S T A T E O F N E W Y O R K

8183

2013-2014 Regular Sessions

I N A S S E M B L Y

October 4, 2013

Introduced by M. of A. SCHIMMINGER -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to authorizing the establishment and operation of public-private partnerships for the construction and operation of public infrastructure

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative intent. The legislature hereby finds that there is a public need for timely development and/or operation of public infrastructure within the state that address the needs identified by the state and its political subdivisions by relieving the burden of real property taxation, creating private sector jobs, attracting global economic development, creating opportunities for small, minority-owned and women-owned businesses, enhancing economic efficiency and that such public need may not be wholly satisfied by existing methods of procurement and operation in which qualifying public infrastructure is developed and/or operated. Authorizing private entities to develop and/or operate one or more public infrastructure may result in the development and/or operation of such infrastructure to the public in a more timely, more efficient, or less costly fashion, thereby serving the public safety and welfare.

It is the intent of this act, among other things, to encourage investment in the state by private entities that facilitates the development and operation of public infrastructure. Accordingly, public and private entities may have the greatest possible flexibility in contracting with each other for the provision of the governmental services which are the subject of this act.

S 2. The executive law is amended by adding a new article 14-A to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD08875-03-3

ARTICLE 14-A
PUBLIC-PRIVATE PARTNERSHIP IN
PUBLIC INFRASTRUCTURE

SECTION 275. DEFINITIONS.
275-A. PUBLIC-PRIVATE PARTNERSHIP BOARD.
276. POWERS, RIGHTS, DUTIES AND LIMITATIONS OF PARTIES.
277. PROCUREMENT.
278. MULTIPLE PUBLIC ENTITIES AND SPECIAL PURPOSE VEHICLES.
278-A. COMPREHENSIVE AGREEMENTS.
279. MATERIAL DEFAULT; REMEDIES.
279-A. PUBLIC WORK.
280. CONSTRUCTION.
281. SEVERABILITY.

S 275. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "AFFECTED JURISDICTION" MEANS ANY COUNTY, CITY, TOWN, SCHOOL DISTRICT OR VILLAGE IN WHICH ALL OR A PORTION OF QUALIFYING PUBLIC INFRASTRUCTURE IS LOCATED AND ANY OTHER RESPONSIBLE PUBLIC ENTITY DIRECTLY AFFECTED BY THE QUALIFYING PUBLIC INFRASTRUCTURE.

2. "BOARD" MEANS THE PUBLIC-PRIVATE PARTNERSHIP BOARD.

3. "COMPREHENSIVE AGREEMENT" MEANS THE COMPREHENSIVE AGREEMENT BETWEEN THE PRIVATE ENTITY AND THE LEAD PUBLIC ENTITY.

4. "INFRASTRUCTURE" MEANS PHYSICAL AND ORGANIZATIONAL STRUCTURES AND FACILITIES NECESSARY FOR THE OPERATION OF A PUBLIC ENTITY.

5. "INTERIM AGREEMENT" MEANS THE INTERIM AGREEMENT, INCLUDING A MEMORANDUM OF UNDERSTANDING OR BINDING PRELIMINARY AGREEMENT, THAT MAY BE ENTERED INTO BETWEEN THE PRIVATE ENTITY AND THE LEAD PUBLIC ENTITY PURSUANT TO SECTION TWO HUNDRED SEVENTY-SEVEN OF THIS ARTICLE.

6. "LEAD PUBLIC ENTITY" MEANS A PUBLIC ENTITY, INCLUDING LOCAL GOVERNMENTS AND REGIONAL AUTHORITIES, THAT HAS THE POWER TO DEVELOP AND/OR OPERATE THE QUALIFYING PUBLIC INFRASTRUCTURE.

7. "MATERIAL DEFAULT" MEANS ANY DEFAULT BY THE PRIVATE ENTITY IN THE PERFORMANCE OF ITS DUTIES UNDER THE COMPREHENSIVE OR INTERIM AGREEMENT THAT JEOPARDIZES ADEQUATE SERVICE TO THE PUBLIC FROM QUALIFYING PUBLIC INFRASTRUCTURE AND REMAINS UNREMEDIED AFTER THE LEAD PUBLIC ENTITY HAS PROVIDED NOTICE TO THE PRIVATE ENTITY AND A REASONABLE CURE PERIOD HAS ELAPSED.

8. "PRIVATE ENTITY" MEANS ANY NATURAL PERSON, CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY INCLUDING A SPECIAL PURPOSE VEHICLE, NOT-FOR-PROFIT CORPORATION OR OTHER BUSINESS ENTITY.

9. "PUBLIC ENTITY" MEANS THE STATE AND ANY AGENCY OR AUTHORITY THEREOF, ANY COUNTY, CITY, TOWN, VILLAGE OR SCHOOL DISTRICT AND ANY OTHER POLITICAL SUBDIVISION, AGENCY OR AUTHORITY OF ANY OF THE FOREGOING, BUT SHALL NOT INCLUDE ANY MUNICIPAL PUBLIC UTILITY.

10. "PUBLIC-PRIVATE PARTNERSHIP" MEANS THE PROVISION OF A SERVICE OR CONSTRUCTION AND/OR OPERATION OF PUBLIC INFRASTRUCTURE WHICH IS FUNDED AND OPERATED THROUGH A PARTNERSHIP OF A PUBLIC ENTITY AND A PRIVATE ENTITY OR PRIVATE ENTITIES.

11. "QUALIFYING PUBLIC INFRASTRUCTURE" MEANS INFRASTRUCTURE DEVELOPED AND/OR OPERATED BY A PRIVATE ENTITY PURSUANT TO THIS ARTICLE.

12. "REVENUES" MEANS ALL REVENUES, INCLUDING, BUT NOT LIMITED TO, INCOME, EARNINGS, USER FEES, LEASE PAYMENTS, ALLOCATIONS, FEDERAL, STATE, REGIONAL AND LOCAL APPROPRIATIONS OR THE APPROPRIATIONS OR OTHER FUNDS AVAILABLE TO ANY POLITICAL SUBDIVISION, AUTHORITY OR INSTRUMENTALITY THEREOF, BOND PROCEEDS, EQUITY INVESTMENTS AND/OR SERVICE PAYMENTS ARISING OUT OF OR IN CONNECTION WITH SUPPORTING THE DEVELOPMENT AND/OR

OPERATION OF A QUALIFYING PUBLIC CAPITAL FACILITY, INCLUDING WITHOUT LIMITATION, MONEY RECEIVED AS GRANTS OR OTHERWISE FROM THE UNITED STATES OF AMERICA, FROM ANY PUBLIC ENTITY, OR FROM ANY AGENCY OR INSTRUMENTALITY OF THE FOREGOING IN AID OF SUCH FACILITY.

13. "SPECIAL PURPOSE VEHICLE" MEANS A LIMITED LIABILITY COMPANY FORMED FOR THE PURPOSE SPECIFIED IN SUBDIVISION (M) OF SECTION TWO HUNDRED TWO OF THE LIMITED LIABILITY COMPANY LAW.

S 275-A. PUBLIC-PRIVATE PARTNERSHIP BOARD. 1. THERE SHALL BE ESTABLISHED A PUBLIC-PRIVATE PARTNERSHIP BOARD TO BE COMPOSED OF THE FOLLOWING SEVEN MEMBERS:

(A) THE COMMISSIONER OF TRANSPORTATION, WHO SHALL BE THE CHAIR OF THE BOARD.

(B) TWO MEMBERS APPOINTED BY THE GOVERNOR;

(C) TWO MEMBERS APPOINTED BY MAJORITY VOTE OF THE SENATE; AND

(D) TWO MEMBERS APPOINTED BY MAJORITY VOTE OF THE ASSEMBLY.

