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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2012	.	
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The Committee on Community Affairs (Bennett) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

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

287.05712 Public-private partnerships.-

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

(a) "Affected local jurisdiction" means any county or municipality in which all or a portion of a qualifying project is located.

(b) "Appropriating body" means the body responsible for



123866

13 appropriating or authorizing funding to pay for a qualifying  
14 project.

15 (c) "Develop" or "development" means to plan, design,  
16 develop, finance, lease, acquire, install, construct, or expand.

17 (d) "Fees" means fees or other charges imposed by the  
18 private entity of a qualifying project for use of all or a  
19 portion of such qualifying project pursuant to a comprehensive  
20 agreement.

21 (e) "Lease payment" means any form of payment, including a  
22 land lease, by a public entity to the private entity for the use  
23 of a qualifying project.

24 (f) "Material default" means any default by the private  
25 entity in the performance of its duties which jeopardizes  
26 adequate service to the public from a qualifying project.

27 (g) "Operate" means to finance, maintain, improve, equip,  
28 modify, repair, or operate.

29 (h) "Private entity" means any natural person, corporation,  
30 general partnership, limited liability company, limited  
31 partnership, joint venture, business trust, public benefit  
32 corporation, nonprofit entity, or other private business entity.

33 (i) "Proposal" means a detailed proposal accepted by a  
34 responsible public entity beyond a conceptual level of review at  
35 which issues such as fixing costs, payment schedules, financing,  
36 deliverables, and project schedule are defined.

37 (j) "Qualifying project" means any:

38 1. Public-purpose facility or project, including, but not  
39 limited to, a public school building and any functionally  
40 related and subordinate facility, including any stadium or other  
41 facility primarily used for school events.



123866

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

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

46           4. Water, wastewater, or surface water management facility  
47 and other related infrastructure.

48           (k) "Responsible public entity" means any county,  
49 municipality, or other political subdivision of the state; any  
50 public body politic and corporate; or any regional entity that  
51 serves a public purpose and has authority to develop or operate  
52 a qualifying project.

53           (l) "Revenues" means all revenues, income, earnings, user  
54 fees, lease payments, or other service payments relating to the  
55 development or operation of a qualifying project, including, but  
56 not limited to, money received as grants or otherwise from the  
57 Federal Government, from any public entity, or from any agency  
58 or instrumentality of the foregoing in aid of a qualifying  
59 project.

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

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

64           (o) "Water or wastewater management facility" means a  
65 project for the treatment, storage, disposal, or distribution of  
66 water or wastewater.

67           (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds  
68 that there is a public need for the construction or upgrade of  
69 facilities that are used predominantly for public purposes and  
70 that it is in the public's interest to provide for the



123866

71 construction or upgrade of such facilities.

72 (a) The Legislature also finds that:

73 1. There is a public need for timely and cost-effective  
74 acquisition, design, construction, improvement, renovation,  
75 expansion, equipping, maintenance, operation, implementation, or  
76 installation of public projects, including educational  
77 facilities, water or wastewater management facilities and  
78 infrastructure, technology infrastructure, and any other public  
79 infrastructure and government facilities within the state which  
80 serve a public need and purpose, and that such public need may  
81 not be wholly satisfied by existing procurement methods.

82 2. There are inadequate resources to develop new  
83 educational facilities, water or wastewater management  
84 facilities and infrastructure, technology infrastructure, and  
85 other public infrastructure and government facilities for the  
86 benefit of residents of this state, and that it has been  
87 demonstrated that public-private partnerships can meet these  
88 needs by improving the schedule for delivery, lowering the cost,  
89 and providing other benefits to the public.

90 3. There are state and federal tax incentives that promote  
91 partnerships between public and private entities to develop and  
92 operate qualifying projects.

93 4. A procurement under this section serves the public  
94 purpose of this section if such action facilitates the timely  
95 development or operation of qualifying projects.

