



210420

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2013	.	
	.	
	.	
	.	

---

---

The Committee on Governmental Oversight and Accountability  
(Benacquisto) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

287.05712 Public-private partnerships.-

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

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

(b) "Develop" means to plan, design, finance, lease,



210420

13 acquire, install, construct, or expand.

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

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

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

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

25 (g) "Private entity" means any natural person, corporation,  
26 general partnership, limited liability company, limited  
27 partnership, joint venture, business trust, public-benefit  
28 corporation, nonprofit entity, or other private business entity.

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

33 (i) "Qualifying project" means:

34 1. A facility or project that serves a public purpose,  
35 including, but not limited to, any ferry or mass transit  
36 facility, vehicle parking facility, airport or seaport facility,  
37 rail facility or project, fuel supply facility, oil or gas  
38 pipeline, medical or nursing care facility, recreational  
39 facility, sporting or cultural facility, or educational facility  
40 or other building or facility that is used or will be used by a  
41 public educational institution, or any other public facility or



210420

42 infrastructure that is used or will be used by the public at  
43 large or in support of an accepted public purpose or activity;

44 2. An improvement, including equipment, of a building that  
45 will be principally used by a public entity or the public at  
46 large or that supports a service delivery system in the public  
47 sector; or

48 3. A water, wastewater, or surface water management  
49 facility or other related infrastructure.

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

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

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

64 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds  
65 that there is a public need for the construction or upgrade of  
66 facilities that are used predominantly for public purposes and  
67 that it is in the public's interest to provide for the  
68 construction or upgrade of such facilities.

69 (a) The Legislature also finds that:

70 1. There is a public need for timely and cost-effective



210420

71 acquisition, design, construction, improvement, renovation,  
72 expansion, equipping, maintenance, operation, implementation, or  
73 installation of projects serving a public purpose, including  
74 educational facilities, transportation facilities, water or  
75 wastewater management facilities and infrastructure, technology  
76 infrastructure, roads, highways, bridges, and other public  
77 infrastructure and government facilities within the state which  
78 serve a public need and purpose, and that such public need may  
79 not be wholly satisfied by existing procurement methods.

80 2. There are inadequate resources to develop new  
81 educational facilities, transportation facilities, water or  
82 wastewater management facilities and infrastructure, technology  
83 infrastructure, roads, highways, bridges, and other public  
84 infrastructure and government facilities for the benefit of  
85 residents of this state, and that a public-private partnership  
86 has demonstrated that it can meet the needs by improving the  
87 schedule for delivery, lowering the cost, and providing other  
88 benefits to the public.

89 3. There may be state and federal tax incentives that  
90 promote partnerships between public and private entities to  
91 develop and operate qualifying projects.

92 4. A procurement under this section serves the public  
93 purpose of this section if such procurement facilitates the  
94 timely development or operation of a qualifying project.

95 (b) It is the intent of the Legislature to encourage  
96 investment in the state by private entities; to facilitate  
97 various bond financing mechanisms, private capital, and other  
98 funding sources for the development and operation of qualifying  
99 projects, including expansion and acceleration of such financing



210420

100 to meet the public need; and to provide the greatest possible  
101 flexibility to public and private entities contracting for the  
102 provision of public services.

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

104 (a) The Partnership for Public Facilities and  
105 Infrastructure Act Guidelines Task Force is created to establish  
106 guidelines for public entities on the types of factors public  
107 entities should review and consider when processing requests for  
108 public-private partnership projects pursuant to this section,  
109 including consistent requirements for private entities seeking  
110 to participate in the construction or development of a  
111 qualifying project throughout the state.

112 (b) The task force shall consist of nine members, as  
113 follows:

114 1. One member of the Senate, appointed by the President of  
115 the Senate.

116 2. One member of the House of Representatives, appointed by  
117 the Speaker of the House of Representatives.

118 3. The Secretary of Management Services or his or her  
119 designee.

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

121 a. One county government official.

122 b. One municipal government official.

123 c. One district school board member.

124 d. Three representatives of the business community.

