



1 A bill to be entitled
2 An act relating to public-private partnerships;
3 amending s. 255.60, F.S.; authorizing certain public
4 entities to contract for public service works with
5 not-for-profit organizations; revising eligibility and
6 contract requirements for not-for-profit organizations
7 contracting with certain public entities; creating s.
8 287.05712, F.S.; providing definitions; providing
9 legislative findings and intent relating to the
10 construction or improvement by private entities of
11 facilities used predominantly for a public purpose;
12 creating a task force to establish specified
13 guidelines; providing procurement procedures;
14 providing requirements for project approval; providing
15 project qualifications and process; providing for
16 notice to affected local jurisdictions; providing for
17 interim and comprehensive agreements between a public
18 and a private entity; providing for use fees;
19 providing for financing sources for certain projects
20 by a private entity; providing powers and duties of
21 private entities; providing for expiration or
22 termination of agreements; providing for the
23 applicability of sovereign immunity for public
24 entities with respect to qualified projects; providing
25 for construction of the act; creating s. 336.71, F.S.;
26 authorizing counties to enter into public-private
27 partnership agreements to construct, extend, or
28 improve county roads; providing requirements and



29 limitations for such agreements; providing procurement
 30 procedures; requiring a fee for certain proposals;
 31 amending s. 348.754, F.S.; revising the limit on terms
 32 for leases that the Orlando-Orange County Expressway
 33 Authority may enter; amending s. 1010.62, F.S.; adding
 34 public-private partnership agreements to the
 35 definition of the term university "debt"; revising
 36 sources that may be used to secure or pay revenue
 37 bonds; authorizing revenues from royalties and
 38 licensing and auxiliary enterprise revenues to be used
 39 to secure debt for academic, educational, and research
 40 facilities that are part of a multipurpose project;
 41 authorizing academic and educational activities to be
 42 bonded without legislative approval of the specific
 43 project; providing an effective date.

44
 45 Be It Enacted by the Legislature of the State of Florida:

46
 47 Section 1. Section 255.60, Florida Statutes, is amended to
 48 read:

49 255.60 Special contracts with charitable not-for-profit
 50 youth organizations.—The state, or the governing body of any
 51 political subdivision of the state, or a public-private
 52 partnership is authorized, but not required, to contract for
 53 public service work with a not-for-profit organization ~~such as~~
 54 ~~highway and park maintenance~~, notwithstanding competitive sealed
 55 bid procedures required under this chapter, or chapter 287, or
 56 any municipal or county charter, upon compliance with this



57 section.

58 (1) The contractor or supplier must meet the following
59 conditions:

60 (a) The contractor or supplier must be a not-for-profit
61 corporation incorporated under chapter 617 and in good standing.

62 (b) The contractor or supplier must hold exempt status
63 under s. 501(a) of the Internal Revenue Code, as an organization
64 described in s. 501(c)(3) of the Internal Revenue Code.

65 (c) For youth organizations, the corporate charter of the
66 contractor or supplier must state that the corporation is
67 organized as a charitable youth organization exclusively for at-
68 risk youths enrolled in a work-study program.

69 (d) Administrative salaries and benefits for any such
70 corporation shall not exceed 15 percent of gross revenues. Field
71 supervisors shall not be considered administrative overhead.

72 (2) The contract, if approved by authorized agency
73 personnel of the state, or the governing body of a political
74 subdivision, or the public-private partnership, as appropriate,
75 must provide at a minimum that:

76 (a) For youth organizations, labor shall be performed
77 exclusively by at-risk youth and their direct supervisors; and
78 shall not be subject to subcontracting.

79 (b) For the preservation, maintenance, and improvement of
80 park land, the property must be at least 20 acres with
81 contiguous public facilities that are capable of seating at
82 least 5,000 people in a permanent structure.

83 (c) For public education buildings, the building must be
84 at least 90,000 square feet.



85 ~~(d)~~ Payment must be production-based.

86 ~~(e)~~ The contract will terminate should the contractor
87 or supplier no longer qualify under subsection (1).

88 ~~(f)~~ The supplier or contractor has instituted a drug-
89 free workplace program substantially in compliance with the
90 provisions of s. 287.087.

91 ~~(g)~~ The contractor or supplier agrees to be subject to
92 review and audit at the discretion of the Auditor General in
93 order to ensure that the contractor or supplier has complied
94 with this section.

95 (3) A ~~No~~ contract under this section may not exceed the
96 annual sum of \$250,000.

97 (4) Should a court find that a contract purporting to have
98 been entered into pursuant to this section does not so qualify,
99 the court may order that the contract be terminated on
100 reasonable notice to the parties. The court shall not require
101 disgorgement of any moneys earned for goods or services actually
102 delivered or supplied.

103 (5) Nothing in this section shall excuse any person from
104 compliance with ss. 287.132-287.134.

105 Section 2. Section 287.05712, Florida Statutes, is created
106 to read:

107 287.05712 Public-private partnerships.-

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

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



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

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

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

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

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

125 (g) "Private entity" means any natural person,
126 corporation, general partnership, limited liability company,
127 limited partnership, joint venture, business trust, public-
128 benefit corporation, nonprofit entity, or other private business
129 entity.

