

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2065 Session of 2020

INTRODUCED BY WHITE, ROTHMAN, SCHMITT, PICKETT, BROWN, STRUZZI, ECKER, MIZGORSKI, HENNESSEY, SCHLEGEL CULVER, ZIMMERMAN, POLINCHOCK AND TOMLINSON, MARCH 13, 2020

SENATOR BROWNE, APPROPRIATIONS, IN SENATE, RE-REPORTED AS AMENDED, NOVEMBER 16, 2020

AN ACT

1 ~~Amending Title 74 (Transportation) of the Pennsylvania~~ <--
2 ~~Consolidated Statutes, in public private transportation~~
3 ~~partnerships, further providing for definitions and for~~
4 ~~duties of board.~~

5 AMENDING TITLE 74 (TRANSPORTATION) OF THE PENNSYLVANIA <--
6 CONSOLIDATED STATUTES, IN PUBLIC-PRIVATE TRANSPORTATION
7 PARTNERSHIPS, FURTHER PROVIDING FOR DEFINITIONS, FOR DUTIES
8 OF BOARD, FOR REQUESTS AND FOR SOVEREIGN IMMUNITY.

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

11 ~~Section 1. The definitions of "public entity" and "public~~ <--
12 ~~private transportation partnership agreement" in section 9102 of~~
13 ~~Title 74 of the Pennsylvania Consolidated Statutes are amended~~
14 ~~to read:~~

15 ~~§ 9102. Definitions.~~

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

19 * * *

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

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

17 ~~(1) Operations and maintenance.~~

18 ~~(2) Revenue collection.~~

19 ~~(3) User fee collection or enforcement.~~

20 ~~(4) Design.~~

21 ~~(5) Construction.~~

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

26 ~~(7) Financing.~~

27 ~~(8) Truck parking.~~

28 ~~(9) Weigh station bypassing.~~

29 ~~(10) Electronic toll payment.~~

30 ~~(11) Snow and ice removal for commercial vehicles.~~

1 * * *

2 Section 2. ~~Section 9104(a)(5) of Title 74 is amended to~~
3 read:

4 ~~§ 9104. Duties of board.~~

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

6 * * *

7 ~~(5) Submit an annual report to the General Assembly~~
8 ~~{detailing all transportation projects evaluated and~~
9 ~~resolutions adopted.}, including, but not limited to, the~~
10 ~~following:~~

11 ~~(i) A description of all transportation projects~~
12 ~~evaluated and resolutions adopted.~~

13 ~~(ii) A description of all transportation projects~~
14 ~~denied and reasons for the denial.~~

15 ~~(iii) A description of all unsolicited plans for~~
16 ~~transportation projects submitted by private entities and~~
17 ~~the status of the board's evaluation of the unsolicited~~
18 ~~plans.~~

19 ~~(iv) A description of all requests for~~
20 ~~transportation projects submitted by public entities and~~
21 ~~the status of the board's evaluation of the requests.~~

22 * * *

23 Section 3. ~~This act shall take effect in 60 days.~~

24 SECTION 1. THE DEFINITIONS OF "PRIVATE ENTITY," "PUBLIC <--
25 ENTITY," "PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT"
26 AND "TRANSPORTATION FACILITY" IN SECTION 9102 OF TITLE 74 OF THE
27 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED AND THE SECTION
28 IS AMENDED BY ADDING A DEFINITION TO READ:

29 § 9102. DEFINITIONS.

30 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER

1 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
2 CONTEXT CLEARLY INDICATES OTHERWISE:

3 * * *

4 "PRIVATE ENTITY." A PERSON, ENTITY, GROUP OR ORGANIZATION
5 THAT IS NOT THE FEDERAL GOVERNMENT, THE COMMONWEALTH, A COUNTY,
6 A CITY OF THE FIRST CLASS, A CITY OF THE SECOND CLASS OR A
7 MUNICIPAL AUTHORITY.

8 * * *

9 "PUBLIC ENTITY." A COMMONWEALTH AGENCY AS DEFINED IN 62
10 PA.C.S. § 103 (RELATING TO DEFINITIONS), A COUNTY, A CITY OF THE
11 FIRST CLASS, A CITY OF THE SECOND CLASS, A MUNICIPAL AUTHORITY
12 OR AN AUTHORITY CREATED BY STATUTE WHICH OWNS A TRANSPORTATION
13 FACILITY. THE TERM DOES NOT INCLUDE THE GENERAL ASSEMBLY AND ITS
14 MEMBERS, OFFICERS OR AGENCIES OR ANY COURT OR OTHER OFFICE OR
15 AGENCY OF THE PENNSYLVANIA JUDICIAL SYSTEM.

