

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3

Session of 2011

INTRODUCED BY GEIST, MCGEEHAN, AUMENT, BAKER, BENNINGHOFF, BOYD, BROOKS, CALTAGIRONE, CAUSER, CHRISTIANA, CLYMER, P. COSTA, 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, WATSON, EVANKOVICH, TRUITT, KILLION, MURT, HARKINS AND BARBIN, FEBRUARY 14, 2011

AS RE-REPORTED FROM COMMITTEE ON TRANSPORTATION, HOUSE OF REPRESENTATIVES, AS AMENDED, NOVEMBER 15, 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.



1 ~~9102. Findings and declaration of policy.~~
2 ~~9103. Definitions.~~
3 ~~9104. Regulations.~~
4 ~~9105. Project delivery methods.~~
5 ~~9106. Approval.~~
6 ~~9107. Public private transportation partnership agreement.~~
7 ~~9108. Police powers and violations of law.~~
8 ~~9109. Environmental and other authorizations.~~
9 ~~9110. Taxation of authorized development entity or entities.~~
10 ~~9111. Power of eminent domain.~~
11 ~~9112. Sovereign immunity.~~
12 ~~9113. Amounts payable by proprietary public entities and~~
13 ~~specific performance.~~
14 ~~9114. Design build development and applicability of other~~
15 ~~statutes.~~
16 ~~9115. Additional procurement provisions.~~
17 ~~9116. Adverse interest.~~
18 ~~9117. Application of chapter.~~
19 ~~9118. Federal, Commonwealth, local and private assistance.~~
20 ~~9119. Public Private Transportation Account.~~
21 ~~9120. Public Private Transportation Partnership Board.~~
22 ~~9121. Duties and powers of board.~~
23 ~~9122. Role of department in operation of board.~~
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 is authorized to promulgate~~
12 ~~regulations or publish guidelines that include the following:~~

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

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

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

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

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

28 ~~(b) Temporary regulations. Notwithstanding any other~~
29 ~~provision of law and in order to facilitate the prompt~~
30 ~~implementation of this chapter, any regulation promulgated by~~

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

~~7 (1) Sections 201, 202, 203 and 204 of the act of July~~
~~8 31, 1968 (P.L.769, No.240), referred to as the Commonwealth~~
~~9 Documents Law.~~

~~10 (2) The act of June 25, 1982 (P.L.633, No.181), known as~~
~~11 the Regulatory Review Act.~~

~~12 § 9105. Project delivery methods.~~

~~13 The department shall provide for the development or operation~~
~~14 of eligible facilities using a variety of project delivery~~
~~15 methods and forms of agreement. The methods may include:~~

~~16 (1) Predevelopment agreements leading to other~~
~~17 implementing agreements.~~

~~18 (2) A design build agreement.~~

~~19 (3) A design build maintain agreement.~~

~~20 (4) A design build finance operate agreement.~~

~~21 (5) A design build operate maintain agreement.~~

~~22 (6) A design build finance operate maintain agreement.~~

~~23 (7) A concession providing for the private entity to~~
~~24 design, build, operate, maintain, manage or lease an eligible~~
~~25 transportation facility.~~

~~26 (8) Any other project delivery method or agreement or~~
~~27 combination of methods or agreements that the department~~
~~28 determines will serve the public interest.~~

~~29 § 9106. Approval.~~

~~30 (a) Authorization. The department or a proprietary public~~

1 ~~entity, upon approval by the board, is authorized to enter into~~
2 ~~an agreement with a development entity for the purpose of~~
3 ~~forming a public private transportation partnership in~~
4 ~~accordance with this chapter.~~

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

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

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

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

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

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

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

29 ~~(c) Notice. The department or a proprietary public entity~~
30 ~~must give adequate public notice of any request for~~

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

6 ~~(d) Costs.~~

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

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

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

25 ~~(e) Modification and termination rights.~~

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

30 ~~(2) A solicitation request may be canceled at any time~~

1 ~~prior to the time a public private transportation partnership~~
2 ~~agreement is executed, if the department or the proprietary~~
3 ~~public entity determines, on a case by case basis, that the~~
4 ~~action is in the best interest of the Commonwealth or the~~
5 ~~proprietary public entity. The reasons for cancellation shall~~
6 ~~be made a part of the file.~~

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

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

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

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

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

30 ~~(2) The department or a proprietary public entity may~~

1 ~~conduct discussions with development entities to assure~~
2 ~~understanding of and responsiveness to the requirements of a~~
3 ~~request for qualifications.~~

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

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

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

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

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

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

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

17 ~~(2) The department or a proprietary public and a private~~
18 ~~development entity may agree, in their discretion, to make~~
19 ~~public any information described under paragraph (1) that~~
20 ~~would not otherwise be subject to public inspection.~~

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

1 ~~contractor responsibility program.~~

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

11 ~~(i) Diversity.~~

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

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

~~participation of business enterprises utilized by development entities in the development and operating of any public private transportation project under this chapter and through the provision of goods and services utilized by development entities in the development and operation of any public private transportation project and through employment opportunities.~~

~~§ 9107. Public private transportation partnership agreement.~~

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

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

~~(2) The term of the public private transportation partnership agreement.~~

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

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

~~(5) Grounds for termination of the public private~~

1 ~~transportation partnership agreement by the parties.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ~~(b) Term. The department or a proprietary public entity may~~
29 ~~enter into a public private transportation partnership agreement~~
30 ~~with any development entity that includes the provisions under~~

1 ~~subsection (a) for a term not to exceed 99 years.~~

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

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

11 ~~(e) Environmental costs.~~

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

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

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

29 ~~(iii) The right to participate in the defense of or~~
30 ~~response to any claim.~~

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

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

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

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

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

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

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

30 ~~(5) In the event an operator of a vehicle fails to pay~~

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

9 ~~(g) Amounts received under a public private transportation~~
10 ~~partnership agreement. The net proceeds received by the~~
11 ~~department or the proprietary public entity under a public~~
12 ~~private transportation partnership agreement shall be available~~
13 ~~exclusively to provide funding for transportation needs in this~~
14 ~~Commonwealth. The use of the proceeds or other revenues from the~~
15 ~~transportation facility shall comply with Federal or State law~~
16 ~~restricting or limiting the use of revenue from the~~
17 ~~transportation facility based on its public funding.~~
18 ~~§ 9108. Police powers and violations of law.~~

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

29 ~~(b) Arrest powers. All officers authorized by law to make~~
30 ~~arrests for violations of law in this Commonwealth shall have~~

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

~~8 § 9109. Environmental and other authorizations.~~

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

~~17 (b) Environmental authorizations. A public private
18 transportation partnership agreement may require that prior to
19 commencing any construction in connection with the development,
20 operation or financing of any eligible transportation facility
21 if the agreement requires environmental authorizations to be
22 obtained, the development entity shall do any of the following:~~

~~23 (1) Secure all necessary environmental permits and
24 authorizations and, if specified under the act of May 19,
25 1995 (P.L.4, No.2), known as the Land Recycling and
26 Environmental Remediation Standards Act, obtain the approval
27 of the Department of Environmental Protection.~~

~~28 (2) Complete environmental remediation of the site on
29 which the eligible transportation facility is or is to be
30 located, including acts required under any agreement entered~~

~~into with the Department of Environmental Protection for
remediation of the site under the Land Recycling and
Environmental Remediation Standards Act.~~

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

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

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

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

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

~~§ 9111. Power of eminent domain.~~

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

6 ~~§ 9112. Sovereign immunity.~~

7 ~~(a) General rule. The General Assembly, under section 11 of~~
8 ~~Article I of the Constitution of Pennsylvania, reaffirms~~
9 ~~sovereign immunity and, except as otherwise provided under~~
10 ~~subsection (b), no provision of this chapter shall constitute a~~
11 ~~waiver of sovereign immunity for the purpose of 1 Pa.C.S. § 2310~~
12 ~~(relating to sovereign immunity reaffirmed; specific waiver) nor~~
13 ~~shall any provision of this chapter constitute an extension of~~
14 ~~sovereign immunity where sovereign immunity has been or may be~~
15 ~~waived under 42 Pa.C.S. (relating to judiciary and judicial~~
16 ~~procedure) or otherwise.~~

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

26 ~~§ 9113. Amounts payable by proprietary public entities and~~
27 ~~specific performance.~~

28 ~~(a) Authorization for payments. The department or any other~~
29 ~~proprietary public entity is authorized to agree to make~~
30 ~~payments to a development entity pursuant to a public private~~

1 ~~transportation partnership agreement under any of the following:~~

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

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

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

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

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

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

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

29 ~~(c) Specific performance. A proprietary public entity is~~
30 ~~authorized to agree that specific performance shall be available~~

~~to a development entity as a remedy for a breach by the
proprietary public entity of its representations, covenants,
warranties or other obligations under the public private
transportation partnership agreement to the extent set forth in
the public private transportation partnership agreement.~~

~~§ 9114. Design build development and applicability of other
statutes.~~

~~Notwithstanding any other provision of law:~~

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

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

~~(3) Any public private transportation project
undertaken, in whole or in part, by any entity pursuant to
this chapter is deemed a project of public work as that term
is defined in section 2(5) of the act of August 15, 1961
(P.L.987, No.442), known as the Pennsylvania Prevailing Wage
Act, and any entity undertaking a public private
transportation project shall be subject to the requirements
of the Pennsylvania Prevailing Wage Act and is deemed a
public body as that term is defined in section 2(4) of the
Prevailing Wage Act.~~

~~§ 9115. Additional procurement provisions.~~

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

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

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

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

24 ~~(4) 62 Pa.C.S. § 107 (relating to reciprocal~~
25 ~~limitations).~~

26 ~~(5) 62 Pa.C.S. § 531 (relating to debarment or~~
27 ~~suspension).~~

28 ~~(6) 62 Pa.C.S. § 541 (relating to approval of accounting~~
29 ~~system).~~

30 ~~(7) 62 Pa.C.S. § 551 (relating to right to inspect~~

1 ~~plant).~~

2 ~~(8) 62 Pa.C.S. § 552 (relating to right to audit~~
3 ~~records).~~

4 ~~(9) 62 Pa.C.S. § 563 (relating to retention of~~
5 ~~procurement records).~~

6 ~~§ 9116. Adverse interest.~~

7 ~~(a) Private entity adverse interests. The following shall~~
8 ~~apply:~~

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

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

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

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

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

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

~~department on the review or approval of the response to the request for solicitations as submitted.~~

~~(3) A private entity which submits a response to a request for solicitation or acts as a consultant or an advisor to a private entity which submits a response to a request for solicitation to the board shall be prohibited from consulting or providing advice to the department on the review or approval of the response to the request for solicitations so submitted.~~

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

~~"State adviser." As defined in the State Adverse Interest Act.~~

~~"State consultant." As defined in the State Adverse Interest Act.~~

~~§ 9117. Application of chapter.~~

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

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

~~(c) Prohibition. Nothing in this chapter shall prohibit a proprietary public entity from entering into a public private~~

1 ~~transportation partnership agreement in the capacity of a~~
2 ~~proprietary public entity pursuant to powers granted exclusively~~
3 ~~under other Commonwealth statutes.~~

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

7 ~~§ 9118. Federal, Commonwealth, local and private assistance.~~

8 ~~(a) Federal assistance. The following shall apply:~~

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

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

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

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

27 ~~(c) Contributions. Subject to acceptance and agreement~~
28 ~~between the private entity and the department or a proprietary~~
29 ~~public entity, any eligible transportation facility may be~~
30 ~~financed, in whole or in part, by contribution of any funds or~~

1 ~~property made by the department or a proprietary public entity,~~
2 ~~a private entity, a proprietary public entity or an affected~~
3 ~~jurisdiction.~~

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

8 ~~§ 9119. Public Private Transportation Account.~~

9 ~~(a) Establishment.~~

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

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

15 ~~(b) Deposits to account. The following shall apply:~~

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

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

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

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

27 ~~(iv) Subject to the provisions of any public private~~
28 ~~transportation partnership agreement, payments made from~~
29 ~~any insurance proceeds or reserve funds or performance or~~
30 ~~payment bonds in connection with a transportation~~

1 facility.

