

PIER PROPERTY DEVELOPMENT

INTRODUCTION

The purpose of this document is to initiate discussion concerning development of the pier property by providing a baseline approach to that development. It is also intended to ensure that critical elements such as project cost estimates, life cycle costs, and a clearly defined project approach are addressed in the process. It is not intended to be the final project plan, but to serve as a starting point and to lay out the process for proceeding. Information presented below is partially based on discussions held with Bowman Murray Hemingway Architects (BMH), Andrew Consulting Engineers, and Mid Atlantic Engineering Partners. See attachments A and B for discussion summaries.

Development of the pier property should encompass the entire property, not just the pier and pier building. Development can however be separated into two separate components, namely the pier structure and the land parcels. Separation of the components (and components into phases) is necessary as funding is limited. Given that the pier is the primary feature of the property and considering its deteriorated condition, it is recommended that it be given first priority for funding. Development of the land parcel should not be constrained by a requirement to retain the current pier building, but should be based on a “clean sheet” approach to broaden the potential uses for the property. Renovation of a building in such poor condition that is several feet below the flood plain in an ocean front location is not advisable. A constraint that will have to be considered however are the requirements of the PARTF grant agreement that was entered into in 2022 which restricts the use of the property to recreational purposes indefinitely.

For each of these components, some form of financial/business case analysis should be performed to determine the development, operational and maintenance costs of any proposed options, as well as the potential revenue that can offset the above costs. Initial development costs will be produced in the preliminary design process and refined in the detailed design process. This information will assist decision makers in determining how/if the town can move forward as well as provide a foundation for seeking outside funding sources and partnerships. This is likely to be more complicated for parcel development in that several possible uses may have to be iteratively analyzed. Further, consideration must be given as to whether the town should enter into commercial real estate development that could compete with local businesses on the island (and off). Lessees would have to cover 100 percent of the debt service, maintenance and operations cost, insurance, etc. Otherwise they would be essentially subsidized by the tax payers which would not be fair to tax paying businesses on the island. Given today’s delivery oriented society, dedicated space for deliveries from local businesses may be a viable option.

PIER

The pier component of the project needs to be addressed from two perspectives, namely repair and replacement. Preliminary design work, project cost estimates and life cycle costs (30 years) need to be developed by the technical agent for each perspective to support decision making.

PIER REPAIR

With regard to repairing the pier, the initial RFP issued by the town came in with a low bid that was 100% over the budgeted amount. This RFP was considered the minimum amount of work to be done to reopen the pier as efficiently as possible. In order to more closely match the budget, it was suggested that the scope be reduced and the project rebid. At that time, the primary cost reduction tool was to water jet the new pilings in versus driving them in. Subsequent discussions with BMH, Andrew

Consulting Engineers and Mid-Atlantic Engineering Partners determined that the piles must be driven in. Driving piles provides a determination/verification of the pile capacity (bearing load and uplift resistance) and greater resistance to lateral loading which cannot be obtained by jetting alone. However, cost savings could be achieved by doing the piling installation from the pier deck to minimize the use of floating plant (a significant cost driver). To accomplish repairs from the deck, the pier would have to be repaired from the shore out (replacing fasteners, bracing, etc) and possibly strengthened (additional stringers) to support equipment and materials for replacing piles and other structure. The added benefit of this approach is that future pile replacement, maintenance and storm damage repairs could likely be done from the deck avoiding considerable cost and accomplished in a more timely fashion. A structural analysis and design will be required to support this approach. The existing pier building would have to be razed to provide access for equipment and materials onto the pier. It should be noted that all present at the BMH meeting agreed that the building is a tear down. Since the building is in such poor condition that is several feet below the flood plain in an ocean front location, razing it should not be an issue.

The pier repairs will likely need to be accomplished in phases to fit within the available funding and not jeopardize higher priority projects. Preliminary design work, and project cost estimates for each phase must be developed for proper decision making. Suggested phases would be as follows:

1. Structural Stabilization of the existing pier – This will include replacement of all 16 major/ severely damaged piles, replacement of all fasteners, and a significant portion of the bracing, if not all, depending on analysis results. Analysis may call for additional bracing as well.
2. Safety repairs – This phase would complete repairs to make the pier safe for the public, to include handrails, ADA access, etc.
3. Complete remaining repairs – These repairs include plumbing, electrical and decking replacement.
4. Extend the pier to 250 feet – This final phase would restore the pier to its original 1000 feet and reach significantly deeper fishing waters than that available at the current 750 ft (4-8ft).

These phases could be combined into combinations of base bids with options based on funding availability.

PIER MAINTENANCE

Given the age of the pier components, (anywhere from 25 to 65 years), maintenance costs must be planned for. Contrary to what was originally reported in the pier inspection reports, the pier pilings are not greenheart hardwood (Greenheart wood is naturally decay and marine organism resistant, has a service life of 50 years, and is significantly stronger than treated pine or fir), but are pressure treated green wood of an unknown species (see final Mid Atlantic Report). Unfortunately, there are no maintenance or repair records available for the pier, so the exact age of the piles is not known. The current assumption is the last pile installation was possibly in 1999. Based on discussions with industry professionals, pressure treated pilings have an expected service life of 25 years. Fortunately, piling inspection results that included pic penetration and hammer testing found most, if not all the piles to be sound, except those with cracks or fissures. It should be noted that several of the damaged piles had damage at the pile cap where the dowel pin connection was made, which is likely to be an ongoing problem in the future. Consequently, a condition based maintenance program should be implemented with periodic and post storm inspections of the pier to allow for planned maintenance and repair. In addition to planned maintenance, repairs from storm damage need to be considered as well.

Given this consideration and the maintenance challenges cited above, a capital reserve fund for supporting the pier may be advisable.

PIER REPLACEMENT

The initial assumption here is that a new wood pier will be constructed as opposed to a concrete pier primarily due to cost. Although a concrete pier is preferred, it may not be financially supportable for a small tax base like Holden Beach. While the upfront cost to replace the pier will be higher than repairing the pier, the life cycle costs will likely be less. A better design with more robust components (larger/concrete piles, better bracing, known pile embedment, greater height above the surf) will provide a more storm resistant structure and new materials will greatly reduce maintenance costs for many years after construction. It may also be possible to leverage off the Oak Island pier replacement project to reduce engineering and cost estimating costs as well (Andrew Consulting was the design agent). It should be noted that the Oak Island pier was replaced for approximately 2.6M in the 2017-2019 time frame.

Funding a pier replacement will likely require financing the project with some sort of loan or bond. Any option to finance a pier replacement should be approved by the property owners/voters in a referendum or by some other reliable method. It is also possible to phase this project too by replacing the current 750 feet initially and constructing the last 250 feet at a different time to for funding flexibility.

