



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

1
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



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

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; providing an effective date.
34

35 Be It Enacted by the Legislature of the State of Florida:
36

37 Section 1. Section 255.60, Florida Statutes, is amended to
38 read:

39 255.60 Special contracts with charitable or not-for-profit
40 ~~youth~~ organizations.—The state, ~~or~~ the governing body of any
41 political subdivision of the state, or a public-private
42 partnership is authorized, but not required, to contract for
43 public service work with a not-for-profit organization or
44 charitable youth organization ~~such as highway and park~~
45 ~~maintenance~~, notwithstanding competitive sealed bid procedures
46 required under this chapter, ~~or~~ chapter 287, or any municipal or
47 county charter, upon compliance with this section.

48 (1) The contractor or supplier must meet the following
49 conditions:

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

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

55 (c) For youth organizations, the corporate charter of the
56 contractor or supplier must state that the corporation is



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

57 organized as a charitable not-for-profit ~~youth~~ organization
58 exclusively for at-risk youths enrolled in a work-study program.

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

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

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

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

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

75 (d) ~~(b)~~ Payment must be production-based.

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

78 (f) ~~(d)~~ The supplier or contractor has instituted a drug-
79 free workplace program substantially in compliance with the
80 provisions of s. 287.087.

81 (g) ~~(e)~~ The contractor or supplier agrees to be subject to
82 review and audit at the discretion of the Auditor General in
83 order to ensure that the contractor or supplier has complied
84 with this section.



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

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

87 | (4) Should a court find that a contract purporting to have
 88 | been entered into pursuant to this section does not so qualify,
 89 | the court may order that the contract be terminated on
 90 | reasonable notice to the parties. The court shall not require
 91 | disgorgement of any moneys earned for goods or services actually
 92 | delivered or supplied.

93 | (5) Nothing in this section shall excuse any person from
 94 | compliance with ss. 287.132-287.134.

95 | Section 2. Section 287.05712, Florida Statutes, is created
 96 | to read:

97 | 287.05712 Public-private partnerships.-

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

99 | (a) "Affected local jurisdiction" means a county,
 100 | municipality, or special district in which all or a portion of a
 101 | qualifying project is located.

102 | (b) "Develop" means to plan, design, finance, lease,
 103 | acquire, install, construct, or expand.

104 | (c) "Fees" means charges imposed by the private entity of
 105 | a qualifying project for use of all or a portion of such
 106 | qualifying project pursuant to a comprehensive agreement.

107 | (d) "Lease payment" means any form of payment, including a
 108 | land lease, by a public entity to the private entity of a
 109 | qualifying project for the use of the project.

110 | (e) "Material default" means a nonperformance of its
 111 | duties by the private entity of a qualifying project which
 112 | jeopardizes adequate service to the public from the project.



ENROLLED
CS/CS/HB 85, Engrossed 3

2013 Legislature

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

115 (g) "Private entity" means any natural person,
116 corporation, general partnership, limited liability company,
117 limited partnership, joint venture, business trust, public-
118 benefit corporation, nonprofit entity, or other private business
119 entity.

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

124 (i) "Qualifying project" means:

125 1. A facility or project that serves a public purpose,
126 including, but not limited to, any ferry or mass transit
127 facility, vehicle parking facility, airport or seaport facility,
128 rail facility or project, fuel supply facility, oil or gas
129 pipeline, medical or nursing care facility, recreational
130 facility, sporting or cultural facility, or educational facility
131 or other building or facility that is used or will be used by a
132 public educational institution, or any other public facility or
133 infrastructure that is used or will be used by the public at
134 large or in support of an accepted public purpose or activity;

135 2. An improvement, including equipment, of a building that
136 will be principally used by a public entity or the public at
137 large or that supports a service delivery system in the public
138 sector;

139 3. A water, wastewater, or surface water management
140 facility or other related infrastructure; or



ENROLLED
 CS/CS/HB 85, Engrossed 3

2013 Legislature

141 4. Notwithstanding any provision of this section, for
 142 projects that involve a facility owned or operated by the
 143 governing board of a county, district, or municipal hospital or
 144 health care system, or projects that involve a facility owned or
 145 operated by a municipal electric utility, only those projects
 146 that the governing board designates as qualifying projects
 147 pursuant to this section.

