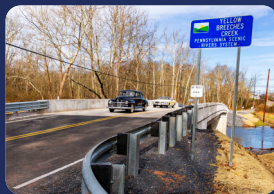


P3



2023 P3 Board Meeting Book



Office of Public-Private
Transportation Partnerships

August 31, 2023 • 10:00 A.M.

Forest Room | Commonwealth Keystone Building | Harrisburg, Pennsylvania

MEETING AGENDA

A. Call to Order

B. Roll Call

C. Adoption of Meeting Minutes of the December 13, 2022 Board Meeting

D. Chair's Remarks

E. New Business

F. Project Updates

- P3 Unsolicited Proposals
- Partnership 81
- Major Bridge P3

G. Other Business

H. Public Comments

I. Adjournment

PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP BOARD
SUMMARY MINUTES
HARRISBURG, PENNSYLVANIA
DECEMBER 13, 2022

CALL TO ORDER:

The twentieth meeting of the Public-Private Transportation Partnership Board (Board) was convened by Secretary of Transportation Yassmin Gramian, at 9:00 a.m. on Tuesday, December 13, 2022, at the PennDOT Riverfront Office Center, Harrisburg, PA.

ROLL CALL:

P3 Office Deputy Director Joseph Gurinko called roll and noted that all seven Board members were present, and as such a quorum was established.

Members Present:

Honorable Yassmin Gramian
Honorable Representative Michael Carroll (via phone)
Mr. Geoffrey Clarke (via phone)
Mr. Gregory Davis (via phone)
Mr. Ronald Drnevich
Mr. Ben Lukens (via phone)
Honorable Tim Murphy (via phone)

ADOPTION OF MEETING MINUTES:

The December 9, 2021, meeting minutes were unanimously approved on a motion by Mr. Ronald Drnevich and seconded by Honorable Michael Carroll.

CHAIR'S REMARKS:

Secretary of Transportation Yassmin Gramian welcomed everyone to the virtual Board meeting and began by introducing new Board member Ben Lukens, the new Pennsylvania Secretary of the Budget.

Secretary Gramian noted that the meeting agenda would include updates on the new requirements of Act 84, the amended P3-enabling legislation that also required the P3 Implementation Manual to be updated to be consistent with new requirements. The agenda would also include an action item regarding the P3 Board review and approval of the P3 Board Report for 2022, which would then be shared with legislative colleagues and posted to the P3 website upon approval. The remainder of the agenda would be comprised of updates on approved projects as well as Unsolicited Proposals.

Secretary Gramian provided an update on the Major Bridge Public-Private Partnership (MBP3), on which PennDOT and the P3 Office have been working diligently. While the project was unable to move forward with the tolling component, the bridges in the

program are critical and must proceed. As a result, the only viable options were to either build the bridges via design-bid-build, which would greatly impact the interstate highway program for years to come, or to proceed with delivery as a P3. Secretary Gramian explained that continuing with P3 delivery was the only logical choice. Under the P3 PennDOT will receive the immediate benefit of replacing six (6) major interstate bridges – three of which are fracture critical – that require near-term attention before incurring major maintenance costs, disruptive weight restriction or bridge closures.

Secretary Gramian also highlighted the preservation of PennDOT's agreement with Bridging Pennsylvania Partners, which is overwhelmingly comprised of Pennsylvania firms with a long history and strong track record of working with PennDOT.

This meeting marked the final P3 Board meeting under the Wolf Administration, and Secretary Gramian noted that Governor Wolf wished to express his appreciation for the Board's work over the past eight (8) years and wanted to ensure that they were acknowledged for their importance to ensuring a safe and reliable transportation system.

NEW BUSINESS:

Secretary Gramian then turned the floor over to PennDOT P3 Office Deputy Director Joseph Gurinko, who noted that the Board meeting book and PowerPoint presentation will be made available to the public on the P3 website after the meeting. Mr. Gurinko added that the agenda will begin with an overview of the new requirements of Act 84 of 2022.

ACT 84 OF 2022 OVERVIEW: PRESENTED BY MR. JOSEPH GURINKO

Mr. Gurinko explained that during summer 2022, the legislature passed Act 84 of 2022, which updated Act 88 of 2012's P3-enabling legislation. The P3 Office has made all necessary updates to work activities, processes and systems that emanated from this updated legislation.

Continuing, Mr. Gurinko provided an overview of several notable Act 84 updates to the P3-enabling legislation, beginning with the review and approval process. Under the updated legislation, the review and approval process for a prospective project to be considered for P3 delivery begins with PennDOT developing a detailed analysis of the proposed transportation project – meeting a specified list of required details/information – prior to requesting P3 Board approval.

After development – and prior to any Board action – the Department shall publish the analysis on their website; submit it to P3 Board, Senate Transportation Committee, and House Transportation Committee; and transmit notice of the analysis to the Legislative Reference Bureau. Simultaneously, the Department must collect public comment for a period of no less than 30 days and then produce and publish a summary of the public outreach process.

Mr. Gurinko explained that once these steps have been satisfied, the Board may then consider and approve the proposed transportation project in the form of a resolution.

However, if the proposed project may impose an optional user fee, unanimous Board approval is required. If the proposed project is approved within the requirements of the updated legislation, the Board Chairperson shall sign and publish a Board Resolution within 48 hours after approval, as well as provide it to the General Assembly. Upon receipt of the resolution from the Board, the General Assembly may, within 20 calendar days or 9 legislative days – whichever is longer – pass a concurrent resolution rescinding the approval of transportation project if the transportation facility which is the subject of the transportation project is owned by the Commonwealth.

Mr. Gurinko also provided insight on the change in definition of “transportation-related services” in the updated legislation, noting that this new definition includes language specific to optional user fees, with user fees deemed mandatory being prohibited. The Major Bridge P3 project resolution was ultimately rescinded when it was retroactively deemed a mandatory fee rather than optional. However, PennDOT may continue work and proceed with the project that was ratified on November 12, 2020, including any contract, but may not impose or collect optional user fees unless the project is resubmitted for approval.

APPROVAL OF P3 IMPLEMENTATION MANUAL UPDATES: PRESENTED BY MR. JOSEPH GURINKO

Mr. Gurinko continued to the next agenda item, noting that these changes in legislation resulted in needed updates to the PennDOT P3 Office Implementation Manual. The P3 Office worked in coordination with PennDOT’s Office of Chief Counsel to ensure all Act 84 of 2022 measures were incorporated. The updated Manual was provided to the P3 Board members in advance for their review and comment and was presented for Board approval.

Secretary Gramian opened the floor to the Board for any questions or comments. Mr. Geoffrey Clarke inquired if the definition of “optional user fee” should be included in the defined terms section of the Manual. Meghan McNaughton, PennDOT Office of Chief Counsel, responded that it could be included and noted that “optional user fees” is not a defined term in Act 84 of 2022, which is why it was not included in the Manual update but rather explained. Secretary Gramian noted that this comment would be adopted.

With no further questions or comments, Secretary Gramian brought forth the P3 Implementation Manual & Guidelines updates for Board approval.

The P3 Implementation Manual & Guidelines were unanimously approved on a motion by Honorable Tim Murphy and seconded by Honorable Michael Carroll.

ADOPTION OF THE P3 BOARD REPORT FOR 2021 – 2022: PRESENTED BY MR. JOSEPH GURINKO

Mr. Gurinko reviewed the P3 Board Report for 2021 – 2022 with the P3 Board, an annual duty of the Board detailing its activities in a report shared annually with the Legislature and public. A copy of the Report was provided to the Board members in advance for their review and comment. Mr. Gurinko then opened the floor to questions and comments.

Mr. Ronald Drnevich commented that the report was well done and motioned to approve.

The P3 Board Report for 2021 – 2022 was unanimously approved on a motion by Mr. Ronald Drnevich and seconded by Honorable Michael Carroll.

PROJECT UPDATES:

UNSOLICITED PROPOSALS UPDATE: PRESENTED BY MR. JOSEPH GURINKO

Mr. Gurinko explained that the P3 Office accepts Unsolicited Proposals twice each year in pursuit of new, innovative opportunities. He displayed three data tables which placed the current Unsolicited Proposals into three categories: Under Consideration, On Hold and Dismissed.

The Under Consideration table encompasses items on which the Department is conducting feasibility analyses to determine merit in pursuing as a public-private partnership; seven (7) proposals currently fall under this categorization.

The PennDOT Solar Initiative is a design, build, finance, operate and maintain (DBFOM) proposal to design and install solar solutions within PennDOT right-of-way, with locations determined jointly to maximize benefits. The proposing firm, Solar Renewable Energy, LLC, identified significant financial value specific to electricity costs, tax credits and a renewable energy certificate. In the time since the proposal was received, the P3 Office has met with appropriate PennDOT staff and the proposer multiple times in addition to holding discussions with the GreenGov Council to determine a path forward and examine P3 feasibility. Additionally, a High-Level Screening Report (HLSR) was completed and accepted by the P3 Office in March 2022. Next steps include identifying any potential ownership issues under Act 84 of 2022, as well as identifying major technical component needs.

The EV Infrastructure Installation Plan, submitted in April 2022 by Charge Zero PA, LLC, is a DBFOM proposal to install electric vehicle (EV) charging stations with supporting solar arrays within PennDOT right-of-way. By the time of the meeting, the project had been recommended for progression to initiation of a High-Level Screening report to address questions regarding the actual financial burden of the project to PennDOT, length of the DBFOM project, and any long-term risk to PennDOT. Additionally, the project is being examined for potential opportunities for combining with the statewide plan for EV charging stations.

The District 4 Northern Tier Counties Bridge Replacements project, proposed by CDR Maguire, is a design, build, finance (DBF) proposal to replace/reconstruct 32 poor condition, PennDOT-owned bridges located in Northern Tier counties in Engineering District 4-0. Recent project updates and action items included the completion of a Detailed Level Screening Report (DLSR), HLSR, and a financial study to identify funding and evaluate project size and bridge selection criteria.

The I-76 Managed Lanes proposal, submitted by CINTRA, aims to improve an estimated 17 miles of Interstate 76 (I-76) between the I-202 and I-676 split. This would

include constructing four new, tolled, managed lanes (two in each direction). Mr. Gurinko noted that this proposal was currently being examined in accordance with the new requirements under Act 84 of 2022.

Mr. Gurinko continued, noting that the next three (3) proposals under consideration had been submitted during the recent October 2022 submission window. As a result, the P3 Office would soon be performing candidacy reviews and Candidacy Forms for each of these new proposals under consideration. Mr. Gurinko provided an overview of each of the projects.

The Bus Portal for PA Schools project, submitted by Busie, proposes to create an online portal enabling Pennsylvania schools to arrange student/student athlete transportation directly with school bus and motor coach providers throughout Pennsylvania.

