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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - PUBLIC-PRIVATE
TRANSPORTATION PARTNERSHIP ACT

Introduced By: Representatives Nunes, Hearn, Marcello, Morgan, and Reilly

Date Introduced: January 27, 2016

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 13.1

4 THE PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP ACT

5 **42-13.1-1. Short title.** -- This chapter shall be known as "The Public-Private
6 Transportation Partnership Act".

7 **42-13.1-2. Definitions.** -- The following words and phrases when used in this chapter
8 shall have the meanings given to them in this section:

9 (1) "Account" means the public-private transportation account;

10 (2) "Board" means the public-private transportation partnership board;

11 (3) "Department" means the Rhode Island department of transportation;

12 (4) "Development entity" means an entity which is a party to a public-private
13 transportation partnership agreement and which is any of the following:

14 (i) A private entity; or

15 (ii) A public entity, other than the public entity providing or improving its own
16 transportation facilities.

17 (5) "Offeror" means a person that submits a proposal or a response in answer to a request
18 for proposals or transportation projects;

1 (6) "Private entity" means a person, entity, group or organization that is not the federal
2 government, the state or a municipal authority;

3 (7) "Proprietary public entity" means a public entity which owns a public-private
4 transportation project and which is a party to a public-private transportation partnership
5 agreement;

6 (8) "Public entity" means an agency, a municipal authority or an authority created by
7 statute which owns a transportation facility;

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

14 (i) Operations and maintenance;

15 (ii) Revenue collection;

16 (iii) User fee collection or enforcement;

17 (iv) Design;

18 (v) Construction;

19 (vi) Development and other activities with respect to existing or new transportation
20 facilities that enhance traffic throughput, reduce congestion, improve safety or otherwise manage
21 or improve a transportation facility; and

22 (vii) Financing.

23 (10) "Public-private transportation project" means a transportation project undertaken by
24 a development entity pursuant to a public-private transportation partnership agreement;

25 (11) "Request for transportation projects" means a solicited or unsolicited plan for a
26 transportation project submitted to the board by a public entity;

27 (12) "Responsible offeror" means an offeror that has submitted a responsive proposal and
28 that possesses the capability to fully perform the public-private transportation partnership
29 agreement requirements in all respects and the integrity and reliability to assure good faith
30 performance;

31 (13) "Responsive proposal" means a proposal that conforms in all material aspects to the
32 requirements and criteria in the request for proposals;

33 (14) "Transportation facility" means a proposed or existing road, bridge, tunnel, overpass,
34 ferry, busway, guideway, public transportation facility, vehicle parking facility, port facility,

1 multimodal transportation facility, airport, station, hub, terminal or similar facility used or to be
2 used for the transportation of persons, animals or goods, together with any buildings, structures,
3 parking areas, appurtenances, intelligent transportation systems and other property needed to
4 operate or related to the operation of the transportation facility. The term includes any
5 improvements or substantial enhancements or modifications to an existing transportation facility;

6 (15) "Transportation project" means an undertaking by a private entity or a public entity,
7 other than the public entity providing or improving its own transportation facilities, to provide or
8 improve a transportation facility or transportation-related service which is totally or partially
9 located within this state.

10 **42-13.1-3. Public-private transportation partnership board.** -- (a) There is established
11 a board to be known as the public-private transportation partnership board.

12 (b) The board shall be composed of the following members:

13 (1) The director of the department of transportation;

14 (2) The state budget officer or a designee who shall be an employee of the state budget
15 office;

16 (3) Five (5) members appointed by the general assembly under subsection (c) of this
17 section;

18 (4) One member appointed by the governor under subsection (d) of this section.

19 (c) Legislative appointments.

20 (1) Appointments of members by the general assembly shall be made as follows:

21 (i) One individual appointed by the president of the senate;

22 (ii) One individual appointed by the minority leader of the senate;

23 (iii) Two (2) individual appointed by the speaker of the house of representatives; and

24 (iv) One individual appointed by the minority leader of the house of representatives.

25 (2) Legislative appointees shall be residents of this state and serve at the pleasure of the
26 appointing authority.

27 (3) Legislative appointees shall have expertise or substantial experience in one or more of
28 the following areas:

29 (i) Transportation;

30 (ii) Finance;

31 (iii) Law; and

32 (iv) Land use and public planning.

