

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0335.01 Jason Gelender

HOUSE BILL 10-1010

HOUSE SPONSORSHIP

Ferrandino, Court, Gerou

SENATE SPONSORSHIP

Morse, Brophy, Heath

House Committees
State, Veterans, & Military Affairs

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

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. IT IS THE INTENT OF THE GENERAL
14 ASSEMBLY IN ENACTING THIS PART 2 ONLY TO PROVIDE FLEXIBILITY TO
15 STATE GOVERNMENT SO THAT IT CAN DELIVER PUBLIC SERVICES MORE
16 COST-EFFECTIVELY AND EFFICIENTLY AND NOT TO ESTABLISH OR
17 AUTHORIZE THE ESTABLISHMENT OF NEW PROGRAMS.

18 **24-38-202. Definitions.** AS USED IN THIS PART 2, UNLESS THE
19 CONTEXT OTHERWISE REQUIRES:

20 (1) "NONPROFIT CONTRIBUTION" MEANS THE SUPPLY BY A
21 NONPROFIT ENTITY OF RESOURCES TO ACCOMPLISH ALL OR ANY PART OF

1 THE WORK ON A PROJECT OR THE IMPLEMENTATION OR ADMINISTRATION
2 OF A PROGRAM.

3 (2) "NONPROFIT ENTITY" MEANS A CORPORATION OR
4 ORGANIZATION AUTHORIZED TO DO BUSINESS IN THE STATE THAT IS
5 EXEMPT FROM TAXATION PURSUANT TO SECTION 501 (a) OF THE FEDERAL
6 "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 501 (a), AS
7 AMENDED, AND IS LISTED AS AN EXEMPT ORGANIZATION IN SECTION 501
8 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C.
9 SEC. 501 (c) (3), AS AMENDED.

10 (3) "PUBLIC BENEFIT" MEANS AN AGENCY GRANT OF A RIGHT OR
11 INTEREST IN OR CONCERNING AN AGENCY PROJECT OR PROGRAM.

12 (4) "PUBLIC-PRIVATE INITIATIVE" MEANS A NONTRADITIONAL
13 ARRANGEMENT BETWEEN AN AGENCY AND ONE OR MORE NONPROFIT
14 ENTITIES THAT PROVIDES FOR:

15 (a) ACCEPTANCE OF A NONPROFIT CONTRIBUTION TO AN AGENCY
16 PROJECT OR SERVICE IN EXCHANGE FOR A PUBLIC BENEFIT CONCERNING
17 THE PROJECT OR SERVICE OTHER THAN ONLY A MONEY PAYMENT;

18 (b) SHARING OF RESOURCES AND THE MEANS OF PROVIDING
19 PROJECTS OR SERVICES; OR

20 (c) COOPERATION IN RESEARCHING, DEVELOPING, AND
21 IMPLEMENTING PROJECTS OR SERVICES.

22 (5) "UNSOLICITED PROPOSAL" MEANS A WRITTEN PROPOSAL FOR
23 A PUBLIC-PRIVATE INITIATIVE THAT IS SUBMITTED BY A NONPROFIT ENTITY
24 FOR THE PURPOSE OF ENTERING INTO AN AGREEMENT WITH AN AGENCY
25 BUT THAT IS NOT IN RESPONSE TO A FORMAL SOLICITATION OR REQUEST
26 ISSUED BY THE AGENCY.

27 **24-38-203. Unsolicited proposals.** (1) AN AGENCY MAY

1 CONSIDER, EVALUATE, AND ACCEPT AN UNSOLICITED PROPOSAL ONLY IF
2 THE PROPOSAL COMPLIES WITH ALL OF THE REQUIREMENTS OF THIS
3 SECTION.

