

## Addendum

On March 17, 2022, the State Contracting Standards Board requested a formal legal opinion from the Attorney General concerning the Connecticut Port Authority's (CPA) ability to enter into public-private partnerships via its enabling statutes (Exhibit A). On January 24, 2023, the Attorney General issued an opinion on the Board's request (Exhibit B).

## Background

1. Public Act 11-1 Oct. Sp. Sess., effective on October 7, 2011, defined public-private partnerships, the nature of public-private partnerships and the steps that a state agency or quasi-public needed to follow in order to enter into a public-private partnership. Public Act 11-1 Oct. Sp. Sess. was codified as Chapter 55d in Connecticut's general statutes.
2. As defined in Chapter 55d, a "Public-private partnership means the relationship established between a state agency and a private entity by contracting for the performance of any combination of specified functions or responsibilities to design, develop, finance, construct, operate or maintain one or more state facilities where the agency has estimated that the revenue generated by such facility or facilities, in combination with other previously identified funding sources, including any appropriated funds, will be sufficient to fund the cost to develop, maintain and operate such facility or facilities, provided state support of a partnership agreement shall not exceed twenty-five per cent of the cost of the project." Chapter 55d also defines "State agency" or "agency" as any office, department, board, council, commission, institution or other agency in the executive branch of state government or **a quasi-public agency** as defined in section 1-120.
3. When initially passed, Public Act 11-1 Oct. Sp. Sess. envisioned up to five public-private partnerships with a legislative sunset on January 1, 2015.
4. Public-private partnerships require approval of the Governor and legislative review. At the time of the first sunset of the legislation, no public-private partnerships were initiated under Chapter 55d.
5. Public Act 14-217 extended the sunset date to January 1, 2016. The Public Act did not make any other changes to Chapter 55d.
6. The second sunset of Chapter 55d occurred on January 1, 2016 and was not reauthorized until July 7, 2017 with the passage of Public Act 17-149. This left a period of time when Chapter 55d was not operative for any state agency or quasi-public agency.
7. The CPA stated that it had such authority under their enabling statutes C.G.S. 15-31b(a) and as amended under Public Act 18-163 to enter into what the Attorney General refers to as colloquially a public-private partnership. The agreement that the CPA entered into is known as the Harbor Development Agreement. The Harbor Development Agreement was entered into on February 11, 2020 by and between the CPA, Gateway New London, LLC and Northeast Offshore, LLC. The State Contracting Standards Board did not have jurisdiction over the CPA until July 1, 2021.
8. A review of the legislative history does not show that 2018 amendments to the CPA statutes gave it an independent authority to enter a public-private partnership.

9. It should be noted that the Request for Proposal for the Harbor Development Agreement called for it to be a public-private partnership. At the time of execution of the Harbor Development Agreement, the actual agreement met all of the characteristics and criteria for a public-private partnership, except for the legislative oversight hearings. Specifically, the agreement met the following characteristics and criteria as described in Chapter 55d:
- a. "...contracting for the performance of any combination of specified functions or responsibilities to **design, develop, finance, construct, operate or maintain one or more state facilities**" Chapter 55d, C.G.S. § 4-255(a)(3)
  - b. "state support of a partnership agreement shall not exceed twenty-five percent of the cost of the project", Chapter 55d, C.G.S. § 4-255(a)(3)
  - c. "A partnership agreement may not be established for the operation or maintenance of a facility unless such agreement also provides for the financing and development of such facility." Chapter 55d, C.G.S. § 4-255(b). The operating agreement established between the CPA and Gateway New London, LLC is known as the "concession agreement" and is a tandem agreement to the Harbor Development Agreement, which has the CPA, Gateway New London, LLC and the joint-venture between Eversource and Orsted, known as North East Offshore, or NEO.
  - d. Eligible projects included, specifically, "Transportation systems, **including ports**, transit-oriented development and related infrastructure" Chapter 55d, C.G.S. § 4-255(c)(2)
  - e. Chapter 55d, C.G.S. § 4-256(a) requires consultation with multiple commissioners of Executive agencies, including the Department of Economic Development, and Department of Administrative Services. The CPA minutes show that DECD Deputy Commissioner David Kooris was personally involved in the development at the State Pier, engaging with the CPA Board on various topics related to the development of solicitations and procurement of consultants and engineering studies. Mr. Kooris was Deputy Commissioner of the Department of Economic Development from March 2018 until January 2020. Mr. Kooris was appointed chair of the Connecticut Port Authority in July 2019 and continues in that role to this date. It is also known from public records that the Deputy Secretary of OPM, Kosta Diamantis, directly supervised the CPA's redevelopment of the State Pier at the time the Harbor Development Agreement was executed.
  - f. The CPA, using Seabury Maritime LLC, released a Request for Qualifications for the State Pier redevelopment, as provided for in Chapter 55d, C.G.S. § 4-257, "Prequalification and requirements for private entities."
  - g. Per Chapter 55d, C.G.S. § 4-258(a), the CPA conducted a competitive bid process to select the developer: "any agency seeking to enter into a public-private partnership shall conduct a competitive procurement process for the selection of a contractor."
  - h. The Harbor Development Agreement itself appears to meet all of the contract term requirements as laid out in Chapter 55d, C.G.S. § 4-259, including the maximum contract length restriction of no more than 50 years.
10. In his opinion, the Attorney General states, "Some of these partnerships might be characterized – colloquially, in business documents, and by the General Assembly – as "public-private

