

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas *As Engrossed: H2/14/13 H2/18/13 S4/3/13*

2 89th General Assembly

A Bill

3 Regular Session, 2013

HOUSE BILL 1251

4

5 By: Representatives Sabin, *McLean, Baltz, E. Armstrong, Hawthorne, D. Whitaker, McGill, Baine*

6 By: *Senator D. Sanders*

7

8

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

14

15

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:

26 Chapter 10 – PARTNERSHIP FOR PUBLIC FACILITIES AND INFRASTRUCTURE ACT

27

28

Subchapter 1 – General Provisions

29

30

22-10-101. Title.

31

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

32

33

34

22-10-102. Legislative findings and intent.

35

(a) The General Assembly finds that:

36

(1) There is a public need for the timely acquisition, design,



1 construction, improvement, renovation, expansion, equipping, maintenance,
2 operation, implementation, and installation of public infrastructure and
3 government facilities within the state that serve a public purpose;

4 (2) The public need for government facilities and public
5 infrastructure may not be satisfied by existing methods of procurement;

6 (3) There are inadequate resources to develop public
7 infrastructure and government facilities for the benefit of citizens of the
8 state, and there is demonstrated evidence that public-private partnerships
9 can meet these needs by leveraging and supplementing the limited public funds
10 available for public projects and providing other benefits to the public;

11 (4) Financial incentives exist that encourage public entities to
12 enter into partnerships with private entities to develop qualifying projects;
13 and

14 (5) Authorizing private entities to develop or operate one (1)
15 or more qualifying projects may result in the availability of such projects
16 to the public in a more timely or less costly manner, thereby serving the
17 public safety, benefit, and welfare.

18 (b) This chapter is not intended to:

19 (1) Delegate the power of eminent domain to any private entity
20 with respect to a qualifying project commenced or proposed under this
21 chapter; or

22 (2) Alter the eminent domain laws of this state or grant the
23 power of eminent domain to a person who is not expressly granted the power of
24 eminent domain under other state law.

25
26 22-10-103. Definitions.

27 As used in this chapter:

28 (1) "Affected local jurisdiction" means a county or municipality
29 in which all or a portion of a qualifying project is located;

30 (2) "Comprehensive agreement" means a required agreement between
31 a private entity and a responsible public entity executed under § 22-10-303
32 that outlines the responsibilities and duties of the responsible public
33 entity and the private entity in relation to a qualifying project;

34 (3) "Develop" and "development of" means to plan, design,
35 develop, finance, lease, acquire, install, construct, operate, maintain, or
36 expand;

1 (4) “Interim agreement” means an agreement between a private
2 entity and a responsible public entity executed under § 22-10-302 to provide
3 for the phasing of the development of a proposed qualifying project and to
4 address the compensable activities that a private entity may perform in
5 relation to a proposed qualifying project before the execution of a
6 comprehensive agreement;

7 (5) “Material default” means a default by a private entity in
8 the performance of the private entity’s duties under a comprehensive
9 agreement that jeopardizes adequate service to the public from a qualifying
10 project;

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

13 (7) “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 (8) “Public entity” means a department, agency, board, or
18 commission of the state and a political subdivision of the state, including
19 without limitation a city, county, and institution of higher education;

20 (9) “Qualifying project” means:

21 (A) A ferry, mass transit facility, vehicle parking
22 facility, port facility, power generation facility, fuel supply facility, oil
23 or gas pipeline, water supply facility, waste treatment facility, hospital,
24 library, school, medical or nursing care facility, recreational facility,
25 public building, transportation system as defined in § 27-76-103, or other
26 similar facility currently available or to be made available to a public
27 entity for public use, including without limitation a structure, parking
28 area, appurtenance, and other property required to operate the structure or
29 facility and any technology infrastructure installed in the structure or
30 facility that is essential to the project’s purpose; or

31 (B) A necessary or desirable improvement to unimproved
32 real property owned by a public entity;

33 (10) “Responsible public entity” means a public entity that has
34 the power to develop the applicable qualifying project;

35 (11) “Revenues” means the revenues, income, earnings, user fees,
36 lease payments, and service payments arising out of or in connection with the

1 development of a qualifying project; and

2 (12) "User fees" means the rates, fees, or other charges imposed
3 by a private entity for use of all or a portion of a qualifying project
4 pursuant to a comprehensive agreement.

