

5501--A

2013-2014 Regular Sessions

I N   S E N A T E

May 16, 2013

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Introduced by Sens. BALL, SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1     Section 1. Legislative intent. The legislature hereby finds that there  
2     is a public need for timely development and/or operation of public  
3     infrastructure within the state that address the needs identified by the  
4     state and its political subdivisions by relieving the burden of real  
5     property taxation, creating private sector jobs, attracting global  
6     economic development, creating opportunities for small, minority-owned  
7     and women-owned businesses, enhancing economic efficiency and that such  
8     public need may not be wholly satisfied by existing methods of procure-  
9     ment and operation in which qualifying public infrastructure is devel-  
10    oped and/or operated. Authorizing private entities to develop and/or  
11    operate one or more public infrastructure may result in the development  
12    and/or operation of such infrastructure to the public in a more timely,  
13    more efficient, or less costly fashion, thereby serving the public safe-  
14    ty and welfare.

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

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

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

LBD08875-04-3

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 STRUCTURES AND/OR 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 A PARTNERSHIP BETWEEN A PUBLIC ENTITY AND A PRIVATE ENTITY OR PRIVATE ENTITIES, WHICH IS FORMED FOR THE PURPOSE OF FUNDING THE DESIGN AND/OR CONSTRUCTION OF PUBLIC INFRASTRUCTURE, AND/OR OPERATING AND/OR MAINTAINING PUBLIC INFRASTRUCTURE FOLLOWING COMPLETION OF CONSTRUCTION.

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 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.

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

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

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

13 5. EVERY PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE SHALL:

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

19 (B) KEEP THE QUALIFYING PUBLIC INFRASTRUCTURE OPEN FOR USE BY THE  
20 MEMBERS OF THE PUBLIC IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE  
21 COMPREHENSIVE OR INTERIM AGREEMENT AFTER ITS INITIAL OPENING UPON  
22 PAYMENT OF THE APPLICABLE USER FEES OR RENTS, PROVIDED THAT THE QUALIFY-  
23 ING PUBLIC INFRASTRUCTURE MAY BE TEMPORARILY CLOSED BECAUSE OF EMERGEN-  
24 CIES OR, WITH THE CONSENT OF THE LEAD PUBLIC ENTITY, TO PROTECT THE  
25 SAFETY OF THE PUBLIC OR FOR REASONABLE CONSTRUCTION OR MAINTENANCE  
26 PROCEDURES;

27 (C) MAINTAIN OR PROVIDE BY CONTRACT FOR THE MAINTENANCE OF THE QUALI-  
28 FYING PUBLIC INFRASTRUCTURE; AND

29 (D) COMPLY WITH THE PROVISIONS OF THE COMPREHENSIVE OR INTERIM AGREE-  
30 MENT AND ANY SERVICE CONTRACT.

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

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

45 8. ANY PUBLIC ENTITY MAY DEDICATE ANY PROPERTY INTEREST THAT IT HAS  
46 FOR PUBLIC USE AS QUALIFIED PUBLIC INFRASTRUCTURE IF IT FINDS THAT SO  
47 DOING WILL SERVE THE PUBLIC PURPOSE OF THIS ARTICLE. IN CONNECTION WITH  
48 SUCH DEDICATION, A PUBLIC ENTITY MAY CONVEY ANY PROPERTY INTEREST THAT  
49 IT HAS, SUBJECT TO THE CONDITIONS IMPOSED BY LAW GOVERNING SUCH CONVEY-  
50 ANCES, TO THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE, SUBJECT TO THE  
51 PROVISIONS OF THIS ARTICLE, FOR SUCH CONSIDERATION AS SUCH PUBLIC ENTITY  
52 MAY DETERMINE. THE AFOREMENTIONED CONSIDERATION MAY INCLUDE, WITHOUT  
53 LIMITATION, THE AGREEMENT OF THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHIC-  
54 LE TO DEVELOP AND/OR OPERATE THE QUALIFYING PUBLIC INFRASTRUCTURE. THE  
55 PROPERTY INTERESTS THAT THE PUBLIC ENTITY MAY CONVEY TO THE PRIVATE  
56 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, UNLESS SUCH PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE AGREES TO A WAIVER OF ANY RIGHT OF SOVEREIGN IMMUNITY TO WHICH SUCH PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE WOULD OTHERWISE BE ENTITLED.

