



General Assembly

**Amendment**

January Session, 2021

LCO No. 9004



Offered by:

SEN. HASKELL, 26<sup>th</sup> Dist.

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To: Subst. Senate Bill No. 920

File No. 423

Cal. No. 261

**"AN ACT CONCERNING PUBLIC-PRIVATE PARTNERSHIPS."**

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. Section 4-255 of the general statutes is repealed and the  
4 following is substituted in lieu thereof (*Effective from passage*):

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

8 [(1) "State agency" or "agency" means any office, department, board,  
9 council, commission, institution or other agency in the executive branch  
10 of state government or a quasi-public agency as defined in section 1-  
11 120;]

12 (1) "Department" means the Department of Transportation;

13 (2) "Private entity" means any individual, corporation, general

14 partnership, limited partnership, limited liability partnership, joint  
15 venture, nonprofit organization or other business entity;

16 (3) "Public-private partnership" means the relationship established  
17 between [a state agency] the department and a private entity by  
18 contracting for the performance of any combination of specified  
19 functions or responsibilities to design, develop, finance, construct,  
20 operate or maintain one or more state facilities; [where the agency has  
21 estimated that the revenue generated by such facility or facilities, in  
22 combination with other previously identified funding sources,  
23 including any appropriated funds, will be sufficient to fund the cost to  
24 develop, maintain and operate such facility or facilities, provided state  
25 support of a partnership agreement shall not exceed twenty-five per  
26 cent of the cost of the project;]

27 (4) "Partnership agreement" means an agreement executed between  
28 [a state agency] the department and a private entity to establish a public-  
29 private partnership;

30 (5) "Project" means a project that [an agency] the department has  
31 submitted to the Governor for approval as a public-private partnership;

32 (6) "Contractor" means a private entity that has entered into a public-  
33 private partnership agreement with [a state agency] the department;

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

37 (8) "Proposer" means a private entity submitting a competitive bid in  
38 response to solicitation or a proposal in response to a request for  
39 proposals for an approved project for consideration; [.] and

40 (9) "Consultant" has the same meaning as provided in section 13b-  
41 20b.

42 (b) Notwithstanding the provisions of section 4b-51, once the project  
43 is approved by the Governor in accordance with section 4-256, as

44 amended by this act, [any state agency] the department may establish  
45 one or more public-private partnerships and execute a partnership  
46 agreement for a project in accordance with this section and sections 4-  
47 256 to 4-263, inclusive, as amended by this act, and section 3 of this act.  
48 A partnership agreement may not be established for the operation or  
49 maintenance of a facility unless such agreement also provides for the  
50 financing and development of such facility.

51 (c) The design, development, operation or maintenance of [the  
52 following] new or existing project types involving transportation  
53 systems, including transit-oriented development and related  
54 infrastructure, are eligible for consideration as a public-private  
55 partnership if approved as a project in accordance with section 4-256, as  
56 amended by this act. [:

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

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

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

62 Sec. 2. Section 4-256 of the general statutes is repealed and the  
63 following is substituted in lieu thereof (*Effective from passage*):

64 (a) On and after [October 27, 2011] the effective date of this section,  
65 and prior to January 1, [2020] 2027, the Governor [shall] may approve  
66 not more than five projects to be implemented as public-private  
67 [partnership projects] partnerships. The Governor shall not approve any  
68 such project unless the Governor finds that the project will result in job  
69 creation and economic growth. [Any agency seeking to establish a  
70 public-private partnership shall, after] After consultation with the  
71 Commissioners of Economic and Community Development [,] and  
72 Administrative Services, [and Transportation,] the State Treasurer and  
73 the Secretary of the Office of Policy and Management, the department  
74 may submit one or more projects to the Governor for approval.

