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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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05/01/2013 09:39 AM

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Senator Diaz de la Portilla moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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



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14 any municipal or county charter, upon compliance with this
15 section.

16 (1) The contractor or supplier must meet the following
17 conditions:

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

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

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

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

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

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

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

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



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43 (d) ~~(b)~~ Payment must be production-based.
44 (e) ~~(e)~~ The contract will terminate should the contractor or
45 supplier no longer qualify under subsection (1).
46 (f) ~~(d)~~ The supplier or contractor has instituted a drug-
47 free workplace program substantially in compliance with the
48 provisions of s. 287.087.
49 (g) ~~(e)~~ The contractor or supplier agrees to be subject to
50 review and audit at the discretion of the Auditor General in
51 order to ensure that the contractor or supplier has complied
52 with this section.
53 (3) A ~~No~~ contract under this section may not exceed the
54 annual sum of \$250,000.
55 (4) Should a court find that a contract purporting to have
56 been entered into pursuant to this section does not so qualify,
57 the court may order that the contract be terminated on
58 reasonable notice to the parties. The court shall not require
59 disgorgement of any moneys earned for goods or services actually
60 delivered or supplied.
61 (5) Nothing in this section shall excuse any person from
62 compliance with ss. 287.132-287.134.
63 Section 2. Section 287.05712, Florida Statutes, is created
64 to read:
65 287.05712 Public-private partnerships.-
66 (1) DEFINITIONS.-As used in this section, the term:
67 (a) "Affected local jurisdiction" means a county,
68 municipality, or special district in which all or a portion of a
69 qualifying project is located.
70 (b) "Develop" means to plan, design, finance, lease,
71 acquire, install, construct, or expand.



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

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

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

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

83 (g) "Private entity" means any natural person, corporation,
84 general partnership, limited liability company, limited
85 partnership, joint venture, business trust, public-benefit
86 corporation, nonprofit entity, or other private business entity.

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

91 (i) "Qualifying project" means:

92 1. A facility or project that serves a public purpose,
93 including, but not limited to, any ferry or mass transit
94 facility, vehicle parking facility, airport or seaport facility,
95 rail facility or project, fuel supply facility, oil or gas
96 pipeline, medical or nursing care facility, recreational
97 facility, sporting or cultural facility, or educational facility
98 or other building or facility that is used or will be used by a
99 public educational institution, or any other public facility or
100 infrastructure that is used or will be used by the public at



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101 large or in support of an accepted public purpose or activity;

102 2. An improvement, including equipment, of a building that
103 will be principally used by a public entity or the public at
104 large or that supports a service delivery system in the public
105 sector;

106 3. A water, wastewater, or surface water management
107 facility or other related infrastructure; or

108 4. Notwithstanding any provision of this section, for
109 projects that involve a facility owned or operated by the
110 governing board of a county, district, or municipal hospital or
111 health care system, or projects that involve a facility owned or
112 operated by a municipal electric utility, only those projects
113 that the governing board designates as qualifying projects
114 pursuant to this section.

115 (j) "Responsible public entity" means a county,
116 municipality, school board, or any other political subdivision
117 of the state; a public body corporate and politic; or a regional
118 entity that serves a public purpose and is authorized to develop
119 or operate a qualifying project.

120 (k) "Revenues" means the income, earnings, user fees, lease
121 payments, or other service payments relating to the development
122 or operation of a qualifying project, including, but not limited
123 to, money received as grants or otherwise from the Federal
124 Government, a public entity, or an agency or instrumentality
125 thereof in aid of the qualifying project.

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

129 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds



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130 that there is a public need for the construction or upgrade of
131 facilities that are used predominantly for public purposes and
132 that it is in the public's interest to provide for the
133 construction or upgrade of such facilities.

134 (a) The Legislature also finds that:

135 1. There is a public need for timely and cost-effective
136 acquisition, design, construction, improvement, renovation,
137 expansion, equipping, maintenance, operation, implementation, or
138 installation of projects serving a public purpose, including
139 educational facilities, transportation facilities, water or
140 wastewater management facilities and infrastructure, technology
141 infrastructure, roads, highways, bridges, and other public
142 infrastructure and government facilities within the state which
143 serve a public need and purpose, and that such public need may
144 not be wholly satisfied by existing procurement methods.

