

PUBLIC-PRIVATE PARTNERSHIP AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Utah Public-Private Partnership Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ authorizes a political subdivision and one or more private persons to enter into an agreement to jointly complete a public-private project; and
- ▶ provides a process by which a political subdivision may enter into a public-private partnership.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

11-54-101, Utah Code Annotated 1953

11-54-102, Utah Code Annotated 1953

11-54-103, Utah Code Annotated 1953

11-54-201, Utah Code Annotated 1953

11-54-202, Utah Code Annotated 1953



28 [11-54-203](#), Utah Code Annotated 1953



30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **11-54-101** is enacted to read:

32 **CHAPTER 54. UTAH PUBLIC-PRIVATE PARTNERSHIP ACT**

33 **Part 1. General Provisions**

34 **11-54-101. Title.**

35 (1) This chapter is known as the "Utah Public-Private Partnership Act."

36 (2) This part is known as "General Provisions."

37 Section 2. Section **11-54-102** is enacted to read:

38 **11-54-102. Definitions.**

39 As used in this chapter:

40 (1) "Interim agreement" means an agreement, including a memorandum of
41 understanding or a binding preliminary agreement, between a political subdivision and a
42 private person under Section [11-54-202](#) that anticipates a public-private partnership under this
43 chapter.

44 (2) "Governing body" means:

45 (a) for a county, the county legislative body as defined in Section [68-3-12.5](#);

46 (b) for a municipality, the council of the city, town, or metro township;

47 (c) for a school district, the local board of education described in Section [53A-3-101](#);

48 (d) for a community development and renewal agency, the agency board described in
49 Section [17C-1-203](#);

50 (e) for a local district, the board of trustees described in Section [17B-1-301](#);

51 (f) for a special service district:

52 (i) the legislative body of the county or municipality that established the special service
53 district, if no administrative control board has been appointed under Section [17D-1-301](#); or

54 (ii) the administrative control board of the special service district, if an administrative
55 control board has been appointed under Section [17D-1-301](#);

56 (g) for an entity created by an interlocal agreement, the governing body of an interlocal
57 entity, as defined in Section [11-13-103](#);

58 (h) for a local building authority, the governing body, as defined in Section [17D-2-102](#),

59 that creates the local building authority; or

60 (i) for any other governmental subdivision or public corporation, the board or other
61 body authorized to make executive and management decisions for the subdivision or public
62 corporation.

63 (3) "Political subdivision" means a county, a municipality, a school district, an agency
64 created under Title 17C, Limited Purpose Local Government Entities - Community
65 Development and Renewal Agencies Act, a local district, a special service district, an interlocal
66 entity as defined in Section 11-13-103, a local building authority, or any other governmental
67 subdivision or public corporation.

68 (4) "Private person" means an individual or a private entity, including a corporation,
69 general partnership, limited partnership, limited liability company, joint venture, business trust,
70 benefit corporation, or nonprofit corporation.

71 (5) "Proposed public-private project" means a solicited or unsolicited proposal to enter
72 into a public-private partnership.

73 (6) (a) "Public facility" means an improvement, structure, or other property, or any part
74 of an improvement, structure, or other property:

75 (i) that is owned or controlled by a political subdivision; or

76 (ii) in which a political subdivision has a property right or interest.

77 (b) Subject to Subsection (6)(a), "public facility" includes any of the following:

78 (i) a building, including an office, courthouse, jail, fire station, police station, sheriff's
79 station, or detention home;

80 (ii) waterworks, irrigation system, water system, dam, reservoir, or water treatment
81 plant;

82 (iii) property used in connection with the acquisition, storage, transportation, or
83 supplying of water for:

84 (A) domestic, industrial, irrigation, recreational, or other purposes; or

85 (B) water pollution prevention;

86 (iv) a sewer system, sewage treatment plant, incinerator, or other improvement,
87 structure, or property used in connection with the collection, treatment, or disposal of sewage,
88 garbage, or other refuse;

89 (v) a drainage or flood control system, storm sewer, or any other improvement,

90 structure, or property used in connection with the collection, transportation, or disposal of
91 water;

92 (vi) a recreational facility, including an athletic or play facility, playground, athletic
93 field, gymnasium, public bath, swimming pool, camp, park, picnic ground, fairground, golf
94 course, zoo, boating improvement, tennis court, auditorium, or theater;

95 (vii) a convention center, sports arena, auditorium, theater, or other improvement for
96 holding a public assembly, convention, or other meeting;

97 (viii) a road, bridge, viaduct, tunnel, sidewalk, curb, gutter, parking building, parking
98 lot, or parking improvement;

99 (ix) an airport, landing field, landing strip, air navigation improvement, port, or other
100 transportation improvement;

101 (x) an educational structure, including a school, gymnasium, auditorium, theater,
102 museum, art gallery, library, stadium, arena, or fairground;

103 (xi) a hospital, convalescent home, or a home for the aged or indigent;

104 (xii) electric light works, an electric generating system, or any other improvement,
105 facility, or property used in connection with the generation or acquisition of electricity to
106 benefit a portion of the public;

107 (xiii) a transmission facility or substation that does not duplicate a transmission facility
108 or substation of another entity operating in the state that is prepared to provide the same
109 service, unless the transmission facility or substation is more economical for the political
110 subdivision than the other entity's transmission facility or substation; or

111 (xiv) a pipeline, natural gas, rail, telephone, telecommunication, or other transmission
112 line or right-of-way.