75 (b) In determining whether a project is suitable for a public-private  
76 partnership agreement, the [agency] department shall conduct an  
77 analysis of the feasibility, desirability and the convenience to the public  
78 of the project and whether the project furthers the public policy goals of  
79 section 4-255, as amended by this act, this section and sections 4-257 to  
80 4-263, inclusive, as amended by this act, and section 3 of this act, taking  
81 into consideration the following, when applicable:

82 (1) The essential characteristics of the proposed facility;

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

85 (3) The technical function and feasibility of the project and its  
86 conformity with the state plan of conservation and development  
87 adopted under chapter 297;

88 (4) The benefit to [clients of the agency and the public as a whole] the  
89 state and its citizens;

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

93 (6) Any operational or technological risk associated with the  
94 proposed project;

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

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

100 (9) The impact to the state's finances of undertaking the project by the  
101 [agency] department; and

102 (10) The advantages and disadvantages of using a public-private

103 partnership rather than having the [state agency] department perform  
104 the function.

105 (c) [An agency] The department shall not [include] submit a project  
106 to the Governor for approval for a public-private partnership solely  
107 based upon the amount of potential revenue generated by such project.

108 (d) [Any agency submitting] If the department submits a project in  
109 accordance with subsection (a) of this section, the department shall at  
110 the same time transmit, in accordance with the provisions of section 11-  
111 4a, a copy of its submission to the joint standing committees of the  
112 General Assembly having cognizance of matters relating to finance,  
113 revenue and bonding and appropriations and the budgets of state  
114 agencies and transportation. Said committees shall hold public hearings  
115 on any such submission.

116 (e) The Governor shall notify the [agency] department when a project  
117 has been approved [as] for a public-private partnership. [project.]

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

122 Sec. 3. (NEW) (*Effective from passage*) (a) As used in this section,  
123 "development and inspection services" has the same meaning as  
124 described in subsection (a) of section 13a-95c of the general statutes.

125 (b) For any public-private partnership, the Commissioner of  
126 Transportation shall make best efforts to perform development and  
127 inspection services using, where such employees are available,  
128 department employees and reducing, and where possible eliminating,  
129 the dependency on consultants. Any contract the department enters into  
130 with a consultant to perform development and inspection services with  
131 regards to a public-private partnership shall contain a provision that  
132 provides for training department employees in the process for bidding  
133 and managing public-private partnerships. Employees may be

134 appointed to durational positions to reduce the need for development  
135 and inspection services to be performed by consultants. Such employees  
136 may be appointed as engineers to durational positions without  
137 examination provided such employees have met the education,  
138 knowledge and training requirements required by the Department of  
139 Administrative Services job classification.

140 (c) Not later than February first of each year following the  
141 establishment of a public-private partnership, and annually thereafter,  
142 the department, in consultation with representatives selected by the  
143 exclusive bargaining agents of the department's employees, shall  
144 submit a report, in accordance with the provisions of section 11-4a of the  
145 general statutes, to the joint standing committee of the General  
146 Assembly having cognizance of matters relating to transportation that  
147 analyzes the progress of any public-private partnerships and the  
148 performance of development and inspection services by any consultant.  
149 If the report finds that a consultant is unable to complete such services  
150 within the timeframe or amount budgeted as stated in the agreement  
151 with the consultant, the department may terminate the agreement and  
152 exercise any other rights and remedies that may be available to it at law  
153 or in equity.

154 (d) Not later than six months after the completion of any public-  
155 private partnership, the department, in consultation with  
156 representatives selected by the exclusive bargaining agents of the  
157 department's employees, shall submit a report, in accordance with the  
158 provisions of section 11-4a of the general statutes, to the joint standing  
159 committee of the General Assembly having cognizance of matters  
160 relating to transportation that evaluates the effectiveness of the public-  
161 private partnership and makes recommendations regarding the  
162 continued use of public-private partnerships.

