

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 646

BY SENATORS JEFFRIES, BEACH, MILLER, OJEDA,

PLYMALE, PREZIOSO AND STOLLINGS

[Introduced March 17, 2017; Referred
to the Committee on Transportation and
Infrastructure; and then to the Committee on
Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §5B-4-1, §5B-4-2, §5B-4-3, §5B-4-4, §5B-4-5, §5B-4-6, §5B-4-7, §5B-4-8,
 3 §5B-4-9, §5B-4-10, §5B-4-11, §5B-4-12, §5B-4-13, §5B-4-14, §5B-4-15, §5B-4-16, §5B-
 4 4-17 and §5B-4-18, relating to creating a public-private infrastructure facilities act.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article designated §5B-4-1, §5B-4-2, §5B-4-3, §5B-4-4, §5B-4-5, §5B-4-6, §5B-4-7, §5B-4-8, §5B-
 3 4-9, §5B-4-10, §5B-4-11, §5B-4-12, §5B-4-13, §5B-4-14, §5B-4-15, §5B-4-16, §5B-4-17 and §5B-
 4 4-18, all to read as follows:

ARTICLE 4. PUBLIC-PRIVATE INFRASTRUCTURE FACILITIES ACT.

§5B-4-1. Legislative findings and purposes.

1 The Legislature finds and declares:

2 (1) That there is a public need for timely acquisition or construction of and improvements
 3 to infrastructure facilities within the state that are compatible with state and local infrastructure
 4 plans;

5 (2) That public need may not be wholly satisfied by existing ways in which infrastructure
 6 facilities are acquired, constructed or improved;

7 (3) That authorizing private entities to acquire, construct or improve one or more
 8 infrastructure facilities may result in the availability of infrastructure facilities to the public in a more
 9 timely or less costly manner, thereby serving the public health, safety, convenience and welfare
 10 and the enhancement of the residential, agricultural, recreational, economic, commercial and
 11 industrial opportunities;

12 (4) That providing a mechanism for the solicitation, receipt and consideration of proposals
 13 submitted by private entities for the purposes described in this section serves the public purpose
 14 of this article to the extent that the action facilitates the timely acquisition or construction of or
 15 improvement to a qualifying infrastructure facility or the continued operation of a qualifying

16 infrastructure facility; and

17 (5) That providing for the expansion and acceleration of infrastructure financing using
18 innovative financing mechanisms, including, but not limited to, design-build contracting and
19 financing arrangements, will add to the convenience of the public and allow public and private
20 entities to have the greatest possible flexibility in contracting with each other for the provision of
21 the public services which are the subject of this article.

§5B-4-2. Definitions.

1 As used in this article, the following words and terms have the following meanings:

2 (1) "Comprehensive agreement" means the comprehensive agreement by and between a
3 developer and the department required by section nine of this article.

4 (2) "Developer" means the private entity that is responsible for the acquisition, construction
5 or improvement of a qualifying infrastructure facility.

6 (3) "Department" means the Department of Commerce.

7 (4) "Material default" means any default by the developer in the performance of its duties
8 under subsection (f), section eight of this article that jeopardizes adequate service to the public
9 from a qualifying infrastructure facility and remains unremedied after the department has provided
10 notice to the developer and a reasonable cure period has elapsed.

11 (5) "Private entity" means any natural person, corporation, limited liability company,
12 partnership, joint venture or other private business entity.

13 (6) "Public entity" means the State of West Virginia or any political subdepartment thereof.

14 (7) "Qualifying infrastructure facility" means one or more infrastructure facilities acquired,
15 constructed or improved by a private entity pursuant to this article.

16 (8) "Revenues" mean the user fees or service payments generated by a qualifying
17 infrastructure facility.

18 (9) "Service contract" means a contract entered into between a public entity and a
19 developer pursuant to section six of this article.

20 (10) "Service payments" mean payments to the developer of a qualifying infrastructure
21 facility pursuant to a service contract.