The Commuter Vanpool Program, submitted by Enterprise Holdings via Commute, aims to provide vehicles, insurance, maintenance, ride-matching services and other support services for a public, statewide vanpool program.

The Snow Removal Scraper System, submitted by Rite-Hite, would install plow systems to remove snow from the surfaces of PennDOT fleet vehicles. The system is a wheel-mounted Model 440T FleetPlow that can be installed quickly and have snow/ice removed within timeframes mandated by Act 90.

Mr. Gurinko then explained that the one (1) proposal categorized as On Hold had passed a high-level screening stage but requires further coordination with the proposer and/or stakeholders. This additional coordination will then lead to either further consideration or dismissal.

PennDOT Truck Parking Expansion Program, proposed by Truck Specialized Parking Services, Inc., aims to support important initiatives in truck safety. PennDOT is currently coordinating with a freight working group and external stakeholders to examine this and similar issues.

Mr. Gurinko concluded the update by explaining that the seven (7) proposals listed as Dismissed had been recommended for dismissal in the time between the previous Board meeting and the present meeting, specifics of which are provided in the Board Meeting Book. Dismissal is typically determined due to a project not having merit or P3 procurement is not the best approach following Department review.

Mr. Gurinko noted that, in the case of the dismissed Shared Mobility Incentives proposal, a ride sharing application that offers those of economic impact a ride to and from work with incentives to driver and rider, the dismissal letter included a recommendation to the proposer to contact state Metropolitan and Rural Planning Organizations to make them aware of the service.

With no comments from the Board, Mr. Gurinko proceeded to the next item on the agenda, Northampton County Bridge Renewal Program project updates.

NORTHAMPTON COUNTY BRIDGE RENEWAL PROGRAM: PRESENTED BY MR. JOSEPH GURINKO

Mr. Gurinko noted that there were no new project updates since the previous Board meeting, and that Charles Dertinger had no significant changes or updates to highlight when they coordinated in preparation for the meeting.

Mr. Gurinko provided a brief project history overview, explaining that the project concept was presented to and approved by the P3 Board in 2015. The P3 Office offered to assist Northampton County with development of procurement documents but have had little involvement since beyond providing status updates.

Mr. Drnevich commented that the project has and continues to struggle.

RAPID BRIDGE REPLACEMENT (RBR) PROJECT: PRESENTED BY MR. JOSEPH GURINKO

Mr. Gurinko then provided an update to the Board and attendees regarding the RBR project, approved by the P3 Board in 2013 as a project to replace 558 poor condition bridges located across the Commonwealth. As of August 2020, all 558 bridges have been replaced and opened to traffic, and 95% were completed within the first three years.

Mr. Gurinko explained that the agreement is currently in the Maintenance Phase, meaning that the Development Entity, Plenary Walsh Keystone Partners, is responsible for maintaining these bridges until the end of 2042, which marks the end of the 25-year maintenance period. At that point, the bridges will then be turned back over to PennDOT in the agreed suitable condition as established by handback requirements. In closing, Mr. Gurinko noted that the RBR project, delivering 558 bridges in a single DBFOM project, remains a success story for P3 projects in Pennsylvania and nationwide.

PENNDOT SPONSORSHIP AND ADVERTISING PROGRAM: PRESENTED BY MR. JOSEPH GURINKO

Mr. Gurinko continued, providing a status update on the PennDOT Sponsorship and Advertising Program. Two (2) firms, The Superlative Group and 2i Group, have been identified to serve as the program's vendors and are currently conducting an evaluation of sponsorship opportunities to present to the P3 Office and PennDOT for consideration.

With no questions from the Board, Mr. Gurinko turned the floor over to Mr. Andy Batson to provide an update on Compressed Natural Gas (CNG) Fueling Stations.

COMPRESSED NATURAL GAS (CNG) FUELING STATIONS: PRESENTED BY MR. ANDY BATSON

Mr. Batson provided a project status update and displayed a project map, noting that 19 of the 24 fueling stations are complete, with the 20th station scheduled to be operational within two (2) months of the meeting. Two more stations, Hazleton and Wilkes-Barre, are slated for completion in 2023, and the Scranton station is scheduled for 2024. The 24th and final station, Harrisburg, will be completed after 2025. Mr. Batson added that, as of December 2022, transit agencies have saved approximately \$10 million through the utilization of this program over traditional fueling methods.

The P3 agreement began in 2017 and extends through 2037, at which point the assets will be turned back over to PennDOT and respective transit agencies. PennDOT is currently working with the development entity (DE), Trillium CNG, to transition to the operations and maintenance (O&M) phase and be properly set up for success for the remainder of the contract.

With no questions from the Board, Mr. Batson turned the floor over to Mr. Joseph Gurinko to provide an update on the Partnership 81 Project.

PARTNERSHIP 81 PROJECT: PRESENTED BY MR. JOSEPH GURINKO

Mr. Gurinko noted that the Partnership 81 Project was approved by the P3 Board in December 2019 as a bundle of 15 interstate bridge replacements along Interstates 80 and 81. PennDOT then conducted further analysis which recognized additional substantial needs for the I-81 corridor near Wilkes Barre that went beyond bridges; the Partnership 81 project focuses on that corridor.

Mr. Gurinko displayed a map of the project limits and detailed the needed safety and mobility improvements, including widening to three lanes in both directions, elimination of a left-hand exit, improvements to adjacent intersections, and bridge replacements over a 7.5-mile section of I-81.

Mr. Gurinko then detailed the progress of ongoing project activities conducted in the time since the previous Board meeting, most notably that of the USDOT decision to elevate the Environmental Clearance Classification from a Categorical Exclusion (CE2) to an Environmental Assessment (EA), which requires more involvement. As a result, the projected timeframe for Environmental Clearance has been moved from early 2023 to spring 2024.

Regarding next steps, Mr. Gurinko noted that the P3 Office aims to hold an Industry Forum for the project to introduce the project and provide further details, including an anticipated schedule which is currently being refined.

Mr. Gurinko then opened the floor to the Board for any questions. With no questions from the Board, Mr. Gurinko moved to the next agenda item, an update on the Major Bridge P3.

MAJOR BRIDGE P3: PRESENTED BY MR. JOSEPH GURINKO

Mr. Gurinko provided an overview of the Major Bridge P3 (MBP3), which was presented to and approved by the P3 Board – which includes representatives from all four legislative caucuses – in November 2020 and pursues the replacement or rehabilitation of nine (9) major bridges through a DBFM method of progressive P3 project delivery. At that time, the plan was to pay for the work on these bridges through tolling, with the goal of preventing disruptions to the Transportation Program so that other important transportation projects on the state system could continue to proceed through the project development process.

Mr. Gurinko also provided a brief overview of PennDOT Pathways: a statewide program that works to identify, assess, and implement reliable, equitable alternative funding solutions for the state's aging highways and bridges. The program is anchored by its Planning and Environmental Linkages (PEL) Study through which the Alternative Funding Office investigated and analyzed several potential funding solutions. One of the immediate-term solutions was bridge tolling, which is no longer an option under the updated P3 legislation.

Continuing, Mr. Gurinko displayed a map of the nine (9) MBP3 candidate bridge locations, calling attention to the labels noting that six (6) bridges were moving forward under the MBP3, whereas three (3) were still under review.

Mr. Gurinko explained that by delivering through a P3 model, PennDOT will receive the immediate benefit of repairing no less than three fracture critical bridges and a total of six major interstate bridges that require near-term attention before incurring major maintenance costs, disruptive weight restrictions or bridge closures.

Without a P3 model, addressing these bridges in the ordinary course of business would consume the entire budget planned to be spent on interstate bridges and highways for the next several years. Bridge construction costs increase annually, and the financing of repairs in today's dollars with deferred, financed repayment is a funding solution to meet obligations for which there are no other viable alternatives available to PennDOT.

Mr. Gurinko provided an update on project procurement, noting that PennDOT has entered into a Pre-Development Agreement (PDA) with Bridging Pennsylvania Partners (BPP) to advance preliminary design work. The PDA will lead to separate contracts to finalize design, build, finance, and maintain packages of bridges in the MBP3. BPP will be required to maintain the Project's bridges for 35 years, and shifting maintenance obligations to a vendor under P3 encourages design and construction methods exceeding that which PennDOT would undertake in a traditional procurement. Additionally, tying payment to substantial completion incentives promotes timely project delivery and allows PennDOT to lock in today's price.

Mr. Gurinko then provided a status update on MBP3 activities that took place since the last P3 Board meeting in December 2021. Through the robust evaluation of the proposals submitted by each of the shortlisted proposers that were due on January 19, 2022, PennDOT determined that the BPP approach aligned more closely with the project goals for delivery of the MBP3. On March 9, 2022, it was announced that BPP was selected as the Apparent Best Value Proposer. On May 6, 2022, the PDA was executed between PennDOT and BPP.

As these activities were underway and proceeding as described, two (2) lawsuits were filed against PennDOT challenging the P3 project. The Commonwealth Court issued an order on May 18, 2022, stopping work related to the MBP3. Accordingly, PennDOT canceled public hearings and procurement activities associated with the project. On June 30, 2022, the Commonwealth Court held that the MBP3 was void.

In July 2022, the state's P3 law was amended to remove tolling as a means of funding the MBP3. The updated law (Act 84 of 2022) provided the ability for PennDOT to continue the program as a P3 and preserved the existing March 2022 PDA with BPP, which leads into separate contracts to Design, Build, Finance, and Maintain (DBFM) the bridges in the MBP3.

Regarding Package 1, which includes six (6) bridges, Mr. Gurinko announced that they had reached Commercial Close on November 29, 2022, and anticipated Financial Close taking place before the end of 2022. PennDOT will repay the amounts financed by BPP through recurring availability payments over 35 years, beginning when construction is complete. The availability payments will be paid using a blend of federal and state funds.

Mr. Gurinko added that PennDOT will also reallocate some funds and pursue additional funding opportunities from the Bipartisan Infrastructure Law (BIL). Funding for the availability payments is anticipated to come from the Interstate Management Program Line Item balances beginning in FFY 2028.

Mr. Gurinko then presented a map displaying the six (6) bridges in Package 1:

- I-80 Canoe Creek Bridges
- I-80 North Fork Bridges
- I-78 Lenhartsville Bridge
- I-80 Nescopeck Creek Bridges
- I-80 over Lehigh River Bridge Project
- I-81 Susquehanna Project

Mr. Gurinko continued, providing an overview of the Bridging Pennsylvania Developers 1 (BPD) team, before moving on to details on PDA work. Mr. Gurinko noted that the independent cost estimate for design & construction was developed to ensure that the cost was reasonable and was then shared with FHWA.

