



Senate Transportation Committee

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Bill Summary

[Senate Bill 693](#)

Sponsor: Senator Rafferty

Printers Number 772

Referred: March 27, 2009

Previous session SB 1158 Passed Senate 49-0

Summary:

Senate Bill 693 amends Pa.C.S. Title 74 (Transportation) adding a new chapter entitled "Partnership and Development." The purpose of the chapter is to authorize the Commonwealth and local transportation authorities to enter into Public Private Partnerships (PPP or P3) to assist in the financing and development of transportation infrastructure and improve transportation management. An overview of PPP's is listed below:

- **Public Private Partnerships** (PPP or P3) commonly refers to contractual agreements formed between a public agency and private sector entity that allow for greater private sector participation in the delivery of transportation projects.

- **Advantages of PPP**
 - Accelerating the implementation of high priority projects by packaging and procuring services in new ways.
 - The private sector can provide specialized management capacity for large and complex programs.
 - Enabling the delivery of new technology developed by private entities.
 - Private sector financial resources.
 - Private entrepreneurial development, ownership, and operation of highways and/or related assets.
 - Allowing for the reduction in the size of the public agency and the substitution of private sector resources and personnel.

- **Public Benefits of PPP**
 - Expedited completion compared to conventional project delivery methods.
 - Project cost savings.
 - Improved quality and system performance from the use of innovative materials and management techniques.
 - Substitution of private resources and personnel for constrained public resources.
 - Access to new sources of private capital.

Analysis:

Senate Bill 693 would allow Pennsylvania to join Virginia, Georgia, Florida, Texas, Indiana and 19 other states by authorizing the use of PPP's to begin to address capacity and maintenance shortfalls in our transportation network. The basic principle behind Public Private Partnerships is to attract private capital or private management expertise, through toll revenues or other enticements, to specific transportation projects or aspects of maintenance, operations or other transportation services.

PPP's can be used in the case of an unfunded capacity improvement such as interstate express lanes by offering the opportunity to a private operator to fund the project with the promise of charging a toll for the expansion. It is important to note that there a host of PPP arrangements which other states and nations have used, ranging in degree from a franchise type agreement for a specific operations management task all the way to a payment for the lease of an existing public asset, as has been discussed for the Pennsylvania Turnpike.

Senate Bill 693 approaches PPP authorization as follows:

- The bill authorizes a transportation entity to enter into agreements with private enterprises for any portion of their operations or facilities with additional requirements for lease or sale agreements where state funded properties are involved.
- In the case of a lease/sale agreement involving state funded properties the approval of the State Transportation Commission is required.
- The Transportation Commission is authorized to solicit specific proposals and to receive and consider unsolicited proposals as well.
- The Commission is responsible for adopting regulations covering the review and adoption of solicited and unsolicited proposals.
- Authorized project activities include planning, design, development, construction, reconstruction, improvement, extension, expansion, operation, repair, maintenance, management, revenue collection or financing of a transportation facility.
- Prior approval is required from the governing body of an asset prior to any action taken by the Commonwealth to enter into a PPP agreement.
- The lease or sale of the Pennsylvania Turnpike shall be excluded from consideration without the passage of separate legislation enacted by the General Assembly.
- Funds derived in excess of those approved by the agreement or otherwise made available to the Commonwealth as a result of a P3 agreement shall be used exclusively for transportation purposes approved by the State Transportation Commission and shall not be diverted from this purpose for any reason.
- Notice of P3 projects shall be made to affected counties and municipalities.

Solicited Proposals:

The Commission and/or a regional mobility authority are authorized to seek private partners on specific projects through solicited proposals where the project shall be awarded on

a best value basis to the successful bidder. Proposals issued under this concept shall be published in the Pennsylvania Bulletin or similar local media outlet and shall include the following information:

- The type and scope of information being requested from the respondent.
- The evaluation criteria being used to select the successful bidder
- The scope and location of the proposed project.
- Any other information deemed important for inclusion by the evaluating body (STC or local transportation authority).
- A clarification clause allowing for further negotiation and evaluation with the submitter of a proposal pursuant to the request.