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

134 (i) "Qualifying project" means:

135 1. A facility or project that serves a public purpose,
136 including, but not limited to, any ferry or mass transit
137 facility, vehicle parking facility, airport or seaport facility,
138 rail facility or project, fuel supply facility, oil or gas
139 pipeline, medical or nursing care facility, recreational



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140 facility, sporting or cultural facility, or educational facility
141 or other building or facility that is used or will be used by a
142 public educational institution, or any other public facility or
143 infrastructure that is used or will be used by the public at
144 large or in support of an accepted public purpose or activity;

145 2. An improvement, including equipment, of a building that
146 will be principally used by a public entity or the public at
147 large or that supports a service delivery system in the public
148 sector;

149 3. A water, wastewater, or surface water management
150 facility or other related infrastructure; or

151 4. Notwithstanding any provision of this section, for
152 projects that involve a facility owned or operated by the
153 governing board of a county, district, or municipal hospital or
154 health care system, or projects that involve a facility owned or
155 operated by a municipal electric utility, only those projects
156 that the governing board designates as qualifying projects
157 pursuant to this section.

158 (j) "Responsible public entity" means a county,
159 municipality, school board, or any other political subdivision
160 of the state; a public body corporate and politic; or a regional
161 entity that serves a public purpose and is authorized to develop
162 or operate a qualifying project.

163 (k) "Revenues" means the income, earnings, user fees,
164 lease payments, or other service payments relating to the
165 development or operation of a qualifying project, including, but
166 not limited to, money received as grants or otherwise from the



167 Federal Government, a public entity, or an agency or
168 instrumentality thereof in aid of the qualifying project.

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

172 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
173 that there is a public need for the construction or upgrade of
174 facilities that are used predominantly for public purposes and
175 that it is in the public's interest to provide for the
176 construction or upgrade of such facilities.

177 (a) The Legislature also finds that:

178 1. There is a public need for timely and cost-effective
179 acquisition, design, construction, improvement, renovation,
180 expansion, equipping, maintenance, operation, implementation, or
181 installation of projects serving a public purpose, including
182 educational facilities, transportation facilities, water or
183 wastewater management facilities and infrastructure, technology
184 infrastructure, roads, highways, bridges, and other public
185 infrastructure and government facilities within the state which
186 serve a public need and purpose, and that such public need may
187 not be wholly satisfied by existing procurement methods.

188 2. There are inadequate resources to develop new
189 educational facilities, transportation facilities, water or
190 wastewater management facilities and infrastructure, technology
191 infrastructure, roads, highways, bridges, and other public
192 infrastructure and government facilities for the benefit of
193 residents of this state, and that a public-private partnership
194 has demonstrated that it can meet the needs by improving the



195 schedule for delivery, lowering the cost, and providing other
196 benefits to the public.

197 3. There may be state and federal tax incentives that
198 promote partnerships between public and private entities to
199 develop and operate qualifying projects.

200 4. A procurement under this section serves the public
201 purpose of this section if such procurement facilitates the
202 timely development or operation of a qualifying project.

203 (b) It is the intent of the Legislature to encourage
204 investment in the state by private entities; to facilitate
205 various bond financing mechanisms, private capital, and other
206 funding sources for the development and operation of qualifying
207 projects, including expansion and acceleration of such financing
208 to meet the public need; and to provide the greatest possible
209 flexibility to public and private entities contracting for the
210 provision of public services.

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

212 (a) There is created the Partnership for Public Facilities
213 and Infrastructure Act Guidelines Task Force for the purpose of
214 recommending guidelines for the Legislature to consider for
215 purposes of creating a uniform process for establishing public-
216 private partnerships, including the types of factors responsible
217 public entities should review and consider when processing
218 requests for public-private partnership projects pursuant to
219 this section.

220 (b) The task force shall be composed of seven members, as
221 follows:



- 222 1. The Secretary of Management Services or his or her
223 designee, who shall serve as chair of the task force.
- 224 2. Six members appointed by the Governor, as follows:
- 225 a. One county government official.
- 226 b. One municipal government official.
- 227 c. One district school board member.
- 228 d. Three representatives of the business community.
- 229 (c) Task force members must be appointed by July 31, 2013.
230 By August 31, 2013, the task force shall meet to establish
231 procedures for the conduct of its business and to elect a vice
232 chair. The task force shall meet at the call of the chair. A
233 majority of the members of the task force constitutes a quorum,
234 and a quorum is necessary for the purpose of voting on any
235 action or recommendation of the task force. All meetings shall
236 be held in Tallahassee, unless otherwise decided by the task
237 force, and then no more than two such meetings may be held in
238 other locations for the purpose of taking public testimony.
239 Administrative and technical support shall be provided by the
240 department. Task force members shall serve without compensation
241 and are not entitled to reimbursement for per diem or travel
242 expenses.
- 243 (d) In reviewing public-private partnerships and
244 developing recommendations, the task force must consider:
- 245 1. Opportunities for competition through public notice and
246 the availability of representatives of the responsible public
247 entity to meet with private entities considering a proposal.
- 248 2. Reasonable criteria for choosing among competing
249 proposals.



