

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 improvement by private entities of
6 facilities used predominantly for a public purpose;
7 creating a task force to establish specified
8 guidelines; providing procurement procedures;
9 providing requirements for project approval; providing
10 project qualifications and process; providing for
11 notice to affected local jurisdictions; providing for
12 interim and comprehensive agreements between a public
13 and a private entity; providing for use fees;
14 providing for financing sources for certain projects
15 by a private entity; providing powers and duties of
16 private entities; providing for expiration or
17 termination of agreements; providing for the
18 applicability of sovereign immunity for public
19 entities with respect to qualified projects; providing
20 for construction of the act; creating s. 336.71, F.S.;
21 authorizing counties to enter into public-private
22 partnership agreements for construction, operation,
23 ownership, and financing of transportation facilities;
24 providing requirements and limitations for such
25 agreements; providing procurement procedures;
26 requiring a fee for certain proposals; providing an
27 effective date.
28

29 Be It Enacted by the Legislature of the State of Florida:

30

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

33 287.05712 Public-private partnerships.-

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

35 (a) "Affected local jurisdiction" means a county,
36 municipality, or special district in which all or a portion of a
37 qualifying project is located.

38 (b) "Develop" means to plan, design, finance, lease,
39 acquire, install, construct, or expand.

40 (c) "Fees" means charges imposed by the private entity of
41 a qualifying project for use of all or a portion of such
42 qualifying project pursuant to a comprehensive agreement.

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

46 (e) "Material default" means a nonperformance of its
47 duties by the private entity of a qualifying project which
48 jeopardizes adequate service to the public from the project.

49 (f) "Operate" means to finance, maintain, improve, equip,
50 modify, or repair.

51 (g) "Private entity" means any natural person,
52 corporation, general partnership, limited liability company,
53 limited partnership, joint venture, business trust, public-
54 benefit corporation, nonprofit entity, or other private business
55 entity.

56 (h) "Proposal" means a plan for a qualifying project with
57 detail beyond a conceptual level for which terms such as fixing
58 costs, payment schedules, financing, deliverables, and project
59 schedule are defined.

60 (i) "Qualifying project" means:

61 1. A facility or project that serves a public purpose,
62 including, but not limited to, any ferry or mass transit
63 facility, vehicle parking facility, airport or seaport facility,
64 power-generating facility, rail facility or project, fuel supply
65 facility, oil or gas pipeline, medical or nursing care facility,
66 recreational facility, sporting or cultural facility, or
67 educational facility or other building or facility that is used
68 or will be used by a public educational institution, or any
69 other public facility or infrastructure that is used or will be
70 used by the public at large or in support of an accepted public
71 purpose or activity;

72 2. An improvement, including equipment, of a building that
73 will be principally used by a public entity or the public at
74 large or that supports a service delivery system in the public
75 sector; or

76 3. A water, wastewater, or surface water management
77 facility or other related infrastructure.

78 (j) "Responsible public entity" means a county,
79 municipality, school board, or university, or any other
80 political subdivision of the state; a public body politic and
81 corporate; or a regional entity that serves a public purpose and
82 is authorized to develop or operate a qualifying project.

83 (k) "Revenues" means the income, earnings, user fees,
84 lease payments, or other service payments relating to the
85 development or operation of a qualifying project, including, but
86 not limited to, money received as grants or otherwise from the
87 Federal Government, a public entity, or an agency or
88 instrumentality thereof in aid of the qualifying project.

89 (1) "Service contract" means a contract between a public
90 entity and the private entity which defines the terms of the
91 services to be provided with respect to a qualifying project.

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

97 (a) The Legislature also finds that:

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

108 2. There are inadequate resources to develop new
109 educational facilities, transportation facilities, water or
110 wastewater management facilities and infrastructure, technology

111 infrastructure, roads, highways, bridges, and other public
112 infrastructure and government facilities for the benefit of
113 residents of this state, and that a public-private partnership
114 has demonstrated that it can meet the needs by improving the
115 schedule for delivery, lowering the cost, and providing other
116 benefits to the public.

117 3. There may be state and federal tax incentives that
118 promote partnerships between public and private entities to
119 develop and operate qualifying projects.

120 4. A procurement under this section serves the public
121 purpose of this section if such procurement facilitates the
122 timely development or operation of a qualifying project.

