

SENATE BILL 3288

By Tracy

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 9; Title 12; Title 54; Title 55; Title 65 and Title
67, to enact the "Public-Private Partnership in
Transportation Act of 2008."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 54, is amended by adding the following language as new chapter 23:

Section 54-23-101. This chapter shall be known and may be cited as the "Public-Private Transportation Act of 2008".

Section 54-23-102.

As used in this chapter, unless the context otherwise requires:

- (1) "Affected local jurisdiction" means any county or municipality in which all or a portion of a qualifying transportation facility is located;
- (2) "Certificate" means the certificate of public convenience and necessity issued to an operator under this chapter that permits operation of a qualifying transportation facility;
- (3) "Comprehensive agreement" means the comprehensive agreement between the operator and the responsible public entity required by § 54-23-113;
- (4) "Department" means the Tennessee department of transportation;
- (5) "Operator" means the private entity that is responsible for operation of a qualifying transportation facility;
- (6) "Private entity" means any natural person, corporation, limited liability company, partnership, joint venture or other private business entity;

(7) "Public entity" means the state and any agency or authority thereof, any county, municipality and any other political subdivision of any of the foregoing;

(8) "Public-private initiative" means an arrangement between the department and one (1) or more private entities, the terms of which are stated in a public-private agreement, that provides for:

(A) Acceptance of a private contribution, including a money payment, for a project or service for a transportation facility;

(B) Sharing of resources and the means of providing a project or service for a transportation facility; or

(C) Cooperation in researching, developing, and implementing projects or services for a transportation facility;

(9) "Qualifying transportation facility" means one (1) or more transportation facilities operated by a private entity pursuant to this chapter;

(10) "Responsible public entity" means a public entity that has the power to acquire, construct or improve the applicable transportation facility;

(11) "Revenues" means the user fees or service payments or both generated by a qualifying transportation facility;

(12) "Service contract" means a contract entered into pursuant to § 54-23-108;

(13) "Service payments" means payments to the operator of a qualifying transportation facility pursuant to a service contract;

(14) "State" means the state of Tennessee;

(15) "Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility or similar commercial facility used for the

transportation of persons or goods, together with any other property that is needed to operate the same, but shall exclude railroads, railroad-related facilities and pipelines owned by a public utility and rail mass transit facilities owned by an interstate compact agency; and

(16) "User fees" mean the rates, fees or other charges imposed by the operator of a qualifying transportation facility for use of all or a portion of such qualifying transportation facility.

Section 54-23-103.

(a) The general assembly finds that:

(1) There is a public need for timely acquisition or construction of and improvements to transportation facilities within the state;

(2) Such public need may not be wholly satisfied by existing ways in which transportation facilities are acquired, constructed or improved; and

(3) Authorizing private entities to construct, improve and/or operate one (1) or more transportation facilities may result in the construction of or improvements to transportation facilities in a more timely or less costly fashion, thereby serving the public safety and welfare.

(b) An action, other than the approval of the responsible public entity under § 54-23-106 or issuance of a certificate under § 54-23-109, shall serve the public purpose of this chapter if such action facilitates the timely construction of or improvement to a qualifying transportation facility or the continued operation of a qualifying transportation facility.

(c) It is the intent of this chapter that transportation financing be expanded and accelerated to improve and add to the convenience of the public, and such that public

and private entities may have the greatest possible flexibility in contracting with each other for the provision of the public services which are the subject of this chapter.

(d) This chapter shall be liberally construed in conformity with the purposes hereof.

Section 54-23-104.

(a) The department may solicit, receive, consider, evaluate, and accept a proposal for a qualifying transportation facility.

(b) In soliciting and selecting a private entity with which to enter into a public-private initiative, the department may utilize one (1) or more of the following procurement approaches:

(1) Sealed bidding;

(2) Selection of proposals, with or without negotiations, based on qualifications, best value, or both; or

(3) Any competitive selection process that the department determines to be appropriate or reasonable.

