

JOINT STATE GOVERNMENT COMMISSION

General Assembly of the Commonwealth of Pennsylvania

PENNSYLVANIA'S TURNPIKE COMMISSION AND DEPARTMENT OF TRANSPORTATION: A POTENTIAL CONSOLIDATION OF INTERSTATE OPERATIONS

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REPORT

*Pennsylvania's Turnpike Commission and Department of Transportation:
A Potential Consolidation of Interstate Operations*

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The Joint State Government Commission was created in 1937 as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly of Pennsylvania.¹

A fourteen-member Executive Committee comprised of the leadership of both the House of Representatives and the Senate oversees the Commission. The seven Executive Committee members from the House of Representatives are the Speaker, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. The seven Executive Committee members from the Senate are the President Pro Tempore, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. By statute, the Executive Committee selects a chairman of the Commission from among the members of the General Assembly. Historically, the Executive Committee has also selected a Vice-Chair or Treasurer, or both, for the Commission.

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A Commission study may involve the appointment of a legislative task force, composed of a specified number of legislators from the House of Representatives or the Senate, or both, as set forth in the enabling statute or resolution. In addition to following the progress of a particular study, the principal role of a task force is to determine whether to authorize the publication of any report resulting from the study and the introduction of any proposed legislation contained in the report. However, task force authorization does not necessarily reflect endorsement of all the findings and recommendations contained in a report.

Some studies involve an appointed advisory committee of professionals or interested parties from across the Commonwealth with expertise in a particular topic; others are managed exclusively by Commission staff with the informal involvement of representatives of those entities that can provide insight and information regarding the particular topic. When a study involves an advisory committee, the Commission seeks consensus among the members.² Although an advisory committee member may represent a particular department, agency, association, or group, such representation does not necessarily reflect the endorsement of the department, agency, association, or group of all the findings and recommendations contained in a study report.

¹ Act of July 1, 1937 (P.L.2460, No.459); 46 P.S. §§ 65–69.

² Consensus does not necessarily reflect unanimity among the advisory committee members on each individual policy or legislative recommendation. At a minimum, it reflects the views of a substantial majority of the advisory committee, gained after lengthy review and discussion.

Over the years, nearly one thousand individuals from across the Commonwealth have served as members of the Commission's numerous advisory committees or have assisted the Commission with its studies. Members of advisory committees bring a wide range of knowledge and experience to deliberations involving a particular study. Individuals from countless backgrounds have contributed to the work of the Commission, such as attorneys, judges, professors and other educators, state and local officials, physicians and other health care professionals, business and community leaders, service providers, administrators and other professionals, law enforcement personnel, and concerned citizens. In addition, members of advisory committees donate their time to serve the public good; they are not compensated for their service as members. Consequently, the Commonwealth receives the financial benefit of such volunteerism, along with their shared expertise in developing statutory language and public policy recommendations to improve the law in Pennsylvania.

The Commission periodically reports its findings and recommendations, along with any proposed legislation, to the General Assembly. Certain studies have specific timelines for the publication of a report, as in the case of a discrete or timely topic; other studies, given their complex or considerable nature, are ongoing and involve the publication of periodic reports. Completion of a study, or a particular aspect of an ongoing study, generally results in the publication of a report setting forth background material, policy recommendations, and proposed legislation. However, the release of a report by the Commission does not necessarily reflect the endorsement by the members of the Executive Committee, or the Chair or Vice-Chair of the Commission, of all the findings, recommendations, or conclusions contained in the report. A report containing proposed legislation may also contain official comments, which may be used to construe or apply its provisions.³

Since its inception, the Commission has published almost 400 reports on a sweeping range of topics, including administrative law and procedure; agriculture; athletics and sports; banks and banking; commerce and trade; the commercial code; crimes and offenses; decedents, estates, and fiduciaries; detectives and private police; domestic relations; education; elections; eminent domain; environmental resources; escheats; fish; forests, waters, and state parks; game; health and safety; historical sites and museums; insolvency and assignments; insurance; the judiciary and judicial procedure; labor; law and justice; the legislature; liquor; mechanics' liens; mental health; military affairs; mines and mining; municipalities; prisons and parole; procurement; state-licensed professions and occupations; public utilities; public welfare; real and personal property; state government; taxation and fiscal affairs; transportation; vehicles; and workers' compensation.

Following the completion of a report, subsequent action on the part of the Commission may be required, and, as necessary, the Commission will draft legislation and statutory amendments, update research, track legislation through the legislative process, attend hearings, and answer questions from legislators, legislative staff, interest groups, and constituents.

³ 1 Pa.C.S. § 1939.



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To the Members of the General Assembly of Pennsylvania:

Senate Resolution 209 of 2017 directed the Joint State Government Commission to conduct a thorough and comprehensive analysis of the potential consolidation of interstate operations at the Department of Transportation and the Pennsylvania Turnpike Commission. In fulfillment of the resolution, this report serves as a resource that may be used to support decisions about the future administration of the Commonwealth's turnpike system.

JSGC staff held numerous meetings and discussions with PennDOT and PTC staff and representatives from other relevant agencies. The information gathered has been synthesized into recommendations and proposed legislation for General Assembly's consideration.

The report is available at <http://jsg.legis.state.pa.us/>

Respectfully submitted,

Glenn J. Pasewicz
Executive Director

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INTRODUCTION

The first turnpike chartered in the United States was the Philadelphia and Lancaster Turnpike in 1792, and “[i]t was the first road in America covered with a layer of crushed stone.”⁴ As transportation systems evolved from the construction of canals to railroads, the idea to convert an “abandoned railway route into a motorway” was realized, partially “to lower unemployment” brought on by the Great Depression.⁵ The Pennsylvania Turnpike Commission was created in 1937⁶ and the first stretch of the Pennsylvania Turnpike opened on October 1, 1940.⁷ The “new concepts of super highway design” that were used for the original stretch of the turnpike in the 1940’s resulted in “[r]apidly increasing traffic volumes, far surpassing anything anticipated by early [t]urnpike planners.”⁸ Regarded as America’s first superhighway, it instilled national pride, helped the economy in some of the areas along its path, influenced other states and foreordained the interstate highway system.⁹ The turnpike was extended in the 1950’s, improvements continued in the 1960’s and updates occurred in the 1970’s and continue.¹⁰ “By the 2000 decade, the original 160-mile route was expanded to” more than 500 miles.¹¹ The turnpike has been a transportation link that has even been reflected in popular culture. The title sequence to the popular 1983 film, *National Lampoon’s Vacation* showed 51 postcards with the very first one being the Western Portal of Kittatinny Tunnel on Pennsylvania Turnpike (America’s Super Highway).¹²

The Commonwealth’s Department of Transportation was created in 1970 by merging the Department of Highways with the Pennsylvania Aeronautics Commission to assume transportation related functions from the Departments of Revenue, Commerce, Community Affairs, and Military Affairs.¹³ A 2007 enactment requiring that the commission partially fund the department of transportation was based on a plan that the commission would soon generate revenue from tolls levied on a parallel interstate highway, Interstate 80. The plan for additional tolling was not realized, and the commission’s payments to the department of transportation resulted in a negative net financial position for the commission. This report contains a brief history of the commission,

⁴ Office of Highway Policy Information, U.S. Dep’t of Transp., Toll Facilities in the U.S., <https://www.fhwa.dot.gov/policyinformation/tollpage/page02.cfm> (last modified Apr. 4, 2018).

⁵ Pa. Tpk. Comm’n, Tpk. History, https://www.paturndpike.com/yourTurnpike/ptc_history.aspx (2019).

⁶ Act of May 21, 1937 (P.L.774, No.211), § 4; 36 P.S. § 652d.

⁷ Pa. Tpk. Comm’n, *supra* note 5.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Nat’l Lampoon’s Vacation* (Warner Bros. 1983), available at <https://www.bing.com/videos/search?q=national+lampoon%27s+vacation+title+sequence&&view=detail&mid=F111CD1D4A94D3328131F111CD1D4A94D3328131&&FORM=VRDGAR>. This film was popular enough to generate several sequels.

¹³ Act of May 6, 1970 (P.L.356, No.120), which amended the act of Apr. 9, 1929 (P.L.177, No.175), § 2001; 71 P.S. § 511.

the department, and the enactments creating these transfers of funds in anticipation of tolling Interstate 80.¹⁴

Summaries of the analyzed topics from Senate Resolution No. 209¹⁵

(1) Evaluate the cost savings, efficiencies and customer service improvements that may materialize as a result of consolidating the interstate operations, including personnel, equipment, facilities and highway administration.¹⁶

If cost savings and efficiencies lead the list of priorities, the most promise for cost savings and efficiencies would come from administrative personnel and centralized staffing. Much of the commission's work is in the field along the turnpike, and the department's is widely distributed throughout the Commonwealth. Correspondingly, much of their equipment and facilities are located according to the geography serviced. Some cost savings and efficiencies have been considered but rejected because they would impair rather than improve customer service. Consolidation elsewhere has achieved mixed results, but cost savings are really achieved through elimination. In recent years, the commission and the department collaborated on an efficiency initiative. After four years of consultation, inefficiencies and duplication of effort were reduced, but the savings totaled approximately \$20,050,000.¹⁷ These efforts should be congratulated rather than derided, but the combined annual budgets for both agencies total \$10,275,238,000 so that this savings amounts to less than 1% after four years of experts' collaboration. Considering where the commission's turnpike is in relation to the department's assets throughout the Commonwealth, geography constrains more robust cost savings and efficiencies so that the focus will probably have to be on administrative and centralized staffing. It can be difficult to improve customer service if cost savings and efficiencies are overemphasized.

In some instances, minor efficiencies could be realized from the commission if it is consolidated with the department; however, this would require substantial changes to how the commission operates its maintenance department. More robust changes would save more but likely impair rather than improve customer service. If the commission is to become part of a new departmental division—the Division of Interstate Operations, it would be more efficient to leave existent maintenance operations in place. Rearranging the current maintenance operations of the existent organizations could create inefficiencies rather than alleviate them. Maintenance would still need to occur on the same geography that it does now.

Both the commission and the department hire professionals in essential areas to execute its responsibilities regardless of those functional differences. If the commission is consolidated within the department, it could potentially implement a 10% decrease in the selected areas from either current workforce. Considering the commission's and the department's workforce, a

¹⁴ *Infra* pp. 11-21.

¹⁵ (Sess. of 2017), appdx. A, *infra* pp. 147-50.

¹⁶ *Infra* pp. 23-50, 67-77.

¹⁷ Pa. Tpk. Comm'n & Pa. Dep't of Transp., *Mapping the Future* 9 (2015). While the initiative improved the lines of communication between the dep't and the comm'n and led to several efficiencies, 76% of the total cost savings, \$15,200,000, were a one-time cost avoidance amount realized by the comm'n after the dep't shared its design standards for the construction of new maintenance facilities. *Id* at 2. In addition, \$328,000 in yearly revenue that was generated from enrolling 49 facilities in a Demand Response Program is now discontinued. Pearsall, *infra* note 180.

consolidation of the two could potentially realize a total savings of approximately \$5,282,002 annually, but this remains a modest amount when one considers their combined budgets. Toll collectors account for the largest employee group within the commission at 372 full-time toll employees and 64 supplemental or part-time employees for a total of 436 toll collectors or almost 23% of the commission's employees. While these positions number more than any other, this will drastically change regardless of a possible consolidation because the commission intends to fully automate toll collection by 2022, which will render the position of toll collector obsolete and likely eliminated once fully automated.¹⁸

Information technology services between the commission and the department could be shared regardless of a consolidation. Legislation has been introduced to establish the Office of Information Technology within the Office of Administration to oversee and achieve information technology consolidation for state agencies that would extend to independent agencies so that the commission would be covered.¹⁹

A consolidation of the commission with the department could potentially run contrary to the intention of creating efficiencies and cost savings for the Commonwealth when it comes to procurement. Employees involved in procurement from both the commission and the department agree that the Commonwealth Procurement Code²⁰ affords the commission more flexibility as a State-affiliated entity when it comes to procuring most materials and services.²¹ The commission is authorized to formulate its own policy governing the procurement, management, control and disposal of supplies, services and construction. This allows the commission to tailor certain source selection practices to its own specific needs. The commission operates under several commodities contracts for items such as fuel, tires and salt, taking advantage of the relatively lower distribution costs for operations linked to a major interstate highway system. Recent analysis indicates that there would be an additional cost of varying amounts should the commission be combined with Commonwealth contracts. As commodity prices fluctuate, there is no specific estimate of this potential annual cost impact.

If the cost savings of approximately \$5,282,002 annually is realistic, it is also realistic that this amount could not be immediately achieved because of offsetting costs to integrate the commission into the department. If information technology is integrated, *via* consolidation between the commission and the department or otherwise, the commission's SAP system and the Commonwealth's were not designed around the same need set and would likely require significant time and resources to complete an integration. This system underpins all purchases, contracts, vehicle management and IT purchasing for both entities. Based upon the historical cost of upgrades, expansions and modifications of the commission's SAP system, it is conceivable that such an integration would cost millions of dollars and take several years to complete. If the commission's radio system is integrated with the Statewide Radio Network, *via* a consolidation between the commission and the department or otherwise, its replacement could cost millions of dollars as well. Other software, communications, and hardware integration costs may add

¹⁸ Telephone interview w/Sheri Norris, Hum. Res. Dir., Pa. Tpk. Comm'n (Mar. 7, 2019).

¹⁹ Pa. S. No. 810 (Sess. of 2019).

²⁰ 62 Pa.C.S. §§ 101-2311.

²¹ While the department is required to use Dep't of Gen. Servs. as its purchasing agency for much of its larger purchases and contracts, the commission can serve as its own purchasing agency.

hundreds of thousands or millions of dollars, based upon past upgrade cost estimates. Integration of staff from differing unions and with differing pay scales, work rules and benefits, could have significant administrative hurdles which could result in additional cost of litigation and administration. Protracted litigation in the past incurred legal costs ranging from \$300,000 to over \$1,000,000.

(2) Identify Federal and State laws that could impact the consolidation of interstate operations.²²

Should the commission be consolidated with the department's interstate operations, the Commonwealth's ability to receive federal funding for toll highways and its ability to use the toll revenues generated therefrom will continue to be limited by federal statute,²³ but this is the *status quo*. In other words, federal law does not impact a possible consolidation of the commission and the department any more than it does under the *status quo*. A consolidation of the commission into the department would require the Commonwealth's statutes to be amended.

While generating significant revenue, the exercise of state authority to toll roads also thrust states into constitutional challenges. Some of the issues litigated in these cases include a state's authority to toll an interstate highway, the state's usage of toll revenue and the amount of tolls imposed on motorists. These issues have been raised by litigants seeking to challenge the states under constitutional legal theories invoking the Dormant Commerce Clause, the right to travel, and the right to Equal Protection under the U.S. Constitution.

Most relevant to the possible consolidation of the commission with the department's interstate operations is the very recent federal court case of *Owner Operator Independent Drivers Association v. Pennsylvania Turnpike Commission*.²⁴ The association alleged that act numbers 44 of 2007²⁵ and 89 of 2013²⁶ authorize and direct "the . . . [t]urnpike [c]ommission . . . to collect user fees with no regard to [t]urnpike operating costs and to redistribute those funds to the . . . [d]epartment of [t]ransportation . . . for projects across the Commonwealth that are of no benefit to the paying [t]urnpike motorist" thereby violating "the dormant Commerce Clause . . . and their constitutional right to travel."²⁷ The Commerce Clause's implied dormancy means that states may not differentiate "in-state and out-of-state economic interests" to benefit the former and burden the latter.²⁸ In other words, states may not regulate to "discriminate against interstate commerce" nor to unduly burden it.²⁹

²² *Infra* pp. 79-96.

²³ 23 U.S.C. §§ 129(a)(1), 301.

²⁴ 934 F.3d 283 (3d Cir. 2019).

²⁵ Act of July 18, 2007 (P.L.169, No.44).

²⁶ Act of Nov. 25, 2013 (P.L.974, No.89).

²⁷ Complaint, *Owner Operator Indep. Drivers Ass'n, Inc. v. Pa. Tpk. Comm'n* (M.D. Pa. 2018) (No. 1:18-cv-00608-SHR).

²⁸ *Owner Operator Independent Drivers Ass'n, Inc. v. Pa. Tpk. Comm'n*, 383 F.Supp.3d 353, 367 (M.D. Pa. 2019).

²⁹ *Id.* at 368. However, Congress can authorize interference with interstate commerce. *Id.*

The U.S. District Court dismissed the complaint because the “factual allegations do not support a claim for violations of the dormant Commerce Clause or the constitutional right to travel.”³⁰ The association appealed this ruling to the U.S. Court of Appeals for the Third Circuit, which affirmed “the District Court’s order dismissing the complaint.”³¹ The Commerce Clause is not implicated by the collection and use of “tolls for non-Turnpike purposes” because Congress permitted state authorities to do that, and the association did not allege that motorists’ “right to travel to, from, and within Pennsylvania has been deterred” so that “their right to travel has not been infringed.”³² Congressional authorization for the use of toll funds for “non-Turnpike related projects” are from ISTEA, which effectively broadened STAA.³³

In the middle of December 2019,³⁴ the association petitioned the U.S. Supreme Court for a *writ of certiorari* with a response due in the middle of January 2020. This filing is to appeal the ruling from U.S. Court of Appeals for the Third Circuit. This report is being published before it is known whether the petition is granted or denied. If granted and the association’s appeal succeeds, the ultimate outcome could be an injunction on excessive tolling, more debt issuance and using toll revenue to retire debt incurred to pay as statutorily required. It could also result in a refund of tolls paid that were excessive.

(3) Review cases in other states where tolled bridges or roadways are effectively governed under a state department of transportation.³⁵

Since the 1950’s, approximately half of all states have tolled roads in some form and today there are approximately 5,809 miles of tolled highways in the National Highway System.³⁶ As in the Commonwealth, most tolled routes are independently administered by authorities and commissions. Of the states with toll roads, only a quarter of them are administered and operated solely by a state’s department of transportation. States whose toll roads are managed by toll authorities typically have more miles of tolled roadway than states whose departments of transportation manage both the tollways and freeways.

The states whose departments of transportation nominally manage both the tollways and freeways generally still create some semi-independent instrumentality for the tollways within the department to exempt that operation from state laws. Financial protection is one reason to do this so that the public is not directly obligated to repay the bonds that financed the toll route. They also help state governments to avoid otherwise applicable debt limits. Another benefit is to segregate tax-supported (but otherwise free) routes from tolled (or surcharged) routes giving both taxpayers and tollpayers confidence that their taxes and tolls are not used to subsidize the other. Other states whose tollways are operated by their departments of transportation fund their routes more by user-fees than regular appropriations. Other states have a mix of privately and

³⁰ *Id.* at 388.

³¹ 934 F.3d 283, 288 (3d Cir. 2019).

³² *Id.* at 288, 290-96.

³³ *Id.* at 292-94; STAA & ISTEA are discussed, *infra*, pp. 80-82.

³⁴ Just before publication of this rep..

³⁵ *Infra* pp. 117-34.

³⁶ Office of Highway Policy Information, U.S. Dep’t of Transp., Fact Sheet, https://www.fhwa.dot.gov/policyinformation/tollpage/documents/fact_sheet.pdf (as of Jan. 1, 2017).

governmentally owned toll roads or enter partnerships with local and regional governments to operate their tollways.³⁷

It is difficult to simply consider states whose department of transportation effectively governs their tollways because they typically have a complex blend of more than one governmental entity that has distinct authority. Despite how integrated Delaware's turnpike appears within its department of transportation, the state uses a public instrumentality, Delaware Transportation Authority,³⁸ to secure funding from bonds.³⁹ The transportation authority is ultimately responsible "for operation and maintenance of the Delaware Turnpike in accordance with the terms and conditions of any trust agreement with bondholders."⁴⁰ The authority's bonds are not a state liability.⁴¹ Aside from adjusting "charges, fares, fees, rentals and/or tolls," the maintenance and operation of the turnpike is really through the departmental Division of Highway Operations.⁴² There is a statutory order of "application of revenues derived from the Delaware Turnpike" with operational, reserve, bond, debt service reserve and improvements funding being prioritized before any of these revenues can be used to pay for the interstate system excluding the turnpike, reimbursements, other transportation or street improvements.⁴³ Statutorily, neither the state nor the authority may authorize an "appropriation or expenditure . . . that would impair the right or power of the Authority to impose tolls on the . . . Turnpike."⁴⁴ Also statutorily, the authority's budget must be at least "the amount actually incurred as operating expenses for the . . . Turnpike in the last prior fiscal year . . . plus an inflation factor . . . unless the . . . Authority requests a lesser amount."⁴⁵

To assist Delaware's department of transportation, the authority's principal role is to finance the department *via* the Transportation Trust Fund and "is a blended component unit of the [s]tate" that is "overseen by the Secretary of Transportation . . . , the Director of the Office of Financial Management and Budget, and the Administrator of the Trust Fund."⁴⁶ The trust fund is primarily funded by "motor fuel taxes, motor vehicle document fees, motor vehicle registration fees, and other transportation-related fees, which are imposed and collected by the [s]tate and transferred to the [t]rust [f]und" with this assignment and continuous appropriation to the trust fund being an irrevocable pledge from the state of "these taxes and fees."⁴⁷ Toll roads are "other major sources of revenue for the [t]rust [f]und" with the trust fund's revenue available to secure its bonds for state-approved transportation projects.⁴⁸

³⁷ *E.g.*, Cal., Fla. & Tex.

³⁸ Del. Code tit. 2, § 1304.

³⁹ *Id.* §§ 1309, 1311, 1312.

⁴⁰ *Id.* § 1305.

⁴¹ *Id.* § 1315. The authority's revenue bonds amortize through 2055. Del. Dep't of Transp., Fin. Statements (June 30, 2018), 28, <https://auditor.delaware.gov/wp-content/uploads/sites/40/2018/12/Delaware-Department-of-Transportation-Financial-Statements-June-30-2018.pdf>.

⁴² Del. Code tit. 2, § 1305. "The Authority and the State shall always maintain and keep in good condition and operating repair the Delaware Turnpike." *Id.* § 1320(a).

⁴³ *Id.* § 1310.

⁴⁴ *Id.* § 1320(g).

⁴⁵ *Id.* § 1320(f). Similarly, the statute also requires the authority's approved budget to be adequate to service its debt as indentured. *Id.*

⁴⁶ Del. Dep't of Transp., *supra* note 41, at 15.

⁴⁷ *Id.*

⁴⁸ *Id.*

Florida’s “Turnpike System is operated by Florida’s Turnpike Enterprise . . . , which acts as a separate business unit of the Florida Department of Transportation.”⁴⁹ The enterprise “is responsible for all operations on every . . . toll road and bridge” owned and operated by the department.⁵⁰ The department “reports directly to the Governor”; the enterprise is a separate, departmental business unit with a “mission to pursue innovation and best private-sector business practices, improve cost-effectiveness and timeliness in project delivery, increase revenues, and improve quality of service to its customers.”⁵¹ Moreover, there are hundreds of miles of tollways in Florida that are not operated by the enterprise.

Massachusetts merged the Massachusetts Turnpike Authority, Massachusetts Bay Transportation Authority, and the Massachusetts highway system to create a new department of transportation.⁵² The department is “a public instrumentality” and “placed in the executive office of the governor but . . . not . . . subject to” his “supervision or control.”⁵³ Its “corporate powers” are “exercised by a board of directors,” being ten of his appointees plus the secretary of transportation.⁵⁴ The department assumed “the assets, obligations and liabilities of the Massachusetts Turnpike Authority” with “turnpike revenues” credited to the Massachusetts Transportation Trust Fund, which is “used for financing transportation-related purposes” of the department.⁵⁵ The department is organized and functions “as a single state agency for administrative purposes” with core administrative functions serving the department’s separate offices and divisions.⁵⁶ The department must adjust tolls to pay the turnpike’s costs and principal and interest on its bonds, which tolls are not subject to the commonwealth’s approval.⁵⁷ The department is authorized to refinance the turnpike authority’s bonds as “special obligations of the department payable solely from monies credited to” the trust fund rather than as “general obligations of the commonwealth” so that the commonwealth is not pledging its credit.⁵⁸ For state contract information and finance, the department is considered to be an independent public authority or a state agency.⁵⁹ Other than the bay, regional and port authorities, the department is represented by “[t]he office of attorney general . . . to the same extent and in the same manner as provided to the commonwealth and state departments.”⁶⁰ The transportation trust fund is under departmental control “and not subject to appropriation.”⁶¹

⁴⁹ Fla.’s Tpk., Frequently Asked Questions, <http://www.floridasturnpike.com/about.html> (2018).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Mass. Gen. Laws ch. 6C, §§ 2, 3 (<https://malegislature.gov/Laws/SessionLaws/Acts/2009/Chapter25>).

⁵³ *Id.* § 2(a).

⁵⁴ *Id.* § 2(b). The secretary is also appointed by the governor for a “coterminous” term to be the department’s “chief executive, administrative and operational officer of the department.” *Id.* § 2(e).

⁵⁵ *Id.* § 4.

⁵⁶ *Id.* § 5. “[C]ore administrative functions . . . include . . . human resources, financial management, legal, procurement, asset management, and . . . information technology.” *Id.*

⁵⁷ *Id.* § 13. The department may also toll the metropolitan highway system; toll revenue is exclusively for debt service on and the costs of the tolled roads. *Id.*

⁵⁸ *Id.* § 17(a). “Bonds may be secured by a” departmental “trust agreement” pledging the trust fund’s monies. *Id.* § 17(c).

⁵⁹ *Id.* §§ 14, 15.

⁶⁰ *Id.* § 18.

⁶¹ *Id.* § 4(a).

(4) Evaluate and make recommendations on how to manage the turnpike's debt as a result of the consolidation of interstate operations.⁶²

The commission has an outstanding Mainline Senior debt of \$6,045,745,000 and Subordinate debt of \$6,755,161,000.⁶³ The issuance and payment of the bonds are governed by bondholder agreements executed by the commission. Much of the commission's accumulated bond debt is driven by its obligations to the department under act numbers 44 of 2007 and 89 of 2013.⁶⁴ What happens to this outstanding debt if the commission and the department consolidate? The question is especially confounding because the turnpike revenue bonds are "not to be deemed a debt of the Commonwealth or a pledge of the faith and credit of the Commonwealth" for the payment of the principal or interest of such bonds.⁶⁵ In fact, the bond instruments themselves are statutorily required to contain an express statement to such effect and say that the repayment for the bonds obligates the commission's rather than the Commonwealth's revenues.⁶⁶

Consequently, it is unclear as to how the Commonwealth can lawfully assume the commission's bond debt. This issue does not appear to have been litigated here; however, a Pennsylvania court's *obiter dicta* noted that the Commonwealth relieved "itself entirely of any financial responsibility in connection" with the turnpike by delegating powers to the commission and the statutory provisions relating to the revenue bonds.⁶⁷ This observation is consistent with the wording of both the statutes and the bond instruments. The commission's bond debt is not to be a debt of the Commonwealth under any circumstances.

Based on the foregoing, it appears that the commission's outstanding bond debt could serve as a potential barrier to its consolidation with the department. Before the two are consolidated, qualified and experienced bond counsel would have to be retained to advise how the Commonwealth can unilaterally eliminate the commission while limiting financial liability for outstanding bonds to the commission's rather than the Commonwealth's revenues.⁶⁸ Presumably, a consolidation could occur with this outstanding bond debt as a somewhat similar scenario occurred in Massachusetts. If a consolidation proceeds with this outstanding bond debt, neither the department specifically nor the Commonwealth generally would be able to impair or otherwise prejudice the bondholders. In other words, the Commonwealth would be unlikely to expand its subsidy for transportation elsewhere in the Commonwealth based upon turnpike revenue nor would it be likely to relieve the pressure to continue to generate turnpike revenue robust enough to service the outstanding debt.

⁶² *Infra* pp. 97-116.

⁶³ Table 19, *infra* p. 108.

⁶⁴ Act of July 18, 2007 (P.L.169, No.44) & act of Nov. 25, 2013 (P.L.974, No.89).

⁶⁵ Act of May 21, 1937 (P.L.774, No.211), § 2; 36 P.S. § 652b; 74 Pa.C.S. § 8104. Special rev. bonds issued under 75 Pa.C.S. ch. 89 are also "not to be deemed a debt . . . of the" Commw. and must state that "neither the faith and credit . . . of the" Commw. "is pledged to the payment of the principal or interest of the bond." 75 Pa.C.S. § 9511.2.

⁶⁶ *Id.*

⁶⁷ *House v. Pa. Tpk. Comm'n*, 45 Pa. D. & C. 677, 678-79 (C.P. Dauphin 1943).

⁶⁸ This would also require further consultation with the State Treasurer.

With the commission's net position peaking "just prior to" the enactment of act number 44 of 2007, its "net position has spiraled into a deficit" since beginning those payments under that enactment.⁶⁹ In its performance audit, the Department of Auditor General recommended a re-evaluation of act numbers 44 of 2007 and 89 of 2013 to focus on alternative revenue sources and that "the \$50 million annual payment scheduled to begin during the fiscal year ending May 31, 2023" not be increased.⁷⁰ The auditor general's other recommendations were directed to the commission, and they were to prioritize capital projects to reduce debt load, use realistic traffic projections, increase revenues while reducing costs and increase traffic itself.⁷¹

(5) Evaluate and make recommendations on how to align contractual agreements, including labor agreements, bondholder agreements or other partnership agreements, as a result of the consolidation of interstate operations.⁷²

A consolidation of interstate operations would involve many complications, especially regarding preexistent contractual obligations of both the commission and the department. Many of their employees are members of labor unions who retain the legal and contractual right to collectively bargain over terms and conditions of employment on behalf of their membership. The collection of bond instruments associated with act numbers 44 of 2007⁷³ and 89 of 2013⁷⁴ among other financing agreements that the commission executed in recent years are further complications. A consolidation must contemplate what is to become of these intact, binding agreements should a consolidation of the two entities take place.

With supermajorities of the commission's and the department's employees maintaining union membership to collective bargaining rights,⁷⁵ the significant issue would be the preexistent collective bargaining agreements and incumbent bargaining units within both in the event of a consolidation. The Public Employee Relations Act does not directly address the rights of employee organizations and their preexistent contracts upon the consolidation of a public employer. But public employers are "not . . . required to bargain over matters of inherent managerial policy, which . . . include . . . the organizational structure and selection and direction of personnel."⁷⁶

In addition to determining the obligation of a successor entity to honor preexistent agreements and collectively bargain moving forward, it must be determined what becomes of the preexistent bargaining units (and their respective labor unions). In other words, which labor union and associated bargaining unit remains? If separate units under a broad-based bargaining unit policy are permitted to coexist, it would be an unfair labor practice should the work performed by employees in one group be transferred to or performed by employees in the other. A consolidation does not appear to preclude the possibility of having a subdivision of workers comprised of prior

⁶⁹ Pa. Dep't of Auditor Gen., *Performance Audit: Pa. Tpk. Comm'n 14* (2019), available at <https://www.paauditor.gov/Media/Default/Reports/Pennsylvania%20Turnpike%20Commission%20Audit%20Report%2003-21-19.pdf>.

⁷⁰ *Id.* at 26

⁷¹ *Id.* at 25.

⁷² *Infra* pp. 51-65.

⁷³ P.L.169, No.44.

⁷⁴ P.L.974, No.89.

⁷⁵ Tables 11 & 15, *infra* pp. 56, 59.

⁷⁶ Act of July 23, 1970 (P.L.563, No.195), § 702; 43 P.S. § 1101.702.

commission employees assigned to the turnpike continue to exclusively work on it. Under that scenario, the prior bargaining units and contracts for departmental and commission employees would continue to exist as separate bargaining units with each represented by the respective labor organizations. Of course, under this scenario, it would only be a partial consolidation of the commission and the department, at least, initially. Other possible scenarios are discussed as well, but the Pennsylvania Labor Relations Board has not previously addressed a consolidation similar to the one proposed by the resolution directing this study. The board does not render advisory opinions so that a question of representation in a combined unit would be questions of public sector labor policy for the board that could only arise and come before it through a properly filed charge of unfair practices or a representation petition. Integration of staff from differing unions and with differing pay scales, work rules and benefits, could have significant administrative hurdles that could result in additional cost of litigation and administration. As already mentioned, prior, protracted litigation incurred legal costs ranging from \$300,000 to over \$1,000,000.⁷⁷

It appears that the commission's outstanding bond debt could serve as a potential barrier to its consolidation with the department. Before the two are consolidated, qualified and experienced bond counsel would have to be retained to advise how the Commonwealth can unilaterally eliminate the commission while limiting financial liability for outstanding bonds to the commission's rather than the Commonwealth's revenues.⁷⁸ Presumably, a consolidation could occur with this outstanding bond debt as a somewhat similar scenario occurred in Massachusetts. If a consolidation proceeds with this outstanding bond debt, neither the department specifically nor the Commonwealth generally would be able to impair or otherwise prejudice the bondholders. In other words, the Commonwealth would be unlikely to expand its subsidy for transportation elsewhere in the Commonwealth based upon turnpike revenue nor would it be likely to relieve the pressure to continue to generate turnpike revenue robust enough to service the outstanding debt.

Should the commission be consolidated into the department, public-private partnerships (P3) agreements could continue largely unimpeded. Any preexistent P3 agreement would have to be reviewed on an individual basis to determine its continued viability and enforceability should a consolidation occur.

(6) Propose legislation required to implement the consolidation of interstate operations;⁷⁹

Previously introduced legislation appear in the appendices⁸⁰ and an amended proposal is published as well.

⁷⁷ E-mail from Craig R. Shuey, Chief Operating Officer, Pa. Tpk. Comm'n (Dec. 21, 2019) (on file w/Pa. J. State Gov't Comm'n).

⁷⁸ This would also require further consultation with the State Treasurer.

⁷⁹ *Infra* pp. 135-43.

⁸⁰ Appdcs. F & G, *infra* pp. 161-82.

Pennsylvania Turnpike Commission

In 1937, the Pennsylvania Turnpike Commission was statutorily created “to facilitate vehicular traffic between the eastern and western sections of the Commonwealth” *via* a turnpike.⁸¹ “The Commission was created as an instrumentality of the Commonwealth . . . to construct, operate, and maintain the Turnpike System, and to issue Turnpike revenue bonds, repayable solely from tolls and other Commission revenues.”⁸² Its statutory powers “in the construction, operation and maintenance of the turnpike” are “an essential governmental function of the Commonwealth.”⁸³ The Commission is the Secretary of Transportation and four gubernatorial appointees.⁸⁴

The commission selects a chairman, vice chairman and secretary/treasurer.⁸⁵ The chief executive officer carries “out the Commission’s policies and directions” managing the turnpike day-to-day with a senior staff, namely a “Chief Operating Officer, Chief Financial Officer, Chief Engineer, Chief Counsel and Chief Compliance Officer.”⁸⁶ Management establishes and maintains “internal controls designed to” protect the commission’s assets “from loss, theft, or misuse and to ensure that adequate accounting data are compiled to allow for the preparation of financial statements in conformity with accounting principles generally accepted in the United States of America.”⁸⁷

The commission “generally receives all of its operating revenue from customer tolls and fees . . . , which represent more than 80 percent of the Commission’s total revenue. The” commission “also receives funding from the Commonwealth’s oil company franchise tax . . . and . . . motor license registration fee revenues in the form of annual capital contributions,” which “are kept in separate funds as required by their respective bond indentures. Non-operating revenues represent approximately 3 percent of total revenues,”⁸⁸ mostly from investment earnings.⁸⁹

⁸¹ Act of May 21, 1937 (P.L.774, No.211), § 1; 36 P.S. § 652a.

⁸² Pa. Tpk. Comm’n, *Comprehensive Ann. Fin. Rep.: Fiscal Yrs. Ended May 31, 2019 & 2018* 1, https://www.paturnpike.com/pdfs/business/2019_Annual_Report.pdf.

⁸³ Act of May 21, 1937 (P.L.774, No.211), § 4; 36 P.S. § 652d.

⁸⁴ *Id.* The secretary may authorize her “Deputy Secretary for Highway Administration to act in” her place with the remaining appointments requiring senatorial consent. *Id.*

⁸⁵ Pa. Tpk. Comm’n, *Act 44 Fin. Plan Fiscal Yr. 2020* 6 (2019),

https://www.paturnpike.com/pdfs/business/finance/PTC_Fiscal_2020_Act_44_Financial_Plan_FINAL.pdf.

⁸⁶ *Id.*

⁸⁷ *Id.*, *supra* note 82, at 7.

⁸⁸ Pa. Dep’t of Auditor Gen., *supra* note 69, at 6.

⁸⁹ *Id.*

“Operations of the [c]ommission are substantially controlled by the provisions of . . . Trust Indentures,” which restrict “certain activities.”⁹⁰ The commission’s “Senior . . . and Subordinate Revenue Bond indentures feature covenants to bondholders that are based on the need to preserve the [c]ommission’s financial flexibility and to provide investors with sufficient security.”⁹¹ “The Trust Indentures require an annual audit of the [c]ommission’s financial statements . . . by independent certified public accountants.”⁹² The Auditor General is required to conduct financial and compliance audits “of the affairs and activities of the” commission quadrennially.⁹³ “[T]he Department of the Auditor General” must also “review the performance, procedures, operating budget, capital budget, and debt of the commission” as well as audit the commission “at least once every two years.”⁹⁴

The Pennsylvania Turnpike opened in 1940 and “was the first long-distance stretch of four-lane, limited-access . . . highway in the United States.”⁹⁵ Its success “set the standard for the future design and construction of . . . the modern interstate system.”⁹⁶ Other states modeled their own turnpikes on Pennsylvania’s, resultant in almost 6,000 miles of turnpikes opened, under construction or being planned by the beginning of 1955.⁹⁷ Rather than retiring “the bonds . . . or building parallel toll-free interstate highways,” Federal-Aid Highway Act of 1956 incorporated turnpikes “into the Interstate System while still charging toll.”⁹⁸

Today, the Pennsylvania Turnpike is “a 552-mile system with five tunnels” connecting “Ohio and New Jersey . . . and with a Northeast Extension and a Southwestern Expansion.”⁹⁹

The Turnpike System is composed of:

- the 359-mile Turnpike Mainline traversing . . . Pennsylvania from east to west;
- the 110-mile north/south section identified as the Northeast Extension;
- the approximately 16-mile north/south connection, known as the Beaver Valley Expressway, which intersects the Turnpike Mainline in the southwestern portion of the Commonwealth;
- the approximately 13-mile Amos K. Hutchinson Bypass, which adjoins the Turnpike Mainline near the New Stanton Interchange;
- the completed portion of the Mon/Fayette Expressway project totaling approximately 48 miles; and
- a six-mile section of the Southern Beltway project from PA 60 to US 22.¹⁰⁰

⁹⁰ Pa. Tpk. Comm’n, *supra* note 82, at 8.

⁹¹ *Id.*, *supra* note 85, at 17.

⁹² *Id.*, *supra* note 82, at 8.

⁹³ Act of Apr. 9, 1929 (P.L.177, No.175), § 706(b); 71 P.S. § 246(b).

⁹⁴ 74 Pa.C.S. § 8204(b). “The Auditor General” may “go beyond . . . financial statements and . . . examine original source documents . . . as is believed necessary or . . . on a random basis . . . to ensure the integrity of the audit.” *Id.*

⁹⁵ Fed. Highway Admin., U.S. Dep’t of Transp., *Pa. Tpk.*, <https://www.fhwa.dot.gov/candc/factsheets/pennsylvaniaturnpike.pdf>.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* Pa.’s Tpk. became “a portion of I-76.” *Id.*

⁹⁹ Pa. Dep’t of Auditor Gen., *supra* note 69, at 1.

¹⁰⁰ Pa. Tpk. Comm’n, *supra* note 82, at 1.

“The [c]ommission” also “operates 66 toll interchanges, 17 service plazas, 22 maintenance facilities, two regional offices, and a main headquarters/administrative building located in Middletown.”¹⁰¹ The commission employs approximately 1,912 people.¹⁰²

Department of Transportation

The Pennsylvania Department of Transportation (PennDOT) was created in 1970 by merging the Department of Highways with the Pennsylvania Aeronautics Commission to assume transportation related functions from the Departments of Revenue, Commerce, Community Affairs, and Military Affairs.¹⁰³ Today, the department of transportation has an annual budget of over \$9,000,000,000 from state and federal funds.¹⁰⁴

“PennDOT oversees programs and policies affecting highways, urban and rural public transportation, airports, railroads, ports and waterways.”¹⁰⁵ Almost “three-quarters of PennDOT’s annual budget is invested in . . . approximately 120,000 miles of state and local highways and 31,000 state and local bridges. PennDOT is directly responsible for nearly 40,000 miles of highway and roughly 25,400 bridges.”¹⁰⁶ The department employs approximately 11,375 people, roughly 7,200 of whom “are engaged in the maintenance, restoration, and expansion of the state highway system.”¹⁰⁷ There are 11 engineering districts and facilities in all counties.¹⁰⁸ The department also administers vehicle registrations and driver's licenses, and oversees safety and emission inspection programs.¹⁰⁹

The department houses a number of commissions and committees, including:

- State Transportation Innovation Council;
- State Transportation Commission;
- Transportation Advisory Committee;
- Aviation Advisory Commission;
- Motor Carrier Safety Advisory Committee;
- Pedalcycle and Pedestrian Advisory Committee; and
- Rail Freight Advisory Committee.¹¹⁰

¹⁰¹ Pa. Dep’t of Auditor Gen., *supra* note 69, at 5.

¹⁰² E-mail from Norris, *supra* note 18 (Mar. 25, 2019) (on file with Pa. J. State Gov’t Comm’n).

¹⁰³ Act of May 6, 1970 (P.L.356, No.120), which amended the act of Apr. 9, 1929 (P.L.177, No.175), § 2001; 71 P.S. § 511.

¹⁰⁴ Pa. Dep’t of Transp., *PennDOT Fact Book 1* (2018), available at <http://www.dot.state.pa.us/public/PubsForms/Publications/PUB%20410.pdf>.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* This amounts to approximately 63% its personnel.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*, About Us, <http://www.penndot.gov/about-us/Pages/default.aspx> (2018).

Interstate 80, Act Nos. 44 of 2007 and 89 of 2013

The act of July 18, 2007,¹¹¹ as amended by the act of November 25, 2013,¹¹² “established the framework for the . . . [c]ommission’s . . . expanded mandate from one focused entirely on constructing, operating, and improving the Pennsylvania Turnpike to one that also provides annual funding contributions for broader Commonwealth transportation needs.”¹¹³ In conjunction with this expanded mandate, it “authorized and empowered” the commission to “[c]onvert Interstate 80 to a toll road and maintain and operate it as a toll road.”¹¹⁴ The funding contributions for broader Commonwealth transportation needs occurred, but the conversion of Interstate 80 to a toll road did not. The following table provides a timeline of the Interstate 80 and act numbers 44 of 2007 and 89 of 2013 project.

Table 1	
I-80, Act Nos. 44 of 2007 & 89 of 2013 Timeline	
1938	The Keystone Shortway was proposed as a toll road along the future I-80 corridor, but World War II interrupted and delayed its planning.
1952	The North Pa. Turnpike Committee was formed with the objective of “the construction of a self-sustaining toll road through northern” Pa..
1954	The General Assembly authorized the Shortway Turnpike from Stroudsburg to Sharon.
1955	The federal program to construct the Interstate Highway System began to provide federal funds to Pa. to construct Interstate highways.
1956	Governor Leader recommended the Shortway as an Interstate highway.
1957	The Federal Highway Administration (FHWA) designated the Shortway as Interstate 80 (I-80).
1960	Construction commenced on portions of I-80.
1970	Construction of I-80 was completed, as a federal aid highway, running 311 miles from New Jersey to Ohio.
1982 & 1983	The Governor’s Toll Roads Task Force was formed by Governor Thornburgh. Preliminary assessments for 25 highway corridors were performed by a consultant. Including I-80, 13 corridors were selected for further in-depth study. The final report, titled “Pa. Toll Roads Feasibility Study,” was submitted Dec. 21, 1983, and became the basis for act no. 61 of 1985. Imposition of tolls and reconstruction on I-80 and I-70 west were recommended in the report, predicated upon authorizing legislation at the federal level.
September 1985	Following the recommendations in the “Pa. Toll Roads Feasibility Study,” act no. 61 was enacted to direct the Commission to undertake construction of new highway projects and operate them as toll roads. The

¹¹¹ P.L.169, No.44.

¹¹² P.L.794, No.89.

¹¹³ Pa. Tpk. Comm’n, *supra* note 85, at 1.

¹¹⁴ 75 Pa.C.S. § 8915.1(1).

Table 1 I-80, Act Nos. 44 of 2007 & 89 of 2013 Timeline	
	<p>projects were grouped and prioritized. The act also contained a general provision authorizing the Commission to convert to toll roads and operate such portions of Pa.'s Interstate highway system as may be required to facilitate the completion of certain turnpike extensions and improvements. This provision was subject to prior passage of federal and state enabling legislation for conversion of certain interstates to toll roads.</p>
December 18, 1991	<p>The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) became law. Section 1012 of the act amended 23 U.S.C. § 129(a) and greatly expanded the types of toll conversion and toll construction work that could be done on the federal aid systems. However, except for bridges and tunnels, Interstate highway construction and reconstruction were prohibited as toll projects, as were Interstate toll conversions of any type except for a special congestion pricing program that allowed up to three tolled projects on the entire Interstate system.</p>
September 1994	<p>A rep. was released: "Feasibility of Implementing Tolls on Interstate Highways in Pa." The study and rep. considered 17 Interstate Highway segments within Pa., and performed detailed analysis on: I-70 from the Tpk. at New Stanton to the W. Va. line; I-80 for its total length between N.J. and Ohio; and I-90 for its total length from N.Y. to Ohio., Except for the ISTEA Congestion Pricing Program, the rep. concluded that there was no current mechanism to convert an Interstate highway to a toll facility. ISTEA, § 1012, permitted implementing tolls on both Interstate and non-Interstate bridges and tunnels.</p>
1994, 1995 & 1996	<p>The Commission employed the 1994 feasibility rep. consultant for additional studies of the potential of rehabilitation and reconstruction of I-80 to tolled status. This work continued despite the absence of any enabling fed. statutes for full-scale conversion of an Interstate highway to tolled status. The need for specific enabling authority at the state level was also recognized, and the state continued to study implementation issues through 1995. In Mar. 1996, Governor Ridge specifically called for placing tolls on I-80 as part of a proposed financial plan to assist Pa. in meeting its highway construction, reconstruction, and maintenance obligations. However, no state legislative action was adopted for a variety of reasons, including the prospect of substantial increases in fed. grant funding under the pending new transportation bill (TEA-21).</p>
June 9, 1998	<p>The Transportation Equity Act for the 21st Century (TEA-21) was enacted. Section 1216(b) of the act amended ISTEA, § 1012, to include the Interstate System Reconstruction and Rehabilitation Pilot (ISRRP) Program. The program authorized the Secretary of Transportation to permit a state to collect tolls on a highway, bridge, or tunnel on the Interstate system to reconstruct and rehabilitate Interstate highway corridors that could not otherwise be adequately maintained or</p>

Table 1 I-80, Act Nos. 44 of 2007 & 89 of 2013 Timeline	
	<p>functionally improved without collecting tolls. The program enabled up to three such pilot projects in three separate states. TEA-21 also increased the number of permissible Congestion Pricing pilot projects to 15, and renamed the program as the Value Pricing Pilot Program.</p> <p>The Pa. congressional delegation and staff were instrumental in developing the Pilot Program language; and I-80 in Pa. was specifically referred to in the TEA-21 Conf. Rep. as typifying the type of Interstate highway that meets the basic requirements of the ISRRP Program.</p>
Late 2003 to 2005	<p>PennDOT studied potential capital cost improvements and toll conversion of I-80, in consultation with the Commission. The final tolling study rep. was issued by PennDOT. Two reports were issued: “I-80 Capital Cost Improvements, Final Rep.,” Aug. 19, 2003; and “I-80 Tolling Study,” Feb., 2005. In a letter circulating the “I-80 Tolling Study,” PennDOT Secretary Biehler stated: “This report recommends that tolling I-80 not be pursued at this time. However it is important to acknowledge that the report represents an isolated examination of tolling I-80. It should not be interpreted as suggesting that tolling be dismissed as a mechanism for generating transportation revenue. Examining tolling in a more comprehensive context may lead to a different conclusion. Indeed tolling of existing and new facilities could be a viable alternative for consideration in the future.”</p>
August 10, 2005	<p>SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users) became law and authorized three new Interstate tolling programs (Express Lanes, HOV Conversion, and New Interstate Construction) as well as allowing tolling of federally-assisted non-Interstate highways. SAFETEA-LU also extended and eased the eligibility requirements for the existing ISRRP program and extended the existing Value Pricing program.</p>
July 18, 2007	<p>Act no. 44 authorized the Commission to: enter into a long term (50 yrs.) lease with PennDOT for I-80; convert I-80 to tolled status upon fed. approval, while undertaking a program of reconstruction and improvements; use the I-80 toll revenues to pay operating expenses of I-80, including lease payments to PennDOT, and the cost of conversion, improvements, and debt service. Together with revenues derived from the Mainline Turnpike and the proceeds of bonds, the annual lease payments would fund specified annual contributions to the Pa. transportation budget. The act provided three years to secure necessary governmental approvals, complete design work, refine revenue projections, and to initiate tolling, debt financing, and construction. The act authorized PennDOT to assist the Commission in assembling and submitting an application to FHWA for its approval.</p>

Table 1	
I-80, Act Nos. 44 of 2007 & 89 of 2013 Timeline	
July 27, 2007	The Secretary of Transportation and the Chief Executive Officer of the Commission sent an introductory letter about the proposed tolling and improvement of I-80 to the Federal Highway Division Administrator.
August 8, 2007	The Commission began making quarterly payments to PennDOT from Mainline Turnpike system toll revenues in the amount of \$62.5 million.
August 17, 2007	PennDOT and the Commission submitted an Expression of Interest to FHWA describing the I-80 proposal and requesting advice as to which toll pilot program to apply under.
September 2007	FHWA recommended the ISRRP Program created under TEA-21.
October 13, 2007	PennDOT and the Commission agreed to 50-year lease for I-80 under act no. 44. The Commission paid \$229.2 million to PennDOT
October 13, 2007	A formal Phase I Application was submitted to FHWA requesting that tolling of I-80 be approved as one of the three pilot toll projects under the ISRRP Program.
November 2007	Eight public meetings were held along the I-80 corridor to present the toll conversion plan, as well as several dozen other meetings in the following months with local chambers of commerce, legislators, regional planning organizations, community groups, <i>etc.</i>
December 2007	FHWA asked 14 questions concerning the application's reconstruction program, tolling policy, and plan of finance.
January 2008	The Commission paid \$229.2 million to PennDOT.
April 2008	The Commission paid \$229.2 million to PennDOT.
July 2008	PennDOT and the Commission submitted an amended application, containing detailed construction plans, potential toll locations and updated fin. plan. Meetings were held with reg'l planning orgs. along the I-80 corridor as required under tolling pilot program. The Commission paid PennDOT, bringing the total payments to date to \$1 billion.
September 2008	FHWA sent a memo citing an inability to advance the application due to insufficient information concerning the level of rents payable from tolls and other questions.
October 2008	The Commission paid \$212.5 million to PennDOT.
January 2009	The Commission paid \$212.5 million to PennDOT, bringing the total payments to date to \$1.3876 billion.
April 2009	The Commission paid \$212.5 million to PennDOT, bringing the total payments to date to \$1.6 billion.
July 2009	The Commission paid \$225 million to PennDOT, bringing the total payments to date to \$1.83 billion.
October 2009	The Commission paid \$225 million to PennDOT, bringing the total payments to date to \$2.05 billion.
October 29, 2009	In response to the Sept. 2008 questions, supplemental information to the Phase I Application, signed by the Secretary of Transportation and the

Table 1	
I-80, Act Nos. 44 of 2007 & 89 of 2013 Timeline	
	Chief Executive Officer of the Commission, was sent to the Federal Highway Division Administrator.
January 2010	The Commission paid \$225 million to PennDOT, bringing the total payments to date to \$2.275 billion.
April 6, 2010	A letter from the U.S. Department of Transportation relaying the final decision regarding the Phase I Application was sent. The FHWA ultimately denied approval to convert I-80 to a toll road, citing legal concerns related to the planned use of the rent payments from the Commission to PennDOT to support statewide transportation projects.
April 2010	The Commission paid \$225 million to PennDOT, bringing the total payments to date to \$2.5 billion.
July 2010	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to more than \$2.6 billion.
October 2010	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to more than \$2.7 billion.
January 2011	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to \$2.8 billion.
April 2011	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to \$2.95 billion.
July 2011	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to \$3.06 billion.
October 2011	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to \$3.175 billion.
January 2012	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to \$3.2875 billion.
April 2012	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to \$3.4 billion.
July 2012	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to more than \$3.5 billion.
October 2012	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to \$3.625 billion.
January 2013	The Commission paid \$112.5 million payment to PennDOT, bringing the total payments to date to \$3.737 billion.
April 2013	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to \$3.85 billion.
July 2013	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to \$3.962 billion.
October 2013	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to \$4.075 billion.
November 25, 2013	Act no. 89 altered the Commission's funding obligations to PennDOT. While the Commission's payment obligation remains at \$450 million annually through Fiscal Yr. 2022, none of the payments are dedicated to

Table 1	
I-80, Act Nos. 44 of 2007 & 89 of 2013 Timeline	
	highways and bridges. Instead, all \$450 million supports transit capital, operating, multi-modal and other non-highway programs. Beginning in Fiscal Yr. 2023, the annual payment obligations decreases to \$50 million until the payment obligations end in 2057.
January 2014	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to more than \$4.187 billion.
April 4, 2014	Under act no. 89, the Commission and PennDOT executed Amendment No. One to the Lease and Funding Agreement of Oct. 13, 2007.
April 2014	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to more than \$4.3 billion.
July 2014	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to more than \$4.412 billion.
October 2014	The Commission paid \$112.5 million payment to, bringing the total payments to date to more than \$4.525 billion.
January 2015	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to more than \$4.637 billion.
April 2015	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to more than \$4.75 billion.
July 2015	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to more than \$4.862 billion.
October 2015	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to \$4.975 billion.
January 2016	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to more than \$5.087 billion.
April 2016	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to more than \$5.2 billion.
July 2016	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to more than \$5.3 billion.
October 2016	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to more than \$5.425 billion.
January 2017	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to more than \$5.537 billion.
April 2017	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to more than \$5.65 billion.
July 2017	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to more than \$5.76 billion.
October 2017	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to \$5.875 billion.
January 2018	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to \$5.987 billion.