- 250 3. Suggested timelines for selecting proposals and
251 negotiating an interim or comprehensive agreement.
- 252 4. If an accelerated selection and review and
253 documentation timelines should be considered for proposals
254 involving a qualifying project that the responsible public
255 entity deems a priority.
- 256 5. Procedures for financial review and analysis which, at
257 a minimum, include a cost-benefit analysis, an assessment of
258 opportunity cost, and consideration of the results of all
259 studies and analyses related to the proposed qualifying project.
- 260 6. The adequacy of the information released when seeking
261 competing proposals and providing for the enhancement of that
262 information, if deemed necessary, to encourage competition.
- 263 7. Current exemptions from public records and public
264 meetings requirements, if any changes to those exemptions are
265 necessary, or if any new exemptions should be created in order
266 to maintain the confidentiality of financial and proprietary
267 information received as part of an unsolicited proposal.
- 268 8. Recommendations regarding the authority of the
269 responsible public entity to engage the services of qualified
270 professionals, which may include a Florida-registered
271 professional or a certified public accountant, not otherwise
272 employed by the responsible public entity, to provide an
273 independent analysis regarding the specifics, advantages,
274 disadvantages, and long-term and short-term costs of a request
275 by a private entity for approval of a qualifying project, unless
276 the governing body of the public entity determines that such
277 analysis should be performed by employees of the public entity.



278 (e) The task force must submit a final report of its
279 recommendations to the Governor, the President of the Senate,
280 and the Speaker of the House of Representatives by July 1, 2014.

281 (f) The task force is terminated December 31, 2014. The
282 establishment of guidelines pursuant to this section or the
283 adoption of such guidelines by a responsible public entity is
284 not required for such entity to request or receive proposals for
285 a qualifying project or to enter into a comprehensive agreement
286 for a qualifying project. A responsible public entity may adopt
287 guidelines so long as such guidelines are not inconsistent with
288 this section.

289 (4) PROCUREMENT PROCEDURES.—A responsible public entity
290 may receive unsolicited proposals or may solicit proposals for
291 qualifying projects and may thereafter enter into an agreement
292 with a private entity, or a consortium of private entities, for
293 the building, upgrading, operating, ownership, or financing of
294 facilities.

295 (a) The responsible public entity may establish a
296 reasonable application fee for the submission of an unsolicited
297 proposal under this section. The fee must be sufficient to pay
298 the costs of evaluating the proposal. The responsible public
299 entity may engage the services of a private consultant to assist
300 in the evaluation.

301 (b) The responsible public entity may request a proposal
302 from private entities for a public-private project or, if the
303 public entity receives an unsolicited proposal for a public-
304 private project and the public entity intends to enter into a
305 comprehensive agreement for the project described in such



306 unsolicited proposal, the public entity shall publish notice in
307 the Florida Administrative Register and a newspaper of general
308 circulation at least once a week for 2 weeks stating that the
309 public entity has received a proposal and will accept other
310 proposals for the same project. The timeframe within which the
311 public entity may accept other proposals shall be determined by
312 the public entity on a project-by-project basis based upon the
313 complexity of the project and the public benefit to be gained by
314 allowing a longer or shorter period of time within which other proposals
315 may be received; however, the timeframe for allowing other proposals
316 must be at least 21 days, but no more than 120 days, after the
317 initial date of publication. A copy of the notice must be mailed
318 to each local government in the affected area.

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

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

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

325 2. Is for a facility that is owned by the responsible
326 public entity or for a facility for which ownership will be
327 conveyed to the responsible public entity.

328 3. Has adequate safeguards in place to ensure that
329 additional costs or service disruptions are not imposed on the
330 public in the event of material default or cancellation of the
331 agreement by the responsible public entity.

332 4. Has adequate safeguards in place to ensure that the
333 responsible public entity or private entity has the opportunity



334 to add capacity to the proposed project or other facilities
335 servicing similar predominantly public purposes.

336 5. Will be owned by the responsible public entity upon
337 completion or termination of the agreement and upon payment of
338 the amounts financed.

339 (e) Before signing a comprehensive agreement, the
340 responsible public entity must consider a reasonable finance
341 plan that is consistent with subsection (11); the project cost;
342 revenues by source; available financing; major assumptions;
343 internal rate of return on private investments, if governmental
344 funds are assumed in order to deliver a cost-feasible project;
345 and a total cash-flow analysis beginning with the implementation
346 of the project and extending for the term of the agreement.

347 (f) In considering an unsolicited proposal, the
348 responsible public entity may require from the private entity a
349 technical study prepared by a nationally recognized expert with
350 experience in preparing analysis for bond rating agencies. In
351 evaluating the technical study, the responsible public entity
352 may rely upon internal staff reports prepared by personnel
353 familiar with the operation of similar facilities or the advice
354 of external advisors or consultants who have relevant
355 experience.

