

ARKANSAS SENATE
91st General Assembly - Regular Session, 2017
Amendment Form

Subtitle of Senate Bill No. 651

TO CREATE THE PARTNERSHIP FOR PUBLIC FACILITIES AND INFRASTRUCTURE ACT; AND TO
REGULATE PUBLIC-PRIVATE PARTNERSHIPS FOR PUBLIC FACILITIES AND INFRASTRUCTURE.

Amendment No. 1 to Senate Bill No. 651

Amend Senate Bill No. 651 as originally introduced:

Delete everything after the enacting clause, and substitute the following:

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

CHAPTER 10
PARTNERSHIP FOR PUBLIC FACILITIES AND INFRASTRUCTURE ACT

Subchapter 1 – General Provisions

22-10-101. Title.

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

22-10-102. Legislative findings – Purpose.

The General Assembly finds that:

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

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

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

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

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

(C) Allow governmental entities to leverage and supplement the developmental cost of public infrastructure and governmental facilities through private funding and participation by the private sector in



governmental incentive and tax programs that are not otherwise available to governmental entities; and

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

22-10-103. Definitions.

As used in this chapter:

(1) "Affected local jurisdiction" means:

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

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

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

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

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

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

(6) "Private entity" means a natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, and other business entity;

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

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

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

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

(10) "Qualifying project" means a capital development or improvement of any nature that:

(A) Serves a public purpose, including without limitation

a ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, combined heating and power facility, central utility plant facility, distributed generation facility, oil or gas pipeline, water supply facility, water treatment intake and distribution facility, waste water treatment and collection facility, waste treatment facility, hospital, library, school, educational facility, medical or nursing care facility, recreational facility, administrative facility, law enforcement facility, fire department facility, public administrative office, toll road, correctional facility, technology infrastructure facility, public building, transportation system as defined in § 27-76-103, or other similar facility currently available or to be made available to a public entity for public use, including without limitation a structure, parking area, appurtenance, and other related or unrelated infrastructure that might otherwise be described in a comprehensive agreement; and

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

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

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

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

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

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

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

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

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

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

(11) "Request for proposals" means a notice that is issued by a public entity announcing the public entity's interest in developing a qualifying project and seeking proposals from private entities to develop the qualifying project that identifies without limitation:

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

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

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

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

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

(12) "Responsible public entity" means a public entity that has the statutory or constitutional authority to develop and operate the

applicable qualifying project;

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

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

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

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

(a) This chapter:

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

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

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

22-10-105. Application.

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

Subchapter 2 – Proposals for Qualifying Projects

22-10-201. Responsible public entity.

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

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

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

(b) A responsible public entity shall:

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

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

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

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

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

(c) A responsible public entity issuing a request for proposals or an invitation for bids under this section shall notify each affected local jurisdiction in the manner required by the rules promulgated under this chapter.

22-10-203. Requirements for proposals.

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

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

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

(c) A qualifying project shall:

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

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

22-10-204. Requirements for qualifying projects.

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

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

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

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

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

(c) Neither this chapter nor an interim agreement or a comprehensive agreement entered into under this chapter enlarges, diminishes, or affects the authority, if any, otherwise possessed by a responsible public entity to take action that would impact the debt capacity of the state.

Subchapter 3 – Contracts between Responsible Public Entity and Private Entity

22-10-301. Procurement requirements.

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

(2) A comprehensive agreement may include terms and conditions

related to the procurement of services or materials related to the qualifying project.

(b) In selecting a qualified respondent:

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

(2) Competitive bidding shall not be used; and

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

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

22-10-302. Interim agreement.

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

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

(c)(1)(A) If an interim agreement is necessary to develop a qualifying project and an interim agreement cannot be negotiated and executed within the time period stated in the rules promulgated under this chapter, the responsible public entity may begin negotiations with the next most-qualified private entity that submitted a proposal in response to the request for proposals.

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

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

22-10-303. Comprehensive agreement.

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

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

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

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

(a)(1) Financing of a qualifying project may be in the amounts and

upon the terms and conditions stated in the interim agreement or the comprehensive agreement.

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

(B) Debt issued by a responsible public entity for the development of a qualifying project may be evidenced by the issuance of taxable or tax-exempt bonds, promissory notes, lease-purchase agreements, or other evidences of indebtedness that are specified in the comprehensive agreement.

