

By the Committee on Community Affairs; and Senator Bennett

578-03299-12

2012576c1

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:

578-03299-12

2012576c1

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, corporation,  
51 general partnership, limited liability company, limited  
52 partnership, joint venture, business trust, public benefit  
53 corporation, nonprofit entity, or other private business entity.

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

58       (j) "Qualifying project" means any:

578-03299-12

2012576c1

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

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

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

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

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

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

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

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

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

578-03299-12

2012576c1

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

93       (a) The Legislature also finds that:

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

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

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

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

578-03299-12

2012576c1

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

125 (3) ADOPTION OF GUIDELINES.-

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

132 (b) The guidelines must include:

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

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

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

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

143 5. Procedures for financial review and analysis which, at a  
144 minimum, include a cost-benefit analysis, an assessment of  
145 opportunity cost, and consideration of the results of all

578-03299-12

2012576c1

146 studies and analyses related to the proposed qualifying project.  
147 The procedures must also include requirements for disclosing  
148 such analysis to the appropriating body for review before the  
149 execution of an interim or comprehensive agreement.

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

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

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

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

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

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

174 a. Specific information and documentation to be released

578-03299-12

2012576c1

175 regarding the nature, timing, and scope of the project.

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

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

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

193 (4) PROCUREMENT PROCEDURES.—The responsible public entity  
194 may receive or solicit proposals and, with the approval of the  
195 Legislature, or other appropriate local government appropriation  
196 process as evidenced by approval of the project in the public  
197 entity's work program, enter into agreements with private  
198 entities, or consortia thereof, for the building, upgrade,  
199 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),

578-03299-12

2012576c1

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 a  
223 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. Does not require the use of state funds unless the  
230 project is for a facility that is owned by the responsible  
231 public entity or for a facility for which ownership will be  
232 conveyed to the responsible public entity;



578-03299-12

2012576c1

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

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

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

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

246       1. A private entity must provide an investment-grade  
247 technical study prepared by a nationally recognized expert who  
248 is accepted by the national bond rating agencies. The private  
249 entity must also provide a finance plan, consistent with  
250 subsection (11), which identifies the project cost, revenues by  
251 source, financing, major assumptions, internal rate of return on  
252 private investments, and whether any government funds are  
253 assumed to deliver a cost-feasible project, and a total cash-  
254 flow analysis beginning with implementation of the project and  
255 extending for the term of the agreement.

256       2. In evaluating a request, including, but not limited to,  
257 the private entity's technical study, the responsible public  
258 entity may rely upon internal staff reports prepared by  
259 personnel familiar with the operation of similar facilities or  
260 the advice of external advisors or consultants having relevant  
261 experience.

578-03299-12

2012576c1

262       (g) The responsible public entity must ensure that all  
263 reasonable costs to the state related to facilities which are  
264 not to be transferred to the responsible public entity are borne  
265 by the private entity. The responsible public entity must also  
266 ensure that all reasonable costs to the state and to  
267 substantially affected local governments and utilities which are  
268 related to the private facility are borne by the private entity  
269 for facilities that are owned by the private entity. For  
270 projects owned by the responsible public entity, the public  
271 entity may use state resources to assist with funding and  
272 financing the project as provided under the public entity's  
273 enabling legislation.

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

278       (a) A topographic map with a scale of 1:2,000 or other  
279 appropriate scale indicating the location of the qualifying  
280 project.

281       (b) A description of the qualifying project, including the  
282 conceptual design of such facilities or a conceptual plan for  
283 the provision of services, and a schedule for the initiation of  
284 and completion of the qualifying project which includes the  
285 proposed major responsibilities and a timeline for activities to  
286 be performed by both the public and private entity.

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

290       (d) Information relating to current plans for the

578-03299-12

2012576c1

291 development of facilities or technology infrastructure to be  
292 used by a public entity which is similar to the qualifying  
293 project being proposed by the private entity, if any, of each  
294 affected local jurisdiction.