22 (11) "State" means the State of West Virginia.

23 (12) "Infrastructure facility" means any public infrastructure including, but not limited to,
24 water, sewer and broadband.

25 (13) "User fees" mean the rates, fees or other charges imposed by the developer of a
26 qualifying infrastructure facility for use of all or a portion of the qualifying infrastructure facility
27 pursuant to the comprehensive agreement.

§5B-4-3. Prerequisites for development.

1 Any private entity seeking authorization under this article to acquire, construct or improve
2 an infrastructure facility shall first submit a conceptual proposal as set forth in section five of this
3 article: *Provided*, That notwithstanding any provision of this code to the contrary, the department
4 has no duty to accept, consider or review a conceptual proposal that is not solicited by the
5 department. The private entity may initiate the approval process pursuant to subsections (a) and
6 (b) of said section or the department may alternatively request proposals pursuant to subsection
7 (c) of said section.

§5B-4-4. Powers and duties of the department and other agencies that are part of the
department.

1 In addition to the powers and duties set forth elsewhere in this code, the department and
2 any other agency that is part of the department may:

3 (1) Undertake one level of review for each proposal submitted by a private entity in
4 accordance with this article. The review shall consist of the review by the department of the
5 conceptual proposal: *Provided*, That expenses of the department incurred for review of proposal
6 shall be paid by the private entity submitting the proposal. The department shall take into account
7 at all times the needs and funding capabilities of the state as a whole in terms of infrastructure;

8 (2) Enter into agreements, contracts or other transactions with any agency that is part of

9 the department, any federal, state, county, municipal agency or private entity;

10 (3) Act on behalf of the state and represent the state in the planning, financing,
11 development and construction of any infrastructure facility for which solicited proposals have been
12 received in accordance with the provisions of this article, with the concurrence of the affected
13 public entity. Other public entities in this state shall cooperate to the fullest extent with what the
14 department considers appropriate to effectuate the duties of the department;

15 (4) Exempt from disclosure any sensitive business, commercial or financial information
16 that is not customarily provided to business competitors that is submitted to the department for
17 final review and approval;

18 (5) Exempt from disclosure any documents, communications or information described in
19 this section including, but not limited to, the project's design, management, financing and other
20 details in accordance with the provisions of article one, chapter twenty-nine-b of this code; and

21 (6) Do any and all things necessary to carry out and accomplish the purposes of this
22 article.

§5B-4-5. Submission and review of conceptual proposals; approval by the Secretary of Commerce.

1 (a) A private entity may submit in writing a solicited conceptual proposal for a infrastructure
2 facility to the department for consideration. The conceptual proposal shall include the following:

3 (1) A statement of the private entity's qualifications and experience;

4 (2) A description of the proposed infrastructure facility;

5 (3) A description of the financing for the infrastructure facility; and

6 (4) A statement setting forth the degree of public support for the proposed infrastructure
7 facility, including a statement of the benefits of the proposed infrastructure facility to the public
8 and its compatibility with existing infrastructure facilities.

9 (b) Following review by the department, the department shall submit to the Secretary of
10 Commerce the conceptual proposals and priority ranking for review for final selection.

11 (c) The conceptual proposal shall be accompanied by the following material and
12 information unless waived by the department with respect to the infrastructure facility or facilities
13 that the private entity proposes to develop as a qualifying infrastructure facility:

14 (1) A topographic map (1:2,000 or other appropriate scale) indicating the location of the
15 infrastructure facility or facilities;

16 (2) A description of the infrastructure facility or facilities, including the conceptual design
17 of the facility or facilities and all proposed interconnections with other infrastructure facilities;

18 (3) The projected total life-cycle cost of the infrastructure facility or facilities and the
19 proposed date for acquisition of or the beginning of construction of, or improvements to, the
20 infrastructure facility or facilities;