Before closing out his update on the MBP3, Mr. Gurinko walked through the current anticipated construction schedule for the Package 1 bridges, with the first project (I-81 Susquehanna) to start construction in July 2023 and all projects completed by June 2028.

OTHER BUSINESS:

Secretary Gramian thanked Mr. Gurinko and all presenters, expressing gratitude for their efforts in advancing P3s in Pennsylvania, and then opened the floor to any Board members for comments on other business.

Mr. Drnevich inquired if the P3 Office had received any submissions that have not been mentioned or detailed to date, to which Secretary Gramian replied that this was not the case; everything is and has been brought before the Board.

Mr. Drnevich commented that transportation innovation lately is centered on advancement of electric vehicle (EV) infrastructure and inquired if PennDOT has a policy related to charging stations and/or other EV considerations. Secretary Gramian

noted that PennDOT has reached out to federal partners regarding EV charging stations and the current limitations and constraints currently being put on states in terms of what can and cannot be monetized. As it currently stands, right-of-way in PennDOT's roadway system cannot be monetized. However, PennDOT continues to extensively look into different approaches for EV infrastructure and adjacent considerations, while also identifying ways to work more efficiently and cost effectively and getting the private sector involved.

Melissa Batula, PennDOT Deputy Secretary of Highway Administration, added the notion of emphasizing identifying other ways to fund transportation. This goes beyond testing with a P3 model and bringing to the P3 Board, extending to working with legislative partners and Transportation Advisory Committee considerations and recommendations.

Larry Shifflet, PennDOT Deputy Secretary for Planning, noted that new federal laws play a significant role in terms of funding streams and categories, examining avenues such as carbon reduction, reconnecting communities, and other discretionary grants and programs.

With no further Board comments, Secretary Gramian opened the floor for public comment.

Nolan Ritchie, Senate of Pennsylvania, called attention to a recent article about PennDOT's emergency procurement for the MBP3 contract with BPP, inquired as to if there was a rush to reach financial close and if this had been brought to the attention of the Governor's transition team.

Melissa Batula responded that it was not a rush, but rather a mindfulness of PennDOT's current financial situation amidst a generally volatile time in financial markets. The further the process was prolonged; the more adverse effects could be in terms of interest rate increases. This matter is also being brought to the transition team.

With no additional comments from the public, Secretary Gramian thanked all attendees for their time and support of the P3 program and thanked all presenters and brought forth a request for a motion to adjourn.

ADJOURNMENT:

On a motion by Mr. Ronald Drnevich, seconded by Honorable Tim Murphy and unanimously approved, the meeting was adjourned at 10:14 a.m.

PART V
TRANSPORTATION INFRASTRUCTURE

Chapter

- 91. Public-Private Transportation Partnerships
- 92. Traffic Signals
- 93. Bridge Bundling Program
- 95. Public Utility Facilities
- 96. Steel Painting

Enactment. Part V was added July 5, 2012, P.L.853, No.88, effective in 60 days unless otherwise noted.

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.
- 9115.1. Prohibition on mandatory user fees.
- 9116. Power of eminent domain.
- 9117. Sovereign immunity.
- 9118. Specific performance.
- 9119. Applicability of other laws.
- 9120. Adverse interests.
- 9121. Federal, State, local and private assistance.
- 9122. Public-Private Transportation Account.
- 9123. Pennsylvania Turnpike Commission.
- 9124. Regulations.

Enactment. Chapter 91 was added July 5, 2012, P.L.853, No.88, effective in 60 days unless otherwise noted.

Special Provisions in Appendix. See section 6 of Act 84 of 2022 in the appendix to this title for special provisions relating to transportation projects.

§ 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 transportation-related services.

(1) (Deleted by amendment).

(2) (Deleted by amendment).

(3) (Deleted by amendment).

(4) (Deleted by amendment).

(5) (Deleted by amendment).

(6) (Deleted by amendment).

(7) (Deleted by amendment).

"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.

"Transportation-related service." Only the following services:

- (1) Operations and maintenance.
- (2) Revenue collection.
- (3) Optional 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.

(July 11, 2022, P.L.1566, No.84, eff. imd.)

2022 Amendment. Act 84 amended the def. of "public-private transportation partnership agreement" and added the def. of "transportation-related service."

Effective Date. Section 3(1) of Act 88 of 2012 provided that section 9102 shall take effect immediately.

§ 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).

Effective Date. Section 3(1) of Act 88 of 2012 provided that section 9103 shall take effect immediately.

§ 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 proposed transportation project or a private entity may submit an unsolicited plan for a proposed 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 proposed transportation projects are in the best interests of the Commonwealth and a public entity, approve the requests or plans for proposed transportation projects. No proposed transportation project that provides for optional user fees may be approved by the board unless the board members approve such a project unanimously. 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) Upon receipt of the resolution from the board under section 9105(b.2), the General Assembly may, within 20 calendar days or nine legislative days, whichever is longer, 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.

(July 11, 2022, P.L.1566, No.84, eff. imd.)

2022 Amendment. Act 84 amended subsecs. (a)(2) and (4) and (c)(1).

Effective Date. Section 3(1) of Act 88 of 2012 provided that section 9104 shall take effect immediately.

Cross References. Section 9104 is referred to in section 9109 of this title.

§ 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 following shall apply:

(1) The department shall develop a detailed analysis of a request or recommendation for a proposed transportation project prior to requesting approval by the board.

(2) The analysis shall include the following:

(i) The anticipated location of the proposed transportation project.

(ii) The type of transportation facility or transportation-related service to be improved.

(iii) The estimated costs of the proposed transportation project to the public entity.

(iv) The estimated length of the public-private transportation partnership agreement.

(v) The potential social, economic and environmental impacts of the proposed transportation project.

(vi) If the proposed transportation project proposes an optional user fee, include the estimated amount for each user group and type of user fee as described under section 9110(f) (relating to public-private transportation partnership agreement).

(vii) Applicable Federal and State laws.

(viii) Alternative courses of action to improve the transportation facility or transportation-related service without a public-private transportation partnership and the

associated risks of improving the transportation facility or transportation-related service with a public-private transportation partnership.

(2.1) The department may conduct additional evaluations prior to the development of the analysis.

(3) The department shall post a copy of the analysis on the department's publicly accessible Internet website, submit the analysis to the board and the chairperson and minority chairperson of the Transportation Committee of the Senate and the chairperson and minority chairperson of the Transportation Committee of the House of Representatives and transmit notice of the analysis to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin for 60 days prior to any action by the board.

(b.1) Public input.--The following shall apply:

(1) The department shall collect comments from the public on the proposed transportation project during a public comment period which shall commence with the publication of the notice in the Pennsylvania Bulletin of the analysis and shall continue for a period of not less than 30 days. Prior to any action by the board, the department shall post a copy of all submitted comments and a summary as provided under paragraph (2) on the department's publicly accessible Internet website and provide the submitted comments and summary to the board and the chairperson and minority chairperson of the Transportation Committee of the Senate and the chairperson and minority chairperson of the Transportation Committee of the House of Representatives.

(2) The summary under paragraph (1) shall include a description of the proposed transportation project, a copy of the notice that was published in the Pennsylvania Bulletin, the time period that the public was allowed to provide input and a chart or graph that accurately portrays all submitted comments, including the positive and negative public input, on the proposed transportation project.

(b.2) Evaluation and approval.--The following shall apply:

(1) After consideration of the analysis and public comment, if the board finds that the proposed transportation project is in the best interests of the Commonwealth, it may approve the proposed transportation project in the form of a resolution. For a proposed transportation project that may impose an optional user fee, unanimous approval of the board is required.

(2) Approval of a proposed transportation project, including a project with an optional user fee, shall be in the form of a resolution signed by the chairperson of the board. A copy of the resolution shall be posted on the department's publicly accessible Internet website and shall be transmitted by the department to the following entities within 48 hours after approval:

(i) The chairperson and minority chairperson of the Transportation Committee of the Senate and the chairperson and minority chairperson of the Transportation Committee of the House of Representatives.

(ii) The Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(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.

(July 11, 2022, P.L.1566, No.84, eff. imd.)

2022 Amendment. Act 84 amended subsec. (b) and added subsecs. (b.1) and (b.2).

Effective Date. Section 3(1) of Act 88 of 2012 provided that section 9105 shall take effect immediately.

Cross References. Section 9105 is referred to in sections 9104, 9109 of this title.

§ 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.

Cross References. Section 9106 is referred to in section 9120 of this title.

§ 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 sections 9104 (relating to duties of board) and 9105 (relating to operation 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. (July 11, 2022, P.L.1566, No.84, eff. imd.)

2022 Amendment. Act 84 amended subsec. (a).

Cross References. Section 9109 is referred to in sections 9106, 9119, 9120 of this title.

§ 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) Optional user fees.--A provision establishing whether optional user fees will be imposed for use of the public-private transportation project and the basis by which any optional user fees will be imposed and collected shall be determined in the public-private transportation partnership agreement. If an optional 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 optional 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 optional 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 optional toll or user fee at any location on a public-private transportation project where optional 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.
(July 11, 2022, P.L.1566, No.84, eff. imd.)

2022 Amendment. Act 84 amended subsec. (f).

Cross References. Section 9110 is referred to in sections 9105, 9117 of this title.

§ 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 optional 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 optional 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.

(July 11, 2022, P.L.1566, No.84, eff. imd.)

2022 Amendment. Act 84 amended subsecs. (a) and (b).

§ 9115.1. Prohibition on mandatory user fees.

A user fee may not be imposed as part of a transportation project approved under this chapter, unless the user fee is imposed only on individuals who select optional means to transit the transportation facility, such as limited access lanes or similar programs that allow individuals multiple means to transit the same transportation facility.

(July 11, 2022, P.L.1566, No.84, eff. imd.)

2022 Amendment. Act 84 added section 9115.1.

§ 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 I 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.

Cross References. Section 9118 is referred to in section 9117 of this title.

§ 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; however, the development entity selected under section 9109 (relating to selection of development entities) shall be the person whose duty it is to receive separate bids and award and enter into separate contracts for each of the subject branches of work required for the erection, construction and alteration of a public building under a public-private transportation partnership agreement.

(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).

(Nov. 25, 2013, P.L.974, No.89, eff. 60 days)

2013 Amendment. Act 89 amended subsec. (a)(1). See the preamble to Act 89 in the appendix to this title for special provisions relating to legislative findings and declarations.

§ 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.

Effective Date. Section 3(1) of Act 88 of 2012 provided that section 9124 shall take effect immediately.