125 (c) Task force members shall serve for a term of 2 years  
126 each and shall elect a chair and a vice chair. The task force  
127 shall meet as necessary. Administrative and technical support  
128 shall be provided by the department. Task force members shall



210420

129 serve without compensation, but are entitled to reimbursement  
130 for per diem and travel expenses pursuant to s. 112.061. The  
131 task force shall terminate on July 1, 2015.

132 (d) The task force shall provide guidelines to public  
133 entities no later than July 1, 2014. The guidelines shall  
134 include:

135 1. Opportunities for competition through public notice and  
136 the availability of representatives of the responsible public  
137 entity to meet with private entities considering a proposal.

138 2. Reasonable criteria for choosing among competing  
139 proposals.

140 3. Suggested timelines for selecting proposals and  
141 negotiating an interim or comprehensive agreement.

142 4. Authorization for accelerated selection and review and  
143 documentation timelines for proposals involving a qualifying  
144 project that the responsible public entity deems a priority.

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

149 6. Consideration of the nonfinancial benefits of a proposed  
150 qualifying project.

151 7. A mechanism for the appropriating body to review a  
152 proposed comprehensive agreement before execution.

153 8. Analysis of the adequacy of the information released  
154 when seeking competing proposals, and providing for the  
155 enhancement of that information, if deemed necessary, to  
156 encourage competition, as well as establishing standards to  
157 maintain the confidentiality of financial and proprietary terms



210420

158 of an unsolicited proposal, which shall be disclosed only in  
159 accordance with the bidding procedures of competing proposals.

160 9. Authority for the responsible public entity to engage  
161 the services of qualified professionals, which may include a  
162 Florida-registered professional or a certified public  
163 accountant, not otherwise employed by the responsible public  
164 entity, to provide an independent analysis regarding the  
165 specifics, advantages, disadvantages, and long-term and short-  
166 term costs of a request by a private entity for approval of a  
167 qualifying project, unless the governing body of the public  
168 entity determines that such analysis should be performed by  
169 employees of the public entity. Professional services as defined  
170 in s. 287.055 must be engaged pursuant to s. 287.055.

171 (e) The establishment of guidelines pursuant to this  
172 section by the task force or the adoption of such guidelines by  
173 a public entity is not required for the public entity to request  
174 or receive proposals for a qualifying project or to enter into a  
175 comprehensive agreement for a qualifying project. A public  
176 entity may adopt guidelines before the establishment of  
177 guidelines by the task force, which may remain in effect as long  
178 as such guidelines are not inconsistent with the guidelines  
179 established by the task force. A guideline that is inconsistent  
180 with the guidelines of the task force must be amended as  
181 necessary to maintain consistency with the task force  
182 guidelines.

183 (4) PROCUREMENT PROCEDURES.—A responsible public entity may  
184 receive unsolicited proposals or may solicit proposals for  
185 qualifying projects and may thereafter enter into an agreement  
186 with a private entity, or a consortium of private entities, for



210420

187 the building, upgrading, operating, ownership, or financing of  
188 facilities.

189 (a) The responsible public entity may establish a  
190 reasonable application fee for the submission of an unsolicited  
191 proposal under this section. The fee must be sufficient to pay  
192 the costs of evaluating the proposal. The responsible public  
193 entity may engage the services of a private consultant to assist  
194 in the evaluation.

195 (b) The responsible public entity may request a proposal  
196 from private entities for a public-private project or, if the  
197 public entity receives an unsolicited proposal, the public  
198 entity shall publish notice in the Florida Administrative  
199 Register and a newspaper of general circulation at least once a  
200 week for 2 weeks stating that the public entity has received a  
201 proposal and will accept other proposals for the same project.  
202 The timeframe within which the public entity may accept other  
203 proposals shall be determined by the public entity on a project-  
204 by-project basis based upon the complexity of the project and  
205 the public benefit to be gained by allowing a longer or shorter  
206 period of time within which other proposals may be received;  
207 however, the timeframe for allowing other proposals must be at  
208 least 21 days, but no more than 120 days, after the initial date  
209 of publication. A copy of the notice must be mailed to each  
210 local government in the affected area. The scope of the proposal  
211 may be publicized for the purpose of soliciting competing  
212 proposals; however, the financial terms of the proposal may not  
213 be disclosed until the terms of all competing bids are  
214 simultaneously disclosed in accordance with the applicable law  
215 governing procurement procedures for the qualifying project.





