

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE DRH30245-LYf-223 (4/6)

Short Title: Public-Private Partner. Infrastructure Act. (Public)

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Sponsors: Representative Wright.

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Referred to:

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1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW PUBLIC ENTITIES TO ENTER INTO AGREEMENTS WITH  
3 PRIVATE PARTIES FOR THE OPERATION AND DEVELOPMENT OF  
4 FACILITIES AND INFRASTRUCTURE FOR PUBLIC PURPOSES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** The General Statutes is amended by adding a new Chapter to  
7 read:

**"Chapter 115F.**

**"Education Infrastructure Act.**

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9  
10 **"§ 115F-1. Definitions.**

11 As used in this Chapter, unless the context requires a different meaning, the  
12 following definitions apply:

- 13 (1) Affected local jurisdiction. – Any county or city in which all or a  
14 portion of a qualifying project is located.
- 15 (2) Commission. – The North Carolina Utilities Commission.
- 16 (3) Comprehensive agreement. – The comprehensive agreement between  
17 the private entity and the responsible public entity required by  
18 G.S. 115F-10.
- 19 (4) Develop. – To plan, design, develop, finance, lease, acquire, install,  
20 construct, or expand.
- 21 (5) Interim agreement. – An agreement between the private entity and the  
22 responsible public entity that provides for phasing of development or  
23 operation of a qualifying project. The phases may include design,  
24 planning, engineering, environmental analysis and mitigation, finance  
25 and revenue analysis, or any other phase of the project that constitutes  
26 activity on any part of the qualifying project.

- 1           (6)   Lease payment. – Any form of payment, including a land lease, by a  
2           public entity to the private entity for the use of a qualifying project.
- 3           (7)   Material default. – Any default by the private entity in the performance  
4           of its duties under G.S. 115F-9(e) that jeopardizes adequate service to  
5           the public from a qualifying project.
- 6           (8)   Operate. – To finance, maintain, improve, equip, modify, repair, or  
7           operate.
- 8           (9)   Private entity. – Any natural person, corporation, general partnership,  
9           limited liability company, limited partnership, joint venture, business  
10           trust, public benefit corporation, nonprofit entity, or other business  
11           entity.
- 12          (10) Public entity. – The State and any agency or authority thereof, any  
13          county or city, and any other political subdivision of the State or any  
14          regional entity that serves a public purpose.
- 15          (11) Qualifying project. – Any of the following:
- 16           a.    Any education facility, including, but not limited to, a school  
17           building, any functionally related and subordinate facility and  
18           land to a school building (including any stadium or other  
19           facility primarily used for school events), and any depreciable  
20           property provided for use in a school facility that is operated as  
21           part of the public school system or as an institution of higher  
22           education.
- 23           b.    Any building or facility that meets a public purpose and is  
24           developed or operated by or for any public entity.
- 25           c.    Any improvements, together with equipment, necessary to  
26           enhance public safety and security of buildings to be principally  
27           used by a public entity.
- 28           d.    Utility and telecommunications and other communications  
29           infrastructure.
- 30           e.    A recreational facility.
- 31           f.    Technology infrastructure, including, but not limited to,  
32           telecommunications, automated data processing, word  
33           processing and management information systems, and related  
34           information, equipment, goods and services.
- 35          (12) Responsible public entity. – A public entity that has the power to  
36          develop or operate the applicable qualifying project.
- 37          (13) Revenues. – All revenue, income, earnings, user fees, lease payments,  
38          or other service payments arising out of or in connection with  
39          supporting the development or operation of a qualifying project,  
40          including money received as grants or otherwise from the United  
41          States government, from any public entity, or from any agency or  
42          instrumentality of the foregoing in aid of the facility.
- 43          (14) Service contract. – A contract entered into between a public entity and  
44          the private entity pursuant to G.S. 115F-6.

1           (15) Service payments. – Payments to the private entity of a qualifying  
2           project pursuant to a service contract.

3           (16) User fees. – The rates, fees, or other charges imposed by the private  
4           entity of a qualifying project for use of all or a portion of the  
5           qualifying project pursuant to the comprehensive agreement pursuant  
6           to G.S. 115F-10.