**TRANSPORTATION (74 PA.C.S.) - OMNIBUS AMENDMENTS AND RESCINDING,
IN PART, A RESOLUTION OF THE PUBLIC-PRIVATE TRANSPORTATION
PARTNERSHIP BOARD**

Act of Jul. 11, 2022, P.L. 1566, No. 84

Cl. 74

Session of 2022

No. 2022-84

SB 382

AN ACT

Amending Title 74 (Transportation) of the Pennsylvania Consolidated Statutes, in public-private transportation partnerships, further providing for definitions, for duties of board, for operation of board, for selection of development entities, for public-private transportation partnership agreement and for taxation of development entity and providing for prohibition on mandatory user fees; and rescinding, in part, a resolution of the Public-Private Transportation Partnership Board.

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

Section 1. The definition of "public-private transportation partnership agreement" in section 9102 of Title 74 of the Pennsylvania Consolidated Statutes is amended and the section is amended by adding a definition to read:

§ 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:

* * *

"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.]

* * *

"Transportation-related service." Only the following services:

(1) **Operations and maintenance.**

(2) **Revenue collection.**

(3) **Optional 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.**

Section 2. Section 9104(a)(2) and (4) and (c)(1) of Title 74 are amended to read:

§ 9104. Duties of board.

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

* * *

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

* * *

(4) Evaluate and, where the board finds that the requests or plans for **proposed** transportation projects are in the best interests of the Commonwealth and a public entity, approve the requests or plans for **proposed** transportation projects. **No proposed transportation project that provides for optional user fees may be approved by the board unless the board members approve such a project unanimously.** The board shall approve a proposed transportation project by adopting a resolution.

* * *

(c) General Assembly.--The following shall apply:

(1) [The] **Upon receipt of the resolution from the board under section 9105(b.2),** 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.

* * *

Section 3. Section 9105(b) of Title 74 is amended and the section is amended by adding subsections to read:

§ 9105. Operation of board.

* * *

(b) Analysis.--**The following shall apply:**

(1) The department shall develop a detailed analysis of a request or recommendation **for a proposed transportation project** prior to **requesting** approval by the board.

(2) **The analysis shall include the following:**

(i) The anticipated location of the proposed transportation project.

(ii) The type of transportation facility or transportation-related service to be improved.

(iii) The estimated costs of the proposed transportation project to the public entity.

(iv) The estimated length of the public-private transportation partnership agreement.

(v) The potential social, economic and environmental impacts of the proposed transportation project.

(vi) If the proposed transportation project proposes an optional user fee, include the estimated amount for each user group and type of user fee as described under section 9110(f) (relating to public-private transportation partnership agreement).

(vii) Applicable Federal and State laws.

(viii) Alternative courses of action to improve the transportation facility or transportation-related service without a public-private transportation partnership and the associated risks of improving the transportation facility or transportation-related service with a public-private transportation partnership.

(2.1) The department may conduct additional evaluations prior to the development of the analysis.

(3) The department shall post a copy of the analysis on the department's publicly accessible Internet website, submit the analysis to the board and the chairperson and minority chairperson of the Transportation Committee of the Senate and the chairperson and minority chairperson of the Transportation Committee of the House of Representatives and transmit notice of the analysis to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin for 60 days prior to any action by the board.

(b.1) Public input.--**The following shall apply:**

(1) The department shall collect comments from the public on the proposed transportation project during a public comment period which shall commence with the publication of the notice in the Pennsylvania Bulletin of the analysis and shall continue for a period of not less than 30 days. Prior to any action by the board, the department shall post a copy of all submitted comments and a summary as provided under paragraph (2) on the department's publicly accessible Internet website and provide the submitted comments and summary to the board and the chairperson and minority chairperson of the Transportation Committee of the Senate and the chairperson and minority chairperson of the Transportation Committee of the House of Representatives.

(2) The summary under paragraph (1) shall include a description of the proposed transportation project, a copy of the notice that was published in the Pennsylvania Bulletin, the time period that the public was allowed to provide input and a chart or graph that accurately portrays all submitted comments, including the positive and negative public input, on the proposed transportation project.

(b.2) Evaluation and approval.--The following shall apply:

(1) After consideration of the analysis and public comment, if the board finds that the proposed transportation project is in the best interests of the Commonwealth, it may approve the proposed transportation project in the form of a resolution. For a proposed transportation project that may impose an optional user fee, unanimous approval of the board is required.

(2) Approval of a proposed transportation project, including a project with an optional user fee, shall be in the form of a resolution signed by the chairperson of the board. A copy of the resolution shall be posted on the department's publicly accessible Internet website and shall be transmitted by the department to the following entities within 48 hours after approval:

(i) The chairperson and minority chairperson of the Transportation Committee of the Senate and the chairperson and minority chairperson of the Transportation Committee of the House of Representatives.

(ii) The Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

* * *

Section 4. Sections 9109(a), 9110(f) and 9115(a) and (b) of Title 74 are amended to read:

§ 9109. Selection of development entities.

(a) Conditions for use.--If a transportation project is approved under [section] **sections** 9104 (relating to duties of

board) **and 9105 (relating to operation of board)**, the public entity may enter into a contract for the transportation project by competitive sealed proposals.

* * *

§ 9110. Public-private transportation partnership agreement.

* * *

(f) [User] **Optional user** fees.--A provision establishing whether **optional** user fees will be imposed for use of the public-private transportation project and the basis by which any **optional** user fees will be imposed and collected shall be determined in the public-private transportation partnership agreement. If [a] **an optional** 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 **optional** 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 **optional** 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] **optional** toll or user fee at any location on a public-private transportation project where **optional** 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.

* * *

§ 9115. Taxation of development entity.

(a) General rule.--To the extent that revenues or **optional** 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 **optional** user fees

received by a development entity pursuant to a public-private transportation partnership agreement.

* * *

Section 5. Title 74 is amended by adding a section to read:
§ 9115.1. Prohibition on mandatory user fees.

A user fee may not be imposed as part of a transportation project approved under this chapter, unless the user fee is imposed only on individuals who select optional means to transit the transportation facility, such as limited access lanes or similar programs that allow individuals multiple means to transit the same transportation facility.

Section 6. The following shall apply:

(1) Except as provided under paragraphs (2) and (3), the resolution ratifying action of the Public-Private Transportation Partnership Board on November 12, 2020, approving the public-private partnership delivery model, including user fees, for interstate bridges or expressway bridges shall be rescinded.

(2) Notwithstanding any other provision of law and subject to paragraph (3), the Department of Transportation may continue work and proceed with the transportation project ratified by the resolution under paragraph (1), including any contract issued under a public-private partnership delivery model, but may not impose or collect optional user fees unless the department submits the transportation project for approval under 74 Pa.C.S. Ch. 91 after the effective date of this section.

(3) The transportation project ratified by the resolution under paragraph (1) shall only provide authority to the department for the following transportation facilities:

- (i) Allegheny County, bridge keys 855 and 858.
- (ii) Berks County, bridge key 4677.
- (iii) Clarion County, bridge keys 10944 and 10945.
- (iv) Dauphin County, bridge key 14257.
- (v) Jefferson County, bridge keys 19565 and 19566.
- (vi) Luzerne County, bridge keys 23645 and 23646.
- (vii) Luzerne and Carbon Counties, bridge keys 8972 and 8974.
- (viii) Philadelphia County, bridge keys 38533 and 38535.
- (ix) Susquehanna County, bridge keys 32209 and 32210.

Section 7. This act shall take effect immediately.

APPROVED--The 11th day of July, A.D. 2022.
TOM WOLF

PennDOT P3 Office Board Meeting

UNSOLICITED PROPOSALS | CANDIDATE – LEGEND

The following are descriptions of the status of the unsolicited proposals received by the P3 Office. More information is available on each candidate in their respective technical sheet.

UNSOLICITED PROPOSALS | CANDIDATE – UNDER CONSIDERATION

Candidates UNDER CONSIDERATION are submissions received by the P3 Office, currently receiving or have progressed through a High-Level screening to evaluate compliance and alternative delivery feasibility, and, as a result of the High-Level screening, are deemed to warrant further investigation and development.

UNSOLICITED PROPOSALS UPDATE | CANDIDATE – ON HOLD

Candidates ON HOLD are proposals that have passed the high-level screening stage and generally require more coordination with and input from the proposer or other stakeholders identified in the unsolicited proposal. Additional coordination will lead to either a dismissal or a more defined project to present to P3 Board.

UNSOLICITED PROPOSALS UPDATE | CANDIDATE – DISMISSED

Candidates DISMISSED are projects or proposals that are not well-defined, not compliant with the P3 enabling legislation or they do not provide a significant transportation benefit to the Commonwealth (or other public entity).

Unsolicited Proposals – Under Consideration

Project Name	Proposed By	P3 Action
PennDOT Solar Initiative	Solar Renewable Energy, LLC	Preparing Detailed Level Screening Report
District 4 Northern Tier Counties Bridge Replacements	CDR Maguire	Preparing Detailed Level Screening Report
I-76 Schuylkill Expressway Managed Lanes	CINTRA	Pre-screening / Candidacy

Unsolicited Proposals – On Hold

Project Name

Proposed By

Reason On Hold

PennDOT Truck Parking Expansion Program

Truck Specialized Parking Services, Inc.

Coordinating with Freight Working Group to identify truck parking strategies

Unsolicited Proposals – Dismissed

Project Name	Proposed By	P3 Action
EV Infrastructure Installation Plan	Charge Zero PA, LLC	Dismissed
Bus Portal for PA Schools	Busie	Dismissed
Commuter Vanpool Program	Enterprise Holdings via Commute	Dismissed

Unsolicited Proposals – Dismissed

Project Name	Proposed By	P3 Action
Snow Removal Scraper System	Rite-Hite	Dismissed
PA 309 Mundy Crossroads Improvement Project	Valley Crest Real Estate, LP	Dismissed
Mass EV Charging Deployment	Invisible Urban Charging (IUC)	Dismissed

UNSOLICITED PROPOSALS | CANDIDATE – UNDER CONSIDERATION | AUG 2023

PROJECT:	UP No. 154 – PennDOT Solar Initiative <i>April 2019 submission</i>
BOUNDARY:	Statewide

PROPOSED BY: Solar Renewable Energy, LLC (SRE)

DESCRIPTION:

An Unsolicited Proposal was received by the P3 Office for a Design-Build-Finance-Operate-Maintain (DBFOM) project to design and install a 5 MW DC solar array on one or more sites located within PennDOT right-of-way. The location of the site(s) would be determined jointly between PennDOT and the proposer to maximize benefits.

