

By Senator Bennett

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1                                   A bill to be entitled  
2       An act relating to public-private partnerships;  
3       creating s. 287.05712, F.S.; establishing the Florida  
4       Public-Private Partnership Act; providing definitions;  
5       providing legislative findings and intent; providing  
6       for private entities to develop and operate public-  
7       purpose projects; requiring public entities to adopt  
8       and make publicly available specified guidelines for  
9       public-private agreements; providing requirements and  
10      procedures for procurement, consideration, and  
11      approval of projects; providing an exemption from the  
12      Consultant's Competitive Negotiation Act and any  
13      interpretations, regulations, or guidelines of the  
14      Department of Management Services; providing  
15      requirements and procedures for interim and  
16      comprehensive agreements between private and public  
17      entities; providing for affected local governments to  
18      comment on proposed projects; providing powers and  
19      duties for private entities; providing for material  
20      default and remedies with respect to projects and  
21      agreements; providing for federal, state, and local  
22      financing; providing sovereign immunity for public  
23      entities with respect to specified project activities;  
24      providing for construction and effect of the act;  
25      establishing the Public-Private Partnership Advisory  
26      Commission; providing commission duties; providing for  
27      appointment and reimbursement of commission members;  
28      requiring the commission to submit annual reports to  
29      the Governor and the Legislature; providing an

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30 effective date.

31  
32 Be It Enacted by the Legislature of the State of Florida:

33  
34 Section 1. Section 287.05712, Florida Statutes, is created  
35 to read:

36 287.05712 Florida Public-Private Partnership Act.-

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

38 (a) "Affected local jurisdiction" means any county, city,  
39 or town in which all or a portion of a qualifying project is  
40 located.

41 (b) "Appropriating body" means the body responsible for  
42 appropriating or authorizing funding to pay for a qualifying  
43 project.

44 (c) "Comprehensive agreement" means the comprehensive  
45 agreement between the private entity and the responsible public  
46 entity.

47 (d) "Develop" or "development" means to plan, design,  
48 develop, finance, lease, acquire, install, construct, or expand.

49 (e) "Interim agreement" means an agreement between a  
50 private entity and a responsible public entity that provides for  
51 phasing of the development or operation of a qualifying project.  
52 Such phases may include, but are not limited to, design,  
53 planning, engineering, environmental analysis and mitigation,  
54 financial and revenue analysis, or any other phase of the  
55 project that constitutes activity on any part of the qualifying  
56 project.

57 (f) "Lease payment" means any form of payment, including a  
58 land lease, by a public entity to the private entity for the use

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59 of a qualifying project.

60 (g) "Material default" means any default by the private  
61 entity in the performance of its duties that jeopardizes  
62 adequate service to the public from a qualifying project.

63 (h) "Operate" means to finance, maintain, improve, equip,  
64 modify, repair, or operate.

65 (i) "Private entity" means any natural person, corporation,  
66 general partnership, limited liability company, limited  
67 partnership, joint venture, business trust, public benefit  
68 corporation, nonprofit entity, or other private business entity.

69 (j) "Proposal" means a detailed proposal accepted by a  
70 responsible public entity beyond a conceptual level of review  
71 and at which time issues such as fixing costs, payment  
72 schedules, financing, deliverables, and project schedule are  
73 defined.

74 (k) "Public entity" means the state and any agency or  
75 authority thereof; any county, city, or town and any other  
76 political subdivision of the state; any public body politic and  
77 corporate; or any regional entity that serves a public purpose.

78 (l) "Qualifying project" means any:

79 1. Public-purpose facility or project, including, but not  
80 limited to, a public school building and any functionally  
81 related and subordinate facility, including any stadium or other  
82 facility primarily used for school events.

83 2. Building or facility that meets a public purpose and is  
84 developed or operated by or for any public entity.

85 3. Improvements, including equipment, of buildings to be  
86 principally used by a public entity.