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

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

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

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

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

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

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

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

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

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

28 ~~(d) Amounts received under a public private transportation~~
29 ~~partnership agreement. The net proceeds received under a~~
30 ~~public private transportation partnership agreement shall be~~

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

7 ~~§ 9120. Public Private Transportation Partnership Board.~~

8 ~~(a) Establishment. There is established a Public Private~~
9 ~~Transportation Partnership Board.~~

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

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

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

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

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

20 ~~(c) Legislative appointments.~~

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

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

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

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

29 ~~(iv) One individual appointed by the Minority Leader~~
30 ~~of the House of Representatives.~~

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

3 ~~(3) Legislative appointees shall:~~

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

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

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

11 ~~(A) Transportation.~~

12 ~~(B) Finance.~~

13 ~~(C) Law.~~

14 ~~(D) Land use and public planning.~~

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

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

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

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

24 ~~(i) Transportation.~~

25 ~~(ii) Finance.~~

26 ~~(iii) Law.~~

27 ~~(iv) Land use and public planning.~~

28 ~~(4) Serve at the pleasure of the Governor.~~

29 ~~(e) Quorum. Five members of the board shall constitute a~~
30 ~~quorum.~~

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

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

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

17 ~~(i) Applicability. The following acts shall apply to the~~
18 ~~board:~~

19 ~~(1) The Right to Know Law.~~

20 ~~(2) The State Adverse Interest Act.~~

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

24 ~~§ 9121. Duties and powers of board.~~

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

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

27 ~~(2) Adopt guidelines establishing the procedure by which~~
28 ~~a public entity or private entity may submit a request for~~
29 ~~evaluation of a solicited or unsolicited proposal to the~~
30 ~~board, including guidelines necessary for initial project~~

1 ~~approval and final project approval.~~

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

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

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

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

15 ~~(b) Powers. The board may do all of the following:~~

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

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

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

27 ~~(c) Actions. Actions by the board are a determination of~~
28 ~~public policy and public interest and shall not be considered~~
29 ~~adjudications under 2 Pa.C.S. Chs. 5 Subch. A (relating to~~
30 ~~practice and procedure of Commonwealth agencies) and 7 Subch. A~~

1 ~~(relating to judicial review of Commonwealth agency action) and~~
2 ~~shall not be appealable to the department or a court of law.~~

3 ~~§ 9122. Role of department in operation of board.~~

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

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

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

16 Section 2. Repeals are as follows:

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

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

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

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

27 ~~(2) This section shall take effect immediately.~~

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

30 CHAPTER



1 THIS CHAPTER RELATES TO PUBLIC-PRIVATE TRANSPORTATION
2 PARTNERSHIPS.

3 § 9102. FINDINGS AND DECLARATION OF POLICY.

4 (A) LEGISLATIVE FINDINGS AND DECLARATIONS.--THE GENERAL
5 ASSEMBLY FINDS, DETERMINES AND DECLARES AS FOLLOWS:

6 (1) THERE IS URGENT PUBLIC NEED TO REDUCE CONGESTION,
7 INCREASE CAPACITY, IMPROVE SAFETY AND ENHANCE ECONOMIC
8 EFFICIENCY OF TRANSPORTATION FACILITIES THROUGHOUT THIS
9 COMMONWEALTH.

10 (2) THE PUBLIC ENTITIES HAVE LIMITED RESOURCES TO FUND
11 THE MAINTENANCE AND EXPANSION OF THEIR RESPECTIVE
12 TRANSPORTATION FACILITIES.

13 (3) TO ENSURE THE NEEDS OF THE PUBLIC ARE ADEQUATELY
14 ADDRESSED, ALTERNATIVE FUNDING MECHANISMS AND STRATEGIES MUST
15 BE DEVELOPED TO SUPPLEMENT EXISTING PUBLIC REVENUE SOURCES.

16 (4) THE IMPOSITION OF USER FEES ESTABLISHES AN
17 ADDITIONAL FUNDING SOURCE FOR TRANSPORTATION INFRASTRUCTURE
18 NEEDS THAT SPREADS THE COSTS ACROSS THOSE WHO MOST BENEFIT
19 FROM THE COMMONWEALTH'S SYSTEM OF ROADS, HIGHWAYS AND
20 BRIDGES.

21 (5) THE IMPOSITION OF USER FEES AND THE DEVELOPMENT,
22 OPERATION, MAINTENANCE, CONSTRUCTION AND IMPROVEMENT OF TOLL
23 ROADS IS A PROPRIETARY FUNCTION WHICH MAY BE DELEGATED TO A
24 PRIVATE ENTITY CONSISTENT WITH SECTION 31 OF ARTICLE III OF
25 THE CONSTITUTION OF PENNSYLVANIA.

26 (6) AUTHORIZING PUBLIC ENTITIES TO ENTER INTO
27 TRANSPORTATION PARTNERSHIP AGREEMENTS WITH PRIVATE ENTITIES
28 AND OTHER PUBLIC ENTITIES FOR THE DEVELOPMENT, OPERATION AND
29 FINANCING OF TRANSPORTATION FACILITIES CAN RESULT IN GREATER
30 AVAILABILITY OF TRANSPORTATION FACILITIES TO THE PUBLIC IN A

1 TIMELY, EFFICIENT AND LESS COSTLY FASHION, THEREBY SERVING
2 THE PUBLIC SAFETY AND WELFARE.

3 (7) ASSURING THAT PUBLIC-PRIVATE TRANSPORTATION PROJECTS
4 ARE DEVELOPED, OPERATED AND FINANCED IN A COST-EFFECTIVE
5 MANNER IS AN IMPORTANT FACTOR IN PROMOTING THE HEALTH, SAFETY
6 AND WELFARE OF THE CITIZENS OF THIS COMMONWEALTH.

7 (B) INTENT.--IT IS THE INTENT OF THIS CHAPTER:

8 (1) TO ENCOURAGE PRIVATE ENTITIES TO INVEST IN THIS
9 COMMONWEALTH BY PARTICIPATING IN THE DEVELOPMENT, OPERATION
10 OR FINANCING OF TRANSPORTATION FACILITIES.

11 (2) TO PROVIDE PUBLIC ENTITIES AND PRIVATE ENTITIES WITH
12 THE AUTHORITY AND FLEXIBILITY IN CONTRACTING FOR THE
13 DEVELOPMENT, OPERATION AND FINANCING OF TRANSPORTATION
14 FACILITIES.

15 (3) TO AUTHORIZE PUBLIC ENTITIES TO CONTRACT WITH
16 PRIVATE AND OTHER PUBLIC ENTITIES TO PROVIDE TRANSPORTATION
17 FACILITIES AND RELATED SERVICES.

18 § 9103. DEFINITIONS.

19 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
20 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
21 CONTEXT CLEARLY INDICATES OTHERWISE:

22 "ACCOUNT." THE PUBLIC-PRIVATE TRANSPORTATION ACCOUNT.

23 "BOARD." THE PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP
24 BOARD.

25 "DEPARTMENT." THE DEPARTMENT OF TRANSPORTATION OF THE
26 COMMONWEALTH.

27 "DEVELOPMENT ENTITY." AN ENTITY WHICH IS A PARTY TO A
28 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT AND WHICH IS
29 ANY OF THE FOLLOWING:

30 (1) A PRIVATE ENTITY.

1 (2) A PUBLIC ENTITY, OTHER THAN THE PUBLIC ENTITY
2 PROVIDING OR IMPROVING ITS OWN TRANSPORTATION FACILITIES.
3 "ELECTRONIC TOLL." A SYSTEM OF COLLECTING TOLLS OR CHARGES
4 WHICH IS CAPABLE OF CHARGING AN ACCOUNT HOLDER FOR THE
5 PRESCRIBED TOLL BY ELECTRONIC TRANSMISSION OF INFORMATION. THE
6 TERM INCLUDES OPEN ROAD TOLLS, VIDEO TOLLS OR OTHER SIMILAR
7 STRUCTURAL OR TECHNOLOGICAL ENHANCEMENTS PERTAINING TO TOLLS.

8 "OFFEROR." A PERSON THAT SUBMITS A PROPOSAL OR A RESPONSE IN
9 ANSWER TO A REQUEST FOR PROPOSALS OR TRANSPORTATION PROJECTS.

10 "PRIVATE ENTITY." A PERSON, ENTITY, GROUP OR ORGANIZATION
11 THAT IS NOT THE FEDERAL GOVERNMENT, THE COMMONWEALTH OR A
12 MUNICIPAL AUTHORITY.

13 "PROPRIETARY PUBLIC ENTITY." A PUBLIC ENTITY WHICH OWNS A
14 PUBLIC-PRIVATE TRANSPORTATION PROJECT AND WHICH IS A PARTY TO A
15 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT.

16 "PUBLIC ENTITY." THE COMMONWEALTH OR A MUNICIPAL AUTHORITY
17 WHICH OWNS A TRANSPORTATION FACILITY. THE TERM DOES NOT INCLUDE
18 THE GENERAL ASSEMBLY AND ITS MEMBERS, OFFICERS OR AGENCIES OR
19 ANY COURT OR OTHER OFFICE OR AGENCY OF THE PENNSYLVANIA JUDICIAL
20 SYSTEM.

21 "PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT." A
22 CONTRACT FOR A TRANSPORTATION PROJECT WHICH TRANSFERS THE RIGHTS
23 FOR THE USE OR CONTROL, IN WHOLE OR IN PART, OF A TRANSPORTATION
24 FACILITY BY A PUBLIC ENTITY TO A DEVELOPMENT ENTITY FOR A
25 DEFINITE TERM DURING WHICH THE DEVELOPMENT ENTITY WILL PROVIDE
26 THE TRANSPORTATION PROJECT TO THE PUBLIC ENTITY IN RETURN FOR
27 THE RIGHT TO RECEIVE ALL OR A PORTION OF THE REVENUE GENERATED
28 FROM THE USE OF THE TRANSPORTATION FACILITY, OR OTHER PAYMENT,
29 SUCH AS THE FOLLOWING TRANSPORTATION-RELATED SERVICES:

30 (1) OPERATIONS AND MAINTENANCE.

1 (2) REVENUE COLLECTION.

2 (3) USER FEE COLLECTION OR ENFORCEMENT.

3 (4) DESIGN.

4 (5) CONSTRUCTION.

5 (6) DEVELOPMENT AND OTHER ACTIVITIES WITH RESPECT TO
6 EXISTING OR NEW TRANSPORTATION FACILITIES THAT ENHANCE
7 TRAFFIC THROUGHPUT, REDUCE CONGESTION, IMPROVE SAFETY OR
8 OTHERWISE MANAGE OR IMPROVE A TRANSPORTATION FACILITY.

9 (7) FINANCING.

10 "PUBLIC-PRIVATE TRANSPORTATION PROJECT." A TRANSPORTATION
11 PROJECT UNDERTAKEN BY A DEVELOPMENT ENTITY PURSUANT TO A PUBLIC-
12 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT.

13 "RESPONSIBLE OFFEROR." AN OFFEROR THAT HAS SUBMITTED A
14 RESPONSIVE PROPOSAL AND THAT POSSESSES THE CAPABILITY TO FULLY
15 PERFORM THE PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT
16 REQUIREMENTS IN ALL RESPECTS AND THE INTEGRITY AND RELIABILITY
17 TO ASSURE GOOD FAITH PERFORMANCE.

18 "RESPONSIVE PROPOSAL." A PROPOSAL THAT CONFORMS IN ALL
19 MATERIAL ASPECTS TO THE REQUIREMENTS AND CRITERIA IN THE REQUEST
20 FOR PROPOSALS.

21 "RIGHT-TO-KNOW LAW." THE ACT OF FEBRUARY 14, 2008 (P.L.6,
22 NO.3), KNOWN AS THE RIGHT-TO-KNOW LAW.

23 "STATE ADVERSE INTEREST ACT." THE ACT OF JULY 19, 1957
24 (P.L.1017, NO.451), KNOWN AS THE STATE ADVERSE INTEREST ACT.

