

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:

25
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, any ferry, mass transit facility, vehicle parking
62 facility, port facility, power generation facility, fuel supply
63 facility, oil or gas pipeline, medical or nursing care facility,
64 or recreational facility used primarily for events.

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

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

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

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

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

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

85 (n) "Service payments" means payments to the private
86 entity of a qualifying project pursuant to a service contract.

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

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

95 (a) The Legislature also finds that:

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

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

113 3. There are state and federal tax incentives that promote
114 partnerships between public and private entities to develop and
115 operate qualifying projects.

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

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

127 (3) ADOPTION OF GUIDELINES.—

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

134 (b) The guidelines must include:

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

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

140 3. Suggested timelines for selecting proposals and

141 negotiating an interim or comprehensive agreement.

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

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

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

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

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

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

169 10. Establishment of criteria, key decision points, and
170 approvals required to ensure that the responsible public entity
171 considers the extent of competition before selecting proposals
172 and negotiating an interim or comprehensive agreement.

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

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

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

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

185 12. A requirement that the responsible public entity
186 engage the services of qualified professionals, which may
187 include a Florida-registered professional or a certified public
188 accountant, not otherwise employed by the responsible public
189 entity, to provide an independent analysis regarding the
190 specifics, advantages, disadvantages, and long-term and short-
191 term costs of a request by a private entity for approval of a
192 qualifying project, unless the governing body of the public
193 entity determines that such analysis should be performed by
194 employees of the public entity. Professional services as defined
195 in s. 287.055(2) (a) shall be engaged pursuant to s. 287.055.

196 (4) PROCUREMENT PROCEDURES.—The responsible public entity

197 may receive or solicit proposals with the approval of the
198 appropriating body as evidenced by approval of the project in
199 the public entity's work program, and enter into agreements with
200 private entities or consortia thereof, for the building,
201 upgrade, operation, ownership, or financing of facilities.

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

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

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

224 (d) A responsible public entity that is a school board or

225 a county or municipality may enter into an interim or
 226 comprehensive agreement only with the approval of the local
 227 governing body.

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

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

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

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

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

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

245 (f) Technical studies and independent analyses must comply
 246 with the following:

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

253 beginning with implementation of the project and extending for
254 the term of the agreement.

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

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

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

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

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

279 (d) Information relating to current plans for the
280 development of facilities or technology infrastructure to be

281 used by a public entity which is similar to the qualifying
 282 project being proposed by the private entity, if any, of each
 283 affected local jurisdiction.

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

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

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

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

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

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

304 (6) PROJECT QUALIFICATION AND PROCESS.—

305 (a) Public-private partnerships shall be qualified by the
 306 responsible public entity as part of the procurement process
 307 outlined in the procurement documents if such process ensures
 308 that the private entity meets at least the minimum standards

309 contained in the responsible public entity's guidelines for
310 qualifying professional architectural, engineering, and
311 contracting services before submitting a proposal under the
312 procurement.

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

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

337 responsible public entity may go to the second-ranked and lower-
338 ranked firms, in order, using this same procedure. If only one
339 proposal is received, the responsible public entity may
340 negotiate in good faith and, if the public entity is not
341 satisfied with the results of the negotiations, the public
342 entity may terminate negotiations with the proposer.
343 Notwithstanding this subsection, the responsible public entity
344 may reject all proposals at any point in the process up to
345 execution of a contract with the proposer.

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

- 351 1. Before the procurement process; and
- 352 2. Before awarding the contract.

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

- 360 1. There is a public need for or benefit derived from a
361 project of the type the private entity proposes as a qualifying
362 project.
- 363 2. The estimated cost of the qualifying project is
364 reasonable in relation to similar facilities.

365 3. The private entity's plans will result in the timely
366 acquisition, design, construction, improvement, renovation,
367 expansion, equipping, maintenance, or operation of the
368 qualifying project.

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

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

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

381 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

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

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

393 plan. Such comments shall be given consideration by the
394 responsible public entity before entering a comprehensive
395 agreement with a private entity.

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

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

411 (b) Establish the process and timing of the negotiation of
412 the comprehensive agreement.

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

417 (9) COMPREHENSIVE AGREEMENT.—

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

421 shall provide for:

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

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

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

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

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

449 6. Reimbursement to be paid to the responsible public
450 entity for services provided by the responsible public entity.

451 7. Filing of appropriate financial statements on a
452 periodic basis.

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

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

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

477 (b) The comprehensive agreement may include:

478 1. An agreement by the responsible public entity to make
479 grants or loans to the private entity from amounts received from
480 the federal, state, or local government or any agency or
481 instrumentality thereof.

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

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

492 (10) FEES.-

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

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

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

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

504 4. Any revenues must be regulated by the responsible

505 public entity pursuant to guidelines or rules established
506 pursuant to subsection (3). The regulations governing the future
507 increase of fees must be included in the public-private
508 partnership agreement.

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

517 (11) FINANCING.-

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

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

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

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

547 (a) The private entity shall:

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

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

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

558 4. Comply with an interim or comprehensive agreement and
559 any lease or service contract.

560 (b) Each private facility constructed pursuant to this

561 section must comply with all requirements of federal, state, and
562 local laws; state, regional, and local comprehensive plans;
563 responsible public entity rules, procedures, and standards for
564 facilities; and any other conditions that the responsible public
565 entity determine to be in the public's best interest.

566 (c) The responsible public entity may provide services to
567 the private entity. Agreements for maintenance and other
568 services entered into pursuant to this section must provide for
569 full reimbursement for services rendered for projects.

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

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

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

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

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

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

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

CS/CS/HB 337

2012

617 of facilities.

618 (c) This section does not waive any requirement of s.

619 287.055.

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