210420

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

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

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

222       2. Is for a facility that is owned by the responsible  
223 public entity or for a facility for which ownership will be  
224 conveyed to the responsible public entity.

225       3. Has adequate safeguards in place to ensure that  
226 additional costs or service disruptions are not imposed on the  
227 public in the event of material default or cancellation of the  
228 agreement by the responsible public entity.

229       4. Has adequate safeguards in place to ensure that the  
230 responsible public entity or the private entity has the  
231 opportunity to add capacity to the proposed project or other  
232 facilities serving similar predominantly public purposes.

233       5. Will be owned by the responsible public entity upon  
234 completion or termination of the agreement and upon payment of  
235 the amounts financed.

236       (e) Before signing a comprehensive agreement, the  
237 responsible public entity must consider a reasonable finance  
238 plan that is consistent with subsection (11), the project cost,  
239 revenues by source, available financing, major assumptions,  
240 internal rate of return on private investments, if governmental  
241 funds are assumed in order to deliver a cost-feasible project,  
242 and a total cash-flow analysis beginning with the implementation  
243 of the project and extending for the term of the agreement.

244       (f) In considering an unsolicited proposal, the responsible



210420

245 public entity may require from the private entity a technical  
246 study prepared by a nationally recognized expert with experience  
247 in preparing analysis for bond rating agencies. In evaluating  
248 the technical study, the responsible public entity may rely upon  
249 internal staff reports prepared by personnel familiar with the  
250 operation of similar facilities or the advice of external  
251 advisors or consultants who have relevant experience.

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

256 (a) A description of the qualifying project, including the  
257 conceptual design of the facilities or a conceptual plan for the  
258 provision of services, and a schedule for the initiation and  
259 completion of the qualifying project.

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

263 (c) A description of the private entity's general plans for  
264 financing the qualifying project, including the sources of the  
265 private entity's funds and the identity of any dedicated revenue  
266 source or proposed debt or equity investment on behalf of the  
267 private entity.

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

270 (e) The proposed user fees, lease payments, or other  
271 service payments over the term of a comprehensive agreement, and  
272 the methodology for and circumstances that would allow changes  
273 to the user fees, lease payments, and other service payments



210420

274 over time.

275 (f) Additional material or information that the responsible  
276 public entity reasonably requests.

277 (6) PROJECT QUALIFICATION AND PROCESS.-

278 (a) The private entity must meet the minimum standards  
279 contained in the responsible public entity's guidelines for  
280 qualifying professional services and contracts for traditional  
281 procurement projects.

282 (b) The responsible public entity must:

283 1. Ensure that provision is made for the private entity's  
284 performance and payment of subcontractors, including, but not  
285 limited to, surety bonds, letters of credit, parent company  
286 guarantees, and lender and equity partner guarantees. For the  
287 components of the qualifying project which involve construction  
288 performance and payment, bonds are required and are subject to  
289 the recordation, notice, suit limitation, and other requirements  
290 of s. 255.05.

291 2. Ensure the most efficient pricing of the security  
292 package that provides for the performance and payment of  
293 subcontractors.

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

297 (c) After the public notification period has expired in the  
298 case of an unsolicited proposal, the responsible public entity  
299 shall rank the proposals received in order of preference. In  
300 ranking the proposals, the responsible public entity may  
301 consider factors that include, but are not limited to,  
302 professional qualifications, general business terms, innovative



210420

303 design techniques or cost-reduction terms, and finance plans. If  
304 the responsible public entity is not satisfied with the results  
305 of the negotiations, the responsible public entity may terminate  
306 negotiations with the proposer and negotiate with the second-  
307 ranked or subsequent-ranked firms in the order consistent with  
308 this procedure. If only one proposal is received, the  
309 responsible public entity may negotiate in good faith, and if  
310 the public entity is not satisfied with the results of the  
311 negotiations, the public entity may terminate negotiations with  
312 the proposer. Notwithstanding this paragraph, the responsible  
313 public entity may reject all proposals at any point in the  
314 process until a contract with the proposer is executed.

