
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3

Session of
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INTRODUCED BY GEIST, MCGEEHAN, AUMENT, BAKER, BENNINGHOFF, BOYD, BROOKS, CALTAGIRONE, CARROLL, CAUSER, CHRISTIANA, CLYMER, P. COSTA, CREIGHTON, CUTLER, DENLINGER, ELLIS, J. EVANS, EVERETT, FARRY, FLECK, GIBBONS, GILLESPIE, GINGRICH, GRELL, GROVE, HALUSKA, HARHAI, HARHART, HARPER, HARRIS, HESS, HICKERNELL, HORNAMAN, HUTCHINSON, KAUFFMAN, M.K. KELLER, W. KELLER, MAHER, MARSHALL, MARSICO, MILLER, MILNE, MUSTIO, OBERLANDER, PAYNE, PAYTON, PICKETT, PYLE, QUINN, RAPP, REED, REICHLEY, SAYLOR, SCHRODER, K. SMITH, SONNEY, STERN, STEVENSON, TALLMAN, TOEPEL, TURZAI, VULAKOVICH, WAGNER, WATSON AND EVANKOVICH, FEBRUARY 14, 2011

REFERRED TO COMMITTEE ON TRANSPORTATION, FEBRUARY 14, 2011

AN ACT

1 Amending Title 74 (Transportation) of the Pennsylvania
2 Consolidated Statutes, providing for public-private
3 transportation partnerships; and making a related repeal.

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 91

11 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP

12 Sec.

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22 § 9101. Scope of chapter.
23 This chapter relates to public-private transportation
24 partnerships.
25 § 9102. Findings and declaration of policy.
26 (a) Legislative findings and declarations.--The General
27 Assembly finds, determines and declares as follows:
28 (1) There is urgent public need to reduce congestion,
29 increase capacity, improve safety and enhance economic
30 efficiency of transportation facilities throughout this

1 Commonwealth.

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

4 (3) To ensure the needs of the public are adequately
5 addressed, alternative funding mechanisms and strategies must
6 be developed to supplement existing public revenue sources.

7 (4) The imposition of user fees establishes an
8 additional funding source for transportation infrastructure
9 needs that spreads the costs across those who most benefit
10 from the Commonwealth's system of roads, highways and
11 bridges.

12 (5) The imposition of user fees and the development,
13 operation, maintenance, construction and improvement of toll
14 roads is a proprietary function which may be delegated to a
15 private entity consistent with section 31 of Article III of
16 the Constitution of Pennsylvania.

17 (6) Authorizing public entities to enter into
18 transportation development agreements with private entities
19 and other public entities for the development, operation and
20 financing of transportation facilities can result in greater
21 availability of transportation facilities to the public in a
22 timely, efficient and less costly fashion, thereby serving
23 the public safety and welfare.

24 (7) Assuring that qualifying transportation projects are
25 developed, operated and financed in a cost-effective manner
26 is an important factor in promoting the health, safety and
27 welfare of the citizens of this Commonwealth.

28 (b) Intent.--It is the intent of this chapter:

29 (1) To encourage private entities to invest in this
30 Commonwealth by participating in the development, operation

1 and/or financing of transportation facilities.

2 (2) To accomplish the goals under subsection (a) and
3 paragraph (1), and to provide the policies set forth in this
4 chapter to provide public entities and private entities with
5 the flexibility in contracting with each other for and in
6 providing of the public services that are the subject of this
7 title.

8 (3) To accomplish the goals under subsection (a) and
9 paragraph (1), and provide the policies set forth in this
10 chapter to make clear that public entities are authorized and
11 empowered to contract with private entities for and in
12 providing the public services which are the subject of this
13 title.

14 (4) To establish a board with the authority to authorize
15 the charging of user fees consistent with the goals under
16 subsection (a) and paragraph (1).

17 § 9103. Definitions.

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

21 "Account." The Public-Private Transportation Account.

22 "Board." The Public-Private Transportation Partnership
23 Board.

24 "Department." The Department of Transportation of the
25 Commonwealth.

26 "Development entity." Any of the following:

27 (1) A private entity.

28 (2) A public entity, other than the proprietary public
29 entity.

30 (3) A partnership of entities proposing, bidding or

1 responding to a solicitation by the Department of
2 Transportation or a proprietary public entity.
3 "Electronic toll." A system of collecting tolls or charges
4 that is capable of charging an account holder for the prescribed
5 toll by electronic transmission of information, including open
6 road tolling, video tolling or other similar structural or
7 technological enhancements pertaining to tolling.

8 "Private entity." A person, entity or organization that is
9 not the Federal Government, a state, a political subdivision of
10 this Commonwealth or a unit of government.

11 "Proprietary public entity." A public entity that owns the
12 eligible transportation facility that is subject to a public-
13 private transportation partnership agreement.

14 "Public entity." The Commonwealth or any of its departments,
15 commissions, authorities, agencies or a unit of government. The
16 term includes the Department of Transportation and the
17 Pennsylvania Turnpike Commission. The term does not include the
18 General Assembly and its members, officers or agencies or any
19 court or other office or agency of the Pennsylvania judicial
20 system.

