

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0759.02 Nicole Myers x4326

SENATE BILL 22-130

SENATE SPONSORSHIP

Rankin and Hansen,

HOUSE SPONSORSHIP

(None),

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 CONCERNING THE AUTHORITY FOR STATE PUBLIC ENTITIES TO ENTER
102 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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

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.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 94 to title
3 24 as follows:

4 **ARTICLE 94**

5 **Public-private Partnerships for State Public Entities**

6 **24-94-101. Legislative declaration.** (1) THE GENERAL ASSEMBLY
7 HEREBY FINDS AND DECLARES THAT IT IS THE INTENT OF THIS ARTICLE 94
8 TO ENCOURAGE PUBLIC-PRIVATE PARTNERSHIPS TO:

9 (a) PROMOTE THE DEVELOPMENT AND OPERATION OF QUALITY
10 PUBLIC PROJECTS THAT PROVIDE ECONOMIC AND SOCIAL VALUE;

11 (b) PROVIDE A WELL-DEFINED MECHANISM TO FACILITATE
12 COLLABORATION BETWEEN PUBLIC AND PRIVATE ENTITIES IN
13 INFRASTRUCTURE DEVELOPMENT AND OPERATION AND TO ENABLE
14 INCREASED INVESTMENT OF PRIVATE CAPITAL;

15 (c) BRING INNOVATIVE THINKING TO PUBLIC PROJECTS;

16 (d) PROVIDE FLEXIBILITY IN CONTRACTING FOR AND DELIVERING

1 PUBLIC PROJECTS;

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

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

5 **24-94-102. Definitions.** AS USED IN THIS ARTICLE 94, UNLESS THE
6 CONTEXT OTHERWISE REQUIRES:

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

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

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

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

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

25 (6) "PRIVATE PARTNER" MEANS ANY NATURAL PERSON,
26 CORPORATION, GENERAL PARTNERSHIP, LIMITED LIABILITY COMPANY,
27 LIMITED PARTNERSHIP, JOINT VENTURE, BUSINESS TRUST, PUBLIC BENEFIT

1 CORPORATION, NONPROFIT ENTITY, OTHER PRIVATE BUSINESS ENTITY, OR
2 COMBINATION THEREOF.

3 (7) "PUBLIC-PRIVATE PARTNERSHIP" MEANS AN ARRANGEMENT
4 BETWEEN ONE OR MORE STATE PUBLIC ENTITIES AND ONE OR MORE
5 PRIVATE PARTNERS THAT ALLOWS FOR:

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

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

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

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

24 (9) "REVENUE" MEANS ALL MONEY INCLUDING INCOME; EARNINGS;
25 DEDICATED TAX REVENUES; FEES; LEASE PAYMENTS; FEDERAL, STATE,
26 AND LOCAL APPROPRIATIONS OR THE APPROPRIATIONS OF OTHER FUNDS
27 AVAILABLE TO ANY POLITICAL SUBDIVISION, AUTHORITY, OR

1 INSTRUMENTALITY THEREOF; BOND PROCEEDS; AND EQUITY INVESTMENTS,
2 SERVICE PAYMENTS, OR ANY COMBINATIONS THEREOF ARISING OUT OF OR
3 IN CONNECTION WITH SUPPORTING THE DEVELOPMENT OR OPERATION OF
4 A PUBLIC PROJECT, INCLUDING MONEY RECEIVED AS GRANTS OR
5 OTHERWISE FROM THE UNITED STATES, FROM ANY STATE PUBLIC ENTITY,
6 OR FROM ANY STATE AGENCY OR INSTRUMENTALITY OF THE FOREGOING
7 IN AID OF A PUBLIC PROJECT.

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

14 **24-94-103. Public-private partnerships - oversight of state**
15 **public entities in the executive branch of state government.** (1) THE
16 EXECUTIVE DIRECTOR SHALL:

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

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

1 PARTNERSHIP UNDERTAKEN BY A STATE PUBLIC ENTITY THAT IS IN THE
2 EXECUTIVE BRANCH OF STATE GOVERNMENT IS IN THE BEST INTEREST OF
3 THE TAXPAYERS OF THE STATE.

