

1                                   A bill to be entitled  
 2       An act relating to public-private partnerships;  
 3       creating s. 287.05712, F.S.; providing definitions;  
 4       providing legislative findings and intent relating to  
 5       the construction or upgrade of facilities by private  
 6       entities which are used predominately for a public  
 7       purpose; requiring public entities to develop and  
 8       adopt guidelines governing procedures and criteria for  
 9       the selection of projects and public-private  
 10      agreements; providing procurement procedures;  
 11      providing project-approval requirements; providing  
 12      project qualifications and process; providing for  
 13      notice to affected local jurisdictions; providing for  
 14      interim and comprehensive agreements between the  
 15      public and private entities; providing for use fees;  
 16      providing for private financing requirements;  
 17      providing powers and duties for private entities;  
 18      providing for expiration or termination of agreements;  
 19      providing for the applicability of sovereign immunity  
 20      for public entities with respect to qualified  
 21      projects; providing for construction of the act;  
 22      providing an effective date.

23  
 24   Be It Enacted by the Legislature of the State of Florida:

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 26           Section 1.   Section 287.05712, Florida Statutes, is created  
 27   to read:  
 28           287.05712   Public-private partnerships.-

29        (1) DEFINITIONS.—As used in this section, the term:  
 30        (a) "Affected local jurisdiction" means any county or  
 31 municipality in which all or a portion of a qualifying project  
 32 is located.  
 33        (b) "Appropriating body" means the body responsible for  
 34 appropriating or authorizing funding to pay for a qualifying  
 35 project.  
 36        (c) "Develop" or "development" means to plan, design,  
 37 develop, finance, lease, acquire, install, construct, or expand.  
 38        (d) "Fees" means fees or other charges imposed by the  
 39 private entity of a qualifying project for use of all or a  
 40 portion of such qualifying project pursuant to a comprehensive  
 41 agreement.  
 42        (e) "Lease payment" means any form of payment, including a  
 43 land lease, by a public entity to the private entity for the use  
 44 of a qualifying project.  
 45        (f) "Material default" means any default by the private  
 46 entity in the performance of its duties which jeopardizes  
 47 adequate service to the public from a qualifying project.  
 48        (g) "Operate" means to finance, maintain, improve, equip,  
 49 modify, repair, or operate.  
 50        (h) "Private entity" means any natural person,  
 51 corporation, general partnership, limited liability company,  
 52 limited partnership, joint venture, business trust, public  
 53 benefit corporation, nonprofit entity, or other private business  
 54 entity.  
 55        (i) "Proposal" means a detailed proposal accepted by a  
 56 responsible public entity beyond a conceptual level of review at

57 which issues such as fixing costs, payment schedules, financing,  
 58 deliverables, and project schedule are defined.

59 (j) "Qualifying project" means any:

60 1. Public-purpose facility or project, including, but not  
 61 limited to, a public school building and any functionally  
 62 related and subordinate facility, including any stadium or other  
 63 facility primarily used for school events.

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

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

68 4. Water, wastewater, or surface water management facility  
 69 and other related infrastructure.

70 (k) "Responsible public entity" means any county,  
 71 municipality, or other political subdivision of the state; any  
 72 public body politic and corporate; or any regional entity that  
 73 serves a public purpose and has authority to develop or operate  
 74 a qualifying project.

75 (l) "Revenues" means all revenues, income, earnings, user  
 76 fees, lease payments, or other service payments relating to the  
 77 development or operation of a qualifying project, including, but  
 78 not limited to, money received as grants or otherwise from the  
 79 Federal Government, from any public entity, or from any agency  
 80 or instrumentality of the foregoing in aid of a qualifying  
 81 project.

82 (m) "Service contract" means a contract entered into  
 83 between a public entity and the private entity.

84 (n) "Service payments" means payments to the private

85 entity of a qualifying project pursuant to a service contract.

86 (o) "Water or wastewater management facility" means a  
 87 project for the treatment, storage, disposal, or distribution of  
 88 water or wastewater.

89 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds  
 90 that there is a public need for the construction or upgrade of  
 91 facilities that are used predominantly for public purposes and  
 92 that it is in the public's interest to provide for the  
 93 construction or upgrade of such facilities.

