
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1891 Session of
2017

INTRODUCED BY EVANKOVICH, BLOOM, IRVIN, MACKENZIE, WARD,
ORTITAY, LAWRENCE, ZIMMERMAN, FEE AND SAYLOR,
OCTOBER 25, 2017

REFERRED TO COMMITTEE ON STATE GOVERNMENT, OCTOBER 25, 2017

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, establishing the Public-Private Partnership Pilot
3 Program and the State Public-Private Partnership Board.

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

6 Section 1. Title 62 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 47

9 PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM

10 Sec.

11 4701. Definitions.

12 4702. State Public-Private Partnership Board.

13 4703. Public-Private Partnership Pilot Program.

14 4704. Unsolicited submission of eligible projects for
15 consideration as pilot projects.

16 4705. Solicitation of eligible projects for consideration as
17 pilot projects.

18 4706. Evaluation and selection of public-private partnership

- 1 agreement proposal.
- 2 4707. Solicitation of proposals for public-private partnership
3 agreements.
- 4 4708. Implementation of public-private partnership agreement.
- 5 4709. Service contracts.
- 6 4710. Affected local jurisdictions.
- 7 4711. Dedication of public property.
- 8 4712. Powers and duties of operator.
- 9 4713. Prompt payment requirements.
- 10 4714. Federal, State and local assistance.
- 11 4715. Material default and remedies.
- 12 4716. Utility crossing.
- 13 4717. Governmental immunity.
- 14 4718. Special approval.
- 15 4719. Exclusivity.
- 16 4720. Applicability.
- 17 4721. Pennsylvania Public Utility Commission.
- 18 § 4701. Definitions.

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

22 "Affected local jurisdiction." A local agency in which all
23 or a portion of an eligible project is located.

24 "Authorized pilot project." A pilot project that is the
25 subject of a public-private partnership agreement.

26 "Board." The State Public-Private Partnership Board
27 established by this chapter.

28 "Deficiency item." Work performed under a contract, but
29 which work an operator or subcontractor will not certify as
30 being completed according to the contract.

1 "Department." The Department of Community and Economic
2 Development of the Commonwealth.

3 "Eligible project." Any of the following:

4 (1) An educational facility. This paragraph includes:

5 (i) A school building.

6 (ii) A facility that is functionally related and
7 subordinate to a school building, including a stadium or
8 other facility primarily used for school events.

9 (iii) Land that is functionally related and
10 subordinate to a school building.

11 (iv) Depreciable property provided for use in an
12 educational facility operated as part of the public
13 school system or as an institution of higher education.

14 (2) A building or facility for use by a government
15 agency.

16 (3) A building, facility or infrastructure used for
17 public water supply distribution or treatment, storm water
18 collection, treatment or disposal or wastewater collection,
19 treatment or disposal or used for public parking facilities.

20 (4) An improvement, together with equipment, necessary
21 to enhance public safety and security of a building to be
22 principally used by a government agency.

23 (5) Telecommunications and other communications
24 infrastructure.

25 (6) Utility infrastructure.

26 (7) A structure or facility fully or partially owned by
27 a government agency.

28 "Government agency." As defined in section 3102 (relating to
29 definitions).

30 "Lease payment." A form of payment, including a land lease,

1 by a local agency to the operator for the use of an eligible
2 project.

3 "Local agency." A county, city, borough, incorporated town,
4 township, school district, county institution, local authority
5 or a joint or cooperative body of local agencies or an
6 instrumentality, authority or corporation thereof which has
7 authority to enter into a contract.

8 "Material default." A default by the operator in the
9 performance of the operator's duties under section 4712(e)
10 (relating to powers and duties of operator) that jeopardizes
11 adequate service to the public from an eligible project.

12 "Offeror." A private entity that submits a proposal under
13 this chapter.

14 "Operator." The private entity that is responsible for an
15 eligible project or a portion of an eligible project, including
16 acquisition, design, construction, improvement, renovation,
17 expansion, equipping, maintenance and operation.

18 "Pilot project." An eligible project approved as a pilot
19 project under section 4702(k)(6) (relating to State Public-
20 Private Partnership Board).

21 "Private entity." An individual, corporation, limited
22 liability company, partnership, joint venture or other private
23 business entity.

24 "Public-private partnership agreement." An agreement between
25 a government agency and a private entity that involves the
26 development or operation, or combination thereof, of an eligible
27 project by the private entity. The agreement may consist of the
28 following:

29 (1) A predevelopment agreement leading to an
30 implementing agreement.