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

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

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

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

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

14 (C) THE PROPOSED COST OF AND FINANCIAL PLAN FOR THE PUBLIC INFRASTRUC-  
15 TURE;

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

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

20 (F) COMMENTS FROM LOCAL CITIZENS RESIDING IN SUCH AFFECTED JURISDIC-  
21 TIONS;

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

23 (H) THE SAFETY RECORD OF THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHI-  
24 CLE; AND

25 (I) ANY OTHER CRITERIA THAT THE LEAD PUBLIC ENTITY CONSIDERS APPROPRI-  
26 ATE.

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

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

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

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

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

48 (3) BENEFITS THE PUBLIC;

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

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

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

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

7 (C) WITHIN NINETY DAYS AFTER RECEIVING AN UNSOLICITED PROPOSAL, THE  
8 LEAD PUBLIC ENTITY SHALL UNDERTAKE A PRELIMINARY EVALUATION OF THE UNSO-  
9 LICITED PROPOSAL TO DETERMINE IF THE PROPOSAL COMPLIES WITH THE REQUIRE-  
10 MENTS OF PARAGRAPH (A) OF THIS SUBDIVISION AND HOLD A PUBLIC HEARING  
11 THEREON PURSUANT TO THE PROVISIONS OF THE GENERAL MUNICIPAL LAW.

12 (D) IF THE UNSOLICITED PROPOSAL DOES NOT COMPLY WITH PARAGRAPH (A) OF  
13 THIS SUBDIVISION, THE LEAD PUBLIC ENTITY SHALL RETURN THE PROPOSAL WITH-  
14 OUT FURTHER ACTION.

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

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

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

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

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

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

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

35 (3) CONDUCT ANY GOOD FAITH DISCUSSIONS AND, IF NECESSARY, ANY NEGOTI-  
36 ATIONS CONCERNING EACH QUALIFIED PROPOSAL.

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

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

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

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

44 (4) CAPABILITIES, RELATED EXPERIENCE, FACILITIES OR TECHNIQUES OF THE  
45 PRIVATE ENTITY, SPECIAL PURPOSE VEHICLE OR UNIQUE COMBINATIONS OF THESE  
46 QUALITIES THAT ARE INTEGRAL FACTORS FOR ACHIEVING THE PROPOSAL OBJEC-  
47 TIVES;

48 (5) QUALIFICATIONS, CAPABILITIES, AND EXPERIENCE OF THE PROPOSED PRIN-  
49 CIPAL INVESTOR, TEAM LEADER, OR KEY PERSONNEL, WHO ARE CRITICAL TO  
50 ACHIEVING THE PROPOSAL OBJECTIVES;

51 (6) HOW THE PROPOSAL BENEFITS THE PUBLIC; AND

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

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

55 (1) ACCEPT THE UNSOLICITED PROPOSAL AND REJECT ANY COMPETING  
56 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,

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

3 (B) ESTABLISH THE PROCESS AND TIMING OF THE NEGOTIATION OF THE COMPRE-  
4 HENSIVE AGREEMENT; AND

5 (C) CONTAIN ANY OTHER PROVISIONS RELATED TO ANY ASPECT OF THE DEVELOP-  
6 MENT AND/OR OPERATION OF A QUALIFYING PUBLIC INFRASTRUCTURE THAT THE  
7 PARTIES MAY DEEM APPROPRIATE.

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

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

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

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

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

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

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

30 (D) THE PROVISIONS OF ALL STATE AND FEDERAL LAWS PROHIBITING DISCRIMI-  
31 NATION AND REQUIRING THE PROVISION OF EQUAL EMPLOYMENT OPPORTUNITY; AND

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

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

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

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

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

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

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

8 (A) PLANNING, ACQUISITION, FINANCING, DEVELOPMENT, DESIGN,  
9 CONSTRUCTION, RECONSTRUCTION, REPLACEMENT, IMPROVEMENT, MAINTENANCE,  
10 MANAGEMENT, REPAIR, LEASING OR OPERATION OF QUALIFYING PUBLIC INFRA-  
11 STRUCTURE;

12 (B) TERM OF THE COMPREHENSIVE AGREEMENT;

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

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

19 (E) WHETHER USER FEES OR RENTS WILL BE COLLECTED FOR USE OF THE QUALI-  
20 FYING PUBLIC INFRASTRUCTURE AND THE BASIS BY WHICH SUCH USER FEES OR  
21 RENTS SHALL BE DETERMINED AND MODIFIED;

22 (F) 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 AND  
25 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 PUBLIC  
28 INFRASTRUCTURE;

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

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

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

41 (J) DISPOSITION OF THE INFRASTRUCTURE UPON COMPLETION OF THE COMPRE-  
42 HENSIVE AGREEMENT;

