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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Angela L. De Jean.

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DIGEST

SB 462 Original

2022 Regular Session

Ward

Proposed law creates the Public-Private Partnerships Cooperative Endeavor Agreement Act which authorizes public entities to enter into public-private partnerships.

Proposed law provides that nothing proposed law provides any additional authority for a public entity to enter into a public-private partnership. If a public entity is otherwise authorized to enter into a public-private partnership pursuant to present law, the provisions of proposed law shall apply as additional requirements for entering into a public-private partnership. Further provides that nothing in proposed law shall constitute a waiver of or exemption from any other requirement of law.

Proposed law provides for definitions of "infrastructure assets", "infrastructure services", "private entity", "private infrastructure investment", "public entity", "public-private partnership", "public services", "qualified transaction", "related", "traditional public project", and "user fees".

Proposed law provides the following requirements for private entities:

- (1) Prior to the governing authority of a public entity granting final approval of a public-private partnership, any private entity seeking to enter into a public-private partnership shall provide the public entity with a copy of proposed law and a written proposal containing sufficient detail as the public entity determines is necessary to evaluate the proposal.
- (2) Any document or other information submitted by the private entity that contains proprietary or trade secret information may be designated as such in accordance with present law and shall have the protections available to the document or information described therein.

Proposed law provides that a public entity seeking to enter into a public-private partnership shall engage the services of the following advisors to assist the public entity in reviewing the proposed public-private partnership:

- (1) An attorney or firm of attorneys licensed to practice law in the state and nationally recognized as experienced in matters relating to the tax exemption of interest on debt of states and political subdivisions to serve as legal advisor.
- (2) An independent registered municipal advisor to serve as financial advisor.
- (3) Any other advisors or consultants the public entity deems necessary.

Further, requires the private entity to cooperate with and provide information as reasonably requested by the public entity and its advisors.

Proposed law provides that the advisors, each acting alone or in coordination with each other, shall provide analysis of the proposed public-private partnership including but not limited to:

- (1) The effect of the public-private partnership on the public entity's outstanding debt, associated debt covenants, and the federal tax treatment of such debt, and on the public entity's legal and financial capacity to incur debt in the future.
- (2) An analysis of the public-private partnership's advantages, disadvantages, benefits, costs, risks, and mitigants, including both financial and nonfinancial factors.
- (3) A financial analysis of the private entity's proposed financing plan and a calculation of projected user fees and cost of capital.
- (4) A description of potential traditional public projects which are available to the public entity as alternatives to the public-private partnership, and a detailed comparison of such alternatives.

Requires the advisors to deliver a written report or separate reports of their analysis to the public entity within 30 days following receipt of all information from the private entity which the advisors deem reasonably necessary to complete their analysis, or within such other timeframe as agreed to by the advisors and the public entity. Further requires the advisors' report to be distributed to the members of the public entity's governing body.

Proposed law provides that the public entity may charge a reasonable application fee to a private entity in order to cover some or all of the public entity's cost of evaluating a proposed public-private partnership.

Proposed law provides for a public hearing to make a determination if the proposed public-private partnership is in the public interest, and thereafter the governing body may approve the public-private partnership by adoption of a resolution or ordinance authorizing the execution of the public-private partnership agreements.

Proposed law provides that for 30 calendar days following the public hearing, any person in interest may contest the legality of the public-private partnership, or any provision of the agreements related thereto, for any cause. After that time, no person shall have a cause or right of action to contest the regularity, formality, or legality of the public-private partnership, any provision of the agreements related thereto, or the compliance with the public entity of any procedural requirements of proposed law. Further provides that thereafter, an irrebuttable presumption is created that every legal requirement for the confection of the public-private partnership and the execution of the agreements relating thereto has been complied with. Provides that no court shall have authority to inquire into any of these matters after the 30 days.

Proposed law provides that in each fiscal year in which a public entity is party to public-private partnership, the public entity shall include in the notes to its comprehensive annual financial report a brief summary of the public-private partnership including a description of the general terms of the

public-private partnership, the name of the private entity, and a schedule of payments expected to be made by or to the public entity.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 33:7641-7649)