

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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GILLEN, NOVEMBER 18, 2013

REFERRED TO COMMITTEE ON STATE GOVERNMENT, NOVEMBER 18, 2013

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, providing for public-private partnerships, for
3 prerequisite for operation, for approval by responsible
4 government agency, for service contracts, for affected local
5 jurisdictions, for dedication of public property, for powers
6 and duties of operator, for comprehensive agreement, for
7 Federal, State and local assistance, for material default and
8 remedies, for condemnation and for utility crossing; imposing
9 duties on the Pennsylvania Public Utility Commission; and
10 providing for governmental immunity, for procurement, for use
11 of intellectual property and for regulations.

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

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

16 CHAPTER 47

17 PUBLIC-PRIVATE PARTNERSHIPS

18 Sec.

19 4701. Definitions.

20 4702. Unsolicited submission of public-private partnership

- 1 agreement proposals to government agency.
- 2 4703. Solicitation of proposals for public-private partnership
3 agreements.
- 4 4704. Evaluation and selection of public-private partnership
5 agreement proposal.
- 6 4705. Implementation of public-private partnership agreement.
- 7 4706. Service contracts.
- 8 4707. Affected local jurisdictions.
- 9 4708. Dedication of public property.
- 10 4709. Powers and duties of operator.
- 11 4710. Federal, State and local assistance.
- 12 4711. Material default and remedies.
- 13 4712. Condemnation.
- 14 4713. Utility crossing.
- 15 4714. Governmental immunity.
- 16 4715. Special approval.
- 17 4716. Exclusivity.
- 18 4717. Use of intellectual property.
- 19 4718. Applicability.
- 20 4719. Regulations.
- 21 § 4701. Definitions.

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

25 "Affected local jurisdiction." A political subdivision in
26 which all or a portion of a qualifying project is located.

27 "Commission." The Pennsylvania Public Utility Commission.

28 "Department." The Department of General Services of the
29 Commonwealth.

30 "Eligible project." Any of the following:

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

2 (i) A school building.

3 (ii) A facility which is functionally related and
4 subordinate to a school building, including a stadium or
5 other facility primarily used for school events.

6 (iii) Land which is functionally related and
7 subordinate to a school building.

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

11 (2) A building or facility for principal use by a
12 government agency.

13 (3) A building or facility used for public water supply
14 or treatment, storm water disposal or waste treatment or used
15 for public parking facilities.

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

19 (5) Telecommunications and other communications
20 infrastructure.

21 (6) Utility infrastructure.

22 "Government agency." As defined in section 3102 (relating to
23 definitions).

24 "Lease payment." A form of payment, including a land lease,
25 by a government agency to the operator for the use of an
26 eligible project.

27 "Material default." A default by the operator in the
28 performance of its duties under section 4709(e) (relating to
29 powers and duties of operator) which jeopardizes adequate
30 service to the public from a qualifying project.

1 "Operator." The private entity that is responsible for an
2 eligible project or a portion of an eligible project, including
3 acquisition, design, construction, improvement, renovation,
4 expansion, equipping, maintenance and operation.

5 "Private entity." An individual, corporation, limited
6 liability company, partnership, joint venture or other private
7 business entity.

8 "Public-private partnership agreement." An agreement between
9 a government agency and a private entity which involves the
10 development or operation, or combination thereof, of an eligible
11 project by the private entity. The agreement may consist of the
12 following:

13 (1) Predevelopment agreements leading to other
14 implementing agreements.

15 (2) A design-build agreement.

16 (3) A design-build-operate agreement.

17 (4) A design-build-maintain agreement.

18 (5) A design-build-finance-operate agreement.

19 (6) A design-build-operate-maintain agreement.

20 (7) A design-build-finance-operate-maintain agreement.

21 (8) An operate-maintain agreement.

22 (9) A concession providing for the private entity to
23 design, build, operate, maintain, manage or lease an eligible
24 project.

