

No. 2012-88

AN ACT

HB 3

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

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

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

***PART V***  
***TRANSPORTATION INFRASTRUCTURE***

***Chapter***

***91. Public-Private Transportation Partnerships***

***CHAPTER 91***

***PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIPS***

***Sec.***

***9101. Scope of chapter.***

***9102. Definitions.***

***9103. Public-Private Transportation Partnership Board.***

***9104. Duties of board.***

***9105. Operation of board.***

***9106. Solicitations for transportation projects.***

***9107. Transportation projects.***

***9108. Requests.***

***9109. Selection of development entities.***

***9110. Public-private transportation partnership agreement.***

***9111. Records of requests.***

***9112. Use of intellectual property.***

***9113. Police powers and violations of law.***

***9114. Environmental and other authorizations.***

***9115. Taxation of development entity.***

***9116. Power of eminent domain.***

***9117. Sovereign immunity.***

***9118. Specific performance.***

***9119. Applicability of other laws.***

***9120. Adverse interest.***

***9121. Federal, State, local and private assistance.***

***9122. Public-Private Transportation Account.***

***9123. Pennsylvania Turnpike Commission.***

***9124. Regulations.***

**§ 9101. Scope of chapter.**

*This chapter relates to public-private transportation partnerships.*

**§ 9102. Definitions.**

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

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

*"Board." The Public-Private Transportation Partnership Board.*

*"Department." The Department of Transportation of the Commonwealth.*

*"Development entity." An entity which is a party to a public-private transportation partnership agreement and which is any of the following:*

*(1) A private entity.*

*(2) A public entity, other than the public entity providing or improving its own transportation facilities.*

*"Electronic toll." A system of collecting tolls or charges which is capable of charging an account holder for the prescribed toll by electronic transmission of information. The term includes open road tolls, video tolls or other similar structural or technological enhancements pertaining to tolls.*

*"Offeror." A person that submits a proposal or a response in answer to a request for proposals or transportation projects.*

*"Private entity." A person, entity, group or organization that is not the Federal Government, the Commonwealth or a municipal authority.*

*"Proprietary public entity." A public entity which owns a public-private transportation project and which is a party to a public-private transportation partnership agreement.*

*"Public entity." A Commonwealth agency as defined in 62 Pa.C.S. § 103 (relating to definitions), a municipal authority or an authority created by statute which owns a transportation facility. The term does not include the General Assembly and its members, officers or agencies or any court or other office or agency of the Pennsylvania judicial system.*

*"Public-private transportation partnership agreement." A contract for a transportation project which transfers the rights for the use or control, in whole or in part, of a transportation facility by a public entity to a development entity for a definite term during which the development entity will provide the transportation project to the public entity in return for the right to receive all or a portion of the revenue generated from the use of the transportation facility, or other payment, such as the following transportation-related services:*

*(1) Operations and maintenance.*

*(2) Revenue collection.*

*(3) User fee collection or enforcement.*

*(4) Design.*

*(5) Construction.*

*(6) Development and other activities with respect to existing or new transportation facilities that enhance traffic throughput, reduce congestion, improve safety or otherwise manage or improve a transportation facility.*

**(7) Financing.**

**"Public-private transportation project."** *A transportation project undertaken by a development entity pursuant to a public-private transportation partnership agreement.*

**"Request for transportation projects."** *A solicited or unsolicited plan for a transportation project submitted to the board by a public entity.*

**"Responsible offeror."** *An offeror that has submitted a responsive proposal and that possesses the capability to fully perform the public-private transportation partnership agreement requirements in all respects and the integrity and reliability to assure good faith performance.*

**"Responsive proposal."** *A proposal that conforms in all material aspects to the requirements and criteria in the request for proposals.*

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

**"Transportation facility."** *A proposed or existing road, bridge, tunnel, overpass, ferry, busway, guideway, public transportation facility, vehicle parking facility, port facility, multimodal transportation facility, airport, station, hub, terminal or similar facility used or to be used for the transportation of persons, animals or goods, together with any buildings, structures, parking areas, appurtenances, intelligent transportation systems and other property needed to operate or related to the operation of the transportation facility. The term includes any improvements or substantial enhancements or modifications to an existing transportation facility.*

