



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: dbedt.hawaii.gov

Telephone: (808) 586-2355
Fax: (808) 586-2377

Statement of
LUIS P. SALAVERIA
Director
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON FINANCE

Friday, April 1, 2016
11:00 A.M.
State Capitol, Room 308

in consideration of
SB 3101, SD1
RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

Chair Luke, Vice Chair Nishimoto, and Members of the Committee.

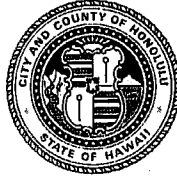
The Department of Business, Economic Development & Tourism (DBEDT) supports the intent and offers comments on SB3101, SD1 which would require DBEDT to conduct a study on the feasibility of establishing a public-private partnership resource agency within DBEDT for all state departments, divisions, and agencies to utilize. DBEDT supports the overall intent of this bill, but would like to provide the following comments:

- Public-private partnerships are an effective strategy for economic development.
- Hawaii has been implementing public-private partnerships for several industries including tourism, film, agriculture, energy, and innovation.
- New economic development theory indicates that long term economic growth is heavily dependent on the organization of production.
- Harvard Business School has defined cluster development as an effective strategy for economic development. A cluster is a geographic concentrations of industries related by knowledge, skills, inputs, demand, and/or other linkages (Delgado, Porter 2014).
- Public-private partnerships could be the core or leading organization for cluster development.
- DBEDT would need to hire a research firm to collect data using both qualitative and quantitative research methods. We estimate this cost to be \$150,000.

Thank you for the opportunity to provide the above comments.

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 110 * HONOLULU, HAWAII 96813
PHONE: (808) 768-5193 * FAX: (808) 768-5105 * INTERNET: www.honolulu.gov

KIRK CALDWELL
MAYOR



DONNA Y. L. LEONG
CORPORATION COUNSEL
PAUL S. AOKI
FIRST DEPUTY CORPORATION COUNSEL

March 31, 2016

The Honorable Sylvia Luke, Chair
and Members of the Committee on Finance
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke and Committee Members:

Re: Testimony in Support of Senate Bill No. 3101, SD1
Hearing: Friday, April 1, 2016, 11:00 a.m., Room 308

The Corporation Counsel of the City and County of Honolulu ("City") hereby submits its testimony in support of S.B. 3101, SD1, which requires the State Department of Business, Economic Development & Tourism to study the feasibility of establishing a public-private partnership resource agency for various State departments and agencies to utilize. The City believes such a study would also be of interest to and may benefit the City and other counties and agencies which face challenges similar to the State in pursuing public-private partnership endeavors.

Much like the State, the City seeks creative mechanisms to provide its core City services as it confronts increasing demands on limited City financial, infrastructure and personnel resources. While the City has encountered unique opportunities for possible partnerships with private enterprises to develop and engage in mutually beneficial projects in more efficient, expeditious, economical and flexible ways than what have been the traditional ways of pursuing projects, the City has found that there is a need to explore a comprehensive business approach and legal structure and process to accomplish these types of public-private partnerships. Government agencies, the public, and the private sector will benefit by exploring options and alternatives to the present methods currently utilized by agencies, including consideration of methods undertaken by other jurisdictions. Thus, the need for a well-crafted and comprehensive approach extends not only to the State but would also be of interest to the counties as well.

The Honorable Sylvia Luke, Chair
and Members of the Committee on Finance
March 31, 2016
Page 2

For these reasons, the City supports S.B. 3101, SD1, and urges your favorable consideration. Should you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Donna Leong". The signature is fluid and cursive, with a large initial "D" and "L".

DONNA Y. L. LEONG
Corporation Counsel

DYLL:li

16-01459/486205



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Eighth Legislature, State of Hawaii
House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association

April 1, 2016

S.B. 3101, S.D. 1 - RELATING TO
PUBLIC-PRIVATE PARTNERSHIPS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly opposes the purpose and intent of S.B. 3101, S.D. 1, which requires and appropriates funding for the Department of Business, Economic Development, and Tourism to conduct a study on the feasibility of establishing a public-private partnership resource agency within the department for all state departments, divisions and agencies to use.

