

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas *As Engrossed: H2/14/13 H2/18/13 S4/3/13*
89th General Assembly **A Bill**
Regular Session, 2013

HOUSE BILL 1251

By: Representatives Sabin, *McLean, Baltz, E. Armstrong, Hawthorne, D. Whitaker, McGill, Baine*
By: Senator *D. Sanders*

For An Act To Be Entitled

AN ACT TO CREATE THE PARTNERSHIP FOR PUBLIC
FACILITIES AND INFRASTRUCTURE ACT; TO REGULATE
PUBLIC-PRIVATE PARTNERSHIPS FOR PUBLIC FACILITIES AND
INFRASTRUCTURE; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE PARTNERSHIP FOR PUBLIC
FACILITIES AND INFRASTRUCTURE ACT; AND TO
REGULATE PUBLIC-PRIVATE PARTNERSHIPS FOR
PUBLIC FACILITIES AND INFRASTRUCTURE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 22 is amended to add an additional
chapter to read as follows:

Chapter 10 – PARTNERSHIP FOR PUBLIC FACILITIES AND INFRASTRUCTURE ACT

Subchapter 1 – General Provisions

22-10-101. Title.

This chapter shall be known and may be cited as the “Partnership for
Public Facilities and Infrastructure Act”.

22-10-102. Legislative findings and intent.

(a) The General Assembly finds that:

(1) There is a public need for the timely acquisition, design,



construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, and installation of public infrastructure and government facilities within the state that serve a public purpose;

(2) The public need for government facilities and public infrastructure may not be satisfied by existing methods of procurement;

(3) There are inadequate resources to develop public infrastructure and government facilities for the benefit of citizens of the state, and there is demonstrated evidence that public-private partnerships can meet these needs by leveraging and supplementing the limited public funds available for public projects and providing other benefits to the public;

(4) Financial incentives exist that encourage public entities to enter into partnerships with private entities to develop qualifying projects; and

(5) Authorizing private entities to develop or operate one (1) or more qualifying projects may result in the availability of such projects to the public in a more timely or less costly manner, thereby serving the public safety, benefit, and welfare.

(b) This chapter is not intended to:

(1) Delegate the power of eminent domain to any private entity with respect to a qualifying project commenced or proposed under this chapter; or

(2) Alter the eminent domain laws of this state or grant the power of eminent domain to a person who is not expressly granted the power of eminent domain under other state law.

22-10-103. Definitions.

As used in this chapter:

(1) "Affected local jurisdiction" means a county or municipality in which all or a portion of a qualifying project is located;

(2) "Comprehensive agreement" means a required agreement between a private entity and a responsible public entity executed under § 22-10-303 that outlines the responsibilities and duties of the responsible public entity and the private entity in relation to a qualifying project;

(3) "Develop" and "development of" means to plan, design, develop, finance, lease, acquire, install, construct, operate, maintain, or expand;

(4) "Interim agreement" means an agreement between a private entity and a responsible public entity executed under § 22-10-302 to provide for the phasing of the development of a proposed qualifying project and to address the compensable activities that a private entity may perform in relation to a proposed qualifying project before the execution of a comprehensive agreement;

(5) "Material default" means a default by a private entity in the performance of the private entity's duties under a comprehensive agreement that jeopardizes adequate service to the public from a qualifying project;

(6) "Opportunity cost" means the cost of passing up an alternative and the increase in costs as the result of delaying a decision;

(7) "Private entity" means a natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, and other business entity;

(8) "Public entity" means a department, agency, board, or commission of the state and a political subdivision of the state, including without limitation a city, county, and institution of higher education;

(9) "Qualifying project" means:

(A) A ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, waste treatment facility, hospital, library, school, medical or nursing care facility, recreational facility, public building, transportation system as defined in § 27-76-103, or other similar facility currently available or to be made available to a public entity for public use, including without limitation a structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project's purpose; or

(B) A necessary or desirable improvement to unimproved real property owned by a public entity;

(10) "Responsible public entity" means a public entity that has the power to develop the applicable qualifying project;

(11) "Revenues" means the revenues, income, earnings, user fees, lease payments, and service payments arising out of or in connection with the

development of a qualifying project; and

(12) "User fees" means the rates, fees, or other charges imposed by a private entity for use of all or a portion of a qualifying project pursuant to a comprehensive agreement.