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

360 (a) A description of the qualifying project, including the
361 conceptual design of the facilities or a conceptual plan for the



362 provision of services, and a schedule for the initiation and
363 completion of the qualifying project.

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

367 (c) A description of the private entity's general plans
368 for financing the qualifying project, including the sources of
369 the private entity's funds and the identity of any dedicated
370 revenue source or proposed debt or equity investment on behalf
371 of the private entity.

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

374 (e) The proposed user fees, lease payments, or other
375 service payments over the term of a comprehensive agreement, and
376 the methodology for and circumstances that would allow changes
377 to the user fees, lease payments, and other service payments
378 over time.

379 (f) Additional material or information that the
380 responsible public entity reasonably requests.

381 (6) PROJECT QUALIFICATION AND PROCESS.—

382 (a) The private entity must meet the minimum standards
383 contained in the responsible public entity's guidelines for
384 qualifying professional services and contracts for traditional
385 procurement projects.

386 (b) The responsible public entity must:

387 1. Ensure that provision is made for the private entity's
388 performance and payment of subcontractors, including, but not
389 limited to, surety bonds, letters of credit, parent company



390 guarantees, and lender and equity partner guarantees. For the
391 components of the qualifying project which involve construction
392 performance and payment, bonds are required and are subject to
393 the recordation, notice, suit limitation, and other requirements
394 of s. 255.05.

395 2. Ensure the most efficient pricing of the security
396 package that provides for the performance and payment of
397 subcontractors.

398 3. Ensure that provision is made for the transfer of the
399 private entity's obligations if the comprehensive agreement is
400 terminated or a material default occurs.

401 (c) After the public notification period has expired in
402 the case of an unsolicited proposal, the responsible public
403 entity shall rank the proposals received in order of preference.
404 In ranking the proposals, the responsible public entity may
405 consider factors that include, but are not limited to,
406 professional qualifications, general business terms, innovative
407 design techniques or cost-reduction terms, and finance plans.
408 The responsible public entity may then begin negotiations for a
409 comprehensive agreement with the highest-ranked firm. If the
410 responsible public entity is not satisfied with the results of
411 the negotiations, the responsible public entity may terminate
412 negotiations with the proposer and negotiate with the second-
413 ranked or subsequent-ranked firms, in the order consistent with
414 this procedure. If only one proposal is received, the
415 responsible public entity may negotiate in good faith, and if
416 the public entity is not satisfied with the results of the
417 negotiations, the public entity may terminate negotiations with



418 the proposer. Notwithstanding this paragraph, the responsible
419 public entity may reject all proposals at any point in the
420 process until a contract with the proposer is executed.

421 (d) The responsible public entity shall perform an
422 independent analysis of the proposed public-private partnership
423 which demonstrates the cost-effectiveness and overall public
424 benefit before the procurement process is initiated or before
425 the contract is awarded.

426 (e) The responsible public entity may approve the
427 development or operation of an educational facility, a
428 transportation facility, a water or wastewater management
429 facility or related infrastructure, a technology infrastructure
430 or other public infrastructure, or a government facility needed
431 by the responsible public entity as a qualifying project, or the
432 design or equipping of a qualifying project that is developed or
433 operated, if:

434 1. There is a public need for or benefit derived from a
435 project of the type that the private entity proposes as the
436 qualifying project.

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

439 3. The private entity's plans will result in the timely
440 acquisition, design, construction, improvement, renovation,
441 expansion, equipping, maintenance, or operation of the
442 qualifying project.

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



446 fees and fees for financial and technical advisors or
447 consultants and for other necessary advisors or consultants.

448 (g) Upon approval of a qualifying project, the responsible
449 public entity shall establish a date for the commencement of
450 activities related to the qualifying project. The responsible
451 public entity may extend the commencement date.

452 (h) Approval of a qualifying project by the responsible
453 public entity is subject to entering into a comprehensive
454 agreement with the private entity.

455 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

456 (a) The responsible public entity must notify each
457 affected local jurisdiction by furnishing a copy of the proposal
458 to each affected local jurisdiction when considering a proposal
459 for a qualifying project.

460 (b) Each affected local jurisdiction that is not a
461 responsible public entity for the respective qualifying project
462 may, within 60 days after receiving the notice, submit in
463 writing any comments to the responsible public entity and
464 indicate whether the facility is incompatible with the local
465 comprehensive plan, the local infrastructure development plan,
466 the capital improvements budget, any development of regional
467 impact processes or timelines, or other governmental spending
468 plan. The responsible public entity shall consider the comments
469 of the affected local jurisdiction before entering into a
470 comprehensive agreement with a private entity. If an affected
471 local jurisdiction fails to respond to the responsible public
472 entity within the time provided in this paragraph, the
473 nonresponse is deemed an acknowledgement by the affected local



474 jurisdiction that the qualifying project is compatible with the
475 local comprehensive plan, the local infrastructure development
476 plan, the capital improvements budget, or other governmental
477 spending plan.