25 (10) Any other delivery method or agreement or
26 combination of methods or agreements that the public entity
27 determines will address the needs of the Commonwealth and the
28 public entity and serve the public interest.

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

- 1 (1) A user fee.
- 2 (2) A lease payment.
- 3 (3) A service payment.

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

6 "User fee." The rate or other charge imposed by the operator
7 of an eligible project for use of the eligible project pursuant
8 to a public-private partnership agreement.

9 § 4702. Unsolicited submission of public-private partnership
10 agreement proposals to government agency.

11 (a) Unsolicited request for approval.--A private entity may
12 request consideration and approval of a proposed public-private
13 partnership agreement for an eligible project. The request may
14 be submitted to the applicable government agency, and any
15 proposal under this section shall not be approved unless the
16 government agency follows procedures outlined in sections 4703
17 (relating to solicitation of proposals for public-private
18 partnership agreements) and 4704 (relating to evaluation and
19 selection of public-private partnership agreement proposal). A
20 request shall be accompanied by the following material and
21 information unless waived by the government agency:

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

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

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

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

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

10 (iii) Any property that the government agency may be
11 requested to condemn.

12 (4) Information relating to the current plans for
13 development of facilities to be used by a government agency
14 that are similar to the eligible project being proposed by
15 the private entity of each affected local jurisdiction.

16 (5) A list of all permits and approvals required for the
17 eligible project from Federal, State or political
18 subdivisions and a projected schedule for obtaining the
19 permits and approvals.

20 (6) A list of public utility facilities that will be
21 crossed by the eligible project and a statement of the plans
22 of the operator to accommodate the crossings.

23 (7) A statement setting forth the private entity's
24 general plans for financing the eligible project, including
25 the sources of the private entity's funds.

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

28 (9) User fees, lease payments and other service payments
29 included in the comprehensive agreement, including frequency
30 of assessments and the methodology and circumstances for

1 changes to the user fees, lease payments and other service
2 payments.

3 (10) Any additional material and information as the
4 government agency may reasonably request.

5 § 4703. Solicitation of proposals for public-private
6 partnership agreements.

7 (a) Solicitation of proposals.--A government agency may
8 issue a request for proposals for public-private partnerships
9 for an eligible project.

10 (b) Public notice.--The government agency shall give public
11 notice of a request for proposals for public--private
12 partnership agreements for an eligible project within the
13 affected local jurisdiction, and the notice shall be consistent
14 with regulations adopted by the department. The regulations
15 shall require that the method of public notice include all of
16 the following:

17 (1) Electronic publication which is accessible to the
18 general public.

19 (2) Advertisement as provided for in 45 Pa.C.S. § 306
20 (relating to use of trade publications).

21 (3) The issuance of a request for proposals to offerors
22 on the mailing list of the government agency.

23 (4) Publication in a newspaper of general circulation.

24 (5) Where prequalification is a requirement of
25 submitting a proposal, notification to all private entities
26 that have been prequalified by the government agency.

27 (c) Adoption of procedures.--A government agency shall not
28 consider a request by a private entity for approval of a public-
29 private partnership agreement for an eligible project until the
30 government agency has adopted and made publicly available

1 procedures sufficient to enable the government agency to comply
2 with regulations issued pursuant to this chapter, and the
3 procedures shall provide a reasonable period of time of not less
4 than 45 days during which the government agency will receive
5 competing proposals.

6 (d) Availability to general public.--Copies of a request for
7 proposals shall be made available to any interested person
8 residing within the affected local jurisdiction upon request to
9 the government agency. A government agency may establish
10 procedures for the distribution of a request for proposals,
11 including the imposition of a fee to reimburse the public entity
12 for the costs of photocopying and mailing.

13 (e) Receipt of proposals.--Offerors shall submit their
14 sealed proposals to ensure that they are received prior to the
15 time and date established for receipt of the proposals. Sealed
16 proposals shall be submitted in the format required by the
17 government agency. Sealed proposals shall be opened so as to
18 avoid disclosure of their contents to competing offerors.

