

By Senator Flores

37-00258-13

2013238

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 requirements for project approval; 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 user fees;  
16          providing for financing from private sources and  
17          public entities; providing powers and duties for  
18          private entities; providing for expiration or  
19          termination of agreements; providing for the  
20          applicability of sovereign immunity for public  
21          entities with respect to qualified projects; providing  
22          for construction of the act; providing an effective  
23          date.

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

26  
27           Section 1. Section 287.05712, Florida Statutes, is created  
28 to read:

29           287.05712 Public-private partnerships.-

37-00258-13

2013238

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

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

34 (b) "Appropriating body" means the body responsible for  
35 appropriating or authorizing funding to pay for a qualifying  
36 project.

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

39 (d) "Lease payment" means any form of payment, including a  
40 land lease, by a public entity to the private entity for the use  
41 of a qualifying project.

42 (e) "Material default" means any default by the private  
43 entity in the performance of its duties which jeopardizes  
44 adequate service to the public from a qualifying project.

45 (f) "Operate" means to finance, maintain, improve, equip,  
46 modify, repair, or operate.

47 (g) "Private entity" means any natural person, corporation,  
48 general partnership, limited liability company, limited  
49 partnership, joint venture, business trust, public benefit  
50 corporation, nonprofit entity, or other private business entity.

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

55 (i) "Qualifying project" means any:

56 1. Facility or project that meets a public purpose,  
57 including, but not limited to, any ferry, mass transit facility,  
58 vehicle parking facility, port facility, power generating

37-00258-13

2013238

59 facility, fuel supply facility, oil or gas pipeline, medical or  
60 nursing care facility, or recreational facility used primarily  
61 for events.

62 2. Improvements, including equipment, of a facility to be  
63 principally used by a public entity.

64 3. Water, wastewater, or surface water management facility  
65 and other related infrastructure.

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

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

78 (l) "Service contract" means a contract entered into  
79 between a public entity and a private entity of a qualifying  
80 project.

81 (m) "Service payment" means a payment to the private entity  
82 of a qualifying project pursuant to a service contract.

83 (n) "User fee" means any fee or charge imposed by the  
84 private entity of a qualifying project for use of all or a  
85 portion of such qualifying project pursuant to a comprehensive  
86 agreement.

87 (o) "Water or wastewater management facility" means a

37-00258-13

2013238

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 public-private partnerships to develop and operate qualifying  
115 projects.

116 4. A procurement under this section serves the public

37-00258-13

2013238

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 a

37-00258-13

2013238

146 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 proposed  
153 qualifying project.

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

156 8. Criteria for the creation and responsibilities of a  
157 public-private partnership oversight committee that includes  
158 members representing the responsible public entity and the  
159 appropriating body. The criteria must include the scope, costs,  
160 and duration of the qualifying project, as well as whether the  
161 project involves or affects multiple public entities. If formed,  
162 the oversight committee shall be an advisory committee that  
163 reviews the terms of a proposed interim or comprehensive  
164 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. Criteria, key decision points, and approvals required  
170 to ensure that the responsible public entity considers the  
171 extent of competition before selecting proposals and negotiating  
172 an interim or comprehensive agreement.

173 11. A requirement that public notice be published and  
174 posted of a private entity's request for approval of a

37-00258-13

2013238

175 qualifying project, 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 60 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 engage  
186 the services of qualified professionals, which may include a  
187 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 must 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 shown by the approval of the project in  
199 the public entity's work program, and enter into an agreement  
200 with a private entity or a consortium thereof, for the building,  
201 upgrade, operation, ownership, or financing of a facility.

202 (a) The responsible public entity may not consider any  
203 request by a private entity for approval of a qualifying project

37-00258-13

2013238

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 an unsolicited proposal under this section.  
211 The 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 a public-private project or, if the  
216 public entity receives an unsolicited proposal, the public  
217 entity shall publish a notice in the Florida Administrative  
218 Weekly or a newspaper of general circulation at least once a  
219 week for 2 weeks stating that the public entity has received a  
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 affected local jurisdiction.

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

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

- 229 1. Is in the public's best interest;  
230 2. 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;



37-00258-13

2013238

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

254       2. Any comprehensive agreement must be consistent with an  
255 investment-grade technical study prepared by a nationally  
256 recognized expert who is accepted by the national bond rating  
257 agencies. In evaluating the technical study, the responsible  
258 public 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.

37-00258-13

2013238

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

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

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

275       (c) A statement specifying the method by which the private  
276 entity proposes to secure any necessary property interest  
277 required for the qualifying project.

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

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

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

290       (g) A statement specifying the private entity's general

37-00258-13

2013238

291 plans for financing the qualifying project, including the  
292 sources of the private entity's funds and identification of any  
293 dedicated revenue source or proposed debt or equity investment  
294 on the behalf of the private entity.

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

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

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

303 (6) PROJECT QUALIFICATION AND PROCESS.—

304 (a) The responsible public entity shall qualify the public-  
305 private partnerships as part of the procurement process outlined  
306 in the procurement documents if such process ensures that the  
307 private entity meets at least the minimum standards contained in  
308 the responsible public entity's guidelines for qualifying  
309 professional architectural, engineering, and contracting  
310 services before submitting a proposal under the procurement.