7 **"§ 115F-2. Declaration of public purpose.**

8           (a) Findings. – The General Assembly finds that:

9           (1) There is a public need for timely acquisition, design, construction,  
10           improvement, renovation, expansion, equipping, maintenance,  
11           operation, implementation, or installation of education facilities,  
12           technology infrastructure and other public infrastructure, and  
13           government facilities within the State that serve a public need and  
14           purpose.

15           (2) The public need may not be wholly satisfied by existing methods of  
16           procurement in which qualifying projects are acquired, designed,  
17           constructed, improved, renovated, expanded, equipped, maintained,  
18           operated, implemented, or installed.

19           (3) There are inadequate resources to develop new education facilities,  
20           technology infrastructure and other public infrastructure, and  
21           government facilities for the benefit of citizens of the State, and there  
22           is demonstrated evidence that public-private partnerships can meet  
23           these needs by improving the schedule for delivery, lowering the cost,  
24           and providing other benefits to the public.

25           (4) Financial incentives exist under State and federal tax provisions that  
26           promote public entities to enter into partnerships with private entities  
27           to develop qualifying projects.

28           (5) Authorizing private entities to develop or operate one or more  
29           qualifying projects may result in the availability of those projects to  
30           the public in a more timely or less costly fashion, thereby serving the  
31           public safety, benefit, and welfare.

32           (b) Purpose. – An action under G.S. 115F-5 shall serve the public purpose of this  
33           Chapter if the action facilitates the timely development or operation of qualifying  
34           projects.

35           (c) Intent. – It is the intent of this Chapter, among other things, to encourage  
36           investment in the State by private entities and to facilitate the bond financing provisions  
37           of the Economic Growth and Tax Relief Reconciliation Act of 2001 or other similar  
38           financing mechanisms, private capital and other funding sources that support the  
39           development or operation of qualifying projects, to the end that financing for qualifying  
40           projects be expanded and accelerated to improve and add to the convenience of the  
41           public, and so that public and private entities may have the greatest possible flexibility  
42           in contracting with each other for the provision of the public services that are the subject  
43           of this Chapter.

1       (d) Construction. – This Chapter shall be liberally construed in conformity with  
2 the purposes hereof.

3 **"§ 115F-3. Prerequisite for operation of a qualifying project.**

4       (a) Approval. – Any private entity seeking authorization under this Chapter to  
5 develop or operate a qualifying project shall first obtain approval of the responsible  
6 public entity under G.S. 115F-5. The private entity may initiate the approval process by  
7 requesting approval pursuant to G.S. 115F-5(a), or the responsible public entity may  
8 request proposals or invite bids pursuant to G.S. 115F-5(b).

9       (b) Identification of Project. – Any facility, building, infrastructure or  
10 improvement included in a proposal as a part of a qualifying project shall be identified  
11 specifically or conceptually.

12       (c) Unsolicited Proposals. – Upon receipt by the responsible public entity of a  
13 proposal submitted by a private entity initiating the approval process pursuant to  
14 G.S. 115F-5(a), the responsible public entity shall determine whether to accept the  
15 proposal for consideration in accordance with G.S. 115F-18. If the responsible public  
16 entity determines not to accept for consideration the proposal submitted by the private  
17 entity pursuant to G.S. 115F-5(a), it shall return the proposal, together with all fees and  
18 accompanying documentation, to the private entity. The responsible public entity may  
19 reject any proposal initiated by a private entity pursuant to G.S. 115F-5(a) at any time.

20 **"§ 115F-4. Adoption of guidelines by responsible public entities.**

21       (a) Guidelines. – Any responsible public entity requesting or considering a  
22 proposal for a qualifying project shall adopt, and make publicly available, guidelines  
23 that are sufficient to enable the responsible public entity to comply with this Chapter.  
24 The guidelines shall guide the selection of projects under the purview of the responsible  
25 public entity and include reasonable criteria for choosing among competitive proposals  
26 and time lines for selecting proposals and negotiating an interim or comprehensive  
27 agreement.

28       (b) Priority. – The guidelines shall permit accelerated selection, review, and  
29 documentation time lines for proposals involving a qualifying project that the  
30 responsible public entity deems a priority.