- 1 (2) A design-build agreement.
2 (3) A design-build-operate agreement.
3 (4) A design-build-maintain agreement.
4 (5) A design-build-finance-operate agreement.
5 (6) A design-build-operate-maintain agreement.
6 (7) A design-build-finance-operate-maintain agreement.
7 (8) An operate-maintain agreement.
8 (9) A concession providing for the private entity to
9 design, build, operate, maintain, manage or lease an eligible
10 project.

11 (10) Any other delivery method or agreement or
12 combination of methods or agreements that the government
13 agency determines will address the needs of the Commonwealth
14 and the government agency and serve the public interest.
15 The term shall not include the acquisition of an eligible
16 project by a public utility under 66 Pa.C.S. § 102 (relating to
17 definitions).

18 "Request for proposals." All documents, including those
19 either attached or incorporated by reference, used for
20 soliciting proposals.

21 "Responsible offeror." An offeror that:

22 (1) Has submitted a responsive proposal.

23 (2) Possesses the capability to fully perform the
24 contract requirements in all respects.

25 (3) Has the integrity and reliability to assure good
26 faith performance.

27 "Responsive proposal." A proposal that conforms in all
28 material respects to the requirements and criteria in a request
29 for proposals.

30 "Revenue." Any of the following generated by an eligible

1 project:

2 (1) A user fee.

3 (2) A lease payment.

4 (3) A service payment.

5 "Sealed proposal." A proposal, the contents of which are not
6 disclosed until the proposal receipt date.

7 "Secretary." The Secretary of Community and Economic
8 Development of the Commonwealth.

9 "Service payment." Payment to the operator of an eligible
10 project pursuant to a public-private partnership agreement.

11 "Subcontractor." A person who has contracted to furnish
12 labor or materials to or has performed labor for an operator or
13 another subcontractor in connection with a public-private
14 partnership agreement.

15 "User fee." A rate or other charge imposed by the operator
16 of an eligible project for use of the eligible project pursuant
17 to a public-private partnership agreement.

18 § 4702. State Public-Private Partnership Board.

19 (a) Establishment.--The State Public-Private Partnership
20 Board is established.

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

23 (1) The secretary, who shall be the chairperson of the
24 board, or a designee who must be an employee of the
25 department.

26 (2) Four members appointed by the General Assembly under
27 subsection (c).

28 (3) Four members appointed by the Governor under
29 subsection (d).

30 (c) Legislative appointments.--

1 (1) Members appointed by the General Assembly under
2 subsection (b) (2) shall be as follows:

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

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

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

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

11 (2) Legislative appointees must be residents of this
12 Commonwealth and shall serve at the pleasure of the
13 appointing authority.

14 (3) Legislative appointees must have expertise or
15 substantial experience in one or more of the following areas:

16 (i) Local government.

17 (ii) Finance.

18 (iii) Public school administration.

19 (iv) Public works construction.

20 (v) Wastewater or storm water collection, treatment,
21 and disposal or public water supply, collection and
22 treatment.

23 (d) Gubernatorial appointments.--

24 (1) Three of the members under subsection (b) (3) shall
25 be appointed by the Governor from a list of nominees
26 submitted by the following organizations:

27 (i) The Pennsylvania Municipal League.

28 (ii) The Pennsylvania State Association of Boroughs.

29 (iii) The Pennsylvania State Association of Township
30 Supervisors.

1 (iv) The County Commissioners Association of
2 Pennsylvania.

3 (v) The Pennsylvania School Boards Association.

4 (2) One of the members under subsection (b)(3) shall be
5 appointed by the Governor from a list of nominees submitted
6 by the Pennsylvania Chamber of Business and Industry.

7 (3) Appointees must be residents of this Commonwealth
8 and shall serve at the pleasure of the Governor.

9 (4) The Governor may not appoint more than one
10 individual from a single organization.

11 (e) Quorum.--Five members of the board shall constitute a
12 quorum. The adoption of a resolution or other action of the
13 board shall require a majority vote of the members of the board.

14 (f) Compensation.--The members of the board shall be
15 entitled to no compensation for their services as members of the
16 board, but shall be entitled to reimbursement by the department
17 for all necessary and reasonable expenses incurred in connection
18 with the performance of their duties as members of the board.

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

24 (h) Financial interests.--No member of the board, during the
25 member's term of office, shall directly or indirectly own, have
26 any significant financial interest in, be associated with or
27 receive any fee, commission, compensation or anything of value
28 from any government agency or private entity seeking to engage
29 in a public-private partnership agreement. This subsection shall
30 not apply to the salary of an employee of a government agency.

1 (i) Technical assistance.--The department shall supply all
2 necessary assistance to the board in carrying out the board's
3 duties and responsibilities under this chapter, including
4 retention of legal, financial and technical consultants and
5 staff to assist with this role.