315 (d) The responsible public entity shall perform an  
316 independent analysis of the proposed public-private partnership  
317 which demonstrates the cost-effectiveness and overall public  
318 benefit before the procurement process is initiated or before  
319 the contract is awarded.

320 (e) The responsible public entity may approve the  
321 development or operation of an educational facility, a  
322 transportation facility, a water or wastewater management  
323 facility or related infrastructure, a technology infrastructure  
324 or other public infrastructure, or a government facility needed  
325 by the responsible public entity as a qualifying project, or the  
326 design or equipping of a qualifying project that is developed or  
327 operated, if:

328 1. There is a public need for or benefit derived from a  
329 project of the type that the private entity proposes as the  
330 qualifying project.

331 2. The estimated cost of the qualifying project is



210420

332 reasonable in relation to similar facilities.

333 3. The private entity's plans will result in the timely  
334 acquisition, design, construction, improvement, renovation,  
335 expansion, equipping, maintenance, or operation of the  
336 qualifying project.

337 (f) The responsible public entity may charge a reasonable  
338 fee to cover the costs of processing, reviewing, and evaluating  
339 the request, including, but not limited to, reasonable attorney  
340 fees and fees for financial and technical advisors or  
341 consultants and for other necessary advisors or consultants.

342 (g) Upon approval of a qualifying project, the responsible  
343 public entity shall establish a date for the commencement of  
344 activities related to the qualifying project. The responsible  
345 public entity may extend the commencement date.

346 (h) Approval of a qualifying project by the responsible  
347 public entity is subject to entering into a comprehensive  
348 agreement with the private entity.

349 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

350 (a) The responsible public entity must notify each affected  
351 local jurisdiction by furnishing a copy of the proposal to each  
352 affected local jurisdiction when considering a proposal for a  
353 qualifying project.

354 (b) Each affected local jurisdiction that is not a  
355 responsible public entity for the respective qualifying project  
356 may, within 60 days after receiving the notice, submit in  
357 writing any comments to the responsible public entity and  
358 indicate whether the facility is incompatible with the local  
359 comprehensive plan, the local infrastructure development plan,  
360 the capital improvements budget, or other governmental spending



210420

361 plan. The responsible public entity shall consider the comments  
362 of the affected local jurisdiction before entering into a  
363 comprehensive agreement with a private entity. If an affected  
364 local jurisdiction fails to respond to the responsible public  
365 entity within the time provided in this paragraph, the  
366 nonresponse is deemed an acknowledgement by the affected local  
367 jurisdiction that the qualifying project is compatible with the  
368 local comprehensive plan, the local infrastructure development  
369 plan, the capital improvements budget, or other governmental  
370 spending plan.

371 (8) INTERIM AGREEMENT.—Before or in connection with the  
372 negotiation of a comprehensive agreement, the public entity may  
373 enter into an interim agreement with the private entity  
374 proposing the development or operation of the qualifying  
375 project. An interim agreement does not obligate the responsible  
376 public entity to enter into a comprehensive agreement. The  
377 interim agreement is discretionary with the parties and is not  
378 required on a qualifying project for which the parties may  
379 proceed directly to a comprehensive agreement without the need  
380 for an interim agreement. An interim agreement must be limited  
381 to provisions that:

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

389 (b) Establish the process and timing of the negotiation of



210420

390 the comprehensive agreement.

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

395 (9) COMPREHENSIVE AGREEMENT.—

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

400 1. The delivery of performance and payment bonds, letters  
401 of credit, or other security acceptable to the responsible  
402 public entity in connection with the development or operation of  
403 the qualifying project in the form and amount satisfactory to  
404 the responsible public entity. For the components of the  
405 qualifying project which involve construction, the form and  
406 amount of the bonds must comply with s. 255.05.

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

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

418 4. The maintenance of a policy of public liability



210420

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

425 5. The monitoring by the responsible public entity of the  
426 maintenance practices to be performed by the private entity to  
427 ensure that the qualifying project is properly maintained.

428 6. The periodic filing by the private entity of the  
429 appropriate financial statements that pertain to the qualifying  
430 project.