19 (e) Fee.--The government agency may charge a reasonable fee
20 to cover the costs of processing, reviewing and evaluating the
21 request, including reasonable attorney fees and fees for
22 financial and other necessary advisers or consultants.

23 § 4704. Evaluation and selection of public-private partnership
24 agreement proposal.

25 (a) Evaluation criteria.--A government agency shall evaluate
26 each proposal to determine which one has the best value for and
27 is in the best interest of the government agency. In making this
28 determination, a government agency may consider any of the
29 following:

30 (1) Cost.

- 1 (2) Price.
- 2 (3) Financial commitment.
- 3 (4) Innovative financing.
- 4 (5) Bonding.
- 5 (6) Technical, scientific, technological or
6 socioeconomic merit.
- 7 (7) Financial strength and viability.
- 8 (8) Design, operation and feasibility of the
9 transportation project.
- 10 (9) Public reputation, qualifications, industry
11 experience and financial capacity of the private entity.
- 12 (10) The compatibility of the proposal with existing
13 local and regional land use plans.
- 14 (11) The commitment of local communities to approve land
15 use plans in preparation for the project.
- 16 (12) Other factors deemed appropriate by the public
17 entity.
- 18 (b) Weighted consideration.--The relative importance of each
19 evaluation factor shall be fixed prior to opening the proposals.
- 20 (c) Discussion with responsible offerors and revision of
21 proposals.--As provided in the request for proposals,
22 discussions and negotiations may be conducted with responsible
23 offerors for the purpose of clarification and of obtaining best
24 and final offers. Responsible offerors shall be accorded fair
25 and equal treatment with respect to any opportunity for
26 discussion and revision of proposals. In conducting discussions,
27 there shall be no disclosure of any information derived from
28 proposals submitted by competing offerors.
- 29 (d) Selection for negotiation.--The responsible offeror
30 whose proposal is determined in writing to be the best value for

1 and in the best interests of the government agency and the
2 general public, taking into consideration all evaluation
3 factors, shall be selected for contract negotiation.

4 (e) Cancellation.--A request for proposals may be canceled
5 at any time prior to the time a partnership contract is executed
6 by all parties when it is in the best interests of the
7 government agency.

8 (f) Award.--Upon reaching an agreement with a selected
9 offeror, the government agency shall enter into a public-private
10 partnership agreement with the offeror. The public-private
11 partnership agreement shall be consistent with the requirements
12 of this chapter. If agreement cannot be reached with the
13 selected offeror, then negotiations shall be formally terminated
14 with the offeror. If proposals were submitted by one or more
15 other responsible offerors, negotiations may be conducted with
16 the other offeror or offerors in the order of their respective
17 qualification ranking. The contract may be awarded to the
18 responsible offeror then ranked as best qualified.

19 (g) Resolution of controversies involving the
20 Commonwealth.--If an offeror is aggrieved by a selection under
21 this section and the government agency or proprietary government
22 agency in the invitation or contract is a Commonwealth agency,
23 the offeror may file a protest or a claim, as appropriate, in
24 accordance with Chapter 17 (relating to legal and contractual
25 remedies).

26 (h) Resolution of controversies not involving the
27 Commonwealth.--If a private entity is aggrieved by a selection
28 under this section and the proprietary government agency in the
29 contract is an entity other than the Commonwealth, an offeror
30 may file a claim with the court of common pleas where the

1 proprietary public entity is located. The process for the filing
2 and resolution of claims, including rights, contents, timing,
3 evaluation, determination and remedies, which are established in
4 Chapter 17 shall apply insofar as they are practicable.

5 § 4705. Implementation of public-private partnership agreement.

6 (a) Final approval.--The approval of the government agency
7 is contingent upon the private entity's agreement to enter into
8 a comprehensive partnership contract with the government agency.