87 4. Water or wastewater management facility and other

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88 related infrastructure.

89 (m) "Responsible public entity" means an agency or  
90 institution of the state that has the authority to develop or  
91 operate a qualifying project.

92 (n) "Revenues" means all revenues, income, earnings, user  
93 fees, lease payments, or other service payments relating to the  
94 development or operation of a qualifying project, including, but  
95 not limited to, money received as grants or otherwise from the  
96 Federal Government, from any public entity, or from any agency  
97 or instrumentality of the foregoing in aid of a qualifying  
98 project.

99 (o) "Service contract" means a contract entered into  
100 between a public entity and the private entity.

101 (p) "Service payments" means payments to the private entity  
102 of a qualifying project pursuant to a service contract.

103 (q) "User fees" means the rates, tolls, fees, or other  
104 charges imposed by the private entity of a qualifying project  
105 for use of all or a portion of such qualifying project pursuant  
106 to a comprehensive agreement.

107 (r) "Water or wastewater management facility" means a  
108 project for treatment, storage, disposal, or distribution of  
109 water or wastewater.

110 (2) LEGISLATIVE FINDINGS AND INTENT.-

111 (a) The Legislature finds that:

112 1. There is a public need for timely and cost-effective  
113 acquisition, design, construction, improvement, renovation,  
114 expansion, equipping, maintenance, operation, implementation, or  
115 installation of public projects, including educational  
116 facilities, water or wastewater management facilities and

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117 infrastructure, technology infrastructure, and any other public  
118 infrastructure and government facilities within the state that  
119 serve a public need and purpose, and that such public need may  
120 not be wholly satisfied by existing methods of procurement.

121 2. There are inadequate resources to develop new  
122 educational facilities, water or wastewater management  
123 facilities and infrastructure, technology infrastructure and  
124 other public infrastructure and government facilities for the  
125 benefit of citizens of the state, and it has been demonstrated  
126 that public-private partnerships can meet these needs by  
127 improving the schedule for delivery, lowering the cost, and  
128 providing other benefits to the public.

129 3. There are state and federal tax incentives that promote  
130 partnerships between public and private entities to operate and  
131 develop qualifying projects.

132 4. An action under subsection (4) serves the public purpose  
133 of this section if such action facilitates the timely  
134 development or operation of qualifying projects.

135 (b) The Legislature declares it is the intent of this  
136 section to encourage investment in the state by private  
137 entities, to facilitate various bond financing mechanisms,  
138 private capital, and other funding sources for the development  
139 and operation of qualifying projects, including expansion and  
140 acceleration of such financing to meet the public need, and to  
141 provide the greatest possible flexibility to public and private  
142 entities to contract for the provision of public services.

143 (3) ADOPTION OF GUIDELINES BY RESPONSIBLE PUBLIC ENTITIES.—

144 (a) A responsible public entity shall, before requesting or  
145 considering a proposal for a qualifying project, adopt and make

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146 publicly available guidelines that are sufficient to enable the  
147 responsible public entity to comply with this section. Such  
148 guidelines shall be reasonable, encourage competition, and guide  
149 the selection of projects under the purview of the responsible  
150 public entity.

151 (b) For a responsible public entity that is an agency or  
152 institution of the state, the guidelines shall include, but are  
153 not limited to:

154 1. Opportunities for competition through public notice and  
155 availability of representatives of the responsible public entity  
156 to meet with private entities considering a proposal.

157 2. Reasonable criteria for choosing among competing  
158 proposals.

159 3. Suggested timelines for selecting proposals and  
160 negotiating an interim or comprehensive agreement.

161 4. Authorization for accelerated selection and review and  
162 documentation timelines for proposals involving a qualifying  
163 project that the responsible public entity deems a priority.