(c) The department may consider the following factors in evaluating and selecting a bid or proposal to enter into a public-private initiative:

(1) The ability of the transportation facility to improve safety, reduce congestion, increase capacity, and promote economic growth;

(2) The proposed cost of and financial plan for the transportation facility;

(3) The general reputation, qualifications, industry experience, and financial capacity of the private entity;

(4) The proposed design, operation, and feasibility of the transportation facility;

(5) Comments from local citizens and affected jurisdictions;

- (6) Benefits to the public;
- (7) The safety record of the private entity; and
- (8) Other criteria that the department deems appropriate.

(d) The department may select multiple private entities with which to enter a public-private agreement for a transportation facility if it is in the public interest to do so.

(e) The department shall select a private entity or entities for a public-private initiative on a competitive basis to the maximum extent practicable.

(g)

(1) A private entity may request a review, prior to submission of a solicited proposal, by the department of information that the private entity has identified as confidential or proprietary to determine whether such information would be subject to disclosure under § 10-7-503.

(2) A private entity may identify confidential or proprietary information submitted as part of a solicited proposal. A private entity shall have an opportunity to object to the release of any information it identifies as confidential or proprietary.

(3) The department shall review any information identified as confidential or proprietary by a private entity as part of a solicited proposal and shall determine if such information is exempt from disclosure under § 10-7-503.

(4) The department shall inform the private entity that submitted the information of its determination of whether information identified by the private entity as confidential or proprietary is subject to disclosure under § 10-7-503.

(5) The private entity shall have the opportunity to object to the determination that the information is subject to disclosure under § 10-7-503 or to withdraw its proposal.

(6) Any information determined by the state to be confidential or proprietary shall be exempt from disclosure under § 10-7-503.

(7) Any information not determined to be confidential or proprietary may be subject to disclosure under § 10-7-503.

Section 54-23-105.

(a)

(1) The department may receive, consider, evaluate, and accept an unsolicited proposal for a public-private initiative if the proposal:

(A) Is independently originated and developed by the proposer;

(B) Benefits the public;

(C) Is prepared without department supervision; and

(D) Includes sufficient detail and information for the department to evaluate the proposal in an objective and timely manner.

(2) Within ninety (90) days after receiving an unsolicited proposal, the department shall undertake a preliminary evaluation of the unsolicited proposal to determine if the proposal complies with the requirements under subdivision

(a)(1).

(b)

(1) A private entity may request a review, prior to submission of an unsolicited proposal, by the department of information that the private entity has identified a confidential or proprietary to determine whether such information will be subject to disclosure under § 10-7-503.

(2) The department shall take appropriate action to protect confidential or proprietary information that a private entity provides as part of an unsolicited proposal and that is exempt from disclosure under § 10-7-503.

(c)

(1) If the unsolicited proposal does not comply with the subdivision (a)(1), the department shall return the proposal without further action.

(2) If the unsolicited proposal complies with the subdivision (a)(1), the department may continue to evaluate the proposal in accordance with this section.

(d)

(1) If the unsolicited proposal complies with the subdivision (a)(1), the department shall advertise the unsolicited proposal for the purpose of receiving competitive proposals for the same proposed transportation facility.

(2) The advertisement shall outline the general nature and scope of the unsolicited proposal, including the location of the transportation facility and the work to be performed on or in connection with the transportation facility and shall specify an address to which a competing proposal may be submitted.

(3) The advertisement shall specify a reasonable time period by which competitors must submit a competing proposal to the department.

(e) The department may charge a reasonable fee to cover its costs to process, review, and evaluate an unsolicited proposal and any competing proposals.

(f) The department shall:

(1) Determine if any competing proposal is comparable in nature and scope to the original unsolicited proposal;

(2) Evaluate the original unsolicited proposal and any comparable competing proposal; and

(3) Conduct any good faith discussions and, if necessary, any negotiations concerning each qualified proposal.

(g) The department shall evaluate an unsolicited proposal and any comparable competing proposal using the following factors:

- (1) Novel methods, approaches, or concepts demonstrated by the proposal;
- (2) Scientific, technical, or socioeconomic merits of the proposal;
- (3) Potential contribution of the proposal to the department's mission;
- (4) Capabilities, related experience, facilities, or techniques of the private entity or unique combinations of these qualities that are integral factors for achieving the proposal objectives;
- (5) Qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel, who are critical to achieving the proposal objectives;
- (6) How the proposal benefits the public; and
- (7) Any other factors appropriate to a particular proposal.