Table 1	
I-80, Act Nos. 44 of 2007 & 89 of 2013 Timeline	
April 2018	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to \$6.1 billion.
July 31, 2018	The Commission and PennDOT amended the Lease Agreement to defer payments until later in the fiscal year pending resolution of the lawsuit brought by <i>Owner Operator Indep. Drivers Ass'n</i> so that no payment was made.
October 2018	Because of the agreed deferral between the Commission and PennDOT, no payment was made.
January 2019	Because of the agreed deferral between the Commission and PennDOT, no payment was made.
April 2019	Because of the agreed deferral between the Commission and PennDOT, no payment was made.
June 2019	Following a U.S. Dist. Ct.'s dismissal of the lawsuit brought by <i>Owner Operator Independent Drivers Ass'n</i> , the Commission paid \$450 million to PennDOT to satisfy act nos. 44 & 89 requirements for Fiscal Year 2019, bringing the total payments to date to \$6.55 billion.
July 2019	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to \$6.6625 billion.
October 2019	The Commission paid \$112.5 million to PennDOT, bringing the total payments to date to \$6.775 billion.
Source: Compiled by J. State Gov't Comm'n staff from Pa. Tpk. Comm'n, I-80/Act 44 History, https://www.paturnpike.com/pdfs/about/historicfactsheet.pdf (2007); Major Activities Accomplished to Date by Pa. Tpk. Comm'n & Pa. Dep't of Transp., https://www.paturnpike.com/pdfs/business/MajorActivitiesAccomplished_timel.pdf (last visited Apr. 24, 2019); e-mail from Nikolaus Grieshaber, Chief Fin. Officer, Pa. Tpk. Comm'n (Dec. 5, 2019).	

The Commission is required by the terms of the Amended Funding Agreement and Act 44 to fix and adjust tolls at levels that will generate revenues (together with other available moneys) sufficient to pay, among other things, amounts to PennDOT pursuant to the Amended Funding Agreement when due and other obligations of the Commission, and the Commission has covenanted in the Subordinate Revenue Indenture to set tolls at a level sufficient to meet its coverage obligations taking into account any additional debt incurred in order to make such payments. . . . Therefore, the Commission plans to continue to increase toll rates annually and to issue debt through fiscal year 2022 to finance the majority of these payments. . . . The sole and exclusive remedy for the failure to make the required payments to PennDOT under the Amended Funding Agreement is that all actions of the Commission taken by a vote of the Commissioners thereafter must be approved by a unanimous vote of all Commissioners until such time as the payment is made.¹¹⁵

¹¹⁵ Pa. Tpk. Comm'n, *supra* note 82, at 94-95. "However, a unanimous vote is not required if it would prevent the Commission from complying with covenants with 'current bondholders, debt holders or creditors.'" *Id.* at 95.

“As of May 31, 2018, the” commission “had paid PennDOT” \$6,100,000,000.¹¹⁶ Table 1 shows that this amount since then has increased to \$6,775,000,000 with the payments projected to total “\$9.65 billion through 2057”.¹¹⁷ “Additionally, since the passage of” act numbers 44 of 2007 and 89 of 2013, the commission “has recorded interest expenses of approximately” \$2,130,000,000 “through FYE May 31, 2018, on debt used to fund the Act 44/89 payments to PennDOT. Based on” Department of Auditor General’s “audit procedures, . . . it appears that the” commission “will be able to meet its debt payments over the next 20 years. However,” the commission’s “ability to raise toll revenue to cover Act 44/89 payments to PennDOT and expenditures for capital projects remains potentially unsustainable.”¹¹⁸

With the commission’s net position peaking “just prior to” the enactment of act number 44 of 2007, its “net position has spiraled into a deficit” since beginning those payments under that enactment.¹¹⁹ In its performance audit, Department of Auditor General recommended a re-evaluation of act numbers 44 of 2007 and 89 of 2013 to focus on alternative revenue sources and that “the \$50 million annual payment scheduled to begin during the fiscal year ending May 31, 2023” not be increased.¹²⁰ The auditor general’s other recommendations were directed to the commission, and they were to prioritize capital projects to reduce debt load, use realistic traffic projections, increase revenues while reducing costs and increase traffic itself.¹²¹

¹¹⁶ Pa. Dep’t of Auditor Gen., *supra* note 69, at 2.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 14

¹²⁰ *Id.* at 26

¹²¹ *Id.* at 25.

COST SAVINGS, EFFICIENCIES & CUSTOMER SERVICE IMPROVEMENTS

Consolidating state government offices, agencies, and departments have been undertaken to streamline, reorganize, modernize, redesign or increase governmental efficiency.¹²² This is something that state governments do and have done recurrently.¹²³ However, “[t]hese actions have not” generally “represented substantial savings for state budgets”¹²⁴ because that requires more elimination than consolidation. Aside from consolidating state agencies, other governmental consolidation has occurred among school districts, townships and other local governmental entities.¹²⁵

Relatively little has been written about intragovernmental consolidation, but a review of the academic literature involving city-county consolidation suggested mixed results for governmental consolidation or mergers, at best.¹²⁶ Although the intention of consolidation is to save “money by shedding layers of management or having departments share equipment such as snowplows,”¹²⁷ “[n]ot all public agencies with overlapping responsibilities are ripe for . . . consolidation.”¹²⁸ This means that the culture and competencies of the agencies proposed for consolidation should be considered along with the possible cost savings.¹²⁹ Several studies indicated that it was uncommon for operating costs to decrease, primarily because when two governmental bodies with differing salary and compensation plans were consolidated, the salaries and benefits were often standardized at the higher level.¹³⁰ Further, difficulties in reconciling job classifications, pay scales, and workplace cultures led to significant morale problems when distinct government units were merged.¹³¹ This review led to the conclusion that consolidation would be unlikely to significantly increase efficiency but quality of service could still be perceived to have significantly increased.¹³² “[A]ny given effort to consolidate can be done well or . . . poorly.”¹³³ Counterintuitively, “a number of studies—and evidence from past consolidations—suggest that

¹²² Mark Murphy, Nat’l Conf. of State Legiss., *Elimination & Consolidation of State Entities* 1, Aug. 1, 2011, <http://www.ncsl.org/documents/fiscal/eliminations2011.pdf>.

¹²³ *See id.*

¹²⁴ *Id.* at 1.

¹²⁵ Conor Dougherty, *When Civic Mergers Don’t Save Money*, *The Wall St. J.*, Aug. 29, 2011, <https://www.wsj.com/articles/SB10001424053111904875404576532342236074926>.

¹²⁶ Samuel R. Staley *et al.*, Ind. Policy Rev. Found., *The Effects of City-County Consolidation: A Rev. of the Recent Acad. Literature* 1-2, <http://www.in.gov/legislative/interim/committee/2005/committees/prelim/MCCC02.pdf> (2005).

¹²⁷ Dougherty, *supra* note 125.

¹²⁸ Peter Frumkin, *Making Pub. Sector Mergers Work: Lessons Learned* 4 (2003), available at <http://www.businessofgovernment.org/sites/default/files/PublicSectorMergers.pdf>.

¹²⁹ *Id.*

¹³⁰ Staley *et al.*, *supra* note 126, at 8, 12.

¹³¹ *Id.* at 12.

¹³² *Id.* at 14.

¹³³ *Id.*

mergers” of governmental entities “rarely save money, and in many cases, . . . end up raising costs.”¹³⁴

One example of a fairly recent government agency merger involves the merger of the Massachusetts Turnpike and the Massachusetts state Department of Transportation.¹³⁵ Two years after that turnpike merged with the department of transportation, its combined staff had been reduced by 0.5% rather than the anticipated 7%.¹³⁶ It was initially anticipated that the reforms associated with the merger would realize approximately \$6,000,000,000 “in savings over 20 years.”¹³⁷ Reform recommendations from Massachusetts Transportation Finance Commission in 2007 had projected new savings to be \$2,450,000,000 or more over 20 years, but only some of that would be attributable to turnpike savings.¹³⁸ One year after the transportation reform in Massachusetts, the estimated savings was almost \$386,606,000 with approximately 69% of that being one-time savings and the remaining 31% being annual savings.¹³⁹ These savings were estimates and not all of the reforms were fully implemented at the time of the estimates; however, if these annual savings continue, the 20-year savings would approximate the amount projected in 2007 rather than the initially anticipated amount.

Joint State Government Commission was directed to “[e]valuate the cost savings, efficiencies, and customer service improvements that may materialize as a result of consolidating the interstate operations” at Department of Transportation with Pennsylvania Turnpike Commission *via* a departmental division.¹⁴⁰

Mapping the Future

In 2011, the commission and the department established a “Mapping the Future Initiative . . . to pool the resources of Pennsylvania’s transportation agencies to improve efficiency, save costs, and develop innovative solutions for the delivery of transportation projects throughout the [C]ommonwealth.”¹⁴¹ To develop solutions, the agencies created seven working groups consisting of “design, construction, facilities, procurement and purchasing, communications and public relations, maintenance and operations, and intelligent transportation systems.”¹⁴²

¹³⁴ Dougherty, *supra* note 125. A key example in this article says that the cost of labor in local government is generally controlled better the smaller the local government is. *Id.*

¹³⁵ *Infra* pp. 125-27.

¹³⁶ Samuel Staley, Reason Found., *Merger of Mass DOT & Turnpike Fails to Produce Savings*, June 21, 2011, <https://reason.org/commentary/merger-of-mass-dot-and-turnpike-fai/>. This marginal reduction including Turnpike police trooper who were then reassigned to State Police but still patrolling the turnpike. *Id.* Excluding these reassigned troopers, the merged staffing actually increased by 2.9%. *Id.*

¹³⁷ *Id.*

¹³⁸ Mass. Transp. Fin. Comm’n, *Transp. Fin. in Mass: Volume 2 (Building a Sustainable Transp. Fin. Sys.)* 3-4, Sept. 17, 2007, https://www.mma.org/wp-content/uploads/2018/07/tfcreport_vol2_0.pdf.

¹³⁹ Mass. Dep’t of Transp., *Transp. Reform-Yr. 1*, at 3-4, Dec. 17, 2010, <https://archives.lib.state.ma.us/bitstream/handle/2452/266255/ocn921512685.pdf?sequence=1&isAllowed=y>.

¹⁴⁰ Pa. S. Res. No. 209 (Sess. of 2017); appdx. A, *infra* p. 149.

¹⁴¹ Pa. Tpk. Comm’n & Dep’t of Transp., *Mapping the Future* 1 (2015).

¹⁴² *Id.*

Over the span of four years, the commission and the department reduced inefficiencies and duplication of effort, developed innovative solutions to transportation construction and maintenance challenges, and saved more than \$20,000,000.¹⁴³ The department was able to save \$3,525,000 through the initiative, as well as generate \$148,000 in annual revenue.¹⁴⁴ The commission was able to save \$16,525,000 and generate \$180,000 in annual revenue.¹⁴⁵ In addition, there were several non-financial accomplishments which included shared maintenance facilities and materials, joint Dynamic Message Sign (DMS) operating guidelines to ensure consistency of DMS information that may be displayed on any roadway network throughout the state, and joint press releases for consistent messages provided to the public.¹⁴⁶

While the initiative improved the lines of communication between the department and the commission and led to several efficiencies, 76% of the total cost savings, \$15,200,000, were a one-time cost avoidance amount realized by the commission after the department shared its design standards for the construction of new maintenance facilities.¹⁴⁷ In addition, \$328,000 in yearly revenue that was generated from enrolling 49 facilities in a Demand Response Program is now discontinued.¹⁴⁸

Maintenance

This section analyzes the commission's and department's maintenance operations and discusses the cost savings, efficiencies, and customer service improvements that could potentially materialize from a consolidation of the two.

The Commission

With its mainline traversing the breadth of the Commonwealth and 2,856 snow-lane miles,¹⁴⁹ the turnpike has unique maintenance needs and solutions. The commission's fleet of vehicles as well as all lawnmowers, chainsaws, passenger vehicles, dump trucks, loaders, plows, and other similar equipment are managed within its maintenance programs.¹⁵⁰

The maintenance facilities are strategically located along the turnpike, dividing its maintenance operations into five districts.¹⁵¹ District # 1 covers the I-76 Mainline from mile marker 0 at the Ohio border to mile marker 100, the Beaver Valley Expressway from mile marker 14.5 to mile marker 31.5, the Amos K. Hutchinson Bypass from mile marker 0 to 13.4, the I-576 Southern Beltway from mile marker 0 to 5.6, and the Mon-Fayette Expressway from mile markers 0 to 7.8 and 13.4 to 54.¹⁵² District # 1 has 997 snow lane miles and receives 50-60 inches of snow

¹⁴³ *Id* at 9.

¹⁴⁴ *Id*.

¹⁴⁵ *Id*.

¹⁴⁶ *Id* at 4-5, 8-9

¹⁴⁷ *Id* at 2.

¹⁴⁸ Interview w/Terrence G. Pearsall Jr., Chief, Facilities Mgmt. Div., Pa. Dept. of Transp. (May 7, 2019).

¹⁴⁹ Pa. Tpk. Comm'n, *Winter Servs. Guide* 3 (2018-2019).

¹⁵⁰ Telephone interview w/Cory Greene, Manager of Maintenance Programs, Pa. Tpk. Comm'n (Mar. 29, 2019).

¹⁵¹ Pa. Tpk. Comm'n, *supra* note 149, at 2, 8-18.

¹⁵² *Id*. at 8.

annually.¹⁵³ District # 2 covers the I-76 Mainline from mile marker 100 to mile marker 201.3.¹⁵⁴ District # 2 has 455 snow lane miles and receives 40-65 inches of snow annually.¹⁵⁵ District # 3 covers the I-76 Mainline from mile marker 201.3 to 302.7.¹⁵⁶ District # 3 has 500 snow lane miles and receives 40-45 inches of snow annually.¹⁵⁷ District # 4 covers the I-76 Mainline from mile marker 302.7 to 359, as well as the I-476 Northeast Extension from mile marker 19.6 to 32.8.¹⁵⁸ District # 4 has 462 snow lane miles and receives 30-35 inches of snow annually.¹⁵⁹ District # 5 covers the I-476 Northeast Extension from mile marker 32.8 to mile marker 130.3.¹⁶⁰ District # 5 has 442 snow lane miles and receives 30-60 inches of snow annually.¹⁶¹

Table 2 is an inventory of the commission's maintenance equipment, staff, materials used, and facilities in its five districts.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 11.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 13.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 15.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 17.

¹⁶¹ *Id.*

Table 2
Pennsylvania Turnpike Commission
Maintenance Staff, Equipment, and Materials
2018-19

	District 1 Gibsonia	District 2 Everett	District 3 Denver	District 4 Plymouth Mtg.	District 5 White Haven	Total
Annual Inches of Snow	50 - 60	40 - 65	40 - 45	30 - 35	30 - 60	N/A
Snow Lane Miles	997	455	500	462	442	2,856
Staff Total						
Foreman	8	4	4	3	4	23
Assistant Foreman	7	4	4	4	4	23
Equipment Operators	94	76	68	56	74	368
Hwy. Maintenance Workers	40	0	0	0	0	40
Maintenance Utility Workers	21	16	16	12	16	81
Section Clerks	7	4	4	3	4	22
District Clerk	1	1	1	1	1	5
Welders	2	2	1	1	1	7
Mechanics	16	9	9	7	9	50
Auto Equip. Supervisor	1	1	1	1	1	5
Total	197	117	108	88	114	624
Facilities						
Section Sheds	7	4	4	3	4	22
Salt Storage	Unknown	Unknown	Unknown	Unknown	Unknown	37
Total	--	--	--	--	--	59
Equipment						
Plow Trucks	131	72	74	61	64	402
Tow Plows	7	3	1	2	1	14
Loaders	23	13	12	9	12	69
Snow Blowers	2	2	1	1	2	8
Total	163	90	88	73	79	493
Materials						
Total Salt Used 2017-18 (Tons)	81,674	49,255	19,556	18,826	30,197	199,508
Total Pre-Wet Material Used 2017-18 (Gals.)	136,622	72,706	46,726	78,508	64,320	398,882
Salt 10 Year Average Usage (Tons)	62,239	42,280	15,187	12,041	23,040	154,787
Source: Pa. Tpk. Comm'n, <i>Winter Servs. Guide</i> 5, 8-18 (2018-2019).						

The commission's maintenance department had expenditures of \$73,110,186 in the fiscal year ending May 31, 2019.¹⁶² For fiscal years 2017 and 2018, the actual expenditures were \$66,190,698 and \$73,428,720, respectively.¹⁶³ The biggest expenditures for materials and supplies are fuel and salt.¹⁶⁴ When more inclement weather occurs during the winter, the demand for fuel and salt increases.¹⁶⁵ Table 3 shows an outlay of the commission's maintenance department by category.

Commitment Item	FY 2017	FY 2018	FY 2019
Wages & Salaries	\$42,861,467	\$44,157,965	\$44,457,709
Training & Education	110,818	122,116	137,606
Professional Services	991,437	982,164	1,093,302
Travel & Meals	305,451	364,805	406,172
Utilities	3,056,206	3,168,257	3,074,710
Telephone & Communication	245,834	274,330	235,774
Fuels	2,885,095	3,556,041	3,665,663
Lease & Rental	272,716	342,623	476,644
Materials & Supplies	15,093,924	20,049,152	19,171,803
Small Tools & Equipment	192,595	214,698	249,396
Postage & Freight	2,056	1,362	1,948
Computer Software	57,951	81,278	81,604
Advertising & Publicity	0	1,502	11,100
Environmental & Hazmat	110,930	106,286	54,973
Miscellaneous	(13,121)	(13,948)	(11,518)
Inventory/COGS	0	0	2
Construction Contracts	1,827	19,617	2,988
Hardware & Storage	15,512	472	310
Total	66,190,698	73,428,720	73,110,186
Source: Pa. Tpk. Comm'n (2019).			

Table 4 shows that Districts 1 and 2 spend far more on equipment, labor, and material than the other three districts. The likely reason for the increased expenditures in these districts is that

¹⁶² E-mail from Greene, *supra* note 150 (Aug. 7, 2019) (on file with Pa. J. State Gov't Comm'n).

¹⁶³ *Id.*

¹⁶⁴ Greene, *supra* note 150.

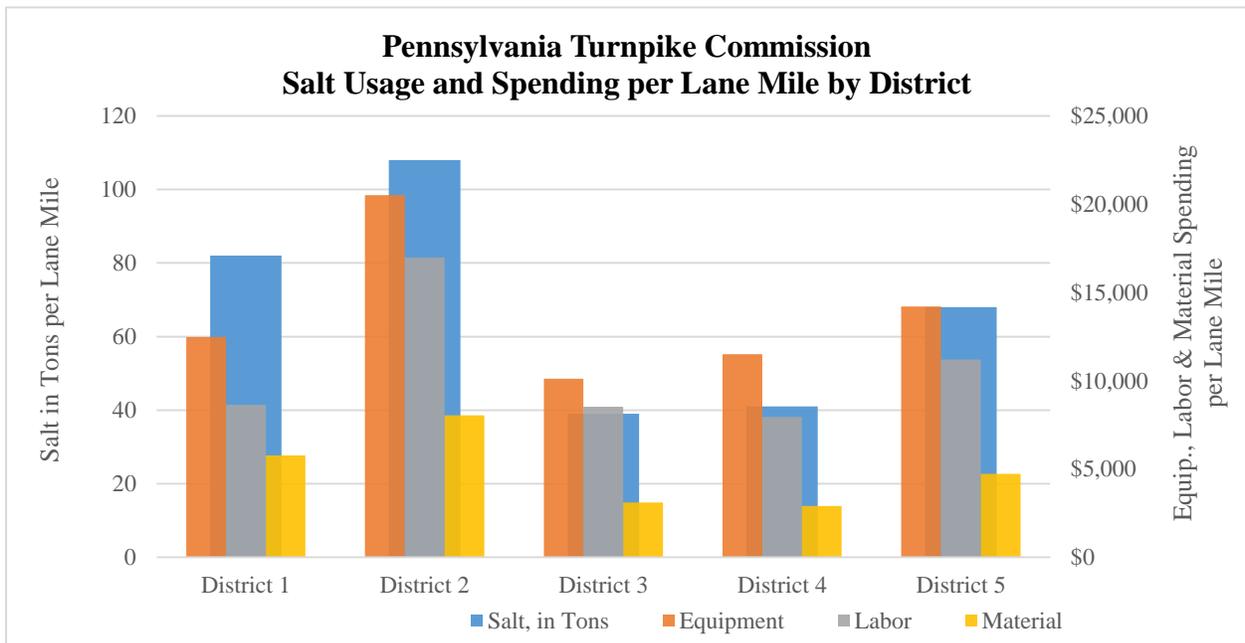
¹⁶⁵ *Id.*

they receive more snow, ice, and other inclement weather than the other districts, necessitating the higher costs for equipment, salt, fuel and labor.¹⁶⁶

District	Equipment	Labor	Material	Contractors	Total
District 1	\$12,436,842	\$8,614,662	\$5,755,424	\$39,749	\$26,846,677
District 2	9,335,159	7,722,402	3,655,269	28,895	20,741,725
District 3	5,059,766	4,265,450	1,554,480	22,864	10,902,560
District 4	5,314,596	3,674,767	1,339,584	23,562	10,352,509
District 5	6,278,566	4,944,073	2,085,514	17,594	13,325,747
Total	38,424,929	29,221,354	14,390,271	132,664	82,169,218

Source: Compiled by Pa. J. State Gov't Comm'n staff from data provided by Pa. Tpk. Comm'n.¹⁶⁷

Figure 1

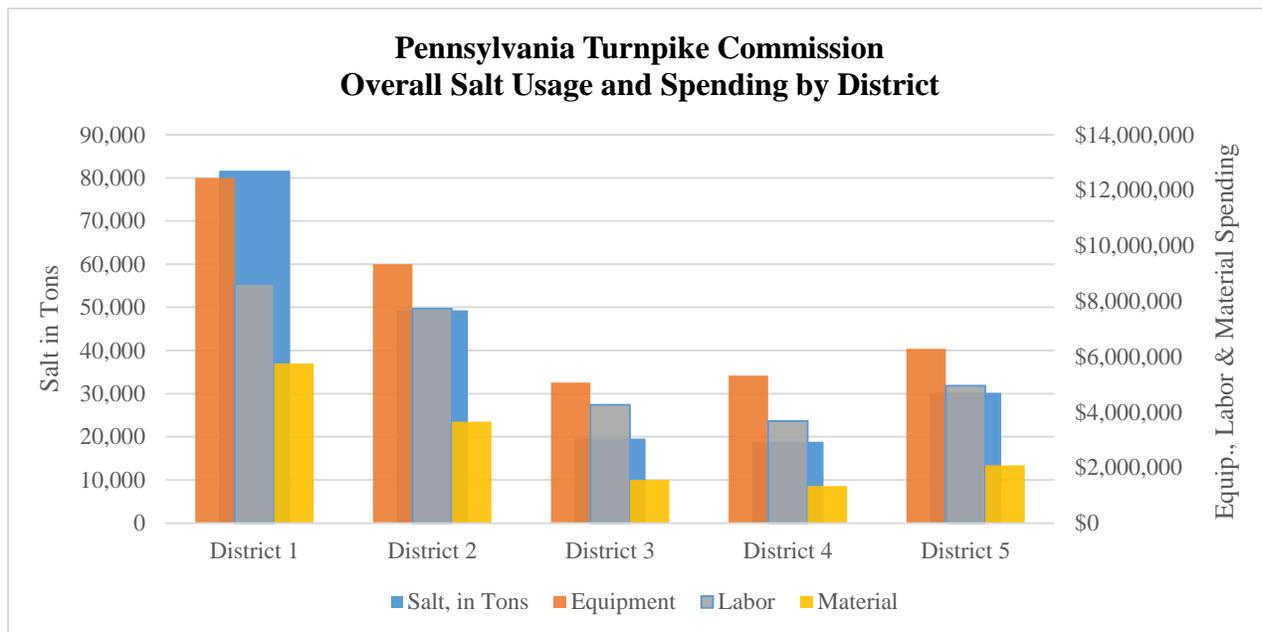


Source: Compiled by Pa. J. State Gov't Comm'n staff from data provided by Pa. Tpk. Comm'n.

¹⁶⁶ Greene, *supra* note 162 (Apr. 24, 2019) (on file with Pa. J. State Gov't Comm'n).

¹⁶⁷ *Id.* For District 1, the data excludes the I-576 Southern Beltway, which is still under construction.

Figure 2



Source: Compiled by Pa. J. State Gov't Comm'n staff from data provided by Pa. Tpk. Comm'n.

When expenses are accounted for *per lane mile*, figure 1¹⁶⁸ shows that greater salt usage generally corresponds to higher equipment, labor, and material costs. District 2 had the highest salt usage and material costs *per lane mile*, followed by Districts 1 and 5. As shown in Table 2,¹⁶⁹ those three districts had an average annual snowfall range that reached 60 inches or more so higher salt usage is to be expected. Overall, District 1 exceeded all other districts in equipment, labor, and material spending, as well as overall salt usage.¹⁷⁰ However, this should not be surprising, as its mileage coverage is almost double that of its next closest district in spending, District 2.

¹⁶⁸ *Supra* p. 29.

¹⁶⁹ *Supra* p. 27.

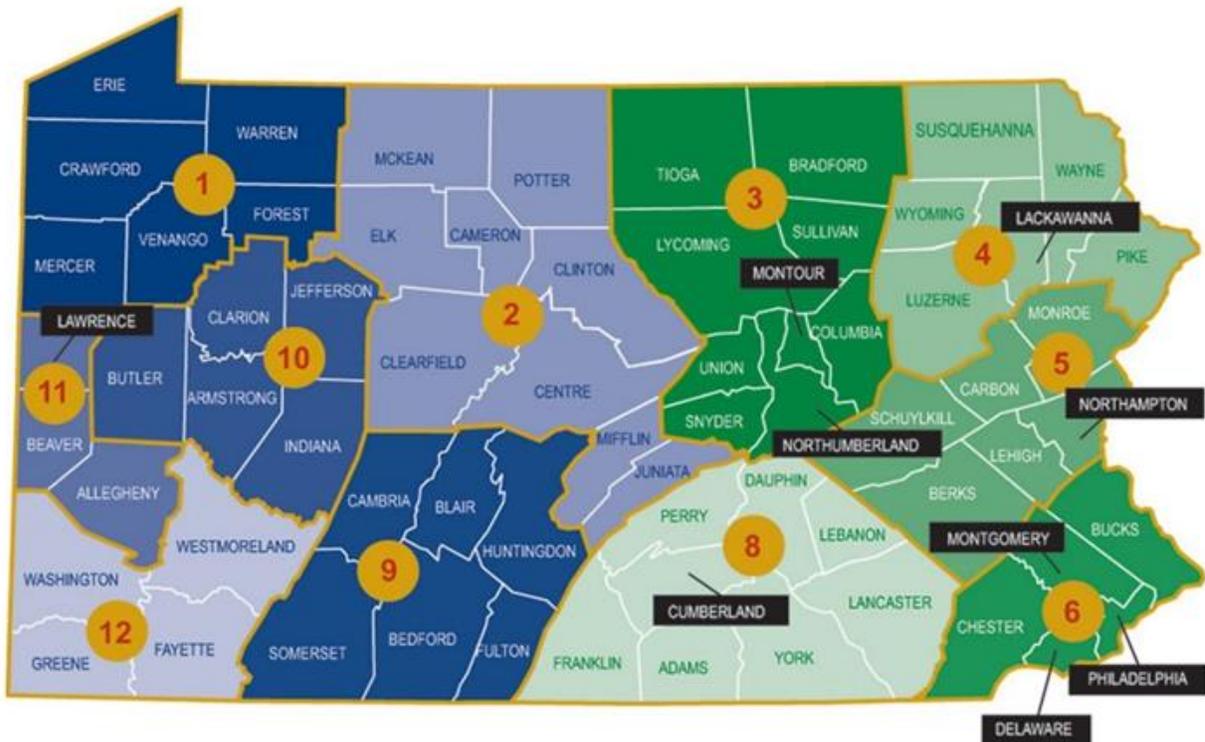
¹⁷⁰ Figure 2, Salt Usage & Spending *per Dist.*

The Department

Like the commission, the department divides its maintenance operations into districts, numbering 11 grouped together by county.¹⁷¹ Unlike the commission, which focuses on one long highway and several spur highways, the department must serve more widely distributed and far more, variable roads within the Commonwealth. The department is responsible for 95,990 snow lane miles across its 11 districts, which include interstate and expressways, other major routes and secondary state roads.¹⁷² It also “is directly responsible for . . . roughly 25,400 bridges.”¹⁷³

Figure 3

Department of Transportation Maintenance Districts



¹⁷¹ Pa. Dep’t of Transp., *2018-2019 Winter Serv. Guide* 8-29, <http://www.dot.state.pa.us/public/PubsForms/Publications/PUB%20628.pdf>. Districts are numbered 1 through 12, with number 7 skipped so that the nominal 12 districts total 11. *Id.*

¹⁷² *Id.* at 5, 7.

¹⁷³ Pa. Dep’t of Transp., *Fact Book* 1 (2019), <http://www.dot.state.pa.us/public/Bureaus/press/Factbook/PUB410/PUB%20410.html>.

Table 5
Pennsylvania Department of Transportation. Winter Services, Districts 1-12 & PA Totals 2018-19

Winter Services	District 1 Oil City	District 2 Clearfield	District 3 Montoursville	District 4 Dunmore	District 5 Allentown	District 6 King of Prussia	District 8 Harrisburg	District 9 Hollidaysburg	District 10 Indiana	District 11 Bridgeville	District 12 Uniontown	PA Total
Average Inches of Snow	83	64	43	40	30	16	23	52	46	35	84	47
Snow Lane Miles	8,410	7,815	9,418	8,816	8,325	11,106	12,713	8,391	6,985	5,890	8,235	96,104
Municipal Agreement Miles	515	150	437	447	1,166	2,972	1,227	252	123	1,761	909	9,959
Winter Budget (FY 18-19)	\$18.8 Million	\$20.7 Million	\$16.5 Million	\$23.4 Million	\$20.8 Million	\$31.0 Million	\$23.9 Million	\$21.0 Million	\$18.2 Million	\$15.5 Million	\$18.3 Million	\$228.1 Million
Actual Winter Spending (FY 17-18)	\$29.9 Million	\$29.2 Million	\$21.9 Million	\$34.4 Million	\$29.6 Million	\$38.4 Million	\$29.4 Million	\$25.6 Million	\$22.7 Million	\$20.1 Million	\$24.4 Million	\$305.6 Million
Staff Totals												
Operators	340	359	477	317	336	296	499	367	352	225	311	3,879
Temporary Operators	26	50	32	131	85	77	147	132	67	49	103	899
Mechanics	32	40	38	38	37	26	45	43	36	21	36	392
Total	398	449	547	486	458	399	691	542	455	295	450	5,170
Equipment												
Plow Trucks	166	196	220	195	208	183	310	220	163	124	196	2,181
Tow Plows	1	1	0	0	3	0	4	3	0	0	0	12
Loaders	40	61	45	46	44	34	78	54	38	38	41	519
Graders	5	7	22	15	9	4	13	15	12	6	10	118
Anti-Icing Trucks	1	19	10	44	18	26	24	25	18	37	14	252
Total	229	284	297	300	282	247	429	317	231	205	261	3,082
Stockpiles	32	53	43	40	37	36	65	45	35	31	30	447

Table 5
Pennsylvania Department of Transportation. Winter Services, Districts 1-12 & PA Totals 2018-19

Winter Services	District 1 Oil City	District 2 Clearfield	District 3 Montoursville	District 4 Dunmore	District 5 Allentown	District 6 King of Prussia	District 8 Harrisburg	District 9 Hollidaysburg	District 10 Indiana	District 11 Bridgeville	District 12 Uniontown	PA Total
Materials												
Salt Used Last Winter (Tons)	92,103	70,253	63,215	132,208	61,501	114,105	79,766	72,638	84,322	77,342	82,925	930,378
Brine Used Last Winter (Gals.)	1,884,990	1,039,939	916,654	1,743,967	885,820	432,430	1,191,890	857,695	969,551	486,510	1,111,346	11,520,792
Anti-Skid Used Last Winter (Tons)	81,760	93,862	55,056	99,951	27,261	6,695	34,601	91,063	69,920	12,422	50,336	622,927

Note: District 7 no longer exists.

Source: Pa. Dept. of Transp., Winter Serv. Guide, 2018-2019, 5-29, (Oct. 2018),
<http://www.dot.state.pa.us/public/PubsForms/Publications/PUB%20628.pdf>.

Table 5¹⁷⁴ lays out the winter operations spending during 2018-2019 as well as the resources on which it was spent. With \$305.6 million spent for that winter's operations, the department spent approximately four times more for its winter operations than what the commission spends for maintenance in an entire year. Overall, the department spent \$1,746,638,000 to maintain highways and bridges during 2017-2018.¹⁷⁵

Possible Efficiencies

While the department is slightly more efficient spending on maintenance *per* lane mile, there is no way to determine the foundation for this discrepancy. The department's size and numerosity of shorter roads closer to each other might lead to some efficiencies in the use of its equipment, particularly when it comes to plowing and salting roads during winter operations, but there is no data to support whether this is the only cause, or even one of several causes, of the slightly lower spending *per* lane mile as compared to the commission.

Furthermore, not all maintenance operations between the two are comparable. The commission hires contractors to complete many maintenance functions, including maintenance-or repair-related bridge-building, road paving and construction, storm water drainage construction, and mowing grassy areas.¹⁷⁶ On the other hand, the department does those functions itself.

The turnpike passes through some part of seven of the department's maintenance districts. In some cases, the commission's maintenance facilities are located near the department's maintenance facilities. For instance, the commission's Greensburg maintenance office is located near the department's District 12-5 maintenance office and the commission's Somerset maintenance office is located near the department's District 9-7 maintenance office.¹⁷⁷

In some instances, minor efficiencies could be realized from the commission if it is consolidated with the department; however, this would require substantial changes to how the commission operates its maintenance department. One such case would be in the number of plow trucks and passes made to clear roads during winter operations. The department's District 8 roughly overlaps with the commission's District 3. The department's District 8 has 12,713 lane miles and 310 plow trucks, resultant in 41 lane miles *per* plow truck. The commission's District 3 has 500 lane miles 74 plow trucks, resultant in approximately 6.76 lane miles *per* plow truck.¹⁷⁸ Because the turnpike is a toll road whose customers expect a higher level of service, the commission has a much shorter plow train cycle time than the department.¹⁷⁹ The commission's

¹⁷⁴ *Supra* pp. 32-33.

¹⁷⁵ Pa. Dep't of Transp., 2018 Ann. Rep. 18, http://www.dot.state.pa.us/public/Bureaus/press/Annual%20Report/2018/PUB%20409_2018.html.

¹⁷⁶ Greene, *supra* note 150.

¹⁷⁷ Pa. Dep't of Transp., PennDOT & Pa. Turnpike Statewide Facilities Map 2017.

¹⁷⁸ The ratio for all the districts in the commission is 7.1 lane miles *per* plow truck; the ratio for all the districts in the department is 44.1 lane miles *per* plow truck.

¹⁷⁹ Greene, *supra* note 162 (May 31, 2019). The commission's District 3 gets almost double the department's District 8's average inches of snow annually; however, taking the department's District 3 with the average inches of snow being equivalent to the commission's District 3 results in a nearly identical, departmental ratio of 42.8 lane miles *per* plow truck to the District 8 comparison in the text.

general policy is to keep its routes free of snow and ice, which necessitates more plow truck passes and therefore more plow trucks.

If the commission increased its lane mile *per* plow truck, it could reduce a number of its trucks from service. In Table 6 below, the number of plow trucks that the commission would have if it followed the department’s plow trucks *per* mile ratio is presented under the “Trucks, Adjusted” column. The figure was arrived at by dividing the number of lane-miles covered by a particular commission district by the department’s average plow trucks *per* mile ratio. This ratio was in turn devised by averaging the plow trucks *per* mile ratio of the department’s Maintenance Districts 4, 5, 6, 8, 9, 11, and 12.¹⁸⁰

PTC District	Number of PTC Trucks	PennDOT Trucks per Mile (Average)	Lane-Miles Covered (PTC)	Trucks, Adjusted
1	131	44	997	23
2	72	44	455	10
3	74	44	500	11
4	61	44	462	10

Although it appears that the number of plow trucks that could be eliminated from service is substantial, it is not clear that there would be a significant cost savings associated with such a reduction of equipment. The commission planned to spend \$14,000,000 for fleet equipment in fiscal year 2020.¹⁸¹ Not all fleet equipment are for plow trucks, but, assuming that all of the \$14,000,000 for fleet equipment could be saved by curtailing plow trucks, it is a fairly insignificant percentage planned for capital expenses. The fiscal year 2020 capital plan totaled \$536,607,355 so that a savings of \$14,000,000 would be approximately 2.6% of capital spending. Beyond its capital budget, the commission must also repay debt and fund its operating expenses.

However, a decline in the number of plow trucks would also result in a decline in the amount of labor (used to operate the trucks) and material (principally, salt spread onto the turnpike). Staff of Joint State Government Commission projected declines in the amount of labor and material commensurate with a hypothetical decline in the number of plow trucks to account for an adjustment of the commission’s plow trucks *per* mile ratio to approximate the department’s ratio, but the data at hand was too imprecise to obtain reliable projections worth publishing. More problematically, adjusting the commission’s ratio of plow trucks *per* snow lane mile to the departmental ratio would be unrealistic and inadvisable because the toll-paying motorist could not be reasonably expected to continue to pay a premium if the snow removal coverage is reduced by 84%.

¹⁸⁰ All of the department’s districts in which a part of the turnpike exists.

¹⁸¹ Pa. Tpk. Comm’n, *FY 2020 10-Yr. Capital Plan Rev.*, https://www.paturnpike.com/pdfs/business/FY2020_Capital_Plan.pdf.

Aside from the uncertainty in how much money could plausibly be saved by reducing plowing frequency (and therefore plowing-related labor and salt), it must be considered whether the cost savings on equipment, material and labor would really be a gain of efficiency. It is conceivable that the policy could result in cost savings but create inefficiencies. Depending on the specific inclement weather episode, less frequent plowing and salting could be an inefficient use of resources and result in unsafe or unsatisfactory conditions on the turnpike. Additionally, it would impair rather than improve customer service.

Consolidation

If the commission is to become part of a new departmental division—the Division of Interstate Operations, it would be more efficient to leave existent maintenance operations in place. Rearranging the current maintenance operations of the existent organizations could create inefficiencies rather than alleviate them. Maintenance would still need to occur on the same geography that it does now.

If maintenance operations were to be divided between a Division of Interstate Operations and the non-highway districts, it would necessitate the rearrangement of stockpiles, salt sheds, and equipment depots to cover the new distribution of responsibility for road maintenance. This would negate the purpose of a proposed consolidation of the commission into the department. The largest cost saving that could conceivably be accomplished would have the department maintain the existent turnpike network, with the commission’s existent material, equipment, and personnel falling under the authority of the department’s various Maintenance Department districts.

Personnel

The Commission

Employing approximately 1,912 workers throughout over 200 different job titles, the commission’s daily operations require a diverse and wide-ranging scope of individuals.¹⁸² The commission’s employees include executives, namely chief executive, operating, technology, financial and compliance officers as well as a chief engineer and counsel.¹⁸³ In addition to these executives, the commission employs others as directors, including those for public relations and marketing, diversity and inclusion, electronic toll collection (ETC) operations, policy and fare collection, human resources, technology infrastructure, enterprise business solutions, technology and innovation, legislative affairs, maintenance, and traffic engineering and operations.¹⁸⁴ The commission also employs individuals who are toll collectors, janitors, skilled labor professionals,¹⁸⁵ engineer project managers, highway maintenance workers and administrative officers among other positions. Table 7 shows these employees by position title.

¹⁸² Norris, *supra* note 102.

¹⁸³ Pa. Tpk. Comm’n, Tpk. Officials, https://www.paturnpike.com/yourTurnpike/ptc_officials.aspx (2019).

¹⁸⁴ Norris, *supra* note 102.

¹⁸⁵ *E.g.*, electricians, automotive mechanics and maintenance utility workers.

Table 7
Pennsylvania Turnpike Commission
Staff Counts By Position
As of March 2019

Position	Staff Counts	Percentage of Total
Toll Collector	372	19.5%
Equipment Operator 2	184	9.6
Equipment Operator 1	162	8.5
Maintenance Utility Worker	81	4.2
Supplemental Toll Collector	64	3.3
Tunnel Guard	59	3.1
Shift Leader	56	2.9
Automotive Mechanic	45	2.4
Toll Collector(Automated Systems)	42	2.2
Interchange Manager	41	2.1
Highway Maintenance Worker	36	1.9
Janitor	36	1.9
Electrician	24	1.3
Assistant Foreman	23	1.2
Foreman	22	1.2
Equipment Operator Trainer	21	1.1
Senior Construction Inspector	21	1.1
Maintenance Utility Worker/Clerk	20	1.0
Engineer Project Manager 3	19	1.0
Traffic Operations Center Technician 2	17	0.9
Construction Manager	14	0.7
Clerk 3 (audit)	14	0.7
Administrative Officer	14	0.7
Engineer Project Manager 2	13	0.7
Senior Engineer Project Manager - P.E.	11	0.6
Carpenter	11	0.6
Other*	490	25.6
Total	1,912	100.0

Source: E-mail from Sheri Norris, Hum. Res. Dir., Pa. Tpk. Comm'n (Mar. 25, 2019) (on file with Pa. J. State Gov't Comm'n).

Table 7 shows that toll collectors account for the largest employee group within the commission at 372 full-time toll employees and 64 supplemental or part-time employees for a total of 436 toll collectors or almost 23% of the commission's employees. While these positions number more than any other, this will drastically change because the commission intends to fully automate

toll collection by 2022, which will render the position of toll collector obsolete and likely be eliminated once fully automated.¹⁸⁶

The commission depends on its toll revenue to fund its operational needs so that it always remains available to its toll-paying motorists. For this very reason, the commission focuses heavily on providing a high level of immediate service in maintaining its highways.¹⁸⁷ A key example of this is the labor force employed for its winter services. The commission has approximately 2,856 snow lane miles of highway to maintain during winter conditions which on average accumulate snow ranging between 30 and 65 inches annually.¹⁸⁸ The commission must be adequately staffed to clear its highways of snow and ice. Table 2 shows that 624 employees staff the districts providing these winter services.¹⁸⁹ These employees include foremen and their assistants, equipment operators, highway maintenance and maintenance utility workers, section and district clerks, welders, mechanics and automobile equipment supervisors.¹⁹⁰ While the commission primarily performs its own winter services operations, larger paving and highway construction operations generally are performed with the assistance of independent private contractors. This eliminates the need to hire a more significant construction labor force.

The Department

Like the commission, the department employs a wide variety of personnel to staff its daily operations. The department's workforce is much larger in number than the commission's, with 12,984 employees¹⁹¹ divided into five main areas of operation known as deputates which include the following:¹⁹²

- Highway Administration
- Driver and Vehicle Services
- Planning
- Multimodal Transportation
- Administration.

There are "more than 7,200 employees" within "the largest depute," Highway Administration, which is engaged in "design, construction, maintenance, materials testing, environmental review, and safety and traffic engineering."¹⁹³ These employees "work in central headquarters located in Harrisburg and in 11 engineering districts with facilities in all . . . counties."¹⁹⁴ With "[n]early three-quarters of" the department's "annual budget . . . invested in approximately 121,000 miles of state and local highways and 32,000 state and local bridges," it

¹⁸⁶ Norris, *supra* note 18.

¹⁸⁷ Greene, *supra* note 150.

¹⁸⁸ Pa. Tpk. Comm'n, *Winter Servs. Guide* 3, 8, 11, 13, 15, 17 (2018-2019).

¹⁸⁹ *Supra* p. 27.

¹⁹⁰ *Id.*

¹⁹¹ E-mail from Christopher J. O'Neal, Dir. Hum. Res. Delivery Cens., Pa. Office of Admin. (July 15, 2019) (on file with Pa. J. State Gov't Comm'n).

¹⁹² Pa. Dep.t of Transp., *supra* note 173, at 2.

¹⁹³ *Id.* The department "contracts with private industry for major construction projects while using in-house staff for routine maintenance and winter services." *Id.*

¹⁹⁴ *Id.* at 1.

“is directly responsible for nearly 40,000 miles of highway and roughly 25,400 bridges” throughout the Commonwealth.¹⁹⁵

The Reason Foundation tracks the performance of state-owned highway systems, through its annual highway report, by ranking each of the 50 states in 13 highway performance categories.¹⁹⁶ Overall, Pennsylvania ranked 35th out of 50 states.¹⁹⁷ Administrative disbursements, which are “general and main-office expenditures in support of state-administered highways,” are included as one of the 14 categories.¹⁹⁸ In 2016, administrative disbursements consisted of “about 6.3 percent of the total disbursements, totaling \$8.81 billion” for the U.S. state-owned highway system.¹⁹⁹ Pennsylvania ranked 28th out of 50 states in administrative disbursements with \$5,408 spent per lane-mile.²⁰⁰ Pennsylvania’s ranking of 28th in administrative disbursements was one of the Commonwealth’s better rankings among the 14 categories but behind overall and rural fatality rates.²⁰¹

For Driver and Vehicle Services, the department employs “more than 1,100 employees” to issue more than 10,300,000 driver’s licenses and 12,036,372 registrations for vehicles.²⁰² “In addition, it operates 75 driver license centers and 26 stand-alone photo license centers.”²⁰³

The Planning “deputate works with the federal government and local planning organizations to develop the Twelve Year Transportation Program, which serves as the blueprint for highway, bridge, aviation, rail freight, and mass transportation improvements.”²⁰⁴ It also “manages the cash flow from federal and state revenues to ensure the continuous operation of improvement projects” and “has sections working on long-range research and map making.”²⁰⁵

¹⁹⁵ *Id.*

¹⁹⁶ Baruch Feigenbaum *et al.*, Reason Found. 24th Ann. Highway Rep. i, Aug. 2019, <https://reason.org/wp-content/uploads/24th-annual-highway-report-2019.pdf>.

¹⁹⁷ *Id.* at 4.

¹⁹⁸ *Id.* at 22. “Each state’s overall rating is determined by rankings in 13 categories” with the overall rating being the 14th. *Id.* at i.

¹⁹⁹ *Id.* at 22.

²⁰⁰ *Id.*

²⁰¹ *Id.* at 4. The urban fatality rate also ranked 28th. *Id.*

²⁰² Pa. Dep.t of Transp., *supra* note 173, at 2, 10-11.

²⁰³ *Id.*

²⁰⁴ *Id.* at 2.

²⁰⁵ *Id.*

The deputate for Multimodal Transportation “oversees aviation, rail freight, public transportation, ports, pedestrian, and bike programs” under the Commonwealth’s comprehensive transportation plan.²⁰⁶ There are 34 urban and rural fixed route transit agencies and more than 7,300 transit vehicles.²⁰⁷ There are “127 public-use airports, 243 private-use airports, and 280 private-use heliports.”²⁰⁸ Its “staff oversee about” \$1,500,000,000 “annually in investments in public transportation systems” including “the Keystone passenger rail corridor between Philadelphia and Harrisburg, and the Pennsylvanian, which provides passenger rail service between Philadelphia and Pittsburgh.”²⁰⁹ In the 2017-2018 state fiscal year, it directly supported “more than 400 million transit trips.”²¹⁰

The deputate for Administration has bureaus to “oversee fiscal management, computer systems, mobile applications, telecommunications, equal opportunity/equal employment opportunity in contract compliance, training, employee safety programs, human resources, office services, facilities management, organizational change management, continuous quality improvements, inter-governmental and local community partnerships, employee engagement activities, and Pennsylvania Welcome Centers.”²¹¹

The department “also has offices with responsibilities for legal, policy, legislative and communications issues.”²¹² Table 8 shows the department’s staff count by position.

Table 8
Pennsylvania Department of Transportation
Staff Counts By Position
As of June 2019

Position	Staff Counts	Percentage of Total
Transport Equipment Operator A	2,117	16.3%
Transport Equipment Operator B	1,961	15.1
Government Services Intern	563	4.3
Engineering Scientific and Technical Intern	542	4.2
Highway Foreman 2	515	4.0
Diesel Construction Equipment Mechanic	372	2.9
Transport Construction Inspection	370	2.8
Clerk 2	269	2.1
Clerk 3	254	2.0
Civil Engineer Transport	247	1.9
Transport Construction Inspection Supervisor	229	1.8
Driver License Examiner Assistant	222	1.7

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 12.

²⁰⁸ *Id.* at 2.

²⁰⁹ *Id.*

²¹⁰ *Id.* at 2, 12.

²¹¹ *Id.* at 2. The department has 14 Welcome Cens. near borders with other states. *Id.* at 15.

²¹² *Id.* at 2.