94 (a) The Legislature also finds that:

95 1. There is a public need for timely and cost-effective  
 96 acquisition, design, construction, improvement, renovation,  
 97 expansion, equipping, maintenance, operation, implementation, or  
 98 installation of public projects, including educational  
 99 facilities, water or wastewater management facilities and  
 100 infrastructure, technology infrastructure, and any other public  
 101 infrastructure and government facilities within the state which  
 102 serve a public need and purpose, and that such public need may  
 103 not be wholly satisfied by existing procurement methods.

104 2. There are inadequate resources to develop new  
 105 educational facilities, water or wastewater management  
 106 facilities and infrastructure, technology infrastructure, and  
 107 other public infrastructure and government facilities for the  
 108 benefit of residents of this state, and that it has been  
 109 demonstrated that public-private partnerships can meet these  
 110 needs by improving the schedule for delivery, lowering the cost,  
 111 and providing other benefits to the public.

112 3. There are state and federal tax incentives that promote

113 partnerships between public and private entities to develop and  
 114 operate qualifying projects.

115 4. A procurement under this section serves the public  
 116 purpose of this section if such action facilitates the timely  
 117 development or operation of qualifying projects.

118 (b) The Legislature declares that it is the intent of this  
 119 section to encourage investment in the state by private  
 120 entities, to facilitate various bond financing mechanisms,  
 121 private capital, and other funding sources for the development  
 122 and operation of qualifying projects, including expansion and  
 123 acceleration of such financing to meet the public need, and to  
 124 provide the greatest possible flexibility to public and private  
 125 entities contracting for the provision of public services.

126 (3) ADOPTION OF GUIDELINES.—

127 (a) Before requesting or considering a proposal for a  
 128 qualifying project, a responsible public entity shall adopt and  
 129 make publicly available guidelines that enable the public entity  
 130 to comply with this section. Such guidelines must be reasonable,  
 131 encourage competition, and guide the selection of projects under  
 132 the purview of the public entity.

133 (b) The guidelines must include:

134 1. Opportunities for competition through public notice and  
 135 the availability of representatives of the responsible public  
 136 entity to meet with private entities considering a proposal.

137 2. Reasonable criteria for choosing among competing  
 138 proposals.

139 3. Suggested timelines for selecting proposals and  
 140 negotiating an interim or comprehensive agreement.

141 4. Authorization for accelerated selection and review and  
142 documentation timelines for proposals involving a qualifying  
143 project that the responsible public entity deems a priority.

144 5. Procedures for financial review and analysis which, at  
145 a minimum, include a cost-benefit analysis, an assessment of  
146 opportunity cost, and consideration of the results of all  
147 studies and analyses related to the proposed qualifying project.  
148 The procedures must also include requirements for disclosing  
149 such analysis to the appropriating body for review before the  
150 execution of an interim or comprehensive agreement.

151 6. Consideration of the nonfinancial benefits of a  
152 proposed qualifying project.

153 7. A mechanism for the appropriating body to review a  
154 proposed interim or comprehensive agreement before execution.

155 8. Establishment of criteria for the creation and  
156 responsibilities of a public-private partnership oversight  
157 committee that includes members representing the responsible  
158 public entity and the appropriating body. Such criteria must  
159 include the scope, costs, and duration of the qualifying  
160 project, as well as whether the project involves or affects  
161 multiple public entities. If formed, the oversight committee  
162 shall be an advisory committee that reviews the terms of a  
163 proposed interim or comprehensive agreement.

164 9. Analysis of the adequacy of the information released  
165 when seeking competing proposals and providing for the  
166 enhancement of that information, if deemed necessary, to  
167 encourage competition.

168 10. Establishment of criteria, key decision points, and

169 approvals required to ensure that the responsible public entity  
170 considers the extent of competition before selecting proposals  
171 and negotiating an interim or comprehensive agreement.

172 11. The publishing and posting of public notice of a  
173 private entity's request for approval of a qualifying project,  
174 including:

175 a. Specific information and documentation to be released  
176 regarding the nature, timing, and scope of the project.

