
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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INTRODUCED BY QUINN, COX, SAYLOR, ZIMMERMAN AND STRUZZI,
JANUARY 28, 2019

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JANUARY 28, 2019

AN ACT

1 Establishing the Public-Private Partnership Infrastructure
2 Board; providing for solicitation of public-private projects
3 and for public-private agreements; and establishing the
4 Public-Private Account.

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12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Short title.

15 This act shall be known and may be cited as the Public-
16 Private Partnership Infrastructure Act.

17 Section 2. Definitions.

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

21 "Board." The Public-Private Partnership Infrastructure Board
22 established under section 3.

23 "Department." The Department of Community and Economic
24 Development of the Commonwealth.

25 "Development entity." An entity that is a party to a public-
26 private agreement and is any of the following:

27 (1) A private entity.

28 (2) A public entity, other than the public entity
29 providing or improving its own facilities or infrastructure
30 under the applicable public-private agreement.

1 "Offeror." A person that submits a proposal, unsolicited
2 proposal or a response in answer to a request for proposals or
3 request for infrastructure projects.

4 "Political subdivision." A county, city, borough,
5 incorporated town, township, school district, vocational school,
6 county institution district, and an authority, entity or body
7 organized by any of them in this Commonwealth.

8 "Predevelopment costs." Costs for planning or assessing the
9 viability of a public-private project, including costs
10 associated with:

11 (1) Developing and obtaining the approval from the board
12 for a public-private project.

13 (2) Project planning, feasibility studies, economic
14 assessments, cost-benefit analyses, public benefit studies
15 and value-for-money analyses.

16 (3) Financial and legal planning, including the
17 identification of funding and financing options.

18 (4) Assessment of the impacts of potential projects on
19 the surrounding area, including the effect on communities,
20 the environment, the workforce, wages and benefits, and
21 assessment of infrastructure vulnerability and resilience.

22 (5) Public outreach and community engagement.

23 (6) Flexible staff, external advisors, convening
24 potential investment partners and legal costs.

25 "Preferred proposer." A responsible offeror selected by a
26 public entity to enter into a public-private agreement, interim
27 agreement or predevelopment agreement.

28 "Private entity." An individual, corporation, general
29 partnership, limited liability company, limited partnership,
30 joint venture, business trust, public benefit corporation,

1 nonprofit entity or other business entity, group or organization
2 that is not the Federal Government, the Commonwealth or a public
3 entity.

4 "Proprietary public entity." A public entity that owns a
5 public-private project and is a party to a public-private
6 agreement.

7 "Public entity." A Commonwealth agency, a State-related
8 institution as defined in 62 Pa.C.S. § 103 (relating to
9 definitions), a political subdivision or an authority created by
10 statute and that owns public infrastructure. The term does not
11 include the General Assembly and its members, officers or
12 agencies.

13 "Public infrastructure." A building, facility or other
14 public infrastructure, including, but not limited to, a school,
15 college, library, court, hospital, health care facility,
16 laboratory, research facility, public safety facility, jail,
17 correction facility, office, dam, levee, water system, waste
18 treatment facility, energy generating facility or
19 telecommunication facility that a public entity chooses to
20 procure under this act, and excluding any transportation project
21 as defined in 74 Pa.C.S. § 9102 (relating to definitions). The
22 term includes:

23 (1) functionally related equipment or supplies and a
24 subordinate facility; and

25 (2) land and any real property rights appurtenant to
26 land with respect to the building, facility or other public
27 infrastructure.

28 "Public-private agreement." An agreement between a public
29 entity and a development entity establishing the obligations and
30 rights of both parties with respect to a public-private project.

1 "Public-private project." An undertaking by a development
2 entity under a public-private agreement to provide or improve
3 public infrastructure or a public infrastructure-related service
4 that is totally or partially located within this Commonwealth.

5 The term includes the following:

6 (1) Design.

7 (2) Construction.

8 (3) Financing.

9 (4) Operations.

10 (5) Maintenance.

11 (6) An infrastructure project provided to the public
12 entity by the development entity and in return for the right
13 to receive all or a portion of the revenue generated from the
14 use of the public infrastructure or other payment.

15 (7) User fee collection or enforcement.

16 (8) Brownfield acquisition, including a land swap or
17 value-capture project.

18 (9) Development and any other activity with respect to
19 an existing or new public infrastructure facility that
20 enhances and improves the public infrastructure facility.

21 (10) Private development and other activity procured in
22 connection with a public infrastructure project on public or
23 private property or procured by a public entity to further
24 the public entity's economic development goals.

25 "Request for infrastructure projects." A request by a public
26 entity to the board for approval of a public-private project.

27 "Responsible offeror." An offeror that has submitted a
28 responsive proposal and possesses the capability to fully
29 perform the public-private agreement requirements in good faith.

30 "Responsive proposal." A proposal or unsolicited proposal

1 that conforms in all material aspects to the requirements and
2 criteria in a request for unsolicited proposals or a request for
3 proposals issued by the department or a public entity.

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

6 "State-supported project." A public infrastructure project
7 that is funded or financed by the Commonwealth and exceeds
8 \$250,000,000 in total construction and life-cycle costs.

