

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 822

Short Title: Education Infrastructure Act. (Public)

Sponsors: Senator Jenkins.

Referred to: Finance.

March 25, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW INFRASTRUCTURE PROCUREMENT PROJECTS INVOLVING
3 PARTNERSHIPS BETWEEN PUBLIC AND PRIVATE ENTITIES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** The General Statutes is amended by adding a new Chapter to read:

6 **"Chapter 115F.**

7 **"Infrastructure Development Act.**

8 **"§ 115F-1. Definitions.**

9 As used in this Chapter, unless the context requires a different meaning, the following
10 definitions apply:

- 11 (1) Affected jurisdiction. – Any county, city, or town that is not a responsible
12 public entity and in which all or a portion of a qualifying project is located.
13 (2) Appropriating body. – The body responsible for appropriating or authorizing
14 funding to pay for a qualifying project.
15 (3) Commission. – The North Carolina Utilities Commission.
16 (4) Comprehensive agreement. – The comprehensive agreement between the
17 private entity and the responsible public entity required by G.S. 115F-10.
18 (5) Develop. – To plan, design, develop, finance, lease, acquire, install,
19 construct, or expand.
20 (6) Interim agreement. – An agreement between the private entity and the
21 responsible public entity that provides for phasing of development or
22 operation of a qualifying project. The phases may include design, planning,
23 engineering, environmental analysis and mitigation, finance and revenue
24 analysis, or any other phase of the project that constitutes activity on any
25 part of the qualifying project.
26 (7) Lease payment. – Any form of payment, including a land lease, by a public
27 entity to the private entity for the use of a qualifying project.
28 (8) Material default. – Any default by the private entity in the performance of its
29 duties under G.S. 115F-9(e) that jeopardizes adequate service to the public
30 from a qualifying project.
31 (9) Operate. – To finance, maintain, improve, equip, modify, repair, or operate.
32 (10) Private entity. – Any natural person, corporation, general partnership,
33 limited liability company, limited partnership, joint venture, business trust,
34 public benefit corporation, nonprofit entity, or other business entity.
35 (11) Public entity. – The State and any agency or authority thereof, any county or
36 city, and any other political subdivision of the State or any regional entity
37 that serves a public purpose.



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- 1 (12) Qualifying project. – Any of the following:
2 a. Any education facility, including, but not limited to, a school
3 building, any functionally related and subordinate facility and land to
4 a school building (including any stadium or other facility primarily
5 used for school events), and any depreciable property provided for
6 use in a school facility that is operated as part of the public school
7 system or as an institution of higher education.
8 b. Any building or facility that meets a public purpose and is developed
9 or operated by or for any public entity.
10 c. Any improvements, together with equipment, necessary to enhance
11 public safety and security of buildings to be principally used by a
12 public entity.
13 d. Utility and telecommunications and other communications
14 infrastructure.
15 e. A recreational facility.
16 f. Technology infrastructure, including, but not limited to,
17 telecommunications, automated data processing, word processing
18 and management information systems, and related information,
19 equipment, goods, and services.
20 g. Any technology, equipment, or infrastructure designed to deploy
21 wireless broadband services to schools, businesses, or residential
22 areas.
23 h. Any improvements necessary or desirable to any unimproved locally
24 or state-owned real estate.

25 Any road or bridge construction project, unless ancillary to the development
26 of a qualifying project, shall not constitute a qualifying project.

- 27 (13) Responsible public entity. – A public entity that has the power to develop or
28 operate the applicable qualifying project.

- 29 (14) Revenues. – All revenue, income, earnings, user fees, lease payments, or
30 other service payments arising out of or in connection with supporting the
31 development or operation of a qualifying project, including money received
32 as grants or otherwise from the United States government, from any public
33 entity, or from any agency or instrumentality of the foregoing in aid of the
34 facility.

- 35 (15) Service contract. – A contract entered into between a public entity and the
36 private entity pursuant to G.S. 115F-6.

- 37 (16) Service payments. – Payments to the private entity of a qualifying project
38 pursuant to a service contract.

- 39 (17) User fees. – The rates, fees, or other charges imposed by the private entity of
40 a qualifying project for use of all or a portion of the qualifying project
41 pursuant to the comprehensive agreement pursuant to G.S. 115F-10.