**"Transportation project."** *An undertaking by a private entity or a public entity, other than the public entity providing or improving its own transportation facilities, to provide or improve a transportation facility or transportation-related service which is totally or partially located within this Commonwealth.*

**§ 9103. Public-Private Transportation Partnership Board.**

**(a) Establishment.**—*There is established a board to be known as the Public-Private Transportation Partnership Board.*

**(b) Composition.**—*The board shall be composed of the following members:*

**(1)** *The Secretary of Transportation, who shall be the chairperson of the board, or a designee who shall be an employee of the department.*

**(2)** *The Secretary of the Budget or a designee who shall be an employee of the Office of the Budget.*

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

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

**(c) Legislative appointments.**—

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

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

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

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

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

(2) *Legislative appointees shall be residents of this Commonwealth and serve at the pleasure of the appointing authority.*

(3) *Legislative appointees shall have expertise or substantial experience in one or more of the following areas:*

(i) *Transportation.*

(ii) *Finance.*

(iii) *Law.*

(iv) *Land use and public planning.*

(d) *Gubernatorial appointment.—A member appointed under subsection (b)(4):*

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

(2) *Shall be a resident of this Commonwealth and have expertise or substantial experience in one or more of the following areas:*

(i) *Transportation.*

(ii) *Finance.*

(iii) *Law.*

(iv) *Land use and public planning.*

(3) *Shall serve at the pleasure of the Governor.*

(e) *Quorum.—Four members of the board shall constitute a quorum. The adoption of a resolution or other action of the board shall require a majority vote of the members of the board.*

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

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

(h) *Financial interests.—No member of the board, during his term of office, shall directly or indirectly own, have any significant financial interest in, be associated with or receive any fee, commission, compensation or anything of value from any public entity or private entity seeking to engage in a public-private transportation partnership agreement. The provisions of this subsection shall not apply to the salary of a Commonwealth employee.*

(i) *Applicability.—The following acts shall apply to the board:*

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

(2) *The State Adverse Interest Act.*

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

§ 9104. *Duties of board.*

(a) *Duties.*—*The board shall do all of the following:*

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

(2) *Adopt guidelines establishing the procedure by which a public entity may submit a request for a transportation project or a private entity may submit an unsolicited plan for a transportation project to the board.*

(3) *Consult with persons affected by proposed transportation projects.*

(4) *Evaluate and, where the board finds that the requests or plans for transportation projects are in the best interests of the Commonwealth and a public entity, approve the requests or plans for transportation projects. The board shall approve a proposed transportation project by adopting a resolution.*

(5) *Submit an annual report to the General Assembly detailing all transportation projects evaluated and resolutions adopted.*

(b) *Actions.*—*Actions by the board are a determination of public policy and public interest and shall not be considered adjudications under 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action) and shall not be appealable to the department or a court of law.*

(c) *General Assembly.*—*The following shall apply:*

(1) *The General Assembly may, within 20 calendar days or nine legislative days, whichever is longer, of the adoption of the resolution under subsection (a)(4), pass a concurrent resolution rescinding the approval of a transportation project if the transportation facility which is the subject of the transportation project is owned by the Commonwealth.*

(2) *If the General Assembly adopts the concurrent resolution within the time period under paragraph (1) by majority vote in both the Senate and the House of Representatives, the transportation project shall be deemed disapproved.*

(3) *If the General Assembly fails to adopt the concurrent resolution by majority vote in both the Senate and the House of Representatives within the time period under paragraph (1), the transportation project shall be deemed approved.*

§ 9105. *Operation of board.*

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

(b) *Analysis.*—*The department shall develop a detailed analysis of a request or recommendation prior to approval by the board.*

(c) *Oversight.*—*If a transportation project becomes a public-private transportation project, the department shall retain oversight and monitor the public-private transportation project, including periodic reports to the board, as necessary.*

