

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE DRS15111-MC-143 (3/9)

Short Title: Education Infrastructure Act.

(Public)

Sponsors: Senator Jenkins.

Referred to:

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.



- 1           (11) Public entity. – The State and any agency or authority thereof, any county or  
2 city, and any other political subdivision of the State or any regional entity  
3 that serves a public purpose.  
4           (12) Qualifying project. – Any of the following:  
5           a. Any education facility, including, but not limited to, a school  
6 building, any functionally related and subordinate facility and land to  
7 a school building (including any stadium or other facility primarily  
8 used for school events), and any depreciable property provided for  
9 use in a school facility that is operated as part of the public school  
10 system or as an institution of higher education.  
11           b. Any building or facility that meets a public purpose and is developed  
12 or operated by or for any public entity.  
13           c. Any improvements, together with equipment, necessary to enhance  
14 public safety and security of buildings to be principally used by a  
15 public entity.  
16           d. Utility and telecommunications and other communications  
17 infrastructure.  
18           e. A recreational facility.  
19           f. Technology infrastructure, including, but not limited to,  
20 telecommunications, automated data processing, word processing  
21 and management information systems, and related information,  
22 equipment, goods, and services.  
23           g. Any technology, equipment, or infrastructure designed to deploy  
24 wireless broadband services to schools, businesses, or residential  
25 areas.  
26           h. Any improvements necessary or desirable to any unimproved locally  
27 or state-owned real estate.  
28           Any road or bridge construction project, unless ancillary to the development  
29 of a qualifying project, shall not constitute a qualifying project.  
30           (13) Responsible public entity. – A public entity that has the power to develop or  
31 operate the applicable qualifying project.  
32           (14) Revenues. – All revenue, income, earnings, user fees, lease payments, or  
33 other service payments arising out of or in connection with supporting the  
34 development or operation of a qualifying project, including money received  
35 as grants or otherwise from the United States government, from any public  
36 entity, or from any agency or instrumentality of the foregoing in aid of the  
37 facility.  
38           (15) Service contract. – A contract entered into between a public entity and the  
39 private entity pursuant to G.S. 115F-6.  
40           (16) Service payments. – Payments to the private entity of a qualifying project  
41 pursuant to a service contract.  
42           (17) User fees. – The rates, fees, or other charges imposed by the private entity of  
43 a qualifying project for use of all or a portion of the qualifying project  
44 pursuant to the comprehensive agreement pursuant to G.S. 115F-10.

45 **§ 115F-2. Reserved for future codification purposes.**

46 **§ 115F-3. Reserved for future codification purposes.**

47 **§ 115F-4. Adoption of guidelines by responsible public entities.**

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

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

22 **"§ 115F-5. Approval of qualifying projects by the responsible public entity.**

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

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

- 1           (8)    The names and addresses of the persons who may be contacted for further  
2           information concerning the request.
- 3           (9)    User fees, lease payments, and other service payments over the term of the  
4           interim or comprehensive agreement pursuant to G.S. 115F-10 and the  
5           methodology and circumstances for changes to user fees, lease payments,  
6           and other service payments over time.
- 7           (10) Any additional material and information as the responsible public entity may  
8           reasonably request.

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

- 19           (1)    There is a public need for or benefit derived from the qualifying project of  
20           the type the private entity proposes as a qualifying project.
- 21           (2)    The estimated cost of the qualifying project is reasonable in relation to  
22           similar facilities.
- 23           (3)    The private entity's plans will result in the timely development or operation  
24           of the qualifying project.

25          (c)    Reserved for future codification purposes.

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

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

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

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

39          "**§ 115F-6. Service contracts.**

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

44          "**§ 115F-7. Notice; comment.**

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

48          (b)    Responsive Comment. – Each affected local jurisdiction shall, within 60 days after  
49          receiving such notice, submit in writing to the responsible public entity any comments it may  
50          have on the proposed qualifying project and indicate whether the facility is compatible with the  
51          local comprehensive plan, local infrastructure development plans, the capital improvements

1 budget, or other government spending plan. Such comments shall be given consideration by the  
2 responsible public entity prior to entering a comprehensive agreement pursuant with a private  
3 entity.