PRELIMINARY FINANCIAL PLAN:

Total Estimated Project Cost:	\$5,300,000
Projected Revenue:	\$200,000/yr. in years 1 – 5 \$450,000/yr. from year 6 on
Projected Term:	40 years

For the first 5 years, SRE will design-build-operate-finance-maintain the site(s) and PennDOT would receive approximately \$200,000 in annual cash flow. In Year 6, PennDOT would purchase the system for approximately \$5,300,000 and begin to receive an increased cash flow of approximately \$450,000 annually. This is based on projected average direct and indirect revenue approximating \$745,000 per year, and average costs being approximately \$335,000 per year. Potential savings to PennDOT over the 40-year term could range between \$5.8M and \$16.3M, depending on the purchase terms and SREC values.

SUMMARY EVALUATION OF P3/ALTERNATIVE DELIVERY:

The project, as presented, would provide PennDOT with a mechanism to re-purpose PennDOT owned lands, reduce PennDOT’s energy costs, and contribute to sustainability benefits offered by renewable energy. The proposer also has the potential to offer significant financial value to PennDOT in three (3) areas:

- savings in electricity costs
- rebates and tax credits for implementing renewable energy programs
- value in Solar Renewable Energy Certificates (SRECs)

The project is also best delivered as a P3/Alternate Delivery project in lieu of a conventional design-bid-build. A conventional design-bid-build delivery would require PennDOT solicit, manage, and deliver design and construction services of a facility for which they have little experience. A P3 project enables PennDOT to employ an outside service whose primary function is providing and packaging solar renewable energy facilities. Since first submitted, the P3 Office has met with PennDOT staff, the Proposer (twice), the Department of General Services (DGS), and the Governor’s Green Council. The Green Council acknowledged that the ownership structure of the proposal enabled tax advantages and SREC credits that would not be available under a typical power-service agreement that is part of the PA Pulse Program. The Green Council expressed interest in the proposal and requested to be communicated with as the proposal developed.

P3 STEERING COMMITTEE RECOMMENDATION:

Based on the above noted benefits, the P3 Office recommended that the Proposal continue to be developed and progressed to a Detailed Level Screening Report (DLSR) in accordance with the P3 Implementation Manual & Guidelines.

P3 TRANSPORTATION BOARD ACTION: No action required

UPDATE/ACTION ITEMS:

A High-Level Screening Report (HLSR) was completed and accepted by the P3 Office on March 24, 2022. As part of the initial efforts of the Detailed Level Screening Report the P3 Office held discussions with the Governor’s Green Council and will continue to coordinate with them as the proposal develops. Additionally, the following items will be undertaken as part of the DLSR:

- Investigate spatial opportunities within PennDOT ROW, quantify areas, and identify respective power supplies
- Discuss maintenance and traffic safety concerns with PennDOT and FHWA
- Identify ownership issues with the Office of Chief Counsel
- Identify major technical component needs, power distribution options, and power sources

UNSOLICITED PROPOSALS | CANDIDATE – UNDER CONSIDERATION | AUG 2023

PROJECT:	UP No. 155 – District 4 Northern Tier County Bridge Replacements July 2020 submission
BOUNDARY:	Susquehanna, Wyoming & Wayne Cos. In District 4-0

PROPOSED BY: CDR Maguire

DESCRIPTION:

The project is a Design-Build-Finance (DBF) to replace or reconstruct 32 poor condition, PennDOT-owned bridges located in the “Northern Tier” counties of Susquehanna, Wayne, and Wyoming in District 4-0. The scope would include preliminary engineering and final design, survey, geotechnical services, environmental permitting, right-of-way acquisition, utility coordination, construction, quality assurance, construction inspection, and finance.

PRELIMINARY FINANCIAL PLAN:

Total Estimated Project Cost:	\$38,500,000
Projected Revenue:	None anticipated
Projected Term:	5-year Design-Build; 20-year financing

The structure is a Design-Build-Finance; Operate or Maintain components were not included. The estimated cost is based on an assumed lump sum \$1,000,000 for any structure less than 30’ span; for structures longer than 30’, the Proposer added a premium equal to \$350/sq. ft. of deck area to the \$1,000,000 lump sum base.

SUMMARY EVALUATION OF P3/ALTERNATIVE DELIVERY:

The P3 Office performed an initial screening of the concept. The project would return a minimum of 12 closed or posted bridges to full service and remove as many as 20 bridges from poor sufficiency rating lists. After the initial submission, the Proposer did provide a bridge list. However, the bridges on the list are located in different settings, and involve a wide range of structure types, span lengths, ADT, and impacts associated with their replacement. Precedent of similar P3/Alternative Delivery projects include the Statewide Rapid Bridge Replacement (RBR) project and the Northampton County Bridge Bundle.

Conversations with the District indicated that they are interested in using this approach to address numerous posted or closed rural bridges. Although low in Average Daily Traffic, these bridges pose long detours and increased delivery costs for businesses needing to access the regional road network. Depending on the financing terms and business model, a P3/Alternative Delivery could enable the District to address a significant number of poorly rated bridges for which they presently do not have the funding or resources.

The proposal does not include criteria for including bridges or detailed financial information. Given the potential benefit and precedent of a bridge bundle P3, the P3 Office engaged Deloitte to prepare a financial report that compared the costs of several project delivery options, including P3.

P3 STEERING COMMITTEE RECOMMENDATION:

There is potential to gain significant value by combining public and private resources which is the intent of a P3 Delivery. The precedent projects support using P3/Alternative Delivery as a mechanism to address deficient bridges. Therefore, the P3 Office is recommending the Proposal continue to be developed and progressed to a Detailed Level Screening Report (DLSR) in accordance with the P3 Implementation Manual & Guidelines. The DLSR will research the outstanding issues, establish criteria for bridges to be included, and quantify the financials.

P3 TRANSPORTATION BOARD ACTION: No action required

UPDATE/ACTION ITEMS:

A High-Level Screening Report (HLSR) dated Nov. 16, 2021, was used as the starting point for the financial study. After two rounds of reviews, the financial study was finalized on July 26, 2022. The following action items will be undertaken by the P3 Office:

- Review technical need and financial availability for project
- Prepare Detailed Level Study that evaluates project size and includes bridge selection criteria

UNSOLICITED PROPOSALS | CANDIDATE – UNDER CONSIDERATION | AUG 2023

PROJECT:	UP No. 166 – I-76 Schuylkill Expressway Managed Lanes <i>October 2021 submission</i>
BOUNDARY:	District 6

PROPOSED BY: CINTRA

DESCRIPTION:

Proposal to improve 16.9 miles of I-76 (Schuylkill Expressway) between the SR 202 interchange and I-676 split. Project includes building 4 new tolled, managed lanes (2 in each direction), integration of public transit, new technologies, social integration and development programs as well as upgrade the General Purpose Lanes (GPLs) to improve the existing free capacity along the corridor. Additional connectivity would be added to the corridor, including additional ramps and new interchanges. Proposer plans to deliver this project through a Design-Build-Finance-Operate-Maintain (DBFOM) agreement for a term of 50 years. Responsibility would include fence-to-fence management of the entire project corridor including the GPLs, tolling operations, customer service, back office and O&M of toll equipment.

PRELIMINARY FINANCIAL PLAN:

Total Estimated Project Cost:	\$3.25 billion (\$0 to PennDOT)
Projected Revenue:	\$200,000,000 concession fee to PennDOT
Projected Term:	50 years

SUMMARY EVALUATION OF P3/ALTERNATIVE DELIVERY:

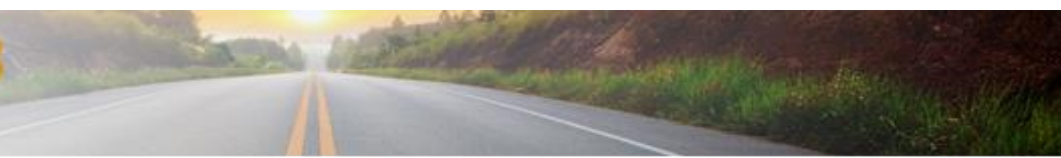
Review of the Unsolicited Proposal is being performed by the P3 Office and Strategic Planning and Finance Office

P3 STEERING COMMITTEE RECOMMENDATION: None at this time

P3 TRANSPORTATION BOARD ACTION: No action required

UPDATE/ACTION ITEMS:

- Coordinate with Strategic Planning and Finance Office on any further analysis



UNSOLICITED PROPOSALS | CANDIDATE – ON HOLD | AUG 2023

PROJECT:	UP No. 138 – PennDOT Truck Parking Expansion Program (TPEP) <i>April 2018 submission</i>
BOUNDARY:	Statewide

PROPOSED BY: Truck Specialized Parking Services, Inc.

DESCRIPTION:

An Unsolicited Proposal was received by the P3 Office to enable underutilized public and private real estate assets along key interstates and highways in eastern Pennsylvania that are most likely to relieve truck parking congestion. The proposed solution incorporates a technology platform developed specifically to manage parking availability and reservations for commercial vehicles.

PRELIMINARY FINANCIAL PLAN:

Total Estimated Project Cost:	\$1,800,000
Projected Revenue:	None anticipated
Projected Term:	Details not provided

SUMMARY EVALUATION OF P3/ALTERNATIVE DELIVERY:

The P3 Office has conducted multiple discussions with the Proposer. In coordination with the Freight Working Group, the P3 Office released a Request for Information (RFI) in fall 2018 to gather feedback related to the development, design, construction, implementation, maintenance, operation, and commercialization of truck parking facilities. Nineteen (19) responses were received for this RFI; supplemental one-on-one meetings have been conducted with selected respondents and their input was incorporated into findings for the project.

This Proposal, offered by Truck Specialized Parking Services, Inc., will be considered during the development of a Department truck parking initiative potentially scoped to include new or modified capacity in addition to the technology capturing a vacancy inventory and disseminated to truck drivers.

P3 STEERING COMMITTEE RECOMMENDATION: No action required

P3 TRANSPORTATION BOARD ACTION: No action needed at this time

UPDATE/ACTION ITEMS:

- Coordinate with Freight Working Group and report on truck parking strategies
- Reactivate the Proposal once when more scope details exist to fully screen as P3 opportunity

UNSOLICITED PROPOSALS | CANDIDATE – DISMISSED | AUG 2023

PROJECT:	UP No. 167 – EV Infrastructure Installation Plan <i>April 2022 submission</i>
BOUNDARY:	Statewide

PROPOSED BY: Charge Zero PA, LLC

DESCRIPTION:

An Unsolicited Proposal was received by the P3 Office for a Design-Build-Finance-Operate-Maintain (DBFOM) project to install electric vehicle (EV) charging stations with supporting solar arrays and batteries to create a statewide infrastructure network. The proposer would provide PennDOT with EV charging stations to reduce operating expenses, risk and management burdens while increasing reliable access to energy. Specifics regarding location and number of sites will be jointly determined.