145 2. There are inadequate resources to develop new
146 educational facilities, transportation facilities, water or
147 wastewater management facilities and infrastructure, technology
148 infrastructure, roads, highways, bridges, and other public
149 infrastructure and government facilities for the benefit of
150 residents of this state, and that a public-private partnership
151 has demonstrated that it can meet the needs by improving the
152 schedule for delivery, lowering the cost, and providing other
153 benefits to the public.

154 3. There may be state and federal tax incentives that
155 promote partnerships between public and private entities to
156 develop and operate qualifying projects.

157 4. A procurement under this section serves the public
158 purpose of this section if such procurement facilitates the



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159 timely development or operation of a qualifying project.

160 (b) It is the intent of the Legislature to encourage
161 investment in the state by private entities; to facilitate
162 various bond financing mechanisms, private capital, and other
163 funding sources for the development and operation of qualifying
164 projects, including expansion and acceleration of such financing
165 to meet the public need; and to provide the greatest possible
166 flexibility to public and private entities contracting for the
167 provision of public services.

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

169 (a) There is created the Partnership for Public Facilities
170 and Infrastructure Act Guidelines Task Force for the purpose of
171 recommending guidelines for the Legislature to consider for
172 purposes of creating a uniform process for establishing public-
173 private partnerships, including the types of factors responsible
174 public entities should review and consider when processing
175 requests for public-private partnership projects pursuant to
176 this section.

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

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

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

182 a. One county government official.

183 b. One municipal government official.

184 c. One district school board member.

185 d. Three representatives of the business community.

186 (c) Task force members must be appointed by July 31, 2013.
187 By August 31, 2013, the task force shall meet to establish



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188 procedures for the conduct of its business and to elect a vice
189 chair. The task force shall meet at the call of the chair. A
190 majority of the members of the task force constitutes a quorum,
191 and a quorum is necessary for the purpose of voting on any
192 action or recommendation of the task force. All meetings shall
193 be held in Tallahassee, unless otherwise decided by the task
194 force, and then no more than two such meetings may be held in
195 other locations for the purpose of taking public testimony.
196 Administrative and technical support shall be provided by the
197 department. Task force members shall serve without compensation
198 and are not entitled to reimbursement for per diem or travel
199 expenses.

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

202 1. Opportunities for competition through public notice and
203 the availability of representatives of the responsible public
204 entity to meet with private entities considering a proposal.

205 2. Reasonable criteria for choosing among competing
206 proposals.

207 3. Suggested timelines for selecting proposals and
208 negotiating an interim or comprehensive agreement.

209 4. If an accelerated selection and review and documentation
210 timelines should be considered for proposals involving a
211 qualifying project that the responsible public entity deems a
212 priority.

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



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

220 7. Current exemptions from public records and public
221 meetings requirements, if any changes to those exemptions are
222 necessary, or if any new exemptions should be created in order
223 to maintain the confidentiality of financial and proprietary
224 information received as part of an unsolicited proposal.

225 8. Recommendations regarding the authority of the
226 responsible public entity to engage the services of qualified
227 professionals, which may include a Florida-registered
228 professional or a certified public accountant, not otherwise
229 employed by the responsible public entity, to provide an
230 independent analysis regarding the specifics, advantages,
231 disadvantages, and long-term and short-term costs of a request
232 by a private entity for approval of a qualifying project, unless
233 the governing body of the public entity determines that such
234 analysis should be performed by employees of the public entity.

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

238 (f) The task force is terminated December 31, 2014. The
239 establishment of guidelines pursuant to this section or the
240 adoption of such guidelines by a responsible public entity is
241 not required for such entity to request or receive proposals for
242 a qualifying project or to enter into a comprehensive agreement
243 for a qualifying project. A responsible public entity may adopt
244 guidelines so long as such guidelines are not inconsistent with
245 this section.



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246 (4) PROCUREMENT PROCEDURES.—A responsible public entity may
247 receive unsolicited proposals or may solicit proposals for
248 qualifying projects and may thereafter enter into an agreement
249 with a private entity, or a consortium of private entities, for
250 the building, upgrading, operating, ownership, or financing of
251 facilities.

252 (a) The responsible public entity may establish a
253 reasonable application fee for the submission of an unsolicited
254 proposal under this section. The fee must be sufficient to pay
255 the costs of evaluating the proposal. The responsible public
256 entity may engage the services of a private consultant to assist
257 in the evaluation.

