

5501--B

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 -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- 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; to amend the public authorities law, in relation to authorizing the dormitory authority to provide financing for public infrastructure; and to amend the local finance law, in relation to authorizing municipalities and school districts to contract indebtedness for purposes of financing public-private partnerships

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.

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

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

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

9 ARTICLE 14-A  
10 PUBLIC-PRIVATE PARTNERSHIP IN  
11 PUBLIC INFRASTRUCTURE

12 SECTION 275. DEFINITIONS.

13 275-A. PUBLIC-PRIVATE PARTNERSHIP BOARD.

14 276. POWERS, RIGHTS, DUTIES AND LIMITATIONS OF PARTIES.

15 277. PROCUREMENT.

16 278. MULTIPLE PUBLIC ENTITIES AND SPECIAL PURPOSE VEHICLES.

17 278-A. COMPREHENSIVE AGREEMENTS.

18 279. MATERIAL DEFAULT; REMEDIES.

19 280. CONSTRUCTION.

20 281. SEVERABILITY.

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

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

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

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

30 4. "INFRASTRUCTURE" MEANS PHYSICAL STRUCTURES AND/OR FACILITIES NECES-  
31 SARY FOR THE OPERATION OF A PUBLIC ENTITY.

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

36 6. "LEAD PUBLIC ENTITY" MEANS A PUBLIC ENTITY, INCLUDING LOCAL GOVERN-  
37 MENTS AND REGIONAL AUTHORITIES, THAT HAS THE POWER TO DEVELOP AND/OR  
38 OPERATE THE QUALIFYING PUBLIC INFRASTRUCTURE.

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

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

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

52 10. "PUBLIC-PRIVATE PARTNERSHIP" MEANS A PARTNERSHIP BETWEEN A PUBLIC  
53 ENTITY AND A PRIVATE ENTITY OR PRIVATE ENTITIES, WHICH IS FORMED FOR THE  
54 PURPOSE OF FUNDING THE DESIGN AND/OR CONSTRUCTION OF PUBLIC INFRASTRUC-  
55 TURE, AND/OR OPERATING AND/OR MAINTAINING PUBLIC INFRASTRUCTURE FOLLOW-  
56 ING 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 EIGHT MEMBERS:

(A) AN INDEPENDENT INDUSTRY MEMBER APPOINTED BY THE GOVERNOR, WHO SHALL BE THE CHAIR OF THE BOARD;

(B) THE STATE COMPTROLLER;

(C) TWO MEMBERS APPOINTED BY THE GOVERNOR;

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

(E) 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, HAVING AN ESTIMATED COST OF ONE HUNDRED MILLION DOLLARS OR MORE, 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. THE PUBLIC ENTITY MAY ESTABLISH A LOCAL BENEFIT CORPORATION, IN ACCORDANCE WITH SECTION FOURTEEN HUNDRED ELEVEN OF THE NOT-FOR-PROFIT CORPORATION LAW, TO ACT ON BEHALF OF SUCH ENTITY IN CONNECTION WITH AN INFRASTRUCTURE PROJECT. EVERY SUCH LOCAL BENEFIT CORPORATION SHALL HAVE ALL POWERS PROVIDED IN SUCH SECTION OF THE NOT-FOR-PROFIT CORPORATION LAW INCLUDING, BUT NOT LIMITED TO, THE ISSUANCE OF BONDS TO FINANCE AN INFRASTRUCTURE PROJECT. A PRIVATE ENTITY MAY BORROW MONEYS FROM ITS LOCAL BENEFIT CORPORATION AND TO LEASE, GIFT, BEQUEST OR DEVISE THE REAL OR PERSONAL PROPERTY OR INTERESTS THEREOF.

5. EVERY PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE SHALL:

(A) DEVELOP, BUILD, OPERATE, FINANCE AND/OR MAINTAIN 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, OPERATE AND/OR PROVIDE BY CONTRACT FOR THE MAINTENANCE OF THE QUALIFYING PUBLIC INFRASTRUCTURE. ANY SUCH CONTRACT MAY HAVE A TERM OF UP TO NINETY-NINE YEARS; 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 BOTH THE BOARD AND 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.