148 (j) "Responsible public entity" means a county,
 149 municipality, school board, or any other political subdivision
 150 of the state; a public body corporate and politic; or a regional
 151 entity that serves a public purpose and is authorized to develop
 152 or operate a qualifying project.

153 (k) "Revenues" means the income, earnings, user fees,
 154 lease payments, or other service payments relating to the
 155 development or operation of a qualifying project, including, but
 156 not limited to, money received as grants or otherwise from the
 157 Federal Government, a public entity, or an agency or
 158 instrumentality thereof in aid of the qualifying project.

159 (l) "Service contract" means a contract between a public
 160 entity and the private entity which defines the terms of the
 161 services to be provided with respect to a qualifying project.

162 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
 163 that there is a public need for the construction or upgrade of
 164 facilities that are used predominantly for public purposes and
 165 that it is in the public's interest to provide for the
 166 construction or upgrade of such facilities.

167 (a) The Legislature also finds that:



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

168 1. There is a public need for timely and cost-effective
169 acquisition, design, construction, improvement, renovation,
170 expansion, equipping, maintenance, operation, implementation, or
171 installation of projects serving a public purpose, including
172 educational facilities, transportation facilities, water or
173 wastewater management facilities and infrastructure, technology
174 infrastructure, roads, highways, bridges, and other public
175 infrastructure and government facilities within the state which
176 serve a public need and purpose, and that such public need may
177 not be wholly satisfied by existing procurement methods.

178 2. There are inadequate resources to develop new
179 educational facilities, transportation facilities, water or
180 wastewater management facilities and infrastructure, technology
181 infrastructure, roads, highways, bridges, and other public
182 infrastructure and government facilities for the benefit of
183 residents of this state, and that a public-private partnership
184 has demonstrated that it can meet the needs by improving the
185 schedule for delivery, lowering the cost, and providing other
186 benefits to the public.

187 3. There may be state and federal tax incentives that
188 promote partnerships between public and private entities to
189 develop and operate qualifying projects.

190 4. A procurement under this section serves the public
191 purpose of this section if such procurement facilitates the
192 timely development or operation of a qualifying project.

193 (b) It is the intent of the Legislature to encourage
194 investment in the state by private entities; to facilitate
195 various bond financing mechanisms, private capital, and other



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

196 funding sources for the development and operation of qualifying
197 projects, including expansion and acceleration of such financing
198 to meet the public need; and to provide the greatest possible
199 flexibility to public and private entities contracting for the
200 provision of public services.

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

202 (a) There is created the Partnership for Public Facilities
203 and Infrastructure Act Guidelines Task Force for the purpose of
204 recommending guidelines for the Legislature to consider for
205 purposes of creating a uniform process for establishing public-
206 private partnerships, including the types of factors responsible
207 public entities should review and consider when processing
208 requests for public-private partnership projects pursuant to
209 this section.

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

212 1. The Secretary of Management Services or his or her
213 designee, who shall serve as chair of the task force.

214 2. Six members appointed by the Governor, as follows:

215 a. One county government official.

216 b. One municipal government official.

217 c. One district school board member.

218 d. Three representatives of the business community.

219 (c) Task force members must be appointed by July 31, 2013.

220 By August 31, 2013, the task force shall meet to establish
221 procedures for the conduct of its business and to elect a vice
222 chair. The task force shall meet at the call of the chair. A
223 majority of the members of the task force constitutes a quorum,



ENROLLED
CS/CS/HB 85, Engrossed 3

2013 Legislature

224 and a quorum is necessary for the purpose of voting on any
225 action or recommendation of the task force. All meetings shall
226 be held in Tallahassee, unless otherwise decided by the task
227 force, and then no more than two such meetings may be held in
228 other locations for the purpose of taking public testimony.
229 Administrative and technical support shall be provided by the
230 department. Task force members shall serve without compensation
231 and are not entitled to reimbursement for per diem or travel
232 expenses.

233 (d) In reviewing public-private partnerships and
234 developing recommendations, the task force must consider:

235 1. Opportunities for competition through public notice and
236 the availability of representatives of the responsible public
237 entity to meet with private entities considering a proposal.

238 2. Reasonable criteria for choosing among competing
239 proposals.

240 3. Suggested timelines for selecting proposals and
241 negotiating an interim or comprehensive agreement.

242 4. If an accelerated selection and review and
243 documentation timelines should be considered for proposals
244 involving a qualifying project that the responsible public
245 entity deems a priority.