9 Section 3. Public-Private Partnership Infrastructure Board.

10 (a) Establishment.--The Public-Private Partnership
11 Infrastructure Board is established.

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

14 (1) The Secretary of Community and Economic Development,
15 who must be the chairperson of the board, or a designee who
16 must be an employee of the department.

17 (2) The Secretary of the Budget or a designee who must
18 be an employee of the Office of the Budget.

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

21 (4) One member appointed by the Governor.

22 (c) Legislative appointments.--Appointments of members by
23 the General Assembly shall be made as follows:

24 (1) One individual shall be appointed by the President
25 pro tempore of the Senate.

26 (2) One individual shall be appointed by the Minority
27 Leader of the Senate.

28 (3) One individual may be appointed by the Speaker of
29 the House of Representatives.

30 (4) One individual may be appointed by the Minority

1 Leader of the House of Representatives.

2 (d) Requirements.--A member appointed by either the General
3 Assembly or the Governor:

4 (1) May not hold any other position as an elected
5 official or employee of the Commonwealth.

6 (2) Must be a resident of this Commonwealth and have
7 expertise or substantial experience in any of the following
8 areas:

9 (i) Public infrastructure.

10 (ii) Buildings or facilities development or
11 management.

12 (iii) Infrastructure finance.

13 (iv) Infrastructure, real estate or environmental
14 law.

15 (v) Land use and public planning.

16 (3) Shall serve at the pleasure of the appointing
17 authority.

18 (e) Quorum.--A majority of the board shall constitute a
19 quorum. The adoption of a resolution or other action of the
20 board shall require a quorum.

21 (f) Compensation.--The members of the board may not receive
22 compensation for their services as members of the board but
23 shall be entitled to reimbursement by the department for all
24 necessary and reasonable expenses incurred in connection with
25 the performance of their duties as members of the board.

26 (g) Initial appointment and vacancy.--Appointing authorities
27 shall appoint initial board members within 30 days of the
28 effective date of this section. Whenever a vacancy occurs on the
29 board, the appointing authority shall appoint a successor member
30 within 30 days of the vacancy.

1 (h) Financial interests.--

2 (1) No member of the board, during the member's term of
3 office, may directly or indirectly own, have any significant
4 financial interest in, be associated with or receive a fee,
5 commission, compensation or anything of value from a public
6 entity or private entity seeking to engage in a public-
7 private agreement.

8 (2) The provisions of this subsection shall not apply to
9 the salary of a Commonwealth employee.

10 Section 4. Duties of board.

11 (a) Duties.--The board shall:

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

13 (2) Adopt guidelines establishing the procedure by which
14 a public entity may submit a request for a public-private
15 project or a private entity may submit an unsolicited
16 proposal for a public-private project to the department or a
17 public entity.

18 (3) Consult with persons affected by proposed public-
19 private projects.

20 (4) Evaluate and, where the board finds that the request
21 or plan for a public-private project is in the best interest
22 of this Commonwealth and a public entity, approve the request
23 or plan for the public-private project.

24 (5) The board shall approve a proposed public-private
25 project by adopting a resolution. The board may not revoke an
26 approval granted for a public-private project unless the
27 scope of the approved public-private project is materially
28 altered or modified prior to the public entity entering into
29 the public-private agreement.

30 (6) Submit an annual report to the General Assembly

1 detailing all infrastructure projects evaluated and
2 resolutions adopted.

3 (7) Provide support, funding and resources to public
4 entities to assist in analyzing and procuring public
5 infrastructure and funding predevelopment costs.

6 (8) Coordinate with, and obtain best practices from, the
7 Department of Transportation and the Public-Private
8 Transportation Partnership Board established under 74 Pa.C.S.
9 Ch. 91 (relating to public-private transportation
10 partnerships) for developing the guidelines for procuring and
11 approving public-private projects.

12 (b) Actions.--Actions by the board are a determination of
13 public policy and public interest and shall not be considered
14 adjudications under 2 Pa.C.S. Chs. 5 Subch. A (relating to
15 practice and procedure of Commonwealth agencies) and 7 Subch. A
16 (relating to judicial review of Commonwealth agency action) and
17 shall not be subject to appeal to the department or a court of
18 law.

19 (c) Review by General Assembly.--

20 (1) The General Assembly may, within 20 calendar days of
21 the board's approval of a public-private project owned by the
22 Commonwealth, pass a concurrent resolution rescinding the
23 approval of the public-private project.

24 (2) If the General Assembly adopts the concurrent
25 resolution within the time period under paragraph (1) by a
26 majority vote in both the Senate and the House of
27 Representatives, the public-private project shall be deemed
28 disapproved.

29 (3) If the General Assembly fails to adopt the
30 concurrent resolution by majority vote in both the Senate and

1 the House of Representatives within the time period under
2 paragraph (1), the public-private project shall be deemed
3 approved.

4 (4) The General Assembly may not revoke adoption of a
5 concurrent resolution of a public-private project under this
6 subsection unless the scope of the approved public-private
7 project is materially altered or modified prior to the public
8 entity entering into the public-private agreement.