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

10 8. ANY PUBLIC ENTITY MAY DEDICATE ANY PROPERTY INTEREST THAT IT HAS  
11 FOR PUBLIC USE AS QUALIFIED PUBLIC INFRASTRUCTURE IF IT FINDS THAT SO  
12 DOING WILL SERVE THE PUBLIC PURPOSE OF THIS ARTICLE. IN CONNECTION WITH  
13 SUCH DEDICATION, AND NOTWITHSTANDING THE PUBLIC NOTICE AND BIDDING  
14 REQUIREMENTS OF THE COUNTY LAW, THE GENERAL CITY LAW, THE TOWN LAW, THE  
15 VILLAGE LAW AND THE GENERAL MUNICIPAL LAW, A PUBLIC ENTITY MAY CONVEY  
16 ANY PROPERTY INTEREST THAT IT HAS TO THE PRIVATE ENTITY OR SPECIAL  
17 PURPOSE VEHICLE, SUBJECT TO THE PROVISIONS OF THIS ARTICLE, FOR SUCH  
18 CONSIDERATION AS SUCH PUBLIC ENTITY MAY DETERMINE. THE AFOREMENTIONED  
19 CONSIDERATION MAY INCLUDE, WITHOUT LIMITATION, THE AGREEMENT OF THE  
20 PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE TO DEVELOP AND/OR OPERATE THE  
21 QUALIFYING PUBLIC INFRASTRUCTURE. THE PROPERTY INTERESTS THAT THE PUBLIC  
22 ENTITY MAY CONVEY TO THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE IN  
23 CONNECTION WITH A DEDICATION UNDER THIS SECTION MAY INCLUDE LICENSES,  
24 FRANCHISES, EASEMENTS, CONCESSIONS, OR ANY OTHER RIGHT OR INTEREST THE  
25 PUBLIC ENTITY DEEMS APPROPRIATE. SUCH PROPERTY INTEREST INCLUDING, BUT  
26 NOT LIMITED TO, A LEASEHOLD INTEREST IN AND/OR RIGHTS TO USE REAL PROP-  
27 ERTY COMPOSING PART OF QUALIFYING PUBLIC INFRASTRUCTURE, SHALL BE  
28 CONSIDERED PROPERTY INDIRECTLY OWNED BY A PUBLIC ENTITY.

29 9. NO PUBLIC ENTITY SHALL ENTER INTO AN INTERIM OR COMPREHENSIVE  
30 AGREEMENT WITH ANY PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE WHICH IS  
31 CONTROLLED BY A FOREIGN GOVERNMENT OR BY A POLITICAL SUBDIVISION THERE-  
32 OF, OR WHICH IS AN AGENCY OF ANY SUCH GOVERNMENT OR SUBDIVISION, UNLESS  
33 SUCH PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE AGREES TO A WAIVER OF ANY  
34 RIGHT OF SOVEREIGN IMMUNITY TO WHICH SUCH PRIVATE ENTITY OR SPECIAL  
35 PURPOSE VEHICLE WOULD OTHERWISE BE ENTITLED.

36 S 277. PROCUREMENT. 1. THE LEAD PUBLIC ENTITY IS AUTHORIZED TO ENTER  
37 INTO INTERIM AND COMPREHENSIVE AGREEMENTS FOR QUALIFYING PUBLIC INFRA-  
38 STRUCTURE PURSUANT TO THIS ARTICLE.

