
OLR Bill Analysis

sSB 920 (File 423, as amended by Senate "A")*

AN ACT CONCERNING PUBLIC-PRIVATE PARTNERSHIPS.

SUMMARY

This bill reestablishes, through January 1, 2027, the governor's authority to approve up to five public-private partnership (P3) project agreements. This authority previously expired on January 1, 2020. It also applies the P3 law to the Department of Transportation (DOT) and transportation projects only, thus reducing the types of state entities and projects covered by the law.

Additionally, the bill makes the following changes to the law:

1. eliminates provisions in current law restricting P3 projects to revenue-generating facilities and limiting the state's share of project costs;
2. requires DOT, for each P3, to make best efforts to use DOT employees to perform development and inspection work and reduce, or eliminate where possible, the department's reliance on outside consultants; and
3. requires DOT to submit additional reports on the use of consultants and on P3s' status and effectiveness.

The bill also makes numerous minor, technical, and conforming changes, primarily to account for limiting the law's scope to DOT and transportation projects. Among other things, these changes require DOT, rather than the governor, to report to the legislature annually by January 15 concerning the status of P3 projects.

*Senate Amendment "A" (1) eliminates a provision in the underlying bill establishing the Office of Innovative Finance and Project Delivery in DOT, (2) adds a sunset date for the governor's

authority to approve P3s, (3) limits the P3 law's scope to DOT and transportation projects, (4) requires DOT to make best efforts to use DOT employees to perform certain work related to P3s, (5) establishes new reporting requirements, and (6) makes numerous minor, technical, and conforming changes.

EFFECTIVE DATE: Upon passage

RESTRICTION TO TRANSPORTATION PROJECTS

Under current law, a P3 is an agreement between a state or quasi-public agency and a private entity to finance, design, construct, develop, operate, or maintain certain "facilities." Eligible facilities under current law generally include revenue-generating projects in the following categories:

1. educational, health, early childcare, or housing facilities;
2. transportation systems, including ports, transit-oriented development, and related infrastructure; and
3. any other type of facility designated as a P3 by an act of the legislature.

The bill instead limits the P3 law to DOT projects only. Under the bill, eligible projects are those involving transportation systems, including transit-oriented development and related infrastructure.

The bill retains existing law's requirement that a P3 obtain the governor's approval. As under existing law, the governor cannot approve the agreement unless he finds it will create jobs and economic growth.

Revenue Generation and State Costs

The bill eliminates provisions restricting P3 projects to revenue-generating facilities and limiting the state's share of project costs. Under current law, these provisions (1) require that facilities, in order to be eligible for a P3 project, generate estimated revenue that, together with other identified funding sources, will sufficiently fund the

facility's development, maintenance, and operating costs and (2) limit state support of the P3 to 25% of the project's cost.

Other Changes

The bill makes numerous changes to conform its limitation of the P3 law to DOT projects only. It makes a minor change specifying that the analysis DOT must do before a P3 project can be approved must consider the facility's anticipated demand, rather than projected demand.

The bill also specifies that the property tax exemption for property developed, operated, or held by a private entity under a P3 applies only to state property.

DEVELOPMENT AND INSPECTION WORK

For any P3, the bill requires the DOT commissioner to make best efforts to (1) use DOT employees, if available, for development and inspection services and (2) reduce, and eliminate where possible, the department's reliance on consultants. It also requires that any contract with a consultant to perform development or inspection services for a P3 include a provision providing for the training of DOT employees in the process for bidding and managing P3s.

In addition, the bill allows DOT to appoint employees to durational positions to reduce the need for consultants to perform inspection or development services. These employees may be appointed as engineers to fill durational positions without an examination if they meet the education, knowledge, and training requirements in the Department of Administrative Services' job classification.

Under the bill, a "consultant" is any (1) registered or licensed architect, professional engineer, landscape architect, land surveyor or accountant; (2) planner; or (3) environmental, management or financial specialist. Development services may include the project's size, type, and desired design character; performance specifications; quality of material; equipment; workmanship; preliminary plans; or any other information needed for DOT to issue a request for proposals.

Inspection services include construction inspections, surveying, testing, environmental compliance monitoring, quality control inspection, and quality assurance audits.

Similar requirements apply under existing law to DOT projects using alternative delivery methods (i.e., design-build or construction manager at risk) (CGS § 13a-95c).

REPORTING REQUIREMENTS

The bill establishes additional DOT reporting requirements related to P3s. The reports must be completed in consultation with representatives selected by department employees' exclusive bargaining agents and submitted to the Transportation Committee.

Specifically, once a P3 is established, DOT must annually submit a report analyzing the P3's progress and consultants' performance of development and inspection work. The report is due each February 1 after a P3 is established. If the report finds that a consultant is unable to complete the services within the timeframe or budget stated in the P3 agreement, DOT may terminate the agreement and exercise any other rights and remedies available to it by law or in equity.

The bill also requires DOT to submit a report six months after a P3's completion evaluating the P3's effectiveness and making recommendations regarding the continued use of P3s.

COMMITTEE ACTION

Transportation Committee

Joint Favorable Substitute
Yea 34 Nay 1 (03/24/2021)

Appropriations Committee

Joint Favorable
Yea 31 Nay 17 (05/10/2021)