

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: S3/15/17

A Bill

SENATE BILL 651

5 By: Senator D. Sanders
6 By: Representatives Sabin, Davis, Eaves
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE PARTNERSHIP FOR PUBLIC
10 FACILITIES AND INFRASTRUCTURE ACT; TO REGULATE
11 PUBLIC-PRIVATE PARTNERSHIPS FOR PUBLIC FACILITIES AND
12 INFRASTRUCTURE; AND FOR OTHER PURPOSES.
13

Subtitle

16 TO CREATE THE PARTNERSHIP FOR PUBLIC
17 FACILITIES AND INFRASTRUCTURE ACT; AND TO
18 REGULATE PUBLIC-PRIVATE PARTNERSHIPS FOR
19 PUBLIC FACILITIES AND INFRASTRUCTURE.
20

21
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 *SECTION 1. Arkansas Code Title 22 is amended to add an additional*
25 *chapter to read as follows:*

CHAPTER 10

PARTNERSHIP FOR PUBLIC FACILITIES AND INFRASTRUCTURE ACT

Subchapter 1 – General Provisions

22-10-101. Title.

31 *This chapter shall be known and may be cited as the “Partnership for*
32 *Public Facilities and Infrastructure Act”.*
33

22-10-102. Legislative findings – Purpose.

34
35 *The General Assembly finds that:*
36



1 (1) There is a public need for the timely acquisition, design,
2 construction, improvement, renovation, expansion, equipping, maintenance,
3 operation, implementation, and installation of public infrastructure and
4 government facilities within the state that serve a public purpose;

5 (2) The public need for government facilities and public
6 infrastructure may not be satisfied by existing methods of procurement or
7 funding available to the state;

8 (3) There are inadequate resources to develop public
9 infrastructure and government facilities for the benefit of citizens of the
10 state, and there is demonstrated evidence that public-private partnerships
11 can:

12 (A) Promote the timely and cost-efficient development of
13 public infrastructure and governmental facilities;

14 (B) Provide alternative and innovative funding sources to
15 governmental entities; and

16 (C) Allow governmental entities to leverage and supplement
17 the developmental cost of public infrastructure and governmental facilities
18 through private funding and participation by the private sector in
19 governmental incentive and tax programs that are not otherwise available to
20 governmental entities; and

21 (4) It is necessary to authorize the formation of public-private
22 partnerships that may result in the ability to develop private projects for
23 public infrastructure and government facilities in a more cost-efficient and
24 timely manner, resulting in increased benefits to the public safety and
25 welfare of the citizens of the state and substantial cost benefits to the
26 governmental entities and the public.

27
28 22-10-103. Definitions.

29 As used in this chapter:

30 (1) "Affected local jurisdiction" means:

31 (A) A county, a city of the first class, a city of the
32 second class, an incorporated town, or a school district in which all or a
33 portion of a qualifying project is located; and

34 (B) Any other local governmental entity that is directly
35 impacted by a qualifying project, as specified in the rules promulgated under
36 this chapter;

1 (2) “Comprehensive agreement” means a final written agreement
2 between a private entity and a public entity executed under § 22-10-303 by
3 which a qualifying project shall be developed;

4 (3) “Develop” or “development of” means to plan, design,
5 develop, own, finance, lease, acquire, install, construct, operate, maintain,
6 or expand a qualifying project;

7 (4) “Interim agreement” means a preliminary written agreement
8 between a private entity and a public entity executed under § 22-10-302 by
9 which the development, scope, and feasibility of a qualifying project is
10 identified;

11 (5) “Opportunity cost” means the cost of passing up an
12 alternative and the increase in costs as the result of delaying a decision;

13 (6) “Private entity” means a natural person, corporation,
14 general partnership, limited liability company, limited partnership, joint
15 venture, business trust, public benefit corporation, nonprofit entity, and
16 other business entity;

17 (7)(A) “Public entity” means an agency or instrumentality of the
18 state, including without limitation a department, an agency, an institution
19 of higher education, a board, or a commission.

