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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- PUBLIC-PRIVATE
TRANSPORTATION INITIATIVES

Introduced By: Senators Raptakis, DiPalma, Maselli, and Walaska

Date Introduced: February 04, 2010

Referred To: Senate Housing & Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 37 of the General Laws entitled "PUBLIC PROPERTY AND
2 WORKS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 24

4 PUBLIC-PRIVATE TRANSPORTATION INITIATIVES

5 **37-24-1. Definitions.** -- (a) "Affected jurisdiction" means any county, city, or town or
6 municipal corporation, or other unit of government within the state in which all or part of a
7 transportation facility is located or any other public entity directly affected by the transportation
8 facility.

9 (b) "Department" means the state department of transportation.

10 (c) "Force majeure" means an uncontrollable force or natural disaster not within the
11 power of the operator or the state.

12 (d) "Maintenance" includes ordinary maintenance, repair, rehabilitation, capital
13 maintenance, maintenance replacement, and any other categories of maintenance that may be
14 designated by the department.

15 (e) "Material default" means any failure of an operator to perform any duties under a
16 public-private agreement, which jeopardizes delivery of adequate service to the public and
17 remains unsatisfied after a reasonable period of time and after the operator has received written
18 notice from the department of the failure.

1 (f) "Operate" means any action to maintain, rehabilitate, improve, equip, or modify a
2 transportation facility.

3 (g) "Operator" means a private entity that has entered into a public-private agreement
4 under this chapter.

5 (h) "Private entity" means any natural person, corporation, general partnership, limited
6 liability company, limited partnership, joint venture, business trust, public benefit corporation,
7 non-profit entity, or other business entity.

8 (i) "Public-private agreement" means the agreement between a private entity and the
9 department that relates to the development, financing, maintenance, or operation of a
10 transportation facility subject to this chapter.

11 (j) "Public-private initiative" means an arrangement between the department and one or
12 more private entities, the terms of which are stated in a public-private agreement, that provides
13 for:

14 (1) Acceptance of a private contribution, including a money payment, for a project or
15 service for a transportation facility;

16 (2) Sharing of resources and the means of providing a project or service for a
17 transportation facility;

18 (3) Cooperation in researching, developing, and implementing projects or services for a
19 transportation facility.

20 (k) "Transportation facility" means any, including new and existing, highway, road,
21 bridge, tunnel, overpass, ferry, airport, public transportation facility, vehicle parking facility,
22 seaport facility, rail facility, intermodal facility, or similar facility open to the public and used for
23 the transportation of persons or goods, and any building, structure, parking area, appurtenances,
24 or other property needed to operate such facility that is subject to a public-private agreement.

25 (l) "User fees" means the rate, toll, fee, or other charges imposed by an operator for use
26 of all or part of a transportation facility.

27 (m) "Utility" means a privately, publicly, or cooperatively owned line, facility, or system
28 for producing, transmitting, or distributing communications, cable television, power, electricity,
29 light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway
30 drainage, or any other similar commodity, including fire or police signal system or street lighting
31 system, which directly or indirectly serves the public.

32 **37-24-2. Solicited proposals.** -- (a) State purchases, pursuant to chapter 37-2, shall not
33 apply to solicited proposals under this chapter.

34 (b) The department may solicit, receive, consider, evaluate, and accept a proposal for a

1 public-private initiative.

2 (c) In soliciting and selecting a private entity with which to enter into a public-private
3 initiative, the department may utilize one or more of the following procurement approaches:

4 (1) Sealed bidding;

5 (2) Selection of proposals, with or without negotiations, based on qualifications, best
6 value, or both; or

7 (3) Any competitive selection process that the department determines to be appropriate or
8 reasonable.

9 (d) The department may consider the following factors in evaluating and selecting a bid
10 or proposal to enter into a public-private initiative:

11 (1) The ability of the transportation facility to improve safety, reduce congestion, increase
12 capacity, and promote economic growth;

13 (2) The proposed cost of and financial plan for the transportation facility;

14 (3) The general reputation, qualifications, industry experience, and financial capacity of
15 the private entity;

16 (4) The proposed design, operation, and feasibility of the transportation facility;

17 (5) Comments from local citizens and affected jurisdictions;

18 (6) Benefits to the public;

19 (7) The safety record of the private entity; and

20 (8) Other criteria that the department deems appropriate.