96 (b) The Legislature declares that it is the intent of this  
97 section to encourage investment in the state by private  
98 entities, to facilitate various bond financing mechanisms,  
99 private capital, and other funding sources for the development



123866

100 and operation of qualifying projects, including expansion and  
101 acceleration of such financing to meet the public need, and to  
102 provide the greatest possible flexibility to public and private  
103 entities contracting for the provision of public services.

104 (3) ADOPTION OF GUIDELINES.-

105 (a) Before requesting or considering a proposal for a  
106 qualifying project, a responsible public entity shall adopt and  
107 make publicly available guidelines that enable the public entity  
108 to comply with this section. Such guidelines must be reasonable,  
109 encourage competition, and guide the selection of projects under  
110 the purview of the public entity.

111 (b) The guidelines must include:

112 1. Opportunities for competition through public notice and  
113 the availability of representatives of the responsible public  
114 entity to meet with private entities considering a proposal.

115 2. Reasonable criteria for choosing among competing  
116 proposals.

117 3. Suggested timelines for selecting proposals and  
118 negotiating an interim or comprehensive agreement.

119 4. Authorization for accelerated selection and review and  
120 documentation timelines for proposals involving a qualifying  
121 project that the responsible public entity deems a priority.

122 5. Procedures for financial review and analysis which, at a  
123 minimum, include a cost-benefit analysis, an assessment of  
124 opportunity cost, and consideration of the results of all  
125 studies and analyses related to the proposed qualifying project.

126 The procedures must also include requirements for disclosing  
127 such analysis to the appropriating body for review before the  
128 execution of an interim or comprehensive agreement.



123866

129           6. Consideration of the nonfinancial benefits of a proposed  
130 qualifying project.

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

133           8. Establishment of criteria for the creation and  
134 responsibilities of a public-private partnership oversight  
135 committee that includes members representing the responsible  
136 public entity and the appropriating body. Such criteria must  
137 include the scope, costs, and duration of the qualifying  
138 project, as well as whether the project involves or affects  
139 multiple public entities. If formed, the oversight committee  
140 shall be an advisory committee that reviews the terms of a  
141 proposed interim or comprehensive agreement.

142           9. Analysis of the adequacy of the information released  
143 when seeking competing proposals and providing for the  
144 enhancement of that information, if deemed necessary, to  
145 encourage competition.

146           10. Establishment of criteria, key decision points, and  
147 approvals required to ensure that the responsible public entity  
148 considers the extent of competition before selecting proposals  
149 and negotiating an interim or comprehensive agreement.

150           11. The publishing and posting of public notice of a  
151 private entity's request for approval of a qualifying project,  
152 including:

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

155           b. A reasonable time period, as determined by the  
156 responsible public entity, of at least 45 days, which encourages  
157 competition and public-private partnerships in accordance with



123866

158 the goals of this section, during which time the responsible  
159 public entity is to receive competing proposals.

160 c. A requirement for advertising the public notice and  
161 posting the notice on the Internet.

162 12. A requirement that the responsible public entity engage  
163 the services of qualified professionals, which may include an  
164 architect, professional engineer, or certified public  
165 accountant, not otherwise employed by the responsible public  
166 entity, to provide an independent analysis regarding the  
167 specifics, advantages, disadvantages, and long-term and short-  
168 term costs of a request by a private entity for approval of a  
169 qualifying project, unless the governing body of the public  
170 entity determines that such analysis should be performed by  
171 employees of the public entity.

172 (4) PROCUREMENT PROCEDURES.—The responsible public entity  
173 may receive or solicit proposals and, with the approval of the  
174 Legislature, or other appropriate local government appropriation  
175 process as evidenced by approval of the project in the public  
176 entity's work program, enter into agreements with private  
177 entities, or consortia thereof, for the building, upgrade,  
178 operation, ownership, or financing of facilities.