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



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

250 6. The adequacy of the information released when seeking
251 competing proposals and providing for the enhancement of that
252 information, if deemed necessary, to encourage competition.

253 7. Current exemptions from public records and public
254 meetings requirements, if any changes to those exemptions are
255 necessary, or if any new exemptions should be created in order
256 to maintain the confidentiality of financial and proprietary
257 information received as part of an unsolicited proposal.

258 8. Recommendations regarding the authority of the
259 responsible public entity to engage the services of qualified
260 professionals, which may include a Florida-registered
261 professional or a certified public accountant, not otherwise
262 employed by the responsible public entity, to provide an
263 independent analysis regarding the specifics, advantages,
264 disadvantages, and long-term and short-term costs of a request
265 by a private entity for approval of a qualifying project, unless
266 the governing body of the public entity determines that such
267 analysis should be performed by employees of the public entity.

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

271 (f) The task force is terminated December 31, 2014. The
272 establishment of guidelines pursuant to this section or the
273 adoption of such guidelines by a responsible public entity is
274 not required for such entity to request or receive proposals for
275 a qualifying project or to enter into a comprehensive agreement
276 for a qualifying project. A responsible public entity may adopt



ENROLLED
CS/CS/HB 85, Engrossed 3

2013 Legislature

277 guidelines so long as such guidelines are not inconsistent with
278 this section.

279 (4) PROCUREMENT PROCEDURES.—A responsible public entity
280 may receive unsolicited proposals or may solicit proposals for
281 qualifying projects and may thereafter enter into an agreement
282 with a private entity, or a consortium of private entities, for
283 the building, upgrading, operating, ownership, or financing of
284 facilities.

285 (a) The responsible public entity may establish a
286 reasonable application fee for the submission of an unsolicited
287 proposal under this section. The fee must be sufficient to pay
288 the costs of evaluating the proposal. The responsible public
289 entity may engage the services of a private consultant to assist
290 in the evaluation.

291 (b) The responsible public entity may request a proposal
292 from private entities for a public-private project or, if the
293 public entity receives an unsolicited proposal for a public-
294 private project and the public entity intends to enter into a
295 comprehensive agreement for the project described in such
296 unsolicited proposal, the public entity shall publish notice in
297 the Florida Administrative Register and a newspaper of general
298 circulation at least once a week for 2 weeks stating that the
299 public entity has received a proposal and will accept other
300 proposals for the same project. The timeframe within which the
301 public entity may accept other proposals shall be determined by
302 the public entity on a project-by-project basis based upon the
303 complexity of the project and the public benefit to be gained by
304 allowing a longer or shorter period of time within which other proposals



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

305 may be received; however, the timeframe for allowing other proposals
306 must be at least 21 days, but no more than 120 days, after the
307 initial date of publication. A copy of the notice must be mailed
308 to each local government in the affected area.

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

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

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

315 2. Is for a facility that is owned by the responsible
316 public entity or for a facility for which ownership will be
317 conveyed to the responsible public entity.

318 3. Has adequate safeguards in place to ensure that
319 additional costs or service disruptions are not imposed on the
320 public in the event of material default or cancellation of the
321 agreement by the responsible public entity.

322 4. Has adequate safeguards in place to ensure that the
323 responsible public entity or private entity has the opportunity
324 to add capacity to the proposed project or other facilities
325 servicing similar predominantly public purposes.

326 5. Will be owned by the responsible public entity upon
327 completion or termination of the agreement and upon payment of
328 the amounts financed.

329 (e) Before signing a comprehensive agreement, the
330 responsible public entity must consider a reasonable finance
331 plan that is consistent with subsection (11); the project cost;
332 revenues by source; available financing; major assumptions;



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

333 internal rate of return on private investments, if governmental
334 funds are assumed in order to deliver a cost-feasible project;
335 and a total cash-flow analysis beginning with the implementation
336 of the project and extending for the term of the agreement.

337 (f) In considering an unsolicited proposal, the
338 responsible public entity may require from the private entity a
339 technical study prepared by a nationally recognized expert with
340 experience in preparing analysis for bond rating agencies. In
341 evaluating the technical study, the responsible public entity
342 may rely upon internal staff reports prepared by personnel
343 familiar with the operation of similar facilities or the advice
344 of external advisors or consultants who have relevant
345 experience.

