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A BILL
20-595

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish the District of Columbia Office of Public-Private Partnerships (“Office”) to facilitate the procurement and administration of public-private partnerships in the District of Columbia, to establish the authority to hire professional staff and consultants, budget for operations of the Office, the adoption of rules and regulations with regard to public-private partnerships, the creation of a District of Columbia Infrastructure Fund, to create exclusive authority in the Office to facilitate public-private partnerships, to establish requirements for the procurement of public-private partnerships, the issuance of requests for information, a pre-qualification process, the issuance of solicitations for public-private partnerships, the consideration of unsolicited proposals for public-private partnerships, the Council review of solicitations for public-private partnerships, the entering into of public-private partnership agreements, the terms that shall, may, and cannot be included in public-private partnership agreements, the legal rights of parties to a public-private partnership agreement, the dispute resolution process for public-private partnership agreements, the requirement to consult relevant District government agencies, the requirement to comply with District laws regarding First Source agreements, fair wages, small, local and minority-owned business hiring, and other procurement rules, requirements to ensure transparency, certain conforming amendments, and transition provisions.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this

act may be cited as the “Public-Private Partnership Act of 2014”.

TITLE I. PUBLIC-PRIVATE PARTNERSHIP ACT.

Sec. 101. Definitions.

For the purposes of this act, the term:

(1) “Administrative Procedure Act” means the District of Columbia

Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code 2-

36 501 *et seq.*).

37 (2) “Freedom of Information Act” means the Freedom of Information Act of
38 1976, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*).

39 (3) “Material default” means the failure of an operator to perform a duty under a
40 public-private partnership agreement that jeopardizes the delivery of adequate service to the
41 public and the duty remains unsatisfied after a reasonable period of time and after the operator
42 has received a written notice from the Office of the failure.

43 (4) “Office” means the District of Columbia Office of Public-Private Partnerships
44 established by section 102.

45 (5) “Open Meetings Act” means the Open Meetings Amendment Act of 2010,
46 effective March 31, 2010 (D.C. Law 18-350 D.C. Official Code § 2-571 *et seq.*).

47 (6) “Operator” means a private entity that has entered into a public-private
48 partnership agreement under section 112.

49 (7) “Private entity” means a natural person, corporation, limited liability
50 company, partnership, joint venture, or other private business entity.

51 (8) “Proposer” means a private entity submitting a proposal to a request for
52 proposals issued by the Office or an unsolicited proposal for a public-private partnership.

53 (9) “Public entity” means a District government agency, department, board,
54 commission or instrumentality.

55 (10) “Public notice” means the distribution or dissemination of information to
56 interested parties using methods that are reasonably available, which shall include publication in

57 the District of Columbia Register, the website of the Office or a public entity, and by mail to all
58 Advisory Neighborhood Commissions in which the public-private partnership project will be
59 located.

60 (11) “Public-private partnership” means the method in the District for delivering a
61 qualified project using a long-term, performance-based agreement between a public entity and a
62 private entity or entities where appropriate risks and benefits can be allocated in a cost-effective
63 manner between the public and private entities in which:

64 (A) A private entity performs functions normally undertaken by the
65 government, but the public entity remains ultimately accountable for the qualified project and its
66 public function; and

67 (B) The District may retain ownership or control in the project asset and
68 the private entity may be given additional decision-making rights in determining how the asset is
69 financed, developed, constructed, operated, and maintained over its life cycle.

70 (12) “Public sector comparator” means a risk-adjusted estimate of the total cost
71 for the lifetime of a project, including all capital, operating, financing, and ancillary costs, if a
72 public-private partnership project were to be financed, built, and operated through a traditional
73 government procurement method.