21 "Public-private transportation partnership agreement." A
22 binding agreement for a public-private transportation project
23 transferring rights for the use or control, in whole or in part,
24 of a transportation facility by the Department of Transportation
25 or a proprietary public entity to a development entity for a
26 definite term during which the development entity will provide
27 transportation-related services in return for the right to
28 receive all or a portion of the revenue of the transportation
29 facility, or other payment, such as the following
30 transportation-related services:

- 1 (1) Operations and maintenance.
- 2 (2) Revenue collection.
- 3 (3) User fee collection or enforcement.
- 4 (4) Design.
- 5 (5) Construction.
- 6 (6) Development and other activities with respect to
7 existing or new transportation facilities that enhance
8 traffic throughput, reduce congestion, improve safety or
9 otherwise manage or improve a transportation facility.

10 "Public-private transportation project." A project for the
11 safe transport of people or goods via one or more modes of
12 transport.

13 "Right-to-Know Law." The act of February 14, 2008 (P.L.6,
14 No.3), known as the Right-to-Know Law.

15 "Solicitation." The process by which the Department of
16 Transportation or a proprietary public entity may elect to
17 procure services under section 9106(b) (relating to approval).

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

20 "Transportation facility." A proposed or existing road,
21 bridge, tunnel, overpass, ferry, busway, guideway, public
22 transportation facility, vehicle parking facility, port
23 facility, multimodal transportation facility, airport, station,
24 hub, terminal or similar facility used or to be used for the
25 transportation of persons, animals or goods, together with any
26 buildings, structures, parking areas, appurtenances and other
27 property needed to operate the transportation facility. The term
28 includes any improvements or substantial enhancements or
29 modifications to an existing transportation facility.

30 "Unit of government." Any of the following:

1 (1) An agency, office or department of the Commonwealth.

2 (2) A city, county, district, commission, authority,
3 entity, port or other public corporation organized and
4 existing under statutory law, voter-approved charter or
5 initiative.

6 (3) An intergovernmental entity.

7 § 9104. Regulations.

8 (a) Promulgation.--In order to facilitate the implementation
9 of this chapter, the department shall promulgate regulations or
10 publish guidelines that include any of the following:

11 (1) The process for review of request for solicitations
12 or responses to requests for solicitations issued by the
13 department or a proprietary public entity.

14 (2) The process for receipt and review of and response
15 to competing responses to requests for solicitations.

16 (3) The type and amount of information that is necessary
17 for adequate review of and response to each state of review
18 of a solicitation.

19 (4) The process for submission and review of requests to
20 the department and the board by public entities for approval
21 of a public-private transportation project under this
22 chapter.

23 (5) Any other provisions which are required under this
24 chapter or which the department determines are appropriate
25 for implementation of this chapter.

26 (b) Temporary regulations.--Notwithstanding any other
27 provision of law and in order to facilitate the prompt
28 implementation of this chapter, any regulation promulgated by
29 the department under this chapter during the two years following
30 the effective date of this section shall be deemed temporary

1 regulations which shall expire no later than three years
2 following the effective date of this section or upon
3 promulgation of final regulations. The temporary regulations
4 shall not be subject to any of the following:

5 (1) Sections 201, 202, 203 and 204 of the act of July
6 31, 1968 (P.L.769, No.240), referred to as the Commonwealth
7 Documents Law.

8 (2) The act of June 25, 1982 (P.L.633, No.181), known as
9 the Regulatory Review Act.

10 § 9105. Project delivery methods.

11 The department shall provide for the development or operation
12 of eligible facilities using a variety of project delivery
13 methods and forms of agreement. The methods may include:

14 (1) Predevelopment agreements leading to other
15 implementing agreements.

16 (2) A design-build agreement.

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

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

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

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

21 (7) A concession providing for the private entity to
22 design, build, operate, maintain, manage or lease an eligible
23 transportation facility.

24 (8) Any other project delivery method or agreement or
25 combination of methods or agreements that the department
26 determines will serve the public interest.

27 § 9106. Approval.

28 (a) Authorization.--The department or a proprietary public
29 entity, upon approval by the board, is authorized to enter into
30 an agreement with a development entity for the purpose of

1 forming a public-private transportation partnership in
2 accordance with this chapter.

3 (b) Solicitation.--The department or a proprietary public
4 entity may procure services under this chapter using any or all
5 of the following:

6 (1) Request for project proposals in which is described
7 a class of transportation facilities or a geographic area in
8 which development entities are invited to submit proposals to
9 develop transportation facilities.

10 (2) Solicitations using requests for qualifications,
11 short-listing of qualified proposers, requests for proposals,
12 negotiations, best and final offers or other procurement
13 procedures.

14 (3) Procurements seeking development and finance plans
15 most suitable for the project.

16 (4) Best value selection procurements based on price,
17 financial proposals, or both, or other factors determined to
18 be relevant to a decision that is in the best interest of the
19 Commonwealth or the proprietary public entity.

20 (5) Other procedures that the department determines may
21 further the implementation of this chapter.

22 (6) Unsolicited proposals as recommended by the board if
23 the board, in consultation with the department, determines
24 there is sufficient merit to pursue the proposal, a
25 reasonable opportunity for other entities to submit competing
26 proposals for consideration and a possible contract award.

27 (c) Notice.--The department or a proprietary public entity
28 must give adequate public notice of any request for
29 qualifications, request for proposal or other solicitation in a
30 reasonable amount of time prior to any deadline date for

1 submission. The solicitation shall generally set forth the
2 factors that will be evaluated and the manner in which responses
3 will be evaluated.

4 (d) Costs.--

5 (1) The department and a proprietary public entity and
6 their respective advisers shall not be responsible for any
7 costs or damages incurred by a private entity in connection
8 with any requests for qualifications, requests for proposals
9 or other solicitations.

