

ARTHUR COCCODRILLI, CHAIRMAN  
GEORGE D. BEDWICK, VICE CHAIRMAN  
S. DAVID FINEMAN, ESQ.  
SILVAN B. LUTKEWITTE III  
JOHN F. MIZNER, ESQ.  
KIM KAUFMAN, EXECUTIVE DIRECTOR  
LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417  
FAX: (717) 783-2664  
irrc@irrc.state.pa.us  
<http://www.irrc.state.pa.us>

## INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

September 30, 2009

Honorable Allen D. Biehler, P.E., Secretary  
Department of Transportation  
Keystone Building, 8th Floor  
400 North Street  
Harrisburg, PA 17120-0041

Re: Regulation #18-415 (IRRC #2779)  
Department of Transportation  
Transportation Enhancement Grants from Automated Red Light Enforcement System  
Revenues

Dear Secretary Biehler:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman  
Executive Director  
wbg  
Enclosure

cc: Honorable Donald C. White, Vice Chairman, Senate Transportation Committee  
Honorable J. Barry Stout, Minority Chairman, Senate Transportation Committee  
Honorable Joseph F. Markosek, Majority Chairman, House Transportation Committee  
Honorable Richard A. Geist, Minority Chairman, House Transportation Committee

# Comments of the Independent Regulatory Review Commission



## Department of Transportation Regulation #18-415 (IRRC #2779)

### Transportation Enhancement Grants from Automated Red Light Enforcement System Revenues

**September 30, 2009**

We submit for your consideration the following comments on the proposed rulemaking published in the August 1, 2009 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Transportation (Department) to respond to all comments received from us or any other source.

#### **1. Eligible sponsors. – Legislative intent; Reasonableness.**

Under 75 Pa.C.S.A. § 3116(a), the use of an automated red light enforcement system is limited to first class cities, which is the City of Philadelphia. Fines collected from violators, less the administrator's costs, are deposited into the Motor License Fund and "shall be used by the department to develop, by regulation, a Transportation Enhancements Grant Program." See 75 Pa.C.S.A. § 3116(l)(2). The statute also includes limitations on the use of automated red light enforcement systems and limits revenues to no more than five percent of a city of the first class' annual budget. See 75 Pa.C.S.A. §§ 3116 (e), (g), (h), (m), (n), (o) and (p).

Section 233.2 of the regulation defines "sponsor" as,

A local authority, metropolitan planning organization, rural planning organization, county planning organization, or Commonwealth agency applying for, or receiving, a transportation enhancement grant under this chapter.

Also, Subsection 233.5(a) states a sponsor may submit an application for a grant and Subsection 233.8(d) includes the term sponsor in the criteria for the grant selection process. As written, anyone who meets the broad definition of sponsor can apply for and receive a grant, which includes entities both inside and outside the City of Philadelphia.

The City of Philadelphia objects to the regulation because it would allow fines collected in Philadelphia to be used for grants anywhere in the state. The City of Philadelphia believes the legislation was intended to only use grant money for safety improvements in the City of Philadelphia. A similar concern was stated by the Philadelphia Parking Authority and former Representative George Kenney.

Representative Richard A. Geist, Republican Chairman of the House Transportation Committee, submitted a letter on September 21, 2009, stating that in his position as Majority Chairman of the House Transportation Committee he led the floor debate over the enabling legislation in the House of Representatives that became Act 123 of 2002. He states that when crafting and debating the legislation “we were adamant that the pilot program was not to be used as a revenue generator for the City of Philadelphia. Specifically, to guard against that possibility, we included the provision that all excess revenue generated by the program be deposited in the Commonwealth’s Motor License Fund and be used for transportation projects throughout the state.” See 75 Pa.C.S. §3116(l)(2). To support his position, he included with his letter the 2002 House Legislative Journal documenting the floor debate. He is concerned that the regulation does not explicitly prohibit the City of Philadelphia from capturing all of the grants via the grant process. Therefore, he respectfully suggests that a caveat be added to the regulation that would explicitly prohibit the City of Philadelphia from laying claim to all of the excess revenues generated by the pilot program to provide an assurance that legislative intent would be maintained.