164 5. Financial review and analysis procedures that shall  
165 include, at a minimum, a cost-benefit analysis, an assessment of  
166 opportunity cost, and consideration of the results of all  
167 studies and analyses related to the proposed qualifying project.  
168 These procedures shall also include requirements for the  
169 disclosure of such analysis to the appropriating body for review  
170 prior to execution of an interim or comprehensive agreement.

171 6. Consideration of the nonfinancial benefits of a proposed  
172 qualifying project.

173 7. A mechanism for the appropriating body to review a  
174 proposed interim or comprehensive agreement prior to execution.

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175       8. Establishment of criteria for the creation of and the  
176 responsibilities of a public-private partnership oversight  
177 committee with members representing the responsible public  
178 entity and the appropriating body. Such criteria shall include  
179 the scope, costs, and duration of the qualifying project, as  
180 well as whether the project involves or impacts multiple public  
181 entities. The oversight committee, if formed, shall be an  
182 advisory committee to review the terms of any proposed interim  
183 or comprehensive agreement.

184       9. Analysis of the adequacy of the information released  
185 when seeking competing proposals and providing for the  
186 enhancement of that information, if deemed necessary, to  
187 encourage competition.

188       10. Establishment of criteria, key decision points, and  
189 approvals required to ensure that the responsible public entity  
190 considers the extent of competition before selecting proposals  
191 and negotiating an interim or comprehensive agreement.

192       11. The posting and publishing of public notice of a  
193 private entity's request for approval of a qualifying project,  
194 including:

195           a. Specific information and documentation to be released  
196 regarding the nature, timing, and scope of the qualifying  
197 project.

198           b. A reasonable time period as determined by the  
199 responsible public entity to encourage competition and public-  
200 private partnerships in accordance with the goals of this  
201 section, such reasonable period to be at least 45 days, during  
202 which time the responsible public entity shall receive competing  
203 proposals.

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204 c. A requirement for advertising the public notice and  
205 posting a notice on the Internet.

206 (c) For a responsible public entity that is not an agency  
207 or institution of the state, the guidelines may include the  
208 provisions set forth in this subsection at the discretion of the  
209 public entity. However, the guidelines shall include:

210 1. A requirement that the responsible public entity engage  
211 the services of qualified professionals, which may include an  
212 architect, professional engineer, or certified public  
213 accountant, not otherwise employed by the responsible public  
214 entity, to provide an independent analysis regarding the  
215 specifics, advantages, disadvantages, and the long and short-  
216 term costs of any request by a private entity for approval of a  
217 qualifying project unless the governing body of the responsible  
218 public entity determines that such analysis shall be performed  
219 by employees of the responsible public entity.

220 2. A mechanism for the appropriating body to review a  
221 proposed interim or comprehensive agreement prior to execution.

222 (4) PROCUREMENT PROCEDURES FOR RESPONSIBLE PUBLIC  
223 ENTITIES.—The Consultant's Competitive Negotiation Act under s.  
224 287.055 and any interpretations, regulations, or guidelines of  
225 the Department of Management Services do not apply to this  
226 section. However, a responsible public entity may enter into an  
227 interim or comprehensive agreement as follows:

228 (a) A responsible public entity shall not be required to  
229 select the proposal with the lowest bid offer, but may consider  
230 price as one factor in evaluating the proposals received. Other  
231 factors that may be considered include:

232 1. The proposed costs of the qualifying facility.



