

LFC Requester:	Joseph Simon
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date January 24, 2024

Bill No: SB165

Sponsor: Garratt and Lundstrom
Short Title: Public Private Partnership Agreements

Agency Name and Code State Ethics Commission (410)
Number: _____
Person Writing Caroline "KC" Manierre
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 190 proposed to add new section to the Procurement Code concerning competitive bidding procedures for public projects developed under a public-private partnership.

Section 1 includes definitions for the new sections. A “public partner” under the act includes a state agency or local public body. Public-private partnerships are defined to mean an arrangement between one or more public partners and one or more private partners for the development of a public project, which is in turn defined to mean a project for which the public partner believes such a partnership would best suit the needs and requirements of the project.

Section 2 would require that prior to entering into a public-private partnership agreement, the public partner issue a request for proposals for competitive sealed proposals, to include the parameters of the project, the duties and responsibilities of the private and public partners, proposed plans for financing, requirements for documentation of the qualifications of the private partner and the private partner’s ability to respond to the needs presented in the RFP and the economic development opportunities presented by the public project, and any other information required by the public partner.

Section 3 further adds a section to the Procurement Code governing unsolicited proposals for public-private partnerships. If a public partner receives an unsolicited proposal, House Bill 190 would allow the public partner to consider further action on the proposal. If the public partner makes no written response and has taken no action on the proposal, the unsolicited proposal shall be deemed rejected. If the public partner elects to consider further action on the proposal, the public partner must provide public notice of the proposal, and outlines what that notice must include and how long it must be posted (depending on the value of the proposal). The bill clarifies that discussion of the project shall not be deemed a solicitation of the project or its concepts after public notice is given. Following the notice period, the public partner may consider the unsolicited proposal and any competing proposal received, and, if the public partner determines it is in the public partner’s best interest to implement some or all of the concepts in those proposals, the public partner may begin a competitive sealed procurement process. A prospective partner that submitted an unsolicited proposal is permitted to submit a proposal in response to an RFP during this open, competitive procurement process.

Section 4 authorizes the board of finance division of the department of finance and administration to promulgate rules for public-private partnership agreements, including when they may be used, minimum requirements, and standards to limit liability of the public partner. The division is required to receive and review RFPs for public-private partnerships, and to receive, review, and approve public-private partnership agreements prior to performance of the agreement.

Section 5 authorizes various types of agreements, including agreements for various combinations of design, building, maintaining, financing, operating, and concessions for the private partner to design, build, operate, maintain, manage or lease a public project. The public partner is required to provide continuous oversight of the project as determined necessary by the division. Finally, House Bill 190 provides that the performance of a public project pursuant to a public-private partnership agreement is a public work for the purposes of the Public Works Minimum Wage Act, the Subcontractors Fair Practices Act and the Public Works Apprentice and Training Act.

FISCAL IMPLICATIONS

The State Ethics Commission is charged with enforcement of the Procurement Code and failures to comply with the Code may result in additional staff time to review, investigate, and potentially enforce the provisions of the Code.

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS