

2022 Regular Session

SENATE BILL NO. 462

BY SENATOR WARD

PUBLIC CONTRACTS. Authorizes public entities to enter into public-private partnerships.  
(gov sig)

1 AN ACT

2 To enact Chapter 21-B of Title 33 of the Louisiana Revised Statutes of 1950, to be comprised

3 of R.S. 33:7641 through 7649, relative to the municipalities and parishes; to provide

4 relative to the creation of the Public-Private Partnerships Cooperative Endeavor

5 Agreement Act; to provide for public-private partnerships; to provide for the

6 authority of public entities to enter into certain public-private partnerships between

7 the private sector and a public entity; to provide with respect to advisors and

8 consultants; to provide for independent analysis by advisors regarding financial, tax,

9 and legal matters; to provide for advisors' report and fees; to provide for

10 requirements and limitations; to provide relative to procedures and approval; to

11 provide for financial reporting; to provide for terms and definitions; to provide for

12 public notice and public hearings; to provide for an effective date; and to provide for

13 related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. Chapter 21-B of Title 33 of the Louisiana Revised Statutes of 1950,  
16 comprised of R.S. 33:7641 through 7649, is hereby enacted to read as follows:

17 **CHAPTER 21-B. PUBLIC-PRIVATE PARTNERSHIPS**

1                    COOPERATIVE ENDEAVOR AGREEMENT LAW

2            §7641. Short title

3                    This Chapter shall be known and may be cited as the "Public-Private  
4                    Partnerships Cooperative Endeavor Agreement Act".

5            §7642. Findings, declaration of purpose, and intent

6                    The legislature hereby finds and declares that:

7                    A. There is a public need for timely acquisition, design, construction,  
8                    improvement, renovation, expansion, furnishing, equipping, maintenance,  
9                    operation, implementation, or installation of public infrastructure within the  
10                   state.

11                   B. There is demonstrated evidence that public- private partnerships meet  
12                   these needs by improving the schedule for delivery, lowering the cost, and  
13                   providing other benefits to the public.

14                   C. Public entities can benefit when private entities deliver their expertise,  
15                   experience, and resources through public-private partnerships in ways not  
16                   possible through traditional governmental procurement.

17                   D. Financial incentives may exist under state and federal tax provisions  
18                   that encourage public entities to enter into partnerships with private entities or  
19                   other persons to develop qualifying projects.

20                   E. Public and private entities are already authorized under existing law  
21                   to enter into certain types of public-private partnerships, but existing law does  
22                   not provide uniform procedures for evaluating and approving public-private  
23                   partnerships.

24                   F. Public-private partnerships can be more complex than traditional  
25                   methods of procuring, financing, operating, and maintaining public  
26                   infrastructure, and many public entities may lack sufficient expertise necessary  
27                   to prudently evaluate, negotiate, and approve proposed public-private  
28                   partnerships.

29                   G. Public-private partnerships can impact a public entity's annual

1 operating budget, the tax-exempt status and financial covenants of a public  
2 entity's outstanding debt, and the capacity of a public entity to incur debt in the  
3 future.

4 H. Prior to approving a public-private partnership, it is in the public  
5 interest for public entities to undertake sufficient review and analysis, to  
6 provide notice to the public, and to accept comments from the public at a public  
7 hearing.

8 I. It is the intent of the legislature to encourage public-private  
9 partnerships and provide a rigorous process for the evaluation and approval of  
10 public-private partnerships.

11 §7643. Limited authority

12 Nothing in this Chapter shall provide any additional authority for a  
13 public entity to enter into a public-private partnership. If a public entity is  
14 otherwise authorized to enter into a public-private partnership pursuant to  
15 existing law, the provisions of this Chapter shall apply as additional  
16 requirements for entering into a public-private partnership. Nothing in this  
17 Chapter shall constitute a waiver of or exemption from any other requirement  
18 of law.

19 §7644. Definitions

20 For purposes of this Chapter, the following terms have the meanings  
21 ascribed to them in this Section, unless a different meaning clearly appears  
22 from the context:

23 (1) "Infrastructure assets" means any immovable or movable asset used  
24 to provide public services or infrastructure services, whether owned by a public  
25 entity or a private entity.