2. THE MEMBERS OF THE BOARD APPOINTED BY THE GOVERNOR, THE SENATE AND THE ASSEMBLY SHALL SERVE AT THE PLEASURE OF THEIR APPOINTING AUTHORITY. SUCH APPOINTED MEMBERS SHALL HOLD NO OTHER PUBLIC OFFICE OR POSITION, AND SHALL HAVE EXPERTISE IN PUBLIC FINANCE, LAW, LAND USE AND PUBLIC PLANNING, CAPITAL CONSTRUCTION, OR PUBLIC ADMINISTRATION. ALL MEMBERS OF THE BOARD SHALL BE RESIDENTS OF THE STATE.

3. FOUR MEMBERS OF THE BOARD SHALL CONSTITUTE A QUORUM, AND ANY ACTION BY THE BOARD SHALL REQUIRE A MAJORITY OF THE WHOLE NUMBER OF THE MEMBERS OF THE BOARD. THE MEMBERS OF THE BOARD SHALL RECEIVE NO COMPENSATION FOR THE PERFORMANCE OF THEIR DUTIES PURSUANT TO THIS SECTION, BUT SHALL BE ENTITLED TO THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN PERFORMING THEIR DUTIES PURSUANT TO THIS ARTICLE.

4. ALL VACANCIES IN THE MEMBERSHIP OF THE BOARD SHALL BE FILLED WITHIN THIRTY DAYS OF THE VACANCY.

5. NO MEMBER OF THE BOARD SHALL, DIRECTLY OR INDIRECTLY, OWN, HAVE ANY SIGNIFICANT FINANCIAL INTEREST IN, BE ASSOCIATED WITH OR RECEIVE ANY FEE, COMMISSION, COMPENSATION OR ANY FORM OF CONSIDERATION FROM ANY PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE WHICH IS SUBJECT TO THE PROVISIONS OF THIS ARTICLE.

6. THE BOARD SHALL HAVE THE FOLLOWING POWERS AND DUTIES:

(A) MEET AS OFTEN AS NECESSARY BUT AT LEAST ANNUALLY;

(B) ADOPT GUIDELINES ESTABLISHING THE PROCEDURE BY WHICH A PUBLIC ENTITY MAY SUBMIT A REQUEST FOR A PUBLIC INFRASTRUCTURE PROJECT OR A PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE MAY SUBMIT AN UNSOLICITED PLAN FOR A PUBLIC INFRASTRUCTURE PROJECT TO THE BOARD;

(C) CONSULT WITH PERSONS AFFECTED BY PROPOSED PUBLIC INFRASTRUCTURE PROJECTS;

(D) EVALUATE AND, WHERE THE BOARD FINDS THAT THE REQUESTS OR PLANS FOR PUBLIC INFRASTRUCTURE PROJECTS ARE IN THE BEST INTERESTS OF THE STATE AND A PUBLIC ENTITY, APPROVE THE REQUEST OR PLANS FOR PUBLIC INFRASTRUCTURE PROJECTS. THE BOARD SHALL APPROVE A PROPOSED PUBLIC INFRASTRUCTURE PROJECT BY ADOPTING A RESOLUTION; AND

(E) SUBMIT AN ANNUAL REPORT TO THE GOVERNOR, THE SENATE AND THE ASSEMBLY DETAILING ALL PUBLIC INFRASTRUCTURE PROJECTS EVALUATED AND RESOLUTIONS ADOPTED.

S 276. POWERS, RIGHTS, DUTIES AND LIMITATIONS OF PARTIES. 1. REAL PROPERTY DEVELOPED, OPERATED OR HELD BY A PRIVATE PARTNER UNDER A COMPREHENSIVE OR INTERIM AGREEMENT SHALL BE EXEMPT FROM ANY AND ALL MUNICIPAL AND SCHOOL DISTRICT AD VALOREM AND REAL PROPERTY TAXES THAT OTHERWISE MIGHT BE APPLICABLE.

2. THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE SHALL HAVE ALL POWERS GRANTED BY LAW TO A PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE HAVING THE SAME FORM OF ORGANIZATION AS THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE AND SHALL HAVE THE POWER TO DEVELOP AND/OR OPERATE THE QUALIFYING PUBLIC INFRASTRUCTURE.

3. THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE MAY OWN, LEASE OR ACQUIRE ANY OTHER RIGHT TO USE OR DEVELOP AND OPERATE THE QUALIFYING PUBLIC INFRASTRUCTURE.

4. SUBJECT TO APPLICABLE PERMIT REQUIREMENTS, THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE SHALL HAVE THE AUTHORITY TO CROSS ANY CANAL OR NAVIGABLE WATERS SO LONG AS THE CROSSING DOES NOT UNREASONABLY INTERFERE WITH THEN CURRENT NAVIGATION AND USE OF SUCH WATERWAY.

5. EVERY PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE SHALL:

(A) DEVELOP AND/OR OPERATE THE QUALIFYING PUBLIC INFRASTRUCTURE IN A MANNER THAT MEETS THE STANDARDS OF THE LEAD PUBLIC ENTITY FOR PUBLIC INFRASTRUCTURE OPERATED AND MAINTAINED BY SUCH LEAD PUBLIC ENTITY, ALL IN ACCORDANCE WITH THE PROVISIONS OF THE COMPREHENSIVE AGREEMENT OR THE INTERIM AGREEMENT;

(B) KEEP THE QUALIFYING PUBLIC INFRASTRUCTURE OPEN FOR USE BY THE MEMBERS OF THE PUBLIC IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE COMPREHENSIVE OR INTERIM AGREEMENT AFTER ITS INITIAL OPENING UPON PAYMENT OF THE APPLICABLE USER FEES OR RENTS, PROVIDED THAT THE QUALIFYING PUBLIC INFRASTRUCTURE MAY BE TEMPORARILY CLOSED BECAUSE OF EMERGENCIES OR, WITH THE CONSENT OF THE LEAD PUBLIC ENTITY, TO PROTECT THE SAFETY OF THE PUBLIC OR FOR REASONABLE CONSTRUCTION OR MAINTENANCE PROCEDURES;

(C) MAINTAIN OR PROVIDE BY CONTRACT FOR THE MAINTENANCE OF THE QUALIFYING PUBLIC INFRASTRUCTURE; AND

(D) COMPLY WITH THE PROVISIONS OF THE COMPREHENSIVE OR INTERIM AGREEMENT AND ANY SERVICE CONTRACT.

6. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, FOR EVERY INTERIM AND COMPREHENSIVE AGREEMENT THE LEAD PUBLIC ENTITY SHALL ENFORCE THE TECHNICAL AND PROFESSIONAL STANDARDS AND SPECIFICATIONS, INCLUDING STANDARDS AND SPECIFICATIONS FOR PERFORMANCE OR OUTCOMES RELATED TO SUCH AGREEMENT.

7. THE LEAD PUBLIC ENTITY MAY EXERCISE THE POWER OF EMINENT DOMAIN TO ACQUIRE REAL PROPERTY RIGHTS OF WAY AND OTHER RIGHTS IN REAL PROPERTY FOR PUBLIC INFRASTRUCTURE THAT ARE NECESSARY TO DEVELOP, OPERATE OR HOLD QUALIFYING PUBLIC INFRASTRUCTURE UNDER THIS ARTICLE, REGARDLESS OF WHETHER THE REAL PROPERTY WILL BE OWNED IN FEE SIMPLE BY THE LEAD PUBLIC ENTITY OR ANOTHER PUBLIC ENTITY, OR WHETHER SUCH PROPERTY WILL BE LEASED TO THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE TO USE, LEASE OR OPERATE FOR ITS BUSINESS PURPOSES IN CONNECTION WITH THE COMPREHENSIVE OR INTERIM AGREEMENT.

