SENATE BILL 22-130

SENATE SPONSORSHIP
Rankin and Hansen,

HOUSE SPONSORSHIP
(None),

Senate Committees
Business, Labor, & Technology

A BILL FOR AN ACT

CONCERNING THE AUTHORITY FOR STATE PUBLIC ENTITIES TO ENTER
INTO PUBLIC-PRIVATE PARTNERSHIPS FOR PUBLIC PROJECTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill authorizes a state public entity to enter into an agreement with a private partner to form a public-private partnership to develop or operate a public project. "State public entity" includes the executive, legislative, and judicial branches of state government, but excludes the department of transportation and any institution of higher education. The bill does not impact the authority of the department of transportation or
any institution of higher education to enter into a public-private partnership or similar agreement as otherwise authorized by law.

The bill specifies the project delivery methods or agreements that a state public entity may use to develop or operate a public project and that the financing of a public project may be in the amounts and upon the terms and conditions determined by the parties to the agreement. The private partner and state public entity may use any money that may be available for the public project and may enter into specified financing agreements.

The executive director of the department of personnel or the executive director's designee (executive director) is required to oversee any public-private partnership undertaken pursuant to the bill by a state public entity that is in the executive branch of state government. The executive director is also required to ensure that each public-private partnership undertaken by a state public entity that is in the executive branch of state government is in the best interest of the taxpayers of the state.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add article 94 to title 24 as follows:

ARTICLE 94
Public-private Partnerships for State Public Entities

24-94-101. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT IT IS THE INTENT OF THIS ARTICLE 94 TO ENCOURAGE PUBLIC-PRIVATE PARTNERSHIPS TO:
(a) PROMOTE THE DEVELOPMENT AND OPERATION OF QUALITY PUBLIC PROJECTS THAT PROVIDE ECONOMIC AND SOCIAL VALUE;
(b) PROVIDE A WELL-DEFINED MECHANISM TO FACILITATE COLLABORATION BETWEEN PUBLIC AND PRIVATE ENTITIES IN INFRASTRUCTURE DEVELOPMENT AND OPERATION AND TO ENABLE INCREASED INVESTMENT OF PRIVATE CAPITAL;
(c) BRING INNOVATIVE THINKING TO PUBLIC PROJECTS;
(d) PROVIDE FLEXIBILITY IN CONTRACTING FOR AND DELIVERING
PUBLIC PROJECTS;

(e) REDUCE TOTAL LIFE-CYCLE COSTS OF PUBLIC PROJECTS; AND

(f) ALLOW FOR COST AND RISK SHARING BETWEEN PUBLIC AND PRIVATE PARTNERS.

24-94-102. Definitions. As used in this Article 94, unless the context otherwise requires:

(1) "COMPREHENSIVE AGREEMENT" MEANS AN AGREEMENT BETWEEN ONE OR MORE PRIVATE PARTNERS AND ONE OR MORE STATE PUBLIC ENTITIES THAT CONTRACTUALLY PROVIDES FOR THE RESPONSIBILITIES OF ALL PARTIES IN DEVELOPING OR OPERATING A PUBLIC PROJECT IN A PUBLIC-PRIVATE PARTNERSHIP.

(2) "CONCESSION" MEANS ANY LEASE, LICENSE, FRANCHISE, EASEMENT, OR OTHER BINDING AGREEMENT TRANSFERRING RIGHTS FOR THE USE OR CONTROL, IN WHOLE OR IN PART, OF A PUBLIC PROJECT BY A STATE PUBLIC ENTITY FOR A DEFINITE TERM DURING WHICH THE PRIVATE PARTNER WILL PROVIDE SERVICES IN RETURN FOR THE RIGHT TO RECEIVE ALL OR A PORTION OF THE REVENUE OF THE PUBLIC PROJECT.

(3) "DEVELOP" MEANS TO PLAN, DESIGN, ESTABLISH, FINANCE, LEASE, ACQUIRE, INSTALL, CONSTRUCT, OR EXPAND A PUBLIC PROJECT.

(4) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL OR THE EXECUTIVE DIRECTOR'S DESIGNEE.

(5) "OPERATE" MEANS TO FINANCE, MAINTAIN, IMPROVE, EQUIP, MODIFY, REPAIR, OR ADMINISTER A PUBLIC PROJECT.