74 (13) “Qualified project” means the planning, acquisition, financing, development,
75 design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance,
76 management, operation, repair, leasing, or ownership of:

77 (A) Education facilities;

78 (B) Transportation facilities, including streets, roads, highways, bridges,
79 tunnels, parking lots or garages, public transit systems, and airports;

80 (C) Cultural or recreational facilities, including parks, libraries, theaters,
81 museums, convention centers, community centers, stadia, athletic facilities, golf courses, or
82 similar facilities;

83 (D) A building or other facility that is beneficial to the public interest
84 and is developed or operated by or for a public entity;

85 (E) Utility facilities, including sewer, water treatment, stormwater
86 management, energy producing or transmission, telecommunications, information technology,
87 recycling, and solid waste management facilities;

88 (F) Improvements necessary or desirable to any District-owned real
89 estate;

90 (G) Any other facility, the construction of which shall be beneficial to
91 the public interest as determined by the Office.

92 (14) "Request for information" means the document issued pursuant to section
93 108 to obtain information from potential proposers about how a public-private partnership
94 project and its associated request for proposals should be structured before a request for proposal
95 is issued

96 (15) "Request for proposal" means the document used in the competitive proposal
97 process pursuant to section 110 in which proposals are evaluated on the basis of technical
98 standards, price and other criteria and in which negotiations with proposers before final selection

99 and entering into a public-private partnership agreement is permissible.

100 (16) “Request for qualification” means the document issued pursuant to section
101 109 used to obtain proof of a private entity’s skills, resources, capabilities, and experience prior
102 to submitting a response to a request for proposals.

103 (17) “Value-for-money analysis” means a comparison of the risk-adjusted cost
104 estimates over the lifetime of a proposed public-private partnership project, including all capital,
105 operating, financing, and ancillary costs, with a public cost comparator.

106 **SUBTITLE A. OFFICE OF PUBLIC-PRIVATE PARTNERSHIPS**
107 **ESTABLISHMENT.**

108 Sec. 102. Establishment of the Office of Public-Private Partnerships.

109 (a) There is established in the Office of the City Administrator an Office of Public-
110 Private Partnerships.

111 (b) The Office shall:

112 (1) Be the primary public entity responsible for facilitating the development,
113 solicitation, evaluation, award, delivery, and oversight of public-private partnerships that involve
114 a public entity in the District; and

115 (2) Consult and coordinate with all public entities that possess relevant
116 knowledge, skills, and expertise in developing requests for proposals, evaluating responses, and
117 negotiating and administering public-private partnership agreements under this act.

118 (c) The Office may retain consultants or enter into contracts to provide financial, legal, or
119 other technical expertise necessary to assist in the development, solicitation, evaluation, award,

120 delivery, and oversight of public-private partnership projects.

121 (d) The Office shall not have the power to pledge the full faith and credit of the District
122 government, nor shall any obligation issued by the Office or any entity sponsored by the Office
123 in connection with any public-private partnership agreement be a general obligation of the
124 District government unless authorized by an act of the Council.

125 Sec. 103. Professional staff.

126 (a) The Office shall be headed by an Executive Director who shall have demonstrated
127 knowledge, training, or experience in the following areas:

128 (1) Infrastructure development;

129 (2) Capital markets and finance, including municipal finance;

130 (3) Public-sector planning; and

131 (4) Procurement.

132 (b) The Executive Director and Office staff shall be subject to the Code of Conduct, as
133 defined in section 101 of the Board of Ethics and Government Accountability Establishment and
134 Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-
135 124; D.C. Official Code § 1-1161.01).

136 Sec. 104. Budget.

137 The Mayor shall provide in the annual budget request to the Council funding for the
138 Office of Public-Private Partnership represented as a separate line or responsibility center.

139 Sec. 105. Rules.

140 (a) The Office shall issue rules, pursuant to Title I of the Administrative

141 Procedure Act, Approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*),
142 to implement the provisions of this title, including:

143 (1) Rules for the development, solicitation, evaluation, award, delivery,
144 and oversight of solicited and unsolicited public-private partnership projects; and

145 (2) Rules to ensure that persons responsible for the proper
146 administration of this title maintain a position of strict impartiality and refrain from any activity
147 that would imply support or opposition to a particular private entity, proposer, or operator of a
148 public-private partnership agreement.

