

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3

Session of 2011

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, EVANKOVICH, TRUITT, KILLION AND MURT, FEBRUARY 14, 2011

AS REPORTED FROM COMMITTEE ON TRANSPORTATION, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 7, 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.

13 9101. Scope of chapter.

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

1 increase capacity, improve safety and enhance economic
2 efficiency of transportation facilities throughout this
3 Commonwealth.

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

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

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

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

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

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

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

1 (1) To encourage private entities to invest in this
2 Commonwealth by participating in the development, operation
3 and/or financing of transportation facilities.

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

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

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

19 § 9103. Definitions.

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

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

24 "Board." The Public-Private Transportation Partnership
25 Board.

26 "Department." The Department of Transportation of the
27 Commonwealth.

28 "Development entity." Any of the following:

29 (1) A private entity.

30 (2) A public entity, other than the proprietary public

1 entity.

2 (3) A partnership of entities proposing, bidding or
3 responding to a solicitation by the Department of
4 Transportation or a proprietary public entity.

5 "Electronic toll." A system of collecting tolls or charges
6 that is capable of charging an account holder for the prescribed
7 toll by electronic transmission of information, including open
8 road tolling, video tolling or other similar structural or
9 technological enhancements pertaining to tolling.

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

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

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

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

1 facility, or other payment, such as the following

2 transportation-related services:

3 (1) Operations and maintenance.

4 (2) Revenue collection.

5 (3) User fee collection or enforcement.

6 (4) Design.

7 (5) Construction.

8 (6) Development and other activities with respect to

9 existing or new transportation facilities that enhance

10 traffic throughput, reduce congestion, improve safety or

11 otherwise manage or improve a transportation facility.

12 "Public-private transportation project." A project for the

13 safe transport of people or goods via one or more modes of

14 transport.

15 "Right-to-Know Law." The act of February 14, 2008 (P.L.6,

16 No.3), known as the Right-to-Know Law.

17 "Solicitation." The process by which the Department of

18 Transportation or a proprietary public entity may elect to

19 procure services under section 9106(b) (relating to approval).

20 "State Adverse Interest Act." The act of July 19, 1957

21 (P.L.1017, No.451), known as the State Adverse Interest Act.

22 "Transportation facility." A proposed or existing road,

23 bridge, tunnel, overpass, ferry, busway, guideway, public

24 transportation facility, vehicle parking facility, port

25 facility, multimodal transportation facility, airport, station,

26 hub, terminal or similar facility used or to be used for the

27 transportation of persons, animals or goods, together with any

28 buildings, structures, parking areas, appurtenances and other

29 property needed to operate the transportation facility. The term

30 includes any improvements or substantial enhancements or

1 modifications to an existing transportation facility.

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

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

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

8 (3) An intergovernmental entity.

9 § 9104. Regulations.

10 (a) Promulgation.--In order to facilitate the implementation
11 of this chapter, the department shall ~~IS AUTHORIZED TO~~ ←
12 promulgate regulations or publish guidelines that include any of ←
13 the following:

14 (1) The process for review of request for solicitations
15 or responses to requests for solicitations issued by the
16 department or a proprietary public entity.

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

19 (3) The type and amount of information that is necessary
20 for adequate review of and response to each state of review
21 of a solicitation.

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

26 (5) Any other provisions which are required under this
27 chapter or which the department determines are appropriate
28 for implementation of this chapter.

29 (b) Temporary regulations.--Notwithstanding any other
30 provision of law and in order to facilitate the prompt

1 implementation of this chapter, any regulation promulgated by
2 the department under this chapter during the two years following
3 the effective date of this section shall be deemed temporary
4 regulations which shall expire no later than three years
5 following the effective date of this section or upon
6 promulgation of final regulations. The temporary regulations
7 shall not be subject to any of the following:

8 (1) Sections 201, 202, 203 and 204 of the act of July
9 31, 1968 (P.L.769, No.240), referred to as the Commonwealth
10 Documents Law.

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

13 § 9105. Project delivery methods.

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

17 (1) Predevelopment agreements leading to other
18 implementing agreements.

19 (2) A design-build agreement.

