PUBLIC-PRIVATE PARTNERSHIP AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor:  Ann Millner
House Sponsor:  Jefferson Moss

LONG TITLE

Committee Note:
The Economic Development and Workforce Services Interim Committee recommended this bill.

Legislative Vote:  10 voting for  0 voting against  6 absent

General Description:
This bill modifies provisions relating to public-private partnerships.

Highlighted Provisions:
This bill:
- eliminates a repeal date for the Public-private Partnerships Act;
- eliminates a provision limiting the length of term of a contract with a public-private partnership facilitator;
- modifies provisions relating to the functions and responsibilities of the facilitator;
- allows the Governor's Office of Economic Opportunity to perform facilitator functions and responsibilities itself or to contract with another person to perform those functions and responsibilities;
- requires the Governor's Office of Economic Opportunity to provide an annual report to the Economic Development and Workforce Services Interim Committee on the facilitator's work;
- encourages government entities to use the services of the facilitator in considering public-private partnerships; and
S.B. 22

Money Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:
AMENDS:
63I-2-263, as last amended by Laws of Utah 2021, First Special Session, Chapter 4
63N-13-302, as enacted by Laws of Utah 2020, Chapter 446
63N-13-303, as last amended by Laws of Utah 2021, Chapter 414
63N-13-304, as enacted by Laws of Utah 2020, Chapter 446
63N-13-305, as enacted by Laws of Utah 2020, Chapter 446
63N-13-306, as enacted by Laws of Utah 2020, Chapter 446

Be it enacted by the Legislature of the state of Utah:
Section 1. Section 63I-2-263 is amended to read:
63I-2-263. Repeal dates, Title 63A to Title 63N.
[(1) Section 63A-3-111 is repealed June 30, 2021.]
[(2) Title 63C, Chapter 19, Higher Education Strategic Planning Commission is repealed July 1, 2021.]
[(3) Title 63C, Chapter 22, Digital Wellness, Citizenship, and Safe Technology Commission is repealed July 1, 2023.]
[(4) Section 63G-1-502 is repealed July 1, 2022.]
[(5) The following sections regarding the World War II Memorial Commission are repealed on July 1, 2022:
(a) Section 63G-1-801;
(b) Section 63G-1-802;
(c) Section 63G-1-803; and
(d) Section 63G-1-804.
[(6) Section 63H-7a-303 is repealed July 1, 2024.
[(7) Subsection 63J-1-206(3)(c), relating to coronavirus, is repealed July 1, 2021.]}
Sections 63M-7-213 and 63M-7-213.5 are repealed on January 1, 2023.

Section 63M-7-217 is repealed on July 1, 2022.

Title 63N, Chapter 13, Part 3, Facilitating Public-private Partnerships Act, is repealed January 1, 2024.

Title 63N, Chapter 15, COVID-19 Economic Recovery Programs, is repealed December 31, 2021.

Section 2. Section 63N-13-302 is amended to read:

As used in this part:
(1) "Facilitator" means:
(a) the office, if the office chooses to perform itself the functions and responsibilities described in Section 63N-13-304; or
(b) a person engaged by the office to perform the functions and responsibilities described in Section 63N-13-304, if the office chooses to have those functions and responsibilities performed by a person other than the office.

(2) "Government entity" means:
(a) the state or any department, division, agency, or other instrumentality of the state; or
(b) a political subdivision of the state.

(3) "Public-private partnership" means an arrangement or agreement between a government entity and one or more private persons to fund and provide for a public need through the development or operation of a public project in which the private person or persons share with the government entity the responsibility or risk of developing, owning, maintaining, financing, or operating the project.

Section 3. Section 63N-13-303 is amended to read:

(1) If the office chooses to have the functions and responsibilities described in Section 63N-13-304 performed by a person other than the office, the office shall, within legislative appropriations, enter into a contract with a nonprofit entity or government entity to act as a facilitator. (2) The office shall use, using a request for proposals process under Title 63G, Chapter 6a, Utah Procurement Code, to select a qualified...
person] to act as facilitator.