10 (2) The department or a proprietary public entity may,
11 in their discretion, elect to pay a stipend to unsuccessful
12 offerors who have submitted responsive proposals, bids and
13 other materials in response to a request for proposals or
14 other solicitation. Stipends may be made available solely to
15 defray the costs of proposal or response preparation. The
16 availability of a stipend and the conditions necessary to
17 qualify for payment shall be included in the request for
18 proposals or other solicitation.

19 (3) The department or a proprietary public entity may
20 charge and retain an administrative fee for the evaluation of
21 a public-private transportation partnership proposal as
22 recommended by the board.

23 (e) Modification and termination rights.--

24 (1) The department or a proprietary public entity may
25 modify a solicitation request if it determines the
26 modification to be in the best interest of the Commonwealth
27 or proprietary public entity.

28 (2) A solicitation request may be canceled at any time
29 prior to the time a public-private transportation partnership
30 agreement is executed, if the department or the proprietary

1 public entity determines, on a case-by-case basis, that the
2 action is in the best interest of the Commonwealth or the
3 proprietary public entity. The reasons for cancellation shall
4 be made a part of the file.

5 (3) A submission and offer made in response to the
6 solicitation request may be rejected at any time prior to the
7 time a public-private transportation partnership agreement is
8 executed, if the department or the proprietary public entity
9 determines, on a case-by-case basis, that the action is in
10 the best interest of the Commonwealth or the proprietary
11 public entity. The reasons for rejection shall be made part
12 of the file.

13 (4) A decision to modify, cancel or reject any request
14 for solicitation shall be final and unreviewable.

15 (5) The issuance for a request for solicitation in no
16 way shall obligate the department or a proprietary public
17 entity to enter into a public-private transportation
18 partnership agreement or a contract of any kind with a party.

19 (f) Selection criteria, evaluation and award by the
20 department or a proprietary public entity.--

21 (1) In evaluating proposals, the department or a
22 proprietary public entity shall obtain the best value for the
23 Commonwealth or the proprietary public entity and may accord
24 relative weight to factors such as cost, financial
25 commitment, innovative financing, technical, scientific,
26 technological or socioeconomic merit, financial strength and
27 viability and other factors as deemed appropriate.

28 (2) The department or a proprietary public entity may
29 conduct discussions with development entities to assure
30 understanding of and responsiveness to the requirements of a

1 request for qualifications.

2 (3) The department or a proprietary public entity shall
3 conduct a public and competitive process to award a public-
4 private transportation partnership agreement.

5 (4) The department or a proprietary public entity shall
6 accept for contract negotiation the responsive and
7 responsible development entity whose proposal is determined
8 in writing to be the most advantageous to the Commonwealth or
9 the proprietary public entity, taking into consideration
10 price and all evaluation factors.

11 (5) The department or a proprietary public entity may
12 require that any bid or proposal submitted to enter into a
13 public-private transportation partnership agreement be
14 accompanied by security in the form of cash, letters of
15 credit or other financial security acceptable to the
16 department or the proprietary public entity.

17 (6) The department or a proprietary public entity may
18 retain financial, technical, legal and other consultants and
19 experts to assist in the evaluation, negotiation and
20 development of eligible facilities under this chapter.

21 (g) Use of intellectual property.--Unless otherwise agreed
22 and except to the extent not transferable by law, the department
23 or a proprietary public entity shall have the right to use all
24 or a portion of a response to a solicitation, including the
25 technologies, techniques, methods, processes and information
26 contained in the response. Notice of nontransferability by law
27 shall be given to the department in response to the request for
28 qualifications.

29 (h) Records of solicitation requests.--Notwithstanding the
30 Right-to-Know Law, the following shall apply:

1 (1) Upon the selection of a development entity to be a
2 party to a public-private transportation partnership
3 agreement, the identity of the development entity selected,
4 the contents of the response of the development entity to the
5 request for qualifications, the final bid or proposal
6 submitted by the development entity and the form of the
7 public-private transportation agreement shall be made public.
8 Any financial information of a development entity that was
9 requested in a request for qualifications or a solicitation
10 to demonstrate the economic capability of a development
11 entity to fully perform the requirements of the public-
12 private transportation partnership agreement and which is
13 contained in a response to a request for qualifications shall
14 not be subject to public inspection.

15 (2) If the department or a proprietary public entity
16 terminates a public-private transportation partnership
17 agreement for default, rejects a development entity or a
18 person on the grounds that the development entity is not
19 responsible or suspends or debars a development entity or a
20 person, the development entity or person shall, upon written
21 request, be provided with a copy of the information contained
22 in the file of the development entity or person maintained by
23 the department, the Office of the Budget and the Department
24 of General Services or a proprietary public entity under a
25 contractor responsibility program.

26 (3) A record, material or data received, prepared, used
27 or retained by the department or a proprietary public entity
28 or their employees, consultants or agents in connection with
29 the evaluation of requests for qualifications shall not
30 constitute a public record subject to public inspection under

1 the Right-to-Know Law if, in the reasonable judgment of the
2 department or the proprietary public entity, the inspection
3 would cause substantial competitive harm to the entity or
4 person from whom the information was received.