21 (4) A statement setting forth the method by which the developer proposes to secure all
22 property interests required for the infrastructure facility or facilities: *Provided*, That with the
23 approval of the department, the private entity may request that the comprehensive agreement
24 assign the department with responsibility for securing all property interests, including public utility
25 facilities, with all costs, including costs of acquiring the property, to be reimbursed to the
26 department by the private entity. The statement shall include the following information regarding
27 the property interests or rights, including, but not limited to, rights to extract mineable minerals:

28 (A) The names and addresses, if known, of the current owners of the property needed for
29 the infrastructure facility or facilities;

30 (B) The nature of the property interests to be acquired;

31 (C) Any property that the department may expect to condemn; and

32 (D) The extent to which the property has been or will be subjected to the extraction of
33 mineable minerals.

34 (5) Information relating to the current infrastructure plans, if any, of each affected local
35 jurisdiction;

36 (6) A list of all permits and approvals required for acquisition or construction of or

37 improvements to the infrastructure facility or facilities from local, state or federal agencies and a
38 projected schedule for obtaining the permits and approvals: *Provided*, That the acquisition,
39 construction, improvement or operation of a qualifying infrastructure facility that includes the
40 extraction of mineable minerals is required to obtain all necessary permits or approvals from all
41 applicable authorities in the same manner as if it were not a qualifying infrastructure facility under
42 this article;

43 (7) A list of public utility facilities, if any, that will be crossed or affected by or as the result
44 of the construction or improvement of the public port infrastructure facility or facilities and a
45 statement of the plans of the developer to accommodate the crossings or relocations;

46 (8) A statement setting forth the developer's general plans for financing and operating the
47 infrastructure facility or facilities;

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

50 (10) Information about the developer, including, but not limited to, an organizational chart
51 of the developer, capitalization of the developer, experience in the operation of infrastructure
52 facilities and references and certificates of good standing from the Tax Commissioner, Insurance
53 Commissioner and the Department of Unemployment Compensation evidencing that the
54 developer is in good standing with state tax, workers' compensation and unemployment
55 compensation laws, respectively; and

56 (11) Any additional material and information requested by the Secretary of Commerce.

57 (d) The department, with approval of the Secretary of Commerce, may solicit proposals
58 from private entities for the acquisition, construction or improvement of infrastructure facilities in
59 a form and with the content determined by the department.

60 (e) The department may solicit any proposal for the acquisition, construction or
61 improvement of the infrastructure facility or facilities as a qualifying infrastructure facility if it is
62 determined that it serves the public purpose of this article. The department may determine that

63 the acquisition, construction or improvement of the infrastructure facility or facilities as a qualifying
64 infrastructure facility serves a public purpose if:

65 (1) There is a public need for the infrastructure facility of the type the private entity
66 proposes to operate as a qualifying infrastructure facility;

67 (2) The infrastructure facility and the proposed interconnections with existing infrastructure
68 facilities and the developer's plans for development of the qualifying infrastructure facility are
69 reasonable and compatible with the state infrastructure plan and with the local comprehensive
70 plan or plans;

71 (3) The estimated cost of the infrastructure facility or facilities is reasonable in relation to
72 similar facilities;

73 (4) The acquisition, construction, improvement or the financing of the infrastructure facility
74 or facilities does not involve any moneys from the state General Revenue Fund: *Provided, That*
75 the moneys from the General Revenue Fund may also be used if so designated and approved by
76 the Legislature;

77 (5) The use of federal funds in connection with the financing of a qualifying infrastructure
78 facility has been determined by the department to be compatible with the state infrastructure plan
79 and with the local comprehensive plan or plans; and

80 (6) The private entity's plans will result in the timely acquisition or construction of or
81 improvements to the infrastructure facility for their more efficient operation and that the private
82 entity's plans will result in a more timely and economical delivery of the infrastructure facility than
83 otherwise available under existing delivery systems.

