

1                                   A bill to be entitled  
 2       An act relating to public-private partnerships;  
 3       creating s. 287.05712, F.S.; providing definitions;  
 4       providing legislative findings and intent relating to  
 5       the construction or upgrade of facilities by private  
 6       entities which are used predominately for a public  
 7       purpose; requiring public entities to develop and  
 8       adopt guidelines governing procedures and criteria for  
 9       the selection of projects and public-private  
 10      agreements; providing procurement procedures;  
 11      providing project-approval requirements; providing  
 12      project qualifications and process; providing for  
 13      notice to affected local jurisdictions; providing for  
 14      interim and comprehensive agreements between the  
 15      public and private entities; providing for use fees;  
 16      providing for private financing requirements;  
 17      providing powers and duties for private entities;  
 18      providing for expiration or termination of agreements;  
 19      providing for the applicability of sovereign immunity  
 20      for public entities with respect to qualified  
 21      projects; providing for construction of the act;  
 22      providing an effective date.

23  
 24   Be It Enacted by the Legislature of the State of Florida:

25  
 26           Section 1.   Section 287.05712, Florida Statutes, is created  
 27   to read:  
 28           287.05712   Public-private partnerships.-

29        (1) DEFINITIONS.—As used in this section, the term:  
 30        (a) "Affected local jurisdiction" means any county or  
 31 municipality in which all or a portion of a qualifying project  
 32 is located.  
 33        (b) "Appropriating body" means the body responsible for  
 34 appropriating or authorizing funding to pay for a qualifying  
 35 project.  
 36        (c) "Develop" or "development" means to plan, design,  
 37 develop, finance, lease, acquire, install, construct, or expand.  
 38        (d) "Fees" means fees or other charges imposed by the  
 39 private entity of a qualifying project for use of all or a  
 40 portion of such qualifying project pursuant to a comprehensive  
 41 agreement.  
 42        (e) "Lease payment" means any form of payment, including a  
 43 land lease, by a public entity to the private entity for the use  
 44 of a qualifying project.  
 45        (f) "Material default" means any default by the private  
 46 entity in the performance of its duties which jeopardizes  
 47 adequate service to the public from a qualifying project.  
 48        (g) "Operate" means to finance, maintain, improve, equip,  
 49 modify, repair, or operate.  
 50        (h) "Private entity" means any natural person,  
 51 corporation, general partnership, limited liability company,  
 52 limited partnership, joint venture, business trust, public  
 53 benefit corporation, nonprofit entity, or other private business  
 54 entity.  
 55        (i) "Proposal" means a detailed proposal accepted by a  
 56 responsible public entity beyond a conceptual level of review at

57 which issues such as fixing costs, payment schedules, financing,  
58 deliverables, and project schedule are defined.

59 (j) "Qualifying project" means any:

60 1. Public-purpose facility or project, including, but not  
61 limited to, any ferry, mass transit facility, vehicle parking  
62 facility, port facility, power generation facility, fuel supply  
63 facility, oil or gas pipeline, medical or nursing care facility,  
64 or recreational facility used primarily for events.

65 2. Building or facility that meets a public purpose and is  
66 developed or operated by or for any public entity.

67 3. Improvements, including equipment, of buildings to be  
68 principally used by a public entity.

69 4. Water, wastewater, or surface water management facility  
70 and other related infrastructure.

71 (k) "Responsible public entity" means any county,  
72 municipality, or other political subdivision of the state; any  
73 public body politic and corporate; or any regional entity that  
74 serves a public purpose and has authority to develop or operate  
75 a qualifying project.

76 (l) "Revenues" means all revenues, income, earnings, user  
77 fees, lease payments, or other service payments relating to the  
78 development or operation of a qualifying project, including, but  
79 not limited to, money received as grants or otherwise from the  
80 Federal Government, from any public entity, or from any agency  
81 or instrumentality of the foregoing in aid of a qualifying  
82 project.

83 (m) "Service contract" means a contract entered into  
84 between a public entity and the private entity.

85        (n) "Service payments" means payments to the private  
86 entity of a qualifying project pursuant to a service contract.

87        (o) "Water or wastewater management facility" means a  
88 project for the treatment, storage, disposal, or distribution of  
89 water or wastewater.