5 (i) Diversity.--

6 (1) It is the intent and goal of the General Assembly
7 that the department and proprietary public entities promote
8 and ensure diversity in all aspects of development and
9 operation of a public-private transportation project
10 authorized under this chapter. The department and proprietary
11 public entities shall work to enhance the representation of
12 diverse groups in the development and operation by private
13 entities of any public-private transportation project through
14 the participation of business enterprises utilized by
15 development entities and through the provision of goods and
16 services utilized by development entities in the development
17 and operation of any public-private transportation project
18 authorized under this chapter.

19 (2) The department is authorized to investigate and
20 conduct periodic studies to ascertain whether effective and
21 meaningful action has been taken or will be taken to enhance
22 the representation of diverse groups in the development and
23 operation by development entities of any public-private
24 transportation project in this Commonwealth through the
25 participation of business enterprises utilized by development
26 entities in the development and operating of any public-
27 private transportation project under this chapter and through
28 the provision of goods and services utilized by development
29 entities in the development and operation of any public-
30 private transportation project and through employment

1 opportunities.

2 § 9107. Public-private transportation partnership agreement.

3 (a) Agreement provisions.--A public-private transportation
4 partnership agreement shall include the following provisions:

5 (1) A description of any planning, development, design,
6 leasing, acquisition or interest in, financing, installation,
7 construction, reconstruction, replacement, expansion,
8 operation, maintenance, improvement, equipping, modification,
9 expansion, enlargement, management, running, control and
10 operation of the transportation facility.

11 (2) The term of the public-private transportation
12 partnership agreement.

13 (3) The type of property interest or other relationship
14 the development entity will have in or with respect to the
15 project, including acquisition of rights-of-way and other
16 property interests that may be required.

17 (4) Authorization for the department and the proprietary
18 public entity, or their authorized representatives, to
19 inspect all assets and properties of the transportation
20 facility and all books and records of the development entity
21 relating to the eligible transportation facility to review
22 the development entity's performance under the public-private
23 transportation partnership agreement.

24 (5) Grounds for termination of the public-private
25 transportation partnership agreement by the parties.

26 (6) Procedures for amendment of the public-private
27 transportation partnership agreement.

28 (7) The rights and remedies available in the event of
29 breach, default or delay.

30 (8) Requirements for a private development entity to

1 provide performance and payment bonds, parent company
2 guarantees, letters of credit or other acceptable forms of
3 security in an amount acceptable to the proprietary public
4 entity.

5 (9) A requirement that the transportation facility
6 acquired or constructed is public property that is leased to
7 the development entity and belongs to the proprietary public
8 entity.

9 (10) Standards for construction, maintenance and
10 operation of the transportation facility if the activities
11 are to be performed by the development entity.

12 (11) Standards for capital improvement or modification
13 of the transportation facility if they are to be made by the
14 development entity.

15 (12) Standards relating to how payments, if any, are to
16 be made by the proprietary public entity to the development
17 entity, including availability payments, performance-based
18 payment and payments of money and revenue-sharing with the
19 development entity.

20 (13) Standards relating to how the parties will allocate
21 and share management of the risks of the project.

22 (14) Standards relating to how the parties will allocate
23 costs of development of the project, including any cost
24 overruns.

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

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

30 (17) A requirement that upon termination of the public-

1 private transportation partnership agreement, the
2 transportation facility must be in a state of proper
3 maintenance and repair and shall be returned to the
4 proprietary public entity in satisfactory condition at no
5 further cost to the proprietary public entity.

6 (18) Provisions for law enforcement of the public
7 transportation facility.

8 (19) An obligation of the private entity to offer
9 employment to any employee of the department or proprietary
10 public entity who would lose employment due to the execution
11 of the public-private partnership agreement and who is in
12 good standing at the time of execution of the partnership
13 agreement, including salary, retirement, health and welfare,
14 and benefits which are substantially identical to the
15 benefits received by the employees immediately prior to
16 execution of the partnership agreement.

17 (20) Other terms and provisions as required under this
18 chapter.

19 (21) Other terms and conditions as may be agreed between
20 the private entity and the department or the proprietary
21 public entity.

22 (b) Term.--The department or a proprietary public entity may
23 enter into a public-private transportation partnership agreement
24 with any development entity that includes the provisions under
25 subsection (a) for a term not to exceed 99 years.

26 (c) Public partner.--Nothing in this chapter shall prohibit
27 the department from entering into a partnership agreement with
28 another Commonwealth agency for purposes of forming a
29 transportation partnership in accordance with this chapter.

30 (d) Propriety public entity.--Nothing in this chapter shall

1 prohibit any proprietary public entity from entering into a
2 public-private transportation partnership agreement with one or
3 more public entities for purposes of forming a transportation
4 partnership in accordance with this chapter.

5 (e) Environmental costs.--

6 (1) The department or any other proprietary public
7 entity may provide in a public-private transportation
8 partnership agreement that it will pay or reimburse, on terms
9 that it deems appropriate, the development entity for actual
10 costs associated with necessary remediation, including
11 investigation activities, for existing environmental
12 contaminants if any are on, under or emanating from the real
13 property associated with a transportation facility as of the
14 date the development entity assumes responsibility for the
15 transportation facility. If provision is made under this
16 paragraph, the public-private transportation partnership
17 agreement shall require that the proprietary public entity be
18 given:

19 (i) Prompt notice of any claim against the third
20 party pertaining to the contaminants.

21 (ii) The right to elect to undertake the necessary
22 remediation.

23 (iii) The right to participate in the defense of or
24 response to any claim.