21 (e) The department may select multiple private entities with which to enter a public-
22 private agreement for a transportation facility if it is in the public interest to do so.

23 (f) The department shall select a private entity or entities for a public-private initiative on
24 a competitive basis to the maximum extent practicable.

25 (g)(1) A private entity may request a review, prior to submission of a solicited proposal,
26 by the department of information that the private entity has identified as confidential or
27 proprietary to determine whether such information would be subject to disclosure under the open
28 meetings' laws in chapter 42-46 and/or access to public records under chapter 38-2.

29 (2) A private entity may identify confidential or proprietary information submitted as part
30 of a solicited proposal. A private entity shall have an opportunity to object to the release of any
31 information it identifies as confidential or proprietary.

32 (3) The department shall review any information identified as confidential or proprietary
33 by a private entity as part of a solicited proposal and shall determine if such information is
34 exempt from disclosure under the open meetings laws in chapter 42-46 and/or access to public

1 records under chapter 38-2.

2 (4) The department shall inform the private entity that submitted the information of its
3 determination of whether information identified by the private entity as confidential or
4 proprietary is subject to disclosure under the open meetings laws in chapter 42-46 and/or access
5 to public records under chapter 38-2.

6 (5) The private entity shall have the opportunity to object to the determination that the
7 information is subject to disclosure under the open meetings laws in chapter 42-46 and/or access
8 to public records under chapter 38-2 or to withdraw its proposal.

9 (6) Any information determined by the state to be confidential or proprietary shall be
10 exempt from disclosure under the open meetings laws in chapter 42-46 and/or access to public
11 records under chapter 38-2.

12 (7) Any information not determined to be confidential or proprietary may be subject to
13 disclosure under the open meetings laws in chapter 42-46 and/or access to public records under
14 chapter 38-2.

15 **37-24-3. Unsolicited proposals.** -- (a) State purchases pursuant to chapter 37-2 shall not
16 apply to this section.

17 (b)(1) The department may receive, consider, evaluate, and accept an unsolicited proposal
18 for a public-private initiative if the proposal:

19 (i) Is independently originated and developed by the proposer;

20 (ii) Benefits the public;

21 (iii) Is prepared without department supervision; and

22 (iv) Includes sufficient detail and information for the department to evaluate the proposal
23 in an objective and timely manner.

24 (2) Within thirty (30) days after receiving an unsolicited proposal, the department shall
25 undertake a preliminary evaluation of the unsolicited proposal to determine if the proposal
26 complies with the requirements under paragraph (1) of this subsection.

27 (c)(1) A private entity may request a review, prior to submission of an unsolicited
28 proposal, by the department of information that the private entity has identified as confidential or
29 proprietary to determine whether such information would be subject to disclosure under the open
30 meetings laws in chapter 42-46 and/or access to public records under chapter 38-2.

31 (2) A private entity may identify confidential or proprietary information submitted as part
32 of an unsolicited proposal. A private entity shall have an opportunity to object to the release of
33 any information it identifies as confidential or proprietary.

34 (3) The department shall review any information identified as confidential or proprietary

1 by a private entity as part of an unsolicited proposal and shall determine if such information is
2 exempt from disclosure under the open meetings laws in chapter 42-46 and/or access to public
3 records under chapter 38-2.

4 (4) The department shall inform the private entity that submitted the information of its
5 determination of whether information identified by the private entity as confidential or
6 proprietary is subject to disclosure under the open meetings laws in chapter 42-46 and/or access
7 to public records under chapter 38-2.

8 (5) The private entity shall have the opportunity to object to the determination that the
9 information is subject to disclosure under the open meetings laws in chapter 42-46 and/or access
10 to public records under chapter 38-2 or to withdraw its proposal.

11 (6) Any information determined by the state to be confidential or proprietary shall be
12 exempt from disclosure under the open meetings laws in chapter 42-46 and/or access to public
13 records under chapter 38-2.

