

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 improvement by private entities of
 6 facilities used predominantly for a public purpose;
 7 providing procurement procedures; providing
 8 requirements for project approval; providing project
 9 qualifications and process; providing for notice to
 10 affected local jurisdictions; providing for
 11 comprehensive agreements between a public and a
 12 private entity; providing for use fees; providing for
 13 financing sources for certain projects by a private
 14 entity; providing powers and duties for private
 15 entities; providing for expiration or termination of
 16 agreements; providing for the applicability of
 17 sovereign immunity for public entities with respect to
 18 qualified projects; providing for construction of the
 19 act; providing an effective date.

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 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Section 287.05712, Florida Statutes, is created
 24 to read:

25 287.05712 Public-private partnerships.-

26 (1) DEFINITIONS.-As used in this section, the term:

27 (a) "Affected local jurisdiction" means a county,
 28 municipality, or special district in which all or a portion of a

29 qualifying project is located.

30 (b) "Develop" means to plan, design, finance, lease,
 31 acquire, install, construct, or expand.

32 (c) "Fees" means charges imposed by the private entity of
 33 a qualifying project for use of all or a portion of such
 34 qualifying project pursuant to a comprehensive agreement.

35 (d) "Lease payment" means any form of payment, including a
 36 land lease, by a public entity to the private entity of a
 37 qualifying project for the use of the project.

38 (e) "Material default" means a nonperformance of its
 39 duties by the private entity of a qualifying project which
 40 jeopardizes adequate service to the public from the project.

41 (f) "Operate" means to finance, maintain, improve, equip,
 42 modify, or repair.

43 (g) "Private entity" means any natural person,
 44 corporation, general partnership, limited liability company,
 45 limited partnership, joint venture, business trust, public-
 46 benefit corporation, nonprofit entity, or other private business
 47 entity.

48 (h) "Proposal" means a plan for a qualifying project with
 49 detail beyond a conceptual level for which terms such as fixing
 50 costs, payment schedules, financing, deliverables, and project
 51 schedule are defined.

52 (i) "Qualifying project" means:

- 53 1. A facility or project that serves a public purpose,
 54 including, but not limited to, any ferry or mass transit
 55 facility, vehicle parking facility, airport or seaport facility,
 56 power-generating facility, rail facility or project, fuel supply

57 facility, oil or gas pipeline, medical or nursing care facility,
58 recreational facility, sporting or cultural facility, or
59 educational facility or other building or facility that is used
60 or will be used by a public educational institution, or any
61 other public facility or infrastructure that is used or will be
62 used by the public at large or in support of an accepted public
63 purpose or activity;

64 2. An improvement, including equipment, of a building that
65 will be principally used by a public entity or the public at
66 large or that supports a service delivery system in the public
67 sector; or

68 3. A water, wastewater, or surface water management
69 facility or other related infrastructure.

70 (j) "Responsible public entity" means a county,
71 municipality, school board, or university, or any other
72 political subdivision of the state; a public body politic and
73 corporate; or a regional entity that serves a public purpose and
74 is authorized to develop or operate a qualifying project.

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

81 (l) "Service contract" means a contract entered into
82 between a public entity and the private entity which defines the
83 terms of the services to be provided with respect to a
84 qualifying project.

85 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
86 that there is a public need for the construction or upgrade of
87 facilities that are used predominantly for public purposes and
88 that it is in the public's interest to provide for the
89 construction or upgrade of the facilities.

90 (a) The Legislature also finds that:

91 1. There is a public need for timely and cost-effective
92 acquisition, design, construction, improvement, renovation,
93 expansion, equipping, maintenance, operation, implementation, or
94 installation of public projects, including educational
95 facilities, transportation facilities, water or wastewater
96 management facilities and infrastructure, technology
97 infrastructure, roads, highways, bridges, and other public
98 infrastructure and governmental facilities within the state
99 which serve a public need and purpose, and that such public need
100 may not be wholly satisfied by existing procurement methods.

101 2. There are inadequate resources to develop new
102 educational facilities, transportation facilities, water or
103 wastewater management facilities and infrastructure, technology
104 infrastructure, roads, highways, bridges, and other public
105 infrastructure and governmental facilities for the benefit of
106 residents of this state, and that a public-private partnership
107 has demonstrated that it can meet the needs by improving the
108 schedule for delivery, lowering the cost, and providing other
109 benefits to the public.

110 3. There are state and federal tax incentives that promote
111 partnerships between public and private entities to develop and
112 operate qualifying projects.

113 4. A procurement under this section serves the public
114 purpose of this section if such action facilitates the timely
115 development or operation of a qualifying project.