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

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

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

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

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

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

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

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

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

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

(1) Capital provided by either the responsible public entity or the qualified respondent;

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

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

(4) Revenues of the qualifying project;

(5) Any tax credits or other incentives for which the qualifying

project or the qualified respondent may qualify;

(6) Governmental or third-party grants; and

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

22-10-305. Service contracts.

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

Subchapter 4 – Other Powers and Responsibilities

22-10-401. Eminent domain – Dedication.

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

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

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

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

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

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

22-10-402. Sovereign immunity.

This chapter does not:

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

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

22-10-403. Freedom of information.

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

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

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

Subchapter 5 – Administration

22-10-501. Review and approval.

(a) The Arkansas Economic Development Commission shall:

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

(2) If a proposed qualifying project complies with the rules promulgated under this chapter, assign the qualifying project to the responsible public entity for purposes of issuing a request for proposals or an invitation for bids; and

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

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

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

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

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

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

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

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

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

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

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

(b) The guidelines promulgated under this section shall include without limitation:

(1) Criteria for selecting qualifying projects to be undertaken

by a public entity;

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

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

(4) Guidelines for negotiating a comprehensive agreement; and

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

22-10-503. Rules.

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

(1) Criteria for selecting a qualifying project;

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

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

(4) Timeline for selecting a qualified respondent;

(5) Guidelines for negotiating a comprehensive agreement;

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

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

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

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

(i) A cost-benefit analysis;

(ii) A value-for-money analysis, which shall include

without limitation a:

(a) Qualitative assessment;

(b) Quantitative assessment;

(c) Business case analysis; and

(d) Comparison of the net present value of the total, risk-adjusted costs of delivering a qualifying project under this chapter and through procurement methods outside of this chapter;

(iii) An assessment of the opportunity cost;

(iv) An analysis of the lifecycle costs, including without limitation the design and construction costs, operating costs, and maintenance and upgrade costs; and

(v) Consideration of the results of relevant studies and analyses related to the proposed qualifying project;

(C) Procedures for considering the nonfinancial benefits of a proposed qualifying project;

(D) Suggested timelines for selecting proposals and negotiating an interim agreement or a comprehensive agreement;

(E) Criteria for allowing the responsible public entity to accelerate the selection, review, and documentation timelines for proposals

involving a qualifying project that the responsible public entity considers to be a priority;

(F) Procedures to:

(i) Determine the adequacy of the information released when seeking proposals under this chapter; and

(ii) Allow the responsible public entity to release more detailed information when seeking proposals if the responsible public entity determines that the release of additional information is necessary to encourage competition;

(G) Criteria, key decision points, and approvals that are required to ensure that the responsible public entity considers the extent of competition before selecting proposals and negotiating an interim agreement or a comprehensive agreement;

(H) Criteria for establishing and determining any fees that the responsible public entity elects to charge under § 22-10-202;

(I) Procedures for posting and publishing the public notice of a responsible public entity's request for proposals, including without limitation:

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

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

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

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

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

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

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

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

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

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

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

(9) Considerations and guidelines for establishing and

determining the mandatory and optional elements of a proposal by a private entity under this chapter, including without limitation:

(A) A project description, including without limitation:

(i) The location of the qualifying project; and
(ii) The specific or conceptual design of the proposed facility, building, infrastructure, or improvement or a conceptual plan for the provision of services or technology infrastructure;

(B) A feasibility statement that includes without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

(E) A business case statement that includes a basic description of the indirect and direct benefits that the private entity can provide in delivering the qualifying project, including without limitation relevant cost, quality, and time frame data;

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

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

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

(A) Engagement of:

(i) An attorney;
(ii) A certified public accountant;
(iii) A financial or economics professional; and
(iv) A consultant or other professional with specialized expertise that is relevant to the proposed qualifying project;

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

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

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

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

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

(A) Criteria for determining when the private entity is permitted to commence activities and perform tasks related to the qualifying project for which the private entity shall be compensated, including without limitation:

(i) Project planning and development;

(ii) Design and engineering;

(iii) Environmental analysis and mitigation;

(iv) Surveying; and

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

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

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

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

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

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

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

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

(D) The source of all revenues derived from the operation and maintenance of the qualifying project and any process for modifying the

revenues during the term of the comprehensive agreement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The Arkansas Economic Development Commission shall:

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

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

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator D. Sanders

JLL/JLL - 03-14-2017 09:47:22

JLL313

Secretary