

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1298

H.P. 884

House of Representatives, April 9, 2015

An Act Relating to the Creation of Public-private Facilities and Infrastructure

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative WARD of Dedham.

Cosponsored by Representatives: CAMPBELL of Orrington, GREENWOOD of Wales, GUERIN of Glenburn, LOCKMAN of Amherst, PICKETT of Dixfield, TUELL of East Machias, TURNER of Burlington.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA c. 167** is enacted to read:

3 **CHAPTER 167**

4 **PUBLIC-PRIVATE INFRASTRUCTURE AGREEMENTS**

5 **§2041. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 **1. Affected jurisdiction.** "Affected jurisdiction" means a county, municipality or
9 unorganized territory in which all or a portion of a qualifying project is located.

10 **2. Comprehensive agreement.** "Comprehensive agreement" means an agreement
11 between a contracting person and a responsible governmental entity pursuant to section
12 2050-C.

13 **3. Contracting person.** "Contracting person" means a person who enters into a
14 comprehensive agreement or interim agreement with a responsible governmental entity
15 under this chapter.

16 **4. Develop.** "Develop" means to plan, design, develop, lease, acquire, install,
17 construct or expand a qualifying project.

18 **5. Governmental entity.** "Governmental entity" means:

19 A. A board, commission, department or agency of the State authorized by the
20 Governor to operate in accordance with this chapter;

21 B. An institution of higher education as defined in Title 20-A, section 12501-A,
22 subsection 11 that elects to operate in accordance with this chapter through the
23 adoption of a resolution by the institution; or

24 C. A city, town, plantation or county that elects to operate in accordance with this
25 chapter through the adoption of a resolution by the legislative body of the city, town,
26 plantation or county.

27 **6. Interim agreement.** "Interim agreement" means an agreement between a
28 contracting person and a responsible governmental entity pursuant to section 2050-D.

29 **7. Lease payment.** "Lease payment" means any form of payment, including a land
30 lease, by a governmental entity to a contracting person for the use of a qualifying project.

31 **8. Material default.** "Material default" means a default by a contracting person in
32 the performance of duties that jeopardizes adequate service to the public from a
33 qualifying project.

34 **9. Operate.** "Operate" means to finance, maintain, improve, equip, modify, repair or
35 operate a qualifying project.

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10. Qualifying project. "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, public works facility, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building or other similar facility that will be used by a governmental entity for public use, including any 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. Any improvements to unimproved real estate determined by a governmental entity to be necessary or desirable.

11. Responsible governmental entity. "Responsible governmental entity" means a governmental entity that has the authority to develop or operate a qualifying project.

12. Revenue. "Revenue" means all revenue, income, earnings, user fees, lease payments or other service payments that support the development or operation of a qualifying project, including money received from the Federal Government, a governmental entity or any agency or instrumentality of the Federal Government.

13. Service contract. "Service contract" means a contract between a responsible governmental entity and a contracting person under section 2049.

14. Service payment. "Service payment" means a payment to a contracting person under a service contract.

15. User fee. "User fee" means a rate, fee or other charge imposed by a contracting person for the use of all or part of a qualifying project under a comprehensive agreement.

§2042. Declaration of public purpose

1. Public purpose. The Legislature finds that:

A. There is a public need to timely develop and operate education facilities, technology and other public infrastructure and governmental facilities in this State that serve a public need and purpose;

B. The public need may not be wholly satisfied by existing methods of procurement by which qualifying projects are developed and operated;

C. There are inadequate resources to develop new education facilities, technology and other public infrastructure and governmental facilities for the benefit of the citizens of this State, and there is demonstrated evidence that partnerships between public entities and private entities or persons can meet these needs by improving the schedule for delivery, lowering the cost, improving operations and providing other benefits to the public;

D. Financial incentives exist under state and federal tax provisions that encourage public entities to enter into partnerships with private entities or persons to develop qualifying projects;

1 E. Authorizing private entities or persons to develop or operate one or more
2 qualifying projects may serve the public safety, benefit and welfare by making
3 projects available to the public in a more timely or less costly fashion; and

4 F. An action authorized under section 2047 serves a public purpose if the action
5 facilitates the timely development or operation of a qualifying project.