4 (2) AN AGENCY MAY CONSIDER AN UNSOLICITED PROPOSAL ONLY
5 IF THE PROPOSAL:

6 (a) WILL ASSIST THE AGENCY IN CARRYING OUT ITS DUTIES IN A
7 COST-EFFECTIVE AND EFFICIENT MANNER WITHOUT REPLACING EXISTING
8 STATE EMPLOYEES;

9 (b) IS INDEPENDENTLY ORIGINATED AND DEVELOPED BY THE
10 PROPOSER;

11 (c) IS PREPARED WITHOUT AGENCY SUPERVISION; AND

12 (d) INCLUDES SUFFICIENT DETAIL AND INFORMATION TO ALLOW
13 THE AGENCY TO EVALUATE THE PROPOSAL IN AN OBJECTIVE AND TIMELY
14 MANNER AND TO DETERMINE IF THE PROPOSAL BENEFITS THE AGENCY.

15 (3) PARAGRAPHS (b) AND (c) OF SUBSECTION (2) OF THIS SECTION
16 SHALL NOT BE DEEMED TO PROHIBIT AN AGENCY FROM ENCOURAGING THE
17 SUBMISSION OF UNSOLICITED PROPOSALS THAT ARE WELL-DEVELOPED AND
18 CONSISTENT WITH THE AGENCY'S GENERAL POLICY PRIORITIES BY
19 PROVIDING WRITTEN OR ORAL INFORMATION TO ANY PERSON REGARDING
20 THE POLICY PRIORITIES OR THE REQUIREMENTS AND PROCEDURES FOR
21 SUBMITTING AN UNSOLICITED PROPOSAL.

22 (4) IF AN UNSOLICITED PROPOSAL DOES NOT MEET THE
23 REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION, THE AGENCY SHALL
24 RETURN THE PROPOSAL WITHOUT FURTHER ACTION. IF AN UNSOLICITED
25 PROPOSAL MEETS ALL OF THE REQUIREMENTS OF SUBSECTION (2), THE
26 AGENCY MAY FURTHER EVALUATE THE PROPOSAL PURSUANT TO THIS
27 SECTION.

1 (5) AN AGENCY SHALL BASE ITS EVALUATION OF AN UNSOLICITED
2 PROPOSAL ON THE FOLLOWING FACTORS:

3 (a) UNIQUE AND INNOVATIVE METHODS, APPROACHES, OR
4 CONCEPTS DEMONSTRATED BY THE PROPOSAL;

5 (b) SCIENTIFIC, TECHNICAL, OR SOCIOECONOMIC MERITS OF THE
6 PROPOSAL;

7 (c) POTENTIAL CONTRIBUTION OF THE PROPOSAL TO THE AGENCY'S
8 MISSION;

9 (d) CAPABILITIES, RELATED EXPERIENCE, FACILITIES, OR
10 TECHNIQUES OF THE PROPOSER OR UNIQUE COMBINATIONS OF THESE
11 QUALITIES THAT ARE INTEGRAL FACTORS FOR ACHIEVING THE PROPOSAL
12 OBJECTIVES;

13 (e) COST SAVINGS, EFFICIENT DELIVERY OF SERVICES, OR
14 ENHANCED QUALITY OF SERVICE DELIVERED TO THE RECIPIENT; AND

15 (f) ANY OTHER FACTORS APPROPRIATE TO A PARTICULAR
16 PROPOSAL.

17 (6) AN AGENCY MAY ACCEPT AN UNSOLICITED PROPOSAL ONLY IF:

18 (a) THE UNSOLICITED PROPOSAL RECEIVES A FAVORABLE
19 EVALUATION; AND

20 (b) THE AGENCY MAKES A WRITTEN DETERMINATION BASED ON
21 FACTS AND CIRCUMSTANCES THAT THE UNSOLICITED PROPOSAL IS AN
22 ACCEPTABLE BASIS FOR AN AGREEMENT TO OBTAIN SERVICES EITHER
23 WITHOUT COMPETITION OR, IF APPLICABLE, AFTER THE AGENCY TAKES THE
24 ACTIONS REQUIRED BY SUBSECTION (7) OF THIS SECTION.