9 (b) Partnership contracts.--Prior to acquiring, designing,
10 constructing, improving, renovating, expanding, equipping,
11 maintaining or operating the eligible project, the private
12 entity shall enter into a comprehensive partnership contract
13 detailing the public-private partnership agreement with the
14 government agency. The partnership contract shall provide for
15 all of the following:

16 (1) Delivery of maintenance, performance and payment
17 bonds or letters of credit in connection with the
18 acquisition, design, construction, improvement, renovation,
19 expansion, equipping, maintenance or operation of the
20 eligible project, in the forms and amounts satisfactory to
21 the responsible government agency.

22 (2) Review of plans and specifications for the eligible
23 project by the government agency and approval by the
24 government agency if the plans and specifications conform to
25 standards acceptable to the government agency. This paragraph
26 may not require the private entity to complete design of an
27 eligible project prior to the execution of a comprehensive
28 contract.

29 (3) Inspection of the eligible project by the
30 responsible government agency to ensure that the operator's

1 activities are acceptable to the government agency in
2 accordance with the comprehensive agreement.

3 (4) Maintenance of a policy of liability insurance,
4 copies of which shall be filed with the government agency
5 accompanied by proofs of coverage, self-insurance, in form
6 and amount satisfactory to the responsible government agency
7 and reasonably sufficient to insure coverage of tort
8 liability to the public and employees and to enable the
9 continued operation of the qualifying project.

10 (5) Monitoring of the practices of the operator by the
11 government agency to ensure that the eligible project is
12 properly maintained.

13 (6) Reimbursement to be paid to the government agency
14 for services provided by the government agency.

15 (7) Filing of appropriate financial statements on a
16 periodic basis.

17 (8) Policies and procedures governing the rights and
18 responsibilities of the government agency and the operator in
19 the event the comprehensive contract is terminated or there
20 is a material default by the operator. The policies and
21 procedures shall include conditions governing assumption of
22 the duties and responsibilities of the operator by the
23 government agency and the transfer or purchase of property or
24 other interests of the operator by the government agency.

25 (c) Fees.--The partnership contract may provide for a user
26 fee, lease payment or service payment. A copy of a service
27 contract must be filed with the government agency. When
28 negotiating a user fee under this section, the parties shall
29 establish payments or fees that are the same for a person using
30 the facility under like conditions and that will not materially

1 discourage use of the eligible project. The execution of the
2 partnership contract or an amendment to the partnership contract
3 constitutes conclusive evidence that the user fee, lease payment
4 or service payment provided for complies with this chapter. A
5 user fee or lease payment established in the partnership
6 contract as a source of revenue may be in addition to or in lieu
7 of a service payment.

8 (d) Grants or loans.--In the partnership contract, the
9 government agency may agree to make a grant or loan to the
10 operator from an amount received from the Federal or State
11 government or a political subdivision or from one of their
12 agencies or instrumentalities.

13 (e) Duties.--The partnership contract shall incorporate the
14 duties of the operator under this chapter and may contain other
15 terms and conditions that the government agency determines serve
16 the public purpose under section 4704(d) (relating to evaluation
17 and selection of public-private partnership agreement proposal).
18 The partnership contract may contain any of the following:

19 (1) Provisions under which the government agency agrees
20 to provide notice of default and right to cure for the
21 benefit of the operator and the persons specified in the
22 notice as providing financing for the eligible project.

23 (2) Other lawful terms and conditions to which the
24 operator and the government agency mutually agree, including
25 provisions regarding unavoidable delays or provisions
26 providing for a loan of public funds to the operator to
27 acquire, design, construct, improve, renovate, expand, equip,
28 maintain or operate one or more eligible protects.

29 (3) Provisions under which the authority and duties of
30 the operator under this chapter shall cease and the eligible

1 project is dedicated to the government agency or, if the
2 eligible project was initially dedicated by an affected local
3 jurisdiction, to the affected local jurisdiction for public
4 use.

5 (f) Amendments.--Change in the terms of the partnership
6 contract, as may be agreed upon by the parties, shall be added
7 by written amendment.

