

PUBLIC-PRIVATE PARTNERSHIP AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ann Millner

House Sponsor: Jefferson Moss

LONG TITLE

Committee Note:

The Economic Development and Workforce Services Interim Committee recommended this bill.

Legislative Vote: 10 voting for 0 voting against 6 absent

General Description:

This bill modifies provisions relating to public-private partnerships.

Highlighted Provisions:

This bill:

- ▶ eliminates a repeal date for the Public-private Partnerships Act;
- ▶ eliminates a provision limiting the length of term of a contract with a public-private partnership facilitator;
- ▶ modifies provisions relating to the functions and responsibilities of the facilitator;
- ▶ allows the Governor's Office of Economic Opportunity to perform facilitator functions and responsibilities itself or to contract with another person to perform those functions and responsibilities;
- ▶ requires the Governor's Office of Economic Opportunity to provide an annual report to the Economic Development and Workforce Services Interim Committee on the facilitator's work;
- ▶ encourages government entities to use the services of the facilitator in considering public-private partnerships; and



28 ▶ makes technical changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **63I-2-263**, as last amended by Laws of Utah 2021, First Special Session, Chapter 4

36 **63N-13-302**, as enacted by Laws of Utah 2020, Chapter 446

37 **63N-13-303**, as last amended by Laws of Utah 2021, Chapter 414

38 **63N-13-304**, as enacted by Laws of Utah 2020, Chapter 446

39 **63N-13-305**, as enacted by Laws of Utah 2020, Chapter 446

40 **63N-13-306**, as enacted by Laws of Utah 2020, Chapter 446



42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **63I-2-263** is amended to read:

44 **63I-2-263. Repeal dates, Title 63A to Title 63N.**

45 ~~[(1) Section **63A-3-111** is repealed June 30, 2021.]~~

46 ~~[(2) Title 63C, Chapter 19, Higher Education Strategic Planning Commission is~~
47 ~~repealed July 1, 2021.]~~

48 ~~[(3)]~~ (1) Title 63C, Chapter 22, Digital Wellness, Citizenship, and Safe Technology
49 Commission is repealed July 1, 2023.

50 ~~[(4)]~~ (2) Section **63G-1-502** is repealed July 1, 2022.

51 ~~[(5)]~~ (3) The following sections regarding the World War II Memorial Commission are
52 repealed on July 1, 2022:

53 (a) Section **63G-1-801**;

54 (b) Section **63G-1-802**;

55 (c) Section **63G-1-803**; and

56 (d) Section **63G-1-804**.

57 ~~[(6)]~~ (4) Section **63H-7a-303** is repealed July 1, 2024.

58 ~~[(7) Subsection **63J-1-206**(3)(c), relating to coronavirus, is repealed July 1, 2021.]~~

59 ~~[(8)]~~ (5) Sections [63M-7-213](#) and [63M-7-213.5](#) are repealed on January 1, 2023.

60 ~~[(9)]~~ (6) Section [63M-7-217](#) is repealed on July 1, 2022.

61 ~~[(10) Title 63N, Chapter 13, Part 3, Facilitating Public-private Partnerships Act, is~~
62 ~~repealed January 1, 2024.]~~

63 ~~[(11) Title 63N, Chapter 15, COVID-19 Economic Recovery Programs, is repealed~~
64 ~~December 31, 2021.]~~

65 Section 2. Section **63N-13-302** is amended to read:

66 **63N-13-302. Definitions.**

67 As used in this part:

68 (1) "Facilitator" means:

69 (a) the office, if the office chooses to perform itself the functions and responsibilities
70 described in Section [63N-13-304](#); or

71 (b) a person engaged by the office to perform the functions and responsibilities
72 described in Section [63N-13-304](#), if the office chooses to have those functions and
73 responsibilities performed by a person other than the office.

74 (2) "Government entity" means:

75 (a) the state or any department, division, agency, or other instrumentality of the state;
76 or

77 (b) a political subdivision of the state.

78 (3) "Public-private partnership" means an arrangement or agreement between a
79 government entity and one or more private persons to fund and provide for a public need
80 through the development or operation of a public project in which the private person or persons
81 share with the government entity the responsibility or risk of developing, owning, maintaining,
82 financing, or operating the project.

83 Section 3. Section **63N-13-303** is amended to read:

84 **63N-13-303. Contract with facilitator.**

85 (1) ~~[Within legislative appropriations,]~~ If the office chooses to have the functions and
86 responsibilities described in Section [63N-13-304](#) performed by a person other than the office,
87 the office shall, within legislative appropriations, enter into a contract with a nonprofit entity or
88 government entity [to act as a facilitator. (2) The office shall use], using a request for
89 proposals process under Title 63G, Chapter 6a, Utah Procurement Code, [to select a qualified

90 ~~person]~~ to act as facilitator.

