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89th General Assembly

A Bill

Regular Session, 2013

HOUSE BILL 1251

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

For An Act To Be Entitled

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

Subtitle

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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 and intent.

(a) The General Assembly finds that:

(1) There is a public need for the timely acquisition, design,
construction, improvement, renovation, expansion, equipping, maintenance,



1 operation, implementation, and installation of public infrastructure and
2 government facilities within the state that serve a public purpose;

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

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

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

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

17 (b) This chapter is not intended to:

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

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

24
25 22-10-103. Definitions.

26 As used in this chapter:

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

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

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

36 (4) "Interim agreement" means an agreement between a private

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

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

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

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

16 (8) "Public entity" means a department, agency, board, or
17 commission of the state and a political subdivision of the state, including
18 without limitation a city, county, and institution of higher education;

19 (9) "Qualifying project" means:

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

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

31 (10) "Responsible public entity" means a public entity that has
32 the power to develop the applicable qualifying project;

33 (11) "Revenues" means the revenues, income, earnings, user fees,
34 lease payments, and service payments arising out of or in connection with the
35 development of a qualifying project; and

36 (12) "User fees" means the rates, fees, or other charges imposed

1 by a private entity for use of all or a portion of a qualifying project
2 pursuant to a comprehensive agreement.

3
4 22-10-104. Construction – Powers supplemental.

5 (a) This chapter shall be liberally construed to effectuate its
6 purpose.

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

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

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

18 (B) Section 22-9-301 et seq., if otherwise applicable.
19

20 22-10-105. Applicability.

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

27 Subchapter 2 – Proposals for Qualifying Projects
28

29 22-10-201. Adoption of guidelines required.

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

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

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

36 (A) A cost-benefit analysis;

1 (B) An assessment of the opportunity cost;

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

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

7 (3) Procedures for considering the nonfinancial benefits of a
8 proposed project;

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

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

15 (6) Procedures to:

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

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

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

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

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

32 (A) Specific information and documentation to be released
33 regarding the nature, timing, and scope of the qualifying project submitted
34 under § 22-10-202(b) and the protection of confidential and proprietary
35 information provided by the private entity under the Freedom of Information
36 Act of 1967, § 25-19-101 et seq.;

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

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

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

12 (D) For local government projects, confirmation that the
13 public notice complies with applicable local laws and regulations.

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

17 (c) The responsible public entity shall:

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

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

22
23 22-10-202. Request by responsible public entity – Initiation by private
24 entity – Fees – Notice.

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

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

31 (c) The responsible public entity may charge a reasonable fee of up to
32 five thousand dollars (\$5,000) to cover the costs of processing, reviewing,
33 and evaluating a proposal under subsection (b) of this section, including
34 without limitation reasonable attorney's fees and fees for financial,
35 technical, and other necessary advisors or consultants under § 22-10-201.

36 (d)(1) A private entity submitting a proposal to a responsible public

1 entity under subsection (b) of this section shall notify each affected local
2 jurisdiction by furnishing a copy of its proposal to each affected local
3 jurisdiction.

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

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

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

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

15
16 22-10-203. Requirements.

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

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

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

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

28 (A) A project description, including without limitation
29 the following:

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

31 (ii) The specific or conceptual design of the
32 proposed facility, building, infrastructure, or improvement or a conceptual
33 plan for the provision of services or technology infrastructure;

34 (B) A feasibility statement that includes without
35 limitation the following:

36 (i) The method by which the private entity proposes

1 to secure any necessary property interests required for the qualifying
2 project;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22-10-204. Consideration – Approval.

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

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

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

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

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

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

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

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

(b) A responsible public entity may approve 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 that the private entity proposes;

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

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

(c) The responsible public entity's approval of the proposed

1 qualifying project is contingent on the private entity entering into an
2 interim agreement or a comprehensive agreement with the responsible public
3 entity.

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

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

10
11 Subchapter 3 – Contracts Between Responsible Public Entity and Private Entity

12
13 22-10-301. Procurement requirements.

14 A responsible public entity may enter into a comprehensive agreement
15 only in accordance with:

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

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

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

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

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

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

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

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

32 (v) Local citizen and government comments;

33 (vi) Benefits to the public;

34 (vii) The private entity's compliance with a
35 minority business enterprise participation plan;

36 (viii) The private entity's plans to employ local

1 contractors and residents; and

2 (ix) Any other criteria that the responsible public
3 entity deems appropriate.

4
5 22-10-302. Interim agreement.

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

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

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

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

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

22 (1) Permit the private entity to commence activities for which
23 it may be compensated relating to the proposed qualifying project, including
24 without limitation project planning and developing, design and engineering,
25 environmental analysis and mitigation, surveying, and ascertaining the
26 availability of financing for the proposed qualifying project;

27 (2) Establish the process and timing of the negotiation of the
28 comprehensive agreement; and

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

32
33 22-10-303. Comprehensive agreement.

34 (a)(1) Before developing or operating the qualifying project, a
35 private entity shall enter into a comprehensive agreement with the
36 responsible public entity.