123 (b) It is the intent of the Legislature to encourage
124 investment in the state by private entities; to facilitate
125 various bond financing mechanisms, private capital, and other
126 funding sources for the development and operation of qualifying
127 projects, including expansion and acceleration of such financing
128 to meet the public need; and to provide the greatest possible
129 flexibility to public and private entities contracting for the
130 provision of public services.

131 (3) PUBLIC-PRIVATE PARTNERSHIP GUIDELINES TASK FORCE.-

132 (a) The Partnership for Public Facilities and
133 Infrastructure Act Guidelines Task Force is created to establish
134 guidelines for public entities on the types of factors public
135 entities should review and consider when processing requests for
136 public-private partnership projects pursuant to this section,
137 including consistent requirements for private entities seeking

138 to participate in the construction or development of a
139 qualifying project throughout the state.

140 (b) The task force shall consist of nine members, as
141 follows:

142 1. One member of the Senate, appointed by the President of
143 the Senate.

144 2. One member of the House of Representatives, appointed
145 by the Speaker of the House of Representatives.

146 3. The Secretary of Management Services or his or her
147 designee.

148 4. Six members appointed by the Governor, as follows:

149 a. One county government official.

150 b. One municipal government official.

151 c. One district school board member.

152 d. Three representatives of the business community.

153 (c) Task force members shall serve for a term of 2 years
154 each and shall elect a chair and a vice chair. The task force
155 shall meet as necessary. Administrative and technical support
156 shall be provided by the department. Task force members shall
157 serve without compensation, but are entitled to reimbursement
158 for per diem and travel expenses pursuant to s. 112.061. The
159 task force shall terminate on July 1, 2015.

160 (d) The task force shall provide guidelines to public
161 entities no later than July 1, 2014. The guidelines shall
162 include:

163 1. Opportunities for competition through public notice and
164 the availability of representatives of the responsible public
165 entity to meet with private entities considering a proposal.

- 166 2. Reasonable criteria for choosing among competing
167 proposals.
- 168 3. Suggested timelines for selecting proposals and
169 negotiating an interim or comprehensive agreement.
- 170 4. Authorization for accelerated selection and review and
171 documentation timelines for proposals involving a qualifying
172 project that the responsible public entity deems a priority.
- 173 5. Procedures for financial review and analysis which, at
174 a minimum, include a cost-benefit analysis, an assessment of
175 opportunity cost, and consideration of the results of all
176 studies and analyses related to the proposed qualifying project.
- 177 6. Consideration of the nonfinancial benefits of a
178 proposed qualifying project.
- 179 7. A mechanism for the appropriating body to review a
180 proposed comprehensive agreement before execution.
- 181 8. Analysis of the adequacy of the information released
182 when seeking competing proposals and providing for the
183 enhancement of that information, if deemed necessary, to
184 encourage competition, as well as establishing standards to
185 maintain the confidentiality of financial and proprietary terms
186 of an unsolicited proposal, which shall be disclosed only in
187 accordance with the bidding procedures of competing proposals.
- 188 9. Authority for the responsible public entity to engage
189 the services of qualified professionals, which may include a
190 Florida-registered professional or a certified public
191 accountant, not otherwise employed by the responsible public
192 entity, to provide an independent analysis regarding the
193 specifics, advantages, disadvantages, and long-term and short-

194 term costs of a request by a private entity for approval of a
195 qualifying project, unless the governing body of the public
196 entity determines that such analysis should be performed by
197 employees of the public entity. Professional services as defined
198 in s. 287.055 must be engaged pursuant to s. 287.055.

199 (e) The establishment of guidelines pursuant to this
200 section by the task force or the adoption of such guidelines by
201 a public entity is not required for the public entity to request
202 or receive proposals for a qualifying project or to enter into a
203 comprehensive agreement for a qualifying project. A public
204 entity may adopt guidelines before the establishment of
205 guidelines by the task force, which may remain in effect as long
206 as such guidelines are not inconsistent with the guidelines
207 established by the task force. A guideline that is inconsistent
208 with the guidelines of the task force must be amended as
209 necessary to maintain consistency with the task force
210 guidelines.

211 (4) PROCUREMENT PROCEDURES.—A responsible public entity
212 may receive unsolicited proposals or may solicit proposals for
213 qualifying projects and may thereafter enter into an agreement
214 with a private entity, or a consortium of private entities, for
215 the building, upgrading, operating, ownership, or financing of
216 facilities.

