechanisms and  
30 strategies must be developed to supplement existing public

1 revenue sources.

2 (4) Public entities should be authorized to enter into  
3 transportation development agreements with private entities,  
4 other public entities or partnerships of such entities in  
5 order to accelerate the cost-effective delivery of improved  
6 transportation facilities throughout this Commonwealth.

7 § 9103. Definitions.

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

11 "Affected local jurisdiction." A county, city, township,  
12 borough, incorporated town, local planning organization,  
13 regional planning organization, metropolitan transportation  
14 authority or regional mobility authority within whose  
15 jurisdictional boundaries all or a portion of a qualifying  
16 transportation project is located, or which is or will be  
17 directly affected by the project.

18 "Approving body." In the case of a proposal subject to State  
19 Transportation Commission review and approval under section  
20 9104(a) (relating to transportation development agreements), the  
21 State Transportation Commission and the proprietary public  
22 entity. In the case of a proposal not subject to State  
23 Transportation Commission approval under section 9104(a), the  
24 proprietary public entity.

25 "Authorized development entity." A private entity, another  
26 public entity or any partnership of the entities authorized by  
27 the approving body or bodies to assume responsibility for the  
28 use of or control, in whole or in part, of a transportation  
29 facility from a proprietary public entity.

30 "Department." The Department of Transportation of the

1 Commonwealth.

2 "Design build." The mode of infrastructure development  
3 whereby the contractor is responsible for both the design and  
4 construction of a qualifying transportation project.

5 "Develop" or "development." The term includes, but is not  
6 limited to, the acts or functions of planning, designing,  
7 financing, constructing, purchasing, installing, adding,  
8 extending or other activities relating to the improvement of a  
9 transportation facility.

10 "Fund." The Pennsylvania Transportation Development Trust  
11 Fund established under section 9114 (relating to Pennsylvania  
12 Transportation Development Trust Fund).

13 "Intergovernmental Cooperation Act." 53 Pa.C.S. Pt. III  
14 Subpt. D (relating to area government and intergovernmental  
15 cooperation).

16 "INTERIM AGREEMENT." AN AGREEMENT, INCLUDING A MEMORANDUM OF <—  
17 UNDERSTANDING OR BINDING PRELIMINARY AGREEMENT, BETWEEN A  
18 PRIVATE ENTITY AND THE RESPONSIBLE PUBLIC ENTITY OR THE AFFECTED  
19 PUBLIC ENTITY UNDER SECTION 9108 (RELATING TO TERMS AND  
20 CONDITIONS OF TRANSPORTATION DEVELOPMENT AGREEMENTS) WHICH  
21 PROVIDES FOR COMPLETION OF STUDIES, INTERIM COMPENSATION RATES  
22 AND ANY OTHER ACTIVITIES TO ADVANCE THE DEVELOPMENT OR OPERATION  
23 OF A QUALIFYING TRANSPORTATION FACILITY.

24 "Local governmental entity." A unit of government with less  
25 than Statewide jurisdiction, or any officially designated public  
26 agency or authority of the unit of government, that has the  
27 responsibility for planning, construction, operation or  
28 maintenance of or jurisdiction over a transportation facility.  
29 The term includes, but is not limited to, a county, city,  
30 township, borough, incorporated town, municipal authority, local

1 or regional planning organization, metropolitan transportation  
2 authority, regional mobility authority or other political  
3 subdivision or governmental entity created with less than  
4 Statewide jurisdiction, or any combination of the entities  
5 acting pursuant to 53 Pa.C.S. Pt. III Subpt. D (relating to area  
6 government and intergovernmental cooperation) or a similar  
7 statute.

8 "Local planning organization." An entity whose jurisdiction  
9 does not exceed the county in which it is located, and which is  
10 charged with transportation planning responsibilities in the  
11 area in which a qualifying transportation project is located.

12 "Material default." Failure of an authorized development  
13 entity or entities to perform any duties under a transportation  
14 development agreement which jeopardizes delivery of adequate  
15 service to the public and remains unsatisfied after a reasonable  
16 period of time and after the authorized development entity or  
17 entities has received written notice from the approving body or  
18 bodies of the failure.