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

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

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

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

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

27 (8) Any other project delivery method or agreement or
28 combination of methods or agreements that the department
29 determines will serve the public interest.

30 § 9106. Approval.

1 (a) Authorization.--The department or a proprietary public
2 entity, upon approval by the board, is authorized to enter into
3 an agreement with a development entity for the purpose of
4 forming a public-private transportation partnership in
5 accordance with this chapter.

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

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

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

17 (3) Procurements seeking development and finance plans
18 most suitable for the project.

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

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

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

30 (c) Notice.--The department or a proprietary public entity

1 must give adequate public notice of any request for
2 qualifications, request for proposal or other solicitation in a
3 reasonable amount of time prior to any deadline date for
4 submission. The solicitation shall generally set forth the
5 factors that will be evaluated and the manner in which responses
6 will be evaluated.

7 (d) Costs.--

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

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

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

26 (e) Modification and termination rights.--

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

1 (2) A solicitation request may be canceled at any time
2 prior to the time a public-private transportation partnership
3 agreement is executed, if the department or the proprietary
4 public entity determines, on a case-by-case basis, that the
5 action is in the best interest of the Commonwealth or the
6 proprietary public entity. The reasons for cancellation shall
7 be made a part of the file.

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

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

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

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

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

1 (2) The department or a proprietary public entity may
2 conduct discussions with development entities to assure
3 understanding of and responsiveness to the requirements of a
4 request for qualifications.

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

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

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

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

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

1 qualifications.

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

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

18 (2) THE DEPARTMENT OR A PROPRIETARY PUBLIC AND A PRIVATE ←
19 DEVELOPMENT ENTITY MAY AGREE, IN THEIR DISCRETION, TO MAKE
20 PUBLIC ANY INFORMATION DESCRIBED UNDER PARAGRAPH (1) THAT
21 WOULD NOT OTHERWISE BE SUBJECT TO PUBLIC INSPECTION.

22 ~~(2)~~ (3) If the department or a proprietary public entity ←
23 terminates a public-private transportation partnership
24 agreement for default, rejects a development entity or a
25 person on the grounds that the development entity is not
26 responsible or suspends or debars a development entity or a
27 person, the development entity or person shall, upon written
28 request, be provided with a copy of the information contained
29 in the file of the development entity or person maintained by
30 the department, the Office of the Budget and the Department

1 of General Services or a proprietary public entity under a
2 contractor responsibility program.

3 ~~(3)~~ (4) A record, material or data received, prepared, ←
4 used or retained by the department or a proprietary public
5 entity or their employees, consultants or agents in
6 connection with the evaluation of requests for qualifications
7 shall not constitute a public record subject to public
8 inspection under the Right-to-Know Law if, in the reasonable
9 judgment of the department or the proprietary public entity,
10 the inspection would cause substantial competitive harm to
11 the entity or person from whom the information was received.

12 (i) Diversity.--

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

26 (2) The department is authorized to investigate and
27 conduct periodic studies to ascertain whether effective and
28 meaningful action has been taken or will be taken to enhance
29 the representation of diverse groups in the development and
30 operation by development entities of any public-private

1 transportation project in this Commonwealth through the
2 participation of business enterprises utilized by development
3 entities in the development and operating of any public-
4 private transportation project under this chapter and through
5 the provision of goods and services utilized by development
6 entities in the development and operation of any public-
7 private transportation project and through employment
8 opportunities.

9 § 9107. Public-private transportation partnership agreement.

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

12 (1) A description of any planning, development, design,
13 leasing, acquisition or interest in, financing, installation,
14 construction, reconstruction, replacement, expansion,
15 operation, maintenance, improvement, equipping, modification,
16 expansion, enlargement, management, running, control and
17 operation of the transportation facility.

18 (2) The term of the public-private transportation
19 partnership agreement.

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

24 (4) Authorization for the department and the proprietary
25 public entity, or their authorized representatives, to
26 inspect all assets and properties of the transportation
27 facility and all books and records of the development entity
28 relating to the eligible transportation facility to review
29 the development entity's performance under the public-private
30 transportation partnership agreement.

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

3 (6) Procedures for amendment of the public-private
4 transportation partnership agreement.