§ 9106. *Solicitations for transportation projects.*

*A public entity may solicit transportation projects through a request for transportation projects. The public entity shall give public notice of a request for transportation projects consistent with section 9109(c) (relating to selection of development entities). Offerors shall submit their responses to the public entity in the form and manner required by the request for transportation projects. A public entity shall evaluate each response to determine if the response is in the best interest of the public entity. Upon being satisfied, the public entity may prepare and submit a request to the board to review the transportation project in accordance with this chapter.*

**§ 9107. Transportation projects.**

*(a) Submission.—Except as provided under subsection (b), a public entity which seeks to undertake a transportation project which has not been previously approved by the board shall submit a request for the transportation project to the board.*

*(b) Exception.—This chapter shall not apply to a transportation project which a public entity is authorized under law to undertake on the effective date of this subsection.*

**§ 9108. Requests.**

*A request may be solicited or unsolicited and may provide for the development or operation of transportation facilities using a variety of project delivery methods and forms of agreement. The methods may include:*

*(1) Predevelopment agreements leading to other implementing agreements.*

*(2) A design-build agreement.*

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

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

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

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

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

*(8) An operate-maintain agreement.*

*(9) A concession providing for the development entity to design, build, operate, maintain, manage or lease a transportation facility.*

*(10) Any other innovative or nontraditional project delivery method or agreement or combination of methods or agreements that the public entity determines will address the transportation needs of the Commonwealth and the public entity and serve the public interest.*

**§ 9109. Selection of development entities.**

*(a) Conditions for use.—If a transportation project is approved under section 9104 (relating to duties of board), the public entity may enter into a contract for the transportation project by competitive sealed proposals.*

*(b) Request for proposals.—After receiving the determination required by subsection (a), a public entity shall solicit proposals through a request for proposals.*

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

- (1) *Electronic publication which is accessible to the general public.*
- (2) *Advertisement as provided for in 45 Pa.C.S. § 306 (relating to use of trade publications).*
- (3) *Issuance of request for proposals to offerors on the mailing list of the public entity.*
- (4) *Publication in a newspaper of general circulation.*
- (5) *Where prequalification is a requirement of submitting a proposal, notification to all private entities who have been prequalified by the public entity.*

(d) *Copies of request for proposals.—Copies of a request for proposals shall be made available to any interested person upon request to the public entity. A public entity may establish procedures for the distribution of a request for proposals, including the imposition of a fee to reimburse the public entity for the costs of photocopying and mailing.*

(e) *Receipt of proposals.—Offerors shall submit their proposals to ensure that their proposals are received prior to the time and date established for receipt of the proposals. Proposals shall be submitted in the format required by the request for proposals. Proposals shall be opened so as to avoid disclosure of their contents to competing offerors.*

(f) *Evaluation.—A public entity shall evaluate each proposal to determine which proposal has the best value for and is in the best interest of the public entity. In making this determination, a public entity may consider any of the following:*

- (1) *Cost.*
- (2) *Price.*
- (3) *Financial commitment.*
- (4) *Innovative financing.*
- (5) *Bonding.*
- (6) *Technical, scientific, technological or socioeconomic merit.*
- (7) *Financial strength and viability.*
- (8) *Design, operation and feasibility of the transportation project.*
- (9) *Public reputation, qualifications, industry experience and financial capacity of the private entity.*
- (10) *The ability of the transportation project to improve economic growth, to improve public safety, to reduce congestion, to increase capacity or to rehabilitate, reconstruct or expand an existing transportation facility.*
- (11) *The compatibility of the proposal with existing local and regional land use plans.*
- (12) *The commitment of local communities to approve land use plans in preparation for the transportation project.*
- (13) *Other factors deemed appropriate by the public entity.*

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

(h) *Participation in evaluation.—If the public entity is a Commonwealth agency, the department is required to invite its comptroller to participate in the evaluation as a nonvoting member of any evaluation committee. No individual who has been employed by an offeror within the last two years may participate in the evaluation of proposals.*

(i) *Discussion with responsible offerors and revision of proposals.*—As provided in the request for proposals, discussions and negotiations may be conducted with responsible offerors for the purpose of clarification and of obtaining best and final offers. Responsible offers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(j) *Selection for negotiation.*—The responsible offeror whose proposal is determined in writing to be the best value for and in the best interests of the public entity, taking into consideration all evaluation factors, shall be selected for contract negotiation.