9 Section 5. Operation of board.

10 (a) Technical assistance.--The department shall supply all
11 necessary assistance to the board in carrying out the board's
12 duties and responsibilities, including retention of legal,
13 financial and technical consultants, and shall provide technical
14 and procurement assistance or guidance to a public entity which
15 receives approval from the department or the board to procure a
16 public-private project.

17 (b) Analysis.--

18 (1) The department may receive all unsolicited proposals
19 and requests for public-private projects on behalf of the
20 board or a public entity.

21 (2) If the department receives unsolicited proposals and
22 requests, the department shall, on behalf of the board,
23 develop a detailed analysis of the proposed public-private
24 project and make a recommendation for whether the proposed
25 public-private project should be approved by the board within
26 120 days of receipt.

27 (3) For a non-State owned unsolicited proposal, the
28 department shall first obtain approval and input from the
29 relevant proprietary public entity before finalizing the
30 department's analysis and submitting a recommendation to the

1 board.

2 (c) Mandatory submittal of State-supported projects.--

3 (1) Before the department or a public entity procures a
4 State-supported project eligible for consideration under this
5 act, a public entity must submit the State-supported project
6 to the department for review and analysis to determine
7 whether the State-supported project should be procured under
8 this act.

9 (2) If the department determines that the State-
10 supported project should be procured under this act, the
11 public entity shall procure the project in accordance with
12 the department's recommendation unless the board disapproves
13 the State-supported project or the public entity has a
14 compelling reason why procurement under this act would not be
15 suitable.

16 (3) The department shall provide a public entity
17 reimbursement for predevelopment costs incurred in connection
18 with a procurement under this act if predevelopment costs
19 were preapproved by the department and the public entity
20 seeks reimbursement from the department.

21 Section 6. Solicitations for public-private partnership
22 projects.

23 (a) Procurement.--A public entity may procure public-private
24 projects through multistep procurements, including a one-step,
25 two-step or three-step procurement, which may include any of the
26 following outreach and procurement mechanisms:

27 (1) A request for information.

28 (2) Confidential or public informal market testing.

29 (3) Industry days.

30 (4) A request for qualifications.

- 1 (5) A qualification-based short list.
- 2 (6) A request for proposals.
- 3 (7) Confidential, one-on-one meetings.
- 4 (8) Interim agreements.
- 5 (9) Predevelopment agreements.
- 6 (10) Best and final offer.
- 7 (11) Requests for unsolicited proposals.

8 (b) Unsolicited proposals.--A public entity or the
9 department may accept and issue requests for unsolicited
10 proposals. Offerors may also directly submit unsolicited
11 proposals to a public entity or the department in the form and
12 manner required by the request for unsolicited proposals or as
13 provided in the guidelines approved by the board.

14 (c) Request for board approval.--

15 (1) A public entity may not issue a request for
16 qualifications or request for proposals for a public-private
17 project prior to receiving board approval.

18 (2) A public entity may request board approval of a
19 public-private project by submitting a request for an
20 infrastructure project to the department.

21 (3) The public entity shall give public notice of a
22 request for infrastructure projects consistent with the
23 guidelines adopted by the board.

24 Section 7. Public-private partnership projects.

25 (a) Submission.--Except as provided in subsection (b), a
26 public entity that seeks to undertake a public-private project
27 that has not been previously approved by the board shall submit
28 a request for a public-private project to the board.

29 (b) Applicability.--This act shall not apply to a public-
30 private project that a public entity is authorized under law to

1 undertake on the effective date of this act.

2 Section 8. Requests.

3 (a) Request details.--A request for a public-private project
4 may be solicited or unsolicited and may provide for any of the
5 following:

6 (1) Design.

7 (2) Construction.

8 (3) Development.

9 (4) Acquisition.

10 (5) Maintenance.

11 (6) Operation of a public-private project.

12 (b) Operational methods.--Operation of a public-private
13 project may be conducted using any of the following delivery
14 methods and forms of agreement:

15 (1) Predevelopment agreements or interim agreements
16 leading to other implementing agreements.

17 (2) A design-build agreement.

18 (3) A design-build-operate agreement.

19 (4) A design-build-maintain agreement.

20 (5) A design-build-finance-operate agreement.

21 (6) A design-build-operate-maintain agreement.

22 (7) A design-build-finance-operate-maintain agreement.

23 (8) An operate-maintain agreement.

24 (9) A property exchange or land swap.

25 (10) A development of a privately owned development on
26 privately owned or publicly owned property.

27 (11) A concession providing for the development entity
28 to design, build, operate, maintain, manage or lease a
29 public-private project.

30 (12) Any other innovative or nontraditional project

1 delivery method or agreement or combination of methods or
2 agreements that the public entity determines will address the
3 public infrastructure needs of the public entity and serve
4 the public interest.

5 Section 9. Selection of development entities.

6 (a) Conditions for use.--If a public-private project is
7 approved under section 4, the public entity may enter into a
8 contract for the public-private project after complying with the
9 provisions of the section.

10 (b) Request for proposals.--After receiving the
11 determination required by subsection (a), a public entity shall
12 solicit proposals through a request for proposals.

13 (c) Public notice.--A public entity shall give public notice
14 of a request for proposals consistent with regulations adopted
15 by the department. The notice shall be given a reasonable time
16 prior to the date set for the close of receipt of the proposals.
17 The method of public notice may include any of the following:

18 (1) Electronic publication that is accessible to the
19 general public.