22-10-104. Construction – Powers supplemental.

(a) This chapter shall be liberally construed to effectuate its purpose.

(b)(1) The powers and procedures established under this chapter pertaining to the procurement of public and private facilities and infrastructure are supplemental to all other laws concerning the powers and procedures that a responsible public entity has with respect to entering into an agreement for or procuring public and private facilities and infrastructure.

(2) To the extent of any conflict, this chapter does not impair, repeal, modify, or affect:

(A) Any other existing law concerning the procurement of public and private facilities and infrastructure, including without limitation Title 6 of this Code; and

(B) Section 22-9-301 et seq., if otherwise applicable.

22-10-105. Applicability.

This chapter does not apply to a telecommunications, cable television, video service, or broadband infrastructure other than technology installed as part of a qualifying project that is essential to the qualifying project unless authorized under the Telecommunications Regulatory Reform Act of 1997, § 23-17-401 et seq.

Subchapter 2 – Proposals for Qualifying Projects

22-10-201. Adoption of guidelines required.

(a) A responsible public entity shall adopt and make publicly available the following guidelines before approving a qualifying project or accepting a proposal for a qualifying project under this chapter:

(1) Reasonable criteria for choosing among competing proposals;

(2) Financial review and analysis procedures for financial and

technical advisors or consultants that include without limitation:

(A) A cost-benefit analysis;

(B) An assessment of the opportunity cost;

(C) An analysis of the lifecycle costs, including without limitation the design and construction costs, operating costs, and maintenance and upgrade costs; and

(D) Consideration of the results of relevant studies and analyses related to the proposed qualifying project;

(3) Procedures for considering the nonfinancial benefits of a proposed project;

(4) Suggested timelines for selecting proposals and negotiating an interim agreement or a comprehensive agreement;

(5) Criteria for allowing the responsible public entity to accelerate the selection, review, and documentation timelines for proposals involving a qualifying project that the responsible public entity considers to be a priority;

(6) Procedures to:

(A) Determine the adequacy of the information released when seeking competing proposals under § 22-10-204; and

(B) Allow the responsible public entity to release more detailed information when seeking competing proposals if the responsible public entity determines that the release of additional information is necessary to encourage competition;

(7) Criteria, key decision points, and approvals that are required to ensure that the responsible public entity considers the extent of competition before selecting proposals and negotiating an interim agreement or a comprehensive agreement;

(8) Criteria for determining any fees that the public entity elects to charge under § 22-10-202;

(9) Procedures for posting and publishing the public notice of a responsible public entity's request for proposals or a private entity's request for approval of a proposal for a qualifying project, including without limitation the following:

(A) Specific information and documentation to be released regarding the nature, timing, and scope of the qualifying project submitted under § 22-10-202(b) and the protection of confidential and proprietary

information provided by the private entity under the Freedom of Information Act of 1967, § 25-19-101 et seq.;

(B)(i) A reasonable time period as determined by the responsible public entity to encourage competition and public-private partnerships in accordance with the purpose of this chapter.

(ii) The time period established under subdivision (a)(9)(B)(i) of this section shall not to be less than forty-five (45) days, during which time the responsible public entity shall accept the submission of competing proposals for the qualifying project under § 22-10-204;

(C) A process for posting the notice required under this subdivision (a)(9) on the responsible public entity's official website and otherwise publishing the notice as required under the applicable procurement laws; and

(D) For local government projects, confirmation that the public notice complies with applicable local laws and regulations; and

(10) The maximum term of a comprehensive agreement for each type of qualifying project for which the responsible public entity intends to request proposals or invite bids from private entities.