26 (2) "Infrastructure services" means any method of providing assets or  
27 making the productive capacity of assets available to a public entity in exchange  
28 for user fees, including without limitation:

29 (a) Selling assets to a public entity.

1                   **(b) Leasing assets to a public entity.**

2                   **(c) Providing a public entity the right to use assets.**

3                   **(d) Providing or selling a public entity the output, capacity, or product**  
4 **of an asset.**

5                   **(e) Providing a public entity with an asset as a service.**

6                   **(f) Providing a public entity with a private infrastructure investment.**

7                   **(3) "Private entity" means a natural person, corporation, general**  
8 **partnership, limited liability company, limited partnership, joint venture,**  
9 **business trust, public benefit corporation, private nonprofit corporation, or**  
10 **other business entity.**

11                   **(4) "Private infrastructure investment" means a private entity making,**  
12 **causing, funding, financing, or facilitating capital investment in a new or**  
13 **existing infrastructure asset pursuant to a public-private partnership, whether**  
14 **such capital investment is made by such private entity, by another private**  
15 **entity, or by a public entity.**

16                   **(5) "Public entity" means any parish, municipality, school board, levee**  
17 **district, hospital service district, law enforcement district, fire protection**  
18 **district, communications district, recreation district, drainage district, gravity**  
19 **drainage district, road district, waterworks district, sewerage district, and any**  
20 **agency or special district heretofore or hereafter created solely by any of the**  
21 **foregoing entities.**

22                   **(6) "Public-private partnership" means any agreement or combination**  
23 **of agreements, other than agreements relating to a qualified transaction,**  
24 **pursuant to which at least one public entity and one private entity are parties,**  
25 **obligating a private entity to make a private infrastructure investment in**  
26 **exchange for user fees.**

27                   **(7) "Public services" means services provided to, utilities sold to, or**  
28 **assets made available to members of the general public or a public entity in**  
29 **exchange for user fees, if such services are of the type commonly provided by**

1 public entities in general, including without limitation:

2 (a) Water utility service.

3 (b) Sewerage utility service.

4 (c) Gas utility service.

5 (d) Electric utility service.

6 (e) Telecommunication or broadband service.

7 (f) Thermal energy service.

8 (g) Solid waste disposal service.

9 (h) Fee-based recreational, cultural or sporting facilities.

10 (i) Fee-based public transportation or transportation infrastructure.

11 (8) "Qualified transaction" means an agreement or combination of  
12 agreements which would otherwise be a public-private partnership but for the  
13 agreement or combination of agreements containing one or more of the  
14 following features:

15 (a) Any transaction related to the construction of infrastructure assets  
16 in which:

17 (i) The role of a private entity is limited to the planning, designing,  
18 engineering, architecture, testing, equipping, or construction of infrastructure  
19 assets.

20 (ii) The infrastructure assets are owned by a public entity and procured  
21 pursuant to the requirements of the Public Bid Law pursuant to R.S. 38:2212  
22 et seq.

23 (iii) The private entity is not related to another private entity engaging  
24 in a public-private partnership with respect to such infrastructure assets.

25 (b) Any transaction constituting a financing lease, lease purchase,  
26 installment sale, or similar agreement by which:

27 (i) The private entity owns an infrastructure asset during the term of the  
28 agreement and transfers ownership to the public entity for nominal  
29 consideration at the end of the agreement.

1            (ii) The private entity is a bank, financing company, leasing company, or  
2            other entity primarily engaged in the business of lending or financial leasing.

3            (iii) The private entity is not related to another private entity engaging  
4            in a public-private partnership with respect to such infrastructure assets.

5            (c) Any transaction constituting an incurring of debt by the public entity  
6            in which:

7            (i) The debt is sold in a public offering by or to a bond underwriter;

8            (ii) The debt is sold in a private offering to a purchaser that is commonly  
9            engaged in the business of lending or investing in debt of public entities, such  
10           as a bank, insurance company, mutual fund, institutional bond investor, retail  
11           bond investor, or managed investment account;

12           (iii) The private entity is not related to another private entity engaging  
13           in a public-private partnership with respect to such infrastructure assets.