177 b. A reasonable time period, as determined by the  
178 responsible public entity, of at least 45 days, which encourages  
179 competition and public-private partnerships in accordance with  
180 the goals of this section, during which time the responsible  
181 public entity is to receive competing proposals.

182 c. A requirement for advertising the public notice and  
183 posting the notice on the Internet.

184 12. A requirement that the responsible public entity  
185 engage the services of qualified professionals, which may  
186 include a Florida-registered professional or a certified public  
187 accountant, not otherwise employed by the responsible public  
188 entity, to provide an independent analysis regarding the  
189 specifics, advantages, disadvantages, and long-term and short-  
190 term costs of a request by a private entity for approval of a  
191 qualifying project, unless the governing body of the public  
192 entity determines that such analysis should be performed by  
193 employees of the public entity.

194 (4) PROCUREMENT PROCEDURES.—The responsible public entity  
195 may receive or solicit proposals with the approval of the  
196 appropriating body as evidenced by approval of the project in

197 the public entity's work program, and enter into agreements with  
198 private entities or consortia thereof, for the building,  
199 upgrade, operation, ownership, or financing of facilities.

200 (a) A responsible public entity may not consider any  
201 request by a private entity for approval of a qualifying project  
202 until the responsible public entity has adopted, or incorporated  
203 and made publicly available, in accordance with subsection (3),  
204 guidelines that enable the responsible public entity to comply  
205 with this section.

206 (b) By rule, ordinance, or guideline as applicable, the  
207 responsible public entity shall establish an application fee for  
208 the submission of unsolicited proposals under this section. The  
209 fee must be sufficient to pay the costs of evaluating the  
210 proposal. The responsible public entity may engage the services  
211 of private consultants to assist in the evaluation.

212 (c) The responsible public entity may request proposals  
213 from private entities for public-private projects or, if the  
214 public entity receives an unsolicited proposal, the public  
215 entity shall publish a notice in the Florida Administrative  
216 Weekly and a newspaper of general circulation at least once a  
217 week for 2 weeks stating that the public entity has received the  
218 proposal and will accept other proposals for the same project  
219 for 60 days after the initial date of publication. A copy of the  
220 notice must be mailed to each local government in the affected  
221 area.

222 (d) A responsible public entity that is a school board or  
223 a county or municipality may enter into an interim or  
224 comprehensive agreement only with the approval of the local

225 governing body.

226 (e) Before approval, the responsible public entity must  
 227 determine that the proposed project:

228 1. Is in the public's best interest;

229 2. Is for a facility that is owned by the responsible  
 230 public entity or for a facility for which ownership will be  
 231 conveyed to the responsible public entity;

232 3. Has adequate safeguards in place to ensure that  
 233 additional costs or service disruptions would not be imposed on  
 234 the public and residents of the state in the event of default or  
 235 cancellation of the agreement by the public entity;

236 4. Has adequate safeguards in place to ensure that the  
 237 responsible public entity or the private entity has the  
 238 opportunity to add capacity to the proposed project and other  
 239 facilities serving similar predominantly public purposes; and

240 5. Would be owned by the responsible public entity upon  
 241 completion or termination of the agreement and upon payment of  
 242 all amounts financed.

243 (f) Technical studies and independent analyses must comply  
 244 with the following:

245 1. Any interim or comprehensive agreement must include a  
 246 reasonable finance plan, consistent with subsection (11), which  
 247 identifies the project cost, revenues by source, financing,  
 248 major assumptions, internal rate of return on private  
 249 investments, and whether any government funds are assumed to  
 250 deliver a cost-feasible project, and a total cash-flow analysis  
 251 beginning with implementation of the project and extending for  
 252 the term of the agreement.

253 2. Any comprehensive agreement must be consistent with an  
254 investment-grade technical study prepared by a nationally  
255 recognized expert who is accepted by the national bond rating  
256 agencies. In evaluating the technical study, the responsible  
257 public entity may rely upon internal staff reports prepared by  
258 personnel familiar with the operation of similar facilities or  
259 the advice of external advisors or consultants having relevant  
260 experience.

261 (5) PROJECT APPROVAL REQUIREMENTS.—A request by a private  
262 entity for approval of a qualifying project must be accompanied  
263 by the following material and information, unless waived by the  
264 responsible public entity:

265 (a) A topographic map with a scale of 1:2,000 or other  
266 appropriate scale indicating the location of the qualifying  
267 project.