20 (2) Advertisement as provided in 45 Pa.C.S. § 306
21 (relating to use of trade publications).

22 (3) Issuance of request for proposals to offerors on the
23 mailing list of the public entity.

24 (4) Publication in a newspaper of general circulation.

25 (5) Where prequalification is a requirement of
26 submitting a proposal, notification to all private entities
27 that have been prequalified by the public entity.

28 (d) Copies of request for proposals.--Copies of a request
29 for proposals shall be made available to any interested person
30 upon request to the public entity. A public entity may establish

1 procedures for the distribution of a request for proposals,
2 including the imposition of a fee to reimburse the public entity
3 for the costs of photocopying and mailing.

4 (e) Receipt of proposals.--Offerors shall submit their
5 proposals prior to the time and date established for receipt of
6 the proposals. Proposals shall be submitted in the format
7 required by the request for proposals. Proposals shall be opened
8 so as to avoid disclosure of their contents to competing
9 offerors.

10 (f) Evaluation.--

11 (1) A public entity shall evaluate each proposal to
12 determine which proposal has the best value for and is in the
13 best interest of the public entity. In making this
14 determination, a public entity may utilize a price-technical
15 trade-off analysis where a technical solution may outweigh
16 price considerations. If the public entity utilizes a price-
17 technical, trade-off analysis, the public entity shall not be
18 required to select the lowest price or the highest-scoring
19 technical solution. Evaluation criteria shall be set prior to
20 receipt of any proposals from responsible offerors.

21 (2) In making this determination, a public entity may
22 consider any of the following:

23 (i) Cost.

24 (ii) Price.

25 (iii) Financial commitment.

26 (iv) Innovative financing.

27 (v) Bonding.

28 (vi) Technical, scientific, technological or
29 socioeconomic merit.

30 (vii) Financial strength and viability.

1 (viii) Design, operation and feasibility of the
2 transportation project.

3 (ix) Public reputation, qualifications, industry
4 experience and financial capacity of the private entity.

5 (x) The ability of the project to improve economic
6 growth and improve public safety, reduce congestion,
7 increase capacity or rehabilitate, reconstruct or expand
8 an existing facility.

9 (xi) The compatibility of the proposal with existing
10 regional and local and land use plans.

11 (xii) The commitment of local communities to approve
12 land use plans in preparation for the project.

13 (xiii) Other factors deemed appropriate by the
14 public entity.

15 (g) Weighted consideration.--The relative importance of each
16 evaluation factor shall be fixed prior to opening the proposals.

17 (h) Participation in evaluation.--

18 (1) If the public entity is a Commonwealth agency, the
19 department shall invite its comptroller to participate in the
20 evaluation as a nonvoting member of an evaluation committee.

21 (2) No individual who has been employed, excluding a
22 third-party subcontractor, contractor or advisor such as a
23 legal, financial or technical advisor, by an offeror within
24 the last two years may participate in the evaluation of
25 proposals.

26 (i) Discussion with responsible offerors and revision of
27 proposals.--

28 (1) If provided in the request for proposals, the public
29 entity may conduct confidential or public meetings,
30 discussions and negotiations with a responsible offeror at

1 any time during the procurement process. Responsible offers
2 shall be accorded fair and equal treatment with respect to
3 any opportunity for discussion and revision of proposals.

4 (2) Information derived from proposals submitted by
5 competing offerors may not be disclosed unless otherwise
6 permitted in the request for proposals or by law.

7 (j) Selection for negotiation.--A responsible offeror whose
8 proposal is determined in writing to be the best value for and
9 in the best interest of the public entity, taking into
10 consideration all evaluation factors in subsection (f), shall be
11 selected for contract negotiation.

12 (k) Cancellation.--

13 (1) A request for proposals or other initiated
14 procurement may be canceled at any time prior to the time a
15 public-private agreement is executed by all parties when in
16 the best interest of the public entity.

17 (2) (i) The public entity may provide under the
18 procurement documentation for the payment of a stipend to
19 unsuccessful responsible offerors that have submitted
20 responsive proposals.

21 (ii) If the public entity issues and cancels a
22 request for proposals at any time prior to the proposal
23 submission deadline or after the receipt of responsive
24 proposals, the public entity shall, if the termination
25 occurs prior to or after the proposal submission
26 deadline, pay the agreed-upon stipend amount to
27 responsible offerors that have satisfied all related
28 conditions and requirements for receipt of the stipend.

29 (l) Award.--

30 (1) After reaching an agreement with a preferred

1 proposer or entering into an interim agreement or
2 predevelopment agreement with the preferred proposer and
3 subsequently reaching an agreement with the preferred
4 proposer, a public entity shall enter into a public-private
5 agreement with the preferred proposer. The public-private
6 agreement shall be consistent with the requirements of this
7 act and the guidelines approved by the board.

8 (2) If agreement cannot be reached with the initial
9 preferred proposer, negotiations shall be formally terminated
10 with the initial preferred proposer.

11 (3) If responsive proposals were submitted by one or
12 more other responsible offerors, negotiations may be
13 conducted with the next-highest-ranked responsible offeror or
14 responsible offerors in the order of their respective
15 qualification ranking.