8 (g) Date.--In connection with its approval of the eligible
9 project, the responsible government agency shall establish a
10 date for the commencement of activities related to the project.
11 The government agency may extend the date.

12 (h) Public access.--Any documents created by or provided to
13 a government agency under this chapter shall be subject to
14 inspection and copying only to the extent required under the act
15 of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know
16 Law.

17 (i) Debt capacity.--A partnership contract entered into
18 under this chapter shall not enlarge, diminish or affect the
19 authority otherwise possessed by the government agency to take
20 action that would impact the debt capacity of the Commonwealth
21 or any of its political subdivisions.

22 § 4706. Service contracts.

23 In addition to any authority conferred by statute, a
24 government agency may contract with an operator for the delivery
25 of services to be provided as part of an eligible project in
26 exchange for service payment and other consideration as the
27 government agency may deem appropriate.

28 § 4707. Affected local jurisdictions.

29 (a) Notification.--A private entity submitting a proposal to
30 a government agency under section 4703 (relating to solicitation

1 of proposals for public-private partnership agreements) shall
2 notify each affected local jurisdiction by furnishing a copy of
3 its request or proposal to each affected local jurisdiction.

4 (b) Comments.--Each affected local jurisdiction that is not
5 the applicable government agency for the respective eligible
6 project shall, within 60 days after receiving the notice, submit
7 any comments it may have in writing on the proposed eligible
8 project to the applicable government agency and indicate whether
9 the facility is compatible with the local ordinance requirements
10 and other local requirements. The comments shall be given
11 consideration by the government agency prior to entering a
12 public-private partnership agreement with a private entity.

13 § 4708. Dedication of public property.

14 A government agency may dedicate any property interest,
15 including land, improvements and tangible personal property,
16 that it has for public use in an eligible project if it finds
17 that doing so will serve the public purpose under section
18 4704(a) (relating to evaluation and selection of public-private
19 partnership agreement proposal) by minimizing the cost of an
20 eligible project to the government agency or reducing the
21 delivery time of a qualifying project. In connection with the
22 dedication, a government agency may convey any property interest
23 that it has, subject to the conditions imposed by law, to the
24 operator, subject to the provisions of this chapter, for
25 consideration as the government agency may determine. The
26 Commonwealth may not convey any interest in real estate
27 belonging to the Commonwealth without the approval of the
28 General Assembly, in accordance with section 514 of the act of
29 April 9, 1929 (P.L.177, No.175), known as The Administrative
30 Code of 1929. The consideration may include the agreement of the

1 operator to operate the eligible project.

2 § 4709. Powers and duties of operator.

3 (a) Powers.--The operator shall have the power under
4 existing law to a private entity having the same form of
5 organization as the operator and shall have the power to
6 acquire, design, construct, improve, renovate, maintain, expand,
7 equip or operate the eligible project and collect lease
8 payments, impose a user fee or enter into a service contract in
9 connection with the use of its power.

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

12 (c) Financing.--

13 (1) Notwithstanding paragraph (2), any financing of the
14 eligible project may be in an amount and upon terms and
15 conditions as may be determined by the operator.

16 (2) The operator may issue debt, equity or other
17 securities or obligations, enter into sale and leaseback
18 transactions and secure any financing with a pledge of,
19 security interest in or lien on any or all of its property,
20 including all of its property interests in the eligible
21 project.

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

24 (1) Make classifications according to reasonable
25 categories for assessment of user fees.

26 (2) With the consent of the government agency, make and
27 enforce reasonable rules to the same extent that the
28 government agency may make and enforce rules with respect to
29 similar facilities.

30 (e) Duties.--The operator shall do the following:

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

4 (2) Keep the eligible project open for use by members of
5 the public at all times or as appropriate based upon the use
6 of the facility after its initial opening upon payment of the
7 applicable user fee, lease payment or service payment except
8 that the eligible project may be temporarily closed because
9 of emergencies or with the consent of the government agency,
10 to protect the safety of the public or for reasonable
11 construction or maintenance procedures as set forth under the
12 public-private partnership agreement.