431 7. The procedures that govern the rights and  
432 responsibilities of the responsible public entity and the  
433 private entity in the course of the construction and operation  
434 of the qualifying project and in the event of the termination of  
435 the comprehensive agreement or a material default by the private  
436 entity. The procedures must include conditions that govern the  
437 assumption of the duties and responsibilities of the private  
438 entity by an entity that funded, in whole or part, the  
439 qualifying project or by the responsible public entity, and must  
440 provide for the transfer or purchase of property or other  
441 interests of the private entity by the responsible public  
442 entity.

443 8. In negotiating user fees, the fees must be the same for  
444 persons using the facility under like conditions and must not  
445 materially discourage use of the qualifying project. The  
446 execution of the comprehensive agreement or a subsequent  
447 amendment is conclusive evidence that the fees, lease payments,





210420

448 or service payments provided for in the comprehensive agreement  
449 comply with this section. Fees or lease payments established in  
450 the comprehensive agreement as a source of revenue may be in  
451 addition to, or in lieu of, service payments.

452 9. The duties of the private entity, including the terms  
453 and conditions that the responsible public entity determines  
454 serve the public purpose of this section.

455 (b) The comprehensive agreement may include:

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

460 2. A provision under which each entity agrees to provide  
461 notice of default and cure rights for the benefit of the other  
462 entity, including, but not limited to, a provision regarding  
463 unavoidable delays.

464 3. A provision that terminates the authority and duties of  
465 the private entity under this section and dedicates the  
466 qualifying project to the responsible public entity or, if the  
467 qualifying project was initially dedicated by an affected local  
468 jurisdiction, to the affected local jurisdiction for public use.

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

473 (a) The responsible public entity may develop new  
474 facilities or increase capacity in existing facilities through  
475 agreements with public-private partnerships.

476 (b) The public-private partnership agreement must ensure



210420

477 that the facility is properly operated, maintained, or improved  
478 in accordance with standards set forth in the comprehensive  
479 agreement.

480 (c) The responsible public entity may lease existing fee-  
481 for-use facilities through a public-private partnership  
482 agreement.

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

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

488 (11) FINANCING.—

489 (a) A private entity may enter into a private-source  
490 financing agreement between financing sources and the private  
491 entity. A financing agreement and any liens on the property or  
492 facility must be paid in full at the applicable closing that  
493 transfers ownership or operation of the facility to the  
494 responsible public entity at the conclusion of the term of the  
495 comprehensive agreement.

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

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



210420

506 qualifying project. The budget may be from any legally  
507 permissible funding sources of the responsible public entity,  
508 including the proceeds of debt issuances. A responsible public  
509 entity may use the model financing agreement provided in s.  
510 489.145(6) for its financing of a facility owned by a  
511 responsible public entity. A financing agreement may not require  
512 the responsible public entity to indemnify the financing source,  
513 subject the responsible public entity's facility to liens in  
514 violation of s. 11.066(5), or secure financing by the  
515 responsible public entity with a pledge of security interest,  
516 and any such provision is void.

517 (d) A responsible public entity shall appropriate on a  
518 priority basis as required by the comprehensive agreement a  
519 contractual payment obligation, annual or otherwise, from the  
520 enterprise or other government fund from which the qualifying  
521 projects will be funded. This required payment obligation must  
522 be appropriated before other noncontractual obligations payable  
523 from the same enterprise or other government fund.

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

525 (a) The private entity shall:

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

529 2. Maintain, or provide by contract for the maintenance or  
530 improvement of, the qualifying project if required by the  
531 comprehensive agreement.

532 3. Cooperate with the responsible public entity in making  
533 best efforts to establish interconnection between the qualifying  
534 project and any other facility or infrastructure as requested by



210420

535 the responsible public entity in accordance with the provisions  
536 of the comprehensive agreement.

537 4. Comply with the comprehensive agreement and any lease or  
538 service contract.

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

546 (c) The responsible public entity may provide services to  
547 the private entity. An agreement for maintenance and other  
548 services entered into pursuant to this section must provide for  
549 full reimbursement for services rendered for qualifying  
550 projects.