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

350 (a) A description of the qualifying project, including the
351 conceptual design of the facilities or a conceptual plan for the
352 provision of services, and a schedule for the initiation and
353 completion of the qualifying project.

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

357 (c) A description of the private entity's general plans
358 for financing the qualifying project, including the sources of
359 the private entity's funds and the identity of any dedicated



360 revenue source or proposed debt or equity investment on behalf
361 of the private entity.

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

364 (e) The proposed user fees, lease payments, or other
365 service payments over the term of a comprehensive agreement, and
366 the methodology for and circumstances that would allow changes
367 to the user fees, lease payments, and other service payments
368 over time.

369 (f) Additional material or information that the
370 responsible public entity reasonably requests.

371 (6) PROJECT QUALIFICATION AND PROCESS.—

372 (a) The private entity must meet the minimum standards
373 contained in the responsible public entity's guidelines for
374 qualifying professional services and contracts for traditional
375 procurement projects.

376 (b) The responsible public entity must:

377 1. Ensure that provision is made for the private entity's
378 performance and payment of subcontractors, including, but not
379 limited to, surety bonds, letters of credit, parent company
380 guarantees, and lender and equity partner guarantees. For the
381 components of the qualifying project which involve construction
382 performance and payment, bonds are required and are subject to
383 the recordation, notice, suit limitation, and other requirements
384 of s. 255.05.

385 2. Ensure the most efficient pricing of the security
386 package that provides for the performance and payment of
387 subcontractors.



ENROLLED
CS/CS/HB 85, Engrossed 3

2013 Legislature

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

391 (c) After the public notification period has expired in
392 the case of an unsolicited proposal, the responsible public
393 entity shall rank the proposals received in order of preference.
394 In ranking the proposals, the responsible public entity may
395 consider factors that include, but are not limited to,
396 professional qualifications, general business terms, innovative
397 design techniques or cost-reduction terms, and finance plans.
398 The responsible public entity may then begin negotiations for a
399 comprehensive agreement with the highest-ranked firm. If the
400 responsible public entity is not satisfied with the results of
401 the negotiations, the responsible public entity may terminate
402 negotiations with the proposer and negotiate with the second-
403 ranked or subsequent-ranked firms, in the order consistent with
404 this procedure. If only one proposal is received, the
405 responsible public entity may negotiate in good faith, and if
406 the public entity is not satisfied with the results of the
407 negotiations, the public entity may terminate negotiations with
408 the proposer. Notwithstanding this paragraph, the responsible
409 public entity may reject all proposals at any point in the
410 process until a contract with the proposer is executed.

411 (d) The responsible public entity shall perform an
412 independent analysis of the proposed public-private partnership
413 which demonstrates the cost-effectiveness and overall public
414 benefit before the procurement process is initiated or before
415 the contract is awarded.



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

416 (e) The responsible public entity may approve the
417 development or operation of an educational facility, a
418 transportation facility, a water or wastewater management
419 facility or related infrastructure, a technology infrastructure
420 or other public infrastructure, or a government facility needed
421 by the responsible public entity as a qualifying project, or the
422 design or equipping of a qualifying project that is developed or
423 operated, if:

424 1. There is a public need for or benefit derived from a
425 project of the type that the private entity proposes as the
426 qualifying project.

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

429 3. The private entity's plans will result in the timely
430 acquisition, design, construction, improvement, renovation,
431 expansion, equipping, maintenance, or operation of the
432 qualifying project.

433 (f) The responsible public entity may charge a reasonable
434 fee to cover the costs of processing, reviewing, and evaluating
435 the request, including, but not limited to, reasonable attorney
436 fees and fees for financial and technical advisors or
437 consultants and for other necessary advisors or consultants.

438 (g) Upon approval of a qualifying project, the responsible
439 public entity shall establish a date for the commencement of
440 activities related to the qualifying project. The responsible
441 public entity may extend the commencement date.



ENROLLED
CS/CS/HB 85, Engrossed 3

2013 Legislature

442 (h) Approval of a qualifying project by the responsible
443 public entity is subject to entering into a comprehensive
444 agreement with the private entity.

445 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

446 (a) The responsible public entity must notify each
447 affected local jurisdiction by furnishing a copy of the proposal
448 to each affected local jurisdiction when considering a proposal
449 for a qualifying project.