16 (m) Resolution of controversies involving the
17 Commonwealth.--If a prospective offeror, offeror or development
18 entity is aggrieved by a selection under this section and the
19 public entity or proprietary public entity in the invitation or
20 contract is a Commonwealth agency, the prospective offeror,
21 offeror or development entity may file a protest or a claim, as
22 appropriate, in accordance with 62 Pa.C.S. Ch. 17 (relating to
23 legal and contractual remedies).

24 (n) Resolution of controversies not involving the
25 Commonwealth.--If a development entity is aggrieved by a
26 selection under this section and the proprietary public entity
27 in the contract is an entity other than the Commonwealth, a
28 development entity may file a claim with the court of common
29 pleas where the proprietary public entity is located. The
30 process for the filing and resolution of claims, including

1 rights, contents, timing, evaluation, determination and remedies
2 established in 62 Pa.C.S. Ch. 17, shall apply insofar as
3 practicable.

4 Section 10. Public-private agreement.

5 (a) Required provisions.--A public-private agreement shall
6 include the following provisions:

7 (1) The term of the public-private agreement may not
8 exceed 99 years.

9 (2) The proprietary public entity or its authorized
10 representatives shall have the right to inspect all assets
11 and properties of the public-private project and all books
12 and records of the development entity relating to the public-
13 private project to review the development entity's
14 performance under the public-private agreement.

15 (3) (i) Whether the proprietary public entity or public
16 entity designated by the proprietary public entity will
17 retain or acquire ownership of a public infrastructure
18 facility acquired or constructed.

19 (ii) This paragraph shall not apply to property
20 conveyed to a private entity for a land swap or value
21 capture project.

22 (4) Upon termination of the public-private agreement,
23 the facility that was the subject of the public-private
24 agreement shall be in a state of proper maintenance and
25 repair and returned to the applicable public entity in
26 satisfactory condition at no further cost to the applicable
27 public entity.

28 (5) The public entity shall have the right to assume
29 control of and remedy safety-related issues during the term
30 of the public-private agreement in paragraph (1).

1 (6) (i) The development entity shall offer employment
2 to employees of the public entity in good standing at the
3 time of execution of the public-private agreement who
4 would lose employment due directly and solely to the
5 execution of the public-private agreement.

6 (ii) The duty specified in subparagraph (i) includes
7 the offering of salary, retirement, health and welfare
8 benefits that are substantially identical to the benefits
9 received by the employees immediately prior to execution
10 of the public-private agreement for the term of the
11 collective bargaining agreement of those employees in
12 effect.

13 (iii) An employee of the proprietary public entity
14 who does not accept employment with the development
15 entity shall be reassigned to an equivalent position,
16 without loss of seniority, within a worksite in as close
17 proximity to the public-private project as feasible.

18 (iv) Nothing in this paragraph shall be construed to
19 impair provisions related to furloughs and layoffs of the
20 collective bargaining agreement of those employees in
21 effect.

22 (7) Other provisions required by this act or the
23 guidelines approved by the board.

24 (b) Optional provisions.--A public-private agreement may
25 include the following provisions if they are consistent with
26 best practices in the public-private partnership industry:

27 (1) A description of any planning, development, design,
28 leasing, acquisition or interest in, financing, installation,
29 construction, reconstruction, replacement, expansion,
30 operation, maintenance, improvement, equipping, modification,

1 expansion, enlargement, management, running, control and
2 operation of the public-private project.

3 (2) Notwithstanding any other law to the contrary, the
4 public entity may convey property to a development entity as
5 part of the public-private project. This provision shall
6 include a description of the type of property interest or
7 other relationship the development entity will have in the
8 public-private project or with respect to the public-private
9 project, including acquisition of rights-of-way and other
10 property interests that may be required and including whether
11 the public entity is conveying any property ownership to the
12 development entity.

13 (3) The development entity may be required to provide
14 performance and payment bonds, parent company guarantees,
15 letters of credit or other acceptable forms of security in an
16 amount acceptable to the proprietary public entity.

17 (4) Standards for construction, maintenance and
18 operation of the public-private project if performed by the
19 development entity.

20 (5) Standards for capital improvement or modification of
21 the public-private project if made by the development entity.

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

27 (7) Standards relating to damages to be assessed for
28 nonperformance, specifying remedies available to the parties
29 and dispute resolution procedures.

30 (8) Standards relating to performance criteria and

1 incentives.

2 (9) Allowing the private entity to perform any right-of-
3 way acquisition on behalf of the public entity.

4 (10) Any other provisions agreed to between the parties
5 to the public-private agreement or are permitted by this act
6 or the guidelines approved by the board.

7 (c) Construction.--Nothing in this act may be construed to
8 prohibit:

9 (1) The department from entering into a public-private
10 agreement with another Commonwealth agency in accordance with
11 this act.

12 (2) A public entity from entering into a public-private
13 agreement with one or more public entities in accordance with
14 this act.