20 (B) “Public entity” does not include a political
21 subdivision of the state or any other local or regional governmental entity,
22 including without limitation a city of the first class, a city of the second
23 class, an incorporated town, a county, a school district, an improvement
24 district, a water authority, a public facilities board, a solid waste
25 management district, or a water distribution district;

26 (8) “Publish” means the publication by a public entity of a
27 request for proposals one (1) time a week for three (3) consecutive weeks in
28 a newspaper of statewide circulation;

29 (9) “Qualified respondent” means the private entity selected as
30 the most qualified respondent to undertake a qualifying project based on a
31 request for proposals issued under this chapter;

32 (10) “Qualifying project” means a capital development or
33 improvement of any nature that:

34 (A) Serves a public purpose, including without limitation
35 a ferry, mass transit facility, vehicle parking facility, port facility,
36 power generation facility, fuel supply facility, combined heating and power

1 facility, central utility plant facility, distributed generation facility,
2 oil or gas pipeline, water supply facility, water treatment intake and
3 distribution facility, waste water treatment and collection facility, waste
4 treatment facility, hospital, library, school, educational facility, medical
5 or nursing care facility, recreational facility, administrative facility, law
6 enforcement facility, fire department facility, public administrative office,
7 toll road, correctional facility, technology infrastructure facility, public
8 building, transportation system as defined in § 27-76-103, or other similar
9 facility currently available or to be made available to a public entity for
10 public use, including without limitation a structure, parking area,
11 appurtenance, and other related or unrelated infrastructure that might
12 otherwise be described in a comprehensive agreement; and

13 (B) Has one (1) or more of the following characteristics:

14 (i) It is developed using a long-term operations and
15 maintenance agreement, management agreement, or services agreement entered
16 into with a private entity;

17 (ii) It is designed and built in whole or in part by
18 a private entity;

19 (iii) It is a capital development or improvement in
20 which a private entity:

21 (a) Invests its own capital or third-party
22 capital arranged by the private entity;

23 (b) Sources or uses indebtedness, available
24 funds, revenues, or financial or tax incentives to fund the capital
25 development or improvement; or

26 (c) Provides other consideration in the form
27 of goods or services to the public entity to fund the project;

28 (iv) It is owned in whole or in part by a private
29 entity for the benefit of a public entity;

30 (v) It involves real or personal property owned by a
31 public entity that is sold to, leased to, or exchanged with a private entity
32 for leaseback or for use by the public entity; or

33 (vi) It is a qualifying project as defined in the
34 rules promulgated under this chapter;

35 (11) "Request for proposals" means a notice that is issued by a
36 public entity announcing the public entity's interest in developing a

1 qualifying project and seeking proposals from private entities to develop the
2 qualifying project that identifies without limitation:

3 (A) The anticipated scope and purpose of the qualifying
4 project;

5 (B) The financial and nonfinancial benefits related to the
6 qualifying project;

7 (C) Any anticipated revenues that might be realized as a
8 result of the operation of the qualifying project;

9 (D) The proposed timeline under which the qualifying
10 project is to be completed; and

11 (E) Any other issues required by the rules promulgated
12 under this chapter;

13 (12) "Responsible public entity" means a public entity that has
14 the statutory or constitutional authority to develop and operate the
15 applicable qualifying project;

16 (13) "Revenues" means the rates, revenues, income, earnings,
17 user fees, lease payments, service payments, other available funds, and other
18 revenue and cash flow of any nature arising out of or in connection with the
19 development of a qualifying project, including without limitation the funds
20 derived from the operation of a qualifying project or otherwise provided by
21 the parties as stated in the comprehensive agreement, and excluding any
22 revenues that are prohibited by law;

23 (14) "User fees" means the rates, fees, or other charges imposed
24 by a private entity for use of all or a portion of a qualifying project
25 pursuant to a comprehensive agreement; and

26 (15) "Value-for-money analysis" means the value calculated, in
27 percentage terms, when comparing the costs to develop a qualifying project
28 outside of this chapter to the costs to develop the qualifying project under
29 this chapter to determine which procurement approach produces the best value
30 to the public over a long-term period.

31
32 22-10-104. Construction – Supplemental nature – Intent.

33 (a) This chapter:

34 (1) Shall be liberally construed to effectuate its purpose; and

35 (2) Is supplemental to all other powers conferred by law and
36 does not restrict or limit any powers that a public entity has under any

1 other law of this state.

2 (b) It is the intent of this chapter to provide an alternative method
3 of developing qualifying projects for public entities.

4
5 22-10-105. Application.

6 This chapter does not apply to projects of the Arkansas State Highway
7 and Transportation Department.

8
9 Subchapter 2 – Proposals for Qualifying Projects

10
11 22-10-201. Responsible public entity.

12 (a) Before issuing a request for proposals or an invitation for bids,
13 a public entity shall:

14 (1) Seek the advice and consent of the Arkansas Economic
15 Development Commission and the Arkansas Development Finance Authority; and

16 (2) Be designated as the responsible public entity for purposes
17 of developing the qualifying project.