Again, a condition based maintenance program should be implemented with periodic and post storm inspections of the pier to allow for planned maintenance. In addition to planned maintenance, repairs from storm damage need to be considered as well. Given this consideration and the maintenance challenges cited above, a capital reserve fund for supporting the pier may be advisable.

SITE DEVELOPMENT

Public (primarily the tax payers) input and the aforementioned financial analysis will drive the features to be developed on the site. In addition, site development will have to comply with the requirements of the PARTF grant contract. If a conflict arises, a contract modification could be possibly negotiated. For the features that are chosen, an annual cost for maintenance, repair and operation (life cycle cost) must be developed. This along with any debt service payments will be needed for decision making and budgeting purposes. In the event that some sort of building(s) are considered, the design should not impede access to the pier for maintenance and repair purposes. All features must be ADA compliant of course.

GOING FORWARD

It is recommended that the following tasks be initiated as soon as financially possible to provide decision making information for the BOC to determine how and when to proceed with the project. Specific Statements of Work should be developed for the technical agent to ensure the desired outcomes are obtained. In addition, a competent project manager needs to be identified to oversee this work.

- Task 1 - Initiate preliminary design work for repair of the current pier from the deck(in phases similar to that outlined above), to include cost estimates for each phase and a draft Maintenance and Repair Plan with yearly cost estimates.
- Task 2 - Initiate preliminary design and cost estimates for a new wooden pier (in phases as outlined above), to include cost estimates for each phase and a draft Maintenance and Repair Plan with yearly cost estimates.
- Task 3 - Initiate preliminary land site wide conceptual design(s) that comply with PARTF requirements to include initial cost estimates for construction, operation and maintenance.
- Task 4 - Conduct a financial/business case analysis should be performed to determine potential revenue that can offset the development costs. This should include some type of market analysis of any potential commercial/retail facilities that may be on the site.

FINANCING

Unexpended funds from the pier repair account should be available this year to fund the above preliminary design and financial work. For constructing the project, see attachment C, Town of Holden Beach Debt Service. It can be seen that in FY25-26, debt service will be reduced by approximately 484K. In FY26-27, another 702K debt is eliminated providing a running total of 1.186M that could be available to fund pier construction. It should be noted that in FY 27-28 the Central Reach Beach Renourishment debt will be paid off, but that the available funds may be applied to the Beach and Inlet reserve fund.

It is imperative that it be understood that **the pier is an amenity and will have to compete against critical infrastructure and other non critical projects for funding.** Examples of critical infrastructure projects include water system capacity increases, stormwater projects, fire station replacement (for 24/7 manning), road paving, beach and inlet maintenance, etc.

If the project cannot be funded within the existing budget, alternative financing such as a loan, bond, or grants, or some other method may be an option. In order to pursue these options, the above tasks must be complete so prospective financiers can adequately evaluate the request. It should also be noted, that from a state and county perspective, there are four other ocean fishing piers within an hour's drive from the Holden Beach causeway. This fact could adversely affect the attractiveness of state and county assistance. This is further exacerbated by the beach, canal and several fishing locations already in existence at Holden Beach.

Last, and perhaps most important, any financing arrangement must be approved by the voters/property owners given the magnitude of the costs involved. While a public hearing may be all that is legally required, they typically result in very poor attendance in part due to the fact that around 70% of the property owners do not live here and the hearings are not extensively advertised. A referendum during an election year (2025) may be more appropriate or some other iron clad way of assessing the property owners' position.

NOTIONAL TIMELINE

The following time line is an educated guess based on experience and will necessarily have to be refined based on more detailed discussion. It is also based on using the current technical agents (BMH,

Andrew Consulting) to leverage off the already completed work and Andrew Consulting's experience with designing the Oak Island Pier

Task 1 – 3 months – 7/1/2024-10/1/2024

Task 2 - 3 months – 09/1/2024-12/01/2024

Task 3 - 6 months – 02/01/2025-07/01/2025

Task 4 – Pier portion– 7/1/2024-10/1/2024; Site Portion - TBD depends on task 3 results

Actual construction times for pier repairs and land parcel development will depend on available funding and selected site features. Replacement of the pier is estimated to take 3 years based on construction of the Oak Island pier.

OTHER OPTIONS

Suggestions have been made to pursue a Public Private Partnership (PPP) in an effort to reduce the financial and operational burden on the Town. While a PPP is a viable option, attachments D, E and F clearly demonstrate that a lot of work must be completed before a partnership can be considered.

STAKEHOLDERS

The primary stakeholders for this project are the Holden Beach property owners as they have the financial responsibility for all costs associated with the pier, whether they use it or not. Businesses on the island are secondary stakeholders in that financial support for the pier could affect their overhead and for those businesses near the pier, their foot traffic volume. Day visitors are secondary stakeholders in that they are not financially responsible for the pier given that using the pier is optional for them. Renters/vacationers and are not considered stakeholders as they are customers of the rental property owners. Consequently, their interests are presumably represented by the rental property owners.

SUMMARY

The purpose of this document is to initiate discussion concerning development of the pier property by providing a baseline approach to that development. It is not intended to be the final project plan, but to serve as a starting point. Development of the pier property should encompass the entire property, not just the pier and pier building, with priority given to addressing the pier. Phases have been suggested to make the development financially manageable. A notional timeline for preliminary work has been outlined with possible funding scenarios to accomplish it. Last information concerning public private partnerships is provided along with stakeholder information.

3-14-2024 Meeting Summary

The following is a summary of the meeting discussions held on Thursday, March 14, at 10:30 between Rick Paarfus, Chip Hemingway of Bowman Murray Hemingway Architects (BMH), Neal Andrew and Zachery Norris of Andrew Consulting Engineers (structural engineering).

At the onset of the meeting, Mr. Paarfus, who is a sitting commissioner for the Town of Holden Beach, stated that he was not there representing the Town of Holden Beach, had no authority to direct or authorize any participants to take action on behalf of the Town or encumber the town in any manner. He further stated that he was there seeking information concerning the Holden Beach pier on his own accord as a private individual and was solely responsible for all costs incurred for the meeting.

Mr. Paarfus inquired if the structural repairs were based only on the documentation provided by the Town or if they had performed their own inspections and incorporated their findings into the repair design. Mr. Andrew stated that they had done their own inspections as well as reviewed the provided documentation to develop the repair designs.

Mr. Paarfus inquired about formal project cost estimates that were developed by the firms for the Town and was informed that they were not requested and consequently not provided. Mr. Hemingway was pressed by the Town Manager for a number for budgetary purposes and he provided a guestimate verbally of 2.1M. It was noted by Mr. Paarfus that without a proper cost estimate it limits the owner's ability to negotiate with a contractor and that it is not good practice to go to bid without a formal cost estimate on a project of this value. It was agreed that formal project cost estimates should be developed prior to any future bidding.