6 **2. Liberal construction.** This chapter must be liberally construed to promote the
7 public purpose as described in this section.

8 **3. Not exclusive.** The procedures in this chapter are not exclusive. This chapter does
9 not prohibit a responsible governmental entity from entering into an agreement for or
10 procuring public and private facilities and infrastructure under other statutory authority.

11 **§2043. Applicability**

12 **1. State highway system.** This chapter does not apply to the financing, design,
13 construction or maintenance of a highway in the state highway system.

14 **2. Eminent domain.** Except as otherwise provided in this chapter, this chapter does
15 not expand or limit any right of eminent domain.

16 **§2044. Authority to enter into agreements**

17 A responsible governmental entity may enter into an agreement with a private entity
18 or person for the development or operation of a qualifying project in accordance with this
19 chapter.

20 **§2045. Adoption of guidelines by responsible governmental entities**

21 **1. Adoption of guidelines required.** Before requesting a proposal under section
22 2047, subsection 2 or considering a proposal under section 2047, subsection 1, a
23 responsible governmental entity must adopt and make available to the public guidelines
24 that comply with this chapter. The guidelines must be reasonable, encourage competition
25 and guide the selection of qualifying projects under the purview of the responsible
26 governmental entity.

27 **2. Guideline contents.** The guidelines adopted by a responsible governmental entity
28 under subsection 1 must:

29 A. Require the responsible governmental entity to make a representative of the
30 responsible governmental entity available to meet with private entities or persons
31 who are considering submitting a proposal for a qualifying project and provide notice
32 of that representative's availability to meet with such private entities or persons;

33 B. Provide reasonable criteria for choosing among competing proposals for a
34 qualifying project and clearly outline selection criteria in requests for proposals;

35 C. Contain a suggested timeline for selecting proposals and entering into an interim
36 agreement or comprehensive agreement;

- 1 D. Require the responsible governmental entity to accelerate the selection, review
2 and documentation timelines for proposals involving a qualifying project considered
3 a priority by the responsible governmental entity;
- 4 E. Include financial review and analysis procedures that at a minimum consist of a
5 cost-benefit analysis, assessment of opportunity cost, consideration of the degree to
6 which functionality and services similar to the functionality and services to be
7 provided by the proposed qualifying project are already available in the private
8 market and consideration of the results of studies and analyses of the proposed
9 qualifying project under paragraph K;
- 10 F. Allow the responsible governmental entity to consider the nonfinancial benefits of
11 the qualifying project;
- 12 G. Include criteria for:
- 13 (1) Evaluating a qualifying project, including the scope, costs and duration of the
14 project and the involvement or effect of the project on multiple public entities;
- 15 (2) The creation and responsibilities of an oversight committee, with members
16 representing the responsible governmental entity, that acts as an advisory
17 committee to review the terms of a proposed interim agreement or
18 comprehensive agreement; and
- 19 (3) Compliance with the requirements of this chapter;
- 20 H. Require the responsible governmental entity to analyze the adequacy of the
21 information to be released by the responsible governmental entity when seeking
22 competing proposals and require that the responsible governmental entity provide
23 detailed information, including but not limited to the selection process for the
24 proposal and for contractors, to encourage competition;
- 25 I. Establish criteria to ensure that the responsible governmental entity considers the
26 extent of the competition before selecting proposals and negotiating an interim
27 agreement or comprehensive agreement;
- 28 J. Require the posting and publishing of a public notice of a request for proposals
29 under section 2047, subsection 2 or of a proposal requesting approval under section
30 2047, subsection 1 including:
- 31 (1) Specific information and documentation regarding the nature, timing and
32 scope of a qualifying project;
- 33 (2) A reasonable period of not less than 45 days, as determined by the
34 responsible governmental entity, during which the responsible governmental
35 entity must accept submission of competing proposals for the qualifying project
36 to encourage competition and partnerships; and
- 37 (3) A requirement for posting the notice on the responsible governmental entity's
38 publicly accessible website and adoption of a public notice process; and
- 39 K. Include a requirement that the responsible governmental entity engage the
40 services of qualified professionals, including an architect, professional engineer and
41 certified public accountant not employed by the responsible governmental entity, to

1 provide independent analyses regarding the specifics, advantages, disadvantages and
2 long-term and short-term costs of any proposal for a qualifying project unless the
3 responsible governmental entity determines the analysis of the proposal is to be
4 performed by employees of the responsible governmental entity.

