



General Assembly

January Session, 2019

**Amendment**

LCO No. 7446



Offered by:

SEN. FASANO, 34<sup>th</sup> Dist.  
SEN. WITKOS, 8<sup>th</sup> Dist.  
SEN. BERTHEL, 32<sup>nd</sup> Dist.

SEN. BIZZARRO, 6<sup>th</sup> Dist.  
SEN. KELLY, 21<sup>st</sup> Dist.  
SEN. HWANG, 28<sup>th</sup> Dist.

To: Subst. Senate Bill No. 878

File No. 722

Cal. No. 333

**"AN ACT ENHANCING PUBLIC-PRIVATE PARTNERSHIPS."**

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. Section 4-255 of the general statutes is repealed and the  
4 following is substituted in lieu thereof (*Effective July 1, 2019*):

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

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

11 (2) "Private entity" means any individual, corporation, general  
12 partnership, limited partnership, limited liability partnership, joint

13 venture, nonprofit organization or other business entity;

14 (3) "Public-private partnership" means the relationship established  
15 between a state agency and a private entity by contracting for the  
16 performance of any combination of specified functions or  
17 responsibilities to design, develop, finance, construct, operate or  
18 maintain [one or more state facilities where the agency has estimated  
19 that the revenue generated by such facility or facilities, in combination  
20 with other previously identified funding sources, including any  
21 appropriated funds, will be sufficient to fund the cost to develop,  
22 maintain and operate such facility or facilities, provided state support  
23 of a partnership agreement shall not exceed twenty-five per cent of the  
24 cost of the] a project;

25 (4) "Partnership agreement" means an agreement executed between  
26 a state agency and a private entity to establish a public-private  
27 partnership;

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

30 (6) "Contractor" means a private entity that has entered into a  
31 public-private partnership agreement with a state agency; and

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

35 [(8)] (7) "Proposer" means a private entity submitting a competitive  
36 bid in response to solicitation or a proposal in response to a request for  
37 proposals for an approved project for consideration.

38 (b) Notwithstanding the provisions of section 4b-51, once the project  
39 is approved by the Governor in accordance with section 4-256, as  
40 amended by this act, any state agency may establish one or more  
41 public-private partnerships and execute a partnership agreement for a  
42 project in accordance with this section and sections 4-256 to 4-263,

43 inclusive, as amended by this act. A partnership agreement may not be  
44 established for the operation or maintenance of a [facility] project  
45 unless such agreement also provides for the financing and  
46 development of such [facility] project.

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

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

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

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

56 Sec. 2. Section 4-256 of the general statutes is repealed and the  
57 following is substituted in lieu thereof (*Effective July 1, 2019*):

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

70 (b) In determining whether a project is suitable for a public-private  
71 partnership agreement, the agency shall conduct an analysis of the  
72 feasibility, desirability and the convenience to the public of the project

73 and whether the project furthers the public policy goals of section 4-  
74 255, as amended by this act, and this section, [and sections 4-257 to 4-  
75 263, inclusive,] taking into consideration the following, when  
76 applicable:

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

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

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

84 (4) The benefit to clients of the agency and the public as a whole;

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

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

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

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

95 (9) The impact to the state's finances of undertaking the project by  
96 the agency; and

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

99 (c) An agency shall not include a project solely based upon the  
100 amount of potential revenue generated by such project.

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

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

110 (f) On or before January [15, 2013] 1, 2020, and annually thereafter,  
111 the Governor shall report, in accordance with the provisions of section  
112 11-4a, to the General Assembly concerning the status of the public-  
113 private partnerships established under this section.

114 Sec. 3. Section 4-259 of the general statutes is repealed and the  
115 following is substituted in lieu thereof (*Effective July 1, 2019*):

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

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

122 [(2)] (1) A complete description of the [facility] project to be  
123 developed and the functions to be performed;

124 [(3)] (2) The terms of the financing, development, design,  
125 improvement, maintenance, operation and administration of the  
126 [facility] project;

127 [(4)] (3) The rights the state, the contractor, or both, have, if any, in  
128 revenue from the financing, development, design, improvement,  
129 maintenance, operation or administration of the [facility] project;

130        [(5)] (4) The minimum quality standards applicable to the project for  
131 development, design, improvement, maintenance, operation or  
132 administration, [of the facility,] including performance criteria,  
133 incentives and disincentives;

134        [(6)] (5) The compensation of the contractor, including the extent to  
135 which and the terms upon which a contractor may charge fees to  
136 individuals and entities for the use of the [facility] project, but in no  
137 event shall such fee extend to the imposition of tolls on the highways  
138 of this state unless such tolls are specifically approved by the General  
139 Assembly;

140        [(7)] (6) The furnishing of an annual independent audit report to the  
141 agency covering all aspects of the partnership agreement;

142        [(8)] (7) Performance and payment bonds or other security deemed  
143 suitable by the agency;

144        [(9)] (8) One or more policies of public liability insurance in such  
145 amounts determined by the agency to ensure coverage of tort liability  
146 for the public and employees of the contractor and to provide for the  
147 continued operation of the partnership project;

148        [(10)] (9) A reverter of the project to the state upon the conclusion or  
149 termination of the partnership agreement;

150        [(11)] (10) The rights and remedies available to the agency for a  
151 material breach of the partnership agreement by the contractor or  
152 private entity or if there is a material default;

153        [(12)] (11) Identification of funding sources to be used to fully fund  
154 the capital, operation, maintenance or other expenses under the  
155 agreement; and

156        [(13)] (12) Any other provision determined to be appropriate by the  
157 agency.

158        (b) [No partnership agreement shall contain any] Any proposed

159 noncompete provisions [limiting] shall not limit the ability of the state  
160 to perform its functions.

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

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

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

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

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

176 (b) Each public-private partnership project shall comply with: (1)  
177 The state's environmental policy requirements as set forth in sections  
178 22a-1 and 22a-1a, (2) the requirements of the set-aside program for  
179 small contractors as set forth in section 4a-60g, and (3) any applicable  
180 permitting or inspection requirements for projects of a similar type,  
181 scope and size as set forth in the general statutes or the local  
182 ordinances of the municipality where the project is to be located.

183 [(c) Any agency that is subject to section 4e-16 shall comply with the  
184 provisions of section 4e-16, provided, notwithstanding the provisions  
185 of subsection (a) of section 4e-16, any agency that enters into a  
186 partnership agreement concerning the operations or maintenance of a  
187 state facility that meets the definition of a privatization contract, as  
188 defined in section 4e-1, shall be subject to the requirements of section

189 4e-16 regardless of whether such services are currently privatized.]"

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2019</i>	4-255
Sec. 2	<i>July 1, 2019</i>	4-256
Sec. 3	<i>July 1, 2019</i>	4-259
Sec. 4	<i>July 1, 2019</i>	4-261