13 (3) Maintain or provide by contract for the maintenance
14 of the eligible project, if required by the public-private
15 partnership agreement.

16 (4) Cooperate with the government agency in making best
17 efforts to establish any interconnection with the eligible
18 project requested by the government agency.

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

21 (f) Additional services.--This section does not prohibit an
22 operator of an eligible project from providing additional
23 services for the eligible project to government agencies or
24 private entities other than the government agency if the
25 provision of additional service does not impair the operator's
26 ability to meet its commitments to the government agency under
27 the comprehensive agreement.

28 § 4710. Federal, State and local assistance.

29 The government agency may obtain assistance from the Federal
30 or State government or one of its political subdivisions for an

1 eligible project in accordance with the purposes under section
2 4704 (relating to evaluation and selection of public-private
3 partnership agreement proposal) and may enter into a contract in
4 order to receive the assistance. If a State agency is the
5 government agency, funds received from the Federal or State
6 government shall be subject to appropriation by the General
7 Assembly. The government agency may pay a portion of the costs
8 of an eligible project directly or indirectly from the proceeds
9 of a grant or loan made by the Federal or State government or
10 one of its political subdivisions.

11 § 4711. Material default and remedies.

12 (a) General rule.--If there is a material default by the
13 operator of an eligible project, the government agency may
14 assume the responsibilities and duties of the operator, in which
15 case it shall succeed to any right, title and interest in the
16 project, subject to any liens on revenue previously granted by
17 the operator to any person providing financing.

18 (b) Condemnation.--A government agency which is a party to a
19 partnership contract, and which has the power of condemnation
20 under State law, may exercise the power of condemnation to
21 acquire the eligible project in the event of a material default
22 by the operator. A person who has provided financing for the
23 eligible project, and the operator to the extent of its capital
24 investment, may participate in the condemnation proceedings with
25 the standing of a property owner.

26 (c) Termination.--For cause shown, the government agency may
27 terminate the comprehensive agreement and exercise any other
28 rights and remedies that may be available at law or in equity.

29 (d) Claims.--The government agency may make or cause to be
30 made any appropriate claims under maintenance, performance or

1 payment bonds or lines of credit required under section
2 4705(b)(1) (relating to implementation of public-private
3 partnership agreement).

4 (e) Procedure after takeover.--If a government agency takes
5 over an eligible project pursuant to (a), it may acquire,
6 design, construct, improve, renovate, operate, expand, equip or
7 maintain the eligible project, impose user fees, impose and
8 collect lease payments for the use of the project and comply
9 with service contracts as if it were the operator. Revenue
10 subject to a lien shall be collected for the benefit of and paid
11 to secured parties, as their interests may appear, to the extent
12 necessary to satisfy the operator's obligations to secured
13 parties, including the maintenance of reserves. Liens shall be
14 correspondingly reduced and released when they are paid off.
15 Before a payment to or for the benefit of secured parties, the
16 government agency may use revenue to pay current operation and
17 maintenance costs of the qualifying project, including
18 compensation to the responsible government agency for its
19 services in operating and maintaining the qualifying project.
20 The right to receive payment, if any, is just compensation for
21 the eligible project. The full faith and credit of the
22 government agency may not be pledged to secure any financing of
23 the operator by the election to take over the eligible project.
24 Assumption of operation of the eligible project may not obligate
25 the government agency to pay an obligation of the operator from
26 sources other than revenue.

27 § 4712. Condemnation.

28 At the written request of the operator, the government agency
29 may exercise its power of condemnation, if any, to acquire
30 lands, estates and interests therein to the extent that the

1 government agency finds that the action serves a public purpose
2 under section 4704(d) (relating to evaluation and selection of
3 public-private partnership agreement proposal). An amount paid
4 in a condemnation proceeding must be paid by the operator.

