

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1475

Short Title: Public-Private Partner. Infrastructure Act.

(Public)

Sponsors: Representative Wright.

Referred to: Finance.

April 21, 2005

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:

8 **"Chapter 115F.**

9 **"Education Infrastructure Act.**

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.
27 (6) Lease payment. – Any form of payment, including a land lease, by a
28 public entity to the private entity for the use of a qualifying project.

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

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

5 **"§ 115F-2. Declaration of public purpose.**

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

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

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

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

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

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

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

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

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

44 **"§ 115F-3. Prerequisite for operation of a qualifying project.**

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

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

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

17 **"§ 115F-4. Adoption of guidelines by responsible public entities.**

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

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

28 **"§ 115F-5. Approval of qualifying projects by the responsible public entity.**

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

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

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

40 (3) A statement setting forth the method by which the private entity
41 proposes to secure any necessary property interests required for the
42 qualifying project.

43 (4) Information relating to the current plans for development of facilities
44 or technology infrastructure to be used by a public entity that are

1 similar to the qualifying project being proposed by the private entity, if
2 any, of each affected local jurisdiction.

3 (5) A list of all permits and approvals required for the qualifying project
4 from local, State, or federal agencies and a projected schedule for
5 obtaining the permits and approvals.

6 (6) A list of public utility facilities, if any, that will be crossed by the
7 qualifying project and a statement of the plans of the private entity to
8 accommodate the crossings.

9 (7) A statement setting forth the private entity's general plans for financing
10 the qualifying project including the sources of the private entity's funds
11 and identification of any dedicated revenue source or proposed debt or
12 equity investment on the behalf of the private entity.

13 (8) The names and addresses of the persons who may be contacted for
14 further information concerning the request.

15 (9) User fees, lease payments, and other service payments over the term of
16 the interim or comprehensive agreement pursuant to G.S. 115F-10 and
17 the methodology and circumstances for changes to user fees, lease
18 payments, and other service payments over time.

19 (10) Any additional material and information as the responsible public
20 entity may reasonably request.

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

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

33 (1) There is a public need for or benefit derived from the qualifying
34 project of the type the private entity proposes as a qualifying project.

35 (2) The estimated cost of the qualifying project is reasonable in relation to
36 similar facilities.

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

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

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

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

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

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

12 **"§ 115F-6. Service contracts.**

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

17 **"§ 115F-7. Affected local jurisdictions.**

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

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

30 **"§ 115F-8. Dedication of public property.**

31 Any public entity may dedicate any property interest, including land, improvements,
32 and tangible personal property, that it has for public use in a qualifying project if it finds
33 that so doing will serve the public purpose of this Chapter by minimizing the cost of a
34 qualifying project to the public entity or reducing the delivery time of a qualifying
35 project. In connection with a dedication, a public entity may convey any property
36 interest that it has, subject to the conditions imposed by general law governing the
37 conveyance, to the private entity subject to the provisions of this Chapter, for any
38 consideration the public entity may determine. The consideration may include the
39 agreement of the private entity to develop or operate the qualifying project. The
40 property interest that the public entity may convey to the private entity in connection
41 with a dedication under this section may include licenses, franchises, easements, or any
42 other right or interest the public entity deems appropriate.

43 **"§ 115F-9. Powers and duties of the operator.**

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

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

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

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

15 (1) Make classifications according to reasonable categories for assessment
16 of user fees.

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

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

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

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

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

37 (4) Cooperate with the responsible public entity in making best efforts to
38 establish any interconnection with the qualifying project requested by
39 the responsible public entity.

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

42 (f) Additional Services. – Nothing in this Chapter shall prohibit a private entity
43 of a qualifying project from providing additional services for the qualifying project to
44 public or private entities other than the responsible public entity so long as the provision

1 of additional service does not impair the private entity's ability to meet its commitments
2 to the responsible public entity pursuant to the interim or comprehensive agreement as
3 provided for in G.S. 115F-10 or G.S. 115F-11.