14 (7) Any information not determined to be confidential or proprietary may be subject to
15 disclosure under the open meetings laws in chapter 42-46 and/or access to public records under
16 chapter 38-2.

17 **37-24-4. Public-private agreement. --** (a)(1) After selecting a solicited or unsolicited
18 proposal for a public-private initiative, the department shall enter into a public-private agreement
19 for a transportation facility with the selected private entity or any configuration of private entities.

20 (2) An affected jurisdiction may be a party to a public-private agreement entered into by
21 the department and a selected private entity or combination of private entities.

22 (b) A public-private agreement under this chapter shall provide for the following:

23 (1) The planning, acquisition, financing, development, design, construction,
24 reconstruction, replacement, improvement, maintenance, management, repair, leasing, or
25 operation of a transportation facility;

26 (2) The term of the public-private agreement;

27 (3) The type of property interest, if any, the private entity will have in the transportation
28 facility;

29 (4) A description of the actions the department may take to ensure proper maintenance of
30 the transportation facility;

31 (5) Whether user fees will be collected on the transportation facility and the basis by
32 which such user fees shall be determined and modified;

33 (6) Compliance with applicable federal, state, and local laws;

34 (7) Grounds for termination of the public-private agreement by the department or

1 operator; and

2 (8) Procedures for amendment of the agreement.

3 (c) A public-private agreement under this chapter may provide for the following:

4 (1) Review and approval by the department of the operator's plans for the development
5 and operation of the transportation facility;

6 (2) Inspection by the department of construction of or improvements to the transportation
7 facility;

8 (3) Maintenance by the operator of a policy of liability insurance or self-insurance;

9 (4) Filing by the operator, on a periodic basis, of appropriate financial statements in a
10 form acceptable to the department;

11 (5) Filing by the operator, on a periodic basis, of traffic reports in a form acceptable to
12 the department;

13 (6) Financing obligations of the operator and the department;

14 (7) Apportionment of expenses between the operator and the department;

15 (8) The rights and duties of the operator, the department, and other state and local
16 governmental entities with respect to use of the transportation facility;

17 (9) The rights and remedies available in the event of default or delay;

18 (10) The terms and conditions of indemnification of the operator by the department;

19 (11) Assignment, subcontracting, or other delegation of responsibilities of the operator or
20 the department under the agreement to third parties, including other private entities and other
21 state agencies;

22 (12) Sale or lease to the operator of private property related to the transportation facility;

23 (13) Traffic enforcement and other policing issues, subject to section 31-24-11, including
24 any reimbursement by the private entity for such services; or

25 (14) Other terms and conditions.

26 **37-24-5. Reversion of transportation facility to the department. --** In the event of
27 termination of the public-private agreement, the authority and duties of the operator cease, except
28 for any duties and obligations that extend beyond the termination as provided in the public-
29 private agreement, and the transportation facility reverts to the department and shall be dedicated
30 to the department for public use.

31 **37-24-6. Material default -- Remedies. --** (a) Upon the occurrence and during the
32 continuation of material default by an operator, not related to an event of force majeure, the
33 department may:

34 (1) Elect to take over the transportation facility, including the succession of all right, title,

1 and interest in the transportation facility, subject to any liens on revenues previously granted by
2 the private entity; and

3 (2) Terminate the public-private agreement and exercise any other rights and remedies
4 that may be available.

5 (b) In the event that the department elects to take over a transportation facility under
6 subsection (a), the department:

7 (1) Shall collect and pay any revenues that are subject to lien to satisfy any obligation;

8 (2) May develop and operate the transportation facility, impose user fees for the use of
9 the transportation facility, and comply with any service contracts; and

10 (3) May solicit proposals for the maintenance and operation of the transportation facility
11 under section 37-24-2.

12 **37-24-7. Bonds.** -- (a)(1) The department may issue and sell bonds or notes of the
13 department for the purpose of providing funds to carry out the provisions of this chapter with
14 respect to the development, financing, or operation of a transportation facility or the refunding of
15 any bonds or notes, together with any costs associated with the transaction.