116 (b) It is the intent of the Legislature to encourage
117 investment in the state by private entities; to facilitate
118 various bond financing mechanisms, private capital, and other
119 funding sources for the development and operation of qualifying
120 projects, including the expansion and acceleration of such
121 financing to meet the public need; and to provide the greatest
122 possible flexibility to public and private entities contracting
123 for the provision of public services.

124 (3) PROCUREMENT PROCEDURES.—A responsible public entity
125 may receive unsolicited proposals or may solicit proposals for
126 qualifying projects and may thereafter enter into an agreement
127 with a private entity, or a consortium of private entities, for
128 the building, upgrade, operation, ownership, or financing of
129 facilities.

130 (a) The responsible public entity may establish a
131 reasonable application fee for the submission of an unsolicited
132 proposal under this section. The fee must be sufficient to pay
133 the costs of evaluating the proposal. The responsible public
134 entity may engage the services of a private consultant to assist
135 in the evaluation.

136 (b) The responsible public entity may request a proposal
137 from private entities for a public-private project or, if the
138 public entity receives an unsolicited proposal, the public
139 entity shall publish notice in the Florida Administrative
140 Register and a newspaper of general circulation at least once a

141 week for 2 weeks stating that the public entity has received a
142 proposal and will accept for 21 days after the initial date of
143 publication other proposals for the same project. A copy of the
144 notice must be mailed to each local government in the affected
145 area. The scope of the proposal may be publicized for the
146 purpose of soliciting competing proposals; however, the
147 financial terms of the proposal may not be disclosed until the
148 terms of all competing bids are simultaneously disclosed in
149 accordance with the applicable law governing procurement
150 procedures for the qualifying project.

151 (c) A responsible public entity that is a school board may
152 enter into a comprehensive agreement only with the approval of
153 the local governing body.

154 (d) Before approval, the responsible public entity must
155 determine that the proposed project:

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

157 2. Is for a facility that is owned by the responsible
158 public entity or for a facility for which ownership will be
159 conveyed to the responsible public entity;

160 3. Has adequate safeguards in place to ensure that
161 additional costs or service disruptions are not imposed on the
162 public in the event of material default or cancellation of the
163 agreement by the responsible public entity;

164 4. Has adequate safeguards in place to ensure that the
165 responsible public entity or the private entity has the
166 opportunity to add capacity to the proposed project or other
167 facilities serving similar predominantly public purposes; and

168 5. Will be owned by the responsible public entity upon

169 completion or termination of the agreement and upon payment of
170 the amounts financed.

171 (e) Before signing any comprehensive agreement, the
172 responsible public entity must consider a reasonable finance
173 plan that is consistent with subsection (9), the project cost,
174 revenues by source, available financing, major assumptions,
175 internal rate of return on private investments, if any
176 governmental funds are assumed in order to deliver a cost-
177 feasible project, and a total cash-flow analysis beginning with
178 the implementation of the project and extending for the term of
179 the agreement.

180 (f) In considering an unsolicited proposal, the
181 responsible public entity may require from the private entity an
182 investment-grade technical study prepared by a nationally
183 recognized expert who is accepted by national bond rating
184 agencies. In evaluating the technical study, the responsible
185 public entity may rely upon internal staff reports prepared by
186 personnel familiar with the operation of similar facilities or
187 the advice of external advisors or consultants having relevant
188 experience.

189 (4) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal
190 from a private entity for approval of a qualifying project must
191 be accompanied by the following material and information, unless
192 waived by the responsible public entity:

193 (a) A description of the qualifying project, including the
194 conceptual design of the facilities or a conceptual plan for the
195 provision of services, and a schedule for the initiation and
196 completion of the qualifying project.

197 (b) A description of the method by which the private
 198 entity proposes to secure any necessary property interests that
 199 are required for the qualifying project.

200 (c) A description of the private entity's general plans
 201 for financing the qualifying project, including the sources of
 202 the private entity's funds and identification of any dedicated
 203 revenue source or proposed debt or equity investment on behalf
 204 of the private entity.

205 (d) The name and address of a person who may be contacted
 206 for further information concerning the proposal.

207 (e) The proposed user fees, lease payments, or other
 208 service payments over the term of a comprehensive agreement, and
 209 the methodology and circumstances for changes to the user fees,
 210 lease payments, and other service payments over time.

211 (f) Any additional material or information that the
 212 responsible public entity reasonably requests.

213 (5) PROJECT QUALIFICATION AND PROCESS.—

214 (a) The private entity must meet the minimum standards
 215 contained in the responsible public entity's guidelines for
 216 qualifying professional architectural, engineering, and
 217 contracting services for traditional procurement projects.