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

27 (2) No payment by the department or any other
28 proprietary public entity under this section may be for
29 anything other than, or extend beyond, actual losses,
30 liabilities, damages, penalties, charges, costs and expenses

1 incurred by a private entity to remediate the environmental
2 contamination on, under or emanating from the real property
3 associated with the transportation facility as of the date
4 the development entity assumes responsibility for the
5 transportation facility.

6 (f) User fees.--A provision establishing whether user fees
7 will be collected for use of the transportation facility and the
8 basis by which any user fees shall be determined in the public-
9 private transportation partnership agreement. If a user fee is
10 proposed as part of the public-private transportation
11 partnership project, the department or a proprietary public
12 entity shall include provisions in the agreement that authorize
13 the collection of user fees, tolls, fares or similar charges,
14 including provisions that:

15 (1) Specify technology to be used in the transportation
16 facility.

17 (2) Establish circumstances under which the department
18 or the proprietary public entity may receive a share of
19 revenues from the charges.

20 (3) Govern the enforcement of electronic tolls,
21 including provisions for use of available technology.

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

24 (5) In the event an operator of a vehicle fails to pay
25 the prescribed toll or user fee at any location on a
26 transportation facility where tolls or user fees are
27 collected by means of an electronic or other automated or
28 remote form of collection, the collection provisions of
29 section 8117 (relating to electronic toll collection) shall
30 apply except that the private entity shall possess all of the

1 rights, roles, limitations and responsibilities of the
2 Pennsylvania Turnpike Commission.

3 (g) Amounts received under a public-private transportation
4 partnership agreement.--The net proceeds received by the
5 department or the proprietary public entity under a public-
6 private transportation partnership agreement shall be available
7 exclusively to provide funding for transportation needs in this
8 Commonwealth. The use of the proceeds or other revenues from the
9 transportation facility shall comply with Federal or State law
10 restricting or limiting the use of revenue from the
11 transportation facility based on its public funding.

12 § 9108. Police powers and violations of law.

13 (a) Enforcement of traffic laws.--To the extent the public-
14 private transportation facility is a highway, bridge, tunnel
15 overpass or similar transportation facility for motor vehicles,
16 the traffic and motor vehicle laws of this Commonwealth or, if
17 applicable, any local jurisdiction shall be the same as those
18 applying to conduct on similar transportation facilities in this
19 Commonwealth or the local jurisdiction. Punishment for offenses
20 shall be prescribed by law for conduct occurring on similar
21 transportation facilities in this Commonwealth or the local
22 jurisdiction.

23 (b) Arrest powers.--All officers authorized by law to make
24 arrests for violations of law in this Commonwealth shall have
25 the same powers, duties and jurisdiction within the limits of a
26 public-private transportation project as they have in their
27 respective areas of jurisdiction. The grant of authority under
28 this section shall not extend to the private offices, buildings,
29 garages and other improvements of a private entity to any
30 greater degree than the police power extends to any other

1 private offices, buildings, garages and other improvements.

2 § 9109. Environmental and other authorizations.

3 (a) No submission of plan under The Administrative Code of
4 1929.--Notwithstanding any other provision of law, neither
5 soliciting nor approving a request for qualification, nor
6 executing a public-private transportation partnership agreement
7 under this chapter shall constitute the submission of a
8 preliminary plan or design to the department under section
9 2002(b) of the act of April 9, 1929 (P.L.177, No.175), known as
10 The Administrative Code of 1929.

11 (b) Environmental authorizations.--A public-private
12 transportation partnership agreement may require that prior to
13 commencing any construction in connection with the development,
14 operation or financing of any eligible transportation facility
15 if the agreement requires environmental authorizations to be
16 obtained, the development entity shall do any of the following:

17 (1) Secure all necessary environmental permits and
18 authorizations and, if specified under the act of May 19,
19 1995 (P.L.4, No.2), known as the Land Recycling and
20 Environmental Remediation Standards Act, obtain the approval
21 of the Department of Environmental Protection.

22 (2) Complete environmental remediation of the site on
23 which the eligible transportation facility is or is to be
24 located, including acts required under any agreement entered
25 into with the Department of Environmental Protection for
26 remediation of the site under the Land Recycling and
27 Environmental Remediation Standards Act.

28 § 9110. Taxation of authorized development entity or entities.

29 (a) General rule.--To the extent that revenues or user fees
30 received by a development entity or entities pursuant to a

1 public-private transportation partnership agreement are subject
2 to a tax imposed by a political subdivision prior to the
3 effective date of this section, the revenues or user fees shall
4 continue to be subject to the tax and to future increases in the
5 rate of the tax.

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

11 (c) Realty transfer tax.--No public-private transportation
12 partnership agreement, lease, concession, franchise or other
13 contract involving real property of a public-private
14 transportation project shall be subject to a Commonwealth or
15 local realty transfer tax imposed under the act of December 31,
16 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act,
17 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
18 Code of 1971, or a successor statute.

19 (d) Property.--Property used in connection with a public-
20 private transportation project shall be considered public
21 property and shall be exempt from ad valorem property taxes and
22 special assessments levied against property by the Commonwealth
23 or any political subdivision.

24 § 9111. Power of eminent domain.

25 The exercise of the power of eminent domain by any condemnor
26 to acquire property for transportation facility purposes under a
27 public-private transportation partnership agreement shall be
28 considered a taking for a public purpose and not for a private
29 purpose or for private enterprise.

30 § 9112. Sovereign immunity.