268 (b) A description of the qualifying project, including the  
269 conceptual design of such facilities or a conceptual plan for  
270 the provision of services, and a schedule for the initiation of  
271 and completion of the qualifying project which includes the  
272 proposed major responsibilities and a timeline for activities to  
273 be performed by both the public and private entity.

274 (c) A statement setting forth the method by which the  
275 private entity proposes to secure any necessary property  
276 interests required for the qualifying project.

277 (d) Information relating to current plans for the  
278 development of facilities or technology infrastructure to be  
279 used by a public entity which is similar to the qualifying  
280 project being proposed by the private entity, if any, of each

281 affected local jurisdiction.

282 (e) A list of all permits and approvals required for the  
 283 qualifying project from local, state, or federal agencies and a  
 284 projected schedule for obtaining such permits and approvals.

285 (f) A list of public water or wastewater management  
 286 facilities, if any, which will be crossed by the qualifying  
 287 project and a statement of the plans of the private entity to  
 288 accommodate such crossings.

289 (g) A statement setting forth the private entity's general  
 290 plans for financing the qualifying project, including the  
 291 sources of the private entity's funds and identification of any  
 292 dedicated revenue source or proposed debt or equity investment  
 293 on the behalf of the private entity.

294 (h) The names and addresses of persons who may be  
 295 contacted for further information concerning the request.

296 (i) User fees, lease payments, and other service payments  
 297 over the term of an interim or comprehensive agreement, and the  
 298 methodology and circumstances for changes to such user fees,  
 299 lease payments, and other service payments over time.

300 (j) Any additional material and information that the  
 301 responsible public entity may reasonably request.

302 (6) PROJECT QUALIFICATION AND PROCESS.—

303 (a) Public-private partnerships shall be qualified by the  
 304 responsible public entity as part of the procurement process  
 305 outlined in the procurement documents if such process ensures  
 306 that the private entity meets at least the minimum standards  
 307 contained in the responsible public entity's guidelines for  
 308 qualifying professional architectural, engineering, and

309 contracting services before submitting a proposal under the  
310 procurement.

311 (b) The responsible public entity must ensure that  
312 procurement documents include provisions for the private  
313 entity's performance and payment of subcontractors, including,  
314 but not limited to, surety bonds, letters of credit, parent  
315 company guarantees, and lender and equity partner guarantees.  
316 For those components of the qualifying project which involve  
317 construction, performance and payment bonds are required and are  
318 subject to the recordation, notice, suit limitation, and other  
319 requirements of s. 255.05. The responsible public entity shall  
320 balance the structure of the security package for the public-  
321 private partnership which ensures performance and payment of  
322 subcontractors with the cost of the security to ensure the most  
323 efficient pricing. The procurement documents must contain  
324 contract provisions addressing termination, default, and exit  
325 transition obligations of the private entity.

326 (c) After the public notification period has expired, the  
327 responsible public entity shall rank the proposals in order of  
328 preference. In ranking the proposals, the responsible public  
329 entity may consider factors that include, but need not be  
330 limited to, professional qualifications, general business terms,  
331 innovative engineering or cost-reduction terms, and finance  
332 plans. If the public entity is not satisfied with the results of  
333 the negotiations, the public entity may terminate negotiations  
334 with the proposer. If these negotiations are unsuccessful, the  
335 responsible public entity may go to the second-ranked and lower-  
336 ranked firms, in order, using this same procedure. If only one

337 proposal is received, the responsible public entity may  
338 negotiate in good faith and, if the public entity is not  
339 satisfied with the results of the negotiations, the public  
340 entity may terminate negotiations with the proposer.  
341 Notwithstanding this subsection, the responsible public entity  
342 may reject all proposals at any point in the process up to  
343 execution of a contract with the proposer.

344 (d) The responsible public entity shall perform an  
345 independent analysis, or other analysis in accordance with  
346 paragraph (4) (f), of the proposed public-private partnership  
347 which demonstrates the cost-effectiveness and overall public  
348 benefit at the following times:

- 349 1. Before the procurement process; and
- 350 2. Before awarding the contract.