31 **"§ 115F-5. Approval of qualifying projects by the responsible public entity.**

32       (a) Unsolicited Proposals. – A private entity may request approval of a qualifying  
33 project by the responsible public entity. Any request shall be accompanied by the  
34 following material and information unless waived by the responsible public entity:

35       (1) A topographic map (1:2,000 or other appropriate scale) indicating the  
36 location of the qualifying project.

37       (2) A description of the qualifying project, including the conceptual  
38 design of the facility or facilities or a conceptual plan for the provision  
39 of services or technology infrastructure, and a schedule for the  
40 initiation of and completion of the qualifying project to include the  
41 proposed major responsibilities and time line for activities to be  
42 performed by both the public and private entity.

- 1           (3) A statement setting forth the method by which the private entity  
2           proposes to secure any necessary property interests required for the  
3           qualifying project.
- 4           (4) Information relating to the current plans for development of facilities  
5           or technology infrastructure to be used by a public entity that are  
6           similar to the qualifying project being proposed by the private entity, if  
7           any, of each affected local jurisdiction.
- 8           (5) A list of all permits and approvals required for the qualifying project  
9           from local, State, or federal agencies and a projected schedule for  
10           obtaining the permits and approvals.
- 11           (6) A list of public utility facilities, if any, that will be crossed by the  
12           qualifying project and a statement of the plans of the private entity to  
13           accommodate the crossings.
- 14           (7) A statement setting forth the private entity's general plans for financing  
15           the qualifying project including the sources of the private entity's funds  
16           and identification of any dedicated revenue source or proposed debt or  
17           equity investment on the behalf of the private entity.
- 18           (8) The names and addresses of the persons who may be contacted for  
19           further information concerning the request.
- 20           (9) User fees, lease payments, and other service payments over the term of  
21           the interim or comprehensive agreement pursuant to G.S. 115F-10 and  
22           the methodology and circumstances for changes to user fees, lease  
23           payments, and other service payments over time.
- 24           (10) Any additional material and information as the responsible public  
25           entity may reasonably request.

26           (b) Solicited Proposals. – The responsible public entity may request proposals or  
27           invite bids from private entities for the development or operation of qualifying projects.

28           (c) Public Purpose. – The responsible public entity may grant approval of the  
29           development or operation of the education facility, technology infrastructure or other  
30           public infrastructure or government facility needed by a public entity as a qualifying  
31           project, or the design or equipping of a qualifying project so developed or operated, if  
32           the responsible public entity determines that the project serves the public purpose of this  
33           Chapter. In evaluating any request, the responsible public entity may rely upon internal  
34           staff reports prepared by personnel familiar with the operation of similar facilities or the  
35           advice of outside advisors or consultants having relevant experience. The responsible  
36           public entity may determine that the development or operation of the qualifying project  
37           as a qualifying project serves a public purpose if:

- 38           (1) There is a public need for or benefit derived from the qualifying  
39           project of the type the private entity proposes as a qualifying project.
- 40           (2) The estimated cost of the qualifying project is reasonable in relation to  
41           similar facilities.
- 42           (3) The private entity's plans will result in the timely development or  
43           operation of the qualifying project.

1       (d) Fee. – The responsible public entity may charge a fee to cover the costs of  
2 processing, reviewing, and evaluating the request, including reasonable attorneys' fees  
3 and fees for financial, technical, and other necessary advisors or consultants.

4       (e) Agreement Required. – The approval of the responsible public entity shall be  
5 subject to the private entity's entering into an interim or comprehensive agreement  
6 pursuant to G.S. 115F-10 with the responsible public entity.

7       (f) Commencement Date. – In connection with its approval of the qualifying  
8 project, the responsible public entity shall establish a date for the commencement of  
9 activities related to the qualifying project. The responsible public entity may extend the  
10 date from time to time.

11       (g) Public Records. – All documents related to the qualifying project are public  
12 records governed by Chapter 132 of the General Statutes and any applicable provisions  
13 of the General Statutes protecting confidential information.

14       (h) No Effect in Debt Authority. – Nothing in this Chapter or in an interim or  
15 comprehensive agreement entered into pursuant to this Chapter shall be deemed to  
16 enlarge, diminish, or affect the authority, if any, otherwise possessed by the responsible  
17 public entity to take action that would impact the debt capacity of the State.