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

468 (8) INTERIM AGREEMENT.—Before or in connection with the
469 negotiation of a comprehensive agreement, the public entity may



ENROLLED
CS/CS/HB 85, Engrossed 3

2013 Legislature

470 enter into an interim agreement with the private entity
471 proposing the development or operation of the qualifying
472 project. An interim agreement does not obligate the responsible
473 public entity to enter into a comprehensive agreement. The
474 interim agreement is discretionary with the parties and is not
475 required on a qualifying project for which the parties may
476 proceed directly to a comprehensive agreement without the need
477 for an interim agreement. An interim agreement must be limited
478 to provisions that:

479 (a) Authorize the private entity to commence activities
480 for which it may be compensated related to the proposed
481 qualifying project, including, but not limited to, project
482 planning and development, design, environmental analysis and
483 mitigation, survey, other activities concerning any part of the
484 proposed qualifying project, and ascertaining the availability
485 of financing for the proposed facility or facilities.

486 (b) Establish the process and timing of the negotiation of
487 the comprehensive agreement.

488 (c) Contain such other provisions related to an aspect of
489 the development or operation of a qualifying project that the
490 responsible public entity and the private entity deem
491 appropriate.

492 (9) COMPREHENSIVE AGREEMENT.—

493 (a) Before developing or operating the qualifying project,
494 the private entity must enter into a comprehensive agreement
495 with the responsible public entity. The comprehensive agreement
496 must provide for:



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

497 1. Delivery of performance and payment bonds, letters of
498 credit, or other security acceptable to the responsible public
499 entity in connection with the development or operation of the
500 qualifying project in the form and amount satisfactory to the
501 responsible public entity. For the components of the qualifying
502 project which involve construction, the form and amount of the
503 bonds must comply with s. 255.05.

504 2. Review of the design for the qualifying project by the
505 responsible public entity and, if the design conforms to
506 standards acceptable to the responsible public entity, the
507 approval of the responsible public entity. This subparagraph
508 does not require the private entity to complete the design of
509 the qualifying project before the execution of the comprehensive
510 agreement.

511 3. Inspection of the qualifying project by the responsible
512 public entity to ensure that the private entity's activities are
513 acceptable to the public entity in accordance with the
514 comprehensive agreement.

515 4. Maintenance of a policy of public liability insurance,
516 a copy of which must be filed with the responsible public entity
517 and accompanied by proofs of coverage, or self-insurance, each
518 in the form and amount satisfactory to the responsible public
519 entity and reasonably sufficient to ensure coverage of tort
520 liability to the public and employees and to enable the
521 continued operation of the qualifying project.

522 5. Monitoring by the responsible public entity of the
523 maintenance practices to be performed by the private entity to
524 ensure that the qualifying project is properly maintained.



ENROLLED
CS/CS/HB 85, Engrossed 3

2013 Legislature

525 6. Periodic filing by the private entity of the
526 appropriate financial statements that pertain to the qualifying
527 project.

528 7. Procedures that govern the rights and responsibilities
529 of the responsible public entity and the private entity in the
530 course of the construction and operation of the qualifying
531 project and in the event of the termination of the comprehensive
532 agreement or a material default by the private entity. The
533 procedures must include conditions that govern the assumption of
534 the duties and responsibilities of the private entity by an
535 entity that funded, in whole or part, the qualifying project or
536 by the responsible public entity, and must provide for the
537 transfer or purchase of property or other interests of the
538 private entity by the responsible public entity.

539 8. Fees, lease payments, or service payments. In
540 negotiating user fees, the fees must be the same for persons
541 using the facility under like conditions and must not materially
542 discourage use of the qualifying project. The execution of the
543 comprehensive agreement or a subsequent amendment is conclusive
544 evidence that the fees, lease payments, or service payments
545 provided for in the comprehensive agreement comply with this
546 section. Fees or lease payments established in the comprehensive
547 agreement as a source of revenue may be in addition to, or in
548 lieu of, service payments.

549 9. Duties of the private entity, including the terms and
550 conditions that the responsible public entity determines serve
551 the public purpose of this section.

552 (b) The comprehensive agreement may include:



ENROLLED
CS/CS/HB 85, Engrossed 3

2013 Legislature

553 | 1. An agreement by the responsible public entity to make
554 | grants or loans to the private entity from amounts received from
555 | the federal, state, or local government or an agency or
556 | instrumentality thereof.

