



Government Operations Appropriations Subcommittee

**Tuesday, February 21, 2012
8:30 AM - 10:00 AM
404 HOB**

Action Packet

**Dean Cannon
Speaker**

**Ed Hooper
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Appropriations Subcommittee

Start Date and Time: Tuesday, February 21, 2012 08:30 am

End Date and Time: Tuesday, February 21, 2012 10:00 am

Location: 404 HOB

Duration: 1.50 hrs

Consideration of the following bill(s):

HB 337 Public-Private Partnerships by Williams, T.

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Monday, February 20, 2012.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, February 20, 2012.

Appearance forms can be found on myfloridahouse.gov. Please print and bring 2 copies of the form to the meeting and give them to the administrative assistant.

NOTICE FINALIZED on 02/17/2012 16:18 by MRI

COMMITTEE MEETING REPORT
Government Operations Appropriations Subcommittee
2/21/2012 8:30:00AM

Location: 404 HOB

Summary:

Government Operations Appropriations Subcommittee

Tuesday February 21, 2012 08:30 am

HB 337 Favorable With Committee Substitute

Yeas: 12 Nays: 3

Amendment 798823 Adopted Without Objection
SA

Amendment 907653 Adopted Without Objection
1a Am to SA

Amendment 455803 Adopted Without Objection
1b Am to SA

Committee meeting was reported out: Tuesday, February 21, 2012 10:38:10AM

COMMITTEE MEETING REPORT
Government Operations Appropriations Subcommittee
2/21/2012 8:30:00AM

Location: 404 HOB

Attendance:

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
Ed Hooper (Chair)	X		
Lori Berman	X		
Daphne Campbell	X		
Gwyndolen Clarke-Reed	X		
Fredrick Costello	X		
Reggie Fullwood	X		
Joseph Gibbons	X		
Eduardo Gonzalez	X		
Gayle Harrell	X		
Debbie Mayfield	X		
Bryan Nelson	X		
H. Marlene O'Toole	X		
Jimmy Patronis	X		
Charles Van Zant	X		
Michael Weinstein	X		
Totals:	15	0	0

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Government Operations Appropriations Subcommittee
2/21/2012 8:30:00AM

Location: 404 HOB

HB 337 : Public-Private Partnerships

Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Lori Berman		X			
Daphne Campbell		X			
Gwyndolen Clarke-Reed		X			
Fredrick Costello	X				
Reggie Fullwood	X				
Joseph Gibbons	X				
Eduardo Gonzalez	X				
Gayle Harrell	X				
Debbie Mayfield	X				
Bryan Nelson	X				
H. Marlene O'Toole	X				
Jimmy Patronis	X				
Charles Van Zant	X				
Michael Weinstein	X				
Ed Hooper (Chair)	X				
Total Yeas: 12		Total Nays: 3			

HB 337 Amendments

Amendment 798823

Adopted Without Objection

Amendment 907653

Adopted Without Objection

Amendment 455803

Adopted Without Objection

Appearances:

Templin, Rich (Lobbyist) - Opponent
 Florida AFL-CIO
 135 S. Monroe
 Tallahassee FL 32301
 Phone: 850-224-6926

Cruz, David (Lobbyist) - Waive In Support
 Florida League of Cities
 P.O. Box 1751
 Tallahassee Florida 32302
 Phone: 850-701-3676

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Government Operations Appropriations Subcommittee
2/21/2012 8:30:00AM

Location: 404 HOB

HB 337 : Public-Private Partnerships (continued)

Appearances: (continued)

Daniel, David (Lobbyist) - Waive In Opposition
Florida Surveying and Mapping Society
311 E. Park Avenue
Tallahassee FL 32301
Phone: 850-224-5081

Linton, Glynda - Waive In Opposition
1 SW 58 Avenue
Plantation Florida 33317
Phone: 954-648-5571

Thomas, William - Waive In Opposition
8227 Alveron Avenue
Orlando Florida
Phone: 321-279-5092