84 (f) Notwithstanding any provision of this article to the contrary, the recommendation of the
85 department to the Secretary of Commerce is subject to:

86 (1) The private entity's entering into a comprehensive agreement with the department; and

87 (2) With respect to infrastructure facilities, the requirement that public information
88 dissemination with regard to any proposal under consideration comply with the department's

89 policy on the public involvement process, as revised.

90 (g) In connection with its approval of the development of the infrastructure facility as a
91 qualifying infrastructure facility, the department shall establish a date for the acquisition of or the
92 beginning of construction of or improvements to the qualifying infrastructure facility. The
93 department may extend that date.

94 (h) Selection by the Secretary of Commerce:

95 (1) Upon presentations of proposals received by the department, the commissioner shall
96 make his or her decision for the project.

97 (2) The commissioner shall notify the department and the public of the final selection for
98 the project.

§5B-4-6. Service contracts.

1 In addition to any authority otherwise conferred by law, any public entity may contract for
2 services to be provided for a qualifying infrastructure facility in exchange for service payments
3 and other consideration as the department determines appropriate.

§5B-4-7. Dedication of public property.

1 Any public entity may dedicate any property interest that it has for public use as a qualified
2 infrastructure facility if it finds it will serve the public purpose of this article. In connection with the
3 dedication, a public entity may convey any property interest that it has to the developer, by
4 contract, for any consideration determined by the public entity. This consideration may include,
5 without limitation, the agreement of the developer to develop the qualifying infrastructure facility.
6 No real property may be dedicated by a public entity pursuant to this article unless all other public
7 notice and comment requirements are met.

§5B-4-8. Powers and duties of the developer.

1 (a) The developer has all power allowed by law generally to a private entity having the
2 same form of organization as the developer and may acquire, construct or improve the qualifying
3 infrastructure facility and impose user fees in connection with the use of the facility.

4 (b) The developer may own, lease or acquire any other right to facilitate the development
5 of the qualifying infrastructure facility.

6 (c) Any financing of the qualifying infrastructure facility may be in the amounts and upon
7 terms and conditions determined by the developer. The developer may issue debt, equity or other
8 securities or obligations, enter into sale and leaseback transactions and secure any financing with
9 a pledge of, security interest in, or lien on, any or all of its property, including all of its property
10 interests in the qualifying infrastructure facility.

11 (d) Subject to applicable permit requirements, the developer may cross any canal or
12 navigable watercourse as long as the crossing does not unreasonably interfere with the current
13 navigation and use of the waterway.

14 (e) In developing the qualifying infrastructure facility, the developer may:

15 (1) Make classifications according to reasonable categories for assessment of user fees;

16 and

17 (2) With the consent of the department, make and enforce reasonable rules to the same
18 extent that the department may make and enforce rules with respect to a similar infrastructure
19 facility.

20 (f) The developer shall:

21 (1) Acquire, construct or improve the qualifying infrastructure facility in a manner that
22 meets the engineering standards of:

23 (A) The authority for facilities operated and maintained by the department, in accordance
24 with the provisions of the comprehensive agreement; and

25 (B) The department, in accordance with the provisions of the comprehensive agreement;

26 (2) Keep the qualifying infrastructure facility open for use by the members of the public at
27 all times after its initial opening upon payment of the applicable user fees or service payments:

28 Provided, That the qualifying infrastructure facility may be temporarily closed because of
29 emergencies or, with the consent of the department, to protect the safety of the public or for

30 reasonable construction or maintenance procedures;

31 (3) Contract for the performance of all maintenance and operation of the infrastructure
32 facility through the department, using its maintenance and operations practices, until the date of
33 termination of the developer's duties as defined in the comprehensive agreement;

34 (4) Cooperate with the department in establishing any interconnection with the qualifying
35 infrastructure facility requested by the department;

36 (5) Remain in compliance with state tax, workers' compensation and unemployment
37 compensation laws; and

38 (6) Comply with the provisions of the comprehensive agreement and any service contract.

§5B-4-9. Comprehensive agreement.