18 (b) A responsible public entity shall:

19 (1) Adopt and make publicly available guidelines that are
20 consistent with the rules promulgated under this chapter before issuing a
21 request for proposals or invitation for bids for a qualifying project under
22 this chapter; and

23 (2) Identify a representative of the responsible public entity
24 who is available to meet with private entities that are considering
25 submitting a proposal.

26
27 22-10-202. Request by responsible public entity – Fees – Notice.

28 (a) A responsible public entity may issue a request for proposals or
29 invitation for bids from private entities for the development of a qualifying
30 project using the guidelines adopted under this chapter.

31 (b) The responsible public entity may charge a reasonable,
32 nonrefundable fee to cover the costs of processing, reviewing, and evaluating
33 a proposal or bid under this section, including without limitation reasonable
34 attorney's fees and fees for financial, technical, or other advisors or
35 consultants.

36 (c) A responsible public entity issuing a request for proposals or an

1 invitation for bids under this section shall notify each affected local
2 jurisdiction in the manner required by the rules promulgated under this
3 chapter.

4
5 22-10-203. Requirements for proposals.

6 (a) A qualifying project shall be developed only after the responsible
7 public entity has issued a request for proposals or invitation for bids under
8 § 22-10-202(a).

9 (b)(1) A private entity that intends to be considered for a qualifying
10 project under subsection (a) of this section shall submit a proposal or bid
11 to the responsible public entity.

12 (2) A proposal by a private entity under subdivision (b)(1) of
13 this section shall be accompanied by the materials and information required
14 by the rules promulgated under this chapter.

15 (c) A qualifying project shall:

16 (1) Be located on real property owned or leased by a public
17 entity; and

18 (2) Include any improvements necessary or desirable to
19 unimproved real property owned by a public entity.

20
21 22-10-204. Requirements for qualifying projects.

22 (a) A responsible public entity may issue a request for proposals or
23 an invitation for bids for the development of a qualifying project if the
24 responsible public entity determines that:

25 (1) There is a public need for or benefit to be derived from the
26 type of qualifying project being proposed;

27 (2) The proposals or bids are anticipated to result in the
28 timely development of the qualifying project; and

29 (3) The qualifying project being considered satisfies or is
30 anticipated to satisfy any criteria stated in the rules promulgated under
31 this chapter.

32 (b) The responsible public entity's development of a qualifying
33 project is contingent on a private entity's entering into an interim
34 agreement or a comprehensive agreement, or both, with the responsible public
35 entity.

36 (c) Neither this chapter nor an interim agreement or a comprehensive

1 agreement entered into under this chapter enlarges, diminishes, or affects
2 the authority, if any, otherwise possessed by a responsible public entity to
3 take action that would impact the debt capacity of the state.

4
5 Subchapter 3 – Contracts between Responsible Public Entity and Private Entity

6
7 22-10-301. Procurement requirements.

8 (a)(1) A responsible public entity may enter into a comprehensive
9 agreement only in accordance with this chapter.

10 (2) A comprehensive agreement may include terms and conditions
11 related to the procurement of services or materials related to the qualifying
12 project.

13 (b) In selecting a qualified respondent:

14 (1) Sections 19-11-801 et seq. apply;

15 (2) Competitive bidding shall not be used; and

16 (3) The responsible public entity shall follow the procedure
17 established for the selection of a qualified respondent in the rules
18 promulgated under this chapter.

19 (c) Procurements related to the development of a qualifying project
20 are exempt from any procurement laws that are not contained in this chapter
21 or the rules promulgated under this chapter and that would otherwise apply to
22 the responsible public entity.

23
24 22-10-302. Interim agreement.

25 (a) Except as otherwise provided in this subsection, after a
26 responsible public entity has selected the qualified respondent to a request
27 for proposals or invitation for bids, the responsible public entity and the
28 qualified respondent may negotiate an interim agreement that complies with
29 the rules promulgated under this chapter.

30 (b) A responsible public entity may enter into an interim agreement
31 with the qualified respondent either before or in connection with the
32 negotiation of a comprehensive agreement under § 22-10-303.

33 (c)(1)(A) If an interim agreement is necessary to develop a qualifying
34 project and an interim agreement cannot be negotiated and executed within the
35 time period stated in the rules promulgated under this chapter, the
36 responsible public entity may begin negotiations with the next most-qualified

1 private entity that submitted a proposal in response to the request for
2 proposals.