Contrary to the assertions made within the bill, there are many examples of inefficiencies, failures and negative impacts to public assets and the public's trust in government as a result of public-private partnerships (P3s). The public-private partnership resulting in the privatization of the Hawaii Health Systems Corporation Maui Region is disrupting many families both in the region and statewide. Long-term P3s in other jurisdictions like the State of Indiana (toll road) and City of Chicago (parking meters) have encumbered government and hampered its ability to respond to changing priorities of the public it is supposed to serve. Before our state goes down the road of committing funds to create yet another entity to study an issue, more effort should be put into determining areas where government inefficiency is resulting in lost resources. In addition, the conversion of the Maui hospitals to private operation will allow for an easy test case on the effectiveness of such partnerships, without dedicating resources today from our state budget that will be better spent on those with greater needs in our community.

We respectfully request that S.B. 3101, S.D. 1 be filed.

Respectfully submitted,

Randy Perreira
Executive Director



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Finance
Friday, April 1, 2016 at 11:00 A.M.
Conference Room 308, State Capitol**

RE: SENATE BILL 3101 SD1 RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **strongly supports** SB 3101 SD1, which would require DBEDT to conduct a study on the feasibility of establishing a public-private partnership resource agency that all state departments, divisions, and agencies may utilize.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

Public Private Partnerships or P3's are growing in popularity across the country. The primary reason for this is most States, Counties, and Cities lack sufficient financial resources to improve, expand or renovate public infrastructure. The traditional P3's were "Toll Roads" where a private developer leases or gains control of a section of a roadway and provides its expertise in the design, construction, financing, operation and maintenance of the section of roadway improvement. Users of the road pay a "toll" to the developer and over a period of years, the developer is compensated for its investment and road it turned over to the government entity which will own it and maintain it from that point on.

Recently however, P3's have been used in the privatization of military housing, construction of new dormitory facilities at Universities across the country, and used in the development of transit stations (i.e. Union Station in Denver, Colorado).

We are aware of other states who have taken an active role in implementation of P3's for a variety of their public infrastructure needs. We believe that given our need to invest in infrastructure in Hawaii, and the lack of public funding available at both the State and County levels of government, P3's may provide a viable option for some of the infrastructure projects in the state.

We strongly support the bill as it would have one entity in the State assess the various P3 delivery methods currently being used by other Cities and States and find the appropriate methods that fit Hawaii's unique situation. A coordinated effort would be the most prudent and cost effect way to assess how P3's would work in Hawaii.

Thank you for the opportunity to testify.

Testimony to the House Committee on Finance
Friday, April 1, 2016
11:00 a.m.
State Capitol - Conference Room 308

LATE

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

2016 OFFICERS

PRESIDENT
CRAIG WASHOFSKY
SERVCO HOME & APPLIANCE
DISTRIBUTION

PRESIDENT-ELECT
EVAN FUJIMOTO
GRAHAM BUILDERS, INC.

VICE PRESIDENT
DEAN UCHIDA
SSFM INTERNATIONAL, INC.

TREASURER
MICHAEL WATANABE
JW, INC.

SECRETARY
PETER ELDRIDGE
RAYNOR OVERHEAD DOORS &
GATES, INC.

SPECIAL APPOINTEE-BUILDER
PAUL D. SILEN
HAWAIIAN DREDGING
CONSTRUCTION CO, INC

SPECIAL APPOINTEE-BUILDER
MARK KENNEDY
HASEKO CONSTRUCTION
MANAGEMENT GROUP, INC.

SPECIAL APPOINTEE-ASSOCIATE
GARY T. OKIMOTO
HONOLULU WOOD TREATING, L.L.C

IMMEDIATE PAST PRESIDENT
RICHARD HOBSON, JR.
GENTRY HOMES, LTD.

CHIEF EXECUTIVE OFFICER
GLADYS MARRONE
BIA-HAWAII

2016 DIRECTORS

ANTHONY BORGE
RMA SALES

BEAU NOBMANN
HPM BUILDING SUPPLY

DOUGLAS E. PEARSON
CASTLE & COOKE HOMES
HAWAII, INC.