(6) "PRIVATE PARTNER" MEANS ANY NATURAL PERSON, CORPORATION, GENERAL PARTNERSHIP, LIMITED LIABILITY COMPANY, LIMITED PARTNERSHIP, JOINT VENTURE, BUSINESS TRUST, PUBLIC BENEFIT
(7) "PUBLIC-PRIVATE PARTNERSHIP" MEANS AN ARRANGEMENT BETWEEN ONE OR MORE STATE PUBLIC ENTITIES AND ONE OR MORE PRIVATE PARTNERS THAT ALLOWS FOR:

(a) ACCEPTANCE OF A PRIVATE CONTRIBUTION TO A PUBLIC PROJECT OR SERVICE IN EXCHANGE FOR A CONCESSION CONCERNING THE PUBLIC PROJECT;

(b) SHARING OF RESOURCES AND THE MEANS OF PROVIDING A PUBLIC PROJECT; OR

(c) COOPERATION IN RESEARCHING, DEVELOPING, AND IMPLEMENTING A PUBLIC PROJECT.

(8) "PUBLIC PROJECT" MEANS ANY CONSTRUCTION, ALTERATION, REPAIR, DEMOLITION, OR IMPROVEMENT OF ANY LAND, BUILDING, STRUCTURE, FACILITY, ROAD, BRIDGE, OR OTHER PUBLIC IMPROVEMENT SUITABLE FOR AND INTENDED FOR USE IN THE PROMOTION OF THE PUBLIC HEALTH, WELFARE, OR SAFETY AND ANY MAINTENANCE PROGRAMS FOR THE UPKEEP OF SUCH PROJECTS. "PUBLIC PROJECT" INCLUDES BUT IS NOT LIMITED TO CIVIC OR EDUCATION FACILITIES; SURFACE TRANSPORTATION FACILITIES SUCH AS ROADS, BRIDGES, PUBLIC TRANSIT SYSTEMS, AIRPORTS, AND INTERMODAL SYSTEMS; CULTURAL OR RECREATIONAL FACILITIES; MEDICAL FACILITIES; UTILITY FACILITIES; AND TELECOMMUNICATIONS FACILITIES.

(9) "REVENUE" MEANS ALL MONEY INCLUDING INCOME; EARNINGS; DEDICATED TAX REVENUES; FEES; LEASE PAYMENTS; FEDERAL, STATE, AND LOCAL APPROPRIATIONS OR THE APPROPRIATIONS OF OTHER FUNDS AVAILABLE TO ANY POLITICAL SUBDIVISION, AUTHORITY, OR
INSTRUMENTALITY THEREOF; BOND PROCEEDS; AND EQUITY INVESTMENTS,
SERVICE PAYMENTS, OR ANY COMBINATIONS THEREOF ARISING OUT OF OR
IN CONNECTION WITH SUPPORTING THE DEVELOPMENT OR OPERATION OF
A PUBLIC PROJECT, INCLUDING MONEY RECEIVED AS GRANTS OR
OTHERWISE FROM THE UNITED STATES, FROM ANY STATE PUBLIC ENTITY,
OR FROM ANY STATE AGENCY OR INSTRUMENTALITY OF THE FOREGOING
IN AID OF A PUBLIC PROJECT.

(10) "STATE PUBLIC ENTITY" MEANS ANY DEPARTMENT,
COMMISSION, COUNCIL, BOARD, BUREAU, COMMITTEE, AGENCY, OR OTHER
GOVERNMENTAL UNIT OF THE EXECUTIVE, LEGISLATIVE, OR JUDICIAL
BRANCH OF STATE GOVERNMENT; EXCEPT THAT "STATE PUBLIC ENTITY"
DOES NOT INCLUDE THE DEPARTMENT OF TRANSPORTATION OR ANY STATE
INSTITUTION OF HIGHER EDUCATION.

24-94-103. Public-private partnerships - oversight of state
public entities in the executive branch of state government. (1) The
EXECUTIVE DIRECTOR SHALL:

(a) DEVELOP A PROCESS BY WHICH A STATE PUBLIC ENTITY THAT
IS IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT MAY REQUEST
APPROVAL TO ENTER INTO WORKING AGREEMENTS, COORDINATION
AGREEMENTS, OR SIMILAR IMPLEMENTATION AGREEMENTS WITH A
PRIVATE PARTNER TO DEVELOP OR OPERATE A PUBLIC PROJECT PURSUANT
TO SECTION 24-94-104; AND

(b) OVERSEE ANY PUBLIC-PRIVATE PARTNERSHIP UNDERTAKEN
PURSUANT TO THIS ARTICLE 94 BY A STATE PUBLIC ENTITY THAT IS IN THE
EXECUTIVE BRANCH OF STATE GOVERNMENT. THE OVERSIGHT MUST BE IN
A FORM AND MANNER TO BE DETERMINED BY THE EXECUTIVE DIRECTOR
AND MUST BE SUFFICIENT TO ENSURE THAT EACH PUBLIC-PRIVATE
PARTNERSHIP UNDERTAKEN BY A STATE PUBLIC ENTITY THAT IS IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT IS IN THE BEST INTEREST OF THE TAXPAYERS OF THE STATE.