25 "TRANSPORTATION FACILITY." A PROPOSED OR EXISTING ROAD,
26 BRIDGE, TUNNEL, OVERPASS, FERRY, BUSWAY, GUIDEWAY, PUBLIC
27 TRANSPORTATION FACILITY, VEHICLE PARKING FACILITY, PORT
28 FACILITY, MULTIMODAL TRANSPORTATION FACILITY, AIRPORT, STATION,
29 HUB, TERMINAL OR SIMILAR FACILITY USED OR TO BE USED FOR THE
30 TRANSPORTATION OF PERSONS, ANIMALS OR GOODS, TOGETHER WITH ANY

1 BUILDINGS, STRUCTURES, PARKING AREAS, APPURTENANCES, INTELLIGENT
2 TRANSPORTATION SYSTEMS AND OTHER PROPERTY NEEDED TO OPERATE THE
3 TRANSPORTATION FACILITY. THE TERM INCLUDES ANY IMPROVEMENTS OR
4 SUBSTANTIAL ENHANCEMENTS OR MODIFICATIONS TO AN EXISTING
5 TRANSPORTATION FACILITY.

6 "TRANSPORTATION PROJECT." AN UNDERTAKING BY A PRIVATE ENTITY
7 OR A PUBLIC ENTITY, OTHER THAN THE PUBLIC ENTITY PROVIDING OR
8 IMPROVING ITS OWN TRANSPORTATION FACILITIES, TO PROVIDE OR
9 IMPROVE A TRANSPORTATION FACILITY OR TRANSPORTATION-RELATED
10 SERVICE WHICH IS TOTALLY OR PARTIALLY LOCATED WITHIN THIS
11 COMMONWEALTH.

12 § 9104. PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP BOARD.

13 (A) ESTABLISHMENT.--THERE IS ESTABLISHED A BOARD TO BE KNOWN
14 AS THE PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP BOARD.

15 (B) COMPOSITION.--THE BOARD SHALL BE COMPOSED OF THE
16 FOLLOWING MEMBERS:

17 (1) THE SECRETARY OF TRANSPORTATION, WHO SHALL BE THE
18 CHAIRPERSON OF THE BOARD, OR A DESIGNEE WHO SHALL BE AN
19 EMPLOYEE OF THE DEPARTMENT.

20 (2) THE SECRETARY OF THE BUDGET OR A DESIGNEE WHO SHALL
21 BE AN EMPLOYEE OF THE OFFICE OF THE BUDGET.

22 (3) FOUR MEMBERS APPOINTED BY THE GENERAL ASSEMBLY UNDER
23 SUBSECTION (C).

24 (4) ONE MEMBER APPOINTED BY THE GOVERNOR UNDER
25 SUBSECTION (D).

26 (C) LEGISLATIVE APPOINTMENTS.--

27 (1) APPOINTMENTS OF MEMBERS BY THE GENERAL ASSEMBLY
28 SHALL BE MADE AS FOLLOWS:

29 (I) ONE INDIVIDUAL APPOINTED BY THE PRESIDENT PRO
30 TEMPORE OF THE SENATE.

1 (II) ONE INDIVIDUAL APPOINTED BY THE MINORITY LEADER
2 OF THE SENATE.

3 (III) ONE INDIVIDUAL APPOINTED BY THE SPEAKER OF THE
4 HOUSE OF REPRESENTATIVES.

5 (IV) ONE INDIVIDUAL APPOINTED BY THE MINORITY LEADER
6 OF THE HOUSE OF REPRESENTATIVES.

7 (2) LEGISLATIVE APPOINTEES SHALL SERVE AT THE PLEASURE
8 OF THE APPOINTING AUTHORITY.

9 (3) LEGISLATIVE APPOINTEES SHALL:

10 (I) BE CITIZENS OF THIS COMMONWEALTH, OF MATURE
11 JUDGMENT AND BROAD EXPERIENCE.

12 (II) HAVE EXPERTISE OR SUBSTANTIAL EXPERIENCE IN ONE
13 OR MORE OF THE FOLLOWING AREAS:

14 (A) TRANSPORTATION.

15 (B) FINANCE.

16 (C) LAW.

17 (D) LAND USE AND PUBLIC PLANNING.

18 (4) LEGISLATIVE APPOINTEES MAY NOT HOLD ANY OTHER
19 POSITION AS AN ELECTED OFFICIAL OR EMPLOYEE OF THE
20 COMMONWEALTH.

21 (D) GUBERNATORIAL APPOINTMENT.--A MEMBER APPOINTED UNDER
22 SUBSECTION (B) (4):

23 (1) MAY NOT HOLD ANY OTHER POSITION AS AN ELECTED
24 OFFICIAL OR EMPLOYEE OF THE COMMONWEALTH.

25 (2) SHALL HAVE EXPERTISE OR SUBSTANTIAL EXPERIENCE IN
26 ONE OR MORE OF THE FOLLOWING AREAS:

27 (I) TRANSPORTATION.

28 (II) FINANCE.

29 (III) LAW.

30 (IV) LAND USE AND PUBLIC PLANNING.

1 (3) SHALL SERVE AT THE PLEASURE OF THE GOVERNOR.

2 (E) QUORUM.--FIVE MEMBERS OF THE BOARD SHALL CONSTITUTE A
3 QUORUM. THE ADOPTION OF A RESOLUTION OR OTHER ACTION OF THE
4 BOARD SHALL REQUIRE A MAJORITY VOTE OF THE MEMBERS OF THE BOARD.

5 (F) COMPENSATION.--THE MEMBERS OF THE BOARD SHALL BE
6 ENTITLED TO NO COMPENSATION FOR THEIR SERVICES AS MEMBERS OF THE
7 BOARD BUT SHALL BE ENTITLED TO REIMBURSEMENT BY THE DEPARTMENT
8 FOR ALL NECESSARY AND REASONABLE EXPENSES INCURRED IN CONNECTION
9 WITH THE PERFORMANCE OF THEIR DUTIES AS MEMBERS OF THE BOARD.

10 (G) INITIAL APPOINTMENT AND VACANCY.--APPOINTING AUTHORITIES
11 SHALL APPOINT INITIAL BOARD MEMBERS WITHIN 30 DAYS OF THE
12 EFFECTIVE DATE OF THIS SECTION. WHENEVER A VACANCY OCCURS ON THE
13 BOARD, THE APPOINTING AUTHORITY SHALL APPOINT A SUCCESSOR MEMBER
14 WITHIN 30 DAYS OF THE VACANCY.

15 (H) FINANCIAL INTERESTS.--NO MEMBER OF THE BOARD, DURING HIS
16 TERM OF OFFICE SHALL DIRECTLY OR INDIRECTLY OWN, HAVE ANY
17 SIGNIFICANT FINANCIAL INTEREST IN, BE ASSOCIATED WITH OR RECEIVE
18 ANY FEE, COMMISSION, COMPENSATION OR ANYTHING OF VALUE FROM ANY
19 PUBLIC ENTITY OR PRIVATE ENTITY SEEKING TO ENGAGE IN A PUBLIC-
20 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT.

21 (I) APPLICABILITY.--THE FOLLOWING ACTS SHALL APPLY TO THE
22 BOARD:

23 (1) THE RIGHT-TO-KNOW LAW.

24 (2) THE STATE ADVERSE INTEREST ACT.

25 (3) THE PROVISIONS OF 65 PA.C.S. CHS. 7 (RELATING TO
26 OPEN MEETINGS) AND 11 (RELATING TO ETHICS STANDARDS AND
27 FINANCIAL DISCLOSURE).

28 § 9105. DUTIES OF BOARD.

29 (A) DUTIES.--THE BOARD SHALL DO ALL OF THE FOLLOWING:

30 (1) MEET AS OFTEN AS NECESSARY BUT AT LEAST ANNUALLY.

1 (2) ADOPT GUIDELINES ESTABLISHING THE PROCEDURE BY WHICH
2 A PUBLIC ENTITY MAY SUBMIT A REQUEST FOR A TRANSPORTATION
3 PROJECT OR A PRIVATE ENTITY MAY SUBMIT AN UNSOLICITED PLAN
4 FOR A TRANSPORTATION PROJECT TO THE BOARD.

5 (3) CONSULT WITH PERSONS AFFECTED BY PROPOSED
6 TRANSPORTATION PROJECTS.

7 (4) EVALUATE AND, WHERE THE BOARD FINDS THAT THE
8 REQUESTS OR PLANS FOR TRANSPORTATION PROJECTS ARE IN THE BEST
9 INTERESTS OF THE COMMONWEALTH AND A PUBLIC ENTITY, APPROVE
10 THE REQUESTS OR PLANS FOR TRANSPORTATION PROJECTS. THE BOARD
11 SHALL APPROVE A PROPOSED TRANSPORTATION PROJECT BY ADOPTING A
12 RESOLUTION.

13 (5) SUBMIT AN ANNUAL REPORT TO THE GENERAL ASSEMBLY
14 DETAILING ALL TRANSPORTATION PROJECTS EVALUATED AND
15 RESOLUTIONS ADOPTED.

16 (B) ACTIONS.--ACTIONS BY THE BOARD ARE A DETERMINATION OF
17 PUBLIC POLICY AND PUBLIC INTEREST AND SHALL NOT BE CONSIDERED
18 ADJUDICATIONS UNDER 2 PA.C.S. CHS. 5 SUBCH. A (RELATING TO
19 PRACTICE AND PROCEDURE OF COMMONWEALTH AGENCIES) AND 7 SUBCH. A
20 (RELATING TO JUDICIAL REVIEW OF COMMONWEALTH AGENCY ACTION) AND
21 SHALL NOT BE APPEALABLE TO THE DEPARTMENT OR A COURT OF LAW.

22 (C) GENERAL ASSEMBLY.--THE FOLLOWING SHALL APPLY:

23 (1) THE GENERAL ASSEMBLY MAY, WITHIN 30 CALENDAR DAYS OR
24 12 LEGISLATIVE DAYS, WHICHEVER IS LONGER, OF THE ADOPTION OF
25 THE RESOLUTION UNDER SUBSECTION (A) (4), PASS A CONCURRENT
26 RESOLUTION RESCINDING THE APPROVAL OF A TRANSPORTATION
27 PROJECT IF THE TRANSPORTATION FACILITY WHICH IS THE SUBJECT
28 OF THE TRANSPORTATION PROJECT IS OWNED BY THE COMMONWEALTH.

29 (2) IF THE GENERAL ASSEMBLY ADOPTS THE CONCURRENT
30 RESOLUTION WITHIN THE TIME PERIOD UNDER PARAGRAPH (1) BY

1 MAJORITY VOTE IN BOTH THE SENATE AND THE HOUSE OF
2 REPRESENTATIVES, THE TRANSPORTATION PROJECT SHALL BE DEEMED
3 DISAPPROVED.

4 (3) IF THE GENERAL ASSEMBLY FAILS TO ADOPT THE
5 CONCURRENT RESOLUTION BY MAJORITY VOTE IN BOTH THE SENATE AND
6 THE HOUSE OF REPRESENTATIVES WITHIN THE TIME PERIOD UNDER
7 PARAGRAPH (1), THE TRANSPORTATION PROJECT SHALL BE DEEMED
8 APPROVED.

9 § 9106. OPERATION OF BOARD.

10 (A) TECHNICAL ASSISTANCE.--THE DEPARTMENT SHALL SUPPLY ALL
11 NECESSARY ASSISTANCE TO ASSIST THE BOARD IN CARRYING OUT ITS
12 DUTIES AND RESPONSIBILITIES, INCLUDING RETENTION OF LEGAL,
13 FINANCIAL AND TECHNICAL CONSULTANTS TO ASSIST WITH THIS ROLE.

14 (B) ANALYSIS.--THE DEPARTMENT SHALL DEVELOP A DETAILED
15 ANALYSIS OF A REQUEST OR RECOMMENDATION PRIOR TO APPROVAL BY THE
16 BOARD.

17 (C) OVERSIGHT.--IF A TRANSPORTATION PROJECT BECOMES A
18 PUBLIC-PRIVATE TRANSPORTATION PROJECT, THE DEPARTMENT SHALL
19 RETAIN OVERSIGHT AND MONITOR THE PUBLIC-PRIVATE TRANSPORTATION
20 PROJECT, INCLUDING PERIODIC REPORTS TO THE BOARD, AS NECESSARY.

21 § 9107. SOLICITATIONS FOR TRANSPORTATION PROJECTS.

