

Part 2 Public-Private Partnerships for Tollways Act

72-6-201 Title.

This part is known as the "Public-Private Partnerships for Tollways Act."

Enacted by Chapter 36, 2006 General Session

72-6-202 Definitions.

As used in this part:

- (1) "High occupancy toll lane" has the same meaning as defined in Section 72-6-118.
- (2) "Toll" has the same meaning as defined in Section 72-6-118.
- (3) "Toll lane" has the same meaning as defined in Section 72-6-118.
- (4) "Tollway" has the same meaning as defined in Section 72-6-118.
- (5)
 - (a) "Tollway development agreement" means a contractual agreement with a public or private entity that provides for any predevelopment activities, design, construction, reconstruction, financing, acquisition, maintenance, or operation of a tollway or any or all of them.
 - (b) "Tollway development agreement" may include:
 - (i) predevelopment agreements;
 - (ii) franchise and concession agreements;
 - (iii) leases;
 - (iv) right-of-entry agreements;
 - (v) financial participation agreements;
 - (vi) other financing agreements;
 - (vii) design-build agreements;
 - (viii) operating agreements;
 - (ix) agreements for services of independent engineers;
 - (x) agreements for the enforcement of tolls on a tollway; or
 - (xi) any combination of Subsections (5)(b)(i) through (x).

Enacted by Chapter 36, 2006 General Session

72-6-203 Authority to enter into public-private partnership agreements for tollways.

- (1) Subject to the provisions of this part, the department may:
 - (a) enter into a tollway development agreement with one or more public or private entities to permit the entity or entities to, independently or jointly with the department, study, perform predevelopment activities, design, finance, acquire, construct, reconstruct, maintain, repair, operate, extend, or expand a tollway facility;
 - (b) enter into an agreement with other public agencies or private entities to independently or jointly provide services, or to study the feasibility of a tollway; and
 - (c) negotiate the terms of private participation in a tollway, including:
 - (i) methods to determine the applicable cost, profit, and revenue distribution between the private participants and the department;
 - (ii) a reasonable method to determine toll rates or user fees, including:
 - (A) identification of vehicle or user classifications, or both, for toll rates;
 - (B) the original proposed toll rate or user fee for the tollway facility;

- (C) proposed toll rate or user fee increases; and
 - (D) a maximum toll rate or user fee for the tollway facility;
 - (iii) acceptable safety and policing standards; and
 - (iv) other applicable professional, consulting, design, engineering, construction, operation and maintenance standards, requirements, expenses, and costs;
 - (d) grant to a private entity through a tollway development agreement the right to impose and collect tolls or user fees under Section 72-6-118 and the right to enforce toll violations; and
 - (e) provide to the private entity, on mutually agreed terms, services in support of the tollway development, operation, and maintenance including planning, environmental review, design, right-of-way acquisition, oversight, inspection and monitoring, maintenance, and policing.
- (2) The department shall engage outside consultants and counsel to:
- (a) provide the state with professional services, including legal and financial guidance, to develop rules and guidelines for public-private partnerships;
 - (b) assist the department in evaluating the risks and benefits of a proposed public-private partnership; and
 - (c) assist in the selection and terms of a tollway development agreement.
- (3) A tollway development agreement entered into under this section shall include:
- (a) a provision for the application of tolls and other operating revenues to the payment of operating and maintenance costs, indebtedness by the private entity for the tollway, reserves for reconstruction, rehabilitation, resurfacing and restoration, return on equity or investment, and sums owing the department;
 - (b) a provision authorizing the department to purchase, under terms agreed to by the parties, the interest of a private participant in a tollway development agreement; and
 - (c) a provision requiring that, at the termination of the tollway development agreement, the tollway project shall:
 - (i) be in a state of proper maintenance as outlined in the agreement and determined by the department; and
 - (ii) be returned to the department in satisfactory condition at no further cost to the department.
- (4) A tollway development agreement entered into under this section may include:
- (a) allocations of liability, risk, and responsibility;
 - (b) combinations of public and private funding and financing;
 - (c) compensation to the department for the grant of the tollway development agreement or the right to impose and collect tolls;
 - (d) participation by the department in tollway revenue, proceeds of refinancings and proceeds of sale of the tollway or interests in the private entity;
 - (e) extensions of time for, and exceptions to, performance by the private entity and compensation from the department to the private entity, due to stated events or circumstances;
 - (f) requirements for performance security, including payment and performance bonds, letters of credit, security deposits, guarantees, and similar protections;
 - (g) rights and obligations to expand the tollway, extend the tollway, add capacity improvements, add intelligent transportation systems, and otherwise upgrade the tollway during the term of the tollway development agreement;
 - (h) alternative dispute resolution procedures;
 - (i) limitations on liability and waivers of consequential damages;
 - (j) lender rights and protections; and
 - (k) other terms necessary or desirable to attract private investment and protect the department's interests.
- (5)