(b) The guidelines adopted by a responsible public entity under this section shall be reasonable, encourage competition, and guide the selection of qualifying projects by the responsible public entity.

(c) The responsible public entity shall:

(1) Make a representative of the responsible public entity available to meet with private entities that are considering submitting a proposal; and

(2) Provide notice of the representative's availability.

22-10-202. Request by responsible public entity – Initiation by private entity – Fees – Notice.

(a) A responsible public entity may request proposals or invite bids from private entities for the development of a qualifying project using the guidelines adopted under § 22-10-201.

(b) A private entity may initiate approval of a qualifying project by a responsible public entity by submitting a proposal requesting approval to the responsible public entity under § 22-10-203.

(c) The responsible public entity may charge a reasonable fee of up to

five thousand dollars (\$5,000) to cover the costs of processing, reviewing, and evaluating a proposal under subsection (b) of this section, including without limitation reasonable attorney's fees and fees for financial, technical, and other necessary advisors or consultants under § 22-10-201.

(d)(1) A private entity submitting a proposal to a responsible public entity under subsection (b) of this section shall notify each affected local jurisdiction by furnishing a copy of its proposal to each affected local jurisdiction.

(2) Within sixty (60) days after receiving the private entity's proposal under subdivision (d)(1) of this section, each affected local jurisdiction that is not a responsible public entity for the respective qualifying project may:

(A) Submit written comments regarding the proposed qualifying project to the responsible public entity; and

(B) Indicate whether the proposed qualifying project is compatible with local plans and budgets.

(3) The responsible public entity shall consider any comments submitted under subdivision (d)(2) of this section before executing an interim agreement or a comprehensive agreement with a private entity.

22-10-203. Requirements.

(a)(1) A private entity that seeks authorization under this chapter to develop a qualifying project shall first obtain approval of the responsible public entity.

(2) A private entity may initiate the approval process by requesting approval under subsection (b) of this section, or the responsible public entity may request proposals or invite bids under § 22-10-202(a).

(b)(1) A private entity that intends to be considered for a qualifying project under subsection (a) of this section shall submit a proposal to the responsible public entity.

(2) A proposal by a private entity under subdivision (b)(1) of this section shall be accompanied by the following material and information:

(A) A project description, including without limitation the following:

(i) The location of the qualifying project; and

(ii) The specific or conceptual design of the

proposed facility, building, infrastructure, or improvement or a conceptual plan for the provision of services or technology infrastructure;

(B) A feasibility statement that includes without limitation the following:

(i) The method by which the private entity proposes to secure any necessary property interests required for the qualifying project;

(ii) A list of all permits and approvals required for the qualifying project from local, state, and federal agencies; and

(iii) A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of how the private entity will accommodate the crossings;

(C) A schedule for the initiation and completion of the qualifying project, including without limitation the following:

(i) The proposed responsibilities of the responsible public entity and the private entity;

(ii) A timeline of the activities to be performed by the responsible public entity and the private entity; and

(iii) A proposed schedule for obtaining the permits required under subdivision (b)(2)(B)(ii) of this section;

(D) A plan for financing the qualifying project, including without limitation the following:

(i) The sources of the private entity's funds;

(ii) Any dedicated revenue source or proposed debt or equity investment on the behalf of the private entity;

(iii) A description of any user fees, lease payments, and other service payments to be paid over the term of the interim agreement or the comprehensive agreement; and

(iv) The methodology and circumstances for modifying any user fees, lease payments, and other service payments;

(E) A business case statement that includes a basic description of the indirect and direct benefits that the private entity can provide in delivering the qualifying project, including without limitation relevant cost, quality, and time frame data;

(F) The names and addresses of the persons who may be contacted for further information concerning the request; and

(G) Any additional material and information that the responsible public entity reasonably requests.

