This document is intended as a model for legislation enabling public-private partnerships. Not all provisions will be appropriate or possible in all states or jurisdictions.

A BILL FOR AN ACT

RELATING TO PUBLIC-PRIVATE PARTNERSHIPS FOR PUBLIC INFRASTRUCTURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF [add state name]:

SECTION 1. The Legislature makes the following findings:

(1) It is important for the economic, social, and environmental well-being of the State that the people of the State have sufficient quality public infrastructure.

(2) The ability of the State to provide sufficient quality public infrastructure will be enhanced by a program providing for private entities to undertake all or a portion of the study, planning, design, development, financing, acquisition, installation, construction, reconstruction, improvement, operation, and/or maintenance of public infrastructure facilities, including facilities related to transportation, water,
wastewater, public buildings or any other public facility, and appurtenances thereto.

(3) Public-private initiatives provide the public sector with increased access to project opportunities and private sector expertise by:

(a) Facilitating the collaboration and cost and risk sharing in public infrastructure projects between public and private partners;

(b) Bringing innovative thinking from the private sector to bear on public infrastructure needs within the State;

(c) Reducing the public cost of project delivery and services for eligible facilities;

(d) Expediting project delivery;

(e) Encouraging life cycle efficiencies in public infrastructure projects;

(f) Fostering flexibility in procurement methods to provide the best value to the public; and

(g) Providing better use and leverage of public resources, increasing private investment in public infrastructure facilities, enhancing capital formation for large projects and providing savings to taxpayers.
The Legislature intends that the powers granted to cities, local agencies, counties, special districts, regional transportation agencies, any department or agency of the State and any other agencies in this Act are in addition to any other powers authorized under applicable law.

SECTION 2. [Add statutory reference] are amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER [add chapter number]

PUBLIC-PRIVATE PARTNERSHIP IN PUBLIC INFRASTRUCTURE

§ A Definitions. Whenever used in this chapter, unless the context otherwise requires:

"Eligible facility" means any facility developed, operated or held in accordance with this Act, including any existing, enhanced, upgraded or new facility used or useful as public infrastructure, including, but not limited to, facilities related to transportation, water, wastewater, public buildings and any other public facilities, as well as appurtenances thereto.

"Private partner" means a person, entity, or organization that is not the federal government or any other public sponsor.

“Public private partnership” means any of the following types of agreements:
(1) Agreements whereby the private partner assists the public sponsor in defining a feasible project and negotiates fair and reasonable terms for implementing the project; and
(2) Agreements whereby the private party assumes responsibility for delivering, improving, operating and/or maintaining eligible facilities in accordance with established performance specifications and payment terms.

"Public sponsor" means any department or agency of the State, any department or agency of a county, any cities, special districts, regional transportation agencies, any public corporation established under state law or county ordinance, joint powers authorities or any intergovernmental agency or corporation.

§ -B Project delivery methods. Notwithstanding any other provision of state law, public sponsors are authorized to enter into public private partnerships for eligible facilities pursuant to this chapter.

§ -C Procurement. (a) Notwithstanding any other provision of state law, the public sponsor is authorized to procure a private partner and award public private partnerships under this Act using any of the following:
(1) Calls for project proposals, whereby the public sponsor describes the public infrastructure facility(ies) that private entities are invited to submit proposals to develop;

(2) Solicitations using, without limitation, requests for qualifications, short-listing of qualified proposers, requests for proposals, negotiations, best and final offers; and

(3) Unsolicited proposals, provided that if the public sponsor determines there is sufficient merit to pursue any unsolicited proposal, reasonable opportunity for other entities to submit competing proposals for consideration and possible contract award is provided;

(b) For any procurement in which the public sponsor issues a request for qualifications, request for proposals or similar solicitation document, the request shall generally set forth the factors that the public sponsor will evaluate when reviewing the submittals. The public sponsor may, in its sole discretion, determine which factors it will consider and the relative weight of such factors in the evaluation process to obtain the best value for the public sponsor.

(c) The public sponsor is authorized to pay a stipend to an unsuccessful proposer, in an amount and on the terms and conditions determined by the public sponsor, if (i) the public
sponsor cancels the procurement prior to the due date for proposals in the request for proposals or (ii) the unsuccessful proposer submits a proposal and the public sponsor determines that the proposal is responsive to the public sponsor’s request for proposals and meets all requirements established by the public sponsor for the project. In exchange for such stipend, the public sponsor may require the unsuccessful proposer to grant to the public sponsor the right to use any work product contained in the unsuccessful proposer’s proposal or, if the public sponsor cancels the procurement prior to the due date for proposals in the request for proposals, any work product developed prior to cancellation, including technologies, techniques, methods, processes and information contained in the recipient’s project design.

(d) The public sponsor may charge a reasonable administrative fee for the evaluation of an unsolicited project proposal.

(e) The public sponsor may procure services, award agreements and administer revenues as authorized in this chapter.

(f) The public sponsor may retain financial, legal and other consultants and experts inside and outside the public sector to assist in the procurement, evaluation and negotiation
of public-private partnerships and for the development and/or
operation of eligible facilities under this Act.

(g) Notwithstanding any other provision of state law, the
public sponsor may agree to or require use of arbitration or
other alternative dispute resolution procedures to resolve
disputes with proposers or the private partner.