113 (7) (a) "Public-private partnership" means a binding agreement between a political
114 subdivision and one or more private persons to provide a public service.

115 (b) "Public-private partnership" includes an agreement to reallocate risk between the
116 parties.

117 (8) "Public-private project" means the public service that a political subdivision and
118 one or more private persons agree to provide under a public-private partnership.

119 (9) "Public service" means:

120 (a) planning, developing, designing, constructing, reconstructing, improving, financing,

121 acquiring, maintaining, or operating a public facility; or

122 (b) a service provided by or at the direction of a political subdivision to or for the
123 benefit of the public or any portion of the public.

124 (10) "Reasonable notice" means publication in a newspaper with general circulation
125 within a political subdivision at least once each week for two consecutive weeks.

126 (11) "User fee" means a charge for use of a public facility or receipt of a public service.

127 Section 3. Section **11-54-103** is enacted to read:

128 **11-54-103. Relation to other provisions.**

129 (1) To the extent a provision of this chapter is contrary to or less restrictive than a
130 provision of any applicable procurement law, the provision of the applicable procurement law
131 shall govern.

132 (2) The provisions of this chapter do not alter:

133 (a) a person's right to exercise eminent domain; or

134 (b) a political subdivision's sovereign immunity.

135 Section 4. Section **11-54-201** is enacted to read:

136 **Part 2. Agreements**

137 **11-54-201. Title.**

138 This part is known as "Agreements."

139 Section 5. Section **11-54-202** is enacted to read:

140 **11-54-202. Soliciting, negotiating, and executing a public-private partnership.**

141 (1) A political subdivision may, in accordance with the provisions of this chapter and
142 applicable procurement law, enter into a public-private partnership.

143 (2) Before a political subdivision enters into a public-private partnership, the political
144 subdivision:

145 (a) shall:

146 (i) provide reasonable notice of the political subdivision's intent to enter into a
147 public-private partnership for a public-private project;

148 (ii) provide a reasonable opportunity for any private person to submit a proposed
149 public-private project in response to the notice described in Subsection (2)(a)(i); and

150 (iii) approve entering into the public-private partnership by a majority vote of the
151 governing body; and

152 (b) may:

153 (i) independently or jointly with one or more private persons, study the feasibility of a
154 proposed public-private project;

155 (ii) make one or more reasonable requests for information from a private person who
156 submits a proposed public-private project in response to a notice described in Subsection
157 (2)(a)(i) related to the private person's proposal, qualifications, work history, financial status, or
158 capabilities; or

159 (iii) engage one or more outside consultants to provide professional services, including
160 legal or financial, to assist the political subdivision in:

161 (A) evaluating the risks and benefits of a proposed public-private project; or
162 (B) the negotiation and terms of a public-private partnership.

163 (3) A political subdivision may accept a proposed public-private project only if the
164 political subdivision determines that:

165 (a) the proposed public-private project is in the public's interest;
166 (b) there is a public need for or benefit derived from the proposed public-private
167 project;

168 (c) the estimated cost of the proposed public-private project is reasonable in relation to
169 similar projects;

170 (d) the private person's plans as described in the proposed public-private project will
171 likely result in a timely completion of the public-private project;

172 (e) the political subdivision will own the public-private project upon:

173 (i) completion or termination of the public-private partnership; and
174 (ii) payment of any amounts financed; and

175 (f) the public-private project will:

176 (i) be open to the public; or
177 (ii) serve members of the public.

178 (4) (a) Notwithstanding Subsection (3)(e), a political subdivision may agree to sell a
179 public-private project for adequate consideration at fair market value, as determined at the time
180 of the execution of the public-private partnership.

181 (b) In determining adequate consideration, the political subdivision may consider the
182 purchaser's past or future contributions to the public-private project.

183 (5) In negotiating the terms of a public-private partnership, a political subdivision shall
184 consider:

185 (a) the methods to determine the cost, profit, and revenue distribution between the
186 political subdivision and each private person;

187 (b) a reasonable method to determine user fees, if any; and

188 (c) the cost, standards, and requirements for other necessary services, including
189 financing, design, engineering, construction, and operations and maintenance.

190 (6) In a public-private partnership, a political subdivision may:

191 (a) delegate the right to impose and collect a user fee or other charge to a private
192 person; or

193 (b) agree to provide services in support of the public-private project that is the subject
194 of the public-private partnership, including planning, environmental review, design,
195 construction, right-of-way acquisition, oversight, inspection, monitoring, or maintenance.

196 Section 6. Section **11-54-203** is enacted to read:

197 **11-54-203. Interim agreements.**

198 (1) Before or in connection with the negotiation of a public-private partnership, a
199 political subdivision and one or more private persons may enter into an interim agreement.

200 (2) An interim agreement may not bind a political subdivision to enter into a
201 public-private partnership.

202 (3) Under an interim agreement, the parties may:

203 (a) authorize a private person to commence one or more activities:

204 (i) related to the proposed public-private project; and

205 (ii) for which the political subdivision compensates the private person;

206 (b) establish the process and timing for the negotiation of the public-private
207 partnership; or

208 (c) agree to any other aspect of the proposed public-private project.