6 (j) Applicability of other statutes.--The following acts
7 shall apply to the board:

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

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

12 (3) 65 Pa.C.S. Chs. 7 (relating to open meetings) and 11
13 (relating to ethics standards and financial disclosure).

14 (k) Duties of board.--The board shall:

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

16 (2) Administer the Public-Private Partnership Pilot
17 Program.

18 (3) Adopt guidelines establishing the procedure by which
19 a government agency may submit to the board an eligible
20 project for consideration as a pilot project.

21 (4) Establish a reasonable fee to cover the costs of
22 processing, reviewing and evaluating proposals, including
23 reasonable attorney fees and fees for financial and other
24 necessary advisers or consultants.

25 (5) Consult with persons affected by proposed public-
26 private partnership agreements.

27 (6) Evaluate and, where the board finds that an eligible
28 project submitted to the board under section 4706(d)
29 (relating to evaluation and selection of public-private
30 partnership agreement proposal) is in the best interest of

1 the Commonwealth and the government agency and meets the
2 criteria in section 4703(d) (relating to Public-Private
3 Partnership Pilot Program), approve the eligible project for
4 a pilot project. The board shall approve a pilot project by
5 adopting a resolution.

6 (7) Submit an annual report to the General Assembly
7 detailing all eligible projects evaluated and pilot project
8 resolutions adopted for that year.

9 (1) Actions.--Actions by the board shall be determinations
10 of public policy and shall not be considered adjudications under
11 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of
12 Commonwealth agencies) and 7 Subch. A (relating to judicial
13 review of Commonwealth agency action) and shall not be
14 appealable to the department or a court of law.

15 § 4703. Public-Private Partnership Pilot Program.

16 (a) Establishment.--The Public-Private Partnership Pilot
17 Program is established to expand the usage of public-private
18 partnership agreements for the development and operation of
19 eligible projects across this Commonwealth.

20 (b) Duration.--The Public-Private Partnership Pilot Program
21 shall expire as of the latest expiration date of a public-
22 private partnership agreement that is entered into under the
23 pilot program.

24 (c) Program description.--The Public-Private Partnership
25 Pilot Program shall consist of 16 authorized pilot projects, as
26 follows:

27 (1) Four authorized pilot projects for a facility or
28 infrastructure used for public water supply distribution or
29 treatment, storm water collection, treatment or disposal or
30 wastewater collection, treatment or disposal, each of which

1 is proposed and submitted to the board by more than one local
2 agency.

3 (2) Twelve authorized pilot projects for any type of
4 eligible project, which pilot projects shall be subject to
5 the following limitations:

6 (i) there may be no more than two authorized pilot
7 projects under this paragraph within each of six regions
8 established by the department; and

9 (ii) three of the authorized pilot projects under
10 this paragraph shall be set aside for eligible projects
11 proposed and submitted to the board by a local agency.

12 (d) Criteria.--

13 (1) Except as provided in paragraph (2), only eligible
14 projects valued at \$20,000,000 or more are eligible for
15 consideration and approval as a pilot project.

16 (2) The \$20,000,000 threshold under paragraph (1) is
17 waived for consideration and approval of a proposed pilot
18 project under subsection (c) (2) (ii).

19 (3) The board shall consider and approve a pilot project
20 based on one or more of the following factors:

21 (i) The project's benefits to public health.

22 (ii) The project's benefits to public safety.

23 (iii) The project's benefits to the environment.

24 (iv) The contribution to and impact of the project
25 on economic development.

26 (v) Whether the project improves the ability of a
27 government agency to come into compliance with Federal
28 and State statutes, regulations and standards.

29 (vi) The cost effectiveness of the project.

30 (4) The board may approve pilot projects from among

1 requests submitted by government agencies under section
2 4706(d) (relating to evaluation and selection of public-
3 private partnership agreement proposal), including requests
4 resulting from solicitations under section 4705(a) and
5 requests resulting from unsolicited submissions made under
6 section 4704(a).

7 § 4704. Unsolicited submission of eligible projects for
8 consideration as pilot projects.

9 (a) Unsolicited submission procedure.--A private entity may
10 make an unsolicited request for consideration of an eligible
11 project for a pilot project. The request may be submitted to the
12 applicable government agency. A proposal under this section may
13 not be approved unless the government agency follows procedures
14 established in sections 4705 (relating to solicitation of
15 eligible projects for consideration as pilot projects) and 4706
16 (relating to evaluation and selection of public-private
17 partnership agreement proposal).

18 (b) Material and information.--A request under subsection
19 (a) shall be accompanied by the following material and
20 information:

21 (1) A topographic map on a scale of 1:2,000 or other
22 appropriate scale indicating the location of the eligible
23 project.