33 (d) Gubernatorial appointment. A member appointed under subsection (b)(4) of this
34 section:

1 (1) May not hold any other position as an elected official or employee of the state;

2 (2) Shall be a resident of this state and have expertise or substantial experience in one or
3 more of the following areas:

4 (i) Transportation;

5 (ii) Finance;

6 (iii) Law;

7 (iv) Land use and public planning.

8 (3) Shall serve at the pleasure of the governor.

9 (e) Four (4) members of the board shall constitute a quorum. The adoption of a resolution
10 or other action of the board shall require a majority vote of the members of the board.

11 (f) The members of the board shall be entitled to no compensation for their services as
12 members of the board but shall be entitled to reimbursement by the department for all necessary
13 and reasonable expenses incurred in connection with the performance of their duties as members
14 of the board.

15 (g) Appointing authorities shall appoint initial board members within thirty (30) days of
16 the effective date of this section. Whenever a vacancy occurs on the board, the appointing
17 authority shall appoint a successor member within thirty (30) days of the vacancy.

18 (h) No member of the board, during their term of office, shall directly or indirectly own,
19 have any significant financial interest in, be associated with or receive any fee, commission,
20 compensation or anything of value from any public entity or private entity seeking to engage in a
21 public-private transportation partnership agreement. The provisions of this subsection shall not
22 apply to the salary of a state employee.

23 **42-13.1-4. Duties of board. --** (a) The board shall:

24 (1) Meet as often as necessary, but at least annually;

25 (2) Adopt guidelines establishing the procedure by which a public entity may submit a
26 request for a transportation project or a private entity may submit an unsolicited plan for a
27 transportation project to the board;

28 (3) Consult with persons affected by proposed transportation projects;

29 (4) Evaluate and, where the board finds that the requests or plans for transportation
30 projects are in the best interests of the state and a public entity, approve the requests or plans for
31 transportation projects;

32 (5) Submit an annual report to the general assembly detailing all transportation projects
33 evaluated and resolutions adopted.

34 (b) Actions by the board are a determination of public policy and public interest and shall

1 not be considered orders under chapter 35 of title 42 (the administrative procedures act) and shall
2 not be appealable to any court of law.

3 (c) The following shall apply:

4 (1) The general assembly may, within twenty (20) calendar days or nine (9) legislative
5 days, whichever is longer, of the adoption of the resolution under subsection (a)(4) of this section,
6 pass a concurrent resolution rescinding the approval of a transportation project if the
7 transportation facility which is the subject of the transportation project is owned by the state.

8 (2) If the general assembly adopts the concurrent resolution within the time period under
9 subsection (c)(1) of this section, by a majority vote in both the senate and the house of
10 representatives, the transportation project shall be deemed disapproved.

11 (3) If the general assembly fails to adopt the concurrent rescinding resolution by a
12 majority vote in both the senate and the house of representatives within the time period under
13 subsection (c)(1) of this section, the transportation project shall be deemed approved.

14 **42-13.1-5. Operation of board. --** (a) The department shall supply all necessary
15 assistance to assist the board in carrying out its duties and responsibilities, including retention of
16 legal, financial and technical consultants to assist with this role.

17 (b) The department shall develop a detailed analysis of a request or recommendation
18 prior to approval by the board.

19 (c) If a transportation project becomes a public-private transportation project, the
20 department shall retain oversight and monitor the public-private transportation project, including
21 periodic reports to the board, as necessary.

22 **42-13.1-6. Solicitations for transportation projects. --** A public entity may solicit
23 transportation projects through a request for transportation projects. The public entity shall give
24 public notice of a request for transportation projects consistent with §42-13.1-9(c) relating to
25 selection of development entities. Offerors shall submit their responses to the public entity in the
26 form and manner required by the request for transportation projects. A public entity shall evaluate
27 each response to determine if the response is in the best interest of the public entity. Upon being
28 satisfied, the public entity may prepare and submit a request to the board to review the
29 transportation project in accordance with this chapter.

30 **42-13.1-7. Transportation projects. --** (a) Except as provided under subsection (b) of
31 this section, a public entity which seeks to undertake a transportation project which has not been
32 previously approved by the board shall submit a request for the transportation project to the
33 board.

34 (b) This chapter shall not apply to a transportation project which a public entity is

1 authorized under law to undertake on the effective date of this chapter.