(k) *Cancellation.*—A request for proposals may be canceled at any time prior to the time a public-private transportation partnership agreement is executed by all parties when it is in the best interests of the public entity.

(l) *Award.*—Upon reaching an agreement with a responsible offeror, a public entity shall enter into a public-private transportation partnership agreement with the responsible offeror. The public-private transportation partnership agreement shall be consistent with the requirements of this chapter. If agreement cannot be reached with the best qualified responsible offeror, then negotiations will be formally terminated with the offeror. If proposals were submitted by one or more other responsible offerors, negotiations may be conducted with the other responsible offeror or responsible offerors in the order of their respective qualification ranking. The contract may be awarded to the responsible offeror then ranked as best qualified.

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

(n) *Resolution of controversies not involving the Commonwealth.*—If a development entity is aggrieved by a selection under this section and the proprietary public entity in the contract is an entity other than the Commonwealth, a development entity may file a claim with the court of common pleas where the proprietary public entity is located. The process for the filing and resolution of claims, including rights, contents, timing, evaluation, determination and remedies, which are established in 62 Pa.C.S. Ch. 17, shall apply insofar as they are practicable.

§ 9110. *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 public-private transportation project.*

*(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 public-private transportation partnership project, including acquisition of rights-of-way and other property interests that may be required.*

*(4) Authorization for the proprietary public entity or its authorized representatives to inspect all assets and properties of the public-private transportation project and all books and records of the development entity relating to the public-private transportation project to review the development entity's performance under the public-private transportation partnership agreement.*

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

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

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

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

*(9) A requirement that ownership of a transportation facility acquired or constructed go to or remain with the proprietary public entity.*

*(10) Standards for construction, maintenance and operation of the public-private transportation project if the activities are to be performed by the development entity.*

*(11) Standards for capital improvement or modification of the public-private transportation project if they are to be made by the development entity.*

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

*(13) Standards relating to how the parties will allocate and share management of the risks of the public-private transportation project.*

*(14) Standards relating to how the parties will allocate costs of development of the public-private transportation project, including any cost overruns.*

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

*(16) Standards relating to performance criteria and incentives.*

*(17) A requirement that upon termination of the public-private transportation partnership agreement, a transportation facility that was the subject of the public-private transportation partnership agreement*

*must be in a state of proper maintenance and repair and shall be returned to the proprietary public entity in satisfactory condition at no further cost to the proprietary public entity.*

*(18) Provisions for law enforcement related to the public-private transportation project.*

*(19) An obligation of the development entity to offer employment to any employee of the proprietary public entity who would lose employment due to the execution of the public-private transportation partnership agreement and who is in good standing at the time of execution of the public-private transportation partnership agreement, including salary, retirement, health and welfare and benefits which are substantially identical to the benefits received by the employees immediately prior to execution of the public-private transportation partnership agreement for the term of the collective bargaining agreement of those employees in effect. An employee of the proprietary public entity who does not accept employment with the development entity shall be reassigned to an equivalent position, without loss of seniority, within a worksite in as close proximity to the public-private transportation project as feasible. Nothing in this paragraph shall impair provisions related to furloughs and layoffs of the collective bargaining agreement of those employees in effect.*

*(20) Other terms and provisions as required under this chapter or agreed to by the development entity and the proprietary public entity.*

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

*(c) Public partner.—Nothing in this chapter shall prohibit the department from entering into a public-private transportation partnership agreement with another Commonwealth agency in accordance with this chapter.*