5
6 22-10-104. Construction – Powers supplemental.

7 (a) This chapter shall be liberally construed to effectuate its
8 purpose.

9 (b)(1) The powers and procedures established under this chapter
10 pertaining to the procurement of public and private facilities and
11 infrastructure are supplemental to all other laws concerning the powers and
12 procedures that a responsible public entity has with respect to entering into
13 an agreement for or procuring public and private facilities and
14 infrastructure.

15 (2) To the extent of any conflict, this chapter does not impair,
16 repeal, modify, or affect:

17 (A) Any other existing law concerning the procurement of
18 public and private facilities and infrastructure, including without
19 limitation Title 6 of this Code; and

20 (B) Section 22-9-301 et seq., if otherwise applicable.

21
22 22-10-105. Applicability.

23 This chapter does not apply to a telecommunications, cable television,
24 video service, or broadband infrastructure other than technology installed as
25 part of a qualifying project that is essential to the qualifying project
26 unless authorized under the Telecommunications Regulatory Reform Act of 1997,
27 § 23-17-401 et seq.

28
29 Subchapter 2 – Proposals for Qualifying Projects

30
31 22-10-201. Adoption of guidelines required.

32 (a) A responsible public entity shall adopt and make publicly
33 available the following guidelines before approving a qualifying project or
34 accepting a proposal for a qualifying project under this chapter:

35 (1) Reasonable criteria for choosing among competing proposals;

36 (2) Financial review and analysis procedures for financial and

1 technical advisors or consultants that include without limitation:

2 (A) A cost-benefit analysis;

3 (B) An assessment of the opportunity cost;

4 (C) An analysis of the lifecycle costs, including without
5 limitation the design and construction costs, operating costs, and
6 maintenance and upgrade costs; and

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

9 (3) Procedures for considering the nonfinancial benefits of a
10 proposed project;

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

13 (5) Criteria for allowing the responsible public entity to
14 accelerate the selection, review, and documentation timelines for proposals
15 involving a qualifying project that the responsible public entity considers
16 to be a priority;

17 (6) Procedures to:

18 (A) Determine the adequacy of the information released
19 when seeking competing proposals under § 22-10-204; and

20 (B) Allow the responsible public entity to release more
21 detailed information when seeking competing proposals if the responsible
22 public entity determines that the release of additional information is
23 necessary to encourage competition;

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

28 (8) Criteria for determining any fees that the public entity
29 elects to charge under § 22-10-202;

30 (9) Procedures for posting and publishing the public notice of a
31 responsible public entity's request for proposals or a private entity's
32 request for approval of a proposal for a qualifying project, including
33 without limitation the following:

34 (A) Specific information and documentation to be released
35 regarding the nature, timing, and scope of the qualifying project submitted
36 under § 22-10-202(b) and the protection of confidential and proprietary

1 information provided by the private entity under the Freedom of Information
2 Act of 1967, § 25-19-101 et seq.;

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

6 (ii) The time period established under subdivision
7 (a)(9)(B)(i) of this section shall not to be less than forty-five (45) days,
8 during which time the responsible public entity shall accept the submission
9 of competing proposals for the qualifying project under § 22-10-204;

10 (C) A process for posting the notice required under this
11 subdivision (a)(9) on the responsible public entity's official website and
12 otherwise publishing the notice as required under the applicable procurement
13 laws; and

14 (D) For local government projects, confirmation that the
15 public notice complies with applicable local laws and regulations; and

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

19 (b) The guidelines adopted by a responsible public entity under this
20 section shall be reasonable, encourage competition, and guide the selection
21 of qualifying projects by the responsible public entity.

22 (c) The responsible public entity shall:

23 (1) Make a representative of the responsible public entity
24 available to meet with private entities that are considering submitting a
25 proposal; and

26 (2) Provide notice of the representative's availability.

27
28 22-10-202. Request by responsible public entity – Initiation by private
29 entity – Fees – Notice.