CHRIS CHEUNG
CC ENGINEERING &
CONSTRUCTION, INC.

CLIFTON CRAWFORD
C&J CONTRACTING, INC.

CURT KIRIU
CK INDEPENDENT LIVING BUILDERS

DWIGHT MITSUNAGA
DM PACIFIC, INC.

JACKSON PARKER
D.R. HORTON, SCHULER DIVISION

JENNIFER ANDREWS
COLDWELL BANKER PACIFIC
PROPERTIES

MARK HERTEL
INTER-ISLAND SOLAR SUPPLY,
OAHU-MAUI-HAWAII-KAUAI

MARSHALL HICKOX
HOMEWORKS CONSTRUCTION, INC.

SARAH LOVE
BAYS LUNG ROSE & HOLMA

MAILING
P.O. BOX 970967
WAIPAHU, HAWAII
96797-0967

STREET
94-487 AKOKI STREET,
WAIPAHU, HAWAII 96797

P 808.847.4666
F 808.440.1198
E INFO@BIAHAWAII.ORG

WWW.BIAHAWAII.ORG

**RE: S.B. 3101 S.D. 1: Relating to the Department of Business, Economic
Development, and Tourism.**

Dear Chair Luke, Vice-Chair Dela Cruz, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA Hawaii is in **strong support** of S.B. 3101, S.D. 1, which would require DBEDT to conduct a study on the feasibility of establishing a public-private partnership resource agency that all state departments, divisions, and agencies may utilize.

Public Private Partnerships or P3's are growing in popularity across the country. The primary reason for this is most States, Counties, and Cities lack sufficient financial resources to improve, expand or renovate public infrastructure. The traditional P3's were "Toll Roads" where a private developer leases or gains control of a section of a roadway and provides its expertise in the design, construction, financing, operation and maintenance of the section of roadway improvement. Users of the road pay a "toll" to the developer and over a period of years, the developer is compensated for its investment and road it turned over to the government entity which will own it and maintain it from that point on.

Recently however, P3's have been used in the privatization of military housing, construction of new dormitory facilities at Universities across the country, and used in the development of transit stations (i.e. Union Station in Denver, Colorado).

We are aware of other states who have taken an active role in implementation of P3's for a variety of their public infrastructure needs. We believe that given our need to invest in infrastructure in Hawaii, and the lack of public funding available at both the State and County levels of government, P3's may provide a viable option for some of the infrastructure projects in the state.

We strongly support the bill as it would have one entity in the State assess the various P3 delivery methods currently being used by other Cities and States and find the appropriate methods that fit Hawaii's unique situation. A coordinated effort would be the most prudent and cost effect way to assess how P3's would work in Hawaii. We have also included recommended enabling legislation that would allow for P3's in Hawaii to be incorporated into the bill.

We express our strong support for S.B. 3101 S.D. 1, and appreciate the opportunity to express our views on this matter.

Key Components of the Model Law

- ***Enables P3s for a wide range of projects.***

While many states have passed P3-enabling legislation, only a handful support P3s for all types of infrastructure and at all levels of government. This model legislation allows for all government entities within a state that are authorized to develop and operate infrastructure projects to contract with private partners for a wide range of projects including roads, bridges, ports, stormwater management, broadband infrastructure, and courthouses, for example.

- ***Creates a state office dedicated to providing P3 expertise and assistance.***

The United States has a deep and successful municipal bond market, long responsible for the financing of local infrastructure projects around the country. While public-private partnerships have a great deal to offer, they are not suitable in every circumstance and can require considerable technical expertise and evaluation. The Office of Infrastructure Investment created by the model legislation would be a resource in this regard not only for state-level agencies and transportation departments, but for localities and counties that may be unfamiliar with alternative methods of procurement but interested in the benefits they could bring. The legislation leaves it to each state to decide how best to fund the Office's operations.