1 (a) Prior to acquiring, constructing or improving the qualifying infrastructure facility, the
2 developer shall enter into a comprehensive agreement with the department. The comprehensive
3 agreement shall provide for:

4 (1) Delivery of performance or payment bonds in connection with the construction of or
5 improvements to the qualifying infrastructure facility, in the forms and amounts satisfactory to the
6 department;

7 (2) Review and approval of the final plans and specifications for the qualifying
8 infrastructure facility by the department;

9 (3) Inspection of the construction of or improvements to the qualifying infrastructure facility
10 to ensure that they conform to the engineering standards acceptable to the department;

11 (4) Maintenance of a policy or policies of public liability insurance or self insurance, in a
12 form and amount satisfactory to the department and reasonably sufficient to insure coverage of
13 tort liability to the public and employees and to enable the continued operation of the qualifying
14 infrastructure facility: *Provided*, That in no event may the insurance impose any pecuniary liability
15 on the state, its agencies or any political subdepartment of the state. Copies of the policies shall
16 be filed with the department accompanied by proofs of coverage;

17 (5) Monitoring of the maintenance and operating practices of the developer by the
18 department and the taking of any actions the department finds appropriate to ensure that the
19 qualifying infrastructure facility is properly maintained and operated;

20 (6) Itemization and reimbursement to be paid to the department for the review and any
21 services provided by the department;

22 (7) Filing of appropriate financial statements on a periodic basis;

23 (8) A reasonable maximum rate of return on investment for the developer;

24 (9) The date of termination of the developer's duties under this article and dedication to
25 the department; and

26 (10) That a infrastructure facility shall accommodate all public utilities on a reasonable,
27 nondiscriminatory and completely neutral basis and in compliance with the provisions of section
28 seventeen-b, article four, chapter seventeen of this code.

29 (b) The comprehensive agreement may require user fees established by agreement of the
30 parties. Any user fees shall be set at a level that, taking into account any service payments, allows
31 the developer the rate of return on its investment specified in the comprehensive agreement:

32 Provided, That the schedule and amount of the initial user fees to be imposed and any increase
33 of the user fees must be approved by the Commissioner of the Department of Highways. A copy
34 of any service contract shall be filed with the department. A schedule of the current user fees shall
35 be made available by the developer to any member of the public upon request. In negotiating user
36 fees under this section, the parties shall establish fees that are the same for persons using the
37 facility under like conditions and that will not unreasonably discourage use of the qualifying
38 infrastructure facility. The execution of the comprehensive agreement or any amendment to the
39 comprehensive agreement constitutes conclusive evidence that the user fees provided in the
40 comprehensive agreement comply with this article. User fees established in the comprehensive
41 agreement as a source of revenues may be in addition to, or in lieu of, service payments.

42 (c) In the comprehensive agreement, the department may agree to accept grants or loans

43 from the developer, from time to time, from amounts received from the state or federal government
44 or any agency or instrumentality of the state or federal government.

45 (d) The comprehensive agreement shall incorporate the duties of the developer under this
46 article and may contain any other terms and conditions that the department determines serve the
47 public purpose of this chapter. Without limitation, the comprehensive agreement may contain
48 provisions under which the department agrees to provide notice of default and cure rights for the
49 benefit of the developer and the persons specified in the comprehensive agreement as providing
50 financing for the qualifying infrastructure facility. The comprehensive agreement may contain any
51 other lawful terms and conditions to which the developer and the department mutually agree,
52 including, without limitation, provisions regarding unavoidable delays or provisions providing for
53 a loan of public funds to the developer to acquire, construct or improve one or more qualifying
54 infrastructure facilities.

55 (e) The comprehensive agreement shall require the deposit of any earnings in excess of
56 the maximum rate of return as negotiated in the comprehensive agreement in the State Road
57 Fund established pursuant to section one, article three, chapter seventeen of this code.