15 (d) Environmental costs.--

16 (1) A public entity may provide in a public-private
17 agreement that it will pay or reimburse, on terms the public
18 entity deems appropriate, the development entity for actual
19 costs associated with necessary remediation for existing
20 environmental contaminants located on, under or emanating
21 from the real property associated with a public-private
22 project as of the date the development entity assumes
23 responsibility for the public-private project.

24 (2) If the public-private agreement provides for
25 environmental remediation, the public-private agreement shall
26 require that the public entity be given:

27 (i) Prompt notice of a claim against the public
28 entity or a third party pertaining to the contaminants.

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

1 (iii) The right to participate in the defense of or
2 response to a claim.

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

5 (e) Actual costs.--No payment by a public entity under this
6 section may be for a cost other than actual costs incurred by a
7 development entity to remediate the environmental contamination
8 on, under or emanating from the real property associated with
9 the public-private project as of the date the development entity
10 assumes responsibility for the public-private project.

11 (f) User fees.--

12 (1) The public-private agreement may provide for
13 imposition of fees for use of the public-private project and
14 the basis by which the fee will be imposed and collected.

15 (2) If a user fee is proposed as part of the public-
16 private project, a public entity shall include provisions in
17 the agreement that authorize the collection of user fees,
18 tolls, fares, revenue or similar charges, including
19 provisions that:

20 (i) Specify technology to be used in the public-
21 private project and allow for exchanges or upgrades to
22 the technology.

23 (ii) Establish circumstances, as applicable, under
24 which the public entity may receive a share of revenues
25 from the charges.

26 (iii) Govern the enforcement of user fee
27 delinquencies, including provisions for use of available
28 technology.

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

1 penalties.

2 (v) In the event a user of a public-private project
3 fails to pay the prescribed user fee at a location on a
4 public-private project, the public entity may permit a
5 public authority to enforce payment of the user fee to
6 the private entity.

7 (g) Amounts received under a public-private agreement.--The
8 net proceeds received by the public entity under a public-
9 private agreement shall be used to provide funding for public
10 infrastructure needs in this Commonwealth or the applicable
11 public entity. The use of the proceeds or other revenues from
12 the public-private project shall comply with Federal or State
13 law restricting or limiting the use of revenue from the public-
14 private project based on its public funding.

15 Section 11. Records of requests.

16 (a) Disclosure of information.--

17 (1) (i) Except as otherwise provided in subparagraph
18 (ii), upon the selection of a development entity to be a
19 party to a public-private agreement, the identity of the
20 development entity selected, the contents of the response
21 of the development entity to the request for proposals,
22 the final proposal submitted by the development entity
23 and the form of the public-private agreement shall be
24 made public.

25 (ii) Financial information of a development entity
26 provided in the request for proposals or during
27 discussions and negotiations to demonstrate the economic
28 capability of a development entity to fully perform the
29 requirements of the public-private agreement may not be
30 subject to public inspection.

1 (2) A proprietary public and a private development
2 entity may make public any information described under
3 paragraph (1) that would not otherwise be subject to public
4 inspection.

5 (3) If a proprietary public entity terminates a public-
6 private agreement for default or rejects, suspends or debars
7 a private entity on the grounds that the private entity is
8 not responsible, the private entity or development entity
9 shall, upon written request, be provided with a copy of the
10 information contained in the file of the private entity or
11 development entity maintained by the proprietary public
12 entity.

13 (b) Confidential information.--The following information may
14 not be disclosed to the public:

15 (1) Proprietary information, trade secrets, patents or
16 exclusive licenses, architectural and engineering plans and
17 information relating to competitive marketing materials and
18 strategies.

19 (2) Security information, including risk prevention
20 plans, detection and countermeasures, emergency management
21 plans, security and surveillance plans, equipment and usage
22 protocols and countermeasures.

23 (3) Records considered nonpublic matters or information
24 by the Securities and Exchange Commission under 17 CFR 200.80
25 (relating to commission records and information).

26 (4) Financial information deemed confidential by the
27 proprietary public entity upon a showing of good cause by the
28 offeror or development entity.

29 (5) Records prepared or utilized to evaluate a proposal.
30 Section 12. Use of intellectual property.

1 The department or the public entity may use all or a portion
2 of information, materials and work product submitted to the
3 public entity, including the technologies, techniques, methods,
4 processes and information contained in a proposal unless not
5 transferable by law or otherwise agreed to. Notice of
6 nontransferability by law shall be given to the department and
7 the public entity in response to the request for proposals.

8 Section 13. Police powers and violations of law.

9 (a) Enforcement of traffic laws.--To the extent the public-
10 private project is a highway, bridge, tunnel overpass or similar
11 transportation facility for motor vehicles, the provisions of 75
12 Pa.C.S. (relating to vehicles) and other laws of this
13 Commonwealth or a local entity of the Commonwealth, if
14 applicable, shall be the same as those applying to conduct on
15 similar transportation facilities in this Commonwealth or the
16 local entity.

17 (b) Penalties.--Penalties for offenses shall be prescribed
18 by law for conduct occurring on similar facilities in this
19 Commonwealth or the local jurisdiction.

20 (c) Arrest powers.--

21 (1) Enforcement officers authorized by law to make
22 arrests for violations of law in this Commonwealth shall have
23 the same powers and duties within the limits of a public-
24 private project as they have within their respective
25 jurisdiction.