258 (b) The responsible public entity may request a proposal
259 from private entities for a public-private project or, if the
260 public entity receives an unsolicited proposal for a public-
261 private project and the public entity intends to enter into a
262 comprehensive agreement for the project described in such
263 unsolicited proposal, the public entity shall publish notice in
264 the Florida Administrative Register and a newspaper of general
265 circulation at least once a week for 2 weeks stating that the
266 public entity has received a proposal and will accept other
267 proposals for the same project. The timeframe within which the
268 public entity may accept other proposals shall be determined by
269 the public entity on a project-by-project basis based upon the
270 complexity of the project and the public benefit to be gained by
271 allowing a longer or shorter period of time within which other
272 proposals may be received; however, the timeframe for allowing
273 other proposals must be at least 21 days, but no more than 120
274 days, after the initial date of publication. A copy of the



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275 notice must be mailed to each local government in the affected
276 area.

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

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

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

283 2. Is for a facility that is owned by the responsible
284 public entity or for a facility for which ownership will be
285 conveyed to the responsible public entity.

286 3. Has adequate safeguards in place to ensure that
287 additional costs or service disruptions are not imposed on the
288 public in the event of material default or cancellation of the
289 agreement by the responsible public entity.

290 4. Has adequate safeguards in place to ensure that the
291 responsible public entity or private entity has the opportunity
292 to add capacity to the proposed project or other facilities
293 servicing similar predominantly public purposes.

294 5. Will be owned by the responsible public entity upon
295 completion or termination of the agreement and upon payment of
296 the amounts financed.

297 (e) Before signing a comprehensive agreement, the
298 responsible public entity must consider a reasonable finance
299 plan that is consistent with subsection (11); the project cost;
300 revenues by source; available financing; major assumptions;
301 internal rate of return on private investments, if governmental
302 funds are assumed in order to deliver a cost-feasible project;
303 and a total cash-flow analysis beginning with the implementation



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304 of the project and extending for the term of the agreement.

305 (f) In considering an unsolicited proposal, the responsible
306 public entity may require from the private entity a technical
307 study prepared by a nationally recognized expert with experience
308 in preparing analysis for bond rating agencies. In evaluating
309 the technical study, the responsible public entity may rely upon
310 internal staff reports prepared by personnel familiar with the
311 operation of similar facilities or the advice of external
312 advisors or consultants who have relevant experience.

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

317 (a) A description of the qualifying project, including the
318 conceptual design of the facilities or a conceptual plan for the
319 provision of services, and a schedule for the initiation and
320 completion of the qualifying project.

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

324 (c) A description of the private entity's general plans for
325 financing the qualifying project, including the sources of the
326 private entity's funds and the identity of any dedicated revenue
327 source or proposed debt or equity investment on behalf of the
328 private entity.

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

331 (e) The proposed user fees, lease payments, or other
332 service payments over the term of a comprehensive agreement, and



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333 the methodology for and circumstances that would allow changes
334 to the user fees, lease payments, and other service payments
335 over time.

336 (f) Additional material or information that the responsible
337 public entity reasonably requests.

338 (6) PROJECT QUALIFICATION AND PROCESS.—

339 (a) The private entity must meet the minimum standards
340 contained in the responsible public entity's guidelines for
341 qualifying professional services and contracts for traditional
342 procurement projects.

343 (b) The responsible public entity must:

344 1. Ensure that provision is made for the private entity's
345 performance and payment of subcontractors, including, but not
346 limited to, surety bonds, letters of credit, parent company
347 guarantees, and lender and equity partner guarantees. For the
348 components of the qualifying project which involve construction
349 performance and payment, bonds are required and are subject to
350 the recordation, notice, suit limitation, and other requirements
351 of s. 255.05.

352 2. Ensure the most efficient pricing of the security
353 package that provides for the performance and payment of
354 subcontractors.

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

358 (c) After the public notification period has expired in the
359 case of an unsolicited proposal, the responsible public entity
360 shall rank the proposals received in order of preference. In
361 ranking the proposals, the responsible public entity may



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362 consider factors that include, but are not limited to,
363 professional qualifications, general business terms, innovative
364 design techniques or cost-reduction terms, and finance plans.
365 The responsible public entity may then begin negotiations for a
366 comprehensive agreement with the highest-ranked firm. If the
367 responsible public entity is not satisfied with the results of
368 the negotiations, the responsible public entity may terminate
369 negotiations with the proposer and negotiate with the second-
370 ranked or subsequent-ranked firms, in the order consistent with
371 this procedure. If only one proposal is received, the
372 responsible public entity may negotiate in good faith, and if
373 the public entity is not satisfied with the results of the
374 negotiations, the public entity may terminate negotiations with
375 the proposer. Notwithstanding this paragraph, the responsible
376 public entity may reject all proposals at any point in the
377 process until a contract with the proposer is executed.