3 (B) A public entity is not required to publish a new
4 request for proposals before beginning negotiations with the next most-
5 qualified private entity under subdivision (c)(1)(A) of this section.

6 (2) If an interim agreement is not necessary to develop a
7 qualifying project under the rules promulgated under this chapter, the
8 responsible public entity and the qualified respondent shall negotiate a
9 comprehensive agreement under § 22-10-303.

10
11 22-10-303. Comprehensive agreement.

12 (a) If a responsible public entity and the qualified respondent have
13 entered into an interim agreement, agree on the findings and conclusions
14 stated in the interim agreement, and desire to proceed with the development
15 of the qualifying project, the responsible public entity and qualified
16 respondent shall negotiate and enter into a comprehensive agreement.

17 (b) If it is unnecessary for a responsible public entity and the
18 qualified respondent to enter into an interim agreement, the responsible
19 public entity and the qualified respondent shall negotiate and enter into a
20 comprehensive agreement following selection of the qualified respondent.

21 (c) Before developing or operating the qualifying project, the
22 qualified respondent shall enter into a comprehensive agreement with the
23 public entity that complies with the rules promulgated under this chapter.

24
25 22-10-304. Financing of a qualifying project.

26 (a)(1) Financing of a qualifying project may be in the amounts and
27 upon the terms and conditions stated in the interim agreement or the
28 comprehensive agreement.

29 (2)(A) A qualifying project may be financed by the qualified
30 respondent or the responsible public entity, or both, and the qualified
31 respondent and the responsible public entity may utilize any funding
32 resources available to them, including without limitation to the fullest
33 extent permitted by applicable law, issuing debt, equity, or other securities
34 or obligations, entering into leases, accessing designated trust funds, and
35 borrowing or accepting grants from any state, federal, or private source.

36 (B) Debt issued by a responsible public entity for the

1 development of a qualifying project may be evidenced by the issuance of
2 taxable or tax-exempt bonds, promissory notes, lease-purchase agreements, or
3 other evidences of indebtedness that are specified in the comprehensive
4 agreement.

5 (C) However, bonds issued by a responsible public entity
6 under this chapter:

7 (i) Shall state plainly on the face of the bonds
8 that the bonds are issued under this chapter;

9 (ii) Are obligations only of the responsible public
10 entity;

11 (iii) Do not constitute an indebtedness of the state
12 or a pledge of the full faith and credit of the state; and

13 (iv) Shall not be secured by a lien or security
14 interest in any property of the state.

15 (3)(A) Except as provided in subdivision (a)(2)(C) of this
16 section, financing for a qualifying project by a responsible public entity
17 may be secured by a pledge of, security interest in, or lien on the real or
18 personal property of the public entity, including without limitation any
19 property interests in the qualifying project or the qualifying project
20 revenues the responsible public entity is entitled to receive.

21 (B) Financing for a qualifying project by the qualified
22 respondent may be secured by a pledge of, security interest in, or lien on
23 the real or personal property of the qualified respondent, including without
24 limitation any property interests in the qualifying project or the qualifying
25 project revenues the qualified respondent is entitled to receive.

26 (b)(1) The responsible public entity may take action to obtain
27 federal, state, or local assistance for a qualifying project that serves the
28 public purpose of this chapter, including without limitation entering into
29 any contracts required to receive such assistance.

30 (2) All or any portion of the costs of a qualifying project may
31 be paid, directly or indirectly, from the proceeds of a grant or loan made by
32 the state government, the federal government, or a public entity if it would
33 serve the public purpose of this chapter.

34 (c) In addition to the financing methods allowed under subsection (a)
35 of this section, a qualifying project may be financed through:

36 (1) Capital provided by either the responsible public entity or

1 the qualified respondent;

2 (2) The available funds of the responsible public entity that
3 may legally be used to finance the qualifying project;

4 (3) The operating expenses of the responsible public entity;

5 (4) Revenues of the qualifying project;

6 (5) Any tax credits or other incentives for which the qualifying
7 project or the qualified respondent may qualify;

8 (6) Governmental or third-party grants; and

9 (7) Any other available capital or funding sources of the
10 responsible public entity or the qualified respondent.

11
12 22-10-305. Service contracts.

13 A responsible public entity may contract with a private entity for the
14 delivery of services to be provided as part of a qualifying project in
15 exchange for service payments or other consideration that the responsible
16 public entity deems appropriate.

17
18 Subchapter 4 – Other Powers and Responsibilities

19
20 22-10-401. Eminent domain – Dedication.