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- 233       2. The general reputation, industry experience, and  
234 financial capacity of the private entity.
- 235       3. The proposed design of the qualifying project.
- 236       4. The eligibility of the facility for accelerated  
237 selection, review, and documentation timelines under the  
238 responsible public entity's compliance with a minority business  
239 enterprise participation plan or good faith effort to comply  
240 with the goals of such plan.
- 241       5. The private entity's plans to employ local contractors  
242 and residents.
- 243       6. Other criteria that the responsible public entity deems  
244 appropriate.
- 245       (b) A responsible public entity shall proceed in accordance  
246 with the guidelines adopted under subsection (3) unless it  
247 determines that proceeding in accordance with the guidelines is  
248 likely to be advantageous to the responsible public entity and  
249 the public, based on:
- 250           1. The probable scope, complexity, or priority of the  
251 project.
- 252           2. Risk sharing, including guaranteed cost or completion  
253 guarantees, added value or debt, or equity investments proposed  
254 by the private entity.
- 255           3. An increase in funding, dedicated revenue source, or  
256 other economic benefit that would not otherwise be available.  
257
- 258 When the responsible public entity determines to proceed  
259 according to the guidelines adopted by it pursuant to subsection  
260 (3), it shall state the reasons for its determination in  
261 writing.

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262 (c) A responsible public entity shall not proceed to  
263 consider any request by a private entity for approval of a  
264 qualifying project until the responsible public entity has  
265 adopted and made publicly available guidelines that are  
266 sufficient to enable the responsible public entity to comply  
267 with this section.

268 (d) A responsible public entity that is a school board or a  
269 county, city, or town may enter into an interim or comprehensive  
270 agreement under this section only with the approval of the local  
271 governing body.

272 (5) CONSIDERATION AND APPROVAL OF QUALIFYING PROJECTS.—

273 (a) A responsible public entity may request proposals or  
274 invite bids from private entities for the development or  
275 operation of qualifying projects pursuant to the public notice  
276 and procurement provisions of this section. A private entity may  
277 request the approval of the responsible public entity for a  
278 qualifying project.

279 (b) A request by a private entity for approval of a  
280 qualifying project shall be accompanied by the following  
281 material and information unless waived by the responsible public  
282 entity:

283 1. A topographic map with a scale of 1:2,000 or other  
284 appropriate scale indicating the location of the qualifying  
285 project.

286 2. A description of the qualifying project, including the  
287 conceptual design of such facility or facilities or a conceptual  
288 plan for the provision of services, and a schedule for the  
289 initiation of and completion of the qualifying project to  
290 include the proposed major responsibilities and timeline for

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291 activities to be performed by both the public and private  
292 entity.

293 3. A statement setting forth the method by which the  
294 private entity proposes to secure any necessary property  
295 interests required for the qualifying project.

296 4. Information relating to the current plans for  
297 development of facilities or technology infrastructure to be  
298 used by a public entity that is similar to the qualifying  
299 project being proposed by the private entity, if any, of each  
300 affected local jurisdiction.

301 5. A list of all permits and approvals required for the  
302 qualifying project from local, state, or federal agencies and a  
303 projected schedule for obtaining such permits and approvals.

304 6. A list of public water or wastewater management  
305 facilities, if any, that will be crossed by the qualifying  
306 project and a statement of the plans of the private entity to  
307 accommodate such crossings.

308 7. A statement setting forth the private entity's general  
309 plans for financing the qualifying project, including the  
310 sources of the private entity's funds and identification of any  
311 dedicated revenue source or proposed debt or equity investment  
312 on the behalf of the private entity.

313 8. The names and addresses of the persons who may be  
314 contacted for further information concerning the request.

315 9. User fees, lease payments, and other service payments  
316 over the term of an interim or comprehensive agreement and the  
317 methodology and circumstances for changes to such user fees,  
318 lease payments, and other service payments over time.

319 10. Additional material and information as the responsible

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320 public entity may reasonably request.

321 (c) Upon receipt of a proposal to develop or operate a  
322 qualifying project, the responsible public entity shall  
323 determine whether to accept the proposal for consideration. The  
324 responsible public entity may reject any proposal initiated by a  
325 private entity at any time. If the responsible public entity  
326 determines not to accept the proposal for consideration, the  
327 responsible public entity shall return the proposal to the  
328 private entity, including all fees and accompanying  
329 documentation.