39 2. EVERY INTERIM AND COMPREHENSIVE AGREEMENT AUTHORIZED PURSUANT TO  
40 THIS ARTICLE SHALL BE IN SUCH FORM AND INCLUDE SUCH CONTENT AS SHALL BE  
41 PROVIDED IN RULES AND REGULATIONS RELATING THERETO, AS PROMULGATED BY  
42 THE BOARD, AND EACH SUCH AGREEMENT SHALL BE SUBJECT TO REVIEW AND  
43 APPROVAL OR REJECTION BY THE BOARD. FURTHERMORE, THE BOARD SHALL  
44 PROMULGATE AND IMPLEMENT RULES AND REGULATIONS REQUIRING PUBLIC ENTITIES  
45 TO ESTABLISH AND SUBMIT TO THE BOARD LISTS AND DESCRIPTIONS OF PUBLIC  
46 INFRASTRUCTURE PROJECTS WHICH SUCH ENTITIES ARE CONSIDERING FOR DEVELOP-  
47 MENT AND/OR OPERATION PURSUANT TO THIS ARTICLE. SUCH LISTS AND  
48 DESCRIPTIONS SHALL INCLUDE THE PROCUREMENT PROCEDURES, POLICIES AND  
49 DOCUMENTS RELATED TO EACH PUBLIC INFRASTRUCTURE PROJECT SO AS TO ENABLE  
50 THE BOARD TO DETERMINE WHETHER THEY COMPLY WITH THE RULES OF THE BOARD.  
51 SUCH RULES AND REGULATIONS SHALL REQUIRE EVERY PROPOSED PUBLIC INFRA-  
52 STRUCTURE PROJECT WITH AN ESTIMATED COST OF ONE HUNDRED MILLION DOLLARS  
53 OR MORE TO BE SUBMITTED TO THE BOARD FOR A DETERMINATION OF WHETHER SUCH  
54 PROJECT QUALIFIES PURSUANT TO THIS ARTICLE. EACH PROPOSED PUBLIC INFRA-  
55 STRUCTURE FOUND BY THE BOARD TO BE SO QUALIFIED SHALL BE POSTED ON THE  
56 DEPARTMENT OF AUDIT AND CONTROL INTERNET WEBSITE AS QUALIFIED PUBLIC

1 INFRASTRUCTURE. IN THE EVENT A PROPOSED PUBLIC INFRASTRUCTURE PROJECT IS  
2 REJECTED BY THE BOARD, SUCH DETERMINATION SHALL BE SUBJECT TO REVIEW  
3 PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

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

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

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

13 (B) IF ADVANTAGEOUS TO THE LEAD PUBLIC ENTITY AND THE PUBLIC BASED ON  
14 THE PROBABLE SCOPE, COMPLEXITY AND URGENCY OF THE PROJECT, OR AN  
15 INCREASE IN FUNDING THAT WOULD BE AVAILABLE, SOLICITATIONS USING, WITH-  
16 OUT LIMITATION, REQUESTS FOR QUALIFICATIONS, SHORT-LISTING OF QUALIFIED  
17 PROPOSERS, REQUESTS FOR PROPOSALS, NEGOTIATIONS, BEST AND FINAL OFFERS;  
18 AND

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

24 5. THE LEAD PUBLIC ENTITY SHALL SELECT A PRIVATE ENTITY OR SPECIAL  
25 PURPOSE VEHICLE, OR ENTITIES OR VEHICLES FOR A PUBLIC-PRIVATE PARTNER-  
26 SHIP ON A COMPETITIVE BASIS. THE PROVISIONS OF ARTICLE NINE OF THE  
27 STATE FINANCE LAW, ARTICLE EIGHT OF THE PUBLIC HOUSING LAW AND ARTICLE  
28 FIVE-A OF THE GENERAL MUNICIPAL LAW SHALL NOT APPLY TO CONTRACTS ISSUED  
29 PURSUANT TO THIS ARTICLE.