179 (a) A responsible public entity may not consider any  
180 request by a private entity for approval of a qualifying project  
181 until the responsible public entity has adopted, or incorporated  
182 and made publicly available, in accordance with subsection (3),  
183 guidelines that enable the responsible public entity to comply  
184 with this section.

185 (b) By rule, ordinance, or guideline as applicable, the  
186 responsible public entity shall establish an application fee for



123866

187 the submission of unsolicited proposals under this section. The  
188 fee must be sufficient to pay the costs of evaluating the  
189 proposal. The responsible public entity may engage the services  
190 of private consultants to assist in the evaluation.

191 (c) The responsible public entity may request proposals  
192 from private entities for public-private projects or, if the  
193 public entity receives an unsolicited proposal, the public  
194 entity shall publish a notice in the Florida Administrative  
195 Weekly and a newspaper of general circulation at least once a  
196 week for 2 weeks stating that the public entity has received the  
197 proposal and will accept other proposals for the same project  
198 for 60 days after the initial date of publication. A copy of the  
199 notice must be mailed to each local government in the affected  
200 area.

201 (d) A responsible public entity that is a school board or a  
202 county or municipality may enter into an interim or  
203 comprehensive agreement only with the approval of the local  
204 governing body.

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

207 1. Is in the public's best interest;  
208 2. Does not require the use of state funds unless the  
209 project is for a facility that is owned by the responsible  
210 public entity or for a facility for which ownership will be  
211 conveyed to the responsible public entity;

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





123866

216           4. Has adequate safeguards in place to ensure that the  
217 responsible public entity or the private entity has the  
218 opportunity to add capacity to the proposed project and other  
219 facilities serving similar predominantly public purposes; and

220           5. Would be owned by the responsible public entity upon  
221 completion or termination of the agreement and upon payment of  
222 all amounts financed.

223           (f) Technical studies and independent analyses must comply  
224 with the following:

225           1. A private entity must provide an investment-grade  
226 technical study prepared by a nationally recognized expert who  
227 is accepted by the national bond rating agencies. The private  
228 entity must also provide a finance plan, consistent with  
229 subsection (11), which identifies the project cost, revenues by  
230 source, financing, major assumptions, internal rate of return on  
231 private investments, and whether any government funds are  
232 assumed to deliver a cost-feasible project, and a total cash-  
233 flow analysis beginning with implementation of the project and  
234 extending for the term of the agreement.

235           2. In evaluating a request, including, but not limited to,  
236 the private entity's technical study, the responsible public  
237 entity may rely upon internal staff reports prepared by  
238 personnel familiar with the operation of similar facilities or  
239 the advice of external advisors or consultants having relevant  
240 experience.

241           (g) The responsible public entity must ensure that all  
242 reasonable costs to the state related to facilities which are  
243 not to be transferred to the responsible public entity are borne  
244 by the private entity. The responsible public entity must also



123866

245 ensure that all reasonable costs to the state and to  
246 substantially affected local governments and utilities which are  
247 related to the private facility are borne by the private entity  
248 for facilities that are owned by the private entity. For  
249 projects owned by the responsible public entity, the public  
250 entity may use state resources to assist with funding and  
251 financing the project as provided under the public entity's  
252 enabling legislation.

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

257 (a) A topographic map with a scale of 1:2,000 or other  
258 appropriate scale indicating the location of the qualifying  
259 project.

260 (b) A description of the qualifying project, including the  
261 conceptual design of such facilities or a conceptual plan for  
262 the provision of services, and a schedule for the initiation of  
263 and completion of the qualifying project which includes the  
264 proposed major responsibilities and a timeline for activities to  
265 be performed by both the public and private entity.

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

269 (d) Information relating to current plans for the  
270 development of facilities or technology infrastructure to be  
271 used by a public entity which is similar to the qualifying  
272 project being proposed by the private entity, if any, of each  
273 affected local jurisdiction.



123866

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

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

281 (g) A statement setting forth the private entity's general  
282 plans for financing the qualifying project, including the  
283 sources of the private entity's funds and identification of any  
284 dedicated revenue source or proposed debt or equity investment  
285 on the behalf of the private entity.