Pile installation methods were discussed next. After consulting with their geotechnical engineer, it was determined that the piles must be installed in the same manner as originally called for in the pier repair bid documents, i.e. driving. It was noted that some jetting may be necessary to penetrate hard pan beneath the mud line, but the final portion of the installation has to be done by driving. Driving not only provides a determination of the pile capacity (bearing load and uplift resistance), but also provides greater resistance to lateral loading of the pile which cannot be obtained with jetting alone.

Mr. Paarfus inquired if jetting piles in could have contributed to the pile cap failures (breakage) and loss of load bearing contact in the inspection reports. Mr. Andrew did not attribute those issues to jetting, but did note that the dowel pins used to attach the horizontal members to the pile caps can corrode and expand sufficiently that when combined with lateral loading can break the pile cap. His preferred method to connect the structure would be through bolting vs. doweling.

The possibility of repairing pile caps vs. replacing piles was briefly discussed and it was determined that this is not recommended unless it is the only repair that the town could afford.

Reduction of the scope was then discussed. The approach to reduce the scope would be to minimize the need for floating plant to make repairs and accomplish the work from the pier deck. To accomplish this, the pier structure would have to be repaired from the shore out (replace all fasteners, bracing, etc.) and possibly strengthened (additional stringers) to be able to support equipment and materials to do the work. Mr. Paarfus noted that the inspection reports indicated that the stringers were held in place with nails, brackets, or no visible form of attachment to the horizontal structural members. A structural analysis will be required to support this approach.

ATTACHMENT A

In order to accomplish repairs from the pier deck, the center of the pier house will have to be removed to allow equipment to access the pier. Importantly, it should be noted that all in attendance consider the pier house a tear down. It was agreed by all present that it did not make sense to renovate a building in such poor condition that was several feet below the flood plain in an ocean front location. In fact, BMH nearly turned down the job because of the previous BOC's insistence that the pier house be renovated.

The discussion turned to how the pier repairs might be phased in order to accommodate a limited budget. Structural stabilization of the pier is the first step to be considered. The second phase would be to complete repairs to make the pier safe for the public (handrails, other safety issues). The third phase would be to complete ADA requirements, electrical and plumbing repairs. Formal cost estimates for each of these phases will have to be prepared to see if the current budget can support them.

Maintenance and repair of the pier was also briefly discussed. Mr. Paarfus noted that the existing piles are not green heart wood as stated in the original inspection reports, but that the species is not known (see final Mid-Atlantic Engineering report). In addition, pressure treated piles are thought to have a service life of roughly 25 years in the marine environment. He stated that he understands that remaining service life is difficult to assess, but some sort of starting point is necessary for maintenance planning. Plans can be adjusted based on inspections over time. Mr. Andrew also noted that planning for the inevitable storm damage repairs must also be considered.

Future tasking relative to the pier project was discussed. It was agreed that a clear scope of work/task statement should be developed for the whole property. The plan should include

- Repair of the current pier in phases, with cost estimates
- Preliminary design and cost estimates for a new wooden pier (possibly leverage off of Oak Is. Design)
- Preliminary site wide design and cost estimates for entire property with cost estimates
- Preliminary Draft Maintenance & Repair plan with yearly cost estimates

All of the above should be divided into phases to support multi year funding due to limited resources. Mr. Paarfus addressed the fact that the property's use is currently constrained by a Parks and Recreation Trust Fund grant that will have to be considered in planning for the property. He also said that pier project funding has to compete against other higher priority critical infrastructure projects for resources. However, if the above project information was available, the BOC would be in a much stronger position to develop a funding strategy and to pursue other funding sources.

Last, Mr. Paarfus inquired about the evolution of the project with regard to direction from the previous BOC. Based on the dates on the pier house drawings and the pier repair drawings, it appears that the BOC focus had initially been on the pier house for the first year, until around the May 2023 timeframe and then the direction shifted to the pier repairs to get it open. BMH confirmed that this is correct. Mr. Paarfus stated that he felt the pier project was handled in a way others do not agree with which was also the general consensus of those in attendance. It was noted that the intent was to get the pier reopened as cost efficiently as possible but the cost still proved to be over budget.

The meeting adjourned at roughly 11:34 a.m.

Prepared by Rick Paarfus

Discussion with Stuart Lewis, P.E., MidAtlantic Engineering Partners 2-27-24@9:45 a.m.

Subject: Project GES-2201, Holden Beach Pier - Due Diligence Inspection

Stuart and I discussed the findings of the subject report (2022-05-17_GES-2201_LetterReport_2.0), potential issues with the pier, and areas for consideration before proceeding with repairs. The inspection and following report were generated as part of a due diligence inspection of the pier in 2022 before Holden Beach's acquisition. The MidAtlantic Engineering Partners was contracted under Geosyntec to inspect the pier elements underwater. This discussion included the following items:

1. Inspection
2. Piles
3. Overall Pier Structure
4. Pre-Construction
5. Cost Benefit Analysis
6. Construction Approach

Inspection:

- We performed the Due Diligence Inspection following ASCE Manuals and Reports on Engineering Practice No. 130 – "Waterfront Facilities Inspection and Assessment" standards. A Due Diligence inspection aims to form an engineering opinion of the general condition of a structure and estimate the order-of-magnitude replacement costs and repair costs.
- All timber piles were inspected visually and tactilely during the inspection, from the caps down to the mudline.
- Tactile inspection included hammer and pic penetration on the piles. The tactile inspection aims to determine the physical condition of the elements compared with the original as-built condition.
- We found most, if not all, of the piles to be sound, except for those with cracks or fissures, as noted in the report.
- The timber piles (except where noted) were in minor condition, i.e., looked good from the mud line up to the bracing, with no significant damage or deterioration noted.

Piles:

- Typically, 1-2 ft. below the mudline, timber piles are usually in good shape due to a lack of oxygen, no marine bores, rot, or deterioration.
- The timber piles' point of fixity results in piles either breaking at the mudline or at other points of fixity (near bracing).
- Most piles from the current shoreline to the offshore end are pressure-treated green piles but unknown timber species or pressure-treated material. Based on Mr. Lewis's experience, these piles have a service life of 25 years. The pressure treatment does not penetrate the pile fully and can wash out on the exterior. EPA rules/regulations no longer permit creosote timber piles in the marine environment.
- Mr. Lewis recommends replacing piles with pre-cast concrete piles for longevity. He also noted that composite piles are around 1.75 times as expensive as pre-cast concrete piles.
- You can install pre-cast concrete piles without causing damage.
- Mr. Lewis has used composite piles in the New York City harbor; they have superior abrasion resistance compared to concrete and timber.