Table 8
Pennsylvania Department of Transportation
Staff Counts By Position
As of June 2019

Position	Staff Counts	Percentage of Total
Sr. Civil Engineering Supervisor Transport	215	1.7
Clerk 1	211	1.6
Highway Maintenance Worker	191	1.5
Driver License Examiner	174	1.3
Assistant Highway Maintenance Manager	158	1.2
Transport Equipment Operation Specialist	155	1.2
Clerk Typist 2	131	1.0
Maintenance Repairmen 2	131	1.0
Clerk Typist 3	102	0.8
Highway Forman 3	98	0.8
Civil Engineer Manager Transport	97	0.7
Mechanic Supervisor	83	0.6
Roadway Programs Technician 2	82	0.6
Clerk Supervisor 2	79	0.6
Civil Engineer Bridges	76	0.6
Highway Equipment Manager 2	73	0.6
Transportation Construction Manager 1	73	0.6
Senior Civil Engineer Manager	67	0.5
Custodial Worker 1	64	0.5
Traffic Control Specialist	63	0.5
Tradesmen Helper	61	0.5
Survey Technician	60	0.5
Welder	60	0.5
Civil Engineer Supervisor	60	0.5
Senior Civil Engineer Transportation	59	0.5
Transportation Construction Manager 2	58	0.4
Administrative Officer 1	57	0.4
Purchasing Agent	57	0.4
Roadway Programs Technician 1	57	0.4
Civil Engineer Trainee	56	0.4
Roadway Programs Coordinator	54	0.4
Senior Civil Engineer Supervisor Bridges	52	0.4
Highway Designer	50	0.4
Driver License Center Supervisor	48	0.4
Tourist Information Counselor	45	0.3
Administrative Assistant 1	44	0.3
Real Estates Specialist	43	0.3

Table 8
Pennsylvania Department of Transportation
Staff Counts By Position
As of June 2019

Position	Staff Counts	Percentage of Total
Tunnel Maintainer	38	0.3
Transportation Construction Manager 3	37	0.3
Senior Highway Maintenance Manager	36	0.3
Transportation Planning Specialist 1	35	0.3
Highway Maintenance Manager	32	0.2
Stock Clerk 2	32	0.2
Survey Technician Supervisor	32	0.2
Roadway Programs Manager 1	31	0.2
Transportation Planning Manager	28	0.2
Automotive Mechanic	28	0.2
Highway Administration Program Manager 1	27	0.2
Administrative Officer 2	27	0.2
Civil Engineer Manager Bridges	27	0.2
Municipal Services Specialist	27	0.2
Civil Engineer Consultant Transportation	26	0.2
Accounting Assistant	26	0.2
Environmental Planner 2	26	0.2
Highway Draftsman Designer	26	0.2
Secondary School Intern	26	0.2
Human Resource Analyst 1 General	25	0.2
Transportation Planning Specialist 2	25	0.2
Assistant Highway District Engineer	24	0.2
Highway Design Manager	23	0.2
Roadway Programs Specialist	23	0.2
Transportation Equipment Operator Trainee	22	0.2
Semi-Skilled Laborer	21	0.2
Management Analyst 2	21	0.2
Regional Traffic Management Center Operator	21	0.2
Other	1,307	10.1
Total	12,984	100.0

Source: E-mail from Christopher J. O'Neal, Dir. Hum. Res. Delivery Cens., Pa. Office of Admin. (July 15, 2019) (on file with Pa. J. State Gov't Comm'n).

Consolidation

As mentioned previously, literature on governmental consolidation has found that operating costs seldom decrease after agencies consolidate, largely due to differing salary and compensation plans generally ending up standardized at the higher level.²¹³ Moreover, reconciling job classifications, pay scales, and workforce cultures create significant issues when distinct government agencies consolidate.²¹⁴ Notwithstanding this literature, personnel data from both the commission and department has been obtained and reviewed to evaluate the potential cost savings and efficiencies that could potentially be obtained from a consolidation.

Due to limitations in the data,²¹⁵ this report does not project direct efficiencies and customer service improvements attributable to a consolidation of the commission and the department. Rather than semi-arbitrarily designating positions assumed to be redundant from a consolidation, discussions were held with departmental employees to discern what could be the most logical opportunities for general efficiencies broken down by centralized administrative and logistical function areas of both the commission and the department. Those function areas include the following:

- Executive
- Compliance
- Legislative Affairs
- Human Resources
- Policy and External
- Legal
- Finance and Administration
- Information Technology
- Communications and Public Relations
- Employee Benefits
- Facilities and Energy Management
- Traffic Engineering
- Equal Opportunity

These areas were selected because despite certain functional differences, both the commission and the department hire professionals in these essential areas to execute its responsibilities regardless of those functional differences. For example, both employ human resource employees to manage their workforce through hiring, employee benefits coordination, and employee job performance.²¹⁶ Human resource professionals also become involved to a certain extent in labor relations between the agencies and their employees. Like human resources, the employment of legal staff is essential to the function of both agencies. Lawyers for both serve in advisory roles, transactional matters and matters involving litigation. Plus, this is largely centralized staffing rather than deployed throughout the Commonwealth.

²¹³ *Supra* pp. 23-24.

²¹⁴ *Id.*

²¹⁵ A comprehensive desk audit was not conducted to align staffing.

²¹⁶ The department does this through Pa. Office of Admin..

During the current gubernatorial administration, the department consolidated its human resources services within a shared services model to more efficiently deliver the same services among departments *via* a complement in Office of Administration.²¹⁷ This transition eliminated positions within the human resources department by placing hiring freezes on new vacancies as an effort to reduce personnel costs, which approached 23% of staffing.²¹⁸ This reduction saved the cost of salary and benefits, but the resultant workloads increased *per* employee causing some delayed completion of work tasks.²¹⁹ Consequently, the Joint State Government Commission staff believes that a 20% reduction in workforce in connection with a hypothetical consolidation of selected functional areas of both the department and the turnpike commission could save cost but result in inefficiency and impair customer service.²²⁰ In other words, routine but necessary functions would be less disrupted by a smaller reduction and allow for a smoother transition to consolidation.

If the commission is consolidated within the department, it could potentially implement a 10% decrease in the selected areas from either current workforce. While the illustration in Table 9 shows the reduction from the commission, it could occur in either or a combination of the two; as such, the staff of Joint State Government Commission is not advocating a reduction in one or the other. For fiscal year 2018-2019, the total budgeted amount for wages and salaries for all the turnpike commission's employees within these departments was approximately \$29,082,732.²²¹ For the same year, the commission budgeted approximately \$23,737,291 for employee benefits within these departments.²²² When including the rest of the commission's workforce in toll collection, maintenance, engineering, and state police-related employment, the commission budgeted approximately \$107,355,440 for all commission salaries and \$87,623,382 for all commission employee benefits.²²³ A ten percent reduction in commission's administrative workforce after a consolidation of the two agencies could potentially realize a total savings of approximately \$5,282,002. For a more detailed breakdown of this proposed reduction within the commission's administrative workforce, see Table 9 below.

²¹⁷ Info. tech. servs. were also consolidated. NASCA Inst., Consolidating Hum. Res. & Info. Tech. Servs. in the Commw. (2017), <https://collaborate.nasca.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=9b1a3661-7a00-ec63-a30d-254338922fa3&forceDialog=0>.

²¹⁸ Interview w/O'Neal, *supra* note 191 (July 11, 2019).

²¹⁹ *Id.*

²²⁰ In this case, the customer being the workforce throughout the consolidated operation.

²²¹ E-mail from Nikolaus Grieshaber, Chief Fin. Officer, Pa. Tpk. Comm'n (June 10, 2019) (on file with Pa. J. State Gov't Comm'n).

²²² *Id.*

²²³ *Id.*

Table 9
Estimated Cost Savings
From Merging the PTC's Administrative Personnel with PennDOT
FY 2018-19 Budget Data

Fund Center	PTC Wages & Salaries	PTC Benefits ¹	10% Savings in Administrative Personnel Costs
<i>Administration</i>			
Executive	\$1,148,436	\$937,352	\$208,579
Compliance	2,904,574	2,370,710	527,528
Legislative Affairs	160,122	130,691	29,081
Human Resources	1,934,233	1,578,719	351,295
Policy and External	193,925	158,281	35,221
Legal	1,078,365	880,160	195,853
Finance & Administration	4,602,175	3,756,290	835,846
Information Technology	4,963,275	4,051,019	901,429
Communications & Public Relations	1,366,997	1,115,741	248,274
Employee Benefits	2,583,163	2,108,375	469,154
Facilities and Energy Management	5,528,512	4,512,365	1,004,088
Traffic Engineering	2,371,057	1,935,254	430,631
Office of Diversity	247,898	202,334	45,023
Sub-Total	29,082,732	23,737,291	5,282,002
Toll Collection	36,583,287	29,859,235	N/A
Maintenance	41,332,612	33,735,629	N/A
Engineering	173,096	141,281	N/A
*Pa State Police	4,963	4,051	N/A
Other	178,750	145,896	N/A
PTC Grand Total	107,355,440	87,623,382	5,282,002

*This number does not reflect the total monetary amount spent on State Police coverage by the PTC.

1. Benefit amounts are calculated for each Fund Center by pro-rating the Pa. Tpk. Commission's overall benefit amount of \$87,623,382 by each Fund Center's wages and salaries. (Ex: Executive \$1,148,436 / \$107,355,440 x \$87,623,382 = \$937,352).

Source: E-mail from Nikolaus Grieshaber, Chief Fin. Officer, Pa. Tpk. Comm'n (June 10, 2019) (on file with Pa. J. State Gov't Comm'n).

Even if a consolidation between the commission and the department realized this projected 10% (\$5,282,002) reduction in centralized, administrative spending, the savings would be nominal when measured against the overall budget of both. The commission's overall budget for the 2018-2019 fiscal year was \$1,254,265,000.²²⁴ The department's general government budget for the 2018-2019 fiscal year was \$9,020,973,000.²²⁵ The estimated \$5,282,002 in personnel savings in wages, salaries, and benefits would amount to less than 1% of the combined \$10,275,238,000 budget of both.²²⁶ Despite the estimated savings being a small percentage of the combined budgets of both, \$5,282,002 in savings is still a possible benefit to be realized from a consolidation. Further, this savings is just one example of possible cost-savings that could be derived from a consolidation.

Facilities

The Commission

Overall, the commission manages about 400 total facilities along the turnpike.²²⁷ The facility counts presented in Table 10²²⁸ may include entries where multiple facilities are physically located within the same structure.²²⁹ For example, the commission's server farm is co-located at an administrative office.²³⁰ When categorizing the facilities, 44.5%²³¹ are categorized as "Other," which mainly consist of ancillary buildings or sheds.²³² Fare collection sites are the next largest category of facilities, with a total of 68 (or 17%).²³³ The commission intends to completely convert to cashless tolling by the fall of 2022,²³⁴ which will make these obsolete and many will be demolished.²³⁵ Furthermore, 64 facilities (or 16%) are self-supporting towers and monopoles.²³⁶ The remaining 90 facilities (22.5%)²³⁷ represent any potential cost savings, efficiencies, or customer service improvements *via* a consolidation of the commission with the department.

The commission's Facilities and Energy Management Operations (FEMO) employs a staff of about 90, consisting primarily of skilled laborers such as electricians, plumbers, and carpenters.²³⁸ The wages and salaries accounted for \$5.5 million (or 48.2%) of the FEMO's total

²²⁴ Pa. Tpk. Comm'n, Operating Budget (2018-2019), https://www.paturndpike.com/pdfs/business/2019-2020_Operating_Budget.pdf.

²²⁵ Governor Wolf, *Exec. Budget*, E39-6 (2019-2020), https://www.budget.pa.gov/PublicationsAndReports/CommonwealthBudget/Documents/2019-20%20Proposed%20Budget/2019-20_Budget_Document_Web.pdf.

²²⁶ 0.051%.

²²⁷ E-mail from L. Keith Jack, Manager of Facilities Operations, Pa. Tpk. Comm'n (May 29, 2019) (on file with Pa. J. State Gov't Comm'n).

²²⁸ *Infra* p. 48.

²²⁹ Telephone interview Jack, *supra* note 227 (May 30, 2019).

²³⁰ *Id.*

²³¹ 178 facilities.

²³² Jack, *supra* note 227.

²³³ *Id.*

²³⁴ Norris, *supra* note 102.

²³⁵ Jack, *supra* note 229.

²³⁶ Jack, *supra* note 227.

²³⁷ *Id.*

²³⁸ *Id.*, telephone interview. (Apr. 18, 2019).

\$11.4 million budget in FY 18-19.²³⁹ The largest budgeted amounts for FEMO's operating expenses were \$3.1 million (or 27.2%) for professional fees and services and \$1.4 million (or 12.3%) for materials and supplies.²⁴⁰

FEMO expects that a consolidation between the commission and the department would result in little, if any, viable savings and efficiencies because much of its facilities would likely need to remain intact to service turnpike roads.²⁴¹ Further, miscellaneous items such as the purchase of energy and fuel are already purchased by the commission through the same provider as the department with practically identical contracts.²⁴²

The Department

The department manages approximately 4,200 total facilities throughout the Commonwealth.²⁴³ That figure represents the facilities maintained rather than used by the department. For instance, there are more 75 Driver's License Centers throughout the Commonwealth, but Table 10²⁴⁴ shows that only 15 are currently maintained by the department.²⁴⁵

The vast majority of the department's facilities—3,627 (86.4%)—are ancillary buildings and sheds, represented as "Other" in Table 10. Stock Piles are the next largest category, numbering 428 (10.2%). Stock Piles are one of the facility types that have been shared between the commission and the department through agility agreements.²⁴⁶ The Pennsylvania Procurement Code authorizes the department to enter in to agility agreements to exchange services instead of money with eligible partners and the American Federation of State, County and Municipal Employees (AFSCME).²⁴⁷ While the agility program allows the commission and the department to share resources regardless of a consolidation, there are still limitations and legal requirements they have to abide by as separate entities. The program requirements include:²⁴⁸

- A formal written agreement (rather than a letter of cooperation)
- The Partner must be a public entity that is considered to be a local public procurement unit by the department
- No exchange of money
- The Motor License Fund cannot incur a deficit, meaning that the exchange must be reasonably equal
- Materials alone cannot be exchanged with some exceptions: road signs, salt brine and magnesium chloride.

²³⁹ *Id.*, *supra* note 227 (Apr. 24, 2019).

²⁴⁰ *Id.*

²⁴¹ *Id.*, *supra* note 238.

²⁴² *Id.*

²⁴³ E-mail from Pearsall, *supra* note 148 (May 15 & June 6, 2019) (on file with Pa. J. State Gov't Comm'n).

²⁴⁴ *Infra* p. 48.

²⁴⁵ Pa. Dep't of Transp. Driver & Vehicle Servs., Driver Licensing, <https://www.dmv.pa.gov/Driver-Services/Driver-Licensing/pages/drivers-license.aspx> (Last visited July 10, 2019).

²⁴⁶ Pearsall, *supra* note 148.

²⁴⁷ Pa. Dept. of Transp., *Agility Partner Guide 2*, 4 (2019),

<http://www.dot.state.pa.us/public/PubsForms/Publications/Pub%20470.pdf>.

²⁴⁸ *Id.* at 5.

Table 10
Pennsylvania Turnpike Commission and Pennsylvania
Department of Transportation Facilities
May 2019

Facility	Pennsylvania Turnpike Commission	Pennsylvania Department of Transportation
Admin. Offices	4	--
County Offices	--	67
District Offices	--	11
Driver's License Centers	--	15
Fare Collection Sites	68	--
Fleet	1	1
Maintenance Sheds	22	--
Riverside Office Complex	--	1
Roadside Rest Area	--	35
Server Farm	1	1
Service Plazas	17	--
Sign Shop	--	1
Stock Piles	34	428
Test Lab	1	1
Tower Sites	64	--
Tunnel Offices	10	--
Welcome Centers	--	12
Other	178	3,627
Total Facilities (# is estimated to include all ancillary buildings)	400	4,200

Source: E-mail from: L. Keith Jack, Manager of Facilities Operations, Pa. Tpk. Comm'n (May 29, 2019) (on file with Pa. J. State Gov't Comm'n); Terrence G. Pearsall Jr., Chief, Facilities Mgmt. Div., Pa. Dept. of Transp. (May 15 & June 6, 2019) (on file with Pa. J. State Gov't Comm'n).

Note: In some cases, the figures above only include facilities managed by the agency. In addition, some facilities share a location and may even be housed within the same building. For example, the Pa. Tpk. Commission's server farm is co-located at one of the four administrative offices.

Possible Efficiencies

In 2011, the commission and the department established a “Mapping the Future Initiative . . . to pool the resources of Pennsylvania’s transportation agencies to improve efficiency, save costs, and develop innovative solutions for the delivery of transportation projects throughout the [C]ommonwealth.”²⁴⁹ Groups from facilities and maintenance developed “agility work plans ranging from the sharing of salt storage facilities and materials to co-location of maintenance personnel at one location.”²⁵⁰

To identify “areas of potential savings opportunities across the entire state,” the facilities group developed a “GIS map identifying all facilities within a 10 mile radius of the” turnpike and created a database for future use.²⁵¹ Nine major accomplishments were reported, consisting of approximately \$18,500,000 in combined one-time savings and generating \$328,000 in yearly revenue.²⁵² However, \$15,200,000 (82%) of that cost savings was actually a cost avoidance amount realized by the commission after the department shared its design standards for the construction of new maintenance facilities and the commission was able to revise designs in Somerset and Plymouth Meeting.²⁵³ Furthermore, the \$328,000 in yearly revenue that was generated from enrolling 49 facilities in a Demand Response Program is discontinued.²⁵⁴ While the facilities working group achieved several notable accomplishments during the four-year initiative, most of the savings were generated from a shared design plan and through agility agreements which occurred and can reoccur regardless of a consolidation of the commission and the department.

While these efficiencies were positive, it took the commission and the department four years to generate them. The geography of the commission’s and the department’s assets remain the same or nearly the same as then so that staff of Joint State Government Commission has not been able to identify further efficiencies in these facilities.

Information Technology Services

The commission’s SAP²⁵⁵ system and the Commonwealth’s were not designed around the same need set and would likely require significant time and resources to integrate. This system underpins all purchases, contracts, vehicle management and information technology for both entities. Based upon the historical cost of upgrades, expansions and modifications of the commission’s SAP system, it is conceivable an integration could cost approximately \$15 million and take several years to complete.²⁵⁶ Based upon past upgrade cost estimates, other software,

²⁴⁹ Pa. Tpk. Comm’n & Dep’t of Transp., *supra* note 17, at 1. This is discussed further, *supra* pp. 24-25.

²⁵⁰ *Id.*

²⁵¹ *Id.* at 2.

²⁵² *Id.* at 2-3.

²⁵³ *Id.* at 1-2.

²⁵⁴ Pearsall, *supra* note 148.

²⁵⁵ Systems Applications and Products in data processing that functions as enterprise resource planning software.

²⁵⁶ Shuey, *supra* note 77.

communications, and hardware integration costs may add anywhere from \$500,000 to \$5,000,000.²⁵⁷

When the Commonwealth consolidated its human resources in 2017, it did the same for its information technology “under a shared services model.”²⁵⁸ Staff of Joint State Government Commission does not have the technical competence to align information technology between the turnpike commission and the department or evaluate what has been accomplished to date by Office of Administration on behalf of the department.²⁵⁹ As of now, Office of Administration’s delivery center supporting the department is the one for infrastructure and economic development.²⁶⁰

Information technology services between the commission and the department could be shared regardless of a consolidation. Legislation has been introduced to establish Office of Information Technology within the Office of Administration to oversee and achieve information technology consolidation for state agencies that would extend to independent agencies so that the commission would be covered.²⁶¹ Similarly, integration of the commission’s radio system with the Statewide Radio Network is being discussed, which could cost as much as \$10,000,000 in capital expenditure to replace;²⁶² however, this could also occur regardless of a consolidation of the commission and the department.

²⁵⁷ *Id.*

²⁵⁸ NASCA Inst., *supra* note 217, at 3. Shared services eliminate redundancies in pursuit of efficiencies. *Id.* at 3 n.1.

²⁵⁹ The Commw. has botched past projects involving information technology, notably ones involving radios for Pa. State Police and Unemployment Compensation Call Cens..

²⁶⁰ Pa. Office of Admin., HR & IT Shared Servs. Transformation, <https://www.oa.pa.gov/shareservices/Pages/default.aspx> (2019).

²⁶¹ Pa. S. No. 810 (Sess. of 2019).

²⁶² Shuey, *supra* note 77.

ALIGNING CONTRACTUAL AGREEMENTS

A consolidation of interstate operations would involve many complications, especially regarding preexistent contractual obligations of both the commission and the department. Many of their employees are members of labor unions who retain the legal and contractual right to collectively bargain over terms and conditions of employment on behalf of their membership. The collection of bond instruments associated with act numbers 44 of 2007²⁶³ and 89 of 2013²⁶⁴ among other financing agreements that the commission executed in recent years are further complications. A consolidation must contemplate what is to become of these intact, binding agreements should a consolidation of the two entities take place. As such, Senate Resolution no. 209 directed the Joint State Government Commission to “[e]valuate and recommend on how to align contractual agreements” resultant from a consolidation of the two.²⁶⁵ Lacking the legal authority to align collectively bargained labor contracts as well as other preexistent agreements, Joint State Government Commission staff focuses below on the law governing collective bargaining agreements and can ultimately highlight the potential labor-related issues that could arise as a result of a merger.

Labor Agreements

The National Labor Relations Act

In 1935, the National Labor Relations Act²⁶⁶ (NLRA) was enacted “to protect the rights of employees and employers, to encourage collective bargaining, and to curtail certain private sector labor and management practices” that “can harm the general welfare of workers, businesses, and the U.S. economy.”²⁶⁷ The protection of employees’ rights “to organize and bargain collectively effectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing sources of industrial strife and unrest.”²⁶⁸ This protection encourages “practices fundamental to the friendly adjustment of industrial disputes” regarding “wages, hours, or other working conditions, and” helps restore “equality of bargaining power between employers and employees.”²⁶⁹

²⁶³ P.L.169, No.44.

²⁶⁴ P.L.974, No.89.

²⁶⁵ Pa. S. Res. No. 209 (Sess. of 2017); appdx. A, *infra* pp. 150.

²⁶⁶ U.S.C. §§ 151-169.

²⁶⁷ Nat’l Labor Relations Bd., Nat’l Labor Relations Act, <https://www.nlr.gov/how-we-work/national-labor-relations-act> (last visited Aug. 21, 2019).

²⁶⁸ 29 U.S.C. § 151.

²⁶⁹ *Id.*

The NLRA expressly grants employees “the right to self-organization, to . . . bargain collectively through” their chosen representatives “and to engage in other concerted activities for . . . mutual aid . . . and to refrain from . . . activities.”²⁷⁰ The scope of these protections only extend to private employees because the act expressly defines “employee” to exclude those who are employed “by any other person who is not an employer as herein defined,” and “employer” is defined to exclude “any wholly owned Government corporation . . . or any State or political subdivision thereof.”²⁷¹

Pennsylvania’s Public Employe Relations Act

While the NLRA does not protect public employees’ rights to organize at the federal level, these rights are protected at the state level. Like other states, Pennsylvania protects the rights of public employees to organize and collectively bargain with their employers under the Public Employe Relations Act (PERA).²⁷² The PERA’s public policy is “to promote orderly and constructive relationships between all public employers and their employes subject . . . to” citizens’ paramount right “to keep inviolate the guarantees for their health, safety and welfare.”²⁷³ Accordingly, the law’s principle objective is to minimize unresolved disputes between public employers and their employes by providing:²⁷⁴

- Public employes the right to organize and choose their representatives;
- Public employers the requirement to negotiate and bargain with employe organizations and to enter into written agreements
- Procedures to protecting the rights of the public employe, public employer and public at large.

A “public employe” is “any individual employed by a public employer” excluding elected officials, gubernatorial appointees subject to senatorial approval, management level employes, confidential employes, clergymen, and employes covered by Policemen and Firemen Collective Bargaining Act.²⁷⁵ “Public employer” is “the Commonwealth . . . , its political subdivisions . . . and any officer, board, commission, agency, authority, or other instrumentality thereof.”²⁷⁶

The PERA specifically authorizes “public employes to organize, form, join or assist in employe organizations” and “to engage in lawful concerted activities” to collectively bargain “or other mutual aid.”²⁷⁷ Wages, hours and terms and conditions of employment are negotiated under collective bargaining between the public employer and the public employes’ representative.²⁷⁸ The

²⁷⁰ *Id.* § 157.

²⁷¹ *Id.* § 152.

²⁷² Act of July 23, 1970 (P.L.563, No.195); 43 P.S. §§ 1101.101-1101.2301. Pa. Labor Relations Act was enacted in 1937 as a state version of the NLRA to protect the rights of private employees to self-organize and collectively bargain. Act of June 1, 1937 (P.L.1168, No.294); 43 P.S. §§ 211.1-211.13.

²⁷³ Act of July 23, 1970 (P.L.563, No.195), § 101; 43 P.S. § 1101.101.

²⁷⁴ *Id.*

²⁷⁵ *Id.* § 301; 43 P.S. § 1101.301. Policeman & Firemen Collective Bargaining Act is the act of June 24, 1968 (P.L.237, No.111); 43 P.S. §§ 217.1-217.10.

²⁷⁶ Act of July 23, 1970 (P.L.563, No.195), § 301; 43 P.S. § 1101.301.

²⁷⁷ *Id.* § 401; 43 P.S. § 1101.401.

²⁷⁸ *Id.* § 701; 43 P.S. § 1101.701.

collective bargaining requires the negotiating conferences to be in good faith and at reasonable times, but neither party must “agree to a proposal or” concede.²⁷⁹ Any agreement reached would be executed in a resultant written contract.²⁸⁰

Public employers must comply with the PERA to avoid unfair practices that are statutorily prohibited.²⁸¹ Statutory unfair practices are:²⁸²

- Interfering, restraining or coercing employees from exercising statutory rights
- Dominating or interfering with any employee organization
- Discriminating in employment to encourage or discourage membership in any employee organization
- Discharging or otherwise discriminating against an employee for providing any testimony under the PERA
- Refusing to bargain collectively in good faith with the exclusive employee representative in an appropriate unit, including the discussion of grievances
- Refusing to write and sign an agreement that was collectively bargained
- Violating rules of the Pennsylvania Labor Relations Board regulating the election of representation
- Refusing to comply with binding arbitration
- Refusing to comply with the requirements of “meet and discuss.”

An employer unilaterally transferring work out of a recognized bargaining unit is recognized by the courts as an unfair practice within Pennsylvania. “[I]t is undisputed that a public employer commits an unfair labor practice if it unilaterally transfers bargaining unit work to persons outside the unit, such persons being non-bargaining unit employees of that same employer, outside contractors, volunteers, etc., without prior negotiation with the employee representative.”²⁸³ This could apply whether the work was performed exclusively by a bargaining unit or if transferring the “work outside of the bargaining unit is not consistent with past practice in a significant way.”²⁸⁴

Fair Share Fees

In 1988, The Administrative Code of 1929 was amended to authorize employee organizations to collectively bargain for and then collect what was referred to as a “fair share fee” from publicly employed nonmembers of the collective bargaining unit.²⁸⁵ This amendment defines “Commonwealth” to include “any board, commission, department, agency or instrumentality of the Commonwealth.”²⁸⁶ It also defines “fair share fee” as “the regular membership dues required

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.* § 1201; 43 P.S. § 1101.1201.

²⁸² *Id.*

²⁸³ *Ass’n of Pa. State Coll. & Univ. Faculties v. Pa. Labor Relations Bd.*, 661 A.2d 898, 901 (Pa. Commw. Ct. 1995) (citations omitted).

²⁸⁴ *Am. Fed. of State, Cnty. & Mun. Emps., Council 13, AFL-CIO v. Pa. Labor Relations Bd.*, 616 A.2d 135, 139 (Pa. Commw. Ct. 1992).

²⁸⁵ Act of Apr. 9, 1929, (P.L.177, No.175), § 2215; 71 P.S. § 575.

²⁸⁶ *Id.*

of members of the exclusive representative less the cost for the previous fiscal year of its activities . . . which were not reasonably employed to implement . . . the duties of the employe organization as exclusive representative.”²⁸⁷ The authorized fair share fees for nonmembers are subject to the collective bargaining agreement.²⁸⁸

The Public Employee Fair Share Fee Law (PEFSFL) was enacted in 1993 to essentially extend fair share fees to all political subdivisions and community colleges within the Commonwealth.²⁸⁹ Accordingly, the PEFSFL provides that a collective bargaining agreement can require “each nonmember of a collective bargaining unit . . . to pay to the exclusive representative a fair share fee.”²⁹⁰

Fair share fees have been challenged in previous years as a deprivation of the freedom of association.²⁹¹ One notable challenge was filed by teachers seeking restitution of the service charges,²⁹² otherwise referred to as fair share fees. Fair share fees counteract “the incentive that employees might otherwise have to become ‘free riders’ to refuse to contribute to the union while obtaining benefits of union representation that necessarily accrue to all employees” by an “arrangement . . . thought to distribute fairly the cost of these activities among those who benefit.”²⁹³ The exclusivity rule for representation is designed to generate labor peace by avoiding multiple agreements among rival unions “holding quite different views as to” terms and conditions of employment.²⁹⁴ “The desirability of labor peace is no less important in the public sector, nor is the risk of ‘free riders’ any smaller.”²⁹⁵ Formerly, the “impingement upon associational freedom created by the” fair share fees was adjudicated to be constitutional “insofar as the service charge is used to finance expenditures by the Union for . . . collective bargaining, contract administration, and grievance adjustment.”²⁹⁶ The application of this ruling was not distinguished by governmental as opposed to private employment because the public employee was not thought to have “a weightier First Amendment interest than a private employee in not being compelled to contribute to the costs of exclusive union representation.”²⁹⁷ This ruling allowed a union “to require every employee to contribute to the cost of collective-bargaining activities,” but prevented “compulsory subsidization of ideological activity by employees who object thereto.”²⁹⁸

Implementation of Pennsylvania’s fair share fee has been challenged in previous years, but any “infringement on nonunion employees’ freedom of expression” was recognized to be “constitutionally justified to support the . . . interest in collective bargaining.”²⁹⁹ In 2018, a major

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ Act of June 2, 1993, (P.L.45, No.15); 43 P.S. §§ 1102.1-1102.9.

²⁹⁰ *Id.* § 3; 43 P.S. § 1102.3.

²⁹¹ *Aboud v. Detroit Bd. of Educ.*, 431 U.S. 209, 213 (1977), *overruled by Janus v. Am. Fed. of State, Cnty., & Mun. Emps., Council 31*, 138 S.Ct. 2448 (2018).

²⁹² *Aboud*, 431 U.S. at 214-15.

²⁹³ *Id.* at 222 (citations omitted).

²⁹⁴ *Id.* at 224.

²⁹⁵ *Id.*

²⁹⁶ *Id.* at 225-26.

²⁹⁷ *Id.* at 229. “The differences between public- and private-sector collective bargaining simply do not translate into differences in First Amendment rights.” *Id.* at 232.

²⁹⁸ *Id.* at 237.

²⁹⁹ *Robinson v. Pa. State Corr. Officers Ass’n*, 363 F.Supp.2d 751, 756 (M.D. Pa. 2005).

blow was struck to the enforceability of statutes authorizing fair share fees when the U.S. Supreme Court overruled its own precedent from 1977.³⁰⁰ A statutory fair share fee “violates the free speech rights of nonmembers by compelling them to subsidize private speech,” which would be “the positions the union takes in collective bargaining and related activities.”³⁰¹ The court held that fair share fees “cannot be upheld on free-rider grounds” because “avoiding free riders is not a compelling interest.”³⁰² This ruling requires employees to “clearly and affirmatively consent before any money is taken from them” because “[s]tates and public-sector unions may no longer extract” fair share “fees from nonconsenting employees” as this “violates the First Amendment and cannot continue.”³⁰³

This relatively new ruling could affect the substantial bargaining latitude of the labor unions representing the commission’s and the department’s employees. For example, since employees are not compelled to pay fair share fees to their exclusive representative, fewer employees may decide to become union members or retain their membership, knowing that they will obtain the benefits negotiated by the union regardless of paying for the representation. It is unclear as to whether this ruling, *per se*, would have any direct and substantial effects on a consolidation between the commission and the department.

The Commission

If the commission is consolidated with the department, several labor agreements may be impacted. “The commission is . . . constituted as an instrumentality of the Commonwealth”³⁰⁴ and as such, is a public employer³⁰⁵ under the PERA and its employees enjoy collective bargaining rights thereunder. The commission employs approximately 1,912 employees consisting largely of skilled labor professionals, toll collectors, and administrative personnel.³⁰⁶ Almost 23% of these employees collect tolls; however, the commission intends to move to a fully automated toll-collection system by fall 2022, which would render the positions of the toll collectors redundant.³⁰⁷

Table 11 shows that the vast majority of the commission’s employees are Teamsters; about 78% of the commission’s employees are union members.³⁰⁸ Practically all employees eligible for union membership are members. Within that total, there are 420 employees recognized as management and ineligible for union membership.³⁰⁹

³⁰⁰ *Janus v. Am. Fed. of State, Cnty., & Mun. Emps., Council 31*, 138 S.Ct. 2448, 2460 (2018).

³⁰¹ *Id.*

³⁰² *Id.* at 2466, 2469. “Labor peace” was assumed to be “a compelling state interest,” but this does not require the restriction of associational freedoms to be achieved. *Id.* at 2465-66.

³⁰³ *Id.* at 2486.

³⁰⁴ Act of May 21, 1937 (P.L.774, No.211), § 4; 36 P.S. § 652d.

³⁰⁵ Act of July 23, 1970 (P.L.563, No.195), § 301; 43 P.S. § 1101.301.

³⁰⁶ Norris, *supra* note 102.

³⁰⁷ *Id.*, *supra* note 18.

³⁰⁸ *Id.*

³⁰⁹ *Id.*

Table 11
Pennsylvania Turnpike Commission
Staff Counts by Bargaining Unit in Relation to
Total Employee Count
As of March 2019

Bargaining Unit	Staff Counts	Percentage of Total
Union 77 Field	677	35.4%
Union 250 Field	644	33.7
Management	420	22.0
Union 77 CO	97	5.1
Union 30 (Supr)	52	2.7
Union 30 (Prof)	22	1.2
Total	1,912	100.0

Source: E-mail from Sheri Norris, Hum. Res. Dir., Pa. Tpk. Comm'n (Mar. 25, 2019) (on file with Pa. J. State Gov't Comm'n).

Table 12 shows the Teamsters Local Unions that are governed by two collective bargaining agreements, one supervisory memorandum of understanding, and one professional unit agreement. The agreements cover a wide range of employment related issues including: management rights, union rights, strike pledges, hours of work, overtime, night work, seniority, vacancies, layoffs, holidays, leaves of absence, training, discharge or disciplinary action, grievance procedures, compensation claims, and wages. These agreements expired on September 30, 2019.³¹⁰ “Since this date, the [c]ommission has been maintaining the status quo of the terms of the” collective bargaining agreement “consistent with applicable law, pending the conclusion of the negotiations over a new collective bargaining agreement.”³¹¹

³¹⁰ Agreement between Pa. Tpk. Comm'n & Teamsters Local Union Nos. 77 & 250 Field Agreement, Feb. 2, 2016-Sept. 30, 2019, art. 37.

³¹¹ Norris, *supra* note 102 (Jan. 8, 2020).

Table 12			
Bargaining Unit	Governing Agreement	Description of Employees	Number of Employees
Teamsters Local Union No. 77 – Central Office	Agreement between PTC and Teamsters Local Union No. 77 – Central Office (February 2, 2016 – September 30, 2019)	Generally covers administrative employees in central office buildings in Harrisburg.	97
Teamsters Local Union No. 77 – Field	Agreement between PTC and Teamsters Local Union Nos. 77 and 250 - Field (Combined Contract) (February 2, 2016 – September 30, 2019)	Generally covers maintenance and toll collection employees in eastern Pennsylvania.	677
Teamsters Local Union No. 250 - Field	Agreement between PTC and Teamsters Local Union Nos. 77 and 250 - Field (Combined Contract) (February 2, 2016 – September 30, 2019)	Generally covers maintenance and toll collection employees in western Pennsylvania.	644
Teamsters Local Union No. 30P	Professional Nonsupervisory Agreement	Generally covers construction inspection employees.	22
Teamsters Local Union No. 30S	Supervisory Unit Memorandum of Law (MOU)	Generally covers first level supervisors such as Assistant Foreman and Foreman employees.	52
Source: E-mail from Sheri Norris, Hum. Res. Dir., Pa. Tpk. Comm’n (May. 2, 2019) (on file with Pa. J. State Gov’t Comm’n).			

Construction inspection employees are generally covered under a Professional Nonsupervisory Agreement negotiated by the Teamsters Local Union No. 30P bargaining unit. Specific members of this bargaining unit include construction manager technicians, design technicians, materials manager technicians, construction managers, materials managers, and surveyors. The Professional Nonsupervisory Agreement is also set to expire on September 30, 2019.

First level supervisors, such as foreman and assistant foreman employees, division paint crew foreman employees, tunnel superintendents, and custodial worker supervisors are represented by the Teamsters Local Union No. 30S bargaining unit and their employment rights are governed

under a Supervisory Unit memorandum of law (MOU). The Teamsters Local Union No. 30S was recognized by the commission, and the MOU memorialized under PERA, which does not require public employers “to bargain with units of first level supervisors” but requires discussion “on matters deemed to be bargainable for other public employes covered by this act.”³¹² The MOU memorializes rather than binds its terms and conditions so that it is a matter of policy rather than contract.³¹³

The Department

Approximately 76% of the department’s employees are union members.³¹⁴ Two labor unions represent the department’s employees: Council 13, American Federation of State, County, and Municipal Employees, AFL-CIO (AFSCME); and the Federation of State Cultural and Educational Professionals Local 2382 (FOSCEP).³¹⁵

There are two collective bargaining agreements (one between each union and the Commonwealth), along with two memoranda under PERA, memorializing discussions with first level supervisors.³¹⁶ The agreements and memoranda that were available to Joint State Government Commission staff expired recently on June 30, 2019; the succeeding ones that have been negotiated and executed expire on June 30, 2023.³¹⁷

AFSCME Council 13 is recognized under the Master Agreement between the Commonwealth and Council 13, AFSCME, AFL-CIO (Master Agreement) “as the exclusive representative for collective bargaining purposes within the classifications included under the following certifications of the Pennsylvania Labor Relations Board”:

- PERA-R-13-C, Units I and III, Maintenance and Trades;
- PERA-R-1205-C and R-1207-C, Human Resources;
- PERA-R-1413-C, Clerical, Administrative, and Fiscal;
- PERA-R-2180-C, Technical Services;
- PERA-R-777-C, Inspection, Investigation, and Safety;
- PERA-R-2687-C, Professional Administrative, and Fiscal;
- PERA-R-3294-C, Engineering and Scientific;
- PERA-R-1329-C, R-1330-C, R-1331-C, and R-1879-C, Auditor General Department;
- PERA-R-1468-C, R-1469-C, R-1470-C, and R-2495-C, Treasury Department;
- PERA-R-2598-C, Pennsylvania Higher Education Assistance Agency;
- PERA-R-2566-C and PERA-R-2567-C, Public School Building Authority;

³¹² Act of July 23, 1970 (P.L.563, No.195), § 704; 43 P.S. § 1101.704.

³¹³ Pa. Tpk. Comm’n & Teamsters Local Union No. 30 (1st Level Supervisors), Memo of Understanding, art. II, § 2.

³¹⁴ O’Neal, *supra* note 191.

³¹⁵ *Id.* (Aug. 9, 2019).

³¹⁶ Pa. Office of Admin., Collective Bargaining/M&D, <https://www.hrm.oa.pa.gov/employee-relations/cba-md/Pages/default.aspx> (2019).

³¹⁷ Pa. & Council 13, Am. Fed. of State, Cnty., & Mun. Emps., AFL-CIO, Master Agreement, *available at* <https://www.hrm.oa.pa.gov/employee-relations/cba-md/Documents/cba-afscme-2019-2023.pdf>; Pa. & Fed. of State Cultural & Educ. Prof’ls, Local, 2382, Collective Bargaining Agreement., *available at* <https://www.hrm.oa.pa.gov/employee-relations/cba-md/Documents/cba-foscep-2019-2023.pdf>.

- PERA-U-81-351-E, U-81-352-E, and U-353-E, Attorney General;
- PERA-R-09-54-E, Pennsylvania State System of Higher Education; and
- PERA-R-09-57-E, Pennsylvania Gaming Control Board.³¹⁸

Table 13 shows that approximately 9,853 departmental employees are members of the AFSCME Council 13 bargaining unit.³¹⁹ Of this amount, 1,227 employees are first level supervisors³²⁰ entitled to discussions under PERA that can then be memorialized within a memorandum of understanding. Approximately 11 employees are represented by FOSCEP with full collective bargaining rights, while two employees are in supervisory roles³²¹ that permit the discussions under PERA.

Table 13
Pennsylvania Department of Transportation
Staff Counts by Union
As of June 2019

Union	Staff Counts	Percentage of Total
AFSMCE Master Agreement (Rank & File)	8,626	66.4%
AFSCME Master Memorandum (Supervisory)	1,227	9.5
FOSCEP Collective Bargaining Agreement (Rank & File)	11	0.1
FOSCEP Memorandum of Understanding (Supervisory)	2	0.0
Non-Union	3,118	24.0
Total	12,984	100.0

Source: E-mail from Christopher J. O'Neal, Dir. Hum. Res. Delivery Cens., Pa. Office of Admin. (July 15, 2019) (on file with Pa. J. State Gov't Comm'n).

³¹⁸ Pa. & Council 13, Am. Fed. of State, Cnty., & Mun. Emps., AFL-CIO, Master Agreement, art. I, § 1 (July 1, 2019–June 30, 2023).

³¹⁹ O'Neal, *supra* note 191.

³²⁰ *Id.*

³²¹ *Id.*

Consolidation

Since supermajorities of the commission's and the department's employees maintain union membership to collectively bargaining rights, the significant issue would be the preexistent collective bargaining agreements and incumbent bargaining units within both in the event of a consolidation. The PERA does not directly address the rights of employee organizations and their preexistent contracts upon the consolidation of a public employer. Public employers are "not . . . required to bargain over matters of inherent managerial policy, which . . . include . . . the organizational structure and selection and direction of personnel."³²²

While there is a dearth of judicial rulings addressing the consolidation of public employers, there is case law in the private sector under the National Labor Relations Act (NLRA) regarding bargaining obligations, if any, with a successor employer. The case law addresses questions regarding successorship in two distinct ways: the successor employer's obligation, if any, to honor and comply with existent terms and conditions of the collective bargaining agreement between the predecessor and its employees and the successor employer's obligation to collectively bargain with the incumbent bargaining units.

One significant U.S. Supreme Court ruling from 1964 held that "the disappearance by merger of a corporate employer which has entered into a collective bargaining agreement with a union does not automatically terminate all rights of the employees covered by the agreement, and that, in appropriate circumstances, . . . the successor employer may be required to" comply with the agreement.³²³ In this case, the corporate employer at issue was legally obligated to arbitrate with an employee union under the collective bargaining agreement between the union and another corporation which had merged with and dissolved into the corporate employer.³²⁴ The rationale for the decision was the fact that there remained "substantial continuity of identity in the business enterprise before and after the change" resultant in a "relevant similarity and continuity of operation across the change in ownership" as was 'adequately evidenced by the wholesale transfer of . . . employees" and "[t]he Union made its position known well before the merger and never departed from it."³²⁵

In a 1972 U.S. Supreme Court ruling, the court distinguished its ruling from 1964 in a different context. The 1972 ruling involved a successor employer providing plant protection with a majority of retained employees plus a minority of its own employees brought in from elsewhere.³²⁶ Since a majority of the former employees remained to "work in the identical unit" and "had already expressed their choice of a bargaining representative in an election held a short time before," the successor employer was obligated "to bargain with the" incumbent "union over terms and conditions of employment."³²⁷ However, this 1972 ruling did not require the successor employer "doing the same work in the same place with the same employees as his predecessor" to "honor the collective-bargaining contract executed by" the predecessor, but a different result might

³²² Act of July 23, 1970 (P.L.563, No.195), § 702; 43 P.S. § 1101.702.

³²³ *John Wiley & Sons v. Livingston*, 376 U.S. 543, 548 (1964).

³²⁴ *Id.* at 548-52.

³²⁵ *Id.* at 551.

³²⁶ *Nat'l Labor Relations Bd. v. Burns Int'l Sec. Servs.*, 406 U.S. 272, 274-75 (1972).

³²⁷ *Id.* at 277-80.

occur had there been a “merger or sale of assets” between the preceding and succeeding employers.³²⁸ Fifteen years later, the U.S. Supreme Court extended the 1972 ruling to “hold that a successor employer’s obligation to bargain is not limited to a situation where the union in question has been recently certified . . . so long as the new employer is in fact a successor of the old employer and the majority of its employees were employed by its predecessor.”³²⁹ Successorship has been determined by the acquisition of substantial assets, continuation of operations without substantial change, employees “doing the same jobs in the same working conditions under the same supervisors” with “basically . . . the same body of customers” perpetuating “substantial continuity”.³³⁰

In addition to determining the obligation of a successor entity to honor preexistent agreements and collectively bargain moving forward, it must be determined what becomes the preexistent bargaining units (and their respective labor unions). In other words, which labor union and associated bargaining unit remains? If separate units under a broad-based bargaining unit policy are permitted to coexist, it would be an unfair labor practice should the work performed by employees in one group be transferred to or performed by employees in the other. A consolidation does not appear to preclude the possibility of having a subdivision of workers comprised of prior commission employees assigned to the turnpike continue to exclusively work on it. Under that scenario, the prior bargaining units and contracts for departmental and commission employees would continue to exist as separate bargaining units with each represented by the respective labor organizations. Of course, under this scenario, it would only be a partial consolidation of the commission and the department, at least, initially.

Another possible scenario could be that the bargaining units for both the commission and the department coexist through a Joint Collective Bargaining Committee comprised of both labor organizations. While many of the issues presented by the potential consolidation of the commission and the department are uncharted territory for the Pennsylvania Labor Relations Board, it is believed that the board has previously allowed two unions seeking to represent separate units agree to the cooperative bargaining arrangement for a larger unit comprised of two subgroups of employees. This would essentially be a voluntary merger of bargaining units that would likely require the consent (by vote) of each labor organization and would have the probable effect of keeping the *status quo* for both labor organizations unchanged for the remaining life of the preexistent collective bargaining agreements. Should this scenario occur, it would ultimately be subject to the board’s review and certification. If the Joint Collective Bargaining Committee was certified, the enforcement of the collective bargaining agreements would be maintained by both AFSCME and the Teamsters for their respective units; however, a single successor collective bargaining agreement for the Interstate Operations division would likely be negotiated through the Joint Collective Bargaining Committee covering all employees from both bargaining units going forward.

The issue of union representation involving the consolidation of two separate entities (with two or more existing labor unions) has been addressed in the private sector through application of the NLRA. For instance, where a private company combines two distinctively represented

³²⁸ *Id.* at 286-91.

³²⁹ *Fall River Dyeing & Finishing Corp. v. Nat’l Labor Relations Bd.*, 482 U.S. 27, 41 (1987).

³³⁰ *Id.* at 43-45.

divisions into a single new organization, the NLRB has recognized that “a question concerning representation arises . . . where neither group of employees is sufficiently predominant to remove the question concerning representation.”³³¹ While the NLRB does not appear to define “sufficiently predominant,” the NLRB’s accretion policy applies where there is an overwhelming ratio between the represented employees.³³² In other cases the NLRB has raised a question of representation caused by the merger, holding that the existence of separate collective bargaining agreements would not preclude a representation petition in the newly formed bargaining unit. In essence what arises is a new election, and a rivalry between the two unions who are left to obtain a majority of the employees in the combined unit.

Regarding the public sector’s federal employees, the Federal Labor Relations Authority (FLRA) is the agency governing collective bargaining for public sector federal employees and has defined “sufficiently predominant” by a statutory test of the showing of interest necessary to raise a question of representation. Under the FLRA, a showing of interest of 30 percent or more of employees in a bargaining unit is required to raise a question of representation.³³³ As such, “absent special circumstances, . . . a union that represents more than 70 percent of the employees in a newly combined unit formerly represented by two or more unions is sufficiently predominant to render an election unnecessary because such election would be a useless exercise.”³³⁴ Based on this concept, if there were a smaller group of employees being merged into another with less than thirty percent of the combined unit, there is a rebuttable presumption that the labor organization for the larger group would retain its majority status for the combined unit after the merger. The representative for the smaller group of employees would no longer represent any of the employees. The employees of the smaller unit are transferred (or accreted) into the larger unit and would automatically fall under the collective bargaining agreement and representation of the labor organization for the larger unit of employees.

Apparently, the Pennsylvania Labor Relations Board has not previously addressed a consolidation similar to the one proposed by the resolution directing this study. As with both the NLRA and FLRA, the board has a 30 percent showing of interest requirement to raise a question of representation. The board’s holding that for purposes of accreting one group of employees into another, a question of representation arises where the smaller group is more than 15 percent of the existing unit.³³⁵ Here, based on the numbers in Tables 11³³⁶ and 13,³³⁷ there would be approximately 15% under the accretion standard but maybe not the 30% in a combined unit for purposes of raising a question of representation through a showing of interest. Which test and which percentage would raise a question of representation in a combined unit and are questions of public sector labor policy for the board that could only arise and come before it through a properly filed charge of unfair practices or a representation petition. Integration of staff from differing unions and with differing pay scales, work rules and benefits, could have significant administrative

³³¹ *Martin Marietta Chems.*, 270 N.L.R.B. 821 (1984) (citation omitted). This circumstance dealt with a physically consolidated operation, “under common management and administration” with a “centralized control of labor relations and interchange of employees.” *Id.*

³³² *U.S. West Commc’ns*, 310 NLRB 854 (1993). The ratio between the represented employees was “70 to 1.” *Id.*

³³³ *U.S. Army Aviation Missile Command*, 56 F.L.R.A. 126 (2000).

³³⁴ *Id.*

³³⁵ *Westmoreland Intermediate Unit*, 12 PPER ¶ 12347 (Order and Notice of Election, 1981).

³³⁶ *Supra* p. 56.

³³⁷ *Supra* p. 59.

hurdles that could result in additional cost of litigation and administration. Prior, protracted litigation incurred legal costs ranging from \$300,000 to over \$1,000,000.³³⁸

New bargaining agreements have been negotiated and executed for all bargaining units within the department, while the commission will likely have newly bargained-for agreements soon because its agreements expired September 30, 2019. Although the consolidation in this report does not involve private employers bound by the NLRA, the department may have an obligation to honor contractual terms and conditions of the existent collective bargaining agreements or, at the very least, an obligation to bargain with the incumbent labor unions representing the commission's employees at the time of the consolidation. The proposed legislation contains a provision to require the department to honor any collective bargaining agreement between the commission and any employee organization.³³⁹ The most recent agreement between the commission and Teamsters Local Union Numbers 30, 77 and 250 covers the transfer of the operation so that the successor party assuming the operation would be obliged "to employ the members of the bargaining unit" and "assure all terms and conditions of the Agreement."³⁴⁰ The department is obligated to use its "Master Agreement employees to perform bargaining unit work to the fullest extent feasible," but is authorized to "assign Master Agreement bargaining unit work" to "other non-Master Agreement bargaining unit state employees" for "legitimate operational reasons resulting in reasonable cost savings or improved deliver of service."³⁴¹

Bondholder Agreements

The commission has an outstanding Mainline Senior debt of \$6,045,745,000 and Subordinate debt of \$6,755,161,000.³⁴² The issuance and payment of the bonds are governed by bondholder agreements executed by the commission. Much of the commission's accumulated bond debt is driven by its obligations to obligations to the department under act numbers 44 of 2007 and 89 of 2013.³⁴³ What happens to this outstanding debt if the commission and the department consolidate? The question is especially confounding because the turnpike revenue bonds are "not to be deemed a debt of the Commonwealth or a pledge of the faith and credit of the Commonwealth" for the payment of the principal or interest of such bonds.³⁴⁴ In fact, the bond instruments themselves are statutorily required to contain an express statement to such effect and say that the repayment for the bonds obligates the commission's rather than the Commonwealth's revenues.³⁴⁵

³³⁸ Shuey, *supra* note 77.

³³⁹ *Infra* p. 139.

³⁴⁰ Pa. Tpk. Comm'n & Teamsters Local Union Nos. 30, 77 & 250; art. 28 (these agreements expired Sept. 30, 2019).

³⁴¹ Pa. & Council 13, Am. Fed. of State, Cnty., & Mun. Emps., AFL-CIO, Master Agreement, art. 43, §§ 1, 3 (July 1, 2019–June 30, 2023).

³⁴² Table 19, *infra* p. 108.

³⁴³ Act of July 18, 2007 (P.L.169, No.44) & act of Nov. 25, 2013 (P.L.974, No.89).

³⁴⁴ Act of May 21, 1937 (P.L.774, No.211), § 2; 36 P.S. § 652b; 74 Pa.C.S. § 8104. Special revenue bonds issued under 75 Pa.C.S. ch. 89 are also "not to be deemed a debt . . . of the" Commw. and must state that "neither the faith and credit . . . of the" Commw. "is pledged to the payment of the principal or interest of the bond." 75 Pa.C.S. § 9511.2.

