



General Assembly

January Session, 2021

Raised Bill No. 920

LCO No. 3437



Referred to Committee on TRANSPORTATION

Introduced by:
(TRA)

AN ACT CONCERNING PUBLIC PRIVATE PARTNERSHIPS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4-255 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2021*):

3 (a) As used in this section and sections 4-256 to 4-263, inclusive, as
4 amended by this act, unless the context indicates a different meaning:

5 (1) "State agency" or "agency" means any office, department, board,
6 council, commission, institution or other agency in the executive branch
7 of state government; [or a quasi-public agency as defined in section 1-
8 120;]

9 (2) "Private entity" means any individual, corporation, general
10 partnership, limited partnership, limited liability partnership, joint
11 venture, nonprofit organization or other business entity;

12 (3) "Public-private partnership" means the relationship established
13 between a state agency and a private entity by contracting for the
14 performance of any combination of specified functions or

15 responsibilities to design, develop, finance, construct, operate or
16 maintain [one or more state facilities where the agency has estimated
17 that the revenue generated by such facility or facilities, in combination
18 with other previously identified funding sources, including any
19 appropriated funds, will be sufficient to fund the cost to develop,
20 maintain and operate such facility or facilities, provided state support
21 of a partnership agreement shall not exceed twenty-five per cent of the
22 cost of the] a project;

23 (4) "Partnership agreement" means an agreement executed between a
24 state agency and a private entity to establish a public-private
25 partnership;

26 (5) "Project" means a project that an agency has submitted to the
27 Governor for approval as a public-private partnership;

28 (6) "Contractor" means a private entity that has entered into a public-
29 private partnership agreement with a state agency; and

30 [(7) "Facility" means any public works or transportation project used
31 as public infrastructure that generates revenue as a function of its
32 operation; and]

33 [(8)] (7) "Proposer" means a private entity submitting a competitive
34 bid in response to solicitation or a proposal in response to a request for
35 proposals for an approved project for consideration.

36 (b) Notwithstanding the provisions of section 4b-51, once the project
37 is approved by the Governor in accordance with section 4-256, as
38 amended by this act, any state agency may establish one or more public-
39 private partnerships and execute a partnership agreement for a project
40 in accordance with this section and sections 4-256 to 4-263, inclusive, as
41 amended by this act. A partnership agreement may not be established
42 for the operation or maintenance of a [facility] project unless such
43 agreement also provides for the financing and development of such
44 [facility] project.

45 [(c) The design, development, operation or maintenance of the
46 following new or existing project types are eligible for consideration as
47 a public-private partnership if approved as a project in accordance with
48 section 4-256:

49 (1) Early childcare, educational, health or housing facilities;

50 (2) Transportation systems, including ports, transit-oriented
51 development and related infrastructure; and

52 (3) Any other kind of facility that may from time to time be
53 designated as such by an act of the General Assembly.]

54 Sec. 2. Section 4-256 of the general statutes is repealed and the
55 following is substituted in lieu thereof (*Effective October 1, 2021*):

56 (a) [On and after October 27, 2011, and prior to January 1, 2020, the
57 Governor shall approve not more than five projects to be implemented
58 as public-private partnership projects. The Governor shall not approve
59 any such project unless the Governor finds that the project will result in
60 job creation and economic growth.] Any agency seeking to establish a
61 public-private partnership shall, after consultation with the
62 [Commissioners of Economic and Community Development,]
63 Commissioner of Administrative Services, [and Transportation,] the
64 State Treasurer and the Secretary of the Office of Policy and
65 Management, submit one or more projects to the Governor for approval.
66 The Governor shall not approve any such project unless the Governor
67 finds that the project will result in job creation and economic growth.

68 (b) In determining whether a project is suitable for a public-private
69 partnership, [agreement,] the agency shall conduct an analysis of the
70 feasibility, desirability and the convenience to the public of the project
71 and whether the project furthers the public policy goals of [section 4-
72 255,] this section and sections 4-257 to 4-263, inclusive, as amended by
73 this act, taking into consideration the following, when applicable:

74 (1) The essential characteristics of the proposed [facility] project;

75 (2) The [projected] anticipated demand for use of the [facility] project
76 and its economic and social impact on the community and the state;

77 (3) The technical function and feasibility of the project and its
78 conformity with the state plan of conservation and development
79 adopted under chapter 297;

80 (4) The benefit to clients of the agency and the public as a whole;

81 (5) An analysis of the value provided for the cost of the project, that
82 at a minimum includes a cost-benefit analysis, an assessment of
83 opportunity costs and any nonfinancial benefits of the project;

84 (6) Any operational or technological risk associated with the
85 proposed project;

86 (7) The cost of the investment to be made and the economic and
87 financial feasibility of the project;

88 (8) An analysis of public versus private financing on a present value
89 basis, and the eligibility of the project for other public funds from local
90 or federal government sources;

91 (9) The impact to the state's finances of undertaking the project by the
92 agency; and

93 (10) The advantages and disadvantages of using a public-private
94 partnership rather than having the state agency perform the function.

95 (c) An agency shall not include a project solely based upon the
96 amount of potential revenue generated by such project.