163 Sec. 4. Section 4-257 of the general statutes is repealed and the  
164 following is substituted in lieu thereof (*Effective from passage*):

165 (a) Notwithstanding the provisions of section 4b-91 and chapter 242,

166 the [agency] department shall, when it determines appropriate, provide  
167 for a process of prequalification for private entities seeking to enter a  
168 public-private partnership. Any such process shall include public notice  
169 of the prequalification process and the requirements and the criteria the  
170 [agency] department will use in determining whether the private entity  
171 qualifies for prequalification. [Any agency that] If the department has  
172 determined that such a prequalification process is appropriate for the  
173 project, the department shall allow only prequalified private entities to  
174 be a proposer. The [agency] department may charge a reasonable  
175 application fee for prequalification.

176 (b) In addition to any requirements set forth in the request for  
177 proposals, request for qualifications or bid solicitation for a [public-  
178 private partnership] project, in order to be prequalified, a private entity  
179 shall:

180 (1) Have available such lawful sources of funding, capital, securities  
181 or other financial resources that, in the judgment of the [agency]  
182 department in consultation with the Department of Economic and  
183 Community Development, are necessary to carry out the [public-private  
184 partnership] project if such private entity is selected as the contractor;

185 (2) Possess either through its staff, subcontractors, a consortium or  
186 joint venture agreement the managerial, organizational, technical  
187 capacity and experience in the type of project for which the proposer is  
188 submitting a bid proposal;

189 (3) Be qualified to lawfully conduct business in this state; and

190 (4) Certify that no director, officer, partner, owner or other individual  
191 with direct and significant control over the policy of the private entity  
192 has been convicted of corruption or fraud in any jurisdiction of the  
193 United States.

194 Sec. 5. Section 4-258 of the general statutes is repealed and the  
195 following is substituted in lieu thereof (*Effective from passage*):

196 (a) [Any agency seeking to enter into a public-private partnership]  
197 The department shall conduct a competitive procurement process for  
198 the selection of a contractor prior to entering a public-private  
199 partnership. The [agency] department shall use, where appropriate, in  
200 accordance with the nature and scope of the project, (1) competitive  
201 bidding, as defined in section 4e-1, or (2) competitive negotiation, as  
202 defined in section 4a-50.

203 (b) Prior to beginning a competitive procurement process in  
204 accordance with subsection (a) of this section, [an agency] the  
205 department may issue a request for information to obtain information  
206 regarding potential [public-private partnership] projects.

207 (c) In conducting the competitive procurement process, the [agency]  
208 department shall meet the following requirements in addition to the  
209 requirements set forth in subsection (a) of this section:

210 (1) Contain, within the bid specifications, a detailed description of the  
211 scope of the proposed [public-private partnership] project;

212 (2) Contain the material terms and conditions of the terms applicable  
213 to the procurement and any contract that results;

214 (3) Provide public notice of the invitation to bid, request for proposal  
215 or request for information not less than thirty days prior to the due date,  
216 unless the [agency head] Commissioner of Transportation makes a  
217 written determination that a lesser time period is appropriate and will  
218 preserve the competitive nature of the procurement; and

219 (4) Publish the evaluation and selection criteria and [shall] include a  
220 determination of which proposals best serve the public purpose of  
221 sections 4-255 to 4-263, inclusive, as amended by this act, and section 3  
222 of this act.

223 (d) The [agency] department may pay a stipend to an unsuccessful  
224 proposer, in an amount and on the terms and conditions determined by  
225 the [agency] department as reasonable, if (1) the [agency] department



226 cancels the procurement process less than thirty days prior to the date  
227 the bid or proposal is due, or (2) the unsuccessful proposer submits a  
228 proposal that is responsive and meets all the requirements established  
229 by the [agency] department for the [public-private partnership] project.  
230 The [agency] department may require the proposer to grant the [agency]  
231 department the right to use any work product contained in any  
232 unsuccessful proposal, or in the event of a cancelled procurement as set  
233 forth in this section, any work product developed prior to cancellation,  
234 including designs, processes, technologies and information. All  
235 conditions for a stipend shall be clearly set forth in the request for  
236 information, bid solicitation, request for proposal or request for  
237 qualifications.