90        (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds  
91 that there is a public need for the construction or upgrade of  
92 facilities that are used predominantly for public purposes and  
93 that it is in the public's interest to provide for the  
94 construction or upgrade of such facilities.

95        (a) The Legislature also finds that:

96        1. There is a public need for timely and cost-effective  
97 acquisition, design, construction, improvement, renovation,  
98 expansion, equipping, maintenance, operation, implementation, or  
99 installation of public projects, including educational  
100 facilities, water or wastewater management facilities and  
101 infrastructure, technology infrastructure, and any other public  
102 infrastructure and government facilities within the state which  
103 serve a public need and purpose, and that such public need may  
104 not be wholly satisfied by existing procurement methods.

105        2. There are inadequate resources to develop new  
106 educational facilities, water or wastewater management  
107 facilities and infrastructure, technology infrastructure, and  
108 other public infrastructure and government facilities for the  
109 benefit of residents of this state, and that it has been  
110 demonstrated that public-private partnerships can meet these  
111 needs by improving the schedule for delivery, lowering the cost,  
112 and providing other benefits to the public.

113 3. There are state and federal tax incentives that promote  
 114 partnerships between public and private entities to develop and  
 115 operate qualifying projects.

116 4. A procurement under this section serves the public  
 117 purpose of this section if such action facilitates the timely  
 118 development or operation of qualifying projects.

119 (b) The Legislature declares that it is the intent of this  
 120 section to encourage investment in the state by private  
 121 entities, to facilitate various bond financing mechanisms,  
 122 private capital, and other funding sources for the development  
 123 and operation of qualifying projects, including expansion and  
 124 acceleration of such financing to meet the public need, and to  
 125 provide the greatest possible flexibility to public and private  
 126 entities contracting for the provision of public services.

127 (3) ADOPTION OF GUIDELINES.—

128 (a) Before requesting or considering a proposal for a  
 129 qualifying project, a responsible public entity shall adopt and  
 130 make publicly available guidelines that enable the public entity  
 131 to comply with this section. Such guidelines must be reasonable,  
 132 encourage competition, and guide the selection of projects under  
 133 the purview of the public entity.

134 (b) The guidelines must include:

135 1. Opportunities for competition through public notice and  
 136 the availability of representatives of the responsible public  
 137 entity to meet with private entities considering a proposal.

138 2. Reasonable criteria for choosing among competing  
 139 proposals.

140 3. Suggested timelines for selecting proposals and

141 negotiating an interim or comprehensive agreement.

142 4. Authorization for accelerated selection and review and  
143 documentation timelines for proposals involving a qualifying  
144 project that the responsible public entity deems a priority.

145 5. Procedures for financial review and analysis which, at  
146 a minimum, include a cost-benefit analysis, an assessment of  
147 opportunity cost, and consideration of the results of all  
148 studies and analyses related to the proposed qualifying project.  
149 The procedures must also include requirements for disclosing  
150 such analysis to the appropriating body for review before the  
151 execution of an interim or comprehensive agreement.

152 6. Consideration of the nonfinancial benefits of a  
153 proposed qualifying project.

154 7. A mechanism for the appropriating body to review a  
155 proposed interim or comprehensive agreement before execution.

156 8. Establishment of criteria for the creation and  
157 responsibilities of a public-private partnership oversight  
158 committee that includes members representing the responsible  
159 public entity and the appropriating body. Such criteria must  
160 include the scope, costs, and duration of the qualifying  
161 project, as well as whether the project involves or affects  
162 multiple public entities. If formed, the oversight committee  
163 shall be an advisory committee that reviews the terms of a  
164 proposed interim or comprehensive agreement.

165 9. Analysis of the adequacy of the information released  
166 when seeking competing proposals and providing for the  
167 enhancement of that information, if deemed necessary, to  
168 encourage competition.

169        10. Establishment of criteria, key decision points, and  
170 approvals required to ensure that the responsible public entity  
171 considers the extent of competition before selecting proposals  
172 and negotiating an interim or comprehensive agreement.

173        11. The publishing and posting of public notice of a  
174 private entity's request for approval of a qualifying project,  
175 including:

176            a. Specific information and documentation to be released  
177 regarding the nature, timing, and scope of the project.

