# Second Regular Session Sixty-seventh General Assembly STATE OF COLORADO

LLS NO. 10-0335.01 Jason Gelender

**HOUSE BILL** 

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### **House Committees**

# **Senate Committees**

# A BILL FOR AN ACT 101 CONCERNING AUTHORIZATION FOR AGENCIES OF THE STATE TO ENTER 102 INTO PUBLIC-PRIVATE INITIATIVE AGREEMENTS WITH 103 NONPROFIT ENTITIES.

# Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

**Long-term Fiscal Stability Commission.** Using the existing public-private initiative program for the department of transportation as a model, **section 1** of the bill:

- Authorizes state agencies to enter into public-private initiative agreements with nonprofit entities; and
- Specifies evaluative criteria to be used by and procedures

to be followed by the agencies in considering, evaluating, and accepting or rejecting unsolicited proposals for public-private initiatives.

**Section 2** of the bill provides an incentive for an agency to enter into public-private initiatives by amending an existing statutory definition of "cost savings" in order to allow an agency to retain a portion of any cost savings realized from a personal services contract entered into pursuant to a public-private initiative agreement.

1	Be it enacted by the General Assembly of the State of Colorado:
2	SECTION 1. Article 38 of title 24, Colorado Revised Statutes, is
3	amended BY THE ADDITION OF A NEW PART to read:
4	PART 2
5	PUBLIC-PRIVATE INITIATIVES
6	24-38-201. Legislative declaration. THE GENERAL ASSEMBLY
7	HEREBY FINDS AND DECLARES THAT STATE GOVERNMENT SHOULD DELIVER
8	PUBLIC SERVICES IN THE MOST COST-EFFECTIVE AND EFFICIENT MANNER,
9	THAT NONPROFIT ENTITIES THAT CONTRACT FOR PUBLIC SERVICES
10	LEVERAGE THE USE OF PUBLIC FUNDS WITH PRIVATE DONATIONS, AND
11	THAT INCREASING OPPORTUNITIES FOR NONPROFIT ENTITIES TO CONTRACT
12	WITH STATE AGENCIES WILL FURTHER THE COST-EFFECTIVE AND EFFICIENT
13	DELIVERY OF PUBLIC SERVICES.
14	24-38-202. Definitions. AS USED IN THIS PART 2, UNLESS THE
15	CONTEXT OTHERWISE REQUIRES:
16	(1) "NONPROFIT CONTRIBUTION" MEANS THE SUPPLY BY A
17	NONPROFIT ENTITY OF RESOURCES TO ACCOMPLISH ALL OR ANY PART OF
18	THE WORK ON A PROJECT OR THE IMPLEMENTATION OR ADMINISTRATION
19	OF A PROGRAM.
20	(2) "Nonprofit entity" means a corporation or
21	ORGANIZATION AUTHORIZED TO DO BUSINESS IN THE STATE THAT IS

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1	EXEMPT FROM TAXATION PURSUANT TO SECTION 501 (a) OF THE FEDERAL
2	"Internal Revenue Code of 1986", 26 U.S.C. Sec. 501 (a), AS
3	AMENDED, AND IS LISTED AS AN EXEMPT ORGANIZATION IN SECTION 501
4	(c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C.
5	SEC. 501 (c), AS AMENDED.
6	(3) "PUBLIC BENEFIT" MEANS AN AGENCY GRANT OF A RIGHT OR
7	INTEREST IN OR CONCERNING AN AGENCY PROJECT OR PROGRAM.
8	(4) "PUBLIC-PRIVATE INITIATIVE" MEANS A NONTRADITIONAL
9	ARRANGEMENT BETWEEN AN AGENCY AND ONE OR MORE NONPROFIT
10	ENTITIES THAT PROVIDES FOR:
11	(a) ACCEPTANCE OF A NONPROFIT CONTRIBUTION TO AN AGENCY
12	PROJECT OR SERVICE IN EXCHANGE FOR A PUBLIC BENEFIT CONCERNING
13	THE PROJECT OR SERVICE OTHER THAN ONLY A MONEY PAYMENT;
14	(b) SHARING OF RESOURCES AND THE MEANS OF PROVIDING
15	PROJECTS OR SERVICES; OR
16	(c) Cooperation in researching, developing, and
17	IMPLEMENTING PROJECTS OR SERVICES.
18	(5) "Unsolicited proposal" means a written proposal for
19	A PUBLIC-PRIVATE INITIATIVE THAT IS SUBMITTED BY A NONPROFIT ENTITY
20	FOR THE PURPOSE OF ENTERING INTO AN AGREEMENT WITH AN AGENCY
21	BUT THAT IS NOT IN RESPONSE TO A FORMAL SOLICITATION OR REQUEST
22	ISSUED BY THE AGENCY.
23	24-38-203. Unsolicited proposals. (1) AN AGENCY MAY
24	CONSIDER, EVALUATE, AND ACCEPT AN UNSOLICITED PROPOSAL ONLY IF
25	THE PROPOSAL COMPLIES WITH ALL OF THE REQUIREMENTS OF THIS
26	SECTION.
27	(2) AN AGENCY MAY CONSIDER AN UNSOLICITED PROPOSAL ONLY