149 (b) The Office shall consult with the Office of the Chief Financial Officer when
150 formulating rules to establish policies and procedures to ensure compliance with relevant laws
151 with regards to the financing of public-private partnership projects.

152 Sec. 106. Public-Private Partnership Administration Fund.

153 (a) There is established as a nonlapsing fund the Public-Private Partnership
154 Administration Fund (“Fund”), which shall be administered by the Executive Director in
155 accordance with subsection (c) of this section.

156 (b) All administrative fees collected under section 108(d) and section 110(d) shall be
157 deposited into the Fund.

158 (c) Money in the Fund shall be used to pay for the costs associated with carrying out
159 section 108 and section 110.

160 (d)(1) The money deposited into the Fund, and any interest earned, shall not revert to the
161 unrestricted fund balance of the General Fund of the District of Columbia at the end of the fiscal

162 year, or at any other time.

163 (2) Subject to authorization in an approved budget and financial plan, any funds
164 appropriated in the Fund shall be continually available without regard to fiscal year limitation.

165 **SUBTITLE B. PROCUREMENT OF PUBLIC-PRIVATE PARTNERSHIPS.**

166 Sec. 107. Requests for information.

167 (a) Before beginning a competitively bid solicitation process in accordance with section
168 109, the Office may issue a request for information to obtain information regarding potential
169 public-private partnership projects.

170 (b) A request for information shall be published in a manner that gives interested parties
171 sufficient public notice, time, and opportunity to respond.

172 (c) Any responses to a request for information shall be the property of the Office.

173 (d) A private entity's response to a request for information shall have no effect on the
174 evaluation or selection of that private entity for a public-private partnership agreement.

175 Sec. 108. Pre-qualification.

176 (a) The Office may provide for a process of prequalification for private entities to submit
177 a bid pursuant to section 109, which shall include public notice of a request for qualifications,
178 including the requirements and the criteria the Office will use in determining whether the private
179 entity prequalifies.

180 (b) In addition to any requirements set forth in the request for proposals for a public-
181 private partnership project, in order to be prequalified, a private entity shall:

182 (1) Have available such lawful sources of funding, capital, securities, or other

183 financial resources necessary to carry out the public-private partnership project if such private
184 entity is selected;

185 (2) Possess, either through its staff, subcontractors, a consortium or joint venture
186 agreement, the managerial, organizational, technical capacity, and experience in the type of
187 project for which the proposer is submitting a bid;

188 (3) Be qualified to lawfully conduct business in the District; and

189 (4) Certify that no director, officer, partner, owner or other individual with direct
190 and significant control over the policy or finances of the private entity has been convicted of
191 corruption or fraud in any jurisdiction of the United States.

192 (c) If the Office determines that a prequalification process is appropriate for the public-
193 private partnership project, only prequalified private entities maybe a proposer.

194 (d) The Office may charge a reasonable application fee for prequalification that may not
195 exceed the Office's actual direct cost of evaluating the application and which shall be deposited
196 into the Fund established by section 106.

197 Sec. 109. Solicitation through Requests for Proposals.

198 (a) A public-private partnership shall be solicited by the Office only through a
199 competitive bid process in which a request for proposals, developed pursuant to section 111, is
200 issued.

201 (b) A request for proposals shall contain, at a minimum, the following:

202 (1) A detailed description of the scope of the proposed public-private
203 partnership project;

204 (2) The material terms and conditions applicable to the procurement and any
205 resulting contract; and

206 (3) The criteria for evaluation and selection of a proposal, which shall indicate
207 the relative weight given to each criterion set forth in subsection (c) of this section.