³⁴⁵ *Id.*

Consequently, it is unclear as to how the Commonwealth can lawfully assume the commission's bond debt. This issue does not appear to have been litigated here; however, a Pennsylvania court's *obiter dicta* noted that the Commonwealth relieved "itself entirely of any financial responsibility in connection" with the turnpike by delegating powers to the commission and the statutory provisions relating to the revenue bonds.³⁴⁶ This observation is consistent with the wording of both the statutes and the bond instruments. The commission's bond debt is not to be a debt of the Commonwealth under any circumstances.

Based on the foregoing, it appears that the commission's outstanding bond debt could serve as a potential barrier to its consolidation with the department. Before the two are consolidated, qualified and experienced bond counsel would have to be retained to advise how the Commonwealth can unilaterally eliminate the commission while limiting financial liability for outstanding bonds to the commission's rather than the Commonwealth's revenues.³⁴⁷ Presumably, a consolidation could occur with this outstanding bond debt as a somewhat similar scenario occurred in Massachusetts. If a consolidation proceeds with this outstanding bond debt, neither the department specifically or the Commonwealth generally would be able to impair or otherwise prejudice the bondholders. In other words, the Commonwealth would be unlikely to expand its subsidy for transportation elsewhere in the Commonwealth based upon turnpike revenue nor would it be likely to relieve the pressure to continue to generate turnpike revenue robust enough to service the outstanding debt.

Partnership Agreements

Aside from labor and bondholder agreements and obligations, Senate Resolution No. 209 also asks about partnership agreements.³⁴⁸ Both the commission and the department maintain public-private partnerships (P3) for their operations. A few examples are discussed below.

The Commission

The commission had been pursuing a P3 "agreement with a private entity to install a fiber optic network within its right-of-way."³⁴⁹ The project was intended to accommodate the commission's "data communication needs and . . . allow the private entity to generate revenue from third party broadband customers."³⁵⁰ The commission's proposal was approved by Pennsylvania's Public-Private Transportation Partnership in 2016;³⁵¹ however, in 2018, the commission ended this project to pursue this *via* a different procurement model.³⁵²

³⁴⁶ *House v. Pa. Tpk. Comm'n*, 45 Pa. D. & C. 677, 678-79 (C.P. Dauphin 1943).

³⁴⁷ This would also require further consultation with the State Treasurer.

³⁴⁸ Appx. A, *infra* p. 150.

³⁴⁹ Pa. Tpk. Comm'n, Broadband Pub.-Private Partnership (P3), https://www.paturnpike.com/business/Broadband_P3.aspx (2019).

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *Id.*, News Release, (Dec. 21, 2018), <https://www.paturnpike.com/Press/2019/20190121103512.htm>.

The Department

The department “operates one of the most ambitious and comprehensive public-private partnership . . . programs in the nation.”³⁵³ Its P3 Office works “closely with stakeholders and industry partners” to develop “innovative project delivery and financing models for a wide variety of initiatives that are designed to strengthen” the Commonwealth’s “transportation network, improve motorist safety, accelerate the delivery of major transportation projects, and generate revenue for the Commonwealth.”³⁵⁴

The Rapid Bridge Replacement Project “will replace 558 structurally deficient bridges around the state” bundled in a P3 agreement.³⁵⁵ The project leverages private investment “[b]y focusing on bridges of similar size and design” to allow mass production of components to save time and costs.³⁵⁶ This project is almost complete and is expected to be completed soon.³⁵⁷

Chalfont Mitigation Banking (CMB) Project is a P3 solution to provide wetland mitigation credits involving 140 acres owned by the department in County of Bucks.³⁵⁸ The CMB project essentially banks wetland to obtain and sell wetland mitigation credits to satisfy environmental mitigation requirements from the impact of transportation projects and will effectively transfer liability from the credit purchaser (the department) to the credit provider (private partner).³⁵⁹

Consolidation

Should the commission be consolidated into the department, P3 agreements could continue largely unimpeded. Any preexistent P3 agreement would have to be reviewed on an individual basis to determine its continued viability and enforceability should a consolidation occur.

³⁵³ Pa. Dep’t of Transp., Public-Private Partnerships, <https://www.penndot.gov/ProjectAndPrograms/p3forpa/Pages/default.aspx> (2019).

³⁵⁴ *Id.*

³⁵⁵ *Id.*, Rapid Bridge Replacement Project, <https://www.penndot.gov/ProjectAndPrograms/p3forpa/Pages/Rapid-Bridge-Replacement-Project.aspx> (2019).

³⁵⁶ *Id.*

³⁵⁷ P3 Transp. Office, Pa. Dep’t of Transp., *A Rep. for Pa. 3* (2018-2019), available at <https://www.penndot.gov/ProjectAndPrograms/p3forpa/Documents/Annual%20Reports/2018-2019%20P3%20Report%20for%20Pennsylvania.pdf>.

³⁵⁸ *Id.*, Chalfont Mitigation Banking Project Indus. Forum (Dec. 18, 2018), <https://www.penndot.gov/ProjectAndPrograms/p3forpa/Documents/2%20Chalfont%20Mitigation%20Banking%20Project%20Industry%20Forum%20Presentation.pdf>.

³⁵⁹ *Id.*

PROCUREMENT

In addition to outstanding bond debt, preexistent labor obligations, and continuing contractual obligations, a consolidation of the commission and the department would also likely face obstacles concerning the procurement of supplies, services, and construction. This section provides a cursory overview of the Commonwealth Procurement Code,³⁶⁰ its application to both the commission and the department, their methodology to comply with procurement requirements, and the potential obstacles that may arise in the event of a consolidation of the two entities.

Commonwealth Procurement Code

The Commonwealth Procurement Code governs the process of contracting with the Commonwealth and its agencies. The term “procurement” is defined as:

[b]uying, purchasing, renting, leasing, licensing or otherwise acquiring any supplies, services or construction. The term also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.³⁶¹

The code “applies to every expenditure of funds, other than the investment of funds, by Commonwealth agencies under any contract, irrespective of their source, including Federal assistance moneys except as specified in section 2108 of the Code (relating to compliance with Federal requirements).”³⁶² It “does not apply to contracts between Commonwealth agencies or between the Commonwealth and its political subdivisions or other governments except as provided in Chapter 19 of the Code (relating to intergovernmental relations).”³⁶³ A “Commonwealth agency” is “[a]n executive agency, and independent agency or a State-affiliated entity.”³⁶⁴ An “[e]xecutive agency” is defined as “[t]he Governor and the departments, boards, commissions, authorities and other officers and agencies of the Commonwealth” but excludes “any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies or any independent agency or State-affiliated entity.”³⁶⁵

³⁶⁰ 62 Pa.C.S. §§ 101-2311.

³⁶¹ *Id.* § 103.

³⁶² *Id.* § 102(a).

³⁶³ *Id.*

³⁶⁴ *Id.* § 103.

³⁶⁵ *Id.*

The department is an “executive agency,”³⁶⁶ whereas, the commission is a “State-affiliated agency,” the definition of which includes the Pennsylvania Turnpike Commission.³⁶⁷ Both the department and the commission are a “Commonwealth agency” under the code so that both are subject to its requirements and limitations in varying degrees. In addition to the “expenditure of funds . . . under any contract,” the code also “applies to the disposal of supplies of Commonwealth agencies.”³⁶⁸

The Department of General Services (DGS) formulates “procurement policy governing the procurement, management, control and disposal of supplies, services and construction for executive . . . agencies.”³⁶⁹ DGS also may procure and supervise procurement for executive agencies; however, certain “supplies, services, and construction need not be procured” through DGS or its procurement policy, *e.g.*:³⁷⁰

- (1) Bridge, highway, dam, airport (except vertical construction), railroad or other heavy or specialized construction, including:
 - * * *
 - (iii) Owner-controlled insurance programs for bridge, highway, dam, airport, railroad or other heavy or specialized construction.

“State-affiliated entities,” such as the commission, “may formulate their own procurement policy governing the procurement, management, control and disposal of supplies, services and construction.”³⁷¹ These entities “may act as their own purchasing agency” but must use the code’s procedures.³⁷²

The code’s methods of source selection include competitive sealed bidding through the invitation for bids, public notice, bid opening, and acceptance and evaluation.³⁷³ “[C]ompetitive electronic auction bidding” is authorized “for supplies or services, but not construction” when “in the best interests of the Commonwealth” as determined in writing by the purchasing agency.³⁷⁴ Small construction projects may be procured on a no-bid basis if authorized by the head of the purchasing agency.³⁷⁵ Sole source procurement “for a supply, service or construction item” is authorized:

³⁶⁶ Act of Apr. 9, 1929 (P.L.177, No.175), § 201; 71 P.S. § 61.

³⁶⁷ 62 Pa.C.S. § 103.

³⁶⁸ *Id.* § 102.

³⁶⁹ *Id.* § 301.

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *Id.* § 512.

³⁷⁴ *Id.* § 512.1(a).

³⁷⁵ *Id.* § 514. When the code was enacted in 1998, construction projects authorized on a no-bid basis were limited to “a total construction cost of \$10,000,” but this amount is adjusted annually to reflect changes in “Composite Construction Cost Index of” U.S. Dep’t of Commerce. *Id.*

if the contracting officer first determines in writing that one of the following conditions exists:

- (1) Only a single contractor is capable of providing the supply, service or construction.
- (2) A Federal or State statute or Federal regulation exempts the supply, service or construction from the competitive procedure.
- (3) The total cost of the supply, service or construction is less than the amount established by the department for small, no-bid procurements under section 514 (relating to small procurements).
- (4) It is clearly not feasible to award the contract for supplies or services on a competitive basis.

* * *

- (5) The services are to be provided by expert witnesses.
- (6) The services involve the repair, modification or calibration of equipment and they are to be performed by the manufacturer of the equipment or by the manufacturer's authorized dealer, provided the contracting officer determines that bidding is not appropriate under the circumstances.

* * *

- (7) The contract for supplies or services is in the best interest of the Commonwealth.³⁷⁶

“[A]n emergency procurement” is authorized “when there exists a threat to public health, welfare or safety or circumstances outside the” agency’s control “create an urgency . . . which does not permit the delay involved in using more formal competitive methods.”³⁷⁷ Nonetheless, “at least two quotes shall be solicited” if a supply is being procured “[w]henever practical.”³⁷⁸ This requires “[a] written determination of the basis for the emergency and for the selection of the particular contractor” to “be included in the procurement file.”³⁷⁹ A written contract is not required because payment is authorized “based on the emergency approval and approved invoice.”³⁸⁰

³⁷⁶ *Id.* § 515(a).

³⁷⁷ *Id.* § 516.

³⁷⁸ *Id.*

³⁷⁹ *Id.*

³⁸⁰ *Id.*

The Commission

Under the code, the commission is a “State-affiliated agency”³⁸¹ and must comply with the applicable requirements when contracting for services and materials. Consistent with its authority under the code, the commission acts as its own purchasing agency through its Director of Procurement and Logistics (DPL), along with its Strategic Sourcing and Asset Management Department (SSAM).³⁸² The DPL is responsible for two of the commission’s three major types of procurement.³⁸³ These two types of procurement include: professional services and supplies and materials procurement.³⁸⁴ The commission’s third major type of procurement is large-scale construction projects, which are competitively bid out by the commission’s chief engineer through its Electronic Bidding System (EBS).³⁸⁵ EBS is intended to streamline the process by which businesses interested in contracting for the commission’s construction projects submit bids.³⁸⁶ EBS begins with “the advertisement of a construction project and” ends “with the notice to proceed.”³⁸⁷ EBS allows interested contractors to electronically search for projects based on status, download bid documents, and submit the entire bid package.”³⁸⁸

Regarding the procurement and source selection of professional services, the commission established its own four-step procedure which is as follows:³⁸⁹

Step 1: *Issuance of Request for Proposals (RFPs)*—the commission’s Issuing Department develops the RFP to be advertised on the commission’s website or the department’s Engineering and Construction Management System (ECMS). The commission’s templates are often very similar to those used by other agencies but other selection factors may be added.

Step 2: *Tier One Review—Technical Evaluation Team (TET)*—The TET reviews responses to an RFP. Approved by the commission’s chief executive officer, the TET is a diverse group of subject matter experts (SMEs) from the Issuing Department and other affected departments and independent professionals. The Issuing Department addresses criteria regarding experience, expertise, and estimated contract value to determine if using independent professionals is necessary.

Step 3: *Tier Two Review—Professional Services Procurement Committee (PSPC)*—The TET presents narrative evaluation summaries to the PSPC which includes the Chief Counsel, Chief Engineer, Chief Financial Officer, Chief Technology Officer, and Director of Procurement and Logistics. The PSPC validates the TET’s evaluation but independently

³⁸¹ *Id.* § 103.

³⁸² Telephone interview w/Donald S. Klingensmith, P.E., Dir. of Procurement & Logistics, Pa. Tpk. Comm’n (May 22, 2019).

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ *Id.*

³⁸⁶ Pa. Tpk. Comm’n, Elec. Bidding Sys, <https://ebs.paturnpike.com/generalinformation/> (2013).

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ *Id.*, Summary of Procedures for Procurement of Prof’l Servs. (May 2016, Amended July 2018), https://www.paturnpike.com/pdfs/business/Professional_Services_Procurement.pdf.

decides the rating for each response. The PSPC then alphabetically lists rather than ranks “Highly Recommended” firms to be submitted to the commission for award at a public meeting.

Step 4: *Tier Three Review–Commission (PTC) Review*–At a public meeting, the commissioners then consider all TET and PSPC materials related to the “Highly Recommended” firms, as well as applicable, additional selection factors. The top firms are selected in alphabetical order with supporting reasons provided. If approved, the commissioners publicly discuss the finalists to reach a consensus on the most “Highly Recommended” firm(s) whose proposal is most advantageous to the commission. A vote follows to affirm selection and authorize the contract negotiations.

The overall selection process is a “qualitative” determination of the professionals seeking to contract with the commission.³⁹⁰ “All firms seeking business with the [c]ommission” must affirm in a written “response to the RFP responses that no conflict of interest exists” or disclose any that do.³⁹¹

All the commission’s procurement, including construction project procurement, takes place centrally at its administration building in Middletown.³⁹² A centralized approach increases standardization when purchasing both reliable and reasonably priced materials and professional services.³⁹³ The rare exception to the centralized purchasing model is the limited use of a Procurement Card (P-Card) for small purchases that are below all bidding thresholds.³⁹⁴ Table 14³⁹⁵ shows bidding procedures for procurement of materials and non-professional maintenance services (such as pest control, building maintenance, *etc.*).

³⁹⁰ Klingensmith, *supra* note 382.

³⁹¹ Pa. Tpk. Comm’n, *supra* note 389.

³⁹² Klingensmith, *supra* note 382.

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ *Infra* p. 72.

Table 14
Commission Bidding Thresholds for Materials
and Non-Professional Maintenance Services

Purchase Price	Bidding Procedure
\$10,000.00 or less	Do not have to be bid; however, the Buyer may elect to send out a bid solicitation through an informal bid process (email, phone, <i>etc.</i>). If the Buyer chooses, he or she may rely on past experience to confirm pricing with a previously used vendor of the needed material or service and simply send a Purchase Order to the vendor/contractor.
\$10,000.01 to \$50,000.00	Requires a formal bidding process involving the sending of paper bid solicitations sent <i>via</i> U.S.P.S. mail. Bid solicitations include instructions for completion and submission of the bid.
Over \$50,000.00	Requires a formal bidding process involving an advertisement for bid published on the commission’s Bid Notices page.

The commission also requires bonding from vendors/contractors as follows:

Bid Surety: Bid proposals in excess of \$100,000 must be accompanied by a bid bond of at least 10% of the total bid price. Instead of a Bond, the guaranty may be in the form of a Bank Cashier’s or Treasurer’s Check or a Depositor’s Check certified by the bank of deposit.

Performance Guaranty: Security in the amount of 100% of the bid may be required from the successful bidder(s) in the form of a Certified Check, Bank Cashier’s Check or Treasurer’s Check drawn to the order of the commission, but a vendor’s performance bond with corporate surety acceptable to the commission is preferred.

Payment Bond: For construction contracts in excess of \$100,000, a payment bond in the amount of 100% of the bid from the successful bidder(s) may be required in the form of a Certified Check, Bank Cashier’s Check or Treasurer’s Check drawn to the order of the commission, but a vendor’s payment bond with corporate surety acceptable to the commission is preferred.

Source: Pa. Tpk. Comm’n, Vendor Guide, https://www.paturnpike.com/business/vendor_guide.aspx (2019).

The Department

The department is bound by the code’s requirements and policies and procedures adopted by the DGS’s Bureau of Procurement. In contrast with the commission, the department is generally required to use DGS as its purchasing agency for its procurement of materials and services. Under DGS requirements, the department must abide by the following general threshold bidding requirements when it comes to materials and services:

Table 15 The Department’s General Procurement Thresholds For building and construction procurement, the department follows the thresholds and methods shown in Table 16			
Materials	Dollar Threshold	Services	Dollar Threshold
No bidding required No documents required The department serves as own purchasing agency	\$10,000 or less	No bidding required No documents required The department serves as own purchasing agency	\$10,000 or less
Formal bidding procedures required	\$10,000.01 to \$100,000	Formal bidding procedures	\$10,000.01 to \$250,000
Formal bidding procedures with DGS serving as purchasing agent	More than \$100,000	Formal bidding procedures with DGS or delegated agency serving as purchasing agent	More than \$250,000
Source: Pa. Dep’t of Gen. Servs., Procurement Handbook, Pt. I, Ch. 07(A) (Revised Aug. 10, 2015), available at https://www.dgs.pa.gov/Documents/Procurement%20Forms/Handbook/Pt1/Pt%20I%20Ch%2007%20Thresholds%20and%20Delegations.pdf .			

Table 16			
The Department's Building and Construction Procurement Thresholds			
Dollar Threshold	Method	Description of Method	Description of Project
\$10,000 or less	Procurement Card (P-Card)	The department's purchaser may use P-Card to purchase certain construction services	Facility or asset repairs and improvements that do not require design professional services such as door replacements, HVAC repair, light fixture replacements, <i>etc.</i>
\$10,000.01 to \$300,000	DGS--Job Order Contracting (JOC)	For small construction projects and administered by the Gordian Group; contracts under this are awarded based on an RFP reviewed for Technical Qualifications, Pricing, and Small and Small Diverse Business participation	Designs, repairs, renovations, replacement, and new construction (<i>i.e.</i> , HVAC systems, plumbing and electrical services, <i>etc.</i>)
\$300,000 and over	DGS--Public Works Public Improvement Project (PIP)	Requires legislative authorization (Capital Line Item)	Renovations and new construction
Under or over \$300,000	DGS Delegation to the department	DGS delegates a project for the department's completion as its own purchasing agency – the department develops the design and bidding documents following all Commonwealth procedures using its Electronic Construction Management System (ECMS) for advertisement, award, and construction of the project	Renovations and new construction

Source: E-mail from Terrence G. Pearsall Jr., Chief, Facilities Mgmt. Div., Pa. Dept. of Transp. (May 31, 2019).

Consolidation

A consolidation of the commission with the department could potentially run contrary to the intention of creating efficiencies and cost savings for the Commonwealth when it comes to procurement. Employees involved in procurement from both the commission and the department agree that the code affords the commission more flexibility as a State-affiliated entity when it comes to procuring most materials and services. The commission is authorized to formulate its own policy governing the procurement, management, control and disposal of supplies, services and construction. This allows the commission to tailor certain source selection practices to its own specific needs. For instance, the commission's chief officers and professionals assist in its source selection process to provide their expertise and familiarity with the commission's needs when reviewing contractors and vendors. The commission operates under several commodities contracts for items such as fuel, tires and salt, taking advantage of the relatively lower distribution costs for operations linked to a major interstate highway system. Recent analysis indicates that there would be an additional cost of varying amounts should the commission be combined with Commonwealth contracts.³⁹⁶ As commodity prices fluctuate, there is no specific estimate of this potential annual cost impact.

While the department is required to use DGS as its purchasing agency for much of its larger purchases and contracts, the commission can serve as its own purchasing agency. With DGS as its purchasing agency, the department must submit project requests to DGS for approval. Once approved, DGS executes the code's procurement procedures. Since DGS serves as the supervisor and purchasing agency for numerous executive and independent agencies, it is flooded with procurement requests in addition to the department's ones. Partially because of the sheer number of agencies DGS acts on behalf of, there can be administrative delays in processing and reviewing procurement approval requests. The delays have resulted in a significant backlog of the department's projects. A key example of this is occurs in the department's Facilities Management Division (FMD). Table 17 shows that FMD has a list of 193 projects with an estimated \$994.8 billion in land acquisition, design and contingency, and construction costs.³⁹⁷

³⁹⁶ Shuey, *supra* note 77.

³⁹⁷ Pearsall, *supra* note 243 (June 24, 2019). Table 17, *infra* p. 76.

Table 17
Pennsylvania Department of Transportation
Facilities Management Division
Capital Budget Projects
As of June 2019

	Number of Projects	Cost of Projects
PennDOT's Global Project List	193	\$994,826,915
DGS's Workflow	60	492,112,000
FY 18-19 Capital Budget Plan	23	21,328,749
FY 19-20 Capital Budget Plan	26	28,841,166
FY 20-21 Capital Budget Plan	24	40,585,634

Source: E-mail containing data from Terrence G. Pearsall Jr., Chief, Facilities Mgmt. Div., Pa. Dep't of Transp. (June 24, 2019).

Projects can range from a single roof replacement to acquiring or constructing an entirely new facility.³⁹⁸ From the department's global list, 60 projects have been prioritized and sent to the DGS as part of the procurement process.³⁹⁹ Some projects may be underway, others may be on hold for various reasons, and some may just be sitting in the queue waiting for DGS to begin processing.⁴⁰⁰

Note that even after a project has been submitted to DGS by the department, its approval still requires funding in the capital budget.⁴⁰¹ The Commonwealth's Capital Budget is "for the construction, renovation, improvement, acquisition and purchase of original furniture and equipment of any building, structure, facility, land or land rights" with

an estimated useful life in excess of five years and an estimated cost in excess of \$100,000 or more if bond funds are used and \$300,000 or more when current revenues are used. . . . Most of the capital budget projects in the past have been paid from monies obtained by the sale of bonds.⁴⁰²

Similar to the operating budget, the capital budget requires "approval, involving both the executive and legislative branches and" an execution phase detailed below:

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² Governor Wolf, *supra* note 225, at 15.

The governor's capital project recommendations along with any additions or deletions made by the General Assembly, are contained in a separate bill usually known as the Capital Budget Project Itemization Act. This bill, along with the Capital Budget Act which contains the maximum debt limitations for the next fiscal year beginning July 1, must be passed by . . . the General Assembly and presented to the governor for signature.

The governor reviews the projects contained in the Capital Budget Project Itemization Act taking into consideration his priorities, the importance of the project and the impact the project will have on agency operating budgets. The governor may approve the bill as is or item veto parts or all of the amounts contained in the bill. Any item veto may be overridden by . . . the General Assembly. The Governor's approval of the Capital Budget Project Itemization Act is the final stage of the capital budget approval process. . . .

[F]or a capital project approved in an enacted project itemization act to move forward, the Department of General Services must request that it be activated. All project activation requests are reviewed by the Governor's Budget Office for consistency with the governor's priorities and policies. Projects approved by the Governor's Budget Office are scheduled for release, first for design, and then when design is complete, for construction. Project releases are made in accordance with certain fiscal guidelines in order to keep the entire capital budget at affordable levels each fiscal year.⁴⁰³

In Fiscal Year 2018-19, the approved Capital Budget amount for the department's facilities was about \$21.3 million which was able to support 23 different projects.⁴⁰⁴ Of the 193 total facility projects on the department's global list, only about 12% are actively funded in a given year based on the Capital Budget Plan for FY 18-19 through FY 20-21.⁴⁰⁵

Anecdotally, departmental employees expressed the concern that by consolidating the commission with the department and adding the commission's procurement needs to an already-overtaxed DGS system, could likely result in the need to expend additional funds to increase the DGS's own resources. Given the fact that the commission generates and borrows its own revenue to pay its costs, it is unclear whether the newly acquired projects from the commission would be restricted by the department's Capital Budget limitations. All of the potential procurement issues mentioned above should be further considered in greater detail before a consolidation between the department and the commission takes place.

⁴⁰³ *Id.* at 5.

⁴⁰⁴ Pearsall, *supra* note 397.

⁴⁰⁵ *Id.*

FEDERAL & STATE LAWS THAT COULD IMPACT CONSOLIDATION

Senate Resolution No. 209 directed the Commission to “[i]dentify Federal and State laws that could impact the consolidation of interstate operations.”⁴⁰⁶ The following identifies these laws and relevant jurisprudence.

Federal Laws

The Federal-Aid Highway Act

While a boom of American transportation-related innovations such as the steam locomotive, the internal combustion engine, and steamships occurred during the nineteenth century, mass production of the automobile occurred in the twentieth century stimulating the creation of our Interstate Highway System; a concept that revolutionized the way Americans could travel across the continental United States. To foster growth and maintenance of highways across the U.S., the 64th U.S. Congress enacted the country’s first law providing federal aid to states for the construction and maintenance of roads.⁴⁰⁷ “The law established a partnership among federal and state highway officials” to construct “rural post roads.”⁴⁰⁸ The law expressly provided that all roads constructed and maintained under its provisions “shall be free from all tolls of all kinds.”⁴⁰⁹ In 1927, Congress enacted a separate law, carving out an exemption permitting the distribution of federal aid to help build toll bridges, limited to the “condition that when the amount contributed by such State . . . , or political subdivision . . . , in the construction of such bridge shall have been repaid from the tolls, the collection of tolls for the use of such bridge shall thereafter cease, and the same shall be maintained and operated as a free bridge.”⁴¹⁰

Federal-Aid Highway Act of 1956 (FAHA) was enacted to create a singular national highway system “that would, according to” President “Eisenhower, eliminate unsafe roads, inefficient routes, traffic jams, and other” obstacles impeding “speedy, safe transcontinental travel.”⁴¹¹ Most pertinent to this report’s analysis, the FAHA added to the preexistent toll bridge

⁴⁰⁶ Pa. S. Res. No. 209 (Sess. of 2017); appdx. A., *infra* p. 150.

⁴⁰⁷ Fed.-Aid Rd. Act, approved July 11, 1916 (Pub. L.No. 64-156, 39 Stat. 355).

⁴⁰⁸ Fed. Highway Admin., U.S. Dep’t of Transp., Contributions & Crossroads 1916,

<https://www.fhwa.dot.gov/candc/timeline.cfm>. Construction was defined as reconstruction & improvement of rds..
Id.

⁴⁰⁹ *Id.* “The act authorized” \$75,000,000 “over 5 years to be apportioned among the states based on three equal factors: land area, population, and mileage of rural deliver routes and” contract “postal routes.” *Id.* The fed. share was up to half. *Id.* “[A]ny state receiving funds needed to have a highway agency capable of administering projects.” *Id.*

⁴¹⁰ Pub. L. No. 69-773, 44 Stat. 1398 (1927).

⁴¹¹ History, The Interstate Highway Sys., <https://www.history.com/topics/us-states/interstate-highway-system> (last updated Aug. 21, 2018).

exemption so as to allow the Interstate system “to incorporate toll roads (like the Pennsylvania Turnpike) and preexistent toll bridges and tunnels into the system, or new toll facilities could be built as part of the Interstate system, but . . . federal-aid highway funds” could not be used to construct, reconstruct or improve those toll facilities.⁴¹² At the time of its passage, the FAHA prohibited the use of federal funds to construct or improve such highways.⁴¹³ In 1958, the FAHA and the preceding highway laws in existence were codified into 23 U.S.C.. In that codification, the original prohibition on tolling within the federal-aid system dating from 1916 became § 301, and toll bridge and tunnel exemptions for pre-existing toll facilities dating from 1927 became § 129.⁴¹⁴

The Surface Transportation Assistance Act

Over the past several decades, the exemptions provided under § 129 to allow funds for certain toll road construction have been gradually augmented. For example, Surface Transportation Assistance Act of 1978 (STAA) allowed for other toll highways to become eligible for federal financial support.⁴¹⁵ To receive federal financial aid, the STAA mandated that state public authorities overseeing toll highways in the Interstate Highway System had to discontinue levying tolls once sufficient revenues were collected to retire outstanding bonds used to finance the highways.⁴¹⁶ Further, the STAA stipulated that if those authorities failed to make a toll road free once enough funds were collected to retire the bonds, the authorities had to repay the federal government for its financing.⁴¹⁷

The Intermodal Surface Transportation Efficiency Act

Surface Transportation and Uniform Relocation Assistance Act of 1987 amended the tolling restriction in § 129 by establishing a pilot program to allow the conversion of non-interstate federal-aid roads built as free roads into toll roads under certain circumstances.⁴¹⁸ Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) transformed the pilot program into a permanent exemption.⁴¹⁹ ISTEA helped to foster “a National Intermodal Transportation System,” consisting “of all forms of transportation in a unified, interconnected manner.”⁴²⁰ “ISTEA freed states from their obligation under the STAA to repay the federal government should they continue to collect tolls after retiring outstanding debts, and granted them greater flexibility to operate toll facilities and use toll revenues for a variety of transportation projects.”⁴²¹

⁴¹² Jeff Davis, *History of the Tolling Ban on Fed.-Aid Highways*, ENO Transp. Weekly (Jan. 22, 2018), available at <https://www.enotrans.org/article/history-tolling-ban-federal-aid-highways/>.

⁴¹³ Pub. L. No. 84-627, § 113(a), 70 Stat. 374, 384 (1956).

⁴¹⁴ 23 U.S.C. §§ 129, 301.

⁴¹⁵ Pub. L. No. 95-599; 92 Stat. 2689 (1978).

⁴¹⁶ *Id.* §105, 92 Stat. at 2692-93. “Section 105’s requirements were effectuated through ‘tripartite agreements’ between the relevant state public authority, the state highway department, and the U.S. Secretary of Transportation.” *Am. Trucking Ass’ns v. N. Y. State Thruway Auth.*, 886 F.3d 238, 241 n.6 (2nd Cir. 2018).

⁴¹⁷ Pub. L. No. 95-599, § 105; 92 Stat. 2689, 2693.

⁴¹⁸ Pub. L. 100–17, § 120; 101 Stat 132, 157-59 (1987).

⁴¹⁹ Pub. L. 102–240, § 1012; 105 Stat 1914, 1936 (1991). It’s now 23 U.S.C. 129(a)(1)(F).

⁴²⁰ Pub. L. 102–240, § 2; 105 Stat 1914.

⁴²¹ *Am. Trucking Ass’ns*, 886 F.3d at 242.

Today, federal participation is “permitted on the same basis and in the same manner as construction of toll-free highways” for the following:

- Initial construction of a toll highway, bridge, or tunnel or approach thereto;
- Initial construction of one or more lanes or other improvements that increase capacity of a highway, bridge, or tunnel (other than a highway on the Interstate System) and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free lanes, excluding auxiliary lanes, after the construction is not less than the number of toll-free lanes, excluding auxiliary lanes, before the construction;
- Initial construction of one or more lanes or other improvements that increase the capacity of a highway, bridge, or tunnel on the Interstate System and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free non-HOV lanes, excluding auxiliary lanes, after such construction is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before such construction;
- Reconstruction, resurfacing, restoration, rehabilitation, or replacement of a toll highway, bridge, or tunnel or approach thereto;
- Reconstruction or replacement of a toll-free bridge or tunnel and conversion of the bridge or tunnel to a toll facility;
- Reconstruction of a toll-free Federal-aid highway (other than a highway on the Interstate System) and conversion of the highway to a toll facility;
- Reconstruction, restoration, or rehabilitation of a highway on the Interstate System if the number of toll-free non-HOV lanes, excluding auxiliary lanes, after reconstruction, restoration, or rehabilitation is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before reconstruction, restoration, or rehabilitation;
- Conversion of a high occupancy vehicle lane on a highway, bridge, or tunnel to a toll facility; and
- Preliminary studies to determine the feasibility of a toll facility for which Federal participation is authorized under the statute.⁴²²

⁴²² 23 U.S.C. § 129(a)(1). This is the exception to the remainder of 23 U.S.C., which otherwise provides that “all highways constructed under . . . this title shall be free from tolls of all kinds.” *Id.* § 301.

Moreover, current law expressly limits the use of “toll revenues received from operation of the toll facility . . . for”:

- Debt service for projects on or for which the tolls are authorized, including funding of reasonable reserves and debt service on refinancing;
- A reasonable return on investment of any private person financing the project, as determined by the State or States concerned;
- Any costs necessary for the improvement and proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation;
- If the toll facility is subject to a public-private partnership agreement, payments that the party holding the right to toll revenues owes to the other party under the public-private partnership agreement; and
- If the public authority certifies annually that the tolled facility is being adequately maintained, any other purpose for which Federal funds may be obligated by a State under 23 Pa.C.S. (relating to highways).⁴²³

Should the commission be consolidated with the department’s interstate operations, the Commonwealth’s ability to receive federal funding for toll highways and its ability to use the toll revenues generated therefrom will be continue to be limited by federal statute as shown above, but this is the *status quo*.

The Moving Ahead for Progress in the 21st Century Act

Moving Ahead for Progress in the 21st Century Act (MAP-21) was enacted in 2012; most pertinent to this report, it required “all toll facilities on Federal-aid highways” to “implement technologies or business practices that provide for the interoperability of electronic toll collection programs.”⁴²⁴

The Commerce Clause of the U.S. Constitution

In considering a potential consolidation of the commission with the department’s interstate operations, one should be cognizant of the constitutional issues that may impact a state’s ability to toll highways. “The Congress” is empowered “[t]o regulate Commerce . . . among the several States.”⁴²⁵ The Commerce Clause has been “interpreted . . . to invalidate local laws that impose commercial barriers or discriminate against an article of commerce by reason of its origin or destination out of State.”⁴²⁶ This “‘negative’ aspect . . . denies the States the power unjustifiably

⁴²³ 23 U.S.C. § 129(a)(3)(A).

⁴²⁴ Pub. L. 112-141, § 1512; 126 Stat. 405, 572 (2012).

⁴²⁵ U.S. Const., art. I, § 8, cl. 3.

⁴²⁶ *C & A Carbone, v. Town of Clarkstown*, 511 U.S. 383, 390 (1994).

to discriminate against or burden the interstate flow of articles of commerce.”⁴²⁷ Characterized as dormant, this negative implication “prohibits economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.”⁴²⁸

The Dormant Commerce Clause has been used on occasion to challenge the constitutionality of user fees such as state highway tolls. Interstate travel is a protected right.⁴²⁹

The “right to travel” . . . protects the right of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.⁴³⁰

Generally, minor burdens that impact “interstate travel, such as toll roads, do not constitute a violation of” the right to interstate travel.⁴³¹ Despite this, the constitutional right to interstate travel under the Commerce Clause has been a legal theory used to attack state highway tolls as shown in several court cases to follow.

Federal Court Cases

While generating significant revenue, the exercise of state authority to toll roads also thrust states into constitutional challenges. Some of the issues litigated in these cases include a state’s authority to toll an interstate highway, the state’s usage of toll revenue and the amount of tolls imposed on motorists. As mentioned previously, many of these issues have been raised by litigants seeking to challenge the states under constitutional legal theories invoking the Dormant Commerce Clause, the right to travel, and the right to Equal Protection under the U.S. Constitution.

An early case evaluating the constitutionality of a state’s burden on interstate commerce is *Pike v. Bruce Church, Inc.*⁴³² A corporation sued to enjoin a state official’s order forbidding it to transport uncrated cantaloupes to a neighboring state for packing and processing.⁴³³ If the state’s order were upheld, it would have cost the corporation “approximately \$200,000” to build packing facilities there instead of shipping the crop in bulk “31 miles away” across the state line to its “centralized and efficient packing shed facilities.”⁴³⁴ The packer’s label would identify the cantaloupes from one state or the other; because these were “of exceptionally high quality,” the growing state, Arizona, wanted the credit of origin, instead of the packing state of California.⁴³⁵

⁴²⁷ *Or. Waste Sys. v. Or. Dep’t of Env’tl. Quality*, 511 U.S. 93, 98 (1994).

⁴²⁸ *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273 (1988).

⁴²⁹ There have been a number of rulings related to this, but an early one invalidating a law impeding the free interstate passage of the indigent is *Edwards v. Cal.*, 314 U.S. 160 (1941).

⁴³⁰ *Saenz v. Roe*, 526 U.S. 489, 500 (1999).

⁴³¹ *Miller v. Reed*, 176 F.3d 1202, 1205 (9th Cir. 1999).

⁴³² 397 U.S. 137 (1970).

⁴³³ *Id.* at 138.

⁴³⁴ *Id.* at 139.

⁴³⁵ *Id.* at 144.

Dating from 1929, Arizona’s law was intended to prevent the shipment of “inferior or deceptively packaged produce,” which could harm “the reputation of Arizona growers.”⁴³⁶ The challenged order, however, was not issued to protect the reputation of Arizona growers, rather it was to enhance it because of the “superior produce” involved and that enhancement would have required the corporation to spend \$200,000 on an unnecessary facility instead of using the existent one 31 miles away across the state line.⁴³⁷ “[E]nhancing the reputation of other producers” is a minimal rather than “compelling state interest.”⁴³⁸ This case is significant because it phrased “the general rule” to determine

the validity of state statutes affecting interstate commerce . . . : Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.⁴³⁹

A case from 1989 decided whether toll revenue from bridges and tunnels could subsidize a port authority’s railroad when the applicable statute required tolls to be “just and reasonable.”⁴⁴⁰ While this case referenced a provision within Federal-Aid Highway Act of 1987 (FAHA),⁴⁴¹ it ended up generating future debate on the amount of tolls imposed on interstate travelers by state authorities.⁴⁴² In this case, automobile clubs sued a port authority contending that “new bridge tolls were not just and reasonable.”⁴⁴³ The port authority increased its “bridge and tunnel tolls” to subsidize its railroad because its railroad system was losing money resultant “in a net operating loss . . . for the Port Authority’s Interstate Transportation Network.”⁴⁴⁴ The automobile clubs claimed that the bridge toll increases violated both the FAHA and the Commerce Clause.⁴⁴⁵ Most specifically, the court had to determine whether the bridge tolls were “just and reasonable” under the FAHA.⁴⁴⁶

The court considered a principle that “would . . . support the inclusion of those facilities in a single rate base *if* they are related to each other.”⁴⁴⁷ Because “[a] functional relationship exists . . . among those facilities that contribute to the Port Authority’s performance of its duty efficiently to provide transportation to travelers over and under the waterways between southern New York and northern New Jersey,” the closure of a “river crossing facility” would spillover as congestion on a different river crossing facility making the port authority “an ‘integrated, interdependent

⁴³⁶ *Id.* at 143.

⁴³⁷ *Id.* at 144.

⁴³⁸ *Id.* at 146.

⁴³⁹ *Id.* at 142.

⁴⁴⁰ *Automobile Club of N.Y. v. Port Auth. of N.Y. & N.J.*, 887 F.2d 417 (2nd Cir. 1989).

⁴⁴¹ Pub. L. 100-17, § 135; 101 Stat. 132, 173-74 (1987).

⁴⁴² *Automobile Club of N.Y.*, 887 F.2d at 417-18.

⁴⁴³ *Id.* at 417-18.

⁴⁴⁴ *Id.*

⁴⁴⁵ *Id.* at 419.

⁴⁴⁶ *Id.* at 417.

⁴⁴⁷ *Id.* at 420.

transportation system.”⁴⁴⁸ Concluding that the railroad is functionally related to the bridges and tunnels “justifies including” the railroad “in the rate base” for the port authority’s tolls.⁴⁴⁹

Another case with potential implications on a state’s ability to toll roads is *Northwest Airlines v. County of Kent*.⁴⁵⁰ Commercial airlines sued a county asserting that its “airport user fees . . . are unreasonable and discriminatory, in violation of” a federal statute “and the Commerce Clause.”⁴⁵¹ The court referred to a three-part test fashioned in a previous court case to determine the constitutionality of a head tax on passengers under the commerce clause.⁴⁵² According to this three-part test, a user fee or toll is constitutional if it: “(1) is based on some fair approximation of the use of the facilities, (2) is not excessive in relation to the benefits conferred, and (3) does not discriminate against interstate commerce.”⁴⁵³ The court ultimately held that the airport user fees did not violate the commerce clause, even assuming that the dormant commerce clause applied, in light of the fact that the fees were reasonable under the applicable federal statute using “a reasonableness standard taken directly from . . . dormant Commerce Clause jurisprudence.”⁴⁵⁴ The applicability of the test in this case *versus* the analysis used in *Pike* would be the source of some inconsistency and debate throughout later cases.

In the 2014 case of *Heffner v. Murphy*, the U.S. Court of Appeals for the Third Circuit’s dormant commerce clause analysis was to not apply heightened scrutiny if a state law does not discriminate “against interstate commerce in either purpose or effect” but to then “balance interests pursuant to *Pike v. Bruce Church*” to determine whether the state law’s nondiscriminatory burden “on interstate commerce substantially outweighs the putative local benefits.”⁴⁵⁵ This case is significant because it is an example from the U.S. Court of Appeals in the circuit that includes the Commonwealth applying the *Pike* test for state provisions that do not discriminate in favor of in-state interests but can burden interstate commerce, much like a state highway toll.

In a 2015 case, a motorist sued on behalf of herself and other turnpike toll payers claiming that Ohio Turnpike and Infrastructure Commission increased tolls “to fund projects that are unrelated to the maintenance and operation of the Ohio Turnpike” violating “the Commerce Clause . . . , the right to travel . . . , and the right to Equal Protection.”⁴⁵⁶ The court partially dismissed the motorist’s lawsuit for the following defects: failure to allege that the “toll increase discriminates against interstate commerce” as required by the dormant Commerce Clause;⁴⁵⁷ insufficient allegation to implicate “components of the right to travel,”⁴⁵⁸ and the failure to show that increased highway tolls imposed on motorists who used Ohio Turnpike but not other motorists burdened a suspect classification, denied a fundamental right or was not rationally related to the legitimate

⁴⁴⁸ *Id.* at 422.

⁴⁴⁹ *Id.* at 423. “[T]he tolls are just and reasonable.” *Id.* at 425.

⁴⁵⁰ 510 U.S. 355 (1994).

⁴⁵¹ *Id.* at 358.

⁴⁵² *Id.* at 362-63 (quoting *Evansville-Vanderburgh Airport Auth. Dist. v. Delta Airlines*, 405 U.S. 707 (1972)).

⁴⁵³ 510 U.S. at 369.

⁴⁵⁴ *Id.* at 373-74.

⁴⁵⁵ 745 F.3d 56, 70-71 (3d Cir. 2014).

⁴⁵⁶ *Ulmo v. Ohio Tpk. & Infrastructure Comm’n*, 126 F.Supp.3d 910, 914 (N.D. Ohio 2015). This is a federal case at the district court level in a different U.S. Court of Appeals and does not provide the controlling persuasiveness of an appellate level case or a case within the Commonwealth’s circuit.

⁴⁵⁷ *Id.* at 915-17.

⁴⁵⁸ *Id.* at 918-19.

governmental interest of improved roads and infrastructure, and, thus, did not sustain an Equal Protection Claim.⁴⁵⁹

A toll on all travelers (in-state and out-of-state) does not impose a commercial barrier or discriminate against an article of commerce if all travelers who use the turnpike are subject to the toll regardless of origin or destination out of state.⁴⁶⁰ The court also applied its three part test from *Northwest Airlines*, but the motorist did not “allege the amount of the toll” or its increase so that it could not be invalidated as an unfair approximation of the use of facilities for whose benefit they are imposed.⁴⁶¹ In addition, the court dismissed the right to travel claim, noting that travelers do not have a constitutional right to the most convenient form of travel, and minor restrictions on travel simply do not amount to the denial of a fundamental right.⁴⁶²

In 2018, the U.S. Court of Appeals for the Second Circuit ruled on a challenge by the American Trucking Associations to the New York State Thruway Authority’s allocation of “surplus highway toll revenues to New York State’s canal system.”⁴⁶³ The associations claimed that the thruway authority violated the Dormant Commerce Clause *via* this allocation of “highway tolls to canal uses.”⁴⁶⁴ Echoing the jurisprudence cited in both the *Ohio Turnpike* and *Northwest Airlines* rulings, the court emphasized the U.S. Supreme Court’s longstanding recognition of the Commerce Clause’s limitation on the states’ ability “to erect barriers against interstate commerce” under the “Dormant Commerce Clause” and even recited the three-part test established in the *Northwest Airlines* ruling.⁴⁶⁵

However, the court also recognized that “state . . . government action . . . specifically authorized by Congress . . . is not subject to the [Dormant] Commerce Clause even if it interferes with interstate commerce.”⁴⁶⁶ Because a federal statute “permitted the Thruway Authority to allocate excess toll revenues . . . to any transportation facilities under” its “jurisdiction or . . . for any project eligible to receive federal assistance under Title 23,” the canal system met both conditions for this allocation.⁴⁶⁷ The court stated that clear authority in a federal statute authorizes “a state to engage in activity that would otherwise violate the Dormant Commerce Clause” meaning that the statute does not need to expressly invoke it as an exception to that clause.⁴⁶⁸

⁴⁵⁹ *Id.* at 919-20.

⁴⁶⁰ *Id.* at 916.

⁴⁶¹ *Id.*

⁴⁶² *Id.* at 918. The motorist also claimed that the increased toll is unlawful tax as opposed to a user fee under state law; however, the federal court remanded this surviving claim to “state court for adjudication.” *Id.* at 920.

⁴⁶³ *American Trucking Ass’n, v. N.Y. State Thruway Auth.*, 886 F.3d 238, 240-41 (2nd Cir. 2018).

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.* at 245.

⁴⁶⁶ *Id.*

⁴⁶⁷ *Id.* at 245-46.

⁴⁶⁸ *Id.* at 245, 247.

With the inconsistent application of constitutional tests throughout the different jurisdictions, the U.S. Supreme Court articulated in 2018 “the analytical framework that now prevails for Commerce Clause cases.”⁴⁶⁹ While this case did not involve a dormant commerce clause challenge to a toll or fee, the court reiterated “two primary principles that mark the boundaries of a State’s authority to regulate interstate commerce”: “state regulations may not discriminate against interstate commerce; and . . . may not impose undue burdens on interstate commerce.”⁴⁷⁰ Moreover, the court said that as to undue burdens, *Pike* sets out the appropriate standard for evaluating the existence of such a burden on interstate commerce imposed by law.⁴⁷¹ While the court’s determination regarding the applicability of the *Pike* test is general, it does provide some form of consistency when considering the U.S. Court of Appeals for the Third Circuit’s application of *Pike* in the *Heffner* case

Owner Operator Independent Drivers Association v. Pennsylvania Turnpike Commission. Most relevant to the possible consolidation of the commission with the department’s interstate operations is the very recent federal court case of *Owner Operator Independent Drivers Association v. Pennsylvania Turnpike Commission*, which was decided by the U.S. District Court in spring 2019.⁴⁷² The association alleged that act numbers 44 of 2007⁴⁷³ and 89 of 2013⁴⁷⁴ authorize and direct “the . . . [t]urnpike [c]ommission . . . to collect user fees with no regard to [t]urnpike operating costs and to redistribute those funds to the . . . [d]epartment of [t]ransportation . . . for projects across the Commonwealth that are of no benefit to the paying [t]urnpike motorist” thereby violating “the dormant Commerce Clause . . . and their constitutional right to travel.”⁴⁷⁵

Originally, act number 44 scheduled annual commission contributions to the department of over \$900,000,000 *per* fiscal year “to fund infrastructure improvements . . . earmarked for non-[t]urnpike projects . . . the state’s 74 mass-transit operations.”⁴⁷⁶ Six years after that enactment, act number “89 amended the” turnpike commission’s “annual payment obligations to” the department.⁴⁷⁷ The annual commission contribution is scheduled to be further reduced for fiscal year 2022-2023 and thereafter, totaling \$9,650,000,000 “through fiscal year 2057.”⁴⁷⁸ This money comes from the turnpike commission’s “tolls and . . . bonds it issues.”⁴⁷⁹ Beginning in 2014, none of the reduced turnpike commission payments were dedicated to highways and bridges; “[i]nstead, all \$ 450 million is allocated to support transit capital, operating, multi-modal and other non-highway programs.”⁴⁸⁰ The association listed “some of the projects approved under these statutory

⁴⁶⁹ *S. Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080, 2090 (2018).

⁴⁷⁰ *Id.* at 2090-91.

⁴⁷¹ *Id.* at 2091 (even-handed state regulations for “a legitimate local public interest . . . will be upheld unless the burden imposed . . . is clearly excessive” related “to the putative local benefits.” *Id.*).

⁴⁷² 383 F.Supp.3d 353 (M.D. Pa. 2019).

⁴⁷³ Act of July 18, 2007 (P.L.169, No.44).

⁴⁷⁴ Act of Nov. 25, 2013 (P.L.974, No.89).

⁴⁷⁵ Complaint, *Owner Operator Indep. Drivers Ass’n, Inc. v. Pa. Tpk. Comm’n* (M.D. Pa. 2018) (No. 1:18-cv-00608-SHR).

⁴⁷⁶ *Owner Operator Indep. Drivers Ass’n v. Pa. Tpk. Comm’n*, 383 F.Supp.3d 353, 357-58 (M.D. Pa. 2019).

⁴⁷⁷ *Id.* at 358.

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.* Specifically, the turnpike commission’s annual payments are deposited into Pub. Transp. Trust Fund for an operating program, an asset improvement program, programs of statewide significance and Multimodal Transp. Fund. 74 Pa.C.S. § 1506(e)(1)-(3), (6).

provisions (and funded with Act 44/89 toll revenues)” asserting that “these funded programs have ‘no functional relationship to the . . . [t]urnpike,’ and” the statutorily required payments would require “continually increasing toll rates and debt.”⁴⁸¹

The association alleged that the turnpike commission’s “toll revenues have consisted of an amount over 200% of the cost to operate, maintain, and upgrade the [t]urnpike.”⁴⁸² The association contended “that [t]urnpike tolls do not represent a ‘fair approximation of the use of the [t]urnpike facilities provided, . . . are excessive in relation to the benefits conferred, and . . . significantly exceed the costs incurred by” the turnpike commission “to operate and maintain” its system.⁴⁸³ The association also alleged that the turnpike commission’s “tolls unduly burden interstate commerce by” generating revenue “to underwrite expenses incurred by” Department of Transportation “in providing services and facilities throughout the Commonwealth that have no functional relationship to the Pennsylvania Turnpike System.”⁴⁸⁴ The association also alleged that act numbers 44 and 89 are “official state action that impedes” travelers who must pay the tolls with the economic benefits favoring “others who do not pay the toll.”⁴⁸⁵ The association alleged that this is a deprivation of its “right to engage in interstate commerce in violation of . . . the Commerce Clause” and violates the “constitutional right to travel.”⁴⁸⁶ The association sought a judgment declaring its allegations of unconstitutionality and a permanent injunction on excessive tolls, additional turnpike debt, the use of tolls to pay outstanding bonds, then enforcement of act numbers 44 and 89 and a refund of excessive tolls already paid.⁴⁸⁷

Once again, this was a complaint asserting that act numbers 44 and 89 violate “both (1) the dormant Commerce Clause of the United States Constitution, and (2) the constitutional right to travel.”⁴⁸⁸ The Commerce Clause’s implied dormancy means that states may not differentiate “in-state and out-of-state economic interests” to benefit the former and burden the latter.⁴⁸⁹ In other words, states may not regulate to “discriminate against interstate commerce” nor to unduly burden interstate commerce.⁴⁹⁰

The parties in this dispute advocated “separate, competing standards within the world of dormant Commerce Clause jurisprudence, rather than two” complementary “analytical frameworks” with “[n]o definitive controlling precedent” supporting “either side.”⁴⁹¹ This U.S. District Court found that “the relevant authority renders *Pike* the appropriate test for examining” the “dormant Commerce Clause challenge” instead of *Northwest Airlines*; however, neither the U.S. Court of Appeals for this Circuit nor the U.S. Supreme Court evaluated these “competing tests in any Commerce Clause challenge to highway tolls.”⁴⁹² The U.S. Court of Appeals for this

⁴⁸¹ *Owner Operator Independent Drivers Ass’n*, 383 F.Supp.3d at 359-60.

⁴⁸² *Id.* at 361.

⁴⁸³ *Id.* at 362.

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.* at 363-64.

⁴⁸⁸ *Id.* at 367.

⁴⁸⁹ *Id.*

⁴⁹⁰ *Id.* at 368. However, Congress can authorize interference with interstate commerce. *Id.*

⁴⁹¹ *Id.* at 379.

