

March 24, 2009

S 822. EDUCATION INFRASTRUCTURE ACT. Filed 3/24/09. *TO ALLOW INFRASTRUCTURE PROCUREMENT PROJECTS INVOLVING PARTNERSHIPS BETWEEN PUBLIC AND PRIVATE ENTITIES.*

To be summarized in tomorrow's *Daily Bulletin*.

Intro. by Jenkins.

GS 115F

March 25, 2009

S 822. EDUCATION INFRASTRUCTURE ACT. Filed 3/24/09. *TO ALLOW INFRASTRUCTURE PROCUREMENT PROJECTS INVOLVING PARTNERSHIPS BETWEEN PUBLIC AND PRIVATE ENTITIES.*

Enacts new GS Chapter 115F, *Infrastructure Development Act*, to permit partnerships between public and private entities to develop and operate infrastructure procurement projects.

Definitions. Provides definitions as they apply in the proposed Chapter. Provides that (1) *public entity* means the state and any state agency, any county or city, and any other political subdivision of the state or any regional entity that serves a public purpose and (2) *private entity* means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity. Allows the private entity and the responsible public entity to enter into a *comprehensive agreement* that provides for all of the details of the project to be done, including performance plans and specifications, policies and procedures governing the rights and responsibilities of both the public and private entities, and financial agreements. Provides that the comprehensive agreement is to be entered into by the public and private entities prior to developing or operating the qualifying project.

Defines a *qualifying project* as any of the following: (1) any education facility, including but not limited to a school building, includes any functionally related and subordinate facility, land of a school building, such as a stadium, and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (2) any building or facility that meets a public purpose developed or operated by or for a public entity; (3) any improvements necessary to enhance the public safety and security of buildings principally used by a public entity; (4) utility, telecommunications, and other communications infrastructure; (5) a recreational facility; (6) technology infrastructure; (7) any technology, equipment, or infrastructure designed to bring wireless broadband services to schools, businesses, or residential areas; and (8) any improvements necessary or desirable to any unimproved locally or state-owned real estate. Specifies that any road or bridge construction project does not constitute a qualifying project unless the bridge or road construction project is ancillary to the development of a qualifying project.

Allows the responsible public entity to enter into an interim agreement with the private entity prior to or in connection with the negotiation of the comprehensive agreement. Defines *interim agreement* as an agreement between the private entity and the responsible public entity that provides for phasing of the development or operation of a qualifying project. Provides that phases may include design, planning, engineering, environmental analysis and mitigation, finance and revenue, or any other phase of the project that is activity on any part of the qualifying project.

Proposals for qualifying projects. Provides that a responsible public entity may invite proposals from a private entity for the (1) development, (2) operation, or (3) development and operation of a qualifying project. Requires that the invitation for proposals be made publicly and specifies information that must be requested in the invitation for proposals. Requires any responsible public entity to adopt guidelines that are sufficient to enable the responsible public entity to comply with this proposed Chapter. Directs that these guidelines are to be made public prior to the responsible public entity issuing a request for proposals for the qualifying project. Provides criteria for the content of the required guidelines.

Permits a responsible public entity to grant approval of the development or operation of the education facility, technology infrastructure, or other public infrastructure or government facility needed by a public entity as a qualifying project, if the responsible public entity determines that the project serves a public purpose. Provides the conditions that must be met in determining if the

qualifying project serves a public purpose. Also provides that approval of the qualifying project by the responsible public entity is subject to the private entity's entering into an interim or comprehensive agreement under proposed GS 115F-10 with the responsible public entity.

Provides that all documents related to the qualifying project are public records governed by GS Chapter 132 and any applicable provisions in the General Statutes protecting confidential information. Provides that nothing in this proposed Chapter is to affect the debt authority of the state, county, city, or town. Permits any public entity to contract with a private entity for the delivery of services in exchange for consideration.

Requires any private entity that submits a proposal to provide a copy of its proposal to each *affected jurisdiction* (any county, city, or town that is not a responsible public entity but in which a portion or all of a qualifying project is located). Allows each affected local jurisdiction 60 days after receiving notice from the private entity to submit written comments regarding the qualifying project to the responsible public entity. Provides that these comments are to be given consideration by the responsible public entity before entering into a comprehensive agreement with the private entity.

Additional provisions. Permits any public entity to dedicate any property interest that the public entity has for public use in a qualifying project if the dedication will serve the public purpose of this proposed Chapter by minimizing the cost of a qualifying project or reducing the delivery time of the qualifying project. Provides that a public entity may, in connection with a dedication, convey its property interest to the private entity, subject to the provisions of this proposed Chapter, for any consideration that the public entity may determine, including the agreement of the private entity to develop or operate the qualifying project.

Provides for the powers and duties of the private entity in operating the qualifying project. Permits the private entity to own, lease, or acquire any right to use or operate the qualifying project after entering into a comprehensive agreement with the responsible public entity. Provides guidelines regarding general powers, financing, fees and rules, operation, and provision of additional service by the private entity.

Provides that the parties to the interim or comprehensive agreement may enter into agreements for financing agreed upon by the parties and may take action to obtain federal, state, and local financial assistance for a qualifying project that serves the public purpose of the proposed Chapter.

Provides for remedies in the event of a material default by the private entity. Remedies include acquiring the qualifying project through the exercise of the power of condemnation if available to the responsible public entity. Permits the responsible public entity to exercise any rights and remedies that may be available in law or in equity should the responsible public entity terminate the agreement with cause.

Requires the private entity and each public service company, public utility, railroad, and cable television provider whose facilities are to be crossed or affected to cooperate fully with each other in planning and arranging the manner of the crossing or relocation of the facilities. Provides that if they are unable to agree to a plan, the North Carolina Utilities Commission (Commission) may decide the manner of the crossing or the relocation and any damages that arise. Permits the Commission to employ experts to make recommendations to the Commission and that the cost of the experts is to be assumed by the private entity. Requires the Commission to make a determination within 90 days of receiving notice of the matter from the private entity.

Provides for police powers within the limits of qualifying projects. States that nothing in this proposed Chapter is to be construed as a waiver of the sovereign immunity of the state, any responsible public entity, any affected local jurisdiction, or any officer or employee of these entities.

Provides that the provisions of Article 8 (Public Contracts) do not apply to this proposed Chapter; however provides guidelines for a responsible public entity to enter into an interim or comprehensive agreement.

Requires the responsible public entity to post all proposals for qualifying projects that it receives within 10 days after receipt of the proposals. Specifies where the received proposals are to be posted depending on whether the responsible public entities are state agencies, departments, or institutions, or local bodies. Also allows posting by additional means other than those prescribed. Additionally requires that a responsible public entity provide an opportunity for a

public hearing prior to executing a comprehensive agreement. After there is an opportunity for public comment, no additional posting is required. Requires the responsible public entity to make procurement records available upon request for public inspection, after the parties have entered into an interim or comprehensive agreement. Provides that cost estimates relating to a proposed procurement transaction are not to be open to public inspection. Also provides that procurement records do not include trade secrets as defined in the Trade Secrets Protection Act (GS Chapter 66, Article 24) or financial records.

States that it is the intent of the General Assembly that the Joint Legislative Commission on Governmental Operations will facilitate development of model procedures to assist in the implementation of this proposed act and that such model procedures will be completed and made available to public entities covered by this act not later than December 31, 2009.

Intro. by Jenkins.

GS 115F