AN ACT ENHANCING 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 Section 4-255 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2019):

(a) As used in this section and sections 4-256 to 4-263, inclusive, as amended by 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;

(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 and a private entity by contracting for the performance of any combination of specified 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 and a private entity to establish a public-private partnership;

(5) "Project" means a project that an agency 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; and

(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.

(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 may establish one or more public-private partnerships and execute a partnership agreement for a project in accordance with this section and sections 4-256 to 4-263,
inclusive, as amended by this act. A partnership agreement may not be established for the operation or maintenance of a [facility] project unless such agreement also provides for the financing and development of such [facility] project.

[(c) The design, development, operation or maintenance of the following new or existing project types are eligible for consideration as a public-private partnership if approved as a project in accordance with section 4-256:

(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 July 1, 2019):

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

(b) In determining whether a project is suitable for a public-private partnership agreement, the agency 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, and this section, [and sections 4-257 to 4-263, inclusive,] taking into consideration the following, when applicable:

(1) The essential characteristics of the proposed [facility] project;

(2) The [projected] anticipated demand for use of the [facility] project 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;

(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; and

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

(c) An agency shall not include a project solely based upon the amount of potential revenue generated by such project.
(d) Any agency submitting a project in accordance with subsection (a) of this section 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. Said committees shall hold public hearings on any such submission.

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

(f) On or before January [15, 2013] 1, 2020, and annually thereafter, the Governor 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. Section 4-259 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2019):

(a) Any partnership agreement executed in accordance with the provisions of sections 4-255 to 4-263, inclusive, as amended by 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] (1) A complete description of the [facility] project to be developed and the functions to be performed;

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

[[4] (3) 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] project;
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;

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] project, 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;

The furnishing of an annual independent audit report to the agency covering all aspects of the partnership agreement;

Performance and payment bonds or other security deemed suitable by the agency;

One or more policies of public liability insurance in such amounts determined by the agency 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;

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

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

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

Any other provision determined to be appropriate by the agency.

(b) [No partnership agreement shall contain any] Any proposed
noncompete provisions [limiting] shall not limit 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, unless the partnership agreement provides that such contractor is liable under such agreement.

Sec. 4. Section 4-261 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2019):

(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 shall provide notice of which requirement applies prior to soliciting bids or proposals for such public-private partnership.

(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 shall comply with the provisions of section 4e-16, provided, notwithstanding the provisions of subsection (a) of section 4e-16, any agency that 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, shall be subject to the requirements of section]
4e-16 regardless of whether such services are currently privatized.]

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**Statement of Purpose:**
To implement the Governor's budget recommendations.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]