partnerships,” since they are literally partnerships between government and private entities, even though they are not created under the authority of Chapter 55d of the General Statutes.”

11. The Attorney General concludes his opinion by stating that the CPA was eligible for Chapter 55d partnerships to the same extent as other quasi-publics from 2015 until June 27, 2021. The Attorney General continues in his opinion to state that after that date, pursuant to legislative amendment (Public Act 21-99), no quasi-public agency can enter into new public-private partnerships. That prerogative is now limited to the Department of Transportation.
12. A review of other quasi-publics shows that some have the same legislative authority to enter into colloquially described public-private partnership.

### Conclusion

The Attorney General suggest that only the Department of Transportation has the ability to enter into a public-private partnership under Chapter 55d. The opinion suggests that state agencies and quasi-publics can enter into “colloquially” described public-private partnerships outside of the statutorily defined public-private partnerships described in Chapter 55d. Specifically this authority comes from the language in the CPA’s enabling statute, as modified effective October 1, 2018, giving the CPA the authority to “make and enter into all contracts and agreements that are necessary, desirable or incidental to the conduct of its business.” Several other quasi-public agencies have similar statutory language as the CPA, and may have used it to enter into “colloquially” described public-private partnerships.

Chapter 55d enumerates several crucial safeguards for the public. The act requires legislative oversight, public hearings, executive agency reviews and annual reports. It requires at least a 75% commitment of capital by the private entity and limits the public entity to a 25% contribution. It requires a strong business case to be presented to show that the preferential or exclusive use and profiting from a state asset by a private entity serves the public interest. And most importantly, it provides for a transparent process for citizens when state assets and significant public money are to be invested.

The State Contracting Standards Board believes that these guardrails are critical public policies to protect the taxpayers of Connecticut. The State Contracting Standards Board believes these safeguards are important whether they apply to Chapter 55d public-private partnerships or to “colloquially described” public-private partnerships.

### Recommendation

1. The General Assembly should review the statutes of state agencies and quasi-public agencies to see if legislative changes are necessary to impose safeguards because of the Attorney General’s opinion regarding non-Chapter 55d public-private partnerships.
2. The General Assembly should review state statutes to see if legislative changes are necessary to impose safeguards on “colloquially described” public-private partnerships, as opined by the Attorney General.

**Exhibit A**



STATE OF CONNECTICUT  
OFFICE OF GOVERNMENTAL ACCOUNTABILITY  
STATE CONTRACTING STANDARDS BOARD

March 17, 2022

The Honorable William Tong, Attorney General  
Office of the Attorney General  
165 Capitol Avenue  
Hartford, CT 06106

VIA EMAIL ONLY  
[AG.Tong@ct.gov](mailto:AG.Tong@ct.gov)

Dear Attorney General Tong:

On behalf of the State Contracting Standards Board (the Board), based upon an affirmative vote of the Board at its March 11, 2022 meeting I write to request a formal Attorney General's opinion concerning the Connecticut Port Authority's ability to enter into public-private partnerships via their enabling statutes.