351 (e) The responsible public entity may approve the  
352 development or operation of an educational facility, a water or  
353 wastewater management facility and related infrastructure,  
354 technology infrastructure or other public infrastructure, or a  
355 governmental facility needed by the public entity as a  
356 qualifying project, or the design or equipping of a qualifying  
357 project so developed or operated, if:

- 358 1. There is a public need for or benefit derived from a  
359 project of the type the private entity proposes as a qualifying  
360 project.

- 361 2. The estimated cost of the qualifying project is  
362 reasonable in relation to similar facilities.

- 363 3. The private entity's plans will result in the timely  
364 acquisition, design, construction, improvement, renovation,

365 expansion, equipping, maintenance, or operation of the  
366 qualifying project.

367 (f) The responsible public entity may charge a reasonable  
368 fee to cover the costs of processing, reviewing, and evaluating  
369 the request, including, but not limited to, reasonable attorney  
370 fees and fees for financial, technical, and other necessary  
371 advisors or consultants.

372 (g) Upon approval of a qualifying project, the responsible  
373 public entity shall establish a date for the commencement of  
374 activities related to the qualifying project. The responsible  
375 public entity may extend such date.

376 (h) Approval of a qualifying project by the responsible  
377 public entity is subject to entering into a comprehensive  
378 agreement with the private entity.

379 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

380 (a) Any private entity requesting approval from, or  
381 submitting a proposal to, a responsible public entity must  
382 notify each affected local jurisdiction by furnishing a copy of  
383 its request or proposal to each affected local jurisdiction.

384 (b) Each affected local jurisdiction that is not a  
385 responsible public entity for the respective qualifying project  
386 shall, within 60 days after receiving such notice, submit any  
387 comments it may have in writing to the responsible public entity  
388 and indicate whether the facility is compatible with the local  
389 comprehensive plan, the local infrastructure development plans,  
390 the capital improvements budget, or other governmental spending  
391 plan. Such comments shall be given consideration by the  
392 responsible public entity before entering a comprehensive

393 agreement with a private entity.

394 (8) INTERIM AGREEMENT.—Before, or in connection with, the  
 395 negotiation of a comprehensive agreement, the responsible public  
 396 entity may enter into an interim agreement with the private  
 397 entity proposing the development or operation of the qualifying  
 398 project. An interim agreement does not obligate the responsible  
 399 public entity to enter into a comprehensive agreement. An  
 400 interim agreement must be limited to provisions that:

401 (a) Authorize the private entity to commence activities  
 402 for which it may be compensated related to the proposed  
 403 qualifying project, including, but not limited to, project  
 404 planning and development, design and engineering, environmental  
 405 analysis and mitigation, surveys, or other activities concerning  
 406 any part of the proposed qualifying project, and ascertaining  
 407 the availability of financing for the proposed facility or  
 408 facilities.

409 (b) Establish the process and timing of the negotiation of  
 410 the comprehensive agreement.

411 (c) Contain any other provisions related to any aspect of  
 412 the development or operation of a qualifying project which the  
 413 responsible public entity and the private entity deem  
 414 appropriate.

415 (9) COMPREHENSIVE AGREEMENT.—

416 (a) Before developing or operating the qualifying project,  
 417 the private entity shall enter into a comprehensive agreement  
 418 with the responsible public entity. The comprehensive agreement  
 419 shall provide for:

420 1. Delivery of maintenance, performance, and payment bonds

421 and letters of credit in connection with the development or  
422 operation of the qualifying project in the forms and amounts  
423 satisfactory to the responsible public entity. For those  
424 components of the qualifying project which involve construction,  
425 the form and amount of the bonds must comply with s. 255.05.

426 2. Review of plans and specifications for the qualifying  
427 project by the responsible public entity and approval by the  
428 responsible public entity if the plans and specifications  
429 conform to standards acceptable to the responsible public  
430 entity. This subparagraph does not require the private entity to  
431 complete the design of a qualifying project before the execution  
432 of a comprehensive agreement.

433 3. Inspection of the qualifying project by the responsible  
434 public entity to ensure that the operator's activities are  
435 acceptable to the public entity in accordance with the  
436 comprehensive agreement.