42 **§ 115F-2. Reserved for future codification purposes.**

43 **§ 115F-3. Reserved for future codification purposes.**

44 **§ 115F-4. Adoption of guidelines by responsible public entities.**

45 Any responsible public entity, prior to requesting a proposal for a qualifying project, shall
46 adopt, and make publicly available, guidelines that are sufficient to enable the responsible
47 public entity to comply with this Chapter. The guidelines shall guide the selection of projects
48 under the purview of the responsible public entity and shall include each of the following:

- 49 (1) Opportunities for competition through public notice and availability of
50 representatives of the responsible public entity to meet with private entities
51 considering a proposal.

- 1 (2) Reasonable criteria for choosing among competing proposals.
- 2 (3) Suggested time lines for selecting proposals and negotiating an interim or
3 comprehensive agreement.
- 4 (4) Authorization for accelerated selection and review and documentation time
5 lines for proposals involving a qualifying project that the responsible public
6 entity deems a priority.
- 7 (5) Financial review and analysis procedures that shall include a cost-benefit
8 analysis, an assessment of opportunity cost, consideration of the results of all
9 studies and analyses related to the proposed qualifying project, and
10 requirements for the disclosure of such analysis to the appropriating body for
11 review prior to execution of an interim or comprehensive agreement.
- 12 (6) Consideration of the nonfinancial benefits of a proposed qualifying project.
- 13 (7) A mechanism for the appropriating body to review a proposed interim or
14 comprehensive agreement prior to execution.
- 15 (8) Establishment of criteria, key decision points, and approvals required to
16 ensure that the responsible public entity considers the extent of competition
17 before selecting proposals and negotiating an interim or comprehensive
18 agreement.

19 **"§ 115F-5. Approval of qualifying projects by the responsible public entity.**

20 (a) Solicited Proposals. – A responsible public entity may invite proposals for the
21 development, operation, or both of a qualifying project from a private entity. Any such
22 invitation shall be made publicly and in a manner such that all interested private parties may
23 submit proposals at the same time. Any such invitation also shall be accompanied by a request
24 for the following material and information unless waived by the responsible public entity:

- 25 (1) A topographic map (1:2,000 or other appropriate scale) indicating the
26 location of the qualifying project.
- 27 (2) A description of the qualifying project, including the conceptual design of
28 the facility or facilities or a conceptual plan for the provision of services or
29 technology infrastructure, and a schedule for the initiation and completion of
30 the qualifying project to include the proposed major responsibilities and time
31 line for activities to be performed by both the public and private entity.
- 32 (3) A statement setting forth the method by which the private entity proposes to
33 secure any necessary property interests required for the qualifying project.
- 34 (4) Information relating to the current plans for development of facilities or
35 technology infrastructure to be used by a public entity that are similar to the
36 qualifying project being proposed by the private entity, if any, of each
37 affected local jurisdiction.
- 38 (5) A list of all permits and approvals required for the qualifying project from
39 local, State, or federal agencies and a projected schedule for obtaining the
40 permits and approvals.
- 41 (6) A list of public utility facilities, if any, that will be crossed by the qualifying
42 project and a statement of the plans of the private entity to accommodate the
43 crossings.
- 44 (7) A statement setting forth the private entity's general plans for financing the
45 qualifying project, including the sources of the private entity's funds and
46 identification of any dedicated revenue source or proposed debt or equity
47 investment on the behalf of the private entity.
- 48 (8) The names and addresses of the persons who may be contacted for further
49 information concerning the request.
- 50 (9) User fees, lease payments, and other service payments over the term of the
51 interim or comprehensive agreement pursuant to G.S. 115F-10 and the

1 methodology and circumstances for changes to user fees, lease payments,
2 and other service payments over time.

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

5 (b) Public Purpose. – The responsible public entity may grant approval of the
6 development or operation of the education facility, technology infrastructure, or other public
7 infrastructure or government facility needed by a public entity as a qualifying project, or the
8 design or equipping of a qualifying project so developed or operated, if the responsible public
9 entity determines that the project serves a public purpose. In evaluating any proposal, the
10 responsible public entity may rely upon internal staff reports prepared by personnel familiar
11 with the operation of similar facilities or the advice of outside advisors or consultants having
12 relevant experience. The responsible public entity may determine that the development or
13 operation of the qualifying project as a qualifying project serves a public purpose if each of the
14 following conditions is satisfied:

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

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

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

21 (c) Reserved for future codification purposes.