30 (a) A responsible public entity may request proposals or invite bids
31 from private entities for the development of a qualifying project using the
32 guidelines adopted under § 22-10-201.

33 (b) A private entity may initiate approval of a qualifying project by
34 a responsible public entity by submitting a proposal requesting approval to
35 the responsible public entity under § 22-10-203.

36 (c) The responsible public entity may charge a reasonable fee of up to

1 five thousand dollars (\$5,000) to cover the costs of processing, reviewing,
2 and evaluating a proposal under subsection (b) of this section, including
3 without limitation reasonable attorney's fees and fees for financial,
4 technical, and other necessary advisors or consultants under § 22-10-201.

5 (d)(1) A private entity submitting a proposal to a responsible public
6 entity under subsection (b) of this section shall notify each affected local
7 jurisdiction by furnishing a copy of its proposal to each affected local
8 jurisdiction.

9 (2) Within sixty (60) days after receiving the private entity's
10 proposal under subdivision (d)(1) of this section, each affected local
11 jurisdiction that is not a responsible public entity for the respective
12 qualifying project may:

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

15 (B) Indicate whether the proposed qualifying project is
16 compatible with local plans and budgets.

17 (3) The responsible public entity shall consider any comments
18 submitted under subdivision (d)(2) of this section before executing an
19 interim agreement or a comprehensive agreement with a private entity.

20
21 22-10-203. Requirements.

22 (a)(1) A private entity that seeks authorization under this chapter to
23 develop a qualifying project shall first obtain approval of the responsible
24 public entity.

25 (2) A private entity may initiate the approval process by
26 requesting approval under subsection (b) of this section, or the responsible
27 public entity may request proposals or invite bids under § 22-10-202(a).

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

31 (2) A proposal by a private entity under subdivision (b)(1) of
32 this section shall be accompanied by the following material and information:

33 (A) A project description, including without limitation
34 the following:

35 (i) The location of the qualifying project; and

36 (ii) The specific or conceptual design of the

1 proposed facility, building, infrastructure, or improvement or a conceptual
2 plan for the provision of services or technology infrastructure;

3 (B) A feasibility statement that includes without
4 limitation the following:

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

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

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

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

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

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

19 (iii) A proposed schedule for obtaining the permits
20 required under subdivision (b)(2)(B)(ii) of this section;

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

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

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

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

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

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

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

1 (G) Any additional material and information that the
2 responsible public entity reasonably requests.

3 (c) A qualifying project shall be located on real property owned or
4 leased by a public entity and include any improvements necessary or desirable
5 to unimproved real property owned by a public entity.

6
7 22-10-204. Consideration – Approval.

8 (a)(1) When a responsible public entity receives a proposal submitted
9 by a private entity, the responsible public entity shall determine whether to
10 accept the proposal for consideration under this section.

11 (2) If the responsible public entity does not accept for
12 consideration the proposal submitted by the private entity under § 22-10-
13 203(b), the responsible public entity shall return the proposal and all
14 accompanying fees and documentation to the private entity.

15 (3)(A) If the responsible public entity chooses to accept a
16 proposal for a qualifying project submitted under § 22-10-203(b), the
17 responsible public entity shall:

18 (i) Make the qualifying project public according to
19 the guidelines adopted under § 22-10-201; and

20 (ii)(a) Seek competing proposals through open
21 competition.

22 (b) In seeking competing proposals, the
23 responsible public entity shall protect confidential and proprietary
24 information provided by the private entity under the Freedom of Information
25 Act of 1967, § 25-19-101 et seq.

26 (B) Public notices of the request for proposals shall be
27 made at least forty-five (45) days before the date set for the receipt of
28 proposals.

29 (C) The responsible public entity shall evaluate all
30 proposals then submitted for qualifying projects under § 22-10-301 before
31 executing a comprehensive agreement with a private entity for the qualifying
32 project.

33 (b) A responsible public entity may approve the development of a
34 qualifying project if the responsible public entity determines that:

35 (1) There is a public need for or benefit to be derived from the
36 type of qualifying project that the private entity proposes;

1 (2) The estimated cost of the proposed qualifying project is
2 reasonable in relation to similar facilities; and

3 (3) The private entity's plans will result in the timely
4 development of the qualifying project.