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

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

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

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

13 (1) A thorough description of the duties of the responsible
14 public entity and the private entity in relation to the completion and
15 operation of the qualifying project;

16 (2) Dates and schedules for the completion of the qualifying
17 project;

18 (3) Any user fees, lease payments, or service payments agreed to
19 by the responsible public entity and the private entity and any process for
20 modifying the user fees, lease payments, or service payments during the term
21 of the comprehensive agreement;

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

23 (5) Reimbursements to be paid to the responsible public entity
24 for services provided by the responsible public entity, if any;

25 (6)(A) A process for the review of plans and specifications for
26 the qualifying project by the responsible public entity and approval by the
27 responsible public entity if the plans and specifications conform to
28 reasonable standards that are acceptable to the responsible public entity.

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

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

35 (8) For the components of the qualifying project that involve
36 construction, provisions for the delivery of maintenance, payment, and

1 performance bonds, as required under § 18-44-503, and for components of the
2 qualifying project that do not involve construction, bonds, letters or
3 credit, or other forms of security acceptable to the responsible public
4 entity in connection with the development of the qualifying project;

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

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

12 (B) Self-insurance;

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

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

18 (12)(A) Policies and procedures governing the rights and
19 responsibilities of the responsible public entity and the private entity if
20 the comprehensive agreement is terminated or there is a material default by
21 the private entity.

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

24 (i) Include conditions governing the assumption of
25 the duties and responsibilities of the private entity by the responsible
26 public entity and the transfer or purchase of property or other interests of
27 the private entity by the responsible public entity; and

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

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

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

33 (2) Provisions stating when the authority and duties of the
34 private entity under this chapter shall cease and the qualifying project is
35 accordingly dedicated to either the responsible public entity or, if the
36 qualifying project was initially dedicated by an affected local jurisdiction,

1 to the affected local jurisdiction for public use; and

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

4 (d) A modification of the terms of the comprehensive agreement shall
5 be:

6 (1) Agreed upon by the responsible public entity and the private
7 entity; and

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

9
10 22-10-304. Material default – Assumption of responsibilities and
11 duties.

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

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

20 (2) If a responsible public entity assumes the responsibilities
21 and duties of a private entity under this subsection, the responsible public
22 entity shall succeed to all of the rights, title, and interest in the
23 qualifying project subject to any liens on revenues previously granted by the
24 private entity to any person providing financing for the qualifying project.

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

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

32 (d)(1) If a responsible public entity assumes the responsibilities and
33 duties of a qualifying project under subsection (b) of this section, the
34 responsible public entity may develop the qualifying project, impose user
35 fees, impose and collect lease payments for the use of the qualifying
36 project, and comply with any service contracts as if it were the private

1 entity.

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

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

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

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

16 (4)(A) The full faith and credit of the responsible public
17 entity shall not be pledged to secure any financing of the private entity
18 when the responsible public entity assumes the responsibilities and duties of
19 a qualifying project.

20 (B) The responsible public entity's assumption of the
21 operation of a qualifying project does not obligate the responsible public
22 entity to pay any obligation of the private entity from sources other than
23 revenues derived from the qualifying project.

24
25 22-10-305. Financing of a qualifying project.

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

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

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

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

10
11 22-10-306. Service contracts.

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

16
17 Subchapter 4 – Other Powers and Responsibilities

18
19 22-10-401. Eminent domain – Dedication.

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

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

32 (2)(A) In connection with a dedication under subdivision (b)(1)
33 of this section, a responsible public entity may convey any property interest
34 that the responsible public entity has, subject to the conditions imposed by
35 general law governing such conveyances, to a private entity subject to this
36 chapter for adequate consideration as determined by the responsible public

1 entity.

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

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

9
10 22-10-402. Sovereign immunity.

11 The conduct of a public entity, an affected local jurisdiction, or an
12 officer or employee of a public entity or an affected local jurisdiction
13 under this chapter does not waive the sovereign immunity of the public
14 entity, the affected local jurisdiction, or the officer or employee of the
15 public entity or affected local jurisdiction with respect to the
16 participation in or approval of all or any part of a qualifying project or
17 its operation, including without limitation the interconnection of the
18 qualifying project with any other infrastructure or project.

19
20 22-10-403. Law enforcement jurisdiction.

21 Police officers of a responsible public entity and of each affected
22 local jurisdiction have the same powers and jurisdiction within the limits of
23 the qualifying project as the police officers have in their respective areas
24 of jurisdiction, and the police officers shall have access to each qualifying
25 project in their jurisdiction at any time for the purpose of exercising their
26 powers and jurisdiction.

27
28 22-10-404. Open meetings – Disclosure of records.

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

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

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

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

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

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

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

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

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

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

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

(d) The legislative members of the task force shall be entitled to
mileage and per diem at the same rate as for attending other legislative
committees.

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

22-10-502. Powers and duties.

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

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

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

(3) Serve as a reference for educational resources;

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

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

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

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

/s/Sabin