

Amendment to SB 549-FN

1 Amend the title of the bill by replacing it with the following:

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3 AN ACT relative to public-private partnerships for transportation infrastructure projects
4 and establishing the public-private infrastructure oversight commission.
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6 Amend the bill by replacing all after the enacting clause with the following:

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8 1 Purpose Statement. Public-private partnerships allow for the sharing of resources to finance,
9 design, build, operate, and maintain transportation infrastructure projects and are especially
10 effective when limited financial resources are available. Such partnerships provide for shared
11 financial responsibilities between the private sector and a public agency. To accomplish that, a
12 clear and succinct law needs to be implemented that considers our infrastructure requirements,
13 delineates responsibilities and commitments, and identifies risks and rewards of both parties.
14 Public-private partnership legislation is designed to address these issues in order to attract the
15 needed investment to sustain and promote growth while maintaining our transportation
16 infrastructure.

17 2 New Paragraph; Transportation Administration; Powers of Commissioner. Amend
18 RSA 228:21 by inserting after paragraph II the following new paragraph:

19 III. The commissioner, upon the approval of the governor and council and the capital
20 budget overview committee, may enter into agreements with private entities for design-build-
21 finance-operate-maintain or design-build-operate-maintain services for transportation
22 infrastructure projects under RSA 228:107 through RSA 228:115, provided that such projects shall
23 be approved as part of the state 10-year transportation improvement program in accordance with
24 RSA 240.

25 3 New Subdivision; Public-Private Partnership Projects. Amend RSA 228 by inserting after
26 section 106 the following new subdivision:

27 Public-Private Partnership Projects

28 228:107 Public-Private Partnership Infrastructure Oversight Commission Established. There
29 is established a public-private partnership transportation infrastructure oversight commission to
30 consider and recommend to the commissioner of transportation projects that may be suitable for
31 delivery using design-build-finance-operate-maintain or design-build-operate-maintain services.
32 The commission shall act as an advisory board during the execution of a public-private partnership

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1 project, supporting the department in the development of a request for proposals and in the
2 preparation of agreements for public-private partnership projects.

3 228:108 Membership.

4 I. The commission established in RSA 228:107 shall have the following members: 2
5 members who shall reside in different geographic regions of the state, to be appointed by the
6 governor for terms of 2 years; 2 members to be appointed by the president of the senate for terms of
7 2 years; 2 members to be appointed by the speaker of the house of representatives for terms of 2
8 years; and one member to be appointed by the state treasurer, who shall not be an employee of the
9 state treasurer, for a term of 2 years. The commissioner, or designee, shall serve as a non-voting
10 member of the commission.

11 II. Each member of the commission shall be an expert with experience in the fields of
12 transportation law, public policy, public finance, management consulting, transportation, or
13 organizational change; provided that one of the members appointed by the governor shall be an
14 expert in the field of public finance, and one member appointed by the governor shall be an expert
15 in the field of transportation. The governor shall appoint a chairperson from among the members.
16 The members may be eligible for reappointment; however, no member shall serve for more than 3
17 terms.

18 III. No person shall be appointed a voting member of the commission who is registered or
19 was registered within the prior one-year period with the secretary of state as a lobbyist under RSA
20 15; no voting member shall have been a member or employee of the general court or an employee of
21 the executive branch for a period of 6 months prior to his or her appointment; and no member shall
22 have been employed by an organization that has business before the commission, for a period of at
23 least one year prior to his or her appointment.

24 IV. The commissioner shall call the first meeting within 90 days of the effective date of this
25 section.

26 V. Members of the commission shall receive mileage at the state employee rate when
27 attending to the duties of the commission.

28 228:109 Duties.

29 I. The commission shall:

30 (a) Establish a general framework for public-private partnership contracts that
31 establishes a process for the submission and evaluation of all such projects and provides a format
32 and forms to enable the bidder to comply with the requirements including terms and conditions.

33 (b) Provide for the submission of unsolicited proposals, including setting qualification
34 criteria for unsolicited proposals and establishing a process for evaluating unsolicited proposals.

35 (c) Provide a method and structure for using public advisors for strategic planning,
36 proposal evaluations, and project monitoring and utilize public professionals on a case by case basis.

37 (d) Perform an analysis to determine whether a project is suitable for a public-private

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1 partnership whenever the department notifies the commission of its intent to pursue a public-
2 private partnership contract.

3 (e) Hold a minimum of 2 publicly noticed hearings per project to establish whether
4 public-private partnership is the appropriate procurement method. Such notice shall be provided at
5 least 14 days prior to the hearing date. The commission shall allow for a 30-day public comment
6 period following the publicly noticed hearing.