Tate, Joseph - Waive In Opposition
5973 Copper Creek Drive
Jacksonville Florida 32218
Phone: 904-765-3746

Bernardino, Frank (Lobbyist) - Proponent
Florida Water Advocates
342 East Virginia Street
Tallahassee Florida 32301
Phone: 561-718-2345

Bailey, Willie - Opponent
8681 NW 3rd Street
Pembroke Pines Florida
Phone: 954-804-4560

Jones, Allen - Waive In Opposition
50 Kirby Circle
Havana Florida 32333
Phone: 850-251-9832

Pullen, Joseph - Waive In Opposition
436 Floridatown Road
Pace FL 32577

Showers, Gerry - Waive In Opposition
1335 South Virginia Ave.
Bartow FL 33830
Phone: 863-244-3751

Watson, Richard (Lobbyist) - Proponent
Associated Builders & Contractors of Florida, Inc
PO Box 10038
Tallahassee FL 32302
Phone: (850)222-0000

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Government Operations Appropriations Subcommittee
2/21/2012 8:30:00AM

Location: 404 HOB

HB 337 : Public-Private Partnerships (continued)

Appearances: (continued)

Sarnoff, Stephen - Opponent
2886 Catherine Dr
Clearwater FL 33759
Phone: 727-798-5228

Bowen Jr., Charles T. - Waive In Opposition
IUPAT
11433 Laurel Brook Ct.
Riverview Florida 33569
Phone: 813-846-0299

Pitts, Brian - Opponent
Trustee-Justice-2-Jesus
1119 Newton Avenue South
S. Petersburg Florida 33705
Phone: 727-897-9291

Harrison, Richard - Opponent
635 Dowling Rd
Marianna Florida 32448
Phone: 850-762-3366

Husband, Warren (Lobbyist) - Waive In Support
Florida Associated General Contractors Council
PO Box 10909
Tallahassee FL 32302
Phone: (850)205-9000

Committee meeting was reported out: Tuesday, February 21, 2012 10:38:10AM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 337 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION Y (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Adopted w/out
objection
2-21-12

1 Committee/Subcommittee hearing bill: Government Operations
2 Appropriations Subcommittee
3 Representative Williams, T. offered the following:
4

Amendment (with title amendment)

5
6 Remove everything after the enacting clause and insert:
7 Section 1. Section 287.05712, Florida Statutes, is created
8 to read:

9 287.05712 Public-private partnerships.-

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

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

14 (b) "Appropriating body" means the body responsible for
15 appropriating or authorizing funding to pay for a qualifying
16 project.

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

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

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

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

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

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

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

40 (j) "Qualifying project" means any:

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

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

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

49 4. Water, wastewater, or surface water management facility
50 and other related infrastructure.

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

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

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

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

67 (o) "Water or wastewater management facility" means a
68 project for the treatment, storage, disposal, or distribution of
69 water or wastewater.

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

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75 (a) The Legislature also finds that:

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

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

93 3. There are state and federal tax incentives that promote
94 partnerships between public and private entities to develop and
95 operate qualifying projects.

96 4. A procurement under this section serves the public
97 purpose of this section if such action facilitates the timely
98 development or operation of qualifying projects.

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

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

107 (3) ADOPTION OF GUIDELINES.-

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

114 (b) The guidelines must include:

115 1. Opportunities for competition through public notice and
116 the availability of representatives of the responsible public
117 entity to meet with private entities considering a proposal.

118 2. Reasonable criteria for choosing among competing
119 proposals.

120 3. Suggested timelines for selecting proposals and
121 negotiating an interim or comprehensive agreement.

122 4. Authorization for accelerated selection and review and
123 documentation timelines for proposals involving a qualifying
124 project that the responsible public entity deems a priority.

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

129 The procedures must also include requirements for disclosing

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130 such analysis to the appropriating body for review before the
131 execution of an interim or comprehensive agreement.