(c) A qualifying project shall be located on real property owned or leased by a public entity and include any improvements necessary or desirable to unimproved real property owned by a public entity.

22-10-204. Consideration – Approval.

(a)(1) When a responsible public entity receives a proposal submitted by a private entity, the responsible public entity shall determine whether to accept the proposal for consideration under this section.

(2) If the responsible public entity does not accept for consideration the proposal submitted by the private entity under § 22-10-203(b), the responsible public entity shall return the proposal and all accompanying fees and documentation to the private entity.

(3)(A) If the responsible public entity chooses to accept a proposal for a qualifying project submitted under § 22-10-203(b), the responsible public entity shall:

(i) Make the qualifying project public according to the guidelines adopted under § 22-10-201; and

(ii)(a) Seek competing proposals through open competition.

(b) In seeking competing proposals, the responsible public entity shall protect confidential and proprietary information provided by the private entity under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(B) Public notices of the request for proposals shall be made at least forty-five (45) days before the date set for the receipt of proposals.

(C) The responsible public entity shall evaluate all proposals then submitted for qualifying projects under § 22-10-301 before executing a comprehensive agreement with a private entity for the qualifying project.

(b) A responsible public entity may approve the development of a qualifying project if the responsible public entity determines that:

(1) There is a public need for or benefit to be derived from the type of qualifying project that the private entity proposes;

(2) The estimated cost of the proposed qualifying project is reasonable in relation to similar facilities; and

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

(c) The responsible public entity's approval of the proposed qualifying project is contingent on the private entity entering into an interim agreement or a comprehensive agreement with the responsible public entity.

(d) The responsible public entity may reject a proposal initiated by a private entity under § 22-10-203 at any time.

(e) Neither this chapter nor an interim agreement or comprehensive agreement entered into under this chapter enlarges, diminishes, or affects the authority, if any, otherwise possessed by a responsible public entity to take action that would impact the debt capacity of the state.

Subchapter 3 – Contracts Between Responsible Public Entity and Private Entity

22-10-301. Procurement requirements.

(a) A responsible public entity may enter into a comprehensive agreement only in accordance with:

(1) The guidelines adopted by the responsible public entity under § 22-10-201; and

(2)(A) Construction procurement and delivery methods consistent with §§ 19-4-1415, 19-11-807, 22-9-203, or 27-67-206.

(B) The responsible public entity is not required to select the proposal with the lowest price offer, but the responsible public entity may consider price as one factor in evaluating the proposals received.

(C) The other factors the responsible public entity may consider include without limitation the following:

(i) The proposed cost of the qualifying facility;

(ii) The general reputation, industry experience, and financial capacity of the private entity;

(iii) The proposed design of the qualifying project;

(iv) The eligibility of the facility for accelerated selection, review, and documentation timelines under the responsible public entity's guidelines;

(v) Local citizen and government comments;
(vi) Benefits to the public;
(vii) The private entity's compliance with a minority business enterprise participation plan;
(viii) The private entity's plans to employ local contractors and residents; and
(ix) Any other criteria that the responsible public entity deems appropriate.

(b) The procurement of a comprehensive agreement and the financial arrangement agreed to by the responsible public entity and the private entity shall comply with any other requirements of state law not specifically stated in this chapter, including without limitation Arkansas Constitution, Amendment 78, § 2, which prohibits counties and municipalities from incurring short-term financing obligations, including without limitation leases and lease-purchase contracts, that mature over a period or have a term that exceeds five (5) years.

22-10-302. Interim agreement.

(a)(1) A responsible public entity may enter into an interim agreement with the private entity proposing the development of a qualifying project either before or in connection with the negotiation of a comprehensive agreement under § 22-10-303.

(2)(A) Before a responsible public entity may enter into an interim agreement under this section, the responsible public entity shall contract with an attorney or a certified public accountant to provide a written evaluation of the proposed interim agreement.