22 A PUBLIC ENTITY MAY SOLICIT TRANSPORTATION PROJECTS THROUGH A
23 REQUEST FOR TRANSPORTATION PROJECTS. THE PUBLIC ENTITY SHALL
24 GIVE PUBLIC NOTICE OF A REQUEST FOR TRANSPORTATION PROJECTS
25 CONSISTENT WITH SECTION 9110(C) (RELATING TO SELECTION OF
26 DEVELOPMENT ENTITIES). OFFERORS SHALL SUBMIT THEIR RESPONSES TO
27 THE PUBLIC ENTITY IN THE FORM AND MANNER REQUIRED BY THE REQUEST
28 FOR TRANSPORTATION PROJECTS. A PUBLIC ENTITY SHALL EVALUATE EACH
29 RESPONSE TO DETERMINE IF THE RESPONSE IS IN THE BEST INTEREST OF
30 THE PUBLIC ENTITY. UPON BEING SATISFIED, THE PUBLIC ENTITY MAY

1 PREPARE AND SUBMIT A REQUEST TO THE BOARD TO REVIEW THE
2 TRANSPORTATION PROJECT IN ACCORDANCE WITH THIS CHAPTER.
3 § 9108. TRANSPORTATION PROJECTS.

4 (A) SUBMISSION.--EXCEPT AS PROVIDED UNDER SUBSECTION (B), A
5 PUBLIC ENTITY WHICH SEEKS TO UNDERTAKE A TRANSPORTATION PROJECT
6 WHICH HAS NOT BEEN PREVIOUSLY APPROVED BY THE BOARD SHALL SUBMIT
7 A REQUEST FOR THE TRANSPORTATION PROJECT TO THE BOARD.

8 (B) EXCEPTION.--THIS SECTION SHALL NOT APPLY TO A
9 TRANSPORTATION PROJECT WHICH A PUBLIC ENTITY IS AUTHORIZED TO
10 UNDERTAKE PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION.
11 § 9109. REQUESTS.

12 A REQUEST MAY BE SOLICITED OR UNSOLICITED AND MAY PROVIDE FOR
13 THE DEVELOPMENT OR OPERATION OF TRANSPORTATION FACILITIES USING
14 A VARIETY OF PROJECT DELIVERY METHODS AND FORMS OF AGREEMENT.
15 THE METHODS MAY INCLUDE:

16 (1) PREDEVELOPMENT AGREEMENTS LEADING TO OTHER
17 IMPLEMENTING AGREEMENTS.

18 (2) A DESIGN-BUILD AGREEMENT.

19 (3) A DESIGN-BUILD-OPERATE AGREEMENT.

20 (4) A DESIGN-BUILD-MAINTAIN AGREEMENT.

21 (5) A DESIGN-BUILD-FINANCE-OPERATE AGREEMENT.

22 (6) A DESIGN-BUILD-OPERATE-MAINTAIN AGREEMENT.

23 (7) A DESIGN-BUILD-FINANCE-OPERATE-MAINTAIN AGREEMENT.

24 (8) AN OPERATE-MAINTAIN AGREEMENT.

25 (9) A CONCESSION PROVIDING FOR THE DEVELOPMENT ENTITY TO
26 DESIGN, BUILD, OPERATE, MAINTAIN, MANAGE OR LEASE A
27 TRANSPORTATION FACILITY.

28 (10) ANY OTHER INNOVATIVE OR NONTRADITIONAL PROJECT
29 DELIVERY METHOD OR AGREEMENT OR COMBINATION OF METHODS OR
30 AGREEMENTS THAT THE PUBLIC ENTITY DETERMINES WILL ADDRESS THE

1 TRANSPORTATION NEEDS OF THE COMMONWEALTH AND THE PUBLIC
2 ENTITY AND SERVE THE PUBLIC INTEREST.

3 § 9110. SELECTION OF DEVELOPMENT ENTITIES.

4 (A) CONDITIONS FOR USE.--IF A TRANSPORTATION PROJECT IS
5 APPROVED UNDER SECTION 9105 (RELATING TO DUTIES OF BOARD), THE
6 PUBLIC ENTITY MAY ENTER INTO A CONTRACT FOR THE TRANSPORTATION
7 PROJECT BY COMPETITIVE SEALED PROPOSALS.

8 (B) REQUEST FOR PROPOSALS.--AFTER RECEIVING THE
9 DETERMINATION REQUIRED BY SUBSECTION (A), A PUBLIC ENTITY SHALL
10 SOLICIT PROPOSALS THROUGH A REQUEST FOR PROPOSALS.

11 (C) PUBLIC NOTICE.--A PUBLIC ENTITY SHALL GIVE PUBLIC NOTICE
12 OF A REQUEST FOR PROPOSALS CONSISTENT WITH REGULATIONS ADOPTED
13 BY THE DEPARTMENT. THE NOTICE SHALL BE GIVEN A REASONABLE TIME
14 PRIOR TO THE DATE SET FOR THE CLOSE OF RECEIPT OF THE PROPOSALS.
15 THE METHOD OF PUBLIC NOTICE MAY INCLUDE ANY OF THE FOLLOWING:

16 (1) ELECTRONIC PUBLICATION WHICH IS ACCESSIBLE TO THE
17 GENERAL PUBLIC.

18 (2) ADVERTISEMENT AS PROVIDED FOR IN 45 PA.C.S. § 306
19 (RELATING TO USE OF TRADE PUBLICATIONS).

20 (3) ISSUANCE OF REQUEST FOR PROPOSALS TO OFFERORS ON THE
21 MAILING LIST OF THE PUBLIC ENTITY.

22 (4) PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION.

23 (5) WHERE PREQUALIFICATION IS A REQUIREMENT OF
24 SUBMITTING A PROPOSAL, NOTIFICATION TO ALL PRIVATE ENTITIES
25 WHO HAVE BEEN PREQUALIFIED BY THE PUBLIC ENTITY.

26 (D) COPIES OF REQUEST FOR PROPOSAL.--COPIES OF A REQUEST FOR
27 PROPOSALS SHALL BE MADE AVAILABLE TO ANY INTERESTED PERSON UPON
28 REQUEST TO THE PUBLIC ENTITY. A PUBLIC ENTITY MAY ESTABLISH
29 PROCEDURES FOR THE DISTRIBUTION OF A REQUEST FOR PROPOSALS,
30 INCLUDING THE IMPOSITION OF A FEE TO REIMBURSE THE PUBLIC ENTITY

1 FOR THE COSTS OF PHOTOCOPYING AND MAILING.

2 (E) RECEIPT OF PROPOSALS.--OFFERORS SHALL SUBMIT THEIR
3 PROPOSALS TO ENSURE THAT THEIR PROPOSALS ARE RECEIVED PRIOR TO
4 THE TIME AND DATE ESTABLISHED FOR RECEIPT OF THE PROPOSALS.
5 PROPOSALS SHALL BE SUBMITTED IN THE FORMAT REQUIRED BY THE
6 REQUEST FOR PROPOSALS. PROPOSALS SHALL BE OPENED SO AS TO AVOID
7 DISCLOSURE OF THEIR CONTENTS TO COMPETING OFFERORS.

8 (F) EVALUATION.--A PUBLIC ENTITY SHALL EVALUATE EACH
9 PROPOSAL TO DETERMINE WHICH PROPOSAL HAS THE BEST VALUE FOR AND
10 IS IN THE BEST INTEREST OF THE PUBLIC ENTITY. IN MAKING THIS
11 DETERMINATION, A PUBLIC ENTITY MAY CONSIDER ANY OF THE
12 FOLLOWING:

13 (1) COST.

14 (2) PRICE.

15 (3) FINANCIAL COMMITMENT.

16 (4) INNOVATIVE FINANCING.

17 (5) BONDING.

18 (6) TECHNICAL, SCIENTIFIC, TECHNOLOGICAL OR
19 SOCIOECONOMIC MERIT.

20 (7) FINANCIAL STRENGTH AND VIABILITY.

21 (8) DESIGN, OPERATION AND FEASIBILITY OF THE
22 TRANSPORTATION PROJECT.

23 (9) PUBLIC REPUTATION, QUALIFICATIONS, INDUSTRY
24 EXPERIENCE AND FINANCIAL CAPACITY OF THE PRIVATE ENTITY.

25 (10) THE ABILITY OF THE TRANSPORTATION PROJECT TO
26 IMPROVE ECONOMIC GROWTH, TO IMPROVE PUBLIC SAFETY, TO REDUCE
27 CONGESTION, TO INCREASE CAPACITY OR TO REHABILITATE,
28 RECONSTRUCT OR EXPAND AN EXISTING TRANSPORTATION FACILITY.

29 (11) THE COMPATIBILITY OF THE PROPOSAL WITH EXISTING
30 LOCAL AND REGIONAL LAND USE PLANS.

1 (12) THE COMMITMENT OF LOCAL COMMUNITIES TO APPROVE LAND
2 USE PLANS IN PREPARATION FOR THE TRANSPORTATION PROJECT.

3 (13) OTHER FACTORS DEEMED APPROPRIATE BY THE PUBLIC
4 ENTITY.

5 (G) WEIGHTED CONSIDERATION.--THE RELATIVE IMPORTANCE OF EACH
6 EVALUATION FACTOR SHALL BE FIXED PRIOR TO OPENING THE PROPOSALS.

7 (H) PARTICIPATION IN EVALUATION.--IF THE PUBLIC ENTITY IS
8 THE COMMONWEALTH, THE DEPARTMENT IS REQUIRED TO INVITE ITS
9 COMPTROLLER TO PARTICIPATE IN THE EVALUATION AS A NONVOTING
10 MEMBER OF ANY EVALUATION COMMITTEE. NO INDIVIDUAL WHO HAS BEEN
11 EMPLOYED BY AN OFFEROR WITHIN THE LAST TWO YEARS MAY PARTICIPATE
12 IN THE EVALUATION OF PROPOSALS.

13 (I) DISCUSSION WITH RESPONSIBLE OFFERORS AND REVISION OF
14 PROPOSALS.--AS PROVIDED IN THE REQUEST FOR PROPOSALS,
15 DISCUSSIONS AND NEGOTIATIONS MAY BE CONDUCTED WITH RESPONSIBLE
16 OFFERORS FOR THE PURPOSE OF CLARIFICATION AND OF OBTAINING BEST
17 AND FINAL OFFERS. RESPONSIBLE OFFERS SHALL BE ACCORDED FAIR AND
18 EQUAL TREATMENT WITH RESPECT TO ANY OPPORTUNITY FOR DISCUSSION
19 AND REVISION OF PROPOSALS. IN CONDUCTING DISCUSSIONS, THERE
20 SHALL BE NO DISCLOSURE OF ANY INFORMATION DERIVED FROM PROPOSALS
21 SUBMITTED BY COMPETING OFFERORS.

22 (J) SELECTION FOR NEGOTIATION.--THE RESPONSIBLE OFFEROR
23 WHOSE PROPOSAL IS DETERMINED IN WRITING TO BE THE BEST VALUE FOR
24 AND IN THE BEST INTERESTS OF THE PUBLIC ENTITY, TAKING INTO
25 CONSIDERATION ALL EVALUATION FACTORS, SHALL BE SELECTED FOR
26 CONTRACT NEGOTIATION.

27 (K) CANCELLATION.--A REQUEST FOR PROPOSALS MAY BE CANCELED
28 AT ANY TIME PRIOR TO THE TIME A PUBLIC-PRIVATE TRANSPORTATION
29 PARTNERSHIP AGREEMENT IS EXECUTED BY ALL PARTIES WHEN IT IS IN
30 THE BEST INTERESTS OF THE PUBLIC ENTITY.

1 (L) AWARD.--UPON REACHING AN AGREEMENT WITH A RESPONSIBLE
2 OFFEROR, A PUBLIC ENTITY SHALL ENTER INTO A PUBLIC-PRIVATE
3 TRANSPORTATION PARTNERSHIP AGREEMENT WITH THE RESPONSIBLE
4 OFFEROR. THE PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT
5 SHALL BE CONSISTENT WITH THE REQUIREMENTS OF THIS CHAPTER. IF
6 AGREEMENT CANNOT BE REACHED WITH THE BEST QUALIFIED RESPONSIBLE
7 OFFEROR, THEN NEGOTIATIONS WILL BE FORMALLY TERMINATED WITH THE
8 OFFEROR. IF PROPOSALS WERE SUBMITTED BY ONE OR MORE OTHER
9 RESPONSIBLE OFFERORS, NEGOTIATIONS MAY BE CONDUCTED WITH THE
10 OTHER RESPONSIBLE OFFEROR OR RESPONSIBLE OFFERORS IN THE ORDER
11 OF THEIR RESPECTIVE QUALIFICATION RANKING. THE CONTRACT MAY BE
12 AWARDED TO THE RESPONSIBLE OFFEROR THEN RANKED AS BEST
13 QUALIFIED.