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

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

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

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

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

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

47 (F) COMMENTS FROM LOCAL CITIZENS RESIDING IN SUCH AFFECTED JURISDIC-  
48 TIONS;

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

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

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

54 7. THE LEAD PUBLIC ENTITY MAY SELECT MULTIPLE PRIVATE ENTITIES AND  
55 SPECIAL PURPOSE VEHICLES WITH WHICH TO ENTER A COMPREHENSIVE OR INTERIM

1 AGREEMENT FOR QUALIFYING PUBLIC INFRASTRUCTURE IF IT IS IN THE PUBLIC  
2 INTEREST TO DO SO.

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

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

- 18 (1) ADDRESSES THE NEEDS IDENTIFIED BY THE PUBLIC ENTITY;  
19 (2) IS THE INDEPENDENT WORK PRODUCT OF THE PROPOSER;  
20 (3) BENEFITS THE PUBLIC;  
21 (4) IS PREPARED WITHOUT LEAD PUBLIC ENTITY SUPERVISION; AND  
22 (5) INCLUDES SUFFICIENT DETAIL AND INFORMATION FOR THE LEAD PUBLIC  
23 ENTITY TO EVALUATE THE PROPOSAL IN AN OBJECTIVE AND TIMELY MANNER.

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

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

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

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

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

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

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

55 (3) THE ADVERTISEMENT SHALL SPECIFY A REASONABLE TIME PERIOD BY WHICH  
56 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 NOT TO EXCEED ONE MILLION DOLLARS OR TEN PERCENT OF THE PROJECT COST, WHICHEVER SHALL BE LESS; 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) WITH REGARD TO ANY LABOR AGREEMENT ENTERED INTO PURSUANT TO THIS ARTICLE, ARTICLE FIFTEEN-A OF THIS CHAPTER AS IF SUCH AGREEMENT IS A STATE CONTRACT, AND ANY CONTRACTOR, SUBCONTRACTOR, LESSEE OR SUBLESSEE ENTERING INTO SUCH CONTRACT OR LEASE FOR THE CONSTRUCTION, DEMOLITION,

1 RECONSTRUCTION, EXCAVATION, REHABILITATION, REPAIR, RENOVATION, ALTER-  
2 ATION OR IMPROVEMENT AUTHORIZED PURSUANT TO THIS ARTICLE, SHALL BE  
3 DEEMED A STATE AGENCY FOR THE PURPOSES OF ARTICLE FIFTEEN-A OF THIS  
4 CHAPTER AND SUBJECT TO THE PROVISIONS OF SUCH ARTICLE. NOTWITHSTANDING  
5 ANY PROVISION OF LAW TO THE CONTRARY, ALL WORK PERFORMED ON A PROJECT  
6 AUTHORIZED BY THIS ARTICLE WHERE ALL OR ANY PORTION THEREOF INVOLVES A  
7 LEASE OR AGREEMENT FOR CONSTRUCTION, DEMOLITION, RECONSTRUCTION, EXCA-  
8 VATION, REHABILITATION, REPAIR, RENOVATION, ALTERATION OR IMPROVEMENT  
9 SHALL BE DEEMED PUBLIC WORK AND SHALL BE SUBJECT TO AND PERFORMED IN  
10 ACCORDANCE WITH THE PROVISIONS OF ARTICLE EIGHT OF THE LABOR LAW TO THE  
11 SAME EXTENT AND IN THE SAME MANNER AS A CONTRACT OF THE STATE, AND  
12 COMPLIANCE WITH ALL THE PROVISIONS OF ARTICLE EIGHT OF THE LABOR LAW  
13 SHALL BE REQUIRED OF ANY LESSEE, SUBLESSEE, CONTRACTOR OR SUBCONTRACTOR  
14 ON THE PROJECT INCLUDING THE ENFORCEMENT OF PREVAILING WAGE REQUIREMENTS  
15 BY THE FISCAL OFFICER AS DEFINED IN PARAGRAPH E OF SUBDIVISION FIVE OF  
16 SECTION TWO HUNDRED TWENTY OF THE LABOR LAW TO THE SAME EXTENT AS A  
17 CONTRACT OF THE STATE;