19 "Maximum rate of return." The negotiated maximum rate of  
20 return a private entity can receive as an authorized development  
21 entity from the operating and nonoperating revenues of a  
22 transportation facility pursuant to a transportation development  
23 agreement, including any incidental receipts and other income  
24 derived from the transportation facility covered by the  
25 agreement.

26 "Municipality Authorities Act." 53 Pa.C.S. Ch. 56 (relating  
27 to municipal authorities).

28 "Operate" or "operation." Includes, but is not limited to,  
29 the acts or functions of managing, controlling, maintaining,  
30 repairing, conducting financial proceedings and other day-to-day

1 activities of an enterprise.

2 "Partnership." An organization structured as a partnership  
3 or joint venture and comprised of any combination of private  
4 entities or public entities or both.

5 "Private entity." A natural person, sole proprietorship,  
6 corporation, company, association, syndicate, partnership,  
7 limited liability company, business trust, public benefit  
8 corporation, nonprofit entity or any other entity not  
9 specifically listed in this definition entering into a  
10 transportation development agreement with a proprietary public  
11 entity for a qualifying transportation project.

12 "Proprietary public entity." The public entity that owns the  
13 proposed or existing transportation facility subject to a  
14 transportation development agreement.

15 "Public entity." The Commonwealth or any department,  
16 commission, authority or agency thereof or any local government  
17 entity. The term shall specifically include the State  
18 Transportation Commission, the Department of Transportation and  
19 the Pennsylvania Turnpike Commission. For purposes of this  
20 chapter, the term does not include the General Assembly and its  
21 members, officers or agencies or any court or other office or  
22 agency of the Pennsylvania judicial system.

23 "Qualifying transportation project." A proposed or existing  
24 undertaking by an authorized development entity or entities for  
25 the development or operation of a transportation facility  
26 totally or partially within this Commonwealth.

27 "Regional mobility account." A separate account of the  
28 Commonwealth within the Pennsylvania Transportation Development  
29 Trust Fund, under the custody of the State Treasurer, into which  
30 transportation development revenues or other funds, including

surcharges imposed by the Commonwealth, may be deposited for operation or development of regional transportation facilities.

"Regional mobility authority." An authority or similar local government entity created pursuant to 53 Pa.C.S. Pt. III Subpt. D (relating to area government and intergovernmental cooperation), 53 Pa.C.S. Ch. 56 (relating to municipal authorities) or other Commonwealth statute and recognized under this chapter and regulations issued by the State Transportation Commission for the purpose of promoting regional transportation development.

"Regional planning organization." An entity with multicounty jurisdiction and designated under Federal or State law with transportation planning responsibilities in the region in which a qualifying transportation project is located.

"Request for proposals." All materials and documents prepared by or on behalf of a public entity to solicit proposals from public or private entities to enter into a transportation development agreement for a qualifying transportation project as set forth in this chapter.

"Right-to-Know Law." The act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.

"Separations Act." The act of May 1, 1913 (P.L.155, No.104), entitled "An act regulating the letting of certain contracts for the erection, construction, and alteration of public buildings."

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

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

"State consultant." An entity as defined in section 2 of the

1 act of July 19, 1957 (P.L.1017, No.451), known as the State  
2 Adverse Interest Act.

3 "Transportation Commission." The State Transportation  
4 Commission of the Commonwealth established under section 468 of  
5 the act of April 9, 1929 (P.L.177, No.175), known as The  
6 Administrative Code of 1929.

7 "Transportation development agreement." A lease, license,  
8 franchise, easement, concession or other binding agreement  
9 transferring rights for the use or control, in whole or in part,  
10 of a transportation facility by a proprietary public entity to  
11 an authorized development entity or entities for a definite term  
12 during which the authorized development entity or entities will  
13 provide transportation-related services, including, but not  
14 limited to, any one or more of the following: operations and  
15 maintenance, revenue collection, toll collection enforcement,  
16 design, construction, development and other activities with  
17 respect to existing or new transportation facilities that  
18 enhance throughput, reduce congestion, improve safety or  
19 otherwise manage or improve a transportation facility in return  
20 for the right to receive all or a portion of the revenues of the  
21 transportation facility.

22 "Transportation development revenues." Money generated from  
23 or received in support of the development or operation of a  
24 qualifying transportation project, including, but not limited  
25 to, user fees, service payments, surcharges, lease payments,  
26 governmental appropriations or grants, proceeds of debt or  
27 equity issuance, income from operations and earnings on  
28 investments.