437 4. Maintenance of a policy or policies of public liability  
438 insurance, copies of which shall be filed with the responsible  
439 public entity accompanied by proofs of coverage, or self-  
440 insurance, each in the form and amount satisfactory to the  
441 responsible public entity and reasonably sufficient to ensure  
442 coverage of tort liability to the public and employees and to  
443 enable the continued operation of the qualifying project.

444 5. Monitoring the practices of the private entity by the  
445 responsible public entity to ensure that the qualifying project  
446 is properly maintained.

447 6. Reimbursement to be paid to the responsible public  
448 entity for services provided by the responsible public entity.

449 7. Filing of appropriate financial statements on a  
450 periodic basis.

451 8. Procedures governing the rights and responsibilities of  
452 the responsible public entity and the private entity in the  
453 event the comprehensive agreement is terminated or there is a  
454 material default by the private entity. Such procedures must  
455 include conditions governing assumption of the duties and  
456 responsibilities of the private entity by the responsible public  
457 entity and the transfer or purchase of property or other  
458 interests of the private entity by the responsible public  
459 entity.

460 9. Fees, lease payments, or service payments as may be  
461 established by agreement of the parties. A copy of any service  
462 contract shall be filed with the responsible public entity. In  
463 negotiating user fees, the parties shall establish fees that are  
464 the same for persons using the facility under like conditions  
465 and that will not materially discourage use of the qualifying  
466 project. The execution of the comprehensive agreement or any  
467 amendment thereto constitutes conclusive evidence that the fees,  
468 lease payments, or service payments provided for comply with  
469 this section. Fees or lease payments established in the  
470 comprehensive agreement as a source of revenues may be in  
471 addition to, or in lieu of, service payments.

472 10. Duties of the private entity, including terms and  
473 conditions that the responsible public entity determine serve  
474 the public purpose of this section.

475 (b) The comprehensive agreement may include:

476 1. An agreement by the responsible public entity to make

477 grants or loans to the private entity from amounts received from  
478 the federal, state, or local government or any agency or  
479 instrumentality thereof.

480 2. Provisions under which each entity agrees to provide  
481 notice of default and cure rights for the benefit of the other  
482 entity, including, but not limited to, provisions regarding  
483 unavoidable delays.

484 3. Provisions whereby the authority and duties of the  
485 private entity under this section will cease and the qualifying  
486 project be dedicated to the responsible public entity or, if the  
487 qualifying project was initially dedicated by an affected local  
488 jurisdiction, to such affected local jurisdiction for public  
489 use.

490 (10) FEES.—

491 (a) Agreements entered into pursuant to this section may  
492 authorize the private entity to impose fees for the use of the  
493 facility. The following provisions apply to such agreements:

494 1. The public-private partnership agreement must ensure  
495 that the facility is properly operated, maintained, and renewed  
496 in accordance with the responsible public entity's standards.

497 2. The responsible public entity may develop new  
498 facilities or increase capacity in existing facilities through  
499 public-private partnerships.

500 3. The responsible public entity may lease existing fee-  
501 for-use facilities through public-private partnerships.

502 4. Any revenues must be regulated by the responsible  
503 public entity pursuant to guidelines or rules established  
504 pursuant to subsection (3). The regulations governing the future

505 increase of fees must be included in the public-private  
506 partnership agreement.

507 (b) The responsible public entity shall include provisions  
508 in the public-private partnership agreement which ensure that a  
509 negotiated portion of revenues from fee-generating projects are  
510 returned to the public entity over the life of the agreement. In  
511 the case of a lease of an existing facility, the responsible  
512 public entity shall receive a portion of funds upon closing on  
513 the agreements and also a portion of excess revenues over the  
514 life of the public-private partnership.

515 (11) FINANCING.—

516 (a) A private entity may enter into private-source  
517 financing agreements between financing sources and the private  
518 entity. All financing agreements and any liens on the property  
519 or facility must be paid in full at the applicable closing that  
520 transfers ownership of a facility to a responsible public  
521 entity.