5 (c) The responsible public entity's approval of the proposed
6 qualifying project is contingent on the private entity entering into an
7 interim agreement or a comprehensive agreement with the responsible public
8 entity.

9 (d) The responsible public entity may reject a proposal initiated by a
10 private entity under § 22-10-203 at any time.

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

15
16 Subchapter 3 – Contracts Between Responsible Public Entity and Private Entity

17
18 22-10-301. Procurement requirements.

19 (a) A responsible public entity may enter into a comprehensive
20 agreement only in accordance with:

21 (1) The guidelines adopted by the responsible public entity
22 under § 22-10-201; and

23 (2)(A) Construction procurement and delivery methods consistent
24 with §§ 19-4-1415, 19-11-807, 22-9-203, or 27-67-206.

25 (B) The responsible public entity is not required to
26 select the proposal with the lowest price offer, but the responsible public
27 entity may consider price as one factor in evaluating the proposals received.

28 (C) The other factors the responsible public entity may
29 consider include without limitation the following:

30 (i) The proposed cost of the qualifying facility;

31 (ii) The general reputation, industry experience,
32 and financial capacity of the private entity;

33 (iii) The proposed design of the qualifying project;

34 (iv) The eligibility of the facility for accelerated
35 selection, review, and documentation timelines under the responsible public
36 entity's guidelines;

1 (v) Local citizen and government comments;
2 (vi) Benefits to the public;
3 (vii) The private entity's compliance with a
4 minority business enterprise participation plan;
5 (viii) The private entity's plans to employ local
6 contractors and residents; and
7 (ix) Any other criteria that the responsible public
8 entity deems appropriate.

9 (b) The procurement of a comprehensive agreement and the financial
10 arrangement agreed to by the responsible public entity and the private entity
11 shall comply with any other requirements of state law not specifically stated
12 in this chapter, including without limitation Arkansas Constitution,
13 Amendment 78, § 2, which prohibits counties and municipalities from incurring
14 short-term financing obligations, including without limitation leases and
15 lease-purchase contracts, that mature over a period or have a term that
16 exceeds five (5) years.

17
18 22-10-302. Interim agreement.

19 (a)(1) A responsible public entity may enter into an interim agreement
20 with the private entity proposing the development of a qualifying project
21 either before or in connection with the negotiation of a comprehensive
22 agreement under § 22-10-303.

23 (2)(A) Before a responsible public entity may enter into an
24 interim agreement under this section, the responsible public entity shall
25 contract with an attorney or a certified public accountant to provide a
26 written evaluation of the proposed interim agreement.

27 (B) The written evaluation required under subdivision
28 (a)(2)(A) of this section shall include the attorney's or certified public
29 accountant's independent assessment of the costs, financial liabilities,
30 advantages, and disadvantages of the interim agreement.

31 (C) An attorney or certified public accountant providing a
32 written evaluation under this subsection shall not be a public employee or an
33 elected official.

34 (b) An interim agreement entered into under this section may:

35 (1) Permit the private entity to commence activities for which
36 it may be compensated relating to the proposed qualifying project, including

1 without limitation project planning and developing, design and engineering,
2 environmental analysis and mitigation, surveying, and ascertaining the
3 availability of financing for the proposed qualifying project;

4 (2) Establish the process and timing of the negotiation of the
5 comprehensive agreement; and

6 (3) Contain any other provisions related to the development of a
7 proposed qualifying project that are agreed upon by the responsible public
8 entity and the private entity.

9
10 22-10-303. Comprehensive agreement.

11 (a)(1) Before developing or operating the qualifying project, a
12 private entity shall enter into a comprehensive agreement with the
13 responsible public entity.

14 (2)(A) Before a responsible public entity may enter into a
15 comprehensive agreement under this section, the responsible public entity
16 shall contract with an attorney or a certified public accountant to provide a
17 written evaluation of the proposed comprehensive agreement.

18 (B) The written evaluation required under subdivision
19 (a)(2)(A) of this section shall include the attorney's or certified public
20 accountant's independent assessment of the costs, financial liabilities,
21 advantages, and disadvantages of the comprehensive agreement.