478 (8) INTERIM AGREEMENT.—Before or in connection with the
479 negotiation of a comprehensive agreement, the public entity may
480 enter into an interim agreement with the private entity
481 proposing the development or operation of the qualifying
482 project. An interim agreement does not obligate the responsible
483 public entity to enter into a comprehensive agreement. The
484 interim agreement is discretionary with the parties and is not
485 required on a qualifying project for which the parties may
486 proceed directly to a comprehensive agreement without the need
487 for an interim agreement. An interim agreement must be limited
488 to provisions that:

489 (a) Authorize the private entity to commence activities
490 for which it may be compensated related to the proposed
491 qualifying project, including, but not limited to, project
492 planning and development, design, environmental analysis and
493 mitigation, survey, other activities concerning any part of the
494 proposed qualifying project, and ascertaining the availability
495 of financing for the proposed facility or facilities.

496 (b) Establish the process and timing of the negotiation of
497 the comprehensive agreement.

498 (c) Contain such other provisions related to an aspect of
499 the development or operation of a qualifying project that the
500 responsible public entity and the private entity deem
501 appropriate.



502 (9) COMPREHENSIVE AGREEMENT.—

503 (a) Before developing or operating the qualifying project,
504 the private entity must enter into a comprehensive agreement
505 with the responsible public entity. The comprehensive agreement
506 must provide for:

507 1. Delivery of performance and payment bonds, letters of
508 credit, or other security acceptable to the responsible public
509 entity in connection with the development or operation of the
510 qualifying project in the form and amount satisfactory to the
511 responsible public entity. For the components of the qualifying
512 project which involve construction, the form and amount of the
513 bonds must comply with s. 255.05.

514 2. Review of the design for the qualifying project by the
515 responsible public entity and, if the design conforms to
516 standards acceptable to the responsible public entity, the
517 approval of the responsible public entity. This subparagraph
518 does not require the private entity to complete the design of
519 the qualifying project before the execution of the comprehensive
520 agreement.

521 3. Inspection of the qualifying project by the responsible
522 public entity to ensure that the private entity's activities are
523 acceptable to the public entity in accordance with the
524 comprehensive agreement.

525 4. Maintenance of a policy of public liability insurance,
526 a copy of which must be filed with the responsible public entity
527 and accompanied by proofs of coverage, or self-insurance, each
528 in the form and amount satisfactory to the responsible public
529 entity and reasonably sufficient to ensure coverage of tort



530 liability to the public and employees and to enable the
531 continued operation of the qualifying project.

532 5. Monitoring by the responsible public entity of the
533 maintenance practices to be performed by the private entity to
534 ensure that the qualifying project is properly maintained.

535 6. Periodic filing by the private entity of the
536 appropriate financial statements that pertain to the qualifying
537 project.

538 7. Procedures that govern the rights and responsibilities
539 of the responsible public entity and the private entity in the
540 course of the construction and operation of the qualifying
541 project and in the event of the termination of the comprehensive
542 agreement or a material default by the private entity. The
543 procedures must include conditions that govern the assumption of
544 the duties and responsibilities of the private entity by an
545 entity that funded, in whole or part, the qualifying project or
546 by the responsible public entity, and must provide for the
547 transfer or purchase of property or other interests of the
548 private entity by the responsible public entity.

549 8. Fees, lease payments, or service payments. In
550 negotiating user fees, the fees must be the same for persons
551 using the facility under like conditions and must not materially
552 discourage use of the qualifying project. The execution of the
553 comprehensive agreement or a subsequent amendment is conclusive
554 evidence that the fees, lease payments, or service payments
555 provided for in the comprehensive agreement comply with this
556 section. Fees or lease payments established in the comprehensive



557 agreement as a source of revenue may be in addition to, or in
558 lieu of, service payments.

559 9. Duties of the private entity, including the terms and
560 conditions that the responsible public entity determines serve
561 the public purpose of this section.

562 (b) The comprehensive agreement may include:

563 1. An agreement by the responsible public entity to make
564 grants or loans to the private entity from amounts received from
565 the federal, state, or local government or an agency or
566 instrumentality thereof.

567 2. A provision under which each entity agrees to provide
568 notice of default and cure rights for the benefit of the other
569 entity, including, but not limited to, a provision regarding
570 unavoidable delays.

571 3. A provision that terminates the authority and duties of
572 the private entity under this section and dedicates the
573 qualifying project to the responsible public entity or, if the
574 qualifying project was initially dedicated by an affected local
575 jurisdiction, to the affected local jurisdiction for public use.

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

580 (a) The responsible public entity may develop new
581 facilities or increase capacity in existing facilities through
582 agreements with public-private partnerships.

583 (b) The public-private partnership agreement must ensure
584 that the facility is properly operated, maintained, or improved



585 in accordance with standards set forth in the comprehensive
586 agreement.

587 (c) The responsible public entity may lease existing fee-
588 for-use facilities through a public-private partnership
589 agreement.