2 **42-13.1-8. Requests.** -- (a) A request may be solicited or unsolicited and may provide for
3 the development or operation of transportation facilities using a variety of project delivery
4 methods and forms of agreement. The methods may include:

5 (1) Predevelopment agreements leading to other implementing agreements;

6 (2) A design-build agreement;

7 (3) A design-build-operate agreement;

8 (4) A design-build-maintain agreement;

9 (5) A design-build-finance-operate agreement;

10 (6) A design-build-operate-maintain agreement;

11 (7) A design-build-finance-operate-maintain agreement;

12 (8) An operate-maintain agreement;

13 (9) A concession providing for the development entity to design, build, operate, maintain,
14 manage or lease a transportation facility;

15 (10) Any other innovative or nontraditional project delivery method or agreement or
16 combination of methods or agreements that the public entity determines will address the
17 transportation needs of the state and the public entity and serve the public interest.

18 **42-13.1-9. Selection of development entities.** -- (a) If a transportation project is
19 approved under §42-13.1-4, relating to duties of board, the public entity may enter into a contract
20 for the transportation project by competitive sealed proposals.

21 (b) After receiving the determination required by subsection (a) of this section, a public
22 entity shall solicit proposals through a request for proposals.

23 (c) A public entity shall give public notice of a request for proposals consistent with
24 regulations adopted by the department. The notice shall be given a reasonable time prior to the
25 date set for the close of receipt of the proposals. The method of public notice may include any of
26 the following:

27 (1) Electronic publication which is accessible to the general public;

28 (2) Advertisement in relevant trade publications;

29 (3) Issuance of request for proposals to offerors on the mailing list of the public entity;

30 (4) Publication in a newspaper of general circulation;

31 (5) Where prequalification is a requirement of submitting a proposal, notification to all
32 private entities who have been prequalified by the public entity.

33 (d) Copies of a request for proposals shall be made available to any interested person
34 upon request to the public entity. A public entity may establish procedures for the distribution of

1 a request for proposals, including the imposition of a fee to reimburse the public entity for the
2 costs of photocopying and mailing.

3 (e) Offerors shall submit their proposals to ensure that their proposals are received prior
4 to the time and date established for receipt of the proposals. Proposals shall be submitted in the
5 format required by the request for proposals. Proposals shall be opened so as to avoid disclosure
6 of their contents to competing offerors.

7 (f) A public entity shall evaluate each proposal to determine which proposal has the best
8 value for and is in the best interest of the public entity. In making this determination, a public
9 entity may consider any of the following:

10 (1) Cost;

11 (2) Price;

12 (3) Financial commitment;

13 (4) Innovative financing;

14 (5) Bonding;

15 (6) Technical, scientific, technological or socioeconomic merit;

16 (7) Financial strength and viability;

17 (8) Design, operation and feasibility of the transportation project;

18 (9) Public reputation, qualifications, industry experience and financial capacity of the
19 private entity;

20 (10) The ability of the transportation project to improve economic growth, to improve
21 public safety, to reduce congestion, to increase capacity or to rehabilitate, reconstruct or expand
22 an existing transportation facility;

23 (11) The compatibility of the proposal with existing local and regional land use plans;

24 (12) The commitment of local communities to approve land use plans in preparation for
25 the transportation project;

26 (13) Other factors deemed appropriate by the public entity.

27 (g) The relative importance of each evaluation factor shall be fixed prior to opening the
28 proposals.

29 (h) If the public entity is a state agency, the department is required to invite its
30 comptroller to participate in the evaluation as a nonvoting member of any evaluation committee.
31 No individual who has been employed by an offeror within the last two (2) years may participate
32 in the evaluation of proposals.

33 (i) As provided in the request for proposals, discussions and negotiations may be
34 conducted with responsible offerors for the purpose of clarification and of obtaining best and final

1 offers. Responsible offers shall be accorded fair and equal treatment with respect to any
2 opportunity for discussion and revision of proposals. In conducting discussions, there shall be no
3 disclosure of any information derived from proposals submitted by competing offerors.

4 (j) The responsible offeror whose proposal is determined in writing to be the best value
5 for and in the best interests of the public entity, taking into consideration all evaluation factors,
6 shall be selected for contract negotiation.