8. ANY PUBLIC ENTITY MAY DEDICATE ANY PROPERTY INTEREST THAT IT HAS FOR PUBLIC USE AS QUALIFIED PUBLIC INFRASTRUCTURE IF IT FINDS THAT SO DOING WILL SERVE THE PUBLIC PURPOSE OF THIS ARTICLE. IN CONNECTION WITH SUCH DEDICATION, A PUBLIC ENTITY MAY CONVEY ANY PROPERTY INTEREST THAT IT HAS, SUBJECT TO THE CONDITIONS IMPOSED BY LAW GOVERNING SUCH CONVEYANCES, TO THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE, SUBJECT TO THE PROVISIONS OF THIS ARTICLE, FOR SUCH CONSIDERATION AS SUCH PUBLIC ENTITY MAY DETERMINE. THE AFOREMENTIONED CONSIDERATION MAY INCLUDE, WITHOUT LIMITATION, THE AGREEMENT OF THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE TO DEVELOP AND/OR OPERATE THE QUALIFYING PUBLIC INFRASTRUCTURE. THE PROPERTY INTERESTS THAT THE PUBLIC ENTITY MAY CONVEY TO THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE IN CONNECTION WITH A DEDICATION UNDER

THIS SECTION MAY INCLUDE LICENSES, FRANCHISES, EASEMENTS, CONCESSIONS, OR ANY OTHER RIGHT OR INTEREST THE PUBLIC ENTITY DEEMS APPROPRIATE. SUCH PROPERTY INTEREST INCLUDING, BUT NOT LIMITED TO, A LEASEHOLD INTEREST IN AND/OR RIGHTS TO USE REAL PROPERTY COMPOSING PART OF QUALIFYING PUBLIC INFRASTRUCTURE, SHALL BE CONSIDERED PROPERTY INDIRECTLY OWNED BY A PUBLIC ENTITY.

9. NO PUBLIC ENTITY SHALL ENTER INTO AN INTERIM OR COMPREHENSIVE AGREEMENT WITH ANY PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE WHICH IS CONTROLLED BY A FOREIGN GOVERNMENT OR BY A POLITICAL SUBDIVISION THEREOF, OR WHICH IS AN AGENCY OF ANY SUCH GOVERNMENT OR SUBDIVISION IF SUCH PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE IS ENTITLED TO CLAIM SOVEREIGN IMMUNITY AS A RESULT OF SUCH CONTROL AND SUCH PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE HAS NOT WAIVED THE SOVEREIGN IMMUNITY.

S 277. PROCUREMENT. 1. THE LEAD PUBLIC ENTITY IS AUTHORIZED TO ENTER INTO INTERIM AND COMPREHENSIVE AGREEMENTS FOR QUALIFYING PUBLIC INFRASTRUCTURE PURSUANT TO THIS ARTICLE.

2. EVERY INTERIM AND COMPREHENSIVE AGREEMENT AUTHORIZED PURSUANT TO THIS ARTICLE SHALL BE IN SUCH FORM AND INCLUDE SUCH CONTENT AS SHALL BE PROVIDED IN RULES AND REGULATIONS RELATING THERETO, AS PROMULGATED BY THE BOARD, AND EACH SUCH AGREEMENT SHALL BE SUBJECT TO REVIEW AND APPROVAL OR REJECTION BY THE BOARD. FURTHERMORE, THE BOARD SHALL PROMULGATE AND IMPLEMENT RULES AND REGULATIONS REQUIRING PUBLIC ENTITIES TO ESTABLISH AND SUBMIT TO THE BOARD LISTS AND DESCRIPTIONS OF PUBLIC INFRASTRUCTURE PROJECTS WHICH SUCH ENTITIES ARE CONSIDERING FOR DEVELOPMENT AND/OR OPERATION PURSUANT TO THIS ARTICLE. SUCH RULES AND REGULATIONS SHALL REQUIRE EVERY PROPOSED PUBLIC INFRASTRUCTURE PROJECT TO BE SUBMITTED TO THE BOARD FOR A DETERMINATION OF WHETHER SUCH PROJECT QUALIFIES PURSUANT TO THIS ARTICLE. EACH PROPOSED PUBLIC INFRASTRUCTURE FOUND BY THE BOARD TO BE SO QUALIFIED SHALL BE POSTED ON THE DEPARTMENT OF AUDIT AND CONTROL INTERNET WEBSITE AS QUALIFIED PUBLIC INFRASTRUCTURE. IN THE EVENT A PROPOSED PUBLIC INFRASTRUCTURE PROJECT IS REJECTED BY THE BOARD, SUCH DETERMINATION SHALL BE SUBJECT TO REVIEW PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

3. THE LEAD PUBLIC ENTITY IS AUTHORIZED TO PROCURE A PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE AND AWARD PUBLIC-PRIVATE PARTNERSHIPS UNDER THIS ARTICLE BY SOLICITING, RECEIVING, CONSIDERING, EVALUATING AND ACCEPTING PROPOSALS FOR A PUBLIC-PRIVATE PARTNERSHIP.

4. IN SOLICITING AND SELECTING A PRIVATE PARTNER, THE LEAD PUBLIC ENTITY SHALL USE ANY OF THE FOLLOWING:

(A) CALLS FOR PROJECT PROPOSALS, WHEREBY THE PUBLIC SPONSOR DESCRIBES THE PUBLIC INFRASTRUCTURE THAT PRIVATE ENTITIES AND SPECIAL PURPOSE VEHICLES ARE INVITED TO SUBMIT PROPOSALS TO DEVELOP VIA SEALED BIDDING;

(B) IF ADVANTAGEOUS TO THE LEAD PUBLIC ENTITY AND THE PUBLIC BASED ON THE PROBABLE SCOPE, COMPLEXITY AND URGENCY OF THE PROJECT, OR AN INCREASE IN FUNDING THAT WOULD BE AVAILABLE, SOLICITATIONS USING, WITHOUT LIMITATION, REQUESTS FOR QUALIFICATIONS, SHORT-LISTING OF QUALIFIED PROPOSERS, REQUESTS FOR PROPOSALS, NEGOTIATIONS, BEST AND FINAL OFFERS; AND

(C) UNSOLICITED PROPOSALS, PROVIDED THAT IF THE PUBLIC SPONSOR DETERMINES THERE IS SUFFICIENT MERIT TO PURSUE ANY UNSOLICITED PROPOSAL, REASONABLE OPPORTUNITY FOR OTHER PRIVATE ENTITIES AND SPECIAL PURPOSE VEHICLES TO SUBMIT COMPETING PROPOSALS FOR CONSIDERATION AND POSSIBLE CONTRACT AWARD IS PROVIDED.

5. THE LEAD PUBLIC ENTITY SHALL SELECT A PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE, OR ENTITIES OR VEHICLES FOR A PUBLIC-PRIVATE PARTNERSHIP ON A COMPETITIVE BASIS. THE PROVISIONS OF ARTICLE NINE OF THE

STATE FINANCE LAW AND ARTICLE FIVE-A OF THE GENERAL MUNICIPAL LAW SHALL NOT APPLY TO CONTRACTS ISSUED PURSUANT TO THIS ARTICLE.

6. THE LEAD PUBLIC ENTITY SHALL NOT BE REQUIRED TO SELECT THE PROPOSAL WITH THE LOWEST PRICE OFFER, BUT MAY CONSIDER PRICE AS ONE FACTOR IN EVALUATING THE PROPOSALS RECEIVED. IF THE LEAD PUBLIC ENTITY DETERMINES TO CONSIDER OTHER FACTORS IN EVALUATING AND SELECTING A BID OR PROPOSAL TO ENTER INTO A PUBLIC-PRIVATE INITIATIVE, THEN SUCH FACTORS SHALL BE:

(A) THE ABILITY OF THE PUBLIC INFRASTRUCTURE TO RELIEVE THE BURDEN OF REAL PROPERTY TAXATION, CREATE PRIVATE SECTOR JOBS, ATTRACT GLOBAL ECONOMIC DEVELOPMENT, CREATE OPPORTUNITIES FOR SMALL, MINORITY-OWNED AND WOMEN-OWNED BUSINESSES, INCREASE CAPACITY AND PROMOTE ECONOMIC GROWTH;

(B) THE EXTENT THAT THE PRIVATE ENTITY'S OR SPECIAL PURPOSE VEHICLE'S PROPOSAL ADDRESSES THE NEEDS OF THE LEAD PUBLIC ENTITY;

(C) THE PROPOSED COST OF AND FINANCIAL PLAN FOR THE PUBLIC INFRASTRUCTURE;

(D) THE GENERAL REPUTATION, QUALIFICATIONS, INDUSTRY EXPERIENCE AND FINANCIAL CAPACITY OF THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE;

(E) THE PROPOSED DESIGN, OPERATION AND FEASIBILITY OF THE PUBLIC INFRASTRUCTURE;

(F) COMMENTS FROM LOCAL CITIZENS AND AFFECTED JURISDICTIONS;

(G) BENEFITS TO THE PUBLIC AND THE AFFECTED PUBLIC INFRASTRUCTURE;

(H) THE SAFETY RECORD OF THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE; AND

(I) ANY OTHER CRITERIA THAT THE LEAD PUBLIC ENTITY CONSIDERS APPROPRIATE.