208 (4) The evaluation and selection criteria in a request for proposals shall include
209 the following, each of which shall be given a relative weight:

210 (A) Cost;

211 (B) Delivery time;

212 (C) Financial commitment required of public entities;

213 (D) Capabilities, related experience, facilities, or techniques of the
214 proposer or unique combinations of these qualities that are integral factors for achieving the
215 proposal objectives;

216 (E) Value-for-money and public sector comparator analysis of the
217 proposal;

218 (F) Novel methods, approaches, or concepts demonstrated by the proposal;

219 (G) Scientific, technical, or socioeconomic merits of the proposal;

220 (H) Potential contribution of the proposal to the mission of the District;

221 (I) How the proposal benefits the public; and

222 (J) Other factors as the Office deems appropriate to obtain the best value
223 for the District.

224 (c) The Office shall provide public notice of a request for proposals for no less than 30
225 days, unless the Office makes a reasonable written determination that a lesser time period is
226 appropriate and will preserve the competitive nature of the procurement.

227 (d) The Office shall evaluate each proposal that satisfies the minimum requirements of
228 the request for proposals according to the evaluation and selection criteria contained in the
229 request for proposals.

230 (e) The Office shall make available to the public each responsive proposal including the
231 scoring for each proposal and the identity of the bidder upon the closing of the response period;
232 provided, that the Office shall not disclose any information which has been designated as
233 confidential or proprietary by a proposer, if the Office determines the designation is proper.

234 (f)(1) The Office may pay a stipend to an unsuccessful proposer, in an amount and on
235 terms and conditions determined by the Office as reasonable, if:

236 (A) The Office cancels the procurement process fewer than 30 days
237 before the date the bid or proposal is due; or

238 (B) The unsuccessful proposer submits a proposal that is responsive and
239 meets all the requirements established by the Office for the public-private partnership project.

240 (2) All conditions for a stipend shall be clearly set forth in the request for
241 information, bid solicitation, request for proposal, or request for qualifications.

242 (g) Any responses to a request for proposals shall be the property of the Office.

243 Sec. 110. Unsolicited proposals.

244 (a) The Office may consider, evaluate, and accept an unsolicited proposal for a public-
245 private partnership project from a private entity if the proposal:

246 (1) Addresses a need identified in a District or regional planning document;

247 (2) Is independently developed and drafted by the proposer without District
248 supervision;

249 (3) Shows that the proposed project could benefit the District;

250 (4) Includes a financing plan to allow the project to move forward pursuant to all
251 applicable District budget and finance requirements; and

252 (5) Includes sufficient detail and information for the Office to evaluate the
253 proposal in an objective and timely manner and permit a determination that the project would be
254 worthwhile.

255 (b) Within 90 days after receiving an unsolicited proposal, the Office shall complete a
256 preliminary evaluation of the unsolicited proposal received pursuant to subsection (a) of this
257 section and shall either:

258 (1) If the preliminary evaluation is unfavorable, return the proposal without
259 further action.

260 (2) If the preliminary evaluation is favorable, notify the proposer that the Office
261 will comprehensively evaluate the proposal and publish the unsolicited proposal in the District of
262 Columbia Register for a period of not less than 30 days during which time other potential
263 proposers may submit an alternative proposal.

264 (c) After a comprehensive evaluation of an unsolicited proposal and any alternatives
265 submitted, the Office may commence negotiations with an offeror if:

266 (1) The proposal has received a favorable comprehensive evaluation;

267 (2) The proposal is not duplicative of existing infrastructure project or services;

268 (3) The proposal does not closely resemble a pending competitive proposal for a
269 public-private partnership or other procurement;

270 (4) The proposal demonstrates a unique method, approach, or concept;

271 (5) The Office can demonstrate facts and circumstances that preclude additional
272 competition;

273 (6) The Chief Financial Officer certifies:

274 (A) The proper tax exempt of any funds, debts, or assets that the District
275 will contribute to the project;

276 (B) That no provision of the proposal would violate the Anti-Deficiency
277 Act;

278 (C) That proper indemnifications are included in the proposal;

279 (D) That the project is not likely to have a significant adverse impact on
280 District bond ratings; and

281 (E) That there are no interstate compact issues if the project involves
282 multiple jurisdictions;

283 (7) The Office provides notification to the public of its intent to commence
284 negotiations with an offeror.