24 (2) A description of the eligible project, including the
25 conceptual design of the facility or a conceptual plan for
26 the provision of services and a schedule for the initiation
27 of and completion of the eligible project to include the
28 proposed major responsibilities and timeline for activities
29 to be performed by both the government agency and private
30 entity.

1 (3) A statement of the method by which the private
2 entity proposes to secure the necessary property interests
3 required for the eligible project. The statement shall
4 include the following:

5 (i) The names and addresses, if known, of the
6 current owners of the property needed for the eligible
7 project.

8 (ii) The nature of the property interests to be
9 acquired.

10 (4) Information relating to the current plans, if any,
11 for development of facilities to be used by a government
12 agency that are similar to the eligible project being
13 proposed by the private entity.

14 (5) A list of all permits and approvals required for the
15 eligible project from Federal, State and local agencies and a
16 projected schedule for obtaining the permits and approvals.

17 (6) A list of any utility facilities known to the
18 private entity that may be crossed or affected by the
19 eligible project and a statement of the plans of the operator
20 to accommodate the crossings or affected facilities.

21 (7) A statement of the private entity's general plans
22 for financing the eligible project, including the sources of
23 the private entity's funds.

24 (8) The names and addresses of the persons who may be
25 contacted for further information concerning the request.

26 (9) User fees, lease payments and other service payments
27 proposed in the public-private partnership agreement,
28 including frequency of assessments and the methodology and
29 circumstances for changes to the user fees, lease payments
30 and other service payments.

1 (c) Evaluation of responses and requests.--

2 (1) A government agency shall evaluate each request
3 under subsection (a) to determine if the request is in the
4 best interest of the government agency.

5 (2) If the government agency concludes that a request is
6 in the best interest of the government agency, the government
7 agency may issue a request for proposals for eligible
8 projects for consideration as a pilot project under section
9 4705 (relating to solicitation of eligible projects for
10 consideration as pilot projects).

11 (d) Prohibition.--A local agency may not disclose material
12 or information provided by a private entity under subsection
13 (b), except for a general description of the proposed eligible
14 project when soliciting eligible project proposals under this
15 chapter.

16 § 4705. Solicitation of eligible projects for consideration as
17 pilot projects.

18 (a) Procedure.--

19 (1) A government agency may solicit eligible projects
20 for consideration as a pilot project through a request for
21 pilot projects, regardless of whether the agency has received
22 an unsolicited proposal or not.

23 (2) The government agency shall give public notice of a
24 request for pilot projects consistent with this section.

25 (3) Offerors must submit their responses to the
26 government agency in the form and manner required by the
27 request for pilot projects. Each response shall be
28 accompanied by the material and information listed in section
29 4704(b) (relating to unsolicited submission of eligible
30 projects for consideration as pilot projects).

1 (b) Availability to general public.--Copies of a request for
2 proposals shall be made available to the public under the act of
3 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law,
4 and shall be posted on the government agency's publicly
5 accessible Internet website. If an agency does not maintain an
6 Internet website, the agency shall provide copies through other
7 means.

8 (c) Receipt of proposals.--Offerors shall submit their
9 sealed proposals to ensure that they are received prior to the
10 time and date established for receipt of the proposals. Sealed
11 proposals shall be submitted in the format required by the
12 government agency. All sealed proposals shall be opened at the
13 time, date and place designated in the request for proposals.

14 (d) Fee.--The government agency may charge a reasonable fee
15 to cover the costs of processing, reviewing and evaluating the
16 proposal, including reasonable attorney fees and fees for
17 financial and other necessary advisers or consultants.
18 \$ 4706. Evaluation and selection of public-private partnership
19 agreement proposal.

20 (a) Evaluation criteria.--A government agency shall evaluate
21 each responsive proposal to determine which one, if any, has the
22 best value for and is in the best interest of the government
23 agency. In making the evaluation, a government agency may
24 consider any of the following:

- 25 (1) Cost.
26 (2) Price.
27 (3) Financial commitment.
28 (4) Innovative financing.
29 (5) Bonding.
30 (6) Technical, scientific, technological or

1 socioeconomic merit.

2 (7) Financial strength and viability.

3 (8) Design, operation and feasibility of the eligible
4 project.

5 (9) Public reputation, qualifications, industry
6 experience and financial capacity of the private entity.

7 (10) The compatibility of the proposal with existing
8 local and county land use plans.

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

11 (12) Other factors deemed appropriate by the government
12 agency.

13 (b) Weighted consideration.--The relative importance of each
14 evaluation factor shall be fixed prior to opening the proposals.

15 (c) Discussion with responsible offerors and revision of
16 proposals.--As provided in the request for proposals,
17 discussions and negotiations may be conducted with responsible
18 offerors for the purpose of clarification and of obtaining best
19 and final offers. Responsible offerors shall be accorded fair
20 and equal treatment with respect to any opportunity for
21 discussion and revision of proposals. In conducting discussions,
22 there shall be no disclosure of any information derived from
23 proposals submitted by competing offerors.