7. THE LEAD PUBLIC ENTITY MAY SELECT MULTIPLE PRIVATE ENTITIES AND SPECIAL PURPOSE VEHICLES WITH WHICH TO ENTER A COMPREHENSIVE OR INTERIM AGREEMENT FOR QUALIFYING PUBLIC INFRASTRUCTURE IF IT IS IN THE PUBLIC INTEREST TO DO SO.

8. ANY MATERIALS OR DATA SUBMITTED TO, MADE AVAILABLE TO, OR RECEIVED BY THE LEAD PUBLIC ENTITY, TO THE EXTENT THAT THE MATERIAL OR DATA CONSIST OF TRADE SECRETS, AS DETERMINED PURSUANT TO SUBDIVISION TWO OF SECTION EIGHTY-SEVEN OF THE PUBLIC OFFICERS LAW, ARE CONFIDENTIAL AND ARE NOT PUBLIC RECORDS. FINANCIAL INFORMATION RECEIVED BY THE LEAD PUBLIC ENTITY THAT IS RELATED TO A PROPOSAL IS CONFIDENTIAL AND NOT A PUBLIC RECORD UNTIL SUCH TIME AS A PROPOSAL IS SELECTED. PRIOR TO SUBMISSION OF A SOLICITED PROPOSAL, A PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE MAY REQUEST A REVIEW BY THE LEAD PUBLIC ENTITY THAT THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE HAS IDENTIFIED AS CONFIDENTIAL, TO DETERMINE WHETHER SUCH INFORMATION WOULD BE SUBJECT TO DISCLOSURE UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

9. (A) THE LEAD PUBLIC ENTITY MAY RECEIVE, CONSIDER, EVALUATE AND ACCEPT AN UNSOLICITED PROPOSAL FOR A PUBLIC-PRIVATE PARTNERSHIP IF THE PROPOSAL MEETS ALL OF THE FOLLOWING:

(1) ADDRESSES THE NEEDS IDENTIFIED BY THE PUBLIC ENTITY;

(2) IS THE INDEPENDENT WORK PRODUCT OF THE PROPOSER;

(3) BENEFITS THE PUBLIC;

(4) IS PREPARED WITHOUT LEAD PUBLIC ENTITY SUPERVISION; AND

(5) INCLUDES SUFFICIENT DETAIL AND INFORMATION FOR THE LEAD PUBLIC ENTITY TO EVALUATE THE PROPOSAL IN AN OBJECTIVE AND TIMELY MANNER.

(B) ANY PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE REQUESTING APPROVAL FROM OR SUBMITTING A PROPOSAL TO A LEAD PUBLIC ENTITY SHALL NOTIFY EACH AFFECTED JURISDICTION BY FURNISHING A COPY OF ITS REQUEST OR PROPOSAL TO EACH AFFECTED JURISDICTION WITHIN THIRTY DAYS OF SUCH REQUEST OR SUBMISSION.

EACH AFFECTED JURISDICTION THAT IS NOT A LEAD PUBLIC ENTITY FOR THE RESPECTIVE QUALIFYING PUBLIC INFRASTRUCTURE SHALL, WITHIN SIXTY DAYS AFTER RECEIVING A REQUEST FOR COMMENTS FROM THE LEAD PUBLIC ENTITY, SUBMIT ANY COMMENTS IT MAY HAVE IN WRITING ON THE PROPOSED PUBLIC INFRASTRUCTURE TO THE LEAD PUBLIC ENTITY AND INDICATING WHETHER THE FACILITY WILL ADDRESS THE NEEDS OF THE PUBLIC ENTITY.

(C) WITHIN NINETY DAYS AFTER RECEIVING AN UNSOLICITED PROPOSAL, THE LEAD PUBLIC ENTITY SHALL UNDERTAKE A PRELIMINARY EVALUATION OF THE UNSOLICITED PROPOSAL TO DETERMINE IF THE PROPOSAL COMPLIES WITH THE REQUIREMENTS OF PARAGRAPH (A) OF THIS SUBDIVISION AND HOLD A PUBLIC HEARING THEREON PURSUANT TO THE PROVISIONS OF THE GENERAL MUNICIPAL LAW.

(D) IF THE UNSOLICITED PROPOSAL DOES NOT COMPLY WITH PARAGRAPH (A) OF THIS SUBDIVISION, THE LEAD PUBLIC ENTITY SHALL RETURN THE PROPOSAL WITHOUT FURTHER ACTION.

(E) IF THE UNSOLICITED PROPOSAL COMPLIES WITH PARAGRAPH (A) OF THIS SUBDIVISION, THE LEAD PUBLIC ENTITY MAY CONTINUE TO EVALUATE THE PROPOSAL IN ACCORDANCE WITH THIS SECTION.

(1) IF THE UNSOLICITED PROPOSAL COMPLIES WITH PARAGRAPH (A) OF THIS SUBDIVISION, THE LEAD PUBLIC ENTITY SHALL ADVERTISE FOR NOT LESS THAN THIRTY DAYS THE UNSOLICITED PROPOSAL FOR THE PURPOSE OF RECEIVING COMPETITIVE PROPOSALS FOR THE PROPOSED PUBLIC INFRASTRUCTURE.

(2) THE ADVERTISEMENT SHALL OUTLINE THE GENERAL NATURE AND SCOPE OF THE UNSOLICITED PROPOSAL, INCLUDING THE LOCATION OF THE PUBLIC INFRASTRUCTURE AND THE WORK TO BE PERFORMED ON OR IN CONNECTION WITH THE PUBLIC INFRASTRUCTURE AND SHALL SPECIFY AN ADDRESS TO WHICH A COMPETING PROPOSAL MAY BE SUBMITTED.

(3) THE ADVERTISEMENT SHALL SPECIFY A REASONABLE TIME PERIOD BY WHICH COMPETITORS MUST SUBMIT A COMPETING PROPOSAL TO THE LEAD PUBLIC ENTITY.

(F) UPON RECEIPT OF ANY COMPETING PROPOSALS, THE LEAD PUBLIC ENTITY SHALL DO ALL OF THE FOLLOWING:

(1) DETERMINE IF ANY COMPETING PROPOSAL IS COMPARABLE IN NATURE AND SCOPE TO THE ORIGINAL UNSOLICITED PROPOSAL;

(2) EVALUATE THE ORIGINAL UNSOLICITED PROPOSAL AND ANY COMPARABLE COMPETING PROPOSAL; AND

(3) CONDUCT ANY GOOD FAITH DISCUSSIONS AND, IF NECESSARY, ANY NEGOTIATIONS CONCERNING EACH QUALIFIED PROPOSAL.