*(d) Public entity.—Nothing in this chapter shall prohibit a public entity from entering into a public-private transportation partnership agreement with one or more public entities in accordance with this chapter.*

*(e) Environmental costs.—*

*(1) A proprietary public entity may provide in a public-private transportation partnership agreement that it will pay or reimburse, on terms that it deems appropriate, the development entity for actual costs associated with necessary remediation for existing environmental contaminants located on, under or emanating from the real property associated with a public-private transportation project as of the date the development entity assumes responsibility for the public-private transportation project. If the public-private transportation partnership agreement provides for environmental remediation, the public-private transportation partnership agreement shall require that the proprietary public entity be given:*

*(i) Prompt notice of any claim against the proprietary public entity or a third party pertaining to the contaminants.*

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

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

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

(2) *No payment by a proprietary public entity under this section may be for anything other than actual costs incurred by a development entity to remediate the environmental contamination on, under or emanating from the real property associated with the public-private transportation project as of the date the development entity assumes responsibility for the public-private transportation project.*

(f) *User fees.—A provision establishing whether user fees will be imposed for use of the public-private transportation project and the basis by which any user fees will be imposed and collected shall be determined in the public-private transportation partnership agreement. If a user fee is proposed as part of the public-private transportation project, a proprietary public entity shall include provisions in the agreement that authorize the collection of user fees, tolls, fares or similar charges, including provisions that:*

(1) *Specify technology to be used in the public-private transportation project.*

(2) *Establish circumstances under which the proprietary public entity may receive a share of revenues from the charges.*

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

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

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

(g) *Amounts received under a public-private transportation partnership agreement.—The net proceeds received by the proprietary public entity under a public-private transportation partnership agreement shall be available exclusively to provide funding for transportation needs in this Commonwealth. The use of the proceeds or other revenues from the public-private transportation project shall comply with Federal or State law restricting or limiting the use of revenue from the public-private transportation project based on its public funding.*

§ 9111. *Records of requests.*

*The following shall apply:*

(1) *Upon the selection of a development entity to be a party to a public-private transportation partnership agreement, the identity of the development entity selected, the contents of the response of the development entity to the request for proposals, the final proposal submitted by the development entity and the form of the public-private*

*transportation partnership agreement shall be made public. Any financial information of a development entity that was requested in the request for proposals or during discussions and negotiations to demonstrate the economic capability of a development entity to fully perform the requirements of the public-private transportation partnership agreement shall not be subject to public inspection.*

*(2) A proprietary public and a private development entity may agree, in their discretion, to make public any information described under paragraph (1) that would not otherwise be subject to public inspection.*

*(3) If a proprietary public entity terminates a public-private transportation partnership agreement for default, rejects a private entity on the grounds that the private entity is not responsible or suspends or debars a development entity, the private entity or development entity, as appropriate, shall, upon written request, be provided with a copy of the information contained in the file of the private entity or development entity maintained by the proprietary public entity under a contractor responsibility program.*

*(4) The following information shall not be public:*

*(i) Information relating to proprietary information, trade secrets, patents or exclusive licenses, architectural and engineering plans and information relating to competitive marketing materials and strategies.*

*(ii) Security information, including risk prevention plans, detection and countermeasures, emergency management plans, security and surveillance plans, equipment and usage protocols and countermeasures.*

*(iii) Records considered nonpublic matters or information by the Securities and Exchange Commission under 17 CFR 200.80 (relating to commission records and information).*

*(iv) Any financial information deemed confidential by the proprietary public entity upon a showing of good cause by the offeror or development entity.*

*(v) Records prepared or utilized to evaluate a proposal.*

**§ 9112. Use of intellectual property.**

*Unless otherwise agreed and except to the extent not transferable by law, the department or a proprietary public entity shall have the right to use all or a portion of a submitted proposal, including the technologies, techniques, methods, processes and information contained in the proposal. Notice of nontransferability by law shall be given to the department and the proprietary public entity in response to the request for proposals.*