7 (k) A request for proposals may be canceled at any time prior to the time a public-private
8 transportation partnership agreement is executed by all parties when it is in the best interests of
9 the public entity.

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

18 (m) If a prospective offeror, offeror or development entity is aggrieved by a selection
19 under this section and the public entity or proprietary public entity in the invitation or contract is
20 a state agency, the prospective offeror, offeror or development entity may file a claim.

21 (n) If a development entity is aggrieved by a selection under this section and the
22 proprietary public entity in the contract is an entity other than the state, a development entity may
23 file a claim in superior court where the proprietary public entity is located.

24 **42-13.1-10. Public-private transportation partnership agreement. -- (a) A public-**
25 **private transportation partnership agreement shall include the following provisions:**

26 (1) A description of any planning, development, design, leasing, acquisition or interest in,
27 financing, installation, construction, reconstruction, replacement, expansion, operation,
28 maintenance, improvement, equipping, modification, expansion, enlargement, management,
29 running, control and operation of the public-private transportation project;

30 (2) The term of the public-private transportation partnership agreement;

31 (3) The type of property interest or other relationship the development entity will have in
32 or with respect to the public-private transportation partnership project, including acquisition of
33 rights-of-way and other property interests that may be required;

34 (4) Authorization for the proprietary public entity or its authorized representatives to

1 inspect all assets and properties of the public-private transportation project and all books and
2 records of the development entity relating to the public-private transportation project to review
3 the development entity's performance under the public-private transportation partnership
4 agreement;

5 (5) Grounds for termination of the public-private transportation partnership agreement by
6 the parties;

7 (6) Procedures for amendment of the public-private transportation partnership agreement;

8 (7) The rights and remedies available in the event of breach, default or delay;

9 (8) Requirements for a private development entity to provide performance and payment
10 bonds, parent company guarantees, letters of credit or other acceptable forms of security in an
11 amount acceptable to the proprietary public entity;

12 (9) A requirement that ownership of a transportation facility acquired or constructed go to
13 or remain with the proprietary public entity;

14 (10) Standards for construction, maintenance and operation of the public-private
15 transportation project if the activities are to be performed by the development entity;

16 (11) Standards for capital improvement or modification of the public-private
17 transportation project if they are to be made by the development entity;

18 (12) Standards relating to how payments, if any, are to be made by the proprietary public
19 entity to the development entity, including availability payments, performance-based payment
20 and payments of money and revenue-sharing with the development entity;

21 (13) Standards relating to how the parties will allocate and share management of the risks
22 of the public-private transportation project;

23 (14) Standards relating to how the parties will allocate costs of development of the
24 public-private transportation project, including any cost overruns;

25 (15) Standards relating to damages to be assessed for nonperformance, specifying
26 remedies available to the parties and dispute resolution procedures;

27 (16) Standards relating to performance criteria and incentives;

28 (17) A requirement that upon termination of the public-private transportation partnership
29 agreement, a transportation facility that was the subject of the public-private transportation
30 partnership agreement must be in a state of proper maintenance and repair and shall be returned to
31 the proprietary public entity in satisfactory condition at no further cost to the proprietary public
32 entity;

33 (18) Provisions for law enforcement related to the public-private transportation project;

34 (19) Other terms and provisions as required under this chapter or agreed to by the

1 development entity and the proprietary public entity.

2 (b) The proprietary public entity may enter into a public-private transportation
3 partnership agreement with any development entity that includes the provisions under subsection
4 (a) of this section for a term not to exceed ninety-nine (99) years.

5 (c) Nothing in this chapter shall prohibit the department from entering into a public-
6 private transportation partnership agreement with another state agency in accordance with this
7 chapter.

8 (d) Nothing in this chapter shall prohibit a public entity from entering into a public-
9 private transportation partnership agreement with one or more public entities in accordance with
10 this chapter.

11 (e) Environmental costs.

12 (1) A proprietary public entity may provide in a public-private transportation partnership
13 agreement that it will pay or reimburse, on terms that it deems appropriate, the development
14 entity for actual costs associated with necessary remediation for existing environmental
15 contaminants located on, under, or emanating from the real property associated with a public-
16 private transportation project as of the date the development entity assumes responsibility for the
17 public-private transportation project. If the public-private transportation partnership agreement
18 provides for environmental remediation, the public-private transportation partnership agreement
19 shall require that the proprietary public entity be given:

20 (i) Prompt notice of any claim against the proprietary public entity or a third party
21 pertaining to the contaminants;

22 (ii) The right to elect to undertake the necessary remediation;

23 (iii) The right to participate in the defense of or response to any claim; and

24 (iv) The right of prior approval before the development entity may settle any claim.

