

By Senator Baker

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1 A bill to be entitled
2 An act relating to public-private partnership
3 infrastructure projects; creating s. 287.09475, F.S.;
4 providing legislative findings and intent; defining
5 terms; providing for state agencies and local
6 governments to receive or solicit proposals to enter
7 into a public works infrastructure project agreement
8 with a private entity, or a consortium of private
9 entities, to build, operate, or finance a public works
10 infrastructure project; providing criteria for the
11 selection of the project and the private entity that
12 will enter into a partnership agreement with the
13 participating governmental unit to build or operate
14 the project; requiring all reasonable costs to the
15 state which are related to the infrastructure project
16 and not part of the governmental unit's work plan to
17 be borne by the private entity; authorizing the
18 private entity to impose user fees for the use of the
19 infrastructure project by the public; setting forth
20 financing and revenue criteria for the infrastructure
21 project agreement; requiring that each infrastructure
22 facility be in compliance with all applicable federal,
23 state, and local laws, construction standards, and
24 performance standards; authorizing each participating
25 governmental unit to exercise any lawful power
26 possessed by it to aid in the development and
27 construction of the infrastructure project; specifying
28 applicable procurement procedures; requiring the
29 procurement documents to provide for the payment of

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30 subcontractors; requiring a governmental unit to
31 provide an independent analysis of the cost-
32 effectiveness and public benefit of a proposed
33 project; authorizing a participating governmental unit
34 to use innovative financing techniques for the
35 infrastructure project; authorizing a governmental
36 unit to enter into a public-private infrastructure
37 project agreement that provides for payments based on
38 performance; limiting the term of the infrastructure
39 project agreement to a specified number of years;
40 prohibiting the department or a participating
41 governmental unit from soliciting proposals from or
42 entering into an agreement with a private entity that
43 engages in or benefits from dealings with a terrorist
44 state; providing an effective date.

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

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48 Section 1. Section 287.09475, Florida Statutes, is created
49 to read:

50 287.09475 Public-private partnership infrastructure
51 projects.-

52 (1) The Legislature finds and declares that there is a
53 public need for the rapid construction of public works
54 infrastructure projects for the purpose of improving the
55 economic, environmental, social, and cultural infrastructure of
56 this state, and that it is in the public interest to provide for
57 the construction or expansion of public works infrastructure
58 projects.

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59 (2) As used in this section, the term:

60 (a) "Governmental unit" means a state agency, county,
61 municipality, school district, or an independent special
62 district.

63 (b) "Infrastructure project" or "public works
64 infrastructure project" means a project to construct, operate,
65 or maintain the basic public works of this state, including
66 telecommunications, cable television, electricity, and broadband
67 technology infrastructure; infrastructure for the transportation
68 of gas, oil, or crude oil products; solid waste, waste water,
69 and storm water infrastructure not connected with highway
70 drainage; or other similar projects. The term does not include a
71 transportation facility as defined in s. 334.03(31).

72 (c) "Maintain" includes ordinary repair, rehabilitation,
73 capital maintenance, maintenance replacement, and any other
74 categories of maintenance on an infrastructure project as
75 designated by a participating governmental unit.

76 (d) "Operate" or "operation" means an action to construct,
77 maintain, rehabilitate, improve, equip, or modify an
78 infrastructure project.

79 (e) "Private entity" means a person who enters into a
80 public-private infrastructure project agreement with a
81 participating governmental unit.

82 (f) "Participating governmental unit" means the
83 governmental unit that enters into a public-private
84 infrastructure project agreement with a private entity.

85 (g) "Public-private infrastructure project agreement" means
86 the document representing the agreement between a private entity
87 and a participating governmental unit. The agreement must

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88 include:

89 1. Acceptance by the participating governmental unit of a
90 private contribution, including a money payment, in exchange for
91 allowing the private entity to construct, operate, manage, or
92 maintain a public works infrastructure project or services
93 connected with an infrastructure project;

94 2. The means of delivering a project or service to the
95 public; and

96 3. Cooperation in researching, developing, and implementing
97 projects or services for an infrastructure project.