378 (d) The responsible public entity shall perform an
379 independent analysis of the proposed public-private partnership
380 which demonstrates the cost-effectiveness and overall public
381 benefit before the procurement process is initiated or before
382 the contract is awarded.

383 (e) The responsible public entity may approve the
384 development or operation of an educational facility, a
385 transportation facility, a water or wastewater management
386 facility or related infrastructure, a technology infrastructure
387 or other public infrastructure, or a government facility needed
388 by the responsible public entity as a qualifying project, or the
389 design or equipping of a qualifying project that is developed or
390 operated, if:



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391 1. There is a public need for or benefit derived from a
392 project of the type that the private entity proposes as the
393 qualifying project.

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

396 3. The private entity's plans will result in the timely
397 acquisition, design, construction, improvement, renovation,
398 expansion, equipping, maintenance, or operation of the
399 qualifying project.

400 (f) The responsible public entity may charge a reasonable
401 fee to cover the costs of processing, reviewing, and evaluating
402 the request, including, but not limited to, reasonable attorney
403 fees and fees for financial and technical advisors or
404 consultants and for other necessary advisors or consultants.

405 (g) Upon approval of a qualifying project, the responsible
406 public entity shall establish a date for the commencement of
407 activities related to the qualifying project. The responsible
408 public entity may extend the commencement date.

409 (h) Approval of a qualifying project by the responsible
410 public entity is subject to entering into a comprehensive
411 agreement with the private entity.

412 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.-

413 (a) The responsible public entity must notify each affected
414 local jurisdiction by furnishing a copy of the proposal to each
415 affected local jurisdiction when considering a proposal for a
416 qualifying project.

417 (b) Each affected local jurisdiction that is not a
418 responsible public entity for the respective qualifying project
419 may, within 60 days after receiving the notice, submit in



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420 writing any comments to the responsible public entity and
421 indicate whether the facility is incompatible with the local
422 comprehensive plan, the local infrastructure development plan,
423 the capital improvements budget, any development of regional
424 impact processes or timelines, or other governmental spending
425 plan. The responsible public entity shall consider the comments
426 of the affected local jurisdiction before entering into a
427 comprehensive agreement with a private entity. If an affected
428 local jurisdiction fails to respond to the responsible public
429 entity within the time provided in this paragraph, the
430 nonresponse is deemed an acknowledgement by the affected local
431 jurisdiction that the qualifying project is compatible with the
432 local comprehensive plan, the local infrastructure development
433 plan, the capital improvements budget, or other governmental
434 spending plan.

435 (8) INTERIM AGREEMENT.—Before or in connection with the
436 negotiation of a comprehensive agreement, the public entity may
437 enter into an interim agreement with the private entity
438 proposing the development or operation of the qualifying
439 project. An interim agreement does not obligate the responsible
440 public entity to enter into a comprehensive agreement. The
441 interim agreement is discretionary with the parties and is not
442 required on a qualifying project for which the parties may
443 proceed directly to a comprehensive agreement without the need
444 for an interim agreement. An interim agreement must be limited
445 to provisions that:

446 (a) Authorize the private entity to commence activities for
447 which it may be compensated related to the proposed qualifying
448 project, including, but not limited to, project planning and



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449 development, design, environmental analysis and mitigation,
450 survey, other activities concerning any part of the proposed
451 qualifying project, and ascertaining the availability of
452 financing for the proposed facility or facilities.

453 (b) Establish the process and timing of the negotiation of
454 the comprehensive agreement.

455 (c) Contain such other provisions related to an aspect of
456 the development or operation of a qualifying project that the
457 responsible public entity and the private entity deem
458 appropriate.

459 (9) COMPREHENSIVE AGREEMENT.-

460 (a) Before developing or operating the qualifying project,
461 the private entity must enter into a comprehensive agreement
462 with the responsible public entity. The comprehensive agreement
463 must provide for:

464 1. Delivery of performance and payment bonds, letters of
465 credit, or other security acceptable to the responsible public
466 entity in connection with the development or operation of the
467 qualifying project in the form and amount satisfactory to the
468 responsible public entity. For the components of the qualifying
469 project which involve construction, the form and amount of the
470 bonds must comply with s. 255.05.

471 2. Review of the design for the qualifying project by the
472 responsible public entity and, if the design conforms to
473 standards acceptable to the responsible public entity, the
474 approval of the responsible public entity. This subparagraph
475 does not require the private entity to complete the design of
476 the qualifying project before the execution of the comprehensive
477 agreement.