18 **"§ 115F-6. Service contracts.**

19       In addition to any authority otherwise conferred by law, any public entity may  
20 contract with a private entity for the delivery of services to be provided as part of a  
21 qualifying project in exchange for service payments and other consideration as the  
22 public entity may deem appropriate.

23 **"§ 115F-7. Affected local jurisdictions.**

24       (a) Notification. – Any private entity requesting approval from, or submitting a  
25 proposal to, a responsible public entity under G.S. 115F-5 shall notify each affected  
26 local jurisdiction by furnishing a copy of its request or proposal to each affected local  
27 jurisdiction.

28       (b) Comment. – Each affected local jurisdiction that is not a responsible public  
29 entity for the respective qualifying project shall, within 60 days after receiving the  
30 notice, submit any comments it has in writing on the proposed qualifying project to the  
31 responsible public entity and indicate whether the facility is compatible with the local  
32 comprehensive plan, local infrastructure development plans, the capital improvements  
33 budget, or other government spending plan. Comments shall be given consideration by  
34 the responsible public entity prior to entering a comprehensive agreement pursuant to  
35 G.S. 115F-10 with a private entity.

36 **"§ 115F-8. Dedication of public property.**

37       Any public entity may dedicate any property interest, including land, improvements,  
38 and tangible personal property, that it has for public use in a qualifying project if it finds  
39 that so doing will serve the public purpose of this Chapter by minimizing the cost of a  
40 qualifying project to the public entity or reducing the delivery time of a qualifying  
41 project. In connection with a dedication, a public entity may convey any property  
42 interest that it has, subject to the conditions imposed by general law governing the  
43 conveyance, to the private entity subject to the provisions of this Chapter, for any  
44 consideration the public entity may determine. The consideration may include the

1 agreement of the private entity to develop or operate the qualifying project. The  
2 property interest that the public entity may convey to the private entity in connection  
3 with a dedication under this section may include licenses, franchises, easements, or any  
4 other right or interest the public entity deems appropriate.

5 **"§ 115F-9. Powers and duties of the operator.**

6 (a) General Powers. – The private entity shall have all power allowed by law  
7 generally to a private entity having the same form of organization as the private entity  
8 and shall have the power to develop or operate the qualifying project and collect lease  
9 payments, impose user fees, or enter into service contracts in connection with the use of  
10 the qualifying project.

11 (b) Property. – The private entity may own, lease, or acquire any other right to  
12 use or operate the qualifying project.

13 (c) Financing. – Any financing of the qualifying project may be in amounts and  
14 upon terms and conditions as are determined by the private entity. Without limiting the  
15 generality of the foregoing, the private entity may issue debt, equity, or other securities  
16 or obligations; enter into sale and leaseback transactions; and secure any financing with  
17 a pledge of, security interest in, or lien on, any or all of its property, including all of its  
18 property interests in the qualifying project.

19 (d) Fees and Rules. – In operating the qualifying project, the private entity may:

20 (1) Make classifications according to reasonable categories for assessment  
21 of user fees.

22 (2) With the consent of the responsible public entity, make and enforce  
23 reasonable rules to the same extent that the responsible public entity  
24 may make and enforce rules with respect to similar facilities.

25 (e) Operation. – The private entity shall:

26 (1) Develop or operate the qualifying project in a manner that is  
27 acceptable to the responsible public entity, all in accordance with the  
28 provisions of the interim or comprehensive agreement pursuant to  
29 G.S. 115F-10 or G.S. 115F-11.

30 (2) Keep the qualifying project open for use by the members of the public  
31 at all times, or as appropriate based upon the use of the facility, after  
32 its initial opening upon payment of the applicable user fees, lease  
33 payments, or service payments. The qualifying project may be  
34 temporarily closed because of emergencies or, with the consent of the  
35 responsible public entity, to protect the safety of the public or for  
36 reasonable construction or maintenance activities. In the event that a  
37 qualifying project is technology infrastructure, access may be limited  
38 as determined by the conditions of the interim or comprehensive  
39 agreement.

40 (3) Maintain, or provide by contract for the maintenance or upgrade of the  
41 qualifying project, if required by the comprehensive agreement.