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

7 (8) Requirements for a private development entity to
8 provide performance and payment bonds, parent company
9 guarantees, letters of credit or other acceptable forms of
10 security in an amount acceptable to the proprietary public
11 entity.

12 (9) A requirement that the transportation facility
13 acquired or constructed is public property that is leased to
14 the development entity and belongs to the proprietary public
15 entity.

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

19 (11) Standards for capital improvement or modification
20 of the transportation facility if they are to be made by the
21 development entity.

22 (12) Standards relating to how payments, if any, are to
23 be made by the proprietary public entity to the development
24 entity, including availability payments, performance-based
25 payment and payments of money and revenue-sharing with the
26 development entity.

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

29 (14) Standards relating to how the parties will allocate
30 costs of development of the project, including any cost

1 overruns.

2 (15) Standards relating to damages to be assessed for
3 nonperformance, specifying remedies available to the parties
4 and dispute resolution procedures.

5 (16) Standards relating to performance criteria and
6 incentives.

7 (17) A requirement that upon termination of the public-
8 private transportation partnership agreement, the
9 transportation facility must be in a state of proper
10 maintenance and repair and shall be returned to the
11 proprietary public entity in satisfactory condition at no
12 further cost to the proprietary public entity.

13 (18) Provisions for law enforcement of the public
14 transportation facility.

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

24 (20) Other terms and provisions as required under this
25 chapter.

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

29 (b) Term.--The department or a proprietary public entity may
30 enter into a public-private transportation partnership agreement

1 with any development entity that includes the provisions under
2 subsection (a) for a term not to exceed 99 years.

3 (c) Public partner.--Nothing in this chapter shall prohibit
4 the department from entering into a partnership agreement with
5 another Commonwealth agency for purposes of forming a
6 transportation partnership in accordance with this chapter.

7 (d) Propriety public entity.--Nothing in this chapter shall
8 prohibit any propriety public entity from entering into a
9 public-private transportation partnership agreement with one or
10 more public entities for purposes of forming a transportation
11 partnership in accordance with this chapter.

12 (e) Environmental costs.--

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

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

28 (ii) The right to elect to undertake the necessary
29 remediation.

30 (iii) The right to participate in the defense of or

1 response to any claim.

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

4 (2) No payment by the department or any other
5 proprietary public entity under this section may be for
6 anything other than, or extend beyond, actual losses,
7 liabilities, damages, penalties, charges, costs and expenses
8 incurred by a private entity to remediate the environmental
9 contamination on, under or emanating from the real property
10 associated with the transportation facility as of the date
11 the development entity assumes responsibility for the
12 transportation facility.

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

22 (1) Specify technology to be used in the transportation
23 facility.

24 (2) Establish circumstances under which the department
25 or the proprietary public entity may receive a share of
26 revenues from the charges.

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

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

1 (5) In the event an operator of a vehicle fails to pay
2 the prescribed toll or user fee at any location on a
3 transportation facility where tolls or user fees are
4 collected by means of an electronic or other automated or
5 remote form of collection, the collection provisions of
6 section 8117 (relating to electronic toll collection) shall
7 apply except that the private entity shall possess all of the
8 rights, roles, limitations and responsibilities of the
9 Pennsylvania Turnpike Commission.

10 (g) Amounts received under a public-private transportation
11 partnership agreement.--The net proceeds received by the
12 department or the proprietary public entity under a public-
13 private transportation partnership agreement shall be available
14 exclusively to provide funding for transportation needs in this
15 Commonwealth. The use of the proceeds or other revenues from the
16 transportation facility shall comply with Federal or State law
17 restricting or limiting the use of revenue from the
18 transportation facility based on its public funding.

19 § 9108. Police powers and violations of law.

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

30 (b) Arrest powers.--All officers authorized by law to make

1 arrests for violations of law in this Commonwealth shall have
2 the same powers, duties and jurisdiction within the limits of a
3 public-private transportation project as they have in their
4 respective areas of jurisdiction. The grant of authority under
5 this section shall not extend to the private offices, buildings,
6 garages and other improvements of a private entity to any
7 greater degree than the police power extends to any other
8 private offices, buildings, garages and other improvements.
9 § 9109. Environmental and other authorizations.