ATTACHMENT B

- Mr. Lewis does not recommend jetting piles in for public access structures like a fishing pier. Resistance to uplift forces is a big concern (surface friction), and the pile capacity (end bearing and surface friction) cannot be determined/evaluated as with pile driving.

Pier Structure:

- Overall, Mr. Lewis thought the structure needed a more robust design for the environmental forces from the Atlantic Ocean.
- Current bracing could be more adequate.
- Pier deck height requirements can vary based on local requirements.
- We did not perform a load rating analysis as part of MidAtlantic's scope. However, the pier likely was designed to be 100 lbs/SF.

Pre-Construction:

- As per the ASCE Manual, a design-level inspection and additional engineering activities should be performed before construction.
- Pile bracing needs to be redesigned, as they appeared to be undersized based on the level of braces broken.
- Should a re-build of the pier be considered, using pre-cast concrete piles for replacements. However, due to the geographic location and possible hurricanes, even concrete piles can fail with specific loads.
- To open the pier before repairs, the city should develop Pier closure criteria to include the number of people allowed on the pier, certain load limits around specific areas where known failed piles and caps exist, weather conditions that dictate temporary closure, etc.

Cost-Benefit Analysis

- Given the geographic location of the pier and the unpredictability of the Atlantic and Hurricanes, even the most robust pier can fail to mother nature.
- A more robust pier will be more expensive. The alternative could involve installing a lower-quality pier that we can replace. Certain criteria for use would be implemented, i.e. weather restrictive use.
- Perform annual inspections of the pier before peak-season tourism to minimize downtime of the pier. (perform inspection between Feb-March to allow for repairs to be completed in April)

New Pier Construction

- Build out from shore, remove the need for floating construction.
- We should evaluate pier loading to determine what equipment loads are acceptable, if any.
- Wilmington, NC, and Charleston have reputable marine contractors for this work.
- Create a nationwide solicitation for qualified contractors for the new pier construction.

Town of Holden Beach, NC

Debt Service By Issue for All Types from 07/01/2022 to 07/01/2038

All Types

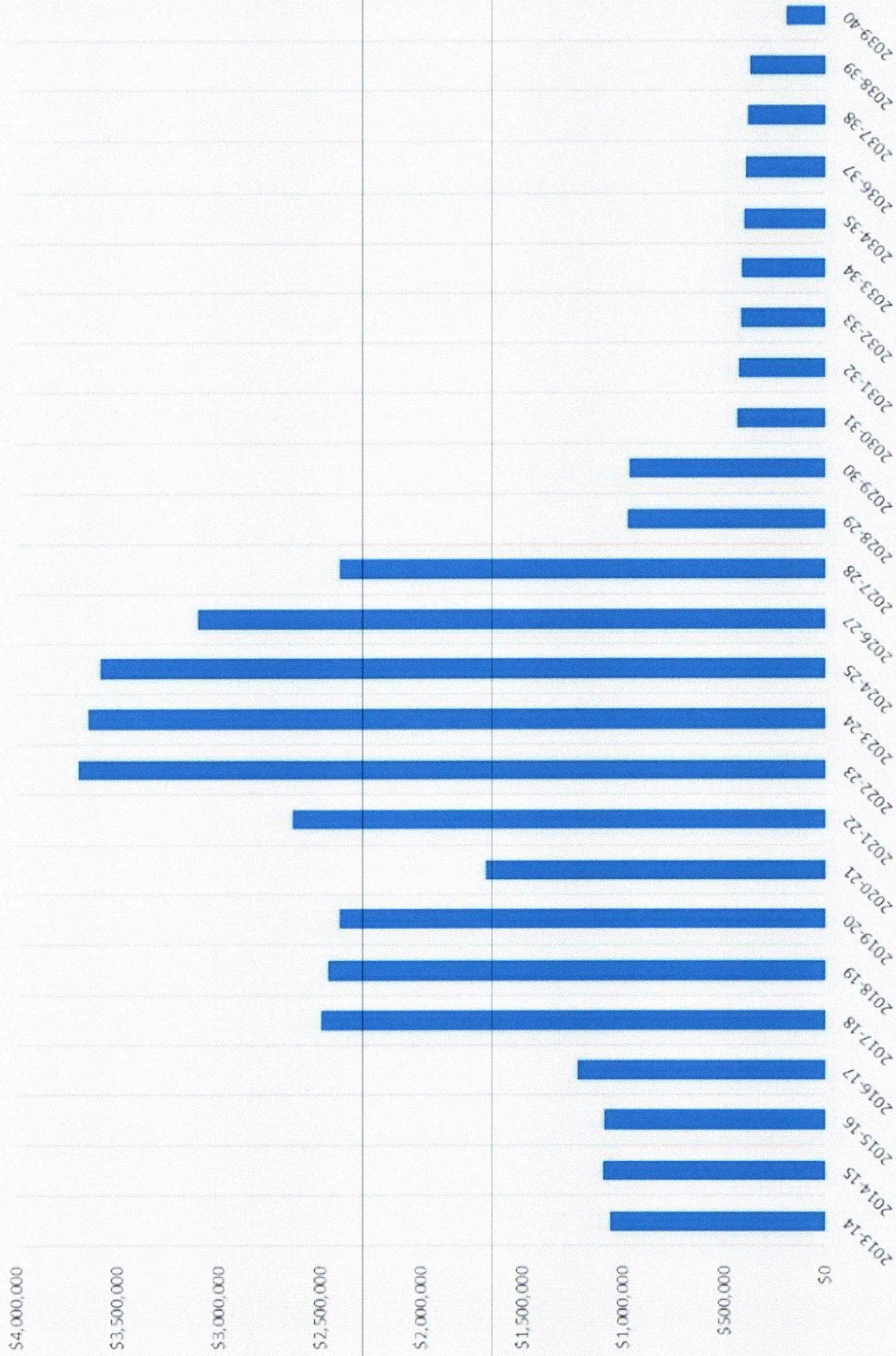
Schedule	Maturity Dates
Profile as Of	07/01/2022
Frequency	Annual
First Period End	07/01/2023
End Date	07/01/2038

	interest rate	FY 23	FY 24	FY 25	FY 26	FY 27
BLOCK Q 2022 Promissory Note	3.180%	365,133.33	354,533.33	343,933.33	-	-
EOC 2015 Note - Real Estate	2.420%	93,334.83	93,334.83	93,334.83	-	-
VAC TRUCK 2021 Capital lease	2.100%	64,770.39	64,770.39	64,770.39	64,770.40	-
2005 Sanitary Sewer Revolving Loan	2.205%	181,366.67	177,691.67	174,016.67	170,341.67	-
2004 Sanitary Sewer Revolving Loan	2.205%	415,821.67	415,821.67	415,821.65	415,821.66	-
CENTRAL REACH 2016 Note - Flood and Erosion Control	2.180%	1,317,720.00	1,291,560.00	1,265,400.00	1,239,240.00	1,213,080.00
TOWN HALL 2008 Note - Real Estate	3.810%	237,793.45	230,173.45	222,553.45	214,933.45	199,267.48
2019B Taxable Enterprise Systems Revenue Refunding Bonds	2.347%	518,174.85	518,964.01	519,407.29	519,176.31	519,505.64
LS REIMBURSEMENT 2021 Note - Sanitary Sewer	1.920%	152,443.06	150,153.55	147,864.05	145,574.54	143,285.03
LS REIMBURSEMENT 2021A Note	2.290%	69,312.07	68,120.49	66,928.91	65,737.33	64,545.75
PIER 2022 Installment Financing Contract	3.180%	277,959.90	279,175.12	273,099.04	267,022.95	260,946.86
Annual Debt Payment		3,693,830.22	3,644,298.51	3,587,129.61	3,102,618.31	2,400,630.76