(B) The written evaluation required under subdivision (a)(2)(A) of this section shall include the attorney's or certified public accountant's independent assessment of the costs, financial liabilities, advantages, and disadvantages of the interim agreement.

(C) An attorney or certified public accountant providing a written evaluation under this subsection shall not be a public employee or an elected official.

(b) An interim agreement entered into under this section may:

(1) Permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying project, including

without limitation project planning and developing, design and engineering, environmental analysis and mitigation, surveying, and ascertaining the availability of financing for the proposed qualifying project;

(2) Establish the process and timing of the negotiation of the comprehensive agreement; and

(3) Contain any other provisions related to the development of a proposed qualifying project that are agreed upon by the responsible public entity and the private entity.

22-10-303. Comprehensive agreement.

(a)(1) Before developing or operating the qualifying project, a private entity shall enter into a comprehensive agreement with the responsible public entity.

(2)(A) Before a responsible public entity may enter into a comprehensive agreement under this section, the responsible public entity shall contract with an attorney or a certified public accountant to provide a written evaluation of the proposed comprehensive agreement.

(B) The written evaluation required under subdivision (a)(2)(A) of this section shall include the attorney's or certified public accountant's independent assessment of the costs, financial liabilities, advantages, and disadvantages of the comprehensive agreement.

(C) An attorney or certified public accountant providing a written evaluation under this subsection shall not be a public employee or an elected official.

(b) The comprehensive agreement shall include the following:

(1) A thorough description of the duties of the responsible public entity and the private entity in relation to the completion and operation of the qualifying project;

(2) Dates and schedules for the completion of the qualifying project;

(3) Any user fees, lease payments, or service payments agreed to by the responsible public entity and the private entity and any process for modifying the user fees, lease payments, or service payments during the term of the comprehensive agreement;

(4) A copy of each service contract, if any;

(5) Reimbursements to be paid to the responsible public entity

for services provided by the responsible public entity, if any;

(6)(A) A process for the review of plans and specifications for the qualifying project by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to reasonable standards that are acceptable to the responsible public entity.

(B) However, the private entity shall not be required to complete the design of a qualifying project before the execution of a comprehensive agreement;

(7) A process for the periodic and final inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities comply with the comprehensive agreement;

(8) For the components of the qualifying project that involve construction, provisions for the delivery of maintenance, payment, and performance bonds, as required under § 18-44-503, and for components of the qualifying project that do not involve construction, bonds, letters or credit, or other forms of security acceptable to the responsible public entity in connection with the development of the qualifying project;

(9) Submission of one (1) of the following in a form and amount satisfactory to the responsible public entity and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project:

(A) One (1) or more policies of public liability insurance, copies of which shall be filed with the responsible public entity accompanied by proofs of coverage; or

(B) Self-insurance;

(10) A process for the responsible public entity's monitoring of the practices of the private entity to ensure that the qualifying project is properly maintained;

(11) The filing of appropriate financial statements with the responsible public entity on a periodic basis; and

(12)(A) Policies and procedures governing the rights and responsibilities of the responsible public entity and the private entity if the comprehensive agreement is terminated or there is a material default by the private entity.

(B) The policies and procedures included in the comprehensive agreement under this subdivision (b)(12) shall:

(i) Include conditions governing the assumption of the duties and responsibilities of the private entity by the responsible public entity and the transfer or purchase of property or other interests of the private entity by the responsible public entity; and

(ii) Be consistent with § 22-10-304.

(c) The comprehensive agreement may include the following:

(1) Any terms and conditions that the responsible public entity determines will serve the public purpose of this chapter, including without limitation provisions regarding unavoidable delays;

(2) Provisions stating when the authority and duties of the private entity under this chapter shall cease and the qualifying project is accordingly dedicated to either the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to the affected local jurisdiction for public use; and

(3) A provision for the development of phases or segments of the qualifying project.

(d) A modification of the terms of the comprehensive agreement shall be:

(1) Agreed upon by the responsible public entity and the private entity; and

(2) Added to the comprehensive agreement by written amendment.