⁴⁹² *Id.*

Circuit applied the *Pike* analysis to dormant Commerce Clause challenges to highway tolls twice “without a detailed analysis as to the issue of the governing test for assessing an undue burden claim under the dormant Commerce Clause” in one case with the other case finding no discrimination “against interstate commerce on its face or in effect.”⁴⁹³ Since the U.S. Supreme Court recently articulated “*Pike* as the standard governing dormant Commerce Clause challenges on undue burden grounds, which comports with the limited precedent in the Third Circuit on this issue in the context of highway tolls,” this U.S. District Court applied *Pike* instead of *Northwest Airlines*.⁴⁹⁴ Regarding the tolls to be a “burden on *commerce* as opposed to a burden on *interstate commerce*,” the “dormant Commerce Clause challenge under *Pike*” was dismissed.⁴⁹⁵

“State laws implicate the right to travel (1) when such laws actually deter travel; (2) when impeding travel is the primary objective of the law; or (3) when the law uses a classification that penalizes travel.”⁴⁹⁶ The U.S. Court of Appeals for this circuit “recently acknowledged that while the Supreme Court has not recognized a constitutional right to ‘intrastate’ travel, this Circuit recognized such a right.”⁴⁹⁷ The reasonable inference drawn by the U.S. District Court was that the turnpike tolls could deter travel through a particular route; however, there is not “a reasonable inference that the constitutional right to travel has been burdened by the toll structure imposed by” act numbers 44 and 89.⁴⁹⁸ The U.S. District Court dismissed the complaint because the “factual allegations do not support a claim for violations of the dormant Commerce Clause or the constitutional right to travel.”⁴⁹⁹

The association appealed this ruling to U.S. Court of Appeals for the Third Circuit, which affirmed “the District Court’s order dismissing the complaint.”⁵⁰⁰ The Commerce Clause is not implicated by the collection and use of “tolls for non-Turnpike purposes” because Congress permitted state authorities to do that, and the association did not allege that motorists’ “right to travel to, from, and within Pennsylvania has been deterred” so that “their right to travel has not been infringed.”⁵⁰¹ Congressional authorization for the use of toll funds for “non-Turnpike related projects” are from ISTEA, which effectively broadened STAA.⁵⁰²

In the middle of December 2019,⁵⁰³ the association petitioned U.S. Supreme Court for a *writ of certiorari* with a response due in the middle of January 2020. This filing is to appeal the ruling from U.S. Court of Appeals for the Third Circuit. This report is being published before it is known whether the petition is granted or denied. If granted and the association’s appeal succeeds, the ultimate outcome could be an injunction on excessive tolling, more debt issuance

⁴⁹³ *Id.* at 380-81.

⁴⁹⁴ *Id.* at 383-84.

⁴⁹⁵ *Id.* at 384. The tolls are identical on “in-state and out-of-state drivers on the Turnpike.” *Id.*

⁴⁹⁶ *Id.* at 385.

⁴⁹⁷ *Id.*

⁴⁹⁸ *Id.* at 387. The right to travel in this dispute focused on entering and leaving a state rather than a statutory objective to impede travel or a classification to penalize travel. *Id.*

⁴⁹⁹ *Id.* at 388.

⁵⁰⁰ 934 F.3d 283, 288 (3d Cir. 2019).

⁵⁰¹ *Id.* at 288, 290-96;

⁵⁰² *Id.* at 292-94; STAA & ISTEA are discussed, *supra*, pp. 80-82.

⁵⁰³ Just before publication of this rep..

and using toll revenue to retire debt incurred to pay as statutorily required. It could also result in a refund of tolls paid that were excessive.

State Laws

The Commission

Pennsylvania Turnpike Commission Act. In 1937, the Pennsylvania Turnpike Commission Act (PTCA) created Pennsylvania Turnpike Commission.⁵⁰⁴ The commission's creation and authority was "to facilitate vehicular traffic between the eastern and western sections of the Commonwealth."⁵⁰⁵ Specifically, this route was from "a point . . . in Cumberland County to a point . . . in Westmoreland County."⁵⁰⁶ This enactment "expressly authorized and empowered" the commission "to construct, operate, and maintain a turnpike . . . with connecting tunnels and bridges, and to issue turnpike revenue bonds . . . , payable solely from tolls, to pay the cost of . . . construction."⁵⁰⁷ The "turnpike revenue bonds issued under . . . this act" were not to be deemed to a Commonwealth debt or pledge of its credit "but . . . payable exclusively from . . . tolls."⁵⁰⁸ Accordingly, all bond money issued under this act must "be applied solely to the purpose for which such bonds are issued, as provided by the resolution authorizing the issuance."⁵⁰⁹

The PTCA also authorized the commission to fix and revise tolls so that they are adjusted sufficiently "to pay--(a) the cost of maintaining, repairing and operating the turnpike; and (b) the bonds and the interest thereon, and all sinking fund requirements, and other requirements provided by . . . the issuance of the bonds or by the trust indenture as . . . due."⁵¹⁰ The tolls are "not . . . subject to supervision or regulation by any other [s]tate commission, board, bureau or agency."⁵¹¹ Reserves are to be regularly set aside "pledged to, and charged with the payment of, (1) the interest upon such bonds as . . . due; (2) the principal of the bonds as . . . due; (3) the necessary fiscal agency charges for paying principal and interest; and (4) any premium upon bonds retired by call or purchase."⁵¹²

The PTCA expressly requires that "[w]hen all bonds and the interest thereon have been paid . . . , the turnpike and the connecting bridges shall become a part of the system of [s]tate highways, and shall be maintained by the Department of Highways free of tolls, and thereupon the commission shall" dissolve, "with all funds . . . not required" to pay "the bonds and all machinery,

⁵⁰⁴ Act of May 21, 1937 (P.L.774, No.211), § 4; 36 P.S. § 652d.

⁵⁰⁵ *Id.* § 1; 36 P.S. § 652a.

⁵⁰⁶ *Id.*

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.* § 2; 36 P.S. § 652b. "All such bonds shall contain a statement on their face that the Commonwealth is not obligated to pay the same or the interest thereon except from tolls and that the faith and credit of the Commonwealth is not pledged to the payment of the principal or interest of such bonds." *Id.*

⁵⁰⁹ *Id.* § 9; 36 P.S. § 652i.

⁵¹⁰ *Id.* § 12; 36 P.S. § 652l.

⁵¹¹ *Id.*

⁵¹² *Id.*

equipment, and other property belonging to the commission, shall be vested in the Department of Highways.”⁵¹³

Extending the Pennsylvania Turnpike System

Pennsylvania Turnpike Philadelphia Extension Act. Three years after enactment of PTCA, Pennsylvania Turnpike Philadelphia Extension Act (PTPEA), was enacted in 1940.⁵¹⁴ The PTPEA authorized the commission “to construct, operate and maintain a turnpike, . . . together with connecting roads, tunnels, and bridges and to issue turnpike revenue bonds . . . to pay the cost of such construction.”⁵¹⁵ This was to extend the turnpike from “Cumberland County to a point at the City of Philadelphia.”⁵¹⁶

Western Pennsylvania Turnpike Extension Act. The following year, the Western Pennsylvania Turnpike Extension Act (WPTEA) was enacted in 1941.⁵¹⁷ The WPTEA authorized the commission “to construct, operate, and maintain a turnpike . . . together with connecting roads, tunnels, and bridges and to issue turnpike revenue bonds . . . to pay the cost of such construction.”⁵¹⁸ This was to extend the turnpike from “Westmoreland County . . . to a point on the western boundary line of the Commonwealth . . . touching on . . . Ohio or . . . West Virginia.”⁵¹⁹

Pennsylvania Turnpike Delaware River Extension Act. The Pennsylvania Turnpike Delaware River Extension Act (PTDREA) was enacted approximately a decade after the enactment of WPTEA.⁵²⁰ This authorized the commission “to construct, operate, and maintain a turnpike . . . from . . . the Eastern Extension of the . . . Turnpike system . . . to a point . . . near the Delaware River between the Commonwealth . . . and . . . New Jersey.”⁵²¹

Pennsylvania Turnpike Northeastern Extension Act. The Pennsylvania Turnpike Northeastern Extension Act was enacted a few months after the enactment of PTDREA.⁵²² This authorized the commission “to construct, operate, and maintain a turnpike . . . from a connection with the . . . Turnpike System . . . east of the Susquehanna River . . . to . . . the boundary line between the Commonwealth . . . and . . . New York, between the Susquehanna” and Delaware Rivers.⁵²³

⁵¹³ *Id.* § 15; 36 P.S. § 652o. Dep’t of Highways is now Dep’t of Transp.. This provision reappears in Pa. Tpk. Gettysburg Extension Act. Act of Jan. 14, (1952) 1951 (P.L.1947, No.547), § 18; 36 P.S. § 667.18. It also reappears in Pa. Tpk. Nw. Extension Act. Act of July 28, 1953 (P.L.706, No.229); § 18; 36 P.S. § 668.18. It also reappears in Pa. Tpk. Keystone Shortway Act. Act of June 10, 1955 (P.L.157, No.50), § 18; 36 P.S. § 666.18. It also reappears in Pa. Tpk. Sw. Extension Act. Act of June 14, 1955 (P.L.174, No.52), § 18; 36 P.S. § 669.18.

⁵¹⁴ Act of May 16, 1940, Spec. Sess. (P.L.949, No.11); 36 P.S. §§ 653-663s.

⁵¹⁵ *Id.* § 2; 36 P.S. § 653a.

⁵¹⁶ *Id.*

⁵¹⁷ Act of June 11, 1941 (P.L.101, No.53); 36 P.S. §§ 654-654r.

⁵¹⁸ *Id.* § 2; 36 P.S. § 654a.

⁵¹⁹ *Id.*

⁵²⁰ Act of May 23, 1951 (P.L.335, No.74); 36 P.S. §§ 658.1-658.20.

⁵²¹ *Id.* § 2; 36 P.S. § 658.2. It also authorized “the construction, operation and maintenance of a bridge across the” Del. River *via* compact between the Commw. and N.J. or by the tpk. comm’n on its own or jointly with another auth..
Id.

⁵²² Act of Sept. 27, 1951 (P.L.1430, No.348); 36 P.S. §§ 660.1-660.20.

⁵²³ *Id.* § 2; 36 P.S. § 660.2

Pennsylvania Turnpike Gettysburg Extension Act. The Pennsylvania Turnpike Gettysburg Extension Act (PTGEA) was enacted approximately five years after the enactment financially combining the turnpike extensions.⁵²⁴ This authorized the commission “to construct, operate, and maintain a turnpike . . . west of the Susquehanna River” connecting the turnpike system “to a point . . . near the boundary line between the Commonwealth . . . and . . . Maryland, in the general vicinity of Gettysburg.”⁵²⁵

Pennsylvania Turnpike Northwestern Extension Act. The Pennsylvania Turnpike Northwestern Extension Act (PTNEA) was enacted the year after the enactment of PTGEA.⁵²⁶ This authorized the commission “to construct, operate, and maintain a turnpike . . . from a point . . . in Erie County . . . southerly . . . to connect with the . . . Turnpike System.”⁵²⁷

Pennsylvania Turnpike Keystone Shortway Act. The Pennsylvania Turnpike Keystone Shortway Act (PTKSA), was enacted two years after the enactment of PTNEA.⁵²⁸ This authorized the commission “to construct, operate, and maintain a turnpike . . . from . . . the western border of Pennsylvania to . . . the eastern border of Pennsylvania . . . from . . . Mercer County to . . . Monroe County.”⁵²⁹

Pennsylvania Turnpike Southwestern Extension Act. The Pennsylvania Turnpike Southwestern Extension Act (PTSEA) was enacted four days after the enactment of PTKSA.⁵³⁰ This authorized the commission “to construct, operate, and maintain a turnpike . . . from a connection with the . . . Turnpike System . . . near . . . Pittsburgh . . . southerly . . . to the West Virginia border.”⁵³¹

Pennsylvania Turnpike Philadelphia Loop Extension Act. The Pennsylvania Turnpike Philadelphia Loop Extension Act (PTPLEA) was enacted almost a year after the enactment of PTSEA.⁵³² This authorized the commission “to construct, operate, and maintain a turnpike . . . from a point . . . in Delaware County . . . northerly . . . to connect with the . . . Turnpike System.”⁵³³

Combining Turnpike Projects for Financing

Act number 367 of 1947. After enactments of PTCA, PTPEA, and WPTEA, “the [c]ommission was authorized . . . to combine the Turnpike, the Eastern Extension, and the Western Extension, or any two thereof, for financing purposes . . . and . . . fix and revise . . . tolls for the

⁵²⁴ Act of Jan. 14, (1952) 1951 (P.L.1947, No.547); 36 P.S. §§ 667.1-667.20.

⁵²⁵ *Id.* § 2; 36 P.S. § 667.2.

⁵²⁶ Act of July 28, 1953 (P.L.706, No.229); 36 P.S. §§ 668.1-668.19.

⁵²⁷ *Id.* § 2; 36 P.S. § 668.2.

⁵²⁸ Act of June 10, 1955 (P.L.157, No.50); 36 P.S. §§ 666.1-661.19.

⁵²⁹ *Id.* § 2; 36 P.S. § 666.2.

⁵³⁰ Act of June 14, 1955 (P.L.174, No.52); 36 P.S. §§ 669.1-669.19.

⁵³¹ *Id.* § 2; 36 P.S. § 669.2.

⁵³² Act of May 15, (1956) 1955 (P.L.1589, No.534); 36 P.S. §§ 652.1- 652.20.

⁵³³ *Id.* § 2; 36 P.S. § 652.2.

use of the project so combined.”⁵³⁴ The commission was also provided additional authority to issue revenue bonds reflecting this combination.⁵³⁵

Pennsylvania Turnpike System Financing Act. Approximately four years after act number 367 of 1947 was enacted, the Pennsylvania Turnpike System Financing Act (PTSFA) was enacted.⁵³⁶ This granted “supplemental and additional powers to the commission” to combine the financing of its projects “subject to any limitations . . . in any trust indenture . . . then outstanding.”⁵³⁷ The PTSFA also expressly authorized the commission to issue “revenue bonds . . . payable solely from” the commission’s revenues to.⁵³⁸

- Pay the cost of any project or projects so combined, and
- Refund any revenue bonds, notwithstanding any limitations as to time of refunding or rate of interest contained in the acts authorizing their issuance, whether or not the projects of which the bonds being refunded are combined,
- Fix and revise tolls until all bonds on all projects are paid, and
- Construct and finance any project, whether or not combined.

The PTSFA also authorizes the commission “to borrow money . . . for preliminary or interim financing” within “the estimated total cost of any project.”⁵³⁹ The authorized financing must be procured “by the issuance of notes . . . payable solely from revenues of the commission.”⁵⁴⁰ The key difference between act number 367 and PTFA is that the former is limited to the turnpike and its eastern and western extensions⁵⁴¹ while the latter extended the combined financing to the three additional extensions authorized after the first two along with “any extension . . . hereafter authorized to be constructed or acquired . . . by the commission.”⁵⁴²

Improvements to the Pennsylvania Turnpike System

Act number 73 of 1957. This enactment required the commission to paint tunnel interiors white or line them with “light colored material” to reflect light.⁵⁴³ It also required the commission to “equip each tunnel with continuous lighting . . . sufficient . . . to eliminate any blind-vision areas while” in “the tunnels.”⁵⁴⁴

Act number 74 of 1957. The same day that act number 73 was enacted, another law was enacted to require the commission to “erect, . . . maintain and repair . . . medial guards . . . to . . .

⁵³⁴ Act of June 21, 1947 (P.L.877, No.367), § 2; 36 P.S. § 654.2.

⁵³⁵ *Id.* This includes paying the cost of the extensions, refunding any turnpike revenue bonds, paying redemption *premia, etc.. Id.*

⁵³⁶ Act of Aug. 14, 1951 (P.L.1232, No.282); 36 P.S. §§ 659.1-659.7.

⁵³⁷ *Id.* §§ 2, 7; 36 P.S. §§ 659.2, 659.7.2.

⁵³⁸ *Id.* § 2; 36 P.S. § 659.2.

⁵³⁹ *Id.* § 3; 36 P.S. § 659.3.

⁵⁴⁰ *Id.*

⁵⁴¹ Act of June 21, 1947 (P.L.877, No.367), § 1; 36 P.S. § 654.1.

⁵⁴² Act of Aug. 14, 1951 (P.L.1232, No.282), § 1; 36 P.S. § 659.1.

⁵⁴³ Act of May 17, 1957 (P.L.160, No.73), § 1; 36 P.S. § 652r.

⁵⁴⁴ *Id.*

prevent vehicular traffic . . . from crossing the medial line and entering the lanes . . . in the opposite direction” between the interchanges at Donegal and Bedford.⁵⁴⁵

Pennsylvania Turnpike Additional Projects Construction Law. Two years after the enactment of the laws to light the tunnels and erect medial barriers, the Pennsylvania Turnpike Additional Projects Construction Law (PTAPCL) which was enacted in 1959.⁵⁴⁶ This authorized the commission “to construct, improve and reconstruct . . . improvements, betterments, extraordinary maintenance and repairs including toll plazas, interchanges, bridges, additional tunnels and lanes on the . . . Turnpike.”⁵⁴⁷ The PTAPCL also approved projects “for financing by issuance . . . of bonds” subjecting the commission’s issuance of other turnpike revenue bonds to legislative approval.⁵⁴⁸

Act number 573 of 1961. Approximately two years after enactment of PTAPCL, this act required the commission to “erect . . . maintain and repair . . . medial guards . . . to . . . prevent vehicular traffic . . . from crossing the medial line and entering the lanes . . . moving in the opposite direction” along at least 150 miles of the turnpike.⁵⁴⁹ Furthermore, this act required that the commission progress at a rate of at least 25 miles “each year until . . . the minimum length of” 150 “miles of the turnpike is so equipped.”⁵⁵⁰

Fixing and Revising Tolls for the Pennsylvania Turnpike System

Pennsylvania Turnpike Organization, Extension and Toll Road Conversion Act. The Pennsylvania Turnpike Organization, Extension and Toll Road Conversion Act (PTOETRCA) was enacted in 2007.⁵⁵¹ This Act restated the commission’s powers and duties and also addressed the collection and disposition of tolls and other revenue.⁵⁵² For example, the PTOETRCA authorizes the commission “to fix and . . . revise tolls for the use of the . . . Turnpike System and the different parts . . . of the system, including the . . . extensions and improvements and the toll road conversions.”⁵⁵³ Aside from charging and collecting tolls, the PTOETRCA further authorizes the commission “to contract with any person . . . desiring the use of any part . . . for placing thereon telephone . . . or power lines, gas stations, garages, stores, hotels, restaurants and advertising signs or for any other purpose . . . for . . . railway use; and to fix the terms, conditions, rents and rates of charges for use.”⁵⁵⁴ The tolls and other revenues are “to provide funds . . . to pay.”⁵⁵⁵

- The cost of the Turnpike, including constructing, widening, extending, repairing and operating the Turnpike.

⁵⁴⁵ Act of May 17, 1957 (P.L.160, No.74), § 1; 36 P.S. § 652s.

⁵⁴⁶ Act of Sept. 8, 1959 (P.L.828, No.322); 36 P.S. §§ 652t-652u.3.

⁵⁴⁷ *Id.* § 2; 36 P.S. § 652u.

⁵⁴⁸ *Id.* § 3; 36 P.S. § 652u.1.

⁵⁴⁹ Act of Sept. 15, 1961 (P.L.1305, No.573), § 1; 36 P.S. § 652v.

⁵⁵⁰ *Id.* § 2; 36 P.S. § 652w.

⁵⁵¹ Act of July 18, 2007 (P.L.169, No.44); 74 Pa.C.S. ch. 81 & amends. to ch. 82 and 75 Pa.C.S. chs. 89 & 95.

⁵⁵² 74 Pa.C.S. §§ 8107, 8116.

⁵⁵³ *Id.* § 8116(a).

⁵⁵⁴ *Id.*

⁵⁵⁵ *Id.*

- Any of the following:
 - The commission’s bonds or other obligations and their interest.
 - Sinking fund requirements.
 - Other requirements provided for by any resolution authorizing the issuance of the bonds or other obligations or by any trust indenture to which the commission is a party.
- Amounts due to Department of Transportation.
- Funds required to be repaid to the federal government under authorization of the conversion of toll-free roads to toll roads.
- Any other amounts payable to the Commonwealth.

Commission Payments to the Department

Act numbers 44 of 2007 and 89 of 2013. The PTOETRCA, which is act number 44 of 2007, essentially expanded the commission’s mandate from one focused specifically on constructing, operating, and improving the turnpike to also fund public transportation and Department of Transportation.⁵⁵⁶ Specifically, the PTOETRCA directed the department and the commission to lease Interstate 80 for half a century along with its conversion to a toll road.⁵⁵⁷ The PTOETRCA also authorized the commission to apply for federal approval to convert “Interstate 80 to a toll road.”⁵⁵⁸ Act number 44 also authorized the commission to “reconstruct, . . . , expand, . . . maintain and operate Interstate 80 from . . . near the Ohio border to . . . near the New Jersey border, . . . with connecting roads, interchanges, slip ramps, tunnels and bridges.”⁵⁵⁹ Moreover, the commission was authorized to “[i]ssue turnpike revenue bonds . . . or other obligations, payable solely from” the commission’s revenues “to pay the cost of . . . reconstructing, . . . expanding or extending Interstate 80 or any other costs of” that interstate and the turnpike.⁵⁶⁰ Almost immediately, the commission was initially obligated to pay the department \$62,500,000 for deposit into the Public Transportation Trust Fund.⁵⁶¹ Later in 2007, the commission initiated its payments to the department in the amount of \$229,200,000.

Despite the federal government’s denial of the conversion of Interstate 80 to a toll road in 2010, the commission had been paying the department since 2007 and continued to do so pursuant to its lease agreement in accordance with the PTOETRCA. In 2013, act number 89 modified the commission’s payments to the department, dedicating “the full amount to public transit.”⁵⁶² In addition, act number 89 reduced the commission’s annual payment obligations through 2022 and by another reduction from then until 2057.⁵⁶³ To date, the commission has paid the department

⁵⁵⁶ Pa. Tpk. Comm’n, Fin./Planning, Act 44 Plan, https://www.paturnpike.com/business/act44_plan.aspx (2019).

⁵⁵⁷ 75 Pa.C.S. §§ 8915.1, 8915.3.

⁵⁵⁸ *Id.* § 8915.2(a).

⁵⁵⁹ *Id.* § 8915.1(1).

⁵⁶⁰ *Id.* § 8915.1(3).

⁵⁶¹ *Id.* § 8915.4(a).

⁵⁶² Pa. Tpk. Comm’n, *supra* note 556.

⁵⁶³ *Id.* Predating the statutory amend. in 2013, the comm’n reduced its payment to the dep’t in 2010 after the fed. gov’t rejected the tolling of Interstate 80. Pa. Tpk. Comm’n, *Act 44 Fin. Plan Fiscal Yr. 2013*, 7 (2013), available at https://www.paturnpike.com/pdfs/business/finance/PTC_Fiscal_2013_Act44_Financial_Plan_6_1_2012.pdf.

Prior to the statutory amend. in 2013, the Corbett admin. & the comm’n agreed that the reduced payment “fully met” the statutory obligation. *Id.*, Act of Nov. 25, 2013 (P.L. 974, No. 89); 74 Pa.C.S. §1506(b)(1)(i)-(ii).

approximately \$6,775,000,000⁵⁶⁴ under act numbers 44 and 89 without generating any toll revenue from Interstate 80. To comply with the statutorily required payments, this amount was generated as almost all debt.

The Department

Act number 120 of 1970. Department of Highways was created in 1903 and was one of the first state-highway departments in the entire country.⁵⁶⁵ Department of Transportation was created in 1970.⁵⁶⁶ This department was created “to consolidate transportation-related duties previously performed by the Departments of Commerce, Revenue, Community Affairs, Forests and Waters, Military Affairs and other state agencies.”⁵⁶⁷

The Administrative Code of 1929. The department exercises the powers vested in and performs duties imposed upon the former Department of Highways along with functions formerly imposed upon bureaus within Department of Revenue, programs within Department of Commerce, a bureau within Department of Community Affairs and a commission within Department of Military Affairs.⁵⁶⁸

Some of the department’s specific powers and duties include, among others, the authority to:

- develop and maintain a comprehensive transportation planning process
- develop programs designed to foster efficient and economical public transportation
- prepare plans to preserve and improve the commuter railroad system
- develop plans for more efficient public transportation *via* motor bus
- coordinate its transportation activities with those of other public agencies
- hold exclusive authority and jurisdiction over all state designated highways.⁵⁶⁹

The department may also “acquire . . . turnpike or toll roads.”⁵⁷⁰

If the commission is consolidated into the department, the deputy secretary for highway administration would likely have the bulk of the administrative responsibility for the turnpike.⁵⁷¹ Moreover, a statutory amendment would be required for the department to assume authority over the commission’s turnpike operations and assets.⁵⁷² Proposed legislation to that effect is provided within this report.⁵⁷³

⁵⁶⁴ Table 1, *supra* p. 20.

⁵⁶⁵ Pa. Highways, History, <http://www.pahighways.com/history.html> (last updated June 4, 2013).

⁵⁶⁶ Act of May 6, 1970 (P.L.356, No.120).

⁵⁶⁷ Pa. Highways, History, *supra* note 565.

⁵⁶⁸ Act of Apr. 9, 1929 (P.L.177, No.175), § 2001; 71 P.S. § 511.

⁵⁶⁹ *Id.* § 2002(a); 71 P.S. § 512(a).

⁵⁷⁰ *Id.* § 2008; 71 P.S. § 518.

⁵⁷¹ The other deputy secretaries are for admin., safety admin., planning, local & area transp., & aviation. *Id.* § 2001.3(a); 71 P.S. § 511.3(a).

⁵⁷² *Infra* pp. 136-43. Similar legis. that was introduced in previous Gen. Assems. appear in appdcs. F & G, *infra* pp. 161-82.

MANAGEMENT OF THE COMMISSION'S DEBT

Senate Resolution No. 209 directed the Joint State Government Commission to “[e]valuate and make recommendations on how to manage the turnpike’s debt as a result of the consolidation of interstate operations.”⁵⁷⁴ This section discusses the laws pertaining to the issuance of bonds by the commission, the commission’s types of bonds and its total outstanding debt, its ability to repay under the terms of the existing bonds and future increases in its outstanding debt, as determined by credit ratings agencies and the Department of the Auditor General.

The Commission

When the Pennsylvania Turnpike Commission Act (PTCA) was enacted in 1937, it was intended that the turnpike would become a toll-free highway and the commission dissolved when its bonds and interest are paid.⁵⁷⁵ If the commission retires its debts, the turnpike itself will fall under the authority of the department. However, this is probably decades away from happening, as the commission has accumulated approximately \$14 billion in debt, net of unamortized premium.⁵⁷⁶

The PTCA delineates how and for what purposes the commission may issue bonds. Some of this authority has been altered by subsequent enactments, one which was the Turnpike Organization, Extension, and Toll Road Conversion Act,⁵⁷⁷ which was itself repealed by act number 44 of 2007.⁵⁷⁸ Initially, turnpike revenue bonds could only be issued for “paying the cost . . . of the turnpike,”⁵⁷⁹ which is the cost of:⁵⁸⁰

- Constructing the turnpike and all connecting tunnels and bridges;
- Lands, properties rights, easements and franchises deemed necessary for construction;
- Machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction;
- Traffic estimates and engineering and legal expenses;
- Plans, specifications, surveys, estimates of cost and of revenues;
- Other necessary or incidental expenses to determine the feasibility or practicability of the enterprise; and
- Administrative expense and such other expenses necessary or incidental to financing.

⁵⁷⁴ Pa. S. Res. No. 209 (Sess. of 2017); appdx. A., *infra* p. 150.

⁵⁷⁵ Act of May 21, 1937 (P.L.774, No.211), § 15; 36 P.S. § 652o. Department of Highways would then maintain the turnpike “free of tolls” as a state highway. *Id.*

⁵⁷⁶ Pa. Tpk. Comm’n, *supra* note 82, at 17.

⁵⁷⁷ Act of Sept. 30, 1985 (P.L.240, No.61) (repealed 2007).

⁵⁷⁸ Act of July 18, 2007 (P.L.169, No.44), § 10. Even though act no. 61 of 1985 was repealed, it was continued *via* the simultaneous addition of 74 Pa.C.S. Ch. 81. *Id.* at § 11.

⁵⁷⁹ Act of May 21, 1937 (P.L.774, No.211), § 8; 36 P.S. § 652h.

⁵⁸⁰ *Id.* § 3; 36 P.S. § 652c.

Act number 44 of 2007 expanded what could be financed by bonds issued by the commission, with the statute stating that “[a]ll money received from any bonds, notes or other obligations issued under this chapter shall be applied solely to the payment of the costs of the department” and “the turnpikes.”⁵⁸¹ “Cost of the department” is the cost of:⁵⁸²

- Constructing, reconstructing, widening, expanding or extending the state highway and rural state highway system and connecting roads, tunnels and bridges
- Systems of public passenger transportation or portions of them, the placing of the systems in operation and the condemnation of property necessary to construct and operate them
- Lands, property rights, rights-of-way, easements and franchises deemed necessary or convenient to construct, reconstruct, widen, expand or extend highways or systems of public passenger transportation
- Machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction
- Traffic estimates, engineering and legal expenses, plans, specifications, surveys, estimates of cost and of revenues
- Other necessary or incidental expenses to determine the feasibility or practicability of the enterprise
- Other necessary or incidental expenses the financing, the construction, reconstruction, widening, expanding or extending of state highways and connecting roads, tunnels and bridges
- Any obligation contracted for by the department or with the United States for traffic surveys, preparation of plans and specifications, supervision of construction and other engineering, administrative and legal services and expenses in connection with the construction, reconstruction, widening, expanding or extending of State highways or any of the connecting roads, tunnels and bridges or the costs of the systems of public passenger transportation or portions of them systems; and
- Payment of any notes if the notes were issued to pay a cost of the department.
"Cost of the turnpikes" is the cost of: ⁵⁸³
- Constructing, reconstructing, widening, expanding or extending turnpikes, connecting roads, storm water management systems, buildings, interchanges, slip ramps, tunnels and bridges
- Lands, property rights, rights-of-way, easements and franchises deemed necessary or convenient for construction
- Machinery and equipment, financing charges and interest
- Traffic estimates, engineering and legal expenses, plans, specifications, surveys, cost and revenue estimates, other necessary or incidental expenses to determine the feasibility or practicability of the enterprise, administrative and legal expense and other necessary or incidental expenses to the financing
- Condemnation or other means of acquisition of property necessary to construct and operate the turnpikes

⁵⁸¹ 74 Pa.C.S. § 8113.

⁵⁸² *Id.* § 8102.

⁵⁸³ *Id.*

- An obligation contracted for by the commission with the department or with the United States for traffic surveys, preparation of plans and specifications, supervision of construction and other engineering and administrative and legal services and expenses in connection with the construction, reconstruction, widening, expansion or extension of the turnpike or any of the connecting roads, storm water management systems, interchanges, slip ramps, tunnels and bridges
- Reimbursement to the federal government under federal law for federal funds expended for highways which are to be made part of the turnpike system; and
- Any portion of the scheduled annual commission contribution required to be paid by the commission under 75 Pa.C.S. Ch. 89 (relating to Pennsylvania Turnpike).

The key expansion of “cost of the Turnpikes” is this last item because it encompasses the commission’s contributions to the department; however, other original limitations on the commission’s bond issues set by the PTCA remain effective. One of these key provisions is that any turnpike revenue bonds issued are not to be considered a debt of the Commonwealth or a pledge of the faith and credit of the Commonwealth, and such bonds are payable exclusively from the commission’s revenues.⁵⁸⁴ These bonds must facially state that the Commonwealth is not obligated to repay the bonds or pay the interest and it does not pledge to do so, and that the principal and interest is being paid from the commission’s revenue.⁵⁸⁵

Perhaps more salient than restating limitations on bond issuance, act number 44 of 2007 also affected the commission’s financial outlook by scheduling its annual contribution to the department to be as high as \$900,000,000 with annual increases of 2.5%.⁵⁸⁶ Under act number 89 of 2013, the commission’s annual contribution and payments to the department were essentially halved through fiscal year 2021-2022, after which the annual base payment is scheduled to be \$50,000,000.⁵⁸⁷ The payments are to last until the year 2057.⁵⁸⁸

The commission has always been authorized to issue turnpike revenue refunding bonds.⁵⁸⁹ This allows outstanding turnpike revenue bonds to be refunded to bear a lower interest rate.⁵⁹⁰ Act number 44 of 2007 expanded the commission’s refunding authority by adding “notes or other obligations.”⁵⁹¹ The commission was also authorized to issue up to \$5,000,000,000 in special revenue bonds to pay the cost of the department if the lease of Interstate 80 was effective at the date of the issuance.⁵⁹²

⁵⁸⁴ Act of May 21, 1937 (P.L.774, No.211), § 2; 36 P.S. § 652b; 74 Pa.C.S. § 8104.

⁵⁸⁵ *Id.*

⁵⁸⁶ Act of July 18, 2007 (P.L.169, No.44), § 4; 75 Pa.C.S. § 8901 (amended 2013).

⁵⁸⁷ Act of Nov. 25, 2013 (P.L.974, No.89), §§ 6, 36; 74 Pa. C. S. § 1506(b); 75 Pa.C.S. § 8901.

⁵⁸⁸ 74 Pa.C.S. § 1506(b); 75 Pa.C.S. § 8915.3.

⁵⁸⁹ Act of May 21, 1937 (P.L.774, No.211), § 13; 36 P.S. § 652m; 74 Pa.C.S. § 8118.

⁵⁹⁰ *Id.*

⁵⁹¹ Act of July 18, 2007 (P.L.169, No.44), § 3; 74 Pa. C. S. § 8118. This expansion actually dates back to at least 1985. Act of Sept. 30, 1985 (P.L.240, No.61), § 17 (repealed by act no. 44 of 2007, § 10).

⁵⁹² 75 Pa.C.S. § 9511.4(a).

The PTCA originally capped the interest on turnpike revenue bonds issued at “six per centum per annum.”⁵⁹³ Later, the now-repealed Turnpike Organization, Extension, and Toll Road Conversion Act permitted the commission’s “bonds, notes or other obligations” to “bear interest at such . . . rates acceptable to the commission.”⁵⁹⁴ This effectively remains current law because the commission is authorized to specify a bond’s interest in its resolution authorizing the bond.⁵⁹⁵ The commission is also authorized to secure its bonds by a trust indenture.⁵⁹⁶

The Commission’s debt has been issued under the provisions of five separate Trust Indentures . . . :

- A Senior Trust Indenture dated July 1, 1986 which was amended and restated March 1, 2001, as supplemented, between the Commission and U.S. Bank, N.A., as successor Trustee;
- An Oil Franchise Tax Trust Indenture dated August 1, 1998, as supplemented, between the Commission and U.S. Bank, N.A., as successor Trustee;
- A Registration Fee Revenue Trust Indenture dated August 1, 2005 between the Commission and U.S. Bank, N.A., as successor Trustee;
- A Subordinate Indenture dated April 1, 2008, as supplemented, between the Commission and Wells Fargo Bank, N.A., as successor Trustee; and
- A Special Obligation Trust Indenture dated September 1, 2014, between the Commission and U.S. Bank, N.A., as successor Trustee.⁵⁹⁷

Table 18 summarizes the commission’s outstanding debt.

⁵⁹³ Act of May 21, 1937 (P.L.774, No.211), § 8; 36 P.S. § 652h.

⁵⁹⁴ Act of Sept. 30, 1985 (P.L.240, No.61), § 12(a) (repealed 2007).

⁵⁹⁵ 74 Pa.C.S. § 8112(a).

⁵⁹⁶ 74 Pa.C.S. § 8114. The trust indenture may pledge tolls to be received and contain provisions for the rights and remedies of bondholders and the trustee. *Id.*

⁵⁹⁷ Pa. Tpk. Comm’n, *supra* note 82, at 49.

Table 18
Table of Bonds⁵⁹⁸

Issue Date	Issue Name	Amount	Amount Outstanding
9/1/2001	Tpk. Rev. Refunding Bonds, Series T of 2001	\$86,660,000	\$0
8/1/2003	Oil Franchise Tax Senior Rev. Bonds, Series A of 2003	\$124,730,000	\$0
8/1/2003	Oil Franchise Tax Subordinated Rev. Bonds Series B of 2003	\$197,955,000	\$0
8/1/2003	Oil Franchise Tax Multi-Modal Senior Rev. Bonds Series C of 2003	\$160,000,000	\$0
6/1/2004	Tpk. Rev. Bonds, Series A of 2004	\$269,245,000	\$0
8/1/2005	Registration Fee Rev. Refunding Bonds, Series A, B, C & D of 2005	\$465,560,000	\$368,895,000
6/22/2006	Tpk. Fixed-Rate Rev. Bonds, Series A of 2006	\$118,015,000	\$0
6/22/2006	Tpk. Multi-Modal Rev. Bonds, Series B of 2006	\$117,925,000	\$0
6/22/2006	Tpk. Multi-Modal Rev. Bonds, Series C of 2006	\$117,925,000	\$0
11/8/2006	Oil Franchise Tax Senior Rev. Refunding Bonds, Series A of 2006	\$98,705,000	\$0
11/8/2006	Oil Franchise Tax Senior Rev. Refunding Bonds, Series B of 2006	\$141,970,000	\$0
4/29/2008	Tpk. Subordinate Rev. Bonds, Series 2008A	\$244,855,000	\$5,835,000 (Sub-Series A-2 out of \$68,290,000 original amount)
7/30/2008	Tpk. Subordinate Rev. Bonds, Series B of 2008	\$233,905,000	\$14,640,000
10/28/2008	Tpk. Subordinate Rev. Bonds, Subseries C-1 of 2008	\$221,335,000	\$0
10/28/2008	Tpk. Subordinate Rev. Bond Anticipation Notes, Subseries C-4 of 2008	\$77,715,000	\$0

⁵⁹⁸ *Id.*, Official Statements, https://www.paturnpike.com/business/investors_official.aspx (2019); *supra* note 82, at 60-65.

Table 18
Table of Bonds⁵⁹⁸

Issue Date	Issue Name	Amount	Amount Outstanding
1/22/2009	Tpk. Subordinate Rev. Bonds, Series A of 2009	\$308,035,000	\$7,120,000
7/1/2009	Tpk. Rev. Bonds, Series A of 2009 (Build Am. Bonds)	\$275,000,000	\$275,000,000
7/28/2009	Tpk. Subordinate Rev. Bonds, Series B & C of 2009	\$956,733,204	\$23,065,000 (Series B); \$152,355,000 (Series C)
10/15/2009	Oil Franchise Tax Senior Rev. Bonds, Series A of 2009	\$21,550,000	\$159,413,000 (covers Series A, B & C of this bond issue)
10/15/2009	Oil Franchise Tax Senior Rev. Bonds, Series B of 2009	\$127,170,000	See Above
10/15/2009	Oil Franchise Tax Senior Rev. Bonds, Series C of 2009	\$15,461,246	See Above
10/15/2009	Oil Franchise Tax Subordinated Rev. Bonds, Series D of 2009	\$31,560,000	\$124,075,000 (covers Series D & E of this bond issue)
10/15/2009	Oil Franchise Tax Subordinated Rev. Bonds, Series E of 2009	\$102,505,000	See Above
10/27/2009	Tpk. Subordinate Rev. Bonds, Series D & E of 2009	\$524,749,558.45	\$4,560,000 (Series D); \$329,975,000 (Series E)
12/22/2009	Tpk. Rev. Bonds, Series B of 2009	\$375,010,000	\$232,325,000
7/28/2010	Tpk. Subordinate Rev. Bonds, Series B of 2010	\$273,526,107.95	\$11,285,000
7/28/2010	Motor License Fund-Enhanced Tpk. Subordinate Special Rev. Bonds, Series A of 2010	\$187,816,151.30	\$41,263,000
9/10/2010	Tpk. Rev. Bonds, Series B of 2010 (Build Am. Bonds)	\$600,000,000	\$600,000,000
10/28/2010	Tpk. Subordinate Rev. Bonds, Series C of 2010	\$138,915,496.60	\$24,735,000
10/28/2010	Motor License Fund-Enhanced Tpk. Subordinate Special Rev. Bonds, Series B of 2010	\$105,299,433	\$46,467,000
4/28/2011	Variable Rate Tpk. Rev. Bonds, Series B of 2011	\$92,035,000	\$0
4/28/2011	Tpk. Rev. Bonds, Series A of 2011	\$68,660,000	\$51,935,000

Table 18
Table of Bonds⁵⁹⁸

Issue Date	Issue Name	Amount	Amount Outstanding
4/28/2011	Tpk. Subordinate Rev. Bonds, Series A of 2011	\$135,655,000	\$0
4/28/2011	Motor License Fund-Enhanced Subordinate Special Rev. Bonds, Series A of 2011	\$102,620,000	\$0
10/31/2011	Tpk. Subordinate Rev. Bonds, Series B of 2011	\$126,740,000	\$62,680,000
10/31/2011	Motor License Fund-Enhanced Tpk. Subordinate Special Rev. Bonds, Series B of 2011	\$98,910,000	\$29,560,000
11/17/2011	Tpk. Rev. Bonds, Series E of 2011	\$110,080,000	\$0 (Refunded Dec. 2017)
4/12/2012	Subordinate Rev. Bonds, Series A of 2012	\$123,545,000	\$71,740,000
4/12/2012	Motor License Fund-Enhanced Tpk. Subordinate Special Rev. Bonds, Series A of 2012	\$94,935,000	\$36,260,000
7/31/2012	Tpk. Rev. Bonds, Series A of 2012	\$200,215,000	\$123,255,000
10/30/2012	Tpk. Subordinate Rev. Bonds, Series B of 2012	\$121,065,000	\$100,720,000
10/30/2012	Motor License Fund Enhanced Tpk. Subordinate Special Rev. Bonds, Series B of 2012	\$92,780,000	\$69,495,000
11/20/2012	Variable Rate Tpk. Rev. Bonds, Series B of 2012	\$70,060,000	\$0
1/31/2013	Variable Rate Tpk. Bonds, Series A of 2013	\$176,075,000	\$0 (Fully refunded in 2018)
4/26/2013	Tpk. Subordinate Rev. Bonds, Series A of 2013	\$71,701,728	\$82,845,000
4/26/2013	Motor License Fund-Enhanced Tpk. Special Rev. Bonds, Series A of 2013	\$92,465,000	\$69,105,000
7/23/2013	Variable Rate Tpk. Rev. Bonds, Series B of 2013	\$265,155,000	\$200,000,000
8/20/2013	Tpk. Rev. Bonds, Series C of 2013	\$222,935,000	\$164,850,000
10/1/2013	Oil Franchise Tax Senior Rev. Refunding Bonds Series A of 2013	\$27,785,000	\$23,120,000

Table 18
Table of Bonds⁵⁹⁸

Issue Date	Issue Name	Amount	Amount Outstanding
10/1/2013	Oil Franchise Tax Subordinated Rev. Refunding Bonds, Series B of 2013	\$32,035,000	\$24,215,000
10/28/2013	Tpk. Subordinate Rev. Bonds, Series B of 2013	\$108,708,400.80	\$110,788,000
10/28/2013	Motor License Fund-Enhanced Tpk. Subordinate Special Rev. Bonds, Series B of 2013	\$101,731,401.80	\$83,691,000
4/1/2014	Tpk. Rev. Bonds, Series A of 2014	\$236,115,000	\$231,970,000
4/29/2014	Tpk. Rev. Bonds, Series A of 2014	\$148,300,359.25	\$156,742,000
4/29/2014	Motor License Fund-Enhanced Tpk. Subordinate Special Rev. Bonds, Series A of 2014	\$59,739,936.20	\$75,640,000
5/20/2014	Variable Rate Tpk. Rev. Bonds, Series B-1 of 2014	\$444,280,000	\$289,150,000
6/2/2014	Variable Rate Tpk. Rev. Bonds, Series B-2 of 2014	\$69,870,000	\$0
9/17/2014	Special Obligation Bonds	\$288,675,000	\$0
10/28/2014	Tpk. Subordinate Rev. Bonds, Series B of 2014	\$201,395,000	\$201,395,000
11/26/2014	Tpk. Rev. Refunding Bonds, Series of 2014	\$239,620,000	\$239,620,000
12/18/2014	Tpk. Rev. Bonds, Series C of 2014	\$294,225,000	\$285,950,000
4/28/2015	Tpk. Subordinate Rev. Bond, Sub-Series A-1 of 2015 (fixed rate)	\$209,010,000	\$209,010,000
4/28/2015	Tpk. Subordinate Rev. Bonds, Sub-Series A-2 of 2015 (SIFMA Floating Rate Tender Notes)	\$50,000,000	(Due in varying installments through 2045)
6/1/2015	Tpk. Rev. Bonds, Series A-1	\$385,095,000	\$385,095,000
6/1/2015	Variable Rate Tpk. Rev. Bonds, Series A-2	\$115,635,000	\$50,000,000
10/27/2015	Tpk. Subordinate Rev. Bonds, Series B of 2015	\$192,215,000	\$131,160,000
12/17/2015	Tpk. Rev. Bonds, Series B of 2015	\$304,005,000	\$303,645,000

Table 18
Table of Bonds⁵⁹⁸

Issue Date	Issue Name	Amount	Amount Outstanding
2/23/2016	Tpk. Subordinate Rev. Refunding Bonds, 1 st Series of 2016	\$360,990,000	\$360,560,000
3/2016	EB-5 Loan (1 st to 3 rd Tranches)	\$150,000,000	\$150,000,000
4/28/2016	Tpk. Subordinate Rev. Bonds, Series A of 2016	\$389,155,000	\$203,700,000 (Sub-Series A-1); \$185,455,000 (Sub-Series A-2)
5/2016	EB-5 Loan (4 th Tranche)	\$50,000,000	\$50,000,000
6/7/2016	Tpk. Subordinate Rev. Refunding Bonds, 2 nd Series of 2016	\$649,545,000	\$649,545,000
6/7/2016	Tpk. Rev. Bonds, Series A-1 of 2016	\$447,850,000	\$447,850,000
6/7/2016	Variable Rate Tpk. Rev. Bonds, Series A-2 of 2016	\$140,590,000	\$0 (Finally refunded in 2018)
9/7/2016	Oil Franchise Tax Subordinated Rev. Refunding Bonds, Series A of 2016	\$198,595,000	\$180,640,000
9/7/2016	Oil Franchise Tax Subordinated Rev. Refunding Bonds, Series B of 2016	\$115,395,000	\$102,725,000
10/20/2016	Tpk. Subordinate Rev. Refunding Bonds, 3d Series of 2016 Sub-series A	\$255,455,000	\$255,455,000
10/20/2016	Tpk. Subordinate Rev. Refunding Bonds, 3d Series of 2016 Sub-series B (Federally Taxable)	\$75,755,000	\$71,720,000
10/20/2016	Motor License Fund-Enhanced Tpk. Subordinate Special Rev. Bonds, 1st Series of 2016 ^e	\$79,865,000	\$79,865,000
1/26/2017	Tpk. Subordinate Rev. Bonds, Series A of 2017	\$284,275,000	\$284,275,000
5/2017	1st Series Subordinate Rev. Refunding Bonds	\$291,850,000	\$291,850,000
7/27/2017	Tpk. Subordinate Rev. Bonds, Series B of 2017	\$750,510,000	\$379,115,000 (Sub-Series B-1); \$371,205,000 (Sub-Series B-2)

Table 18
Table of Bonds⁵⁹⁸

Issue Date	Issue Name	Amount	Amount Outstanding
7/27/2017	Motor License Fund-Enhanced Tpk. Rev. Refunding Bonds, 1 st Series of 2017	\$45,390,000	\$45,390,000
10/11/2017	Pa. Tpk. Rev. Bonds, Series A-1 of 2017	\$365,895,000	\$360,130,000
10/11/2017	Pa. Tpk. Rev. Refunding Bonds, Series A-2 of 2017	\$133,060,000	\$133,060,000
10/2017	Variable Rate Tpk. Rev. Bonds, Series B-1 of 2017	\$40,000,000	\$0 (Fully refunded in 2018)
11/30/2017	Tpk. Subordinate Rev. Refunding Bonds, 2d Series of 2017	\$150,425,000	\$150,425,000
11/30/2017	Motor License Fund-Enhanced Tpk. Subordinate Special Rev. Refunding Bonds, 2d Series of 2017	\$243,675,000	\$243,675,000
12/1/2017	Variable Rate Tpk. Rev. Bonds, Series B-2 of 2017	\$100,320,000	\$0 (Fully refunded in 2018)
12/2017	Pa. Tpk. Rev. Bonds, Series C of 2017	\$103,330,000	\$0 (Fully refunded 2019)
12/19/2017	Tpk. Subordinate Rev. Refunding Bonds, 3d Series of 2017	\$143,585,000	\$143,585,000
12/19/2017	Motor License Fund-Enhanced Tpk. Subordinate Special Rev. Refunding Bonds, 3d Series of 2017	\$164,240,000	\$164,240,000
2/2018	EB-5 Loan (1 st Tranche)	\$50,000,000	\$50,000,000
6/5/2018	Oil Franchise Tax Senior Rev. Bonds, Series A of 2018	\$231,385,000	\$231,385,000
6/5/2018	Oil Franchise Tax Subordinated Rev. Bonds, Series B of 2018	\$210,480,000	\$210,480,000
6/27/2018	Variable Rate Tpk. Rev. Bonds, Series A-1 of 2018	\$182,455,000	\$182,455,000
6/27/2018	Tpk. Rev. Bonds, Series A-2 of 2018	\$307,935,000	\$307,935,000
11/1/2018	EB-5 Loan (2d Tranche)	\$45,000,000	\$45,000,000
11/6/2018	Variable Rate Tpk. Rev. Bonds, Series B of 2018	\$141,200,000	\$141,200,000

Table 18
Table of Bonds⁵⁹⁸

Issue Date	Issue Name	Amount	Amount Outstanding
2/7/2019	Tpk. Rev. Refunding Bonds, 1 st Series of 2019	\$84,365,000	\$84,365,000
6/4/2019	Variable Rate Tpk. Rev. Bonds, 2d Series of 2019	\$139,815,000	\$139,815,000
6/27/2019	Tpk. Subordinate Rev. Bonds, Series A of 2019	\$722,970,000	\$722,970,000
8/15/2019	Tpk. Rev. Bonds, Series A of 2019	\$341,325,000	\$341,325,000
9/24/2019	Tpk. Rev. Refunding Bonds, Series of 2019 (Forward Delivery)	\$179,815,000	
	Total Debt Outstanding		\$14,046,039,000

Debt Service Coverage Ratios

“[T]he debt service coverage ratio . . . states net operating income as a multiple of debt obligations due within one year” thereby measuring “the cash flow available to pay current obligations.”⁵⁹⁹ It “reflects the ability to service debts given a particular level of income.”⁶⁰⁰ “Fiscal 2020 debt service coverages on the [c]ommission’s Senior . . ., Subordinate . . . and Subordinate Special Revenue Bonds is projected to be 3.11x, 1.54x and 1.43x, respectively and are consistent with the [c]ommission’s targeted debt service coverage ratios.”⁶⁰¹ These ratios exceed the commission’s assumption in its financial plan.⁶⁰² “Typically, a” ratio “greater than 1 means the entity . . . has sufficient income to pay its current debt obligations.”⁶⁰³

Revenues, Debts and Financial Outlook

For more than a decade, the commission has issued bonds to fund the Commonwealth’s “transportation needs” in addition to the bonds issued to fund the turnpike itself.⁶⁰⁴ Through fiscal year 2022, “the [c]ommission will continue to have significant financial responsibilities to fund” \$450,000,000 “annually in Commonwealth-wide transit needs.”⁶⁰⁵ This additional funding has been “primarily financed . . . through the issuance of Subordinate Revenue . . . and Subordinate

⁵⁹⁹ Investopedia, Debt-Service Coverage Ratio–DSCR, <https://www.investopedia.com/terms/d/dscr.asp> (updated June 27, 2019).

⁶⁰⁰ *Id.*

⁶⁰¹ Pa. Tpk. Comm’n, *supra* note 85, at 3.

⁶⁰² *Id.*

⁶⁰³ Investopedia, *supra* note 599.