**§ 9113. Police powers and violations of law.**

*(a) Enforcement of traffic laws.—To the extent the public-private transportation project is a highway, bridge, tunnel overpass or similar transportation facility for motor vehicles, 75 Pa.C.S. (relating to vehicles) and other laws of this Commonwealth or, if applicable, any local jurisdiction shall be the same as those applying to conduct on similar transportation facilities in this Commonwealth or the local jurisdiction. Punishment for offenses shall be prescribed by law for conduct occurring*

*on similar transportation facilities in this Commonwealth or the local jurisdiction.*

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

*§ 9114. Environmental and other authorizations.*

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

*(b) Environmental authorizations.—A public-private transportation partnership agreement may require that prior to commencing any construction in connection with the development, operation or financing of any public-private transportation project if the agreement requires environmental authorizations to be obtained, the development entity shall do any of the following:*

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

*(2) Complete environmental remediation of the site on which the public-private transportation project is to be 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.*

*§ 9115. Taxation of development entity.*

*(a) General rule.—To the extent that revenues or user fees received by a development entity 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 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.*

**§ 9116. Power of eminent domain.**

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

**§ 9117. Sovereign immunity.**

*Under section 11 of Article 1 of the Constitution of Pennsylvania, it is declared to be the intent of the General Assembly that the Commonwealth, and its officials and employees, and a municipal authority, and its officials and employees, acting within the scope of their duties, shall continue to enjoy sovereign immunity and official immunity and remain immune from suit except as provided in section 9118 (relating to specific performance). A claim against the Commonwealth and its officials and employees or municipal authority and its officials and employees shall be brought only in such manner and in such courts and in such cases as directed by the provision of section 9110(e) (relating to public-private transportation partnership agreement), 42 Pa.C.S. Ch. 85 (relating to matters affecting government units), 62 Pa.C.S. Ch. 17 (relating to legal and contractual remedies) or any procurement law applicable to a municipal authority.*

**§ 9118. Specific performance.**

*A proprietary public entity is 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.*

**§ 9119. Applicability of other laws.**

*(a) General rule.—Except as provided under subsection (b), all provisions of laws related to the development, construction, operation or financing of a transportation project in effect on the date the public-private transportation partnership agreement is fully executed shall apply to a public-private transportation partnership agreement entered into between a proprietary public entity and a development entity. The provisions shall include:*

*(1) The act of May 1, 1913 (P.L.155, No.104), referred to as the Separations Act.*

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

*(b) Limitation.—The following apply:*

*(1) If the public entity or the proprietary public entity is a Commonwealth agency, 62 Pa.C.S (relating to procurement) shall apply only to the extent provided under paragraph (2).*

*(2) The following shall apply if the public entity or the proprietary public entity is a Commonwealth agency:*

- (i) *Section 107 (relating to reciprocal limitations).*
- (ii) *Section 531 (relating to debarment or suspension).*
- (iii) *Section 541 (relating to approval of accounting system).*
- (iv) *Section 551 (relating to right to inspect plant).*
- (v) *Section 552 (relating to right to audit records).*
- (vi) *Section 563 (relating to retention of procurement records).*
- (vii) *Chapter 17 (relating to legal and contractual remedies).*

§ 9120. *Adverse interests.*

(a) *Private entity adverse interests.—The following shall apply:*

(1) *Except as provided under paragraph (2), a private entity which submits a response to a request for proposals under section 9109 (relating to selection of development entities), a request for transportation projects under section 9106 (relating to solicitations for transportation projects) or an unsolicited proposal, and which is also a State advisor or a State consultant for the department or the Pennsylvania Turnpike Commission, shall not be deemed to be in violation of the State Adverse Interest Act while engaging in any of the following activities:*

- (i) *Preparing or submitting a response to a request for proposals or transportation projects.*
- (ii) *Participating in any activity with the department related to a request for proposals or transportation projects.*
- (iii) *Negotiating and entering into any contract lease or public-private transportation partnership agreement which results from a request for proposals or transportation projects.*
- (iv) *Engaging in any other action taken in furtherance of the purposes of this chapter.*