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

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

595 (11) FINANCING.-

596 (a) A private entity may enter into a private-source
597 financing agreement between financing sources and the private
598 entity. A financing agreement and any liens on the property or
599 facility must be paid in full at the applicable closing that
600 transfers ownership or operation of the facility to the
601 responsible public entity at the conclusion of the term of the
602 comprehensive agreement.

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

606 (c) The responsible public entity may use innovative
607 finance techniques associated with a public-private partnership
608 under this section, including, but not limited to, federal loans
609 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
610 and hedges against inflation from commercial banks or other
611 private sources. In addition, the responsible public entity may
612 provide its own capital or operating budget to support a



613 qualifying project. The budget may be from any legally
614 permissible funding sources of the responsible public entity,
615 including the proceeds of debt issuances. A responsible public
616 entity may use the model financing agreement provided in s.
617 489.145(6) for its financing of a facility owned by a
618 responsible public entity. A financing agreement may not require
619 the responsible public entity to indemnify the financing source,
620 subject the responsible public entity's facility to liens in
621 violation of s. 11.066(5), or secure financing by the
622 responsible public entity with a pledge of security interest,
623 and any such provision is void.

624 (d) A responsible public entity shall appropriate on a
625 priority basis as required by the comprehensive agreement a
626 contractual payment obligation, annual or otherwise, from the
627 enterprise or other government fund from which the qualifying
628 projects will be funded. This required payment obligation must
629 be appropriated before other noncontractual obligations payable
630 from the same enterprise or other government fund.

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

632 (a) The private entity shall:

633 1. Develop or operate the qualifying project in a manner
634 that is acceptable to the responsible public entity in
635 accordance with the provisions of the comprehensive agreement.

636 2. Maintain, or provide by contract for the maintenance or
637 improvement of, the qualifying project if required by the
638 comprehensive agreement.

639 3. Cooperate with the responsible public entity in making
640 best efforts to establish interconnection between the qualifying



641 project and any other facility or infrastructure as requested by
642 the responsible public entity in accordance with the provisions
643 of the comprehensive agreement.

644 4. Comply with the comprehensive agreement and any lease
645 or service contract.

646 (b) Each private facility that is constructed pursuant to
647 this section must comply with the requirements of federal,
648 state, and local laws; state, regional, and local comprehensive
649 plans; the responsible public entity's rules, procedures, and
650 standards for facilities; and such other conditions that the
651 responsible public entity determines to be in the public's best
652 interest and that are included in the comprehensive agreement.

653 (c) The responsible public entity may provide services to
654 the private entity. An agreement for maintenance and other
655 services entered into pursuant to this section must provide for
656 full reimbursement for services rendered for qualifying
657 projects.

658 (d) A private entity of a qualifying project may provide
659 additional services for the qualifying project to the public or
660 to other private entities if the provision of additional
661 services does not impair the private entity's ability to meet
662 its commitments to the responsible public entity pursuant to the
663 comprehensive agreement.

664 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
665 expiration or termination of a comprehensive agreement, the
666 responsible public entity may use revenues from the qualifying
667 project to pay current operation and maintenance costs of the
668 qualifying project. If the private entity materially defaults



669 under the comprehensive agreement, the compensation that is
670 otherwise due to the private entity is payable to satisfy all
671 financial obligations to investors and lenders on the qualifying
672 project in the same way that is provided in the comprehensive
673 agreement or any other agreement involving the qualifying
674 project, if the costs of operating and maintaining the
675 qualifying project are paid in the normal course. Revenues in
676 excess of the costs for operation and maintenance costs may be
677 paid to the investors and lenders to satisfy payment obligations
678 under their respective agreements. A responsible public entity
679 may terminate with cause and without prejudice a comprehensive
680 agreement and may exercise any other rights or remedies that may
681 be available to it in accordance with the provisions of the
682 comprehensive agreement. The full faith and credit of the
683 responsible public entity may not be pledged to secure the
684 financing of the private entity. The assumption of the
685 development or operation of the qualifying project does not
686 obligate the responsible public entity to pay any obligation of
687 the private entity from sources other than revenues from the
688 qualifying project unless stated otherwise in the comprehensive
689 agreement.

690 (14) SOVEREIGN IMMUNITY.—This section does not waive the
691 sovereign immunity of a responsible public entity, an affected
692 local jurisdiction, or an officer or employee thereof with
693 respect to participation in, or approval of, any part of a
694 qualifying project or its operation, including, but not limited
695 to, interconnection of the qualifying project with any other
696 infrastructure or project. A county or municipality in which a



697 qualifying project is located possesses sovereign immunity with
698 respect to the project, including, but not limited to, its
699 design, construction, and operation.

700 (15) CONSTRUCTION.—This section shall be liberally
701 construed to effectuate the purposes of this section. This
702 section shall be construed as cumulative and supplemental to any
703 other authority or power vested in or exercised by the governing
704 board of a county, district, or municipal hospital or health
705 care system including those contained in acts of the Legislature
706 establishing such public hospital boards or s. 155.40. This
707 section does not affect any agreement or existing relationship
708 with a supporting organization involving such governing board or
709 system in effect as of January 1, 2013.