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

25 (e) Commencement Date. – In connection with its approval of the qualifying project,
26 the responsible public entity shall establish a date for the commencement of activities related to
27 the qualifying project. The responsible public entity may extend the date from time to time.

28 (f) Public Records. – All documents related to the qualifying project are public records
29 governed by Chapter 132 of the General Statutes and any applicable provisions of the General
30 Statutes protecting confidential information.

31 (g) No Effect in Debt Authority. – Nothing in this Chapter or in an interim or
32 comprehensive agreement entered into pursuant to this Chapter shall be deemed to enlarge,
33 diminish, or affect the authority, if any, otherwise possessed by the responsible public entity to
34 take action that would impact the debt capacity of the State or a county, city, or town.

35 **"§ 115F-6. Service contracts.**

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

40 **"§ 115F-7. Notice; comment.**

41 (a) Notice. – Any private entity submitting a proposal to a responsible public entity
42 shall notify each affected jurisdiction by furnishing a copy of its proposal to each affected
43 jurisdiction.

44 (b) Responsive Comment. – Each affected local jurisdiction shall, within 60 days after
45 receiving such notice, submit in writing to the responsible public entity any comments it may
46 have on the proposed qualifying project and indicate whether the facility is compatible with the
47 local comprehensive plan, local infrastructure development plans, the capital improvements
48 budget, or other government spending plan. Such comments shall be given consideration by the
49 responsible public entity prior to entering a comprehensive agreement pursuant with a private
50 entity.

51 **"§ 115F-8. Dedication of public property.**

1 Any public entity may dedicate any property interest, including land, improvements, and
2 tangible personal property, that it has for public use in a qualifying project if it finds that so
3 doing will serve the public purpose of this Chapter by minimizing the cost of a qualifying
4 project to the public entity or reducing the delivery time of a qualifying project. In connection
5 with a dedication, a public entity may convey any property interest that it has, subject to the
6 conditions imposed by general law governing the conveyance, to the private entity subject to
7 the provisions of this Chapter, for any consideration the public entity may determine. The
8 consideration may include the agreement of the private entity to develop or operate the
9 qualifying project. The property interest that the public entity may convey to the private entity
10 in connection with a dedication under this section may include licenses, franchises, easements,
11 or any other right or interest the public entity deems appropriate.

12 **"§ 115F-9. Powers and duties of the operator.**

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

17 (b) Property. – After entering into a comprehensive agreement, the private entity may
18 own, lease, or acquire any other right to use or operate the qualifying project.

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

25 (d) Fees and Rules. – In operating the qualifying project, the private entity may do the
26 following:

27 (1) Make classifications according to reasonable categories for assessment of
28 user fees.

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

32 (e) Operation. – The private entity shall do each of the following:

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

37 (2) Keep the qualifying project open for use by the members of the public at all
38 times, or as appropriate based upon the use of the facility, after its initial
39 opening upon payment of the applicable user fees, lease payments, or service
40 payments. The qualifying project may be temporarily closed because of
41 emergencies or, with the consent of the responsible public entity, to protect
42 the safety of the public or for reasonable construction or maintenance
43 activities. In the event that a qualifying project is technology infrastructure,
44 access may be limited as determined by the conditions of the interim or
45 comprehensive agreement.

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

48 (4) Cooperate with the responsible public entity in making best efforts to
49 establish any interconnection with the qualifying project requested by the
50 responsible public entity.

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

3 (f) Additional Services. – Nothing in this Chapter shall prohibit a private entity of a
4 qualifying project from providing additional services for the qualifying project to public or
5 private entities other than the responsible public entity so long as the provision of additional
6 service does not impair the private entity's ability to meet its commitments to the responsible
7 public entity pursuant to the interim or comprehensive agreement as provided for in
8 G.S. 115F-10 or G.S. 115F-11.

9 **"§ 115F-10. Comprehensive agreement.**

10 (a) General Terms. – Prior to developing or operating the qualifying project, the private
11 entity shall enter into a comprehensive agreement with the responsible public entity. The
12 comprehensive agreement shall provide for each of the following:

13 (1) Delivery of performance and payment bonds in connection with the
14 development of the qualifying project as required by this Chapter.

15 (2) Review of plans and specifications for the qualifying project by the
16 responsible public entity and approval by the responsible public entity if the
17 plans and specifications conform to standards acceptable to the responsible
18 public entity. This shall not be construed as requiring the private entity to
19 complete design of a qualifying project prior to the execution of a
20 comprehensive agreement.