1 (a) General rule.--The General Assembly, under section 11 of
2 Article I of the Constitution of Pennsylvania, reaffirms
3 sovereign immunity and, except as otherwise provided under
4 subsection (b), no provision of this chapter shall constitute a
5 waiver of sovereign immunity for the purpose of 1 Pa.C.S. § 2310
6 (relating to sovereign immunity reaffirmed; specific waiver) or
7 otherwise.

8 (b) Exemption.--The General Assembly, under section 11 of
9 Article I of the Constitution of Pennsylvania, waives sovereign
10 immunity as a bar to claims against the department and any other
11 department, commission, authority or agency of the Commonwealth
12 or any authority or political subdivision brought in accordance
13 with sections 9107(e) (relating to public-private transportation
14 partnership agreement) and 9113 (relating to amounts payable by
15 proprietary public entities and specific performance), but only
16 to the extent set forth under this chapter.
17 § 9113. Amounts payable by proprietary public entities and
18 specific performance.

19 (a) Authorization for payments.--The department or any other
20 proprietary public entity is authorized to agree to make
21 payments to a development entity pursuant to a public-private
22 transportation partnership agreement under any of the following:

23 (1) Upon a breach by the proprietary public entity of
24 its representations, covenants, warranties or other
25 obligations under the public-private transportation
26 partnership agreement.

27 (2) If the proprietary public entity takes adverse
28 actions against the development entity in violation of the
29 terms of the public-private transportation partnership
30 agreement.

1 (3) Upon the occurrence of force majeure or other events
2 that have a material adverse effect on the ability of the
3 development entity to perform its obligations under the
4 public-private transportation partnership agreement or to
5 obtain the benefits of the public-private transportation
6 partnership agreement.

7 (b) Reason for payments.--The payments made by a proprietary
8 public entity pursuant to a public-private transportation
9 partnership agreement may be for:

10 (1) Losses, liabilities, damages, penalties, costs and
11 expenses of the development entity.

12 (2) Amounts necessary to restore the development entity
13 to the same after-tax economic position it would have been in
14 had the event in question not occurred.

15 (3) Amounts necessary to pay the fair market value of
16 the interest, benefits and rights of the development entity
17 and the rights and obligations of the development entity
18 created and made under the public-private transportation
19 partnership agreement.

20 (c) Specific performance.--A proprietary public entity is
21 authorized to agree that specific performance shall be available
22 to a development entity as a remedy for a breach by the
23 proprietary public entity of its representations, covenants,
24 warranties or other obligations under the public-private
25 transportation partnership agreement to the extent set forth in
26 the public-private transportation partnership agreement.

27 § 9114. Design-build development and Separations Act.

28 Notwithstanding any other provision of law:

29 (1) Any public-private transportation partnership
30 project undertaken under this chapter may provide design-

1 build, design-build-operate, design-build-operate-maintain,
2 and operate-maintain procurements and other innovative or
3 nontraditional competitive procurement methods for
4 transportation-related infrastructure development.

5 (2) A development entity or entities shall be subject to
6 the requirements of the act of May 1, 1913 (P.L.155, No.104),
7 referred to as the Separations Act, in connection with the
8 development or operation of a public-private transportation
9 project authorized under this chapter.

10 § 9115. Additional procurement provisions.

11 To the extent applicable to the proprietary public entity,
12 the following provisions shall apply to a contract entered into
13 between the department or a proprietary public entity and an
14 authorized development entity related to the development,
15 operation or financing of a public-private transportation
16 project under this chapter:

17 (1) The act of August 15, 1961 (P.L.987, No.442), known
18 as the Pennsylvania Prevailing Wage Act.

19 (2) The act of July 23, 1968 (P.L.686, No.226),
20 entitled, "An act equalizing trade practices in public works
21 procurement; authorizing the purchase by the Commonwealth,
22 its political subdivisions, and all public agencies, of
23 aluminum and steel products produced in a foreign country,
24 provided the foreign country does not prohibit or
25 discriminate against the importation to, sale or use in the
26 foreign country of supplies, material or equipment
27 manufactured in this Commonwealth; establishing procedures
28 for determining whether foreign countries discriminate
29 against supplies, materials or equipment manufactured in this
30 Commonwealth; and imposing penalties and providing for relief

1 for violation of this act."

2 (3) The act of March 3, 1978 (P.L.6, No.3), known as the
3 Steel Products Procurement Act.

4 (4) 62 Pa.C.S. § 107 (relating to reciprocal
5 limitations).

6 (5) 62 Pa.C.S. § 531 (relating to debarment or
7 suspension).

8 (6) 62 Pa.C.S. § 541 (relating to approval of accounting
9 system).

10 (7) 62 Pa.C.S. § 551 (relating to right to inspect
11 plant).

12 (8) 62 Pa.C.S. § 552 (relating to right to audit
13 records).

14 (9) 62 Pa.C.S. § 563 (relating to retention of
15 procurement records).

16 § 9116. Adverse interest.

17 (a) Private entity adverse interests.--The following shall
18 apply:

19 (1) Except as provided under paragraph (2), a private
20 entity which submits a response to a request for solicitation
21 under section 9106(b) (relating to approval) or an
22 unsolicited proposal and which is also a State adviser or a
23 State consultant for the department or the Pennsylvania
24 Turnpike Commission shall not be deemed to be in violation of
25 the State Adverse Interest Act while engaging in any of the
26 following activities:

27 (i) Preparing or submitting a response to a request
28 for qualifications.