557 | 2. A provision under which each entity agrees to provide
558 | notice of default and cure rights for the benefit of the other
559 | entity, including, but not limited to, a provision regarding
560 | unavoidable delays.

561 | 3. A provision that terminates the authority and duties of
562 | the private entity under this section and dedicates the
563 | qualifying project to the responsible public entity or, if the
564 | qualifying project was initially dedicated by an affected local
565 | jurisdiction, to the affected local jurisdiction for public use.

566 | (10) FEES.—An agreement entered into pursuant to this
567 | section may authorize the private entity to impose fees to
568 | members of the public for the use of the facility. The following
569 | provisions apply to the agreement:

570 | (a) The responsible public entity may develop new
571 | facilities or increase capacity in existing facilities through
572 | agreements with public-private partnerships.

573 | (b) The public-private partnership agreement must ensure
574 | that the facility is properly operated, maintained, or improved
575 | in accordance with standards set forth in the comprehensive
576 | agreement.

577 | (c) The responsible public entity may lease existing fee-
578 | for-use facilities through a public-private partnership
579 | agreement.



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

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

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

585 (11) FINANCING.—

586 (a) A private entity may enter into a private-source
587 financing agreement between financing sources and the private
588 entity. A financing agreement and any liens on the property or
589 facility must be paid in full at the applicable closing that
590 transfers ownership or operation of the facility to the
591 responsible public entity at the conclusion of the term of the
592 comprehensive agreement.

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

596 (c) The responsible public entity may use innovative
597 finance techniques associated with a public-private partnership
598 under this section, including, but not limited to, federal loans
599 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
600 and hedges against inflation from commercial banks or other
601 private sources. In addition, the responsible public entity may
602 provide its own capital or operating budget to support a
603 qualifying project. The budget may be from any legally
604 permissible funding sources of the responsible public entity,
605 including the proceeds of debt issuances. A responsible public
606 entity may use the model financing agreement provided in s.
607 489.145(6) for its financing of a facility owned by a



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

608 responsible public entity. A financing agreement may not require
609 the responsible public entity to indemnify the financing source,
610 subject the responsible public entity's facility to liens in
611 violation of s. 11.066(5), or secure financing by the
612 responsible public entity with a pledge of security interest,
613 and any such provision is void.

614 (d) A responsible public entity shall appropriate on a
615 priority basis as required by the comprehensive agreement a
616 contractual payment obligation, annual or otherwise, from the
617 enterprise or other government fund from which the qualifying
618 projects will be funded. This required payment obligation must
619 be appropriated before other noncontractual obligations payable
620 from the same enterprise or other government fund.

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

622 (a) The private entity shall:

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

626 2. Maintain, or provide by contract for the maintenance or
627 improvement of, the qualifying project if required by the
628 comprehensive agreement.

629 3. Cooperate with the responsible public entity in making
630 best efforts to establish interconnection between the qualifying
631 project and any other facility or infrastructure as requested by
632 the responsible public entity in accordance with the provisions
633 of the comprehensive agreement.

634 4. Comply with the comprehensive agreement and any lease
635 or service contract.



ENROLLED
CS/CS/HB 85, Engrossed 3

2013 Legislature

636 (b) Each private facility that is constructed pursuant to
637 this section must comply with the requirements of federal,
638 state, and local laws; state, regional, and local comprehensive
639 plans; the responsible public entity's rules, procedures, and
640 standards for facilities; and such other conditions that the
641 responsible public entity determines to be in the public's best
642 interest and that are included in the comprehensive agreement.

643 (c) The responsible public entity may provide services to
644 the private entity. An agreement for maintenance and other
645 services entered into pursuant to this section must provide for
646 full reimbursement for services rendered for qualifying
647 projects.

648 (d) A private entity of a qualifying project may provide
649 additional services for the qualifying project to the public or
650 to other private entities if the provision of additional
651 services does not impair the private entity's ability to meet
652 its commitments to the responsible public entity pursuant to the
653 comprehensive agreement.