14 (M) RESOLUTION OF CONTROVERSIES INVOLVING THE
15 COMMONWEALTH.--IF A PROSPECTIVE OFFEROR, OFFEROR OR DEVELOPMENT
16 ENTITY IS AGGRIEVED BY A SELECTION UNDER THIS SECTION AND THE
17 PUBLIC ENTITY OR PROPRIETARY PUBLIC ENTITY IN THE INVITATION OR
18 CONTRACT IS THE COMMONWEALTH, THE PROSPECTIVE OFFEROR, OFFEROR
19 OR DEVELOPMENT ENTITY MAY FILE A PROTEST OR A CLAIM, AS
20 APPROPRIATE, IN ACCORDANCE WITH 62 PA.C.S. CH. 17 (RELATING TO
21 LEGAL AND CONTRACTUAL REMEDIES).

22 (N) RESOLUTION OF CONTROVERSIES NOT INVOLVING THE
23 COMMONWEALTH.--IF A PROSPECTIVE OFFEROR, OFFEROR OR DEVELOPMENT
24 ENTITY IS AGGRIEVED BY A SELECTION UNDER THIS SECTION AND THE
25 PUBLIC ENTITY OR PROPRIETARY PUBLIC ENTITY IN THE INVITATION OR
26 CONTRACT IS AN ENTITY OTHER THAN THE COMMONWEALTH, A PROSPECTIVE
27 OFFEROR, OFFEROR OR DEVELOPMENT ENTITY MAY FILE A PROTEST OR A
28 CLAIM, AS APPROPRIATE, WITH THE COURT OF COMMON PLEAS WHERE THE
29 PUBLIC ENTITY OR PROPRIETARY PUBLIC ENTITY IS LOCATED. THE
30 PROCESSES FOR THE FILING AND RESOLUTION OF PROTESTS AND THE

1 FILING AND RESOLUTION OF CLAIMS, INCLUDING RIGHTS, CONTENTS,
2 TIMING, EVALUATION, DETERMINATION AND REMEDIES, WHICH ARE
3 ESTABLISHED IN 62 PA.C.S. CH. 17, SHALL APPLY INsofar AS THEY
4 ARE PRACTICABLE.

5 § 9111. PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT.

6 (A) AGREEMENT PROVISIONS.--A PUBLIC-PRIVATE TRANSPORTATION
7 PARTNERSHIP AGREEMENT SHALL INCLUDE THE FOLLOWING PROVISIONS:

8 (1) A DESCRIPTION OF ANY PLANNING, DEVELOPMENT, DESIGN,
9 LEASING, ACQUISITION OR INTEREST IN, FINANCING, INSTALLATION,
10 CONSTRUCTION, RECONSTRUCTION, REPLACEMENT, EXPANSION,
11 OPERATION, MAINTENANCE, IMPROVEMENT, EQUIPPING, MODIFICATION,
12 EXPANSION, ENLARGEMENT, MANAGEMENT, RUNNING, CONTROL AND
13 OPERATION OF THE PUBLIC-PRIVATE TRANSPORTATION PROJECT.

14 (2) THE TERM OF THE PUBLIC-PRIVATE TRANSPORTATION
15 PARTNERSHIP AGREEMENT.

16 (3) THE TYPE OF PROPERTY INTEREST OR OTHER RELATIONSHIP
17 THE DEVELOPMENT ENTITY WILL HAVE IN OR WITH RESPECT TO THE
18 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP PROJECT, INCLUDING
19 ACQUISITION OF RIGHTS-OF-WAY AND OTHER PROPERTY INTERESTS
20 THAT MAY BE REQUIRED.

21 (4) AUTHORIZATION FOR THE PROPRIETARY PUBLIC ENTITY OR
22 ITS AUTHORIZED REPRESENTATIVES TO INSPECT ALL ASSETS AND
23 PROPERTIES OF THE PUBLIC-PRIVATE TRANSPORTATION PROJECT AND
24 ALL BOOKS AND RECORDS OF THE DEVELOPMENT ENTITY RELATING TO
25 THE PUBLIC-PRIVATE TRANSPORTATION PROJECT TO REVIEW THE
26 DEVELOPMENT ENTITY'S PERFORMANCE UNDER THE PUBLIC-PRIVATE
27 TRANSPORTATION PARTNERSHIP AGREEMENT.

28 (5) GROUNDS FOR TERMINATION OF THE PUBLIC-PRIVATE
29 TRANSPORTATION PARTNERSHIP AGREEMENT BY THE PARTIES.

30 (6) PROCEDURES FOR AMENDMENT OF THE PUBLIC-PRIVATE

1 TRANSPORTATION PARTNERSHIP AGREEMENT.

2 (7) THE RIGHTS AND REMEDIES AVAILABLE IN THE EVENT OF
3 BREACH, DEFAULT OR DELAY.

4 (8) REQUIREMENTS FOR A DEVELOPMENT ENTITY TO PROVIDE
5 PERFORMANCE AND PAYMENT BONDS, PARENT COMPANY GUARANTEES,
6 LETTERS OF CREDIT OR OTHER ACCEPTABLE FORMS OF SECURITY IN AN
7 AMOUNT ACCEPTABLE TO THE PROPRIETARY PUBLIC ENTITY.

8 (9) A REQUIREMENT THAT OWNERSHIP OF A TRANSPORTATION
9 FACILITY ACQUIRED OR CONSTRUCTED GO TO OR REMAIN WITH THE
10 PROPRIETARY PUBLIC ENTITY.

11 (10) STANDARDS FOR CONSTRUCTION, MAINTENANCE AND
12 OPERATION OF THE PUBLIC-PRIVATE TRANSPORTATION PROJECT IF THE
13 ACTIVITIES ARE TO BE PERFORMED BY THE DEVELOPMENT ENTITY.

14 (11) STANDARDS FOR CAPITAL IMPROVEMENT OR MODIFICATION
15 OF THE PUBLIC-PRIVATE TRANSPORTATION PROJECT IF THEY ARE TO
16 BE MADE BY THE DEVELOPMENT ENTITY.

17 (12) STANDARDS RELATING TO HOW PAYMENTS, IF ANY, ARE TO
18 BE MADE BY THE PROPRIETARY PUBLIC ENTITY TO THE DEVELOPMENT
19 ENTITY, INCLUDING AVAILABILITY PAYMENTS, PERFORMANCE-BASED
20 PAYMENT AND PAYMENTS OF MONEY AND REVENUE-SHARING WITH THE
21 DEVELOPMENT ENTITY.

22 (13) STANDARDS RELATING TO HOW THE PARTIES WILL ALLOCATE
23 AND SHARE MANAGEMENT OF THE RISKS OF THE PUBLIC-PRIVATE
24 TRANSPORTATION PROJECT.

25 (14) STANDARDS RELATING TO HOW THE PARTIES WILL ALLOCATE
26 COSTS OF DEVELOPMENT OF THE PUBLIC-PRIVATE TRANSPORTATION
27 PROJECT, INCLUDING ANY COST OVERRUNS.

28 (15) STANDARDS RELATING TO DAMAGES TO BE ASSESSED FOR
29 NONPERFORMANCE, SPECIFYING REMEDIES AVAILABLE TO THE PARTIES
30 AND DISPUTE RESOLUTION PROCEDURES.

1 (16) STANDARDS RELATING TO PERFORMANCE CRITERIA AND
2 INCENTIVES.

3 (17) A REQUIREMENT THAT UPON TERMINATION OF THE PUBLIC-
4 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT, A
5 TRANSPORTATION FACILITY THAT WAS THE SUBJECT OF THE PUBLIC-
6 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT MUST BE IN A
7 STATE OF PROPER MAINTENANCE AND REPAIR AND SHALL BE RETURNED
8 TO THE PROPRIETARY PUBLIC ENTITY IN SATISFACTORY CONDITION AT
9 NO FURTHER COST TO THE PROPRIETARY PUBLIC ENTITY.

10 (18) PROVISIONS FOR LAW ENFORCEMENT RELATED TO THE
11 PUBLIC-PRIVATE TRANSPORTATION PROJECT.

12 (19) AN OBLIGATION OF THE DEVELOPMENT ENTITY TO OFFER
13 EMPLOYMENT TO ANY EMPLOYEE OF THE PROPRIETARY PUBLIC ENTITY
14 WHO WOULD LOSE EMPLOYMENT DUE TO THE EXECUTION OF THE PUBLIC-
15 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT AND WHO IS IN
16 GOOD STANDING AT THE TIME OF EXECUTION OF THE PUBLIC-PRIVATE
17 TRANSPORTATION PARTNERSHIP AGREEMENT, INCLUDING SALARY,
18 RETIREMENT, HEALTH AND WELFARE AND BENEFITS WHICH ARE
19 SUBSTANTIALLY IDENTICAL TO THE BENEFITS RECEIVED BY THE
20 EMPLOYEES IMMEDIATELY PRIOR TO EXECUTION OF THE PUBLIC-
21 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT FOR THE TERM OF
22 THE COLLECTIVE BARGAINING AGREEMENT OF THOSE EMPLOYEES IN
23 EFFECT.

24 (20) OTHER TERMS AND PROVISIONS AS REQUIRED UNDER THIS
25 CHAPTER OR AGREED TO BY THE DEVELOPMENT ENTITY AND THE
26 PROPRIETARY PUBLIC ENTITY.

27 (B) TERM.--THE PROPRIETARY PUBLIC ENTITY MAY ENTER INTO A
28 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT WITH ANY
29 DEVELOPMENT ENTITY THAT INCLUDES THE PROVISIONS UNDER SUBSECTION
30 (A) FOR A TERM NOT TO EXCEED 99 YEARS.

1 (C) PUBLIC PARTNER.--NOTHING IN THIS CHAPTER SHALL PROHIBIT
2 THE DEPARTMENT FROM ENTERING INTO A PUBLIC-PRIVATE
3 TRANSPORTATION PARTNERSHIP AGREEMENT WITH ANOTHER COMMONWEALTH
4 AGENCY IN ACCORDANCE WITH THIS CHAPTER.

5 (D) PUBLIC ENTITY.--NOTHING IN THIS CHAPTER SHALL PROHIBIT A
6 PUBLIC ENTITY FROM ENTERING INTO A PUBLIC-PRIVATE TRANSPORTATION
7 PARTNERSHIP AGREEMENT WITH ONE OR MORE PUBLIC ENTITIES IN
8 ACCORDANCE WITH THIS CHAPTER.

9 (E) ENVIRONMENTAL COSTS.--

10 (1) A PROPRIETARY PUBLIC ENTITY MAY PROVIDE IN A PUBLIC-
11 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT THAT IT WILL PAY
12 OR REIMBURSE, ON TERMS THAT IT DEEMS APPROPRIATE, THE
13 DEVELOPMENT ENTITY FOR ACTUAL COSTS ASSOCIATED WITH NECESSARY
14 REMEDICATION FOR EXISTING ENVIRONMENTAL CONTAMINANTS LOCATED
15 ON, UNDER OR EMANATING FROM THE REAL PROPERTY ASSOCIATED WITH
16 A PUBLIC-PRIVATE TRANSPORTATION PROJECT AS OF THE DATE THE
17 DEVELOPMENT ENTITY ASSUMES RESPONSIBILITY FOR THE PUBLIC-
18 PRIVATE TRANSPORTATION PROJECT. IF THE PUBLIC-PRIVATE
19 TRANSPORTATION PARTNERSHIP AGREEMENT PROVIDES FOR
20 ENVIRONMENTAL REMEDIATION, THE PUBLIC-PRIVATE TRANSPORTATION
21 PARTNERSHIP AGREEMENT SHALL REQUIRE THAT THE PROPRIETARY
22 PUBLIC ENTITY BE GIVEN:

23 (I) PROMPT NOTICE OF ANY CLAIM AGAINST THE
24 PROPRIETARY PUBLIC ENTITY OR A THIRD PARTY PERTAINING TO
25 THE CONTAMINANTS.

26 (II) THE RIGHT TO ELECT TO UNDERTAKE THE NECESSARY
27 REMEDICATION.

28 (III) THE RIGHT TO PARTICIPATE IN THE DEFENSE OF OR
29 RESPONSE TO ANY CLAIM.