- ***Standardizes and promotes best practices.***

The model legislation is a template that should be customized to suit each state's particular circumstances and needs. Yet providing some degree of standardization and promotion of best practices may encourage greater private infrastructure investment and establish clear rules of the road. To do this, the legislation creates a Guidelines Task Force with members representing all tiers of government within a state as well as public and private stakeholders. It is tasked with recommending the governing guidelines for solicitation, evaluation, award, and delivery of P3 projects. The success of such a task force can be seen in states like Florida, whose task force held public meetings recorded and available online and made recommendations following significant input from the public and interested stakeholders. The task force will also identify the types of projects for which a P3 approach must be considered. The Office of Infrastructure Investment is charged with reviewing and updating the task force's guidelines as well as supplying template contracts and promoting best practices.

- ***Protects the public interest.***

For a P3 project to be a success, the public must support its goals and understand the benefits it will bring. The model legislation provides a process for public education and input in the development of P3 projects. The legislation requires an evaluation of the life-cycle costs and benefits of a potential P3 project, and before a contract can be signed, there must be a finding of public interest and compatibility with regional plans to ensure that the public agency has fully assessed the costs and benefits of the P3 and disclosed that information to the public. Further, the Guidelines Task Force would bring various stakeholders together to make a recommendation on a uniform process to receive solicited and unsolicited proposals. The Office of Infrastructure Investment is directed to conduct on-going public and stakeholder engagement and outreach and work to promote transparency and information-sharing.

Legislative Findings & Purpose

It is the intent of this act by encouraging public-private partnerships to:

- Promote the development and operation of quality infrastructure projects that provide economic and social value;
- Provide a well-defined mechanism to facilitate collaboration between public and private entities in infrastructure development and operation and enable increased investment of private capital;
- Bring innovative thinking to public projects;
- Provide flexibility in contracting and delivering infrastructure projects;
- Reduce total life-cycle costs of public infrastructure; and
- Allow for cost and risk sharing between public and private partners.

Section 1. Definitions

"Affected Jurisdiction" means any county, municipality, city, town, or special district in which all or a portion of a qualifying project is located.

"Develop" means to plan, design, develop, finance, lease, acquire, install, construct, or expand a qualifying project.

"Comprehensive Agreement" means an agreement between one or more private partners and one or more responsible public entities contractually providing for the responsibilities of all parties in developing or operating a qualifying project in a public-private partnership.

"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 qualifying project by a responsible 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 revenues of the qualifying project.

"Fees" means rates, tolls, fees, or other charges imposed by the private partner or responsible public entity for use of all or a portion of a qualifying project pursuant to a comprehensive agreement.

"Material Default" means any default by private partners in the performance of its duties as outlined in a comprehensive agreement that jeopardizes adequate service to the public from a qualifying project and is not remedied following notice and a reasonable cure period.

"Operate" means to finance, maintain, improve, equip, modify, repair, or operate a qualifying project.

"Private Partner" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, other private business entity or combination thereof.

"Proposal" means a plan for a qualifying project submitted by a private partner with detail beyond a conceptual level for which all terms determined to be necessary by the responsible public entity, including costs, payment schedules, financing, deliverables, and project schedule, are defined.

"Qualifying Project" means any public facility or infrastructure or improvement to any public facility or infrastructure that is used or will be used by the public at large or in support of a public purpose or activity including, but not limited to: civic or education facilities; surface transportation facilities such as roads, bridges, public transit systems, ferry and port facilities, airports and intermodal systems; cultural or recreational facilities; medical facilities; utility facilities; and telecommunications facilities.

"Responsible Public Entity" means the state or any agency or authority thereof; a county, municipality, school board, or any other political subdivision of the state or combination of entities; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

"Revenues" means all revenues 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; equity investments, service payments, or any combinations thereof arising out of or in connection with supporting the development or operation of a qualifying project, including money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such a qualifying project.