24 (d) Selection for submission to board.--The responsible
25 offeror whose proposal is determined in writing to be the best
26 value for and in the best interests of the government agency and
27 the general public, taking into consideration all evaluation
28 factors, shall be selected for submission to the board for
29 consideration and approval as a pilot project.

30 § 4707. Solicitation of proposals for public-private

1 partnership agreements.

2 (a) Discretion to government agency.--If an eligible project
3 is approved by the board as a pilot project under section
4 4702(j)(6) (relating to State Public-Private Partnership Board),
5 the government agency may enter into contract negotiations with
6 the responsible offeror for a public-private partnership
7 agreement for an eligible project.

8 (b) Cancellation.--A request for proposals may be canceled
9 at any time prior to the time a public-private partnership
10 agreement is executed by all parties when it is in the best
11 interest of the government agency.

12 (c) Award.--

13 (1) Upon reaching an agreement with a responsible
14 offeror, the government agency shall enter into a public-
15 private partnership agreement with the responsible offeror.
16 The public-private partnership agreement shall be consistent
17 with the requirements of this chapter.

18 (2) (i) If agreement cannot be reached with the
19 responsible offeror, then negotiations shall be formally
20 terminated with the responsible offeror.

21 (ii) If proposals were submitted by one or more
22 other responsible offerors, the agency may submit the
23 remaining proposal determined in writing to be the best
24 value for and in the best interests of the government
25 agency to the board for consideration and approval as a
26 pilot project.

27 (iii) The public-private partnership agreement may
28 be awarded to the responsible offeror whose proposal is
29 then ranked as providing the best value.

30 (d) Resolution of controversies.--

1 (1) If a private entity is aggrieved by a selection
2 under this section, a responsible offeror may, in the case of
3 a government agency other than a Commonwealth agency, file a
4 claim with the court of common pleas where the government
5 agency is located or, in the case of a Commonwealth agency,
6 file a claim with the Commonwealth Court.

7 (2) The process for the filing and resolution of claims,
8 including rights, contents, timing, evaluation, determination
9 and remedies, which are established in Chapter 17 (relating
10 to legal and contractual remedies) shall apply insofar as
11 practicable.

12 § 4708. Implementation of public-private partnership agreement.

13 (a) Final approval.--Approval of the government agency is
14 contingent upon the private entity's agreement to enter into a
15 public-private partnership agreement with the government agency.

16 (b) Contents.--Prior to designing, constructing, improving,
17 renovating, expanding, equipping, maintaining or operating the
18 eligible project, the private entity shall enter into a public-
19 private partnership agreement with the government agency. The
20 public-private partnership agreement shall provide for all of
21 the following:

22 (1) Delivery of maintenance, performance and payment
23 bonds or letters of credit in connection with the
24 acquisition, design, construction, improvement, renovation,
25 expansion, equipping, maintenance or operation of the
26 eligible project, in the forms and amounts satisfactory to
27 the government agency.

28 (2) Review of plans and specifications for the eligible
29 project by the government agency and approval by the
30 government agency if the plans and specifications conform to

1 standards acceptable to the government agency, except that
2 nothing in this paragraph shall be construed as requiring the
3 private entity to complete design of an eligible project
4 prior to the execution of a public-private partnership
5 agreement.

6 (3) Inspection of the eligible project by the government
7 agency to ensure that the operator's activities are
8 acceptable to the government agency in accordance with the
9 public-private partnership agreement.

10 (4) Maintenance of policies of liability insurance,
11 copies of which shall be filed with the government agency
12 accompanied by proofs of coverage and self-insurance in form
13 and amount satisfactory to the government agency and
14 reasonably sufficient to insure coverage of tort liability to
15 the public and employees and to enable the continued
16 operation of the eligible project.

17 (5) Monitoring of the practices of the operator by the
18 government agency to ensure that the eligible project is
19 properly maintained.

20 (6) Reimbursement to be paid to the government agency
21 for services provided by the government agency.

22 (7) Filing of appropriate financial statements on a
23 periodic basis.

24 (8) Policies and procedures governing the rights and
25 responsibilities of the government agency and the operator in
26 the event the public-private partnership agreement is
27 terminated or there is a material default by the operator.
28 The policies and procedures shall include conditions
29 governing assumption of the duties and responsibilities of
30 the operator by the government agency and the transfer or

1 purchase of property or other interests of the operator by
2 the government agency.

3 (c) Fees.--

4 (1) The public-private partnership agreement may provide
5 for a user fee, lease payment or service payment. A copy of a
6 service contract must be filed with the government agency.