18 (B) WITH REGARD TO ANY LABOR CONTRACTS AWARDED OR ENTERED INTO PURSU-  
19 ANT TO THIS ARTICLE, A PROJECT LABOR AGREEMENT, AS DEFINED IN SUBDIVI-  
20 SION ONE OF SECTION TWO HUNDRED TWENTY-TWO OF THE LABOR LAW, PROVIDED A  
21 STUDY DONE BY OR FOR THE CONTRACTING ENTITY DETERMINES THAT A PROJECT  
22 LABOR AGREEMENT WILL BENEFIT SUCH CONSTRUCTION, RECONSTRUCTION, RENO-  
23 VATION, REHABILITATION, IMPROVEMENT OR EXPANSION THROUGH REDUCED RISK OF  
24 DELAY, POTENTIAL COST SAVINGS OR POTENTIAL REDUCTION IN THE RISK OF  
25 LABOR UNREST IN LIGHT OF ANY PERTINENT LOCAL HISTORY THEREOF;

26 (C) THE PROVISIONS OF ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION  
27 LAW;

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

30 (E) THE PROVISIONS OF ARTICLE SIX OF THE PUBLIC OFFICERS LAW;

31 (F) THE PROVISIONS OF ARTICLE EIGHT OF THE LABOR LAW INCLUDING, BUT  
32 NOT LIMITED TO, THE WAGES, HOURS AND SUPPLEMENTS RELATED TO PUBLIC WORK;  
33 AND

34 (G) ANY OTHER LOCAL, STATE AND FEDERAL LAW, RULES AND REGULATIONS  
35 RELATING TO PUBLIC WORK AND THE WORK TO WHICH THE PROJECT RELATES.

36 17. THE LEAD PUBLIC ENTITY SHALL ENSURE THAT EVERY INTERIM AGREEMENT  
37 AND COMPREHENSIVE AGREEMENT SHALL PROVIDE FOR THE QUALITY OF THE MATERI-  
38 AL TO BE USED, THE USE OF TECHNOLOGY AND THE PERIOD OF PROBABLE USEFUL-  
39 NESS OF THE PUBLIC INFRASTRUCTURE.

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

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

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

5 S 278-A. COMPREHENSIVE AGREEMENTS. 1. AFTER SELECTING A SOLICITED OR  
6 UNSOLICITED PROPOSAL FOR A PUBLIC-PRIVATE INITIATIVE, THE RESPONSIBLE  
7 PUBLIC ENTITY, SUBJECT TO THE APPROVAL OF THE STATE COMPTROLLER, SHALL  
8 ENTER INTO A PUBLIC-PRIVATE AGREEMENT FOR QUALIFYING PUBLIC INFRASTRUC-  
9 TURE WITH THE SELECTED PRIVATE ENTITY, SPECIAL PURPOSE VEHICLE OR ANY  
10 CONFIGURATION OF PRIVATE ENTITIES. AN AFFECTED JURISDICTION MAY BE A  
11 PARTY TO A COMPREHENSIVE AGREEMENT ENTERED INTO BY THE RESPONSIBLE  
12 PUBLIC ENTITY AND A SELECTED PRIVATE ENTITY, SPECIAL PURPOSE VEHICLE OR  
13 COMBINATION OF PRIVATE ENTITIES.

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

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

20 (B) TERM OF THE COMPREHENSIVE AGREEMENT, NOT TO EXCEED NINETY-NINE  
21 YEARS;

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

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

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

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

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

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

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

50 (J) DISPOSITION OF THE INFRASTRUCTURE UPON COMPLETION OF THE COMPRE-  
51 HENSIVE AGREEMENT;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 5. IN THE COMPREHENSIVE AGREEMENT, THE LEAD PUBLIC ENTITY, THE RESPON-  
54 SIBLE PUBLIC ENTITY AND ANY PUBLIC AUTHORITY, SO AUTHORIZED BY LAW, MAY  
55 AGREE TO MAKE GRANTS OR LOANS FOR THE DEVELOPMENT AND/OR OPERATION OF  
56 THE QUALIFYING PUBLIC INFRASTRUCTURE FROM TIME TO TIME FROM AMOUNTS