25 (2) No payment by a proprietary public entity under this section may be for anything
26 other than actual costs incurred by a development entity to remediate the environmental
27 contamination on, under, or emanating from the real property associated with the public-private
28 transportation project as of the date the development entity assumes responsibility for the public-
29 private transportation project.

30 **42-13.1-11. Records of requests.** -- (a) Upon the selection of a development entity to be
31 a party to a public-private transportation partnership agreement, the identity of the development
32 entity selected, the contents of the response of the development entity to the request for proposals,
33 the final proposal submitted by the development entity and the form of the public-private
34 transportation partnership agreement shall be made public. Any financial information of a

1 development entity that was requested in the request for proposals or during discussions and
2 negotiations to demonstrate the economic capability of a development entity to fully perform the
3 requirements of the public-private transportation partnership agreement shall not be subject to
4 public inspection.

5 (b) A proprietary public and a private development entity may agree, in their discretion,
6 to make public any information described under subsection (d)(1) of this section that would not
7 otherwise be subject to public inspection.

8 (c) If a proprietary public entity terminates a public-private transportation partnership
9 agreement for default, rejects a private entity on the grounds that the private entity is not
10 responsible or suspends or debar a development entity, the private entity or development entity,
11 as appropriate, shall, upon written request, be provided with a copy of the information contained
12 in the file of the private entity or development entity maintained by the proprietary public entity
13 under a contractor responsibility program.

14 (d) The following information shall not be public:

15 (1) Information relating to proprietary information, trade secrets, patents or exclusive
16 licenses, architectural and engineering plans and information relating to competitive marketing
17 materials and strategies;

18 (2) Security information, including risk prevention plans, detection and countermeasures,
19 emergency management plans, security and surveillance plans, equipment and usage protocols
20 and countermeasures;

21 (3) Records considered nonpublic matters or information by the Securities and Exchange
22 Commission under 17 CFR 200.80 (relating to commission records and information);

23 (4) Any financial information deemed confidential by the proprietary public entity upon a
24 showing of good cause by the offeror or development entity; and

25 (5) Records prepared or utilized to evaluate a proposal.

26 **42-13.1-12. Use of intellectual property. --** Unless otherwise agreed to and except to the
27 extent not transferable by law, the department or a proprietary public entity shall have the right to
28 use all or a portion of a submitted proposal, including the technologies, techniques, methods,
29 processes and information contained in the proposal. Notice of nontransferability by law shall be
30 given to the department and the proprietary public entity in response to the request for proposals.

31 **42-13.1-13. Police powers and violations of law. --** (a) To the extent the public-private
32 transportation project is a highway, bridge, tunnel overpass or similar transportation facility for
33 motor vehicles, all state and local traffic laws shall apply.

34 (b) Arrest powers. All officers authorized by law to make arrests for violations of law in

1 this state shall have the same powers, duties and jurisdiction within the limits of a public-private
2 transportation project as they have in their respective areas of jurisdiction. The grant of authority
3 under this section shall not extend to the private offices, buildings, garages and other
4 improvements of a development entity to any greater degree than the police power extends to any
5 other private offices, buildings, garages and other improvements.

6 **42-13.1-14. Environmental and other authorizations.** -- (a) A public-private
7 transportation partnership agreement may require that prior to commencing any construction in
8 connection with the development, operation or financing of any public-private transportation
9 project if the agreement requires environmental authorizations to be obtained, the development
10 entity shall do any of the following:

11 (1) Secure all necessary environmental permits and authorizations;

12 (2) Complete environmental remediation of the site on which the public-private
13 transportation project is to be located, including acts required under any agreement entered into
14 with the state department of environmental management for remediation of the site.

15 **42-13.1-15. Taxation of development entity.** -- (a) To the extent that revenues or user
16 fees received by a development entity pursuant to a public-private transportation partnership
17 agreement are subject to a tax imposed by a political subdivision prior to the effective date of this
18 section, the revenues or user fees shall continue to be subject to the tax and to future increases in
19 the rate of the tax.