217 (a) The responsible public entity may establish a
218 reasonable application fee for the submission of an unsolicited
219 proposal under this section. The fee must be sufficient to pay
220 the costs of evaluating the proposal. The responsible public

221 entity may engage the services of a private consultant to assist
222 in the evaluation.

223 (b) The responsible public entity may request a proposal
224 from private entities for a public-private project or, if the
225 public entity receives an unsolicited proposal, the public
226 entity shall publish notice in the Florida Administrative
227 Register and a newspaper of general circulation at least once a
228 week for 2 weeks stating that the public entity has received a
229 proposal and will accept other proposals for the same project.
230 The timeframe within which the public entity may accept other
231 proposals shall be determined by the public entity on a project-
232 by-project basis based upon the complexity of the project and the
233 public benefit to be gained by allowing a longer or shorter period of
234 time within which other proposals may be received; however, the
235 timeframe for allowing other proposals must be at least 21 days, but
236 no more than 120 days, after the initial date of publication. A
237 copy of the notice must be mailed to each local government in
238 the affected area. The scope of the proposal may be publicized
239 for the purpose of soliciting competing proposals; however, the
240 financial terms of the proposal may not be disclosed until the
241 terms of all competing bids are simultaneously disclosed in
242 accordance with the applicable law governing procurement
243 procedures for the qualifying project.

244 (c) A responsible public entity that is a school board may
245 enter into a comprehensive agreement only with the approval of
246 the local governing body.

247 (d) Before approval, the responsible public entity must
248 determine that the proposed project:

249 1. Is in the public's best interest.

250 2. Is for a facility that is owned by the responsible
251 public entity or for a facility for which ownership will be
252 conveyed to the responsible public entity.

253 3. Has adequate safeguards in place to ensure that
254 additional costs or service disruptions are not imposed on the
255 public in the event of material default or cancellation of the
256 agreement by the responsible public entity.

257 4. Has adequate safeguards in place to ensure that the
258 responsible public entity or the private entity has the
259 opportunity to add capacity to the proposed project or other
260 facilities serving similar predominantly public purposes.

261 5. Will be owned by the responsible public entity upon
262 completion or termination of the agreement and upon payment of
263 the amounts financed.

264 (e) Before signing a comprehensive agreement, the
265 responsible public entity must consider a reasonable finance
266 plan that is consistent with subsection (11), the project cost,
267 revenues by source, available financing, major assumptions,
268 internal rate of return on private investments, if governmental
269 funds are assumed in order to deliver a cost-feasible project,
270 and a total cash-flow analysis beginning with the implementation
271 of the project and extending for the term of the agreement.

272 (f) In considering an unsolicited proposal, the
273 responsible public entity may require from the private entity a
274 technical study prepared by a nationally recognized expert with
275 experience in preparing analysis for bond rating agencies. In
276 evaluating the technical study, the responsible public entity

277 may rely upon internal staff reports prepared by personnel
278 familiar with the operation of similar facilities or the advice
279 of external advisors or consultants having relevant experience.

280 (5) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal
281 from a private entity for approval of a qualifying project must
282 be accompanied by the following material and information, unless
283 waived by the responsible public entity:

284 (a) A description of the qualifying project, including the
285 conceptual design of the facilities or a conceptual plan for the
286 provision of services, and a schedule for the initiation and
287 completion of the qualifying project.

288 (b) A description of the method by which the private
289 entity proposes to secure the necessary property interests that
290 are required for the qualifying project.

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

296 (d) The name and address of a person who may be contacted
297 for additional information concerning the proposal.

298 (e) The proposed user fees, lease payments, or other
299 service payments over the term of a comprehensive agreement, and
300 the methodology and circumstances for changes to the user fees,
301 lease payments, and other service payments over time.

302 (f) Additional material or information that the
303 responsible public entity reasonably requests.

304 (6) PROJECT QUALIFICATION AND PROCESS.—

305 (a) The private entity must meet the minimum standards
306 contained in the responsible public entity's guidelines for
307 qualifying professional services and contracts for traditional
308 procurement projects.

309 (b) The responsible public entity must:

310 1. Ensure that provisions are made for the private
311 entity's performance and payment of subcontractors, including,
312 but not limited to, surety bonds, letters of credit, parent
313 company guarantees, and lender and equity partner guarantees.
314 For the components of the qualifying project which involve
315 construction performance and payment, bonds are required and are
316 subject to the recordation, notice, suit limitation, and other
317 requirements of s. 255.05.