30 (IV) THE RIGHT OF PRIOR APPROVAL BEFORE THE

1 DEVELOPMENT ENTITY MAY SETTLE ANY CLAIM.

2 (2) NO PAYMENT BY A PROPRIETARY PUBLIC ENTITY UNDER THIS
3 SECTION MAY BE FOR ANYTHING OTHER THAN ACTUAL COSTS INCURRED
4 BY A DEVELOPMENT ENTITY TO REMEDIATE THE ENVIRONMENTAL
5 CONTAMINATION ON, UNDER OR EMANATING FROM THE REAL PROPERTY
6 ASSOCIATED WITH THE PUBLIC-PRIVATE TRANSPORTATION PROJECT AS
7 OF THE DATE THE DEVELOPMENT ENTITY ASSUMES RESPONSIBILITY FOR
8 THE PUBLIC-PRIVATE TRANSPORTATION PROJECT.

9 (F) USER FEES.--A PROVISION ESTABLISHING WHETHER USER FEES
10 WILL BE COLLECTED FOR USE OF THE PUBLIC-PRIVATE TRANSPORTATION
11 PROJECT AND THE BASIS BY WHICH ANY USER FEES WILL BE COLLECTED
12 SHALL BE DETERMINED IN THE PUBLIC-PRIVATE TRANSPORTATION
13 PARTNERSHIP AGREEMENT. IF A USER FEE IS PROPOSED AS PART OF THE
14 PUBLIC-PRIVATE TRANSPORTATION PROJECT, A PROPRIETARY PUBLIC
15 ENTITY SHALL INCLUDE PROVISIONS IN THE AGREEMENT THAT AUTHORIZE
16 THE COLLECTION OF USER FEES, TOLLS, FARES OR SIMILAR CHARGES,
17 INCLUDING PROVISIONS THAT:

18 (1) SPECIFY TECHNOLOGY TO BE USED IN THE PUBLIC-PRIVATE
19 TRANSPORTATION PROJECT.

20 (2) ESTABLISH CIRCUMSTANCES UNDER WHICH THE PROPRIETARY
21 PUBLIC ENTITY MAY RECEIVE A SHARE OF REVENUES FROM THE
22 CHARGES.

23 (3) GOVERN THE ENFORCEMENT OF ELECTRONIC TOLLS,
24 INCLUDING PROVISIONS FOR USE OF AVAILABLE TECHNOLOGY.

25 (4) ESTABLISH PAYMENT COLLECTION STANDARDS, INCLUDING
26 PROVISIONS FOR ENFORCEMENT OF NONPAYMENT AND PENALTIES.

27 (5) IN THE EVENT AN OPERATOR OF A VEHICLE FAILS TO PAY
28 THE PRESCRIBED TOLL OR USER FEE AT ANY LOCATION ON A PUBLIC-
29 PRIVATE TRANSPORTATION PROJECT WHERE TOLLS OR USER FEES ARE
30 COLLECTED BY MEANS OF AN ELECTRONIC OR OTHER AUTOMATED OR

1 REMOTE FORM OF COLLECTION, THE COLLECTION PROVISIONS OF
2 SECTION 8117 (RELATING TO ELECTRONIC TOLL COLLECTION) SHALL
3 APPLY EXCEPT THAT THE DEVELOPMENT ENTITY SHALL POSSESS ALL OF
4 THE RIGHTS, ROLES, LIMITATIONS AND RESPONSIBILITIES OF THE
5 PENNSYLVANIA TURNPIKE COMMISSION.

6 (G) AMOUNTS RECEIVED UNDER A PUBLIC-PRIVATE TRANSPORTATION
7 PARTNERSHIP AGREEMENT.--THE NET PROCEEDS RECEIVED BY THE
8 PROPRIETARY PUBLIC ENTITY UNDER A PUBLIC-PRIVATE TRANSPORTATION
9 PARTNERSHIP AGREEMENT SHALL BE AVAILABLE EXCLUSIVELY TO PROVIDE
10 FUNDING FOR TRANSPORTATION NEEDS IN THIS COMMONWEALTH. THE USE
11 OF THE PROCEEDS OR OTHER REVENUES FROM THE PUBLIC-PRIVATE
12 TRANSPORTATION PROJECT SHALL COMPLY WITH FEDERAL OR STATE LAW
13 RESTRICTING OR LIMITING THE USE OF REVENUE FROM THE PUBLIC-
14 PRIVATE TRANSPORTATION PROJECT BASED ON ITS PUBLIC FUNDING.
15 § 9112. RECORDS OF REQUESTS.

16 NOTWITHSTANDING THE RIGHT-TO-KNOW LAW, THE FOLLOWING SHALL
17 APPLY:

18 (1) UPON THE SELECTION OF A DEVELOPMENT ENTITY TO BE A
19 PARTY TO A PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP
20 AGREEMENT, THE IDENTITY OF THE DEVELOPMENT ENTITY SELECTED,
21 THE CONTENTS OF THE RESPONSE OF THE DEVELOPMENT ENTITY TO THE
22 REQUEST FOR PROPOSALS, THE FINAL PROPOSAL SUBMITTED BY THE
23 DEVELOPMENT ENTITY AND THE FORM OF THE PUBLIC-PRIVATE
24 TRANSPORTATION PARTNERSHIP AGREEMENT SHALL BE MADE PUBLIC.
25 ANY FINANCIAL INFORMATION OF A DEVELOPMENT ENTITY THAT WAS
26 REQUESTED IN THE REQUEST FOR PROPOSALS OR DURING DISCUSSIONS
27 AND NEGOTIATIONS TO DEMONSTRATE THE ECONOMIC CAPABILITY OF A
28 DEVELOPMENT ENTITY TO FULLY PERFORM THE REQUIREMENTS OF THE
29 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT SHALL NOT
30 BE SUBJECT TO PUBLIC INSPECTION.

1 (2) A PROPRIETARY PUBLIC AND A DEVELOPMENT ENTITY MAY
2 AGREE, IN THEIR DISCRETION, TO MAKE PUBLIC ANY INFORMATION
3 DESCRIBED UNDER PARAGRAPH (1) THAT WOULD NOT OTHERWISE BE
4 SUBJECT TO PUBLIC INSPECTION.

5 (3) IF A PROPRIETARY PUBLIC ENTITY TERMINATES A PUBLIC-
6 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT FOR DEFAULT,
7 REJECTS A PRIVATE ENTITY ON THE GROUNDS THAT THE PRIVATE
8 ENTITY IS NOT RESPONSIBLE OR SUSPENDS OR DEBARS A DEVELOPMENT
9 ENTITY, THE PRIVATE ENTITY OR DEVELOPMENT ENTITY, AS
10 APPROPRIATE, SHALL, UPON WRITTEN REQUEST, BE PROVIDED WITH A
11 COPY OF THE INFORMATION CONTAINED IN THE FILE OF THE PRIVATE
12 ENTITY OR DEVELOPMENT ENTITY MAINTAINED BY THE PROPRIETARY
13 PUBLIC ENTITY UNDER A CONTRACTOR RESPONSIBILITY PROGRAM.

14 (4) THE FOLLOWING INFORMATION SHALL NOT BE SUBJECT TO
15 THE RIGHT-TO-KNOW LAW:

16 (I) INFORMATION RELATING TO PROPRIETARY INFORMATION,
17 TRADE SECRETS, PATENTS OR EXCLUSIVE LICENSES,
18 ARCHITECTURAL AND ENGINEERING PLANS AND INFORMATION
19 RELATING TO COMPETITIVE MARKETING MATERIALS AND
20 STRATEGIES.

21 (II) SECURITY INFORMATION, INCLUDING RISK PREVENTION
22 PLANS, DETECTION AND COUNTERMEASURES, EMERGENCY
23 MANAGEMENT PLANS, SECURITY AND SURVEILLANCE PLANS,
24 EQUIPMENT AND USAGE PROTOCOLS AND COUNTERMEASURES.

25 (III) RECORDS CONSIDERED NONPUBLIC MATTERS OR
26 INFORMATION BY THE SECURITIES AND EXCHANGE COMMISSION
27 UNDER 17 CFR 200.80 (RELATING TO COMMISSION RECORDS AND
28 INFORMATION).

29 (IV) ANY FINANCIAL INFORMATION DEEMED CONFIDENTIAL
30 BY THE PROPRIETARY PUBLIC ENTITY UPON A SHOWING OF GOOD

1 CAUSE BY AN OFFEROR OR DEVELOPMENT ENTITY.

2 § 9113. USE OF INTELLECTUAL PROPERTY.

3 UNLESS OTHERWISE AGREED AND EXCEPT TO THE EXTENT NOT
4 TRANSFERABLE BY LAW, THE DEPARTMENT OR A PROPRIETARY PUBLIC
5 ENTITY SHALL HAVE THE RIGHT TO USE ALL OR A PORTION OF A
6 SUBMITTED PROPOSAL, INCLUDING THE TECHNOLOGIES, TECHNIQUES,
7 METHODS, PROCESSES AND INFORMATION CONTAINED IN THE PROPOSAL.
8 NOTICE OF NONTRANSFERABILITY BY LAW SHALL BE GIVEN TO THE
9 DEPARTMENT AND THE PROPRIETARY PUBLIC ENTITY IN RESPONSE TO THE
10 REQUEST FOR PROPOSALS.

11 § 9114. POLICE POWERS AND VIOLATIONS OF LAW.

12 (A) ENFORCEMENT OF TRAFFIC LAWS.--TO THE EXTENT THE PUBLIC-
13 PRIVATE TRANSPORTATION PROJECT IS A HIGHWAY, BRIDGE, TUNNEL
14 OVERPASS OR SIMILAR TRANSPORTATION FACILITY FOR MOTOR VEHICLES,
15 75 PA.C.S. (RELATING TO VEHICLES) AND OTHER LAWS OF THIS
16 COMMONWEALTH OR, IF APPLICABLE, ANY LOCAL JURISDICTION SHALL BE
17 THE SAME AS THOSE APPLYING TO CONDUCT ON SIMILAR TRANSPORTATION
18 FACILITIES IN THIS COMMONWEALTH OR THE LOCAL JURISDICTION.
19 PUNISHMENT FOR OFFENSES SHALL BE PRESCRIBED BY LAW FOR CONDUCT
20 OCCURRING ON SIMILAR TRANSPORTATION FACILITIES IN THIS
21 COMMONWEALTH OR THE LOCAL JURISDICTION.

22 (B) ARREST POWERS.--ALL OFFICERS AUTHORIZED BY LAW TO MAKE
23 ARRESTS FOR VIOLATIONS OF LAW IN THIS COMMONWEALTH SHALL HAVE
24 THE SAME POWERS, DUTIES AND JURISDICTION WITHIN THE LIMITS OF A
25 PUBLIC-PRIVATE TRANSPORTATION PROJECT AS THEY HAVE IN THEIR
26 RESPECTIVE AREAS OF JURISDICTION. THE GRANT OF AUTHORITY UNDER
27 THIS SECTION SHALL NOT EXTEND TO THE PRIVATE OFFICES, BUILDINGS,
28 GARAGES AND OTHER IMPROVEMENTS OF A DEVELOPMENT ENTITY TO ANY
29 GREATER DEGREE THAN THE POLICE POWER EXTENDS TO ANY OTHER
30 PRIVATE OFFICES, BUILDINGS, GARAGES AND OTHER IMPROVEMENTS.

1 § 9115. ENVIRONMENTAL AND OTHER AUTHORIZATIONS.

2 (A) THE ADMINISTRATIVE CODE OF 1929.--NOTWITHSTANDING ANY
3 OTHER PROVISION OF LAW, NEITHER SOLICITING NOR APPROVING A
4 REQUEST FOR PROPOSALS, NOR EXECUTING A PUBLIC-PRIVATE
5 TRANSPORTATION PARTNERSHIP AGREEMENT UNDER THIS CHAPTER SHALL
6 CONSTITUTE THE SUBMISSION OF A PRELIMINARY PLAN OR DESIGN TO THE
7 DEPARTMENT UNDER SECTION 2002(B) OF THE ACT OF APRIL 9, 1929
8 (P.L.177, NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF 1929.