14           (d) Any transaction for a performance-based energy efficiency contract  
15           which is subject to the requirements provided for in R.S. 33:4547.1 et seq.

16           (e) Any transaction for the lease of infrastructure assets by or to a public  
17           entity pursuant to R.S. 41:1211 et seq.

18           (f) Any transaction for the maintenance or warranty of infrastructure  
19           assets by a private entity, provided that private entity is not related to another  
20           private entity engaging in a public-private partnership with respect to such  
21           infrastructure assets.

22           (g) Any transaction which would otherwise be a public-private  
23           partnership, in which the private entity is a nonprofit corporation, provided  
24           that the private nonprofit corporation does not enter into a secondary  
25           transaction with a private for profit entity, if such secondary transaction would  
26           be a public-private partnership if the private for profit entity entered into such  
27           secondary transaction directly with the public entity.

28           (h) Any transaction in which the activities of a private entity are subject  
29           to the approval, regulation, or ratemaking authority of the Louisiana Public

1 Service Commission, regardless of whether the private entity makes a private  
2 infrastructure investment.

3 (i) Any transaction in which a private entity assumes the operation or  
4 management of healthcare services of a hospital, medical center, clinic, or other  
5 healthcare-related facility or service on behalf of a public entity, regardless of  
6 whether the private entity makes a private infrastructure investment.

7 The transaction shall constitute a qualified transaction only to the extent  
8 that any of the transactions are not undertaken by a public entity as part of, in  
9 conjunction with, in coordination with, in combination with, or in relation to  
10 any other transaction which, when taken together, would otherwise be a  
11 public-private partnership.

12 (9) "Related" means two or more private entities if:

13 (a) One private entity is a child, stepchild, parent, stepparent, spouse,  
14 sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law,  
15 brother-in-law or sister-in-law of the other private entity.

16 (b) One private entity is an executive officer, director, or nominee for  
17 director of the other private entity.

18 (c) One private entity owns more than ten percent of any class of the  
19 other private entity's voting securities.

20 (d) One private entity directly or indirectly controls, is controlled by, or  
21 is under common control with the other private entity.

22 (e) One private party is a party to a joint venture or similar arrangement  
23 with the other private party.

24 (f) One private party is engaged by or under contract with the other  
25 private party.

26 (10) "Traditional public project" means an infrastructure asset that is  
27 owned, financed, acquired, operated, and maintained by a public entity through  
28 traditional government procurement methods, and is not part of a public-  
29 private partnership.

1           (11) "User fees" means revenues, user fees, lease payments, service  
2           payments, or other payments received from the general public or a public entity  
3           with respect to public services or infrastructure services.

4           §7645. Requirements for private entities

5           A. Prior to the governing authority of a public entity granting final  
6           approval of a public-private partnership, any private entity seeking to enter into  
7           a public-private partnership shall provide the public entity with a copy of this  
8           Chapter and a written proposal containing sufficient detail as the public entity  
9           determines is necessary to evaluate the proposal.

10          B. Any document or other information submitted by the private entity  
11          that contains proprietary or trade secret information may be designated as such  
12          in accordance with R.S. 44:3.2 and shall have the protections available to the  
13          document or information described therein.

14          §7646. Independent analysis

15          A. A public entity seeking to enter into a public-private partnership shall  
16          engage the services of the following advisors to assist the public entity in  
17          reviewing the proposed public-private partnership:

18                 (1) An attorney or firm of attorneys licensed to practice law in the state  
19                 and nationally recognized as experienced in matters relating to the tax  
20                 exemption of interest on debt of states and political subdivisions to serve as legal  
21                 advisor.

22                 (2) An independent registered municipal advisor to serve as financial  
23                 advisor.

24                 (3) Any other advisors or consultants the public entity deems necessary.

25          B. The private entity shall cooperate with and provide information as  
26          reasonably requested by the public entity and its advisors.