ATTACHMENT C

FY 28	FY 29	FY 30	FY 31	FY 32	FY 33	FY 34	FY 35	FY 36	FY 37	FY 38
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-	-	-	-	-	-	-	-	-	-	-
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520,152.04	517,583.78	-	-	-	-	-	-	-	-	-
140,995.53	138,706.02	136,416.51	134,127.00	131,837.49	129,547.99	127,258.48	124,968.97	122,679.46	120,389.95	-
63,354.16	62,162.58	60,971.00	59,779.41	58,587.82	57,396.24	56,204.66	55,013.08	53,821.50	52,629.92	-
254,870.78	248,794.69	242,718.60	236,642.52	230,566.44	224,490.35	218,414.26	212,338.18	206,262.09	200,186.00	194,109.84
979,372.51	967,247.07	440,106.11	430,548.93	420,991.75	411,434.58	401,877.40	392,320.23	382,763.05	373,205.87	194,109.84

Debt Service



https://canons.sog.unc.edu/2014/03/new-construction-delivery-methods-public-private-partnerships-p3/



Coates' Canons NC Local Government Law

New Construction Delivery Methods – Public-Private Partnerships (P3)

Published: 03/05/14

Author Name: Norma Houston

In my last two posts, I described the new **design-build** and **design-build bridging** construction delivery methods authorized by the General Assembly during the 2013 legislative session. This post completes our discussion of the new delivery methods by outlining the third method authorized in **S.L. 2013-401/H857** – public-private partnerships (P3).

What is a Public-Private Partnership?

The basic concept of the P3 legislation is to provide flexible contracting authority under which units of government can partner with a private developer for the construction, operation, and financing of a capital project. Prior to the legislation's enactment, local governments had to seek authorization from the General Assembly through local acts to enter into public private partnerships. The new legislation makes this development and financing option available statewide to all public entities.

Public-private partnerships are not new in North Carolina. This type of contracting method has been authorized from time to time by the General Assembly, such as for the Department of Revenue's Tax Information Management System in 2009 (**S.L. 2009-451, Sec. 6.20**), the Town of Matthews in 2010 (**S.L. 2010-52**), Onslow County in 2013 (**S.L. 2013-37**), and certain Department of Transportation projects (**G.S. 136-28.1**) and toll roads (**S.L. 2012-184**). Similar public-private financing authorization has been available for well over a decade for NCSU's Centennial Campus, UNC-CH's Horace Williams Campus, and the Millennial Campuses of other UNC constituent institutions (**Article 21B of Chapter 116**). Public schools have had public-private partnership authorization since 2006 for built-to-suit capital leases (**G.S. 115C-532**; this statute expires July 1, 2015). Public-private partnerships were the subject of a **2009 legislative study commission** and a study by **NCSU's Institute for**

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ATTACHMENT D

D-1

4/16/2024, 4:23 PM

<https://canons.sog.unc.edu/2014/03/new-construction-delivery-methods-public-private-partnerships-p3/>

Emerging Issues. What is new is the statutory framework for entering into a P3 contract and the availability of this contracting and financing method for any unit of local government without having to obtain specific legislative authorization through a local act.

A public private project is defined under the new **G.S. 143-128.1C** as a “capital improvement project undertaken for the benefit of a governmental entity and private developer pursuant to a development contract that includes construction of a public facility or other improvements, including paving, grading, utilities, infrastructure, reconstruction, or repair, and may include both public and private facilities.”^[1] Under the P3 construction delivery method, the unit of government is authorized to acquire, construct, own, lease (as lessor or lessee), and operate a public-private project or facilities within a public-private project, and may make loans or grants for these purposes. Importantly, the private developer must provide at least 50% of the financing for the total cost of the project.^[2] The Local Government Commission must approve the contract if it involves a capital or operating lease.^[3]

P3 Contracting Process

To enter into a P3 contract, units of government must comply with the statutory requirements set out in **G.S. 143-128.1C**. The procedures are similar to those required for design-build and design-build bridging contracts only in that they are based on the Mini-Brooks Act. Otherwise, the P3 procurement requirements are substantially different.

Adopt Written Findings: To begin the P3 contracting process, the unit of government must make written findings that it has a critical need for the project. While the statute does not specifically require governing board approval, entities that are a public body under the Open Meetings Act (**Article 33C of Chapter 143**) must adopt these findings at an open meeting of the body, which for local governments means the governing board must approve the findings. Unlike the design-build and design-build bridging statutes, there are no specific criteria that must be adopted by the governing board other than a finding that there is a critical need for the project.

Determine Programming Needs: After approving the use of the P3 method, the unit must determine its programming requirements for the facilities to be constructed under the P3 contract and the form in which private developers submit their qualifications. This information forms the basis of the RFQ the unit advertises.

Publish Notice of RFQ: Next, the unit must advertise notice for interested private developers to submit their qualifications. The advertisement must be published in a newspaper of general circulation within the county in which the unit is located. The statute does not specify a minimum timeframe for the publication period, but units should choose a time sufficient for interested parties to develop a proposal taking into consideration the complexity of a P3 project. While the unit is not required to

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publish the programming requirements in the advertisement itself, it must make these requirements available to potential respondents in whatever form the unit deems appropriate.

Receive Responses: Units may choose to receive responses to its RFQ in any form it deems appropriate; sealed proposals and a public opening are not required. Private developers must submit the following information as part of their response to the RFQ:

- 1) Evidence of financial stability (the statute specifies that information that constitutes a “trade secret” under **G.S. 66-152(3)** remains confidential).
- 2) Experience with similar projects.
- 3) An explanation of project team selection by either listing licensed contractors, licensed subcontractors, and licensed design professionals whom the private developer proposes to use for the project’s design and construction, or a statement outlining a strategy for open contractor and subcontractor selection based competitive bidding procedures.
- 4) A statement of the developer’s availability to undertake the public-private project and projected time line for project completion.
- 5) Any other information required by the unit.