42 (4) Cooperate with the responsible public entity in making best efforts to  
43 establish any interconnection with the qualifying project requested by  
44 the responsible public entity.

1           (5) Comply with the provisions of the comprehensive agreement and any  
2           lease or service contract.

3           (f) Additional Services. – Nothing in this Chapter shall prohibit a private entity  
4 of a qualifying project from providing additional services for the qualifying project to  
5 public or private entities other than the responsible public entity so long as the provision  
6 of additional service does not impair the private entity's ability to meet its commitments  
7 to the responsible public entity pursuant to the interim or comprehensive agreement as  
8 provided for in G.S. 115F-10 or G.S. 115F-11.

9 **"§ 115F-10. Comprehensive agreement.**

10          (a) General Terms. – Prior to developing or operating the qualifying project, the  
11 private entity shall enter into a comprehensive agreement with the responsible public  
12 entity. The comprehensive agreement shall provide for:

13           (1) Delivery of maintenance, performance, and payment bonds or letters  
14 of credit in connection with the development or operation of the  
15 qualifying project, in the forms and amounts satisfactory to the  
16 responsible public entity.

17           (2) Review of plans and specifications for the qualifying project by the  
18 responsible public entity and approval by the responsible public entity  
19 if the plans and specifications conform to standards acceptable to the  
20 responsible public entity. This shall not be construed as requiring the  
21 private entity to complete design of a qualifying project prior to the  
22 execution of a comprehensive agreement.

23           (3) Inspection of the qualifying project by the responsible public entity to  
24 ensure that the private entity's activities are acceptable to the  
25 responsible public entity in accordance with the provisions of the  
26 comprehensive agreement.

27           (4) Maintenance of a policy or policies of public liability insurance  
28 (copies of which shall be filed with the responsible public entity  
29 accompanied by proofs of coverage) or self-insurance, each in form  
30 and amount satisfactory to the responsible public entity and reasonably  
31 sufficient to insure coverage of tort liability to the public and  
32 employees and to enable the continued operation of the qualifying  
33 project.

34           (5) Monitoring of the practices of the private entity by the responsible  
35 public entity to ensure that the qualifying project is properly  
36 maintained.

37           (6) Reimbursement to be paid to the responsible public entity for services  
38 provided by the responsible public entity.

39           (7) Filing of appropriate financial statements on a periodic basis.

40           (8) Policies and procedures governing the rights and responsibilities of the  
41 responsible public entity and the private entity in the event the  
42 comprehensive agreement is terminated or there is a material default  
43 by the private entity. These policies and guidelines shall include  
44 conditions governing assumption of the duties and responsibilities of



1           the private entity by the responsible public entity and the transfer or  
2           purchase of property or other interests of the private entity by the  
3           responsible public entity.

4       (b) Payments. – The comprehensive agreement shall provide for user fees, lease  
5 payments, or service payments as may be established from time to time by agreement of  
6 the parties. A copy of any service contract shall be filed with the responsible public  
7 entity. In negotiating user fees under this section, the parties shall establish payments or  
8 fees that are the same for persons using the facility under like conditions and that will  
9 not materially discourage use of the qualifying project. The execution of the  
10 comprehensive agreement or any amendment thereto shall constitute conclusive  
11 evidence that the user fees, lease payments, or service payments provided for comply  
12 with this Chapter. User fees or lease payments established in the comprehensive  
13 agreement as a source of revenues may be in addition to, or in lieu of, service payments.

14       (c) Grants and Loans. – In the comprehensive agreement, the responsible public  
15 entity may agree to make grants or loans to the private entity from time to time from  
16 amounts received from the federal, State, or local government or any agency or  
17 instrumentality thereof.

18       (d) Optional Terms. – The comprehensive agreement shall incorporate the duties  
19 of the private entity under this Chapter and may contain other terms and conditions that  
20 the responsible public entity determines serve the public purpose of this Chapter.  
21 Without limitation, the comprehensive agreement may contain provisions under which  
22 the responsible public entity agrees to provide notice of default and cure rights for the  
23 benefit of the private entity and the persons specified therein as providing financing for  
24 the qualifying project. The comprehensive agreement may contain other lawful terms  
25 and conditions to which the private entity and the responsible public entity mutually  
26 agree, including provisions regarding unavoidable delays or provisions providing for a  
27 loan of public funds to the private entity to develop or operate one or more qualifying  
28 projects. The comprehensive agreement may also contain provisions where the authority  
29 and duties of the private entity under this Chapter cease, and the qualifying project is  
30 dedicated to the responsible public entity or, if the qualifying project was initially  
31 dedicated by an affected local jurisdiction, to the affected local jurisdiction for public  
32 use.