710 (a) This section does not limit a political subdivision of
711 the state in the acquisition, design, or construction of a
712 public project pursuant to other statutory authority.

713 (b) Except as otherwise provided in this section, this
714 section does not amend existing laws by granting additional
715 powers to, or further restricting, a local governmental entity
716 from regulating and entering into cooperative arrangements with
717 the private sector for the planning, construction, or operation
718 of a facility.

719 (c) This section does not waive any requirement of s.
720 287.055.

721 Section 3. Section 336.71, Florida Statutes, is created to
722 read:

723 336.71 Public-private cooperation in construction of
724 county roads.—



725 (1) If a county receives a proposal, solicited or
726 unsolicited, from a private entity seeking to construct, extend,
727 or improve a county road or portion thereof, the county may
728 enter into an agreement with the private entity for completion
729 of the road construction project, which agreement may provide
730 for payment to the private entity, from public funds, if the
731 county conducts a noticed public hearing and finds that the
732 proposed county road construction project:

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

734 (b) Would only use county funds for portions of the
735 project that will be part of the county road system.

736 (c) Would have adequate safeguards to ensure that
737 additional costs or unreasonable service disruptions are not
738 realized by the traveling public and citizens of the state.

739 (d) Upon completion, would be a part of the county road
740 system owned by the county.

741 (e) Would result in a financial benefit to the public by
742 completing the subject project at a cost to the public
743 significantly lower than if the project were constructed by the
744 county using the normal procurement process.

745 (2) The notice for the public hearing provided for in
746 subsection (1) must be published at least 14 days before the
747 date of the public meeting at which the governing board takes
748 final action. The notice must identify the project, the
749 estimated cost of the project, and specify that the purpose for
750 the public meeting is to consider whether it is in the public's
751 best interest to accept the proposal and enter into an agreement
752 pursuant thereto. The determination of cost savings pursuant to



753 paragraph (1) (e) must be supported by a professional engineer's
754 cost estimate made available to the public at least 14 days
755 before the public meeting and placed in the record for that
756 meeting.

757 (3) If the process in subsection (1) is followed, the
758 project and agreement are exempt from s. 255.20 pursuant to s.
759 255.20(1)(c)11.

760 (4) Except as otherwise expressly provided in this
761 section, this section does not affect existing law by granting
762 additional powers to or imposing further restrictions on local
763 government entities.

764 Section 4. Paragraph (d) of subsection (2) of section
765 348.754, Florida Statutes, is amended to read:

766 348.754 Purposes and powers.—

767 (2) The authority is hereby granted, and shall have and
768 may exercise all powers necessary, appurtenant, convenient or
769 incidental to the carrying out of the aforesaid purposes,
770 including, but without being limited to, the following rights
771 and powers:

772 (d) To enter into and make leases for terms not exceeding
773 99 ~~40~~ years, as either lessee or lessor, in order to carry out
774 the right to lease as set forth in this part.

775 Section 5. Paragraph (c) of subsection (1), paragraph (a)
776 of subsection (2), paragraph (a) of subsection (3), and
777 paragraph (a) of subsection (7) of section 1010.62, Florida
778 Statutes, are amended to read:

779 1010.62 Revenue bonds and debt.—

780 (1) As used in this section, the term:



781 (c) "Debt" means bonds, except revenue bonds as defined in
782 paragraph (e), loans, promissory notes, lease-purchase
783 agreements, certificates of participation, installment sales,
784 leases, public-private partnership agreements, or any other
785 financing mechanism or financial arrangement, whether or not a
786 debt for legal purposes, for financing or refinancing for or on
787 behalf of a state university or a direct-support organization or
788 for the acquisition, construction, improvement, or purchase of
789 capital outlay projects.

790 (2) (a) The Board of Governors may request the issuance of
791 revenue bonds pursuant to the State Bond Act and s. 11(d), Art.
792 VII of the State Constitution to finance or refinance capital
793 outlay projects permitted by law. Revenue bonds may be secured
794 by or payable only from those revenues authorized for such
795 purpose, including the Capital Improvement Trust Fund fee, ~~the~~
796 ~~building fee~~, the health fee, the transportation access fee,
797 hospital revenues, or those revenues derived from or received in
798 relation to sales and services of auxiliary enterprises or
799 component units of the university, including, but not limited
800 to, housing, transportation, health care, research or research-
801 related activities, food service, retail sales, athletic
802 activities, or other similar services, other revenues
803 attributable to the projects to be financed or refinanced, any
804 other revenue approved by the Legislature for facilities
805 construction or for securing revenue bonds issued pursuant to s.
806 11(d), Art. VII of the State Constitution, or any other revenues
807 permitted by law. Revenues from the activity and service fee and
808 the athletic fee may be used to pay and secure revenue bonds



