

1 **DRAFT Establishing a Public-Private Partnership (P3) Authority Act**

2
3 **Summary**

4
5 This Act establishes a state Partnership Committee and an Office of Public-Private
6 Partnerships to identify and establish public-private partnerships and approve qualified
7 bidders, requests for proposals, and template contracts. The Act is designed to improve
8 public operational efficiencies and environmental performance, promote public safety,
9 attract private investment in the state, and minimize governmental liabilities.

10
11 **Legislation**

12
13 **{Title, enacting clause, etc.}**

14
15 **Section 1. {Title}**

16
17 This Act may be cited as the “Establishing a Public-Private Partnership (P3) Authority
18 Act”

19
20 **Section 2. {Definitions}** The following definitions apply in this section:

21
22 (A) "Contract" means any purchase and sale agreement, lease, service agreement,
23 franchise agreement, concession agreement, or other written agreement entered into
24 under sections [insert sections here] of the Revised Code with respect to the provision of
25 a public service and any project related thereto.

26
27 (B) "Improvement" means any construction, reconstruction, rehabilitation, renovation,
28 installation, improvement, enlargement, or extension of property or improvements to
29 property.

30
31 (C) "Partnership Committee" means a committee consisting of two members nominated
32 by the President of the Senate, two members nominated by the Speaker of the House, two
33 representatives of the responsible governmental agency, and two representatives of the
34 Office of Budget and Management [or budget agency]. All members of the Committee
35 will be appointed by the Governor. Five members of the Partnership Committee shall
36 constitute a quorum. The Partnership Committee shall act only upon a decision of a
37 majority.

38
39 (D) "Private sector entity" means any corporation, whether for profit or not for profit,
40 limited liability company, partnership, limited liability partnership, sole proprietorship,
41 business trust, joint venture or other entity, but shall not mean the state, a political
42 subdivision of the state, or a public or governmental entity, agency, or instrumentality of
43 the state.
44

45 (E) "Project" means real or personal property, or both, and improvements thereto or in
46 support thereof, including undivided and other interests therein, used for or in the
47 provision of a public service.

48
49 (F) "Proposer" means a private sector entity, a local or regional public entity or agency,
50 or any group or combination thereof, submitting qualifications or a proposal for a public-
51 private partnership contract.

52
53 (G) "Public service" means a service provided for a public purpose of the responsible
54 state agency and identified in an invitation for qualifications or proposals under section
55 [insert section here] of the Revised Code.

56
57 (H) "Responsible state agency" means the agency, department, commission, authority, or
58 other instrumentality of the state responsible for the provision of the public service which
59 is or is proposed to be the subject of a contract.

60
61 **Section 3. {Public-Private Partnership}**

62
63 (A) The Partnership Committee shall have the authority to identify potential public-
64 private partnerships, to approve a short-list of qualified bidders, to approve requests for
65 proposals, and to approve template contracts before they are sent to bidders. The
66 Partnership Committee shall operate with the assistance of the Office of Public-Private
67 Partnerships.

68
69 (B) There shall be established within the Office of Budget and Management an Office of
70 Public-Private Partnerships, which shall have the authority to charge fees for services it
71 shall render as part of the procedures to establish Partnerships in accordance with
72 Revised Code sections [insert sections here] and to receive money on loan to cover its
73 operating expenses and to accomplish the purposes of Revised Code sections [insert
74 sections here].

75
76 (C) The director of budget and management [or budget agency] and the authorized
77 representative of a responsible state agency may jointly take any action and execute any
78 contract for the provision of a public service in order to more efficiently and effectively
79 provide public services, including by generating additional resources in support of those
80 public services and related projects.

81
82 **Section 4. {Project Selection}**

83
84 (A) Selection of Projects. Any proposer or responsible state agency may submit to the
85 Partnership Committee one or more proposals for partnership projects in connection with
86 any public service. The Partnership Committee shall identify potential projects and
87 public services for which a public-private partnership may be appropriate from those
88 received from a proposer, a responsible state agency, or those identified by the
89 Partnership Committee itself. The Partnership Committee shall select such projects based
90 on the partnership's potential to improve public operational efficiencies, improve

91 environmental performance, promote public safety, attract private investment in the state,
92 and minimize governmental liabilities.