25 (7) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (8) OF THIS
26 SECTION, IF AN UNSOLICITED PROPOSAL REQUIRES AN AGENCY TO SPEND
27 PUBLIC MONEYS IN AN AMOUNT THAT IS REASONABLY EXPECTED TO

1 EXCEED FIFTY THOUSAND DOLLARS IN THE AGGREGATE FOR ANY FISCAL
2 YEAR, THE AGENCY SHALL TAKE THE FOLLOWING ACTIONS BEFORE
3 ACCEPTING THE UNSOLICITED PROPOSAL:

4 (a) PROVIDE PUBLIC NOTICE THAT THE AGENCY WILL CONSIDER
5 COMPARABLE PROPOSALS. THE NOTICE SHALL:

6 (I) BE GIVEN AT LEAST FOURTEEN DAYS PRIOR TO THE DATE SET
7 FORTH THEREIN FOR THE OPENING OF PROPOSALS, PURSUANT TO RULES.
8 THE NOTICE MAY INCLUDE PUBLICATION IN A NEWSPAPER OF GENERAL
9 CIRCULATION AT LEAST FOURTEEN DAYS PRIOR TO THE CONSIDERATION OF
10 COMPARABLE PROPOSALS.

11 (II) BE PROVIDED TO ANY PERSON OR ENTITY THAT EXPRESSES, IN
12 WRITING TO THE AGENCY, AN INTEREST IN A PUBLIC-PRIVATE INITIATIVE
13 THAT IS SIMILAR IN NATURE AND SCOPE TO THE UNSOLICITED PROPOSAL;

14 (III) OUTLINE THE GENERAL NATURE AND SCOPE OF THE
15 UNSOLICITED PROPOSAL, INCLUDING THE WORK TO BE PERFORMED ON THE
16 PROJECT AND THE TERMS OF ANY NONPROFIT CONTRIBUTIONS OFFERED
17 AND PUBLIC BENEFITS REQUESTED CONCERNING THE PROJECT;

18 (IV) REQUEST INFORMATION TO DETERMINE IF THE PROPOSER OF
19 A COMPARABLE PROPOSAL HAS THE NECESSARY EXPERIENCE AND
20 QUALIFICATIONS TO PERFORM THE PUBLIC-PRIVATE INITIATIVE; AND

21 (V) SPECIFY THE ADDRESS TO AND THE DATE BY WHICH
22 COMPARABLE PROPOSALS MUST BE SUBMITTED, ALLOWING A REASONABLE
23 TIME TO PREPARE AND SUBMIT THE PROPOSALS;

24 (b) DETERMINE, IN ITS DISCRETION, IF ANY SUBMITTED PROPOSAL
25 IS COMPARABLE IN NATURE AND SCOPE TO THE UNSOLICITED PROPOSAL
26 AND WARRANTS FURTHER EVALUATION;

27 (c) EVALUATE EACH COMPARABLE PROPOSAL, TAKING RELEVANT

1 FACTORS INTO CONSIDERATION; AND

2 (d) CONDUCT GOOD FAITH DISCUSSIONS AND, IF NECESSARY,
3 NEGOTIATIONS CONCERNING EACH COMPARABLE PROPOSAL.

4 (8) THE ACTIONS REQUIRED BY SUBSECTION (7) OF THIS SECTION
5 DO NOT APPLY TO AN UNSOLICITED RESEARCH PROPOSAL IF AN AGENCY
6 REASONABLY DETERMINES THAT THE ACTIONS WOULD IMPROPERLY
7 DISCLOSE EITHER THE ORIGINALITY OF THE RESEARCH OR PROPRIETARY
8 INFORMATION ASSOCIATED WITH THE RESEARCH PROPOSAL.

9 (9) AN AGENCY MAY ACCEPT A COMPARABLE PROPOSAL
10 SUBMITTED PURSUANT TO SUBSECTION (7) OF THIS SECTION IF THE AGENCY
11 DETERMINES THAT THE COMPARABLE PROPOSAL IS THE MOST
12 ADVANTAGEOUS TO THE STATE IN COMPARISON TO AN UNSOLICITED
13 PROPOSAL OR OTHER SUBMITTED PROPOSALS.