285 (d) The Office may charge an administrative fee for the costs of processing, reviewing, or
286 evaluating any unsolicited proposals or alternative proposals submitted by a private entity;
287 provided, that the administrative fee is reasonable and shall not exceed the Office's actual direct
288 costs of evaluating the proposal.

289 (e) Any unsolicited proposals or alternatives shall be the property of the Office.

290 Sec. 111. Review of Requests for Proposals.

291 (a) Before the issuance of a request for proposals pursuant to section 109, the Office shall
292 transmit to the Council a proposed resolution to approve a proposed request for proposals in
293 accordance with the criteria established in this section.

294 (b) Before submitting a proposed resolution to the Council pursuant to this subsection
295 (a) of section, the Office shall:

296 (1) Hold at least one public hearing on the proposed request for proposals.

297 The hearing shall be subject to the Open Meetings Act and held at an accessible evening or
298 weekend time and in an accessible location near the proposed public-private partnership project.

299 (2) The Office shall provide at least 30 days' notice to affected Advisory
300 Neighborhood Commissions of the public hearing and shall publicize the hearing by placing a
301 notice in the District of Columbia Register at least 15 days before the hearing.

302 (c)(1) A proposed request for proposals for a public-private partnership project that is
303 anticipated to be valued at more than \$100 million or extend for a term of more than 20 years
304 shall be deemed approved by the Council unless, during a 45-calendar day review period
305 beginning on the 1st day (excluding Saturdays, Sundays, and holidays) following its receipt by

306 the Office of the Secretary to the Council, the Council adopts a resolution to disapprove the
307 proposed request for proposals.

308 (2) A proposed request for proposals for a project that is anticipated to be valued
309 at less than \$100 million or extend for a term of less than 20 years shall be deemed approved by
310 the Council if one of the following occurs:

311 (A) During a 10-day review period beginning on the 1st day (excluding
312 Saturdays, Sundays, and holidays) following its receipt by the Office of the Secretary to the
313 Council, no member of the Council introduces a resolution to approve or disapprove the
314 proposed request for proposals; or

315 (B) If a resolution has been introduced in accordance with subparagraph
316 (A) of this paragraph, and the Council does not disapprove the proposed request for proposals
317 during a 45-day review period beginning on the 1st day (excluding Saturdays, Sundays, and
318 holidays) following its receipt by the Office of the Secretary to the Council.

319 (d)(1) The final request for proposals issued by the Office shall be substantially similar to
320 the proposed request for proposals submitted to the Council for approval.

321 (2) If a substantive change is made to the proposed request for proposals after
322 approval by the Council pursuant to subsection (c) of this section, a revised proposed request for
323 proposals, including changes in redline format, shall be transmitted to Council review pursuant
324 to subsection (c) of this section.

325 (d)(1) Approval of a proposed request for proposals by the Council shall expire 2 years
326 after the effective date of the approval.

327 (2) If the Office determines prior to the end of the 2-year period that a public-
328 private partnership agreement cannot be entered into within the 2-year period, the Office may
329 submit to the Council, no later than 60 days before the end of the 2-year period, a proposed
330 resolution seeking additional time for the public-private partnership project and shall include
331 within the proposed resolution a detailed status report on efforts made toward the public-private
332 partnership project, as well as the reasons for the failure to enter into a public-private partnership
333 agreement within the 2-year period.

334 (3) If the Council does not approve or disapprove the proposed resolution
335 submitted pursuant to paragraph (2) of this subsection within 30 days of receipt of the proposed
336 resolution (excluding Saturdays, Sundays, legal holidays, and days of Council recess), the
337 proposed resolution shall be deemed disapproved.

338 Sec. 112. Public-Private Partnership Agreements.

339 (a) After selecting a solicited or unsolicited proposal for a public-private partnership
340 project, the Office or a designated public entity shall enter into a public-private partnership
341 agreement for a qualified project with the selected private entity or entities.