5 **§2046. Approval required**

6 A private entity or person may not develop or operate a qualifying project under this
7 chapter unless that private entity or person obtains the approval of a responsible
8 governmental entity under this chapter. A private entity or person may initiate the
9 approval process by submitting a proposal requesting approval under section 2047,
10 subsection 1 or a responsible governmental entity may request proposals under section
11 2047, subsection 2.

12 **§2047. Qualifying projects; proposals; approval**

13 **1. Proposal.** A private entity or person may submit to a responsible governmental
14 entity a proposal requesting approval of a qualifying project. A proposal submitted under
15 this subsection must be accompanied by the following, unless waived by a responsible
16 governmental entity:

17 A. A topographic map, with appropriate scale, indicating the location of the
18 qualifying project;

19 B. A description of the qualifying project, including:

20 (1) A conceptual design of the facility or a conceptual plan for the provision of
21 services or technology infrastructure; and

22 (2) A schedule from the initiation to the completion of the qualifying project that
23 includes the proposed major responsibilities and timeline for activities to be
24 performed by the responsible governmental entity and the private entity or
25 person;

26 C. A statement of the method the private entity or person proposes for securing
27 necessary property interests required for the qualifying project;

28 D. Information relating to any plans for the development of facilities or technology
29 infrastructure to be used by a governmental entity that are similar to the qualifying
30 project being proposed by the private entity or person for each affected jurisdiction;

31 E. A list of all permits and approvals required for the development and completion of
32 the qualifying project from local, state or federal agencies and a projected schedule
33 for obtaining permits and approvals;

34 F. A list of any facilities as defined in section 2050-I that will be affected by the
35 qualifying project and a statement of the private entity's or person's plans to
36 accommodate affected facilities;

37 G. A statement concerning the private entity's or person's plans for financing the
38 qualified project, including the sources of the private entity's or person's funds and
39 identification of any dedicated revenue source of the proposed debt or equity
40 investment for the private entity or person;

1 H. The name and address of each individual who may be contacted for further
2 information concerning the proposal;

3 I. User fees, lease payments and other service payments anticipated over the term of
4 any applicable interim agreement or comprehensive agreement and the method and
5 circumstances for changes to the user fees, lease payments and other service
6 payments over time; and

7 J. Any material and information requested by the responsible governmental entity.

8 A responsible governmental entity that makes a determination to reject a proposal
9 submitted under this subsection shall return the proposal, all fees and accompanying
10 documentation to the private entity or person submitting the proposal. Rejected proposals
11 are not public records and to protect the intellectual property of the private entity or
12 person who submitted the proposal may not be retained by the responsible governmental
13 entity.

14 **2. Request for proposals.** A responsible governmental entity may request proposals
15 for the development or operation of a qualifying project. A responsible governmental
16 entity shall consider the total project cost as a factor in evaluating proposals received but
17 is not required to select the proposal that offers the lowest total project cost. When
18 evaluating a response to a request for proposals, the responsible governmental entity may
19 consider the following factors:

20 A. The proposed cost of the qualifying project;

21 B. The general reputation, industry experience and financial capacity of the private
22 entity or person submitting a proposal;

23 C. The proposed design of the qualifying project;

24 D. The eligibility of the project for accelerated selection, review and documentation
25 timelines under the responsible governmental entity's guidelines adopted pursuant to
26 section 2045, subsection 2, paragraph D;

27 E. Comments from local citizens and officials of affected jurisdictions;

28 F. Benefits to the public;

29 G. The private entity's or person's good faith effort to comply with the goals of a
30 historically underutilized business plan;

31 H. The private entity's or person's plans to use contractors that meet pre-bid
32 qualifications according to section 1747 and employ residents of the State for
33 operations and maintenance;

34 I. For a qualifying project that involves a continuing role beyond design and
35 construction, the private entity's or person's proposed rate of return and opportunities
36 for revenue sharing; and