29 (ii) Participating in any activity with the
30 department related to a request for solicitation.

1 (iii) Negotiating and entering into any contract
2 lease or public-private transportation partnership
3 agreement which results from a request for solicitation.

4 (iv) Engaging in any other action taken in
5 furtherance of the purposes of this chapter.

6 (2) A private entity which submits a response to a
7 request for solicitation or acts as a consultant or an
8 adviser to a private entity which submits a response to a
9 request for solicitation to the department shall be
10 prohibited from consulting or providing advice to the
11 department on the review or approval of the response to the
12 request for solicitations as submitted.

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

16 "State adviser." As defined in the State Adverse
17 Interest Act.

18 "State consultant." As defined in the State Adverse
19 Interest Act.

20 § 9117. Application of chapter.

21 (a) Applicability.--This chapter shall apply to public-
22 private transportation partnership agreements between
23 proprietary public entities, other public entities and
24 development entities for public-private transportation projects
25 and shall satisfy any applicable procurement laws unless
26 otherwise or to the extent provided for under this chapter.

27 (b) Nonapplicability.--This chapter shall not apply to
28 agreements entered into exclusively under 62 Pa.C.S. Pt. I
29 (relating to Commonwealth Procurement Code) or any other
30 Commonwealth law relating to the expenditure or receipt of funds

1 by a public entity under contract for construction or services.

2 (c) Prohibition.--Nothing in this chapter shall prohibit a
3 proprietary public entity from entering into a public-private
4 transportation partnership agreement in the capacity of a
5 proprietary public entity pursuant to powers granted exclusively
6 under other Commonwealth statutes.

7 (d) Agreements.--If an agreement is entered into under this
8 chapter, the public-private transportation partnership agreement
9 shall be subject to the provisions of this chapter.

10 § 9118. Federal, Commonwealth, local and private assistance.

11 (a) Federal assistance.--The following shall apply:

12 (1) The department or a proprietary public entity may
13 accept from the United States, or any of its agencies, funds
14 that are available to the Commonwealth for carrying out this
15 chapter, whether the funds are made available by grant, loan,
16 loan guarantee or otherwise.

17 (2) The department or a proprietary public entity is
18 authorized to assent to any Federal requirements, conditions
19 or terms of any Federal funding accepted by the department
20 under this section.

21 (3) The department or a proprietary public entity may
22 enter into agreements or other arrangements with the United
23 States, or any of its agencies, as may be necessary for
24 carrying out the purposes of this chapter.

25 (b) Acceptance of grants and donations.--The department or a
26 proprietary public entity may accept from any source any grant,
27 donation, gift or other form of conveyance of land, money or
28 other real, personal or mixed property or other item of value
29 for carrying out the purpose of this chapter.

30 (c) Contributions.--Subject to acceptance and agreement

1 between the private entity and the department or a proprietary
2 public entity, any eligible transportation facility may be
3 financed, in whole or in part, by contribution of any funds or
4 property made by the department or a proprietary public entity,
5 a private entity, a proprietary public entity or an affected
6 jurisdiction.

7 (d) Combination of funds.--The department or proprietary
8 public entity may combine Federal, State, local and private
9 funds to finance an eligible transportation facility under this
10 chapter.

11 § 9119. Public-Private Transportation Account.

12 (a) Establishment.--

13 (1) There is established within the Motor License Fund a
14 separate account to be known as the Public-Private
15 Transportation Account.

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

18 (b) Deposits to account.--The following shall apply:

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

21 (i) All money received pursuant to the terms of a
22 public-private transportation partnership agreement.

23 (ii) Repayment of any loans from the account made
24 under this chapter.

25 (iii) Subject to the provisions of any public-
26 private transportation partnership agreement, monetary
27 damages and other amounts for failure by a development
28 entity to comply with the terms of the public-private
29 transportation partnership agreement.

30 (iv) Subject to the provisions of any public-private

1 transportation partnership agreement, payments made from
2 any insurance proceeds or reserve funds or performance or
3 payment bonds in connection with a transportation
4 facility.

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

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

10 (c) Appropriation.--The funds in the account are hereby
11 continuously appropriated to the department for the following
12 purposes:

13 (1) Paying the amounts as the department may be required
14 to repay the Federal Highway Administration.

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

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

21 (4) Paying expenses incurred under or in connection with
22 any public-private transportation partnership agreement by
23 the department, including professional fees and expenses.

24 (5) Paying the costs of the department relating to
25 performing and administering duties under this chapter.

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

29 (7) Paying costs of any purpose authorized under this
30 chapter.

1 (d) Amounts received under a public-private transportation
2 partnership agreement.--The net proceeds received under a
3 public-private transportation partnership agreement shall be
4 available exclusively to provide funding for transportation
5 needs in this Commonwealth. The use of the proceeds or other
6 revenues from the transportation facility shall be in accord
7 with Federal or State law restricting or limiting the use of
8 revenue from the transportation facility based on its public
9 funding.

10 § 9120. Public-Private Transportation Partnership Board.

11 (a) Establishment.--There is established a Public-Private
12 Transportation Partnership Board.

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

15 (1) The Secretary of Transportation, who shall be the
16 chairperson of the board as an ex officio member.

17 (2) The Secretary of the Budget, or a designee as an ex
18 officio member.

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

21 (4) One member appointed by the Governor under
22 subsection (d).