(h) After evaluating the unsolicited proposal and any competing proposals, the department may:

- (1) Accept the unsolicited proposal and reject any competing proposals;
- (2) Reject the unsolicited proposal and accept a comparable competing proposal if the department determines that the comparable competing proposal is the most advantageous to the state;
- (3) Accept both an unsolicited proposal and a competing proposal if accepting both proposals is advantageous to the state; or
- (4) Reject the unsolicited proposal and any competing proposals.

(j) Subsection (b) shall apply to any unsolicited proposal or competing proposal that is rejected.

Section 54-23-106.

No private entity may operate a transportation facility under this chapter without first obtaining approval of, obtaining a certificate from and entering into a comprehensive agreement with the responsible public entity.

Section 54-23-107.

(a) Prior to the approval of the responsible public entity, the private entity shall provide the following material and information with respect to the transportation facility or facilities that the private entity proposes to operate as a qualifying transportation facility:

(1) A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation facility or facilities;

(2) A description of the transportation facility or facilities, including the conceptual design of such facility or facilities and all proposed interconnections with other transportation facilities;

(3) The projected cost of the transportation facility or facilities and the proposed date for the beginning of construction of or improvements to the transportation facility or facilities;

(4) A statement setting forth the method by which the operator proposes to secure all property interests required for the transportation facility or facilities, including:

(A) The current owners of the property needed for the transportation facility or facilities;

(B) The nature of the interest in the property to be acquired; and

(C) Any property that the responsible public entity is expected to be requested to condemn;

(5) Information relating to the current transportation plans, if any, of each affected local jurisdiction;

(6) A list of all permits and approvals required for construction of or improvements to the transportation facility or facilities from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;

(7) A list of public utility facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the operator to accommodate such crossings;

(8) A statement setting forth the operator's general plans for operation of the transportation facility or facilities; and

(9) Such additional material and information as the responsible public entity may reasonably request.

(b) The responsible public entity may grant approval if the operation of the transportation facility or facilities as a qualifying transportation facility serves the public purpose of this chapter. The responsible public entity may determine that the operation of the transportation facility or facilities as a qualifying transportation facility serves such public purpose if:

(1) The application is complete;

(2) There is a public need for the transportation facility or facilities of the type the private entity proposes to operate as a qualifying transportation facility;

(3) The transportation facility or facilities and the proposed interconnections with existing transportation facilities are compatible with the existing transportation plan for the state;

(4) The estimated cost of the transportation facility or facilities is reasonable;

(5) The private entity's plans will result in the timely construction of or improvements to the transportation facility or facilities or their more efficient operation; and

(6) The operator's plan for operation of the transportation facility or facilities is reasonable and is consistent with state, regional and local transportation plans.

(c) The responsible public entity may charge a reasonable fee to cover the costs of processing and reviewing the request for approval.

(d) The approval of the responsible public entity shall be subject to the private entity's entering into a comprehensive agreement with the responsible public entity.

(e) In connection with its approval of the operation of the transportation facility or facilities as a qualifying transportation facility, the responsible public entity shall establish a date for the beginning of construction of, or improvements to the qualifying transportation facility. The responsible public entity may extend such date from time to time.

Section 54-23-108.

In addition to any authority otherwise conferred by law, any public entity may contract with an operator for transportation services to be provided by a qualifying transportation facility in exchange for such service payments and other consideration as such public entity may deem appropriate.

Section 54-23-109.

(a) It shall be unlawful for any private entity to construct or enlarge, by lease or otherwise, any transportation facility without first having obtained a certificate from the responsible public entity that the public convenience and necessity require the

construction or enlargement by the private entity. The responsible public entity may issue the certificate if it finds that:

(1) There is a public need for the construction or enlargement of the transportation facility by the private entity;

(2) The cost estimates, choice of technology, construction plans and proposed manner of financing the construction or enlargement are reasonable;

(3) There are no suitable alternatives to the proposed construction or enlargement;

(4) The private entity proposing the construction or enlargement is viable, technically, managerially and financially, to carry out the proposal;

(5) The responsible public entity has approved the construction or enlargement; and

(6) The proposed construction or enlargement is otherwise in the public interest when compared to substantially similar construction or enlargement of transportation facilities by the responsible public entity.