37 J. Criteria the responsible governmental entity considers appropriate.

38 **3. Approval.** A responsible governmental entity may approve a proposal for the
39 development or operation of a qualifying project if the responsible governmental entity

1 determines that the project serves the public purpose of this chapter based on the
2 following:

3 A. There is a public need for or benefit derived from the proposed qualifying project;

4 B. The estimated cost of the proposed qualifying project is reasonable in relation to
5 the cost of similar facilities; and

6 C. The proposal results in the timely development or operation of the qualifying
7 project.

8 **4. Fee.** A responsible governmental entity may charge a reasonable fee to cover the
9 costs of processing, reviewing and evaluating a proposal, including reasonable legal fees
10 and fees for financial, technical and other necessary advisors or consultants.

11 **5. Approval subject to agreement.** The approval of a proposal by a responsible
12 governmental entity is subject to the private entity's or person's entering into a
13 comprehensive agreement with the responsible governmental entity and may be subject to
14 the private entity's or person's entering into an interim agreement.

15 **6. Establishment of start date.** On approval of a qualifying project, the responsible
16 governmental entity shall establish a date by which activities related to the qualifying
17 project must begin. The responsible governmental entity may extend that date.

18 **7. Confidential information.** A responsible governmental entity shall protect
19 confidential and proprietary information provided by the contracting person under an
20 interim agreement and a comprehensive agreement.

21 **8. Submittal to Bureau of General Services.** Before entering into an interim
22 agreement or comprehensive agreement, a responsible governmental entity shall submit
23 copies of proposals to the Department of Administrative and Financial Services, Bureau
24 of General Services.

25 **9. Debt service capacity.** This chapter or an interim agreement or comprehensive
26 agreement entered into under this chapter does not enlarge, diminish or affect any
27 authority a responsible governmental entity has to take action that would affect the debt
28 service capacity of the State.

29 **§2048. Posting of proposals; public comment; public access to procurement records**

30 **1. Notice.** Not later than the 10th day after the date a responsible governmental
31 entity accepts a proposal submitted in accordance with section 2047, the responsible
32 governmental entity shall provide notice of the proposal as follows:

33 A. For a responsible governmental entity described in section 2041, subsection 5,
34 paragraph A or B, by posting on the responsible governmental entity's publicly
35 accessible website; and

36 B. For a responsible governmental entity described in section 2041, subsection 5,
37 paragraph C, by posting a copy of the proposal on the responsible governmental
38 entity's publicly accessible website or publishing in a newspaper of general
39 circulation in the area in which the qualifying project is to be performed a summary

1 of the proposal and the location where copies of the proposal are available for public
2 inspection.

3 **2. Public inspection.** A responsible governmental entity shall make available for
4 public inspection at least one copy of the proposal under subsection 1. This section does
5 not prohibit the responsible governmental entity from posting the proposal in another
6 manner considered appropriate by the responsible governmental entity to provide
7 maximum notice to the public of the opportunity to inspect the proposal.

8 **3. Posting exclusions.** Trade secrets, financial records or other records of a
9 contracting person excluded from disclosure under this chapter may not be posted or
10 made available for public inspection pursuant to this section except as otherwise agreed
11 by the responsible governmental entity and the contracting person.

12 **4. Public hearing.** A responsible governmental entity shall hold a public hearing on
13 the proposal under subsection 1 during the proposal review process not later than the 30th
14 day before the date the entity enters into an interim agreement or comprehensive
15 agreement.

16 **5. Notice upon completion of negotiation.** When the negotiation phase for the
17 development of an interim agreement or comprehensive agreement is complete and
18 before an interim agreement or comprehensive agreement is entered into, a responsible
19 governmental entity shall make available the proposed agreement in a manner provided
20 by subsection 1 or 2.

21 **6. Procurement records.** Except as otherwise provided in this subsection, a
22 responsible governmental entity that has entered into an interim agreement or
23 comprehensive agreement shall make procurement records available for public inspection
24 on request. For purposes of this subsection, the following are designated as confidential
25 for purposes of Title 1, section 402, subsection 3, paragraph A:

26 A. Trade secrets of the contracting person or the financial records, including balance
27 sheets and financial statements of the contracting person, that are not generally
28 available to the public through other means; and

29 B. Cost estimates relating to a proposed procurement transaction prepared by or for a
30 responsible governmental entity.