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

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

302 (g) A statement setting forth the private entity's general  
303 plans for financing the qualifying project, including the  
304 sources of the private entity's funds and identification of any  
305 dedicated revenue source or proposed debt or equity investment  
306 on the behalf of the private entity.

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

309 (i) User fees, lease payments, and other service payments  
310 over the term of an interim or comprehensive agreement, and the  
311 methodology and circumstances for changes to such user fees,  
312 lease payments, and other service payments over time.

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

315 (6) PROJECT QUALIFICATION AND PROCESS.—

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

578-03299-12

2012576c1

320 contained in the responsible public entity's guidelines for  
321 qualifying professional architectural, engineering, and  
322 contracting services before submitting a proposal under the  
323 procurement.

324 (b) The responsible public entity must ensure that  
325 procurement documents include provisions for the private  
326 entity's performance and payment of subcontractors, including,  
327 but not limited to, surety bonds, letters of credit, parent  
328 company guarantees, and lender and equity partner guarantees.  
329 For those components of the qualifying project which involve  
330 construction, performance and payment bonds are required and are  
331 subject to the recordation, notice, suit limitation, and other  
332 requirements of s. 255.05. The responsible public entity shall  
333 balance the structure of the security package for the public-  
334 private partnership which ensures performance and payment of  
335 subcontractors with the cost of the security to ensure the most  
336 efficient pricing. The procurement documents must contain  
337 contract provisions addressing termination, default, and exit  
338 transition obligations of the private entity.

339 (c) After the public notification period has expired, the  
340 responsible public entity shall rank the proposals in order of  
341 preference. In ranking the proposals, the responsible public  
342 entity may consider factors that include, but need not be  
343 limited to, professional qualifications, general business terms,  
344 innovative engineering or cost-reduction terms, finance plans,  
345 and the need for state funds in order to deliver the project. If  
346 the public entity is not satisfied with the results of the  
347 negotiations, the public entity may terminate negotiations with  
348 the proposer. If these negotiations are unsuccessful, the

578-03299-12

2012576c1

349 responsible public entity may go to the second-ranked and lower-  
350 ranked firms, in order, using this same procedure. If only one  
351 proposal is received, the responsible public entity may  
352 negotiate in good faith and, if the public entity is not  
353 satisfied with the results of the negotiations, the public  
354 entity may terminate negotiations with the proposer.  
355 Notwithstanding this subsection, the responsible public entity  
356 may reject all proposals at any point in the process up to  
357 execution of a contract with the proposer.

358 (d) The responsible public entity shall perform an  
359 independent analysis, or other analysis in accordance with  
360 paragraph (4) (f), of the proposed public-private partnership  
361 which demonstrates the cost-effectiveness and overall public  
362 benefit at the following times:

- 363 1. Before the procurement process; and
- 364 2. Before awarding the contract.

365 (e) The responsible public entity may approve the  
366 development or operation of an educational facility, a water or  
367 wastewater management facility and related infrastructure,  
368 technology infrastructure or other public infrastructure, or a  
369 governmental facility needed by the public entity as a  
370 qualifying project, or the design or equipping of a qualifying  
371 project so developed or operated, if:

- 372 1. There is a public need for or benefit derived from a  
373 project of the type the private entity proposes as a qualifying  
374 project.
- 375 2. The estimated cost of the qualifying project is  
376 reasonable in relation to similar facilities.
- 377 3. The private entity's plans will result in the timely

578-03299-12

2012576c1

378 acquisition, design, construction, improvement, renovation,  
379 expansion, equipping, maintenance, or operation of the  
380 qualifying project.

381 (f) The responsible public entity may charge a reasonable  
382 fee to cover the costs of processing, reviewing, and evaluating  
383 the request, including, but not limited to, reasonable attorney  
384 fees and fees for financial, technical, and other necessary  
385 advisors or consultants.

386 (g) Upon approval of a qualifying project, the responsible  
387 public entity shall establish a date for the commencement of  
388 activities related to the qualifying project. The responsible  
389 public entity may extend such date.