27          C. The advisors, each acting alone or in coordination with each other,  
28          shall provide analysis of the proposed public-private partnership including but  
29          not limited to:

1           **(1) The effect of the public-private partnership on the public entity's**  
2           **outstanding debt, associated debt covenants, and the federal tax treatment of**  
3           **such debt, and on the public entity's legal and financial capacity to incur debt**  
4           **in the future.**

5           **(2) An analysis of the public-private partnership's advantages,**  
6           **disadvantages, benefits, costs, risks, and mitigants, including both financial and**  
7           **nonfinancial factors.**

8           **(3) A financial analysis of the private entity's proposed financing plan**  
9           **and a calculation of projected user fees and cost of capital.**

10           **(4) A description of potential traditional public projects which are**  
11           **available to the public entity as alternatives to the public-private partnership,**  
12           **and a detailed comparison of such alternatives.**

13           **D. The advisors shall deliver a written report or separate reports of their**  
14           **analysis to the public entity within thirty days following receipt of all**  
15           **information from the private entity which the advisors deem reasonably**  
16           **necessary to complete their analysis, or within such other timeframe as agreed**  
17           **to by the advisors and the public entity. Upon receipt of the advisors' report, the**  
18           **report shall be distributed to the members of the public entity's governing body.**

19           **E. The public entity may charge a reasonable application fee to a private**  
20           **entity in order to cover some or all of the public entity's cost of evaluating a**  
21           **proposed public-private partnership.**

22           **§7647. Public notice; public hearing required**

23           **Prior to granting final approval of a public-private partnership, and**  
24           **following the receipt by the public entity of the written report of its advisors, the**  
25           **governing authority of a public entity shall hold a public hearing. Notice of the**  
26           **public hearing shall be published in the official journal of the public entity, or**  
27           **a newspaper of general circulation within the parish where the public entity is**  
28           **located, not less than seven days prior to the date of the public hearing. The**  
29           **notice shall include the following at a minimum:**

1           A. The date, time, place, and subject matter of the hearing.

2           B. A brief description of the proposed public-private partnership,  
3 including the name of the private entity and a general description of the  
4 infrastructure services or public services being provided.

5           C. A statement that copies of the proposed public-private partnership  
6 agreements and the report of the public entity's advisors are available for public  
7 inspection, and the methods by which the public may inspect such documents  
8 in a manner consistent with the Public Records Law, which may also include the  
9 posting of such documents on the public entity's internet homepage at least  
10 seven days prior to the public hearing.

11 §7648. Approval by governing authority

12           A. After holding the public hearing required by this Chapter, the  
13 governing body of the public entity shall make a determination if the proposed  
14 public-private partnership is in the public interest, which shall be made based  
15 upon such factors as the governing body deems appropriate.

16           B. Upon making a determination that the public-private partnership is  
17 in the public interest, the governing body shall make a determination if all  
18 requirements of this Chapter have been met, and thereafter may approve the  
19 public-private partnership by adoption of a resolution or ordinance authorizing  
20 the execution of the public-private partnership agreements in accordance with  
21 applicable law.

22           C. For thirty calendar days following the public hearing required by this  
23 Chapter, any person in interest may contest the legality of the public-private  
24 partnership, or any provision of the agreements related thereto, for any cause.  
25 After that time, no person shall have a cause or right of action to contest the  
26 regularity, formality, or legality of the public-private partnership, any provision  
27 of the agreements related thereto, or the compliance with the public entity of  
28 any procedural requirements of this Chapter. Thereafter, an irrebuttable  
29 presumption is created that every legal requirement for the confection of the

1            **public-private partnership and the execution of the agreements relating thereto**  
 2            **has been complied with. No court shall have authority to inquire into any of**  
 3            **these matters after the thirty days.**

4            **§7649. Financial reporting**

5            **In each fiscal year in which a public entity is party to public-private**  
 6            **partnership, the public entity shall include in the notes to its comprehensive**  
 7            **annual financial report a brief summary of the public-private partnership**  
 8            **including a description of the general terms of the public-private partnership,**  
 9            **the name of the private entity, and a schedule of payments expected to be made**  
 10           **by or to the public entity.**

11           Section 2. This Act shall become effective upon signature by the governor or, if not  
 12           signed by the governor, upon expiration of the time for bills to become law without signature  
 13           by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 14           vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 15           effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Angela L. De Jean.