Section 2. Office of Infrastructure Investment

- A. There shall be established an Office of Infrastructure Investment reporting to the Governor and independent of other agencies and departments of the state. The Office shall be headed by an Executive Director, appointed by the Governor for a fixed term of five years, who shall have demonstrated knowledge, training, or experience in one or more of the following areas:
1. Infrastructure development or operation;
 2. Capital markets and finance, including municipal finance;
 3. Public-sector planning; or
 4. Procurement.
- B. The Office shall:
1. Assist responsible public entities with identifying projects, including opportunities for project aggregation, for which a public-private partnership may be appropriate;
 2. Provide technical assistance and expertise to responsible public entities on using public-private partnerships to develop or operate infrastructure projects, including analyzing their benefits and costs and the innovative financing options available to support them;
 3. Supply template contracts;
 4. Track proposed, ongoing, and completed private-public partnerships;
 5. Identify methods of encouraging competition for the development or operation of infrastructure projects;
 6. Serve as a liaison to federal government officials charged with promoting public-private infrastructure partnerships, other state Executive Directors of Infrastructure Investment and regional or metropolitan public-private partnership offices;
 7. Conduct public and stakeholder engagement and outreach, including efforts to encourage transparency and information-sharing regarding public-private partnerships;
 8. Create a process for updating, as necessary, the recommendations made by the task force pursuant to Subsection (D), including a public comment period;
 9. Promote best practices, including standardized methodologies and processes; and
 10. Attract private investment in infrastructure to the state.
- C. The Executive Director shall provide to the standing committees of the Legislature having jurisdiction over transportation or infrastructure and post online a report annually within six weeks of the end of each fiscal year that:
1. Lists those public-private partnerships that-
 - a. are expected to be soliciting bids within the next fiscal year
 - b. are in progress,
 - c. were completed during the prior fiscal year, or
 - d. were removed from consideration during the prior fiscal year; and
 2. Summarizes actions taken by the Office to fulfill its duties pursuant to Subsection (B) of this section.
- D. The Executive Director, within three months of appointment by the Governor, shall convene a task force, which is directed to:
1. Make recommendations within one year of the task force convening, and following a period of public review, to responsible public entities on a uniform process for the review, solicitation, evaluation, award, and delivery of public-private partnerships, including:
 - a. A process for acceptance of unsolicited proposals by a responsible public entity;
 - b. A specific schedule for review of unsolicited proposals by the responsible public entity that shall include public solicitation of additional proposals prior to entering a comprehensive agreement; and
 - c. Timeframes and requirements for public outreach prior to entering into a comprehensive agreement on a selected proposal, whether solicited or unsolicited. Such timeframes and requirements shall provide for a reasonable period of public review and comment;
 2. Determine a cost threshold for qualifying projects, depending on type of project and type of responsible public entity, to merit standardized screening pursuant to Subsection (H) of this section and independent audit pursuant to Subsection (D) of Section 4;

3. Make any recommendations to the Legislature and Governor on any changes to this act deemed necessary to carry out the purposes of this act; and
4. Terminate following public release of final recommendations required under this subsection.
- E. The task force convened pursuant to Subsection (D) shall be composed of nine members, as follows:
 1. The head of the department of the state with primary jurisdiction over economic development, who shall serve with the Executive Director as co-chairs of the task force; and
 2. Seven members appointed by the Governor having expertise, knowledge, or experience in infrastructure development or operation, capital markets and finance, public-sector planning, or procurement, including:
 - a. One county government official,
 - b. One municipal government official,
 - c. One regional or district official,
 - d. Two representatives of the public interest, and
 - e. Two representatives of the business community.
 3. Not more than five members of the task force shall be members of the same political party. Members of the task force shall represent geographically diverse regions of the state.
- F. A responsible public entity shall follow the final recommendations of the task force with regard to any public-private partnership subject to this act, except that a responsible public entity may adopt guidelines for public-private partnerships other than those pursuant to Subsection (D) (1) of this section so long as such guidelines are not inconsistent with this act.
- G. The Office shall coordinate with responsible public entities on state environmental reviews and permitting for all qualifying projects subject to this act. As soon as practicable, and not later than the commencement of a comprehensive agreement, the responsible public entity shall identify all necessary state permits, and in consultation with the Office and relevant state offices and departments, shall create a timeline for review and issuance of such permits. The Office shall maintain on its website a listing of projects under this section for which state permits are delayed more than 90 days past the deadline specified in the timeline and post an official explanation for the delay which shall come from the office in charge of approving the permit, or link to public websites containing such information.
- H. For qualifying projects with an estimated cost meeting the threshold determined by the task force pursuant to Subsection (D) (2) of this section, the Office, in coordination with the responsible public entity, must assess through a standardized screening process whether a public-private partnership may provide a greater value added than traditional procurement.