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

9 **24-94-104. State public entity agreements - public-private**
10 **partnership.** (1) A STATE PUBLIC ENTITY MAY, EITHER SEPARATELY OR
11 IN COMBINATION WITH ANY OTHER STATE PUBLIC ENTITY, ENTER INTO
12 WORKING AGREEMENTS, COORDINATION AGREEMENTS, OR SIMILAR
13 IMPLEMENTATION AGREEMENTS WITH A PRIVATE PARTNER TO DEVELOP OR
14 OPERATE A PUBLIC PROJECT SUBJECT TO THE REQUIREMENTS OF THIS
15 ARTICLE 94. ANY STATE PUBLIC ENTITY THAT IS IN THE EXECUTIVE
16 BRANCH OF STATE GOVERNMENT MUST OBTAIN APPROVAL FROM THE
17 EXECUTIVE DIRECTOR PURSUANT TO SECTION 24-94-103 (1)(a) BEFORE
18 PROCEEDING WITH ANY AGREEMENT TO DEVELOP OR OPERATE A PUBLIC
19 PROJECT PURSUANT TO THIS SECTION.

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

24 (3) NOTHING IN THIS ARTICLE 94 SHALL BE CONSTRUED TO
25 PROHIBIT, LIMIT, OR OTHERWISE MODIFY THE AUTHORITY OF THE
26 DEPARTMENT OF TRANSPORTATION OR ANY INSTITUTION OF HIGHER
27 EDUCATION TO ENTER INTO A PUBLIC-PRIVATE PARTNERSHIP OR SIMILAR

1 AGREEMENT AS AUTHORIZED BY ANY OTHER PROVISION OF LAW.

2 **24-94-105. Project delivery methods.** SUBJECT TO THE
3 REQUIREMENTS OF THIS ARTICLE 94, A STATE PUBLIC ENTITY MAY USE ANY
4 PROJECT DELIVERY METHOD OR AGREEMENT OR COMBINATION OF
5 METHODS OR AGREEMENTS TO DEVELOP OR OPERATE A PUBLIC PROJECT
6 INCLUDING BUT NOT LIMITED TO A DESIGN-BUILD AGREEMENT; A
7 DESIGN - BUILD - MAINTAIN AGREEMENT; A
8 DESIGN-BUILD-FINANCE-OPERATE AGREEMENT; A
9 DESIGN-BUILD-OPERATE-MAINTAIN AGREEMENT; A
10 DESIGN-BUILD-FINANCE-OPERATE-MAINTAIN AGREEMENT; OR A
11 CONCESSION PROVIDING FOR THE PRIVATE PARTNER TO DESIGN, BUILD,
12 OPERATE, MAINTAIN, MANAGE, OR LEASE A QUALIFYING PROJECT.

13 **24-94-106. Public-private partnership - public project**
14 **financing.** (1) THE FINANCING OF A PUBLIC PROJECT MAY BE IN THE
15 AMOUNTS AND UPON THE TERMS AND CONDITIONS DETERMINED BY THE
16 PARTIES TO THE INTERIM OR COMPREHENSIVE AGREEMENT. THE PRIVATE
17 PARTNER AND STATE PUBLIC ENTITY MAY USE ANY REVENUE THAT MAY BE
18 AVAILABLE TO THEM FOR THE PURPOSES OF THIS ARTICLE 94 AND MAY:

19 (a) ENTER INTO LEASES, CONCESSIONS, GRANT, AND LOAN
20 AGREEMENTS;

21 (b) ACCESS ANY APPROPRIATED STATE MONEY; AND

22 (c) SECURE ANY OTHER FINANCING WITH A PLEDGE OF, SECURITY
23 INTEREST IN, OR LIEN ON ANY OR ALL OF ITS PROPERTY, INCLUDING ALL OF
24 ITS PROPERTY INTERESTS IN THE PUBLIC PROJECT.

25 (2) A STATE PUBLIC ENTITY MAY TAKE ANY ACTION TO OBTAIN
26 FEDERAL OR LOCAL ASSISTANCE OR ASSISTANCE FROM ANOTHER STATE
27 PUBLIC ENTITY FOR A PUBLIC PROJECT AND MAY ENTER INTO CONTRACTS

1 REQUIRED TO RECEIVE FEDERAL ASSISTANCE. TO THE EXTENT ALLOWED
2 BY LAW, FEDERAL, STATE, AND LOCAL MONEY MAY BE COMBINED WITH
3 ANY PRIVATE SECTOR MONEY FOR THE PURPOSE OF A PUBLIC PROJECT.

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