390 (h) Approval of a qualifying project by the responsible  
391 public entity is subject to entering into a comprehensive  
392 agreement with the private entity.

393 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

394 (a) Any private entity requesting approval from, or  
395 submitting a proposal to, a responsible public entity must  
396 notify each affected local jurisdiction by furnishing a copy of  
397 its request or proposal to each affected local jurisdiction.

398 (b) Each affected local jurisdiction that is not a  
399 responsible public entity for the respective qualifying project  
400 shall, within 60 days after receiving such notice, submit any  
401 comments it may have in writing to the responsible public entity  
402 and indicate whether the facility is compatible with the local  
403 comprehensive plan, the local infrastructure development plans,  
404 the capital improvements budget, or other governmental spending  
405 plan. Such comments shall be given consideration by the  
406 responsible public entity before entering a comprehensive

578-03299-12

2012576c1

407 agreement with a private entity.

408 (8) INTERIM AGREEMENT.—Before, or in connection with, the  
409 negotiation of a comprehensive agreement, the responsible public  
410 entity may enter into an interim agreement with the private  
411 entity proposing the development or operation of the qualifying  
412 project. An interim agreement does not obligate the responsible  
413 public entity to enter into a comprehensive agreement. An  
414 interim agreement must be limited to provisions that:

415 (a) Authorize the private entity to commence activities for  
416 which it may be compensated related to the proposed qualifying  
417 project, including, but not limited to, project planning and  
418 development, design and engineering, environmental analysis and  
419 mitigation, surveys, or other activities concerning any part of  
420 the proposed qualifying project, and ascertaining the  
421 availability of financing for the proposed facility or  
422 facilities.

423 (b) Establish the process and timing of the negotiation of  
424 the comprehensive agreement.

425 (c) Contain any other provisions related to any aspect of  
426 the development or operation of a qualifying project which the  
427 responsible public entity and the private entity deem  
428 appropriate.

429 (9) COMPREHENSIVE AGREEMENT.—

430 (a) Before developing or operating the qualifying project,  
431 the private entity shall enter into a comprehensive agreement  
432 with the responsible public entity. The comprehensive agreement  
433 shall provide for:

434 1. Delivery of maintenance, performance, and payment bonds  
435 and letters of credit in connection with the development or

578-03299-12

2012576c1

436 operation of the qualifying project in the forms and amounts  
437 satisfactory to the responsible public entity. For those  
438 components of the qualifying project which involve construction,  
439 the form and amount of the bonds must comply with s. 255.05.

440 2. Review of plans and specifications for the qualifying  
441 project by the responsible public entity and approval by the  
442 responsible public entity if the plans and specifications  
443 conform to standards acceptable to the responsible public  
444 entity. This subparagraph does not require the private entity to  
445 complete the design of a qualifying project before the execution  
446 of a comprehensive agreement.

447 3. Inspection of the qualifying project by the responsible  
448 public entity to ensure that the operator's activities are  
449 acceptable to the public entity in accordance with the  
450 comprehensive agreement.

451 4. Maintenance of a policy or policies of public liability  
452 insurance, copies of which shall be filed with the responsible  
453 public entity accompanied by proofs of coverage, or self-  
454 insurance, each in the form and amount satisfactory to the  
455 responsible public entity and reasonably sufficient to ensure  
456 coverage of tort liability to the public and employees and to  
457 enable the continued operation of the qualifying project.

458 5. Monitoring the practices of the private entity by the  
459 responsible public entity to ensure that the qualifying project  
460 is properly maintained.

461 6. Reimbursement to be paid to the responsible public  
462 entity for services provided by the responsible public entity.

463 7. Filing of appropriate financial statements on a periodic  
464 basis.



578-03299-12

2012576c1

465 8. Procedures governing the rights and responsibilities of  
466 the responsible public entity and the private entity in the  
467 event the comprehensive agreement is terminated or there is a  
468 material default by the private entity. Such procedures must  
469 include conditions governing assumption of the duties and  
470 responsibilities of the private entity by the responsible public  
471 entity and the transfer or purchase of property or other  
472 interests of the private entity by the responsible public  
473 entity.