522 (b) The responsible public entity may lend funds from its  
523 trust fund to private entities that construct projects  
524 containing facilities that are approved under this section. To  
525 be eligible, a private entity must comply with s. 215.97 and  
526 must provide an indication from a nationally recognized rating  
527 agency that the senior bonds for the project will be investment  
528 grade, or must provide credit support, such as a letter of  
529 credit or other means acceptable to the responsible public  
530 entity, to ensure that the loans will be fully repaid.

531 (c) The responsible public entity may use innovative  
532 finance techniques associated with a public-private partnership

533 under this section, including, but not limited to, federal loans  
534 as provided in 23 and 49 C.F.R., commercial bank loans, and  
535 hedges against inflation from commercial banks or other private  
536 sources. A responsible public entity may use the model financing  
537 agreement as provided in s. 489.145(6) for its financing of a  
538 facility owned by a responsible public entity. A financing  
539 agreement may not require the responsible public entity to  
540 indemnify the financing source, subject the responsible public  
541 entity's facility to liens in violation of s. 11.066(5), or  
542 secure financing by a responsible public entity with a pledge of  
543 security interest, and any such provisions are void.

544 (12) POWERS AND DUTIES OF THE PRIVATE ENTITY.—

545 (a) The private entity shall:

546 1. Develop or operate the qualifying project in a manner  
547 that is acceptable to the responsible public entity in  
548 accordance with the provisions of an interim or comprehensive  
549 agreement.

550 2. Maintain, or provide by contract for the maintenance or  
551 upgrade of, the qualifying project if required by an interim or  
552 comprehensive agreement.

553 3. Cooperate with the responsible public entity in making  
554 best efforts to establish any interconnection with the  
555 qualifying project requested by the responsible public entity.

556 4. Comply with an interim or comprehensive agreement and  
557 any lease or service contract.

558 (b) Each private facility constructed pursuant to this  
559 section must comply with all requirements of federal, state, and  
560 local laws; state, regional, and local comprehensive plans;

561 responsible public entity rules, procedures, and standards for  
562 facilities; and any other conditions that the responsible public  
563 entity determine to be in the public's best interest.

564 (c) The responsible public entity may exercise any power  
565 possessed by it, including eminent domain, to facilitate the  
566 development and construction of projects pursuant to this  
567 section. The responsible public entity may provide services to  
568 the private entity. Agreements for maintenance and other  
569 services entered into pursuant to this section must provide for  
570 full reimbursement for services rendered for projects.

571 (d) A private entity of a qualifying project may provide  
572 additional services for the qualifying project to public or  
573 private entities other than the responsible public entity if the  
574 provision of additional service does not impair the private  
575 entity's ability to meet its commitments to the public entity  
576 pursuant to an interim or comprehensive agreement.

577 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon  
578 expiration or termination of an interim or comprehensive  
579 agreement, the responsible public entity may use revenues to pay  
580 current operation and maintenance costs of the qualifying  
581 project, as well as compensation to the responsible public  
582 entity for its services in developing and operating the  
583 qualifying project. Except as provided otherwise in the interim  
584 or comprehensive agreement, the right to receive such payment,  
585 if any, is considered just compensation for the qualifying  
586 project in the event termination is due to the default of the  
587 private entity; however, this right does not affect the right of  
588 the responsible public entity to terminate, with cause, an

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589 interim or comprehensive agreement and to exercise any other  
590 rights and remedies that may be available to it at law or in  
591 equity. The full faith and credit of the responsible public  
592 entity may not be pledged to secure any financing of the private  
593 entity by the election to take over the qualifying project.  
594 Assumption of the development or operation of the qualifying  
595 project does not obligate the responsible public entity to pay  
596 any obligation of the private entity from sources other than  
597 revenues.

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

608 (15) CONSTRUCTION.—This section shall be liberally  
609 construed to effectuate the purposes thereof.

610 (a) This section does not limit the state or its agencies  
611 in the acquisition, design, or construction of public projects  
612 pursuant to other statutory authority.

613 (b) Except as otherwise provided in this section, this  
614 section does not amend existing laws by granting additional  
615 powers to, or further restricting, local governmental entities  
616 from regulating and entering into cooperative arrangements with

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617 the private sector for the planning, construction, and operation  
618 of facilities.

619 Section 2. This act shall take effect July 1, 2012.