Also, at the March 11, 2022 meeting of the Board, a second affirmative vote of the Board directed that I also write to request a formal Attorney General's opinion regarding the legitimacy of the Connecticut Port Authority's Harbor Development public-private partnership.

Please send your response or any questions regarding this letter to Executive Director, David Guay, via email at [David.Guay@ct.gov](mailto:David.Guay@ct.gov).

Sincerely,

*Lawrence S. Fox*  
Lawrence S. Fox  
Chair, State Contracting Standards Board

Cc: SCSB

Maura Osborne Murphy, Deputy Associate Attorney General [Maura.MurphyOsborne@ct.gov](mailto:Maura.MurphyOsborne@ct.gov)  
Robert Deichert, Assistant Attorney General [Robert.Deichert@ct.gov](mailto:Robert.Deichert@ct.gov)

## Exhibit B



### OFFICE OF THE ATTORNEY GENERAL CONNECTICUT

WILLIAM TONG  
ATTORNEY GENERAL

January 24, 2023

#### **By Email**

Lawrence S. Fox  
Chair, State Contracting Standards Board  
165 Capitol Avenue, Suite 1060  
Hartford, Connecticut 06106

Re: *Request for Formal Opinion*

Dear Chairman Fox:

You wrote seeking a formal legal opinion “concerning the Port Authority’s ability to enter into public-private partnerships via their enabling statutes.”<sup>1</sup>

The Connecticut Port Authority is a quasi-public agency charged with, among other things, coordinating “the development of Connecticut’s ports and harbors, with a focus on private and public investments.”<sup>2</sup> To achieve its goals, the Port Authority is broadly empowered to enter into contracts, joint ventures, and partnerships with both governmental and private entities.<sup>3</sup>

In 2011, the legislature created a special type of “public-private partnership,” codified at Chapter 55d of the General Statutes, and authorized state agencies to enter into such partnerships under certain circumstances. The statute creating these partnerships expressly included a “quasi-public agency” in the definition of “state agency” for purposes of the section. Conn. Gen. Stat. § 4-255(a). As explained below, the Port Authority, as a quasi-public agency, was able to enter into these Chapter 55d partnerships to the same extent and on the same terms as other quasi-public agencies from the time the Port Authority was created until the statute was modified in June 2021.

#### *The Port Authority’s Creation and Powers*

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<sup>1</sup> This opinion does not speak to the legality, propriety, or ethics of any particular public-private partnership. We do not assume that any specific project or development characterized as a “public-private partnership” is – or should be – a partnership within the meaning of chapter 55d of the General Statutes.

<sup>2</sup> Conn. Gen. Stat. § 15-31b(a).

<sup>3</sup> *Id.*

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In 2015, the General Assembly established the Connecticut Port Authority as a quasi-public agency.<sup>4</sup> In 2018, the General Assembly explicitly gave the Authority the “duty and power” to:

- “Make and enter into all contracts and agreements that are necessary, desirable or incidental to the conduct of its business[.]”<sup>5</sup>
- “Enter into joint ventures and invest in, and participate with, any person or entity, including, without limitation, governmental or private business entities in the formation, ownership, management and operation of business entities, including stock and nonstock corporations, limited liability companies and general and limited partnerships, formed to advance the purposes of the authority.”<sup>6</sup>

The Port Authority remains a quasi-public agency, and retains the authority to enter into “all... necessary, desirable, or incidental” contracts and into “partnerships” with “governmental or private” entities.<sup>7</sup> Some of these partnerships might be characterized – colloquially, in business documents, and by the General Assembly – as “public-private partnerships,” since they are literally partnerships between government and private entities, even though they are not created under the authority of Chapter 55d of the General Statutes.<sup>8</sup>