The proposer would develop and deploy a single base station which would provide an average of 1.5MWh of solar energy per day, with an on-site battery for storage and four or more EV chargers in a mix of Level 2 and 3 (DC fast chargers) as desired. This base station would take approximately 16 months to complete, with a forecasted useful life of 30 years.

PRELIMINARY FINANCIAL PLAN:

Total Estimated Project Cost:	\$10,000,000 (w/ \$50,000 review fee)
Projected Revenue:	TBD
Projected Term:	TBD

The estimated \$2.5 million cost to construct the base station does not reflect the actual cost to the Department, as the proposer would create specialty financing to include an optimized blend of NEVI and grant funds, as well as low-cost borrowing to reduce costs below what would be possible in PennDOT’s standard program.

The proposal states there are potential revenue opportunities available through use of the excess energy from the solar array. Suggested options were to power PennDOT facilities, selling back to the grid, or charging neighbors to use the EV Chargers. The proposal claims estimated saving and revenue opportunities available using solar energy, but it does not provide details regarding what is covered by the above referenced cost or the payback to the development entity. So, there was no comparative context in which to evaluate the financials.

SUMMARY EVALUATION OF P3/ALTERNATIVE DELIVERY:

Although there are benefits, the P3 Office has consulted with PennDOT’s Infrastructure Implementation Office to confirm the only mechanism to access funds under the Pennsylvania NEVI State Plan is through the existing competitive application process. Under the approved Pennsylvania NEVI State Plan, funding has not been allocated to support implementation via a public-private partnership. As a result, all P3s for NEVI implementation should be dismissed without further screening.

P3 STEERING COMMITTEE RECOMMENDATION: No action required

P3 TRANSPORTATION BOARD ACTION: No action required

UPDATE/ACTION ITEMS:

Based on performing the candidacy review and consultation with the Department’s Infrastructure Implementation Office, it was determined this proposal does not meet the Commonwealth’s objectives or criteria for projects pursued under the P3 contracting mechanism and will not be recommended for further analysis or P3 Transportation Board consideration. In accordance with the P3 Implementation Manual, the P3 Office informed the proposer team that the P3 office has officially rejected and returned the Proposal on March 20, 2023.



UNSOLICITED PROPOSALS | CANDIDATE – DISMISSED | AUG 2023

PROJECT:	UP No. 171 – Bus Portal for PA Schools <i>October 2022 submission</i>
BOUNDARY:	Lehigh Valley

PROPOSED BY: Busie

DESCRIPTION:

Presently, school officials can only arrange bus transportation through broker services. This proposal would create an online portal that enables PA schools to arrange student/student athlete transportation directly with school bus and motor coach providers throughout Pennsylvania. The portal would verify the operators are available, are validated PA School Bus & Motor Coach operators, and have up-to-date PA DOT credentials and operation status.

PRELIMINARY FINANCIAL PLAN:

Total Estimated Project Cost:	\$3,000,000
	\$1,500,000 for operation, deployment, and implementation
	\$1,000,000 for maintenance
	\$500,000 for engineering
Projected Revenue:	Not indicated in proposal
Projected Term:	Not indicated in proposal

SUMMARY EVALUATION OF P3/ALTERNATIVE DELIVERY:

The system would put school officials in direct contact with owners of buses and offer better service by avoiding trip delays and cancellations that occur because brokers did not fulfill the request. The Proposal also eliminates lost monies that result from cancelling and re-arranging trips.

Although there are benefits, the Proposal appears to be more of a service agreement that does not involve PennDOT-owned facilities as school bus transportation is not under the purview of PennDOT.

P3 STEERING COMMITTEE RECOMMENDATION: No action needed at this time

P3 TRANSPORTATION BOARD ACTION: No action needed at this time

UPDATE/ACTION ITEMS: Based on performing the candidacy review (High Level Screening) and consultation with the Department’s Bureau of Public Transportation, it was determined this proposal does not meet the Commonwealth’s objectives or criteria for projects pursued under the P3 contracting mechanism and will not be recommended for further analysis or P3 Transportation Board consideration. In accordance with the P3 Implementation Manual, the P3 Office informed the proposer team that the P3 office has officially rejected and returned the Proposal on May 24, 2023.



UNSOLICITED PROPOSALS | CANDIDATE – DISMISSED | AUG 2023

PROJECT:	UP No. 172 – Commuter Vanpool Program <i>October 2022 submission</i>
BOUNDARY:	Statewide

PROPOSED BY: Enterprise Holdings via Commute

DESCRIPTION:

Proposing to provide vehicles, insurance, maintenance, ride matching services and other support services for a public, statewide vanpool program. PennDOT would provide financial assistance to vanpool groups via a monthly subsidy.

PRELIMINARY FINANCIAL PLAN:

Total Estimated Project Cost:	\$5,183,600 (over 4 years)
Projected Revenue:	Potential \$2,300,000 in federal formula funds from CO2 savings
Projected Term:	4 years

SUMMARY EVALUATION OF P3/ALTERNATIVE DELIVERY:

A public, statewide vanpool program would reduce congestion, pollution, vehicles miles traveled, and remove 3 million pounds of CO2 from being released into the atmosphere. The program would increase access to jobs, recruitment and retention efforts while also diversifying transportation options, addressing transit service gaps and transit deserts.

Enterprise’s teams are experts at managing vanpool programs of any size — and with more than 1.2 million vehicles in North America, vanpool groups can choose from passenger vans, crossovers, minivans, or SUVs. They propose a local account management team and locally established operations give the program a complete, turnkey solution.

While there are benefits, the Proposal does not address an issue related to a specific Commonwealth Department or a Public Entity transportation facility or service.

P3 STEERING COMMITTEE RECOMMENDATION: No action needed at this time

P3 TRANSPORTATION BOARD ACTION: No action needed at this time

UPDATE/ACTION ITEMS: Based on performing the candidacy review (High Level Screening) and consultation with the Department’s Bureau of Public Transportation, it was determined this proposal does not meet the Commonwealth’s objectives or criteria for projects pursued under the P3 contracting mechanism and will not be recommended for further analysis or P3 Transportation Board consideration. In accordance with the P3 Implementation Manual, the P3 Office informed the proposer team that the P3 office has officially rejected and returned the Proposal on May 24, 2023

UNSOLICITED PROPOSALS | CANDIDATE – DISMISSED | AUG 2023

PROJECT:	UP No. 173 – Snow Removal Scraper System <i>October 2022 submission</i>
BOUNDARY:	Statewide

PROPOSED BY: Rite-Hite

DESCRIPTION:

Proposal to install plow systems to remove snow from the surfaces of PennDOT fleet vehicles. The system is a wheel-mounted Model 440T FleetPlow that can be installed in less than a day and once installed, can have snow and ice removed within 24 hours mandated by state law Act 90 (75 Pa. Code 3721).

PRELIMINARY FINANCIAL PLAN:

Total Estimated Project Cost: \$360,000 - \$2,500,000 (dependent on number installed)

Projected Revenue: Not indicated in proposal

Projected Term: Not indicated in proposal

SUMMARY EVALUATION OF P3/ALTERNATIVE DELIVERY:

The system features easy-to-install equipment that can save time and labor spent on manually removing snow from PennDOT vehicles, while also ensuring vehicles can be safely operated on roads within 24 hours of snowfall, thereby complying with state mandate.

Although there are benefits, this seems like a service needed at warehouses or logistic facilities and not at weigh station or rest areas which are located many miles away from a trucks initial trip. Additionally, there are concerns around the cost and responsibility of operating and maintaining this system.

P3 STEERING COMMITTEE RECOMMENDATION: No action needed at this time

P3 TRANSPORTATION BOARD ACTION: No action needed at this time

UPDATE/ACTION ITEMS: Based on performing the candidacy review (High Level Screening) and consultation with the Department’s Bureau of Operations, it was determined this proposal does not meet the Commonwealth’s objectives or criteria for projects pursued under the P3 contracting mechanism and will not be recommended for further analysis or P3 Transportation Board consideration. In accordance with the P3 Implementation Manual, the P3 Office informed the proposer team that the P3 office has officially rejected and returned the Proposal on June 28, 2023.

UNSOLICITED PROPOSALS | CANDIDATE – DISMISSED | AUG 2023

PROJECT:	UP No. 174 – PA 309 Mundy Crossroads Improvement Project <i>April 2023 submission</i>
BOUNDARY:	District 4

PROPOSED BY: Valley Crest Real Estate, LP

DESCRIPTION:

This proposal consists of road improvements to address the traffic congestion due to the intense development where Interstate 81, Exit 170 A&B meet Pennsylvania Route 309 and Route 115, approximately 3 miles from the city center of Wilkes-Barre. This proposal also considers improvements to PennDOT right of way in the area.

The proposer has obtained \$10,100,000 in public funds and are required to fund matches for several grants that will amount to \$2,800,000. In addition, they expended \$340,000 for preliminary engineering and the traffic study for PennDOT. The proposal is seeking a P3 to support the rest of the funding gap.

PRELIMINARY FINANCIAL PLAN:

Total Estimated Project Cost:	\$18,714,060
Projected Revenue:	Not indicated in proposal
Projected Term:	Not indicated in proposal

SUMMARY EVALUATION OF P3/ALTERNATIVE DELIVERY:

The project does not address an issue related to a specific Commonwealth Department or a Public Entity transportation facility or service. A P3 Agreement between Valley Crest Real Estate, LP and the Department or a Public Entity would not be the appropriate vehicle for implementation of the proposed project. The proposed project does not meet the definition of a P3.

A P3 Agreement would be 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 transportation-related services. This proposal does not identify a transportation facility that could be transferred, nor does it demonstrate a source of project generated revenues to pay a development entity or concessionaire.

P3 STEERING COMMITTEE RECOMMENDATION: No action needed at this time

P3 TRANSPORTATION BOARD ACTION: No action needed at this time

UPDATE/ACTION ITEMS: Based on performing the candidacy review (High Level Screening) and consultation with the Department’s District 4-0 executive staff, it was determined this proposal does not meet the Commonwealth’s objectives or criteria for projects pursued under the P3 contracting mechanism and will not be recommended for further analysis or P3 Transportation Board consideration. In accordance with the P3 Implementation Manual, the P3 Office informed the proposer team that the P3 office has officially rejected and returned the Proposal on July 26, 2023.