809 | except that the annual debt service may ~~shall~~ not exceed an
810 | amount equal to 5 percent of the fees collected during the most
811 | recent 12 consecutive months for which collection information is
812 | available before ~~prior to~~ the sale of the bonds. The assets of a
813 | university foundation and the earnings thereon may also be used
814 | to pay and secure revenue bonds of the university or its direct-
815 | support organizations. Revenues from royalties and licensing
816 | fees may also be used to pay and secure revenue bonds so long as
817 | either the facilities being financed are functionally related to
818 | the university operation or direct-support organization
819 | reporting such royalties and licensing fees, or such revenues
820 | are used to secure revenue bonds issued to finance academic,
821 | educational, or research facilities that are part of a
822 | multipurpose capital outlay project. Revenue bonds may not be
823 | secured by or be payable from, directly or indirectly, tuition,
824 | the financial aid fee, ~~sales and services of educational~~
825 | ~~departments,~~ revenues from grants and contracts, except for
826 | money received for overhead and indirect costs and other moneys
827 | not required for the payment of direct costs, or any other
828 | operating revenues of a state university. Revenues from one
829 | auxiliary enterprise may ~~not~~ be used to secure revenue bonds of
830 | another only if ~~unless~~ the Board of Governors, after review and
831 | analysis, determines that either the facilities being financed
832 | are functionally related to the auxiliary enterprise revenues
833 | being used to secure such revenue bonds or such revenues are
834 | used to secure revenue bonds issued to finance academic,
835 | educational, or research facilities that are part of a
836 | multipurpose capital outlay project.



837 (3) (a) A state university or direct-support organization
838 may not issue debt without the approval of the Board of
839 Governors. The Board of Governors may approve the issuance of
840 debt by a state university or a direct-support organization only
841 when such debt is used to finance or refinance capital outlay
842 projects. The debt may be secured by or payable only from those
843 revenues authorized for such purpose, including the health fee,
844 the transportation access fee, hospital revenues, or those
845 revenues derived from or received in relation to sales and
846 services of auxiliary enterprises or component units of the
847 university, including, but not limited to, housing,
848 transportation, health care, research or research-related
849 activities, food service, retail sales, athletic activities, or
850 other similar services. Revenues derived from the activity and
851 service fee and the athletic fee may be used to pay and secure
852 debt except that the annual debt service may ~~shall~~ not exceed an
853 amount equal to 5 percent of the fees collected during the most
854 recent 12 consecutive months for which collection information is
855 available before ~~prior to~~ incurring the debt. The assets of
856 university foundations and the earnings thereon may be used to
857 pay and secure debt of the university or its direct-support
858 organizations. Gifts and donations or pledges of gifts may also
859 be used to secure debt so long as the maturity of the debt,
860 including extensions, renewals, and refundings, does not exceed
861 5 years. Revenues from royalties and licensing fees may also be
862 used to secure debt so long as either the facilities being
863 financed are functionally related to the university operation or
864 direct-support organization reporting such royalties and



865 | licensing fees or such revenues are used to secure debt issued
866 | to finance academic, educational, or research facilities that
867 | are part of a multipurpose capital outlay project. The debt may
868 | not be secured by or be payable from, directly or indirectly,
869 | tuition, the financial aid fee, ~~sales and services of~~
870 | ~~educational departments,~~ revenues from grants and contracts,
871 | except for money received for overhead and indirect costs and
872 | other moneys not required for the payment of direct costs of
873 | grants, or any other operating revenues of a state university.
874 | The debt of direct-support organizations may not be secured by
875 | or be payable under an agreement or contract with a state
876 | university unless the source of payments under such agreement or
877 | contract is limited to revenues that universities are authorized
878 | to use for payment of debt service. Revenues from one auxiliary
879 | enterprise may ~~not~~ be used to secure debt of another only if
880 | ~~unless~~ the Board of Governors, after review and analysis,
881 | determines that either the facilities being financed are
882 | functionally related to the auxiliary enterprise revenues being
883 | used to secure such debt or such revenues are used to secure
884 | debt issued to finance academic, educational, or research
885 | facilities that are part of a multipurpose capital outlay
886 | project. Debt may not be approved to finance or refinance
887 | operating expenses of a state university or a direct-support
888 | organization. The maturity of debt used to finance or refinance
889 | the acquisition of equipment or software, including any
890 | extensions, renewals, or refundings thereof, shall be limited to
891 | 5 years or the estimated useful life of the equipment or
892 | software, whichever is shorter. The Board of Governors may



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893 establish conditions and limitations on such debt as it
894 determines to be advisable.

895 (7) (a) As required pursuant to s. 11(d), Art. VII of the
896 State Constitution and subsection (6), the Legislature approves
897 capital outlay projects meeting the following requirements:

898 1. The project is located on a campus of a state
899 university or on land leased to the university or is used for
900 activities relating to the state university;

901 2. The project is included in the master plan of the state
902 university or is for facilities that are not required to be in a
903 university's master plan;

904 3. The project is approved by the Board of Governors as
905 being consistent with the strategic plan of the state university
906 and the programs offered by the state university; and

907 4. The project is for purposes relating to the housing,
908 transportation, health care, research or research-related
909 activities, food service, retail sales, ~~or~~ student activities,
910 or academic or educational activities that are part of a
911 multipurpose capital outlay project of the state university.

912 Section 6. This act shall take effect July 1, 2013.