5 § 4713. Utility crossing.

6 (a) General rule.--The operator and each public service
7 company, public utility, railroad and cable television provider
8 whose facilities are to be crossed or affected shall cooperate
9 fully in planning and arranging the manner of the crossing or
10 relocation of the facilities. A government agency possessing the
11 power of condemnation is expressly granted authority to exercise
12 that power in connection with moving or relocating facilities to
13 be crossed by the eligible project or facilities that must be
14 relocated, to the extent that moving or relocation is made
15 necessary or desirable by construction of, renovation to or
16 improvements to the eligible project, which shall be construed
17 to include construction of, renovation to or improvements to
18 temporary facilities for the purpose of providing service during
19 the period of construction or improvement. An amount paid for
20 the crossing, construction, moving or relocating facilities must
21 be paid by the operator.

22 (b) Disputes.--If the operator and a public service company,
23 public utility, railroad or cable television provider are unable
24 to agree upon a plan for the crossing or relocation, the
25 commission may determine the manner in which the crossing or
26 relocation is to be accomplished and any damages due arising out
27 of the crossing or relocation. The determination shall be made
28 within 90 days of notification by the private entity that the
29 project will cross utilities subject to the commission's
30 jurisdiction. The commission may employ expert engineers who

1 shall examine the location and plans for the crossing or
2 relocation, hear any objections, consider modifications and make
3 a recommendation to the commission. The cost of the experts must
4 be borne by the operator.

5 § 4714. Governmental immunity.

6 This chapter shall not be construed or deemed to constitute a
7 waiver of the governmental immunity of the Commonwealth, a
8 government agency or an affected local jurisdiction with respect
9 to participation in or approval of an eligible project or its
10 operation, including interconnection of the eligible project
11 with another infrastructure or project. A political subdivision
12 in which an eligible project is located has governmental
13 immunity with respect to its design, construction and operation.

14 § 4715. Special approval.

15 A government agency that is a political subdivision may enter
16 into an agreement under this chapter only with the approval of
17 its governing body.

18 § 4716. Exclusivity.

19 The provisions of this chapter and regulations adopted in
20 accordance with section 4719 (relating to regulations) shall
21 constitute the exclusive method of procurement for agreements
22 entered into under this chapter, notwithstanding any other law.
23 In the event of a conflict with another statute or regulation,
24 the provisions of this chapter and the regulations promulgated
25 under this chapter shall govern.

26 § 4717. Use of intellectual property.

27 Unless otherwise agreed and except to the extent not
28 transferable by law, the government agency shall have the right
29 to use all or a portion of a submitted proposal, including the
30 technologies, techniques, methods, processes and information

1 contained in the proposal. Notice of nontransferability by law
2 shall be given to the government agency in response to the
3 request for proposals.

4 § 4718. Applicability.

5 Eligible projects that are subject to a public private
6 partnership agreement under this chapter shall not be subject to
7 the requirements of the following:

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

10 (2) Section 1909 of the act of June 23, 1931 (P.L.932,
11 No.317), known as The Third Class City Code.

12 (3) Section 1805 of act of June 24, 1931 (P.L.1206,
13 No.331), known as The First Class Township Code.

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

16 (5) Section 751 of the act of March 10, 1949 (P.L.30,
17 No.14), known as the Public School Code of 1949.

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

21 (7) Section 2517 of the act of July 28, 1953 (P.L.723,
22 No.230), known as the Second Class County Code.

23 (8) Section 2317 of the act of August 9, 1955 (P.L.323,
24 No.130), known as The County Code.

25 (9) Section 1404 of the act of February 1, 1966 (1965
26 P.L.1656, No.581), known as The Borough Code.

27 § 4719. Regulations.

28 The Department of General Services shall, within 12 months of
29 the effective date of this section, promulgate proposed
30 regulations which are necessary to implement the provisions of

1 this chapter.

2 Section 2. This act shall take effect in 60 days.