29 "Transportation facility." A road, bridge, tunnel, overpass,  
30 ferry, busway, guideway, other public transportation facility,

1 vehicle parking facility, port facility, multimodal  
2 transportation facility, airport, station, hub, terminal or  
3 similar facility used for the transportation of persons, animals  
4 or goods, together with any buildings, structures, parking  
5 areas, appurtenances and other property needed to operate the  
6 facility. The term includes any improvements or substantial  
7 enhancements thereto.

8 "User fees." Rates, tolls, fees or other charges imposed or  
9 collected by an authorized development entity or entities for  
10 use of all or a portion of a transportation facility pursuant to  
11 a transportation development agreement.

12 § 9104. Transportation development agreements.

13 (a) Authorization and approval.--Subject to the provisions  
14 of this chapter and the approval of its governing body, a  
15 proprietary public entity has full authority to enter into a  
16 transportation development agreement with an authorized  
17 development entity or entities governing the development or  
18 operation of all or any portion of a transportation facility,  
19 except that, if the transportation development agreement results  
20 in the proprietary public entity disposing of or relinquishing  
21 its control of a transportation facility or pertains to a  
22 transportation facility that receives Commonwealth funding, then  
23 the transportation development agreement must also be reviewed  
24 and approved by the Transportation Commission before the  
25 proprietary public entity can enter into the agreement.

26 (b) Project activities authorized.--Subject to the  
27 requirements of this chapter, a transportation development  
28 agreement may provide for the authorized development entity or  
29 entities to be partially or entirely responsible for any one or  
30 more of the following activities: planning, design, development,

construction, reconstruction, improvement, extension or  
expansion, operation, repair, maintenance, management, revenue  
collection or financing of a transportation facility.

(c) Repositories for materials.--The Transportation  
Commission shall serve as the primary repository for all  
materials relating to the review and approval of transportation  
development agreements that involve transportation facilities  
that receive funding from the Commonwealth or result in the  
proprietary public entity disposing of or relinquishing its  
control over the transportation facilities. Otherwise, the  
proprietary public entity shall serve as the repository for  
materials relating to the review of transportation development  
agreements which do not require the approval of the  
Transportation Commission.

§ 9105. Proposals for transportation development agreements.

(a) Solicited proposals.--Before entering into a  
transportation development agreement, the proprietary public  
entity must issue a request for proposals as set forth in this  
subsection. If the proposal being requested is subject to  
Transportation Commission review and approval pursuant to  
section 9104(a) (relating to transportation development  
agreements), the request for proposals must be authorized and  
issued jointly by the proprietary public entity and the  
Transportation Commission. Any request for proposals shall use a  
competitive procurement process that selects the authorized  
development entity whose proposal provides the best value for  
the proprietary public entity and for the Commonwealth. Notice  
of any such request for proposals shall be published in the  
Pennsylvania Bulletin and posted or published in whatever other  
medium is regularly used by the proprietary public entity for

procurement matters. A request for proposals issued under this subsection shall include the following:

(1) The minimum scope and content of the information to be provided by the respondent.

(2) The factors or criteria that will be used by the approving body or bodies in evaluating the proposals and the deadline for submitting the proposal.

(3) A statement concerning the scope and location of the proposed project.

(4) A statement concerning any other information that the approving body or bodies may consider in evaluating the proposals.

(5) A statement indicating that if clarification is needed in the evaluation of the proposals, the proprietary public entity, together with the Transportation Commission if its approval is required, may negotiate specific provisions with the prospective authorized development entity that submitted the proposal pursuant to the request for proposals.