474 9. Fees, lease payments, or service payments as may be  
475 established by agreement of the parties. A copy of any service  
476 contract shall be filed with the responsible public entity. In  
477 negotiating user fees, the parties shall establish fees that are  
478 the same for persons using the facility under like conditions  
479 and that will not materially discourage use of the qualifying  
480 project. The execution of the comprehensive agreement or any  
481 amendment thereto constitutes conclusive evidence that the fees,  
482 lease payments, or service payments provided for comply with  
483 this section. Fees or lease payments established in the  
484 comprehensive agreement as a source of revenues may be in  
485 addition to, or in lieu of, service payments.

486 10. Duties of the private entity, including terms and  
487 conditions that the responsible public entity determine serve  
488 the public purpose of this section.

489 (b) The comprehensive agreement may include:

490 1. An agreement by the responsible public entity to make  
491 grants or loans to the private entity from amounts received from  
492 the federal, state, or local government or any agency or  
493 instrumentality thereof.

578-03299-12

2012576c1

494 2. Provisions under which each entity agrees to provide  
495 notice of default and cure rights for the benefit of the other  
496 entity, including, but not limited to, provisions regarding  
497 unavoidable delays.

498 3. Provisions whereby the authority and duties of the  
499 private entity under this section will cease and the qualifying  
500 project be dedicated to the responsible public entity or, if the  
501 qualifying project was initially dedicated by an affected local  
502 jurisdiction, to such affected local jurisdiction for public  
503 use.

504 (10) FEES.—

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

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

511 2. The responsible public entity may develop new facilities  
512 or increase capacity in existing facilities through public-  
513 private partnerships.

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

516 4. Any revenues must be regulated by the responsible public  
517 entity pursuant to guidelines or rules established pursuant to  
518 subsection (3). The regulations governing the future increase of  
519 fees must be included in the public-private partnership  
520 agreement.

521 (b) The responsible public entity shall include provisions  
522 in the public-private partnership agreement which ensure that a

578-03299-12

2012576c1

523 negotiated portion of revenues from fee-generating projects are  
524 returned to the public entity over the life of the agreement. In  
525 the case of a lease of an existing facility, the responsible  
526 public entity shall receive a portion of funds upon closing on  
527 the agreements and also a portion of excess revenues over the  
528 life of the public-private partnership.

529 (11) FINANCING.—

530 (a) A private entity may enter into private-source  
531 financing agreements between financing sources and the private  
532 entity. All financing agreements and any liens on the property  
533 or facility must be paid in full at the applicable closing that  
534 transfers ownership of a facility to a responsible public  
535 entity.

536 (b) The responsible public entity may lend funds from its  
537 trust fund to private entities that construct projects  
538 containing facilities that are approved under this section. To  
539 be eligible, a private entity must comply with s. 215.97 and  
540 must provide an indication from a nationally recognized rating  
541 agency that the senior bonds for the project will be investment  
542 grade, or must provide credit support, such as a letter of  
543 credit or other means acceptable to the responsible public  
544 entity, to ensure that the loans will be fully repaid. The  
545 state's liability for the funding of a facility is limited to  
546 the amount approved for that specific facility in the  
547 responsible public entity's 5-year work program adopted pursuant  
548 to the responsible public entity's rules, or otherwise limited  
549 to 15 percent of the responsible public entity's total funding  
550 for similar projects in a given fiscal year.

551 (c) The responsible public entity may use innovative

578-03299-12

2012576c1

552 finance techniques associated with a public-private partnership  
553 under this section, including, but not limited to, federal loans  
554 as provided in Titles 23 and 49 C.F.R., commercial bank loans,  
555 and hedges against inflation from commercial banks or other  
556 private sources. A responsible public entity may use the model  
557 financing agreement provided pursuant to s. 489.145(6) for its  
558 financing of a facility owned by a responsible public entity. A  
559 financing agreement may not require the responsible public  
560 entity to indemnify the financing source, subject the  
561 responsible public entity's facility to liens in violation of s.  
562 11.066(5), or secure financing by a responsible public entity  
563 with a pledge of security interest, and any such provisions are  
564 void.