10 (a) No submission of plan under The Administrative Code of
11 1929.--Notwithstanding any other provision of law, neither
12 soliciting nor approving a request for qualification, nor
13 executing a public-private transportation partnership agreement
14 under this chapter shall constitute the submission of a
15 preliminary plan or design to the department under section
16 2002(b) of the act of April 9, 1929 (P.L.177, No.175), known as
17 The Administrative Code of 1929.

18 (b) Environmental authorizations.--A public-private
19 transportation partnership agreement may require that prior to
20 commencing any construction in connection with the development,
21 operation or financing of any eligible transportation facility
22 if the agreement requires environmental authorizations to be
23 obtained, the development entity shall do any of the following:

24 (1) Secure all necessary environmental permits and
25 authorizations and, if specified under the act of May 19,
26 1995 (P.L.4, No.2), known as the Land Recycling and
27 Environmental Remediation Standards Act, obtain the approval
28 of the Department of Environmental Protection.

29 (2) Complete environmental remediation of the site on
30 which the eligible transportation facility is or is to be

1 located, including acts required under any agreement entered
2 into with the Department of Environmental Protection for
3 remediation of the site under the Land Recycling and
4 Environmental Remediation Standards Act.

5 § 9110. Taxation of authorized development entity or entities.

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

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

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

26 (d) Property.--Property used in connection with a public-
27 private transportation project shall be considered public
28 property and shall be exempt from ad valorem property taxes and
29 special assessments levied against property by the Commonwealth
30 or any political subdivision.

1 § 9111. Power of eminent domain.

2 The exercise of the power of eminent domain by any condemnor
3 to acquire property for transportation facility purposes under a
4 public-private transportation partnership agreement shall be
5 considered a taking for a public purpose and not for a private
6 purpose or for private enterprise.

7 § 9112. Sovereign immunity.

8 (a) General rule.--The General Assembly, under section 11 of
9 Article I of the Constitution of Pennsylvania, reaffirms
10 sovereign immunity and, except as otherwise provided under
11 subsection (b), no provision of this chapter shall constitute a
12 waiver of sovereign immunity for the purpose of 1 Pa.C.S. § 2310
13 (relating to sovereign immunity reaffirmed; specific waiver) NOR ←
14 SHALL ANY PROVISION OF THIS CHAPTER CONSTITUTE AN EXTENSION OF
15 SOVEREIGN IMMUNITY WHERE SOVEREIGN IMMUNITY HAS BEEN OR MAY BE
16 WAIVED UNDER 42 PA.C.S. (RELATING TO JUDICIARY AND JUDICIAL
17 PROCEDURE) or otherwise.

18 (b) Exemption.--The General Assembly, under section 11 of
19 Article I of the Constitution of Pennsylvania, waives sovereign
20 immunity as a bar to claims against the department and any other
21 department, commission, authority or agency of the Commonwealth
22 or any authority or political subdivision brought in accordance
23 with sections 9107(e) (relating to public-private transportation
24 partnership agreement) and 9113 (relating to amounts payable by
25 proprietary public entities and specific performance), but only
26 to the extent set forth under this chapter.

27 § 9113. Amounts payable by proprietary public entities and
28 specific performance.

29 (a) Authorization for payments.--The department or any other
30 proprietary public entity is authorized to agree to make

1 payments to a development entity pursuant to a public-private
2 transportation partnership agreement under any of the following:

3 (1) Upon a breach by the proprietary public entity of
4 its representations, covenants, warranties or other
5 obligations under the public-private transportation
6 partnership agreement.

7 (2) If the proprietary public entity takes adverse
8 actions against the development entity in violation of the
9 terms of the public-private transportation partnership
10 agreement.

11 (3) Upon the occurrence of force majeure or other events
12 that have a material adverse effect on the ability of the
13 development entity to perform its obligations under the
14 public-private transportation partnership agreement or to
15 obtain the benefits of the public-private transportation
16 partnership agreement.

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

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

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

25 (3) Amounts necessary to pay the fair market value of
26 the interest, benefits and rights of the development entity
27 and the rights and obligations of the development entity
28 created and made under the public-private transportation
29 partnership agreement.

