

1                   A bill to be entitled  
2     An act relating to public-private partnership  
3     infrastructure projects; creating s. 287.09475, F.S.;  
4     providing legislative findings and intent; defining terms;  
5     providing for the Department of Management Services and a  
6     state agency or local government to receive or solicit  
7     proposals to enter into a public works infrastructure  
8     project agreement with a private entity, or a consortium  
9     of private entities, to build, operate, or finance a  
10    public works infrastructure project; providing criteria  
11    for the selection of the project and the private entity  
12    that will enter into a partnership agreement with the  
13    participating governmental unit to build or operate the  
14    project; requiring all reasonable costs to the state  
15    related to infrastructure project and not part of the  
16    governmental unit's work plan to be borne by the private  
17    entity; authorizing the private entity to impose user fees  
18    for the use of the infrastructure project by the public;  
19    setting forth financing and revenue criteria for the  
20    infrastructure project agreement; requiring that each  
21    infrastructure facility be in compliance with all  
22    applicable federal, state, and local laws, construction  
23    standards, and performance standards; authorizing each  
24    participating governmental unit to exercise any lawful  
25    power possessed by it to aid in the development and  
26    construction of the infrastructure project; providing  
27    procedures for requesting and considering proposals;  
28    authorizing the department and a participating

29 governmental unit to use innovative financing techniques  
 30 for the infrastructure project; requiring the department  
 31 to compile a summary of new projects each year; limiting  
 32 the term of the infrastructure project agreement to a  
 33 specified number of years; providing that the head of the  
 34 participating governmental unit may authorize an increase  
 35 in the term of a project by 25 years; providing an  
 36 effective date.

37

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

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40 Section 1. Section 287.09475, Florida Statutes, is created  
 41 to read:

42 287.09475 Public-private partnership infrastructure  
 43 projects.--

44 (1) The Legislature finds and declares that there is a  
 45 public need for the rapid construction of public works  
 46 infrastructure projects for the purpose of improving the  
 47 economic, environmental, social, and cultural infrastructure of  
 48 this state, and that it is in the public interest to provide for  
 49 the construction or expansion of public works infrastructure  
 50 projects.

51 (2) As used in this section, the term:

52 (a) "Department" means the Department of Management  
 53 Services.

54 (b) "Government" means the state or a political  
 55 subdivision of the state.

56 (c) "Infrastructure project" or "public works

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57 infrastructure project" means a project to construct, operate,  
58 or maintain the basic public works of this state, including  
59 telecommunications, cable television, electricity, and broadband  
60 technology infrastructure, infrastructure for the transportation  
61 of gas, oil, or crude oil products; solid waste, waste water,  
62 and storm water infrastructure not connected with highway  
63 drainage; or other similar projects. The term does not include a  
64 transportation facility governed by s. 334.30.

65 (d) "Maintain" includes ordinary repair, rehabilitation,  
66 capital maintenance, maintenance replacement, and any other  
67 categories of maintenance on an infrastructure project as  
68 designated by the government.

69 (e) "Operate" or "operation" means an action to construct,  
70 maintain, rehabilitate, improve, equip, or modify an  
71 infrastructure project.

72 (f) "Private entity" means a person who enters into a  
73 public-private infrastructure project agreement with a  
74 participating governmental unit.

75 (g) "Participating governmental unit" means the  
76 governmental unit that enters into a public-private  
77 infrastructure project agreement with a private entity.

78 (h) "Public-private infrastructure project agreement"  
79 means the document representing the agreement between a private  
80 entity and a participating governmental unit. The agreement must  
81 include:

82 1. Acceptance by the participating governmental unit of a  
83 private contribution, including a money payment, in exchange for  
84 allowing the private entity to construct, operate, manage, or

85 maintain a public works infrastructure project or services  
 86 connected with an infrastructure project;

87 2. The sharing of resources by the participating  
 88 governmental unit with a private entity and the means of  
 89 delivering a project or service to the public; and

90 3. Cooperation in researching, developing, and  
 91 implementing projects or services for an infrastructure project.

92 (i) "User fee" means the rate, toll, fee, or other charges  
 93 imposed on the public by a private entity for use of all or part  
 94 of an infrastructure project.

95 (3) (a) In cooperation with the participating government,  
 96 the department and a participating governmental unit may receive  
 97 or solicit proposals and enter into a public-private  
 98 infrastructure project agreement with a private entity, or a  
 99 consortium of private entities, to build, operate, manage,  
 100 maintain, or finance a public works infrastructure project. The  
 101 participating governmental unit may advance a project programmed  
 102 in the governmental unit's adopted work program or its 10-year  
 103 plan. The project may use funds provided by the private entity,  
 104 which shall be reimbursed from user fees derived from the  
 105 project as programmed in the adopted work program.