⁶⁰⁴ Pa. Tpk. Comm’n, *supra* note 85, at 1.

⁶⁰⁵ *Id.* at 3.

Special Revenue Bonds.”⁶⁰⁶ Senior Revenue Bonds finance “a substantial portion of” the commission’s “capital improvement program.”⁶⁰⁷

Table 19	
Mainline Senior Debt	\$6,045,745,000
Mainline Subordinate Debt (consisting of Subordinate Rev. Debt & Motor License Fund-Enhanced Subordinate Special Rev. Debt)	\$6,755,161,000
Oil Franchise Tax Senior & Subordinate Debt & Total Motor License Registration Fee Debt	\$1,424,948,000
Total Debt Outstanding	\$14,225,854,000

The bonds have covenants specifying each party’s obligations. The commission’s “Senior Revenue Bonds and Subordinate Revenue Bond indentures feature covenants . . . that are based on the need to preserve the [c]ommission’s financial flexibility and to provide investors with sufficient security.”⁶⁰⁸ The rate covenant obligates the commission “to set tolls so that pledged revenues cover debt service” according to specific debt service coverage ratios.⁶⁰⁹ *E.g.*, net revenues must “cover the greater of 1.30x Senior Revenue Bond debt service or 1.00x the sum of Senior Revenue Bond maximum annual debt service, deposits into the Reserve Maintenance Fund and amounts necessary, if required, to restore a deficiency in the Debt Service Reserve Fund.”⁶¹⁰ Another covenant pledges revenues by specifying which revenues are used to pay particular expenses before other expenses.⁶¹¹ The commission’s “toll and other operating revenues are first used to pay Turnpike operating and maintenance expenses.”⁶¹² After paying the operating and maintenance expenses, debt and other obligations are serviced.⁶¹³ Thus, the bonds are paid from net toll revenues with Senior Revenue Bonds then being paid before Subordinate Revenue Bonds.⁶¹⁴ “Subordinate Special Revenue Bonds are secured . . . junior . . . to the Subordinate Revenue Bonds, but benefit from a back-up pledge of the Commonwealth Motor License Fund.”⁶¹⁵ The subordinate payment structure ensures the availability of “sufficient revenues . . . first to meet the needs of the Turnpike’s debt service, capital reinvestment and reserve needs before payments to” the department.⁶¹⁶

⁶⁰⁶ *Id.* at 1.

⁶⁰⁷ *Id.* at 9.

⁶⁰⁸ *Id.* at 17.

⁶⁰⁹ *Id.* at 18.

⁶¹⁰ *Id.* “While the rate covenant provides an important level of protection to bondholders, the” commission “has typically maintained much higher coverage levels than the legal threshold . . . on debt service across all three liens.” *Id.*

⁶¹¹ *Id.* at 17.

⁶¹² *Id.*

⁶¹³ *Id.*

⁶¹⁴ *Id.*

⁶¹⁵ *Id.*

⁶¹⁶ *Id.*

Tolls generate the commission's main revenue. In fiscal year 2018, adjusted gross toll revenues were \$1,196,606,000 and approximately 7.7% higher than the prior fiscal year.⁶¹⁷ This amount is also 10.4% higher than the estimate from the commission's Act 44 Financial Plan for Fiscal Year 2019.⁶¹⁸ "Total Turnpike operating revenues, which includes toll revenues and other income derived from service plazas and transponder sales, grew an estimated 9.5% to" \$1,315,000,000, which is "4.8% higher than levels assumed in the Fiscal 2019 Financial Plan."⁶¹⁹

For fiscal year 2020, the commission projects adjusted gross toll revenues amounting to \$1,390,057,000 and gross operating revenues amounting to \$1,393,426,000.⁶²⁰ However, the commission also projects its Senior Revenue Bond debt service payment will increase from \$303,762,000 in 2019 to \$314,729,000 in 2020.⁶²¹ Additionally, the debt service for its Subordinate Revenue Bonds and Subordinate Special Revenue Bonds is projected to be \$371,503,000.⁶²² Senior Revenue, Subordinate Revenue, and Special Subordinate debt service payments in fiscal year 2020 are projected to total approximately \$686,232,000, meaning that almost half of adjusted gross toll revenues will service debt.⁶²³

On top of its debt payment obligations, the commission expects to spend approximately \$432,021,000 on its operating expenses during fiscal year 2020, which would be almost 4% higher than fiscal year 2019.⁶²⁴ "The [c]ommission's required contribution to the Pennsylvania State Police is projected to grow by 5.7% in fiscal 2020."⁶²⁵ The commission's approved budget for 2018-2019 totaled just over \$1,000,000 weekly going to the State Police with the preliminary budget for 2019-2020 increasing that amount to \$1,061,980.77 weekly.⁶²⁶ Additionally, the commission expects its employee pension expenses to grow 8.4% during fiscal year 2020, to approximately \$59,500,000.⁶²⁷

Department of the Auditor General's most recent performance audit report "covered the period June 1, 2015 through January 30, 2019."⁶²⁸ It determined "the status of . . . prior audit findings", one of which "related to the sustainability of the" commission.⁶²⁹ The commission paid Department of Transportation approximately \$6,100,000,000 (or 63%) of a projected \$9,650,000,000 "through 2057", which the Auditor General determines to be "potentially

⁶¹⁷ *Id.* at 11.

⁶¹⁸ *Id.*

⁶¹⁹ *Id.* at 12.

⁶²⁰ *Id.* at 22.

⁶²¹ *Id.*

⁶²² *Id.* at 22, 24.

⁶²³ *Id.*

⁶²⁴ *Id.* The commission cannot control "significant portions of" its operating budget. Pa. Dep't of Auditor Gen., *supra* note 69, at 53. "These external cost drivers include the . . . [c]ommission's pension expense related to the State Employees Retirement System . . . and" its expenditure for the Pa. State Police. *Id.*

⁶²⁵ Pa. Tpk. Comm'n, *supra* note 85, at 24.

⁶²⁶ Pa. Tpk. Comm'n, Operating Budget, https://www.paturnpike.com/pdfs/business/2019-2020_Operating_Budget.pdf (last visited Oct. 10, 2019).

⁶²⁷ *Id.*

⁶²⁸ Pa. Dep't of Auditor Gen., *supra* note 69, at 2.

⁶²⁹ *Id.* at 3. The audit includes a review of the commission's debt. 74 Pa.C.S. § 8204(b)(1).

unsustainable” after “the next 20 years.”⁶³⁰ This debt has degraded the commission’s net position and continues to require costly, annual toll increases.⁶³¹ The commission “may not have the ability to raise enough toll revenue in the future to cover the Act 44/89 payments to” Department of Transportation and expenditures for capital projects.”⁶³² The Auditor General recommended a legislative re-evaluation of acts number 44 of 2007 and 89 of 2013 “to closely focus on . . . interim alternative” sources of revenue to mitigate the commission’s debt burden and not increase the \$50,000,000 “annual payment scheduled to begin during the fiscal year ending May 31, 2023.”⁶³³

Net position is “total assets minus total liabilities” and “[a] good indicator of the financial condition of any entity.”⁶³⁴ The commission’s “highest net position value” was in 2007 before enactment of act number 44; since that enactment, its net position declined by the amount approximately equal to its payments to Department of Transportation plus the corresponding interest expense.⁶³⁵

Tolls have increased annually since 2009, with the most recent prior increases occurring in 2004 and 1991, but increases occurred only “five times in” the “64 years” preceding act number 44 of 2007.⁶³⁶ The commission “plans to increase tolls each year through 2048 . . . to meet its” obligations under act numbers 44 of 2007 and 89 of 2013.⁶³⁷ “[A]nnual increases in toll rates may . . . have negative effect on traffic growth, which in turn could negatively affect the” commission’s “ability to collect revenues needed to sustain its operations.”⁶³⁸ “[T]he [c]ommission's current leverage strategy . . . is reliant on above inflation annual toll rate increases and assumed steady traffic volume and revenue growth.”⁶³⁹ The Auditor General believes “that, at some point, the typical [t]urnpike traveler will be deterred by the increased cost and seek alternate, toll-free routes,” which “would obviously negatively impact the” commission’s “revenues.”⁶⁴⁰ Moreover, “[c]redit rating decreases can lead to an increase in debt financing costs on new bond issues and higher future interest rates, which equate to higher debt payments.”⁶⁴¹ The commission’s audit response agreed that it “must implement new ways to raise revenue and reduce” its “debt load,”

⁶³⁰ Pa. Dep’t of Auditor Gen., *supra* note 69, at 2. From 2019-2022, payments total approximately \$1,800,000,000 with the total dropping to \$1,750,000,000 covering the period, 2023-2057. *Id.* at 9.

⁶³¹ *Id.* Its net position declined “from a negative” \$4,110,000,000 “in 2015 to negative” \$5,640,000,000 “in 2018.” *Id.* at 2.

⁶³² *Id.* at 11.

⁶³³ *Id.*

⁶³⁴ *Id.* at 14 n.23.

⁶³⁵ *Id.* at 14. Tpk. syss. in four neighboring states have retained “positive net positions” during the same period. *Id.* at 14 n.24.

⁶³⁶ *Id.* at 21-22.

⁶³⁷ *Id.* at 22. Projected increases could approximately triple tolls during the next three decades. *Id.* (A table of actual increases from 2009 through 2018 and projected increases through 2048 appear *id.* at 68. The projected increases are from Pa. Dep’t of Auditor Gen. “based on Traffic and Revenue Forecast Studies performed by a” commission consultant. *Id.*)

⁶³⁸ *Id.* at 18. The increases “since January 1, 2009,” have been “greater than the rate of inflation for that respective year.” *Id.* at 22.

⁶³⁹ Moody’s, Rating Action: Moody's assigns A1 to Pa. Tpk. Commission's \$91 million Tpk. Rev. Refunding Bonds, 1st Series of 2018 & to \$141 million Variable Rate Tpk. Rev. Bonds, Series B of 2018; stable outlook (Oct. 1, 2018), https://www.moodys.com/research/Moodys-assigns-A1-to-Pennsylvania-Turnpike-Commission-91-million-Turnpike--PR_905536646.

⁶⁴⁰ Pa. Dep’t of Auditor Gen., *supra* note 69, at 22.

⁶⁴¹ *Id.* at 24.

possibly by “further reduction or” elimination of “[a]ct 44/89 required payments to” Department of Transportation.⁶⁴²

The commission implements 10-year capital plans to prioritize projects and focuses “on the most urgent repair projects” to assure that its maximum levels of financial investment are not exceeded.⁶⁴³ The commission retains “a nationally recognized expert” to annually study its traffic and revenue so that projections “are consistently updated” and then considered when “increasing toll rates.”⁶⁴⁴

Finding that the commission’s “ability to raise toll revenue to cover” payments to Department of Transportation under act numbers 44 of 2007 and 89 of 2013 “and expenditures for capital projects remains potentially unsustainable,” the Auditor General recommended that the commission:⁶⁴⁵

- Prioritize only capital projects requiring immediate attention;
- Ensure that traffic projects are conservative and realistic;
- Evaluate and scrutinize sources of revenue and operating expenses to increase the former while reducing the latter; and
- Evaluate ways to increase passenger car and commercial use of the Turnpike.

Additionally, the Auditor General recommended legislative mitigation of the commission’s “current debt burden” including refraining “from increasing the \$50 million annual payment scheduled to begin in the fiscal year ending May 31, 2023.”⁶⁴⁶

Credit Rating Agencies

“[T]he three primary bond rating agencies are Standard and Poor’s Global Ratings, Moody’s Investors Service, and Fitch Ratings.”⁶⁴⁷ The published ratings represent creditworthiness of both debt and their issuers, which are “used by investment professionals to assess the likelihood that the debt will be repaid.”⁶⁴⁸ Each agency has a different letter-based rating system corresponding to risk.⁶⁴⁹

⁶⁴² *Id.* at 50. The response also mentions “seeking reciprocity agreements with neighboring states in furtherance of” its “toll violation enforcement efforts.” *Id.* After listing the performance audit’s draft recommendations directed to the Gen. Assem. relating to a suggested re-evaluation of “Acts 44/89” and “[r]efrain from increasing the” \$50,000,000 “annual payment scheduled to begin in . . . 2023”, the commission’s audit response document states that it “cannot comment on the recommendations addressed to the . . . General Assembly.” *Id.* at 54. However, its response letter to the auditor gen. from its chief executive officer indicates that the comm’n “will continue to work with the state legislature to further reduce or eliminate Act 44/89 required payments to” Dep’t of Transp.. *Id.* at 50.

⁶⁴³ *Id.* at 52.

⁶⁴⁴ *Id.*

⁶⁴⁵ *Id.* at 11, 25.

⁶⁴⁶ *Id.* at 26.

⁶⁴⁷ Investopedia, Bond Rating Agencies, <https://www.investopedia.com/terms/b/bond-rating-agencies.asp> (updated Feb. 17, 2018).

⁶⁴⁸ *Id.*

⁶⁴⁹ *Id.*

Each bond issue is rated separately. Although every rating of every bond issuance from each rating agency will not be detailed here, some examples are provided to depict how the commission's finances are viewed by those agencies. *E.g.*, "Fitch Ratings . . . assigned an 'A-' . . . to the . . . [c]ommission's . . . subordinate revenue bonds, series 2016A."⁶⁵⁰ This is reflective of the commission's "strong commercial and passenger traffic profile and improving underlying economic trends", its "demonstrated willingness to raise tolls, relatively low elasticity observed through recent increases, and history of prudent cost management."⁶⁵¹ Low elasticity refers to motorists' willingness to accept toll increases, as the traffic demand has not been destabilized by increased tolls. Fitch Ratings noted that while the commission's "debt is sizable", the bonds' "variable rate exposure" is limited.⁶⁵²

As for risk sensitivities that are negative, Fitch Ratings recognizes that "traffic growth" could "stagnate after multiple years of toll increases" resultant in "toll increases greater than the forecasted 3%-6%".⁶⁵³ Also, the commission's "ability to control expenses and manage its large capital expenditures may affect the rating."⁶⁵⁴ Likewise, inability "to meet . . . coverage policies" would pressure ratings.⁶⁵⁵ If interest rates increase, that "could . . . lower financial flexibility . . . to fund the . . . capital plan."⁶⁵⁶

Kroll Bond Rating Agency rated the commission's Revenue Refunding Bonds First Series of 2019, AA- with a Stable outlook.⁶⁵⁷ It also "affirmed the long-term rating of AA- and . . . A+" on "outstanding Turnpike Revenue Bonds as well as . . . Turnpike Subordinate Revenue Bonds" respectively, with a "Stable Outlook" for both.⁶⁵⁸ Its methodology for this assessment (of public toll roads) is determined by: size and scope of operations, demand assessment, management/regulatory framework, financial profile, and security provisions.⁶⁵⁹

In fiscal year 2018, "Moody's and Fitch affirmed their 'A1' and 'A+' ratings on the Senior Revenue Bonds and 'A3' and 'A-' ratings on the Subordinate Revenue Bonds . . . with a Stable Outlook" for both.⁶⁶⁰ In 2018, "S&P raised its long-term underlying ratings on the Commission's senior-lien turnpike revenue bonds and subordinate revenue bonds outstanding to 'A+' and 'A', respectively", but this change is attributed to its revised criteria.⁶⁶¹ "Moody's rates the . . .

⁶⁵⁰ BusinessWire, Fitch Rates Pa. Tpk. 2016A Sub Rev Bonds 'A-' (Mar. 23, 2016), <https://www.businesswire.com/news/home/20160323006508/en/Fitch-Rates-Pennsylvania-Turnpike-2016A-Rev-Bonds>. This is a high credit rating that is investment grade. Fitch Ratings, Rating Definitions, <https://www.fitchratings.com/site/definitions> (2019).

⁶⁵¹ BusinessWire, *supra* note 650.

⁶⁵² *Id.*

⁶⁵³ *Id.*

⁶⁵⁴ *Id.*

⁶⁵⁵ *Id.*

⁶⁵⁶ *Id.*

⁶⁵⁷ MarketWatch, Press Release, KBRA Releases Rep. Assigning AA- & Stable Outlook to Pa. Tpk. Comm'n Tpk. Rev. Refunding Bonds, 1st Series of 2019 (Jan. 18, 2019), <https://www.marketwatch.com/press-release/kbra-releases-report-assigning-aa--and-stable-outlook-to-pennsylvania-turnpike-commission-turnpike-revenue-refunding-bonds-first-series-of-2019-2019-01-18>.

⁶⁵⁸ *Id.*

⁶⁵⁹ *Id.*

⁶⁶⁰ Pa. Tpk. Comm'n, *supra* note 85, at 15.

⁶⁶¹ *Id.*

Subordinate Special Revenue Bonds ‘A2’ while Fitch rates the bonds ‘AA-’ with “a Stable Outlook” from both.⁶⁶² The Subordinate Special Revenue Bonds were “assigned a rating of ‘AA-’” from Kroll “with a Stable Outlook”.⁶⁶³ The commission ceased using Standard and Poor’s ratings in 2015, selling bond issuances with just Moody’s and Fitch’s ratings, until it began using Kroll as well in 2018.⁶⁶⁴

Certain Risk Factors Associated with the Debt

Potential investors are wise to consider “various factors which . . . may result in an inability to meet the debt service requirements.”⁶⁶⁵ Even though “potential investors should be thoroughly familiar with the entire Official Statement” in a bond offering, the commission summarizes some risk factors for potential investors to consider.⁶⁶⁶ One risk factor is the decline of revenue because “toll revenues . . . depends upon . . . rates . . . and the level and composition of traffic” uncertainty because of prospective variabilities including “general economic conditions, diversion of some traffic to alternative non-toll routes . . . , higher fuel” costs, *inter alia*.⁶⁶⁷

Another risk factor is the commission’s financial condition, which could be adversely affected by:⁶⁶⁸

- costs of operation and maintenance
- decreased toll revenues
- increased mass transit
- action by a unionized workforce
- temporary closure
- pension obligations
- employment benefits including healthcare
- variable rates in obligations
- fuel costs
- litigation and judgments
- valuation of debt securities
- hedging
- enactments
- subsidies including taxation
- redemption of bonds and defaults
- contractual covenants

EB-5 Use

In fiscal year 2016, the commission obtained \$200,000,000 in EB-5 loans to fund a portion of its now-completed I-95 Interchange project.⁶⁶⁹ “The EB-5 program is also known as the Immigrant Investor Program and is administered by the U.S. Citizenship and Immigration Services.”⁶⁷⁰ The EB-5 loans are on parity with the senior lien bonds, meaning that the immigrant

⁶⁶² *Id.*

⁶⁶³ *Id.* at 16.

⁶⁶⁴ *Id.* at 15.

⁶⁶⁵ Pa. Tpk. Comm’n, Official Statement: \$141,200,000 Variable Rate Tpk. Rev. Bonds, Series B of 2018, p. 22, https://www.paturnpike.com/pdfs/business/documents/Official_Statement_ML_2018B.pdf.

⁶⁶⁶ *Id.*

⁶⁶⁷ *Id.*

⁶⁶⁸ *Id.* at 23-26.

⁶⁶⁹ Pa. Tpk. Comm’n, *supra* note 85, at 10.

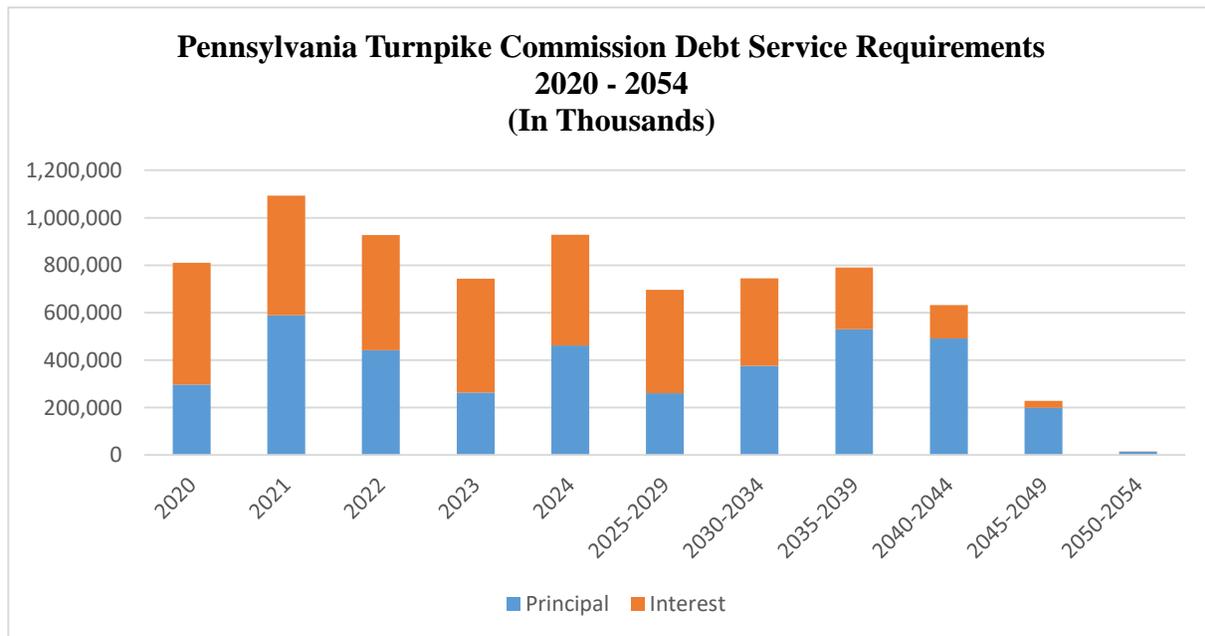
⁶⁷⁰ *Id.* “EB-5 visas” are “for participants who invest in commercial enterprises . . . approved by” U.S. Citizenship & Immigration Servs. “based on proposals for promoting economic growth” allowing entrepreneurs to apply for

investors and senior lien bondholders have equal seniority and equal rights regarding repayment.⁶⁷¹ “Proceeds of the new EB-5 loans will be used on selected projects on the Turnpike mainline which are included in the 10 year capital plan.”⁶⁷²

Recent Financial Audits

The commission publishes its basic financial statements annually with an independent auditor’s report. The most recently published one covers fiscal years ended May 31, 2019 and 2018.⁶⁷³ The commission’s net position is the difference between “assets and deferred outflows of resources, liabilities and deferred inflows of resources,” totaling a \$6,242,241,000 as of the end of the 2019 fiscal year.⁶⁷⁴ “Debt service requirements subsequent to May 31, 2019 related to the Mainline debt” are expected to peak at about \$1,093,560,000 in 2021.⁶⁷⁵ Debt service for these bonds will total \$811,034,000 in fiscal year 2020.⁶⁷⁶ Figure 4 below shows the Mainline debt service requirements projected though the year ending May 31, 2054.

Figure 4



permanent residence. U.S. Citizenship & Immigration Servs., EB-5 Immigrant Investor Program, <https://www.uscis.gov/eb-5> (last visited Nov. 4, 2019).

⁶⁷¹ Pa. Tpk. Comm’n, *supra* note 85, at 10.

⁶⁷² *Id.*

⁶⁷³ *Id.*, Basic Fin. Statements Fiscal Yrs. Ended May 31, 2019 & 2018 w/Indep. Auditor’s Rep., https://www.paturnpike.com/pdfs/business/PTC_on_BFS_2019.pdf.

⁶⁷⁴ *Id.* at 4-5, 110-11.

⁶⁷⁵ *Id.* at 65. This excludes debt requirements related to Oil Franchise Tax and Motor License Registration Fee.

⁶⁷⁶ *Id.*

The data provided for the five-year periods is debt service requirement for the entirety of each five-year period, but the figure depicts this as an average amount required to service the debt annually during that period. Thus, the amount represented in the years ending May 31, 2025-2029, *e.g.*, represents an average amount for each of those years.

Similar to Department of Auditor General, the independent auditor emphasized that “[t]he [c]ommission’s ability to make . . . payments” to Department of Transportation “is dependent on its continuing capability to issue bonds to fund such payments and ultimately to raise tolls sufficient to repay its bonded debt and current lease payments.”⁶⁷⁷ As of the fiscal year ending May 31, 2019, the commission’s Mainline, Oil Franchise Tax and Motor License Registration Fee debt totaled \$13,916,609,000.⁶⁷⁸ Since then, Revenue Bonds, Subordinate Revenue Bonds and Refunding Bonds have been issued.⁶⁷⁹

Pennsylvania’s Constitutional Limit on Debt

If the commission is consolidated into the department’s interstate operations, it would arrive with more than \$14,000,000,000 in debt. “No debt shall be incurred by or on behalf of the Commonwealth except by law and in accordance with” constitutional “provisions.”⁶⁸⁰ Whether or not the commission’s indebtedness would pose a barrier to its consolidation with the department is an open question.

Constitutionally, debt means “the issued and outstanding obligations of the Commonwealth” including “obligations of its agencies or authorities to the extent they are to be repaid from lease rentals or other charges payable directly or indirectly from revenues of the Commonwealth.”⁶⁸¹ The “portion of obligations to be repaid from charges made to the public for the use of the capital projects financed” is constitutionally excluded from debt.⁶⁸² Because debt service on the commission’s bonds is paid from its toll and other revenues, the commission’s debt is not the Commonwealth’s debt under this constitutional provision.⁶⁸³

Even if the commission’s debt counted towards the constitutionally limited debt of the Commonwealth, it would be within that limitation. Capital project debt is constitutionally limited to “one and three-quarters times the average of the annual tax revenues deposited in the previous five fiscal years.”⁶⁸⁴ The Commonwealth’s capital budget debt subject to the constitutional limitation is almost \$11,000,000,000.⁶⁸⁵ The commission’s \$14,000,000,000 added to that would total approximately \$25,000,000,000 but still amount to approximately a third of the constitutional amount.⁶⁸⁶

⁶⁷⁷ Pa. Tpk. Comm’n, *supra* note 673, at 2.

⁶⁷⁸ *Id.* at 54.

⁶⁷⁹ Pa. Tpk. Comm’n, Official Statements, https://www.paturnpike.com/business/investors_official.aspx (2019).

⁶⁸⁰ Pa. Const. art. VIII, § 7(a).

⁶⁸¹ *Id.* § 7(c).

⁶⁸² *Id.*

⁶⁸³ The commission’s bond issues do not obligate the Commonwealth and must facially say so, *supra* p. 100.

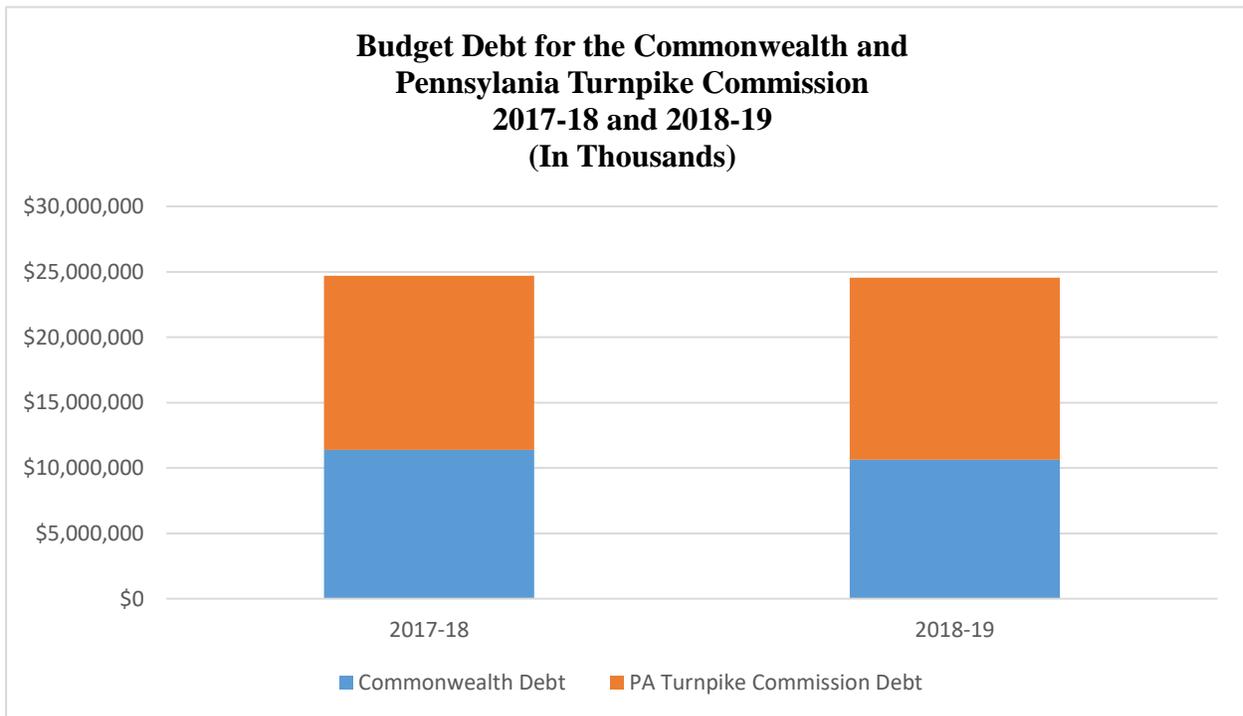
⁶⁸⁴ Pa. Const. art. VIII, § 7(a)(4).

⁶⁸⁵ Governor Wolf, *supra* note 225, at G6.

⁶⁸⁶ *Id.*

The state constitution limits outstanding capital budget debt to 1.75 times the average tax revenues during the previous five fiscal years which equaled \$68,808,014,000 in fiscal year 2017-18.⁶⁸⁷ The Commonwealth's outstanding debt in that fiscal year was \$11,380,728,000, or 16.5 percent of the debt limit.⁶⁸⁸ As of June 1, 2018, the Commission's total outstanding debt was \$13,312,271,000.⁶⁸⁹ The Commonwealth's and commission's combined debt in fiscal year 2017-18 totaled \$24,692,999,000, or 35.9 % of the debt limit, as shown in Figure 5 below. In fiscal year 2018-19, the Commonwealth's debt limit was projected to be \$71,908,652,000, but the combined debt of both agencies would still fall below the constitutional debt limit at \$24,552,242,000.⁶⁹⁰

Figure 5



⁶⁸⁷ *Id.*

⁶⁸⁸ *Id.*

⁶⁸⁹ Pa. Tpk. Comm'n, *supra* note 673, at 54.

⁶⁹⁰ *Id.*; Governor Wolf, *supra* note 225, at G6.

OTHER STATES WITH TOLLWAYS GOVERNED UNDER A STATE DEPARTMENT OF TRANSPORTATION

Senate Resolution No. 209 directed the Joint State Government Commission to “[r]eview . . . other states where tolled bridges or roadways are effectively governed under a state department of transportation.”⁶⁹¹

Other States

Since the 1950’s, approximately half of all states have tolled roads in some form and today there are approximately 5,809 miles of tolled highways in National Highway System.⁶⁹² As in the Commonwealth, most tolled routes are independently administered by authorities and commissions. Of the states with toll roads, only a quarter of them are administered and operated solely by a state’s department of transportation. States whose toll roads are managed by toll authorities typically have more miles of tolled roadway than states whose departments of transportation manage both the tollways and freeways.⁶⁹³

The states whose departments of transportation nominally manage both the tollways and freeways generally still create some semi-independent instrumentality for the tollways within the department to exempt that operation from state laws. Financial protection is one reason to do this so that the public is not directly obligated to repay the bonds that financed the toll route. They also help state governments to avoid otherwise applicable debt limits. Another benefit is to segregate tax-supported (but otherwise free) routes from tolled (or surcharged) routes giving both taxpayers and tollpayers confidence that their taxes and tolls are not used to subsidize the other. Other states whose tollways are operated by their departments of transportation fund their routes more by user-fees than regular appropriations.

Other states have a mix of privately and governmentally owned toll roads or enter partnerships with local and regional governments to operate their tollways.⁶⁹⁴ It is difficult to simply consider states whose department of transportation effectively governs their tollways because they typically have a complex blend of more than one governmental entity that has distinct authority.

⁶⁹¹ Pa. S. Res. No. 209 (Sess. of 2017); appdx. A., *infra* p. 150.

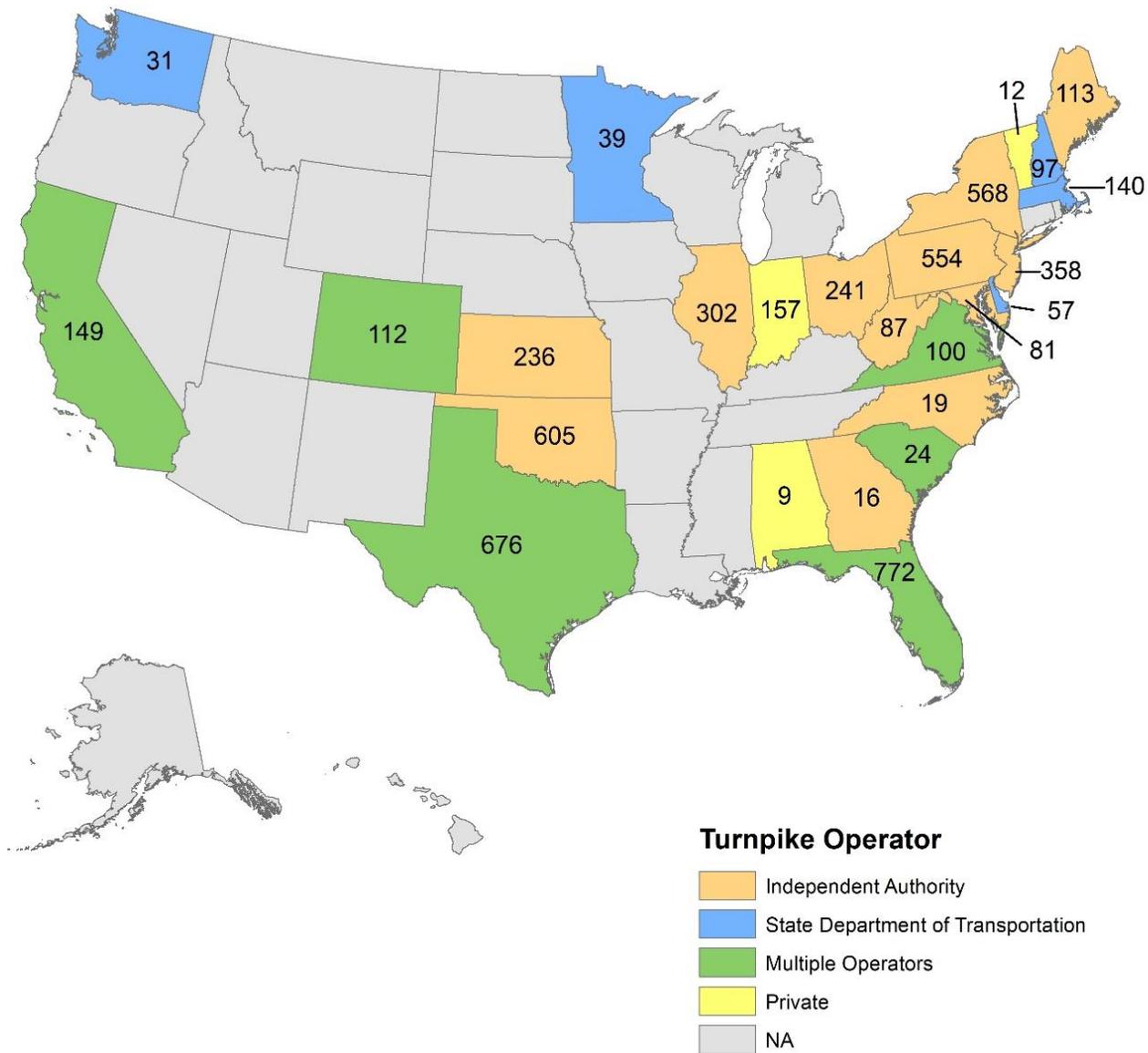
⁶⁹² Office of Highway Policy Information, U.S. Dep’t of Transp., Fact Sheet, https://www.fhwa.dot.gov/policyinformation/tollpage/documents/fact_sheet.pdf (as of Jan. 1, 2017).

⁶⁹³ Appdx. B, *infra* p. 151.

⁶⁹⁴ *E.g.*, Cal., Fla. & Tex.

Figure 6

Turnpike Operators and Miles of Tolled Roadway in the United States⁶⁹⁵



⁶⁹⁵ Office of Highway Policy Information, U.S. Dep't of Transp., Toll Facilities in the United States, <https://www.fhwa.dot.gov/policyinformation/tollpage/page00.cfm> (last visited Dec. 19, 2019). Analysis provided by J. State Gov't Comm'n staff (excludes tolled bridges, tunnels & ferries but includes Interstate & Non-Interstate Sys. toll rds.).

California

California has nearly 150 miles of tolled roadway, but most of these toll roads and bridges are owned and operated by regional transportation authorities centered on major cities or are smaller privately-owned toll roads.⁶⁹⁶ While that state's department of transportation operates toll roads within the state, it does so through partnerships with a number of organizations across the state.⁶⁹⁷

The large concentration of California's tolled roadways are in Orange County. During the mid-1980's, the state decided to add roadways to relieve congestion but did not have the available funds.⁶⁹⁸ Two transportation corridor agencies (TCA) were created to construct and finance the toll roads.⁶⁹⁹ The San Joaquin Hills TCA manages 15 miles of roadway on route 73,⁷⁰⁰ while the Foothill/Eastern TCA operates 52 miles along routes 133, 241 and 261.⁷⁰¹ After construction, these state routes became "part of the state highway system" with "ownership, liability, and maintenance" being assumed by the state's department of transportation eliminating the necessity of these TCAs to fund the maintenance.⁷⁰² "Elected officials from 18 cities and three members of the Orange County Board of Supervisors govern the agencies."⁷⁰³ While the TCAs are authorized to collect tolls, the routes are policed by the state's highway patrol troopers, and they collaborate with regional transportation planners.⁷⁰⁴

A relatively recent review raised serious concerns about the Orange County toll roads,⁷⁰⁵ but, in the seven years since then, some of these concerns have not been realized. This review questioned the sustainability of the operations because of "overly optimistic growth assumptions" and "greater price sensitivity than projected."⁷⁰⁶ The review notes these routes' high toll rates *per* mile increasing to service the debt that has been exacerbated by extending bond payments "to address short-term financial problems."⁷⁰⁷ During the first 17 years of operation, toll rates were increased "at least 12 times" on the 15-mile route and the other routes had rates among the highest nationally on a *per* mile basis.⁷⁰⁸ Originally planned to convert to toll free when the bonds mature, newer bonds were issued, thereby extending the toll period.⁷⁰⁹ This review was published after several years of decreasing transactions occurring during years of projected increases with stagnant

⁶⁹⁶ *Id.*

⁶⁹⁷ *Id.*

⁶⁹⁸ The Toll Rds. of Orange Cnty., Background & History, <https://thetollroads.com/about/background> (2017).

⁶⁹⁹ *Id.*

⁷⁰⁰ *Id.*, Leadership, <https://thetollroads.com/about/leadership> (2017).

⁷⁰¹ *Id.*, Who owns & operates The Toll Rds.?, <https://thetollroads.com/help/faq/389> (2017).

⁷⁰² KPMG, Foothill/Eastern Transp. Corridor Agency Fin. Statements (June 30 2018 & 2017) 3 https://thetollroads.com/sites/default/files/pdf/investor/2018_FETCA_Audited_Financial_Statements_ADA.pdf; San Joaquin Hills Transp. Corridor Agency Fin. Statements (June 30 2018 & 2017) 3, https://thetollroads.com/sites/default/files/pdf/investor/2018%20SJHTCA_Audited_Financial_Statements_ADA.pdf.

⁷⁰³ The Toll Rds. of Orange Cnty., *supra* note 700.

⁷⁰⁴ Transp. Corridor Agencies, 2017 Ann. Rep., <https://spark.adobe.com/page/p1A0K9VQC9nDc/>.

⁷⁰⁵ Donna Arduin & Wayne Winegarden. Orange Cnty. Toll Roads: Serious Concerns Should Lead to Significant Rev. by State & Local Officials (2013), https://www.pacificresearch.org/wp-content/uploads/2017/06/OrangeCountyTolls_F.pdf.

⁷⁰⁶ *Id.* at 4.

⁷⁰⁷ *Id.* at 4, 6.

⁷⁰⁸ *Id.* at 6.

⁷⁰⁹ *Id.* at 7.

toll revenue rather than the projected increased toll revenue.⁷¹⁰ “Some of the lower traffic usage compared to projections is due to the economic recession” during that period.⁷¹¹

Since this review was published, bond ratings for both of these agencies have been upgraded.⁷¹² The economic recession concluded and travel on these routes have increased every year since the review was published.⁷¹³ Other characteristics of these toll routes do not particularly lend themselves to a reasonable comparison with the Commonwealth’s turnpike. For one thing, the state rather than the agencies maintain these routes, which is the opposite of the Commonwealth’s turnpike.⁷¹⁴ The toll routes in this county are subsidized by fees assessed on new development with areas benefiting from these routes;⁷¹⁵ the Commonwealth’s turnpike does not receive fees from new development in areas benefiting from that route. At least for a period of time, the state agreed “to refrain from any capital project on the state highway system within the . . . zone which would have the . . . reasonably foreseeable effect of significantly adversely affecting . . . toll operations.”⁷¹⁶ There is no non-competition agreement between the commission and the Commonwealth; however, a non-competition agreement either here or in California is unlikely to artificially support a toll route because freeways are more of a burden on states than tollways, which is a key reason that tollways are operate. The TCAs in Orange County are “examples of public-private partnerships that ease traffic by building new infrastructure at no cost to taxpayers.”⁷¹⁷ As with the Commonwealth, the payment of tolls to the TCAs “was designed to sunset on the date . . . the bonds were repaid in full,” which originally were to mature in 2035;⁷¹⁸ however, bonds have been refunded with long-term debt obligations extending annual debt service to 2053.⁷¹⁹ Consolidated or separate, the Commonwealth and the commission are public-public partnerships that added the turnpike at no cost to taxpayers and, in recent years, has subsidized the Commonwealth. Orange County has almost a quarter⁷²⁰ of the Commonwealth’s population⁷²¹ and that county’s toll roads cover less than 70 miles of state highway while the turnpike covers more than 550 miles of interstate highway. The negative net position of the TCAs is approximately 59%⁷²² of the commission’s negative net position, but this also is not a meaningful comparison because of substantial differences in assets and operations between the two.

⁷¹⁰ *Id.* at 10-11.

⁷¹¹ *Id.* at 12.

⁷¹² *Id.* at 12; The Toll Rds. of Orange Cnty., Fin. Snapshot, <https://thetollroads.com/financial-snapshot>; Investor Information, <https://thetollroads.com/about/investor> (2017).

⁷¹³ At least up through 2017. The Toll Rds. of Orange Cnty., Fin. Snapshot, <https://thetollroads.com/financial-snapshot>; Investor Information, <https://thetollroads.com/about/investor> (2017).

⁷¹⁴ Arduin & Winegarden, *supra* note 705, at 4.

⁷¹⁵ The Toll Rds. of Orange Cnty., Dev. Fee Program, <https://thetollroads.com/about/development> (2017). In 2018, dev. impact fees totaled approximately \$31,552,000. KPMG, *supra* note 642, at 16 in each fin. statement.

⁷¹⁶ Arduin & Winegarden, *supra* note 705, at 8.

⁷¹⁷ *Id.* at 19.

⁷¹⁸ *Id.* at 7.

⁷¹⁹ KPMG, *supra* note 702, at 30-31 & 31-32, respectively.

⁷²⁰ U.S. Census Bureau, Quick Facts, <https://www.census.gov/quickfacts/orangecountycalifornia> (estimates July 1, 2018).

⁷²¹ *Id.*, <https://www.census.gov/quickfacts/PA> (estimates July 1, 2018).

⁷²² KPMG, *supra* note 702, at 8-9 in each fin. statement.

California has given its car pool lanes new utility by tolling express lanes for solo drives for a 20 mile stretch along Interstate 15.⁷²³ The price is not fixed with the fee rising when demand is high during rush hour, and lowering during times of the day when there is not as much traffic. Traveling in the express lanes requires the use of transponders, but “high occupancy vehicles . . . with two or more passenger can use the lanes for free.”⁷²⁴ A movable barrier adjusts “the number of lanes in each direction to keep traffic flowing smoothly.”⁷²⁵ Operations of the expressway are from the Corridor Management Team, made of up the state’s department of transportation, the association of governments in the county, and the metropolitan transit system.⁷²⁶ Toll revenue from the express lanes fund their maintenance and operation, and subsidize transit services.⁷²⁷ To meet projected growth, the I-15 express lanes are being added in a neighboring county.⁷²⁸ Federal and local sources are funding this by a loan, program funding, a grant and sales tax.⁷²⁹

The San Diego Southbay Expressway is “[a] private 10-mile toll road . . . near the Mexican border.”⁷³⁰ For two-axel vehicles, the tolls range from 50¢-\$2.75 if paying electronically and \$2-\$3.50 if paying by cash or credit card.⁷³¹ “The San Diego Association of Governments . . . purchased the lease to operate the toll road” and now directly manages its operation.⁷³² The state is expected take it over in 2042, whereafter tolls would be eliminated.⁷³³ There are contracts with the state’s department of transportation to inspect it and periodically maintain it as well as with the state’s highway patrol to patrol and manage incidents on this state route.⁷³⁴

Delaware

Delaware’s Department of Transportation operates a state route, an interstate and a U.S. route *via* tolls.⁷³⁵ Reviewing the website and organizational charts, Delaware’s turnpike system is entirely integrated with its highway system from the perspective of the consumer, when compared to other states. Despite how integrated the turnpike appears within its department of transportation, the state uses a public instrumentality, Delaware Transportation Authority,⁷³⁶ to secure funding

⁷²³ San Diego Ass’n of Gov’ts., The I-15 Express Lanes Corridor Fact Sheet. (Apr. 2018), https://www.sandag.org/uploads/publicationid/publicationid_6_1065.pdf.

⁷²⁴ *Id.* “Carpools, vanpools, transit services, motorcycles, and permitted clean air vehicles can use the Express Lanes for free . . . every day.” *Id.*

⁷²⁵ *Id.*

⁷²⁶ *Id.*

⁷²⁷ *Id.*

⁷²⁸ Riverside Cnty. Transp. Comm’n, I-15 Express Lanes, https://15project.info/wp-content/uploads/2018/07/I-15_Express_Lanes_FAQ_20180717.pdf (revised July 5, 2018).

⁷²⁹ *Id.*

⁷³⁰ Cal., Caltrans, <https://dot.ca.gov/programs/traffic-operations/legal-truck-access/tolls> (2019).

⁷³¹ S. Bay Expressway, FAQ, <http://www.southbayexpressway.com/how-to-use-sbx/faq> (last visited Nov. 17, 2019).

⁷³² *Id.* This is an association of 19 local governments with “a Board of Directors composed of mayors, councilmembers, and county supervisors from each” supplemented by advisory members from other governmental districts including the state’s department of transportation. SANDAG, About SANDAG, <https://www.sandag.org/index.asp?fuseaction=about.home> (last visited Nov. 17, 2019).

⁷³³ Cal. *supra* note 730; S. Bay Expressway, *supra* note 731.

⁷³⁴ S. Bay Expressway, *supra* note 731.

⁷³⁵ Del. Dep’t of Transp., Toll Calculator, <http://www.deldot.gov/public.ejs?command=PublicTollRateUS301> (last visited Nov. 17, 2019).

⁷³⁶ Del. Code tit. 2, § 1304.

from bonds.⁷³⁷ The transportation authority is ultimately responsible “for operation and maintenance of the Delaware Turnpike in accordance with the terms and conditions of any trust agreement with bondholders.”⁷³⁸ The authority’s bonds are not a state liability.⁷³⁹ Aside from adjusting “charges, fares, fees, rentals and/or tolls,” the maintenance and operation of the turnpike is really through the departmental Division of Highway Operations.⁷⁴⁰ There is a statutory order of “application of revenues derived from the Delaware Turnpike” with operational, reserve, bond, debt service reserve and improvements funding being prioritized before any of these revenues can be used to pay for the interstate system excluding the turnpike, reimbursements, other transportation or street improvements.⁷⁴¹ Statutorily, neither the state nor the authority may authorize an “appropriation or expenditure . . . that would impair the right or power of the Authority to impose tolls on the . . . Turnpike.”⁷⁴² Also statutorily, the authority’s budget must be at least “the amount actually incurred as operating expenses for the . . . Turnpike in the last prior fiscal year . . . plus an inflation factor . . . unless the . . . Authority requests a lesser amount.”⁷⁴³

To assist the state’s department of transportation, the authority’s principal role is to finance the department *via* the Transportation Trust Fund and “is a blended component unit of the [s]tate” that is “overseen by the Secretary of Transportation . . . , the Director of the Office of Financial Management and Budget, and the Administrator of the Trust Fund.”⁷⁴⁴ The trust fund is primarily funded by “motor fuel taxes, motor vehicle document fees, motor vehicle registration fees, and other transportation-related fees, which are imposed and collected by the [s]tate and transferred to the [t]rust [f]und” with this assignment and continuous appropriation to the trust fund being an irrevocable pledge from the state of “these taxes and fees.”⁷⁴⁵ Toll roads are “other major sources of revenue for the [t]rust [f]und” with the trust fund’s revenue available to secure its bonds for state-approved transportation projects.⁷⁴⁶

A 14-mile Route 301 bypass opened “with a hefty \$4 toll” which is “comparable with the Delaware Turnpike (I-95) but pricier *per* mile than Route 1, the toll road that will connect with the bypass.”⁷⁴⁷ “Toll roads generate resentment because the money is paid all at once, rather than a little bit at a time through the gas tax.”⁷⁴⁸ An interstate “commuter . . . said that using the toll road” to Maryland “would cost him more than \$2,000 a year,” but “[m]otorists should prepare for more tolls” because “gas tax revenue growth is minimal” due “to more fuel-efficient vehicles” and “a growing fleet of all electrics.”⁷⁴⁹ With technology now allowing for “toll-taking on many

⁷³⁷ *Id.* §§ 1309, 1311, 1312.

⁷³⁸ *Id.* § 1305.

⁷³⁹ *Id.* § 1315. The authority’s revenue bonds amortize through 2055. Del. Dep’t of Transp., *supra* note 41.

⁷⁴⁰ Del. Code tit. 2, § 1305. “The Authority and the State shall always maintain and keep in good condition and operating repair the Delaware Turnpike.” *Id.* § 1320(a).

⁷⁴¹ *Id.* § 1310.

⁷⁴² *Id.* § 1320(g).

⁷⁴³ *Id.* § 1320(f). Similarly, the statute also requires the authority’s approved budget to be adequate to service its debt as indentured. *Id.*

⁷⁴⁴ Del. Dep’t of Transp., *supra* note 41, at 15.

⁷⁴⁵ *Id.*

⁷⁴⁶ *Id.*

⁷⁴⁷ Del. Bus. Now!, *Ouch – Those Route 301 Tolls*, Jan. 14, 2019, <https://delawarebusinessnow.com/2019/01/ouch-those-route-301-tolls/>.

⁷⁴⁸ *Id.*

⁷⁴⁹ *Id.*

highways,” “federal highway officials may be more inclined to expand toll-taking as repair bills soar” for an interstate system “showing signs of rapid deterioration.”⁷⁵⁰ In addition, “[t]ests are underway on a user fee system” in Delaware.⁷⁵¹

Florida

Florida’s turnpike opened in 1957 after Charles Costar, a South Florida businessman, “watched as the state’s roadways became congested” and “envisioned building a turnpike similar to the one he had traveled on while vacationing in Pennsylvania. In 1953, he led a group of citizens to lobby state officials for a toll road . . . to ease growing traffic congestion,” which resulted in the Florida State Turnpike Authority and Florida Turnpike Act the same year.⁷⁵² Today, Florida has almost 800 miles of tolled roadway,⁷⁵³ 483 miles of which is operated by the Florida Turnpike Enterprise.⁷⁵⁴ The turnpike system is being expanded in three corridors under the department’s Multi-use Corridors of Regional Economic Significance Program.⁷⁵⁵ News accounts indicate that this will add 300 miles of toll roads.⁷⁵⁶ “The Turnpike System is operated by Florida’s Turnpike Enterprise . . ., which acts as a separate business unit of the Florida Department of Transportation.”⁷⁵⁷ The enterprise “is responsible for all operations on every . . . toll road and bridge” owned and operated by the department.⁷⁵⁸ The department “reports directly to the Governor”; the enterprise is a separate, departmental business unit with a “mission to pursue innovation and best private-sector business practices, improve cost-effectiveness and timeliness in project delivery, increase revenues, and improve quality of service to its customers.”⁷⁵⁹

Excepting high-occupancy toll or express lanes, state law forbids tolls “charged for use of an interstate highway where tolls were not charged as of July 1, 1997.”⁷⁶⁰ For “the State Highway System,” tolls are limited to toll lanes existent on July 1, 2012, but tolls may be charged on the system for new facilities, new and replacement bridges, high-occupancy vehicle and express lanes, and the turnpike.⁷⁶¹ Payment of tolls may be suspended “to assist in emergency evacuation.”⁷⁶² Failure to pay a toll is “a noncriminal traffic infraction, punishable as a moving violation.”⁷⁶³

⁷⁵⁰ *Id.*

⁷⁵¹ *Id.*

⁷⁵² Tpk. Enterprise, Fla. Dep’t of Transp., *FY 2007 Ann. Rep.* 2, <http://www.floridasturnpike.com/documents/reports/Turnpike%20Annual%20Report/2007AnnualReport.pdf>.

