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## DRAFT FISCAL IMPACT REPORT

ORIGINAL DATE 02/22/13  
 SPONSOR HTRC LAST UPDATED 03/06/13 HB CS/405/HTRCS  
 SHORT TITLE Public-Private Partnerships Act SB \_\_\_\_\_  
 ANALYST Hanika-Ortiz

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HJM47

### SOURCES OF INFORMATION

LFC Files

### SUMMARY

#### Synopsis of Bill

The House Taxation and Revenue Committee substitute for the House Judiciary Committee substitute for House Bill 405 enacts the public-private partnerships act (act) to allow state and local governments to enter into long-term partnerships with private sector partners to facilitate public projects, creates a governing board and provides for its powers and duties, authorizes the collection of user fees or other services charges, and provides penalties for misuse of access to public databases by private partners enforcing user fees, and for failing to pay user fees by private citizens using property in a public project.

More specifically,

Sections 1 and 2 names the act and provides for definitions including “board” to mean the new public-private partnerships board and “public project” which excludes housing pursuant to the Affordable Housing Act;

Section 3 creates the public-private partnerships board administratively attached to the General Services Department (GSD);

Section 4 provides for the new board’s powers and duties to include developing a long-term plan,

engaging the public and stakeholders, and implementing a proposal review process;

Section 5 provides for a variety of project delivery methods including predevelopment agreements, concession agreements, and other project delivery methods or agreements that the public partner determines is most advantageous to the public interest;

Section 6 provides guidelines for soliciting proposals and responding to unsolicited proposals, imposes a fee to evaluate unsolicited proposals, requires outside experts evaluating proposals to have experience, provides for contractor insurance, requires one public hearing, and allows an executive summary for public disclosure to be absent information considered proprietary;

Section 7 provides that procurements are subject to the Procurement Code and other areas of law relating to public works projects, requires an operating agreement between the parties that defines roles and responsibilities, and forbids the approval of projects that displace or replace government employees whose employment is under the Public Employee Bargaining Act;

Section 8 provides a comprehensive list of evaluation criteria that includes any other criteria that the public partners and the board deem appropriate;

Section 9 requires the Attorney General's Office (AGO) and the Department of Finance and Administration (DFA) to advise on legal and accounting issues and assist in preparing and negotiating agreements prior to board approval of a partnership agreements;

Section 10 requires that agreements include any provisions for the use of cameras or other mechanisms that identify users, or that allow access to public databases for enforcement purposes and provides civil penalties of \$10,000 per violation for misuse of the privilege; a statement that the public partner will own any real property when the project reverts; allows for extension of agreements beyond 25-years; provides for compensation to the private partner for the adverse effect of any public unplanned facility that affects revenues; requires State Board of Finance approval before the transfer or sale of assets or investment, and further provides that the sale or lease of state property longer than twenty-five years requires legislative approval;

Section 11 allows any lawful source of funding including user fees, rents, gross or net receipts from sales, advertising and sponsorship charges and other service charges;

Section 12-18 provides for 1) the public partner to continue user fees after the term of agreement, 2) the project to revert to the public partner once an agreement is terminated, 3) remedies afforded the public partner if a private partner materially defaults, 4) rights of police to exercise their powers and jurisdictions, 5) cooperation between parties before rearranging the manner of crossing or relocating utility facilities, 6) penalties for persons who fail to pay a user fees to be guilty of a petty misdemeanor, and 7) provides an effective date to enact the act of July 1, 2013.

## **FISCAL IMPLICATIONS**

The substitute allows any lawful source of funding to be used for the development or management of a public-private project, including federal, state or local revenue. As such, the substitute could have a future impact on the general fund and local government funds.

The substitute allows for toll revenue bonds or other revenue bonds to be issued and backed by a

pledge of revenues. The bonds may be issued on behalf of the public body or on behalf of the private partner (conduit bonds). Bonds will have a maximum maturity of 25 years.

The substitute provides that a person who fails to pay a user fee for the privilege of using property included in a public project is guilty of a petty misdemeanor pursuant to Section 31-19-1 NMSA 1978. This section provides that if convicted, the judge may sentence a person to be imprisoned for a term not to exceed 6 months or to the payment of a fine of not more than five hundred dollars (\$500) or both.

Additional administrative costs would be incurred by the GSD, SBOF and AG to review and advise the board on proposed public project agreements.

## **SIGNIFICANT ISSUES**

The substitute authorizes a state agency, institution, municipality, county or a regional entity created by a joint powers agreement, to enter into long-term partnerships with one or more private partners for the development, financing or construction of public projects, including a lease, ground lease, franchise, easement, permit or other agreement. The substitute establishes the public-private partnerships board to consult with the public entities desiring to enter into such partnerships.

Before entering into a public-private partnership, the board and the public partner must consider a list of evaluation factors, including the ability of the public project to meet the needs of the community in which it is to be located, the proposed cost, the financial commitment of the private partner, the risk of proposed financing, the estimated operating costs, the financial commitment of the private partner, the compatibility with local and regional land and water plans, and other criteria.

## **PERFORMANCE IMPLICATIONS**

The AG and DFA must review the proposed partnership agreements, advise the board of their legality, assist the public partners in negotiating the agreements, assist the public partner in preparing any partnership documents, advise the board and public partner regarding any relevant federal securities or other laws and disclosure requirements, and advise the board and the public partner regarding applicable accounting, investment and tax requirements.

Procurements under the substitute are subject to the Procurement Code. The substitute delineates the required elements for inclusion in the partnership agreements. If an agreement is terminated, the public project reverts to the public partner and is dedicated for public use. The substitute contains provisions regarding the remedies applicable when a private partner engages in a material default, including the public partner taking over the public project.

## **ADMINISTRATIVE IMPLICATIONS**

The board consists of the AG, the secretaries of the DFA, GSD and the Economic Development Department, three private sector members appointed by Legislative Council, and two members appointed by the Council of State Government. The board's duties include developing a long-term vision and plan for the development of public projects through public-private partnerships. The board must engage input from the public, experts and interested persons and submit its long-term vision and plan to the governor and the legislature. State agencies, institutions and state

instrumentalities, and local governments must assist the board by providing technical assistance, analysis and other services as requested.

AHO/svb:blm