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

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

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

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

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

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

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

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

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

8 (G) RIGHTS AND DUTIES OF THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHI-  
9 CLE, THE RESPONSIBLE PUBLIC ENTITY, AND OTHER STATE AND LOCAL GOVERN-  
10 MENTAL ENTITIES WITH RESPECT TO USE OF THE QUALIFYING PUBLIC INFRASTRUC-  
11 TURE;

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

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

15 (J) ASSIGNMENT, SUBCONTRACTING, OR OTHER DELEGATION OF RESPONSIBIL-  
16 ITIES OF THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE, OR THE RESPONSI-  
17 BLE PUBLIC ENTITY UNDER THE AGREEMENT TO THIRD PARTIES, INCLUDING OTHER  
18 PRIVATE ENTITIES OR SPECIAL PURPOSE VEHICLES AND OTHER STATE AGENCIES;

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

21 (L) PROCEDURES FOR THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE TO  
22 MAKE AND ENFORCE REASONABLE RULES TO THE SAME EXTENT THAT THE RESPONSI-  
23 BLE PUBLIC ENTITY MAY MAKE AND ENFORCE RULES WITH RESPECT TO A SIMILAR  
24 PUBLIC INFRASTRUCTURE; AND

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

27 4. THE COMPREHENSIVE AGREEMENT MAY PROVIDE THAT USER FEES AND RENTS  
28 SHALL BE COLLECTED FOR USE OF THE QUALIFYING PUBLIC INFRASTRUCTURE. THE  
29 PARTIES MAY AGREE THAT USER FEES AND RENTS MAY BE SET BY THE PRIVATE  
30 ENTITY OR SPECIAL PURPOSE VEHICLE, THE RESPONSIBLE PUBLIC ENTITY, OR BY  
31 AGREEMENT OF THE PARTIES. A SCHEDULE OF THE CURRENT USER FEES AND RENTS  
32 SHALL BE MADE AVAILABLE BY THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE  
33 TO ANY MEMBER OF THE PUBLIC ON REQUEST. USER FEES AND RENTS SHALL BE SET  
34 AT LEVELS THAT ARE THE SAME FOR PERSONS USING THE QUALIFYING PUBLIC  
35 INFRASTRUCTURE UNDER LIKE CONDITIONS. USER FEES AND RENTS ESTABLISHED IN  
36 THE COMPREHENSIVE AGREEMENT AS A SOURCE OF REVENUES MAY BE IN ADDITION  
37 TO, OR IN LIEU OF, SERVICE PAYMENTS. A RESPONSIBLE PUBLIC ENTITY MAY  
38 IMPOSE AND COLLECT USER FEES AND RENTS FROM USERS OF ELIGIBLE INFRAS-  
39 TRUCTURE AND USE LAWFUL MEASURES TO ENFORCE SUCH CHARGES, AND AUTHORIZE  
40 THE PRIVATE ENTITY, SPECIAL PURPOSE VEHICLE OR ANOTHER PUBLIC ENTITY TO  
41 IMPOSE, COLLECT AND ENFORCE SUCH USER FEES AND RENTS TO THE SAME EXTENT  
42 AS AVAILABLE TO THE RESPONSIBLE PUBLIC ENTITY.

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

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

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

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

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

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

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

22 S 279. MATERIAL DEFAULT; REMEDIES. 1. UPON THE OCCURRENCE AND DURING  
23 THE CONTINUATION OF MATERIAL DEFAULT UNDER A COMPREHENSIVE OR INTERIM  
24 AGREEMENT, THE LEAD PUBLIC ENTITY MAY EXERCISE ANY OR ALL OF THE FOLLOW-  
25 ING REMEDIES:

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

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

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

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

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

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

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

20 S 280. CONSTRUCTION. THE PROVISIONS OF THIS ARTICLE WHICH ARE INCON-  
21 SISTENT WITH ANY OTHER PROVISION OF STATE LAW SHALL BE DEEMED TO SUPER-  
22 CEDE SUCH PROVISION OF LAW, AND THE PROVISIONS OF THIS ARTICLE SHALL BE  
23 CONTROLLING.

24 S 281. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR  
25 PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURIS-  
26 DICTION TO BE INVALID AND AFTER EXHAUSTION OF ALL FURTHER JUDICIAL  
27 REVIEW, THE JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAIN-  
28 DER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO THE CLAUSE,  
29 SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE DIRECTLY INVOLVED  
30 IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL HAVE BEEN RENDERED.

31 S 3. This act shall take effect immediately.