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

557 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the  
558 expiration or termination of a comprehensive agreement, the  
559 responsible public entity may use revenues from the qualifying  
560 project to pay current operation and maintenance costs of the  
561 qualifying project. If the private entity materially defaults  
562 under the comprehensive agreement, the compensation that is  
563 otherwise due to the private entity is payable to satisfy all



210420

564 financial obligations to investors and lenders on the qualifying  
565 project in the same way that is provided in the comprehensive  
566 agreement or any other agreement involving the qualifying  
567 project, if the costs of operating and maintaining the  
568 qualifying project are paid in the normal course. Revenues in  
569 excess of the costs for operation and maintenance costs may be  
570 paid to the investors and lenders to satisfy payment obligations  
571 under their respective agreements. A responsible public entity  
572 may terminate with cause and without prejudice a comprehensive  
573 agreement and may exercise any other rights or remedies that may  
574 be available to it in accordance with the provisions of the  
575 comprehensive agreement. The full faith and credit of the  
576 responsible public entity may not be pledged to secure the  
577 financing of the private entity. The assumption of the  
578 development or operation of the qualifying project does not  
579 obligate the responsible public entity to pay any obligation of  
580 the private entity from sources other than revenues from the  
581 qualifying project unless stated otherwise in the comprehensive  
582 agreement.

583 (14) SOVEREIGN IMMUNITY.—This section does not waive the  
584 sovereign immunity of a responsible public entity, an affected  
585 local jurisdiction, or an officer or employee thereof with  
586 respect to participation in, or approval of, any part of a  
587 qualifying project or its operation, including, but not limited  
588 to, interconnection of the qualifying project with any other  
589 infrastructure or project. A county or municipality in which a  
590 qualifying project is located possesses sovereign immunity with  
591 respect to the project, including, but not limited to, its  
592 design, construction, and operation.



210420

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

595           (a) This section does not limit a state agency or political  
596 subdivision of the state in the acquisition, design, or  
597 construction of a public project pursuant to other statutory  
598 authority.

599           (b) Except as otherwise provided in this section, this  
600 section does not amend existing laws by granting additional  
601 powers to, or further restricting, a local governmental entity  
602 from regulating and entering into cooperative arrangements with  
603 the private sector for the planning, construction, or operation  
604 of a facility.

605           (c) This section does not waive any requirement of s.  
606 287.055.

607           Section 2. Section 336.71, Florida Statutes, is created to  
608 read:

609           336.71 Public-private transportation facilities.—

610           (1) A county may receive or solicit proposals and enter  
611 into agreements with private entities or consortia thereof to  
612 build, operate, own, or finance highways, bridges, multimodal  
613 transportation systems, transit-oriented development nodes,  
614 transit stations, and related transportation facilities located  
615 solely within the county, including municipalities therein.

616 Before approval, the county must determine that a proposed  
617 project:

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

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



210420

622 (c) Would have adequate safeguards to ensure that  
623 additional costs or unreasonable service disruptions are not  
624 realized by the traveling public and citizens of the state in  
625 the event of default or cancellation of the agreement by the  
626 county.

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

629 (2) The county shall ensure that all reasonable costs to  
630 the county related to transportation facilities that are not  
631 part of the county road system are borne by the private entity  
632 that develops or operates the facilities. The county shall also  
633 ensure that all reasonable costs to the county and substantially  
634 affected local governments and utilities related to the private  
635 transportation facility are borne by the private entity for  
636 transportation facilities that are owned by private entities.  
637 For projects on the county road system or that provide increased  
638 mobility on the county road system, the county may use county  
639 resources to participate in funding and financing the project  
640 pursuant to the county's financial policies and ordinances.