31 An inspection of procurement transaction records under this subsection is subject to
32 reasonable restrictions to ensure the security and integrity of the records.

33 This section applies to any proposal under subsection 1 regardless of whether the
34 proposal results in an interim agreement or comprehensive agreement.

35 **§2049. Service contracts**

36 A responsible governmental entity may contract with a contracting person for the
37 delivery of services to be provided as part of a qualifying project in exchange for service
38 and other consideration as the responsible governmental entity considers appropriate.

1 **§2050. Affected jurisdictions**

2 A private entity or person submitting a proposal to a responsible governmental entity
3 under section 2047 shall provide a copy of that proposal to each affected jurisdiction.
4 Not later than the 60th day after the date an affected jurisdiction receives the notice
5 required under this section, the affected jurisdiction shall submit in writing to the
6 responsible governmental entity comments the affected jurisdiction has on the proposed
7 qualifying project indicating whether the facility or project is compatible with a local
8 comprehensive plan, a local infrastructure development plan, a capital improvements
9 budget or other government spending plan. The responsible governmental entity shall
10 consider the submitted comments before entering into a comprehensive agreement with a
11 contracting person.

12 **§2050-A. Dedication and conveyance of public property**

13 **1. Dedication of property interest for public use.** A responsible governmental
14 entity may dedicate for public use a property interest in land, improvements and tangible
15 personal property if the responsible governmental entity finds that the dedication of the
16 property interest will serve the public purpose of this chapter by minimizing the cost of a
17 qualifying project to the responsible governmental entity or reducing the delivery time of
18 a qualifying project. A responsible governmental entity may not dedicate a property
19 interest under this subsection unless the responsible governmental entity obtains an
20 appraisal of the land, improvements or tangible property.

21 **2. Conveyance of property interest to contracting person.** A responsible
22 governmental entity may convey a property interest in property dedicated for public use
23 under subsection 1 to a contracting person for consideration as determined by the
24 responsible governmental entity. Consideration may include an agreement by the
25 contracting person to develop or operate the qualifying project. A property interest under
26 this subsection includes a license, franchise, easement or other right or interest the
27 responsible governmental entity considers appropriate and is subject to conditions
28 imposed by general law governing the conveyance and subject to the rights of an existing
29 utility under a license, franchise, easement or other right or interest under law.

30 **§2050-B. Powers and duties of contracting person**

31 **1. Powers.** A contracting person may:

32 A. Exercise the powers granted by general law to a person that has the same form of
33 organization as the contracting person and governing the business or activity of the
34 contracting person;

35 B. Develop or operate a qualifying project and collect lease payments, impose fees
36 and enter into service contracts in connection with the use of a qualifying project;

37 C. Impose a user fee or increase a user fee if the fee or increase is approved by the
38 responsible governmental entity;

39 D. Own, lease or acquire any right to use or operate a qualifying project;

1 E. Finance a qualifying project in an amount and according to terms determined by
2 the contracting person. A contracting person may issue debt, equity or other securities
3 or obligations, enter into sale and leaseback transactions and secure any financing
4 with a pledge of security interest in or lien on any or all of the contracting person's
5 property, including all of the contracting person's property interests in the qualifying
6 project; and

7 F. In operating a qualifying project, establish classifications according to reasonable
8 categories for assessment of user fees and, with the consent of the responsible
9 governmental entity, adopt and enforce reasonable rules for the qualifying project to
10 the same extent as the responsible governmental entity.