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1	IF THE PROPOSAL:
2	(a) WILL ASSIST THE AGENCY IN CARRYING OUT ITS DUTIES IN A
3	COST-EFFECTIVE AND EFFICIENT MANNER WITHOUT REPLACING EXISTING
4	STATE EMPLOYEES;
5	(b) Is independently originated and developed by the
6	PROPOSER;
7	(c) IS PREPARED WITHOUT AGENCY SUPERVISION; AND
8	(d) INCLUDES SUFFICIENT DETAIL AND INFORMATION TO ALLOW
9	THE AGENCY TO EVALUATE THE PROPOSAL IN AN OBJECTIVE AND TIMELY
10	MANNER AND TO DETERMINE IF THE PROPOSAL BENEFITS THE AGENCY.
11	(3) PARAGRAPHS (b) AND (c) OF SUBSECTION (2) OF THIS SECTION
12	SHALL NOT BE DEEMED TO PROHIBIT AN AGENCY FROM ENCOURAGING THE
13	SUBMISSION OF UNSOLICITED PROPOSALS THAT ARE WELL-DEVELOPED AND
14	CONSISTENT WITH THE AGENCY'S GENERAL POLICY PRIORITIES BY
15	PROVIDING WRITTEN OR ORAL INFORMATION TO ANY PERSON REGARDING
16	THE POLICY PRIORITIES OR THE REQUIREMENTS AND PROCEDURES FOR
17	SUBMITTING AN UNSOLICITED PROPOSAL.
18	(4) If an unsolicited proposal does not meet the
19	REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION, THE AGENCY SHALL
20	RETURN THE PROPOSAL WITHOUT FURTHER ACTION. IF AN UNSOLICITED
21	PROPOSAL MEETS ALL OF THE REQUIREMENTS OF SUBSECTION (2), THE
22	AGENCY MAY FURTHER EVALUATE THE PROPOSAL PURSUANT TO THIS
23	SECTION.
24	(5) AN AGENCY SHALL BASE ITS EVALUATION OF AN UNSOLICITED
25	PROPOSAL ON THE FOLLOWING FACTORS:
26	(a) UNIQUE AND INNOVATIVE METHODS, APPROACHES, OR
27	CONCEPTS DEMONSTRATED BY THE PROPOSAL:

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1	(b) SCIENTIFIC, TECHNICAL, OR SOCIOECONOMIC MERITS OF THE
2	PROPOSAL;
3	(c) POTENTIAL CONTRIBUTION OF THE PROPOSAL TO THE AGENCY'S
4	MISSION;
5	(d) CAPABILITIES, RELATED EXPERIENCE, FACILITIES, OR
6	TECHNIQUES OF THE PROPOSER OR UNIQUE COMBINATIONS OF THESE
7	QUALITIES THAT ARE INTEGRAL FACTORS FOR ACHIEVING THE PROPOSAL
8	OBJECTIVES;
9	(e) COST SAVINGS, EFFICIENT DELIVERY OF SERVICES, OR
10	ENHANCED QUALITY OF SERVICE DELIVERED TO THE RECIPIENT; AND
11	(f) ANY OTHER FACTORS APPROPRIATE TO A PARTICULAR
12	PROPOSAL.
13	(6) AN AGENCY MAY ACCEPT AN UNSOLICITED PROPOSAL ONLY IF:
14	(a) THE UNSOLICITED PROPOSAL RECEIVES A FAVORABLE
15	EVALUATION; AND
16	(b) THE AGENCY MAKES A WRITTEN DETERMINATION BASED ON
17	FACTS AND CIRCUMSTANCES THAT THE UNSOLICITED PROPOSAL IS AN
18	ACCEPTABLE BASIS FOR AN AGREEMENT TO OBTAIN SERVICES EITHER
19	WITHOUT COMPETITION OR, IF APPLICABLE, AFTER THE AGENCY TAKES THE
20	ACTIONS REQUIRED BY SUBSECTION (7) OF THIS SECTION.
21	(7) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (8) OF THIS
22	SECTION, IF AN UNSOLICITED PROPOSAL REQUIRES AN AGENCY TO SPEND
23	PUBLIC MONEYS IN AN AMOUNT THAT IS REASONABLY EXPECTED TO
24	EXCEED FIFTY THOUSAND DOLLARS IN THE AGGREGATE FOR ANY FISCAL
25	YEAR, THE AGENCY SHALL TAKE THE FOLLOWING ACTIONS BEFORE
26	ACCEPTING THE UNSOLICITED PROPOSAL:
27	(a) PROVIDE PUBLIC NOTICE THAT THE AGENCY WILL CONSIDER

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1	COMPARABLE PROPOSALS. THE NOTICE SHALL:
2	(I) BE GIVEN AT LEAST FOURTEEN DAYS PRIOR TO THE DATE SET
3	FORTH THEREIN FOR THE OPENING OF PROPOSALS, PURSUANT TO RULES.
4	THE NOTICE MAY INCLUDE PUBLICATION IN A NEWSPAPER OF GENERAL
5	CIRCULATION AT LEAST FOURTEEN DAYS PRIOR TO THE CONSIDERATION OF
6	COMPARABLE PROPOSALS.
7	(II) BE PROVIDED TO ANY PERSON OR ENTITY THAT EXPRESSES, IN
8	WRITING TO THE AGENCY, AN INTEREST IN A PUBLIC-PRIVATE INITIATIVE
9	THAT IS SIMILAR IN NATURE AND SCOPE TO THE UNSOLICITED PROPOSAL;
10	(III) OUTLINE THE GENERAL NATURE AND SCOPE OF THE
11	UNSOLICITED PROPOSAL, INCLUDING THE WORK TO BE PERFORMED ON THE
12	PROJECT AND THE TERMS OF ANY NONPROFIT CONTRIBUTIONS OFFERED
13	AND PUBLIC BENEFITS REQUESTED CONCERNING THE PROJECT;
14	(IV) REQUEST INFORMATION TO DETERMINE IF THE PROPOSER OF
15	A COMPARABLE PROPOSAL HAS THE NECESSARY EXPERIENCE AND
16	QUALIFICATIONS TO PERFORM THE PUBLIC-PRIVATE INITIATIVE; AND
17	(V) SPECIFY THE ADDRESS TO AND THE DATE BY WHICH
18	COMPARABLE PROPOSALS MUST BE SUBMITTED, ALLOWING A REASONABLE
19	TIME TO PREPARE AND SUBMIT THE PROPOSALS;
20	(b) DETERMINE, IN ITS DISCRETION, IF ANY SUBMITTED PROPOSAL
21	IS COMPARABLE IN NATURE AND SCOPE TO THE UNSOLICITED PROPOSAL
22	AND WARRANTS FURTHER EVALUATION;
23	(c) EVALUATE EACH COMPARABLE PROPOSAL, TAKING RELEVANT
24	FACTORS INTO CONSIDERATION; AND
25	(d) CONDUCT GOOD FAITH DISCUSSIONS AND, IF NECESSARY,
26	NEGOTIATIONS CONCERNING EACH COMPARABLE PROPOSAL.
27	(8) THE ACTIONS REQUIRED BY SUBSECTION (7) OF THIS SECTION