318 2. Ensure the most efficient pricing of the security
319 package that provides for the performance and payment of
320 subcontractors.

321 3. Ensure that provisions are made for the transfer of the
322 private entity's obligations if the comprehensive agreement is
323 terminated or a material default occurs.

324 (c) After the public notification period has expired in
325 the case of an unsolicited proposal, the responsible public
326 entity shall rank the proposals received in order of preference.
327 In ranking the proposals, the responsible public entity may
328 consider factors that include, but are not limited to,
329 professional qualifications, general business terms, innovative
330 design techniques or cost-reduction terms, and finance plans. If
331 the responsible public entity is not satisfied with the results
332 of the negotiations, the responsible public entity may terminate

333 negotiations with the proposer and negotiate with the second-
334 ranked or subsequent-ranked firms, in the order consistent with
335 this procedure. If only one proposal is received, the
336 responsible public entity may negotiate in good faith, and if
337 the public entity is not satisfied with the results of the
338 negotiations, the public entity may terminate negotiations with
339 the proposer. Notwithstanding this paragraph, the responsible
340 public entity may reject all proposals at any point in the
341 process until a contract with the proposer is executed.

342 (d) The responsible public entity shall perform an
343 independent analysis of the proposed public-private partnership
344 which demonstrates the cost-effectiveness and overall public
345 benefit before the procurement process is initiated or before
346 the contract is awarded.

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

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

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

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

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

369 (g) Upon approval of a qualifying project, the responsible
370 public entity shall establish a date for the commencement of
371 activities related to the qualifying project. The responsible
372 public entity may extend the commencement date.

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

376 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

377 (a) The responsible public entity must notify each
378 affected local jurisdiction by furnishing a copy of the proposal
379 to each affected local jurisdiction when considering a proposal
380 for a qualifying project.

381 (b) Each affected local jurisdiction that is not a
382 responsible public entity for the respective qualifying project
383 may, within 60 days after receiving the notice, submit in
384 writing any comments to the responsible public entity and
385 indicate whether the facility is incompatible with the local
386 comprehensive plan, the local infrastructure development plan,
387 the capital improvements budget, or other governmental spending

388 plan. The responsible public entity shall consider the comments
389 of the affected local jurisdiction before entering into a
390 comprehensive agreement with a private entity. If an affected
391 local jurisdiction fails to respond to the responsible public
392 entity within the time provided in this paragraph, the
393 nonresponse is deemed an acknowledgement by the affected local
394 jurisdiction that the qualifying project is compatible with the
395 local comprehensive plan, the local infrastructure development
396 plan, the capital improvements budget, or other governmental
397 spending plan.

398 (8) INTERIM AGREEMENT.—Before or in connection with the
399 negotiation of a comprehensive agreement, the public entity may
400 enter into an interim agreement with the private entity
401 proposing the development or operation of the qualifying
402 project. An interim agreement does not obligate the responsible
403 public entity to enter into a comprehensive agreement. The
404 interim agreement is discretionary with the parties and is not
405 required on a qualifying project for which the parties may
406 proceed directly to a comprehensive agreement without the need
407 for an interim agreement. An interim agreement must be limited
408 to provisions that:

409 (a) Authorize the private entity to commence activities
410 for which it may be compensated related to the proposed
411 qualifying project, including, but not limited to, project
412 planning and development, design and engineering, environmental
413 analysis and mitigation, survey, other activities concerning any
414 part of the proposed qualifying project, and ascertaining the
415 availability of financing for the proposed facility or

416 facilities.

417 (b) Establish the process and timing of the negotiation of
418 the comprehensive agreement.

419 (c) Contain such other provisions related to an aspect of
420 the development or operation of a qualifying project that the
421 responsible public entity and the private entity deem
422 appropriate.

423 (9) COMPREHENSIVE AGREEMENT.—

424 (a) Before developing or operating the qualifying project,
425 the private entity must enter into a comprehensive agreement
426 with the responsible public entity. The comprehensive agreement
427 must provide for:

428 1. The delivery of performance and payment bonds, letters
429 of credit, or other security acceptable to the responsible
430 public entity in connection with the development or operation of
431 the qualifying project in the form and amount satisfactory to
432 the responsible public entity. For the components of the
433 qualifying project which involve construction, the form and
434 amount of the bonds must comply with s. 255.05.