- (a) A tollway that is the subject of a tollway development agreement with a private entity, including the facilities acquired or constructed on the tollway, is public property and title to the tollway and facilities is vested in the state.
- (b) A tollway that is the subject of a tollway development agreement is part of the state highway system for purposes of identification, maintenance, enforcement of traffic laws, and other purposes.
- (c) The department may enter into one or more agreements that provide for:
 - (i) the lease of rights-of-way, improvements, and all or any portion of the appurtenances over and under the tollway facility to the private entity for a term ending not later than 99 years after commencement of revenue operations, provided that the agreement provides upon termination for reversion of the leased property, together with the right to impose and collect tolls, to the department;
 - (ii) the granting of easements;
 - (iii) the issuance of franchises, licenses, or permits; or
 - (iv) any other lawful uses to enable a private entity to construct, operate, maintain, or finance a tollway.

Enacted by Chapter 36, 2006 General Session

72-6-204 Minimum requirements for a tollway development agreement proposal.

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department and the commission shall make rules establishing minimum guidelines for tollway development agreement proposals.
- (2) The guidelines under Subsection (1) shall require the proposal to include:
 - (a) a map indicating the location of the tollway facility;
 - (b) a description of the tollway facility;
 - (c) a list of the major permits and approvals required for developing or operating improvements to the tollway facility from local, state, or federal agencies and a projected schedule for obtaining the permits and approvals;
 - (d) a description of the types of public utility facilities, if any, that will be crossed by the tollway facility and a statement of the plans to accommodate the crossing;
 - (e) an estimate of the design and construction costs of the tollway facility;
 - (f) a statement setting forth the private entity's general plans for developing or operating the tollway facility, including identification of any revenue, public or private, or proposed debt or equity investment proposed by the private entity;
 - (g) a statement of the estimated level of funding, if any, required to be provided by the state;
 - (h) the name and addresses of the persons who may be contacted for further information concerning the tollway development agreement proposal; and
 - (i) any other material or information that the department requires by rules made under this section.
- (3) The department is not required to review a tollway development agreement proposal if it determines that the proposal does not meet the guidelines established under this section.

Amended by Chapter 382, 2008 General Session

72-6-205 Solicited and unsolicited tollway development agreement proposals.

- (1) In accordance with this section, the department may:
 - (a) accept unsolicited tollway development agreement proposals; or

- (b) solicit tollway development agreement proposals for a proposed project.
- (2) The department shall solicit tollway development agreement proposals in accordance with Section 63G-6a-1403.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department and the commission shall establish rules and procedures for accepting unsolicited proposals that require the:
 - (a) private entity that submits the unsolicited proposal to comply with the minimum requirements for tollway development agreement proposals under Section 72-6-204;
 - (b) department to issue a request for competing proposals and qualifications that includes:
 - (i) a description of the proposed tollway development facility and the terms and conditions of a tollway development agreement;
 - (ii) submittal requirements;
 - (iii) the criteria to be used to evaluate the proposals;
 - (iv) the relative weight given to the criteria; and
 - (v) the deadline by which competing proposals must be received; and
 - (c) department to publish a notice advertising the request for competing proposals and providing information regarding how to obtain a copy of the request.
- (4)
 - (a) The department may establish a fee in accordance with Section 63J-1-504 for reviewing unsolicited proposals and competing proposals submitted under this section.
 - (b) The department may waive the fee under Subsection (4)(a) if it determines that it is reasonable and in the best interest of the state.

Amended by Chapter 347, 2012 General Session

72-6-206 Commission approval and legislative review of tollway development agreement provisions.

- (1) Prior to the department entering into a tollway development agreement under Section 72-6-203, the department shall submit to the commission for approval the tollway development agreement, including:
 - (a) a description of the tollway facility, including the conceptual design of the facility and all proposed interconnections with other transportation facilities;
 - (b) the proposed date for development, operation, or both of the tollway facility;
 - (c) the proposed term of the tollway development agreement;
 - (d) the proposed method to determine toll rates or user fees, including:
 - (i) identification of vehicle or user classifications, or both, for toll rates;
 - (ii) the original proposed toll rate or user fee for the tollway facility;
 - (iii) proposed toll rate or user fee increases; and
 - (iv) a maximum toll rate or user fee for the tollway facility; and
 - (e) any proposed revenue, public or private, or proposed debt or equity investment that will be used for the design, construction, financing, acquisition, maintenance, or operation of the tollway facility.
- (2) Prior to amending or modifying a tollway development agreement, the department shall submit the proposed amendment or modification to the commission for approval.
- (3) The department shall report to the Transportation Interim Committee or another committee designated by the Legislative Management Committee on the status and progress of a tollway subject to a tollway development agreement under Section 72-6-203.

Amended by Chapter 222, 2016 General Session