33       (e) Amendments. – Any changes in the terms of the comprehensive agreement,  
34 as may be agreed upon by the parties from time to time, shall be added to the  
35 comprehensive agreement by written amendment.

36       (f) Oversight. – When a responsible public entity that is not an agency or  
37 authority of the State enters into a comprehensive agreement pursuant to this Chapter, it  
38 shall within 30 days thereafter submit a copy of the comprehensive agreement to the  
39 Attorney General's Office and the Local Government Commission.

40       (g) Phases. – The comprehensive agreement may provide for the development or  
41 operation of phases or segments of the qualifying project.

42 **"§ 115F-11. Interim agreement.**

43       Prior to or in connection with the negotiation of the comprehensive agreement, the  
44 responsible public entity may enter into an interim agreement with the private entity

1 proposing the development or operation of the qualifying project. An interim agreement  
2 may (i) permit the private entity to commence activities for which it may be  
3 compensated relating to the proposed qualifying project, including project planning and  
4 development, design and engineering, environmental analysis and mitigation, survey,  
5 and ascertaining the availability of financing for the proposed facility or facilities; (ii)  
6 establish the process and timing of the negotiation of the comprehensive agreement; and  
7 (iii) contain any other provisions related to any aspect of the development or operation  
8 of a qualifying project that the parties deem appropriate.

9 **"§ 115F-12. Federal, State and local assistance.**

10 (a) Financing. – Any financing of a qualifying facility may be in amounts and  
11 upon terms and conditions as are determined by the parties to the interim or  
12 comprehensive agreement. Without limiting the generality of the terms and conditions  
13 of the financing, the private entity and the responsible public entity may propose to  
14 utilize any and all funding resources that may be available to them and may, to the  
15 fullest extent permitted by applicable law, issue debt, equity, or other securities or other  
16 obligations, enter into leases, access any designated trust funds, borrow or accept grants  
17 from any State infrastructure bank, and secure any financing with a pledge of, security  
18 interest in, or lien on any or all of its property, including all of its property interest in the  
19 qualifying facility.

20 (b) Public Assistance. – The responsible public entity may take any action to  
21 obtain federal, State, or local assistance for a qualifying project that serves the public  
22 purpose of this Chapter and may enter into any contracts required to receive that  
23 assistance. If the responsible public entity is a State agency, any funds received from the  
24 State or federal government or any agency or instrumentality thereof shall be subject to  
25 appropriation by the General Assembly. The responsible public entity may determine  
26 that it serves the public purpose of this Chapter for all or any portion of the costs of a  
27 qualifying project to be paid, directly or indirectly, from the proceeds of a grant or loan  
28 made by the local, State, or federal government or any agency or instrumentality  
29 thereof.

30 **"§ 115F-13. Material default; remedies.**

31 (a) Default. – In the event of a material default by the private entity, the  
32 responsible public entity may elect to assume the responsibilities and duties of the  
33 private entity of the qualifying project, and in such a case, it shall succeed to all of the  
34 right, title, and interest in the qualifying project, subject to any liens on revenues  
35 previously granted by the private entity to any person providing financing thereof.

36 (b) Condemnation. – Any responsible public entity having the power of  
37 condemnation under State law may exercise the power of condemnation to acquire the  
38 qualifying project in the event of a material default by the private entity. Any person  
39 who has provided financing for the qualifying project, and the private entity, to the  
40 extent of its capital investment, may participate in the condemnation proceedings with  
41 the standing of a property owner.

42 (c) Termination of Agreement. – The responsible public entity may terminate,  
43 with cause, the interim or comprehensive agreement and exercise any other rights and  
44 remedies that may be available to it at law or in equity.

1       (d) Credit. – The responsible public entity may make or cause to be made any  
2 appropriate claims under the lines of credit or maintenance, performance, or payment  
3 bonds required by G.S. 115F-10(a)(1).