(b) Unsolicited proposals.--A proprietary public entity may entertain and accept for review unsolicited proposals submitted by public or private entities for a qualifying transportation project. To the extent a proposal is subject to Transportation Commission review and approval pursuant to section 9104(a), the proposal shall also be submitted to the Transportation Commission. For proposals not subject to Transportation Commission approval, proprietary public entities may establish rules and procedures for accepting unsolicited proposals and may set forth the information required to be included in unsolicited proposals submitted by public or private entities. The Transportation Commission shall be responsible for establishing

1 rules and procedures for unsolicited proposals subject to its  
2 approval, which shall include a review and response period not  
3 exceeding 135 days from receipt of the unsolicited proposal for  
4 any proposal with an estimated cost of construction greater than  
5 \$50,000,000. If an unsolicited proposal is deemed to be in  
6 compliance with the rules and procedures as established by the  
7 appropriate approving body and if the public entity or entities  
8 so desire to pursue the proposed qualifying transportation  
9 project, the proprietary public entity, jointly with the  
10 Transportation Commission if its approval is required, must  
11 publish a request for and receive competing proposals in <—  
12 accordance with subsection (a). RESPONSES TO REQUESTS FOR <—  
13 PROPOSALS ISSUED IN RESPONSE TO THE FAVORABLE REVIEW OF A  
14 PROPOSAL UNDER THIS SUBSECTION SHALL BE RETURNED TO THE  
15 COMMISSION OR PROPRIETARY PUBLIC ENTITY WITHIN 60 DAYS.

16 (c) Discussions and negotiations with proposing entities.--A  
17 proprietary public entity, and the Transportation Commission  
18 where its approval is required, may conduct discussions and  
19 negotiations with public or private entities which have  
20 submitted solicited or unsolicited proposals for the purpose of  
21 clarification to assure full understanding of the proposals or  
22 the responsiveness of solicited proposals to solicitation  
23 requirements.

24 (d) Design build development; Separations Act  
25 inapplicable.--Notwithstanding any other provision of law to the  
26 contrary:

27 (1) any proposal made pursuant to this chapter may  
28 provide for the design build mode of infrastructure  
29 development; and

30 (2) in no event shall an authorized development entity

1 or entities be subject to the requirements of the Separations  
2 Act in connection with a transportation development agreement  
3 authorized pursuant to this chapter.

4 (e) Federal credit assistance.--The approving body or bodies  
5 and affected local jurisdictions may apply for, execute or  
6 endorse applications by prospective authorized development  
7 entities to obtain Federal credit assistance for a qualifying  
8 transportation project.

9 (f) Adverse interests of proposing private entity.--

10 (1) Except as provided in paragraph (2), a private  
11 entity which is a State advisor or State consultant for the  
12 Transportation Commission, the department, the Pennsylvania  
13 Turnpike Commission or any other proprietary public entity  
14 shall not be deemed to be in violation of the State Adverse  
15 Interest Act if the private entity:

16 (i) prepares or submits a proposal or a response to  
17 a request for proposals under this section;

18 (ii) negotiates or enters into a transportation  
19 development agreement; or

20 (iii) engages in other activities in furtherance of  
21 the provisions or purposes of this chapter.

22 (2) A private entity which submits an unsolicited  
23 proposal or a response to a request for proposals shall be  
24 prohibited from providing advice to the Transportation  
25 Commission, the department, the Pennsylvania Turnpike  
26 Commission or a proprietary public entity on its proposal,  
27 any competing proposal or a request for proposals for which  
28 it has submitted a response.

29 (g) Fees.--The approving body or bodies may require that a  
30 nonrefundable fee accompany any solicited or unsolicited

1 proposal submitted pursuant to this section to cover all or part  
2 of the costs of processing, reviewing and evaluating the  
3 proposal.

4 (h) Confidentiality of records.--To encourage public and  
5 private entities to submit proposals under subsections (a) and  
6 (b), the following information shall be considered confidential,  
7 and shall not be considered a public record subject to  
8 disclosure, public inspection or copying under the Right-to-Know  
9 Law, or any other act, until a final transportation development  
10 agreement for a proposed qualifying transportation project is  
11 entered into:

12 (1) All or part of a proposal, whether solicited or  
13 unsolicited, submitted by a public or private entity or any  
14 partnership of the entities for a proposed qualifying  
15 transportation project, except information regarding the  
16 scope, location and limits of the project and information  
17 pertaining to a public or private entity's qualifications,  
18 experience, technical competence and capability to develop  
19 the project.

20 (2) Information and records created during any  
21 discussions or negotiations arising from the process as  
22 described in subsection (c).