218 (b) The responsible public entity must:

- 219 1. Ensure that provisions are made for the private
 220 entity's performance and payment of subcontractors, including,
 221 but not limited to, surety bonds, letters of credit, parent
 222 company guarantees, and lender and equity partner guarantees.
 223 For the components of the qualifying project which involve
 224 construction performance and payment, bonds are required and are

225 subject to the recordation, notice, suit limitation, and other
226 requirements of s. 255.05.

227 2. Ensure the most efficient pricing of the security
228 package that provides for the performance and payment of
229 subcontractors.

230 3. Ensure that provisions are made for the transfer of the
231 private entity's obligations if the comprehensive agreement is
232 terminated or a material default occurs.

233 (c) After the public notification period has expired in
234 the case of an unsolicited proposal, the responsible public
235 entity shall rank the proposals received in order of preference.
236 In ranking the proposals, the responsible public entity may
237 consider factors that include, but are not limited to,
238 professional qualifications, general business terms, innovative
239 engineering or cost-reduction terms, and finance plans. If the
240 responsible public entity is not satisfied with the results of
241 the negotiations, the responsible public entity may terminate
242 negotiations with the proposer and negotiate with the second-
243 ranked or subsequent-ranked firms, in the order consistent with
244 this procedure. If only one proposal is received, the
245 responsible public entity may negotiate in good faith, and if
246 the public entity is not satisfied with the results of the
247 negotiations, the public entity may terminate negotiations with
248 the proposer. Notwithstanding this paragraph, the responsible
249 public entity may reject all proposals at any point in the
250 process until a contract with the proposer is executed.

251 (d) The responsible public entity shall perform an
252 independent analysis of the proposed public-private partnership

253 which demonstrates the cost-effectiveness and overall public
254 benefit before the procurement process is initiated or before
255 the contract is awarded.

256 (e) The responsible public entity may approve the
257 development or operation of an educational facility, a
258 transportation facility, a water or wastewater management
259 facility or related infrastructure, a technology infrastructure
260 or other public infrastructure, or a governmental facility
261 needed by the responsible public entity as a qualifying project,
262 or the design or equipping of a qualifying project that is
263 developed or operated, if:

264 1. There is a public need for or benefit derived from a
265 project of the type that the private entity proposes as the
266 qualifying project.

267 2. The estimated cost of the qualifying project is
268 reasonable in relation to similar facilities.

269 3. The private entity's plans will result in the timely
270 acquisition, design, construction, improvement, renovation,
271 expansion, equipping, maintenance, or operation of the
272 qualifying project.

273 (f) The responsible public entity may charge a reasonable
274 fee to cover the costs of processing, reviewing, and evaluating
275 the request, including, but not limited to, reasonable attorney
276 fees and fees for financial and technical advisors or
277 consultants and for other necessary advisors or consultants.

278 (g) Upon approval of a qualifying project, the responsible
279 public entity shall establish a date for the commencement of
280 activities related to the qualifying project. The responsible

281 public entity may extend the commencement date.

282 (h) Approval of a qualifying project by the responsible
 283 public entity is subject to entering into a comprehensive
 284 agreement with the private entity.

285 (6) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

286 (a) The responsible public entity must notify each
 287 affected local jurisdiction by furnishing a copy of the proposal
 288 to each affected local jurisdiction when considering a proposal
 289 for a qualifying project.

290 (b) Each affected local jurisdiction that is not a
 291 responsible public entity for the respective qualifying project
 292 may, within 60 days after receiving the notice, submit in
 293 writing any comments to the responsible public entity and
 294 indicate whether the facility is incompatible with the local
 295 comprehensive plan, the local infrastructure development plan,
 296 the capital improvements budget, or other governmental spending
 297 plan. The responsible public entity shall consider the comments
 298 of the affected local jurisdiction before entering into a
 299 comprehensive agreement with a private entity. If an affected
 300 local jurisdiction fails to respond to the responsible public
 301 entity within the time provided in this paragraph, such failure
 302 to respond is deemed an acknowledgement by the affected local
 303 jurisdiction that the qualifying project is compatible with the
 304 local comprehensive plan, the local infrastructure development
 305 plan, the capital improvements budget, or other governmental
 306 spending plan.

307 (7) COMPREHENSIVE AGREEMENT.—

308 (a) Before developing or operating the qualifying project,

309 the private entity must enter into a comprehensive agreement
310 with the responsible public entity. The comprehensive agreement
311 must provide for:

312 1. The delivery of performance and payment bonds, letters
313 of credit, or other security acceptable to the responsible
314 public entity in connection with the development or operation of
315 the qualifying project in the form and amount satisfactory to
316 the responsible public entity. For the components of the
317 qualifying project which involve construction, the form and
318 amount of the bonds must comply with s. 255.05.