(G) THE LEAD PUBLIC ENTITY SHALL EVALUATE AN UNSOLICITED PROPOSAL AND ANY COMPARABLE COMPETING PROPOSAL USING THE FOLLOWING FACTORS:

(1) INNOVATIVE METHODS, APPROACHES OR CONCEPTS DEMONSTRATED BY THE PROPOSAL;

(2) SCIENTIFIC, TECHNICAL OR SOCIOECONOMIC MERITS OF THE PROPOSAL;

(3) POTENTIAL CONTRIBUTION OF THE PROPOSAL TO THE LEAD PUBLIC ENTITY'S MISSION;

(4) CAPABILITIES, RELATED EXPERIENCE, FACILITIES OR TECHNIQUES OF THE PRIVATE ENTITY, SPECIAL PURPOSE VEHICLE OR UNIQUE COMBINATIONS OF THESE QUALITIES THAT ARE INTEGRAL FACTORS FOR ACHIEVING THE PROPOSAL OBJECTIVES;

(5) QUALIFICATIONS, CAPABILITIES, AND EXPERIENCE OF THE PROPOSED PRINCIPAL INVESTOR, TEAM LEADER, OR KEY PERSONNEL, WHO ARE CRITICAL TO ACHIEVING THE PROPOSAL OBJECTIVES;

(6) HOW THE PROPOSAL BENEFITS THE PUBLIC; AND

(7) ANY OTHER FACTORS APPROPRIATE TO A PARTICULAR PROPOSAL.

(H) AFTER EVALUATING THE UNSOLICITED PROPOSAL AND ANY COMPETING PROPOSALS, THE LEAD PUBLIC ENTITY MAY DO ANY OF THE FOLLOWING:

(1) ACCEPT THE UNSOLICITED PROPOSAL AND REJECT ANY COMPETING PROPOSALS;

(2) REJECT THE UNSOLICITED PROPOSAL AND ACCEPT A COMPARABLE COMPETING PROPOSAL IF THE LEAD PUBLIC ENTITY DETERMINES THAT THE COMPARABLE COMPETING PROPOSAL IS THE MOST ADVANTAGEOUS TO THE STATE;

(3) ACCEPT BOTH AN UNSOLICITED PROPOSAL AND A COMPETING PROPOSAL IF ACCEPTING BOTH PROPOSALS IS ADVANTAGEOUS TO THE STATE; OR

(4) REJECT THE UNSOLICITED PROPOSAL AND ANY COMPETING PROPOSALS.

(I) THE LEAD PUBLIC ENTITY SHALL CHARGE A REASONABLE FEE FOR THE EVALUATION OF AN UNSOLICITED PROJECT PROPOSAL AND A COMPETING PROJECT PROPOSAL. FOR ANY PROJECT WITH AN ESTIMATED CONSTRUCTION COST OF OVER FIFTY MILLION DOLLARS, THE LEAD PUBLIC ENTITY ALSO SHALL REQUIRE THE PRIVATE ENTITY TO PAY THE COSTS FOR AN INDEPENDENT AUDIT OF ANY AND ALL COST ESTIMATES ASSOCIATED WITH THE PRIVATE ENTITY'S OR SPECIAL PURPOSE VEHICLE'S PROPOSAL, AS WELL AS A REVIEW OF ALL PUBLIC COSTS AND POTENTIAL LIABILITIES TO WHICH TAXPAYERS COULD BE EXPOSED (INCLUDING IMPROVEMENTS TO OTHER PUBLIC INFRASTRUCTURE THAT MAY BE NEEDED AS A RESULT OF THE PROPOSAL, FAILURE BY THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE TO REIMBURSE THE LEAD PUBLIC ENTITY FOR SERVICES PROVIDED, AND POTENTIAL RISK AND LIABILITY IN THE EVENT THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE DEFAULTS ON THE COMPREHENSIVE AGREEMENT OR ON BONDS ISSUED FOR THE PROJECT). THIS INDEPENDENT AUDIT SHALL BE CONDUCTED BY AN INDEPENDENT CONSULTANT SELECTED BY THE LEAD PUBLIC ENTITY, AND ALL SUCH INFORMATION FROM SUCH REVIEW SHALL BE FULLY DISCLOSED.

10. THE LEAD PUBLIC ENTITY IS AUTHORIZED TO PAY A STIPEND TO AN UNSUCCESSFUL BIDDER OR PROPOSER, IN AN AMOUNT AND ON THE TERMS AND CONDITIONS DETERMINED BY THE LEAD PUBLIC ENTITY, IF:

(A) THE LEAD PUBLIC ENTITY CANCELS THE PROCUREMENT PRIOR TO THE DUE DATE FOR PROPOSALS IN THE REQUEST FOR PROPOSALS; OR

(B) THE UNSUCCESSFUL BIDDER OR PROPOSER SUBMITS A PROPOSAL AND THE LEAD PUBLIC ENTITY DETERMINES THAT THE PROPOSAL IS RESPONSIVE TO THE LEAD PUBLIC ENTITY'S REQUEST FOR PROPOSALS AND MEETS ALL REQUIREMENTS ESTABLISHED BY THE LEAD PUBLIC ENTITY FOR THE PROJECT.

IN EXCHANGE FOR SUCH STIPEND, THE LEAD PUBLIC ENTITY MAY REQUIRE THE UNSUCCESSFUL BIDDER OR PROPOSER TO GRANT TO THE LEAD PUBLIC ENTITY THE RIGHT TO USE ANY WORK PRODUCT CONTAINED IN THE UNSUCCESSFUL BIDDER'S OR PROPOSER'S PROPOSAL OR, IF THE LEAD PUBLIC ENTITY CANCELS THE PROCUREMENT PRIOR TO THE DUE DATE FOR PROPOSALS IN THE REQUEST FOR PROPOSALS, ANY WORK PRODUCT DEVELOPED PRIOR TO CANCELLATION, INCLUDING TECHNOLOGIES, TECHNIQUES, METHODS, PROCESSES AND INFORMATION CONTAINED IN THE PROJECT DESIGN.

11. THE LEAD PUBLIC ENTITY MAY RETAIN, BY MEANS OF COMPETITIVE NEGOTIATION IN ACCORDANCE WITH ARTICLE NINE OF THE STATE FINANCE LAW OR ARTICLE FIVE-A OF THE GENERAL MUNICIPAL LAW, FINANCIAL, LEGAL AND OTHER CONSULTANTS AND EXPERTS INSIDE AND OUTSIDE THE PUBLIC SECTOR TO ASSIST IN THE PROCUREMENT, EVALUATION AND NEGOTIATION OF PUBLIC-PRIVATE PARTNERSHIPS AND FOR THE DEVELOPMENT AND/OR OPERATION OF QUALIFYING PUBLIC INFRASTRUCTURE UNDER THIS ARTICLE.

12. PRIOR TO OR IN CONNECTION WITH THE NEGOTIATION OF THE COMPREHENSIVE AGREEMENT, THE LEAD PUBLIC ENTITY, UPON THE APPROVAL OF THE BOARD, MAY ENTER INTO AN INTERIM AGREEMENT WITH THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE PROPOSING THE DEVELOPMENT AND/OR OPERATION OF THE QUALIFYING PUBLIC INFRASTRUCTURE. SUCH INTERIM AGREEMENT MAY:

(A) PERMIT THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE TO COMMENCE ACTIVITIES FOR WHICH IT MAY BE COMPENSATED RELATING TO THE PROPOSED QUALIFYING PUBLIC INFRASTRUCTURE, INCLUDING PROJECT PLANNING AND DEVELOPMENT, ADVANCE RIGHT-OF-WAY ACQUISITION, DESIGN AND ENGINEERING, ENVIRONMENTAL ANALYSIS AND MITIGATION, SURVEY, CONDUCTING REVENUE STUDIES,

AND ASCERTAINING THE AVAILABILITY OF FINANCING FOR THE PROPOSED FACILITY OR FACILITIES;

(B) ESTABLISH THE PROCESS AND TIMING OF THE NEGOTIATION OF THE COMPREHENSIVE AGREEMENT; AND

(C) CONTAIN ANY OTHER PROVISIONS RELATED TO ANY ASPECT OF THE DEVELOPMENT AND/OR OPERATION OF A QUALIFYING PUBLIC INFRASTRUCTURE THAT THE PARTIES MAY DEEM APPROPRIATE.