23 (i) Disclosure of records.--Notwithstanding subsection (h),  
24 after a transportation development agreement has been entered  
25 into, the entire selected proposal shall be considered a public  
26 record for purposes of disclosure under the Right-to-Know Law.  
27 Promptly after a transportation development agreement has been  
28 entered into, the approving body or bodies shall also make  
29 available for inspection and copying by the public a summary of  
30 the terms of the selected proposal and a written explanation of

1 the basis upon which the selection was made. Proprietary  
2 information contained in proposals not selected and records of  
3 negotiations with private entities not selected shall continue  
4 to be exempt from public disclosure.

5 § 9106. Review and selection of proposals.

6 (a) Timing of review.--For proposals subject to its  
7 approval, the Transportation Commission, IN CONJUNCTION WITH THE <—  
8 DEPARTMENT, by published regulations shall promulgate procedures  
9 and guidelines that establish the process for the review and  
10 selection of a proposal submitted pursuant to section 9105(a)  
11 and (b) (relating to proposals for transportation development  
12 agreements). THE DEPARTMENT SHALL PUBLISH INTERIM GUIDELINES <—  
13 WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THIS SECTION AND  
14 SHALL PUBLISH FINAL REGULATIONS WITHIN TWO YEARS OF THE  
15 EFFECTIVE DATE OF THIS SECTION. The guidelines shall establish:

16 (1) a specific schedule for the timing of the review of  
17 the proposals by the approving body or bodies designed with a  
18 high priority placed upon a review schedule requiring less  
19 than 135 days;

20 (2) a process for alteration of that schedule if the  
21 approving body or bodies deem that changes are necessary  
22 because of the scope or complexity of proposals received; and

23 (3) the type and amount of information that is necessary  
24 for adequate review of proposals. A proprietary public entity  
25 shall promulgate its own procedures and guidelines for the  
26 review and selection of proposals which do not require  
27 Transportation Commission approval.

28 (b) Asset valuation.--In evaluating any submitted proposal,  
29 the approving body or bodies may rely on internal reports  
30 prepared by staff familiar with the operation of similar

transportation facilities or may engage the services of the private consultants, engineers and other experts as the approving body or bodies determine are necessary or desirable for the purposes of performing the evaluations. As part of each evaluation of any submitted proposal, the approving body or bodies shall be required to obtain a financial and valuation assessment with respect to the proposed qualifying transportation project from a qualified independent advisor with experience and expertise with similar transportation facilities.

(c) Factors for review and selection of proposals.--The appropriate approving body or bodies may consider the following factors in reviewing and selecting a proposal to enter into a transportation development agreement:

(1) the ability of the qualifying transportation project to improve safety, reduce congestion, increase capacity and promote economic growth;

(2) the compatibility of the proposal with existing local or regional land use plans or the commitment of local communities to approve plans in preparation for the proposed project;

(3) the proposed cost of and financial plan for the qualifying transportation project;

(4) the general reputation, qualifications, industry experience and financial capacity of the entity or entities submitting the proposal;

(5) the proposed design, operation and feasibility of the qualifying transportation project;

(6) comments from local citizens and affected local jurisdictions;

(7) benefits to the public;

1       (8) the safety record of the entity or entities  
2       submitting the proposal; and  
3       (9) other criteria that the approving body or bodies  
4       deem appropriate.

5   § 9107. Affected local jurisdictions.

6       The Transportation Commission by published regulations shall  
7       promulgate procedures and guidelines that establish a process in  
8       which affected local jurisdictions receive notice of a proposed  
9       qualifying transportation project and have an opportunity to  
10       provide input regarding the project before a transportation  
11       development agreement is executed. For proposed qualifying  
12       transportation projects which do not require approval of the  
13       Transportation Commission under section 9104(a) (relating to  
14       transportation development agreements), the proprietary public  
15       entity shall promulgate its own procedures and guidelines by  
16       which affected local jurisdictions receive notice of a proposed  
17       qualifying transportation project and have an opportunity to  
18       provide input prior to the execution of a transportation  
19       development agreement.

20   § 9108. Terms and conditions of transportation development  
21       agreements.

22       (a) Proprietary public entity and authorized development  
23       entity negotiations.--Except as otherwise expressly provided in  
24       section 9105 (relating to proposals for transportation  
25       development agreements) and this section, a proprietary public  
26       entity may enter into a transportation development agreement  
27       with an authorized development entity or entities without regard  
28       to the provisions of 62 Pa.C.S. Pt. 1 (relating to Commonwealth  
29       Procurement Code). The proprietary public entity and authorized  
30       development entity or entities are expressly authorized to

1 negotiate the provisions of a transportation development  
2 agreement.