330 (d) The responsible public entity may approve the  
331 development or operation of an education facility, a water or  
332 wastewater management facility and related infrastructure,  
333 technology infrastructure or other public infrastructure, or a  
334 government facility needed by a public entity as a qualifying  
335 project, or the design or equipping of a qualifying project so  
336 developed or operated, if:

337 1. There is a public need for or benefit derived from a  
338 project of the type the private entity proposes as a qualifying  
339 project.

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

342 3. The private entity's plans will result in the timely  
343 acquisition, design, construction, improvement, renovation,  
344 expansion, equipping, maintenance, or operation of the  
345 qualifying project.

346 (e) In evaluating any request, the responsible public  
347 entity may rely upon internal staff reports prepared by  
348 personnel familiar with the operation of similar facilities or

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349 the advice of external advisors or consultants having relevant  
350 experience.

351 (f) The responsible public entity may charge a reasonable  
352 fee to cover the costs of processing, reviewing, and evaluating  
353 the request, including, but not limited to, reasonable  
354 attorney's fees and fees for financial, technical, and other  
355 necessary advisors or consultants.

356 (g) Upon approval of a qualifying project, the responsible  
357 public entity shall establish a date for the commencement of  
358 activities related to the qualifying project. The responsible  
359 public entity may extend such date.

360 (h) Approval of a qualifying project by the responsible  
361 public entity is subject to entering into a comprehensive  
362 agreement with the private entity.

363 (6) INTERIM AGREEMENT.—Before or in connection with the  
364 negotiation of a comprehensive agreement, the responsible public  
365 entity may enter into an interim agreement with the private  
366 entity proposing the development or operation of the qualifying  
367 project. The interim agreement may:

368 (a) Permit the private entity to commence activities for  
369 which it may be compensated related to the proposed qualifying  
370 project, including, but not limited to, project planning and  
371 development, design and engineering, environmental analysis and  
372 mitigation, survey, and ascertaining the availability of  
373 financing for the proposed facility or facilities.

374 (b) Establish the process and timing of the negotiation of  
375 the comprehensive agreement.

376 (c) Contain any other provisions related to any aspect of  
377 the development or operation of a qualifying project that the

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378 responsible public entity and the private entity deem  
379 appropriate.

380 (7) COMPREHENSIVE AGREEMENT.—

381 (a) Before developing or operating the qualifying project,  
382 the private entity shall enter into a comprehensive agreement  
383 with the responsible public entity. The comprehensive agreement  
384 shall provide for:

385 1. Delivery of maintenance, performance, and payment bonds  
386 and letters of credit in connection with the development or  
387 operation of the qualifying project, in the forms and amounts  
388 satisfactory to the responsible public entity for those  
389 components of the qualifying project that involve construction.

390 2. Review of plans and specifications for the qualifying  
391 project by the responsible public entity and approval by the  
392 responsible public entity if the plans and specifications  
393 conform to standards acceptable to the responsible public  
394 entity. This subparagraph does not require the private entity to  
395 complete the design of a qualifying project prior to the  
396 execution of a comprehensive agreement.

397 3. Inspection of the qualifying project by the responsible  
398 public entity to ensure that the operator's activities are  
399 acceptable to the responsible public entity in accordance with  
400 the provisions of the comprehensive agreement.

401 4. Maintenance of a policy or policies of public liability  
402 insurance, copies of which shall be filed with the responsible  
403 public entity accompanied by proofs of coverage, and self-  
404 insurance, each in the form and amount satisfactory to the  
405 responsible public entity and reasonably sufficient to insure  
406 coverage of tort liability to the public and employees and to

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407 enable the continued operation of the qualifying project.

408 5. Monitoring the practices of the private entity by the  
409 responsible public entity to ensure that the qualifying project  
410 is properly maintained.

411 6. Reimbursement to be paid to the responsible public  
412 entity for services provided by the responsible public entity.

413 7. Filing of appropriate financial statements on a periodic  
414 basis.