58 (f) Any changes in the terms of the comprehensive agreement, agreed upon by the parties,
59 shall be added to the comprehensive agreement by written amendment.

60 (g) Notwithstanding any provision of this article to the contrary, the department may not
61 enter into any comprehensive agreements with a developer after June 30, 2017.

62 (h) Notwithstanding any provision of this article to the contrary, at least thirty days prior to
63 execution, the commissioner shall provide a copy of a comprehensive agreement to the Joint
64 Committee on Government and Finance.

§5B-4-10. Federal, state and local assistance.

1 The department may take any action to obtain federal, state or local assistance for a
2 qualifying infrastructure facility that serves the public purpose of this article and may enter into
3 any contracts required to receive federal assistance. The department may determine that it serves

4 the public purpose of this article for all or any portion of the costs of a qualifying infrastructure
5 facility to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local,
6 state or federal government or any agency or instrumentality thereof.

§5B-4-11. Material default; remedies.

1 (a) Except upon written agreement of the developer and any other parties identified in the
2 comprehensive agreement, the department may exercise, at its discretion, any or all of the
3 following remedies provided in this section or elsewhere in this article to remedy any material
4 default that has occurred or may continue to occur.

5 (1) To elect to take over the infrastructure facility or facilities and in that case it shall
6 succeed to all of the rights, title and interest in the infrastructure facility or facilities, subject to any
7 liens on revenues previously granted by the developer to any person providing financing for the
8 facility or facilities and the provisions of subsection (c) of this section;

9 (2) To exercise the power of condemnation to acquire the qualifying infrastructure facility
10 or facilities. Any person who has provided financing for the qualifying infrastructure facility and
11 the developer, to the extent of its capital investment, may participate in the condemnation
12 proceedings with the standing of a property owner;

13 (3) To terminate the comprehensive agreement and exercise any other rights and
14 remedies that may be available to it at law or in equity, subject only to the express limitations of
15 the terms of the comprehensive agreement; and

16 (4) To make or cause to be made any appropriate claims under the performance or
17 payment bonds required by this article.

18 (b) In the event the department elects to take over a qualifying infrastructure facility
19 pursuant to subdepartment (1), subsection (a) of this section, the department may acquire,
20 construct or improve the infrastructure facility, impose user fees for the use of the infrastructure
21 facility and comply with any service contracts as if it were the developer. Any revenues that are
22 subject to a lien shall be collected for the benefit of, and paid to, secured parties, as their interests

23 may appear, to the extent necessary to satisfy the developer's obligations to secured parties,
 24 including the maintenance of reserves and the liens shall be correspondingly reduced and, when
 25 paid off, released. Remaining revenues, if any, after all payments to, or for the benefit of, secured
 26 parties shall be paid to the developer, subject to the negotiated maximum rate of return. The right
 27 to receive the payment, if any, shall be considered just compensation for the infrastructure facility
 28 or facilities. The full faith and credit of the department may not be pledged to secure any financing
 29 of the developer by the election to take over the qualifying infrastructure facility. Assumption of
 30 development of the qualifying infrastructure facility does not obligate the department to pay any
 31 obligation of the developer from sources other than revenues.

§5B-4-12. Governmental entities prohibited from pledging full faith and credit.

1 The full faith and credit of the state, or any county, municipality or political subdepartment
 2 of the state may not be pledged to secure any financing of the developer in connection with the
 3 acquisition, construction or equipping of a qualifying infrastructure facility.

§5B-4-13. Condemnation.

1 (a) At the request of the developer, the department may exercise the power of
 2 condemnation that it has under law for the purpose of acquiring any lands or estates or interests
 3 in any lands or estates to the extent that the department finds that the action serves the public
 4 purpose of this article: *Provided*, That the power of condemnation may not be exercised if the
 5 extraction of mineable minerals is outside the defined one thousand foot corridor of the project or
 6 work which is the subject of a solicited conceptual proposal, comprehensive agreement or service
 7 contract submitted or entered into under the provisions of this article. Any amounts to be paid in
 8 any condemnation proceeding shall be paid by the developer.