In the Preamble, the Department explains:

Other affected entities are sponsors that choose to apply for, or receive, a transportation enhancement grant under the provisions of the proposed regulations. These include local authorities (county, municipal and other local boards or bodies having authority to enact laws relating to traffic), metropolitan planning organizations, rural planning organizations, county planning organizations or Commonwealth agencies.

The Department should explain its determination that grants should be made available to all of the entities described in the proposed definition of sponsor and explain how the grants will be geographically distributed.

## **2. Section 233.2. Definitions. – Need.**

### *Secretary*

This term is defined, but we were unable to find it used in the regulation. We suggest deleting it.

### **3. Section 233.5. Application procedure. – Clarity.**

#### *Address to submit applications*

Subsection (a) requires applications to be submitted to the “Director: Attention – Transportation Enhancement Grants from Automated Red Light Enforcement System Revenues.” We recommend including the full address in Subsection (a) so that sponsors know where to send the application.

#### *Other information requested by the Department*

Paragraph (c)(11) requires the sponsor to provide other information “that is requested by the Department.” We recommend limiting the scope of this provision to information related to the project.

### **4. Section 233.6. Deadline for applications. – Reasonableness; Clarity.**

#### *Complete in a timely fashion*

The phrase “in a timely fashion” at the end of Subsection (d) is vague. The Department should replace this phrase with a definite time frame, such as “by July 15.”

### **5. Section 233.8. Grant selection process and criteria. – Reasonableness; Clarity.**

#### *Next fiscal year*

The deadline for applications is June 30. Subsection (a) states applications “will be considered for funding during the next fiscal year.” The Pennsylvania State Association of Township Supervisors (PSATS) commented that it presumes the next fiscal year would begin July 1, which is right after applications are received. PSATS notes that, depending on how quickly applications are processed, the construction season could be over before applications are processed. We agree that it is not clear what is meant by the “next fiscal year.” It is important for applicants to understand how soon the grants may be forthcoming because the applicants are working on safety improvements to their transportation systems. We recommend that the Department review and clarify the timing of the applications, the processing of applications and the offer of a grant.

#### *Other factors*

In Subsection (c), it is not clear what is meant by the phrase “and other factors.” What other factors would the Director consider that are not already specified in Subsections (d) and (e)? A sponsor should have full notice regarding how the application will be considered. We recommend deleting this

phrase. Alternatively, if the Department knows of other factors that will be considered, those should be included in the regulation.

*Other criteria*

After listing the criteria that will be considered in Paragraphs (d)(1) to (7), the criteria conclude with Paragraph (d)(8) which states, “Other criteria which the Department determines should be considered.” Given that sponsors are competing for grants, it would not be fair to approve or deny a grant based on “other criteria” that other sponsors were not given an equal opportunity to meet. Paragraph (d)(8) also implies the criteria could be altered outside the regulatory process. We recommend deleting Paragraph (d)(8).

**6. Section 233.11. Audit and recordkeeping. – Clarity.**

*Exceeds the standards of this chapter*

Paragraph (a)(5) states, in part, “...If this elapsed time exceeds the standards of this chapter, the Department may require the return of interest earned on payments made.” The phrase “the standards of this chapter” is vague. The regulation should cross-reference or state the specific time requirements that may not be exceeded and that would cause the Department to require the return of interest earned.

### Facsimile Cover Sheet



Phone: (717) 783-5417  
Fax #: (717) 783-2664  
E-mail: [irrc@irrc.state.pa.us](mailto:irrc@irrc.state.pa.us)  
Website: [www.irrc.state.pa.us](http://www.irrc.state.pa.us)

**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14<sup>TH</sup> FLOOR, HARRISBURG, PA 17101

**To:** Stephen Martin  
**Agency:** Department of Transportation  
**Phone:** 7-5079  
**Fax:** 2-2741  
**Date:** September 30, 2009  
**Pages:** 6

RECEIVED  
SEP 30 AM 9:44  
INDEPENDENT REGULATORY REVIEW COMMISSION

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Department of Transportation's regulation #18-415 (IRRC #2779). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:  Date: 09-30-2009