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478 3. Inspection of the qualifying project by the responsible
479 public entity to ensure that the private entity's activities are
480 acceptable to the public entity in accordance with the
481 comprehensive agreement.

482 4. Maintenance of a policy of public liability insurance, a
483 copy of which must be filed with the responsible public entity
484 and accompanied by proofs of coverage, or self-insurance, each
485 in the form and amount satisfactory to the responsible public
486 entity and reasonably sufficient to ensure coverage of tort
487 liability to the public and employees and to enable the
488 continued operation of the qualifying project.

489 5. Monitoring by the responsible public entity of the
490 maintenance practices to be performed by the private entity to
491 ensure that the qualifying project is properly maintained.

492 6. Periodic filing by the private entity of the appropriate
493 financial statements that pertain to the qualifying project.

494 7. Procedures that govern the rights and responsibilities
495 of the responsible public entity and the private entity in the
496 course of the construction and operation of the qualifying
497 project and in the event of the termination of the comprehensive
498 agreement or a material default by the private entity. The
499 procedures must include conditions that govern the assumption of
500 the duties and responsibilities of the private entity by an
501 entity that funded, in whole or part, the qualifying project or
502 by the responsible public entity, and must provide for the
503 transfer or purchase of property or other interests of the
504 private entity by the responsible public entity.

505 8. Fees, lease payments, or service payments. In
506 negotiating user fees, the fees must be the same for persons



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507 using the facility under like conditions and must not materially
508 discourage use of the qualifying project. The execution of the
509 comprehensive agreement or a subsequent amendment is conclusive
510 evidence that the fees, lease payments, or service payments
511 provided for in the comprehensive agreement comply with this
512 section. Fees or lease payments established in the comprehensive
513 agreement as a source of revenue may be in addition to, or in
514 lieu of, service payments.

515 9. Duties of the private entity, including the terms and
516 conditions that the responsible public entity determines serve
517 the public purpose of this section.

518 (b) The comprehensive agreement may include:

519 1. An agreement by the responsible public entity to make
520 grants or loans to the private entity from amounts received from
521 the federal, state, or local government or an agency or
522 instrumentality thereof.

523 2. A provision under which each entity agrees to provide
524 notice of default and cure rights for the benefit of the other
525 entity, including, but not limited to, a provision regarding
526 unavoidable delays.

527 3. A provision that terminates the authority and duties of
528 the private entity under this section and dedicates the
529 qualifying project to the responsible public entity or, if the
530 qualifying project was initially dedicated by an affected local
531 jurisdiction, to the affected local jurisdiction for public use.

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



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536 (a) The responsible public entity may develop new
537 facilities or increase capacity in existing facilities through
538 agreements with public-private partnerships.

539 (b) The public-private partnership agreement must ensure
540 that the facility is properly operated, maintained, or improved
541 in accordance with standards set forth in the comprehensive
542 agreement.

543 (c) The responsible public entity may lease existing fee-
544 for-use facilities through a public-private partnership
545 agreement.

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

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

551 (11) FINANCING.—

552 (a) A private entity may enter into a private-source
553 financing agreement between financing sources and the private
554 entity. A financing agreement and any liens on the property or
555 facility must be paid in full at the applicable closing that
556 transfers ownership or operation of the facility to the
557 responsible public entity at the conclusion of the term of the
558 comprehensive agreement.

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

562 (c) The responsible public entity may use innovative
563 finance techniques associated with a public-private partnership
564 under this section, including, but not limited to, federal loans



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565 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
566 and hedges against inflation from commercial banks or other
567 private sources. In addition, the responsible public entity may
568 provide its own capital or operating budget to support a
569 qualifying project. The budget may be from any legally
570 permissible funding sources of the responsible public entity,
571 including the proceeds of debt issuances. A responsible public
572 entity may use the model financing agreement provided in s.
573 489.145(6) for its financing of a facility owned by a
574 responsible public entity. A financing agreement may not require
575 the responsible public entity to indemnify the financing source,
576 subject the responsible public entity's facility to liens in
577 violation of s. 11.066(5), or secure financing by the
578 responsible public entity with a pledge of security interest,
579 and any such provision is void.

580 (d) A responsible public entity shall appropriate on a
581 priority basis as required by the comprehensive agreement a
582 contractual payment obligation, annual or otherwise, from the
583 enterprise or other government fund from which the qualifying
584 projects will be funded. This required payment obligation must
585 be appropriated before other noncontractual obligations payable
586 from the same enterprise or other government fund.