Section 3. Government Agreements

- A. The responsible public entity may, either separately or in combination with any other public entities, enter into working agreements, coordination agreements, or similar implementation agreements, including the formation of bi-state or multistate organizations, to develop or operate a qualifying project subject to the requirements of this act. These agreements must conform to any relevant state laws.

Section 4. Procurement

- A. The responsible public entity may request proposals from private partners for the development or operation of a qualifying project under one or more of the project delivery methods described in Section 8. The responsible public entity shall not charge a fee to cover the costs of processing, reviewing, and evaluating proposals received in response to such a request.
- B. A private partner may request approval by a responsible public entity of an unsolicited proposal using one or more of the project delivery methods described in Section 8 and in conformance with all recommendations made by the task force under Subsection (D) (1) of Section 2 or any alternative guidelines adopted by a responsible public entity pursuant to Subsection (F) of Section 2. A responsible public entity may charge a reasonable fee to cover its costs to process and review unsolicited proposals.
- C. Upon submitting a proposal, a private partner shall identify those portions of a proposal that the partner considers to be a trade secret or confidential commercial, financial, or proprietary information and provide any justification as to why these materials, upon request, should not be disclosed by the responsible public entity. A private partner shall fully comply with any applicable state laws for such materials to be exempt from disclosure. Patent information will be covered until the patent expires. Other information such as originality of design or records of negotiation may only be protected under this section until a comprehensive agreement is reached. Projects under federal jurisdiction or using federal funds must conform to federal regulations under the Freedom of Information Act.
- D. For any selected proposal for a qualifying project with an estimated cost meeting the threshold determined by the task force pursuant to Subsection (D) (2) of Section 2, the responsible public entity shall obtain an independent audit of the proposed private-public partnership, including an assessment of projected usage and public costs, before the comprehensive agreement is executed. The analysis shall be disclosed to the public prior to execution of a comprehensive agreement, subject to the limitations described in Subsection (C).
- E. The responsible public entity may apply for local, state, or federal credit assistance, or endorse such applications submitted by private partners, for qualifying projects to be developed or operated pursuant to a comprehensive agreement.
- F. Consultants and experts may be engaged at any point to assist in the evaluation, negotiation, development or operation of qualifying projects.

Section 5. Finding of Public Interest

- A. The responsible public entity may enter into a comprehensive agreement for the development or operation of a qualifying project only after the chief executive officer of the responsible public entity makes a finding of public interest and regional plan compatibility. Such a finding shall, at a minimum, consider the following:
1. Benefits to the public;
 2. Advantages or disadvantages of developing or operating the qualifying project as a public-private partnership versus a traditional procurement, including the anticipated cost over the project life-cycle, adjusted for risk and risk transfers;
 3. Sources of funding and financing for the qualifying project;
 4. General reputation, qualifications, industry experience and financial capacity of the private partners;
 5. Proposal's compatibility with regional infrastructure plans; and

6. Other criteria that the responsible public entity deems appropriate.

B. The responsible public entity shall publicly disclose all findings of public interest and regional compatibility made pursuant to the requirements of Subsection (A) in a public report, which shall include a detailed discussion of all considerations on which the findings are based subject to the limitations outlined in Subsection (C) of Section 4 and be followed by a reasonable period of public comment before execution of a comprehensive agreement.

Section 6. Notice to Affected Jurisdictions Regarding Unsolicited Proposals

A. Prior to entering into a comprehensive agreement resulting from an unsolicited proposal, the responsible public entity shall notify affected jurisdictions by furnishing a copy of the proposal to each affected jurisdiction.