7 (2) When negotiating a user fee under this subsection,
8 the parties shall establish payments or fees that are the
9 same for a person using the facility under like conditions
10 and that will not materially discourage use of the eligible
11 project.

12 (3) The execution of the public-private partnership
13 agreement or an amendment to the public-private partnership
14 agreement constitutes conclusive evidence that any user fee,
15 lease payment or service payment complies with this chapter.

16 (4) A user fee or lease payment established in the
17 public-private partnership agreement as a source of revenue
18 may be in addition to or in lieu of a service payment.

19 (d) Grants or loans.--The government agency may agree in the
20 public-private partnership agreement to make a grant, if the
21 terms of the grant allow, or loan to the operator from an amount
22 received from a Federal, State or local agency or
23 instrumentality.

24 (e) Duties.--

25 (1) The public-private partnership agreement shall
26 incorporate the duties of the operator under this chapter and
27 may contain other terms and conditions that the government
28 agency determines serve the public purpose under section
29 4706(d) (relating to evaluation and selection of public-
30 private partnership agreement proposal).

1 (2) The public-private partnership agreement may contain
2 any of the following:

3 (i) Provisions under which the government agency
4 agrees to provide notice of default and right to cure for
5 the benefit of the operator and the persons specified in
6 the notice as providing financing for the eligible
7 project.

8 (ii) Other lawful terms and conditions to which the
9 operator and the government agency mutually agree,
10 including provisions regarding unavoidable delays or
11 provisions providing for a loan of public funds to the
12 operator to acquire, design, construct, improve,
13 renovate, expand, equip, maintain or operate one or more
14 eligible projects.

15 (iii) Provisions under which the authority and
16 duties of the operator under this chapter shall cease and
17 the eligible project shall be dedicated to the government
18 agency or, if the eligible project is initially dedicated
19 by an affected local jurisdiction, to the affected local
20 jurisdiction for public use.

21 (f) Amendments.--Change in the terms of the public-private
22 partnership agreement, as may be agreed upon by the parties,
23 shall be added only by written amendment.

24 (g) Date.--In connection with its approval of the eligible
25 project, the government agency shall establish a date for the
26 commencement of activities related to the eligible project. The
27 government agency may extend the date.

28 (h) Public access.--

29 (1) Any documents created by or provided to a government
30 agency under this chapter shall be subject to inspection and

1 copying only to the extent required under the act of February
2 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

3 (2) Nothing in this chapter shall be construed to
4 abrogate the provisions of the act of November 29, 2006
5 (P.L.1435, No.156), known as the Public Utility Confidential
6 Security Information Disclosure Protection Act.

7 (i) Debt capacity.--No public-private partnership agreement
8 entered into under this chapter may enlarge, diminish or affect
9 the authority otherwise possessed by the government agency to
10 take action that would impact the debt capacity of the
11 Commonwealth or any local agency.

12 § 4709. Service contracts.

13 In addition to any authority conferred by statute, a
14 government agency may contract with an operator for the delivery
15 of services to be provided as part of an eligible project in
16 exchange for service payment and other consideration as the
17 government agency may deem appropriate.

18 § 4710. Affected local jurisdictions.

19 (a) Notification.--

20 (1) Prior to entering into a public-private partnership
21 agreement with a responsible offeror in accordance with
22 section 4706 (relating to evaluation and selection of public-
23 private partnership agreement proposal), the government
24 agency shall notify each affected local jurisdiction by
25 furnishing a copy of the proposal to each affected local
26 jurisdiction.

27 (2) The responsible offeror shall reimburse the
28 government agency for costs incurred by the agency in
29 furnishing a copy of the proposal to each affected local
30 jurisdiction.

1 (b) Comments.--Each affected local jurisdiction that is not
2 the applicable government agency for the respective eligible
3 project shall, within 30 days after receiving the notice, submit
4 any comments the local jurisdiction may have in writing on the
5 proposed eligible project to the applicable government agency
6 and indicate whether the eligible project is compatible with the
7 local ordinance requirements and other local requirements. The
8 comments shall be given consideration by the government agency
9 prior to entering a public-private partnership agreement with
10 the private entity.

11 § 4711. Dedication of public property.

12 A government agency may dedicate any property interest,
13 including land, improvements and tangible personal property,
14 that the government agency has for public use in an eligible
15 project if it finds that doing so serves the public purpose
16 under section 4706(a) (relating to evaluation and selection of
17 public-private partnership agreement proposal) by minimizing the
18 cost of an eligible project to the government agency or reducing
19 the delivery time of an eligible project. In connection with the
20 dedication, a government agency may convey any property interest
21 that the government agency has, subject to the conditions
22 imposed by law, to the operator, subject to the provisions of
23 this chapter, for consideration as the government agency may
24 determine.

