

By Senator Baker

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

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

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

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

45 287.09475 Public-private partnership infrastructure
46 projects.-

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

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

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

57 (b) "Government" means the state or a political subdivision
58 of the state.

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

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

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

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

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

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

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

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88 maintain a public works infrastructure project or services
89 connected with an infrastructure project;

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

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

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

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

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

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

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

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117 proposed infrastructure project:

118 1. Is in the public interest;

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

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

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

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

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

143 (a) The participating governmental unit may lease an
144 existing public works facility to a private entity through a
145 public-private partnership. The public-private partnership

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146 infrastructure project agreement must ensure that the
147 infrastructure facility is properly operated, maintained, and
148 renewed in accordance with the participating governmental unit's
149 standards.

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

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

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

170 (e) The private entity must provide to the department an
171 investment grade usage and revenue study prepared by an
172 internationally recognized public works revenue expert who is
173 recognized by the national bond rating agencies. The private
174 entity must also provide a financing plan that identifies the

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175 project costs; lists the projected revenue by source, financing,
176 major assumptions, and internal rate of return on private
177 investments; specifies whether any government funds are
178 necessary in order to deliver a cost-feasible project; and
179 provides a total cash flow analysis beginning with
180 implementation of the project and extending for the term of the
181 public-private infrastructure project agreement.

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

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

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

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

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

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

224 (c) Procurement documents must include provisions for
225 performance by the private entity and payment of subcontractors,
226 including, but not limited to, surety bonds, letters of credit,
227 parent company guarantees, and lender and equity partner
228 guarantees. The department and the participating governmental
229 unit must balance the structure of the security requirements
230 with the cost of the security in order to ensure the most
231 efficient pricing.

232 (d) After the public notification period has expired, the

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

254 (e) The department and a participating governmental unit
255 must provide an independent analysis of the proposed public-
256 private infrastructure project agreement which demonstrates its
257 cost-effectiveness and overall public benefit before moving
258 forward with procurement and, if the procurement moves forward,
259 before awarding the contract.

260 (9) The department and a participating governmental unit
261 may use innovative finance techniques associated with a public-

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262 private partnership under this section, including, but not
263 limited to, federal loans as provided in 23 and 49 C.F.R.,
264 commercial bank loans, and hedges against inflation from
265 commercial banks or other private sources.

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

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

281 (b) The annual payments must be subject to annual
282 appropriation by the Legislature as specified in the General
283 Appropriations Act which provides the initial funding support
284 for the program.

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

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

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