B. Each affected jurisdiction that is not the responsible public entity may, within 60 days after receiving the notice, submit in writing any comments on the project's potential impact or compatibility with local and regional budgets and infrastructure plans to the responsible public entity.

C. The responsible public entity shall consider the comments of the affected jurisdictions before entering into a comprehensive agreement with a private partner.

Section 7. Public-Private Partnership Agreements

A. Interim Agreements. Before or in connection with the negotiation of a comprehensive agreement, the responsible public entity may enter into an interim agreement with the private partner that submitted the selected proposal. An interim agreement shall not obligate the responsible public entity to enter into a comprehensive agreement. The interim agreement is discretionary with the parties and is not required on a qualifying project for which the parties may proceed directly to a comprehensive agreement without the need for an interim agreement. An interim agreement shall only:

1. Authorize the private partner to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning, advance right-of-way acquisition, design and engineering, environmental analysis and mitigation and ascertaining the availability of financing for the proposed facility; and
2. Establish the process and timing of the negotiation of the comprehensive agreement.

B. A responsible public entity may enter into an interim agreement with multiple private partners if the responsible public entity determines in writing that is it in the public interest to do so.

C. Comprehensive Agreements. Prior to developing or operating a qualifying project, the private partner that submitted the selected proposal shall enter into a comprehensive agreement with the responsible public entity. Comprehensive agreements, in addition to other contract terms stipulating the obligations of the parties, must include:

1. Descriptions of which party will assume responsibility for specific project elements and when;
2. How the parties will share management of the risks of the project;
3. How the parties will share costs of development or operation of the project;
4. How the parties will allocate financial responsibility for cost overruns;
5. Any safeguards to mitigate additional costs or service disruptions to the public in the event of material default or cancellation of the agreement;
6. Performance standards and any damages for nonperformance;

7. Any performance incentives;
 8. Accounting and auditing standards to be used to evaluate work on the project;
 9. For a project that reverts to public ownership, the responsibility for reconstruction or renovations required for a qualifying project to meet all applicable government standards upon reversion to the state; and
 10. Such other terms and conditions agreed to mutually by the responsible public entity and private partner.
- D. The comprehensive agreement shall provide for such fees as may be established by agreement of the parties.
- E. The comprehensive agreement shall contain a provision by which a private partner expressly agrees that it is prohibited from seeking injunctive or other equitable relief to delay, prevent or otherwise hinder the responsible public entity or any jurisdiction from developing or operating any project that was planned and that may impact the revenue that the private partner may derive from the qualifying project under a public-private partnership, except that the comprehensive agreement may provide for reasonable compensation to the private partner for the adverse effect on revenues resulting from an unplanned revenue impacting project.

Section 8. Project Delivery Methods

- A. Subject to the requirements of this act, the responsible public entity may utilize any project delivery method or agreement or combination of methods or agreements to develop or operate a qualifying 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; and a concession providing for the private partner to design, build, operate, maintain, manage, or lease a qualifying project.

Section 9. Eligible Funding and Financing

- A. Any financing of a qualifying project may be in such amounts and upon such terms and conditions as may be determined by the parties to the interim or comprehensive agreement. The private partner and responsible public entity may utilize any and all revenues that may be available to them for the purposes of this act and may, to the fullest extent permitted by applicable law:
1. Issue debt, equity, or other securities or obligations;
 2. Enter into leases, concessions, and grant and loan agreements;
 3. Access any designated state funds;
 4. Borrow or accept grants from any state infrastructure bank; and
 5. 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 qualifying project.
- B. The responsible public entity may take any action to obtain federal, state, and/or local assistance for a qualifying project that serves the purpose of this act and may enter into contracts required to receive such federal assistance. To the fullest extent allowed by law, federal, state, and local monies may be combined with any private sector monies for any project purposes.
- C. The private partner and responsible public entity are authorized to acquire right-of-way by any means allowable under applicable federal and state constitutional, legal and regulatory requirements.