Unsolicited Proposals:

- The Commission and/or a regional mobility authority are authorized to accept an unsolicited proposal submitted by a public or private entity.
- The State Transportation Commission and/or Approving Body shall adopt regulations governing the acceptance of unsolicited proposals.
- The maximum time for review of an unsolicited proposal by the Commission shall be 135 days for projects greater than \$50,000,000.
- Prior to the selection of a development partner in conjunction with an approved unsolicited proposal the STC must publish a request for and receive competing proposals in accordance with the solicited proposal criteria.
- Responses to RFP's for competing proposals must be returned within 60 days.

Other Proposal Provisions:

- Design Build development may be considered for any proposal made pursuant to this chapter and such agreements shall not be subject to the requirements of the Separations Act.
- Fees adequate to cover the costs of evaluating proposals submitted under this chapter may be imposed by the Approving body.
- Proprietary information provided in conjunction with a proposal under this chapter shall remain confidential only until a final agreement between the parties is entered into and thereafter made available to the public.
- The STC shall adopt regulations detailing the timing and requirements for review of solicited and unsolicited proposals with a high priority for a review time of less than 135 days, with limited exceptions.
- The STC and/or approving agencies shall be required to determine the value of a transportation project and shall use independent advisors to establish that value.

Transportation projects:

Factors for the review and selection of a transportation project selected under this chapter shall include the following considerations:

- Improving safety.
- Increasing transportation capacity (any mode).
- Reduce congestion (any mode).
- Promote economic growth.
- Compatibility with local land use plans.
- The project cost and financial plan.
- Qualifications, experience and safety record of the proposed developer.
- The design operation and feasibility of the project.
- Local input.
- Public benefit of the project.
- Other criteria deemed important to the approving body.

Agreement requirements:

The terms and conditions of transportation development agreements shall include the following:

- Fee setting and adjustment factors to be imposed upon transportation facility users (tolls and their rates).
- Term of the agreement (not to exceed 50 years).
- Timeline for start and completion of construction or improvement.
- Establishment that the public is the property owner and that developer is leasing the property for the agreed upon conditions.
- Proper maintenance of property required throughout the lease and upon termination of the lease.
- Liability assignments.
- Prevailing wage to apply.
- Material default procedures.
- Applications of user fees for transportation facilities is permitted where applicable state and federal laws allow.
- Fees shall be uniform based upon similar classes of vehicles and utilization.
- Congestion pricing is allowed.
- Debt obligations shall not be backed by a pledge of the credit of the Commonwealth.

Other Agreement Provisions:

- Eminent domain powers of the Commonwealth and local jurisdictions are retained by the governing agencies.
- Law enforcement and traffic enforcement laws are applicable.
- Developer is responsible for law enforcement costs.

- Fines and distribution of fines are reserved as covered by current law.
- Existing local taxes unaffected-new local taxation barred upon fees on developer revenues or user fees.
- Realty Transfer tax is not applicable to transportation projects.

Pennsylvania Transportation Development Trust Fund:

- The bill establishes a dedicated transportation trust fund for the deposit of any revenues generated for the Commonwealth as the result of agreements developed under this chapter.
- The Fund is administered by the State Transportation Commission for the purpose of financing transportation projects and is not subject to General Assembly approval.
- The fund consists of revenues derived from agreements under this chapter, excess earnings over the maximum rate of return, from the developer, surcharges or service fees or user fees which may be imposed or levied by the Commonwealth on passenger or commercial travel or any appropriations made by the General Assembly.

Turnpike Lease Restricted:

- Any transfer of oversight responsibilities by lease, sale or other agreement of the Pennsylvania Turnpike, its additions or lease properties, is restricted unless a separate act of the General Assembly is enacted.
- This section does not limit or restrict the Turnpike Commission or the Transportation Commission to consider and approve partnership agreements which do not require the transfer of operational oversight from the Turnpike Commission.

Effective Date: 60 Days