25 § 4712. Powers and duties of operator.

26 (a) General rule.--The operator shall have the power to
27 acquire, design, construct, improve, renovate, maintain, expand,
28 equip or operate the eligible project and collect lease
29 payments, impose a user fee or enter into a service contract in
30 connection with the use of this power.

1 (b) Right.--The operator may own, lease or acquire any other
2 right to use or operate the eligible project.

3 (c) Financing.--

4 (1) Notwithstanding paragraph (2), any financing of the
5 eligible project may be in an amount and upon such terms and
6 conditions as may be determined by the operator.

7 (2) The operator may issue debt, equity or other
8 securities or obligations, enter into sale and leaseback
9 transactions and secure any financing with a pledge of,
10 security interest in or lien on any or all of its property,
11 including all of its property interests in the eligible
12 project.

13 (d) Operation.--In operating the eligible project, the
14 operator may do all of the following:

15 (1) Make classifications according to reasonable
16 categories for assessment of user fees.

17 (2) With the consent of the government agency, make and
18 enforce reasonable rules to the same extent that the
19 government agency may make and enforce rules with respect to
20 similar facilities.

21 (e) Duties.--The operator shall:

22 (1) Acquire, design, construct, improve, renovate,
23 expand, equip, maintain or operate the eligible project in
24 accordance with the public-private partnership agreement.

25 (2) Keep the eligible project open for use by members of
26 the public as appropriate based upon the use of the facility
27 after its initial opening upon payment of the applicable user
28 fee, lease payment or service payment. The eligible project
29 may be temporarily closed because of emergencies or, with the
30 consent of the government agency, to protect the safety of

1 the public or for reasonable construction or maintenance
2 procedures as specified in the public-private partnership
3 agreement.

4 (3) Maintain or provide by contract for the maintenance
5 of the eligible project, if required by the public-private
6 partnership agreement.

7 (4) Cooperate with the government agency in making best
8 efforts to establish any interconnection with the eligible
9 project requested by the government agency.

10 (5) Comply with the public private-partnership agreement
11 and any service contract.

12 (f) Construction.--Nothing in this section shall be
13 construed to prohibit an operator from providing additional
14 services for the eligible project to private entities or
15 government agencies, other than the government agency that is
16 party to the public-private partnership agreement, if the
17 provision of additional service does not impair the operator's
18 ability to meet its commitments to the government agency under
19 the public-private partnership agreement.

20 § 4713. Prompt payment requirements.

21 The provisions of sections 3933 (relating to contractors' and
22 subcontractors' payment obligations) and 3935 (relating to
23 penalty and attorney fees) shall apply to the payment of
24 subcontractors by operators or subcontractors under this
25 chapter.

26 § 4714. Federal, State and local assistance.

27 The government agency may obtain assistance from the Federal
28 or State Government or a local agency for an eligible project in
29 accordance with the purposes under section 4706 (relating to
30 evaluation and selection of public-private partnership agreement

1 proposal) and may enter into a contract in order to receive the
2 assistance. The government agency may pay a portion of the costs
3 of an eligible project directly or indirectly from the proceeds
4 of a grant or loan made by a Federal, State or local agency.

5 § 4715. Material default and remedies.

6 (a) General rule.--If there is a material default by the
7 operator, the government agency may assume the duties of the
8 operator, in which case it shall succeed to any right, title and
9 interest in the eligible project, subject to any liens on
10 revenue previously granted by the operator to any person
11 providing financing.

12 (b) Condemnation.--

13 (1) A government agency that is a party to a public-
14 private partnership agreement, and which has the power of
15 condemnation under State law, may exercise the power of
16 condemnation to acquire the eligible project in the event of
17 a material default by the operator.

18 (2) A person who has provided financing for the eligible
19 project, and the operator to the extent of its capital
20 investment, may participate in the condemnation proceedings
21 with the standing of a property owner.

22 (c) Termination.--The government agency may terminate, for
23 cause shown, the public-private partnership agreement and
24 exercise any other rights and remedies that may be available at
25 law or in equity.

26 (d) Claims.--The government agency may make or cause to be
27 made any appropriate claims under maintenance, performance or
28 payment bonds or lines of credit required under section 4708(b)

29 (1) (relating to implementation of public-private partnership
30 agreement).

1 (e) Procedure after takeover.--

2 (1) If a government agency takes over an eligible
3 project under subsection (a), it may acquire, design,
4 construct, improve, renovate, operate, expand, equip or
5 maintain the eligible project, impose user fees, impose and
6 collect lease payments for the use of the eligible project
7 and comply with service contracts as if the government agency
8 were the operator.

