



Substitute Senate Bill No. 920

Public Act No. 21-99

AN ACT CONCERNING PUBLIC-PRIVATE PARTNERSHIPS.

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

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 Section 4-255 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

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

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

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

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

(3) "Public-private partnership" means the relationship established between [a state agency] the department and a private entity by contracting for the performance of any combination of specified

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

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

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

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

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

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

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

(b) Notwithstanding the provisions of section 4b-51, once the project is approved by the Governor in accordance with section 4-256, as amended by this act, [any state agency] the department may establish one or more public-private partnerships and execute a partnership agreement for a project in accordance with this section and sections 4-

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256 to 4-263, inclusive, as amended by this act, and section 3 of this act. A partnership agreement may not be established for the operation or maintenance of a facility unless such agreement also provides for the financing and development of such facility.

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

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

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

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

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

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

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

(1) The essential characteristics of the proposed facility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) For any public-private partnership, the Commissioner of Transportation shall make best efforts to perform development and inspection services using, where such employees are available, department employees and reducing, and where possible eliminating, the dependency on consultants. Any contract the department enters into with a consultant to perform development and inspection services with

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regards to a public-private partnership shall contain a provision that provides for training department employees in the process for bidding and managing public-private partnerships. Employees may be appointed to durational positions to reduce the need for development and inspection services to be performed by consultants. Such employees may be appointed as engineers to durational positions without examination provided such employees have met the education, knowledge and training requirements required by the Department of Administrative Services job classification.

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

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

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continued use of public-private partnerships.

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

(a) Notwithstanding the provisions of section 4b-91 and chapter 242, the [agency] department shall, when it determines appropriate, provide for a process of prequalification for private entities seeking to enter a public-private partnership. Any such process shall include public notice of the prequalification process and the requirements and the criteria the [agency] department will use in determining whether the private entity qualifies for prequalification. [Any agency that] If the department has determined that such a prequalification process is appropriate for the project, the department shall allow only prequalified private entities to be a proposer. The [agency] department may charge a reasonable application fee for prequalification.

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

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

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

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

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

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

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

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

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

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

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

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

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preserve the competitive nature of the procurement; and

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

(d) The [agency] department may pay a stipend to an unsuccessful proposer, in an amount and on the terms and conditions determined by the [agency] department as reasonable, if (1) the [agency] department cancels the procurement process less than thirty days prior to the date the bid or proposal is due, or (2) the unsuccessful proposer submits a proposal that is responsive and meets all the requirements established by the [agency] department for the [public-private partnership] project. The [agency] department may require the proposer to grant the [agency] department the right to use any work product contained in any unsuccessful proposal, or in the event of a cancelled procurement as set forth in this section, any work product developed prior to cancellation, including designs, processes, technologies and information. All conditions for a stipend shall be clearly set forth in the request for information, bid solicitation, request for proposal or request for qualifications.

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

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

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

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

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

(3) The terms of the financing, development, design, improvement, maintenance, operation and administration of the facility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) In the event the state elects to assume the responsibility and duties of a [partnership] project pursuant to subsection (a) of this section, the [agency] department may develop or operate the [public-private partnership] project, impose user fees, impose and collect lease payments for the use thereof and comply with any service contracts as if it were the contractor. Any revenue that is 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 contractor's obligations to secured parties, including the maintenance of reserves. Such liens shall be correspondingly reduced and, when paid off,

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released. Before any payments to, or for the benefit of, secured parties, the [agency] department may use revenue to pay current operation and maintenance costs of the qualifying project, including compensation to the [agency] department for its services in operating and maintaining the [public-private partnership] project. The right to receive such payment, if any, shall be considered just compensation for the project. The full faith and credit of the [agency] department shall not be pledged to secure any financing of the contractor by the election to take over such project. The assumption of the operation of the [partnership] project shall not obligate the [agency] department to pay any obligation of the contractor from sources other than revenue.

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

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