132 6. Consideration of the nonfinancial benefits of a
133 proposed qualifying project.

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

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

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

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

153 11. The publishing and posting of public notice of a
154 private entity's request for approval of a qualifying project,
155 including:

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

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158 b. A reasonable time period, as determined by the
159 responsible public entity, of at least 45 days, which encourages
160 competition and public-private partnerships in accordance with
161 the goals of this section, during which time the responsible
162 public entity is to receive competing proposals.

163 c. A requirement for advertising the public notice and
164 posting the notice on the Internet.

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

175 (4) PROCUREMENT PROCEDURES.—The responsible public entity
176 may receive or solicit proposals with the approval of the
177 appropriating body as evidenced by approval of the project in
178 the public entity's work program, enter into agreements with
179 private entities, or consortia thereof, for the building,
180 upgrade, operation, ownership, or financing of facilities.

181 (a) A responsible public entity may not consider any
182 request by a private entity for approval of a qualifying project
183 until the responsible public entity has adopted, or incorporated
184 and made publicly available, in accordance with subsection (3),

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185 guidelines that enable the responsible public entity to comply
186 with this section.

187 (b) By rule, ordinance, or guideline as applicable, the
188 responsible public entity shall establish an application fee for
189 the submission of unsolicited proposals under this section. The
190 fee must be sufficient to pay the costs of evaluating the
191 proposal. The responsible public entity may engage the services
192 of private consultants to assist in the evaluation.

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

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

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

- 209 1. Is in the public's best interest;
210 2. Is for a facility that is owned by the responsible
211 public entity or for a facility for which ownership will be
212 conveyed to the responsible public entity;

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

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

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

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

226 1. Any interim or comprehensive agreement must include a
227 reasonable finance plan, consistent with subsection (11), which
228 identifies the project cost, revenues by source, financing,
229 major assumptions, internal rate of return on private
230 investments, and whether any government funds are assumed to
231 deliver a cost-feasible project, and a total cash flow analysis
232 beginning with implementation of the project and extending for
233 the term of the agreement.

234 2. Any comprehensive agreement must be consistent with an
235 investment-grade technical study prepared by a nationally
236 recognized expert who is accepted by the national bond rating
237 agencies. In evaluating the technical study, the responsible
238 public entity may rely upon internal staff reports prepared by
239 personnel familiar with the operation of similar facilities or

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240 the advice of external advisors or consultants having relevant
241 experience.

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

246 (a) A topographic map with a scale of 1:2,000 or other
247 appropriate scale indicating the location of the qualifying
248 project.

249 (b) A description of the qualifying project, including the
250 conceptual design of such facilities or a conceptual plan for
251 the provision of services, and a schedule for the initiation of
252 and completion of the qualifying project which includes the
253 proposed major responsibilities and a timeline for activities to
254 be performed by both the public and private entity.

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

258 (d) Information relating to current plans for the
259 development of facilities or technology infrastructure to be
260 used by a public entity which is similar to the qualifying
261 project being proposed by the private entity, if any, of each
262 affected local jurisdiction.

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

266 (f) A list of public water or wastewater management
267 facilities, if any, which will be crossed by the qualifying

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268 project and a statement of the plans of the private entity to
269 accommodate such crossings.

270 (g) A statement setting forth the private entity's general
271 plans for financing the qualifying project, including the
272 sources of the private entity's funds and identification of any
273 dedicated revenue source or proposed debt or equity investment
274 on the behalf of the private entity.

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

277 (i) User fees, lease payments, and other service payments
278 over the term of an interim or comprehensive agreement, and the
279 methodology and circumstances for changes to such user fees,
280 lease payments, and other service payments over time.