435 2. The review of the plans and specifications for the
436 qualifying project by the responsible public entity and, if the
437 plans and specifications conform to standards acceptable to the
438 responsible public entity, the approval of the responsible
439 public entity. This subparagraph does not require the private
440 entity to complete the design of the qualifying project before
441 the execution of the comprehensive agreement.

442 3. The inspection of the qualifying project by the
443 responsible public entity to ensure that the private entity's

444 activities are acceptable to the public entity in accordance
445 with the comprehensive agreement.

446 4. The maintenance of a policy of public liability
447 insurance, a copy of which must be filed with the responsible
448 public entity and accompanied by proofs of coverage, or self-
449 insurance, each in the form and amount satisfactory to the
450 responsible public entity and reasonably sufficient to ensure
451 coverage of tort liability to the public and employees and to
452 enable the continued operation of the qualifying project.

453 5. The monitoring by the responsible public entity of the
454 maintenance practices to be performed by the private entity to
455 ensure that the qualifying project is properly maintained.

456 6. The periodic filing by the private entity of the
457 appropriate financial statements that pertain to the qualifying
458 project.

459 7. The procedures that govern the rights and
460 responsibilities of the responsible public entity and the
461 private entity in the course of the construction and operation
462 of the qualifying project and in the event of the termination of
463 the comprehensive agreement or a material default by the private
464 entity. The procedures must include conditions that govern the
465 assumption of the duties and responsibilities of the private
466 entity by an entity that funded, in whole or part, the
467 qualifying project or by the responsible public entity, and must
468 provide for the transfer or purchase of property or other
469 interests of the private entity by the responsible public
470 entity.

471 8. The fees, lease payments, or service payments. In
472 negotiating user fees, the fees must be the same for persons
473 using the facility under like conditions and must not materially
474 discourage use of the qualifying project. The execution of the
475 comprehensive agreement or a subsequent amendment is conclusive
476 evidence that the fees, lease payments, or service payments
477 provided for in the comprehensive agreement comply with this
478 section. Fees or lease payments established in the comprehensive
479 agreement as a source of revenue may be in addition to, or in
480 lieu of, service payments.

481 9. The duties of the private entity, including the terms
482 and conditions that the responsible public entity determines
483 serve the public purpose of this section.

484 (b) The comprehensive agreement may include:

485 1. An agreement by the responsible public entity to make
486 grants or loans to the private entity from amounts received from
487 the federal, state, or local government or an agency or
488 instrumentality thereof.

489 2. A provision under which each entity agrees to provide
490 notice of default and cure rights for the benefit of the other
491 entity, including, but not limited to, a provision regarding
492 unavoidable delays.

493 3. A provision that terminates the authority and duties of
494 the private entity under this section and dedicates the
495 qualifying project to the responsible public entity or, if the
496 qualifying project was initially dedicated by an affected local
497 jurisdiction, to the affected local jurisdiction for public use.

498 (10) FEES.—An agreement entered into pursuant to this
499 section may authorize the private entity to impose fees to
500 members of the public for the use of the facility. The following
501 provisions apply to the agreement:

502 (a) The responsible public entity may develop new
503 facilities or increase capacity in existing facilities through
504 agreements with public-private partnerships.

505 (b) The public-private partnership agreement must ensure
506 that the facility is properly operated, maintained, or improved
507 in accordance with standards set forth in the comprehensive
508 agreement.

509 (c) The responsible public entity may lease existing fee-
510 for-use facilities through a public-private partnership
511 agreement.

512 (d) Any revenues must be regulated by the responsible
513 public entity pursuant to the comprehensive agreement.

514 (e) A negotiated portion of revenues from fee-generating
515 uses must be returned to the public entity over the life of the
516 agreement.

517 (11) FINANCING.—

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

525 (b) The responsible public entity may lend funds to
526 private entities that construct projects containing facilities
527 that are approved under this section.

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

546 (d) A responsible public entity shall appropriate on a
547 priority basis as required by the comprehensive agreement a
548 contractual payment obligation, annual or otherwise, from the
549 enterprise or other government fund from which the qualifying
550 projects will be funded. This required payment obligation must
551 be appropriated before other noncontractual obligations payable
552 from the same enterprise or other government fund.

553 (12) POWERS AND DUTIES OF THE PRIVATE ENTITY.—
 554 (a) The private entity shall:
 555 1. Develop or operate the qualifying project in a manner
 556 that is acceptable to the responsible public entity in
 557 accordance with the provisions of the comprehensive agreement.
 558 2. Maintain, or provide by contract for the maintenance or
 559 improvement of, the qualifying project if required by the
 560 comprehensive agreement.
 561 3. Cooperate with the responsible public entity in making
 562 best efforts to establish interconnection between the qualifying
 563 project and any other facility or infrastructure as requested by
 564 the responsible public entity in accordance with the provisions
 565 of the comprehensive agreement.
 566 4. Comply with the comprehensive agreement and any lease
 567 or service contract.
 568 (b) Each private facility that is constructed pursuant to
 569 this section must comply with the requirements of federal,
 570 state, and local laws; state, regional, and local comprehensive
 571 plans; the responsible public entity's rules, procedures, and
 572 standards for facilities; and such other conditions that the
 573 responsible public entity determines to be in the public's best
 574 interest and that are included in the comprehensive agreement.
 575 (c) The responsible public entity may provide services to
 576 the private entity. An agreement for maintenance and other
 577 services entered into pursuant to this section must provide for
 578 full reimbursement for services rendered for qualifying
 579 projects.

580 (d) A private entity of a qualifying project may provide
581 additional services for the qualifying project to the public or
582 to other private entities if the provision of additional
583 services does not impair the private entity's ability to meet
584 its commitments to the responsible public entity pursuant to the
585 comprehensive agreement.

586 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
587 expiration or termination of a comprehensive agreement, the
588 responsible public entity may use revenues from the qualifying
589 project to pay current operation and maintenance costs of the
590 qualifying project. If the private entity materially defaults
591 under the comprehensive agreement, the compensation that is
592 otherwise due to the private entity is payable to satisfy all
593 financial obligations to investors and lenders on the qualifying
594 project in the same way that is provided in the comprehensive
595 agreement or any other agreement involving the qualifying
596 project, if the costs of operating and maintaining the
597 qualifying project are paid in the normal course. Revenues in
598 excess of the costs for operation and maintenance costs may be
599 paid to the investors and lenders to satisfy payment obligations
600 under their respective agreements. A responsible public entity
601 may terminate with cause and without prejudice a comprehensive
602 agreement and may exercise any other rights or remedies that may
603 be available to it in accordance with the provisions of the
604 comprehensive agreement. The full faith and credit of the
605 responsible public entity may not be pledged to secure the
606 financing of the private entity. The assumption of the
607 development or operation of the qualifying project does not

608 obligate the responsible public entity to pay any obligation of
 609 the private entity from sources other than revenues from the
 610 qualifying project unless stated otherwise in the comprehensive
 611 agreement.

612 (14) SOVEREIGN IMMUNITY.—This section does not waive the
 613 sovereign immunity of a responsible public entity, an affected
 614 local jurisdiction, or an officer or employee thereof with
 615 respect to participation in, or approval of, any part of a
 616 qualifying project or its operation, including, but not limited
 617 to, interconnection of the qualifying project with any other
 618 infrastructure or project. A county or municipality in which a
 619 qualifying project is located possesses sovereign immunity with
 620 respect to the project, including, but not limited to, its
 621 design, construction, and operation.

622 (15) CONSTRUCTION.—This section shall be liberally
 623 construed to effectuate the purposes of this section.

624 (a) This section does not limit a state agency or
 625 political subdivision of the state in the acquisition, design,
 626 or construction of a public project pursuant to other statutory
 627 authority.

628 (b) Except as otherwise provided in this section, this
 629 section does not amend existing laws by granting additional
 630 powers to, or further restricting, a local governmental entity
 631 from regulating and entering into cooperative arrangements with
 632 the private sector for the planning, construction, or operation
 633 of a facility.

634 (c) This section does not waive any requirement of s.
 635 287.055.

636 Section 2. Section 336.71, Florida Statutes, is created to
637 read:

638 336.71 Public-private transportation facilities.—

639 (1) The governing body of a county may receive or solicit
640 proposals and enter into agreements with private entities or
641 consortia thereof to build, operate, own, or finance highways,
642 bridges, multimodal transportation systems, transit-oriented
643 development nodes, transit stations, and related transportation
644 facilities located solely within the county, including
645 municipalities therein. Before approval, the governing body of
646 the county must determine that a proposed project:

647 (a) Is in the best interest of the public.