238 (e) The [agency] department may retain financial, legal and other  
239 consultants and experts to assist in the procurement, evaluation and  
240 negotiation of public-private partnerships and for the development of  
241 eligible facilities in accordance with sections 4-255 to 4-263, inclusive, as  
242 amended by this act, and section 3 of this act. Such services may be  
243 procured through a contract with a private entity or with another state  
244 agency.

245 Sec. 6. Section 4-259 of the general statutes is repealed and the  
246 following is substituted in lieu thereof (*Effective from passage*):

247 (a) Any partnership agreement executed in accordance with the  
248 provisions of sections 4-255 to 4-263, inclusive, as amended by this act,  
249 and section 3 of this act, shall include, but not be limited to, the following  
250 terms and conditions:

251 (1) The term of the agreement, which shall be for a period not to  
252 exceed fifty years from the date of the full execution of the partnership  
253 agreement;

254 (2) A complete description of the facility to be developed and the  
255 functions to be performed;

256 (3) The terms of the financing, development, design, improvement,

257 maintenance, operation and administration of the facility;

258 (4) The rights the state, the contractor, or both, have, if any, in revenue  
259 from the financing, development, design, improvement, maintenance,  
260 operation or administration of the facility;

261 (5) The minimum quality standards applicable to the project for  
262 development, design, improvement, maintenance, operation or  
263 administration of the facility, including performance criteria, incentives  
264 and disincentives;

265 (6) The compensation of the contractor, including the extent to which  
266 and the terms upon which a contractor may charge fees to individuals  
267 and entities for the use of the facility, but in no event shall such fee  
268 extend to the imposition of tolls on the highways of this state unless such  
269 tolls are specifically approved by the General Assembly;

270 (7) The furnishing of an annual independent audit report to the  
271 [agency] department covering all aspects of the partnership agreement;

272 (8) Performance and payment bonds or other security deemed  
273 suitable by the [agency] department;

274 (9) One or more policies of public liability insurance in such amounts  
275 determined by the [agency] department to ensure coverage of tort  
276 liability for the public and employees of the contractor and to provide  
277 for the continued operation of the [partnership] project;

278 (10) A reverter of the project to the state upon the conclusion or  
279 termination of the partnership agreement;

280 (11) The rights and remedies available to the [agency] department for  
281 a material breach of the partnership agreement by the contractor or  
282 private entity or if there is a material default;

283 (12) Identification of funding sources to be used to fully fund the  
284 capital, operation, maintenance or other expenses under the agreement;  
285 and

286 (13) Any other provision determined to be appropriate by the  
287 [agency] department.

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

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

292 (d) The partnership agreement shall not be construed as waiving the  
293 sovereign immunity of the state or as a grant of sovereign immunity to  
294 the contractor or any private entity.

295 (e) No contractor shall be liable for the debts or obligations of the state  
296 or the [agency] department, unless the partnership agreement provides  
297 that such contractor is liable under such agreement.

298 Sec. 7. Section 4-260 of the general statutes is repealed and the  
299 following is substituted in lieu thereof (*Effective from passage*):

300 The [state agency] department or the state may apply for and accept  
301 funds from local or federal government and other sources of financial  
302 aid to further the purposes of sections 4-255 to 4-263, inclusive, as  
303 amended by this act, and section 3 of this act, and to fund public-private  
304 partnerships entered into in accordance with said sections.

305 Sec. 8. Section 4-261 of the general statutes is repealed and the  
306 following is substituted in lieu thereof (*Effective from passage*):

307 (a) Each [public-private partnership] project shall either be subject to  
308 the prevailing wage requirements pursuant to section 31-53 or the rate  
309 established by the use of a project labor agreement. The [agency]  
310 department shall provide notice of which requirement applies prior to  
311 soliciting bids or proposals for such [public-private partnership] project.