93
94 (B) Public-Sector Comparators. After the Partnership Committee identifies a potential
95 partnership for a public project or public service, the Office of Public-Private
96 Partnerships shall conduct a public-sector comparator study of the potential partnership.
97 The Partnership Committee shall determine the scope of each public sector comparator,
98 which scope shall depend on the type of proposed partnership and the nature of the public
99 service under consideration for the partnership. The following issues shall be considered
100 as components of a public sector comparator:

101
102 (1) The definition of the need served by the proposed partnership;

103
104 (2) The cost required to meet the public need served by the public service under
105 traditional procurements or traditional state agency operations;

106
107 (3) An analysis of alternative methods for providing the public services under
108 consideration, including but not limited to design-build, design-build-finance,
109 design-build-finance-operate-maintain, service contracts, or leases, and how the
110 alternative method(s) would meet the need served by the public service; and,

111
112 (4) An evaluation of the cost/benefit of using an alternative method or public-
113 private partnership to render a public service, which cost/benefit analysis shall
114 include:

115
116 (a) The potential cost of utilizing an alternative method;

117
118 (b) The operational and technological risks involved in utilizing an
119 alternative method;

120
121 (c) A comparative analysis of rendering the public service by allowing the
122 responsible state agency to utilize traditional methods;

123
124 (d) The financial impact the partnership will have on the responsible state
125 agency; and

126
127 (e) The impact a partnership would have on job formation, economic
128 growth, and the community in which the public service is to be rendered.

129
130 (C) The Partnership Committee shall use the results of the public sector comparator to
131 determine which public services and projects are appropriate for partnership. The Office
132 of Public-Private Partnerships shall publish on its website the public sector comparator
133 for each project to provide a public service for which a request for qualifications is
134 initiated.

136 (D) The Office of Public-Private Partnerships shall publish notice of the intent to enter
137 into a contract for a partnership for public service or related project, and shall prepare a
138 request for qualifications for private sector entities interested in serving as proposers for
139 the partnership. The notice shall notify interested parties of the opportunity to submit
140 their qualifications for consideration and shall be published at least thirty days prior to the
141 deadline for submitting those qualifications. The Office also may advertise the
142 information contained in the notice in appropriate trade journals and otherwise notify
143 parties believed to be interested in providing the public service and in any related project.
144

145 (E) After inviting qualifications, the Partnership Committee shall evaluate the
146 qualifications submitted and may hold discussions with proposers to further explore their
147 qualifications. Following this evaluation, the Partnership Committee may determine a list
148 of qualified proposers based on criteria in the invitation, and invite only those proposers
149 to submit a proposal.
150

151 (F) The Office of Public-Private Partnerships shall prepare a request for proposal and the
152 proposed partnership contract, both of which shall be approved by the Partnership
153 Committee. After the Partnership Committee's approval of the request for proposal and
154 the partnership contract, the project shall be deemed an Approved Partnership
155 Procurement.
156

157 (1) Partnership contracts may contain the terms and conditions to carry out and
158 effect the purposes of sections [insert sections here] of the Revised Code,
159 including the duration of the contract, which shall not exceed seventy-five years,
160 rates or fees for the public services to be provided or methods or procedures for
161 the determination of such rates or fees, standards for the public services to be
162 provided, responsibilities and standards for operation and maintenance of any
163 related project, required financial assurances, financial and other data
164 reporting requirements, bases and procedures for termination of the contract and
165 retaking of possession or title to the project, and events of default and remedies
166 upon default, including mandamus, a suit in equity, an action at law, or any
167 combination of those remedial actions.
168

169 (G) After proposals are received, the Office of Public-Private Partnerships, using the
170 criteria established in the request for proposal by the Partnership Committee, shall
171 evaluate the proposals submitted and may hold discussions with proposers to further
172 explore their proposals, the scope and nature of the public service(s) they would provide,
173 and the various technical approaches they may take regarding the public service and any
174 related project. Following this evaluation, the Partnership Committee shall select and
175 rank no fewer than three proposers that the Partnership Committee considers to be the
176 most qualified to enter into the contract, except when the Partnership Committee
177 determines that fewer than three qualified proposers are available, in which case the
178 Partnership Committee shall select and rank them.
179

180 (H) After the proposers have been ranked by the Partnership Committee, the director of
181 budget and management and the authorized representative of the responsible state agency

182 shall negotiate the contract with the proposer ranked most qualified to provide the public
183 service at a compensation determined in writing to be fair and reasonable, and to
184 purchase, lease or otherwise take a legal interest in the project.