21 (3) Inspection of the qualifying project by the responsible public entity to ensure
22 that the private entity's activities are acceptable to the responsible public
23 entity in accordance with the provisions of the comprehensive agreement.

24 (4) Maintenance of a policy or policies of public liability insurance (copies of
25 which shall be filed with the responsible public entity accompanied by
26 proofs of coverage) or selfinsurance, each in form and amount satisfactory to
27 the responsible public entity and reasonably sufficient to insure coverage of
28 tort liability to the public and employees and to enable the continued
29 operation of the qualifying project.

30 (5) Monitoring of the practices of the private entity by the responsible public
31 entity to ensure that the qualifying project is properly maintained.

32 (6) Reimbursement to be paid to the responsible public entity for services
33 provided by the responsible public entity.

34 (7) Filing of appropriate financial statements on a periodic basis.

35 (8) Policies and procedures governing the rights and responsibilities of the
36 responsible public entity and the private entity in the event the
37 comprehensive agreement is terminated or there is a material default by the
38 private entity. These policies and guidelines shall include conditions
39 governing assumption of the duties and responsibilities of the private entity
40 by the responsible public entity and the transfer or purchase of property or
41 other interests of the private entity by the responsible public entity.

42 (b) Payments. – The comprehensive agreement shall provide for user fees, lease
43 payments, or service payments as may be established from time to time by agreement of the
44 parties. A copy of any service contract shall be filed with the responsible public entity. In
45 negotiating user fees under this section, the parties shall establish payments or fees that are the
46 same for persons using the facility under like conditions and that will not materially discourage
47 use of the qualifying project. The execution of the comprehensive agreement or any
48 amendment thereto shall constitute conclusive evidence that the user fees, lease payments, or
49 service payments provided for comply with this Chapter. User fees or lease payments
50 established in the comprehensive agreement as a source of revenue may be in addition to, or in
51 lieu of, service payments.

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

4 (d) Optional Terms. – The comprehensive agreement shall incorporate the duties of the
5 private entity under this Chapter and may contain other terms and conditions that the
6 responsible public entity determines serve the public purpose of this Chapter. Without
7 limitation, the comprehensive agreement may contain provisions under which the responsible
8 public entity agrees to provide notice of default and cure rights for the benefit of the private
9 entity and the persons specified therein as providing financing for the qualifying project. The
10 comprehensive agreement may contain other lawful terms and conditions to which the private
11 entity and the responsible public entity mutually agree, including provisions regarding
12 unavoidable delays or provisions providing for a loan of public funds to the private entity to
13 develop or operate one or more qualifying projects. The comprehensive agreement may also
14 contain provisions where the authority and duties of the private entity under this Chapter cease
15 and the qualifying project is dedicated to the responsible public entity for public use.

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

19 (f) Phases. – The comprehensive agreement may provide for the development or
20 operation of phases or segments of the qualifying project.

21 **"§ 115F-11. Interim agreement.**

22 Prior to or in connection with the negotiation of the comprehensive agreement, the
23 responsible public entity may enter into an interim agreement with the private entity proposing
24 the development or operation of the qualifying project. An interim agreement may (i) permit
25 the private entity to commence activities for which it may be compensated relating to the
26 proposed qualifying project, including project planning and development, design and
27 engineering, land acquisition, environmental analysis and mitigation, survey, and ascertaining
28 the availability of financing for the proposed facility or facilities; (ii) establish the process and
29 timing of the negotiation of the comprehensive agreement; and (iii) contain any other
30 provisions related to any aspect of the development or operation of a qualifying project that the
31 parties deem appropriate. All data, reports, correspondence, and other communications
32 generated in connection with an executed interim agreement shall be maintained by the
33 responsible public entity in such a manner that they can be made available for review and
34 copying by any interested person within five business days.

35 **"§ 115F-12. Federal, State, and local assistance.**

36 (a) Financing. – Any financing of a qualifying facility may be in amounts and upon
37 terms and conditions as are determined by the parties to the interim or comprehensive
38 agreement. Without limiting the generality of the terms and conditions of the financing, the
39 private entity and the responsible public entity may propose to utilize any and all funding
40 resources that may be available to them and may, to the fullest extent permitted by applicable
41 law, issue debt, equity, or other securities or other obligations, enter into leases, access any
42 designated trust funds, borrow and secure any financing with a pledge of, security interest in, or
43 lien on any or all of its property, including all of its property interest in the qualifying facility.