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

283 (6) PROJECT QUALIFICATION AND PROCESS.-

284 (a) Public-private partnerships shall be qualified by the
285 responsible public entity as part of the procurement process
286 outlined in the procurement documents if such process ensures
287 that the private entity meets at least the minimum standards
288 contained in the responsible public entity's guidelines for
289 qualifying professional architectural, engineering, and
290 contracting services before submitting a proposal under the
291 procurement.

292 (b) The responsible public entity must ensure that
293 procurement documents include provisions for the private
294 entity's performance and payment of subcontractors, including,
295 but not limited to, surety bonds, letters of credit, parent

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296 company guarantees, and lender and equity partner guarantees.
297 For those components of the qualifying project which involve
298 construction, performance and payment bonds are required and are
299 subject to the recordation, notice, suit limitation, and other
300 requirements of s. 255.05. The responsible public entity shall
301 balance the structure of the security package for the public-
302 private partnership which ensures performance and payment of
303 subcontractors with the cost of the security to ensure the most
304 efficient pricing. The procurement documents must contain
305 contract provisions addressing termination, default, and exit
306 transition obligations of the private entity.

307 (c) After the public notification period has expired, the
308 responsible public entity shall rank the proposals in order of
309 preference. In ranking the proposals, the responsible public
310 entity may consider factors that include, but need not be
311 limited to, professional qualifications, general business terms,
312 innovative engineering or cost-reduction terms, and finance
313 plans. If the public entity is not satisfied with the results of
314 the negotiations, the public entity may terminate negotiations
315 with the proposer. If these negotiations are unsuccessful, the
316 responsible public entity may go to the second-ranked and lower-
317 ranked firms, in order, using this same procedure. If only one
318 proposal is received, the responsible public entity may
319 negotiate in good faith and, if the public entity is not
320 satisfied with the results of the negotiations, the public
321 entity may terminate negotiations with the proposer.
322 Notwithstanding this subsection, the responsible public entity

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323 may reject all proposals at any point in the process up to
324 execution of a contract with the proposer.

325 (d) The responsible public entity shall perform an
326 independent analysis, or other analysis in accordance with
327 paragraph (4)(f), of the proposed public-private partnership
328 which demonstrates the cost-effectiveness and overall public
329 benefit at the following times:

330 1. Before the procurement process; and

331 2. Before awarding the contract.

332 (e) The responsible public entity may approve the
333 development or operation of an educational facility, a water or
334 wastewater management facility and related infrastructure,
335 technology infrastructure or other public infrastructure, or a
336 governmental facility needed by the public entity as a
337 qualifying project, or the design or equipping of a qualifying
338 project so developed or operated, if:

339 1. There is a public need for or benefit derived from a
340 project of the type the private entity proposes as a qualifying
341 project.

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

344 3. The private entity's plans will result in the timely
345 acquisition, design, construction, improvement, renovation,
346 expansion, equipping, maintenance, or operation of the
347 qualifying project.

348 (f) The responsible public entity may charge a reasonable
349 fee to cover the costs of processing, reviewing, and evaluating
350 the request, including, but not limited to, reasonable attorney

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351 | fees and fees for financial, technical, and other necessary
352 | advisors or consultants.

353 | (g) Upon approval of a qualifying project, the responsible
354 | public entity shall establish a date for the commencement of
355 | activities related to the qualifying project. The responsible
356 | public entity may extend such date.

357 | (h) Approval of a qualifying project by the responsible
358 | public entity is subject to entering into a comprehensive
359 | agreement with the private entity.

360 | (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.-

361 | (a) Any private entity requesting approval from, or
362 | submitting a proposal to, a responsible public entity must
363 | notify each affected local jurisdiction by furnishing a copy of
364 | its request or proposal to each affected local jurisdiction.

365 | (b) Each affected local jurisdiction that is not a
366 | responsible public entity for the respective qualifying project
367 | shall, within 60 days after receiving such notice, submit any
368 | comments it may have in writing to the responsible public entity
369 | and indicate whether the facility is compatible with the local
370 | comprehensive plan, the local infrastructure development plans,
371 | the capital improvements budget, or other governmental spending
372 | plan. Such comments shall be given consideration by the
373 | responsible public entity before entering a comprehensive
374 | agreement with a private entity.