UNSOLICITED PROPOSALS | CANDIDATE – DISMISSED | AUG 2023

PROJECT:	UP No. 175 – Mass EV Charging Deployment <i>April 2023 submission</i>
BOUNDARY:	Statewide

PROPOSED BY: Invisible Urban Charging (IUC)

DESCRIPTION:

IUC recommends 36,000 Level 2 EVs installed by 2028 with 7,200 installed per year based on the International Energy Agency’s recommendation of a public charger to EV ratio of 1:10 and a forecast of 360,000 EVs in the Commonwealth by 2028. IUC proposes two options for PennDOT:

1. NEVI and/or other capital funding are applied to the IUC model up front, reducing the ongoing monthly fees which PennDOT funds into the future, net of 80% of the EV charging revenue received from each station. Level 2 Stations are installed on PennDOT sites throughout the state at destination sites.
2. NEVI and/or other capital funding are applied to the IUC model up front, reducing the ongoing monthly operating costs and this discounted model is presented to businesses throughout the state, who receive the ongoing 80% EV driver revenue, net of the monthly cost. In this approach the business pays the residual monthly fee, not PennDOT.

PRELIMINARY FINANCIAL PLAN:

Total Estimated Project Cost:	\$285/month per charge as base fee (dependent on number installed)
Projected Revenue:	Proposed 80% share to PennDOT and 20% to IUC
Projected Term:	[Not indicated in proposal]

SUMMARY EVALUATION OF P3/ALTERNATIVE DELIVERY:

Although there are benefits, the P3 Office has consulted with PennDOT’s Infrastructure Implementation Office to confirm the only mechanism to access funds under the Pennsylvania NEVI State Plan is through the existing competitive application process. Under the approved Pennsylvania NEVI State Plan, funding has not been allocated to support implementation via a public-private partnership. As a result, all P3s for NEVI implementation should be dismissed without further screening.

P3 STEERING COMMITTEE RECOMMENDATION: No action needed at this time

P3 TRANSPORTATION BOARD ACTION: No action needed at this time

UPDATE/ACTION ITEMS: Based on performing the candidacy review and consultation with the Department’s Infrastructure Implementation Office, it was determined this proposal does not meet the Commonwealth’s objectives or criteria for projects pursued under the P3 contracting mechanism and will not be recommended for further analysis or P3 Transportation Board consideration. In accordance with the P3 Implementation Manual, the P3 Office informed the proposer team that the P3 office has officially rejected and returned the Proposal on June 28, 2023.

Partnership 81 Project

PROJECT OVERVIEW:

Approved by the P3 Board in December 2019, the Partnership 81 Project aims to address needed safety, capacity and mobility improvements along a section of Interstate 81 near the City of Wilkes-Barre, Luzerne County. These improvements include the reconstruction and widening of I-81 to three lanes in each direction; replacement of poor condition bridges; the elimination of a left-hand exit currently existing on I-81; and the redesign of other intersections immediately off I-81.

In June 2020, the P3 Board approved an extension of the Partnership 81 project limits. The project limits now extend from MM 161.2 (current termini of the six-lane cross section) to 168.7 (Highland Park Boulevard interchange), a 7.5-mile reconstruction in total. At the same time, the P3 Board also approved using Design-Build-Finance (DBF) delivery to procure the project. After a review of project delivery alternatives, it was determined that a DBF approach would provide the best opportunity to meet PennDOT's goals.

BENEFITS:

- Reconstruction/widening of 7.5 miles of I-81 to 3 lanes in both directions
- Replacement of poor condition bridges
- Safety and mobility improvements, including elimination of a left-hand exit
- Opportunity to innovate and create efficiencies in scheduling and cost savings
- Make proposed improvements to an interstate that are not covered by the TIP

CURRENT STATUS:

PennDOT advanced preliminary studies and engineering for the project, and in September 2022, submitted updated, revised versions of the Alternatives Alignment Report (AAR) and Conceptual Point of Access Study (CPOAS) to Central Office and FHWA. NEPA approval that had been targeted for fall 2022 is now projected for Spring 2024.

NEXT STEPS:

In early 2023, PennDOT determined that it was in the best interest of the project to be cancelled as a P3 project. The project will be delivered via traditional delivery.

P3 Project Update | August 2023

Rapid Bridge Replacement (RBR) Project

Public Authority:

PennDOT

Private Partners:

Plenary Walsh Keystone Partners

Status:

Maintenance Term

P3 Office Staff Lead:

Michael Bonini

PennDOT Technical Advisor:

Gary Kleist, P.E.

P3 Board Meeting Approval Date:

September 2013

PROJECT OVERVIEW:

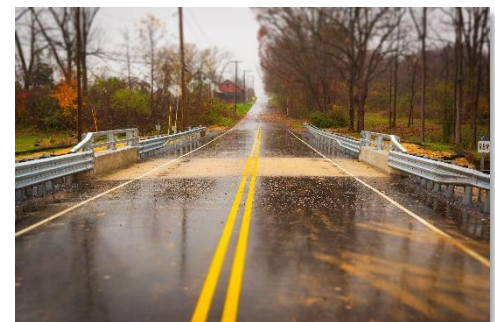
The project is bolstering PennDOT’s ongoing effort to address Pennsylvania’s more than 4,000 poor bridges. Plenary Walsh Keystone Partners (PWKP) was selected for the Department’s Rapid Bridge Replacement (RBR) project to replace 558 bridges across the state. Commercial Close (execution of the contract) was achieved on January 9, 2015. The team, which includes over 50 Pennsylvania-based companies, began construction of the bridges in June 2015.

The commonwealth retains ownership of the bridges, but PWKP is responsible for maintaining each bridge for 25 years after its replacement. The team managed bridge design and construction and will continue to manage maintenance under the contract. The team is responsible for financing the effort and PennDOT will make performance-based payments based on the contractor’s adherence to the contract terms. PennDOT will be responsible for routine maintenance, such as snow plowing and debris removal.

BENEFITS:

The project provides the following benefits:

- Construction of 558 bridges;
- Potential cost savings due to similar design of the P3 bridges, bulk purchase of materials, and standardization of pre-fabricated bridge elements;
- Contractor responsible for the maintenance of these bridges for 25 years;
- Transfer of risk to the PWKP team for the design and construction of the 558 bridges;
- Transfer of risk to PWKP for the maintenance of the bridges for 25 years (excluding routine maintenance like snow plowing/debris removal); and



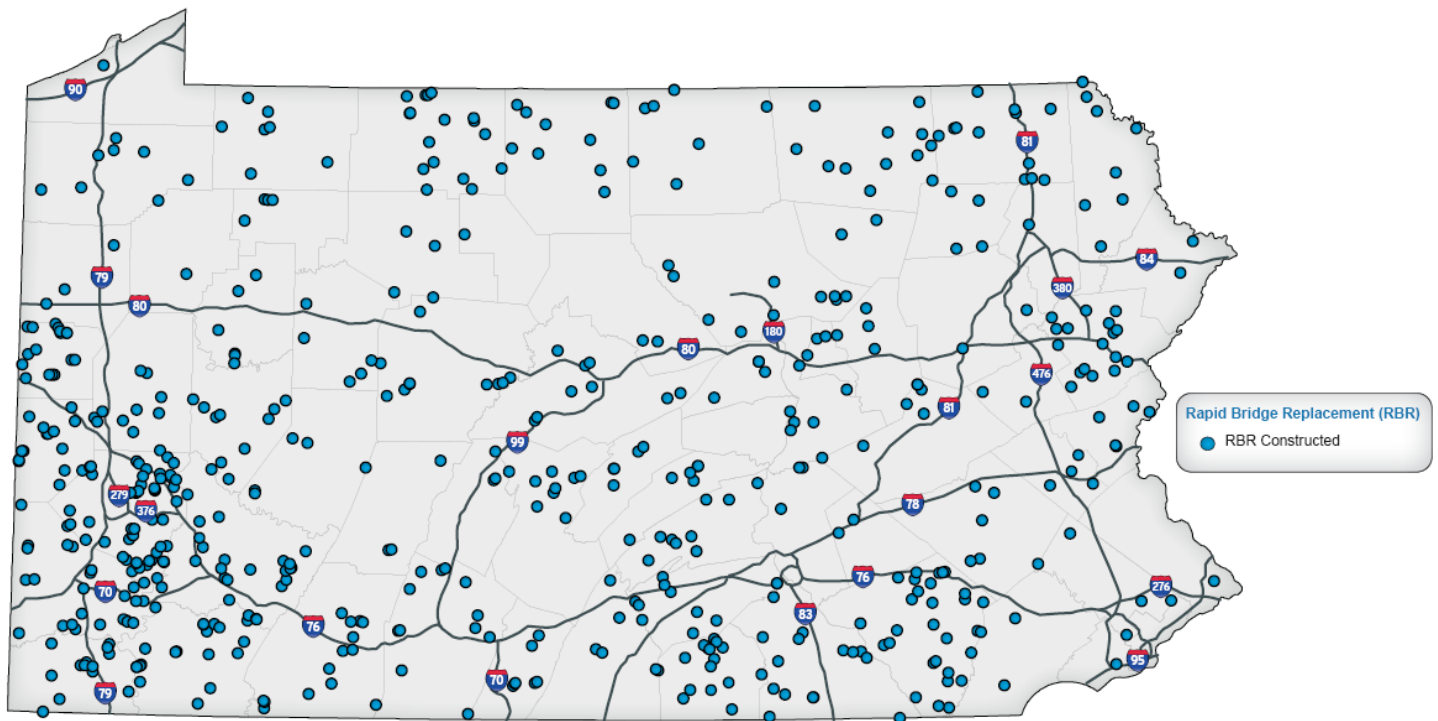
Bridge JV-577, Jonestown Road (RT 4013) over Tributary to Raccoon Creek, Lebanon County

Rapid Bridge Replacement (RBR) Project

- Financial cost for delivery of bridges and maintenance of bridges (post construction) is spread over 28 years (initial mobilization payment, milestone payments during the design and construction phases of the project, and availability payments spread over 25 years)

STATUS:

As of August 2020, all 558 bridges have been replaced and are open to traffic. PWKP is obligated to maintain the bridges to the end of 2042.



P3 Project Update | August 2023

Compressed Natural Gas (CNG) Fueling Stations for Public Transit Agencies

Public Authority:

PennDOT

Private Partners:

Trillium CNG

Status:

Contract Executed –
Under Construction

P3 Office Staff Lead:

PennDOT Technical Advisor:

Nick Baldwin, Bureau of Public
Transportation

**P3 Board Meeting
Approval Date:**

September 2014

PROJECT OVERVIEW:



PennDOT selected Trillium CNG as the development entity and partner to supply CNG fueling equipment to 24 transit facilities which will fuel up to 750 buses throughout the Commonwealth. Trillium will make CNG-related safety upgrades to existing transit maintenance facilities and will design, build, finance, operate and maintain the CNG fueling stations. Trillium will be responsible for maintaining the stations until 2037.