26 (2) The grant of authority under this section shall not
27 extend to the private offices, buildings, garages and
28 improvements of a development entity to a greater degree than
29 the police power extends to other private offices, buildings,
30 garages and improvements.

1 Section 14. Environmental and other authorizations.

2 (a) The Administrative Code of 1929.--Notwithstanding any
3 other provision of law, soliciting or approving a request for
4 proposals or executing a public-private agreement under this act
5 shall not constitute the submission of a preliminary plan or
6 design to the department under section 2002(b) of the act of
7 April 9, 1929 (P.L.177, No.175), known as The Administrative
8 Code of 1929.

9 (b) Environmental authorizations.--A public-private
10 agreement may require that, prior to commencing construction in
11 connection with the development, operation or financing of a
12 public-private project, the development entity shall:

13 (1) secure all necessary environmental permits and
14 authorizations and, if specified under the act of May 19,
15 1995 (P.L.4, No.2), known as the Land Recycling and
16 Environmental Remediation Standards Act, obtain the approval
17 of the Department of Environmental Protection; or

18 (2) complete environmental remediation of the site on
19 which the public-private project is to be located, including
20 actions required under an agreement entered into with the
21 Department of Environmental Protection for remediation of the
22 site under the Land Recycling and Environmental Remediation
23 Standards Act.

24 Section 15. Taxation of development entity.

25 (a) General rule.--To the extent that revenues or user fees
26 received by a development entity under a public-private
27 agreement are subject to a tax imposed by a political
28 subdivision prior to the effective date of this section, the
29 revenues or user fees shall continue to be subject to the tax
30 and to future increases in the rate of the tax.

1 (b) New taxation barred.--After the effective date of this
2 section, no new tax may be imposed by a political subdivision or
3 the Commonwealth on the revenues or user fees received by a
4 development entity under a public-private agreement.

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

12 (d) Property.--Property used in connection with a public-
13 private project shall be considered public property and shall be
14 exempt from ad valorem property taxes and special assessments
15 levied against property by the Commonwealth or a political
16 subdivision.

17 Section 16. Power of eminent domain.

18 The exercise of the power of eminent domain by a condemnor to
19 acquire property for public-private project purposes under a
20 public-private agreement shall be considered a taking for a
21 public purpose and not for a private purpose or for private
22 enterprise.

23 Section 17. Sovereign immunity.

24 Under section 11 of Article I of the Constitution of
25 Pennsylvania, it is declared to be the intent of the General
26 Assembly that the Commonwealth, its officials and employees, and
27 a municipal authority, its officials and employees, acting
28 within the scope of their duties, shall continue to enjoy
29 sovereign immunity and official immunity and remain immune from
30 suit except as provided in section 18. A claim against the

1 Commonwealth and its officials and employees or municipal
2 authority and its officials and employees shall be brought only
3 in such manner and in such courts and in such cases as directed
4 by the provision of section 10(d), 42 Pa.C.S. Ch. 85 (relating
5 to matters affecting government units), 62 Pa.C.S. Ch. 17
6 (relating to legal and contractual remedies) or any procurement
7 law applicable to a municipal authority.

8 Section 18. Specific performance.

9 A proprietary public entity may agree in a public-private
10 agreement that specific performance shall be available to a
11 development entity as a remedy for a breach by the proprietary
12 public entity of its representations, covenants, warranties or
13 other obligations under the public-private agreement to the
14 extent specified in the public-private agreement.

15 Section 19. Applicability of other laws.

16 (a) General rule.--Except as provided under subsection (b),
17 a provision of law relating to the development, construction,
18 maintenance, procurement, operation or financing of a public-
19 private project in effect on the date a public-private agreement
20 is fully executed between a public entity and a development
21 entity, including the act of August 15, 1961 (P.L.987, No.442),
22 known as the Pennsylvania Prevailing Wage Act, shall apply to a
23 public-private agreement.

24 (b) Limitation.--If the public entity or proprietary public
25 entity is a Commonwealth agency, 62 Pa.C.S. (relating to
26 procurement) shall apply only to the extent provided under
27 subsection (c).

28 (c) Other acts.--If the public entity or proprietary public
29 entity is a Commonwealth agency:

30 (1) The act of May 1, 1913 (P.L.155, No.104), referred

1 to as the Separations Act, shall not apply.

2 (2) Any local law enacted by a public entity that
3 directly conflicts with this act shall control over this act.

4 Section 20. Adverse interest.

5 (a) Private entity adverse interests.--

6 (1) Except as provided under paragraph (2), a private
7 entity that submits a response to a request for proposals
8 under this act and that is a State advisor or State
9 consultant for the department or a public entity procuring a
10 public-private project under this act shall not be deemed to
11 be in violation of the State Adverse Interest Act while
12 engaging in the following activities:

13 (i) Preparing or submitting a response to a request
14 for proposals or projects.

15 (ii) Participating in an activity with the
16 department or a public entity related to a request for
17 proposals or infrastructure projects.

18 (iii) Negotiating and entering into a contract,
19 lease or public-private agreement that results from a
20 request for proposals or an infrastructure project.

21 (iv) Engaging in other action taken in furtherance
22 of the purposes of this act.