4       (e) Affect of Assumption of Project. – In the event the responsible public entity  
5 elects to take over a qualifying project pursuant to subsection (a) of this section, the  
6 responsible public entity may develop or operate the qualifying project, impose user  
7 fees, impose and collect lease payments for the use thereof and comply with any service  
8 contracts as if it were the private entity. Any revenues that are subject to a lien shall be  
9 collected for the benefit of and paid to secured parties, as their interests may appear, to  
10 the extent necessary to satisfy the private entity's obligations to secured parties,  
11 including the maintenance of reserves. These liens shall be correspondingly reduced  
12 and, when paid off, released. Before any payments to, or for the benefit of, secured  
13 parties, the responsible public entity may use revenues to pay current operation and  
14 maintenance costs of the qualifying project, including compensation to the responsible  
15 public entity for its services in operating and maintaining the qualifying project. The  
16 right to receive payment, if any, shall be considered just compensation for the  
17 qualifying project. The full faith and credit of the responsible public entity shall not be  
18 pledged to secure any financing of the private entity by the election to take over the  
19 qualifying project. Assumption of operation of the qualifying project shall not obligate  
20 the responsible public entity to pay any obligation of the private entity from sources  
21 other than revenues.

22 **"§ 115F-14. Condemnation.**

23       At the request of the private entity, the responsible public entity may exercise any  
24 power of condemnation that it has under law for the purpose of acquiring any lands or  
25 estates or interests therein to the extent that the responsible public entity finds that this  
26 action serves the public purpose of this Chapter. Any amounts to be paid in any  
27 condemnation proceeding shall be paid by the private entity.

28 **"§ 115F-15. Utility crossing.**

29       The private entity and each public service company, public utility, railroad, and  
30 cable television provider whose facilities are to be crossed or affected shall cooperate  
31 fully with the other entity in planning and arranging the manner of the crossing or  
32 relocation of the facilities. Any entity possessing the power of condemnation may use  
33 those powers in connection with the moving or relocation of facilities to be crossed by  
34 the qualifying project or that must be relocated to the extent that moving or relocation is  
35 made necessary or desirable by construction of, renovation to, or improvements to the  
36 qualifying project, including construction of, renovation to, or improvements to  
37 temporary facilities for the purpose of providing service during the period of  
38 construction or improvement. Any amount to be paid for the crossing, construction,  
39 moving or relocating of facilities shall be paid for by the private entity. If the private  
40 entity and any public service company, public utility, railroad, and cable television  
41 provider are not able to agree upon a plan for the crossing or relocation, the  
42 Commission may determine the manner in which the crossing or relocation is to be  
43 accomplished and any damages due arising out of the crossing or relocation. The  
44 Commission may employ expert engineers who shall examine the location and plans for

1 the crossing or relocation, hear any objections and consider modifications, and make a  
2 recommendation to the Commission. In such a case, the cost of the experts is to be  
3 borne by the private entity. A determination shall be made by the Commission within 90  
4 days of notification by the private entity that the qualifying project will cross utilities  
5 subject to the Commission's jurisdiction.

6 **"§ 115F-16. Police powers; violations of law.**

7 All police officers of the State and of each affected local jurisdiction have the same  
8 powers and jurisdiction within the limits of qualifying projects as they have in their  
9 respective areas of jurisdiction and police officers shall have access to the qualifying  
10 project at any time for the purpose of exercising those powers and jurisdiction.

11 **"§ 115F-17. Sovereign immunity.**

12 Nothing in this Chapter shall be construed as or deemed a waiver of the sovereign  
13 immunity of the State, any responsible public entity or any affected local jurisdiction or  
14 any officer or employee thereof with respect to the participation in, or approval of all or  
15 any part of the qualifying project or its operation, including interconnection of the  
16 qualifying project with any other infrastructure or projects. Counties and cities in which  
17 a qualifying project is located possess sovereign immunity with respect to its design,  
18 construction, and operation.