11 **2. Duties.** A contracting person shall:

12 A. Develop or operate a qualifying project in a manner that is acceptable to the
13 responsible governmental entity and in accordance with an applicable interim
14 agreement or comprehensive agreement;

15 B. Subject to subsection 3, keep a qualifying project open for use by the public at all
16 times or as appropriate based on the use of the project after its initial opening on
17 payment of applicable user fees, lease payments or service payments;

18 C. Maintain or provide by contract for the maintenance or upgrade of a qualifying
19 project if required by an applicable interim agreement or comprehensive agreement;

20 D. Cooperate with the responsible governmental entity to establish any
21 interconnection with the qualifying project requested by the responsible
22 governmental entity; and

23 E. Comply with an applicable interim agreement or comprehensive agreement and a
24 lease or service contract.

25 **3. Temporary closure.** A contracting person may temporarily close a qualifying
26 project because of emergencies or, with the consent of the responsible governmental
27 entity, to protect public safety or for reasonable construction or maintenance activities.

28 **4. Additional services.** This chapter does not prohibit a contracting person from
29 providing additional services for the qualifying project to persons other than the
30 responsible governmental entity, as long as the provision of additional services does not
31 impair the contracting person's ability to meet the contracting person's commitments to
32 the responsible governmental entity under an applicable interim agreement or
33 comprehensive agreement.

34 **§2050-C. Comprehensive agreement**

35 **1. Requirements.** Before developing or operating a qualifying project, a contracting
36 person shall enter into a comprehensive agreement with a responsible governmental
37 entity. The comprehensive agreement must require the following:

38 A. Delivery of letters of credit or other security in connection with the development
39 or operation of a qualifying project, in the forms and amounts satisfactory to the

1 responsible governmental entity, and delivery of performance and payment bonds for
2 all construction activities;

3 B. Review of plans and specifications for the qualifying project by the responsible
4 governmental entity and approval by the responsible governmental entity. The plans
5 and specifications must conform to standards acceptable to the responsible
6 governmental entity, except that the contracting person may not be required to
7 complete the design of a qualifying project before execution of a comprehensive
8 agreement;

9 C. Inspection of the qualifying project by the responsible governmental entity to
10 ensure that the contracting person's activities are acceptable to the responsible
11 governmental entity in accordance with the comprehensive agreement;

12 D. Maintenance of a public liability insurance policy, copies of which must be filed
13 with the responsible governmental entity accompanied by proofs of coverage, or self-
14 insurance, each in the form and amount satisfactory to the responsible governmental
15 entity and reasonably sufficient to ensure coverage of tort liability to the public and
16 project employees and to enable the continued operation of the qualifying project;

17 E. Monitoring of the practices of the contracting person by the responsible
18 governmental entity to ensure that the qualifying project is properly maintained;

19 F. Reimbursement to be paid to the responsible governmental entity for services
20 provided by the responsible governmental entity;

21 G. Filing of appropriate financial statements on a periodic basis or as agreed upon in
22 the comprehensive agreement;

23 H. Policies and procedures governing the rights and responsibilities of the
24 responsible governmental entity and the contracting person if the comprehensive
25 agreement is terminated or there is a material default by the contracting person;

26 I. Assumption of the duties and responsibilities of the contracting person by the
27 responsible governmental entity if determined necessary by the responsible
28 governmental entity; and

29 J. The transfer or purchase of property or other interests of the contracting person to
30 the responsible governmental entity if determined necessary by the responsible
31 governmental entity.

32 **2. User fee, lease payment or service payment.** A comprehensive agreement must
33 establish any user fee, lease payment or service payment established by agreement of the
34 contracting person and the responsible governmental entity. In negotiating a user fee
35 under this section, the parties shall establish a payment or fee that is the same for persons
36 using the qualifying project under like conditions and that will not materially discourage
37 use of the qualifying project. The execution of a comprehensive agreement or an
38 amendment to the comprehensive agreement is conclusive evidence that a user fee, lease
39 payment or service payment complies with this chapter. A user fee or lease payment
40 established in a comprehensive agreement as a source of revenue may be in addition to,
41 or in lieu of, a service payment.

1 **3. Grants and loans.** A comprehensive agreement may authorize the responsible
2 governmental entity to make grants or loans to the contracting person from money
3 received from the Federal Government, the State Government or the local government or
4 any agency or instrumentality of the government.