3 (A.1) INTERIM AGREEMENT.--PRIOR TO COMPLETION OF A <—  
4 TRANSPORTATION DEVELOPMENT AGREEMENT, A PROPRIETARY PUBLIC  
5 ENTITY AND AN AUTHORIZED DEVELOPMENT ENTITY MAY NEGOTIATE AN  
6 INTERIM AGREEMENT FOR THE PURPOSE OF FURTHER DEFINING PROJECT  
7 PLANNING AND DEVELOPMENT, ADVANCE RIGHT-OF-WAY ACQUISITION,  
8 DESIGN AND ENGINEERING, ENVIRONMENTAL ANALYSIS AND MITIGATION,  
9 SURVEYING, CONDUCTING TRANSPORTATION AND REVENUE STUDIES AND  
10 ASCERTAINING THE AVAILABILITY OF FINANCING FOR THE PROPOSED  
11 QUALIFYING TRANSPORTATION FACILITY OR FACILITIES. THE INTERIM  
12 AGREEMENT MAY ALSO ESTABLISH THE PROCESS AND TIMING OF THE  
13 NEGOTIATION OF THE COMPREHENSIVE AGREEMENT AND ANY OTHER  
14 PROVISIONS RELATED TO ANY ASPECT OF THE DEVELOPMENT OR OPERATION  
15 OF A QUALIFYING TRANSPORTATION FACILITY THAT THE PARTIES MAY  
16 DEEM APPROPRIATE.

17 (b) Required provisions.--A transportation development  
18 agreement entered into under this chapter shall provide for the  
19 following:

20 (1) a process by which the authorized development entity  
21 or entities implements, sets and adjusts any user fees on any  
22 transportation facility;

23 (2) the methodologies, indices or other factors for the  
24 setting and adjusting of user fees;

25 (3) the original term of the transportation development  
26 agreement, which may not exceed 50 years;

27 (4) dates for the beginning and completion of  
28 construction of or improvements to the qualifying  
29 transportation project;

30 (5) the transportation facility acquired or constructed

1 pursuant to a transportation development agreement is public  
2 property that is leased to the authorized development entity  
3 and belongs to the proprietary public entity;

4 (6) that upon termination of the transportation  
5 development agreement, the transportation facility must be in  
6 a state of proper maintenance and repair and shall be  
7 returned to the proprietary public entity in satisfactory  
8 condition at no further cost to the public entity;

9 (7) maintenance of a policy or policies of liability  
10 insurance, copies of which shall be filed with the  
11 proprietary public entity accompanied by proofs of coverage,  
12 or self insurance, each in form and amount satisfactory to  
13 the proprietary public entity and reasonably sufficient to  
14 insure coverage of tort liability to the public and employees  
15 and to enable the continued operation of the transportation  
16 facility; and

17 (8) that the authorized development entity shall comply  
18 with the act of August 15, 1961 (P.L.987, No.442), known as  
19 the Pennsylvania Prevailing Wage Act, and 62 Pa.C.S. § 107  
20 (relating to reciprocal limitations).

21 § 9109. Material default; remedies.

22 (a) General rule.--Upon the occurrence and during the  
23 continuation of a material default of a transportation  
24 development agreement by an authorized development entity or  
25 entities, the approving body or bodies may:

26 (1) Elect to take over the transportation facility which  
27 is the subject of the transportation development agreement,  
28 including the succession of all right, title and interest in  
29 the transportation facility, subject to any liens on revenues  
30 previously granted by the authorized development entity or

1 entities.

2 (2) Terminate the transportation development agreement  
3 and exercise any other rights and remedies that may be  
4 available.

5 (b) Takeover.--In the event that the approving body or  
6 bodies elect to take over a transportation facility under  
7 subsection (a), the approving body or bodies:

8 (1) Shall collect and pay any revenues that are subject  
9 to lien to satisfy any obligation.

10 (2) May develop and operate the transportation facility,  
11 impose user fees for the use of the transportation facility  
12 and comply with any service contracts.

13 (3) May solicit proposals for the maintenance and  
14 operation of the transportation facility under section 9105  
15 (relating to proposals for transportation development  
16 agreements).