Evaluate Responses and Select Developer: The unit may award the development contract to the private developer it determines to be best qualified, which is the standard of award under the Mini-Brooks Act (**G.S. 143-64.31**). However, unlike a traditional Mini-Brooks Act selection process, the unit may negotiate with one or more of the respondents during the evaluation process. The statute is silent on the criteria the unit must use in evaluating the qualifications of the respondents, so the unit is free to develop their own criteria based on its programming needs, project scope, and any other factors related to the project it deems appropriate.

Award Development Contract: The unit’s governing board must award the development contract at an open meeting after a public hearing and at least 30 days’ published notice of the terms of the contract. The advertisement of the terms of the contract and the public hearing must be in a newspaper of general circulation within the county in which the unit is located. The unit must also make available a summary of the contract terms and conditions, and indicate how to obtain a copy of the complete contract.

Development Contract Terms and Conditions: The development contract between the unit and the private developer specifies the parties’ interests, roles, and responsibilities for the project. At a minimum, the contract must address:

- 1) The property interests of the unit and the private developer (this could include ownership, lease arrangements, or both).

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2) The development responsibilities of the unit and the private developer (this could include both construction and on-going operation and maintenance activities).

3) The financing responsibilities of the unit and the private developer (remember that the private developer must provide at least 50% of the financing for the total cost of the project).

4) The parties' good faith efforts to comply with HUB participation requirements and to recruit and select small business entities (the term "small business entities" is not defined in the statute).

The development contract also may require the developer to be responsible for some or all of the construction, purchase of materials and equipment, compliance with HUB participation requirements, and to use the same contractor(s) as the unit. It also may require the developer to purchase materials for the project at a reasonable price. If the project utilizes the design-build construction delivery method, the procurement requirements of the new design-build statute (G.S. 143-128.1A) apply.

Performance and payment bond requirements also apply, and the statute sets out specific procedures for claims under a payment bond made against the private developer.^[4]

The private developer with whom the unit contracts cannot perform any design or construction work on the project unless a contractor defaults, a qualified replacement cannot be obtained in a timely manner, and the unit approves.

Finally, the private developer and its contractors must comply with state HUB participation requirements, which include bidders' good faith efforts to solicit historically underutilized businesses on building construction projects costing \$300,000 or more (G.S. 143-128.2).

[1] G.S. 143-128.1C(a)(8).

[2] G.S. 143-128.1C(b).

[3] G.S. 143-128.1C(j). A capital or operating lease involving a public school cannot contain provisions relating to student assignment (G.S. 143-128.1C(l)).

[4] G.S. 143-128.1C(g).

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Public-Private Partnership

A new law became effective on October 10, 2023, and applies to any covered public enterprise agreements executed on or after that date.

Part IV of S.L. 2023-138 (See attachment F) compels LGC approval of any agreement in which a local government concedes or transfers control of a public enterprise that the local government owns or operates to a nongovernmental entity.

The requirements for these arrangements include holding a public hearing describing the terms of the agreement. After the public hearing, the local unit's governing board may proceed only after adopting a resolution declaring that the proposed arrangement is in the public interest. In making this determination, the board must consider ALL the following:

1. The physical condition of the public enterprise;
2. The capital replacements, additions, expansions, and repairs needed for the public enterprise to provide reliable service and meet all applicable federal standards;
3. The availability of federal and State grants and loans for system upgrades and repairs of the public enterprise;
4. The willingness and the ability of the nongovernmental entity to make system upgrades and repairs and provide high-quality and cost-effective service;
5. The reasonableness of the amount to be paid to the unit of local government to enter the arrangement;
6. The reasonableness of any amounts to be paid by the unit of local government to exit the arrangement;
7. The service quality guarantees provided by the arrangement and the consequences of any failure to satisfy the guarantees;
8. The most recent income and expense statement and asset and liabilities balance sheet of the nongovernmental entity and any consolidated nongovernmental entity;
9. The projected rates to customers of the public enterprise during the term of the arrangement and the affordability of the services of the public enterprise resulting from such projected rates;
10. The experience of the nongovernmental entity (and, if applicable, its affiliates within the consolidated nongovernmental entity) in the operation of utility systems similar to the public enterprise that is the subject of the arrangement; and
11. The alternatives to entering the arrangement and the potential impact on utility customers if the arrangement is not entered.

Local units should record the governing board's findings addressing all these considerations as part of the written resolution or supporting documentation.

Once the governing board adopts its resolution, the LGC may consider the proposed arrangement for approval. Like a bond issuance, the local government will apply to the LGC for approval and work with Department of State Treasurer staff to prepare the appropriate documentation and address any concerns.

ATTACHMENT E

E-1

Public-Private Partnership

The LGC may only approve the proposed arrangement if it finds and determines that the customers of the public enterprise will enjoy reasonable and material short-term and long-term savings and other net benefits from the arrangement during the term of the arrangement without the imposition of any material cost or charge upon termination of the arrangement.

The LGC may consider any of the following in making its determination (this is a non-exclusive list):

1. The projected financial feasibility of the proposed arrangement in the short-term and long-term, its effect on rates to be charged to the customers of the public enterprise under the arrangements being proposed, and its effect on the quality of services to be provided by the public enterprise under the arrangement.
2. The projected rates to customers of the public enterprise during the term of the arrangement, the basis for the establishment of such rates and the reasonableness of the basis, and the affordability of the services of the public enterprise resulting from such projected rates.
3. If the unit of local government will receive an initial payment for participating in the arrangement, a summary of the unit of local government's proposed plans for the use of the initial payment.
4. If there is any indebtedness of the unit of local government associated with the public enterprise, the plans for the retirement or defeasance of such indebtedness.
5. The financial condition of the nongovernmental entity and its affiliates within the consolidated nongovernmental entity and its ability to carry out the undertakings required of the nongovernmental entity in the arrangement.
6. The experience of the nongovernmental entity and its affiliates within the consolidated non-governmental entity in the operation of utility systems similar to the public enterprise that is the subject of the arrangement.
7. The nongovernmental entity's plans to finance its initial participation in the arrangement and future improvements to the public enterprise and the expected participation of the unit of local government in any financing.
8. The obligations of the nongovernmental entity set forth in the agreement for the maintenance of the public enterprise and the installation of improvements to the public enterprise during the term of the arrangement and the requirements of the agreement that adequate reserves be maintained during the term of the arrangement for such maintenance and improvements.
9. The plans set forth in the agreements for the arrangement for maintaining the quality of the components of the public enterprise to be returned to the control of the unit of local government at the end of the term of the agreement.
10. Any ongoing financial and other commitments of the unit of local government under the arrangement during its term.
11. Any financial payments the unit of local government is expected to be required to pay to the nongovernmental entity or any other person or entity at the end of the arrangement.