23 (c) Legislative appointments.--

24 (1) Appointments by members of the General Assembly
25 shall be made as follows:

26 (i) One individual appointed by the President pro
27 tempore of the Senate.

28 (ii) One individual appointed by the Minority Leader
29 of the Senate.

30 (iii) One individual appointed by the Speaker of the

1 House of Representatives.

2 (iv) One individual appointed by the Minority Leader
3 of the House of Representatives.

4 (2) Legislative appointees shall serve at the pleasure
5 of the appointing authority.

6 (3) Legislative appointees shall:

7 (i) Be reputable citizens of this Commonwealth, of
8 mature judgment and broad experience.

9 (ii) Not be a member of the General Assembly or
10 staff of a member of the General Assembly.

11 (iii) Have professional background expertise or
12 substantial experience in one or more of the following
13 areas:

14 (A) Transportation.

15 (B) Finance.

16 (C) Law.

17 (D) Land use and public planning.

18 (d) Gubernatorial appointment.--Appointments under
19 subsection (b) (4) shall be made by the Governor. The member
20 shall:

21 (1) Be a reputable citizen of this Commonwealth, of
22 mature judgment and broad business experience.

23 (2) Not hold any other position as an employee of the
24 Commonwealth.

25 (3) Have professional background expertise or
26 substantial experience in one or more of the following areas:

27 (i) Transportation.

28 (ii) Finance.

29 (iii) Law.

30 (iv) Land use and public planning.

1 (4) Serve at the pleasure of the Governor.

2 (e) Quorum.--Five members of the board shall constitute a
3 quorum.

4 (f) Compensation.--The members of the board shall be
5 entitled to no compensation for their services as members of the
6 board but shall be entitled to reimbursement by the department
7 for all necessary and reasonable expenses incurred in connection
8 with the performance of their duties as members of the board.

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

14 (h) Financial interests.--No member of the board, during his
15 term of office shall directly or indirectly own, have any
16 significant financial interest in, be associated with or receive
17 any fee, commission, compensation or anything of value from any
18 public entity or private entity seeking to engage in a
19 transportation development agreement.

20 (i) Applicability.--The following acts shall apply to the
21 board:

22 (1) The Right-to-Know Law.

23 (2) The State Adverse Interest Act.

24 (3) The provisions of 65 Pa.C.S. Chs. 7 (relating to
25 open meetings) and 11 (relating to ethics standards and
26 financial disclosure).

27 § 9121. Duties and powers of board.

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

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

30 (2) Adopt guidelines establishing the procedure by which

1 a public entity or private entity may submit a request for
2 evaluation of a solicited or unsolicited proposal to the
3 board, including guidelines necessary for initial project
4 approval and final project approval.

5 (3) Consult with persons affected by proposed public-
6 private transportation partnership projects.

7 (4) Evaluate and approve or deny requests by the
8 department and proprietary public entities to undertake
9 transportation partnership projects and make recommendations
10 to the department and proprietary public entities in the form
11 of a resolution.

12 (5) Take all action by resolution. The affirmative vote
13 of the majority of the members shall be necessary for the
14 adoption of a resolution.

15 (6) Submit an annual report to the General Assembly
16 detailing all transportation partnership projects evaluated
17 and resolutions adopted.

18 (b) Powers.--The board may do all of the following:

19 (1) In evaluating proposals, accord relative weight to
20 factors such as cost, financial commitment, innovative
21 financing, technical, scientific, technological or
22 socioeconomic merit and other factors as the board deems
23 appropriate to obtain the best value for the Commonwealth.

24 (2) Conduct discussions with private entities to assure
25 understanding of and responsiveness to a request for
26 evaluation.

27 (3) Seek technical assistance necessary to assist the
28 board in carrying out its duties and powers, at the expense
29 of the department.

30 (c) Actions.--Actions by the board are a determination of

1 public policy and public interest and shall not be considered
2 adjudications under 2 Pa.C.S. Chs. 5 Subch. A (relating to
3 practice and procedure of Commonwealth agencies) and 7 Subch. A
4 (relating to judicial review of Commonwealth agency action) and
5 shall not be appealable to the department or a court of law.

6 § 9122. Role of department in operation of board.

7 (a) Technical assistance.--The department shall supply all
8 necessary assistance to assist the board in carrying out its
9 duties and responsibilities, including retention of legal,
10 financial and technical consultants to assist with this role.

11 (b) Analysis.--Upon initial board approval of a public-
12 private transportation project, the department shall develop a
13 detailed analysis of the proposal prior to the final approval by
14 the board.

15 (c) Oversight.--Upon final approval by the board of a
16 transportation partnership project, the department shall retain
17 oversight and monitor the project, including periodic reports to
18 the board, as necessary.

19 Section 2. Repeals are as follows:

20 (1) The General Assembly declares that the repeal under
21 paragraph (2) is necessary to effectuate the addition of 74
22 Pa.C.S. Ch. 91.

23 (2) Section 3 of the act of May 29, 1945 (P.L.1108,
24 No.402), referred to as the Limited Access Highway Law, is
25 repealed insofar as it is inconsistent with the addition of
26 74 Pa.C.S. Ch. 91.

27 Section 3. This act shall take effect as follows:

28 (1) The addition of 74 Pa.C.S. §§ 9104 and 9120 shall
29 take effect immediately.

30 (2) This section shall take effect immediately.

1 (3) The remainder of this act shall take effect in 60
2 days.