21 (a)(1) A public entity may exercise its right of eminent domain under
22 applicable law in connection with the development of a qualifying project.

23 (2) The power of eminent domain shall not be delegated to a
24 private entity with respect to a qualifying project commenced or proposed
25 under this chapter.

26 (3) Damages awarded to a third party in an eminent domain action
27 may be included in the development budget for the qualifying project.

28 (b)(1) A responsible public entity may dedicate any real or personal
29 property interest, including land, improvements, and tangible personal
30 property, through lease, sale, or otherwise, to the qualified respondent to
31 facilitate a qualifying project if so doing will serve the public purpose of
32 this chapter.

33 (2) The consideration for the dedication, lease, sale, or
34 exchange of any real or personal property interest under subdivision (b)(1)
35 of this section may include an agreement by the qualified respondent to
36 operate or develop the qualifying project or provide other services to the

1 public entity.

2 (3) The property interests that a responsible public entity may
3 convey to the qualified respondent in connection with a dedication under this
4 section may include licenses, franchises, easements, or other rights or
5 interests that the public entity deems appropriate.

6
7 22-10-402. Sovereign immunity.

8 This chapter does not:

9 (1) Waive the sovereign immunity of a public entity or the
10 officers or employees of the public entity under state law; or

11 (2) Extend a public entity's sovereign immunity to any private
12 entity.

13
14 22-10-403. Freedom of information.

15 (a) This chapter does not abrogate the obligation of a responsible
16 public entity to comply with the Freedom of Information Act of 1967, § 25-19-
17 101 et seq.

18 (b)(1) However, records that would otherwise be exempt from disclosure
19 under the Freedom of Information Act of 1967, § 25-19-101 et seq., including
20 without limitation confidential and proprietary information, remain exempt
21 when in the custody or control of a public entity, the Chief Fiscal Officer
22 of the State, or the Governor.

23 (2) Records related to a qualifying project that are provided to
24 or compiled or developed by a public entity, the Chief Fiscal Officer of the
25 State, or the Governor in furtherance of the entity's or officer's powers,
26 duties, or obligations under this chapter are exempt under § 25-19-
27 105(b)(9)(A) as files that would give an advantage to competitors or bidders.

28
29 Subchapter 5 – Administration

30
31 22-10-501. Review and approval.

32 (a) The Arkansas Economic Development Commission shall:

33 (1) Review each proposed qualifying project for compliance with
34 the rules promulgated under this chapter;

35 (2) If a proposed qualifying project complies with the rules
36 promulgated under this chapter, assign the qualifying project to the

1 responsible public entity for purposes of issuing a request for proposals or
2 an invitation for bids; and

3 (3) After the responsible public entity selects a qualified
4 respondent and upon request of the responsible public entity, assist in the
5 negotiation of an interim agreement or a comprehensive agreement in
6 accordance with this chapter and the rules promulgated under this chapter.

7 (b)(1) Before execution of an interim agreement or a comprehensive
8 agreement, the responsible public entity shall:

9 (A) Review, negotiate, and select a qualifying project in
10 accordance with this chapter and the rules promulgated under this chapter;
11 and

12 (B)(i) Submit the proposed interim agreement or
13 comprehensive agreement to the Chief Fiscal Officer of the State for
14 approval.

15 (ii) After completing all of the steps in
16 subdivision (b)(2) of this section, the responsible public entity shall
17 submit a proposed comprehensive agreement to the Governor for approval and
18 authorization to execute the comprehensive agreement.

19 (2) Before execution of a comprehensive agreement, the
20 responsible public entity shall:

21 (A) Conduct a public hearing in accordance with the
22 requirements of § 19-9-607;

23 (B) Satisfy any requirements established by the rules
24 promulgated under this chapter; and

25 (C) After conducting a public hearing under subdivision
26 (b)(2)(A) of this section and receiving approval of the proposed
27 comprehensive agreement under subdivision (b)(1)(B) of this section,
28 authorize the execution of the comprehensive agreement by order, ordinance,
29 or resolution at a public meeting that complies with § 25-19-106.

30
31 22-10-502. Arkansas Economic Development Commission – Duties.

32 (a) The Arkansas Economic Development Commission shall promulgate
33 certain rules regarding the definitions and guidelines related to the
34 development of qualifying projects under this chapter within ninety (90) days
35 of the effective date of this chapter.