(b) The findings required by subsection (a) shall be made after consideration of alternatives to the project, consideration of the economic, social and environmental effects of the proposed construction or enlargement, and consideration of public comments, including comments from any metropolitan planning organization and/or rural planning organization in which the proposal is located.

(c) If a certificate is issued pursuant to this section, it shall be the operator's duty to furnish reasonably adequate service and facilities at reasonable user fees to any persons desiring to use the transportation facilities, and to charge uniformly for the use of the transportation facilities all persons using the facilities under like conditions.

(e) In issuing the certificate, the responsible governing entity shall set forth any reports that the operator needs to file if the information or materials filed with the application change. Except for these reports, the operator shall not be required to update the information or materials filed with the application.

(f) The responsible public entity may charge a reasonable application fee to cover the costs of processing and reviewing an application and may charge a reasonable annual fee to cover the costs of the performance of its duties under this chapter.

Section 54-23-110.

(a) Any private entity requesting approval from the responsible public entity or shall notify each affected local jurisdiction.

(b) Each affected local jurisdiction may submit comments relating to a proposed qualifying transportation facility to the responsible public entity.

Section 54-23-111.

Any public entity may dedicate any property in which it has an interest for public use as a qualified transportation facility if it finds that so doing would serve the public purpose of this chapter. In connection with such dedication, such public entity may convey any interest that it has in such property, subject to the conditions imposed by general law, to the operator, subject to this chapter, for such consideration as such public entity may determine. Such consideration may include, without limitation, the agreement of the operator to operate the qualifying transportation facility.

Section 54-23-112.

(a) The operator shall have all power allowed by law generally to a private entity having the same form of organization as the operator and shall have the power to operate the qualifying transportation facility and impose user fees and/or enter into

service contracts in connection with the use thereof. No tolls or user fees may be imposed by the operator on any interstate highway and no tolls or user fees may be imposed by the operator on any existing road, bridge, tunnel or overpass without the consent of the affected local jurisdiction.

(b) The operator may own, lease or acquire any other right to use or operate the qualifying transportation facility.

(c) Any financing of the qualifying transportation facility may be in such amounts and upon such terms and conditions as may be determined by the operator. Without limiting the generality of the foregoing, the operator may issue debt, equity or other securities or obligations, enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including the certificate of authority, subject to the provisions of this chapter regarding transfer of the certificate of authority.

(d) In operating the qualifying transportation facility, the operator may:

(1) Make classifications according to reasonable categories for assessment of user fees; and

(2) With the consent of the responsible public entity, make and enforce reasonable rules to the same extent that the responsible public entity could have made rules with respect to a similar transportation facility.

(e) The operator shall:

(1) Construct or improve the qualifying transportation facility in a manner that meets the engineering standards of the responsible public entity for transportation facilities operated and maintained by such responsible public entity, all in accordance with the comprehensive agreement;

(2) Keep the qualifying transportation facility open for use by the members of the public at all times after its initial opening upon payment of the applicable user fees and/or service payments; provided, that the qualifying transportation facility may be temporarily closed because of emergencies or, with the consent of the responsible public entity, to protect the safety of the public or for reasonable construction or maintenance procedures;

(3) Maintain, or provide by contract for the maintenance of, the qualifying transportation facility;

(4) File with the responsible public entity:

(A) Reports describing material contracts with affiliates of the operator;

(B) An accurate schedule of applicable user fees and/or service payments charged for use of the qualifying transportation facility; and

(C) Any other information required by the responsible public entity;

and

(5) Cooperate with the responsible public entity in establishing any interconnection with the qualifying transportation facility requested by the responsible public entity.

Section 54-23-113.