106 (b) The department shall establish an application fee for  
 107 the submission of unsolicited proposals under this section. The  
 108 fee may not exceed the cost of evaluating the proposal.

109 (c) The department and a participating governmental unit  
 110 may engage the services of private consultants to assist in the  
 111 evaluation.

112 (d) Before approving a project, the department and the

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113 participating governmental unit must determine whether the  
114 proposed infrastructure project:

115 1. Is in the public interest;

116 2. Would have adequate safeguards in place to ensure that  
117 no additional costs or service disruptions would affect the  
118 public and residents of the state if the private entity defaults  
119 or if the participating governmental unit cancels the project;

120 3. Would have adequate safeguards in place to ensure that  
121 the participating governmental unit or the private entity has  
122 the opportunity to add capacity to the proposed project and  
123 other infrastructure projects serving similar goals and  
124 objectives; and

125 4. Would be owned by the participating governmental unit  
126 upon completion or termination of the public-private  
127 infrastructure project agreement.

128  
129 The department and participating governmental unit shall ensure  
130 that all reasonable costs to the state related to infrastructure  
131 projects that are not part of a participating governmental  
132 unit's work plan are borne by the private entity. The department  
133 and the participating governmental unit shall also ensure that  
134 all reasonable costs to the state and substantially affected  
135 local governments and utilities related to the infrastructure  
136 project are borne by the private entity for infrastructure  
137 projects that are owned by private entities.

138 (4) If a public-private infrastructure project agreement  
139 authorizes the private entity to impose user fees:

140 (a) The participating governmental unit may lease an

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141 existing public works facility to a private entity through a  
142 public-private partnership. The public-private partnership  
143 infrastructure project agreement must ensure that the  
144 infrastructure facility is properly operated, maintained, and  
145 renewed in accordance with the participating governmental unit's  
146 standards.

147 (b) The participating governmental unit may develop new  
148 infrastructure projects or increase capacity of existing  
149 projects through public-private partnerships. The public-private  
150 partnership infrastructure project agreement must ensure that  
151 the public works infrastructure project is properly operated and  
152 maintained in accordance with applicable standards.

153 (c) Revenue from user fees must be regulated by the  
154 participating governmental unit. The regulations governing  
155 future increases in fees or rates must be included in the  
156 public-private partnership infrastructure project agreement.

157 (d) The public-private partnership infrastructure project  
158 agreement must include provisions that ensure that a portion of  
159 revenue from projects that generate revenue is returned to the  
160 participating governmental unit over the term of the agreement.  
161 If an infrastructure project agreement includes the lease of an  
162 existing public works facility, the participating governmental  
163 unit must receive a portion of the funds upon closing the  
164 agreement, with the remainder paid from excess revenue that  
165 accrues during the term of the public-private infrastructure  
166 project agreement.

167 (e) The private entity must provide to the department an  
168 investment grade usage and revenue study prepared by an

169 internationally recognized public works revenue expert who is  
 170 recognized by the national bond rating agencies. The private  
 171 entity must also provide a financing plan that identifies the  
 172 project costs; lists the projected revenue by source, financing,  
 173 major assumptions, and internal rate of return on private  
 174 investments; specifies whether any government funds are  
 175 necessary in order to deliver a cost-feasible project; and  
 176 provides a total cash flow analysis beginning with  
 177 implementation of the project and extending for the term of the  
 178 public-private infrastructure project agreement.

179 (5) Each infrastructure project constructed pursuant to  
 180 this section shall be constructed in compliance with all  
 181 requirements of federal, state, and local laws; state, regional,  
 182 and local comprehensive plans; department rules, policies,  
 183 procedures, and standards for infrastructure public works  
 184 projects; and any other conditions that a participating  
 185 governmental unit determines to be in the public interest.

186 (6) The participating governmental unit may exercise its  
 187 powers with respect to the development and construction of state  
 188 and local public works infrastructure projects, including  
 189 eminent domain, to facilitate the development and construction  
 190 of infrastructure projects under this section. The department  
 191 and a participating governmental unit may provide services to  
 192 the private entity, but the public-private infrastructure  
 193 project agreement must provide for full reimbursement for these  
 194 services.

195 (7) Except as otherwise provided in this section, this  
 196 section does not grant additional powers to, or further

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197 restrict, local governmental entities from regulating and  
198 entering into cooperative arrangements with private entities for  
199 the planning, construction, and operation of infrastructure  
200 projects.

201 (8) Procurement conducted by the private entity, the  
202 department, and participating governmental units shall adhere to  
203 the requirements of this subsection. Generally accepted business  
204 practices must be part of the procurement process or included in  
205 the public-private partnership infrastructure project agreement.