565 (12) POWERS AND DUTIES OF THE PRIVATE ENTITY.-

566 (a) The private entity shall:

567 1. Develop or operate the qualifying project in a manner  
568 that is acceptable to the responsible public entity in  
569 accordance with the provisions of an interim or comprehensive  
570 agreement.

571 2. Maintain, or provide by contract for the maintenance or  
572 upgrade of, the qualifying project if required by an interim or  
573 comprehensive agreement.

574 3. Cooperate with the responsible public entity in making  
575 best efforts to establish any interconnection with the  
576 qualifying project requested by the responsible public entity.

577 4. Comply with an interim or comprehensive agreement and  
578 any lease or service contract.

579 (b) Each private facility constructed pursuant to this  
580 section must comply with all requirements of federal, state, and

578-03299-12

2012576c1

581 local laws; state, regional, and local comprehensive plans;  
582 responsible public entity rules, procedures, and standards for  
583 facilities; and any other conditions that the responsible public  
584 entity determine to be in the public's best interest.

585 (c) The responsible public entity may exercise any power  
586 possessed by it, including eminent domain, to facilitate the  
587 development and construction of projects pursuant to this  
588 section. The responsible public entity may provide services to  
589 the private entity. Agreements for maintenance and other  
590 services entered into pursuant to this section must provide for  
591 full reimbursement for services rendered for projects.

592 (d) A private entity of a qualifying project may provide  
593 additional services for the qualifying project to public or  
594 private entities other than the responsible public entity if the  
595 provision of additional service does not impair the private  
596 entity's ability to meet its commitments to the public entity  
597 pursuant to an interim or comprehensive agreement.

598 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon  
599 expiration or termination of an interim or comprehensive  
600 agreement, the responsible public entity may use revenues to pay  
601 current operation and maintenance costs of the qualifying  
602 project, as well as compensation to the responsible public  
603 entity for its services in developing and operating the  
604 qualifying project. Except as provided otherwise in the interim  
605 or comprehensive agreement, the right to receive such payment,  
606 if any, is considered just compensation for the qualifying  
607 project in the event termination is due to the default of the  
608 private entity; however, this right does not affect the right of  
609 the responsible public entity to terminate, with cause, an

578-03299-12

2012576c1

610 interim or comprehensive agreement and to exercise any other  
611 rights and remedies that may be available to it at law or in  
612 equity. The full faith and credit of the responsible public  
613 entity may not be pledged to secure any financing of the private  
614 entity by the election to take over the qualifying project.  
615 Assumption of the development or operation of the qualifying  
616 project does not obligate the responsible public entity to pay  
617 any obligation of the private entity from sources other than  
618 revenues.

619 (14) SOVEREIGN IMMUNITY.—This section does not waive the  
620 sovereign immunity of the state, any responsible public entity,  
621 any affected local jurisdiction, or any officer or employee  
622 thereof with respect to participation in, or approval of, all or  
623 any part of the qualifying project or its operation, including,  
624 but not limited to, interconnection of the qualifying project  
625 with any other infrastructure or project. Counties and  
626 municipalities in which a qualifying project is located possess  
627 sovereign immunity with respect to the project's design,  
628 construction, and operation.

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

631 (a) This section does not affect the authority of the  
632 responsible public entity to take action that would impact the  
633 debt capacity of the state.

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

637 (c) Except as otherwise provided in this section, this  
638 section does not amend existing laws by granting additional

578-03299-12

2012576c1

639 powers to, or further restricting, local governmental entities  
640 from regulating and entering into cooperative arrangements with  
641 the private sector for the planning, construction, and operation  
642 of facilities.

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