311 (b) The responsible public entity shall ensure that  
312 procurement documents include provisions for the private  
313 entity's performance and payment of subcontractors, including,  
314 but not limited to, surety bonds, letters of credit, parent  
315 company guarantees, and lender and equity partner guarantees.  
316 For those components of the qualifying project which involve  
317 construction, performance and payment bonds are required and are  
318 subject to the recordation, notice, suit limitation, and other  
319 requirements of s. 255.05. The responsible public entity shall

37-00258-13

2013238

320 balance the structure of the security package for the public-  
321 private partnership which ensures performance and payment of  
322 subcontractors with the cost of the security to ensure the most  
323 efficient pricing. The procurement documents must contain  
324 contract provisions addressing termination, default, and exit  
325 transition obligations of the private entity.

326 (c) After the public notification period has expired, the  
327 responsible public entity shall rank the proposals in order of  
328 preference. In ranking the proposals, the responsible public  
329 entity may consider factors that include, but need not be  
330 limited to, professional qualifications, general business terms,  
331 innovative engineering or cost-reduction terms, and finance  
332 plans. If the public entity is not satisfied with the results of  
333 the negotiations with the first-ranked private entity, the  
334 public entity may terminate negotiations and go to the second-  
335 ranked, then lower-ranked private entities, in order, using this  
336 same procedure. If only one proposal is received, the  
337 responsible public entity may negotiate in good faith and, if  
338 the public entity is not satisfied with the results of the  
339 negotiations, the public entity may terminate negotiations with  
340 the proposer. Notwithstanding this subsection, the responsible  
341 public entity may reject all proposals at any point in the  
342 process up to execution of a contract with the proposer.

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

348 1. Before the procurement process; and

37-00258-13

2013238

349 2. Before awarding the contract.

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

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

360 2. The estimated cost of the qualifying project is  
361 reasonable in relation to similar facilities; and

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

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

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

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

37-00258-13

2013238

378 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.-

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

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

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

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

37-00258-13

2013238

407 facilities.

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

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

414 (9) COMPREHENSIVE AGREEMENT.-

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

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

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

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

37-00258-13

2013238

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

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

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

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

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

459 9. User fees, lease payments, or service payments as may be  
460 established by agreement of the parties. A copy of any service  
461 contract shall be filed with the responsible public entity. In  
462 negotiating user fees, the parties shall establish user fees  
463 that are the same for persons using the facility under like  
464 conditions and that will not materially discourage use of the



37-00258-13

2013238

465 qualifying project. The execution of the comprehensive agreement  
466 or any amendment thereto constitutes conclusive evidence that  
467 the user fees, lease payments, or service payments provided for  
468 comply with this section. User fees or lease payments  
469 established in the comprehensive agreement as a source of  
470 revenues may be in addition to, or in lieu of, service payments.

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

474 (b) The comprehensive agreement may include:

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

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

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

489 (10) USER FEES.—

490 (a) An agreement that is entered into pursuant to this  
491 section may authorize the private entity to impose user fees for  
492 the use of the facility. The following provisions apply to such  
493 agreement:

37-00258-13

2013238

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

497 2. The responsible public entity may develop a new facility  
498 or increase the capacity of the existing facility through a  
499 public-private partnership.

500 3. The responsible public entity may lease the existing  
501 fee-for-use facility through a public-private partnership.

502 4. The responsible public entity shall regulate any  
503 revenues pursuant to guidelines or rules established in  
504 subsection (3).

505 5. The regulations governing the future increase of user  
506 fees must be included in the public-private partnership  
507 agreement.

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

516 (11) FINANCING.—

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

522 (b) The responsible public entity may lend funds from its

37-00258-13

2013238

523 trust fund to a private entity that constructs a project  
524 containing a facility which is approved under this section. To  
525 be eligible, the private entity must comply with s. 215.97 and  
526 must provide an indication from a nationally recognized rating  
527 agency that the senior bonds for the project will be investment  
528 grade, or must provide credit support, such as a letter of  
529 credit or other means acceptable to the responsible public  
530 entity, to ensure that the loans will be fully repaid.

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

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

546 (a) The private entity shall:

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

551 2. Maintain, or provide by contract for the maintenance or

37-00258-13

2013238

552 upgrade of, the qualifying project if required by the interim or  
553 comprehensive agreement.

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

557 4. Comply with the interim or comprehensive agreement and  
558 any lease or service contract.

559 (b) Each private facility constructed pursuant to this  
560 section must comply with all requirements of federal, state, and  
561 local laws; state, regional, and local comprehensive plans;  
562 responsible public entity rules, procedures, and standards for  
563 facilities; and any other conditions that the responsible public  
564 entity determines to be in the public's best interest.

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

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

576 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon  
577 expiration or termination of the 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

37-00258-13

2013238

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, the  
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. A county and  
604 municipality in which a qualifying project is located possess  
605 sovereign immunity with respect to the project, including, but  
606 not limited to, its design, construction, and operation.

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

609 (a) This section does not limit the state or its agencies

37-00258-13

2013238

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  
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, 2013.