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

- 25 (1) OPERATIONS AND MAINTENANCE.
- 26 (2) REVENUE COLLECTION.
- 27 (3) USER FEE COLLECTION OR ENFORCEMENT.
- 28 (4) DESIGN.
- 29 (5) CONSTRUCTION.
- 30 (6) DEVELOPMENT AND OTHER ACTIVITIES WITH RESPECT TO

1 EXISTING OR NEW TRANSPORTATION FACILITIES THAT ENHANCE
2 TRAFFIC THROUGHPUT, REDUCE CONGESTION, IMPROVE SAFETY [OR
3 OTHERWISE], MANAGE OR IMPROVE A TRANSPORTATION FACILITY[.] OR
4 SUPPORT THE ADVANCEMENT OF ALTERNATIVE FUEL VEHICLES OR
5 HIGHLY AUTOMATED VEHICLES AUTHORIZED UNDER 75 PA.C.S.
6 (RELATING TO VEHICLES).

7 (7) FINANCING.

8 (8) DRIVER AND VEHICLE SERVICES.

9 * * *

10 "TRANSPORTATION FACILITY." A PROPOSED OR EXISTING ROAD,
11 BRIDGE, TUNNEL, OVERPASS, FERRY, BUSWAY, GUIDEWAY, PUBLIC
12 TRANSPORTATION FACILITY, VEHICLE PARKING FACILITY, PORT
13 FACILITY, MULTIMODAL TRANSPORTATION FACILITY, AIRPORT, STATION,
14 HUB, TERMINAL, REST AREA, WEIGH STATION, WEIGH STATION BYPASS,
15 WELCOME CENTER, UNMANNED AERIAL SYSTEM OR SIMILAR FACILITY USED
16 OR TO BE USED FOR THE TRANSPORTATION OF PERSONS, ANIMALS OR
17 GOODS, TOGETHER WITH ANY BUILDINGS, STRUCTURES, PARKING AREAS,
18 APPURTENANCES, INTELLIGENT TRANSPORTATION SYSTEMS AND OTHER
19 PROPERTY NEEDED TO OPERATE OR RELATED TO THE OPERATION OF THE
20 TRANSPORTATION FACILITY. THE TERM INCLUDES ANY IMPROVEMENTS OR
21 SUBSTANTIAL ENHANCEMENTS OR MODIFICATIONS TO AN EXISTING
22 TRANSPORTATION FACILITY OR TRANSPORTATION-RELATED SERVICE.

23 * * *

24 "TRANSPORTATION-RELATED SERVICE." A PROPOSED OR EXISTING
25 SERVICE OFFERED BY THE DEPARTMENT OR A COMMONWEALTH AGENCY TO
26 PROVIDE A PRODUCT, PERMIT OR SIMILAR AUTHORIZATION IN A
27 TRANSACTION FOR A RESIDENT OR NONRESIDENT TO MOVE INDIVIDUALS OR
28 PROPERTY WITHIN THIS COMMONWEALTH DURING THE NORMAL COURSE OF
29 BUSINESS OR A DECLARATION BY THE GOVERNOR OF DISASTER EMERGENCY
30 UNDER 35 PA.C.S. § 7301(C) (RELATING TO GENERAL AUTHORITY OF

1 GOVERNOR) .

2 SECTION 2. SECTIONS 9104(A) (5), 9108 AND 9117 ARE AMENDED TO
3 READ:

4 § 9104. DUTIES OF BOARD.

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

6 * * *

7 (5) SUBMIT AN ANNUAL REPORT TO THE GENERAL ASSEMBLY

8 [DETAILING ALL TRANSPORTATION PROJECTS EVALUATED AND
9 RESOLUTIONS ADOPTED.], INCLUDING, BUT NOT LIMITED TO, THE
10 FOLLOWING:

11 (I) A DESCRIPTION OF ALL TRANSPORTATION PROJECTS
12 EVALUATED AND RESOLUTIONS ADOPTED.

13 (II) A DESCRIPTION OF ALL TRANSPORTATION PROJECTS
14 DENIED AND REASONS FOR THE DENIAL.