(a) Prior to commencing construction of or improvements to the qualifying transportation facility, the operator shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide for:

(1) Delivery of performance and payment bonds in connection with the construction of or improvements to the qualifying transportation facility, in the forms and amounts satisfactory to the responsible public entity;

(2) Review of plans and specifications for the qualifying transportation facility by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to standard conditions of the responsible public entity;

(3) Inspection of construction of or improvements to the qualifying transportation facility by the responsible public entity to ensure that they conform to the engineering standards acceptable to the responsible public entity;

(4) Maintenance by the operator of a policy or policies of public liability insurance (copies of which shall be filed with the responsible public entity accompanied by proofs of coverage) or self-insurance, in form and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying transportation facility;

(5) Monitoring of the maintenance practices of the operator by the responsible public entity and the taking of such actions as the responsible public entity finds appropriate to ensure that the qualifying transportation facility is properly maintained; and

(6) Reimbursement to be paid to the responsible public entity for its cost to provide the services performed by the responsible public entity.

(b) In the comprehensive agreement, the responsible public entity may agree to make grants or loans to the operator from time to time from amounts received from the federal government or any division thereof.

(c) The comprehensive agreement shall incorporate the duties of the operator under this chapter and may contain such other terms and conditions that the responsible public entity determines serve the public purpose of this chapter. Without limitation, the

comprehensive agreement may contain provisions under which the responsible public entity agrees to provide notice of default and cure rights for the benefit of the persons providing financing for the qualifying transportation facility. The comprehensive agreement may contain such other terms and conditions to which the operator and the responsible public entity mutually agree.

Section 54-23-114.

The responsible public entity may take any action to obtain federal assistance for a qualifying transportation facility that serves the public purpose of this chapter and may enter into any contracts required to receive such federal assistance subject to appropriation by the general assembly. The responsible public entity may determine that it serves the public purpose of this chapter for all or any portion of the costs of a qualifying transportation facility to be paid, directly or indirectly, from the proceeds of a grant or loan made by the federal government or any division thereof.

Section 54-23-115.

(a) The responsible public entity may revoke a certificate for a qualifying transportation facility if:

- (1) If a material default in the performance of the operator's duties under the comprehensive agreement or under the service contract, if any, has occurred and is continuing;
- (2) If construction of or improvement to the qualifying transportation facility has not begun by the date established by the responsible public entity as such date has been extended;
- (3) For failure to provide reasonably adequate service and facilities at reasonable and uniform user fees as provided by law; or
- (4) For failure to comply with any lawful order.

(b) Prior to any revocation of a certificate the responsible public entity shall give written notice to the operator and any person providing financing for the qualifying transportation facility, including any trustee or agent for any person providing financing. The operator and the persons providing financing for the qualifying transportation facility shall be entitled to a reasonable time period to cure the event that could lead to a revocation of the certificate. Prior to any revocation of the certificate, the responsible public entity shall conduct a hearing to determine if revocation of the certificate serves the public purpose of this chapter. Any interested party shall be entitled to participate in such hearing.

(c) Upon the revocation of a certificate of authority, the responsible public entity may exercise any or all of the following remedies:

(1) The responsible public entity may elect to take over the transportation facility or facilities and in such case it shall succeed to all of the right, title and interest in such transportation facility or facilities, subject to any liens on revenues previously granted by the operator to any person providing financing therefore and subject to subsection (d). Any liens on the real estate and tangible property comprising the transportation facility or facilities shall be deemed to be extinguished and shall be released on request if the responsible public entity takes over the qualifying transportation facility pursuant to this subsection (c).

(2) Any responsible public entity having the power of condemnation under applicable eminent domain law may exercise such power of condemnation to acquire the qualifying transportation facility or facilities. Nothing in this chapter shall be construed to limit the exercise of the power of condemnation by eminent domain by any responsible public entity against a qualifying transportation facility after revocation of the certificate. Any person that has provided financing for the

qualifying transportation facility, and the operator, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.

(3) The responsible public entity may exercise all other rights and remedies which may be available to it at law or in equity.