9 (b) Until the department has provided written certification as to the existence of a material
 10 default under subsection (a), section eleven of this article, the power of condemnation may not
 11 be exercised against a qualifying infrastructure facility.

§5B-4-14. Utility crossings.

1 The developer and each county, municipality, public service district, public utility, railroad
2 and cable television provider whose facilities are to be crossed or affected shall cooperate fully
3 with the other in planning and arranging the manner of the crossing or relocation of the facilities.
4 Any entity possessing the power of condemnation is expressly granted the powers in connection
5 with the moving or relocation of facilities to be crossed by the qualifying infrastructure facility or
6 that must be relocated to the extent that the moving or relocation is made necessary or desirable
7 by construction of or improvements to the qualifying infrastructure facility, which includes
8 construction of or improvements to temporary facilities for the purpose of providing service during
9 the period of construction or improvement. Any amount to be paid for the crossing, construction,
10 moving or relocating of facilities shall be paid by the developer.

§5B-4-15. Dedication of assets.

1 The department shall terminate the developer's authority and duties under this article on
2 the date set forth in the comprehensive agreement. Upon termination, the department and duties
3 of the developer under this article cease and the qualifying infrastructure facility shall be dedicated
4 to the department for public use.

§5B-4-16. Qualifying a infrastructure facility as a public improvement.

1 All qualifying infrastructure facilities authorized under this article are public improvements
2 and are subject to article five-a, chapter twenty-one of this code. Article twenty-two, chapter five
3 of this code applies to all qualifying infrastructure facilities authorized under this article. All
4 construction, reconstruction, repair or improvement of qualifying infrastructure facilities authorized
5 under this article shall be awarded by competitive bidding. Competitive bids shall be solicited by
6 the department for each construction contract in excess of \$25,000 in total cost. Construction
7 costs should be of sufficient size that the performance and payment bonds are in the \$10 million
8 to \$30 million range, where possible. Competitive bids shall be solicited by the department
9 through publication of a Class II legal advertisement, in compliance with the provisions of article
10 three, chapter fifty-nine of this code, and the publication area is the county or municipality in which

11 the infrastructure facility is to be located. The advertisement shall also be published as a Class II
 12 advertisement in a newspaper of general circulation published in the city of Charleston. The
 13 advertisement shall solicit sealed proposals for the construction of the infrastructure facility,
 14 stating the time and place for the opening of bids. All bids shall be publicly opened and read aloud.
 15 Construction contracts shall be awarded to the lowest qualified responsible bidder, who shall
 16 furnish a sufficient performance or payment bond: *Provided*, That both the department and the
 17 private entity have the right to reject all bids and solicit new bids for the construction contract. The
 18 provisions of article one-c, chapter twenty-one of this code apply to the construction of all
 19 qualifying infrastructure facilities approved under this article.

§5B-4-17. Exemptions from taxation.

1 (a) The exercise of the powers granted in this article will be in all respects for the benefit
 2 of the people of this state, for the improvement of their health, safety, convenience and welfare
 3 and for the enhancement of their residential, agricultural, recreational, economic, commercial and
 4 industrial opportunities and is a public purpose. As the construction, acquisition, improvement,
 5 operation and maintenance of qualifying infrastructure facilities will constitute the performance of
 6 essential governmental functions, a developer is not required to pay any taxes or assessments
 7 upon any qualifying infrastructure facility or any property acquired or used by the developer under
 8 the provisions of this article or upon the income therefrom, other than taxes collected from the
 9 consumer pursuant to article fifteen, chapter eleven of this code.

§5B-4-18. Construction.

1 The provisions of this article are remedial and shall be liberally construed and applied so
 2 as to promote the purposes set out in section one of this article.

NOTE: The purpose of this bill is to create a public-private infrastructure facilities act.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.