20 (b) After the effective date of this section, no new tax shall be imposed by a political
21 subdivision or the state on the revenues or user fees received by a development entity pursuant to
22 a public-private transportation partnership agreement.

23 (c) No public-private transportation partnership agreement, lease, concession, franchise
24 or other contract involving real property of a public-private transportation project shall be subject
25 to a state or local realty transfer tax.

26 (d) Property used in connection with a public-private transportation project shall be
27 considered public property and shall be exempt from ad valorem property taxes and special
28 assessments levied against property by the state or any political subdivision.

29 **42-13.1-16. Power of eminent domain.** -- The exercise of the power of eminent domain
30 by any condemnor to acquire property for a public-private transportation project purposes under a
31 public-private transportation partnership agreement shall be considered a taking for a public
32 purpose and not for a private purpose or for private enterprise.

33 **42-13.1-17. Sovereign immunity.** -- It is declared to be the intent of the general
34 assembly that the state, and its officials and employees, and a municipal authority, and its

1 officials and employees, acting within the scope of their duties pursuant to this chapter, shall
2 enjoy sovereign immunity and official immunity afforded by chapter 31 of title 9 entitled
3 governmental tort liability and remain immune from suit except as provided in §42-13.1-18
4 relating to specific performance. A claim against the state and its officials and employees or
5 municipal authority and its officials and employees shall be brought only in such manner and in
6 such courts and in such cases as directed by the provisions of §42-13.1-10(e) relating to public-
7 private transportation partnership agreement or any procurement or contractual law applicable to
8 a municipal authority.

9 **42-13.1-18. Specific performance.** -- A proprietary public entity is authorized to agree
10 that specific performance shall be available to a development entity as a remedy for a breach by
11 the proprietary public entity of its representations, covenants, warranties or other obligations
12 under the public-private transportation partnership agreement to the extent set forth in the public-
13 private transportation partnership agreement.

14 **42-13.1-19. Applicability of other laws.** -- All provisions of laws related to the
15 development, construction, operation or financing of a transportation project in effect on the date
16 the public-private transportation partnership agreement is fully executed shall apply to a public-
17 private transportation partnership agreement entered into between a proprietary public entity and
18 a development entity.

19 **42-13.1-20. Adverse interests.** -- (a)(1) Except as provided under subsection (a)(2) of
20 this section, a private entity which submits a response to a request for proposals under §42-13.1-9
21 relating to selection of development entities, a request for transportation projects under §42-13.1-
22 6 relating to solicitations for transportation projects or an unsolicited proposal, and which is also a
23 state advisor or a state consultant for the department or the Rhode Island turnpike and bridge
24 authority, shall not be deemed to be in violation of the state code of ethics in chapter 14 of title
25 36, while engaging in any of the following activities:

26 (i) Preparing or submitting a response to a request for proposals or transportation
27 projects;

28 (ii) Participating in any activity with the department related to a request for proposals or
29 transportation projects;

30 (iii) Negotiating and entering into any contract lease or public-private transportation
31 partnership agreement which results from a request for proposals or transportation projects;

32 (iv) Engaging in any other action taken in furtherance of the purposes of this chapter.

33 (2) A private entity which submits a response to a request for proposals or transportation
34 projects or acts as a consultant or an advisor to a private entity which submits a response to a

1 request for proposals or transportation projects to the department shall be prohibited from
2 consulting or providing advice to the department on the review or approval of the response to the
3 request for proposals or transportation projects as submitted.

4 (3) A private entity which submits a response to a request for proposals or transportation
5 projects or acts as a consultant or an advisor to a private entity which submits a response to a
6 request for proposals or transportation projects to the board shall be prohibited from consulting or
7 providing advice to the department on the review or approval of the response to the request for
8 proposals or transportation projects so submitted.

9 **42-13.1-21. Federal, state, local, and private assistance. --** (a) The department or a
10 proprietary public entity may accept from the United States or any of its agencies, funds that are
11 available to the state for carrying out this chapter, whether the funds are made available by grant,
12 loan, loan guarantee or otherwise.

13 (b) The department or a proprietary public entity is authorized to assent to any federal
14 requirements, conditions or terms of any federal funding accepted by the department or a
15 proprietary public entity under this section.