17 § 9110. Financing qualifying transportation projects.

18 (a) User fees.--

19 (1) Each transportation development agreement shall  
20 authorize the authorized development entity or entities to  
21 impose user fees for use of the transportation facility.  
22 Unless specifically prohibited in the transportation  
23 development agreement, the authorization shall permit the  
24 imposition of user fees on transportation facilities not  
25 currently subject to user fees, subject to compliance with  
26 applicable Federal and State law and approval by the  
27 Transportation Commission.

28 (2) The transportation development agreement may  
29 authorize the authorized development entity or entities to  
30 collect tolls or user fees through both conventional methods

1 and nonconventional methods, including, but not limited to,  
2 automatic vehicle identification systems, electronic toll  
3 collection systems and, to the extent permitted by law,  
4 video-based toll-collection enforcement.

5 (3) A maximum rate of return on investment shall be  
6 negotiated by the proprietary public entity and the  
7 authorized development entity or entities and stated in the  
8 transportation development agreement.

9 (4) After expiration of the original term of the  
10 transportation development agreement, the proprietary public  
11 entity may continue to charge user fees for the use of the  
12 transportation facility.

13 (5) User fees under a transportation development  
14 agreement shall generally be uniform for similar persons and  
15 vehicles traveling under like conditions, except as may be  
16 required to mitigate congestion on and preserve capacity of  
17 the transportation facility which is the subject of the  
18 transportation development agreement.

19 (b) Bonding authority.--A proprietary public entity or  
20 authorized development entity or entities may authorize the  
21 issuance of debt, equity or other securities or obligations to  
22 pay all or part of the costs of a qualifying transportation  
23 project and may secure any such financing with a pledge of,  
24 security interest in or lien on any of the user fees charged and  
25 collected for the use of the transportation facility. However,  
26 any bonds, debt, other securities or other financing issued for  
27 the purposes of this chapter shall be limited obligations of the  
28 proprietary public entity or authorized development entity or  
29 entities and shall not be considered to constitute a debt of the  
30 Commonwealth or any political subdivision thereof or a pledge of

1 the full faith and credit of the Commonwealth or any political  
2 subdivision thereof.

3 (c) Limited recourse bonds backed by pledge of portion of  
4 Motor License Fund revenues.--(Reserved).

5 § 9111. Power of eminent domain.

6 At the request of an authorized development entity or  
7 entities, the proprietary public entity or an affected local  
8 jurisdiction otherwise possessing the power of eminent domain  
9 may exercise that power for the purpose of acquiring any real  
10 property or interests therein deemed necessary to advance the  
11 development or operation of a qualifying transportation project.  
12 Any amounts payable in any such eminent domain proceeding may be  
13 paid by the proprietary public entity or the authorized  
14 development entity or entities.

15 § 9112. Police powers; motor vehicle laws.

16 (a) Powers and jurisdiction.--All law enforcement officers  
17 of the Commonwealth and each affected local jurisdiction shall  
18 have the same powers and jurisdiction within the limits of a  
19 qualifying transportation project as they have in their  
20 respective areas of jurisdiction, and law enforcement officers  
21 shall have access to the qualifying transportation project at  
22 any time for the purpose of exercising their law enforcement  
23 powers and jurisdiction.

24 (b) Enforcement of traffic laws.--To the extent the  
25 qualifying transportation project includes a highway, bridge,  
26 tunnel, overpass or similar transportation facility for motor  
27 vehicles, the traffic and motor vehicle laws of this  
28 Commonwealth or, if applicable, any local jurisdiction shall be  
29 the same as those applying to conduct on similar transportation  
30 facilities in the Commonwealth or the local jurisdiction.

1     (c) Payment of law enforcement costs.--The authorized  
2 development entity or entities shall be responsible for the  
3 payment of all costs associated with the provision of law  
4 enforcement services pursuant to subsections (a) and (b) within  
5 the limits of a qualifying transportation project.

6     (d) Fines.--Fines imposed by law enforcement officers for  
7 violations occurring within the limits of a qualifying  
8 transportation project shall be imposed, collected, distributed  
9 and governed as otherwise provided by applicable law.

10 § 9113. Taxation of authorized development entity or entities.