319 2. The review of the plans and specifications for the
320 qualifying project by the responsible public entity and, if the
321 plans and specifications conform to standards acceptable to the
322 responsible public entity, the approval by the responsible
323 public entity. This subparagraph does not require the private
324 entity to complete the design of the qualifying project before
325 the execution of the comprehensive agreement.

326 3. The inspection of the qualifying project by the
327 responsible public entity to ensure that the private entity's
328 activities are acceptable to the public entity in accordance
329 with the comprehensive agreement.

330 4. The maintenance of a policy of public liability
331 insurance, a copy of which must be filed with the responsible
332 public entity and accompanied by proofs of coverage, or self-
333 insurance, each in the form and amount satisfactory to the
334 responsible public entity and reasonably sufficient to ensure
335 coverage of tort liability to the public and employees and to
336 enable the continued operation of the qualifying project.

337 5. The monitoring by the responsible public entity of the
338 maintenance practices to be performed by the private entity to
339 ensure that the qualifying project is properly maintained.

340 6. The periodic filing by the private entity of the
341 appropriate financial statements that pertain to the qualifying
342 project.

343 7. The procedures that govern the rights and
344 responsibilities of the responsible public entity and the
345 private entity in the course of the construction and operation
346 of the qualifying project and in the event of the termination of
347 the comprehensive agreement or a material default by the private
348 entity. The procedures must include conditions that govern the
349 assumption of the duties and responsibilities of the private
350 entity by an entity that funded, in whole or part, the
351 qualifying project or by the responsible public entity, and must
352 provide for the transfer or purchase of property or other
353 interests of the private entity by the responsible public
354 entity.

355 8. The fees, lease payments, or service payments. In
356 negotiating user fees, the fees must be the same for persons
357 using the facility under like conditions and must not materially
358 discourage use of the qualifying project. The execution of the
359 comprehensive agreement or a subsequent amendment is conclusive
360 evidence that the fees, lease payments, or service payments
361 provided for in the comprehensive agreement comply with this
362 section. Fees or lease payments established in the comprehensive
363 agreement as a source of revenue may be in addition to, or in
364 lieu of, service payments.

365 9. The duties of the private entity, including the terms
366 and conditions that the responsible public entity determines
367 serve the public purpose of this section.

368 (b) The comprehensive agreement may include:

369 1. An agreement by the responsible public entity to make
370 grants or loans to the private entity from amounts received from
371 the federal, state, or local government or any agency or
372 instrumentality thereof.

373 2. A provision under which each entity agrees to provide
374 notice of default and cure rights for the benefit of the other
375 entity, including, but not limited to, a provision regarding
376 unavoidable delays.

377 3. A provision that terminates the authority and duties of
378 the private entity under this section and dedicates the
379 qualifying project to the responsible public entity or, if the
380 qualifying project was initially dedicated by an affected local
381 jurisdiction, to the affected local jurisdiction for public use.

382 (8) FEES.—An agreement entered into pursuant to this
383 section may authorize the private entity to impose fees for the
384 use of the facility. The following provisions apply to the
385 agreement:

386 (a) The responsible public entity may develop new
387 facilities or increase capacity in existing facilities through
388 agreements with public-private partnerships.

389 (b) The public-private partnership agreement must ensure
390 that the facility is properly operated, maintained, or improved
391 in accordance with standards set forth in the comprehensive
392 agreement.

393 (c) The responsible public entity may lease existing fee-
394 for-use facilities through a public-private partnership
395 agreement.

396 (d) Any revenues must be regulated by the responsible
397 public entity pursuant to the comprehensive agreement.

398 (e) A negotiated portion of revenues from fee-generating
399 uses must be returned to the public entity over the life of the
400 agreement.

401 (9) FINANCING.—

402 (a) A private entity may enter into a private-source
403 financing agreement between financing sources and the private
404 entity. A financing agreement and any liens on the property or
405 facility must be paid in full at the applicable closing that
406 transfers ownership or operation of the facility to the
407 responsible public entity at the conclusion of the term of the
408 comprehensive agreement.

409 (b) The responsible public entity may lend funds to
410 private entities that construct projects containing facilities
411 that are approved under this section.