36 (b) The guidelines promulgated under this section shall include

1 without limitation:

2 (1) Criteria for selecting qualifying projects to be undertaken
3 by a public entity;

4 (2) Criteria for selecting among competing proposals submitted
5 according to a request for proposals under this chapter;

6 (3) Timelines for selecting a qualified respondent under the
7 process for requests for proposals under this chapter;

8 (4) Guidelines for negotiating a comprehensive agreement; and

9 (5) Guidelines for allowing the accelerated selection of a
10 qualified respondent and the review and approval of a qualifying project that
11 is determined to be a priority by the Governor and is funded in whole or
12 substantial part by dedicated revenues.

13
14 22-10-503. Rules.

15 (a) The Arkansas Economic Development Commission and the Arkansas
16 Development Finance Authority shall jointly promulgate rules to administer
17 this chapter, including without limitation rules regarding:

18 (1) Criteria for selecting a qualifying project;

19 (2) Guidelines for a public entity operating under this chapter;

20 (3) Guidelines for monitoring and reporting on qualifying
21 projects;

22 (4) Timeline for selecting a qualified respondent;

23 (5) Guidelines for negotiating a comprehensive agreement;

24 (6) Guidelines for the accelerated selection of a qualified
25 respondent and the review and approval of a qualifying project that the
26 Governor determines to be a priority and that is funded, in whole or in part,
27 by dedicated revenues;

28 (7) Guidelines for selecting a qualifying project, including
29 without limitation:

30 (A) Reasonable criteria for selecting and scoring among
31 competing proposals;

32 (B) Financial review and analysis procedures for financial
33 and technical advisors or consultants that include without limitation:

34 (i) A cost-benefit analysis;

35 (ii) A value-for-money analysis, which shall include
36 without limitation a:

- 1 (a) Qualitative assessment;
2 (b) Quantitative assessment;
3 (c) Business case analysis; and
4 (d) Comparison of the net present value of the
5 total, risk-adjusted costs of delivering a qualifying project under this
6 chapter and through procurement methods outside of this chapter;
7 (iii) An assessment of the opportunity cost;
8 (iv) An analysis of the lifecycle costs, including
9 without limitation the design and construction costs, operating costs, and
10 maintenance and upgrade costs; and
11 (v) Consideration of the results of relevant studies
12 and analyses related to the proposed qualifying project;
13 (C) Procedures for considering the nonfinancial benefits
14 of a proposed qualifying project;
15 (D) Suggested timelines for selecting proposals and
16 negotiating an interim agreement or a comprehensive agreement;
17 (E) Criteria for allowing the responsible public entity to
18 accelerate the selection, review, and documentation timelines for proposals
19 involving a qualifying project that the responsible public entity considers
20 to be a priority;
21 (F) Procedures to:
22 (i) Determine the adequacy of the information
23 released when seeking proposals under this chapter; and
24 (ii) Allow the responsible public entity to release
25 more detailed information when seeking proposals if the responsible public
26 entity determines that the release of additional information is necessary to
27 encourage competition;
28 (G) Criteria, key decision points, and approvals that are
29 required to ensure that the responsible public entity considers the extent of
30 competition before selecting proposals and negotiating an interim agreement
31 or a comprehensive agreement;
32 (H) Criteria for establishing and determining any fees
33 that the responsible public entity elects to charge under § 22-10-202;
34 (I) Procedures for posting and publishing the public
35 notice of a responsible public entity's request for proposals, including
36 without limitation:

1 (i) Specific information and documentation to be
2 released regarding the nature, timing, and scope of the qualifying project;

3 (ii)(a) A reasonable time period as determined by
4 the responsible public entity to encourage competition and public-private
5 partnerships in accordance with the purpose of this chapter.

6 (b) However, the time period established under
7 subdivision (a)(7)(I)(ii)(a) of this section shall not be less than forty-
8 five (45) days, during which time the responsible public entity shall accept
9 the submission of proposals for the qualifying project under this chapter;
10 and

11 (iii) A process for posting the notice required
12 under this subdivision (a)(7)(I) on the responsible public entity's official
13 website and otherwise publishing the notice; and

14 (J) The maximum term of a comprehensive agreement for each
15 type of qualifying project for which the responsible public entity intends to
16 request proposals or invite bids from private entities;

17 (8) A responsible public entity's interaction with affected
18 local jurisdictions and other public entities, including without limitation:

19 (A) Considerations and guidelines for establishing and
20 determining the delivery of a request for proposals or an invitation for bids
21 by the responsible public entity to each affected local jurisdiction and
22 public entity that has complementary authority with respect to a qualifying
23 project;

24 (B) The method of identifying affected local jurisdictions
25 and public entities that have complementary authority with respect to a
26 qualifying project; and