13. ANY LAWFUL SOURCE OF FUNDING AND FINANCING MAY BE UTILIZED FOR THE DEVELOPMENT OR OPERATION OF QUALIFYING PUBLIC INFRASTRUCTURE UNDER THIS ARTICLE.

14. THE LEAD PUBLIC ENTITY MAY ACCEPT FROM THE UNITED STATES OR ANY OF ITS AGENCIES SUCH FUNDS OR CREDIT ASSISTANCE AS ARE AVAILABLE TO IT FOR CARRYING OUT THE PURPOSES OF THIS ARTICLE, WHETHER THE FUNDS ARE MADE AVAILABLE BY GRANT, LOAN OR OTHER FINANCING ARRANGEMENT. THE LEAD PUBLIC ENTITY MAY ENTER INTO SUCH AGREEMENTS AND OTHER ARRANGEMENTS WITH THE UNITED STATES OR ANY OF ITS AGENCIES AS MAY BE NECESSARY, PROPER AND CONVENIENT FOR CARRYING OUT THE PURPOSES OF THIS ARTICLE.

15. THE LEAD PUBLIC ENTITY MAY ACCEPT FROM ANY SOURCE ANY GRANT, DONATION, GIFT, OR OTHER FORM OF CONVEYANCE OF LAND, MONEY, OTHER REAL OR PERSONAL PROPERTY OR OTHER VALUABLE THING MADE TO THE PUBLIC SPONSOR FOR CARRYING OUT THE PURPOSES OF THIS ARTICLE.

16. EVERY PRIVATE ENTITY WHICH ENTERS INTO AN INTERIM AGREEMENT OR COMPREHENSIVE AGREEMENT SHALL BE SUBJECT TO:

(A) THE PROVISIONS OF THE LABOR LAW, INCLUDING SECTION TWO HUNDRED TWENTY RELATING TO THE PAYMENT OF THE PREVAILING WAGE TO EMPLOYEES AND OTHER WORKERS EMPLOYED IN THE COURSE OF SUCH AGREEMENT;

(B) THE PROVISIONS OF ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW;

(C) THE PROVISIONS OF ARTICLE FIFTEEN-A OF THIS CHAPTER;

(D) THE PROVISIONS OF ALL STATE AND FEDERAL LAWS PROHIBITING DISCRIMINATION AND REQUIRING THE PROVISION OF EQUAL EMPLOYMENT OPPORTUNITY; AND

(E) THE PROVISIONS OF ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

S 278. MULTIPLE PUBLIC ENTITIES AND SPECIAL PURPOSE VEHICLES. 1. IF A PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE SUBMITS A PROPOSAL PURSUANT TO SUBDIVISION FOUR OF SECTION TWO HUNDRED SEVENTY-SEVEN OF THIS ARTICLE TO DEVELOP AND/OR OPERATE QUALIFYING PUBLIC INFRASTRUCTURE THAT MAY REQUIRE APPROVAL BY MORE THAN ONE PUBLIC ENTITY AND/OR SPECIAL PURPOSE VEHICLE, REPRESENTATIVES OF EACH OF THE AFFECTED PUBLIC ENTITIES AND SPECIAL PURPOSE VEHICLES SHALL, PRIOR TO ACCEPTANCE OF SUCH PROPOSAL, CONVENE AND DETERMINE WHICH PUBLIC ENTITY SHALL SERVE AS THE COORDINATING LEAD PUBLIC ENTITY. SUCH DETERMINATION SHALL OCCUR WITHIN SIXTY DAYS OF THE RECEIPT OF A PROPOSAL BY THE RESPECTIVE PUBLIC ENTITIES.

2. IF PUBLIC ENTITIES REQUEST PROPOSALS FROM PRIVATE ENTITIES AND SPECIAL PURPOSE VEHICLES FOR THE DEVELOPMENT AND/OR OPERATION OF QUALIFYING PUBLIC INFRASTRUCTURE PURSUANT TO SUBDIVISION FOUR OF SECTION TWO HUNDRED SEVENTY-SEVEN OF THIS ARTICLE, THE DETERMINATION OF WHICH PUBLIC ENTITY SHALL SERVE AS THE COORDINATING LEAD PUBLIC ENTITY SHALL BE MADE PRIOR TO ANY REQUEST FOR PROPOSALS.

3. ONCE A DETERMINATION HAS BEEN MADE IN ACCORDANCE WITH SUBDIVISION ONE OR TWO OF THIS SECTION, THE COORDINATING LEAD PUBLIC ENTITY AND THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE SHALL PROCEED IN ACCORDANCE WITH THIS ARTICLE.

S 278-A. COMPREHENSIVE AGREEMENTS. 1. AFTER SELECTING A SOLICITED OR UNSOLICITED PROPOSAL FOR A PUBLIC-PRIVATE INITIATIVE, THE RESPONSIBLE PUBLIC ENTITY, SUBJECT TO THE APPROVAL OF THE STATE COMPTROLLER, SHALL ENTER INTO A PUBLIC-PRIVATE AGREEMENT FOR QUALIFYING PUBLIC INFRASTRUC-

TURE WITH THE SELECTED PRIVATE ENTITY, SPECIAL PURPOSE VEHICLE OR ANY CONFIGURATION OF PRIVATE ENTITIES. AN AFFECTED JURISDICTION MAY BE A PARTY TO A COMPREHENSIVE AGREEMENT ENTERED INTO BY THE RESPONSIBLE PUBLIC ENTITY AND A SELECTED PRIVATE ENTITY, SPECIAL PURPOSE VEHICLE OR COMBINATION OF PRIVATE ENTITIES.

2. A COMPREHENSIVE AGREEMENT UNDER THIS SECTION SHALL PROVIDE FOR ALL OF THE FOLLOWING:

(A) PLANNING, ACQUISITION, FINANCING, DEVELOPMENT, DESIGN, CONSTRUCTION, RECONSTRUCTION, REPLACEMENT, IMPROVEMENT, MAINTENANCE, MANAGEMENT, REPAIR, LEASING OR OPERATION OF QUALIFYING PUBLIC INFRASTRUCTURE;

(B) TERM OF THE COMPREHENSIVE AGREEMENT;

(C) TYPE OF PROPERTY INTEREST, IF ANY, THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE WILL HAVE IN THE QUALIFYING PUBLIC INFRASTRUCTURE;

(D) A SPECIFIC PLAN TO ENSURE PROPER MAINTENANCE OF THE QUALIFYING PUBLIC INFRASTRUCTURE THROUGHOUT THE TERM OF THE COMPREHENSIVE AGREEMENT AND A RETURN OF THE INFRASTRUCTURE TO THE RESPONSIBLE PUBLIC ENTITY, IF APPLICABLE, IN GOOD CONDITION AND REPAIR;

(E) WHETHER USER FEES OR RENTS WILL BE COLLECTED FOR USE OF THE QUALIFYING PUBLIC INFRASTRUCTURE AND THE BASIS BY WHICH SUCH USER FEES OR RENTS SHALL BE DETERMINED AND MODIFIED;

(F) MAINTENANCE OF A POLICY OR POLICIES OF PUBLIC LIABILITY INSURANCE (COPIES OF WHICH SHALL BE FILED WITH THE RESPONSIBLE PUBLIC ENTITY ACCOMPANIED BY PROOFS OF COVERAGE) OR SELF-INSURANCE, EACH IN FORM AND AMOUNT SATISFACTORY TO THE RESPONSIBLE PUBLIC ENTITY AND REASONABLY SUFFICIENT TO INSURE COVERAGE OF TORT LIABILITY TO THE PUBLIC AND EMPLOYEES AND TO ENABLE THE CONTINUED OPERATION OF THE QUALIFYING PUBLIC INFRASTRUCTURE;