Public-Private Partnership

12. The effect, if any, of the arrangement on the tax status of interest on debt obligations issued by the unit of local government, or any other units of local government on account of contractual arrangements the other unit of local government may have with the unit of local government proposing the agreement being considered.

As with other contracts requiring LGC approval, any agreement subject to this new law that is executed without LGC approval is void. And the law makes it unlawful for any officer, employee, or agent of a local unit to take any actions pursuant to the agreement.

alteration, or removal, the cost shall (i) include all labor and materials costs associated with the project for the applicable dam and (ii) not include the costs associated with acquisition of land or right-of-way, design, quality control, electrical generating machinery, or constructing a roadway across the dam.

(3) Immediately upon completion of construction, repair, alteration, or removal of a dam, the owner shall file a certification with the Director, on a form prescribed by the Department, and accompanying documentation, which shows actual cost incurred by the owner for construction, repair, alteration, or removal of the applicable dam.

a. The owner's certification and accompanying documentation shall be filed with the as-built plans and the engineer's certification.

b. If the Director finds that the owner's certification and accompanying documentation contain inaccurate cost information, the Director shall either withhold final impoundment approval, if applicable, or revoke final impoundment approval, if applicable, until the owner provides accurate documentation and that documentation has been verified by the Department.

(4) Final approval to impound shall not be granted until the owner's certification and the accompanying documentation are filed in accordance with subdivision (3) of this subsection and the remainder of the application processing and compliance fee has been paid as provided by this subsection.

(5) Payment of the application processing and compliance fee shall be by check or money order made payable to the Department and reference the applicable dam.

(b) The Dam Safety Account is established as a nonreverting account within the Department. Fees collected under this section shall be credited to the Account and shall be applied to the costs of administering this Part."

PART IV. REQUIRE APPROVAL BY THE LOCAL GOVERNMENT COMMISSION FOR LOCAL GOVERNMENTS TO ENTER INTO AGREEMENTS TO CEDE OR TRANSFER CONTROL OVER A PUBLIC ENTERPRISE TO A NONGOVERNMENTAL ENTITY; PROHIBIT LOCAL GOVERNMENTS FROM ENTERING NONDISCLOSURE AGREEMENTS IN ORDER TO RESTRICT ACCESS TO PUBLIC RECORDS SUBJECT TO DISCLOSURE UNDER THE PUBLIC RECORDS ACT

SECTION 5.(a) Article 8 of Chapter 159 of the General Statutes reads as rewritten:

"Article 8.

"Financing Agreements and Other Financing Arrangements. Arrangements; Arrangements for Nongovernmental Control of Public Enterprises.

...
"§ 159-154. Nongovernmental control of public enterprises.

(a) For purposes of this section, the following definitions apply:

(1) Adjusted revenues. – Gross revenue of a public enterprise minus the cost of commodity purchases and wholesale electricity purchases for the public enterprise.

(2) Consolidated nongovernmental entity. – Collectively, all affiliated nongovernmental entities, which includes each entity's parents,

ATTACHMENT F

F-1
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subsidiaries, and each other entity that owns, directly or indirectly, at least ten percent (10%) of the capital or voting rights of the entity, and each other entity in which the entity owns, directly or indirectly, at least ten percent (10%) of the capital or voting rights.

- (3) Control. – Any one or more of the following, except that a contractual arrangement by a unit of local government with a nongovernmental entity to provide specified maintenance services for a fixed fee or fee per service basis alone does not create control of the public enterprise for purposes of this section:
- a. The authority to expend or otherwise manage during any fiscal year more than fifty percent (50%) of a public enterprise's adjusted revenues.
 - b. Responsibility for provision to the public of the services previously provided by the public enterprise.
 - c. Responsibility for operation and maintenance of a material portion of the assets and facilities of the public enterprise.
 - d. The authority to manage a material portion of the staff responsible for operation and maintenance of the assets and facilities of the public enterprise.
- (4) Nongovernmental entity. – Any person or entity other than (i) the State, (ii) a unit of local government, or (iii) a public body created pursuant to Chapter 159B of the General Statutes.
- (5) Public enterprise. – All or a material portion of one or more of the systems set forth in G.S. 160A-311, G.S. 153A-274, and Chapter 162A of the General Statutes.
- (6) Unit of local government. – A "unit of local government" as defined in G.S. 159-7 and a "public authority" as defined in G.S. 159-7.

(b) No unit of local government may concede or transfer control of any public enterprise that the unit of local government owns or operates to any nongovernmental entity or consolidated nongovernmental entity or enter into an agreement to do so unless the concession or transfer of control and the agreement thereunder have been approved by the Commission pursuant to this section as evidenced by the secretary's certificate thereon. Any agreement subject to Commission approval under this section that does not bear the secretary's certificate thereon shall be void, and it shall be unlawful for any officer, employee, or agent of a unit of local government to take any actions thereunder.

(c) Before executing an agreement subject to this section, the governing board of the unit of local government shall file an application for Commission approval of the agreement with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning the proposed agreement and the arrangements proposed to be carried out thereunder as the secretary may require. The Commission may prescribe the form of the application. Before the secretary accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference at which time the secretary and deputies may informally discuss the proposed agreement and arrangements proposed to be carried out thereunder.

(d) Prior to the Commission's consideration of whether to approve an agreement subject to this section and the arrangements thereunder, the governing body of the unit of local government shall conduct a public hearing on whether the proposed arrangement is in the public interest and following the public hearing the governing body shall adopt a resolution or take a similar action stating that it determines that the proposed arrangement is in the public interest. The public hearing shall be held by the governing body of the unit of

local government proposing the arrangement following publication of notice of the public hearing at least 10 days prior to the public hearing. The notice of public hearing shall describe the proposed arrangement in general terms. In determining that the arrangement is in the public interest, the governing body of the unit of local government shall consider, at a minimum, all of the following:

- (1) The physical condition of the public enterprise.
- (2) The capital replacements, additions, expansions, and repairs needed for the public enterprise to provide reliable service and meet all applicable federal standards.
- (3) The availability of federal and State grants and loans for system upgrades and repairs of the public enterprise.
- (4) The willingness and the ability of the nongovernmental entity to make system upgrades and repairs and provide high-quality and cost-effective service.
- (5) The reasonableness of the amount to be paid to the unit of local government to enter into the arrangement.
- (6) The reasonableness of any amounts to be paid by the unit of local government to exit the arrangement.
- (7) The service quality guarantees provided by the arrangement and the consequences of any failure to satisfy the guarantees.
- (8) The most recent income and expense statement and asset and liabilities balance sheet of the nongovernmental entity and any consolidated nongovernmental entity.
- (9) The projected rates to customers of the public enterprise during the term of the arrangement and the affordability of the services of the public enterprise resulting from such projected rates.
- (10) The experience of the nongovernmental entity and its affiliates within the consolidated nongovernmental entity in the operation of utility systems similar to the public enterprise that is the subject of the arrangement.
- (11) The alternatives to entering into the arrangement and the potential impact on utility customers if the arrangement is not entered.