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

288 (i) User fees, lease payments, and other service payments  
289 over the term of an interim or comprehensive agreement, and the  
290 methodology and circumstances for changes to such user fees,  
291 lease payments, and other service payments over time.

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

294 (6) PROJECT QUALIFICATION AND PROCESS.-

295 (a) Public-private partnerships shall be qualified by the  
296 responsible public entity as part of the procurement process  
297 outlined in the procurement documents if such process ensures  
298 that the private entity meets at least the minimum standards  
299 contained in the responsible public entity's guidelines for  
300 qualifying professional architectural, engineering, and  
301 contracting services before submitting a proposal under the  
302 procurement.



123866

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

318       (c) After the public notification period has expired, the  
319 responsible public entity shall rank the proposals in order of  
320 preference. In ranking the proposals, the responsible public  
321 entity may consider factors that include, but need not be  
322 limited to, professional qualifications, general business terms,  
323 innovative engineering or cost-reduction terms, finance plans,  
324 and the need for state funds in order to deliver the project. If  
325 the public entity is not satisfied with the results of the  
326 negotiations, the public entity may terminate negotiations with  
327 the proposer. If these negotiations are unsuccessful, the  
328 responsible public entity may go to the second-ranked and lower-  
329 ranked firms, in order, using this same procedure. If only one  
330 proposal is received, the responsible public entity may  
331 negotiate in good faith and, if the public entity is not



123866

332 satisfied with the results of the negotiations, the public  
333 entity may terminate negotiations with the proposer.  
334 Notwithstanding this subsection, the responsible public entity  
335 may reject all proposals at any point in the process up to  
336 execution of a contract with the proposer.

337 (d) The responsible public entity shall perform an  
338 independent analysis, or other analysis in accordance with  
339 paragraph (4) (f), of the proposed public-private partnership  
340 which demonstrates the cost-effectiveness and overall public  
341 benefit at the following times:

- 342 1. Before the procurement process; and  
343 2. Before awarding the contract.

344 (e) The responsible public entity may approve the  
345 development or operation of an educational facility, a water or  
346 wastewater management facility and related infrastructure,  
347 technology infrastructure or other public infrastructure, or a  
348 governmental facility needed by the public entity as a  
349 qualifying project, or the design or equipping of a qualifying  
350 project so developed or operated, if:

351 1. There is a public need for or benefit derived from a  
352 project of the type the private entity proposes as a qualifying  
353 project.

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

356 3. The private entity's plans will result in the timely  
357 acquisition, design, construction, improvement, renovation,  
358 expansion, equipping, maintenance, or operation of the  
359 qualifying project.

360 (f) The responsible public entity may charge a reasonable



123866

361 fee to cover the costs of processing, reviewing, and evaluating  
362 the request, including, but not limited to, reasonable attorney  
363 fees and fees for financial, technical, and other necessary  
364 advisors or consultants.

365 (g) Upon approval of a qualifying project, the responsible  
366 public entity shall establish a date for the commencement of  
367 activities related to the qualifying project. The responsible  
368 public entity may extend such date.

369 (h) Approval of a qualifying project by the responsible  
370 public entity is subject to entering into a comprehensive  
371 agreement with the private entity.

372 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

373 (a) Any private entity requesting approval from, or  
374 submitting a proposal to, a responsible public entity must  
375 notify each affected local jurisdiction by furnishing a copy of  
376 its request or proposal to each affected local jurisdiction.

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

387 (8) INTERIM AGREEMENT.—Before, or in connection with, the  
388 negotiation of a comprehensive agreement, the responsible public  
389 entity may enter into an interim agreement with the private



123866

390 entity proposing the development or operation of the qualifying  
391 project. An interim agreement does not obligate the responsible  
392 public entity to enter into a comprehensive agreement. An  
393 interim agreement must be limited to provisions that:

394 (a) Authorize the private entity to commence activities for  
395 which it may be compensated related to the proposed qualifying  
396 project, including, but not limited to, project planning and  
397 development, design and engineering, environmental analysis and  
398 mitigation, surveys, or other activities concerning any part of  
399 the proposed qualifying project, and ascertaining the  
400 availability of financing for the proposed facility or  
401 facilities.