27 (C) The time period during which an affected local
28 jurisdiction and a public entity other than the responsible public entity
29 may:

30 (i) Submit written comments regarding the proposed
31 qualifying project to the responsible public entity; and

32 (ii) Indicate whether the proposed qualifying
33 project is compatible with local plans and budgets;

34 (9) Considerations and guidelines for establishing and
35 determining the mandatory and optional elements of a proposal by a private
36 entity under this chapter, including without limitation:

1 (A) A project description, including without limitation:
2 (i) The location of the qualifying project; and
3 (ii) The specific or conceptual design of the
4 proposed facility, building, infrastructure, or improvement or a conceptual
5 plan for the provision of services or technology infrastructure;

6 (B) A feasibility statement that includes without
7 limitation:

8 (i) The method by which the private entity proposes
9 to secure any necessary property interests required for the qualifying
10 project;

11 (ii) A list of all permits and approvals required
12 for the qualifying project from local, state, and federal agencies; and

13 (iii) A list of public utility facilities, if any,
14 that will be crossed by the qualifying project and a statement of how the
15 private entity will accommodate the crossings;

16 (C) A schedule for the initiation and completion of the
17 qualifying project, including without limitation:

18 (i) The proposed responsibilities of the responsible
19 public entity and the private entity;

20 (ii) A timeline of the activities to be performed by
21 the responsible public entity and the private entity; and

22 (iii) A proposed schedule for obtaining the permits
23 required under subdivision (a)(9)(B)(ii) of this section;

24 (D) A plan for financing the qualifying project, including
25 without limitation:

26 (i) The sources of the private entity's funds;

27 (ii) Any dedicated revenue source or proposed debt
28 or equity investment on behalf of the private entity;

29 (iii) A description of any user fees, lease
30 payments, and other service payments to be paid over the term of the interim
31 agreement or the comprehensive agreement; and

32 (iv) The methodology and circumstances for modifying
33 any user fees, lease payments, and other service payments;

34 (E) A business case statement that includes a basic
35 description of the indirect and direct benefits that the private entity can
36 provide in delivering the qualifying project, including without limitation

1 relevant cost, quality, and time frame data;

2 (F) The names and addresses of the persons who may be
3 contacted for further information concerning the request; and

4 (G) Any additional material and information that the
5 responsible public entity reasonably requests;

6 (10) Considerations and guidelines with respect to the
7 preliminary, mandatory, and optional requirements of an interim agreement and
8 a comprehensive agreement, including without limitation the:

9 (A) Engagement of:

10 (i) An attorney;

11 (ii) A certified public accountant;

12 (iii) A financial or economics professional; and

13 (iv) A consultant or other professional with
14 specialized expertise that is relevant to the proposed qualifying project;

15 (B)(i) Delivery of one (1) or more written evaluations or
16 assessments analyzing financial, legal, or other considerations that should
17 be evaluated by the public entity, including without limitation an assessment
18 of the costs of the qualifying project, the financial viability of the
19 qualifying project, and all other financial and operating assumptions related
20 to the qualifying project.

21 (ii) If municipal financing is a component of the
22 interim agreement, the responsible public entity shall obtain a written
23 evaluation of the proposed qualifying project from a municipal advisor
24 registered with the United States Securities and Exchange Commission and the
25 Municipal Securities Rulemaking Board;

26 (C) Fees and expenses and the responsibility for paying
27 the fees and expenses associated with engaging an attorney, certified public
28 accountant, financial or economics professional, or other consultant; and

29 (D) Negotiation and creation of additional contracts for
30 services and materials, including without limitation revenue contracts,
31 construction contracts, management contracts, services contracts, and other
32 agreements related to the qualifying project;

33 (11) Considerations and guidelines with respect to the
34 preliminary, mandatory, and optional terms and conditions of an interim
35 agreement, including without limitation:

36 (A) Criteria for determining when the private entity is

1 permitted to commence activities and perform tasks related to the qualifying
2 project for which the private entity shall be compensated, including without
3 limitation:

4 (i) Project planning and development;

5 (ii) Design and engineering;

6 (iii) Environmental analysis and mitigation;

7 (iv) Surveying; and

8 (v) Ascertaining the availability of financing for
9 the proposed qualifying project and the ownership of any work product
10 developed;

11 (B) Criteria for establishing the process and timing of
12 the negotiation of the comprehensive agreement;

13 (C) The process for amending, extending, or supplementing
14 an interim agreement; and

