



Ohio Revised Code

Section 5501.73 Public-private agreement.

Effective: September 29, 2015

Legislation: House Bill 64 - 131st General Assembly

(A) After selecting a solicited or unsolicited proposal for a public-private initiative, the department of transportation shall enter into a public-private agreement for a transportation facility with the selected private entity or any configuration of private entities. An affected jurisdiction may be a party to a public-private agreement entered into by the department and a selected private entity or combination of private entities.

(B)(1) A public-private agreement under this section shall provide for all of the following:

(a) Planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing, or operation of a transportation facility;

(b) Term of the public-private agreement;

(c) Type of property interest, if any, the private entity will have in the transportation facility;

(d) A specific plan to ensure proper maintenance of the transportation facility throughout the term of the agreement and a return of the facility to the department, if applicable, in good condition and repair;

(e) Whether user fees, administrative fees, or other charges will be collected for use of the transportation facility in accordance with sections 5531.11 to 5531.18 of the Revised Code and the basis by which such user fees, administrative fees, or other charges shall be determined and modified;

(f) Compliance with applicable federal, state, and local laws;

(g) Grounds for termination of the public-private agreement by the department or operator;



(h) Disposition of the facility upon completion of the agreement;

(i) Procedures for amendment of the agreement;

(j) If the agreement contains a construction services component, a contract performance bond executed by a surety authorized by the department of insurance to write surety bonds in an amount specified by the director of transportation, conditioned upon the private entity or contractor performing the construction services portion of the work in accordance with the agreed upon terms, within the time prescribed;

(k) If the agreement contains a construction services component, a payment bond executed by a surety authorized by the department of insurance to write surety bonds in an amount specified by the director, conditioned upon the payment for all labor, work performed, and materials furnished in connection with the construction services portion of the work.

(2) As used in divisions (B)(1)(j) and (k), "construction services" means design-build, construction, reconstruction, replacement, improvement, or repair services.

(C) A public-private agreement under this section may provide for any of the following:

(1) Review and approval by the department of the operator's plans for the development and operation of the transportation facility;

(2) Inspection by the department of construction of or improvements to the transportation facility;

(3) Maintenance by the operator of a policy of liability insurance or self-insurance;

(4) Filing by the operator, on a periodic basis, of appropriate financial statements in a form acceptable to the department;

(5) Filing by the operator, on a periodic basis, of traffic reports in a form acceptable to the department;



- (6) Financing obligations of the operator and the department;
- (7) Apportionment of expenses between the operator and the department;
- (8) Rights and duties of the operator, the department, and other state and local governmental entities with respect to use of the transportation facility;
- (9) Rights and remedies available in the event of default or delay;
- (10) Terms and conditions of indemnification of the operator by the department;
- (11) Assignment, subcontracting, or other delegation of responsibilities of the operator or the department under the agreement to third parties, including other private entities and other state agencies;
- (12) Sale or lease to the operator of private property related to the transportation facility;
- (13) Traffic enforcement and other policing issues, including any reimbursement by the private entity for such services.

(D)(1) The director of transportation may include in any public-private agreement under sections 5501.70 to 5501.83 of the Revised Code a provision authorizing a binding dispute resolution method for any controversy subsequently arising out of the contract. The binding dispute resolution method may proceed only upon agreement of all parties to the controversy. If all parties do not agree to proceed to a binding dispute resolution, a party having a claim against the department shall exhaust its administrative remedies specified in the public-private agreement prior to filing any action against the department in the court of claims.

No appeal from the determination of a technical expert lies to any court, except that the court of common pleas of Franklin County may issue an order vacating such a determination upon the application of any party to the binding dispute resolution if any of the following applies:

- (a) The determination was procured by corruption, fraud, or undue means.



(b) There was evidence of partiality or corruption on the part of the technical expert.

(c) The technical expert was guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced.

(2) As used in this division, "binding dispute resolution" means a binding determination after review by a technical expert of all relevant items, which may include documents, and by interviewing appropriate personnel and visiting the project site involved in the controversy. "Binding dispute resolution" does not involve representation by legal counsel or advocacy by any person on behalf of any party to the controversy.

(E) No public-private agreement entered into under this section shall be construed to transfer to a private entity the director's authority to appropriate property under Chapters 163., 5501., and 5519. of the Revised Code.

(F) Money collected by the department pursuant to an agreement entered into under this section shall be deposited into the state treasury to the credit of the highway operating fund unless the agreement is related to a toll project under sections 5531.11 to 5531.18 of the Revised Code, in which case the money shall be deposited as specified in the agreement.

(G) Chapter 5525. of the Revised Code does not apply to public-private agreements under sections 5501.70 to 5501.83 of the Revised Code.