178            b. A reasonable time period, as determined by the  
179 responsible public entity, of at least 45 days, which encourages  
180 competition and public-private partnerships in accordance with  
181 the goals of this section, during which time the responsible  
182 public entity is to receive competing proposals.

183            c. A requirement for advertising the public notice and  
184 posting the notice on the Internet.

185        12. A requirement that the responsible public entity  
186 engage the services of qualified professionals, which may  
187 include a Florida-registered professional or a certified public  
188 accountant, not otherwise employed by the responsible public  
189 entity, to provide an independent analysis regarding the  
190 specifics, advantages, disadvantages, and long-term and short-  
191 term costs of a request by a private entity for approval of a  
192 qualifying project, unless the governing body of the public  
193 entity determines that such analysis should be performed by  
194 employees of the public entity. Professional services as defined  
195 in s. 287.055(2) (a) shall be engaged pursuant to s. 287.055.

196        (4) PROCUREMENT PROCEDURES.—The responsible public entity

197 may receive or solicit proposals with the approval of the  
198 appropriating body as evidenced by approval of the project in  
199 the public entity's work program, and enter into agreements with  
200 private entities or consortia thereof, for the building,  
201 upgrade, operation, ownership, or financing of facilities.

202 (a) A responsible public entity may not consider any  
203 request by a private entity for approval of a qualifying project  
204 until the responsible public entity has adopted, or incorporated  
205 and made publicly available, in accordance with subsection (3),  
206 guidelines that enable the responsible public entity to comply  
207 with this section.

208 (b) By rule, ordinance, or guideline as applicable, the  
209 responsible public entity shall establish an application fee for  
210 the submission of unsolicited proposals under this section. The  
211 fee must be sufficient to pay the costs of evaluating the  
212 proposal. The responsible public entity may engage the services  
213 of private consultants to assist in the evaluation.

214 (c) The responsible public entity may request proposals  
215 from private entities for public-private projects or, if the  
216 public entity receives an unsolicited proposal, the public  
217 entity shall publish a notice in the Florida Administrative  
218 Weekly and a newspaper of general circulation at least once a  
219 week for 2 weeks stating that the public entity has received the  
220 proposal and will accept other proposals for the same project  
221 for 60 days after the initial date of publication. A copy of the  
222 notice must be mailed to each local government in the affected  
223 area.

224 (d) A responsible public entity that is a school board or



225 a county or municipality may enter into an interim or  
226 comprehensive agreement only with the approval of the local  
227 governing body.

228 (e) Before approval, the responsible public entity must  
229 determine that the proposed project:

230 1. Is in the public's best interest;

231 2. Is for a facility that is owned by the responsible  
232 public entity or for a facility for which ownership will be  
233 conveyed to the responsible public entity;

234 3. Has adequate safeguards in place to ensure that  
235 additional costs or service disruptions would not be imposed on  
236 the public and residents of the state in the event of default or  
237 cancellation of the agreement by the public entity;

238 4. Has adequate safeguards in place to ensure that the  
239 responsible public entity or the private entity has the  
240 opportunity to add capacity to the proposed project and other  
241 facilities serving similar predominantly public purposes; and

242 5. Would be owned by the responsible public entity upon  
243 completion or termination of the agreement and upon payment of  
244 all amounts financed.

245 (f) Technical studies and independent analyses must comply  
246 with the following:

247 1. Any interim or comprehensive agreement must include a  
248 reasonable finance plan, consistent with subsection (11), which  
249 identifies the project cost, revenues by source, financing,  
250 major assumptions, internal rate of return on private  
251 investments, and whether any government funds are assumed to  
252 deliver a cost-feasible project, and a total cash-flow analysis

253 beginning with implementation of the project and extending for  
 254 the term of the agreement.

255 2. Any comprehensive agreement must be consistent with an  
 256 investment-grade technical study prepared by a nationally  
 257 recognized expert who is accepted by the national bond rating  
 258 agencies. In evaluating the technical study, the responsible  
 259 public entity may rely upon internal staff reports prepared by  
 260 personnel familiar with the operation of similar facilities or  
 261 the advice of external advisors or consultants having relevant  
 262 experience.

263 (5) PROJECT APPROVAL REQUIREMENTS.—A request by a private  
 264 entity for approval of a qualifying project must be accompanied  
 265 by the following material and information, unless waived by the  
 266 responsible public entity:

267 (a) A topographic map with a scale of 1:2,000 or other  
 268 appropriate scale indicating the location of the qualifying  
 269 project.