22-10-304. Material default – Assumption of responsibilities and duties.

(a) If there is a material default by a private entity, the responsible public entity may terminate an interim agreement or a comprehensive agreement and exercise any other rights and remedies that may be available to the responsible public entity, including without limitation claims under the maintenance, payment, and performance bonds, letter of credit, or other forms of security required under § 22-10-303.

(b)(1) The responsible public entity may assume the responsibilities and duties of the private entity of the qualifying project.

(2) If a responsible public entity assumes the responsibilities and duties of a private entity under this subsection, the responsible public entity shall succeed to all of the rights, title, and interest in the qualifying project subject to any liens on revenues previously granted by the

private entity to any person providing financing for the qualifying project.

(c)(1) A responsible public entity having the power of condemnation under state law may exercise the power of condemnation to acquire a qualifying project if there is a material default by a private entity.

(2) A person who has provided financing for a qualifying project and the private entity, to the extent of its capital investment, may participate in any condemnation proceedings brought by a responsible public entity with the standing of a property owner.

(d)(1) If a responsible public entity assumes the responsibilities and duties of a qualifying project under subsection (b) of this section, the responsible public entity may develop the qualifying project, impose user fees, impose and collect lease payments for the use of the qualifying project, and comply with any service contracts as if it were the private entity.

(2)(A) Revenues that are subject to a lien shall be collected for the benefit of and paid to secured parties, as their interests may appear, to the extent necessary to satisfy the private entity's obligations to secured parties, including without limitation the maintenance of reserves.

(B) Liens paid under subdivision (d)(2)(A) of this section shall be correspondingly reduced and released when paid off entirely.

(3)(A) Before making payments to or for the benefit of a secured party, the responsible public entity may use revenues to pay current operation and maintenance costs of the qualifying project, including without limitation compensation to the responsible public entity for its services in operating and maintaining the qualifying project.

(B) The responsible public entity's right to receive payment under subdivision (d)(3)(A) of this section shall be considered just compensation for the qualifying project.

(4)(A) The full faith and credit of the responsible public entity shall not be pledged to secure any financing of the private entity when the responsible public entity assumes the responsibilities and duties of a qualifying project.

(B) The responsible public entity's assumption of the operation of a qualifying project does not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues derived from the qualifying project.

22-10-305. Financing of a qualifying project.

(a)(1) Financing of a qualifying project may be in such amounts and upon such terms and conditions as stated in the interim agreement or the comprehensive agreement.

(2) The private entity and the responsible public entity may propose to utilize any funding resources available to them and, to the fullest extent permitted by applicable law, may issue debt, equity, or other securities or obligations, enter into leases, access designated trust funds, borrow or accept grants from a state infrastructure bank, and secure financing with a pledge of, security interest in, or lien on the responsible public entity's or the private entity's property, including without limitation any property interests in the qualifying project.

(b)(1) The responsible public entity may take action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this chapter, including without limitation entering into any contracts required to receive such assistance.

(2) All or any portion of the costs of a qualifying project to may be paid, directly or indirectly, from the proceeds of a grant or loan made by a local government, the state government, the federal government, or an agency or instrumentality of a local government, the state government, or the federal government if it would serve the public purpose of this chapter.

22-10-306. Service contracts.

A public entity may contract with a private entity for the delivery of services to be provided as part of a qualifying project in exchange for service payments or other consideration that the public entity deems appropriate.

Subchapter 4 – Other Powers and Responsibilities22-10-401. Eminent domain – Dedication.

(a)(1) This chapter does not alter the eminent domain laws of this state or grant the power of eminent domain to any person who is not expressly granted that power under other state law.

(2) The power of eminent domain shall not be delegated to a

private entity with respect to a qualifying project commenced or proposed under this chapter.