91 ~~[(3) The term of a contract under Subsection (1) may not exceed three years.]~~

92 ~~[(4) (2)~~ Except as provided in Subsection 63H-1-202(9), the office shall ensure that
93 ~~[the]~~ a contract with a person performing the functions and responsibilities of the facilitator
94 includes a conflict-of-interest provision prohibiting the facilitator, or a principal, officer, or
95 employee of the facilitator, from receiving a direct or indirect financial benefit from any
96 public-private partnership that results from the facilitator's work under the contract.

97 Section 4. Section 63N-13-304 is amended to read:

98 **63N-13-304. Functions and responsibilities of facilitator.**

99 ~~[In a contract under Section 63N-13-303, the office shall require a facilitator to:]~~

100 (1) A facilitator shall:

101 ~~[(1)]~~ (a) be a single point of contact and information on public-private partnerships in
102 the state for:

103 ~~[(a)]~~ (i) government entities exploring the possibility of filling a public need through a
104 public-private partnership; and

105 ~~[(b)]~~ (ii) private persons exploring investment opportunities in a public project in the
106 state through a public-private partnership;

107 ~~[(2)]~~ (b) work throughout the state to identify government entities that may have an
108 interest in seeking to fill a public need through a public-private partnership;

109 ~~[(3)]~~ (c) work to identify private persons who may have an interest in investment
110 opportunities in public projects in the state through a public-private partnership;

111 ~~[(4)]~~ (d) facilitate the matching of government entities seeking to fill a public need
112 through a public-private partnership with private persons seeking investment opportunities in
113 public projects through a public-private partnership;

114 ~~[(5)]~~ (e) facilitate and assist with the establishment of public-private partnerships for
115 government entities who request the facilitator's assistance in establishing a public-private
116 partnership; ~~[and]~~

117 (f) provide a website with information:

118 (i) about the process for pursuing, developing, and implementing a public-private
119 partnership in the state; and

120 (ii) to help government entities and persons seeking investment opportunities through

121 public-private partnerships in the state to understand available public-private partnership
 122 opportunities; and

123 (g) through promotional, informational, and other activities, work to help move the
 124 state to the forefront throughout the country in the area of private participation in public
 125 infrastructure development through public-private partnerships.

126 (2) If the office chooses to have the functions and responsibilities described in
 127 Subsection (1) performed by a person other than the office, the office shall include in a contract
 128 with that person provisions requiring the person to perform the functions and responsibilities
 129 described in Subsection (1).

130 ~~[(6)]~~ (3) The office may make recommendations for the Legislature to consider ~~[at the~~
 131 ~~2021 legislative general session]~~ relating to public-private partnerships:

132 (a) to enhance the statutory framework for the establishment of public-private
 133 partnerships for public infrastructure projects; and

134 (b) with the goal of moving the state to the forefront throughout the country in the area
 135 of private participation in public infrastructure development through public-private
 136 partnerships.

137 Section 5. Section **63N-13-305** is amended to read:

138 **63N-13-305. Office oversight over contract performance of facilitator -- Office**
 139 **reports to Legislature.**

140 (1) The office shall monitor and oversee a facilitator's performance under a contract
 141 under Section **63N-13-303** to ensure that the facilitator is fulfilling the requirements of Section
 142 **63N-13-304.**

143 (2) Before November 15 of each year, the office shall provide an annual report to the
 144 Economic Development and Workforce Services Interim Committee of the facilitator's
 145 activities under this part.

146 Section 6. Section **63N-13-306** is amended to read:

147 **63N-13-306. Limits on application of this part.**

148 (1) Nothing in this part:

149 ~~[(1)]~~ (a) requires a government entity to use the facilitator to explore the possibility of
 150 filling a public need through a public-private partnership; or

151 ~~[(2)]~~ (b) limits the ability of a government entity to directly:

152 [~~(a)~~] (i) solicit a public-private partnership; or
153 [~~(b)~~] (ii) respond to a private person exploring an investment opportunity in a public
154 project through a public-private partnership.

155 (2) A government entity anticipating the possibility of entering a public-private
156 partnership is encouraged to consult with and take advantage of the expertise of the facilitator
157 as the government entity determines:

- 158 (a) whether to enter the public-private partnership; and
159 (b) the best way to structure the public-private partnership.