23 (2) A private entity and its consultants may not consult
24 or provide advice, excluding during any market testing or
25 request for information process, to the department or a
26 public entity on a public-private project procurement that
27 the private entity is an offeror.

28 (3) A private entity and its consultants may advise a
29 public entity or the department on an unrelated public-
30 private project where the private entity is not an offeror

1 or, with respect to the private entity's consultants, where
2 the consultants are not advising the private entity on the
3 public-private project.

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

7 "State advisor." As defined in section 2(7) of the act of
8 July 19, 1957 (P.L.1017, No.451), known as the State Adverse
9 Interest Act.

10 "State consultant." As defined in section 2(9) of the State
11 Adverse Interest Act.

12 Section 21. Federal, State, local and private assistance.

13 (a) Federal assistance.--

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

19 (2) The department or a proprietary public entity may
20 assent to Federal requirements, conditions or terms of
21 Federal funding accepted by the department or a proprietary
22 public entity under this section.

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

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

1 for carrying out the purposes of this act.

2 (c) Contributions.--Subject to acceptance and agreement
3 between the development entity and a proprietary public entity,
4 a public-private project may be financed, in whole or in part,
5 by contribution of funds or property made by a proprietary
6 public entity, a development entity or an affected jurisdiction.

7 (d) Combination of funds.--The department or proprietary
8 public entity may combine Federal, State, local and private
9 funds to finance a public-private project under this act.

10 (e) Itemization.--Pursuant to section 7(a)(4) of Article
11 VIII of the Constitution of Pennsylvania, a public-private
12 project funded, in whole or in part, through the issuance of
13 debt where the credit of the Commonwealth is pledged shall be
14 itemized in a capital budget itemization act.

15 Section 22. Public-Private Account.

16 (a) Establishment.--

17 (1) The Public-Private Account is established as a
18 restricted account in the General Fund.

19 (2) Money in the Public-Private Account shall be used
20 only for the purposes enumerated under subsection (c).

21 (b) Deposits to account.--

22 (1) The department shall deposit in the Public-Private
23 Account the following:

24 (i) All money received by the department under the
25 terms of a public-private agreement in which the
26 department is the proprietary public entity.

27 (ii) Repayment of loans from the Public-Private
28 Account made under this act.

29 (iii) Subject to the provisions of a public-private
30 agreement in which the department is the proprietary

1 public entity, monetary damages and other amounts for
2 failure by the development entity to comply with the
3 terms of the public-private agreement.

4 (iv) Subject to the provisions of a public-private
5 agreement in which the department is the proprietary
6 public entity, payments made from insurance proceeds or
7 reserve funds or performance or payment bonds in
8 connection with a public-private project.

9 (v) Earnings from the investment of the money in the
10 Public-Private Account.

11 (2) The Secretary of the Budget shall establish
12 restricted accounts within the Public-Private Account as the
13 secretary deems necessary for the proper administration of
14 the Public-Private Account.

15 (3) Money related to a public-private agreement in which
16 the department is not the proprietary public entity may not
17 be held in the Public-Private Account but shall be held by
18 the proprietary public entity or its agent.

19 (c) Continuing appropriation.--The money in the Public-
20 Private Account is appropriated on a continuing basis to the
21 department for the following purposes:

22 (1) Paying the amounts the department is required to
23 repay the Federal funding agencies.

24 (2) Paying the amounts designated by the department for
25 repayment or defeasance of outstanding bonds.

26 (3) Paying costs of maintenance, operating and financing
27 transportation facilities in this Commonwealth which are
28 available for public use, including the costs of insurance or
29 reserves against risks of contingencies.

30 (4) Paying expenses incurred by the department under or

1 in connection with a public-private agreement, including
2 professional fees and expenses.

3 (5) Paying costs of the department relating to
4 performing and administering duties under this act.

5 (6) Paying expenses approved by the board for costs
6 incurred to perform its duties, including professional fees
7 and expenses.

8 (7) Paying costs of any purpose authorized under this
9 act.

10 (d) Use of net proceeds.--The net proceeds received under a
11 public-private agreement shall be available exclusively to
12 provide funding for infrastructure needs in this Commonwealth.
13 The use of the proceeds or other revenues from a public-private
14 project shall be in accord with Federal or State law restricting
15 or limiting the use of revenue from the public-private project
16 based on its public funding.

17 Section 23. Regulations.

18 In order to facilitate implementation of this act, the
19 department may promulgate regulations or publish guidelines that
20 include the following:

21 (1) The process for department review of a request by a
22 public entity to procure a public-private project.

23 (2) The process for department review of its proposed
24 projects.

25 (3) The process for receipt of unsolicited proposals.

26 (4) The process for evaluating infrastructure projects
27 to determine, based upon a value-for-money analysis, the
28 procurement structure and methodology that will deliver the
29 best value for money for the project.

30 (5) The process for receipt, review of and response to

1 competing responses to requests for proposals or
2 infrastructure projects.

3 (6) The type and amount of information necessary for
4 adequate review of and response to each stage of review of a
5 proposal or public-private project.

6 (7) Any other provision the department deems
7 appropriate.

8 Section 24. Effective date.

9 This act shall take effect in 60 days.