375 | (8) INTERIM AGREEMENT.-Before, or in connection with, the
376 | negotiation of a comprehensive agreement, the responsible public
377 | entity may enter into an interim agreement with the private
378 | entity proposing the development or operation of the qualifying

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379 project. An interim agreement does not obligate the responsible
380 public entity to enter into a comprehensive agreement. An
381 interim agreement must be limited to provisions that:

382 (a) Authorize the private entity to commence activities
383 for which it may be compensated related to the proposed
384 qualifying project, including, but not limited to, project
385 planning and development, design and engineering, environmental
386 analysis and mitigation, surveys, or other activities concerning
387 any part of the proposed qualifying project, and ascertaining
388 the availability of financing for the proposed facility or
389 facilities.

390 (b) Establish the process and timing of the negotiation of
391 the comprehensive agreement.

392 (c) Contain any other provisions related to any aspect of
393 the development or operation of a qualifying project which the
394 responsible public entity and the private entity deem
395 appropriate.

396 (9) COMPREHENSIVE AGREEMENT.-

397 (a) Before developing or operating the qualifying project,
398 the private entity shall enter into a comprehensive agreement
399 with the responsible public entity. The comprehensive agreement
400 shall provide for:

401 1. Delivery of maintenance, performance, and payment bonds
402 and letters of credit in connection with the development or
403 operation of the qualifying project in the forms and amounts
404 satisfactory to the responsible public entity. For those
405 components of the qualifying project which involve construction,
406 the form and amount of the bonds must comply with s. 255.05.

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407 2. Review of plans and specifications for the qualifying
408 project by the responsible public entity and approval by the
409 responsible public entity if the plans and specifications
410 conform to standards acceptable to the responsible public
411 entity. This subparagraph does not require the private entity to
412 complete the design of a qualifying project before the execution
413 of a comprehensive agreement.

414 3. Inspection of the qualifying project by the responsible
415 public entity to ensure that the operator's activities are
416 acceptable to the public entity in accordance with the
417 comprehensive agreement.

418 4. Maintenance of a policy or policies of public liability
419 insurance, copies of which shall be filed with the responsible
420 public entity accompanied by proofs of coverage, or self-
421 insurance, each in the form and amount satisfactory to the
422 responsible public entity and reasonably sufficient to ensure
423 coverage of tort liability to the public and employees and to
424 enable the continued operation of the qualifying project.

425 5. Monitoring the practices of the private entity by the
426 responsible public entity to ensure that the qualifying project
427 is properly maintained.

428 6. Reimbursement to be paid to the responsible public
429 entity for services provided by the responsible public entity.

430 7. Filing of appropriate financial statements on a
431 periodic basis.

432 8. Procedures governing the rights and responsibilities of
433 the responsible public entity and the private entity in the
434 event the comprehensive agreement is terminated or there is a

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435 material default by the private entity. Such procedures must
436 include conditions governing assumption of the duties and
437 responsibilities of the private entity by the responsible public
438 entity and the transfer or purchase of property or other
439 interests of the private entity by the responsible public
440 entity.

441 9. Fees, lease payments, or service payments as may be
442 established by agreement of the parties. A copy of any service
443 contract shall be filed with the responsible public entity. In
444 negotiating user fees, the parties shall establish fees that are
445 the same for persons using the facility under like conditions
446 and that will not materially discourage use of the qualifying
447 project. The execution of the comprehensive agreement or any
448 amendment thereto constitutes conclusive evidence that the fees,
449 lease payments, or service payments provided for comply with
450 this section. Fees or lease payments established in the
451 comprehensive agreement as a source of revenues may be in
452 addition to, or in lieu of, service payments.

453 10. Duties of the private entity, including terms and
454 conditions that the responsible public entity determine serve
455 the public purpose of this section.