(2) THE JUDICIAL AND LEGISLATIVE BRANCHES OF STATE GOVERNMENT MAY CONSULT WITH THE EXECUTIVE DIRECTOR IN CONNECTION WITH ANY ASPECT OF A PUBLIC-PRIVATE PARTNERSHIP UNDERTAKEN BY SUCH BRANCH OF STATE GOVERNMENT PURSUANT TO THIS ARTICLE 94.

24-94-104. State public entity agreements - public-private partnership. (1) A STATE PUBLIC ENTITY MAY, EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER STATE PUBLIC ENTITY, ENTER INTO WORKING AGREEMENTS, COORDINATION AGREEMENTS, OR SIMILAR IMPLEMENTATION AGREEMENTS WITH A PRIVATE PARTNER TO DEVELOP OR OPERATE A PUBLIC PROJECT SUBJECT TO THE REQUIREMENTS OF THIS ARTICLE 94. ANY STATE PUBLIC ENTITY THAT IS IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT MUST OBTAIN APPROVAL FROM THE EXECUTIVE DIRECTOR PURSUANT TO SECTION 24-94-103 (1)(a) BEFORE PROCEEDING WITH ANY AGREEMENT TO DEVELOP OR OPERATE A PUBLIC PROJECT PURSUANT TO THIS SECTION.

(2) ANY AGREEMENT THAT A STATE PUBLIC ENTITY ENTERS INTO PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL COMPLY WITH APPLICABLE STATE LAWS, INCLUDING APPLICABLE STATE PROCUREMENT LAWS.

(3) NOTHING IN THIS ARTICLE 94 SHALL BE CONSTRUED TO PROHIBIT, LIMIT, OR OTHERWISE MODIFY THE AUTHORITY OF THE DEPARTMENT OF TRANSPORTATION OR ANY INSTITUTION OF HIGHER EDUCATION TO ENTER INTO A PUBLIC-PRIVATE PARTNERSHIP OR SIMILAR.
AGREEMENT AS AUTHORIZED BY ANY OTHER PROVISION OF LAW.

24-94-105. Project delivery methods. Subject to the
requirements of this article 94, a state public entity may use any
project delivery method or agreement or combination of
methods or agreements to develop or operate a public project
including but not limited to a design-build agreement; a
design-build-maintain agreement; a
design-build-finance-operate agreement; a
design-build-operate-maintain agreement; a
design-build-finance-operate-maintain agreement; or a
concession providing for the private partner to design, build,
operate, maintain, manage, or lease a qualifying project.

24-94-106. Public-private partnership - public project
financing. (1) The financing of a public project may be in the
amounts and upon the terms and conditions determined by the
parties to the interim or comprehensive agreement. The private
partner and state public entity may use any revenue that may be
available to them for the purposes of this article 94 and may:

(a) Enter into leases, concessions, grant, and loan
agreements;

(b) Access any appropriated state money; and

(c) Secure any other financing with a pledge of, security
interest in, or lien on any or all of its property, including all of
its property interests in the public project.

(2) A state public entity may take any action to obtain
federal or local assistance or assistance from another state
public entity for a public project and may enter into contracts
REQUIRED TO RECEIVE FEDERAL ASSISTANCE. TO THE EXTENT ALLOWED
BY LAW, FEDERAL, STATE, AND LOCAL MONEY MAY BE COMBINED WITH
ANY PRIVATE SECTOR MONEY FOR THE PURPOSE OF A PUBLIC PROJECT.

SECTION 2. Act subject to petition - effective date. This act
takes effect at 12:01 a.m. on the day following the expiration of the
ninety-day period after final adjournment of the general assembly; except
that, if a referendum petition is filed pursuant to section 1 (3) of article V
of the state constitution against this act or an item, section, or part of this
act within such period, then the act, item, section, or part will not take
effect unless approved by the people at the general election to be held in
November 2022 and, in such case, will take effect on the date of the
official declaration of the vote thereon by the governor.