402 (b) Establish the process and timing of the negotiation of  
403 the comprehensive agreement.

404 (c) Contain any other provisions related to any aspect of  
405 the development or operation of a qualifying project which the  
406 responsible public entity and the private entity deem  
407 appropriate.

408 (9) COMPREHENSIVE AGREEMENT.—

409 (a) Before developing or operating the qualifying project,  
410 the private entity shall enter into a comprehensive agreement  
411 with the responsible public entity. The comprehensive agreement  
412 shall provide for:

413 1. Delivery of maintenance, performance, and payment bonds  
414 and letters of credit in connection with the development or  
415 operation of the qualifying project in the forms and amounts  
416 satisfactory to the responsible public entity. For those  
417 components of the qualifying project which involve construction,  
418 the form and amount of the bonds must comply with s. 255.05.



123866

419           2. Review of plans and specifications for the qualifying  
420 project by the responsible public entity and approval by the  
421 responsible public entity if the plans and specifications  
422 conform to standards acceptable to the responsible public  
423 entity. This subparagraph does not require the private entity to  
424 complete the design of a qualifying project before the execution  
425 of a comprehensive agreement.

426           3. Inspection of the qualifying project by the responsible  
427 public entity to ensure that the operator's activities are  
428 acceptable to the public entity in accordance with the  
429 comprehensive agreement.

430           4. Maintenance of a policy or policies of public liability  
431 insurance, copies of which shall be filed with the responsible  
432 public entity accompanied by proofs of coverage, or self-  
433 insurance, each in the form and amount satisfactory to the  
434 responsible public entity and reasonably sufficient to ensure  
435 coverage of tort liability to the public and employees and to  
436 enable the continued operation of the qualifying project.

437           5. Monitoring the practices of the private entity by the  
438 responsible public entity to ensure that the qualifying project  
439 is properly maintained.

440           6. Reimbursement to be paid to the responsible public  
441 entity for services provided by the responsible public entity.

442           7. Filing of appropriate financial statements on a periodic  
443 basis.

444           8. Procedures governing the rights and responsibilities of  
445 the responsible public entity and the private entity in the  
446 event the comprehensive agreement is terminated or there is a  
447 material default by the private entity. Such procedures must





123866

448 include conditions governing assumption of the duties and  
449 responsibilities of the private entity by the responsible public  
450 entity and the transfer or purchase of property or other  
451 interests of the private entity by the responsible public  
452 entity.

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

465 10. Duties of the private entity, including terms and  
466 conditions that the responsible public entity determine serve  
467 the public purpose of this section.

468 (b) The comprehensive agreement may include:

469 1. An agreement by the responsible public entity to make  
470 grants or loans to the private entity from amounts received from  
471 the federal, state, or local government or any agency or  
472 instrumentality thereof.

473 2. Provisions under which each entity agrees to provide  
474 notice of default and cure rights for the benefit of the other  
475 entity, including, but not limited to, provisions regarding  
476 unavoidable delays.



123866

477           3. Provisions whereby the authority and duties of the  
478 private entity under this section will cease and the qualifying  
479 project be dedicated to the responsible public entity or, if the  
480 qualifying project was initially dedicated by an affected local  
481 jurisdiction, to such affected local jurisdiction for public  
482 use.

483           (10) FEES.—

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

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

490           2. The responsible public entity may develop new facilities  
491 or increase capacity in existing facilities through public-  
492 private partnerships.

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

495           4. Any revenues must be regulated by the responsible public  
496 entity pursuant to guidelines or rules established pursuant to  
497 subsection (3). The regulations governing the future increase of  
498 fees must be included in the public-private partnership  
499 agreement.