206 (a) The department and participating governmental unit may  
207 request proposals from private entities for infrastructure  
208 projects or, if the department receives an unsolicited proposal,  
209 the department shall publish a notice in the Florida  
210 Administrative Weekly and a newspaper of general circulation at  
211 least once a week for 2 weeks stating that the department has  
212 received the proposal and will accept, for 120 days after the  
213 initial date of publication, other proposals for the same  
214 project purpose. A copy of the notice must be mailed to each  
215 local government in the affected area.

216 (b) A private entity must be qualified by the department  
217 as part of the procurement process, which must ensure that the  
218 private entity meets at least the minimum qualifying standards  
219 of the participating governmental unit for providing  
220 professional services and constructing infrastructure projects.

221 (c) Procurement documents must include provisions for  
222 performance by the private entity and payment of subcontractors,  
223 including, but not limited to, surety bonds, letters of credit,  
224 parent company guarantees, and lender and equity partner



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225 guarantees. The department and the participating governmental  
226 unit must balance the structure of the security requirements  
227 with the cost of the security in order to ensure the most  
228 efficient pricing.

229 (d) After the public notification period has expired, the  
230 department and participating governmental unit shall rank the  
231 proposals in order of preference. In ranking the proposals, the  
232 department and participating governmental unit may consider  
233 factors that include, but are not limited to, professional  
234 qualifications, general business terms, innovative engineering  
235 or cost-reduction terms, financing plans, and the need for state  
236 funds to deliver the infrastructure project. If the department  
237 and participating governmental unit are not satisfied with the  
238 results of the negotiations, the department and participating  
239 governmental unit may terminate negotiations with the highest-  
240 ranked proposal and may consider the second-ranked and lower-  
241 ranked proposals, in order, using the same procedure. If only  
242 one proposal is received, the department and participating  
243 governmental unit may negotiate in good faith and, if the  
244 department and participating governmental unit are not satisfied  
245 with the results of the negotiations, the department and  
246 participating governmental unit may terminate negotiations with  
247 the proposer. Notwithstanding this subsection, the department  
248 and a participating governmental unit may reject all proposals  
249 at any point in the process up to completion of a contract with  
250 the proposer.

251 (e) The department and a participating governmental unit  
252 must provide an independent analysis of the proposed public-

253 private infrastructure project agreement which demonstrates its  
 254 cost-effectiveness and overall public benefit before moving  
 255 forward with procurement and, if the procurement moves forward,  
 256 before awarding the contract.

257 (9) The department and a participating governmental unit  
 258 may use innovative finance techniques associated with a public-  
 259 private partnership under this section, including, but not  
 260 limited to, federal loans as provided in 23 and 49 C.F.R.,  
 261 commercial bank loans, and hedges against inflation from  
 262 commercial banks or other private sources.

263 (10) The department and a participating governmental unit  
 264 may enter into a public-private infrastructure project agreement  
 265 that includes extended terms providing annual payments for  
 266 performance based on the availability of services or the opening  
 267 of a facility to the public. In addition to other provisions in  
 268 this section, the following apply:

269 (a) The annual payments under a public works  
 270 infrastructure project agreement must be included in the  
 271 department's and participating governmental unit's tentative  
 272 work program and the long-range infrastructure plan for the  
 273 applicable metropolitan planning organization. The department  
 274 and participating governmental unit shall ensure that annual  
 275 payments on multiyear public-private infrastructure project  
 276 agreements are prioritized ahead of new capacity projects in the  
 277 development and updating of the tentative work infrastructure  
 278 project.

279 (b) The annual payments must be subject to annual  
 280 appropriation by the Legislature as specified in the General

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281 Appropriations Act which provides the initial funding support  
282 for the program.

283 (11) The department shall compile a summary of new public  
284 works infrastructure projects each year. This summary shall  
285 include identification of planned funding beyond a 5-year  
286 tentative work program and the public involvement process for  
287 the project, including discussion of the use of future funds to  
288 deliver the project.

289 (12) A public-private infrastructure project agreement  
290 under this section is limited to a term not exceeding 50 years.  
291 Upon making written findings that a public-private  
292 infrastructure project agreement requires a term in excess of 50  
293 years, the head of the participating governmental unit may  
294 authorize a term of up to 75 years. Infrastructure project  
295 agreements under this section may not have a term in excess of  
296 75 years unless specifically approved by the Legislature. The  
297 department and the participating governmental unit shall  
298 identify new projects having a term exceeding 75 years in the  
299 transmittal letter that accompanies the submission of the  
300 tentative work program to the Governor and the Legislature.

301 Section 2. This act shall take effect July 1, 2009.