185
186 (1) Upon failure to negotiate a contract with the proposer ranked most qualified,
187 the director of budget and management shall inform the proposer in writing of the
188 termination of negotiations and may enter, with the responsible state agency, into
189 negotiations with the proposer ranked next most qualified. If negotiations again
190 fail, the same procedure may be followed with each next most qualified proposer
191 selected and ranked, in order of ranking, until a contract is negotiated and
192 executed.

193
194 (2) If the director of budget and management and the authorized representative of
195 the responsible state agency fail to negotiate a contract with any of the ranked
196 proposers, the director of budget and management, in consultation with the
197 responsible state agency, may terminate the process or select and rank additional
198 proposers, based on their qualifications or proposals, and negotiations shall
199 continue as with the proposers selected and ranked initially until a contract is
200 negotiated.

201
202 (3) The director and the authorized representative of the responsible state agency
203 may jointly reject any and all submissions of qualifications or proposals, and may
204 jointly terminate the procurement process at any point.

205
206 (4) The director of budget and management and the authorized representative of
207 the responsible state agency shall have the authority to make commercially
208 reasonable changes to the partnership contract approved by the Partnership
209 Committee. Any such contract may contain the terms and conditions to carry out
210 and affect the purposes of sections [insert sections here] of the Revised Code.

211 212 **Section 5. {Partnership Contracts}**

213
214 (A) Partnership contract shall be signed by both the director of budget and management
215 and the authorized representative of the responsible state agency for which the public
216 service at issue in the contract relates.

217
218 (B) The director of budget and management is authorized to receive and deposit any
219 money received under the contract. Any such contract shall be sufficient to effect its
220 purpose notwithstanding any provision of the Revised Code to the contrary, including
221 other laws governing the sale, lease or other disposition of property or interests therein,
222 service contracts, or financial transactions by or for the state.

223
224 (C) The Office of Public-Private Partnerships shall provide a report to the Speaker of the
225 House and the President of the Senate explaining the value of the contract to the state and
226 describing the procurement process by which the contract was reached.

227

228 **Section 6. {Ownership}**

229

230 (A) The exercise of the powers granted by sections [insert sections here] of the Revised
231 Code will be for the benefit of the people of the state and shall be liberally construed to
232 effect the purposes thereof. As the performance of public services will constitute the
233 performance of essential government functions, any project or part thereof owned by the
234 state and used for performing any public service pursuant to a contract entered into under
235 sections [insert sections here] of the Revised Code that would be exempt from taxation or
236 assessments in the absence of such contract shall remain exempt from taxation and
237 assessments levied by the state and its subdivisions to the same extent as if not subject to
238 that contract. The gross receipts and income of a successful proposer derived from
239 providing public services under a contract through a project owned by the state shall be
240 exempt from taxation levied by the state and its subdivisions. Any transfer or lease
241 between a proposer and the state of a project or part thereof, or item included or to be
242 included in the project, shall be exempt from the taxes levied pursuant to Chapters [insert
243 chapters here] of the Revised Code if the state is retaining ownership of the project or
244 part thereof that is being transferred or leased.

245

246 **Section 7. {Director's Responsibilities}**

247

248 (A) The director of budget and management, in consultation with the responsible state
249 agency, may retain or contract for the services of commercial appraisers, engineers,
250 investment bankers, financial advisers, accounting experts, and other consultants,
251 independent contractors or providers of professional services as are necessary in the
252 judgment of the director to carry out the director's powers and duties under sections
253 [insert sections here] of the Revised Code, including the identification of public services
254 and any related projects to be subject to invitations for qualifications or proposals under
255 sections [insert sections here] of the Revised Code, the development of those invitations
256 and related evaluation criteria, the evaluation of those invitations, and negotiation of any
257 contract under sections [insert sections here] of the Revised Code.

258

259 **Section 8. {Severability Clause}**

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261 **Section 9. {Repealer Clause}**

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263 **Section 10. {Effective Date}**