98 (h) "User fee" means the rate, toll, fee, or other charges
99 imposed on the public by a private entity for use of all or part
100 of an infrastructure project.

101 (3) (a) A governmental unit may receive or solicit proposals
102 and enter into a public-private infrastructure project agreement
103 with a private entity, or a consortium of private entities, to
104 build, operate, manage, maintain, or finance a public works
105 infrastructure project. A participating governmental unit may
106 advance a project included in its adopted work program or 10-
107 year plan. The project may use funds provided by the private
108 entity, which shall be reimbursed from user fees derived from
109 the project as programmed in the adopted work program.

110 (b) Governmental units shall adopt rules to establish an
111 application fee for the submission of unsolicited proposals
112 under this section. The fee may not exceed the cost of
113 evaluating the proposal.

114 (c) A governmental unit may engage the services of private
115 consultants to assist in the evaluation of proposals.

116 (d) Before approving a project, the governmental unit must

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117 determine whether the proposed infrastructure project:

118 1. Is in the public interest;

119 2. Will have adequate safeguards in place to ensure that no
120 additional costs or service disruptions would affect the public
121 and residents of the state if the private entity defaults or if
122 the governmental unit cancels the project;

123 3. Will have adequate safeguards in place to ensure that
124 the governmental unit or the private entity has the opportunity
125 to add capacity to the proposed project and other infrastructure
126 projects serving similar goals and objectives; and

127 4. Will be owned by the governmental unit upon completion
128 or termination of the public-private infrastructure project
129 agreement.

130
131 A participating governmental unit shall require all reasonable
132 costs related to infrastructure projects that are not part of a
133 participating governmental unit's work plan to be borne by the
134 private entity. This includes all design, development, and
135 installation costs related to the project. The costs associated
136 with the design, development, and installation of the public-
137 private infrastructure project may be recouped in the user fee,
138 if applicable. The participating governmental unit shall also
139 require that all reasonable costs to the state and substantially
140 affected local governments and utilities related to the
141 infrastructure project are borne by the private entity for
142 infrastructure projects that are owned by private entities.

143 (4) If a public-private infrastructure project agreement
144 authorizes the private entity to impose user fees:

145 (a) The participating governmental unit may lease an

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146 existing public works facility to a private entity through a
147 public-private partnership. The public-private partnership
148 infrastructure project agreement must require that the
149 infrastructure facility is properly operated, maintained, and
150 renewed in accordance with the participating governmental unit's
151 standards.

152 (b) The participating governmental unit may develop new
153 infrastructure projects or increase capacity of existing
154 projects through public-private partnerships. The public-private
155 partnership infrastructure project agreement must require that
156 the public works infrastructure project is properly operated and
157 maintained in accordance with the participating governmental
158 unit's existing standards.

159 (c) Revenue from user fees must be regulated by the
160 participating governmental unit. The regulations governing
161 future increases in fees or rates must be included in the
162 public-private partnership infrastructure project agreement.

163 (d) The public-private partnership infrastructure project
164 agreement must include provisions requiring that a portion of
165 revenue from projects that generate revenue is returned to the
166 participating governmental unit over the term of the agreement.
167 If an infrastructure project agreement includes the lease of an
168 existing public works facility, the participating governmental
169 unit must receive a portion of the funds upon closing the
170 agreement, with the remainder paid from excess revenue that
171 accrues during the term of the public-private infrastructure
172 project agreement.