1 RECEIVED FROM THE FEDERAL GOVERNMENT OR ANY AGENCY OR INSTRUMENTALITY  
2 THEREOF.

3 6. THE COMPREHENSIVE AGREEMENT SHALL INCORPORATE THE DUTIES OF THE  
4 PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE UNDER THIS ARTICLE AND MAY  
5 CONTAIN SUCH OTHER TERMS AND CONDITIONS THAT THE RESPONSIBLE PUBLIC  
6 ENTITY, THE STATE COMPTROLLER DETERMINES SERVE THE PUBLIC PURPOSE OF  
7 THIS ARTICLE. WITHOUT LIMITATION, THE COMPREHENSIVE AGREEMENT MAY  
8 CONTAIN PROVISIONS UNDER WHICH THE RESPONSIBLE PUBLIC ENTITY AGREES TO  
9 PROVIDE NOTICE OF DEFAULT AND CURE RIGHTS FOR THE BENEFIT OF THE PRIVATE  
10 ENTITY OR SPECIAL PURPOSE VEHICLE AND THE PERSONS SPECIFIED THEREIN AS  
11 PROVIDING FINANCING FOR THE QUALIFYING PUBLIC INFRASTRUCTURE. THE  
12 COMPREHENSIVE AGREEMENT MAY CONTAIN SUCH OTHER LAWFUL TERMS AND CONDI-  
13 TIONS TO WHICH THE PRIVATE ENTITY OR SPECIAL PURPOSE VEHICLE AND THE  
14 RESPONSIBLE PUBLIC ENTITY MUTUALLY AGREE, INCLUDING, WITHOUT LIMITATION,  
15 PROVISIONS REGARDING UNAVOIDABLE DELAYS OR PROVISIONS PROVIDING FOR A  
16 LOAN OF PUBLIC FUNDS FOR THE DEVELOPMENT AND/OR OPERATION OF ONE OR MORE  
17 QUALIFYING PUBLIC INFRASTRUCTURE.

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

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

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

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

33 11. COMPREHENSIVE AGREEMENTS SHALL NOT BE SUBJECT TO THE PROVISIONS OF  
34 SECTION SIXTY-FIVE HUNDRED TWELVE OF THE EDUCATION LAW.

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

39 (A) THE LEAD PUBLIC ENTITY MAY ELECT TO ASSUME CONTROL OVER THE QUALI-  
40 FYING PUBLIC INFRASTRUCTURE AND IN SUCH CASE IT SHALL SUCCEED TO ALL OF  
41 THE RIGHT, TITLE AND INTEREST IN SUCH PUBLIC INFRASTRUCTURE, SUBJECT TO  
42 ANY SECURITY INTEREST ON REVENUES PREVIOUSLY GRANTED BY THE PRIVATE  
43 ENTITY OR SPECIAL PURPOSE VEHICLE TO ANY PERSON PROVIDING FINANCING  
44 THEREFOR; AND

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

48 2. IN THE EVENT THE LEAD PUBLIC ENTITY ELECTS TO ASSUME CONTROL OVER  
49 QUALIFYING PUBLIC INFRASTRUCTURE PURSUANT TO SUBDIVISION ONE OF THIS  
50 SECTION, THE LEAD PUBLIC ENTITY MAY DEVELOP AND/OR OPERATE THE PUBLIC  
51 INFRASTRUCTURE, IMPOSE USER FEES OR RENTS FOR THE USE THEREOF, COMPLY  
52 WITH ANY THIRD-PARTY CONTRACTS AS IF IT WERE THE PRIVATE ENTITY OR  
53 SPECIAL PURPOSE VEHICLE, AND SOLICIT PROPOSALS FOR THE CONTINUED OPERA-  
54 TION AND MAINTENANCE OF THE PUBLIC INFRASTRUCTURE BY PRIVATE ENTITIES.  
55 ANY REVENUES THAT ARE SUBJECT TO A SECURITY INTEREST SHALL BE COLLECTED  
56 FOR THE BENEFIT OF, AND PAID TO, SECURED PARTIES, AS THEIR INTERESTS MAY