14 (10) IF AN UNSOLICITED PROPOSAL IS ACCEPTED OR IF A
15 COMPARABLE PROPOSAL IS ACCEPTED PURSUANT TO SUBSECTION (9) OF
16 THIS SECTION, THE ACCEPTING AGENCY SHALL USE THE PROPOSAL AS THE
17 BASIS FOR NEGOTIATION OF AN AGREEMENT.

18 (11) SUBJECT TO THE REQUIREMENTS OF THIS SECTION, EACH
19 AGENCY SHALL DETERMINE ITS OWN PROCESS FOR CONSIDERING,
20 EVALUATING, AND ACCEPTING OR REJECTING UNSOLICITED PROPOSALS. IF
21 THE DIVISION OF FINANCE AND PROCUREMENT OF THE DEPARTMENT OF
22 PERSONNEL HOLDS THE PROCUREMENT AUTHORITY FOR AN AGENCY THAT
23 RECEIVES AN UNSOLICITED PROPOSAL, IT IS RECOMMENDED THAT THE
24 AGENCY CONSULT WITH THE DIVISION BEFORE DECIDING TO ACCEPT THE
25 PROPOSAL.

26 **24-38-204. Public-private initiative agreements - cost**
27 **savings.** (1) AN AGENCY SHALL ENTER INTO AN AGREEMENT FOR EACH

1 PUBLIC-PRIVATE INITIATIVE THAT IT ACCEPTS.

2 (2) AN AGENCY SHALL INCLUDE TERMS AND CONDITIONS IN THE
3 AGREEMENT THAT IT DETERMINES ARE APPROPRIATE IN THE PUBLIC
4 INTEREST.

5 (3) IF AN AGENCY ACHIEVES COST-SAVINGS IN A FISCAL YEAR BY
6 ENTERING INTO A PUBLIC-PRIVATE INITIATIVE AGREEMENT, THE AGENCY
7 SHALL BE ELIGIBLE TO RETAIN A PORTION OF ANY COST SAVINGS
8 RESULTING FROM THE AGREEMENT AS PROVIDED IN SECTION 24-38-103.

9 (4) AN AGENCY THAT ENTERS INTO A PUBLIC-PRIVATE INITIATIVE
10 AGREEMENT WITH A NONPROFIT ENTITY IS NOT A PARTNER OR A JOINT
11 VENTURER WITH THE NONPROFIT ENTITY FOR ANY PURPOSE.

12 **SECTION 2.** 24-38-102 (2), Colorado Revised Statutes, is
13 amended to read:

14 **24-38-102. Definitions.** As used in this article, unless the context
15 otherwise requires:

16 (2) "Cost savings" means any money that an agency does not
17 expend from its general fund appropriations for a given fiscal year that is
18 a direct result of cost-cutting measures, ~~"Cost savings" includes~~
19 INCLUDING an action that would result in a base reduction due to
20 permanent reductions in spending. ~~but~~ In no case shall "cost savings"
21 include or be a result of a case load reduction or personal services
22 contracts that the agency entered into under a managed competition
23 process; EXCEPT THAT "COST SAVINGS" DOES INCLUDE SAVINGS REALIZED
24 FROM PERSONAL SERVICES CONTRACTS ENTERED INTO PURSUANT TO A
25 PUBLIC-PRIVATE INITIATIVE AGREEMENT BETWEEN THE AGENCY AND A
26 NONPROFIT ENTITY IN ACCORDANCE WITH PART 2 OF THIS ARTICLE.

27 **SECTION 3. Act subject to petition - effective date.** This act

1 shall take effect at 12:01 a.m. on the day following the expiration of the
2 ninety-day period after final adjournment of the general assembly (August
3 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
4 referendum petition is filed pursuant to section 1 (3) of article V of the
5 state constitution against this act or an item, section, or part of this act
6 within such period, then the act, item, section, or part shall not take effect
7 unless approved by the people at the general election to be held in
8 November 2010 and shall take effect on the date of the official
9 declaration of the vote thereon by the governor.