415 8. Policies and procedures governing the rights and  
416 responsibilities of the responsible public entity and the  
417 private entity in the event the comprehensive agreement is  
418 terminated or there is a material default by the private entity.  
419 Such policies and guidelines shall include conditions governing  
420 assumption of the duties and responsibilities of the private  
421 entity by the responsible public entity and the transfer or  
422 purchase of property or other interests of the private entity by  
423 the responsible public entity.

424 9. User fees, lease payments, or service payments as may be  
425 established by agreement of the parties. A copy of any service  
426 contract shall be filed with the responsible public entity. In  
427 negotiating user fees under this subsection, the parties shall  
428 establish payments or fees that are the same for persons using  
429 the facility under like conditions and that will not materially  
430 discourage use of the qualifying project. The execution of the  
431 comprehensive agreement or any amendment thereto shall  
432 constitute conclusive evidence that the user fees, lease  
433 payments, or service payments provided for comply with this  
434 section. User fees or lease payments established in the  
435 comprehensive agreement as a source of revenues may be in

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436 addition to, or in lieu of, service payments.

437 10. Duties of the private entity, including terms and  
438 conditions that the responsible public entity determines serve  
439 the public purpose of this section.

440 (b) The comprehensive agreement may include:

441 1. An agreement by the responsible public entity to make  
442 grants or loans to the private entity from amounts received from  
443 the federal, state, or local government or any agency or  
444 instrumentality thereof.

445 2. Provisions under which the responsible public entity  
446 agrees to provide notice of default and cure rights for the  
447 benefit of the private entity and the persons specified therein  
448 as providing financing for the qualifying project, including  
449 terms and conditions to which the private entity and the  
450 responsible public entity mutually agree, including but limited  
451 to, provisions regarding unavoidable delays or a loan of public  
452 funds to the private entity to develop or operate one or more  
453 qualifying projects.

454 3. Provisions where the authority and duties of the private  
455 entity under this section shall cease, and the qualifying  
456 project is dedicated to the responsible public entity or, if the  
457 qualifying project was initially dedicated by an affected local  
458 jurisdiction, to such affected local jurisdiction for public  
459 use.

460 (c) Any changes in the terms of the comprehensive  
461 agreement, as agreed upon by the responsible public entity and  
462 the private entity, shall be added to the comprehensive  
463 agreement by written amendment.

464 (d) The comprehensive agreement may provide for the



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465 development or operation of phases or segments of the qualifying  
466 project.

467 (8) AFFECTED LOCAL JURISDICTIONS.—

468 (a) Any private entity requesting approval from, or  
469 submitting a proposal to, a responsible public entity shall  
470 notify each affected local jurisdiction by furnishing a copy of  
471 its request or proposal to each affected local jurisdiction.

472 (b) Each affected local jurisdiction that is not a  
473 responsible public entity for the respective qualifying project  
474 shall, within 60 days after receiving such notice, submit any  
475 comments it may have in writing on the proposed qualifying  
476 project to the responsible public entity and indicate whether  
477 the facility is compatible with the local comprehensive plan,  
478 local infrastructure development plans, the capital improvements  
479 budget, or other government spending plan. Such comments shall  
480 be given consideration by the responsible public entity before  
481 entering a comprehensive agreement with a private entity.

482 (9) POWERS AND DUTIES OF THE PRIVATE ENTITY.—

483 (a) The private entity has all power allowed by law  
484 generally to a private entity having the same form of  
485 organization as the private entity and shall have the power to  
486 develop or operate the qualifying project and collect lease  
487 payments, impose user fees, or enter into service contracts in  
488 connection with use thereof.

489 (b) The private entity may own, lease, or acquire any other  
490 right to use or operate the qualifying project.

491 (c) Any financing of the qualifying project may be in such  
492 amounts and upon such terms and conditions as may be determined  
493 by the private entity. Without limiting the generality of the

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494 foregoing, the private entity may issue debt, equity, or other  
495 securities or obligations; enter into sale and leaseback  
496 transactions; and secure any financing with a pledge of,  
497 security interest in, or lien on any or all of its property,  
498 including all of its property interests in the qualifying  
499 project.