173 (e) The private entity must provide to the participating
174 governmental unit an investment-grade usage and revenue study

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175 prepared by an internationally recognized public works revenue
176 expert who is recognized by the national bond rating agencies.
177 The private entity must also provide a financing plan that
178 identifies the project costs; lists the projected revenue by
179 source; states the methodology of the financing plan, including
180 supporting calculations and assumptions used to evaluate costs
181 and revenues, and the internal rate of return on private
182 investments; specifies whether any government funds are
183 necessary in order to deliver a cost-feasible project; and
184 provides a total cash flow analysis beginning with
185 implementation of the project and extending for the term of the
186 public-private infrastructure project agreement.

187 (5) Each infrastructure project constructed pursuant to
188 this section shall be constructed in compliance with all
189 requirements of federal, state, and local laws; state, regional,
190 and local comprehensive plans; applicable rules, policies,
191 procedures, and standards for infrastructure public works
192 projects; and any other conditions that a participating
193 governmental unit determines to be in the public interest.

194 (6) The participating governmental unit may exercise its
195 powers with respect to the development and construction of state
196 and local public works infrastructure projects, including
197 eminent domain, to facilitate the development and construction
198 of infrastructure projects under this section. The participating
199 governmental unit may provide services to the private entity,
200 but the public-private infrastructure project agreement must
201 provide for full reimbursement for these services.

202 (7) Except as otherwise provided in this section, this
203 section does not grant additional powers to, or further

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204 restrict, local governmental entities from regulating and
205 entering into cooperative arrangements with private entities for
206 the planning, construction, and operation of infrastructure
207 projects.

208 (8) Procurement conducted by a governmental unit shall
209 adhere to the requirements set forth in s. 287.057.

210 (a) Procurement documents must include provisions for
211 performance by the private entity and payment of subcontractors,
212 including, but not limited to, surety bonds, letters of credit,
213 parent company guarantees, and lender and equity partner
214 guarantees. The governmental unit must make a good faith effort
215 to balance the structure of the security requirements with the
216 cost of the security in order to ensure the most efficient
217 pricing.

218 (b) The governmental unit must provide an independent
219 analysis of the proposed public-private infrastructure project
220 agreement which demonstrates its cost-effectiveness and overall
221 public benefit before moving forward with procurement and, if
222 the procurement moves forward, before awarding the contract.

223 (9) A governmental unit may use innovative finance
224 techniques associated with a public-private partnership under
225 this section, including, but not limited to, federal loans as
226 provided in 23 and 49 C.F.R. and commercial bank loans.

227 (10) A participating governmental unit may enter into a
228 public-private infrastructure project agreement that includes
229 extended terms providing annual payments for performance based
230 on the availability of services or the opening of a facility to
231 the public. In addition to other provisions in this section, the
232 following apply:

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233 (a) The annual payments under a public works infrastructure
234 project agreement must be included in the participating
235 governmental unit's tentative work program and the long-range
236 infrastructure plan for the applicable metropolitan planning
237 organization. The participating governmental unit shall ensure
238 that annual payments on multiyear, public-private infrastructure
239 project agreements are prioritized ahead of new capacity
240 projects in the development and updating of the tentative work
241 infrastructure project.

242 (b) The annual payments must be subject to annual
243 appropriation by the Legislature as specified in the General
244 Appropriations Act or subject to appropriation by the governing
245 body of the governmental unit that provides the initial funding
246 support for the program.

247 (11) A public-private infrastructure project agreement
248 under this section is limited to a term not exceeding 50 years.
249 All renewals of the agreement must be expressly approved by the
250 governing body of the participating governmental unit or an
251 agency head.

252 (12) A participating governmental unit may not receive or
253 solicit proposals from, or enter into a public-private
254 infrastructure project agreement with, any private entity or
255 consortium of private entities to build, operate, manage,
256 maintain, or finance a public works infrastructure project under
257 this section if the private entity or consortium of private
258 entities engages in or in any way benefits from dealings with,
259 or activities related to or involving, a terrorist state. For
260 the purposes of this section, "terrorist state" is defined as
261 any state, country, or nation designated by the United States

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262 Department of State as a state sponsor of terrorism.

263 Section 2. This act shall take effect July 1, 2010.