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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]:

1 SECTION 1. The Legislature makes the following findings:

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

6 (2) The ability of the State to provide sufficient quality
7 public infrastructure will be enhanced by a program
8 providing for private entities to undertake all or a
9 portion of the study, planning, design, development,
10 financing, acquisition, installation, construction,
11 reconstruction, improvement, operation, and/or
12 maintenance of public infrastructure facilities,
13 including facilities related to transportation, water,

1 wastewater, public buildings or any other public
2 facility, and appurtenances thereto.

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

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

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

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

14 (d) Expediting project delivery;

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

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

19 (g) Providing better use and leverage of public
20 resources, increasing private investment in
21 public infrastructure facilities, enhancing
22 capital formation for large projects and
23 providing savings to taxpayers.

1 The Legislature intends that the powers granted to cities,
2 local agencies, counties, special districts, regional
3 transportation agencies, any department or agency of the State
4 and any other agencies in this Act are in addition to any other
5 powers authorized under applicable law.

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

9 **"CHAPTER [add chapter number]**

10 **PUBLIC-PRIVATE PARTNERSHIP IN PUBLIC INFRASTRUCTURE**

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

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

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

22 "Public private partnership" means any of the following
23 types of agreements:

1 (1) Agreements whereby the private partner assists the
2 public sponsor in defining a feasible project and
3 negotiates fair and reasonable terms for implementing
4 the project; and

5 (2) Agreements whereby the private party assumes
6 responsibility for delivering, improving, operating
7 and/or maintaining eligible facilities in accordance
8 with established performance specifications and
9 payment terms.

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

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

20 **§ -C Procurement.** (a) Notwithstanding any other
21 provision of state law, the public sponsor is authorized to
22 procure a private partner and award public private partnerships
23 under this Act using any of the following:

- 1 (1) Calls for project proposals, whereby the public
2 sponsor describes the public infrastructure
3 facility(ies) that private entities are invited to
4 submit proposals to develop;
- 5 (2) Solicitations using, without limitation, requests for
6 qualifications, short-listing of qualified proposers,
7 requests for proposals, negotiations, best and final
8 offers; and
- 9 (3) Unsolicited proposals, provided that if the public
10 sponsor determines there is sufficient merit to pursue
11 any unsolicited proposal, reasonable opportunity for
12 other entities to submit competing proposals for
13 consideration and possible contract award is provided;
- 14 (b) For any procurement in which the public sponsor issues
15 a request for qualifications, request for proposals or similar
16 solicitation document, the request shall generally set forth the
17 factors that the public sponsor will evaluate when reviewing the
18 submittals. The public sponsor may, in its sole discretion,
19 determine which factors it will consider and the relative weight
20 of such factors in the evaluation process to obtain the best
21 value for the public sponsor.
- 22 (c) The public sponsor is authorized to pay a stipend to
23 an unsuccessful proposer, in an amount and on the terms and
24 conditions determined by the public sponsor, if (i) the public

1 sponsor cancels the procurement prior to the due date for
2 proposals in the request for proposals or (ii) the unsuccessful
3 proposer submits a proposal and the public sponsor determines
4 that the proposal is responsive to the public sponsor's request
5 for proposals and meets all requirements established by the
6 public sponsor for the project. In exchange for such stipend,
7 the public sponsor may require the unsuccessful proposer to
8 grant to the public sponsor the right to use any work product
9 contained in the unsuccessful proposer's proposal or, if the
10 public sponsor cancels the procurement prior to the due date for
11 proposals in the request for proposals, any work product
12 developed prior to cancellation, including technologies,
13 techniques, methods, processes and information contained in the
14 recipient's project design.

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

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

21 (f) The public sponsor may retain financial, legal and
22 other consultants and experts inside and outside the public
23 sector to assist in the procurement, evaluation and negotiation

1 of public-private partnerships and for the development and/or
2 operation of eligible facilities under this Act.

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

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

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

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

21 (3) Provisions addressing how the public sponsor and
22 private partner will share development costs and
23 allocate and manage project risks;

- 1 (4) Provisions establishing performance criteria and/or
2 incentives;
- 3 (5) Provisions addressing the acquisition of rights-of-way
4 and other property interests that may be required,
5 including provisions addressing the exercise of
6 eminent domain;
- 7 (6) Provisions addressing responsibility for
8 reconstruction or renovations that is required in
9 order for a facility to meet applicable government
10 standards at the end of the term of the agreement;
- 11 (7) Provisions providing for patrolling and law
12 enforcement on, in or for the eligible facilities;
- 13 (8) Provisions identifying any technical specifications
14 that must be satisfied, and a process whereby the
15 private partner may request and receive authorization
16 to deviate from such specifications on making a
17 showing satisfactory to the public sponsor;
- 18 (9) Provisions authorizing the private partner to receive
19 a reasonable rate of return on the private partner's
20 investment;
- 21 (10) Provisions regarding the private partner's
22 compensation, including but not limited to provisions
23 regarding the use of availability payments, retention

1 of fees, tolls, fares, rents or similar charges, and
2 generation and use of other revenues;

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

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

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

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

20 **§ -F Ad Valorem and Property Taxes.** Property developed,
21 operated or held by a private partner under a public-private
22 partnership shall be exempt from any and all state and county ad
23 valorem and property taxes that otherwise might be applicable.

1 **§ -G Performance and Payment Security.** A public-private
2 partnership shall require the private partner or each of its
3 prime contractors to provide performance and payment security.
4 Notwithstanding any other provision of state law, the penal sum
5 or amount of such security may be less than the price of the
6 contract involved, based upon the public sponsor's
7 determination, made in its sole discretion and on a facility-by-
8 facility basis, of what is required to adequately protect the
9 public sponsor and adequately assure payment of persons and
10 amounts provided for in **[add statutory reference, if**
11 **appropriate]**.

12 **§ -H Funding and financing.** (a) Any lawful source of
13 funding and financing may be utilized for the development or
14 operation of an eligible facility under this Act.

15 (b) The public sponsor may accept from the United States
16 or any of its agencies such funds or credit assistance as are
17 available to it for carrying out the purposes of this Act,
18 whether the funds are made available by grant, loan, or other
19 financing arrangement. The public sponsor may enter into such
20 agreements and other arrangements with the United States or any
21 of its agencies as may be necessary, proper, and convenient for
22 carrying out the purposes of this Act.

23 (c) The public sponsor may accept from any source any
24 grant, donation, gift, or other form of conveyance of land,

1 money, other real or personal property, or other valuable thing
2 made to the public sponsor for carrying out the purposes of this
3 Act.

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

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

- 17 (1) Invoke such exclusion upon submission of the
18 information or other materials for which protection is
19 sought;
- 20 (2) Identify the data or other materials for which
21 protection is sought with conspicuous labeling;
- 22 (3) State the reasons why protection is necessary; and

1 (4) Fully comply with any applicable provisions of state
2 law with respect to information the proposer contends
3 should be exempt from disclosure.

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

12 **§ -J Technical Standards and Specifications.**

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

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

1 purposes in connection with the public-private partnership
2 project.

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

9 SECTION 4. In codifying the new sections added by Section
10 2 of this Act, the revisor of statutes shall substitute
11 appropriate section numbers for the letters used in designating
12 the new sections in this Act.

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

INTRODUCED BY: _____
BY REQUEST

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