(2) *A private entity which submits a response to a request for proposals or transportation projects or acts as a consultant or an advisor to a private entity which submits a response to a request for proposals or transportation projects to the department shall be prohibited from consulting or providing advice to the department on the review or approval of the response to the request for proposals or transportation projects as submitted.*

(3) *A private entity which submits a response to a request for proposals or transportation projects or acts as a consultant or an advisor to a private entity which submits a response to a request for proposals or transportation projects 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 proposals or transportation projects 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 advisor." As defined in section 2(7) of the act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act.*

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

§ 9121. *Federal, State, local and private assistance.*

(a) *Federal assistance.*—*The following shall apply:*

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

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

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

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

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

(d) *Combination of funds.*—*The department or proprietary public entity may combine Federal, State, local and private funds to finance a public-private transportation project under this chapter.*

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

§ 9122. *Public-Private Transportation Account.*

(a) *Establishment.*—

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

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

(b) *Deposits to account.*—*The following shall apply:*

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

(i) *All money received by the department pursuant to the terms of a public-private transportation partnership agreement under which the department is the proprietary public entity.*

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

(iii) *Subject to the provisions of any public-private transportation partnership agreement under which the department is the proprietary public entity, monetary damages and other amounts for failure by a development entity to comply with the terms of the public-private transportation partnership agreement.*

(iv) *Subject to the provisions of any public-private transportation partnership agreement under which the department is the proprietary public entity, payments made from any insurance proceeds or reserve funds or performance or payment bonds in connection with a public-private transportation project.*

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

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

(3) *All money related to any public-private transportation partnership agreement in which the department is not the proprietary public entity shall not be held in the account, but shall be held by the proprietary public entity or its agent.*

(c) *Appropriation.—The funds in the account are continuously appropriated to the department for the following purposes:*

(1) *Paying the amounts as the department may be required to repay the Federal funding agencies.*

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

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

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

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

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

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

(d) *Amounts received.—The net proceeds received under a public-private transportation partnership agreement shall be available exclusively to provide funding for transportation needs in this Commonwealth. The use of the proceeds or other revenues from the public-private transportation project shall be in accord with Federal or State law restricting or limiting the use of revenue from the public-private transportation project based on its public funding.*

§ 9123. *Pennsylvania Turnpike Commission.*

*The Pennsylvania Turnpike Commission may not enter into a public-private transportation partnership agreement in the capacity of a proprietary public entity with respect to granting substantial oversight and control over the Turnpike Mainline to another entity unless specific authority is granted through an act of law passed by the General Assembly. However, this shall not restrict the Pennsylvania Turnpike Commission from entering into a public-private transportation partnership agreement under this chapter or under other statutes which does not involve granting substantial oversight and control over the Turnpike Mainline to another entity.*

**§ 9124. Regulations.**

*(a) Department.—In order to facilitate the implementation of this chapter, the department is authorized to promulgate regulations or publish guidelines that include the following:*

*(1) The process for review of a request for proposals or transportation projects or responses to requests for proposals or transportation projects issued by a public entity.*

*(2) The process for receipt and review of and response to competing responses to requests for proposals or transportation projects.*

*(3) The type and amount of information that is necessary for adequate review of and response to each stage of review of a proposal or transportation project.*

*(4) Any other provisions which are required under this chapter or which the department determines are appropriate for implementation of this chapter.*

*(b) Temporary regulations.—Notwithstanding any other provision of law, any regulation promulgated by the department under this chapter during the two years following the effective date of this section shall be deemed temporary regulations which shall expire no later than three years following the effective date of this section or upon promulgation of final regulations. The temporary regulations shall not be subject to any of the following:*

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

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

Section 2. Repeals are as follows:

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

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

Section 3. This act shall take effect as follows:

(1) The addition of 74 Pa.C.S. §§ 9102, 9103, 9104, 9105 and 9124 shall take effect immediately.

(2) This section shall take effect immediately.

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

APPROVED—The 5th day of July, A.D. 2012

TOM CORBETT