11     (a) General rule.--To the extent that revenues or user fees  
12 received by an authorized development entity or entities are  
13 subject to any tax imposed by a political subdivision prior to  
14 the effective date of this chapter, the revenues or user fees  
15 shall continue to be subject to the tax and to future increases  
16 in the rate of the tax.

17     (b) New taxation barred.--After the effective date of this  
18 chapter, no new tax shall be imposed by a political subdivision  
19 on the revenues or user fees received by an authorized  
20 development entity or entities.

21     (c) Realty transfer tax.--No transportation development  
22 agreement, lease, concession, franchise or other contract  
23 involving real property of a qualifying transportation project  
24 shall be subject to any Commonwealth or local realty transfer  
25 tax imposed under the act of December 31, 1965 (P.L.1257,  
26 No.511), known as The Local Tax Enabling Act, the act of March  
27 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, or  
28 a successor statute.

29     (d) Property.--Property used in connection with a qualifying  
30 transportation project shall be considered public property and

1 is exempt from ad valorem property taxes and special assessments  
2 levied against property by the Commonwealth or any political  
3 subdivision.

4 § 9114. Pennsylvania Transportation Development Trust Fund.

5 (a) Establishment of fund.--The Pennsylvania Transportation  
6 Development Trust Fund is hereby established separate and  
7 distinct from the General Fund of the Commonwealth. Interest  
8 earned on moneys held in the fund shall be credited to the fund.  
9 The Transportation Commission shall hold, administer and manage  
10 the fund, and expenses of administering the fund shall be paid  
11 from money in the fund.

12 (b) Separate accounts.--Within the fund, separate accounts  
13 and subaccounts may be established.

14 (c) Deposits.--Subject to the provisions of a transportation  
15 development agreement, the following moneys may be deposited  
16 into the fund:

17 (1) Payments received from an authorized development  
18 entity or entities under a transportation development  
19 agreement.

20 (2) Revenues received from a qualifying transportation  
21 project pursuant to a transportation development agreement  
22 with an authorized development entity or entities.

23 (3) Excess earnings over the negotiated maximum rate of  
24 return for an authorized development entity or entities in a  
25 transportation development agreement.

26 (4) Surcharges or other service fees or user fees which  
27 may be imposed or levied by the Commonwealth on passenger or  
28 commercial travel.

29 (5) Appropriations, if any, made by the General  
30 Assembly.

1       (6) Interest, premiums, gains or other earnings on the  
2       fund.

3       (7) Any other moneys from any sources, public or  
4       private, that are done by donation, grant, contract, law or  
5       other means transferred, allocated or appropriated to the  
6       fund.

7       (d) Permitted uses.--

8       (1) The fund shall be a separate trust fund to be  
9       appropriated and used by the Transportation Commission, upon  
10      majority vote thereof, solely for the operation and  
11      development of transportation facilities wholly or partly  
12      within this Commonwealth. Included as a permitted use of fund  
13      moneys is the funding of regional mobility authorities  
14      designated by the Transportation Commission under section  
15      9115 (relating to regional mobility account, etc.).

16      (2) Money may not be transferred, assigned or otherwise  
17      removed from the fund except by the Transportation Commission  
18      and not by the General Assembly or any other agency,  
19      authority or other political subdivision of the Commonwealth.

20      (3) Money in the fund at the end of the fiscal year  
21      shall not revert to the General Fund.

22    § 9115.   Regional mobility account, etc.

23      (Reserved).

24    § 9116.   Regional mobility authority.

25      A regional mobility authority shall be eligible to receive  
26      transportation development revenues directly from the fund or  
27      from a regional mobility fund. An existing local governmental  
28      entity shall be eligible for designation as a regional mobility  
29      authority upon application to the Transportation Commission.

30    § 9117.   Turnpike lease restricted.

1     The Pennsylvania Turnpike, its additions and lease properties  
2     may not be subject to a transfer of oversight responsibilities  
3     through a lease, sale or other agreement unless specific  
4     authority is granted through an act of law passed by a majority  
5     of members of the General Assembly. This section shall not  
6     restrict the ability of the Pennsylvania Turnpike Commission or  
7     the Transportation Commission to consider and approve  
8     partnership agreements which do not require a transfer of  
9     operational oversight from the Pennsylvania Turnpike Commission.

10     Section 2. This act shall take effect in 60 days.