4 **"§ 115F-8. Dedication of public property.**

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

16 **"§ 115F-9. Powers and duties of the operator.**

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

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

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

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

- 31 (1) Make classifications according to reasonable categories for assessment of  
32 user fees.  
33 (2) With the consent of the responsible public entity, make and enforce  
34 reasonable rules to the same extent that the responsible public entity may  
35 make and enforce rules with respect to similar facilities.

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

- 37 (1) Develop or operate the qualifying project in a manner that is acceptable to  
38 the responsible public entity, all in accordance with the provisions of the  
39 interim or comprehensive agreement pursuant to G.S. 115F-10 or  
40 G.S. 115F-11.  
41 (2) Keep the qualifying project open for use by the members of the public at all  
42 times, or as appropriate based upon the use of the facility, after its initial  
43 opening upon payment of the applicable user fees, lease payments, or service  
44 payments. The qualifying project may be temporarily closed because of  
45 emergencies or, with the consent of the responsible public entity, to protect  
46 the safety of the public or for reasonable construction or maintenance  
47 activities. In the event that a qualifying project is technology infrastructure,  
48 access may be limited as determined by the conditions of the interim or  
49 comprehensive agreement.  
50 (3) Maintain, or provide by contract for the maintenance or upgrade of the  
51 qualifying project, if required by the comprehensive agreement.

1           (4) Cooperate with the responsible public entity in making best efforts to  
2           establish any interconnection with the qualifying project requested by the  
3           responsible public entity.

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

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

12           **"§ 115F-10. Comprehensive agreement.**

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

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

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

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

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

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

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

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

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

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

1 service payments provided for comply with this Chapter. User fees or lease payments  
2 established in the comprehensive agreement as a source of revenue may be in addition to, or in  
3 lieu of, service payments.

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

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

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

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

24 **"§ 115F-11. Interim agreement.**

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

38 **"§ 115F-12. Federal, State, and local assistance.**

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

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

1 The responsible public entity may determine that it serves the public purpose of this Chapter  
2 for all or any portion of the costs of a qualifying project to be paid, directly or indirectly, from  
3 the proceeds of a grant or loan made by the local, State, or federal government or any agency or  
4 instrumentality thereof.

5 **"§ 115F-13. Material default; remedies.**

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

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

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

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

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

38 **"§ 115F-14. Condemnation.**

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

42 **"§ 115F-15. Utility crossing.**

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



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

11 **"§ 115F-16. Police powers; violations of law.**

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

16 **"§ 115F-17. Sovereign immunity.**

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

23 **"§ 115F-18. Procurement.**

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

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

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

1 plans to employ local contractors and residents; and (ix) other criteria that  
2 the responsible public entity deems appropriate. When the responsible public  
3 entity determines to proceed according to the guidelines adopted by it  
4 pursuant to this subdivision, it shall state the reasons for its determination in  
5 writing. If a State agency is the responsible public entity, the approval of the  
6 agency's head is required before the responsible public entity may enter into  
7 a comprehensive agreement pursuant to this subdivision.

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

13 **"§ 115F-19. Posting of proposed qualifying projects; public comment; public access to**  
14 **procurement records.**

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

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

1           (6)    Cost estimates relating to a proposed procurement transaction prepared by or  
2                    for a responsible public entity shall not be open to public inspection."

3           **SECTION 2.** It is the intent of the General Assembly that the Joint Legislative  
4 Commission on Governmental Operations will facilitate the development of model procedures  
5 to assist in the implementation of this act, that public entities and private sector businesses,  
6 including construction management firms, contractors, and design professionals, will be  
7 consulted in the development of such procedures, and that such model procedures will be  
8 completed and made available to public entities covered by this act not later than December 31,  
9 2009.

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