

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; prohibiting public-  
 36 private infrastructure project agreements with private  
 37 entities that engage in or benefit from dealings with any  
 38 terrorist state; providing an effective date.

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

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42 Section 1. Section 287.09475, Florida Statutes, is created  
 43 to read:

44 287.09475 Public-private partnership infrastructure  
 45 projects.--

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

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

54 (a) "Department" means the Department of Management  
 55 Services.

56 (b) "Government" means the state or a political

57 subdivision of the state.

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

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

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

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

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

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

84 1. Acceptance by the participating governmental unit of a

85 private contribution, including a money payment, in exchange for  
86 allowing the private entity to construct, operate, manage, or  
87 maintain a public works infrastructure project or services  
88 connected with an infrastructure project;

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

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

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

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

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

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

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113 evaluation.

114 (d) Before approving a project, the department and the  
115 participating governmental unit must determine whether the  
116 proposed infrastructure project:

117 1. Is in the public interest;

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

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

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

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

140 (4) If a public-private infrastructure project agreement

141 authorizes the private entity to impose user fees:

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

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

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

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

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

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

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

197 (7) Except as otherwise provided in this section, this  
198 section does not grant additional powers to, or further  
199 restrict, local governmental entities from regulating and  
200 entering into cooperative arrangements with private entities for  
201 the planning, construction, and operation of infrastructure  
202 projects.

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

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

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

223 (c) Procurement documents for construction under an  
224 infrastructure project must include provisions for surety bonds



225 as required in s. 255.05.

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

248 (e) The department and a participating governmental unit  
 249 must provide an independent analysis of the proposed public-  
 250 private infrastructure project agreement which demonstrates its  
 251 cost-effectiveness and overall public benefit before moving  
 252 forward with procurement and, if the procurement moves forward,

253 before awarding the contract.

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

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

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

276 (b) The annual payments must be subject to annual  
277 appropriation by the Legislature as specified in the General  
278 Appropriations Act which provides the initial funding support  
279 for the program.

280 (11) The department shall compile a summary of new public

281 works infrastructure projects each year. This summary shall  
282 include identification of planned funding beyond a 5-year  
283 tentative work program and the public involvement process for  
284 the project, including discussion of the use of future funds to  
285 deliver the project.

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

298 (13) The department or a participating governmental unit  
299 may not receive or solicit proposals from, nor enter into a  
300 public-private infrastructure project agreement with, any  
301 private entity or consortium of private entities to build,  
302 operate, manage, maintain, or finance a public works  
303 infrastructure project under this section if the private entity  
304 or consortium of private entities engages in or in any way  
305 benefits from dealings with, or activities related to or  
306 involving, a terrorist state. For the purposes of this section,  
307 "terrorist state" is defined as any state, country, or nation  
308 designated by the United States Department of State as a state

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309 | sponsor of terrorism.

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