5 **4. Terms.** A comprehensive agreement must incorporate the duties of the
6 contracting person under this chapter and may contain terms the responsible
7 governmental entity determines serve the public purpose of this chapter. The
8 comprehensive agreement may contain:

9 A. Provisions that require the responsible governmental entity to provide notice of
10 default and cure rights for the benefit of the contracting person and the persons
11 specified in the agreement as providing financing for the qualifying project;

12 B. Terms to which the contracting person and the responsible governmental entity
13 mutually agree, including provisions regarding unavoidable delays or providing for a
14 loan of public money to the contracting person to develop or operate one or more
15 qualifying projects; and

16 C. Provisions in which the authority and duties of the contracting person under this
17 chapter cease and the qualifying project is dedicated for the public use to the
18 responsible governmental entity.

19 **5. Changes to agreement.** A change in terms of a comprehensive agreement that
20 the parties agree to must be added to the comprehensive agreement by written
21 amendment.

22 **6. Phases.** A comprehensive agreement may provide for the development or
23 operation of phases or segments of a qualifying project.

24 **§2050-D. Interim agreements**

25 Before entering into a comprehensive agreement, a responsible governmental entity
26 may enter into an interim agreement with a contracting person proposing the development
27 or operation of a qualifying project. An interim agreement may:

28 **1. Project phases.** Authorize a contracting person to begin project phases or
29 activities for which the contracting person may be compensated relating to the proposed
30 qualifying project, including project planning and development, design, engineering,
31 environmental analysis and mitigation, surveying and financial and revenue analysis,
32 including ascertaining the availability of financing for the qualifying project;

33 **2. Negotiation timing and process.** Establish a process and timing for the
34 negotiation of a comprehensive agreement; and

35 **3. Other provisions.** Contain provisions related to any aspect of the development or
36 operation of a qualifying project that the responsible governmental entity and the
37 contracting person consider appropriate.

1 **§2050-E. Federal, state and local assistance**

2 **1. Funding sources.** A contracting person and a responsible governmental entity
3 may use any funding sources that are available to the parties, including designated trust
4 fund grants.

5 **2. Assistance.** A responsible governmental entity may obtain federal, state or local
6 assistance for a qualifying project that serves the public purpose of this chapter and may
7 enter into any contracts required to receive the assistance.

8 **3. Appropriation.** If a responsible governmental entity is a state agency, any money
9 received from the State Government or the Federal Government or any agency or
10 instrumentality of the State Government or the Federal Government is subject to
11 appropriation by the Legislature.

12 **4. Government grants and loans.** A qualifying project may be directly or
13 indirectly paid for from the proceeds of a grant or loan made by a local government or the
14 State Government or the Federal Government or any agency or instrumentality of the
15 government.

16 **§2050-F. Performance and payment bonds**

17 The construction, remodel or repair of a qualifying project may be performed only
18 after performance and payment bonds for the construction, remodel or repair have been
19 executed in accordance with requirements in chapter 153 regardless of whether the
20 qualifying project is on public or private property or is publicly or privately owned.

21 For purposes of this section, a qualifying project is considered a public work under
22 chapter 153 and the responsible governmental entity shall assume the obligations and
23 duties of a governmental entity under that chapter. The obligee under a performance bond
24 under this section may be a public entity, a private person or an entity consisting of both a
25 public entity and a private person.

26 **§2050-G. Material default; remedies**

27 **1. Assumption of duties.** If a contracting person commits a material default under a
28 comprehensive agreement, a responsible governmental entity may assume the
29 responsibilities and duties of the contracting person. If a responsible governmental entity
30 assumes the responsibilities and duties of the contracting person under this subsection,
31 the responsible governmental entity has all the rights, title and interest in the qualifying
32 project, subject to any liens on revenue previously granted by the contracting person to
33 any person providing financing for the project, and may:

- 34 A. Develop or operate the qualifying project;
35 B. Impose user fees;
36 C. Impose and collect lease payments for the use of the project; and
37 D. Comply with any applicable contract to provide services.

1 **2. Eminent domain.** A responsible governmental entity that has the power of
2 eminent domain under state law may exercise that power to acquire a qualifying project
3 in the event of a material default by the contracting person. A person who has provided
4 financing for the qualifying project and the contracting person to the extent of the
5 contracting person's capital investment may participate in the eminent domain
6 proceedings with the standing of a property owner.