15 (D) Other provisions and criteria related to the
16 development of a proposed qualifying project;

17 (12) Considerations and guidelines with respect to the
18 preliminary, mandatory, and optional terms and conditions of a comprehensive
19 agreement, including without limitation:

20 (A) A thorough description of the duties of the
21 responsible public entity and the qualified respondent in relation to the
22 development and operation of the qualifying project;

23 (B) Dates and schedules for the completion of the
24 qualifying project, including any available extensions or renewals of the
25 qualifying project;

26 (C) A pro forma analysis or budget under which the
27 qualifying project shall be developed, financed, constructed, operated, and
28 maintained;

29 (D) The source of all revenues derived from the operation
30 and maintenance of the qualifying project and any process for modifying the
31 revenues during the term of the comprehensive agreement;

32 (E) Financing and funding sources for the qualifying
33 project and any contractual provisions related to the financing and funding
34 sources for the qualifying project;

35 (F) A copy of each contract related to the development of
36 the qualifying project;

1 (G) Reimbursements to be paid to the responsible public
2 entity for services provided by the qualified respondent, if any;

3 (H) A process for the review of plans and specifications
4 for the qualifying project by the responsible public entity and the
5 engineering and architectural consultants of the responsible public entity,
6 if any;

7 (I) A process for the periodic and final inspection of the
8 qualifying project by the responsible public entity or its designee to ensure
9 that the qualified respondent's development activities comply with the
10 comprehensive agreement;

11 (J) For the components of the qualifying project that
12 involve construction, provisions for the:

13 (i) Delivery of maintenance, payment, and
14 performance bonds in the amounts that may be specified by the responsible
15 public entity in the comprehensive agreement; and

16 (ii) Posting and delivery of all other bonds,
17 letters of credit, or other forms of security acceptable to the responsible
18 public entity in connection with the development of the qualifying project;

19 (K) Submission to the responsible public entity by the
20 qualified respondent of proof of workers' compensation, property, casualty,
21 general liability, and other policies of insurance related to the development
22 and operation of the qualifying project in the amounts and subject to the
23 terms that may be specified by the responsible public entity in the
24 comprehensive agreement;

25 (L) A process for the responsible public entity's
26 monitoring of the practices of the qualified respondent to ensure that the
27 qualifying project is properly developed, constructed, operated, and
28 maintained;

29 (M) The filing by the qualified respondent of appropriate
30 financial statements with the responsible public entity related to the
31 operations of the qualifying project within the timeframes established in the
32 comprehensive agreement;

33 (N) Policies and procedures governing the rights and
34 responsibilities of the responsible public entity and the qualified
35 respondent if the comprehensive agreement is terminated according to the
36 terms of the comprehensive agreement or as the result of a default under the

1 terms of the comprehensive agreement; and

2 (O) The process for amending, extending, or supplementing
3 the terms of the comprehensive agreement; and

4 (13) Guidelines for using the value-for-money analysis as a
5 determinative factor in selecting a qualifying project.

6 (b) The commission and the authority may jointly promulgate rules that
7 establish procurement guidelines and requirements that vary depending on the
8 type of qualifying project.

9
10 22-10-504. Legal actions heard as preferred cause of action – Appeals.

11 (a) A lawsuit brought concerning the validity of this chapter, bonds
12 issued under this chapter, or the execution and delivery of an interim
13 agreement or comprehensive agreement is of public interest and shall be
14 advanced by the court and heard as a preferred cause of action.

15 (b) An appeal from a judgment or decree rendered in a case described
16 in subsection (a) of this section shall be taken within thirty (30) calendar
17 days after the judgment or decree is rendered.

18
19 22-10-505. Audits – Monitoring and reporting.

20 (a) An account related to the construction, operation, or maintenance
21 of a qualifying project authorized under this chapter shall be audited by the
22 Arkansas Economic Development Commission, the Arkansas Development Finance
23 Authority, and the Chief Fiscal Officer of the State.

24 (b) The Arkansas Economic Development Commission shall:

25 (1) Monitor and report to the Governor, the authority, and the
26 General Assembly concerning each qualifying project and the qualified
27 respondent's and responsible public entity's progress in satisfying the terms
28 and conditions of the comprehensive agreement; and

29 (2) Require the qualified respondent to provide proof of
30 compliance with all reporting and auditing requirements of the United States
31 Securities and Exchange Commission and any other state or federal regulatory
32 agency that has jurisdiction over the private entity or the qualifying
33 project.

34
35 /s/D. Sanders
36

1
2

APPROVED: 04/03/2017