648 (b) Would not require county funds to be used unless the
649 project is on the county road system or would provide increased
650 mobility on the county road system.

651 (c) Would have adequate safeguards to ensure that
652 additional costs or unreasonable service disruptions are not
653 realized by the traveling public and citizens of the state in
654 the event of default or cancellation of the agreement by the
655 county.

656 (d) Would be owned by the county upon completion or
657 termination of the agreement.

658 (2) The governing body of the county shall ensure that all
659 reasonable costs to the county related to transportation
660 facilities that are not part of the county road system are borne
661 by the private entity that develops or operates the facilities.
662 and that all reasonable costs to the county and substantially
663 affected local governments and utilities related to the private

664 transportation facility are borne by the private entity for
665 transportation facilities that are owned by private entities.
666 For projects on the county road system or that provide increased
667 mobility on the county road system, the governing body of the
668 county may use county resources to participate in funding and
669 financing the project pursuant to the county's financial
670 policies and ordinances.

671 (3) The governing body of the county may request proposals
672 and receive unsolicited proposals for public-private
673 transportation facilities. Upon a determination by the governing
674 body of the county to issue a request for proposals, the
675 governing body of the county must publish a notice of the
676 request for proposals in a newspaper of general circulation in
677 the county at least once a week for 2 weeks. Upon receipt of an
678 unsolicited proposal, the governing body of the county must
679 publish a notice in a newspaper of general circulation in the
680 county at least once a week for 2 weeks stating that it has
681 received the proposal and will accept, for 60 days after the
682 initial date of publication, other proposals for the same
683 project purpose. A copy of the notice must be mailed to the
684 governing body of each local government in the affected area.
685 After the public notification period has expired, the governing
686 body of the county shall rank the proposals in order of
687 preference. In ranking the proposals, the governing body of the
688 county shall consider professional qualifications, general
689 business terms, innovative engineering or cost-reduction terms,
690 finance plans, and the need for county funds to complete the
691 project. If the governing body of the county is not satisfied

692 with the results of the negotiations, it may terminate
693 negotiations with the proposer. If negotiations are
694 unsuccessful, the governing body of the county may negotiate
695 with the private entity having the next highest ranked proposal,
696 using the same procedure. If only one proposal is received, the
697 governing body of the county may negotiate in good faith and
698 may, if not satisfied with the results, terminate negotiations
699 with the proposer. The governing body of the county may, at its
700 discretion, reject all proposals at any point in the process up
701 to completion of a contract with the proposer. Any private
702 entity submitting an unsolicited proposal shall submit with the
703 proposal a fee of \$25,000 to be used by the governing body of
704 the county for the costs associated with the review and analysis
705 of the proposal, and such entity shall remain liable for any
706 additional costs and expenses incurred by the governing body of
707 the county for such review and analysis.

708 (4) Agreements entered into pursuant to this section may
709 authorize the county or the private project owner, lessee, or
710 operator to impose, collect, and enforce tolls or fares for the
711 use of the transportation facility. However, the amount and use
712 of toll or fare revenue shall be regulated by the county to
713 avoid unreasonable costs to users of the facility.

714 (5) Each public-private transportation facility
715 constructed pursuant to this section shall comply with all
716 requirements of federal, state, and local laws; state, regional,
717 and local comprehensive plans; the county's rules, policies,
718 procedures, and standards for transportation facilities; and any

719 other conditions that the county determines to be in the best
720 interest of the public.

721 (6) The governing body of the county may exercise any of
722 its powers, including eminent domain, to facilitate the
723 development and construction of transportation projects pursuant
724 to this section. The governing body of the county may pay all or
725 part of the cost of operating and maintaining the facility and
726 may provide services to the private entity, for which services
727 it shall receive full or partial reimbursement.

728 (7) Except as otherwise provided in this section, this
729 section is not intended to amend existing law by granting
730 additional powers to or imposing further restrictions on local
731 governmental entities with regard to regulating and entering
732 into cooperative arrangements with the private sector for the
733 planning, construction, and operation of transportation
734 facilities.

735 (8) Public-private partnership agreements under this
736 section shall be limited to a term not exceeding 75 years.

737 (9) This section does not authorize the governing body of
738 any county to enter into agreements with private entities or
739 consortia thereof to build, operate, own, or finance a
740 transportation facility that would extend beyond the
741 geographical boundaries of a single county.

742 Section 3. This act shall take effect July 1, 2013.