16 (2) Any bond or note issued under this section:

17 (A) Constitutes the corporate obligation of the department;

18 (B) Does not constitute the indebtedness of the state within the meaning or application of
19 any constitutional provision or limitation; and

20 (C) Is payable solely as to both principal and interest from:

21 (i) The revenues from a lease to the department, if any;

22 (ii) Proceeds of bonds or notes, if any;

23 (iii) Investment earnings on proceeds of bonds or notes; or

24 (iv) Other funds available to the department for such purpose.

25 (b)(1) For the purpose of financing a transportation facility, the department and operator
26 may apply for, obtain, issue, and use private activity bonds available under any federal law or
27 program.

28 (2) Any bonds debt, other securities, or other financing issued for the purpose of this
29 chapter shall not be considered to be a debt of the state or any political subdivision of the state or
30 a pledge of the faith and credit of the state or any political subdivision of the state.

31 (c) Nothing in this section shall limit a local government or any authority of the state to
32 issue bonds for transportation projects.

33 **37-24-8. Funding from federal government or other sources.** -- (a)(1) The department
34 may accept from the United States or any of its agencies funds that are available to the state for

1 carrying out this chapter, whether the funds are made available by grant, loan, or other financial
2 assistance.

3 (2) The state assents to any federal requirements, conditions, or terms of any federal
4 funding accepted by the department under this section.

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

7 (b) The department may accept from any source any grant, donation, gift, or other form
8 of conveyance of land, money, other real or personal property, or other item of value made to the
9 state or the department for carrying out the purpose of this chapter.

10 (c) Any transportation facility may be financed in whole or in part by contribution of any
11 funds or property made by any private entity or affected jurisdiction that is party to a public-
12 private agreement under this chapter.

13 (d) The department may combine federal, state, local, and private funds to finance a
14 transportation facility under this chapter.

15 **37-24-9. Property tax exemption.** -- (a) This section applies to:

16 (1) A transportation facility; and

17 (2) Tangible personal property used exclusively with a transportation facility that are:

18 (i) Owned by the department and leased, licensed, financed, or otherwise conveyed to an
19 operator; or

20 (ii) Acquired, constructed, or otherwise provided by an operator on behalf of the
21 department.

22 (b) Property listed under subsection (a) of this section are exempt from all ad valorem
23 property taxes and special assessments levied against property by the state or any political
24 subdivision of the state.

25 **37-24-10. Eminent domain.** -- The department may exercise the power of eminent
26 domain to acquire property, rights-of-way or other rights in property for transportation projects
27 that are part of a public-private initiative.

28 **37-24-11. Police powers – Violations of law.** -- (a) All law enforcement officers of the
29 state and of an affected local jurisdiction shall have the same powers and jurisdiction within the
30 limits of the transportation facility as they have in their respective areas of jurisdiction and access
31 to the transportation facility at any time for the purpose of exercising such powers and
32 jurisdiction.

33 (b) The traffic and motor vehicle laws of the state or, if applicable, any affected local
34 jurisdiction shall be the same on the transportation facility as those laws applied to conduct on

1 similar transportation facilities in the state or local jurisdiction.

2 (c) Punishment for violations of traffic and motor vehicle laws of the state or, if
3 applicable, any affected local jurisdiction on the transportation facility shall be as prescribed by
4 law for conduct occurring on similar transportation facilities in the state or local jurisdiction.

5 **37-24-12. Utility crossings. --** An operator under this chapter and any utility whose
6 facility is to be crossed or relocated shall cooperate fully in planning and arranging the manner of
7 the crossing or relocation of the utility facility.

8 **37-24-13. Sovereign immunity. --** Nothing in this chapter shall be construed or deemed
9 to limit any waiver of the sovereign immunity of the state or any officer or employee of the state
10 with respect to the participation in or approval of all or any part of the transportation facility or its
11 operation.

12 **37-24-14. Regulations. --** The department may adopt rules and regulations to carry out
13 the provisions of this chapter.

14 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- PUBLIC-PRIVATE
TRANSPORTATION INITIATIVES

1 This act would allow public-private partnerships (PPP) which are contractual agreements
2 formed between a public agency and private sector entity that would allow for greater private
3 sector participation in the delivery of transportation projects.

4 This act would take effect upon passage.

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