⁷⁵³ Figure 6, *supra* p. 118.

⁷⁵⁴ Fla. Tpk. Sys., Fla. Dep’t of Transp., 2018 Comprehensive Ann. Fin. Rep. 7, http://www.floridasturnpike.com/documents/reports/Comprehensive%20Annual%20Financial%20Report/CAFR_2018.pdf.

⁷⁵⁵ Fla. Stat. § 338.2278. Funding may come from turnpike rev. bonds, the departmental Transp. Fin. Corp., State Transp. Trust Fund, pub.-private partnerships and donations. *Id.*

⁷⁵⁶ *E.g.*, Miami Herald, *Fla. Plans 300 Miles of New Too Rds.. Groups Vetting the Project Ask: ‘Why?’*, Oct. 25, 2019, <https://www.miamiherald.com/news/politics-government/state-politics/article236595963.html>.

⁷⁵⁷ Fla.’s Tpk., Frequently Asked Questions, <http://www.floridasturnpike.com/about.html> (2018).

⁷⁵⁸ *Id.*

⁷⁵⁹ *Id.*

⁷⁶⁰ Fla. Stat. §§ 338.165(8), 338.166(6).

⁷⁶¹ *Id.* § 338.151.

⁷⁶² *Id.* § 338.155(1)(b).

⁷⁶³ *Id.* § 338.155(1)(c).

Dissimilar to the Commonwealth, tolls may continue to be collected after the discharge of any related bond indebtedness.⁷⁶⁴ Toll rates are adjusted every one to five years.⁷⁶⁵

Florida averages 3,000,000 customers daily traveling its central turnpike roadways.⁷⁶⁶ Florida's turnpike system has "\$2.6 billion of bonds . . . outstanding with a Five-Year Capital Plan that calls for \$1.5 billion of additional bonds to be issued."⁷⁶⁷ Statutory authorization limits "the issuance of revenue bonds to fund approved projects" to "no more than \$10 billion in bonds . . . outstanding."⁷⁶⁸ The turnpike "system continues to report a strong debt service coverage ratio driven by record operating revenues of over \$1 billion for fiscal year 2018," and the turnpike's "debt service coverage ratio of 3.3 exceeded" its "debt management policy, as well as the bond indenture requirement of 1.2."⁷⁶⁹ As is the case with turnpike revenue bonds in the Commonwealth, Florida does not pledge its state revenues to pay the bonds so that bondholders are limited to the pledges on the bonds.⁷⁷⁰ "[E]xcluding bond obligations," the turnpike system's annual budget is required "to provide for a cash reserve" of at least 5% "of the unpaid balance of all . . . contractual obligations . . . to be paid from revenues."⁷⁷¹

Supplementing departmental powers, the turnpike enterprise is "a single budget entity" that may procure "under any rule adopted . . . solely for" its benefit and has its own executive director and staff, including a chief financial officer.⁷⁷² Before the turnpike enterprise was authorized, the turnpike system was operated by the department.⁷⁷³ "[R]evenues and bond proceeds from the turnpike system received by the department pursuant to . . . the Florida Turnpike Enterprise Law . . . shall be used only for the cost of turnpike projects and . . . improvements and for the administration, operation, maintenance, and financing of the turnpike system."⁷⁷⁴ Similar to the Commonwealth, Florida Highway Patrol has a troop "headquartered with the turnpike enterprise" and "treated as a part of the cost of the operation of the turnpike system" along with "expenses incurred on the turnpike system" by "Department of Highway Safety and Motor Vehicles."⁷⁷⁵

"Since opening to traffic in 1957, the" Florida turnpike "[s]ystem has generated sufficient revenues to operate, maintain, and preserve" itself "as well as meet debt service requirements and construct improvements and expansions."⁷⁷⁶ Overall toll revenue increased by almost one "percent in FY 2018, compared to the preceding year,"⁷⁷⁷ which "is attributed to significant traffic growth spurred by low unemployment rates, housing and commercial

⁷⁶⁴ *Id.* § 338.165(1).

⁷⁶⁵ *Id.* § 338.165(3).

⁷⁶⁶ Fla. Tpk. Sys., *supra* note 754.

⁷⁶⁷ *Id.* at 2.

⁷⁶⁸ *Id.*

⁷⁶⁹ *Id.*

⁷⁷⁰ Fla. Stat. § 338.228.

⁷⁷¹ *Id.* § 338.241.

⁷⁷² *Id.* § 338.2216.

⁷⁷³ *Id.* § 338.222.

⁷⁷⁴ *Id.* § 338.227(2).

⁷⁷⁵ *Id.* § 338.239(2).

⁷⁷⁶ Fla. Tpk. Sys., *supra* note 754, at 2.

⁷⁷⁷ Letter from AECOM Tech. Servs. to Bren Dietrich, Chief Fin. Officer, Fla. Tpk. Enter. 3 (Dec. 28, 2018), http://www.floridasturnpike.com/documents/reports/Traffic%20Engineers%20Annual%20Report/2018/01_Executive%20Summary.pdf.

development in the area and a record number of tourists.”⁷⁷⁸ Forecasts of revenue “are subject to significant economic uncertainties and . . . unforeseen events.”⁷⁷⁹ With an unemployment rate “lower than the national unemployment rate . . . and another record breaking year of 122 million tourists in FY 2018”, revenue is projected to increase 3.6 percent annually over the next 10 years.⁷⁸⁰

Kentucky

In the past, Kentucky has built toll roads whose fees are lifted after their bonds are paid off and they join the state’s highway system.⁷⁸¹ Kentucky also has tolled bridges along the Ohio River which are jointly operated with the state of Indiana.⁷⁸² The River Link toll system consists of three bridges, two of which are interstates, with revenues split evenly between the two states to cover the costs of the bridges’ construction, operations and maintenance.⁷⁸³ A joint board “of top transportation and finance officials from both states” oversee these bridges.⁷⁸⁴

Massachusetts

Opening in 1957, the largest portion of the Massachusetts turnpike stretched 123 miles horizontally from the outskirts of Boston to the western border of the state at West Stockbridge.⁷⁸⁵ Today, this section of the Massachusetts Turnpike is commonly referred to as the Western Turnpike. Completed in 1964, another dozen miles extended the turnpike to Boston with tunnels added later.⁷⁸⁶ For much of its history, both sections of the turnpike were operated by the Massachusetts Turnpike Authority, run by a gubernatorially appointed board.⁷⁸⁷

In 2009 Massachusetts began overhauling its transportation system by merging the Massachusetts Turnpike Authority, Massachusetts Bay Transportation Authority, and the Massachusetts highway system to create a new department of transportation.⁷⁸⁸ The department is “a public instrumentality” and “placed in the executive office of the governor but . . . not . . . subject to” his “supervision or control.”⁷⁸⁹ Its “corporate powers” are “exercised by a board of directors,” being ten of his appointees plus the secretary of transportation.⁷⁹⁰ The department assumed “the assets, obligations and liabilities of the Massachusetts Turnpike Authority” with “turnpike revenues” credited to the Massachusetts Transportation Trust Fund, which is “used for

⁷⁷⁸ *Id.* at 5-6

⁷⁷⁹ *Id.* at 6.

⁷⁸⁰ *Id.* at 6, 8.

⁷⁸¹ Linda M. Spock, NCHRP Synthesis 262: Tolling Practices for Highway Facilities 14 (1998), http://onlinepubs.trb.org/Onlinepubs/nchrp/nchrp_syn_262.pdf.

⁷⁸² River Link, About Riverlink, <https://riverlink.com/about/> (2018).

⁷⁸³ *Id.*

⁷⁸⁴ *Id.*, Tolling Oversight, <https://riverlink.com/about/joint-board/> (2018).

⁷⁸⁵ Mass. Tpk., Historic Overview, <http://www.bostonroads.com/roads/mass-pike/> (last visited Nov. 20, 2019).

⁷⁸⁶ *Id.*

⁷⁸⁷ *Id.*

⁷⁸⁸ Mass. Gen. Laws ch. 6C, §§ 2, 3 (<https://malegislature.gov/Laws/SessionLaws/Acts/2009/Chapter25>).

⁷⁸⁹ *Id.* § 2(a).

⁷⁹⁰ *Id.* § 2(b). The secretary is also appointed by the governor for a “coterminous” term to be the department’s “chief executive, administrative and operational officer of the department.” *Id.* § 2(e).

financing transportation-related purposes” of the department.⁷⁹¹ The department is organized and functions “as a single state agency for administrative purposes” with core administrative functions serving the department’s separate offices and divisions.⁷⁹² The department must adjust tolls to pay the turnpike’s costs and principal and interest on its bonds, which tolls are not subject to the commonwealth’s approval.⁷⁹³ The department is authorized to refinance the turnpike authority’s bonds as “special obligations of the department payable solely from monies credited to” the trust fund rather than as “general obligations of the commonwealth” so that the commonwealth is not pledging its credit.⁷⁹⁴ For state contract information and finance, the department is considered to be an independent public authority or a state agency.⁷⁹⁵ Other than the bay, regional and port authorities, the department is represented by “[t]he office of attorney general . . . to the same extent and in the same manner as provided to the commonwealth and state departments.”⁷⁹⁶ The transportation trust fund is under departmental control “and not subject to appropriation.”⁷⁹⁷ The department may not be discontinued “so long as” it has ‘bonds outstanding without adequate provision for the complete payment and satisfaction thereof’; then, “[t]he obligations, debts and liabilities of the department shall be assumed by and imposed upon the commonwealth.”⁷⁹⁸

In its first annual report, the department of transportation anticipated that the consolidation would generate “over \$100 million in . . . annualized and one time savings.”⁷⁹⁹ Health care insurance savings for the former turnpike employees were anticipated to amount to \$5,100,000 annually, being achieved to a transfer to the state group plan and raising the employees’ contribution from 15% to 20%.⁸⁰⁰ Much greater health care insurance savings anticipated for former bay transportation authority employees (and retirees) in the same consolidation needed to wait for “the expiration of applicable collective bargaining agreements” and “ongoing litigation.”⁸⁰¹ “[M]anager furloughs, changes in work policies, voluntary retirements and workforce reduction” were anticipated to save “\$2.7 million in FY10 payroll” annualized “into FY11.”⁸⁰² For snow and ice costs, “smarter procurement . . . and management of vendors, were anticipated to avoid “\$9.5 million,” at least in “FY11.”⁸⁰³ Switching to a less expensive 511 information service “will achieve \$1.2 million in annual savings.”⁸⁰⁴ Hiring “new maintenance staff” instead of contracting “for mowing and other routine maintenance services” was anticipated to be “a net savings of \$2.7 million,” at least for the initial year.⁸⁰⁵

⁷⁹¹ *Id.* § 4.

⁷⁹² *Id.* § 5. “[C]ore administrative functions . . . include . . . human resources, financial management, legal, procurement, asset management, and . . . information technology.” *Id.*

⁷⁹³ *Id.* § 13. The department may also toll the metropolitan highway system; toll revenue is exclusively for debt service on and the costs of the tolled roads. *Id.*

⁷⁹⁴ *Id.* § 17(a). “Bonds may be secured by a” departmental “trust agreement” pledging the trust fund’s monies. *Id.* § 17(c).

⁷⁹⁵ *Id.* §§ 14, 15.

⁷⁹⁶ *Id.* § 18.

⁷⁹⁷ *Id.* § 4(a).

⁷⁹⁸ *Id.* § 23.

⁷⁹⁹ Mass. Dep’t of Transp., *Transp. Reform – Yr. 1, 2* (Dec. 17, 2010.)

<https://archives.lib.state.ma.us/bitstream/handle/2452/266255/ocn921512685.pdf?sequence=1&isAllowed=y>.

⁸⁰⁰ *Id.* at 5. There were 2,065 former turnpike employees. *Id.*

⁸⁰¹ *Id.* at 3 n.2. There were more than 12,000 of these “employees, retirees and survivors.” *Id.* at 5.

⁸⁰² *Id.* at 5.

⁸⁰³ *Id.* at 6.

⁸⁰⁴ *Id.*

⁸⁰⁵ *Id.* at 5.

Although consolidating transportation agencies has worked out favorably for Massachusetts, commonwealth officials recognized that alone would not solve the deficiencies in state funding. Perhaps more vital was the Transportation Finance Act of 2013 which “was projected to raise an estimated \$600 million annually for the next five years.”⁸⁰⁶ “The department” is statutorily authorized to “combine Federal, state, local and private funds to finance a transportation facility.”⁸⁰⁷

New Hampshire

First opened in 1950, New Hampshire’s turnpike is maintained and operated by the Bureau of Turnpikes in the state department of transportation’s division of operations.⁸⁰⁸ This “[t]urnpike [s]ystem . . . consists of” almost 89 “miles of limited access highway, 36 miles of which are” interstate highway.⁸⁰⁹ Toll rates are set by the departmental commissioner subject to approval by both the governor and the executive council.⁸¹⁰ The effect of public officials in charge of the tolling rates, makes the decision political in nature. Turnpike tolls have not been increased in a decade.⁸¹¹ A proposed 50% rate increase ultimately failed due to “a public outcry” that persuaded the governor to remove the item from the council’s agenda.⁸¹² This meant that projects must be adapted “to the lack of a toll hike . . . or a different way to pay for them” must be found.⁸¹³

South Carolina

Of the states financing or operating toll roads by their departments of transportation, South Carolina had the fewest miles of roadway.⁸¹⁴ “[T]here are two toll roads in” this state.⁸¹⁵ The Southern Connector “is approximately 16 miles”⁸¹⁶ and “designated as Interstate 185 Toll” but “was financed solely through the sale of bonds” rather than tax dollars.⁸¹⁷ While it was first conceived in the late 1960s, the state struggled for over 30 years to raise the necessary funds before

⁸⁰⁶ Conservation L. Found., Transp. for Mass. Coalition Releases progress Rep. on Transp. Fin. Act of 2013 (Mar. 20, 2014), <https://www.clf.org/blog/progress-report-transportation-finance-act-of-2013/>. Its revenue sources are from an additional and indexed gas tax, a motor vehicles sales tax, turnpike tolls and gaming. Rafael Mares, Transp. for Mass.: Keeping on Track 15 (2017), <https://www.clf.org/wp-content/uploads/2017/02/Keeping-on-Track-Jan2017.pdf>.

⁸⁰⁷ Mass. Gen. Laws ch. 6C, § 68(d).

⁸⁰⁸ N.H. Dep’t of Transp., Ops.: Tpk. (2015), <https://www.nh.gov/dot/org/operations/turnpikes/system/index.htm>.

⁸⁰⁹ *Id.*

⁸¹⁰ “[T]he . . . [l]egislature has final say over the projects that are . . . funded in the state’s highway plan. The governor controls what items appear on the agenda of Executive Council meetings, and he also has the power to negate a council vote.” John DiStaso. *Updated: Sununu Kills Tpk. Toll Increase Proposal, Won’t Allow Exec. Council Vote.* (Dec 21, 2017), <https://www.wmur.com/article/sununu-kills-turnpike-toll-increase-proposal-wont-allow-executive-council-vote/14478908>.

⁸¹¹ Kevin Landrigan. 1st N. H. Tpk. Toll Hike in 10 Yrs. Proposed, N. H. Union Leader, Nov. 28, 2017, *available at* <https://www.tnews.com/articles/first-new-hampshire-turnpike-toll-hike-10-years-proposed>.

⁸¹² DiStaso, *supra* note 810.

⁸¹³ *Id.*

⁸¹⁴ Figure 6, *supra* p. 118; Non-Interstate Sys. Toll Rds. in the U.S. (Jan. 1, 2017), *available at* <https://www.fhwa.dot.gov/policyinformation/tollpage/documents/t1part4.pdf>.

⁸¹⁵ S.C. Dep’t of Transp., Traffic & Rd. Conditions, <https://www.scdot.org/travel/travel-road.aspx> (updated Nov. 21, 2019).

⁸¹⁶ So. Connector, FAQ’s, <https://www.southernconnector.com/faqs.html> (2016).

⁸¹⁷ *Id.*

opening in 2001.⁸¹⁸ While the department of transportation “retains ownership,” a “non-profit corporation . . . issued tax-exempt toll revenue bonds to construct” it and “is responsible for . . . operation, and maintenance” during the “50-year license.”⁸¹⁹ Toll revenues pay for all maintenance costs, which is actually done by the department.⁸²⁰ “The bonds are . . . scheduled to be paid off in . . . 2051, at which point the road will likely become free.”⁸²¹ In 2010, the operator filed for bankruptcy to reorganize its debts, which have subsequently been restructured.⁸²² The other toll road is the 7.5-mile Cross Island Parkway on Hilton Head, which the department operates and has been collecting tolls since 1995 but might remove toll booths in 2021 when the project’s original debt is paid.⁸²³

Texas

Texas “has 25 toll roads, more than any other state.”⁸²⁴ These “toll roads began as public entities, but in 2003, amid shortfalls in transportation funding, a state law” allowed “new and existing ones to enter public-private partnerships.”⁸²⁵ Toll prices vary, but “many roads are traversed for under \$1.”⁸²⁶ Typically, “a private toll road” is “15-20% government-funded” as opposed to others for which “full construction costs” are government-funded.⁸²⁷ The state’s department of transportation estimated “that eliminating tolls would cost Texas \$40 billion in revenue.”⁸²⁸ A poll scored “toll roads . . . as the least popular way to solve Texas’ traffic issues” notwithstanding “the clear advantage in quality, efficiency and cost to the public.”⁸²⁹

Toll roads and bridges “are operated by various authorized governmental entities, including regional mobility authorities and state, regional and county toll authorities.”⁸³⁰ The state’s department of transportation and transportation commission “have limited legal oversight roles that vary for each type of toll authority.”⁸³¹ The department “is the sole state-wide toll authority” with “approximately 230 centerline miles of toll roads.”⁸³² Collection of revenue focuses “on maximizing payment collections of tolls and minimizing unpaid tolls” by “reconciling transactions and distributing revenue in accordance with project agreements, reporting revenue collections data

⁸¹⁸ *Id.*, Our History, <https://www.southernconnector.com/history.html> (2016).

⁸¹⁹ Cen. for Innovative Fin. Support, U.S. Dep’t of Transp., Project Profile: So. Connector, https://www.fhwa.dot.gov/ipd/project_profiles/sc_southern_connector.aspx (last visited Nov. 25, 2019).

⁸²⁰ *Id.*; So. Connector, *supra* note 816.

⁸²¹ Amy Clarke Burns, *Q&Amy: When Will the So. Connector Be Free?*, Greenville News, Nov. 12, 2015, <https://www.greenvilleonline.com/story/news/2015/11/11/qamy-when-southern-connector-free/75218590/>.

⁸²² *Id.* This was after an economic recession.

⁸²³ Katherine Kokal, *When Will You Finally Get to Stop Paying the Cross Island Toll? Here’s What We Know*, The Island Packet, Oct. 1, 2018, <https://www.islandpacket.com/news/local/traffic/article218786880.html>.

⁸²⁴ Scott Beyer, *Tex.’s Toll Roads: A Big Step Towards Open Markets For Transp.*, Forbes, June 30, 2017, <https://www.forbes.com/sites/scottbeyer/2017/06/30/texas-toll-roads-a-big-step-towards-open-markets-for-transportation/#39371a421e9d>.

⁸²⁵ *Id.*

⁸²⁶ *Id.*

⁸²⁷ *Id.*

⁸²⁸ *Id.*

⁸²⁹ *Id.*

⁸³⁰ Tex. Dep’t of Transp., *2019-2020 Educ. Series: Toll Rd. Operations 2*, https://ftp.dot.state.tx.us/pub/txdot-info/sla/education_series/toll-roads.pdf.

⁸³¹ *Id.*

⁸³² *Id.*

and accounting for the toll payments collected and processed under interoperability agreements with other Texas toll authorities.”⁸³³ For the department’s facilities, the maximum amount of the administrative fee to be charged for failure to pay for the use of a toll road applies to each invoice maxing out at “\$48 per year” cumulatively.⁸³⁴ The Class C Misdemeanor for “two or more unpaid invoices” is limited to \$250 *per* year.⁸³⁵

In 2014 and 2015, voters overwhelmingly agreed to send the state’s department of transportation “billions of dollars' worth of new revenue streams.”⁸³⁶ The ballot authorization “said the money could not be used on toll roads or toll lanes,” but the department “was considering accounting maneuvers that would still allow toll lanes to be built” adjacent to “non-tolled main lanes” with funds “that don’t come with restrictions on using them for toll projects.”⁸³⁷ In 2017, transportation officials said that “they were dropping several toll projects from long-term plans due to public response.”⁸³⁸

Virginia

Virginia has 12 toll roads, three toll tunnels and two toll bridges covering 100 miles of roadway owned and operated by a mix of private, regional, and state organizations.⁸³⁹ The toll facilities are in the north, Hampton Roads and Richmond.⁸⁴⁰ The commonwealth’s department of transportation operates express lanes and one bridge in Hampton Roads, a parkway extension in Richmond and express lanes in the north so that the remaining dozen are operated by others.⁸⁴¹

Like other states, Virginia has struggled to fund the expansion and maintenance of its roadways in recent years and has turned to privately financing several of its roads using tolls to repay the bonds. The Public-Private Transportation Act of 1995 authorizes a public entity to agree with a private entity for the development and operation of a qualifying transportation facility.⁸⁴² This allows the commonwealth, its agencies and authorities, and political subdivisions to contract with business to build and operate toll roads. “[F]inancing options for the development and/or operation of transportation . . . facilities” are evaluated and reviewed by “the Transportation Public-Private Partnership Steering Committee.”⁸⁴³ Before the committee convenes, “a finding of public interest” must be made by “the chief executive officer of the responsible public entity” with a concurrence by the secretary of transportation if that department “is the responsible public entity.”⁸⁴⁴

⁸³³ *Id.* at 3.

⁸³⁴ *Id.*

⁸³⁵ *Id.*

⁸³⁶ Brandon Formby, *Amid Blowback Over Accounting Maneuver, TxDOT Drops Financing Idea for Several Toll Projects*, Tex. Tribune, Nov. 16, 2017, <https://www.texastribune.org/2017/11/16/patrick-criticizes-txdot-over-toll-projects-abbott-remains-mum/>.

⁸³⁷ *Id.*

⁸³⁸ *Id.*

⁸³⁹ Figure 6, *supra* p. 118; Toll Rds. in Va., Toll Facilities, <https://www.tollroadsinvirginia.com/Home/TollFacilities/> (2017).

⁸⁴⁰ *Id.*

⁸⁴¹ *Id.* Others are a commission, authorities, city, a partnership and corporations. *Id.*

⁸⁴² Va. Code §§ 33.2-1800 to -1823.

⁸⁴³ *Id.* § 33.2-1803.2(A).

⁸⁴⁴ *Id.* § 33.2-1803.1(A).

“The Powhite Parkway Extension is a limited access toll facility owned and operated by the” commonwealth’s department of transportation running “[a]pproximately ten miles.”⁸⁴⁵ More typically, the commonwealth’s limited access toll roads are either privately operated or are express lanes. Opening in 1988, the parkway was extended “to relieve traffic congestion due to” the county’s “rapidly increasing population.”⁸⁴⁶ A resident engineer “manages the daily operation of the toll facility and reports directly to the” department’s district administrator.⁸⁴⁷ Monies collected on the parkway extension pool in a revenue fund; this fund’s statement of revenues and expenditures for 2013 showed that it transferred money out for maintenance, E-ZPass transactional fees and patrol services from state police.⁸⁴⁸

The commonwealth’s department of transportation owns, operates and maintains “the I-66 Express Lanes Inside the Beltway,” which are free for “high-occupancy vehicles with 2 or more occupants.”⁸⁴⁹ These lanes are unusual because tolls are charged only to “solo drivers using the lanes during rush hours.”⁸⁵⁰ Other interstate express lanes in the north are “100 per cent Transurban owned”⁸⁵¹ but managed and operated by the department of transportation under a partnership (until 2087).⁸⁵² Pricing on these express lanes is determined by dynamic tolling as demand increases.

Formerly, the commonwealth’s department of transportation operated the 14-miles Dulles toll roads near Washington’s international airport, but Metropolitan Washington Airports Authority became the toll road’s sole operator in 2009.⁸⁵³ Rather than privatizing “operation of the [t]oll [r]oad under the Virginia Public Private Transportation Act,” the airports authority persuaded the commonwealth to relinquish the remainder of its easement on the airport property.⁸⁵⁴

Washington

While plenty of states have operated toll roads for an extended period, this is relatively new for Washington. Washington’s toll roads are jointly managed by its department of transportation and the Washington State Transportation Commission. The list of tolled facilities include: the State Route 520 and the Tacoma Narrows bridges, the State Route 167 High Occupancy Toll

⁸⁴⁵ Va. J. Legis. Audit & Rev. Comm’n, Rev. of the RMA & Powhite Parkway Extension Toll Facility Operations 11 (2000), <http://jlarc.virginia.gov/pdfs/reports/Rpt261.pdf>.

⁸⁴⁶ *Id.* at 11-12.

⁸⁴⁷ *Id.* at 12.

⁸⁴⁸ Va. Dep’t of Transp., Statement of Revs. & Expenditures: Powhite Parkway Extension Toll Rd. Special Rev.-Rev. Fund (June, 30 2013), https://www.virginiadot.org/projects/resources/Powhite_Ext_financing/powhite2013/Powhite_Parkway_Extension_-_Revenue_Expenses_-_June_2013.pdf.

⁸⁴⁹ 66 ExpressLanes, Toll Questions, http://www.66expresslanes.org/toll_questions/ (2018).

⁸⁵⁰ *Id.*, About The Lanes, http://www.66expresslanes.org/about_the_lanes/default.asp (2019).

⁸⁵¹ Transurban, Greater Wash. area, <https://www.transurban.com/roads-and-projects/north-america#usa> (last visited Dec. 1, 2019).

⁸⁵² Express Lanes, FAQs, <https://www.expresslanes.com/faqs> (2018). The three express lanes run 53 miles. *Id.*

⁸⁵³ Dulles Toll Rd., About Dulles Toll Rd., <https://www.dullestollroad.com/toll/about-dulles-toll-road> (last visited Dec. 1, 2019).

⁸⁵⁴ Metropolitan Wash. Airports Auth., Dulles Corridor Proposal 1, 4 (2006), *available at* <https://www.metwashairports.com/sites/default/files/archive/mwaa.com/file/CorridorProposal.pdf>.

(HOT) lanes, the I-405 express toll lanes and the State Route 99 tunnel.⁸⁵⁵ Together these facilities total approximately 35 miles of roadway.⁸⁵⁶

The state transportation “[c]ommission adopts tolls for all state toll facilities”.⁸⁵⁷ The commission “also monitors traffic and toll revenue, reviews and oversees toll collection processes, costs, and operational policies.”⁸⁵⁸ The “[c]ommission is a seven member body of citizens appointed by the Governor for six-year terms” with the secretary of the department of transportation “and a representative from the Governor’s Office” as “*ex officio* members.”⁸⁵⁹ Taking effect in 2019 the commission approved exemptions on toll facilities for buses, emergency vehicles while on-duty, authorized tow trucks while in-service, vanpools, incident response vehicles while on-duty and maintenance vehicles working on tolled roads.⁸⁶⁰

The State Route 167 HOT Lanes opened in 2008 to charge solo drivers.⁸⁶¹ Currently, the tolls in this system range from 50¢ to \$9, varying based on congestion.⁸⁶² The amount charged “is displayed on the overhead electronic signs” and applies whether one drives the entire nine miles or only part of it.⁸⁶³ The I-405 Express Toll Lanes opened in 2015 and operate similarly to the HOT lanes on State Route 167.⁸⁶⁴ In 2016, the state transportation commission permanently adopted toll-free use to all vehicles on week nights and weekends.⁸⁶⁵

Other Initiatives

Ohio

In 2013, Ohio changed its infrastructure funding plan and included characteristics which set it apart from other tolling initiatives.⁸⁶⁶ Ohio would maintain “ownership, operation, and maintenance of the turnpike,” and “issued bonds against future toll revenues . . . to fund projects outside of the turnpike itself.”⁸⁶⁷ In addition, the following measures were enacted to address concerns about issuing bonds against future toll revenue.⁸⁶⁸

⁸⁵⁵ Wash. State Transp. Comm’n, Roles & Responsibilities, <https://www.wstc.wa.gov/AboutUs/Roles-Responsibilities.htm> (2010).

⁸⁵⁶ Office of Highway Policy Information, U.S. Dep’t of Transp., Toll Facilities in the United States, <https://www.fhwa.dot.gov/policyinformation/tollpage/page00.cfm> (last visited Dec. 19, 2019). Analysis provided by J. State Gov’t Comm’n staff (excludes tolled ferries).

⁸⁵⁷ Wash. State Transp. Comm’n, *supra* note 855.

⁸⁵⁸ *Id.*

⁸⁵⁹ *Id.*

⁸⁶⁰ Wash. Dep’t of Transp., Toll Exemptions, <https://www.wsdot.wa.gov/goodtogo/toll-exemptions> (2019).

⁸⁶¹ Wash. State Trans. Comm’n, SR 167 High Occupancy Toll Lanes, <https://www.wstc.wa.gov/HighwayTolling/SR167Rates/SR167HOTLanesWashingtonStateTransportationCommission.htm> (last visited Aug. 20, 2019).

⁸⁶² *Id.*

⁸⁶³ *Id.*

⁸⁶⁴ *Id.*, I-405 Express Toll Lanes Rates & Policies, <https://www.wstc.wa.gov/HighwayTolling/I405ETLRates/I405ETLRatesandPolicy.htm> (last visited Dec. 1, 2019).

⁸⁶⁵ *Id.*

⁸⁶⁶ Capri S. Cafaro, Bipartisan Policy Cen., *Ohio’s Tpk. Plan: A Creative Alternative to Raise Rev.* (Dec. 1, 2018), <https://bipartisanpolicy.org/blog/ohios-turnpike-plan-a-creative-alternative-to-raise-revenue/>.

⁸⁶⁷ *Id.*

⁸⁶⁸ *Id.*

- The Ohio Turnpike Commission was replaced with a new entity now called the Ohio Turnpike and Infrastructure Commission (OTIC). OTIC’s jurisdiction was modified to enable toll revenue-backed bond proceeds to be used for non-turnpike related infrastructure projects, while also maintaining traditional turnpike jurisdictional matters within the newly created commission.
- In order to be eligible for funding, a project must first be recommended by the existing Transportation Review and Advisory Council (TRAC). TRAC must recommend no less than 90 percent of the dollars allocated for infrastructure be, at least in part, within 75 miles of the Ohio Turnpike itself. These projects must also have a discernable benefit to Ohio’s highway system and a “nexus” with the Ohio Turnpike.
- Toll increases for passenger vehicles (i.e., cars and not commercial semi-trucks) were prohibited between 2013 and 2023 if paid by electronic transmitter (EZ-PASS) and for distances less than 30 miles on the turnpike. The flexibility was given to increase tolls to support bonds issued before July 1, 2013 and outside of exempt categories (i.e., EZ PASS and commuters).
- The director of the Ohio Department of Transportation and the director of the Ohio Office of Budget and Management were no longer permitted to enter into agreements with the private sector on behalf of the Ohio Turnpike.
- The Highway Services Fund, meant to collect payments from private sector vendors, was repealed.

“In 2013, roughly \$1 billion in bonds were issued by the OTIC” consisting of “\$930 million in junior debt allocated toward infrastructure projects and \$70 million in senior debt allocated toward turnpike projects.”⁸⁶⁹ A class-action lawsuit was filed in 2015 “challenging the use of toll revenue backed bonds for projects outside of the Ohio Turnpike itself,” but “[a] U.S. district judge dismissed six of the seven claims brought in the case, Ullmo v. Ohio” because “projects that received funds met the” statutory “‘nexus’ criteria . . . and such projects provide a benefit to turnpike users.”⁸⁷⁰ The judge upheld the claim asserting that diverting toll revenues to the unrelated projects is an “unlawful tax or user fee under” state law.⁸⁷¹

In total, “\$1.5 billion” was “raised for highway projects through the sale of bonds backed by future toll revenue from the Ohio Turnpike,” but “the Ohio Turnpike and Infrastructure Commission . . . will be paying on the debt until 2048 and will not have revenue for new projects.”⁸⁷² The state’s “motor fuel user fee” stood at 28¢ *per* gallon since 2005.⁸⁷³ “Since then, construction costs have risen dramatically and the value of that dollar in 2003 is only 58 cents today.”⁸⁷⁴

⁸⁶⁹ *Id.*

⁸⁷⁰ *Id.*

⁸⁷¹ *Id.*

⁸⁷² Ohio Governor M. DeWine’s Advisory Comm. on Transp. Infrastructure, *Recommendation Rep.* 3, (2019). https://governor.ohio.gov/wps/wcm/connect/gov/63d50e4c-c430-4d0b-a98f-cc5b4b2fe51d/Transportation+Report+Final.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_M1HGGIK0N0JO00QO9DDDDM3000-63d50e4c-c430-4d0b-a98f-cc5b4b2fe51d-mzOZOoc.

⁸⁷³ *Id.* at 5.

⁸⁷⁴ *Id.*

Jack Marchbanks, director of the Ohio Department of Transportation, warned the Governor’s Advisory Committee on Transportation Infrastructure that Ohio is “facing a future where we will clearly not be able to maintain the quality of the system we have, let alone improve upon it.”⁸⁷⁵ Despite the department’s “money-saving efforts of instituting efficiencies, delaying projects, and stretching our dollars as far as they can go, we are looking over the edge of a fiscal cliff. Past practices of borrowing and bonding have brought us to this troubled state, and we are here because we need a better solution. Without one - our system of state and local roadways will fall into a dangerous state of disrepair.”⁸⁷⁶

The Governor’s Advisory Committee discussed a number of funding mechanisms, including:⁸⁷⁷

- Indexing and caps
- Permissive registration fees
- Seeking an appropriate revenue stream from vehicles that use little or no fuel
- More funding for mass transit
- Exploring alternative funding sources

“[T]he committee was split on the previously mentioned options” and “the only funding mechanism that generated broad consensus was an increase in the motor fuel user fee.”⁸⁷⁸ A motor fuel user fee is an efficient funding means, protected by the Ohio Constitution to only pay for highway construction and related activities, fair to those who pay it because road upkeep is connected to the act of driving, easy to quickly implement to meet the urgent need for funding and is economically competitive because neighboring states already have higher motor vehicle user fees.⁸⁷⁹ Subsequent to the publication of this report, Ohio amended its levy of motor fuel excise tax to impose 38½¢ “on each gallon of gasoline” starting July 1, 2019.⁸⁸⁰ Ohio also began collecting “an additional fee of two hundred dollars for each application for registration or registration renewal received for any plug-in electric motor vehicle” and “one hundred dollars for each application for registration or registration renewal received for any hybrid motor vehicle.”⁸⁸¹

Variable Pricing

“Variable pricing manages demand on congested roadways by providing motorists with carefully constructed financial cues” to “encourage motorists to use the available roadway in a more efficient manner.”⁸⁸² Time of day pricing correlates “with the level of congestion on the road; the times of day with higher congestion levels are tolled the highest, and the times of day

⁸⁷⁵ *Id.* at appdx. 1.

⁸⁷⁶ *Id.*

⁸⁷⁷ *Id.* at 12-13.

⁸⁷⁸ *Id.* at 13.

⁸⁷⁹ *Id.*

⁸⁸⁰ Ohio Rev. Code § 5735.05(E)(1).

⁸⁸¹ *Id.* § 4503.10(C)(3), (4). These fees are not imposed until 2020. *Id.* These fees are used for highways and shared with municipal corporations. *Id.*

⁸⁸² Tex. A&M Transp. Inst., Mobility Investment Priorities. *Variable Pricing*, <https://mobility.tamu.edu/mip/strategies-pdfs/travel-options/technical-summary/variable-pricing-4-pg.pdf> (last visited Apr. 4, 2019).

with the lower congestion levels are tolled at a lower rate.”⁸⁸³ Dynamic pricing adjusts the toll “in real time with the level of congestion on the road” through “an increased level of precision and technological complexity.”⁸⁸⁴ These adjustments encourage motorists to choose an alternative route, a different time, a different transportation mode or to not take trips unless they are a high priority.⁸⁸⁵

“Managed lanes (MLs) were conceived to improve traffic throughput and to provide motorists, who are willing to pay a toll, with a reliable and congestion-free travel option . . . by raising tolls when congestion worsens to whatever level is necessary to prevent travel speeds from falling below critical thresholds.”⁸⁸⁶ Some downsides are “that toll rates may be very high,”⁸⁸⁷ dynamic pricing may lack pricing predictability which could discourage some motorists “who otherwise would have used the MLs,” and variable pricing could be fixed but sometimes become out of sync with actual traffic conditions.⁸⁸⁸

According to research from the Texas A&M Transportation Institute, below are several variable pricing best practices:⁸⁸⁹

- Type of Location: Works best on roads with pre-existing toll facilities, readily available alternative transportation options.
- Agency Practices: Agencies should ensure the public is informed about the new pricing policy and its benefits.
- Frequency of Reanalysis: Depending on whether the agency uses dynamic or time of day pricing, the congestion levels may need to be regularly evaluated to ensure that traffic continues to flow freely.
- Supporting Policies or Actions Needed: The managing agencies should collaborate with the local transit services and other stakeholders to ensure that transportation alternatives are adequately provided.
- Complementary Strategies: Managed (HOV/HOT) lanes, adding new toll roads, car and vanpooling, temporary shoulder use, express bus service, and electronic toll collection systems.

⁸⁸³ *Id.*

⁸⁸⁴ *Id.*

⁸⁸⁵ *Id.*

⁸⁸⁶ FitchRatings, *Managed Lanes: A Framework for Prudent Pricing* 1, (Oct. 1, 2018),

https://www.ibtta.org/sites/default/files/documents/Managed%20Lane%20Pricing%20Report_Oct2018.pdf .

⁸⁸⁷ *Id.*

⁸⁸⁸ *Id.* at 6.

⁸⁸⁹ Tex. A&M Transp. Inst., *supra* note 882.

LEGISLATION

Senate Resolution No. 209 directed the Joint State Government Commission to “[p]ropose legislation required to result in the consolidation of interstate operations.”⁸⁹⁰ House Bill No. 1197 (Sess. of 2013),⁸⁹¹ Senate Bill No. 1051 (Sess. of 2015)⁸⁹² and Senate Bill No. 39 (Sess. of 2017)⁸⁹³ would have amended The Administrative Code of 1929⁸⁹⁴ to consolidate the commission into the department as a bureau of toll administration. Senate Resolution No. 209 would have the consolidation occur as an Interstate Operations division instead of as a bureau.

Organizationally and for ease of integration, a separate bureau rather than a new division would be preferable. A new division would either fall under the Deputy Secretary for Highway Administration or that Deputy Secretary would be for state highways and there would be an additional one for Interstate Operations. Having two separate Deputy Secretaries for state highways and Interstate Operations does not seem to be advisable given the organizational structure of the department. If the *status quo* is retained with a single Deputy Secretary for Highway Administration, there would either likely be an additional bureau of toll administration added or seven divisions (for Interstate Operations) added, with three of them in its Bureau of Project Delivery and another four of them in its Bureau of Maintenance and Operations. Then again, an additional bureau for toll administration could have divisions of project delivery as well as maintenance and operations. Organizationally, divisions fall under bureaus.⁸⁹⁵ Regardless, the department is already authorized to divide the state into suitable divisions.⁸⁹⁶

The following draft of legislation would “implement the consolidation of interstate operations” as directed by Senate Resolution No. 209. It is similar to House Bill No. 1197 (Sess. of 2013), Senate Bill No. 1051 (Sess. of 2015) and Senate Bill No. 39 (Sess. of 2017). Rather than add a Deputy Secretary of Toll Administration as these other bills proposed, it would authorize the department to organize the consolidation by bureau or division. It would also transfer the employees of the commission to the department.⁸⁹⁷ The department would not revise tolls under the Regulatory Review Act⁸⁹⁸ but would be required to maintain the asset and service the outstanding debt. The outstanding debt would not be assumed by the Commonwealth but repayable as already pledged.⁸⁹⁹

⁸⁹⁰ Pa. S. Res. No. 209 (Sess. of 2017); appdx. A., *infra* p. 150.

⁸⁹¹ Appdx. F, *infra* pp. 161-71.

⁸⁹² This bill is very similar to Pa. S. No. 39 (Sess. of 2017) so that only the latter is reproduced as an appdx..

⁸⁹³ Appdx. G, *infra* pp. 173-82.

⁸⁹⁴ Act of Apr. 9, 1929 (P.L.177, No.175); 71 P.S. §§ 51-732.

⁸⁹⁵ Appdx. E, *infra* pp. 157-60.

⁸⁹⁶ Act of Apr. 9, 1929 (P.L.177, No.175), § 2004; 71 P.S. §§ 51-732.

⁸⁹⁷ This could be subject to litigation as discussed, *supra* pp. 60-63.

⁸⁹⁸ Act of June 25, 1982 (P.L.633, No.181); 71 P.S. §§ 745.1-745.14.

⁸⁹⁹ Bond counsel should probably be retained to be certain that his is correctly drafted and enforceable and further consultation with the State Treasurer would likely be required.

AN ACT

Amending the act of April 9, 1929 (P.L.177, No.175), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined," providing for the assumption by the Department of Transportation of the functions of the Pennsylvania Turnpike Commission, for assumption by the Commonwealth of the financing functions of the commission, for transfer to the Department of Transportation and State Treasurer of land, buildings, personal property and employees of the commission, for the abolition of the commission and the offices of Turnpike Commissioner; and making an inconsistent repeal of various acts relating to the Pennsylvania Turnpike.

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

Section 1. Section 2001.3(f) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, amended June 22, 1982 (P.L.573, No.166), are amended and the section is amended by adding a subsection to read:

* * *

(f) The Deputy Secretary for Local and Area Transportation, with the approval of the Secretary of Transportation shall have the powers and perform the functions and duties provided in sections 2002 and 2003 regarding services to municipalities, local and public transportation, planning, development and funding of local and public transportation, technological development of rail, water or other modes of transportation (except recreational boating and ferry licensing), environmental design, improvement of transportation services and shall perform the functions and duties heretofore imposed upon and performed by the Mass Transportation Division in the Bureau of Community Development of the former Department of Community Affairs, by the Secretary of Community Affairs under the act of January 22, 1968 (P.L.42, Act No.8), known as the "Pennsylvania Urban Mass Transportation Law," by the former Department of Commerce in regard to High-Speed Rail Demonstration Programs and by the former Department of Highways in regard to the distribution of liquid fuels taxes to the municipalities and townships.

* * *

Section 2. Section 2008 of the act, amended May 6, 1970 (P.L.356, No.120), is repealed:

[Section 2008. Toll Roads and Bridges.--The Department of Transportation shall have the power to acquire, for and on behalf of the Commonwealth, by purchase or otherwise turnpike or toll roads, or any parts thereof, or toll bridges, in such manner and under and subject to such terms and conditions as may now or hereafter be provided by law.]

Section 3. The act is amended by adding a section to read:

Section 2008.1. Toll Road and Bridge Administration.--(a) The Department of Transportation shall assume all powers and duties of the Pennsylvania Turnpike Commission that relate to operation, maintenance, construction and reconstruction of the Pennsylvania Turnpike and related highways and shall receive all tolls and other money otherwise payable to the commission. The functions assumed shall include all related functions under the following acts:

Act of May 21, 1937 (P.L.774, No.211), referred to as the Pennsylvania Turnpike Commission Act.

Act of May 16, 1940 (Sp.Sess., P.L.949, No.11), known as the "Pennsylvania Turnpike Philadelphia Extension Act."

Act of June 11, 1941 (P.L.101, No.53), known as the "Western Pennsylvania Turnpike Extension Act."

Act of June 21, 1947 (P.L.877, No.367), entitled "An act to authorize and empower the Pennsylvania Turnpike Commission to combine the Turnpike, the Eastern Extension, and the Western Extension, or any two thereof, for financing purposes under the provisions of this act; authorizing the issuance of Turnpike revenue bonds of the Commonwealth payable solely from tolls; to pay the cost of the Eastern Extension and the Western Extension; paying the cost of the Eastern Extension, or the cost of the Western Extension, or the cost of both; and refunding any Turnpike revenue bonds or Turnpike refunding bonds which have heretofore been issued by the Commission under the provisions of any act heretofore approved, or under the provisions of this act, and which shall then be outstanding, including the payment of any redemption premiums

thereon; refunding any revenue bonds or revenue refunding bonds heretofore issued under the provisions of this act, including the payment of and redemption premiums thereon; authorizing the Commission to fix tolls from time to time for use of the projects so combined; providing for the use of a facsimile of the signature of the Governor, and of the Chairman of the Commission in lieu of their manual signatures, and a facsimile of the official seal of the Commission upon any bonds issued under the provisions of this act, or any other act; authorizing the issuance of bonds for the payment of the construction of any turnpike, and giving certain definitions."

Act of May 23, 1951 (P.L.335, No.74), known as the "Pennsylvania Turnpike Delaware River Extension Act."

Act of August 14, 1951 (P.L.1232, No.282), referred to as the Pennsylvania Turnpike System Financing Act.

Act of September 27, 1951 (P.L.1430, No.348), known as the "Pennsylvania Turnpike Northeastern Extension Act."

Act of January 14, 1952 (1951 P.L.1947, No.547), known as the "Pennsylvania Turnpike Gettysburg Extension Act."

Act of July 28, 1953 (P.L.706, No.229), known as the "Pennsylvania Turnpike Northwestern Extension Act."

Act of June 10, 1955 (P.L.157, No.50), known as the "Pennsylvania Turnpike Keystone Shortway Act."

Act of June 14, 1955 (P.L.174, No.52), known as the "Pennsylvania Turnpike Southwestern Extension Act."

Act of May 15, 1956 (1955 P.L.1589, No.534), known as the "Pennsylvania Turnpike Philadelphia Loop Extension Act."

Act of May 17, 1957 (P.L.160, No.73), entitled "An act requiring all tunnels on the Pennsylvania Turnpike to be painted white or lined with a light colored material and be equipped with continuous lighting."

Act of September 8, 1959 (P.L.828, No.322), entitled "An act authorizing the Pennsylvania

Turnpike Commission to finance and construct certain additional projects on the Pennsylvania Turnpike System."

Act of September 15, 1961 (P.L.1305, No.573), entitled "An act requiring the erection and maintenance of medial barriers or guards on the Pennsylvania Turnpike."

74 Pa.C.S. Chs. 81 (relating to turnpike) and 82 (relating to turnpike commission standards of conduct).

75 Pa.C.S. Chs. 89 (relating to Pennsylvania Turnpike) and 95 (relating to taxes for highway maintenance and construction).

(b) (1) The department is authorized to manage the functions assumed under this section by creating an Interstate Operations division, other divisions or a Bureau of Toll Administration.

(2) The department shall have the power to acquire, for and on behalf of the Commonwealth, by purchase or otherwise, turnpike or toll roads, or any parts thereof, or toll bridges, in such manner and under and subject to such terms and conditions as provided by law. The powers vested in the department shall include:

(i) The power to fix or set tolls on any roadway or bridge under its jurisdiction.

(ii) The power to enter into partnership agreements with regard to the operation of preexistent or future toll roads under its jurisdiction.

(iii) The power to take actions authorized under the acts specified in subsection (a).

(c) (1) Collective bargaining-level and other positions added to the department under this section shall first be offered to bargaining-level and other personnel employed by the commission who possess the necessary expertise and experience to perform the duties of such position.

(2) The department shall honor any collective bargaining agreement in existence between the commission and any employe organization.

(3) Any transfers made under this section shall not affect the civil service status of affected employes of the commission, nor that of existing employes of the department.

(4) Employes and personal property of the commission used in the bonding process are hereby transferred to the State Treasurer.

(d) All land, buildings and personal property, as well as all appropriations, allocations, documents, files, records, contracts, agreements, equipment, materials, orders, rights and obligations of the commission are transferred to the department.

(e) The department may continue to use or recycle all forms, stationery, business cards and other office supplies or materials that reference the commission until the preexistent supplies and materials are depleted.

(f) (1) The department shall have the power and duty to promulgate regulations to administer the respective functions transferred to it under this section.

(2) The regulations of the commission for the administration of the functions transferred under this section shall remain in effect until such time as new regulations are promulgated under this section. However, the eligibility requirements for funding within any program subject to review under this section shall not be changed, amended or altered in any way.

(3) Any action to fix or to revise the tolls for the use of the turnpike and the different parts or sections thereof or to fix or set tolls on any roadway or bridge under the jurisdiction of the department are not subject to the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act."

(g) Tolls shall be so fixed and adjusted as to provide, at a minimum, funds sufficient with other revenues, if any, to pay: (i) costs incurred related to the turnpike including, but not limited to, the cost of owning, maintaining, repairing, reconstructing, improving, rehabilitating, policing, using, administering, controlling and operating the turnpike; (ii) the principal of, redemption premium, if any, and the interest on notes or bonds relating to the turnpike as the same shall become due and payable and to create and maintain reserves; and (iii) to comply with the terms of any presently existing trust indenture entered into by the commission as well as the applicable terms in outstanding bonds, notes or other obligations of the commission.

(h) Revenue received from tolls, rates, fees, rentals and other charges for transit over or through all tolled roads, bridges or tunnels shall be applied to: (i) the payment of existing debt service on such tolled roads; and (ii) the cost of owning, maintaining, repairing, reconstructing,

improving, rehabilitating, policing, using, administering, controlling and operating such tolled roads.

(i) The following words and phrases when used in this section shall have the meanings given to them in this subsection, unless the context clearly indicates otherwise:

"Commission" means the Pennsylvania Turnpike Commission.

"Department" means the Department of Transportation of the Commonwealth.

Section 4. The Commonwealth shall assume the debt evidenced by outstanding bonds of the commission and shall draw upon the tolls and other sources of revenue formerly received the commission for repayment of this debt as pledged. The Commonwealth's assumption of obligations and liabilities evidenced by outstanding bonds, notes or other obligations of the commission remain subject to the terms and conditions in those instruments, including provisions administering the debt, so that the outstanding debt remains subject to any limitations or restrictions contained in any trust indenture or other agreement securing revenue bonds or revenue refunding bonds or other obligations issued on account of any such project. Accordingly, the outstanding debt remains payable solely from the sources pledged rather than becoming a pledge of the faith and credit of the Commonwealth. Revenue bonds, refunding bonds, notes or other obligations heretofore issued by the commission, remain refundable as previously authorized by statute and in the instruments. The State Treasurer shall assume all powers and duties of the Pennsylvania Turnpike Commission which relate to issuance and payment of bonds for construction, reconstruction and maintenance of the turnpike. As applicable to either, the department and the State Treasurer remain subject to the provisions of any presently existing trust indenture entered into by the commission as well as the terms in outstanding bonds, notes or other obligations of the commission.

Section 5. The Pennsylvania Turnpike Commission and the office of Turnpike Commissioner are abolished.

Section 6. On and after the effective date of this section, a reference in any statute to the Pennsylvania Turnpike Commission shall be deemed to be a reference to the Department of Transportation.

Section 7. (a) The following acts, or portions thereof, are repealed to the extent that they are

inconsistent with this act:

Act of May 21, 1937 (P.L.774, No.211), referred to as the Pennsylvania Turnpike Commission Act.

Act of May 16, 1940 (Sp.Sess., P.L.949, No.11), known as the Pennsylvania Turnpike Philadelphia Extension Act.