270 (b) A description of the qualifying project, including the  
 271 conceptual design of such facilities or a conceptual plan for  
 272 the provision of services, and a schedule for the initiation of  
 273 and completion of the qualifying project which includes the  
 274 proposed major responsibilities and a timeline for activities to  
 275 be performed by both the public and private entity.

276 (c) A statement setting forth the method by which the  
 277 private entity proposes to secure any necessary property  
 278 interests required for the qualifying project.

279 (d) Information relating to current plans for the  
 280 development of facilities or technology infrastructure to be

281 used by a public entity which is similar to the qualifying  
282 project being proposed by the private entity, if any, of each  
283 affected local jurisdiction.

284 (e) A list of all permits and approvals required for the  
285 qualifying project from local, state, or federal agencies and a  
286 projected schedule for obtaining such permits and approvals.

287 (f) A list of public water or wastewater management  
288 facilities, if any, which will be crossed by the qualifying  
289 project and a statement of the plans of the private entity to  
290 accommodate such crossings.

291 (g) A statement setting forth the private entity's general  
292 plans for financing the qualifying project, including the  
293 sources of the private entity's funds and identification of any  
294 dedicated revenue source or proposed debt or equity investment  
295 on the behalf of the private entity.

296 (h) The names and addresses of persons who may be  
297 contacted for further information concerning the request.

298 (i) User fees, lease payments, and other service payments  
299 over the term of an interim or comprehensive agreement, and the  
300 methodology and circumstances for changes to such user fees,  
301 lease payments, and other service payments over time.

302 (j) Any additional material and information that the  
303 responsible public entity may reasonably request.

304 (6) PROJECT QUALIFICATION AND PROCESS.—

305 (a) Public-private partnerships shall be qualified by the  
306 responsible public entity as part of the procurement process  
307 outlined in the procurement documents if such process ensures  
308 that the private entity meets at least the minimum standards

309 contained in the responsible public entity's guidelines for  
310 qualifying professional architectural, engineering, and  
311 contracting services before submitting a proposal under the  
312 procurement.

313 (b) The responsible public entity must ensure that  
314 procurement documents include provisions for the private  
315 entity's performance and payment of subcontractors, including,  
316 but not limited to, surety bonds, letters of credit, parent  
317 company guarantees, and lender and equity partner guarantees.  
318 For those components of the qualifying project which involve  
319 construction, performance and payment bonds are required and are  
320 subject to the recordation, notice, suit limitation, and other  
321 requirements of s. 255.05. The responsible public entity shall  
322 balance the structure of the security package for the public-  
323 private partnership which ensures performance and payment of  
324 subcontractors with the cost of the security to ensure the most  
325 efficient pricing. The procurement documents must contain  
326 contract provisions addressing termination, default, and exit  
327 transition obligations of the private entity.

328 (c) After the public notification period has expired, the  
329 responsible public entity shall rank the proposals in order of  
330 preference. In ranking the proposals, the responsible public  
331 entity may consider factors that include, but need not be  
332 limited to, professional qualifications, general business terms,  
333 innovative engineering or cost-reduction terms, and finance  
334 plans. If the public entity is not satisfied with the results of  
335 the negotiations, the public entity may terminate negotiations  
336 with the proposer. If these negotiations are unsuccessful, the

337 responsible public entity may go to the second-ranked and lower-  
338 ranked firms, in order, using this same procedure. If only one  
339 proposal is received, the responsible public entity may  
340 negotiate in good faith and, if the public entity is not  
341 satisfied with the results of the negotiations, the public  
342 entity may terminate negotiations with the proposer.  
343 Notwithstanding this subsection, the responsible public entity  
344 may reject all proposals at any point in the process up to  
345 execution of a contract with the proposer.

346 (d) The responsible public entity shall perform an  
347 independent analysis, or other analysis in accordance with  
348 paragraph (4) (f), of the proposed public-private partnership  
349 which demonstrates the cost-effectiveness and overall public  
350 benefit at the following times:

- 351 1. Before the procurement process; and
- 352 2. Before awarding the contract.