412 (c) The responsible public entity may use innovative
413 finance techniques associated with a public-private partnership
414 under this section, including, but not limited to, federal loans
415 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
416 and hedges against inflation from commercial banks or other
417 private sources. In addition, the responsible public entity may
418 provide its own capital or operating budget to support a
419 qualifying project. The budget may be from any legally
420 permissible funding sources of the responsible public entity,

421 including the proceeds of debt issuances. A responsible public
422 entity may use the model financing agreement provided in s.
423 489.145(6) for its financing of a facility owned by a
424 responsible public entity. A financing agreement may not require
425 the responsible public entity to indemnify the financing source,
426 subject the responsible public entity's facility to liens in
427 violation of s. 11.066(5), or secure financing by the
428 responsible public entity with a pledge of security interest,
429 and any such provisions are void.

430 (d) A responsible public entity shall appropriate on a
431 priority basis as required by the comprehensive agreement a
432 contractual payment obligation, annual or otherwise, and the
433 required payment obligation must be appropriated before other
434 noncontractual obligations of the responsible public entity.

435 (10) POWERS AND DUTIES OF THE PRIVATE ENTITY.—

436 (a) The private entity shall:

437 1. Develop or operate the qualifying project in a manner
438 that is acceptable to the responsible public entity in
439 accordance with the comprehensive agreement.

440 2. Maintain, or provide by contract for the maintenance or
441 improvement of, the qualifying project if required by the
442 comprehensive agreement.

443 3. Cooperate with the responsible public entity in making
444 best efforts to establish interconnection between the qualifying
445 project and any other facility or infrastructure as requested by
446 the responsible public entity.

447 4. Comply with the comprehensive agreement and any lease
448 or service contract.

449 (b) Each private facility that is constructed pursuant to
450 this section must comply with the requirements of federal,
451 state, and local laws; state, regional, and local comprehensive
452 plans; the responsible public entity's rules, procedures, and
453 standards for facilities; and any other conditions that the
454 responsible public entity determines to be in the public's best
455 interest and that are included in the comprehensive agreement.

456 (c) The responsible public entity may provide services to
457 the private entity. An agreement for maintenance and other
458 services entered into pursuant to this section must provide for
459 full reimbursement for services rendered for qualifying
460 projects.

461 (d) A private entity of a qualifying project may provide
462 additional services for the qualifying project to the public or
463 to other private entities if the provision of additional
464 services does not impair the private entity's ability to meet
465 its commitments to the responsible public entity pursuant to the
466 comprehensive agreement.

467 (11) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
468 expiration or termination of a comprehensive agreement, the
469 responsible public entity may use revenues from the qualifying
470 project to pay current operation and maintenance costs of the
471 qualifying project. If the private entity materially defaults
472 under the comprehensive agreement, the compensation that is
473 otherwise due to the private entity is payable to satisfy all
474 financial obligations to investors and lenders on the qualifying
475 project in the same way that is provided in the comprehensive
476 agreement or any other agreement involving the qualifying

477 project, if the costs of operating and maintaining the
478 qualifying project are paid in the normal course. Revenues in
479 excess of the costs for operation and maintenance costs may be
480 paid to the investors and lenders to satisfy payment obligations
481 under their respective agreements. A responsible public entity
482 may terminate with cause and without prejudice a comprehensive
483 agreement and may exercise any other rights or remedies that may
484 be available to it. The full faith and credit of the responsible
485 public entity may not be pledged to secure the financing of the
486 private entity. The assumption of the development or operation
487 of the qualifying project does not obligate the responsible
488 public entity to pay any obligation of the private entity from
489 sources other than revenues from the qualifying project unless
490 stated otherwise in the comprehensive agreement.

491 (12) SOVEREIGN IMMUNITY.—This section does not waive the
492 sovereign immunity of the state, any responsible public entity,
493 any affected local jurisdiction, or any officer or employee
494 thereof with respect to participation in, or approval of, any
495 part of a qualifying project or its operation, including, but
496 not limited to, interconnection of the qualifying project with
497 any other infrastructure or project. A county or municipality in
498 which a qualifying project is located possesses sovereign
499 immunity with respect to the project, including, but not limited
500 to, its design, construction, and operation.

501 (13) CONSTRUCTION.—This section shall be liberally
502 construed to effectuate the purposes of this section.

503 (a) This section does not limit any state agency or
504 political subdivision of the state in the acquisition, design,

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505 or construction of a public project pursuant to other statutory
506 authority.

507 (b) Except as otherwise provided in this section, this
508 section does not amend existing laws by granting additional
509 powers to, or further restricting, a local governmental entity
510 from regulating and entering into cooperative arrangements with
511 the private sector for the planning, construction, or operation
512 of a facility.

513 (c) This section does not waive any requirement of s.
514 287.055.

515 Section 2. This act shall take effect July 1, 2013.