(G) COMPENSATION TO THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE, WHICH MAY INCLUDE A REASONABLE DEVELOPMENT FEE, SERVICE PAYMENTS, PAYMENTS BASED ON A REASONABLE MAXIMUM RATE OF RETURN ON INVESTMENT, AND REIMBURSEMENT OF INVESTMENT AND DEVELOPMENT EXPENSES IN THE EVENT OF TERMINATION FOR CONVENIENCE BY THE RESPONSIBLE PUBLIC ENTITY. SUCH COMPENSATION SHALL TAKE INTO ACCOUNT THE SYSTEM OF USER FEES OR RENTS SPECIFIED IN THE COMPREHENSIVE AGREEMENT, AND AN ADJUSTMENT IN CASE OF GAINS BY THE PRIVATE ENTITY ON ACCOUNT OF ANY REFINANCINGS;

(H) COMPLIANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL LABOR AND PUBLIC WORK LAWS;

(I) GROUNDS FOR TERMINATION OF THE COMPREHENSIVE AGREEMENT BY THE RESPONSIBLE PUBLIC ENTITY, OR PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE;

(J) DISPOSITION OF THE INFRASTRUCTURE UPON COMPLETION OF THE COMPREHENSIVE AGREEMENT;

(K) PROCEDURES FOR AMENDMENT OF THE COMPREHENSIVE AGREEMENT; AND

(L) A DATE FOR THE ACQUISITION OF OR THE BEGINNING OF CONSTRUCTION OF OR IMPROVEMENTS TO THE QUALIFYING PUBLIC INFRASTRUCTURE. THE RESPONSIBLE PUBLIC ENTITY MAY EXTEND SUCH DATE FROM TIME TO TIME.

3. AS DETERMINED BY THE STATE COMPTROLLER, A COMPREHENSIVE AGREEMENT UNDER THIS SECTION SHALL PROVIDE FOR THE FOLLOWING:

(A) REVIEW AND APPROVAL BY THE RESPONSIBLE PUBLIC ENTITY OF THE PRIVATE ENTITY'S OR SPECIAL PURPOSE VEHICLE'S PLANS FOR THE DEVELOPMENT AND OPERATION OF THE QUALIFYING PUBLIC INFRASTRUCTURE;

(B) INSPECTION BY THE RESPONSIBLE PUBLIC ENTITY OF CONSTRUCTION OF OR IMPROVEMENTS TO THE QUALIFYING PUBLIC INFRASTRUCTURE;

(C) FILING BY THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE, ON A PERIODIC BASIS, OF APPROPRIATE FINANCIAL STATEMENTS IN A FORM ACCEPTABLE TO THE RESPONSIBLE PUBLIC ENTITY;

(D) FILING BY THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE, ON A PERIODIC BASIS, OF REPORTS IN A FORM ACCEPTABLE TO THE RESPONSIBLE PUBLIC ENTITY;

(E) FINANCING OBLIGATIONS OF THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE AND THE RESPONSIBLE PUBLIC ENTITY;

(F) APPORTIONMENT OF EXPENSES BETWEEN THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE AND THE RESPONSIBLE PUBLIC ENTITY;

(G) RIGHTS AND DUTIES OF THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE, THE RESPONSIBLE PUBLIC ENTITY, AND OTHER STATE AND LOCAL GOVERNMENTAL ENTITIES WITH RESPECT TO USE OF THE QUALIFYING PUBLIC INFRASTRUCTURE;

(H) RIGHTS AND REMEDIES AVAILABLE IN THE EVENT OF DEFAULT OR DELAY;

(I) TERMS AND CONDITIONS OF INDEMNIFICATION OF THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE BY THE RESPONSIBLE PUBLIC ENTITY;

(J) ASSIGNMENT, SUBCONTRACTING, OR OTHER DELEGATION OF RESPONSIBILITIES OF THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE, OR THE RESPONSIBLE PUBLIC ENTITY UNDER THE AGREEMENT TO THIRD PARTIES, INCLUDING OTHER PRIVATE ENTITIES OR SPECIAL PURPOSE VEHICLES AND OTHER STATE AGENCIES;

(K) SALE OR LEASE TO THE OPERATOR OF PRIVATE PROPERTY RELATED TO THE QUALIFYING PUBLIC INFRASTRUCTURE;

(L) PROCEDURES FOR THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE TO MAKE AND ENFORCE REASONABLE RULES TO THE SAME EXTENT THAT THE RESPONSIBLE PUBLIC ENTITY MAY MAKE AND ENFORCE RULES WITH RESPECT TO A SIMILAR PUBLIC INFRASTRUCTURE; AND

(M) ENFORCEMENT AND OTHER POLICING ISSUES, INCLUDING ANY REIMBURSEMENT BY THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE FOR SUCH SERVICES.

4. THE COMPREHENSIVE AGREEMENT MAY PROVIDE THAT USER FEES AND RENTS SHALL BE COLLECTED FOR USE OF THE QUALIFYING PUBLIC INFRASTRUCTURE. THE PARTIES MAY AGREE THAT USER FEES AND RENTS MAY BE SET BY THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE, THE RESPONSIBLE PUBLIC ENTITY, OR BY AGREEMENT OF THE PARTIES. A SCHEDULE OF THE CURRENT USER FEES AND RENTS SHALL BE MADE AVAILABLE BY THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE TO ANY MEMBER OF THE PUBLIC ON REQUEST. USER FEES AND RENTS SHALL BE SET AT LEVELS THAT ARE THE SAME FOR PERSONS USING THE QUALIFYING PUBLIC INFRASTRUCTURE UNDER LIKE CONDITIONS. USER FEES AND RENTS ESTABLISHED IN THE COMPREHENSIVE AGREEMENT AS A SOURCE OF REVENUES MAY BE IN ADDITION TO, OR IN LIEU OF, SERVICE PAYMENTS. A RESPONSIBLE PUBLIC ENTITY MAY IMPOSE AND COLLECT USER FEES AND RENTS FROM USERS OF ELIGIBLE INFRASTRUCTURE AND USE LAWFUL MEASURES TO ENFORCE SUCH CHARGES, AND AUTHORIZE THE PRIVATE ENTITY, SPECIAL PURPOSE VEHICLE OR ANOTHER PUBLIC ENTITY TO IMPOSE, COLLECT AND ENFORCE SUCH USER FEES AND RENTS TO THE SAME EXTENT AS AVAILABLE TO THE RESPONSIBLE PUBLIC ENTITY.

5. IN THE COMPREHENSIVE AGREEMENT, THE RESPONSIBLE PUBLIC ENTITY MAY AGREE TO MAKE GRANTS OR LOANS FOR THE DEVELOPMENT AND/OR OPERATION OF THE QUALIFYING PUBLIC INFRASTRUCTURE FROM TIME TO TIME FROM AMOUNTS RECEIVED FROM THE FEDERAL GOVERNMENT OR ANY AGENCY OR INSTRUMENTALITY THEREOF.

6. THE COMPREHENSIVE AGREEMENT SHALL INCORPORATE THE DUTIES OF THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE UNDER THIS ARTICLE AND MAY CONTAIN SUCH OTHER TERMS AND CONDITIONS THAT THE RESPONSIBLE PUBLIC ENTITY, THE STATE COMPTROLLER DETERMINES SERVE THE PUBLIC PURPOSE OF THIS ARTICLE. WITHOUT LIMITATION, THE COMPREHENSIVE AGREEMENT MAY CONTAIN PROVISIONS UNDER WHICH THE RESPONSIBLE PUBLIC ENTITY AGREES TO PROVIDE NOTICE OF DEFAULT AND CURE RIGHTS FOR THE BENEFIT OF THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE AND THE PERSONS SPECIFIED THEREIN AS PROVIDING FINANCING FOR THE QUALIFYING PUBLIC INFRASTRUCTURE. THE

COMPREHENSIVE AGREEMENT MAY CONTAIN SUCH OTHER LAWFUL TERMS AND CONDITIONS TO WHICH THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE AND THE RESPONSIBLE PUBLIC ENTITY MUTUALLY AGREE, INCLUDING, WITHOUT LIMITATION, PROVISIONS REGARDING UNAVOIDABLE DELAYS OR PROVISIONS PROVIDING FOR A LOAN OF PUBLIC FUNDS FOR THE DEVELOPMENT AND/OR OPERATION OF ONE OR MORE QUALIFYING PUBLIC INFRASTRUCTURE.