342 (b) Public-private partnership agreements approved and entered into by the Office
343 pursuant to this act shall include the following:

344 (1) The term length of the agreement, which shall be for a period not to exceed 99
345 years from the date of the full execution of the public-private partnership agreement;

346 (2) A complete description of the facilities to be developed and the functions and
347 responsibilities to be performed by public entities and private entities that are party to the

348 agreement;

349 (3) The types of property interest, if any, that the private entity will have in the
350 project facilities;

351 (4) The terms of the planning, acquisition, financing, development, design,
352 construction, reconstruction, rehabilitation, replacement, improvement, maintenance,
353 management, operation, repair, leasing, and ownership of the facilities;

354 (5) The rights that the public entities and private entities that are party to the
355 agreement have, if any, in revenue generated as a result of the public-private partnership
356 agreement;

357 (6) The minimum quality standards applicable to the public-private partnership
358 project, including performance criteria, reporting requirements, incentives, and penalties for
359 failure to meet these standards;

360 (7) A specific plan to ensure proper maintenance of the project facilities
361 throughout the term of the agreement and a return of the facility to the Office or a designated
362 public entity, if applicable, in good condition and repair;

363 (8) The compensation of the private entities, including the extent to which and the
364 terms upon which a private entity may charge fees to individuals and entities for the use of the
365 facility, but in no event shall new fees be imposed or existing fees be amended unless authorized
366 by an act of the Council.

367 (9) The requirement of an annual independent audit report furnished by the
368 private entities to the Office covering all aspects of the agreement;

369 (10) Performance and payment bonds or other security and risk-mitigation tools
370 deemed suitable by the Office;

371 (11) If the private entity is responsible for operating the public-private
372 partnership project, one or more policies of public liability insurance in amounts determined by
373 the Office to ensure coverage of tort liability for the public and employees of the private entities;

374 (12) Grounds for termination of the public-private partnership agreement by the
375 Office, a designated public entity, or private entity;

376 (13) Procedures for amending the public-private partnership agreement;

377 (14) Disposition of the facility upon the conclusion or termination of the public-
378 private partnership agreement;

379 (15) The rights and remedies available to the Office for a material breach of the
380 agreement by the private entities or if there is a material default;

381 (16) Identification of funding sources to be used to fully fund the capital,
382 operation, maintenance, or other expenses under the public-private partnership agreement;

383 (17) Certification of compliance with applicable District and federal laws; and

384 (18) Any other provisions determined to be appropriate by the Office.

385 (c) Public-private partnership agreements approved and entered into by the Office
386 pursuant to this act may include review and approval by the Office or a designated public entity
387 of the private entity's plans for the development, operation, and maintenance of the public-
388 private partnership project facilities;

389 (d) No public-private partnership agreement shall contain any noncompete provisions

390 limiting the ability of a public entity to perform its government functions.

391 (e) The Office or a designated public entity shall have access and the right to inspect the
392 public-private partnership project at any time with reasonable notice.

393 (f) The Office or other public entities may apply for and accept funds from the District or
394 federal government and other sources of financial aid to fund public-private partnership projects
395 or otherwise further the purposes of this act.

396 (g) Notwithstanding any other requirements of this act, the Office or other public entities
397 may enter into public-private partnership agreements with other local and state government
398 agencies that are regional in scope as long as the regional scope is expressly stated in the request
399 for proposals submitted to the Council pursuant to section 111.

400 Sec. 113. Legal rights; dispute resolution.

401 (a) The terms of a public-private partnership agreement shall not be construed as a
402 waiver of the sovereign immunity of the District government or as a grant of sovereign immunity
403 to any private entity.

404 (b) No private entity shall be liable for the debts or obligations of the District government
405 or public entities, unless the public-private partnership agreement provides that a private entity is
406 liable under the public-private partnership agreement.

407 (c) In addition to any other remedy available to the Office, in the event of a material
408 default by an operator, the Office may elect to assume the responsibilities and duties of the
409 operator in the public-private partnership project, and in this instance, the Office or a designated
410 public entity shall succeed to all of the rights, title, and interest in the public- private partnership

411 project.