22 (C) An attorney or certified public accountant providing a
23 written evaluation under this subsection shall not be a public employee or an
24 elected official.

25 (b) The comprehensive agreement shall include the following:

26 (1) A thorough description of the duties of the responsible
27 public entity and the private entity in relation to the completion and
28 operation of the qualifying project;

29 (2) Dates and schedules for the completion of the qualifying
30 project;

31 (3) Any user fees, lease payments, or service payments agreed to
32 by the responsible public entity and the private entity and any process for
33 modifying the user fees, lease payments, or service payments during the term
34 of the comprehensive agreement;

35 (4) A copy of each service contract, if any;

36 (5) Reimbursements to be paid to the responsible public entity

1 for services provided by the responsible public entity, if any;

2 (6)(A) A process for the review of plans and specifications for
3 the qualifying project by the responsible public entity and approval by the
4 responsible public entity if the plans and specifications conform to
5 reasonable standards that are acceptable to the responsible public entity.

6 (B) However, the private entity shall not be required to
7 complete the design of a qualifying project before the execution of a
8 comprehensive agreement;

9 (7) A process for the periodic and final inspection of the
10 qualifying project by the responsible public entity to ensure that the
11 private entity's activities comply with the comprehensive agreement;

12 (8) For the components of the qualifying project that involve
13 construction, provisions for the delivery of maintenance, payment, and
14 performance bonds, as required under § 18-44-503, and for components of the
15 qualifying project that do not involve construction, bonds, letters or
16 credit, or other forms of security acceptable to the responsible public
17 entity in connection with the development of the qualifying project;

18 (9) Submission of one (1) of the following in a form and amount
19 satisfactory to the responsible public entity and reasonably sufficient to
20 ensure coverage of tort liability to the public and employees and to enable
21 the continued operation of the qualifying project:

22 (A) One (1) or more policies of public liability
23 insurance, copies of which shall be filed with the responsible public entity
24 accompanied by proofs of coverage; or

25 (B) Self-insurance;

26 (10) A process for the responsible public entity's monitoring of
27 the practices of the private entity to ensure that the qualifying project is
28 properly maintained;

29 (11) The filing of appropriate financial statements with the
30 responsible public entity on a periodic basis; and

31 (12)(A) Policies and procedures governing the rights and
32 responsibilities of the responsible public entity and the private entity if
33 the comprehensive agreement is terminated or there is a material default by
34 the private entity.

35 (B) The policies and procedures included in the
36 comprehensive agreement under this subdivision (b)(12) shall:

1 (i) Include conditions governing the assumption of
2 the duties and responsibilities of the private entity by the responsible
3 public entity and the transfer or purchase of property or other interests of
4 the private entity by the responsible public entity; and

5 (ii) Be consistent with § 22-10-304.

6 (c) The comprehensive agreement may include the following:

7 (1) Any terms and conditions that the responsible public entity
8 determines will serve the public purpose of this chapter, including without
9 limitation provisions regarding unavoidable delays;

10 (2) Provisions stating when the authority and duties of the
11 private entity under this chapter shall cease and the qualifying project is
12 accordingly dedicated to either the responsible public entity or, if the
13 qualifying project was initially dedicated by an affected local jurisdiction,
14 to the affected local jurisdiction for public use; and

15 (3) A provision for the development of phases or segments of the
16 qualifying project.

17 (d) A modification of the terms of the comprehensive agreement shall
18 be:

19 (1) Agreed upon by the responsible public entity and the private
20 entity; and

21 (2) Added to the comprehensive agreement by written amendment.

22
23 22-10-304. Material default – Assumption of responsibilities and
24 duties.

25 (a) If there is a material default by a private entity, the
26 responsible public entity may terminate an interim agreement or a
27 comprehensive agreement and exercise any other rights and remedies that may
28 be available to the responsible public entity, including without limitation
29 claims under the maintenance, payment, and performance bonds, letter of
30 credit, or other forms of security required under § 22-10-303.

31 (b)(1) The responsible public entity may assume the responsibilities
32 and duties of the private entity of the qualifying project.