The Department also entered into agreements with transit agencies, establishing commitments to CNG fuel purchases and operational requirements. The project

will provide access to commercial CNG fueling stations for owners of private vehicles and business fleets in areas with sufficient market demand. The Department will receive a portion of the commercial fuel sales revenue to support future capital projects for transit agencies.

BENEFITS:

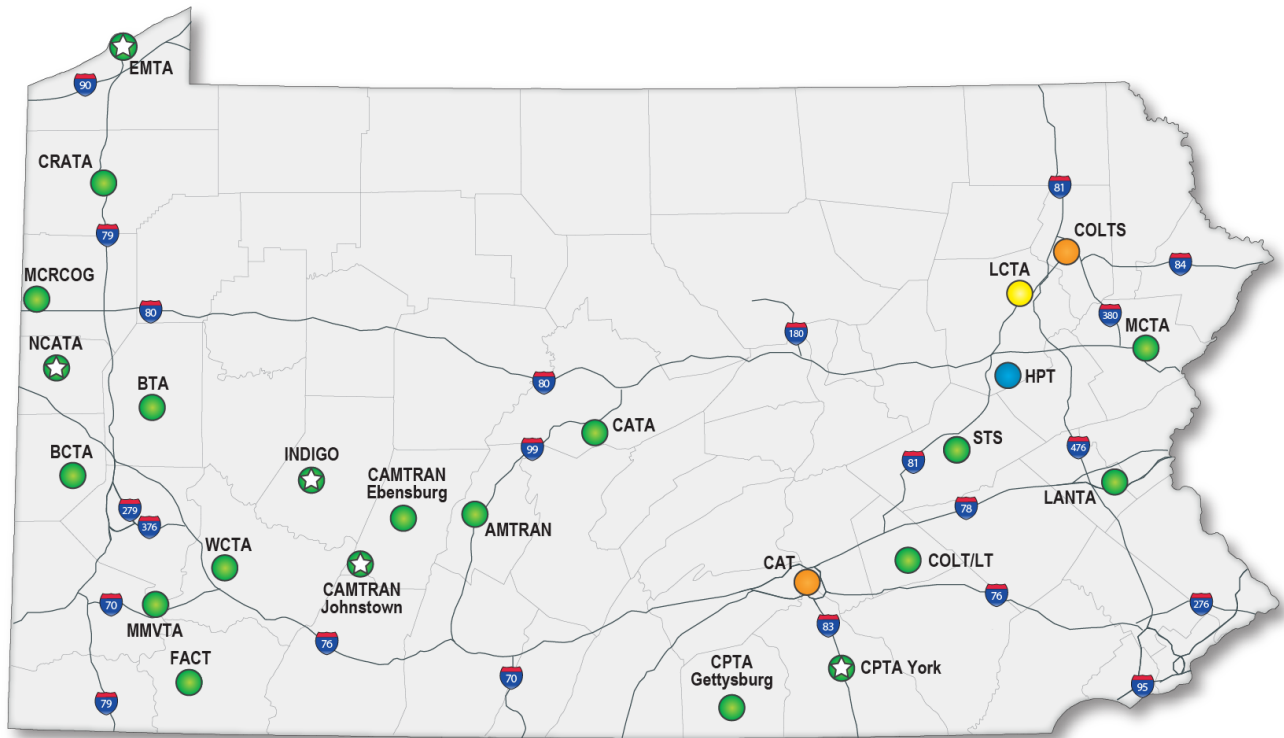
The construction of CNG fueling stations will provide benefits including:

- Operational cost savings for transit agencies;
- Improved engine life of CNG vehicles;
- Reduced carbon emissions and greenhouse gases; and
- Enhanced access to CNG for individuals and owners of small fleets.

Compressed Natural Gas (CNG) Fueling Stations for Public Transit Agencies

STATUS:

On April 20, 2017, Governor Tom Wolf announced the opening of the CNG fueling station at the Cambria County Transportation Authority (CamTran) in Johnstown. This marked the first CNG fueling station constructed through the public-private partnership with Trillium CNG. As of August 2023, 20 stations have been completed. Of those stations, five (New Castle, Erie, Indiana, Johnstown and York) have public fueling positions.



As of August 2023

● Completed |
 ● Planned Construction |
 ● 2023 |
 ● 2024 |
 ● 2025-2027 |
 ☆ Public Access

It is estimated that over the life of the P3 contract, this \$84.5 million project will pay for itself through economy of scale efficiencies in building the stations and through fuel cost savings to the transit agencies. When compared to the price of diesel fuel, Pennsylvania transit agencies have saved approximately \$11.5 million to date with the stations already open.

P3 Project Update | August 2023

Major Bridge Public-Private Partnership (MB P3)

Public Authority:

PennDOT

Private Partners:

Bridging Pennsylvania Partners

Bridging Pennsylvania Developer I

Status:

Pre-Development Agreement Executed

Package 1 DBFM Agreement Executed

P3 Office Staff Lead:

Michael Bonini

PennDOT Technical Advisor:

Christine Norris, P.E.

P3 Board Meeting Approval Date:

November 2020

PROJECT OVERVIEW:

The Project seeks infrastructure improvements focusing on the rehabilitation and replacement of six major bridges (and associated roadways) across the Commonwealth. Under the PDA, a Pre-Development Agreement Entity (“PDA Entity”) is collaborating with PennDOT and performing pre-development work, including but not limited to: advancing designs; coordinating with stakeholders, utilities, and railroads; obtaining or identifying required permits; assisting PennDOT in achieving NEPA Approvals; performing site investigations; and conducting open book pricing; with the ultimate goal of submitting a package of the bridges (a “Package Proposal”) to PennDOT for review and approval.

Historically, PennDOT has used the design-bid-build (DBB) or (two-phase) low-bid design-build (LBDB) method of delivery with projects being awarded to the lowest responsible bidder. However, P3 procurements are permitted under the P3 Law. This law enables the Commonwealth to enter into agreements with the private sector to participate in the delivery, operations, maintenance, and financing of transportation related projects. The Implementation Manual and Guidelines, approved for use on January 9, 2013, as last amended on December 13, 2022 (the “Implementation Manual”), provides guidance regarding Public Private Transportation Project development and implementation in the Commonwealth.

PennDOT has used a P3 in its Rapid Bridge Replacement Project for the replacement of 558 bridges across the Commonwealth, under a conventional availability payment-based P3 procedure, and to design, build, finance, operate, and maintain compressed natural gas (CNG) fueling stations at 24 locations across the Commonwealth. For this Project, however, PennDOT used its pre-development authority (Sec. 9108(1) & (10) of the P3 Law; see Sec. 9109(f) of the P3 Law (best value); see also Section 6.1 of the Implementation Manual) for the design-build-finance maintain (DBFM) of major bridges throughout the Commonwealth.

Major Bridge Public-Private Partnership (MB P3)

The Pre-Development/Progressive P3 procurement strategy offers advantages over the traditional DBB and design build (DB) delivery methods including:

1. Proposer selection based on qualification, commercial pricing impositions, Project approach, and other proposal-based criteria (rather than solely on price) similar to a two-phase request for qualifications (RFQ) and request for proposal (RFP) DB procurement.
2. Conservation of PennDOT resources by shifting pre-development work to the PDA Entity enabling the advancement of other needed projects within the remaining program.
3. Efficient delivery whereby the Project design is advanced in the pre-development phase by the PDA Entity. This allows for the incorporation of the strengths of the PDA Entity team's means and methods of delivery, resulting in projects with a more definitive scope and content of work, and again, at a point in time even earlier than under DB.
4. Realization of many of the benefits of a competitive price-based procurement in the formation of the Project itself, through deferral of payments to the PDA Entity¹, and most notably through the requirement that the ultimate PDA Entity finance the Project (benefitting from lender scrutiny and underwriting of the financial viability of the Project). Similar to a traditional P3, the Pre-Development/Progressive P3 procurement strategy mitigates risk and associated costs by advancing a project during the pre-development phase prior to establishing the fixed cost.
5. Realization of other benefits of competitive price-based procurement, such as DBB, insofar as the PDA Entity's pricing of the packaging work is prepared on an open book basis based on early risk assessment, and is subject to the competitively bid monetary constraints set forth in the RFP.
6. Acceleration of schedule through packaging of bridges into discrete projects and early utilization of DB pre-design and design.

The MB P3 Package 1 includes six bridges and reached contract execution (Commercial Close) on November 29, 2022 and Financial Close on December 22, 2022. PennDOT will repay the amounts financed by BPP through recurring availability payments over 35 years, beginning when construction is complete. The availability payments will be paid using a blend of federal and state funds.

The 6 bridges included in Package 1 include:

- I-80 Canoe Creek Bridges
- I-80 North Fork Bridges
- I-78 Lenhartsville Bridge
- I-80 Nescopeck Creek Bridges
- I-80 over Lehigh River Bridge Project
- I-81 Susquehanna Project

Major Bridge Public-Private Partnership (MB P3)

STATUS:

Notice to Proceed 1 (NTP1) was issued on December 22, 2022 which allowed the Development Entity to expand the draft Project Management Plans that were started during the PDA Phase. On March 14, 2023 NTP2 was issued, authorizing the Development Entity to begin design work. The design on all 6 bridges is being advanced. Overall, approximately 30% of the anticipated design submittals have been completed to date.

In addition to advancing the design of the 6 bridges, the Development Entity is also working to achieve NTP3 which authorizes full construction to begin. Prior to issuance of NTP3, construction activities for a limited scope of work may be authorized under a limited NTP3 (LNTP3). The first LNTP3 was issued for the Susquehanna Project on 6/30/23, which also initiated the Development Entity's maintenance responsibilities during the Construction Period for that bridge. Additional LNTP3's are anticipated throughout the fall of 2023, including a second LNTP3 for the Susquehanna Project and a first LNTP3 for Canoe Creek.

Full NTP3 is scheduled to be achieved in May 2024, at which point all 6 bridges will be under full construction.

P3 BOARD MEMBERS

Name:	Member Appointment (as per Act 88):
Michael S. Carroll, Chair	Secretary of Transportation
Geoffrey Clarke	Senate Minority Leader appointee
Gregory Davis	Office of the Governor appointee
Ronald Drnevich	House Minority Leader appointee
Uri Monson	Secretary of the Budget
Honorable Timothy Murphy	Senate Majority Leader appointee
Honorable Ed Neilson	House Majority Leader appointee

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	Deputy Director, P3 Office		
James Nicastro	Project Manager, P3 Office	717.934.4206	janicastro@pa.gov
Madelyn Vergos	Executive Secretary, Office of the Deputy Secretary	717.787.3154	mvergos@pa.gov