(d) In the event the responsible public entity elects to take over a qualifying transportation facility pursuant to subdivision (c)(1), the responsible public entity shall acquire, construct, improve, operate and maintain the transportation facility, impose user fees for the use thereof and comply with any service contracts as if it were the operator. Any revenues that are subject to a lien shall be collected for the benefit of, and paid to, secured parties, as their interests may appear, to the extent necessary to satisfy the operator's obligations to secured parties, including the maintenance of reserves. Before such payments to or for the benefit of secured parties, the responsible public entity may use revenues to pay current operation and maintenance costs of the transportation facility or facilities, including compensation to the responsible public entity for its services in operating and maintaining the qualifying transportation facility. Remaining revenues, if any, after all such payments have been made or provided for in an amount not to exceed an amount that will provide the operator with the rate of return on its capital investment shall be paid to the operator over the time period that the certificate would have been in place had it not been revoked. The right to receive such payment, if any, shall be considered just compensation for the transportation facility or facilities. The full faith and credit of the responsible public entity shall not be pledged to secure any financing of the operator by the election to take over the qualifying transportation facility. Assumption of operation of the qualifying transportation facility shall not obligate the responsible public entity to pay any obligation of the operator from sources other than revenues.

Section 54-23-116.

(a) At the request of the operator, the responsible public entity may exercise any power of condemnation by eminent domain that it has under law for the purpose of acquiring any lands or estates or interests therein to the extent that the responsible public entity finds that such action serves the public purpose of this chapter. Any amounts to be paid in any such condemnation proceeding shall be paid by the operator.

(b) Except as provided in subsection (a), until a certificate has been revoked, the power of condemnation may not be exercised against a qualifying transportation facility.

(c) After the certificate has been revoked, any responsible public entity having the power of condemnation under law may exercise such power of condemnation as provided by law.

Section 54-23-117.

The operator and each public utility, railroad, and cable television provider, whose facilities are to be crossed or affected shall cooperate fully with the other in planning and arranging the manner of the crossing or relocation of the facilities. Any such entity possessing the power of condemnation is expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the qualifying transportation facility or that must be relocated to the extent that such moving or relocation is made necessary or desirable by construction of or improvements to the qualifying transportation facility, which shall be construed to include construction of or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Should the operator and any such public utility, railroad or cable television provider not be able to agree upon a plan for the crossing or relocation, the department may determine the manner in which the crossing or relocation is to be accomplished and any damages due arising out of the crossing or relocation.

The responsible public entity may employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the department. In such a case, the cost of the experts is to be borne by the operator.

Section 54-23-118.

(a) All police officers of the state and of each local jurisdiction, shall have the same powers and jurisdiction within the limits of such qualifying transportation facility as are authorized in such respective areas of jurisdiction and such police officers shall have access to the qualifying transportation facility at any time for the purpose of exercising such powers and jurisdiction. This authority does not extend to the private offices, buildings, garages and other improvements of the operator to any greater degree than the police power extends to any other private buildings and improvements.

(b) To the extent the transportation facility is a road, bridge, tunnel, overpass or similar transportation facility for motor vehicles, the traffic and motor vehicle laws of the state and, if applicable, any local jurisdiction shall be the same as those applying to conduct on similar transportation facilities in the state. Punishment for offenses shall be as prescribed by law for conduct occurring on similar transportation facilities in the state.

Section 54-23-119.

The responsible public entity shall determine the date of termination of the original permanent financing and shall terminate the operator's certificate on a date that shall not exceed ten (10) years from the end of the term of the original permanent financing. The responsible public entity may change the termination date to take into account any refinancing of the original permanent financing, including any refinancing for the purpose of expansion, or any early termination of the original permanent financing to the extent that such modification serves the public purpose of this chapter. Upon the

termination of the certificate, the authority and duties of the operator under this chapter shall cease, and the qualifying transportation facility shall be dedicated to the responsible public entity or, if the qualifying transportation facility was initially dedicated by an affected local jurisdiction, to such affected local jurisdiction for public use.

Section 54-23-120.

Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the state, any responsible public entity or any affected local jurisdiction with respect to the participation in, or approval of all or any part of the qualifying transportation facility or its operation, including but not limited to interconnection of the qualifying transportation facility with any other transportation facility. Counties and municipalities in which a qualifying transportation facility is located shall possess sovereign immunity with respect to its construction and operation.

SECTION 2. The commissioner of transportation is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. For purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2008, the public welfare requiring it.