312 (b) Each [public-private partnership] project shall comply with: (1)  
313 The state's environmental policy requirements as set forth in sections  
314 22a-1 and 22a-1a, (2) the requirements of the set-aside program for small

315 contractors as set forth in section 4a-60g, and (3) any applicable  
316 permitting or inspection requirements for projects of a similar type,  
317 scope and size as set forth in the general statutes or the local ordinances  
318 of the municipality where the project is to be located.

319 (c) [Any agency that is subject to section 4e-16] The department shall  
320 comply with the provisions of section 4e-16, provided, notwithstanding  
321 the provisions of subsection (a) of section 4e-16, [any agency that] if the  
322 department enters into a partnership agreement concerning the  
323 operations or maintenance of a state facility that meets the definition of  
324 a privatization contract, as defined in section 4e-1, the department shall  
325 be subject to the requirements of section 4e-16 regardless of whether  
326 such services are currently privatized.

327 Sec. 9. Section 4-262 of the general statutes is repealed and the  
328 following is substituted in lieu thereof (*Effective from passage*):

329 (a) In addition to any other remedy available to the state, in the event  
330 of a material default by the contractor, the state may elect to assume the  
331 responsibilities and duties of the contractor of the [public-private  
332 partnership] project, and in such case, the state shall succeed to all of the  
333 rights, title and interest in such [partnership] project, subject to any liens  
334 on revenue previously granted by the contractor to any person  
335 providing financing thereof.

336 (b) [Any state agency having the power of condemnation under state  
337 law] The department may exercise [such] the power of condemnation to  
338 acquire the [public-private partnership] project in the event of a material  
339 default by the contractor. Any person who has provided financing for  
340 the [public-private partnership] project, and the contractor, to the extent  
341 of its capital investment, may participate in the condemnation  
342 proceedings with the standing of a property owner.

343 (c) The [agency] department may terminate, with cause, the  
344 partnership agreement and exercise any other rights and remedies that  
345 may be available to it at law or in equity.

346 (d) The state may make or cause to be made any appropriate claims  
347 under the maintenance, performance or payment bonds, or lines of  
348 credit, as set forth in the partnership agreement.

349 (e) In the event the state elects to assume the responsibility and duties  
350 of a [partnership] project pursuant to subsection (a) of this section, the  
351 [agency] department may develop or operate the [public-private  
352 partnership] project, impose user fees, impose and collect lease  
353 payments for the use thereof and comply with any service contracts as  
354 if it were the contractor. Any revenue that is subject to a lien shall be  
355 collected for the benefit of and paid to secured parties, as their interests  
356 may appear, to the extent necessary to satisfy the contractor's  
357 obligations to secured parties, including the maintenance of reserves.  
358 Such liens shall be correspondingly reduced and, when paid off,  
359 released. Before any payments to, or for the benefit of, secured parties,  
360 the [agency] department may use revenue to pay current operation and  
361 maintenance costs of the qualifying project, including compensation to  
362 the [agency] department for its services in operating and maintaining  
363 the [public-private partnership] project. The right to receive such  
364 payment, if any, shall be considered just compensation for the project.  
365 The full faith and credit of the [agency] department shall not be pledged  
366 to secure any financing of the contractor by the election to take over such  
367 project. The assumption of the operation of the [partnership] project  
368 shall not obligate the [agency] department to pay any obligation of the  
369 contractor from sources other than revenue.

370 Sec. 10. Section 4-263 of the general statutes is repealed and the  
371 following is substituted in lieu thereof (*Effective from passage*):

372 Any state property developed, operated or held by a private entity  
373 pursuant to a partnership agreement shall be exempt from municipal  
374 property tax."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	4-255

Sec. 2	<i>from passage</i>	4-256
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	4-257
Sec. 5	<i>from passage</i>	4-258
Sec. 6	<i>from passage</i>	4-259
Sec. 7	<i>from passage</i>	4-260
Sec. 8	<i>from passage</i>	4-261
Sec. 9	<i>from passage</i>	4-262
Sec. 10	<i>from passage</i>	4-263