500           (b) The responsible public entity shall include provisions  
501 in the public-private partnership agreement which ensure that a  
502 negotiated portion of revenues from fee-generating projects are  
503 returned to the public entity over the life of the agreement. In  
504 the case of a lease of an existing facility, the responsible  
505 public entity shall receive a portion of funds upon closing on



123866

506 the agreements and also a portion of excess revenues over the  
507 life of the public-private partnership.

508 (11) FINANCING.—

509 (a) A private entity may enter into private-source  
510 financing agreements between financing sources and the private  
511 entity. All financing agreements and any liens on the property  
512 or facility must be paid in full at the applicable closing that  
513 transfers ownership of a facility to a responsible public  
514 entity.

515 (b) The responsible public entity may lend funds from its  
516 trust fund to private entities that construct projects  
517 containing facilities that are approved under this section. To  
518 be eligible, a private entity must comply with s. 215.97 and  
519 must provide an indication from a nationally recognized rating  
520 agency that the senior bonds for the project will be investment  
521 grade, or must provide credit support, such as a letter of  
522 credit or other means acceptable to the responsible public  
523 entity, to ensure that the loans will be fully repaid. The  
524 state's liability for the funding of a facility is limited to  
525 the amount approved for that specific facility in the  
526 responsible public entity's 5-year work program adopted pursuant  
527 to the responsible public entity's rules, or otherwise limited  
528 to 15 percent of the responsible public entity's total funding  
529 for similar projects in a given fiscal year.

530 (c) The responsible public entity may use innovative  
531 finance techniques associated with a public-private partnership  
532 under this section, including, but not limited to, federal loans  
533 as provided in Titles 23 and 49 C.F.R., commercial bank loans,  
534 and hedges against inflation from commercial banks or other



123866

535 private sources. A responsible public entity may use the model  
536 financing agreement provided pursuant to s. 489.145(6) for its  
537 financing of a facility owned by a responsible public entity. A  
538 financing agreement may not require the responsible public  
539 entity to indemnify the financing source, subject the  
540 responsible public entity's facility to liens in violation of s.  
541 11.066(5), or secure financing by a responsible public entity  
542 with a pledge of security interest, and any such provisions are  
543 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.



123866

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  
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



123866

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 affect the authority of the  
611 responsible public entity to take action that would impact the  
612 debt capacity of the state.

613 (b) This section does not limit the state or its agencies  
614 in the acquisition, design, or construction of public projects  
615 pursuant to other statutory authority.

616 (c) Except as otherwise provided in this section, this  
617 section does not amend existing laws by granting additional  
618 powers to, or further restricting, local governmental entities  
619 from regulating and entering into cooperative arrangements with  
620 the private sector for the planning, construction, and operation  
621 of facilities.



123866

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

623

624 ===== T I T L E A M E N D M E N T =====

625 And the title is amended as follows:

626 Delete everything before the enacting clause  
627 and insert:

628 A bill to be entitled  
629 An act relating to public-private partnerships;  
630 creating s. 287.05712, F.S.; providing definitions;  
631 providing legislative findings and intent relating to  
632 the construction or upgrade of facilities by private  
633 entities which are used predominately for a public  
634 purpose; requiring public entities to develop and  
635 adopt guidelines governing procedures and criteria for  
636 the selection of projects and public-private  
637 agreements; providing procurement procedures;  
638 providing project-approval requirements; providing  
639 project qualifications and process; providing for  
640 notice to affected local jurisdictions; providing for  
641 interim and comprehensive agreements between the  
642 public and private entities; providing for use fees;  
643 providing for private financing requirements;  
644 providing powers and duties for private entities;  
645 providing for expiration or termination of agreements;  
646 providing for the applicability of sovereign immunity  
647 for public entities with respect to qualified  
648 projects; providing for construction of the act;  
649 providing an effective date.