33 (2) If a responsible public entity assumes the responsibilities
34 and duties of a private entity under this subsection, the responsible public
35 entity shall succeed to all of the rights, title, and interest in the
36 qualifying project subject to any liens on revenues previously granted by the

1 private entity to any person providing financing for the qualifying project.

2 (c)(1) A responsible public entity having the power of condemnation
3 under state law may exercise the power of condemnation to acquire a
4 qualifying project if there is a material default by a private entity.

5 (2) A person who has provided financing for a qualifying project
6 and the private entity, to the extent of its capital investment, may
7 participate in any condemnation proceedings brought by a responsible public
8 entity with the standing of a property owner.

9 (d)(1) If a responsible public entity assumes the responsibilities and
10 duties of a qualifying project under subsection (b) of this section, the
11 responsible public entity may develop the qualifying project, impose user
12 fees, impose and collect lease payments for the use of the qualifying
13 project, and comply with any service contracts as if it were the private
14 entity.

15 (2)(A) Revenues that are subject to a lien shall be collected
16 for the benefit of and paid to secured parties, as their interests may
17 appear, to the extent necessary to satisfy the private entity's obligations
18 to secured parties, including without limitation the maintenance of reserves.

19 (B) Liens paid under subdivision (d)(2)(A) of this section
20 shall be correspondingly reduced and released when paid off entirely.

21 (3)(A) Before making payments to or for the benefit of a secured
22 party, the responsible public entity may use revenues to pay current
23 operation and maintenance costs of the qualifying project, including without
24 limitation compensation to the responsible public entity for its services in
25 operating and maintaining the qualifying project.

26 (B) The responsible public entity's right to receive
27 payment under subdivision (d)(3)(A) of this section shall be considered just
28 compensation for the qualifying project.

29 (4)(A) The full faith and credit of the responsible public
30 entity shall not be pledged to secure any financing of the private entity
31 when the responsible public entity assumes the responsibilities and duties of
32 a qualifying project.

33 (B) The responsible public entity's assumption of the
34 operation of a qualifying project does not obligate the responsible public
35 entity to pay any obligation of the private entity from sources other than
36 revenues derived from the qualifying project.

1
2 22-10-305. Financing of a qualifying project.

3 (a)(1) Financing of a qualifying project may be in such amounts and
4 upon such terms and conditions as stated in the interim agreement or the
5 comprehensive agreement.

6 (2) The private entity and the responsible public entity may
7 propose to utilize any funding resources available to them and, to the
8 fullest extent permitted by applicable law, may issue debt, equity, or other
9 securities or obligations, enter into leases, access designated trust funds,
10 borrow or accept grants from a state infrastructure bank, and secure
11 financing with a pledge of, security interest in, or lien on the responsible
12 public entity's or the private entity's property, including without
13 limitation any property interests in the qualifying project.

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

18 (2) All or any portion of the costs of a qualifying project to
19 may be paid, directly or indirectly, from the proceeds of a grant or loan
20 made by a local government, the state government, the federal government, or
21 an agency or instrumentality of a local government, the state government, or
22 the federal government if it would serve the public purpose of this chapter.

23
24 22-10-306. Service contracts.

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

29
30 Subchapter 4 – Other Powers and Responsibilities

31
32 22-10-401. Eminent domain – Dedication.

33 (a)(1) This chapter does not alter the eminent domain laws of this
34 state or grant the power of eminent domain to any person who is not expressly
35 granted that power under other state law.

36 (2) The power of eminent domain shall not be delegated to a

1 private entity with respect to a qualifying project commenced or proposed
2 under this chapter.

3 (b)(1) A responsible public entity may dedicate any property interest,
4 including land, improvements, and tangible personal property, that the
5 responsible public entity has for public use in a qualifying project if so
6 doing will serve the public purpose of this chapter by minimizing the cost of
7 a qualifying project to the responsible public entity or reducing the
8 delivery time of a qualifying project.

9 (2)(A) In connection with a dedication under subdivision (b)(1)
10 of this section, a responsible public entity may convey any property interest
11 that the responsible public entity has, subject to the conditions imposed by
12 general law governing such conveyances, to a private entity subject to this
13 chapter for adequate consideration as determined by the responsible public
14 entity.