(e) The Commission may approve an agreement for a unit of local government to concede or transfer control of a public enterprise and the arrangement to do so if it finds and determines that the customers of the public enterprise will enjoy reasonable and material short-term and long-term savings and other net benefits from the arrangement during the term of the arrangement without the imposition of any material cost or charge on the unit of local government or its customers upon termination of the arrangement. In determining whether a proposed agreement and the arrangements thereunder shall be approved, the Commission shall have authority to inquire into and to give consideration to such matters that it may believe to have bearing on whether the proposed agreement and the arrangement thereunder should be approved. Such matters may include any of the following:

- (1) The projected financial feasibility of the proposed arrangement in the short-term and long-term, its effect on rates to be charged to the customers of the public enterprise under the arrangements being proposed, and its effect on the quality of services to be provided by the public enterprise under the arrangement.
- (2) The projected rates to customers of the public enterprise during the term of the arrangement, the basis for the establishment of such rates and the reasonableness of the basis, and the affordability of the services of the public enterprise resulting from such projected rates.

- (3) If the unit of local government will receive an initial payment for participating in the arrangement, a summary of the unit of local government's proposed plans for the use of the initial payment.
- (4) If there is any indebtedness of the unit of local government associated with the public enterprise, the plans for the retirement or defeasance of such indebtedness.
- (5) The financial condition of the nongovernmental entity and its affiliates within the consolidated nongovernmental entity and its ability to carry out the undertakings required of the nongovernmental entity in the arrangement.
- (6) The experience of the nongovernmental entity and its affiliates within the consolidated non-governmental entity in the operation of utility systems similar to the public enterprise that is the subject of the arrangement.
- (7) The nongovernmental entity's plans to finance its initial participation in the arrangement and future improvements to the public enterprise and the expected participation of the unit of local government in any financing.
- (8) The obligations of the nongovernmental entity set forth in the agreement for the maintenance of the public enterprise and the installation of improvements to the public enterprise during the term of the arrangement and the requirements of the agreement that adequate reserves be maintained during the term of the arrangement for such maintenance and improvements.
- (9) The plans set forth in the agreements for the arrangement for maintaining the quality of the components of the public enterprise to be returned to the control of the unit of local government at the end of the term of the agreement.
- (10) Any ongoing financial and other commitments of the unit of local government under the arrangement during its term.
- (11) Any financial payments the unit of local government is expected to be required to pay to the nongovernmental entity or any other person or entity at the end of the arrangement.
- (12) The effect, if any, of the arrangement on the tax status of interest on debt obligations issued by the unit of local government, or any other units of local government on account of contractual arrangements the other unit of local government may have with the unit of local government proposing the agreement being considered.

(f) The Commission may require that any projection or other analysis provided to the Commission in connection with its consideration of the arrangement be prepared by a qualified independent expert approved by the Commission.

(g) If the Commission tentatively decides to deny the application because it cannot be supported from the information presented to it, it shall so notify the unit of local government filing the application. If the Commission approves or denies the application, the Commission shall enter its order setting forth such approval or denial of the application. If the Commission enters an order denying the application, the proceedings under this section shall be concluded. An order approving an application shall not be construed as an approval of the legality of the agreement in any respect.

(h) If the Commission approves an agreement and the arrangements thereunder as provided in this section and thereafter the parties determine to terminate the agreement voluntarily prior to the expiration of its stated term, the unit of local government shall not enter into any such termination arrangement unless the termination is approved by the

Commission following a procedure similar to the procedure for initial approval of the agreement and arrangement required by this section. This section shall not prohibit the termination of an agreement in the exercise of legal remedies following a breach of the agreement in accordance with its terms.

(i) If the Commission approves an agreement and the arrangements thereunder as provided in this section and thereafter the parties determine to amend the agreement in a material respect, the unit of local government shall not enter into any such amendment unless the amendment is approved by the Commission following a procedure similar to the procedure for initial approval of the agreement.

(j) Nothing in this section shall be construed to apply to the sale of a public enterprise to a utility regulated by the North Carolina Utilities Commission."

SECTION 5.(b) G.S. 132-1 is amended by adding a new subsection to read:

"(c) No political subdivision of this State may enter into a nondisclosure agreement in order to restrict access to public records subject to disclosure under this Chapter. The contract by which a political subdivision of this State agrees not to disclose information deemed confidential under State law shall be a public record, unless the existence of the contract is also deemed confidential under State law. If a nondisclosure agreement is associated with one or more closed session meetings under Article 33C of Chapter 143 of the General Statutes, the nondisclosure agreement shall be included in the minutes of each closed session meeting."

SECTION 5.(c) Subsection (b) of this section becomes effective November 1, 2023, and applies to any nondisclosure agreement entered into on or after that date. The remainder of this section is effective when it becomes law.

PART V. EMPLOYEE CLASSIFICATION AND COMPENSATION EXEMPTIONS FOR UTILITIES COMMISSION AND PUBLIC STAFF

SECTION 6.(a) G.S. 62-14 reads as rewritten:

"§ 62-14. Commission staff; structure and function.

(a) The Commission is authorized and empowered to employ hearing examiners; court reporters; a chief clerk and deputy clerk; a commission attorney and assistant commission attorney; transportation and pipeline safety inspectors; and such other professional, administrative, technical, and clerical personnel as the Commission may determine to be necessary in the proper discharge of the Commission's duty and responsibility as provided by law. The chairman shall organize and direct the work of the Commission staff.

(b) The salaries and compensation of all such personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State ~~agencies~~ agencies, except that the Commission and its employees are exempt from the classification and compensation rules established by the State Human Resources Commission pursuant to G.S. 126-4(1) through (4); G.S. 126-4(5) only as it applies to hours and days of work, vacation, and sick leave; G.S. 126-4(6) only as it applies to promotion and transfer; G.S. 126-4(10) only as it applies to the prohibition of the establishment of incentive pay programs; and Article 2 of Chapter 126 of the General Statutes, except for G.S. 126-7.1.

(c) The chairman, within allowed budgetary limits and as allowed by law, shall authorize and approve travel, subsistence and related expenses of such personnel, incurred while traveling on official business."

SECTION 6.(b) G.S. 62-15 reads as rewritten:

"§ 62-15. Office of executive director; Public Staff, structure and function.

(a) There is established in the Commission the office of executive director, whose salary and longevity pay shall be the same as that fixed for members of the Commission.