15 (III) A DESCRIPTION OF ALL UNSOLICITED PLANS FOR
16 TRANSPORTATION PROJECTS SUBMITTED BY PRIVATE ENTITIES AND
17 THE STATUS OF THE BOARD'S EVALUATION OF THE UNSOLICITED
18 PLANS.

19 (IV) A DESCRIPTION OF ALL REQUESTS FOR
20 TRANSPORTATION PROJECTS SUBMITTED BY PUBLIC ENTITIES AND
21 THE STATUS OF THE BOARD'S EVALUATION OF THE REQUESTS.

22 * * *

23 § 9108. REQUESTS.

24 A REQUEST MAY BE SOLICITED OR UNSOLICITED AND MAY PROVIDE FOR
25 THE DEVELOPMENT OR OPERATION OF TRANSPORTATION FACILITIES OR
26 TRANSPORTATION-RELATED SERVICES USING A VARIETY OF PROJECT
27 DELIVERY METHODS AND FORMS OF AGREEMENT. THE METHODS MAY
28 INCLUDE:

29 (1) PREDEVELOPMENT AGREEMENTS LEADING TO OTHER
30 IMPLEMENTING AGREEMENTS.

- 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 DEVELOPMENT ENTITY TO
- 9 DESIGN, BUILD, OPERATE, MAINTAIN, MANAGE OR LEASE A
- 10 TRANSPORTATION FACILITY.
- 11 (10) ANY OTHER INNOVATIVE OR NONTRADITIONAL PROJECT
- 12 DELIVERY METHOD OR AGREEMENT OR COMBINATION OF METHODS OR
- 13 AGREEMENTS THAT THE PUBLIC ENTITY DETERMINES WILL ADDRESS THE
- 14 TRANSPORTATION NEEDS OF THE COMMONWEALTH AND THE PUBLIC
- 15 ENTITY AND SERVE THE PUBLIC INTEREST.

16 § 9117. SOVEREIGN IMMUNITY.

17 UNDER SECTION 11 OF ARTICLE I OF THE CONSTITUTION OF

18 PENNSYLVANIA, IT IS DECLARED TO BE THE INTENT OF THE GENERAL

19 ASSEMBLY THAT THE COMMONWEALTH, AND ITS OFFICIALS AND EMPLOYEES,

20 A COUNTY AND ITS OFFICIALS AND EMPLOYEES, A CITY OF THE FIRST

21 CLASS AND ITS OFFICIALS AND EMPLOYEES, A CITY OF THE SECOND

22 CLASS AND ITS OFFICIALS AND EMPLOYEES, AND A MUNICIPAL

23 AUTHORITY, AND ITS OFFICIALS AND EMPLOYEES, ACTING WITHIN THE

24 SCOPE OF THEIR DUTIES, SHALL CONTINUE TO ENJOY SOVEREIGN

25 IMMUNITY AND OFFICIAL IMMUNITY AND REMAIN IMMUNE FROM SUIT

26 EXCEPT AS PROVIDED IN SECTION 9118 (RELATING TO SPECIFIC

27 PERFORMANCE). A CLAIM AGAINST THE COMMONWEALTH AND ITS OFFICIALS

28 AND EMPLOYEES, A COUNTY AND ITS OFFICIALS AND EMPLOYEES, A CITY

29 OF THE FIRST CLASS AND ITS OFFICIALS AND EMPLOYEES, A CITY OF

30 THE SECOND CLASS AND ITS OFFICIALS AND EMPLOYEES, OR MUNICIPAL

1 AUTHORITY AND ITS OFFICIALS AND EMPLOYEES SHALL BE BROUGHT ONLY
2 IN SUCH MANNER AND IN SUCH COURTS AND IN SUCH CASES AS DIRECTED
3 BY THE PROVISION OF SECTION 9110 (E) (RELATING TO PUBLIC-PRIVATE
4 TRANSPORTATION PARTNERSHIP AGREEMENT), 42 PA.C.S. CH. 85
5 (RELATING TO MATTERS AFFECTING GOVERNMENT UNITS), 62 PA.C.S. CH.
6 17 (RELATING TO LEGAL AND CONTRACTUAL REMEDIES) OR ANY
7 PROCUREMENT LAW APPLICABLE TO A COUNTY, A CITY OF THE FIRST
8 CLASS, A CITY OF THE SECOND CLASS OR MUNICIPAL AUTHORITY.

9 SECTION 3. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.