

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

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29 | to provide an independent analysis of the cost-
30 | effectiveness and public benefit of a proposed project;
31 | authorizing participating governmental unit to use
32 | innovative financing techniques for the infrastructure
33 | project; authorizing a governmental unit to enter into a
34 | public-private infrastructure project agreement that
35 | provides for payments based on performance; limiting the
36 | term of the infrastructure project agreement to a
37 | specified number of years; prohibiting the department or a
38 | participating governmental unit from soliciting proposals
39 | from or entering into an agreement with a private entity
40 | that engages in or benefits from dealings with a terrorist
41 | state; providing an effective date.

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43 | Be It Enacted by the Legislature of the State of Florida:

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45 | Section 1. Section 287.09475, Florida Statutes, is created
46 | to read:

47 | 287.09475 Public-private partnership infrastructure
48 | projects.-

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

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

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57 (a) "Governmental unit" means a state agency, county,
58 municipality, school district, or an independent special
59 district.

60 (b) "Infrastructure project" or "public works
61 infrastructure project" means a project to construct, operate,
62 or maintain the basic public works of this state, including
63 telecommunications, cable television, electricity, and broadband
64 technology infrastructure; infrastructure for the transportation
65 of gas, oil, or crude oil products; solid waste, waste water,
66 and storm water infrastructure not connected with highway
67 drainage; or other similar projects. The term does not include a
68 transportation facility as defined in s. 334.03(31).

69 (c) "Maintain" includes ordinary repair, rehabilitation,
70 capital maintenance, maintenance replacement, and any other
71 categories of maintenance on an infrastructure project as
72 designated by a participating governmental unit.

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

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

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

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

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85 include:

86 1. Acceptance by the participating governmental unit of a
87 private contribution, including a money payment, in exchange for
88 allowing the private entity to construct, operate, manage, or
89 maintain a public works infrastructure project or services
90 connected with an infrastructure project;

91 2. The means of delivering a project or service to the
92 public; and

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

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

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

112 (c) A governmental unit may engage the services of private

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113 consultants to assist in the evaluation of proposals.

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

116 1. Is in the public interest;

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

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

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

128
129 A participating governmental unit shall require all reasonable
130 costs related to infrastructure projects that are not part of a
131 participating governmental unit's work plan to be borne by the
132 private entity. This includes all design, development, and
133 installation costs related to the project. The costs associated
134 with the design, development, and installation of the public-
135 private infrastructure project may be recouped in the user fee,
136 if applicable. The participating governmental unit shall also
137 require that all reasonable costs to the state and substantially
138 affected local governments and utilities related to the
139 infrastructure project are borne by the private entity for
140 infrastructure 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
 146 infrastructure project agreement must require 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 require that
 154 the public works infrastructure project is properly operated and
 155 maintained in accordance with the participating governmental
 156 unit's existing standards.

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

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

169 accrues during the term of the public-private infrastructure
170 project agreement.

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

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

192 (6) The participating governmental unit may exercise its
193 powers with respect to the development and construction of state
194 and local public works infrastructure projects, including
195 eminent domain, to facilitate the development and construction
196 of infrastructure projects under this section. The participating

197 governmental unit may provide services to the private entity,
 198 but the public-private infrastructure project agreement must
 199 provide for full reimbursement for these services.

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

206 (8) Procurement conducted by a governmental unit shall
 207 adhere to the requirements set forth in s. 287.057.

208 (a) Procurement documents must include provisions for
 209 performance by the private entity and payment of subcontractors,
 210 including, but not limited to, surety bonds, letters of credit,
 211 parent company guarantees, and lender and equity partner
 212 guarantees. The governmental unit must make a good faith effort
 213 to balance the structure of the security requirements with the
 214 cost of the security in order to ensure the most efficient
 215 pricing.

216 (b) The governmental unit must provide an independent
 217 analysis of the proposed public-private infrastructure project
 218 agreement which demonstrates its cost-effectiveness and overall
 219 public benefit before moving forward with procurement and, if
 220 the procurement moves forward, before awarding the contract.

221 (9) A governmental unit may use innovative finance
 222 techniques associated with a public-private partnership under
 223 this section, including, but not limited to, federal loans as
 224 provided in 23 and 49 C.F.R. and commercial bank loans.

225 (10) A participating governmental unit may enter into a
 226 public-private infrastructure project agreement that includes
 227 extended terms providing annual payments for performance based
 228 on the availability of services or the opening of a facility to
 229 the public. In addition to other provisions in this section, the
 230 following apply:

231 (a) The annual payments under a public works
 232 infrastructure project agreement must be included in the
 233 participating governmental unit's tentative work program and the
 234 long-range infrastructure plan for the applicable metropolitan
 235 planning organization. The participating governmental unit shall
 236 ensure that annual payments on multiyear, public-private
 237 infrastructure project agreements are prioritized ahead of new
 238 capacity projects in the development and updating of the
 239 tentative work infrastructure project.

240 (b) The annual payments must be subject to annual
 241 appropriation by the Legislature as specified in the General
 242 Appropriations Act or subject to appropriation by the governing
 243 body of the governmental unit that provides the initial funding
 244 support for the program.

245 (11) A public-private infrastructure project agreement
 246 under this section is limited to a term not exceeding 50 years.
 247 All renewals of the agreement must be expressly approved by the
 248 governing body of the participating governmental unit or an
 249 agency head.

250 (12) A participating governmental unit may not receive or
 251 solicit proposals from, or enter into a public-private
 252 infrastructure project agreement with, any private entity or

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253 consortium of private entities to build, operate, manage,
254 maintain, or finance a public works infrastructure project under
255 this section if the private entity or consortium of private
256 entities engages in or in any way benefits from dealings with,
257 or activities related to or involving, a terrorist state. For
258 the purposes of this section, "terrorist state" is defined as
259 any state, country, or nation designated by the United States
260 Department of State as a state sponsor of terrorism.

261 Section 2. This act shall take effect July 1, 2010.