16 (c) The department or a proprietary public entity may enter into agreements or other
17 arrangements with the United States or any of its agencies as may be necessary for carrying out
18 the purposes of this chapter.

19 (d) The department or a proprietary public entity may accept from any source any grant,
20 donation, gift or other form of conveyance of land, money or other real, personal or mixed
21 property or other item of value for carrying out the purposes of this chapter.

22 (e) Subject to acceptance and agreement between the development entity and a
23 proprietary public entity, any public-private transportation project may be financed, in whole or
24 in part, by contribution of any funds or property made by a proprietary public entity, a
25 development entity or an affected jurisdiction.

26 (f) The department or proprietary public entity may combine federal, state, local and
27 private funds to finance a public-private transportation project under this chapter.

28 (g) A public-private transportation project funded, in whole or in part, through the
29 issuance of debt where the credit of the state is pledged shall be itemized in a capital budget
30 itemization act.

31 **42-13.1-22. Public-private transportation account. --** (a)(1) There is established a
32 separate account to be known as the public-private transportation account.

33 (2) Money in the account shall be used only for the purposes enumerated under
34 subsection (c) of this section.

1 (b) The following shall apply:

2 (1) The department shall deposit in the account the following:

3 (i) All money received by the department pursuant to the terms of a public-private
4 transportation partnership agreement under which the department is the proprietary public entity;

5 (ii) Repayment of any loans from the account made under this chapter;

6 (iii) Subject to the provisions of any public-private transportation partnership agreement
7 under which the department is the proprietary public entity, monetary damages and other amounts
8 for failure by a development entity to comply with the terms of the public-private transportation
9 partnership agreement;

10 (iv) Subject to the provisions of any public-private transportation partnership agreement
11 under which the department is the proprietary public entity, payments made from any insurance
12 proceeds or reserve funds or performance or payment bonds in connection with a public-private
13 transportation project;

14 (v) Earnings from the investment of the money in the account.

15 (2) The state budget officer shall establish any restricted accounts within the account as
16 they deem necessary for the proper administration of the account.

17 (3) All money related to any public-private transportation partnership agreement in which
18 the department is not the proprietary public entity shall not be held in the account, but shall be
19 held by the proprietary public entity or its agent.

20 (c) The funds in the account are continuously appropriated to the department for the
21 following purposes:

22 (1) Paying the amounts as the department may be required to repay the federal funding
23 agencies;

24 (2) Paying all amounts designated by the department as required for repayment or
25 defeasance of outstanding bonds;

26 (3) Paying costs of maintenance, operating and financing of transportation facilities in
27 this state which are available for use by the public, including the costs of insurance or reserves
28 against risks of contingencies;

29 (4) Paying expenses incurred under or in connection with any public-private
30 transportation partnership agreement by the department, including professional fees and
31 expenses;

32 (5) Paying the costs of the department relating to performing and administering duties
33 under this chapter;

34 (6) Paying all expenses approved by the board for its costs incurred to perform its duties,

1 including paying professional fees and expenses;

2 (7) Paying costs of any purpose authorized under this chapter.

3 (d) The net proceeds received under a public-private transportation partnership agreement
4 shall be available exclusively to provide funding for transportation needs in this state. The use of
5 the proceeds or other revenues from the public-private transportation project shall be in accord
6 with federal or state law restricting or limiting the use of revenue from the public-private
7 transportation project based on its public funding.

8 **42-13.1-23. Regulations. --** (a) In order to facilitate the implementation of this chapter,
9 the department is authorized to promulgate regulations that include the following:

10 (1) The process for review of a request for proposals or transportation projects or
11 responses to requests for proposals or transportation projects issued by a public entity;

12 (2) The process for receipt and review of and response to competing responses to requests
13 for proposals or transportation projects;

14 (3) The type and amount of information that is necessary for adequate review of and
15 response to each stage of review of a proposal or transportation project;

16 (4) Any other provisions which are required under this chapter or which the department
17 determines are appropriate for implementation of this chapter.

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

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LC004016
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - PUBLIC-PRIVATE
TRANSPORTATION PARTNERSHIP ACT

1 This act would authorize the creation of a public-private transportation partnership board
2 to promote transportation improvement programs for the users of our roads. The board would
3 evaluate proposed plans for transportation projects.

4 This act would take effect upon passage.

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LC004016
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