641 (3) The county may request proposals and receive  
642 unsolicited proposals for public-private transportation  
643 facilities. Upon a determination by the governing body of the  
644 county to issue a request for proposals, the governing body of  
645 the county must publish a notice of the request for proposals in  
646 a newspaper of general circulation in the county at least once a  
647 week for 2 weeks. Upon receipt of an unsolicited proposal, the  
648 governing body of the county must publish a notice in a  
649 newspaper of general circulation in the county at least once a  
650 week for 2 weeks stating that it has received the proposal and



210420

651 will accept, for 60 days after the initial date of publication,  
652 other proposals for the same project purpose. A copy of the  
653 notice must be mailed to the governing body of each local  
654 government in the affected area. After the public notification  
655 period has expired, the governing body of the county shall rank  
656 the proposals in order of preference. In ranking the proposals,  
657 the governing body of the county shall consider professional  
658 qualifications, general business terms, innovative engineering  
659 or cost-reduction terms, finance plans, and the need for county  
660 funds to complete the project. If the governing body of the  
661 county is not satisfied with the results of the negotiations, it  
662 may terminate negotiations with the proposer. If negotiations  
663 are unsuccessful, the governing body of the county may negotiate  
664 with the private entity that has the next highest ranked  
665 proposal, using the same procedure. If only one proposal is  
666 received, the governing body of the county may negotiate in good  
667 faith and may, if not satisfied with the results, terminate  
668 negotiations with the proposer. The governing body of the county  
669 may, at its discretion, reject all proposals at any point in the  
670 process up to completion of a contract with the proposer. Any  
671 private entity submitting an unsolicited proposal shall submit  
672 with the proposal a fee of \$25,000 to be used by the governing  
673 body of the county for the costs associated with the review and  
674 analysis of the proposal, and such entity shall remain liable  
675 for any additional costs and expenses incurred by the governing  
676 body of the county for such review and analysis.

677 (4) Agreements entered into pursuant to this section may  
678 authorize the county or the private project owner, lessee, or  
679 operator to impose, collect, and enforce tolls or fares for the





210420

680 use of the transportation facility. However, the amount and use  
681 of toll or fare revenue shall be regulated by the county to  
682 avoid unreasonable costs to users of the facility.

683 (5) Each public-private transportation facility constructed  
684 pursuant to this section shall comply with all requirements of  
685 federal, state, and local laws; state, regional, and local  
686 comprehensive plans; the county's rules, policies, procedures,  
687 and standards for transportation facilities; and any other  
688 conditions that the county determines to be in the best interest  
689 of the public.

690 (6) The governing body of the county may exercise any of  
691 its powers, including eminent domain, to facilitate the  
692 development and construction of transportation projects pursuant  
693 to this section. The governing body of the county may pay all or  
694 part of the cost of operating and maintaining the facility and  
695 may provide services to the private entity, for which services  
696 it shall receive full or partial reimbursement.

697 (7) Except as otherwise provided in this section, this  
698 section is not intended to amend existing law by granting  
699 additional powers to or imposing further restrictions on local  
700 governmental entities with regard to regulating and entering  
701 into cooperative arrangements with the private sector for the  
702 planning, construction, and operation of transportation  
703 facilities.

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

706 (9) This section does not authorize a county or counties to  
707 enter into agreements with private entities or consortia thereof  
708 to build, operate, own, or finance a transportation facility



210420

709 that would extend beyond the geographical boundaries of a single  
710 county.

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

712

713 ===== T I T L E A M E N D M E N T =====

714 And the title is amended as follows:

715 Delete everything before the enacting clause  
716 and insert:

717 A bill to be entitled  
718 An act relating to public-private partnerships;  
719 creating s. 287.05712, F.S.; providing definitions;  
720 providing legislative findings and intent relating to  
721 the construction or improvement by private entities of  
722 facilities used predominantly for a public purpose;  
723 creating a task force to establish specified  
724 guidelines; providing procurement procedures;  
725 providing requirements for project approval; providing  
726 project qualifications and process; providing for  
727 notice to affected local jurisdictions; providing for  
728 interim and comprehensive agreements between a public  
729 and a private entity; providing for use fees;  
730 providing for financing sources for certain projects  
731 by a private entity; providing powers and duties of  
732 private entities; providing for expiration or  
733 termination of agreements; providing for the  
734 applicability of sovereign immunity for public  
735 entities with respect to qualified projects; providing  
736 for construction of the act; creating s. 336.71, F.S.;

737 authorizing counties to enter into public-private



210420

738 partnership agreements for construction, operation,  
739 ownership, and financing of transportation facilities;  
740 providing requirements and limitations for such  
741 agreements; providing procurement procedures;  
742 requiring a fee for certain proposals; providing an  
743 effective date.