Act of June 11, 1941 (P.L.101, No.53), known as the Western Pennsylvania Turnpike Extension Act.

Act of June 21, 1947 (P.L.877, No.367), entitled "An act to authorize and empower the Pennsylvania Turnpike Commission to combine the Turnpike, the Eastern Extension, and the Western Extension, or any two thereof, for financing purposes under the provisions of this act; authorizing the issuance of Turnpike revenue bonds of the Commonwealth payable solely from tolls; to pay the cost of the Eastern Extension and the Western Extension; paying the cost of the Eastern Extension, or the cost of the Western Extension, or the cost of both; and refunding any Turnpike revenue bonds or Turnpike refunding bonds which have heretofore been issued by the Commission under the provisions of any act heretofore approved, or under the provisions of this act, and which shall then be outstanding, including the payment of any redemption premiums thereon; refunding any revenue bonds or revenue refunding bonds heretofore issued under the provisions of this act, including the payment of and redemption premiums thereon; authorizing the Commission to fix tolls from time to time for use of the projects so combined; providing for the use of a facsimile of the signature of the Governor, and of the Chairman of the Commission in lieu of their manual signatures, and a facsimile of the official seal of the Commission upon any bonds issued under the provisions of this act, or any other act; authorizing the issuance of bonds for the payment of the construction of any turnpike, and giving certain definitions."

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74 Pa.C.S. Chs. 81 (relating to turnpike) and 82 (relating to turnpike commission standards of conduct).

75 Pa.C.S. Chs. 89 (relating to Pennsylvania Turnpike) and 95 (relating to taxes for highway maintenance and construction).

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 8. This amendatory act shall be known as the Turnpike-Transportation Merger Act.

Section 9. This act shall take effect in 180 days.

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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 209 Session of
2017

INTRODUCED BY RAFFERTY, HUTCHINSON, AUMENT, FOLMER, KILLION,
MENSCH, REGAN, BARTOLOTTA, VULAKOVICH AND WARD,
OCTOBER 3, 2017

REFERRED TO TRANSPORTATION, OCTOBER 3, 2017

A RESOLUTION

1 Directing the Joint State Government Commission to conduct a
2 thorough and comprehensive analysis of the potential
3 consolidation of interstate operations at the Department of
4 Transportation and the Pennsylvania Turnpike Commission.

5 WHEREAS, The Department of Transportation was created in 1970
6 when the former Department of Highways was merged with
7 transportation-related functions from the Department of
8 Commerce, Department of Community Affairs, Department of Forests
9 and Waters, Department of Military Affairs and the Department of
10 Revenue; and

11 WHEREAS, With an annual budget of more than \$8,000,000,000 in
12 Federal and State funds, the department oversees programs and
13 policies affecting highways, urban and rural public
14 transportation, airports, railroads, ports and waterways; and

15 WHEREAS, The department is directly responsible for nearly
16 40,000 miles of highway and roughly 25,400 bridges, a system
17 first established in 1911; and

18 WHEREAS, Approximately 10,600 employees at the department are

1 engaged in the maintenance, restoration and expansion of the
2 State highway system, and work in the central headquarters in
3 Harrisburg and 11 engineering districts, with facilities in all
4 67 counties; and

5 WHEREAS, The department is divided into five main areas
6 including Highway Administration, Driver and Vehicle Services,
7 Planning, Multimodal Transportation and Administration; and

8 WHEREAS, The creation of the Pennsylvania Turnpike Commission
9 was authorized in 1937, and the original 160-mile section of the
10 Pennsylvania Turnpike, known as "America's First Superhighway,"
11 opened in 1940; and

12 WHEREAS, The commission has an operating budget of
13 approximately \$360,000,000 with gross toll revenue estimated at
14 \$1,000,000,000; and

15 WHEREAS, The commission will have assumed nearly
16 \$17,000,000,000 in debt by 2022, primarily as a result of
17 \$450,000,000 in annual funding contributions to the department
18 required under Act 44 of 2007; and

19 WHEREAS, The commission is directly responsible for 552 miles
20 of roadway, 1,150 bridges, 79 interchange configurations, 27
21 maintenance facilities and 17 service plazas; and

22 WHEREAS, The commission is governed by five commissioners,
23 employs more than 2,000 employees, with two-thirds working in
24 field locations and the remainder working in the central
25 headquarters in Middletown and five maintenance districts; and

26 WHEREAS, The commission is divided into five main areas,
27 including Toll Collection, Operations, Maintenance, Human
28 Resources, Traffic Engineering; and

29 WHEREAS, The National Highway System is a network of
30 strategic highways within the United States, including the

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1 Interstate Highway System and other roads serving major
2 airports, ports, rail or truck terminals, railway stations,
3 pipeline terminals and other strategic transport facilities; and

4 WHEREAS, The department and the commission have a shared
5 responsibility of managing, constructing and maintaining the
6 Commonwealth's interstate system, including interstate and
7 freeway designations such as I-76, I-276 and I-476; and

8 WHEREAS, There has never been a study of the potential
9 consolidation of the interstate operations between the
10 department and the commission; and

11 WHEREAS, Both the department and the commission created a
12 "Mapping the Future" initiative in 2011 to discuss government
13 working better together by aligning areas of strength, to
14 initiate cooperation and reform, to maximize funding and to
15 explore collaboration in the areas of design, construction,
16 facilities, procurement and purchasing, communications and
17 public relations, maintenance and operations and intelligent
18 transportation systems; therefore be it

19 RESOLVED, That the Senate of Pennsylvania direct the Joint
20 State Government Commission to conduct a thorough and
21 comprehensive analysis of the potential consolidation of
22 interstate operations at the department and the commission
23 through the creation of an Interstate Operations division at the
24 department; and be it further

25 Resolved, That the Joint State Government Commission, in
26 conducting the study, shall do all of the following:

27 (1) Evaluate the cost savings, efficiencies and customer
28 service improvements that may materialize as a result of
29 consolidating the interstate operations, including personnel,
30 equipment, facilities and highway administration.

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1 (2) Identify Federal and State laws that could impact
2 the consolidation of interstate operations.

3 (3) Review cases in other states where tolled bridges or
4 roadways are effectively governed under a state department of
5 transportation.

6 (4) Evaluate and make recommendations on how to manage
7 the turnpike's debt as a result of the consolidation of
8 interstate operations.

9 (5) Evaluate and make recommendations on how to align
10 contractual agreements, including labor agreements,
11 bondholder agreements or other partnership agreements, as a
12 result of the consolidation of interstate operations.

13 (6) Propose legislation required to implement the
14 consolidation of interstate operations;

15 and be it further

16 RESOLVED, That the Joint State Government Commission report
17 its findings and recommendations to the Senate no later than 18
18 months from the adoption of this resolution.

APPENDIX B

Interstate System Toll Roads by Operating Authority in Operation as of January 2017 United States

State	Operating Authority	Miles		
		Rural	Rural/Urban	Urban
California	Alameda County Congestion Management Agency	--	--	14.00
California	Los Angeles County Metropolitan Transportation Authority	--	--	25.00
California	San Diego Assoc of Gov; CA Dept. of Trans	--	--	8.00
California	Santa Clara Valley Transportation Authority	--	--	4.00
Colorado	High Performance Transportation Enterprise	13.00	--	5.00
Colorado	Plenary Roads Denver	--	--	7.00
Delaware	DE Dept. of Trans	--	--	11.90
Florida	FL Dept. of Transportation	78.00	--	30.50
Georgia	State Road and Tollway Authority (SRTA)	--	--	15.50
Illinois	IL State Toll Highway Authority	103.94	--	183.31
Illinois	Skyway Concession Company, LLC	--	--	7.70
Indiana	IN Finance Authority/ITR Concession Company LLC	--	157.00	--
Kansas	KS Turnpike Authority	177.00	--	59.00
Maine	ME Turnpike Authority	71.52	--	41.20
Maryland	MD Transportation Authority (MDTA)	53.44	--	9.63
Massachusetts	MassDot	38.42	--	101.10
Minnesota	MN Dept. of Trans	--	--	39.00
New Hampshire	NH Department of Transportation	--	--	7.43
New Hampshire	NH Department of Transportation	--	9.49	18.47
New Jersey	NJ Turnpike Authority	6.00	--	82.78
New York	NY State Thruway Authority	344.30	--	204.40
Ohio	OH Turnpike Commission	241.20	--	--
Oklahoma	OK Turnpike Authority	253.10	--	16.00
Pennsylvania	PA Turnpike Commission	251.32	--	235.32
South Carolina	Connector 2000 Association	16.00	--	--
Texas	Harris County Toll Road Authority	--	--	12.14
Texas	Metropolitan Transit Authority of Harris County	--	--	35.40
Texas	Texas Department of Transportation	--	--	46.03
Utah	Utah Department of Transportation	--	--	61.90
Virginia	95 Express, LLC	--	--	29.00
Virginia	Capital Beltway Express, LLC	--	--	14.00
Washington	Washington State Department of Transportation	--	--	17.00
West Virginia	WV Parkways Economic Development & Tourism Authority	68.80	--	18.00
Total		1,716.04	166.49	1,359.71

Source: Office of Highway Policy Info., U.S. Dep't of Transp., Interstate Sys. Toll Rds. in the U.S., <https://www.fhwa.dot.gov/policyinformation/tollpage/page00.cfm> (last modified Apr. 5, 2018).

**Interstate System Toll Roads by Fee Type
in Operation as of January 2017
United States**

State	Miles	Fee Type	Minimum Vehicle Fee	Maximum Vehicle Fee	Minimum Truck Fee	Maximum Truck Fee
California	8	No Data	\$0.50	\$8.00	No Data	No Data
California	43	Dynamic Variable	\$0.25	\$19.60	No Data	No Data
Colorado	13	Dynamic Variable	\$3.00	\$30.00	No Data	No Data
Colorado	12	Fixed Variable	\$0.70	\$6.75	\$18.70	\$31.75
Delaware	11.9	Fixed	No Data	\$4.00	\$6.00	\$11.00
Florida	30.5	Dynamic Variable	\$0.50	No Max	\$0.75	No Max
Florida	78	Fixed	\$2.85	\$3.00	\$8.55	\$18.00
Georgia	15.5	Dynamic Variable	\$0.02	\$13.95	No Data	No Data
Illinois	294.95	Fixed Variable	\$2.00	\$10.20	\$12.00	\$29.50
Indiana	157	Fixed	\$4.65	\$10.00	\$14.60	\$86.60
Kansas	236	Fixed	\$0.28	\$13.25	\$0.77	\$85.25
Maine	112.72	Fixed	\$0.60	\$2.85	\$2.70	\$12.85
Maryland	9.63	Fixed Variable	\$0.49	\$2.54	\$0.98	\$17.33
Maryland	53.44	Fixed	\$2.80	\$12.00	\$16.00	\$75.00
Massachusetts	139.52	Fixed	\$0.25	\$10.55	\$1.75	\$38.25
Minnesota	39	Dynamic Variable	\$0.25	\$8.00	\$0.25	\$8.00
New Hampshire	14.6	No Data	No Data	No Data	No Data	No Data
New Hampshire	20.79	Fixed	\$0.35	\$2.75	\$0.90	\$7.50
New Jersey	88.78	Fixed Variable	\$1.90	\$11.80	\$1.95	\$50.55
New York	21.6	No Data	No Data	No Data	No Data	No Data
New York	527.1	Fixed	\$0.15	\$33.70	\$0.40	\$137.90
Ohio	241.2	Fixed	\$0.50	\$16.50	\$0.50	\$83.00
Oklahoma	269.1	Fixed	\$0.25	\$4.75	\$0.25	\$20.00
Pennsylvania	486.64	Fixed	\$2.45	\$45.75	\$3.68	\$1,562.90
South Carolina	16	Fixed	\$1.00	\$3.50	\$1.00	\$14.40
Texas	36.73	Dynamic Variable	\$0.43	\$9.98	\$0.86	\$49.88
Texas	56.84	Fixed Variable	\$0.21	\$7.00	\$0.42	\$7.00
Utah	61.9	Dynamic Variable	\$0.25	\$1.00	No Data	No Data
Virginia	43	Dynamic Variable	\$0.50	No Data	No Data	No Data
Washington	17	Dynamic Variable	\$0.75	\$12.00	No Data	No Data
West Virginia	86.8	Fixed	\$1.30	\$6.00	\$2.50	\$36.00
Total	3,242.24	Average	\$1.04	\$11.46	\$4.34	\$113.46

Dynamic Variable: Rate varies based on current traffic conditions.

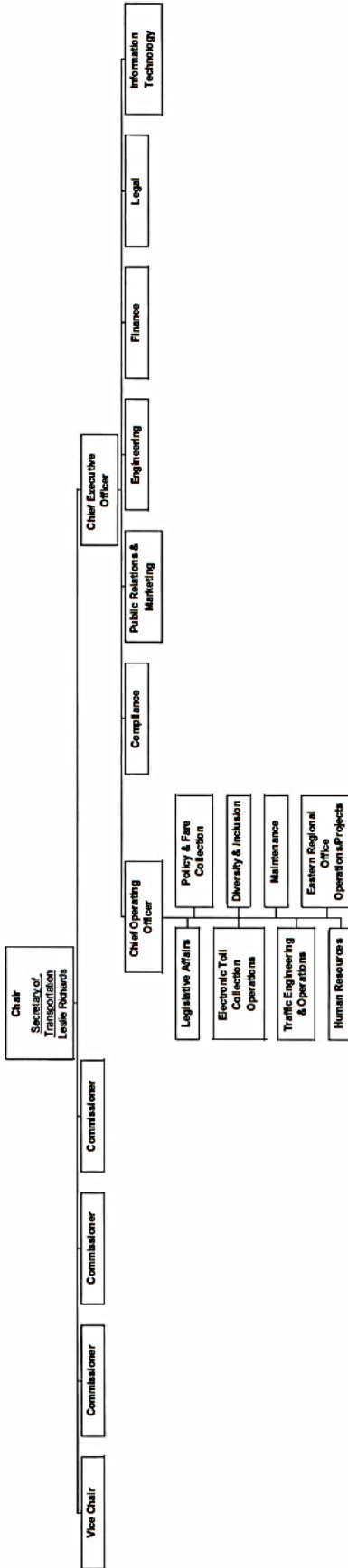
Fixed Variable: Rate varies by time of day based on pre-set schedule.

Fixed: Rate does not vary by time of day or traffic conditions (May vary by vehicle/weight class or distance traveled).

Source: Office of Highway Policy Info., U.S. Dep't of Transp., Interstate Sys. Toll Rds. in the U.S., <https://www.fhwa.dot.gov/policyinformation/tollpage/page00.cfm> (last modified Apr. 5, 2018).

Pennsylvania Turnpike Commission Organizational Chart

Pennsylvania Turnpike Commission



EXECUTIVE BOARD RESOLUTION

RESOLUTION NO. OR-19-008
July 8, 2019

WHEREAS, The Secretary of the Department of Transportation has requested, pursuant to Sections 212 and 709(b) of *The Administrative Code of 1929*, approval to establish the Transformational Technologies Office reporting to the Executive Deputy Secretary; establish the Operations and Performance Office in the Office of Highway Administration; and abolish the Maintenance Performance Division in the Bureau of Maintenance and Operations; Therefore, be it

RESOLVED, That the Secretary of Transportation is hereby granted approval to make the above-mentioned changes; **changes shown by (bold)**; and, be it further

RESOLVED, That the attached organizational chart reflecting the above change will be submitted to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* and *Pennsylvania Code*.

Secretary

Office of Chief Counsel
Real Property Division
General Law Division
Highway Construction and Claims Division
Driver and Vehicle Services Division

Policy Office

Communications Office

Office of Legislative Affairs

Executive Deputy Secretary

Transformational Technologies Office

Deputy Secretary for Administration

Bureau of Fiscal Management
Budget Division
Finance Division
Audits Division

Bureau of Equal Opportunity

Bureau of Office Services
Materials and Services Management Division
Graphic Service Center Division
Facilities Management Division

Bureau of Innovations
Next Generation Division
Tourism Services Division

EXECUTIVE BOARD RESOLUTION

**RESOLUTION NO. OR-19-008
July 8, 2019**

Deputy Secretary for Planning

Center for Program Development and Management
Funding and Twelve Year Program Division
Transportation Program Development Division
Planning and Contract Management Division
Financial and Contract Services Division

Bureau of Planning and Research
Geographic Information Division
Transportation Planning Division
Research Division

Public-Private Transportation Partnership Office

Deputy Secretary for Driver and Vehicle Services

Bureau of Motor Vehicles
Customer Service Division
Vehicle Registration Division
Vehicle Inspection Division

Bureau of Driver Licensing
Driver License Division
Driver Safety Division
License Control Division

Information/Fiscal Services Office

Risk Management Office

Bureau of Support Services
Operational Services Division
Budget Administration and Contracts Division
Training and Development Division

Deputy Secretary for Highway Administration

Bureau of Project Delivery
Highway Delivery Division
Bridge Design and Technology Division
Construction and Materials Division

Bureau of Maintenance and Operations
Highway Safety and Traffic Operations Division
Fleet Management Division
Maintenance Technical Leadership Division
Asset Management Division

Operations and Performance Office

Eleven Engineering Districts
67 Counties

EXECUTIVE BOARD RESOLUTION

**RESOLUTION NO. OR-19-008
July 8, 2019**

Deputy Secretary for Multimodal Transportation

Bureau of Aviation

Flight Services/Safety Division

Aviation Business Management and Administration Division

Airport Engineering and Planning Division

Bureau of Public Transportation

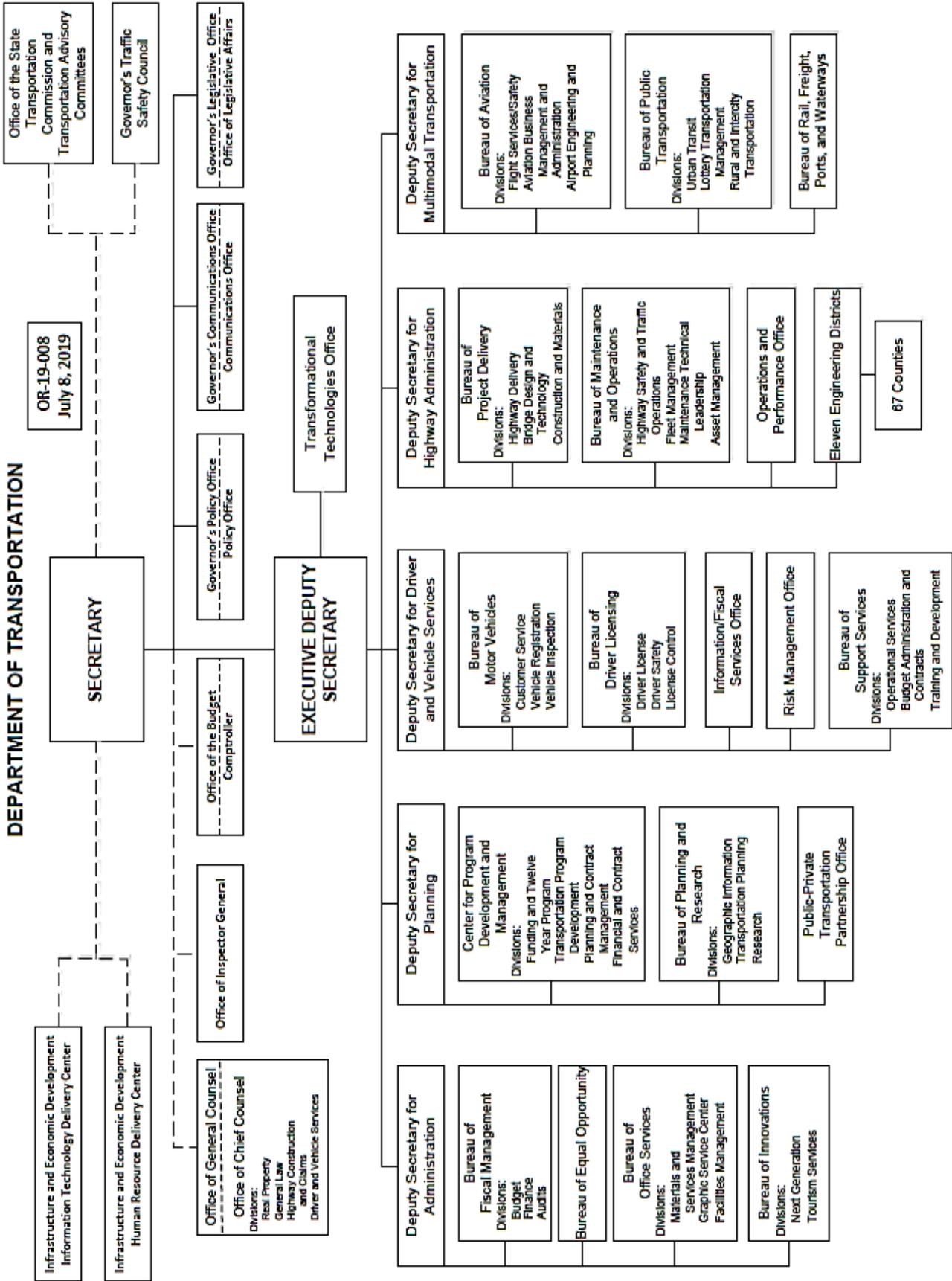
Urban Transit Division

Lottery Transportation Management Division

Rural and Intercity Transportation Division

Bureau of Rail, Freight, Ports, and Waterways

DEPARTMENT OF TRANSPORTATION



THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1197 Session of
2013

INTRODUCED BY OBERLANDER, AUMENT, BARRAR, BLOOM, BROOKS, CAUSER,
CHRISTIANA, CUTLER, DENLINGER, DUNBAR, GABLER, GILLEN,
GREINER, GROVE, C. HARRIS, JAMES, KAUFFMAN, LAWRENCE, MILNE,
MOUL, MUNDY, REESE, ROAE, SANKEY, SAYLOR, SIMMONS, SONNEY,
STEVENSON, SWANGER, TOEPEL, TOOHIL, TRUITT, VEREB AND
METCALFE, APRIL 16, 2013

REFERRED TO COMMITTEE ON TRANSPORTATION, APRIL 16, 2013

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
2 "An act providing for and reorganizing the conduct of the
3 executive and administrative work of the Commonwealth by the
4 Executive Department thereof and the administrative
5 departments, boards, commissions, and officers thereof,
6 including the boards of trustees of State Normal Schools, or
7 Teachers Colleges; abolishing, creating, reorganizing or
8 authorizing the reorganization of certain administrative
9 departments, boards, and commissions; defining the powers and
10 duties of the Governor and other executive and administrative
11 officers, and of the several administrative departments,
12 boards, commissions, and officers; fixing the salaries of the
13 Governor, Lieutenant Governor, and certain other executive
14 and administrative officers; providing for the appointment of
15 certain administrative officers, and of all deputies and
16 other assistants and employes in certain departments, boards,
17 and commissions; and prescribing the manner in which the
18 number and compensation of the deputies and all other
19 assistants and employes of certain departments, boards and
20 commissions shall be determined," establishing the Bureau of
21 Toll Administration within the Department of Transportation;
22 providing for the assumption by the Department of
23 Transportation of the functions of the Pennsylvania Turnpike
24 Commission, for assumption by the Commonwealth of the
25 financing functions of the commission, for transfer to the
26 Department of Transportation and State Treasurer of land,
27 buildings, personal property and employes of the commission,
28 for the abolition of the commission and the offices of
29 Turnpike Commissioner; and making an inconsistent repeal of
30 various acts relating to the Pennsylvania Turnpike.

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

3 Section 1. Section 2001.3(a) and (f) of the act of April 9,
4 1929 (P.L.177, No.175), known as The Administrative Code of
5 1929, amended June 22, 1982 (P.L.573, No.166), are amended and
6 the section is amended by adding a subsection to read:

7 Section 2001.3. Deputy Secretaries.--(a) The Secretary of
8 Transportation shall appoint, with the approval of the Governor,
9 [six] seven deputy secretaries who shall have the title of
10 Deputy Secretary for Administration, Deputy Secretary for
11 Highway Administration, Deputy Secretary for Safety
12 Administration, Deputy Secretary for Planning, Deputy Secretary
13 for Local and Area Transportation [and], Deputy Secretary for
14 Aviation and the Deputy Secretary for Toll Administration.
15 Deputy secretaries appointed under this section shall be
16 qualified by virtue of education and experience to hold the
17 positions for which they are chosen. In addition, if specific
18 qualifications are provided for any deputy secretary named under
19 this section, it shall be unlawful for the secretary to appoint
20 an individual who does not meet each of the specific criteria.

21 * * *

22 (f) The Deputy Secretary for Local and Area Transportation,
23 with the approval of the Secretary of Transportation shall have
24 the powers and perform the functions and duties provided in
25 sections 2002 and 2003 regarding services to municipalities,
26 local and public transportation, planning, development and
27 funding of local and public transportation, technological
28 development of rail, water or other modes of transportation
29 (except recreational boating and ferry licensing), environmental
30 design, improvement of transportation services and shall perform

1 the functions and duties heretofore imposed upon and performed
2 by the Mass Transportation Division in the Bureau of Community
3 Development of the former Department of Community Affairs, by
4 the Secretary of Community Affairs under the act of January 22,
5 1968 (P.L.42, Act No.8), known as the "Pennsylvania Urban Mass
6 Transportation Law," by the former Department of Commerce in
7 regard to High-Speed Rail Demonstration Programs and by the
8 former Department of Highways in regard to the distribution of
9 liquid fuels taxes to the municipalities and townships.

10 * * *

11 (h) The Deputy Secretary for Toll Administration, with the
12 approval of the Secretary of Transportation, shall have the
13 powers and perform the functions and duties as provided by law
14 relating to the department's responsibilities under section
15 2008.1 and under this article with regard to the operation of
16 toll roads within this Commonwealth and shall be qualified by
17 education and experience to perform those duties. At a minimum,
18 the deputy secretary shall be required to have a bachelor's
19 degree in civil engineering and shall have at least ten years of
20 experience designing and building highways.

21 Section 2. Section 2008 of the act, amended May 6, 1970
22 (P.L.356, No.120), is repealed:

23 [Section 2008. Toll Roads and Bridges.--The Department of
24 Transportation shall have the power to acquire, for and on
25 behalf of the Commonwealth, by purchase or otherwise turnpike or
26 toll roads, or any parts thereof, or toll bridges, in such
27 manner and under and subject to such terms and conditions as may
28 now or hereafter be provided by law.]

29 Section 3. The act is amended by adding a section to read:

30 Section 2008.1. Toll Road and Bridge Administration.--(a)

1 The Department of Transportation shall assume all powers and
2 duties of the Pennsylvania Turnpike Commission that relate to
3 operation, maintenance, construction and reconstruction of the
4 Pennsylvania Turnpike and related highways and shall receive all
5 tolls and other money otherwise payable to the commission. The
6 functions assumed shall include all related functions under the
7 following acts:

8 Act of May 21, 1937 (P.L.774, No.211), referred to as the
9 Pennsylvania Turnpike Commission Act.

10 Act of May 16, 1940 (Sp.Sess., 1941 P.L.949, No.11), known as
11 the "Pennsylvania Turnpike Philadelphia Extension Act."

12 Act of June 11, 1941 (P.L.101, No.53), known as the "Western
13 Pennsylvania Turnpike Extension Act."

14 Act of June 21, 1947 (P.L.877, No.367), entitled "An act to
15 authorize and empower the Pennsylvania Turnpike Commission to
16 combine the Turnpike, the Eastern Extension, and the Western
17 Extension, or any two thereof, for financing purposes under the
18 provisions of this act; authorizing the issuance of Turnpike
19 revenue bonds of the Commonwealth payable solely from tolls; to
20 pay the cost of the Eastern Extension and the Western Extension;
21 paying the cost of the Eastern Extension, or the cost of the
22 Western Extension, or the cost of both; and refunding any
23 Turnpike revenue bonds or Turnpike refunding bonds which have
24 heretofore been issued by the Commission under the provisions of
25 any act heretofore approved, or under the provisions of this
26 act, and which shall then be outstanding, including the payment
27 of any redemption premiums thereon; refunding any revenue bonds
28 or revenue refunding bonds heretofore issued under the
29 provisions of this act, including the payment of and redemption
30 premiums thereon; authorizing the Commission to fix tolls from

1 time to time for use of the projects so combined; providing for
2 the use of a facsimile of the signature of the Governor, and of
3 the Chairman of the Commission in lieu of their manual
4 signatures, and a facsimile of the official seal of the
5 Commission upon any bonds issued under the provisions of this
6 act, or any other act; authorizing the issuance of bonds for the
7 payment of the construction of any turnpike, and giving certain
8 definitions."

9 Act of May 23, 1951 (P.L.335, No.74), known as the
10 "Pennsylvania Turnpike Delaware River Extension Act."

11 Act of August 14, 1951 (P.L.1232, No.282), referred to as the
12 Pennsylvania Turnpike System Financing Act.

13 Act of September 27, 1951 (P.L.1430, No.348), known as the
14 "Pennsylvania Turnpike Northeastern Extension Act."

15 Act of January 14, 1952 (1951 P.L.1947, No.547), known as the
16 "Pennsylvania Turnpike Gettysburg Extension Act."

17 Act of July 28, 1953 (P.L.706, No.229), known as the
18 "Pennsylvania Turnpike Northwestern Extension Act."

19 Act of June 10, 1955 (P.L.157, No.50), known as the
20 "Pennsylvania Turnpike Keystone Shortway Act."

21 Act of June 14, 1955 (P.L.174, No.52), known as the
22 "Pennsylvania Turnpike Southwestern Extension Act."

23 Act of May 15, 1956 (1955 P.L.1589, No.534), known as the
24 "Pennsylvania Turnpike Philadelphia Loop Extension Act."

25 Act of May 17, 1957 (P.L.160, No.73), entitled "An act
26 requiring all tunnels on the Pennsylvania Turnpike to be painted
27 white or lined with a light colored material and be equipped
28 with continuous lighting."

29 Act of September 8, 1959 (P.L.828, No.322), entitled "An act
30 authorizing the Pennsylvania Turnpike Commission to finance and

1 construct certain additional projects on the Pennsylvania
2 Turnpike System."

3 Act of September 15, 1961 (P.L.1305, No.573), entitled "An
4 act requiring the erection and maintenance of medial barriers or
5 guards on the Pennsylvania Turnpike."

6 74 Pa.C.S. Chs. 81 (relating to turnpike) and 82 (relating to
7 turnpike commission standards of conduct).

8 75 Pa.C.S. Chs. 89 (relating to Pennsylvania Turnpike) and 95
9 (relating to taxes for highway maintenance and construction).

10 (b) (1) The Bureau of Toll Administration is hereby
11 established in the department to manage the functions assumed by
12 the department under this section.

13 (2) The bureau shall have the power to acquire, for and on
14 behalf of the Commonwealth, by purchase or otherwise, turnpike
15 or toll roads, or any parts thereof, or toll bridges, in such
16 manner and under and subject to such terms and conditions as
17 provided by law. The powers vested in the bureau shall include:

18 (i) The power to fix or set tolls on any roadway or bridge
19 under the jurisdiction of the department.

20 (ii) The power to take actions authorized under the acts
21 specified in subsection (a).

22 (c) (1) Collective bargaining-level positions created by
23 the establishment of the bureau shall first be offered to
24 bargaining-level personnel employed by the commission who
25 possess the necessary expertise and experience to perform the
26 duties of such position.

27 (2) The department shall honor any collective bargaining
28 agreement in existence between the commission and any employe
29 organization.

30 (3) Any transfers made under this section shall not affect

1 the civil service status of affected employes of the commission,
2 nor that of existing employes of the department.

3 (4) Employes and personal property of the commission
4 utilized in the bonding process are hereby transferred to the
5 State Treasurer.

6 (d) All land, buildings and personal property, as well as
7 all appropriations, allocations, documents, files, records,
8 contracts, agreements, equipment, materials, orders, rights and
9 obligations of the commission are transferred to the department.

10 (e) The bureau shall continue to use or recycle all forms,
11 stationery, business cards and other office supplies or
12 materials which contain references to the commission until the
13 existing supplies and materials are depleted.

14 (f) The department shall have the power to acquire, for and
15 on behalf of the Commonwealth, by purchase or otherwise,
16 turnpike or toll roads, or any parts thereof, or toll bridges,
17 in such manner and under and subject to such terms and
18 conditions as provided by law.

19 (g) (1) The department shall have the power and duty to
20 promulgate regulations to administer the respective functions
21 transferred to it under this section.

22 (2) The regulations of the commission for the administration
23 of the functions transferred under this section shall remain in
24 effect until such time as new regulations are promulgated under
25 this section. However, the eligibility requirements for funding
26 within any program subject to review under this section shall
27 not be changed, amended or altered in any way.

28 (3) Any action to fix or to revise the tolls for the use of
29 the turnpike and the different parts or sections thereof or to
30 fix or set tolls on any roadway or bridge under the jurisdiction

1 of the department shall be taken in accordance with the act of
2 June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review
3 Act."

4 (h) The following words and phrases when used in this
5 section shall have the meanings given to them in this
6 subsection, unless the context clearly indicates otherwise:

7 "Bureau" means the Bureau of Toll Administration established
8 under this section.

9 "Commission" means the Pennsylvania Turnpike Commission.

10 "Department" means the Department of Transportation of the
11 Commonwealth.

12 Section 4. The Commonwealth shall assume the debt evidenced
13 by outstanding bonds of the Pennsylvania Turnpike Commission and
14 shall draw upon the tolls received by the Department of
15 Transportation for repayment of this debt. The State Treasurer
16 shall assume all powers and duties of the Pennsylvania Turnpike
17 Commission which relate to issuance and payment of bonds for
18 construction, reconstruction and maintenance of the turnpike.

19 Section 5. The Pennsylvania Turnpike Commission and the
20 office of Turnpike Commissioner are abolished.

21 Section 6. On and after the effective date of this section,
22 a reference in any statute to the Pennsylvania Turnpike
23 Commission shall be deemed to be a reference to the Department
24 of Transportation.

25 Section 7. (a) The following acts, or portions thereof, are
26 repealed to the extent that they are inconsistent with this act:

27 Act of May 21, 1937 (P.L.774, No.211), referred to as the
28 Pennsylvania Turnpike Commission Act.

29 Act of May 16, 1940 (Sp.Sess., 1941 P.L.949, No.11), known as
30 the Pennsylvania Turnpike Philadelphia Extension Act.

1 Act of June 11, 1941 (P.L.101, No.53), known as the Western
2 Pennsylvania Turnpike Extension Act.

3 Act of June 21, 1947 (P.L.877, No.367), entitled "An act to
4 authorize and empower the Pennsylvania Turnpike Commission to
5 combine the Turnpike, the Eastern Extension, and the Western
6 Extension, or any two thereof, for financing purposes under the
7 provisions of this act; authorizing the issuance of Turnpike
8 revenue bonds of the Commonwealth payable solely from tolls; to
9 pay the cost of the Eastern Extension and the Western Extension;
10 paying the cost of the Eastern Extension, or the cost of the
11 Western Extension, or the cost of both; and refunding any
12 Turnpike revenue bonds or Turnpike refunding bonds which have
13 heretofore been issued by the Commission under the provisions of
14 any act heretofore approved, or under the provisions of this
15 act, and which shall then be outstanding, including the payment
16 of any redemption premiums thereon; refunding any revenue bonds
17 or revenue refunding bonds heretofore issued under the
18 provisions of this act, including the payment of and redemption
19 premiums thereon; authorizing the Commission to fix tolls from
20 time to time for use of the projects so combined; providing for
21 the use of a facsimile of the signature of the Governor, and of
22 the Chairman of the Commission in lieu of their manual
23 signatures, and a facsimile of the official seal of the
24 Commission upon any bonds issued under the provisions of this
25 act, or any other act; authorizing the issuance of bonds for the
26 payment of the construction of any turnpike, and giving certain
27 definitions."

28 Act of May 23, 1951 (P.L.335, No.74), known as the
29 Pennsylvania Turnpike Delaware River Extension Act.

30 Act of August 14, 1951 (P.L.1232, No.282), referred to as the

1 Pennsylvania Turnpike System Financing Act.

2 Act of September 27, 1951 (P.L.1430, No.348), known as the
3 Pennsylvania Turnpike Northeastern Extension Act.

4 Act of January 14, 1952 (1951 P.L.1947, No.547), known as the
5 Pennsylvania Turnpike Gettysburg Extension Act.

6 Act of July 28, 1953 (P.L.706, No.229), known as the
7 Pennsylvania Turnpike Northwestern Extension Act.

8 Act of June 10, 1955 (P.L.157, No.50), known as the
9 Pennsylvania Turnpike Keystone Shortway Act.

10 Act of June 14, 1955 (P.L.174, No.52), known as the
11 Pennsylvania Turnpike Southwestern Extension Act.

12 Act of May 15, 1956 (1955 P.L.1589, No.534), known as the
13 Pennsylvania Turnpike Philadelphia Loop Extension Act.

14 Act of May 17, 1957 (P.L.160, No.73), entitled "An act
15 requiring all tunnels on the Pennsylvania Turnpike to be painted
16 white or lined with a light colored material and be equipped
17 with continuous lighting."

18 Act of September 8, 1959 (P.L.828, No.322), entitled "An act
19 authorizing the Pennsylvania Turnpike Commission to finance and
20 construct certain additional projects on the Pennsylvania
21 Turnpike System."

22 Act of September 15, 1961 (P.L.1305, No.573), entitled "An
23 act requiring the erection and maintenance of medial barriers or
24 guards on the Pennsylvania Turnpike."

25 74 Pa.C.S. Chs. 81 (relating to turnpike) and 82 (relating to
26 turnpike commission standards of conduct).

27 75 Pa.C.S. Chs. 89 (relating to Pennsylvania Turnpike) and 95
28 (relating to taxes for highway maintenance and construction).

29 (b) All other acts and parts of acts are repealed insofar as
30 they are inconsistent with this act.

1 Section 8. This amendatory act shall be known as the
2 Turnpike-Transportation Merger Act.

3 Section 9. This act shall take effect in 90 days.

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 39 Session of
2017

INTRODUCED BY HUTCHINSON AND EICHELBERGER, JANUARY 12, 2017

REFERRED TO TRANSPORTATION, JANUARY 12, 2017

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
2 "An act providing for and reorganizing the conduct of the
3 executive and administrative work of the Commonwealth by the
4 Executive Department thereof and the administrative
5 departments, boards, commissions, and officers thereof,
6 including the boards of trustees of State Normal Schools, or
7 Teachers Colleges; abolishing, creating, reorganizing or
8 authorizing the reorganization of certain administrative
9 departments, boards, and commissions; defining the powers and
10 duties of the Governor and other executive and administrative
11 officers, and of the several administrative departments,
12 boards, commissions, and officers; fixing the salaries of the
13 Governor, Lieutenant Governor, and certain other executive
14 and administrative officers; providing for the appointment of
15 certain administrative officers, and of all deputies and
16 other assistants and employes in certain departments, boards,
17 and commissions; and prescribing the manner in which the
18 number and compensation of the deputies and all other
19 assistants and employes of certain departments, boards and
20 commissions shall be determined," in powers and duties of the
21 Department of Transportation, further providing for deputy
22 secretaries, establishing the Bureau of Toll Administration
23 within the Department of Transportation; providing for the
24 assumption by the Department of Transportation of the
25 functions of the Pennsylvania Turnpike Commission, for
26 assumption by the Commonwealth of the financing functions of
27 the commission, for transfer to the Department of
28 Transportation and State Treasurer of land, buildings,
29 personal property and employees of the commission, for the
30 abolition of the commission and the office of Turnpike
31 Commissioner; and making inconsistent repeals of various acts
32 relating to the Pennsylvania Turnpike.

33 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Section 2001.3(a) of the act of April 9, 1929
3 (P.L.177, No.175), known as The Administrative Code of 1929, is
4 amended and the section is amended by adding a subsection to
5 read:

6 Section 2001.3. Deputy Secretaries.--(a) The Secretary of
7 Transportation shall appoint, with the approval of the Governor,
8 [six] seven deputy secretaries who shall have the title of
9 Deputy Secretary for Administration, Deputy Secretary for
10 Highway Administration, Deputy Secretary for Safety
11 Administration, Deputy Secretary for Planning, Deputy Secretary
12 for Local and Area Transportation [and], Deputy Secretary for
13 Aviation and the Deputy Secretary for Toll Administration.

14 * * *

15 (h) The Deputy Secretary for Toll Administration, with the
16 approval of the Secretary of Transportation, shall have the
17 powers and perform the functions and duties as provided by law
18 relating to the Department of Transportation's responsibilities
19 under section 2008.1 and under this article with regard to the
20 operation of toll roads within this Commonwealth.

21 Section 2. Section 2008 of the act is repealed:

22 [Section 2008. Toll Roads and Bridges.--The Department of
23 Transportation shall have the power to acquire, for and on
24 behalf of the Commonwealth, by purchase or otherwise turnpike or
25 toll roads, or any parts thereof, or toll bridges, in such
26 manner and under and subject to such terms and conditions as may
27 now or hereafter be provided by law.]

28 Section 3. The act is amended by adding a section to read:

29 Section 2008.1. Toll Road and Bridge Administration.--(a)
30 The Department of Transportation shall assume all powers and

1 duties of the Pennsylvania Turnpike Commission that relate to
2 operation, maintenance, construction and reconstruction of the
3 Pennsylvania Turnpike and related highways and shall receive all
4 tolls and other money otherwise payable to the commission. The
5 functions assumed shall include all related functions under the
6 following acts:

7 Act of May 21, 1937 (P.L.774, No.211), referred to as the
8 Pennsylvania Turnpike Commission Act.

9 Act of May 16, 1940 (1941 Sp.Sess. P.L.949, No.11), known as
10 the "Pennsylvania Turnpike Philadelphia Extension Act."

11 Act of June 11, 1941 (P.L.101, No.53), known as the "Western
12 Pennsylvania Turnpike Extension Act."

13 Act of June 21, 1947 (P.L.877, No.367), entitled "An act to
14 authorize and empower the Pennsylvania Turnpike Commission to
15 combine the Turnpike, the Eastern Extension, and the Western
16 Extension, or any two thereof, for financing purposes under the
17 provisions of this act; authorizing the issuance of Turnpike
18 revenue bonds of the Commonwealth payable solely from tolls; to
19 pay the cost of the Eastern Extension and the Western Extension;
20 paying the cost of the Eastern Extension, or the cost of the
21 Western Extension, or the cost of both; and refunding any
22 Turnpike revenue bonds or Turnpike refunding bonds which have
23 heretofore been issued by the Commission under the provisions of
24 any act heretofore approved, or under the provisions of this
25 act, and which shall then be outstanding, including the payment
26 of any redemption premiums thereon; refunding any revenue bonds
27 or revenue refunding bonds heretofore issued under the
28 provisions of this act, including the payment of and redemption
29 premiums thereon; authorizing the Commission to fix tolls from
30 time to time for use of the projects so combined; providing for

1 the use of a facsimile of the signature of the Governor, and of
2 the Chairman of the Commission in lieu of their manual
3 signatures, and a facsimile of the official seal of the
4 Commission upon any bonds issued under the provisions of this
5 act, or any other act; authorizing the issuance of bonds for the
6 payment of the construction of any turnpike, and giving certain
7 definitions."

8 Act of May 23, 1951 (P.L.335, No.74), known as the
9 "Pennsylvania Turnpike Delaware River Extension Act."

10 Act of August 14, 1951 (P.L.1232, No.282), referred to as the
11 Pennsylvania Turnpike System Financing Act.

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13 "Pennsylvania Turnpike Northeastern Extension Act."

14 Act of January 14, 1952 (1951 P.L.1947, No.547), known as the
15 "Pennsylvania Turnpike Gettysburg Extension Act."

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17 "Pennsylvania Turnpike Northwestern Extension Act."

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19 "Pennsylvania Turnpike Keystone Shortway Act."

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21 "Pennsylvania Turnpike Southwestern Extension Act."

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23 "Pennsylvania Turnpike Philadelphia Loop Extension Act."

24 Act of May 17, 1957 (P.L.160, No.73), entitled "An act
25 requiring all tunnels on the Pennsylvania Turnpike to be painted
26 white or lined with a light colored material and be equipped
27 with continuous lighting."

28 Act of September 8, 1959 (P.L.828, No.322), entitled "An act
29 authorizing the Pennsylvania Turnpike Commission to finance and
30 construct certain additional projects on the Pennsylvania

1 Turnpike System."

2 Act of September 15, 1961 (P.L.1305, No.573), entitled "An
3 act requiring the erection and maintenance of medial barriers or
4 guards on the Pennsylvania Turnpike."

5 74 Pa.C.S. Chs. 81 (relating to turnpike) and 82 (relating to
6 Turnpike Commission standards of conduct).

7 75 Pa.C.S. Ch. 89 (relating to Pennsylvania Turnpike).

8 (b) (1) The Bureau of Toll Administration is hereby
9 established in the department to manage the functions assumed by
10 the department under this section.

11 (2) The executive director of the commission may be
12 appointed the first deputy secretary of the bureau.

13 (3) The bureau shall have the power to acquire, for and on
14 behalf of the Commonwealth, by purchase or otherwise, turnpike
15 or toll roads, or any parts thereof, or toll bridges, in such
16 manner and under and subject to such terms and conditions as
17 provided by law. The powers vested in the bureau shall include:

18 (i) The power to fix or set tolls on any roadway or bridge
19 under the jurisdiction of the department.

20 (ii) The power to enter into lease or other partnership
21 agreements with regard to the operation of existing or future
22 toll roads under the jurisdiction of the department.

23 (iii) The power to take actions authorized under the acts
24 specified in subsection (a).

25 (c) (1) Positions created by the establishment of the
26 bureau shall first be offered to personnel employed by the
27 commission who possess the necessary expertise and experience to
28 perform the duties of such position.

29 (2) The department shall honor any collective bargaining
30 agreement in existence between the commission and any employe

1 organization.

2 (3) Any transfers made under this section shall not affect
3 the civil service status of affected employes of the commission,
4 nor that of existing employes of the department.

5 (4) Employes and personal property of the commission
6 utilized in the bonding process are hereby transferred to the
7 State Treasurer.

8 (d) All land, buildings and personal property, as well as
9 all appropriations, allocations, documents, files, records,
10 contracts, agreements, equipment, materials, orders, rights and
11 obligations of the commission are transferred to the department.

12 (e) The bureau shall continue to use or recycle all forms,
13 stationery, business cards and other office supplies or
14 materials which contain references to the commission until the
15 existing supplies and materials are depleted.

16 (f) The department shall have the power to acquire, for and
17 on behalf of the Commonwealth, by purchase or otherwise,
18 turnpike or toll roads, or any parts thereof, or toll bridges,
19 or may contract out or privatize them, in such manner and under
20 and subject to such terms and conditions as provided by law.

21 (g) (1) The department shall have the power and duty to
22 promulgate regulations to administer the respective functions
23 transferred to it under this section.

24 (2) The regulations of the commission for the administration
25 of the functions transferred under this section shall remain in
26 effect until such time as new regulations are promulgated under
27 this section. However, the eligibility requirements for funding
28 within any program subject to review under this section shall
29 not be changed, amended or altered in any way.

30 (3) Any action to fix or to revise the tolls for the use of

1 the turnpike and the different parts or sections thereof or to
2 fix or set tolls on any roadway or bridge under the jurisdiction
3 of the department shall be taken in accordance with the act of
4 June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review
5 Act."

6 (h) The following words and phrases when used in this
7 section shall have the meanings given to them in this
8 subsection, unless the context clearly indicates otherwise:

9 "Bureau" means the Bureau of Toll Administration established
10 under this section.

11 "Commission" means the Pennsylvania Turnpike Commission.

12 "Department" means the Department of Transportation of the
13 Commonwealth.

14 Section 4. The Commonwealth shall assume the debt evidenced
15 by outstanding bonds of the Pennsylvania Turnpike Commission and
16 may draw upon the tolls received by the Department of
17 Transportation for repayment of this debt. The State Treasurer
18 shall assume all powers and duties of the Pennsylvania Turnpike
19 Commission which relate to issuance and payment of bonds for
20 construction, reconstruction and maintenance of the turnpike.

21 Section 5. The Pennsylvania Turnpike Commission and the
22 office of Turnpike Commissioner are abolished.

23 Section 6. On and after the effective date of this section,
24 a reference in any statute to the Pennsylvania Turnpike
25 Commission shall be deemed to be a reference to the Department
26 of Transportation.

27 Section 7. (a) The following acts, or portions thereof, are
28 repealed to the extent that they are inconsistent with this act:

29 Act of May 21, 1937 (P.L.774, No.211), referred to as the
30 Pennsylvania Turnpike Commission Act.

1 Act of May 16, 1940 (1941 Sp.Sess. P.L.949, No.11), known as
2 the Pennsylvania Turnpike Philadelphia Extension Act.

3 Act of June 11, 1941 (P.L.101, No.53), known as the Western
4 Pennsylvania Turnpike Extension Act.

5 Act of June 21, 1947 (P.L.877, No.367), entitled "An act to
6 authorize and empower the Pennsylvania Turnpike Commission to
7 combine the Turnpike, the Eastern Extension, and the Western
8 Extension, or any two thereof, for financing purposes under the
9 provisions of this act; authorizing the issuance of Turnpike
10 revenue bonds of the Commonwealth payable solely from tolls; to
11 pay the cost of the Eastern Extension and the Western Extension;
12 paying the cost of the Eastern Extension, or the cost of the
13 Western Extension, or the cost of both; and refunding any
14 Turnpike revenue bonds or Turnpike refunding bonds which have
15 heretofore been issued by the Commission under the provisions of
16 any act heretofore approved, or under the provisions of this
17 act, and which shall then be outstanding, including the payment
18 of any redemption premiums thereon; refunding any revenue bonds
19 or revenue refunding bonds heretofore issued under the
20 provisions of this act, including the payment of and redemption
21 premiums thereon; authorizing the Commission to fix tolls from
22 time to time for use of the projects so combined; providing for
23 the use of a facsimile of the signature of the Governor, and of
24 the Chairman of the Commission in lieu of their manual
25 signatures, and a facsimile of the official seal of the
26 Commission upon any bonds issued under the provisions of this
27 act, or any other act; authorizing the issuance of bonds for the
28 payment of the construction of any turnpike, and giving certain
29 definitions."

30 Act of May 23, 1951 (P.L.335, No.74), known as the

1 Pennsylvania Turnpike Delaware River Extension Act.
2 Act of August 14, 1951 (P.L.1232, No.282), referred to as the
3 Pennsylvania Turnpike System Financing Act.
4 Act of September 27, 1951 (P.L.1430, No.348), known as the
5 Pennsylvania Turnpike Northeastern Extension Act.
6 Act of January 14, 1952 (1951 P.L.1947, No.547), known as the
7 Pennsylvania Turnpike Gettysburg Extension Act.
8 Act of July 28, 1953 (P.L.706, No.229), known as the
9 Pennsylvania Turnpike Northwestern Extension Act.
10 Act of June 10, 1955 (P.L.157, No.50), known as the
11 Pennsylvania Turnpike Keystone Shortway Act.
12 Act of June 14, 1955 (P.L.174, No.52), known as the
13 Pennsylvania Turnpike Southwestern Extension Act.
14 Act of May 15, 1956 (1955 P.L.1589, No.534), known as the
15 Pennsylvania Turnpike Philadelphia Loop Extension Act.
16 Act of May 17, 1957 (P.L.160, No.73), entitled "An act
17 requiring all tunnels on the Pennsylvania Turnpike to be painted
18 white or lined with a light colored material and be equipped
19 with continuous lighting."
20 Act of September 8, 1959 (P.L.828, No.322), entitled "An act
21 authorizing the Pennsylvania Turnpike Commission to finance and
22 construct certain additional projects on the Pennsylvania
23 Turnpike System."
24 Act of September 15, 1961 (P.L.1305, No.573), entitled "An
25 act requiring the erection and maintenance of medial barriers or
26 guards on the Pennsylvania Turnpike."
27 74 Pa.C.S. Chs. 81 (relating to turnpike) and 82 (relating to
28 Turnpike Commission standards of conduct).
29 75 Pa.C.S. Ch. 89 (relating to Pennsylvania Turnpike).
30 (b) All other acts and parts of acts are repealed insofar as

1 they are inconsistent with this act.

2 Section 8. This amendatory act shall be known as the
3 Turnpike-Transportation Merger Act.

4 Section 9. This act shall take effect in 90 days.