[(3) The term of a contract under Subsection (1) may not exceed three years.]

[(4)] (2) Except as provided in Subsection 63H-1-202(9), the office shall ensure that a contract with a person performing the functions and responsibilities of the facilitator includes a conflict-of-interest provision prohibiting the facilitator, or a principal, officer, or employee of the facilitator, from receiving a direct or indirect financial benefit from any public-private partnership that results from the facilitator's work under the contract.

Section 4. Section 63N-13-304 is amended to read:

63N-13-304. Functions and responsibilities of facilitator.

[In a contract under Section 63N-13-303, the office shall require a facilitator to:]

(1) A facilitator shall:

[(+)

(a) be a single point of contact and information on public-private partnerships in the state for:

[(+)] (i) government entities exploring the possibility of filling a public need through a public-private partnership; and

[(+)] (ii) private persons exploring investment opportunities in a public project in the state through a public-private partnership;

[(+)] (b) work throughout the state to identify government entities that may have an interest in seeking to fill a public need through a public-private partnership;

[(+)] (c) work to identify private persons who may have an interest in investment opportunities in public projects in the state through a public-private partnership;

[(+)] (d) facilitate the matching of government entities seeking to fill a public need through a public-private partnership with private persons seeking investment opportunities in public projects through a public-private partnership;

[(+)] (e) facilitate and assist with the establishment of public-private partnerships for government entities who request the facilitator's assistance in establishing a public-private partnership; [and]

(f) provide a website with information:

(i) about the process for pursuing, developing, and implementing a public-private partnership in the state; and

(ii) to help government entities and persons seeking investment opportunities through
121 public-private partnerships in the state to understand available public-private partnership
122 opportunities; and
123   (g) through promotional, informational, and other activities, work to help move the
124 state to the forefront throughout the country in the area of private participation in public
125 infrastructure development through public-private partnerships.
126   (2) If the office chooses to have the functions and responsibilities described in
127 Subsection (1) performed by a person other than the office, the office shall include in a contract
128 with that person provisions requiring the person to perform the functions and responsibilities
129 described in Subsection (1).
130   [(6)] (3) The office may make recommendations for the Legislature to consider [at the
131 2021 legislative general session] relating to public-private partnerships:
132   (a) to enhance the statutory framework for the establishment of public-private
133 partnerships for public infrastructure projects; and
134   (b) with the goal of moving the state to the forefront throughout the country in the area
135 of private participation in public infrastructure development through public-private
136 partnerships.
137 Section 5. Section 63N-13-305 is amended to read:
138 63N-13-305. Office oversight over contract performance of facilitator -- Office
139 reports to Legislature.
140   (1) The office shall monitor and oversee a facilitator's performance under a contract
141 under Section 63N-13-303 to ensure that the facilitator is fulfilling the requirements of Section
142 63N-13-304.
143   (2) Before November 15 of each year, the office shall provide an annual report to the
144 Economic Development and Workforce Services Interim Committee of the facilitator's
145 activities under this part.
146 Section 6. Section 63N-13-306 is amended to read:
147 63N-13-306. Limits on application of this part.
148   (1) Nothing in this part:
149   [(4)] (a) requires a government entity to use the facilitator to explore the possibility of
150 filling a public need through a public-private partnership; or
151   [(2)] (b) limits the ability of a government entity to directly:
[(a)] (i) solicit a public-private partnership; or
[(b)] (ii) respond to a private person exploring an investment opportunity in a public project through a public-private partnership.

(2) A government entity anticipating the possibility of entering a public-private partnership is encouraged to consult with and take advantage of the expertise of the facilitator as the government entity determines:

(a) whether to enter the public-private partnership; and
(b) the best way to structure the public-private partnership.