353 (e) The responsible public entity may approve the  
354 development or operation of an educational facility, a water or  
355 wastewater management facility and related infrastructure,  
356 technology infrastructure or other public infrastructure, or a  
357 governmental facility needed by the public entity as a  
358 qualifying project, or the design or equipping of a qualifying  
359 project so developed or operated, if:

- 360 1. There is a public need for or benefit derived from a  
361 project of the type the private entity proposes as a qualifying  
362 project.
- 363 2. The estimated cost of the qualifying project is  
364 reasonable in relation to similar facilities.

365 3. The private entity's plans will result in the timely  
366 acquisition, design, construction, improvement, renovation,  
367 expansion, equipping, maintenance, or operation of the  
368 qualifying project.

369 (f) The responsible public entity may charge a reasonable  
370 fee to cover the costs of processing, reviewing, and evaluating  
371 the request, including, but not limited to, reasonable attorney  
372 fees and fees for financial, technical, and other necessary  
373 advisors or consultants.

374 (g) Upon approval of a qualifying project, the responsible  
375 public entity shall establish a date for the commencement of  
376 activities related to the qualifying project. The responsible  
377 public entity may extend such date.

378 (h) Approval of a qualifying project by the responsible  
379 public entity is subject to entering into a comprehensive  
380 agreement with the private entity.

381 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

382 (a) Any private entity requesting approval from, or  
383 submitting a proposal to, a responsible public entity must  
384 notify each affected local jurisdiction by furnishing a copy of  
385 its request or proposal to each affected local jurisdiction.

386 (b) Each affected local jurisdiction that is not a  
387 responsible public entity for the respective qualifying project  
388 shall, within 60 days after receiving such notice, submit any  
389 comments it may have in writing to the responsible public entity  
390 and indicate whether the facility is compatible with the local  
391 comprehensive plan, the local infrastructure development plans,  
392 the capital improvements budget, or other governmental spending

393 plan. Such comments shall be given consideration by the  
394 responsible public entity before entering a comprehensive  
395 agreement with a private entity.

396 (8) INTERIM AGREEMENT.—Before, or in connection with, the  
397 negotiation of a comprehensive agreement, the responsible public  
398 entity may enter into an interim agreement with the private  
399 entity proposing the development or operation of the qualifying  
400 project. An interim agreement does not obligate the responsible  
401 public entity to enter into a comprehensive agreement. An  
402 interim agreement must be limited to provisions that:

403 (a) Authorize the private entity to commence activities  
404 for which it may be compensated related to the proposed  
405 qualifying project, including, but not limited to, project  
406 planning and development, design and engineering, environmental  
407 analysis and mitigation, surveys, or other activities concerning  
408 any part of the proposed qualifying project, and ascertaining  
409 the availability of financing for the proposed facility or  
410 facilities.

411 (b) Establish the process and timing of the negotiation of  
412 the comprehensive agreement.

413 (c) Contain any other provisions related to any aspect of  
414 the development or operation of a qualifying project which the  
415 responsible public entity and the private entity deem  
416 appropriate.

417 (9) COMPREHENSIVE AGREEMENT.—

418 (a) Before developing or operating the qualifying project,  
419 the private entity shall enter into a comprehensive agreement  
420 with the responsible public entity. The comprehensive agreement

421 shall provide for:

422 1. Delivery of maintenance, performance, and payment bonds  
423 and letters of credit in connection with the development or  
424 operation of the qualifying project in the forms and amounts  
425 satisfactory to the responsible public entity. For those  
426 components of the qualifying project which involve construction,  
427 the form and amount of the bonds must comply with s. 255.05.

428 2. Review of plans and specifications for the qualifying  
429 project by the responsible public entity and approval by the  
430 responsible public entity if the plans and specifications  
431 conform to standards acceptable to the responsible public  
432 entity. This subparagraph does not require the private entity to  
433 complete the design of a qualifying project before the execution  
434 of a comprehensive agreement.

435 3. Inspection of the qualifying project by the responsible  
436 public entity to ensure that the operator's activities are  
437 acceptable to the public entity in accordance with the  
438 comprehensive agreement.

439 4. Maintenance of a policy or policies of public liability  
440 insurance, copies of which shall be filed with the responsible  
441 public entity accompanied by proofs of coverage, or self-  
442 insurance, each in the form and amount satisfactory to the  
443 responsible public entity and reasonably sufficient to ensure  
444 coverage of tort liability to the public and employees and to  
445 enable the continued operation of the qualifying project.