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DIGEST

SB 462 Original

2022 Regular Session

Ward

Proposed law creates the Public-Private Partnerships Cooperative Endeavor Agreement Act which authorizes public entities to enter into public-private partnerships.

Proposed law provides that nothing proposed law provides any additional authority for a public entity to enter into a public-private partnership. If a public entity is otherwise authorized to enter into a public-private partnership pursuant to present law, the provisions of proposed law shall apply as additional requirements for entering into a public-private partnership. Further provides that nothing in proposed law shall constitute a waiver of or exemption from any other requirement of law.

Proposed law provides for definitions of "infrastructure assets", "infrastructure services", "private entity", "private infrastructure investment", "public entity", "public-private partnership", "public services", "qualified transaction", "related", "traditional public project", and "user fees".

Proposed law provides the following requirements for private entities:

- (1) Prior to the governing authority of a public entity granting final approval of a public-private partnership, any private entity seeking to enter into a public-private partnership shall provide the public entity with a copy of proposed law and a written proposal containing sufficient detail as the public entity determines is necessary to

evaluate the proposal.

- (2) Any document or other information submitted by the private entity that contains proprietary or trade secret information may be designated as such in accordance with present law and shall have the protections available to the document or information described therein.

Proposed law provides that a public entity seeking to enter into a public-private partnership shall engage the services of the following advisors to assist the public entity in reviewing the proposed public-private partnership:

- (1) An attorney or firm of attorneys licensed to practice law in the state and nationally recognized as experienced in matters relating to the tax exemption of interest on debt of states and political subdivisions to serve as legal advisor.
- (2) An independent registered municipal advisor to serve as financial advisor.
- (3) Any other advisors or consultants the public entity deems necessary.

Further, requires the private entity to cooperate with and provide information as reasonably requested by the public entity and its advisors.

Proposed law provides that the advisors, each acting alone or in coordination with each other, shall provide analysis of the proposed public-private partnership including but not limited to:

- (1) The effect of the public-private partnership on the public entity's outstanding debt, associated debt covenants, and the federal tax treatment of such debt, and on the public entity's legal and financial capacity to incur debt in the future.
- (2) An analysis of the public-private partnership's advantages, disadvantages, benefits, costs, risks, and mitigants, including both financial and nonfinancial factors.
- (3) A financial analysis of the private entity's proposed financing plan and a calculation of projected user fees and cost of capital.
- (4) A description of potential traditional public projects which are available to the public entity as alternatives to the public-private partnership, and a detailed comparison of such alternatives.

Requires the advisors to deliver a written report or separate reports of their analysis to the public entity within 30 days following receipt of all information from the private entity which the advisors deem reasonably necessary to complete their analysis, or within such other timeframe as agreed to by the advisors and the public entity. Further requires the advisors' report to be distributed to the members of the public entity's governing body.

Proposed law provides that the public entity may charge a reasonable application fee to a private entity in order to cover some or all of the public entity's cost of evaluating a proposed public-private partnership.

Proposed law provides for a public hearing to make a determination if the proposed public-private partnership is in the public interest, and thereafter the governing body may approve the public-private partnership by adoption of a resolution or ordinance authorizing the execution of the public-private partnership agreements.

Proposed law provides that for 30 calendar days following the public hearing, any person in interest may contest the legality of the public-private partnership, or any provision of the agreements related thereto, for any cause. After that time, no person shall have a cause or

right of action to contest the regularity, formality, or legality of the public-private partnership, any provision of the agreements related thereto, or the compliance with the public entity of any procedural requirements of proposed law. Further provides that thereafter, an irrebuttable presumption is created that every legal requirement for the confection of the public-private partnership and the execution of the agreements relating thereto has been complied with. Provides that no court shall have authority to inquire into any of these matters after the 30 days.

Proposed law provides that in each fiscal year in which a public entity is party to public-private partnership, the public entity shall include in the notes to its comprehensive annual financial report a brief summary of the public-private partnership including a description of the general terms of the public-private partnership, the name of the private entity, and a schedule of payments expected to be made by or to the public entity.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 33:7641-7649)