500 (d) In operating the qualifying project, the private entity  
501 may make classifications according to reasonable categories for  
502 assessment of user fees and, with the consent of the responsible  
503 public entity, make and enforce reasonable rules to the same  
504 extent that the responsible public entity may make and enforce  
505 rules with respect to similar facilities.

506 (e) The private entity shall:

507 1. Develop or operate the qualifying project in a manner  
508 that is acceptable to the responsible public entity, all in  
509 accordance with the provisions of an interim or comprehensive  
510 agreement.

511 2. Maintain, or provide by contract for the maintenance or  
512 upgrade of the qualifying project, if required by an interim or  
513 comprehensive agreement.

514 3. Cooperate with the responsible public entity in making  
515 best efforts to establish any interconnection with the  
516 qualifying project requested by the responsible public entity.

517 4. Comply with the provisions of an interim or  
518 comprehensive agreement and any lease or service contract.

519 (f) A private entity of a qualifying project is not  
520 prohibited from providing additional services for the qualifying  
521 project to public or private entities other than the responsible  
522 public entity so long as the provision of additional service

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523 does not impair the private entity's ability to meet its  
524 commitments to the responsible public entity pursuant to an  
525 interim or comprehensive agreement.

526 (10) MATERIAL DEFAULT; REMEDIES.-

527 (a) In the event of a material default by the private  
528 entity, the responsible public entity may elect to assume the  
529 responsibilities and duties of the private entity of the  
530 qualifying project, and in such case, it shall succeed to all of  
531 the right, title, and interest in such qualifying project,  
532 subject to any liens on revenues previously granted by the  
533 private entity to any person providing financing thereof.

534 (b) Any responsible public entity having the power of  
535 condemnation under state law may exercise such power of  
536 condemnation to acquire the qualifying project in the event of a  
537 material default by the private entity. Any person who has  
538 provided financing for the qualifying project, and the private  
539 entity, to the extent of its capital investment, may participate  
540 in the condemnation proceedings with the standing of a property  
541 owner.

542 (c) The responsible public entity may terminate, with  
543 cause, an interim or comprehensive agreement and exercise any  
544 other rights and remedies that may be available to it at law or  
545 in equity.

546 (d) The responsible public entity may make or cause to be  
547 made any appropriate claims under the maintenance, performance,  
548 or payment bonds, or lines of credit.

549 (e) In the event the responsible public entity elects to  
550 take over a qualifying project, the responsible public entity  
551 may develop or operate the qualifying project, impose user fees,

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552 impose and collect lease payments for the use thereof and comply  
553 with any service contracts as if it were the private entity. Any  
554 revenues that are subject to a lien shall be collected for the  
555 benefit of and paid to secured parties, as their interests may  
556 appear, to the extent necessary to satisfy the private entity's  
557 obligations to secured parties, including the maintenance of  
558 reserves. Such liens shall be correspondingly reduced and, when  
559 paid off, released. Before any payments to, or for the benefit  
560 of, secured parties, the responsible public entity may use  
561 revenues to pay current operation and maintenance costs of the  
562 qualifying project, including compensation to the responsible  
563 public entity for its services in developing and operating the  
564 qualifying project. The right to receive such payment, if any,  
565 shall be considered just compensation for the qualifying  
566 project. The full faith and credit of the responsible public  
567 entity shall not be pledged to secure any financing of the  
568 private entity by the election to take over the qualifying  
569 project. Assumption of the development or operation of the  
570 qualifying project shall not obligate the responsible public  
571 entity to pay any obligation of the private entity from sources  
572 other than revenues.