4 **"§ 115F-10. Comprehensive agreement.**

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

- 8 (1) Delivery of maintenance, performance, and payment bonds or letters
9 of credit in connection with the development or operation of the
10 qualifying project, in the forms and amounts satisfactory to the
11 responsible public entity.
- 12 (2) Review of plans and specifications for the qualifying project by the
13 responsible public entity and approval by the responsible public entity
14 if the plans and specifications conform to standards acceptable to the
15 responsible public entity. This shall not be construed as requiring the
16 private entity to complete design of a qualifying project prior to the
17 execution of a comprehensive agreement.
- 18 (3) Inspection of the qualifying project by the responsible public entity to
19 ensure that the private entity's activities are acceptable to the
20 responsible public entity in accordance with the provisions of the
21 comprehensive agreement.
- 22 (4) Maintenance of a policy or policies of public liability insurance
23 (copies of which shall be filed with the responsible public entity
24 accompanied by proofs of coverage) or self-insurance, each in form
25 and amount satisfactory to the responsible public entity and reasonably
26 sufficient to insure coverage of tort liability to the public and
27 employees and to enable the continued operation of the qualifying
28 project.
- 29 (5) Monitoring of the practices of the private entity by the responsible
30 public entity to ensure that the qualifying project is properly
31 maintained.
- 32 (6) Reimbursement to be paid to the responsible public entity for services
33 provided by the responsible public entity.
- 34 (7) Filing of appropriate financial statements on a periodic basis.
- 35 (8) Policies and procedures governing the rights and responsibilities of the
36 responsible public entity and the private entity in the event the
37 comprehensive agreement is terminated or there is a material default
38 by the private entity. These policies and guidelines shall include
39 conditions governing assumption of the duties and responsibilities of
40 the private entity by the responsible public entity and the transfer or
41 purchase of property or other interests of the private entity by the
42 responsible public entity.

43 (b) Payments. – The comprehensive agreement shall provide for user fees, lease
44 payments, or service payments as may be established from time to time by agreement of

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

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

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

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

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

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

37 **"§ 115F-11. Interim agreement.**

38 Prior to or in connection with the negotiation of the comprehensive agreement, the
39 responsible public entity may enter into an interim agreement with the private entity
40 proposing the development or operation of the qualifying project. An interim agreement
41 may (i) permit the private entity to commence activities for which it may be
42 compensated relating to the proposed qualifying project, including project planning and
43 development, design and engineering, environmental analysis and mitigation, survey,
44 and ascertaining the availability of financing for the proposed facility or facilities; (ii)

1 establish the process and timing of the negotiation of the comprehensive agreement; and
2 (iii) contain any other provisions related to any aspect of the development or operation
3 of a qualifying project that the parties deem appropriate.

4 **"§ 115F-12. Federal, State and local assistance.**

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

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

25 **"§ 115F-13. Material default; remedies.**

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

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

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

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

43 (e) Affect of Assumption of Project. – In the event the responsible public entity
44 elects to take over a qualifying project pursuant to subsection (a) of this section, the

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

17 **"§ 115F-14. Condemnation.**

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

23 **"§ 115F-15. Utility crossing.**

24 The private entity and each public service company, public utility, railroad, and
25 cable television provider whose facilities are to be crossed or affected shall cooperate
26 fully with the other entity in planning and arranging the manner of the crossing or
27 relocation of the facilities. Any entity possessing the power of condemnation may use
28 those powers in connection with the moving or relocation of facilities to be crossed by
29 the qualifying project or that must be relocated to the extent that moving or relocation is
30 made necessary or desirable by construction of, renovation to, or improvements to the
31 qualifying project, including construction of, renovation to, or improvements to
32 temporary facilities for the purpose of providing service during the period of
33 construction or improvement. Any amount to be paid for the crossing, construction,
34 moving or relocating of facilities shall be paid for by the private entity. If the private
35 entity and any public service company, public utility, railroad, and cable television
36 provider are not able to agree upon a plan for the crossing or relocation, the
37 Commission may determine the manner in which the crossing or relocation is to be
38 accomplished and any damages due arising out of the crossing or relocation. The
39 Commission may employ expert engineers who shall examine the location and plans for
40 the crossing or relocation, hear any objections and consider modifications, and make a
41 recommendation to the Commission. In such a case, the cost of the experts is to be
42 borne by the private entity. A determination shall be made by the Commission within 90
43 days of notification by the private entity that the qualifying project will cross utilities
44 subject to the Commission's jurisdiction.

1 **"§ 115F-16. Police powers; violations of law.**

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

6 **"§ 115F-17. Sovereign immunity.**

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

14 **"§ 115F-18. Procurement.**

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

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

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

1 proposed by the private entity; or (iii) an increase in funding,
2 dedicated revenue source, or other economic benefit that would not
3 otherwise be available. When the responsible public entity determines
4 to proceed according to the guidelines adopted by it pursuant to this
5 subdivision, it shall state the reasons for its determination in writing. If
6 a State agency is the responsible public entity, the approval of the
7 agency's head is required before the responsible public entity may
8 enter into a comprehensive agreement pursuant to this subdivision.

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

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

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

34 b. Provide for the posting and publishing of public notice of a
35 private entity's request for approval of a qualifying project
36 pursuant to G.S. 115F-5(a) and a reasonable time period,
37 determined by the responsible public entity to be appropriate to
38 encourage competition and public-private partnerships pursuant
39 to the goals of this Chapter, not to be less than 45 days, during
40 which the responsible public entity will receive competing
41 proposals pursuant to that subsection.

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

1

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