446 5. Monitoring the practices of the private entity by the  
447 responsible public entity to ensure that the qualifying project  
448 is properly maintained.



449       6. Reimbursement to be paid to the responsible public  
450 entity for services provided by the responsible public entity.

451       7. Filing of appropriate financial statements on a  
452 periodic basis.

453       8. Procedures governing the rights and responsibilities of  
454 the responsible public entity and the private entity in the  
455 event the comprehensive agreement is terminated or there is a  
456 material default by the private entity. Such procedures must  
457 include conditions governing assumption of the duties and  
458 responsibilities of the private entity by the responsible public  
459 entity and the transfer or purchase of property or other  
460 interests of the private entity by the responsible public  
461 entity.

462       9. Fees, lease payments, or service payments as may be  
463 established by agreement of the parties. A copy of any service  
464 contract shall be filed with the responsible public entity. In  
465 negotiating user fees, the parties shall establish fees that are  
466 the same for persons using the facility under like conditions  
467 and that will not materially discourage use of the qualifying  
468 project. The execution of the comprehensive agreement or any  
469 amendment thereto constitutes conclusive evidence that the fees,  
470 lease payments, or service payments provided for comply with  
471 this section. Fees or lease payments established in the  
472 comprehensive agreement as a source of revenues may be in  
473 addition to, or in lieu of, service payments.

474       10. Duties of the private entity, including terms and  
475 conditions that the responsible public entity determine serve  
476 the public purpose of this section.

477        (b) The comprehensive agreement may include:

478            1. An agreement by the responsible public entity to make

479 grants or loans to the private entity from amounts received from

480 the federal, state, or local government or any agency or

481 instrumentality thereof.

482            2. Provisions under which each entity agrees to provide

483 notice of default and cure rights for the benefit of the other

484 entity, including, but not limited to, provisions regarding

485 unavoidable delays.

486            3. Provisions whereby the authority and duties of the

487 private entity under this section will cease and the qualifying

488 project be dedicated to the responsible public entity or, if the

489 qualifying project was initially dedicated by an affected local

490 jurisdiction, to such affected local jurisdiction for public

491 use.

492            (10) FEES.—

493            (a) Agreements entered into pursuant to this section may

494 authorize the private entity to impose fees for the use of the

495 facility. The following provisions apply to such agreements:

496            1. The public-private partnership agreement must ensure

497 that the facility is properly operated, maintained, and renewed

498 in accordance with the responsible public entity's standards.

499            2. The responsible public entity may develop new

500 facilities or increase capacity in existing facilities through

501 public-private partnerships.

502            3. The responsible public entity may lease existing fee-

503 for-use facilities through public-private partnerships.

504            4. Any revenues must be regulated by the responsible

505 public entity pursuant to guidelines or rules established  
 506 pursuant to subsection (3). The regulations governing the future  
 507 increase of fees must be included in the public-private  
 508 partnership agreement.

509 (b) The responsible public entity shall include provisions  
 510 in the public-private partnership agreement which ensure that a  
 511 negotiated portion of revenues from fee-generating projects are  
 512 returned to the public entity over the life of the agreement. In  
 513 the case of a lease of an existing facility, the responsible  
 514 public entity shall receive a portion of funds upon closing on  
 515 the agreements and also a portion of excess revenues over the  
 516 life of the public-private partnership.

517 (11) FINANCING.-

518 (a) A private entity may enter into private-source  
 519 financing agreements between financing sources and the private  
 520 entity. All financing agreements and any liens on the property  
 521 or facility must be paid in full at the applicable closing that  
 522 transfers ownership of a facility to a responsible public  
 523 entity.

524 (b) The responsible public entity may lend funds from its  
 525 trust fund to private entities that construct projects  
 526 containing facilities that are approved under this section. To  
 527 be eligible, a private entity must comply with s. 215.97 and  
 528 must provide an indication from a nationally recognized rating  
 529 agency that the senior bonds for the project will be investment  
 530 grade, or must provide credit support, such as a letter of  
 531 credit or other means acceptable to the responsible public  
 532 entity, to ensure that the loans will be fully repaid.