7 (f) Make recommendations to the commissioner, subject to the approval of the governor
8 and council and the capital budget overview committee, concerning the use of public-private
9 partnerships for certain projects.

10 (g) Upon approval of the governor and council and the capital budget overview
11 committee, the commission shall support the department in the development of a request for
12 proposals.

13 (h) Provide criteria for qualifications to bid per project, including but not limited to,
14 adequate equipment to perform, financial stability, and proven record on projects of this type.

15 (i) Assure that any public-private partnership agreement is advanced in accordance
16 with the department's design, permitting, and right of way acquisition process and complies with all
17 federal and state design criteria.

18 (j) Estimate the costs associated with hiring qualified private and public support
19 personnel to advance and oversee any public-private partnership contract.

20 (k) Hold a minimum of one publicly noticed hearing per project to solicit public feedback
21 concerning the draft request for proposals. Such notice shall be provided at least 14 days prior to
22 the hearing date. The commission shall allow for a 30-day public comment period following the
23 publicly noticed hearing.

24 II. Once the commission is satisfied that the request for proposals is complete, governor and
25 council approval shall be obtained before it is released by the department.

26 228:110 Procedure. Whenever the department notifies the commission that it is contemplating
27 the use of a public-private partnership contract for design-build-finance-operate-maintain or design-
28 build-operate-maintain services, the department shall submit a written request to the commission
29 for its consideration. The commission shall provide an initial written response to the request to
30 consider a public-private partnership contract within 15 days. No request for proposals shall be
31 issued by the department for a public-private agreement for design-build-finance-operate-maintain
32 or design-build-operate-maintain services without the commission's written recommendation and
33 concurrence by governor and council of both the procurement method and content of the request for
34 proposals.

35 228:111 Commission Report. The commission shall issue the following reports:

36 I. Within 6 months of the first meeting of the commission a copy of the framework
37 establishing the process for the submission and evaluation of public-private partnership projects

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1 shall be provided to the chairpersons of the public works and highways committee, the senate
2 transportation committee and the governor and council. The framework shall include the process
3 for the submission of both solicited and unsolicited proposals and a process for evaluating such
4 proposals. It shall also include how public advisors may be utilized for planning, evaluating, and
5 monitoring of projects.

6 II. Annually thereafter, a report on the work of the commission shall be provided to the
7 individuals listed in paragraph I, including but not limited to, the number of projects reviewed, the
8 recommendations for such projects and the number of requests for proposals being developed.

9 228:112 Project Reports.

10 I. For each request to establish a public-private partnership contract for design-build-
11 finance-operate-maintain or design-build-operate-maintain services, the commission shall report on
12 issues surrounding the project including, but not limited to:

13 (a) The impact on current state employees.

14 (b) The policy and regulatory structure for overseeing a privately operated
15 transportation facility and ongoing legislative oversight.

16 (c) Issues of taxation, profit-sharing, and resolution of new revenue producing ideas.

17 (d) Advertising and marketing.

18 (e) Use of new technologies.

19 (f) Lease terms and termination clauses.

20 (g) Additional responsibilities by both the private infrastructure operator and the state
21 during the lease period.

22 (h) The financial valuation of the state transportation facility.

23 (i) Issues of public concern.

24 (j) The anticipated advantages of entering into the anticipated public-private agreement
25 for design-build-finance-operate-maintain or design-build-operate-maintain services.

26 II. The report shall be delivered within 30 days of the commission's recommendation
27 concerning the use of design-build-finance-operate-maintain or design-build-operate-maintain
28 services to the chairpersons of the public works and highways committee, the senate transportation
29 committee, and the governor and council.

30 228:113 Contributions from Other States. When a project involves one or more other states,
31 the commissioner may receive and accept capital contributions and funding from such other states
32 and may approve the transfer of support personnel and experts.

33 228:114 State and Federal Funding. Any public-private partnership projects shall be approved
34 as part of the state 10-year transportation improvement program in accordance with RSA 240.

35 228:115 Liability Insurance. Any contract for public-private design-build-finance-operate-
36 maintain or design-build-operate-maintain services shall provide for securing and maintaining a
37 liability insurance policy for contractors and engineers in the design phase of a project which shall

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1 be limited to 10 percent of the cost of such project. A certificate of liability compliance shall be
2 included in the bid. Any such contract shall require a bond under RSA 447:16 for the design-build
3 and bonds, letters of credit, or other forms of security for the operations and maintenance phases of
4 the project.

5 4 Effective Date. This act shall take effect 60 days after its passage.