412 (d) The Office may terminate, with cause, the public-private partnership agreement and
413 exercise any other rights and remedies that may be available to it under the law or in equity.

414 (e) The Office may make or cause to be made any appropriate claims under the
415 maintenance, performance or payment bonds, or lines of credit, as set forth in the partnership
416 agreement.

417 (f) In the event the Office or a designated public entity elects to assume the responsibility
418 and duties of a public-private partnership project pursuant to subsection (c) of this section, the
419 Office may develop or operate the public-private partnership project, impose previously
420 approved user fees, impose and collect lease payments, and comply with any service contracts as
421 if it were the operator.

422 (g) The full faith and credit of the District government shall not be pledged to secure any
423 financing of the operator by the election to assume the responsibilities of an operator, and the
424 assumption of the operation of the public-private partnership project shall not obligate the Office
425 or the District government to pay any obligation of the operator from sources other than revenue
426 from the project.

427 Sec. 114. Compliance with federal and District law.

428 (a) The Office, public entities, and private entities that are parties to a public-private
429 partnership agreement shall be exempt from the Procurement Practices Reform Act of 2010,
430 effective April 8, 2011, (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*) (“Act”),
431 except for sections 202 and 415 and title X of the Act.

432 (b) Private entities shall comply, to the extent otherwise applicable, with:

433 (1) The First Source Employment Agreement Act of 1984, effective June 29,
434 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.01 *et seq.*).

435 (2) The Living Wage Act of 2006, effective June 8, 2006, (D.C. Law 16-118;
436 D.C. Official Code § 2-220.01 *et seq.*), or the rate established by the use of a project labor
437 agreement, notice of which must be provided by the Office before soliciting bids or proposals for
438 a public-private partnership;

439 (3) The Small, Local, and Disadvantaged Business Enterprise Development and
440 Assistance Act of 2005, effective October 20, 2005, (D.C. Law 16-33; D.C. Official Code § 2-
441 218.01 *et seq.*);

442 (4) The Clean Hands Before Receiving a License or Permit Act of 1996,
443 effective May 11, 1996, (D.C. Law 11-118; D.C. Official Code § 47-2861 *et seq.*);

444 (5) The Green Building Act of 2006, effective March 8, 2007, (D.C. Law 16-234;
445 D.C. Official Code § 6-1451.01 *et seq.*);

446 (6) The Anacostia Waterfront Environmental Standards Act of 2008, effective
447 March 26, 2008, (D.C. Law 17-138; D.C. Official Code § 2-1226.31 *et seq.*);

448 (7) The Davis-Bacon Act of 1931, approved March 3, 1931 (46 Stat. 1494; 40
449 U.S.C. § 3141 *et seq.*); and

450 (8) The District Hotel Development Projects Labor Peace Agreement Act of
451 2002, effective April 2, 2003 (D.C. Law 14-266; D.C. Official Code § 32-851).

452 (c) Unless otherwise provided by law, nothing in this act shall exempt public-private

453 partnership projects, and participating public entities and private entities, from complying with
454 all applicable District laws and regulations.

455 Sec. 115. Transparency.

456 (a)(1) Before entering into a public-private partnership agreement, the Office shall submit
457 to the Council a report outlining the details of the selected proposal, including any participating
458 private entities, significant terms of the public-private partnership agreement, overall cost, cost to
459 the District, value-for-money analysis and public sector comparator analysis, time for
460 completion, delivery method, any participating public entities, a list of private entities that
461 responded to the request for proposals, and how those responses were scored and how a response
462 was selected according to the criteria and methodology for evaluating responses outlined in the
463 request for proposals.

464 (2) The Office shall provide public notice of the report submitted to the Council.

465 (b) A solicited or unsolicited proposer shall identify those portions of a proposal or other
466 submission that the proposer considers to be a trade secret or confidential commercial, financial,
467 or proprietary information.