19 **"§ 115F-18. Procurement.**

20 The provisions of Article 8 of Chapter 143 do not apply to this Chapter. However, a  
21 responsible public entity may enter into a comprehensive agreement only in accordance  
22 with guidelines adopted by it as follows:

23 (1) A responsible public entity may enter into a comprehensive agreement  
24 in accordance with guidelines adopted by it that are consistent with  
25 procurement through competitive sealed bidding under G.S. 143-129.

26 (2) A responsible public entity may enter into a comprehensive agreement  
27 in accordance with guidelines adopted by it that are consistent with the  
28 procurement through alternative bidding methods authorized by  
29 G.S. 143-129.9 or G.S. 143-31. The responsible public entity shall not  
30 be required to select the proposal with the lowest price offer, but may  
31 consider price as one factor in evaluating the proposals received. Other  
32 factors that may be considered include (i) the proposed cost of the  
33 qualifying facility; (ii) the general reputation, industry experience, and  
34 financial capacity of the private entity; (iii) the proposed design of the  
35 qualifying project; (iv) the eligibility of the facility for accelerated  
36 selection, review, and documentation time lines under the responsible  
37 public entity's guidelines; (v) local citizen and government comments;  
38 (vi) benefits to the public; (vii) the private entity's compliance with a  
39 minority business enterprise participation plan or good faith effort to  
40 comply with the goals of the plan; (viii) the private entity's plans to  
41 employ local contractors and residents; and (ix) other criteria that the  
42 responsible public entity deems appropriate. A responsible public  
43 entity shall proceed in accordance with the guidelines adopted by it  
44 pursuant to subdivision (1) of this section unless it determines that

1 proceeding in accordance with the guidelines adopted by it pursuant to  
2 this subdivision is likely to be advantageous to the responsible public  
3 entity and the public, based on (i) the probable scope, complexity or  
4 priority of the project; (ii) risk sharing including guaranteed cost or  
5 completion guarantees, added value or debt or equity investments  
6 proposed by the private entity; or (iii) an increase in funding,  
7 dedicated revenue source, or other economic benefit that would not  
8 otherwise be available. When the responsible public entity determines  
9 to proceed according to the guidelines adopted by it pursuant to this  
10 subdivision, it shall state the reasons for its determination in writing. If  
11 a State agency is the responsible public entity, the approval of the  
12 agency's head is required before the responsible public entity may  
13 enter into a comprehensive agreement pursuant to this subdivision.

14 (3) Nothing in this Chapter shall authorize or require that a responsible  
15 public entity obtain consultant or architectural, engineering, or  
16 surveying services through any process except in accordance with  
17 guidelines adopted by it that are consistent with the procurement of  
18 those services under Article 3C or 3D of Chapter 143 of the General  
19 Statutes.

20 (4) A responsible public entity shall not proceed to consider any request  
21 by a private entity for approval of a qualifying project pursuant to  
22 G.S. 115F-5(a) until the responsible public entity has adopted and  
23 made publicly available guidelines that are sufficient to enable the  
24 responsible public entity to comply with this Chapter. These guidelines  
25 shall:

26 a. If the responsible public entity is not an agency or authority of  
27 the State, require the responsible public entity to engage the  
28 services of qualified professionals, which may include an  
29 architect, professional engineer, or certified public accountant  
30 not employed by the responsible public entity to provide to the  
31 responsible public entity independent analysis regarding the  
32 specifics, advantages, disadvantages, and the long- and  
33 short-term costs of any request by a private entity for approval  
34 of a qualifying project, unless the governing body of the  
35 responsible public entity makes a written determination that this  
36 analysis of a request by a private entity for approval of a  
37 qualifying project shall be performed by employees of the  
38 responsible public entity.

39 b. Provide for the posting and publishing of public notice of a  
40 private entity's request for approval of a qualifying project  
41 pursuant to G.S. 115F-5(a) and a reasonable time period,  
42 determined by the responsible public entity to be appropriate to  
43 encourage competition and public-private partnerships pursuant  
44 to the goals of this Chapter, not to be less than 45 days, during

1                           which the responsible public entity will receive competing  
2                           proposals pursuant to that subsection.

3           (5)   A responsible public entity that is a school board, a county, or a city  
4                   may enter into an interim or comprehensive agreement under this  
5                   Chapter only with the approval of the local governing body."

6           **SECTION 2.** This act is effective when it becomes law.