30 (c) Specific performance.--A proprietary public entity is

1 authorized to agree that specific performance shall be available
2 to a development entity as a remedy for a breach by the
3 proprietary public entity of its representations, covenants,
4 warranties or other obligations under the public-private
5 transportation partnership agreement to the extent set forth in
6 the public-private transportation partnership agreement.
7 § 9114. Design-build development and Separations Act

←

8 APPLICABILITY OF OTHER STATUTES.

←

9 Notwithstanding any other provision of law:

10 (1) Any public-private transportation partnership
11 project undertaken under this chapter may provide design-
12 build, design-build-operate, design-build-operate-maintain,
13 and operate-maintain procurements and other innovative or
14 nontraditional competitive procurement methods for
15 transportation-related infrastructure development.

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

21 (3) ANY PUBLIC-PRIVATE TRANSPORTATION PROJECT
22 UNDERTAKEN, IN WHOLE OR IN PART, BY ANY ENTITY PURSUANT TO
23 THIS CHAPTER IS DEEMED A PROJECT OF PUBLIC WORK AS THAT TERM
24 IS DEFINED IN SECTION 2(5) OF THE ACT OF AUGUST 15, 1961
25 (P.L.987, NO.442), KNOWN AS THE PENNSYLVANIA PREVAILING WAGE
26 ACT, AND ANY ENTITY UNDERTAKING A PUBLIC-PRIVATE
27 TRANSPORTATION PROJECT SHALL BE SUBJECT TO THE REQUIREMENTS
28 OF THE PENNSYLVANIA PREVAILING WAGE ACT AND IS DEEMED A
29 PUBLIC BODY AS THAT TERM IS DEFINED IN SECTION 2(4) OF THE
30 PREVAILING WAGE ACT.

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1 § 9115. Additional procurement provisions.

2 To the extent applicable to the proprietary public entity,
3 the following provisions shall apply to a contract entered into
4 between the department or a proprietary public entity and an
5 authorized development entity related to the development,
6 operation or financing of a public-private transportation
7 project under this chapter:

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

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

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

25 (4) 62 Pa.C.S. § 107 (relating to reciprocal
26 limitations).

27 (5) 62 Pa.C.S. § 531 (relating to debarment or
28 suspension).

29 (6) 62 Pa.C.S. § 541 (relating to approval of accounting
30 system).

1 (7) 62 Pa.C.S. § 551 (relating to right to inspect
2 plant).

3 (8) 62 Pa.C.S. § 552 (relating to right to audit
4 records).

5 (9) 62 Pa.C.S. § 563 (relating to retention of
6 procurement records).

7 § 9116. Adverse interest.

8 (a) Private entity adverse interests.--The following shall
9 apply:

10 (1) Except as provided under paragraph (2), a private
11 entity which submits a response to a request for solicitation
12 under section 9106(b) (relating to approval) or an
13 unsolicited proposal and which is also a State adviser or a
14 State consultant for the department or the Pennsylvania
15 Turnpike Commission shall not be deemed to be in violation of
16 the State Adverse Interest Act while engaging in any of the
17 following activities:

18 (i) Preparing or submitting a response to a request
19 for qualifications.

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

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

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

27 (2) A private entity which submits a response to a
28 request for solicitation or acts as a consultant or an
29 adviser to a private entity which submits a response to a
30 request for solicitation to the department shall be

1 prohibited from consulting or providing advice to the
2 department on the review or approval of the response to the
3 request for solicitations as submitted.

4 (3) A PRIVATE ENTITY WHICH SUBMITS A RESPONSE TO A
5 REQUEST FOR SOLICITATION OR ACTS AS A CONSULTANT OR AN
6 ADVISOR TO A PRIVATE ENTITY WHICH SUBMITS A RESPONSE TO A
7 REQUEST FOR SOLICITATION TO THE BOARD SHALL BE PROHIBITED
8 FROM CONSULTING OR PROVIDING ADVICE TO THE DEPARTMENT ON THE
9 REVIEW OR APPROVAL OF THE RESPONSE TO THE REQUEST FOR
10 SOLICITATIONS SO SUBMITTED.