533        (c) The responsible public entity may use innovative  
534 finance techniques associated with a public-private partnership  
535 under this section, including, but not limited to, federal loans  
536 as provided in 23 and 49 C.F.R., commercial bank loans, and  
537 hedges against inflation from commercial banks or other private  
538 sources. A responsible public entity may use the model financing  
539 agreement as provided in s. 489.145(6) for its financing of a  
540 facility owned by a responsible public entity. A financing  
541 agreement may not require the responsible public entity to  
542 indemnify the financing source, subject the responsible public  
543 entity's facility to liens in violation of s. 11.066(5), or  
544 secure financing by a responsible public entity with a pledge of  
545 security interest, and any such provisions are void.

546        (12) POWERS AND DUTIES OF THE PRIVATE ENTITY.—

547        (a) The private entity shall:

548        1. Develop or operate the qualifying project in a manner  
549 that is acceptable to the responsible public entity in  
550 accordance with the provisions of an interim or comprehensive  
551 agreement.

552        2. Maintain, or provide by contract for the maintenance or  
553 upgrade of, the qualifying project if required by an interim or  
554 comprehensive agreement.

555        3. Cooperate with the responsible public entity in making  
556 best efforts to establish any interconnection with the  
557 qualifying project requested by the responsible public entity.

558        4. Comply with an interim or comprehensive agreement and  
559 any lease or service contract.

560        (b) Each private facility constructed pursuant to this

561 section must comply with all requirements of federal, state, and  
562 local laws; state, regional, and local comprehensive plans;  
563 responsible public entity rules, procedures, and standards for  
564 facilities; and any other conditions that the responsible public  
565 entity determine to be in the public's best interest.

566 (c) The responsible public entity may provide services to  
567 the private entity. Agreements for maintenance and other  
568 services entered into pursuant to this section must provide for  
569 full reimbursement for services rendered for projects.

570 (d) A private entity of a qualifying project may provide  
571 additional services for the qualifying project to public or  
572 private entities other than the responsible public entity if the  
573 provision of additional service does not impair the private  
574 entity's ability to meet its commitments to the public entity  
575 pursuant to an interim or comprehensive agreement.

576 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon  
577 expiration or termination of an interim or comprehensive  
578 agreement, the responsible public entity may use revenues to pay  
579 current operation and maintenance costs of the qualifying  
580 project, as well as compensation to the responsible public  
581 entity for its services in developing and operating the  
582 qualifying project. Except as provided otherwise in the interim  
583 or comprehensive agreement, the right to receive such payment,  
584 if any, is considered just compensation for the qualifying  
585 project in the event termination is due to the default of the  
586 private entity; however, this right does not affect the right of  
587 the responsible public entity to terminate, with cause, an  
588 interim or comprehensive agreement and to exercise any other

589 rights and remedies that may be available to it at law or in  
 590 equity. The full faith and credit of the responsible public  
 591 entity may not be pledged to secure any financing of the private  
 592 entity by the election to take over the qualifying project.  
 593 Assumption of the development or operation of the qualifying  
 594 project does not obligate the responsible public entity to pay  
 595 any obligation of the private entity from sources other than  
 596 revenues.

597 (14) SOVEREIGN IMMUNITY.—This section does not waive the  
 598 sovereign immunity of the state, any responsible public entity,  
 599 any affected local jurisdiction, or any officer or employee  
 600 thereof with respect to participation in, or approval of, all or  
 601 any part of the qualifying project or its operation, including,  
 602 but not limited to, interconnection of the qualifying project  
 603 with any other infrastructure or project. Counties and  
 604 municipalities in which a qualifying project is located possess  
 605 sovereign immunity with respect to the project, including, but  
 606 not limited to, its design, construction, and operation.

607 (15) CONSTRUCTION.—This section shall be liberally  
 608 construed to effectuate the purposes thereof.

609 (a) This section does not limit the state or its agencies  
 610 in the acquisition, design, or construction of public projects  
 611 pursuant to other statutory authority.

612 (b) Except as otherwise provided in this section, this  
 613 section does not amend existing laws by granting additional  
 614 powers to, or further restricting, local governmental entities  
 615 from regulating and entering into cooperative arrangements with  
 616 the private sector for the planning, construction, and operation

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617 of facilities.

618 (c) This section does not waive any requirement of s.

619 287.055.

620 Section 2. This act shall take effect July 1, 2012.