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1	DO NOT APPLY TO AN UNSOLICITED RESEARCH PROPOSAL IF AN AGENCY
2	REASONABLY DETERMINES THAT THE ACTIONS WOULD IMPROPERLY
3	DISCLOSE EITHER THE ORIGINALITY OF THE RESEARCH OR PROPRIETARY
4	INFORMATION ASSOCIATED WITH THE RESEARCH PROPOSAL.
5	(9) AN AGENCY MAY ACCEPT A COMPARABLE PROPOSAL
6	SUBMITTED PURSUANT TO SUBSECTION (7) OF THIS SECTION IF THE AGENCY
7	DETERMINES THAT THE COMPARABLE PROPOSAL IS THE MOST
8	ADVANTAGEOUS TO THE STATE IN COMPARISON TO AN UNSOLICITED
9	PROPOSAL OR OTHER SUBMITTED PROPOSALS.
10	(10) If an unsolicited proposal is accepted or if a
11	COMPARABLE PROPOSAL IS ACCEPTED PURSUANT TO SUBSECTION (9) OF
12	THIS SECTION, THE ACCEPTING AGENCY SHALL USE THE PROPOSAL AS THE
13	BASIS FOR NEGOTIATION OF AN AGREEMENT.
14	(11) AN AGENCY'S PROCUREMENT OFFICER OR THE PROCUREMENT
15	OFFICER'S DESIGNEE HAS THE AUTHORITY TO MAKE THE DETERMINATIONS
16	AND TAKE THE ACTIONS REQUIRED BY THIS SECTION.
17	24-38-204. Public-private initiative agreements - cost
18	savings. (1) AN AGENCY SHALL ENTER INTO AN AGREEMENT FOR EACH
19	PUBLIC-PRIVATE INITIATIVE THAT IT ACCEPTS.
20	(2) AN AGENCY SHALL INCLUDE TERMS AND CONDITIONS IN THE
21	AGREEMENT THAT IT DETERMINES ARE APPROPRIATE IN THE PUBLIC
22	INTEREST.
23	(3) IF AN AGENCY ACHIEVES COST-SAVINGS IN A FISCAL YEAR BY
24	ENTERING INTO A PUBLIC-PRIVATE INITIATIVE AGREEMENT, THE AGENCY
25	SHALL BE ELIGIBLE TO RETAIN A PORTION OF ANY COST SAVINGS
26	RESULTING FROM THE AGREEMENT AS PROVIDED IN SECTION 24-38-103.
27	(4) AN AGENCY THAT ENTERS INTO A PUBLIC-PRIVATE INITIATIVE

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1	AGREEMENT WITH A NONPROFIT ENTITY IS NOT A PARTNER OR A JOINT
2	VENTURER WITH THE NONPROFIT ENTITY FOR ANY PURPOSE.
3	SECTION 2. 24-38-102 (2), Colorado Revised Statutes, is
4	amended to read:
5	24-38-102. Definitions. As used in this article, unless the context
6	otherwise requires:
7	(2) "Cost savings" means any money that an agency does not
8	expend from its general fund appropriations for a given fiscal year that is
9	a direct result of cost-cutting measures, "Cost savings" includes
10	INCLUDING an action that would result in a base reduction due to
11	permanent reductions in spending. but In no case shall "cost savings"
12	include or be a result of a case load reduction or personal services
13	contracts that the agency entered into under a managed competition
14	process; EXCEPT THAT "COST SAVINGS" DOES INCLUDE SAVINGS REALIZED
15	FROM PERSONAL SERVICES CONTRACTS ENTERED INTO PURSUANT TO A
16	PUBLIC-PRIVATE INITIATIVE AGREEMENT BETWEEN THE AGENCY AND A
17	NONPROFIT ENTITY IN ACCORDANCE WITH PART 2 OF THIS ARTICLE.
18	SECTION 3. Act subject to petition - effective date. This act
19	shall take effect at 12:01 a.m. on the day following the expiration of the
20	ninety-day period after final adjournment of the general assembly (August
21	11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
22	referendum petition is filed pursuant to section 1 (3) of article V of the
23	state constitution against this act or an item, section, or part of this act
24	within such period, then the act, item, section, or part shall not take effect
25	unless approved by the people at the general election to be held in
26	November 2010 and shall take effect on the date of the official
27	declaration of the vote thereon by the governor.

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