44 (b) Public Assistance. – The responsible public entity may take any action to obtain
45 federal, State, or local assistance for a qualifying project that serves the public purpose of this
46 Chapter and may enter into any contracts required to receive that assistance. If the responsible
47 public entity is a State agency, any funds received from the State or federal government or any
48 agency or instrumentality thereof shall be subject to appropriation by the General Assembly.
49 The responsible public entity may determine that it serves the public purpose of this Chapter
50 for all or any portion of the costs of a qualifying project to be paid, directly or indirectly, from

1 the proceeds of a grant or loan made by the local, State, or federal government or any agency or
2 instrumentality thereof.

3 **"§ 115F-13. Material default; remedies.**

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

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

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

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

20 (e) Affect of Assumption of Project. – In the event the responsible public entity elects
21 to take over a qualifying project pursuant to subsection (a) of this section, the responsible
22 public entity may develop or operate the qualifying project, impose user fees, impose and
23 collect lease payments for the use thereof, and comply with any service contracts as if it were
24 the private entity. Any revenues that are subject to a lien shall be collected for the benefit of
25 and paid to secured parties, as their interests may appear, to the extent necessary to satisfy the
26 private entity's obligations to secured parties, including the maintenance of reserves. These
27 liens shall be correspondingly reduced and, when paid off, released. Before any payments to, or
28 for the benefit of, secured parties, the responsible public entity may use revenues to pay current
29 operation and maintenance costs of the qualifying project, including compensation to the
30 responsible public entity for its services in operating and maintaining the qualifying project.
31 The right to receive payment, if any, shall be considered just compensation for the qualifying
32 project. The full faith and credit of the responsible public entity shall not be pledged to secure
33 any financing of the private entity by the election to take over the qualifying project.
34 Assumption of operation of the qualifying project shall not obligate the responsible public
35 entity to pay any obligation of the private entity from sources other than revenues.

36 **"§ 115F-14. Condemnation.**

37 The responsible public entity may exercise any power of condemnation that it has under
38 law for the purpose of acquiring any lands or estates or interests therein to the extent that the
39 responsible public entity finds that this action serves the public purpose of this Chapter.

40 **"§ 115F-15. Utility crossing.**

41 The private entity and each public service company, public utility, railroad, and cable
42 television provider whose facilities are to be crossed or affected shall cooperate fully with the
43 other entity in planning and arranging the manner of the crossing or relocation of the facilities.
44 Any entity possessing the power of condemnation may use those powers in connection with the
45 moving or relocation of facilities to be crossed by the qualifying project or that must be
46 relocated to the extent that moving or relocation is made necessary or desirable by construction
47 of, renovation to, or improvements to the qualifying project, including construction of,
48 renovation to, or improvements to temporary facilities for the purpose of providing service
49 during the period of construction or improvement. Any amount to be paid for the crossing,
50 construction, moving, or relocating of facilities shall be paid for by the private entity. If the
51 private entity and any public service company, public utility, railroad, and cable television

1 provider are not able to agree upon a plan for the crossing or relocation, the Commission may
2 determine the manner in which the crossing or relocation is to be accomplished and any
3 damages due arising out of the crossing or relocation. The Commission may employ expert
4 engineers who shall examine the location and plans for the crossing or relocation, hear any
5 objections and consider modifications, and make a recommendation to the Commission. In
6 such a case, the cost of the experts is to be borne by the private entity. A determination shall be
7 made by the Commission within 90 days of notification by the private entity that the qualifying
8 project will cross utilities subject to the Commission's jurisdiction.

9 **"§ 115F-16. Police powers; violations of law.**

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

14 **"§ 115F-17. Sovereign immunity.**

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

21 **"§ 115F-18. Procurement.**

22 The provisions of Article 8 of Chapter 143 do not apply to this Chapter. However, a
23 responsible public entity may enter into an interim or comprehensive agreement only in
24 accordance with guidelines adopted by it as follows:

25 (1) A responsible public entity may enter into an interim or comprehensive
26 agreement in accordance with guidelines adopted by it that gives all
27 potentially interested private parties a fair, reasonable, and competitive
28 opportunity to do business with the public entity. As a minimum, the
29 guidelines adopted by the responsible public entity shall provide for the
30 method by which notice shall be given for the solicitation of proposals and
31 the disclosure of all of the data, reports, correspondence, and other
32 communications generated in connection with any interim or comprehensive
33 agreement associated with the qualifying project. The guidelines shall also
34 expressly provide that the responsible public entity can reject any and all
35 proposals for any reason at any time before it enters into a comprehensive
36 agreement.