654 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
655 expiration or termination of a comprehensive agreement, the
656 responsible public entity may use revenues from the qualifying
657 project to pay current operation and maintenance costs of the
658 qualifying project. If the private entity materially defaults
659 under the comprehensive agreement, the compensation that is
660 otherwise due to the private entity is payable to satisfy all
661 financial obligations to investors and lenders on the qualifying
662 project in the same way that is provided in the comprehensive
663 agreement or any other agreement involving the qualifying



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

664 project, if the costs of operating and maintaining the
665 qualifying project are paid in the normal course. Revenues in
666 excess of the costs for operation and maintenance costs may be
667 paid to the investors and lenders to satisfy payment obligations
668 under their respective agreements. A responsible public entity
669 may terminate with cause and without prejudice a comprehensive
670 agreement and may exercise any other rights or remedies that may
671 be available to it in accordance with the provisions of the
672 comprehensive agreement. The full faith and credit of the
673 responsible public entity may not be pledged to secure the
674 financing of the private entity. The assumption of the
675 development or operation of the qualifying project does not
676 obligate the responsible public entity to pay any obligation of
677 the private entity from sources other than revenues from the
678 qualifying project unless stated otherwise in the comprehensive
679 agreement.

680 (14) SOVEREIGN IMMUNITY.—This section does not waive the
681 sovereign immunity of a responsible public entity, an affected
682 local jurisdiction, or an officer or employee thereof with
683 respect to participation in, or approval of, any part of a
684 qualifying project or its operation, including, but not limited
685 to, interconnection of the qualifying project with any other
686 infrastructure or project. A county or municipality in which a
687 qualifying project is located possesses sovereign immunity with
688 respect to the project, including, but not limited to, its
689 design, construction, and operation.

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



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

692 section shall be construed as cumulative and supplemental to any
693 other authority or power vested in or exercised by the governing
694 board of a county, district, or municipal hospital or health
695 care system including those contained in acts of the Legislature
696 establishing such public hospital boards or s. 155.40. This
697 section does not affect any agreement or existing relationship
698 with a supporting organization involving such governing board or
699 system in effect as of January 1, 2013.

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

703 (b) Except as otherwise provided in this section, this
704 section does not amend existing laws by granting additional
705 powers to, or further restricting, a local governmental entity
706 from regulating and entering into cooperative arrangements with
707 the private sector for the planning, construction, or operation
708 of a facility.

709 (c) This section does not waive any requirement of s.
710 287.055.

711 Section 3. Section 336.71, Florida Statutes, is created to
712 read:

713 336.71 Public-private cooperation in construction of
714 county roads.-

715 (1) If a county receives a proposal, solicited or
716 unsolicited, from a private entity seeking to construct, extend,
717 or improve a county road or portion thereof, the county may
718 enter into an agreement with the private entity for completion
719 of the road construction project, which agreement may provide



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

720 for payment to the private entity, from public funds, if the
721 county conducts a noticed public hearing and finds that the
722 proposed county road construction project:

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

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

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

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

731 (e) Would result in a financial benefit to the public by
732 completing the subject project at a cost to the public
733 significantly lower than if the project were constructed by the
734 county using the normal procurement process.

735 (2) The notice for the public hearing provided for in
736 subsection (1) must be published at least 14 days before the
737 date of the public meeting at which the governing board takes
738 final action. The notice must identify the project, the
739 estimated cost of the project, and specify that the purpose for
740 the public meeting is to consider whether it is in the public's
741 best interest to accept the proposal and enter into an agreement
742 pursuant thereto. The determination of cost savings pursuant to
743 paragraph (1)(e) must be supported by a professional engineer's
744 cost estimate made available to the public at least 14 days
745 before the public meeting and placed in the record for that
746 meeting.

747 (3) If the process in subsection (1) is followed, the



ENROLLED

CS/CS/HB 85, Engrossed 3

2013 Legislature

748 project and agreement are exempt from s. 255.20 pursuant to s.
 749 255.20(1)(c)11.

750 (4) Except as otherwise expressly provided in this
 751 section, this section does not affect existing law by granting
 752 additional powers to or imposing further restrictions on local
 753 government entities.

754 Section 4. Paragraph (d) of subsection (2) of section
 755 348.754, Florida Statutes, is amended to read:

756 348.754 Purposes and powers.—

757 (2) The authority is hereby granted, and shall have and
 758 may exercise all powers necessary, appurtenant, convenient or
 759 incidental to the carrying out of the aforesaid purposes,
 760 including, but without being limited to, the following rights
 761 and powers:

762 (d) To enter into and make leases for terms not exceeding
 763 99 ~~40~~ years, as either lessee or lessor, in order to carry out
 764 the right to lease as set forth in this part.

765 Section 5. This act shall take effect July 1, 2013.