7. THE COMPREHENSIVE AGREEMENT SHALL PROVIDE FOR THE DISTRIBUTION OF ANY EARNINGS IN EXCESS OF THE MAXIMUM RATE OF RETURN AS NEGOTIATED IN THE COMPREHENSIVE AGREEMENT. WITHOUT LIMITATION, EXCESS EARNINGS MAY BE DISTRIBUTED, AS DETERMINED BY THE BOARD, TO THE RESPONSIBLE PUBLIC ENTITY, OR TO THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE FOR DEBT REDUCTION OR THEY MAY BE SHARED WITH APPROPRIATE PUBLIC ENTITIES.

8. ANY CHANGES IN THE TERMS OF THE COMPREHENSIVE AGREEMENT, AS MAY BE AGREED UPON BY THE PARTIES FROM TIME TO TIME, SHALL BE ADDED TO THE COMPREHENSIVE AGREEMENT BY WRITTEN AMENDMENT APPROVED BY THE BOARD.

9. THE COMPREHENSIVE AGREEMENT MAY PROVIDE FOR THE DEVELOPMENT AND/OR OPERATION OF PHASES OR SEGMENTS OF THE QUALIFYING PUBLIC INFRASTRUCTURE.

10. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE RESPONSIBLE PUBLIC ENTITY MAY AGREE TO OR REQUIRE USE OF ARBITRATION OR OTHER ALTERNATIVE DISPUTE RESOLUTION PROCEDURES TO RESOLVE DISPUTES WITH THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE.

S 279. MATERIAL DEFAULT; REMEDIES. 1. UPON THE OCCURRENCE AND DURING THE CONTINUATION OF MATERIAL DEFAULT UNDER A COMPREHENSIVE OR INTERIM AGREEMENT, THE LEAD PUBLIC ENTITY MAY EXERCISE ANY OR ALL OF THE FOLLOWING REMEDIES:

(A) THE LEAD PUBLIC ENTITY MAY ELECT TO TAKE OVER THE QUALIFYING PUBLIC INFRASTRUCTURE AND IN SUCH CASE IT SHALL SUCCEED TO ALL OF THE RIGHT, TITLE AND INTEREST IN SUCH PUBLIC INFRASTRUCTURE, SUBJECT TO ANY SECURITY INTEREST ON REVENUES PREVIOUSLY GRANTED BY THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE TO ANY PERSON PROVIDING FINANCING THEREFOR; AND

(B) THE LEAD PUBLIC ENTITY MAY TERMINATE THE COMPREHENSIVE OR INTERIM AGREEMENT AND EXERCISE ANY OTHER RIGHTS AND REMEDIES WHICH MAY BE AVAILABLE TO IT AT LAW OR IN EQUITY.

2. IN THE EVENT THE LEAD PUBLIC ENTITY ELECTS TO TAKE OVER QUALIFYING PUBLIC INFRASTRUCTURE PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THE LEAD PUBLIC ENTITY MAY DEVELOP AND/OR OPERATE THE PUBLIC INFRASTRUCTURE, IMPOSE USER FEES OR RENTS FOR THE USE THEREOF, COMPLY WITH ANY THIRD-PARTY CONTRACTS AS IF IT WERE THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE, AND SOLICIT PROPOSALS FOR THE CONTINUED OPERATION AND MAINTENANCE OF THE PUBLIC INFRASTRUCTURE BY PRIVATE ENTITIES. ANY REVENUES THAT ARE SUBJECT TO A SECURITY INTEREST SHALL BE COLLECTED FOR THE BENEFIT OF, AND PAID TO, SECURED PARTIES, AS THEIR INTERESTS MAY APPEAR, TO THE EXTENT NECESSARY TO SATISFY THE PRIVATE ENTITY'S OR SPECIAL PURPOSE VEHICLE'S OBLIGATIONS TO SECURED PARTIES, INCLUDING THE MAINTENANCE OF RESERVES AND SUCH SECURITY INTERESTS SHALL BE CORRESPONDINGLY REDUCED AND, WHEN SATISFIED, RELEASED. BEFORE ANY PAYMENTS TO, OR FOR THE BENEFIT OF, SECURED PARTIES, THE LEAD PUBLIC ENTITY MAY USE REVENUES TO PAY CURRENT OPERATION AND MAINTENANCE COSTS OF THE PUBLIC INFRASTRUCTURE, INCLUDING COMPENSATION TO THE LEAD PUBLIC ENTITY FOR ITS SERVICES IN OPERATING AND MAINTAINING THE QUALIFYING PUBLIC INFRASTRUCTURE. REMAINING REVENUES, IF ANY, AFTER ALL PAYMENTS FOR OPERATION AND MAINTENANCE OF THE PUBLIC CAPITAL INFRASTRUCTURE, AND TO, OR FOR THE BENEFIT OF, SECURED PARTIES, HAVE BEEN MADE, MAY BE PAID TO THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE, SUBJECT TO THE NEGOTIATED RATE OF RETURN, IF THE COMPREHENSIVE AGREEMENT SO PROVIDES. IN SUCH CASE, THE RIGHT TO

RECEIVE SUCH PAYMENT, IF ANY, SHALL BE CONSIDERED JUST COMPENSATION FOR THE QUALIFYING PUBLIC INFRASTRUCTURE.

3. THE FULL FAITH AND CREDIT OF THE LEAD PUBLIC ENTITY SHALL NOT BE PLEDGED TO SECURE ANY FINANCING OF THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE BY THE ELECTION TO TAKE OVER THE QUALIFYING PUBLIC INFRASTRUCTURE. ASSUMPTION OF OPERATION OF THE QUALIFYING PUBLIC INFRASTRUCTURE SHALL NOT OBLIGATE THE LEAD PUBLIC ENTITY TO PAY ANY OBLIGATION OF THE PRIVATE ENTITY FROM SOURCES OTHER THAN REVENUES.

4. IN THE EVENT OF TERMINATION OF A COMPREHENSIVE OR INTERIM AGREEMENT, THE AUTHORITY AND DUTIES OF THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE CEASE, EXCEPT FOR ANY DUTIES AND OBLIGATIONS THAT EXTEND BEYOND THE TERMINATION AS PROVIDED IN THE COMPREHENSIVE OR INTERIM AGREEMENT, AND THE QUALIFYING PUBLIC INFRASTRUCTURE REVERTS TO THE LEAD PUBLIC ENTITY AND SHALL BE DEDICATED TO THE LEAD PUBLIC ENTITY FOR PUBLIC USE.

S 279-A. PUBLIC WORK. EVERY EMPLOYEE OF A PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE AND EVERY WORKER EMPLOYED PURSUANT TO THE EXECUTION OF A COMPREHENSIVE AGREEMENT IN ACCORDANCE WITH THIS ARTICLE SHALL BE SUBJECT TO THE HOURS, WAGES AND SUPPLEMENTS FOR PUBLIC WORK UNDER THE PROVISIONS OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW.

S 280. CONSTRUCTION. THE PROVISIONS OF THIS ARTICLE WHICH ARE INCONSISTENT WITH ANY OTHER PROVISION OF STATE LAW SHALL BE DEEMED TO SUPERCEDE SUCH PROVISION OF LAW, AND THE PROVISIONS OF THIS ARTICLE SHALL BE CONTROLLING.

S 281. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID AND AFTER EXHAUSTION OF ALL FURTHER JUDICIAL REVIEW, THE JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO THE CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL HAVE BEEN RENDERED.

S 3. This act shall take effect immediately.