573 (11) FEDERAL, STATE, AND LOCAL FINANCING.—

574 (a) Any financing of a qualifying project may be in such  
575 amounts and upon such terms and conditions as determined by an  
576 interim or comprehensive agreement between the responsible  
577 public entity and the private entity. Without limiting the  
578 generality of the terms and conditions of the financing, the  
579 private entity and the responsible public entity may propose to  
580 use any and all funding resources that may be available and may,

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581 to the fullest extent permitted by applicable law, issue debt,  
582 equity, or other securities or obligations; enter into leases;  
583 access any designed trust funds; borrow or accept grants from  
584 any state infrastructure bank; and secure any financing with a  
585 pledge of, security interest in, or lien on, any or all of its  
586 property, including all of its property interests in the  
587 qualifying facility.

588 (b) The responsible public entity may take any action to  
589 obtain federal, state, or local assistance for a qualifying  
590 project that serves the public purpose of this section and may  
591 enter into any contracts required to receive such assistance. If  
592 the responsible public entity is a state agency, any funds  
593 received from the state or federal government or any agency or  
594 instrumentality thereof shall be subject to appropriation by the  
595 Legislature. The responsible public entity may determine that it  
596 serves the public purpose of this section for all or any portion  
597 of the costs of a qualifying project to be paid, directly or  
598 indirectly, from the proceeds of a grant or loan made by the  
599 local, state, or federal government or any agency or  
600 instrumentality thereof.

601 (12) SOVEREIGN IMMUNITY.—This section does not waive the  
602 sovereign immunity of the state, any responsible public entity,  
603 any affected local jurisdiction, or any officer or employee  
604 thereof with respect to the participation in, or approval of all  
605 or any part of the qualifying project or its operation,  
606 including, but not limited to, interconnection of the qualifying  
607 project with any other infrastructure or project. Counties,  
608 cities, and towns in which a qualifying project is located  
609 possess sovereign immunity with respect to the project's design,

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610 construction, and operation.

611 (13) CONSTRUCTION AND EFFECT.—This section shall be  
612 liberally construed to effectuate the purposes thereof. This  
613 section does not affect the authority of the responsible public  
614 entity to take action that would impact the debt capacity of the  
615 state.

616 (14) PUBLIC-PRIVATE PARTNERSHIP ADVISORY COMMISSION.—

617 (a) The Public-Private Partnership Advisory Commission is  
618 established to review the implementation of this section and to  
619 provide recommendations for any revisions necessary to further  
620 support public-private partnership opportunities in the state.

621 (b) The commission shall consist of 12 members, as follows:

622 1. Two members of the House of Representatives, appointed  
623 by the Speaker of the House of Representatives.

624 2. Two members of the Senate, appointed by the President of  
625 the Senate.

626 3. Eight members appointed by the Governor, as follows:

627 a. Four local government officials.

628 b. Two state agency representatives.

629 c. Two representatives of the private sector.

630

631 All terms are for 4 years, except those members of the House of  
632 Representatives and Senate, who shall serve on the commission  
633 until the expiration of their terms of office or until their  
634 successors qualify.

635 (c) The members of the commission shall elect a chairperson  
636 and a vice-chairperson. The commission shall hold public  
637 meetings at least quarterly or upon the call of the chairperson.  
638 A majority of the commission constitutes a quorum.

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639       (d) Members of the commission are entitled to receive per  
640 diem and travel expenses as provided in s. 112.061.

641       (e) Administrative staff support shall be provided by the  
642 Executive Office of the Governor, as appropriate.

643       (f) A copy of the minutes from each commission meeting  
644 shall be provided to and maintained by the Governor, the  
645 President of Senate, and the Speaker of the House of  
646 Representatives.

647       (g) Beginning on December 13, 2012, and each year  
648 thereafter, the commission shall submit a report providing  
649 comments on the implementation of this section and  
650 recommendations for future revisions to the Governor, the  
651 President of the Senate, and the Speaker of the House of  
652 Representatives.

653       Section 2. This act shall take effect July 1, 2011.