(b)(1) A responsible public entity may dedicate any property interest, including land, improvements, and tangible personal property, that the responsible public entity has for public use in a qualifying project if so doing will serve the public purpose of this chapter by minimizing the cost of a qualifying project to the responsible public entity or reducing the delivery time of a qualifying project.

(2)(A) In connection with a dedication under subdivision (b)(1) of this section, a responsible public entity may convey any property interest that the responsible public entity has, subject to the conditions imposed by general law governing such conveyances, to a private entity subject to this chapter for adequate consideration as determined by the responsible public entity.

(B) The consideration paid under subdivision (b)(2)(A) of this section may include the agreement of the private entity to develop the qualifying project.

(3) The property interests that a responsible public entity may convey to a private entity in connection with a dedication under this section may include licenses, franchises, easements, or any other right or interest the responsible public entity deems appropriate.

22-10-402. Sovereign immunity.

The conduct of a public entity, an affected local jurisdiction, or an officer or employee of a public entity or an affected local jurisdiction under this chapter does not waive the sovereign immunity of the public entity, the affected local jurisdiction, or the officer or employee of the public entity or affected local jurisdiction with respect to the participation in or approval of all or any part of a qualifying project or its operation, including without limitation the interconnection of the qualifying project with any other infrastructure or project.

22-10-403. Law enforcement jurisdiction.

Police officers of a responsible public entity and of each affected local jurisdiction have the same powers and jurisdiction within the limits of the qualifying project as the police officers have in their respective areas

of jurisdiction, and the police officers shall have access to each qualifying project in their jurisdiction at any time for the purpose of exercising their powers and jurisdiction.

22-10-404. Open meetings – Disclosure of records.

(a) This chapter does not abrogate the obligation of a responsible public entity or the Legislative Task Force on the Partnership for Public Facilities and Infrastructure to comply with the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) However, records that would otherwise be exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., remain exempt when in the custody or control of a responsible public entity or the task force.

Subchapter 5 – Legislative Task Force on the Partnership for Public Facilities and Infrastructure

22-10-501. Creation – Meetings – Staff.

(a) There is created the Legislative Task Force on the Partnership for Public Facilities and Infrastructure.

(b)(1) The task force shall be composed of no more than twenty (20) members. The number of members shall be determined by agreement between the Chair of the Senate Committee on State Agencies and Governmental Affairs and the Chair of the House Committee on State Agencies and Governmental Affairs.

(2) The Chair of the Senate Committee on State Agencies and Governmental Affairs and the Chair of the House Committee on State Agencies and Governmental Affairs shall appoint the membership for each biennium pursuant to the procedure agreed upon by the respective chairs.

(3) The task force shall include members of the General Assembly and members of the public.

(4)(A) The task force shall have two (2) cochairs who are members of the General Assembly.

(B) One (1) cochair shall be a member of the Senate, and one (1) cochair shall be a member of the House of Representatives.

(c) The task force shall meet at least annually.

(d) The legislative members of the task force shall be entitled to

mileage and per diem at the same rate as for attending other legislative committees.

(e) The task force shall receive staff support from the Bureau of Legislative Research.

22-10-502. Powers and duties.

The Legislative Task Force on the Partnership for Public Facilities and Infrastructure shall:

(1) Review, discuss, and advise on issues related to this chapter;

(2) Monitor case-study projects and evaluate performance and outcomes relevant to public-private partnerships;

(3) Serve as a reference for educational resources;

(4) Ask for a review of any request for proposals for a qualifying project or any proposal for a qualifying project;

(5) Develop goals and strategies to promote public-private partnerships under this subchapter;

(6) Work in consultation with the Joint Adequacy Evaluation Oversight Subcommittee of the House Committee on Education and the Senate Committee on Education or the Commission for Arkansas Public School Academic Facilities and Transportation to consider, evaluate, and discuss the application of this chapter to public school districts; and

(7) Develop model guidelines to assist responsible public entities in adopting the guidelines required under § 22-10-201.

/s/Sabin