456 (b) The comprehensive agreement may include:

457 1. An agreement by the responsible public entity to make
458 grants or loans to the private entity from amounts received from
459 the federal, state, or local government or any agency or
460 instrumentality thereof.

461 2. Provisions under which each entity agrees to provide
462 notice of default and cure rights for the benefit of the other

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463 entity, including, but not limited to, provisions regarding
464 unavoidable delays.

465 3. Provisions whereby the authority and duties of the
466 private entity under this section will cease and the qualifying
467 project be dedicated to the responsible public entity or, if the
468 qualifying project was initially dedicated by an affected local
469 jurisdiction, to such affected local jurisdiction for public
470 use.

471 (10) FEES.-

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

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

478 2. The responsible public entity may develop new
479 facilities or increase capacity in existing facilities through
480 public-private partnerships.

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

483 4. Any revenues must be regulated by the responsible
484 public entity pursuant to guidelines or rules established
485 pursuant to subsection (3). The regulations governing the future
486 increase of fees must be included in the public-private
487 partnership agreement.

488 (b) The responsible public entity shall include provisions
489 in the public-private partnership agreement which ensure that a
490 negotiated portion of revenues from fee-generating projects are

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491 returned to the public entity over the life of the agreement. In
492 the case of a lease of an existing facility, the responsible
493 public entity shall receive a portion of funds upon closing on
494 the agreements and also a portion of excess revenues over the
495 life of the public-private partnership.

496 (11) FINANCING.—

497 (a) A private entity may enter into private-source
498 financing agreements between financing sources and the private
499 entity. All financing agreements and any liens on the property
500 or facility must be paid in full at the applicable closing that
501 transfers ownership of a facility to a responsible public
502 entity.

503 (b) The responsible public entity may lend funds from its
504 trust fund to private entities that construct projects
505 containing facilities that are approved under this section. To
506 be eligible, a private entity must comply with s. 215.97 and
507 must provide an indication from a nationally recognized rating
508 agency that the senior bonds for the project will be investment
509 grade, or must provide credit support, such as a letter of
510 credit or other means acceptable to the responsible public
511 entity, to ensure that the loans will be fully repaid.

512 (c) The responsible public entity may use innovative
513 finance techniques associated with a public-private partnership
514 under this section, including, but not limited to, federal loans
515 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
516 and hedges against inflation from commercial banks or other
517 private sources. A responsible public entity may use the model
518 financing agreement as provided in s. 489.145(6)

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519 for its financing of a facility owned by a responsible public
520 entity. A financing agreement may not require the responsible
521 public entity to indemnify the financing source, subject the
522 responsible public entity's facility to liens in violation of s.
523 11.066(5), or secure financing by a responsible public entity
524 with a pledge of security interest, and any such provisions are
525 void.

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

527 (a) The private entity shall:

528 1. Develop or operate the qualifying project in a manner
529 that is acceptable to the responsible public entity in
530 accordance with the provisions of an interim or comprehensive
531 agreement.

532 2. Maintain, or provide by contract for the maintenance or
533 upgrade of, the qualifying project if required by an interim or
534 comprehensive agreement.

535 3. Cooperate with the responsible public entity in making
536 best efforts to establish any interconnection with the
537 qualifying project requested by the responsible public entity.

538 4. Comply with an interim or comprehensive agreement and
539 any lease or service contract.

540 (b) Each private facility constructed pursuant to this
541 section must comply with all requirements of federal, state, and
542 local laws; state, regional, and local comprehensive plans;
543 responsible public entity rules, procedures, and standards for
544 facilities; and any other conditions that the responsible public
545 entity determine to be in the public's best interest.

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546 (c) The responsible public entity may exercise any power
547 possessed by it, including eminent domain, to facilitate the
548 development and construction of projects pursuant to this
549 section. The responsible public entity may provide services to
550 the private entity. Agreements for maintenance and other
551 services entered into pursuant to this section must provide for
552 full reimbursement for services rendered for projects.