9 (B) ENVIRONMENTAL AUTHORIZATIONS.--A PUBLIC-PRIVATE
10 TRANSPORTATION PARTNERSHIP AGREEMENT MAY REQUIRE THAT PRIOR TO
11 COMMENCING ANY CONSTRUCTION IN CONNECTION WITH THE DEVELOPMENT,
12 OPERATION OR FINANCING OF ANY PUBLIC-PRIVATE TRANSPORTATION
13 PROJECT IF THE AGREEMENT REQUIRES ENVIRONMENTAL AUTHORIZATIONS
14 TO BE OBTAINED, THE DEVELOPMENT ENTITY SHALL DO ANY OF THE
15 FOLLOWING:

16 (1) SECURE ALL NECESSARY ENVIRONMENTAL PERMITS AND
17 AUTHORIZATIONS AND, IF SPECIFIED UNDER THE ACT OF MAY 19,
18 1995 (P.L.4, NO.2), KNOWN AS THE LAND RECYCLING AND
19 ENVIRONMENTAL REMEDIATION STANDARDS ACT, OBTAIN THE APPROVAL
20 OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.

21 (2) COMPLETE ENVIRONMENTAL REMEDIATION OF THE SITE ON
22 WHICH THE PUBLIC-PRIVATE TRANSPORTATION PROJECT IS TO BE
23 LOCATED, INCLUDING ACTS REQUIRED UNDER ANY AGREEMENT ENTERED
24 INTO WITH THE DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR
25 REMEDICATION OF THE SITE UNDER THE LAND RECYCLING AND
26 ENVIRONMENTAL REMEDIATION STANDARDS ACT.

27 § 9116. TAXATION OF DEVELOPMENT ENTITY.

28 (A) GENERAL RULE.--TO THE EXTENT THAT REVENUES OR USER FEES
29 RECEIVED BY A DEVELOPMENT ENTITY PURSUANT TO A PUBLIC-PRIVATE
30 TRANSPORTATION PARTNERSHIP AGREEMENT ARE SUBJECT TO A TAX

1 IMPOSED BY A POLITICAL SUBDIVISION PRIOR TO THE EFFECTIVE DATE
2 OF THIS SECTION, THE REVENUES OR USER FEES SHALL CONTINUE TO BE
3 SUBJECT TO THE TAX AND TO FUTURE INCREASES IN THE RATE OF THE
4 TAX.

5 (B) NEW TAXATION BARRED.--AFTER THE EFFECTIVE DATE OF THIS
6 SECTION, NO NEW TAX SHALL BE IMPOSED BY A POLITICAL SUBDIVISION
7 OR THE COMMONWEALTH ON THE REVENUES OR USER FEES RECEIVED BY A
8 DEVELOPMENT ENTITY PURSUANT TO A PUBLIC-PRIVATE TRANSPORTATION
9 PARTNERSHIP AGREEMENT.

10 (C) REALTY TRANSFER TAX.--NO PUBLIC-PRIVATE TRANSPORTATION
11 PARTNERSHIP AGREEMENT, LEASE, CONCESSION, FRANCHISE OR OTHER
12 CONTRACT INVOLVING REAL PROPERTY OF A PUBLIC-PRIVATE
13 TRANSPORTATION PROJECT SHALL BE SUBJECT TO A COMMONWEALTH OR
14 LOCAL REALTY TRANSFER TAX IMPOSED UNDER THE ACT OF DECEMBER 31,
15 1965 (P.L.1257, NO.511), KNOWN AS THE LOCAL TAX ENABLING ACT,
16 THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), KNOWN AS THE TAX REFORM
17 CODE OF 1971, OR A SUCCESSOR STATUTE.

18 (D) PROPERTY.--PROPERTY USED IN CONNECTION WITH A PUBLIC-
19 PRIVATE TRANSPORTATION PROJECT SHALL BE CONSIDERED PUBLIC
20 PROPERTY AND SHALL BE EXEMPT FROM AD VALOREM PROPERTY TAXES AND
21 SPECIAL ASSESSMENTS LEVIED AGAINST PROPERTY BY THE COMMONWEALTH
22 OR ANY POLITICAL SUBDIVISION.

23 § 9117. POWER OF EMINENT DOMAIN.

24 THE EXERCISE OF THE POWER OF EMINENT DOMAIN BY ANY CONDEMNOR
25 TO ACQUIRE PROPERTY FOR PUBLIC-PRIVATE TRANSPORTATION PROJECT
26 PURPOSES UNDER A PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP
27 AGREEMENT SHALL BE CONSIDERED A TAKING FOR A PUBLIC PURPOSE AND
28 NOT FOR A PRIVATE PURPOSE OR FOR PRIVATE ENTERPRISE.

29 § 9118. SOVEREIGN IMMUNITY.

30 UNDER SECTION 11 OF ARTICLE 1 OF THE CONSTITUTION OF

1 PENNSYLVANIA, IT IS DECLARED TO BE THE INTENT OF THE GENERAL
2 ASSEMBLY THAT THE COMMONWEALTH, AND ITS OFFICIALS AND EMPLOYEES
3 AND A MUNICIPAL AUTHORITY, AND ITS OFFICIALS AND EMPLOYEES,
4 ACTING WITHIN THE SCOPE OF THEIR DUTIES, SHALL CONTINUE TO ENJOY
5 SOVEREIGN IMMUNITY AND OFFICIAL IMMUNITY AND REMAIN IMMUNE FROM
6 SUIT EXCEPT AS PROVIDED IN SECTION 9119 (RELATING TO SPECIFIC
7 PERFORMANCE). A CLAIM AGAINST THE COMMONWEALTH AND ITS OFFICIALS
8 AND EMPLOYEES OR MUNICIPAL AUTHORITY AND ITS OFFICIALS AND
9 EMPLOYEES SHALL BE BROUGHT ONLY IN SUCH MANNER AND IN SUCH
10 COURTS AND IN SUCH CASES AS DIRECTED BY THE PROVISION OF SECTION
11 9111(E) (RELATING TO PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP
12 AGREEMENT), 42 PA.C.S. CH. 85 (RELATING TO MATTERS AFFECTING
13 GOVERNMENT UNITS), 62 PA.C.S. CH. 17 (RELATING TO LEGAL AND
14 CONTRACTUAL REMEDIES) OR ANY PROCUREMENT LAW APPLICABLE TO A
15 MUNICIPAL AUTHORITY.

16 § 9119. SPECIFIC PERFORMANCE.

17 A PROPRIETARY PUBLIC ENTITY IS AUTHORIZED TO AGREE THAT
18 SPECIFIC PERFORMANCE SHALL BE AVAILABLE TO A DEVELOPMENT ENTITY
19 AS A REMEDY FOR A BREACH BY THE PROPRIETARY PUBLIC ENTITY OF ITS
20 REPRESENTATIONS, COVENANTS, WARRANTIES OR OTHER OBLIGATIONS
21 UNDER THE PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT TO
22 THE EXTENT SET FORTH IN THE PUBLIC-PRIVATE TRANSPORTATION
23 PARTNERSHIP AGREEMENT.

24 § 9120. ADDITIONAL PROVISIONS.

25 TO THE EXTENT APPLICABLE, ALL PROVISIONS OF LAW SHALL APPLY
26 TO A CONTRACT ENTERED INTO BETWEEN A PROPRIETARY PUBLIC ENTITY
27 AND A DEVELOPMENT ENTITY RELATED TO THE DEVELOPMENT, OPERATION
28 OR FINANCING OF A PUBLIC-PRIVATE TRANSPORTATION PROJECT UNDER
29 THIS CHAPTER. THIS SECTION INCLUDES:

30 (1) 62 PA.C.S. § 107 (RELATING TO RECIPROCAL

1 LIMITATIONS).

2 (2) 62 PA.C.S. § 531 (RELATING TO DEBARMENT OR
3 SUSPENSION).

4 (3) 62 PA.C.S. § 541 (RELATING TO APPROVAL OF ACCOUNTING
5 SYSTEM).

6 (4) 62 PA.C.S. § 551 (RELATING TO RIGHT TO INSPECT
7 PLANT).

8 (5) 62 PA.C.S. § 552 (RELATING TO RIGHT TO AUDIT
9 RECORDS).

10 (6) 62 PA.C.S. § 563 (RELATING TO RETENTION OF
11 PROCUREMENT RECORDS).

12 § 9121. ADVERSE INTEREST.

13 (A) PRIVATE ENTITY ADVERSE INTERESTS.--THE FOLLOWING SHALL
14 APPLY:

15 (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2), A PRIVATE
16 ENTITY WHICH SUBMITS A RESPONSE TO A REQUEST FOR PROPOSALS
17 UNDER SECTION 9110 (RELATING TO SELECTION OF DEVELOPMENT
18 ENTITIES), A REQUEST FOR TRANSPORTATION PROJECTS UNDER
19 SECTION 9107 (RELATING TO SOLICITATIONS FOR TRANSPORTATION
20 PROJECTS) OR AN UNSOLICITED PROPOSAL, AND WHICH IS ALSO A
21 STATE ADVISER OR A STATE CONSULTANT FOR THE DEPARTMENT OR THE
22 PENNSYLVANIA TURNPIKE COMMISSION, SHALL NOT BE DEEMED TO BE
23 IN VIOLATION OF THE STATE ADVERSE INTEREST ACT WHILE ENGAGING
24 IN ANY OF THE FOLLOWING ACTIVITIES:

25 (I) PREPARING OR SUBMITTING A RESPONSE TO A REQUEST
26 FOR PROPOSALS OR TRANSPORTATION PROJECTS.

27 (II) PARTICIPATING IN ANY ACTIVITY WITH THE
28 DEPARTMENT RELATED TO A REQUEST FOR PROPOSALS OR
29 TRANSPORTATION PROJECTS.

30 (III) NEGOTIATING AND ENTERING INTO ANY CONTRACT

1 LEASE OR PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP
2 AGREEMENT WHICH RESULTS FROM A REQUEST FOR PROPOSALS OR
3 TRANSPORTATION PROJECTS.

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 PROPOSALS OR TRANSPORTATION PROJECTS OR ACTS AS A
8 CONSULTANT OR AN ADVISER TO A PRIVATE ENTITY WHICH SUBMITS A
9 RESPONSE TO A REQUEST FOR PROPOSALS OR TRANSPORTATION
10 PROJECTS TO THE DEPARTMENT SHALL BE PROHIBITED FROM
11 CONSULTING OR PROVIDING ADVICE TO THE DEPARTMENT ON THE
12 REVIEW OR APPROVAL OF THE RESPONSE TO THE REQUEST FOR
13 PROPOSALS OR TRANSPORTATION PROJECTS AS SUBMITTED.

14 (3) A PRIVATE ENTITY WHICH SUBMITS A RESPONSE TO A
15 REQUEST FOR PROPOSALS OR TRANSPORTATION PROJECTS OR ACTS AS A
16 CONSULTANT OR AN ADVISOR TO A PRIVATE ENTITY WHICH SUBMITS A
17 RESPONSE TO A REQUEST FOR PROPOSALS OR TRANSPORTATION
18 PROJECTS TO THE BOARD SHALL BE PROHIBITED FROM CONSULTING OR
19 PROVIDING ADVICE TO THE DEPARTMENT ON THE REVIEW OR APPROVAL
20 OF THE RESPONSE TO THE REQUEST FOR PROPOSALS OR
21 TRANSPORTATION PROJECTS SO SUBMITTED.

22 (B) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
23 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
24 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

25 "STATE ADVISER." AS DEFINED IN SECTION 2(7) OF THE ACT OF
26 JULY 19, 1957 (P.L.1017, NO.451), KNOWN AS THE STATE ADVERSE
27 INTEREST ACT.

28 "STATE CONSULTANT." AS DEFINED IN SECTION 2(9) OF THE ACT OF
29 JULY 19, 1957 (P.L.1017, NO.451), KNOWN AS THE STATE ADVERSE
30 INTEREST ACT.

1 § 9122. FEDERAL, STATE, LOCAL AND PRIVATE ASSISTANCE.

2 (A) FEDERAL ASSISTANCE.--THE FOLLOWING SHALL APPLY:

3 (1) THE DEPARTMENT OR A PROPRIETARY PUBLIC ENTITY MAY
4 ACCEPT FROM THE UNITED STATES OR ANY OF ITS AGENCIES FUNDS
5 THAT ARE AVAILABLE TO THE COMMONWEALTH FOR CARRYING OUT THIS
6 CHAPTER, WHETHER THE FUNDS ARE MADE AVAILABLE BY GRANT, LOAN,
7 LOAN GUARANTEE OR OTHERWISE.