468 (2) For trade secrets and confidential and proprietary information to be exempt
469 from disclosure, the proposer must do all of the following:

470 (A) Invoke exclusion on submission of the information or other materials
471 for which protection is sought;

472 (B) Identify with conspicuous labeling the data or other materials for
473 which protection is sought;

474 (C) State the reasons why protection is necessary; and

475 (D) Fully comply with any applicable District law with respect to
476 information that the proposer contends should be exempt from disclosure.

477 (3) Each request for proposals issued pursuant to this title shall require the
478 proposer to include with its proposal an executive summary, which shall be subject to release and
479 disclosure to the public at any time, describing the major elements of its proposal that do not
480 address the proposer's price, financing plan, or other confidential or proprietary information or
481 trade secrets that the proposer intends to be exempt from disclosure..

482 (4)(A) Notwithstanding other provisions of law, no part of a proposal other than
483 the executive summary shall be subject to release or disclosure by the Office or a designated
484 public entity before an award of the public-private partnership agreement and the conclusion of
485 any protest, appeal, or other challenge to the award, absent an administrative or judicial order
486 requiring release or disclosure.

487 (B) After the award of the public-private partnership agreement and the
488 conclusion of any protest, appeal, or other challenge to the award, the Freedom of Information
489 Act shall apply to the proposal.

490 (6) An unsolicited proposal shall contain a similar executive summary and be
491 afforded the same protections as a requested proposal.

492 (c) The Office shall provide public notice of all meetings and shall conduct its meetings
493 in compliance with the Open Meetings Act.

494 (d) The Office shall submit an annual report to the Council within 90 days after the end

495 of each fiscal year, summarizing the activities of the Office for the preceding fiscal year,
496 including:

497 (1) A summary of solicitations requested by public entities for any public-private
498 partnership, including the type of project, the Office's response, and current status;

499 (2) A summary of unsolicited proposals submitted to the Office by private
500 entities, including the type of project, the Office's response, and current status;

501 (3) A summary of all public-private partnership agreements entered into by the
502 Office, including the term sheet and current status of implementation;

503 (4) A summary of all public hearings and public meetings held by the Office;

504 (5) Any recommendations for needed action on the part of the Mayor and Council
505 that is necessary for the Office to fulfill its mission; and

506 (6) An audit of the Office's budget, including the amount and percentage of the
507 Office's budget spent on administrative costs.

508 **TITLE II. CONFORMING AMENDMENT; INITIAL RULES**

509 Sec. 201. Procurement.

510 Section 105(c) of the Procurement Practices Reform Act of 2010, effective April 8, 2011
511 (D.C. Law 18-371; D.C. Official Code § 2-351.05(c)), is amended as follows:

512 (a) Paragraph (17) is amended by striking the word "and" at the end.

513 (b) Paragraph (18) is amended by striking the period and inserting the phrase “; and” in
514 its place.

515 (c) A new paragraph (19) is added to read as follows:

516 “(19) The Office of Public-Private Partnerships, except that sections 202 and 415
517 and title X shall apply.”.

518 Sec. 202. Rules.

519 (a) Within 90-days of the appointment of an Executive Director, proposed rules for
520 implementation of this act and all procurement procedures shall be submitted to the Council for a
521 45-day period of review, excluding days of Council recess.

522 (b) If the Council does not approve or disapprove the rules by resolution within 45-days,
523 the rules shall be deemed approved.

524 **TITLE III. APPLICABILITY; FISCAL IMPACT; EFFECTIVE DATE**

525 Sec. 301. Applicability.

526 This act shall apply upon the inclusion of their fiscal effect in an approved budget and
527 financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in
528 a certification published by the Council in the District of Columbia Register.

529 Sec. 302. Fiscal impact statement.

530 The Council adopts the fiscal impact statement in the committee report as the fiscal
531 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
532 approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(3)).

533 Sec. 303. Effective date.

534 This act shall take effect after approval by the Mayor (or in the event of a veto by the
535 Mayor, override of the veto by the Council, a 30-day period of congressional review as provided
536 in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973

ENGROSSED ORIGINAL

537 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia
538 Register.