9 (2) Revenue subject to a lien shall be collected for the
10 benefit of and paid to secured parties, as their interests
11 may appear, to the extent necessary to satisfy the operator's
12 obligations to secured parties, including the maintenance of
13 reserves. Liens shall be correspondingly reduced and released
14 when they are satisfied.

15 (3) Before a payment to or for the benefit of secured
16 parties, the government agency may use revenue to pay current
17 operation and maintenance costs of the eligible project,
18 including compensation to the responsible government agency
19 for its services in operating and maintaining the eligible
20 project. The right to receive payment, if any, shall be just
21 compensation for the eligible project.

22 (4) The full faith and credit of the government agency
23 may not be pledged to secure any financing of the operator by
24 the election to take over the eligible project.

25 (5) Assumption of operation of the eligible project may
26 not obligate the government agency to pay an obligation of
27 the operator from sources other than revenue.

28 § 4716. Utility crossing.

29 Notwithstanding any other provision of law:

30 (1) The operator and each public utility, railroad and

1 cable television provider whose facilities are to be crossed
2 or affected by an eligible project shall cooperate fully in
3 planning and arranging the manner of the crossing or
4 relocation of the facilities.

5 (2) All costs incurred by the public utility, railroad
6 or cable television provider in relocating, constructing or
7 reconstructing its facilities, including temporary
8 facilities, shall be paid by the operator.

9 (3) If the operator and a public utility, railroad or
10 cable television provider are unable to agree upon costs to
11 be paid by the operator under paragraph (2), the Pennsylvania
12 Public Utility Commission shall determine the amount of the
13 payment to be made by the operator.

14 § 4717. Governmental immunity.

15 This chapter shall not be construed or deemed to constitute a
16 waiver of the governmental immunity of a government agency or an
17 affected local jurisdiction with respect to participation in or
18 approval of an eligible project or its operation, including
19 interconnection of the eligible project with an existing
20 infrastructure or an existing project. An affected local
21 jurisdiction shall continue to have governmental immunity with
22 respect to an eligible project's design, construction and
23 operation.

24 § 4718. Special approval.

25 A government agency may enter into a public-private
26 partnership agreement under this chapter only with the approval
27 of its governing body.

28 § 4719. Exclusivity.

29 (a) Exclusive method of procurement.--The provisions of this
30 chapter shall constitute the exclusive method of procurement for

1 public-private partnership agreements entered into under the
2 Public-Private Partnership Pilot Program established under this
3 chapter, notwithstanding any other law. In the event of a
4 conflict between a provision of this chapter and another statute
5 or regulation, with regard to a public-private partnership
6 agreement entered into under this chapter, the provisions of
7 this chapter shall govern.

8 (b) Construction.--Nothing in this chapter shall be
9 construed to prohibit a government agency from entering into a
10 contract management arrangement that is authorized by another
11 law, provided that the contract management arrangement is not a
12 pilot project under this chapter.

13 § 4720. Applicability.

14 (a) General rule.--This chapter shall not apply to any
15 transportation project as that term is defined in 74 Pa.C.S. §
16 9102 (relating to definitions).

17 (b) Authorized pilot projects.--Authorized pilot projects
18 shall not be subject to the requirements of the following:

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

21 (2) Section 1805 of act of June 24, 1931 (P.L.1206,
22 No.331), known as The First Class Township Code.

23 (3) Section 3107 of the act of May 1, 1933 (P.L.103,
24 No.69), known as The Second Class Township Code.

25 (4) Section 751 of the act of March 10, 1949 (P.L.30,
26 No.14), known as the Public School Code of 1949.

27 (5) Section 5 of the act of May 27, 1953 (P.L.244,
28 No.34), entitled "An act relating to and regulating the
29 contracts of incorporated towns and providing penalties."

30 (6) Section 2517 of the act of July 28, 1953 (P.L.723,

1 No.230), known as the Second Class County Code.

2 (7) Section 2317 of the act of August 9, 1955 (P.L.323,
3 No.130), known as The County Code.

4 (8) 8 Pa.C.S. § 1405 (relating to separate bids for
5 plumbing, heating, ventilating and electrical work).

6 (9) 11 Pa.C.S. Pt. V (relating to third class cities).
7 § 4721. Pennsylvania Public Utility Commission.

8 Except as provided in section 4716 (relating to utility
9 crossing) nothing in this chapter shall be construed to affect
10 the duties and jurisdiction of the Pennsylvania Public Utility
11 Commission.

12 Section 2. Effective date.

13 This act shall take effect as follows:

14 (1) The following provisions shall take effect
15 immediately:

16 (i) The addition of 62 Pa.C.S. §§ 4701 and 4702.

17 (ii) This section.

18 (2) The remainder of this act shall take effect in 90
19 days.