8 (2) THE DEPARTMENT OR A PROPRIETARY PUBLIC ENTITY IS
9 AUTHORIZED TO ASSENT TO ANY FEDERAL REQUIREMENTS, CONDITIONS
10 OR TERMS OF ANY FEDERAL FUNDING ACCEPTED BY THE DEPARTMENT OR
11 A PROPRIETARY PUBLIC ENTITY UNDER THIS SECTION.

12 (3) THE DEPARTMENT OR A PROPRIETARY PUBLIC ENTITY MAY
13 ENTER INTO AGREEMENTS OR OTHER ARRANGEMENTS WITH THE UNITED
14 STATES OR ANY OF ITS AGENCIES AS MAY BE NECESSARY FOR
15 CARRYING OUT THE PURPOSES OF THIS CHAPTER.

16 (B) ACCEPTANCE OF GRANTS AND DONATIONS.--THE DEPARTMENT OR A
17 PROPRIETARY PUBLIC ENTITY MAY ACCEPT FROM ANY SOURCE ANY GRANT,
18 DONATION, GIFT OR OTHER FORM OF CONVEYANCE OF LAND, MONEY OR
19 OTHER REAL, PERSONAL OR MIXED PROPERTY OR OTHER ITEM OF VALUE
20 FOR CARRYING OUT THE PURPOSE OF THIS CHAPTER.

21 (C) CONTRIBUTIONS.--SUBJECT TO ACCEPTANCE AND AGREEMENT
22 BETWEEN THE DEVELOPMENT ENTITY AND A PROPRIETARY PUBLIC ENTITY,
23 ANY PUBLIC-PRIVATE TRANSPORTATION PROJECT MAY BE FINANCED, IN
24 WHOLE OR IN PART, BY CONTRIBUTION OF ANY FUNDS OR PROPERTY MADE
25 BY A PROPRIETARY PUBLIC ENTITY, A DEVELOPMENT ENTITY OR AN
26 AFFECTED JURISDICTION.

27 (D) COMBINATION OF FUNDS.--THE DEPARTMENT OR PROPRIETARY
28 PUBLIC ENTITY MAY COMBINE FEDERAL, STATE, LOCAL AND PRIVATE
29 FUNDS TO FINANCE A PUBLIC-PRIVATE TRANSPORTATION PROJECT UNDER
30 THIS CHAPTER.

1 § 9123. PUBLIC-PRIVATE TRANSPORTATION ACCOUNT.

2 (A) ESTABLISHMENT.--

3 (1) THERE IS ESTABLISHED WITHIN THE MOTOR LICENSE FUND A
4 SEPARATE ACCOUNT TO BE KNOWN AS THE PUBLIC-PRIVATE
5 TRANSPORTATION ACCOUNT.

6 (2) MONEY IN THE ACCOUNT SHALL BE USED ONLY FOR THE
7 PURPOSES ENUMERATED UNDER SUBSECTION (C).

8 (B) DEPOSITS TO ACCOUNT.--THE FOLLOWING SHALL APPLY:

9 (1) THE DEPARTMENT SHALL DEPOSIT IN THE ACCOUNT THE
10 FOLLOWING:

11 (I) ALL MONEY RECEIVED BY THE DEPARTMENT PURSUANT TO
12 THE TERMS OF A PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP
13 AGREEMENT UNDER WHICH THE DEPARTMENT IS THE PROPRIETARY
14 PUBLIC ENTITY.

15 (II) REPAYMENT OF ANY LOANS FROM THE ACCOUNT MADE
16 UNDER THIS CHAPTER.

17 (III) SUBJECT TO THE PROVISIONS OF ANY PUBLIC-
18 PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT UNDER WHICH
19 THE DEPARTMENT IS THE PROPRIETARY PUBLIC ENTITY, MONETARY
20 DAMAGES AND OTHER AMOUNTS FOR FAILURE BY A DEVELOPMENT
21 ENTITY TO COMPLY WITH THE TERMS OF THE PUBLIC-PRIVATE
22 TRANSPORTATION PARTNERSHIP AGREEMENT.

23 (IV) SUBJECT TO THE PROVISIONS OF ANY PUBLIC-PRIVATE
24 TRANSPORTATION PARTNERSHIP AGREEMENT UNDER WHICH THE
25 DEPARTMENT IS THE PROPRIETARY PUBLIC ENTITY, PAYMENTS
26 MADE FROM ANY INSURANCE PROCEEDS OR RESERVE FUNDS OR
27 PERFORMANCE OR PAYMENT BONDS IN CONNECTION WITH A PUBLIC-
28 PRIVATE TRANSPORTATION PROJECT.

29 (V) EARNINGS FROM THE INVESTMENT OF THE MONEY IN THE
30 ACCOUNT.

1 (2) THE SECRETARY OF THE BUDGET SHALL ESTABLISH ANY
2 RESTRICTED ACCOUNTS WITHIN THE ACCOUNT AS THE SECRETARY DEEMS
3 NECESSARY FOR THE PROPER ADMINISTRATION OF THE ACCOUNT.

4 (3) ALL MONEY RELATED TO ANY PUBLIC-PRIVATE
5 TRANSPORTATION PARTNERSHIP AGREEMENT IN WHICH THE DEPARTMENT
6 IS NOT THE PROPRIETARY PUBLIC ENTITY SHALL NOT BE HELD IN THE
7 ACCOUNT, BUT SHALL BE HELD BY THE PROPRIETARY PUBLIC ENTITY
8 OR ITS AGENT.

9 (C) APPROPRIATION.--THE FUNDS IN THE ACCOUNT ARE
10 CONTINUOUSLY APPROPRIATED TO THE DEPARTMENT FOR THE FOLLOWING
11 PURPOSES:

12 (1) PAYING THE AMOUNTS AS THE DEPARTMENT MAY BE REQUIRED
13 TO REPAY THE FEDERAL HIGHWAY ADMINISTRATION.

14 (2) PAYING ALL AMOUNTS DESIGNATED BY THE DEPARTMENT AS
15 REQUIRED FOR REPAYMENT OR DEFEASANCE OF OUTSTANDING BONDS.

16 (3) PAYING COSTS OF MAINTENANCE, OPERATING AND FINANCING
17 OF TRANSPORTATION FACILITIES IN THIS COMMONWEALTH WHICH ARE
18 AVAILABLE FOR USE BY THE PUBLIC, INCLUDING THE COSTS OF
19 INSURANCE OR RESERVES AGAINST RISKS OF CONTINGENCIES.

20 (4) PAYING EXPENSES INCURRED UNDER OR IN CONNECTION WITH
21 ANY PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT BY
22 THE DEPARTMENT, INCLUDING PROFESSIONAL FEES AND EXPENSES.

23 (5) PAYING THE COSTS OF THE DEPARTMENT RELATING TO
24 PERFORMING AND ADMINISTERING DUTIES UNDER THIS CHAPTER.

25 (6) PAYING ALL EXPENSES APPROVED BY THE BOARD FOR ITS
26 COSTS INCURRED TO PERFORM ITS DUTIES, INCLUDING PAYING
27 PROFESSIONAL FEES AND EXPENSES.

28 (7) PAYING COSTS OF ANY PURPOSE AUTHORIZED UNDER THIS
29 CHAPTER.

30 (D) AMOUNTS RECEIVED.--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 PUBLIC-PRIVATE TRANSPORTATION PROJECT SHALL BE
5 IN ACCORD WITH FEDERAL OR STATE LAW RESTRICTING OR LIMITING THE
6 USE OF REVENUE FROM THE PUBLIC-PRIVATE TRANSPORTATION PROJECT
7 BASED ON ITS PUBLIC FUNDING.

8 § 9124. PENNSYLVANIA TURNPIKE COMMISSION.

9 THE PENNSYLVANIA TURNPIKE COMMISSION MAY NOT ENTER INTO A
10 PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT IN THE
11 CAPACITY OF A PROPRIETARY PUBLIC ENTITY WITH RESPECT TO GRANTING
12 SUBSTANTIAL OVERSIGHT AND CONTROL OVER THE TURNPIKE MAINLINE TO
13 ANOTHER ENTITY UNLESS SPECIFIC AUTHORITY IS GRANTED THROUGH AN
14 ACT OF LAW PASSED BY THE GENERAL ASSEMBLY. HOWEVER, THIS SHALL
15 NOT RESTRICT THE PENNSYLVANIA TURNPIKE COMMISSION FROM ENTERING
16 INTO A PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT UNDER
17 THIS CHAPTER OR UNDER OTHER STATUTES WHICH DOES NOT INVOLVE
18 GRANTING SUBSTANTIAL OVERSIGHT AND CONTROL OVER THE TURNPIKE
19 MAINLINE TO ANOTHER ENTITY.

20 § 9125. REGULATIONS.

21 (A) DEPARTMENT.--IN ORDER TO FACILITATE THE IMPLEMENTATION
22 OF THIS CHAPTER, THE DEPARTMENT IS AUTHORIZED TO PROMULGATE
23 REGULATIONS OR PUBLISH GUIDELINES THAT INCLUDE THE FOLLOWING:

24 (1) THE PROCESS FOR REVIEW OF A REQUEST FOR PROPOSALS OR
25 TRANSPORTATION PROJECTS OR RESPONSES TO REQUESTS FOR
26 PROPOSALS OR TRANSPORTATION PROJECTS ISSUED BY A PUBLIC
27 ENTITY.

28 (2) THE PROCESS FOR RECEIPT AND REVIEW OF AND RESPONSE
29 TO COMPETING RESPONSES TO REQUESTS FOR PROPOSALS OR
30 TRANSPORTATION PROJECTS.

1 (3) THE TYPE AND AMOUNT OF INFORMATION THAT IS NECESSARY
2 FOR ADEQUATE REVIEW OF AND RESPONSE TO EACH STAGE OF REVIEW
3 OF A PROPOSAL OR TRANSPORTATION PROJECT.

4 (4) ANY OTHER PROVISIONS WHICH ARE REQUIRED UNDER THIS
5 CHAPTER OR WHICH THE DEPARTMENT DETERMINES ARE APPROPRIATE
6 FOR IMPLEMENTATION OF THIS CHAPTER.

7 (B) TEMPORARY REGULATIONS.--NOTWITHSTANDING ANY OTHER
8 PROVISION OF LAW, ANY REGULATION PROMULGATED BY THE DEPARTMENT
9 UNDER THIS CHAPTER DURING THE TWO YEARS FOLLOWING THE EFFECTIVE
10 DATE OF THIS SECTION SHALL BE DEEMED TEMPORARY REGULATIONS WHICH
11 SHALL EXPIRE NO LATER THAN THREE YEARS FOLLOWING THE EFFECTIVE
12 DATE OF THIS SECTION OR UPON PROMULGATION OF FINAL REGULATIONS.
13 THE TEMPORARY REGULATIONS SHALL NOT BE SUBJECT TO ANY OF THE
14 FOLLOWING:

15 (1) SECTIONS 201, 202, 203 AND 204 OF THE ACT OF JULY
16 31, 1968 (P.L.769, NO.240), REFERRED TO AS THE COMMONWEALTH
17 DOCUMENTS LAW.

18 (2) THE ACT OF JUNE 25, 1982 (P.L.633, NO.181), KNOWN AS
19 THE REGULATORY REVIEW ACT.

20 SECTION 2. REPEALS ARE AS FOLLOWS:

21 (1) THE GENERAL ASSEMBLY DECLARES THAT THE REPEAL UNDER
22 PARAGRAPH (2) IS NECESSARY TO EFFECTUATE THE ADDITION OF 74
23 PA.C.S. CH. 91.

24 (2) SECTION 3 OF THE ACT OF MAY 29, 1945 (P.L.1108,
25 NO.402), REFERRED TO AS THE LIMITED ACCESS HIGHWAY LAW, IS
26 REPEALED INSOFAR AS IT IS INCONSISTENT WITH THE ADDITION OF
27 74 PA.C.S. CH. 91.

28 SECTION 3. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

29 (1) THE ADDITION OF 74 PA.C.S. §§ 9103, 9104, 9105, 9106
30 AND 9125 SHALL TAKE EFFECT IMMEDIATELY.

1 (2) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.

2 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60

3 DAYS.