### *Chapter 55d Public-Private Partnerships*

In 2011, the General Assembly defined a special category of public-private partnership,<sup>9</sup> codified at Chapter 55d of the General Statutes. The legislature envisioned the Chapter 55d

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<sup>4</sup> See Conn. Gen. Stat. (Rev. to 2015) § 15-31a, as enacted by June Sp. Sess. Public Act 15-5, § 1 (creating the Port Authority); Conn. Gen. Stat. (Rev. to 2015) § 1-120(1), as amended by June Sp. Sess. Public Act 15-5, § 37 (including “the Connecticut Port Authority” within definition of a quasi-public agency).

<sup>5</sup> Conn. Gen. Stat. (Supp. 2018) § 15-31b(a), as amended by P.A. 18-163, § 1.

<sup>6</sup> *Id.*

<sup>7</sup> Conn. Gen. Stat. (Supp. 2022) §§ 15-31b(a)(9) and (10).

<sup>8</sup> See, e.g., Connecticut Council for Philanthropy, *How a Public/Private Partnership Brought \$30 Million and 6,650 Jobs to Connecticut*, <https://tinyurl.com/zsz52hxy> (last visited Jan. 3, 2023) (describing a 2010 collaboration between nonprofits and the Connecticut State government to bring an extra \$29 million of federal funding into Connecticut); 2009 Public Acts 9-5, § 52 (codified as amended at Conn. Gen. Stat. § 17a-303a) (calling for Department of Social Services to oversee and support certain projects, including “[p]rivate sector and public-private partnerships to develop technologies to prevent falls among older adults and prevent or reduce injuries when falls occur”).

<sup>9</sup> October Special Session Public Act 11-1 (“Oct. Sp. Sess. P.A. 11-1”).

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partnership as a formal “relationship” in which a “state agency” – including a quasi-public agency like the Port Authority – contracted with “a private entity” to “design, develop, finance, construct, operate or maintain one or more state facilities.”<sup>10</sup>

Between October 2011 and June 2021, Chapter 55d’s provisions went largely unchanged. But legislation passed in 2021 provided that, as of June 28, 2021, only the Department of Transportation can enter into chapter 55d partnerships with private entities.<sup>11</sup>

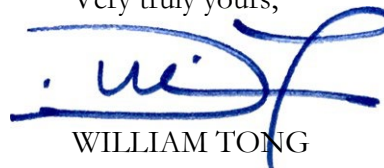
*Legal Analysis: The Port Authority Has Always Been Able to Enter into Chapter 55d Partnerships to the Same Extent as Other Quasi-Public Agencies*

Chapter 55d, as passed in 2011, expressly authorized all quasi-public agencies to enter into public-private partnerships. The General Assembly presumably knew that when it established the Port Authority as a quasi-public agency in 2015. We conclude, then, that the General Assembly extended to the Authority the power of all quasi-public agencies to enter into Chapter 55d partnerships.<sup>12</sup>

So the Port Authority was eligible for Chapter 55d partnerships to the same extent as other quasi-public agencies from 2015 until June 27, 2021. And after that date, pursuant to a legislative amendment, no quasi-public agency – including the Authority – can enter into new public-private partnerships. That prerogative is now limited to the Department of Transportation,

I trust this opinion responds to the Board’s request.

Very truly yours,



WILLIAM TONG

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<sup>10</sup> Conn. Gen. Stat. (Rev. to 2011) § 4-255(a)(3). Chapter 55d defined “state agency” to encompass various entities within the executive branch and any “quasi-public agency,” as defined by Conn. Gen. Stat. § 1-120. Conn. Gen. Stat. (Rev. to 2011) § 4-255(a)(1).

<sup>11</sup> P.A. 21-99, §§ 1, 2, 4-9 (among other changes to Chapter 55d, the legislature deleted references to “state agency” or “agency” and replaced them with references to the DOT).

<sup>12</sup> See *Southern New England Tel. Co. v. Dept. of Pub. Util. Control*, 274 Conn. 119, 129 (2005)(noting that courts “presume that the legislature is aware of existing statutes when creating new ones”).