97 (d) Any agency submitting a project in accordance with subsection
98 (a) of this section shall at the same time transmit, in accordance with the
99 provisions of section 11-4a, a copy of its submission to the joint standing
100 committees of the General Assembly having cognizance of matters
101 relating to finance, revenue and bonding and appropriations and the
102 budgets of state agencies. Said committees shall hold public hearings on

103 any such submission.

104 (e) The Governor shall notify the agency when a project has been
105 approved as a public-private partnership project.

106 (f) On or before January 15, [2013] 2022, and annually thereafter, the
107 Governor shall report, in accordance with the provisions of section 11-
108 4a, to the General Assembly concerning the status of the public-private
109 partnerships established under this section.

110 Sec. 3. Section 4-259 of the general statutes is repealed and the
111 following is substituted in lieu thereof (*Effective October 1, 2021*):

112 (a) Any partnership agreement executed in accordance with the
113 provisions of sections 4-255 to 4-263, inclusive, as amended by this act,
114 shall include, but not be limited to, the following terms and conditions:

115 [(1) The term of the agreement, which shall be for a period not to
116 exceed fifty years from the date of the full execution of the partnership
117 agreement;]

118 [(2)] (1) A complete description of the [facility] project to be
119 developed and the functions to be performed;

120 [(3)] (2) The terms of the financing, development, design,
121 improvement, maintenance, operation and administration of the
122 [facility] project;

123 [(4)] (3) The rights the state, the contractor, or both, have, if any, in
124 revenue from the financing, development, design, improvement,
125 maintenance, operation or administration of the [facility] project;

126 [(5)] (4) The minimum quality standards [applicable to the project]
127 for the development, design, improvement, maintenance, operation or
128 administration of the [facility] project, including performance criteria,
129 incentives and disincentives;

130 [(6)] (5) The compensation of the contractor, including the extent to

131 which and the terms upon which a contractor may charge fees to
132 individuals and entities for the use of the [facility] project, but in no
133 event shall such fee extend to the imposition of tolls on the highways of
134 this state unless such tolls are specifically approved by the General
135 Assembly;

136 [(7)] (6) The furnishing of an annual independent audit report to the
137 agency covering all aspects of the partnership agreement;

138 [(8)] (7) Performance and payment bonds or other security deemed
139 suitable by the agency;

140 [(9)] (8) One or more policies of public liability insurance in such
141 amounts determined by the agency to ensure coverage of tort liability
142 for the public and employees of the contractor and to provide for the
143 continued operation of the partnership project;

144 [(10)] (9) A reverter of the project to the state upon the conclusion or
145 termination of the partnership agreement;

146 [(11)] (10) The rights and remedies available to the agency for a
147 material breach of the partnership agreement by the contractor or
148 private entity or if there is a material default;

149 [(12)] (11) Identification of funding sources to be used to fully fund
150 the capital, operation, maintenance or other expenses under the
151 agreement; and

152 [(13)] (12) Any other provision determined to be appropriate by the
153 agency.

154 (b) No partnership agreement shall contain any noncompete
155 provisions limiting the ability of the state to perform its functions.

156 (c) No user fees may be imposed by the contractor except as set forth
157 in a partnership agreement.

158 (d) The partnership agreement shall not be construed as waiving the

159 sovereign immunity of the state or as a grant of sovereign immunity to
160 the contractor or any private entity.

161 (e) No contractor shall be liable for the debts or obligations of the state
162 or the agency, unless the partnership agreement provides that such
163 contractor is liable under such agreement.

164 Sec. 4. Section 4-261 of the general statutes is repealed and the
165 following is substituted in lieu thereof (*Effective October 1, 2021*):

166 (a) Each public-private partnership project shall either be subject to
167 the prevailing wage requirements pursuant to section 31-53 or the rate
168 established by the use of a project labor agreement. The agency shall
169 provide notice of which requirement applies prior to soliciting bids or
170 proposals for such public-private partnership.

171 (b) Each public-private partnership project shall comply with: (1) The
172 state's environmental policy requirements as set forth in sections 22a-1
173 and 22a-1a, (2) the requirements of the set-aside program for small
174 contractors as set forth in section 4a-60g, and (3) any applicable
175 permitting or inspection requirements for projects of a similar type,
176 scope and size as set forth in the general statutes or the local ordinances
177 of the municipality where the project is to be located.

178 [(c) Any agency that is subject to section 4e-16 shall comply with the
179 provisions of section 4e-16, provided, notwithstanding the provisions of
180 subsection (a) of section 4e-16, any agency that enters into a partnership
181 agreement concerning the operations or maintenance of a state facility
182 that meets the definition of a privatization contract, as defined in section
183 4e-1, shall be subject to the requirements of section 4e-16 regardless of
184 whether such services are currently privatized.]

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2021</i>	4-255
Sec. 2	<i>October 1, 2021</i>	4-256
Sec. 3	<i>October 1, 2021</i>	4-259

Sec. 4	October 1, 2021	4-261
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Statement of Purpose:

To revise the requirements regarding the utilization of public-private partnerships to design, develop, finance, construct, operate or maintain projects.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]