37 (2) A responsible public entity may enter into an interim or comprehensive
38 agreement in accordance with guidelines adopted by it that are consistent
39 with this Chapter. The responsible public entity shall not be required to
40 select the proposal with the lowest price offer, but may consider price as one
41 factor in evaluating the proposals received. Other factors that may be
42 considered include (i) the proposed cost of the qualifying facility; (ii) the
43 general reputation, industry experience, and financial capacity of the private
44 entity; (iii) the proposed design of the qualifying project; (iv) the eligibility
45 of the facility for accelerated selection, review, and documentation time lines
46 under the responsible public entity's guidelines; (v) local citizen and
47 government comments; (vi) benefits to the public; (vii) the private entity's
48 compliance with a minority business enterprise participation plan or good
49 faith effort to comply with the goals of the plan; (viii) the private entity's
50 plans to employ local contractors and residents; and (ix) other criteria that
51 the responsible public entity deems appropriate. When the responsible public

1 entity determines to proceed according to the guidelines adopted by it
2 pursuant to this subdivision, it shall state the reasons for its determination in
3 writing. If a State agency is the responsible public entity, the approval of the
4 agency's head is required before the responsible public entity may enter into
5 a comprehensive agreement pursuant to this subdivision.

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

11 **§ 115F-19. Posting of proposed qualifying projects; public comment; public access to**
12 **procurement records.**

13 Proposals for qualifying projects received by a responsible public entity shall be posted by
14 the responsible public entity within 10 business days after receipt of such proposals as follows:

- 15 (1) For responsible public entities that are State agencies, departments, and
16 institutions, posting shall be on the Department of Administration, Division
17 of Purchase and Contract's online purchasing system commonly known as
18 "NC E-Procurement @ Your Service."
- 19 (2) For responsible public entities that are local bodies, posting shall be on the
20 responsible public entity's Web site or by publication, in a newspaper of
21 general circulation in the area in which the contract is to be performed, of a
22 summary of the proposals and the location where copies of the proposals are
23 available for public inspection. Posting may also be on the Department of
24 Administration, Division of Purchase and Contract's online purchasing
25 system commonly known as "NC E-Procurement @ Your Service," in the
26 discretion of the local responsible public entity.
- 27 (3) Nothing in this section shall be construed to prohibit the posting of the
28 conceptual proposals by additional means deemed appropriate by the
29 responsible public entity so as to provide maximum notice to the public of
30 the opportunity to inspect the proposals. Trade secrets, financial records, or
31 other records of the private entity excluded from disclosure under Chapter
32 132 and any other applicable provisions of the General Statutes protecting
33 confidential information shall not be required to be posted, except as
34 otherwise agreed to by the responsible public entity and the private entity.
35 Notwithstanding this paragraph, all provisions of a proposed comprehensive
36 agreement shall be disclosed at least 30 days in advance of its execution.
- 37 (4) In addition to the posting requirements of this section, a responsible public
38 entity shall provide an opportunity for a public hearing on the proposals
39 prior to executing a comprehensive agreement. After the end of the public
40 comment period, no additional posting shall be required.
- 41 (5) Once an interim agreement or a comprehensive agreement has been entered
42 into, a responsible public entity shall make procurement records available
43 for public inspection, upon request. For the purposes of this subsection,
44 procurement records shall not be interpreted to include (i) trade secrets of the
45 private entity as defined in the Trade Secrets Protection Act (Article 24 of
46 Chapter 66 of the General Statutes) or (ii) financial records, including
47 balance sheets or financial statements of the private entity that are not
48 generally available to the public through regulatory disclosure or otherwise.
- 49 (6) Cost estimates relating to a proposed procurement transaction prepared by or
50 for a responsible public entity shall not be open to public inspection."

1 **SECTION 2.** It is the intent of the General Assembly that the Joint Legislative
2 Commission on Governmental Operations will facilitate the development of model procedures
3 to assist in the implementation of this act, that public entities and private sector businesses,
4 including construction management firms, contractors, and design professionals, will be
5 consulted in the development of such procedures, and that such model procedures will be
6 completed and made available to public entities covered by this act not later than December 31,
7 2009.

8 **SECTION 3.** This act is effective when it becomes law.