553 (d) A private entity of a qualifying project may provide
554 additional services for the qualifying project to public or
555 private entities other than the responsible public entity if the
556 provision of additional service does not impair the private
557 entity's ability to meet its commitments to the public entity
558 pursuant to an interim or comprehensive agreement.

559 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon
560 expiration or termination of an interim or comprehensive
561 agreement, the responsible public entity may use revenues to pay
562 current operation and maintenance costs of the qualifying
563 project, as well as compensation to the responsible public
564 entity for its services in developing and operating the
565 qualifying project. Except as provided otherwise in the interim
566 or comprehensive agreement, the right to receive such payment,
567 if any, is considered just compensation for the qualifying
568 project in the event termination is due to the default of the
569 private entity; however, this right does not affect the right of
570 the responsible public entity to terminate, with cause, an
571 interim or comprehensive agreement and to exercise any other
572 rights and remedies that may be available to it at law or in
573 equity. The full faith and credit of the responsible public

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574 entity may not be pledged to secure any financing of the private
575 entity by the election to take over the qualifying project.
576 Assumption of the development or operation of the qualifying
577 project does not obligate the responsible public entity to pay
578 any obligation of the private entity from sources other than
579 revenues.

580 (14) SOVEREIGN IMMUNITY.—This section does not waive the
581 sovereign immunity of the state, any responsible public entity,
582 any affected local jurisdiction, or any officer or employee
583 thereof with respect to participation in, or approval of, all or
584 any part of the qualifying project or its operation, including,
585 but not limited to, interconnection of the qualifying project
586 with any other infrastructure or project. Counties and
587 municipalities in which a qualifying project is located possess
588 sovereign immunity with respect to the project's design,
589 construction, and operation.

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

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

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

598 (c) Except as otherwise provided in this section, this
599 section does not amend existing laws by granting additional
600 powers to, or further restricting, local governmental entities
601 from regulating and entering into cooperative arrangements with

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602 the private sector for the planning, construction, and operation
603 of facilities.

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

605

606

607 -----

608 **T I T L E A M E N D M E N T**

609 Remove the entire title and insert:

610 A bill to be entitled

611 An act relating to public-private partnerships;
612 creating s. 287.05712, F.S.; providing definitions;
613 providing legislative findings and intent relating to
614 the construction or upgrade of facilities by private
615 entities which are used predominately for a public
616 purpose; requiring public entities to develop and
617 adopt guidelines governing procedures and criteria for
618 the selection of projects and public-private
619 agreements; providing procurement procedures;
620 providing project-approval requirements; providing
621 project qualifications and process; providing for
622 notice to affected local jurisdictions; providing for
623 interim and comprehensive agreements between the
624 public and private entities; providing for use fees;
625 providing for private financing requirements;
626 providing powers and duties for private entities;
627 providing for expiration or termination of agreements;
628 providing for the applicability of sovereign immunity
629 for public entities with respect to qualified

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630 | projects; providing for construction of the act;
631 | providing an effective date.

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Bill No. HB 337 (2012)

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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	✓	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

*Adopted w/out
objection 2-21-12*

1 Committee/Subcommittee hearing bill: Government Operations
2 Appropriations Subcommittee
3 Representative Williams, T. offered the following:

4
5 **Amendment to Amendment (798823) by Representative Williams,**
6 **T.**

7 Remove lines 592-594 of the amendment
8

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 337 (2012)

Amendment No. 1b

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	✓	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

*Adopted w/out
objection
2-21-12*

1 Committee/Subcommittee hearing bill: Government Operations
2 Appropriations Subcommittee
3 Representative Patronis offered the following:

4
5 **Amendment to Amendment (798823) by Representative Williams,**
6 **T.**

7 Remove line 167 of the amendment and insert:
8 include a Florida registered professional or certified public
9