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

14 "State adviser." As defined in the State Adverse
15 Interest Act.

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

18 § 9117. Application of chapter.

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

25 (b) Nonapplicability.--This chapter shall not apply to
26 agreements entered into exclusively under 62 Pa.C.S. Pt. I
27 (relating to Commonwealth Procurement Code) or any other
28 Commonwealth law relating to the expenditure or receipt of funds
29 by a public entity under contract for construction or services.

30 (c) Prohibition.--Nothing in this chapter shall prohibit a

1 proprietary public entity from entering into a public-private
2 transportation partnership agreement in the capacity of a
3 proprietary public entity pursuant to powers granted exclusively
4 under other Commonwealth statutes.

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

8 § 9118. Federal, Commonwealth, local and private assistance.

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

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

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

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

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

28 (c) Contributions.--Subject to acceptance and agreement
29 between the private entity and the department or a proprietary
30 public entity, any eligible transportation facility may be

1 financed, in whole or in part, by contribution of any funds or
2 property made by the department or a proprietary public entity,
3 a private entity, a proprietary public entity or an affected
4 jurisdiction.

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

9 § 9119. Public-Private Transportation Account.

10 (a) Establishment.--

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

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

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

17 (1) The department shall deposit in the account the
18 following:

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

21 (ii) Repayment of any loans from the account made
22 under this chapter.

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

28 (iv) Subject to the provisions of any public-private
29 transportation partnership agreement, payments made from
30 any insurance proceeds or reserve funds or performance or

1 payment bonds in connection with a transportation
2 facility.

3 (v) Earnings from the investment of the money in the
4 account.

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

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

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

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

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

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

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

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

27 (7) Paying costs of any purpose authorized under this
28 chapter.

29 (d) Amounts received under a public-private transportation
30 partnership agreement.--The net proceeds received under a

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

8 § 9120. Public-Private Transportation Partnership Board.

9 (a) Establishment.--There is established a Public-Private
10 Transportation Partnership Board.

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

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

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

17 (3) Four members appointed by the General Assembly under
18 subsection (c).

19 (4) One member appointed by the Governor under
20 subsection (d).

21 (c) Legislative appointments.--

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

24 (i) One individual appointed by the President pro
25 tempore of the Senate.

26 (ii) One individual appointed by the Minority Leader
27 of the Senate.

28 (iii) One individual appointed by the Speaker of the
29 House of Representatives.

30 (iv) One individual appointed by the Minority Leader

1 of the House of Representatives.

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

4 (3) Legislative appointees shall:

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

7 (ii) Not be a member of the General Assembly or
8 staff of a member of the General Assembly.

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

12 (A) Transportation.

13 (B) Finance.

14 (C) Law.

15 (D) Land use and public planning.

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

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

21 (2) Not hold any other position as an employee of the
22 Commonwealth.

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

25 (i) Transportation.

26 (ii) Finance.

27 (iii) Law.

28 (iv) Land use and public planning.

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

30 (e) Quorum.--Five members of the board shall constitute a

1 quorum.

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

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

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

18 (i) Applicability.--The following acts shall apply to the
19 board:

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

21 (2) The State Adverse Interest Act.

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

25 § 9121. Duties and powers of board.

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

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

28 (2) Adopt guidelines establishing the procedure by which
29 a public entity or private entity may submit a request for
30 evaluation of a solicited or unsolicited proposal to the

1 board, including guidelines necessary for initial project
2 approval and final project approval.

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

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

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

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

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

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

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

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

28 (c) Actions.--Actions by the board are a determination of
29 public policy and public interest and shall not be considered
30 adjudications under 2 Pa.C.S. Chs. 5 Subch. A (relating to

1 practice and procedure of Commonwealth agencies) and 7 Subch. A
2 (relating to judicial review of Commonwealth agency action) and
3 shall not be appealable to the department or a court of law.

4 § 9122. Role of department in operation of board.

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

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

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

17 Section 2. Repeals are as follows:

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

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

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

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

28 (2) This section shall take effect immediately.

29 (3) The remainder of this act shall take effect in 60
30 days.