§ -E Public-private partnership agreements. (a) In a
public-private partnership, the public sponsor is authorized to
include any provision the public sponsor determines necessary or
appropriate, including but not limited to the following:

(1) Provisions authorizing the private partner to impose,
collect and enforce user fees, tolls, fares, rents or
similar charges, including, without limitation,
provisions regarding what the private partner will do
with the collected monies and the technology the
private partner is required to use to collect these
charges.

(2) Provisions allowing the public sponsor to accept
payments of money and share revenues with the private
partner;

(3) Provisions addressing how the public sponsor and
private partner will share development costs and
allocate and manage project risks;
(4) Provisions establishing performance criteria and/or incentives;

(5) Provisions addressing the acquisition of rights-of-way and other property interests that may be required, including provisions addressing the exercise of eminent domain;

(6) Provisions addressing responsibility for reconstruction or renovations that is required in order for a facility to meet applicable government standards at the end of the term of the agreement;

(7) Provisions providing for patrolling and law enforcement on, in or for the eligible facilities;

(8) Provisions identifying any technical specifications that must be satisfied, and a process whereby the private partner may request and receive authorization to deviate from such specifications on making a showing satisfactory to the public sponsor;

(9) Provisions authorizing the private partner to receive a reasonable rate of return on the private partner's investment;

(10) Provisions regarding the private partner’s compensation, including but not limited to provisions regarding the use of availability payments, retention
of fees, tolls, fares, rents or similar charges, and
generation and use of other revenues;

(11) Provisions specifying the conditions under which the
private partner is entitled to compensation for lost
revenues or other demonstrable damages resulting from
the construction of a competing facility by the public
sponsor or another governmental entity;

(12) Provisions specifying events of default, remedies
available to the private partner and public sponsor
and dispute resolution procedures, including
arbitration and other alternative dispute resolution
procedures; and/or

(13) Provisions regarding the maintenance and auditing of
the private partner’s books and records.

(b) In a public-private partnership, the public sponsor is
required to include a provision that establishes the public
sponsor’s right to develop, maintain, repair, rehabilitate,
operate or lease other projects independent of the location of
those projects.

§ –F Ad Valorem and Property Taxes. Property developed,
operated or held by a private partner under a public-private
partnership shall be exempt from any and all state and county ad
valorem and property taxes that otherwise might be applicable.
§ -G Performance and Payment Security. A public-private partnership shall require the private partner or each of its prime contractors to provide performance and payment security. Notwithstanding any other provision of state law, the penal sum or amount of such security may be less than the price of the contract involved, based upon the public sponsor’s determination, made in its sole discretion and on a facility-by-facility basis, of what is required to adequately protect the public sponsor and adequately assure payment of persons and amounts provided for in [add statutory reference, if appropriate].

§ -H Funding and financing. (a) Any lawful source of funding and financing may be utilized for the development or operation of an eligible facility under this Act. (b) The public sponsor may accept from the United States or any of its agencies such funds or credit assistance as are available to it for carrying out the purposes of this Act, whether the funds are made available by grant, loan, or other financing arrangement. The public sponsor may enter into such agreements and other arrangements with the United States or any of its agencies as may be necessary, proper, and convenient for carrying out the purposes of this Act. (c) The public sponsor may accept from any source any grant, donation, gift, or other form of conveyance of land,
money, other real or personal property, or other valuable thing
made to the public sponsor for carrying out the purposes of this
Act.

(d) Public sponsors may impose and collect user fees,
tolls, fares, rents or similar charges from users of eligible
facilities and use lawful measures to enforce such charges
and/or authorize a private partner or another public entity to
impose, collect and enforce such charges to the same extent as
available to the public sponsor.

§ -I Confidentiality and public disclosure. (a) A
proposer may identify those portions of a proposal or other
submission that the proposer considers to be trade secrets or
confidential commercial, financial, or proprietary information.
In order for confidential and proprietary information and trade
secrets to be exempt from disclosure, the proposer shall do all
of the following:

(1) Invoke such exclusion upon submission of the
information or other materials for which protection is
sought;

(2) Identify the data or other materials for which
protection is sought with conspicuous labeling;

(3) State the reasons why protection is necessary; and
(4) Fully comply with any applicable provisions of state law with respect to information the proposer contends should be exempt from disclosure.

(b) Notwithstanding any other provision of law, in order to properly balance the need to maximize competition under the Act and create a transparent procurement process, proposals shall not be subject to release or disclosure by the public sponsor until the award of the public-private partnership contract and the conclusion of any protest or other challenge to such award, absent an administrative or judicial order requiring such release or disclosure.

§ -J Technical Standards and Specifications.

Notwithstanding any law to the contrary, for a public-private partnership the public sponsor may adopt, amend, repeal, apply, enforce and waive technical standards and specifications, including standards and specifications for performance or outcomes.

§ -K Eminent domain. The public sponsor may exercise the power of eminent domain to acquire property, rights of way, or other rights in property for projects that are necessary to develop, operate or hold an eligible facility under this Act, regardless of whether the property will be owned in fee simple by the public sponsor or whether such property will be leased to the private partner to use, lease or operate for its business

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purposes in connection with the public-private partnership

SECTION 3. If any provision of this Act, or the
application thereof to any person or circumstance is held
invalid, the invalidity does not affect other provisions or
applications of the Act which can be given effect without the
invalid provision or application, and to this end the provisions
of this Act are severable.

SECTION 4. In codifying the new sections added by Section
2 of this Act, the revisor of statutes shall substitute
appropriate section numbers for the letters used in designating
the new sections in this Act.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: _____________________________

BY REQUEST