1 APPEAR, TO THE EXTENT NECESSARY TO SATISFY THE PRIVATE ENTITY'S OR  
2 SPECIAL PURPOSE VEHICLE'S OBLIGATIONS TO SECURED PARTIES, INCLUDING THE  
3 MAINTENANCE OF RESERVES AND SUCH SECURITY INTERESTS SHALL BE CORRESPOND-  
4 INGLY REDUCED AND, WHEN SATISFIED, RELEASED. BEFORE ANY PAYMENTS TO, OR  
5 FOR THE BENEFIT OF, SECURED PARTIES, THE LEAD PUBLIC ENTITY MAY USE  
6 REVENUES TO PAY CURRENT OPERATION AND MAINTENANCE COSTS OF THE PUBLIC  
7 INFRASTRUCTURE, INCLUDING COMPENSATION TO THE LEAD PUBLIC ENTITY FOR ITS  
8 SERVICES IN OPERATING AND MAINTAINING THE QUALIFYING PUBLIC INFRASTRUC-  
9 TURE. REMAINING REVENUES, IF ANY, AFTER ALL PAYMENTS FOR OPERATION AND  
10 MAINTENANCE OF THE PUBLIC CAPITAL INFRASTRUCTURE, AND TO, OR FOR THE  
11 BENEFIT OF, SECURED PARTIES, HAVE BEEN MADE, MAY BE PAID TO THE PRIVATE  
12 ENTITY OR SPECIAL PURPOSE VEHICLE, SUBJECT TO THE NEGOTIATED RATE OF  
13 RETURN, IF THE COMPREHENSIVE AGREEMENT SO PROVIDES. IN SUCH CASE, THE  
14 RIGHT TO RECEIVE SUCH PAYMENT, IF ANY, SHALL BE CONSIDERED JUST COMPEN-  
15 SATION FOR THE QUALIFYING PUBLIC INFRASTRUCTURE.

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

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

28 S 280. CONSTRUCTION. THE PROVISIONS OF THIS ARTICLE WHICH ARE INCON-  
29 SISTENT WITH ANY OTHER PROVISION OF STATE LAW SHALL BE DEEMED TO SUPER-  
30 CEDE SUCH PROVISION OF LAW, AND THE PROVISIONS OF THIS ARTICLE SHALL BE  
31 CONTROLLING.

32 S 281. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR  
33 PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURIS-  
34 DICTION TO BE INVALID AND AFTER EXHAUSTION OF ALL FURTHER JUDICIAL  
35 REVIEW, THE JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAIN-  
36 DER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO THE CLAUSE,  
37 SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE DIRECTLY INVOLVED  
38 IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL HAVE BEEN RENDERED.

39 S 3. Paragraph (b) of subdivision 2 of section 1676 of the public  
40 authorities law is amended by adding a new undesignated paragraph to  
41 read as follows:

42 ANY PRIVATE ENTITY FOR THE PURPOSES OF DEVELOPMENT OR OPERATION OF  
43 QUALIFYING PUBLIC INFRASTRUCTURE PURSUANT TO ARTICLE FOURTEEN-A OF THE  
44 EXECUTIVE LAW.

45 S 4. Subdivision 1 of section 1680 of the public authorities law is  
46 amended by adding a new undesignated paragraph to read as follows:

47 ANY PRIVATE ENTITY FOR THE PURPOSES OF DEVELOPMENT OR OPERATION OF  
48 QUALIFYING PUBLIC INFRASTRUCTURE PURSUANT TO ARTICLE FOURTEEN-A OF THE  
49 EXECUTIVE LAW.

50 S 5. The opening paragraph of section 10.00 of the local finance law  
51 is designated subdivision 1 and a new subdivision 2 is added to read as  
52 follows:

53 2. A MUNICIPALITY, SCHOOL DISTRICT OR DISTRICT CORPORATION SHALL HAVE  
54 THE POWER TO CONTRACT INDEBTEDNESS FOR THE PURPOSES OF IMPLEMENTING THE  
55 PROVISIONS OF ARTICLE FOURTEEN-A OF THE EXECUTIVE LAW.

56 S 6. This act shall take effect immediately.