7 **3. Termination.** A responsible governmental entity may terminate with cause an
8 interim agreement or comprehensive agreement and exercise any other rights and
9 remedies available to the responsible governmental entity at law or in equity.

10 **4. Security.** A responsible governmental entity may make a claim under letters of
11 credit, other security or performance and payment bonds.

12 **5. Payment to secured parties.** If a responsible governmental entity terminates a
13 comprehensive agreement, the responsible governmental entity shall collect and pay to
14 secured parties any revenue subject to a lien to the extent necessary to satisfy the
15 contracting person's obligations to secured parties, including maintenance of reserves.
16 The liens must be correspondingly reduced and, when paid off, released.

17 **6. Operation and maintenance costs.** Before any payment is made to or for the
18 benefit of a secured party, a responsible governmental entity may use revenue to pay the
19 operation and maintenance costs of a qualifying project, including compensation to the
20 responsible governmental entity for its services in operating and maintaining the
21 qualifying project. The right to receive any payment is considered just compensation for
22 the qualifying project.

23 **7. Full faith and credit.** The full faith and credit of a governmental entity may not
24 be pledged to secure any financing of the contracting person that was assumed by the
25 governmental entity if the governmental entity assumes responsibility for the qualifying
26 project.

27 **§2050-H. Eminent domain**

28 At the request of a contracting person, a responsible governmental entity may
29 exercise any power of eminent domain that it has to acquire any land or property interest
30 to the extent that the responsible governmental entity dedicates the land or property
31 interest to public use and finds that the action serves the public purpose of this chapter.
32 Any amounts to be paid in an eminent domain proceeding must be paid by the contracting
33 person.

34 **§2050-I. Affected facilities**

35 **1. Cooperation.** A contracting person and each facility owner, including the owner
36 of a public utility, a public service company or a cable television provider, whose
37 facilities will be affected by a qualifying project shall cooperate fully in planning and
38 arranging the manner in which the facilities will be affected.

39 **2. Disruption of service.** A contracting person and the responsible governmental
40 entity shall ensure that a facility owner whose facility will be affected by a qualifying

1 project does not suffer a disruption of service as a result of the construction or
2 improvement of the qualifying project.

3 **3. Relocation of facilities.** A governmental entity possessing the power of eminent
4 domain may exercise that power in connection with the relocation of facilities affected by
5 a qualifying project or facilities that must be relocated to the extent that the relocation is
6 necessary due to construction of, renovation to or improvements to a qualifying project,
7 which includes construction of, renovation to or improvements to temporary facilities to
8 provide service during the period of construction, renovation or improvement of the
9 qualifying project. A governmental entity shall exercise its power of eminent domain to
10 the extent required to ensure the owner of an affected facility does not suffer a disruption
11 of service as a result of the construction, renovation or improvement of the qualifying
12 project during construction, renovation or improvement or after the qualifying project is
13 completed, renovated or improved.

14 **4. Cost.** A contracting person shall pay any amount owed for the construction or
15 relocation of facilities under this section.

16 For the purposes of this section, "facility" means real estate and improvements used
17 principally for commercial purposes.

18 **§2050-J. Procurement guidelines**

19 **1. State procurement laws.** State procurement laws and rules and the
20 interpretations of those laws and rules do not apply to a qualifying project unless
21 specified in this chapter.

22 **2. Professional services.** This chapter does not authorize a responsible
23 governmental entity or a contracting person to obtain professional services except in
24 accordance with this chapter.

25 **3. Replacement of professionals.** Professionals identified in an interim agreement
26 or comprehensive agreement, including the identified architect, engineer and builder, may
27 not be substituted or replaced after a qualifying project is approved and the interim
28 agreement or comprehensive agreement is executed without the written approval of the
29 responsible governmental entity.

30 **SUMMARY**

31 This bill authorizes and establishes a framework for governmental entities to enter
32 into agreements with private entities and persons to develop or operate qualifying
33 projects, including, but not limited to, ferries, mass transit facilities, vehicle parking
34 facilities, port facilities, power generation facilities, fuel supply facilities, oil or gas
35 pipelines, water supply facilities, public works facilities, waste treatment facilities,
36 hospitals, schools, medical facilities, nursing care facilities and recreational facilities.