15 (B) The consideration paid under subdivision (b)(2)(A) of
16 this section may include the agreement of the private entity to develop the
17 qualifying project.

18 (3) The property interests that a responsible public entity may
19 convey to a private entity in connection with a dedication under this section
20 may include licenses, franchises, easements, or any other right or interest
21 the responsible public entity deems appropriate.

22
23 22-10-402. Sovereign immunity.

24 The conduct of a public entity, an affected local jurisdiction, or an
25 officer or employee of a public entity or an affected local jurisdiction
26 under this chapter does not waive the sovereign immunity of the public
27 entity, the affected local jurisdiction, or the officer or employee of the
28 public entity or affected local jurisdiction with respect to the
29 participation in or approval of all or any part of a qualifying project or
30 its operation, including without limitation the interconnection of the
31 qualifying project with any other infrastructure or project.

32
33 22-10-403. Law enforcement jurisdiction.

34 Police officers of a responsible public entity and of each affected
35 local jurisdiction have the same powers and jurisdiction within the limits of
36 the qualifying project as the police officers have in their respective areas

1 of jurisdiction, and the police officers shall have access to each qualifying
2 project in their jurisdiction at any time for the purpose of exercising their
3 powers and jurisdiction.

4
5 22-10-404. Open meetings – Disclosure of records.

6 (a) This chapter does not abrogate the obligation of a responsible
7 public entity or the Legislative Task Force on the Partnership for Public
8 Facilities and Infrastructure to comply with the Freedom of Information Act
9 of 1967, § 25-19-101 et seq.

10 (b) However, records that would otherwise be exempt from disclosure
11 under the Freedom of Information Act of 1967, § 25-19-101 et seq., remain
12 exempt when in the custody or control of a responsible public entity or the
13 task force.

14
15 Subchapter 5 – Legislative Task Force on the Partnership for Public
16 Facilities and Infrastructure

17
18 22-10-501. Creation – Meetings – Staff.

19 (a) There is created the Legislative Task Force on the Partnership for
20 Public Facilities and Infrastructure.

21 (b)(1) The task force shall be composed of no more than twenty (20)
22 members. The number of members shall be determined by agreement between the
23 Chair of the Senate Committee on State Agencies and Governmental Affairs and
24 the Chair of the House Committee on State Agencies and Governmental Affairs.

25 (2) The Chair of the Senate Committee on State Agencies and
26 Governmental Affairs and the Chair of the House Committee on State Agencies
27 and Governmental Affairs shall appoint the membership for each biennium
28 pursuant to the procedure agreed upon by the respective chairs.

29 (3) The task force shall include members of the General Assembly
30 and members of the public.

31 (4)(A) The task force shall have two (2) cochairs who are
32 members of the General Assembly.

33 (B) One (1) cochair shall be a member of the Senate, and
34 one (1) cochair shall be a member of the House of Representatives.

35 (c) The task force shall meet at least annually.

36 (d) The legislative members of the task force shall be entitled to

1 mileage and per diem at the same rate as for attending other legislative
2 committees.

3 (e) The task force shall receive staff support from the Bureau of
4 Legislative Research.

5
6 22-10-502. Powers and duties.

7 The Legislative Task Force on the Partnership for Public Facilities and
8 Infrastructure shall:

9 (1) Review, discuss, and advise on issues related to this
10 chapter;

11 (2) Monitor case-study projects and evaluate performance and
12 outcomes relevant to public-private partnerships;

13 (3) Serve as a reference for educational resources;

14 (4) Ask for a review of any request for proposals for a
15 qualifying project or any proposal for a qualifying project;

16 (5) Develop goals and strategies to promote public-private
17 partnerships under this subchapter;

18 (6) Work in consultation with the Joint Adequacy Evaluation
19 Oversight Subcommittee of the House Committee on Education and the Senate
20 Committee on Education or the Commission for Arkansas Public School Academic
21 Facilities and Transportation to consider, evaluate, and discuss the
22 application of this chapter to public school districts; and

23 (7) Develop model guidelines to assist responsible public
24 entities in adopting the guidelines required under § 22-10-201.

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