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

588 (a) The private entity shall:

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

592 2. Maintain, or provide by contract for the maintenance or
593 improvement of, the qualifying project if required by the



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594 comprehensive agreement.

595 3. Cooperate with the responsible public entity in making
596 best efforts to establish interconnection between the qualifying
597 project and any other facility or infrastructure as requested by
598 the responsible public entity in accordance with the provisions
599 of the comprehensive agreement.

600 4. Comply with the comprehensive agreement and any lease or
601 service contract.

602 (b) Each private facility that is constructed pursuant to
603 this section must comply with the requirements of federal,
604 state, and local laws; state, regional, and local comprehensive
605 plans; the responsible public entity's rules, procedures, and
606 standards for facilities; and such other conditions that the
607 responsible public entity determines to be in the public's best
608 interest and that are included in the comprehensive agreement.

609 (c) The responsible public entity may provide services to
610 the private entity. An agreement for maintenance and other
611 services entered into pursuant to this section must provide for
612 full reimbursement for services rendered for qualifying
613 projects.

614 (d) A private entity of a qualifying project may provide
615 additional services for the qualifying project to the public or
616 to other private entities if the provision of additional
617 services does not impair the private entity's ability to meet
618 its commitments to the responsible public entity pursuant to the
619 comprehensive agreement.

620 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
621 expiration or termination of a comprehensive agreement, the
622 responsible public entity may use revenues from the qualifying



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623 project to pay current operation and maintenance costs of the
624 qualifying project. If the private entity materially defaults
625 under the comprehensive agreement, the compensation that is
626 otherwise due to the private entity is payable to satisfy all
627 financial obligations to investors and lenders on the qualifying
628 project in the same way that is provided in the comprehensive
629 agreement or any other agreement involving the qualifying
630 project, if the costs of operating and maintaining the
631 qualifying project are paid in the normal course. Revenues in
632 excess of the costs for operation and maintenance costs may be
633 paid to the investors and lenders to satisfy payment obligations
634 under their respective agreements. A responsible public entity
635 may terminate with cause and without prejudice a comprehensive
636 agreement and may exercise any other rights or remedies that may
637 be available to it in accordance with the provisions of the
638 comprehensive agreement. The full faith and credit of the
639 responsible public entity may not be pledged to secure the
640 financing of the private entity. The assumption of the
641 development or operation of the qualifying project does not
642 obligate the responsible public entity to pay any obligation of
643 the private entity from sources other than revenues from the
644 qualifying project unless stated otherwise in the comprehensive
645 agreement.

646 (14) SOVEREIGN IMMUNITY.—This section does not waive the
647 sovereign immunity of a responsible public entity, an affected
648 local jurisdiction, or an officer or employee thereof with
649 respect to participation in, or approval of, any part of a
650 qualifying project or its operation, including, but not limited
651 to, interconnection of the qualifying project with any other



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652 infrastructure or project. A county or municipality in which a
653 qualifying project is located possesses sovereign immunity with
654 respect to the project, including, but not limited to, its
655 design, construction, and operation.

656 (15) CONSTRUCTION.—This section shall be liberally
657 construed to effectuate the purposes of this section. This
658 section shall be construed as cumulative and supplemental to any
659 other authority or power vested in or exercised by the governing
660 board of a county, district, or municipal hospital or health
661 care system including those contained in acts of the Legislature
662 establishing such public hospital boards or s. 155.40. This
663 section does not affect any agreement or existing relationship
664 with a supporting organization involving such governing board or
665 system in effect as of January 1, 2013.

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

669 (b) Except as otherwise provided in this section, this
670 section does not amend existing laws by granting additional
671 powers to, or further restricting, a local governmental entity
672 from regulating and entering into cooperative arrangements with
673 the private sector for the planning, construction, or operation
674 of a facility.

675 (c) This section does not waive any requirement of s.
676 287.055.

677 Section 3. Section 336.71, Florida Statutes, is created to
678 read:

679 336.71 Public-private cooperation in construction of county
680 roads.—



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681 (1) If a county receives a proposal, solicited or
682 unsolicited, from a private entity seeking to construct, extend,
683 or improve a county road or portion thereof, the county may
684 enter into an agreement with the private entity for completion
685 of the road construction project, which agreement may provide
686 for payment to the private entity, from public funds, if the
687 county conducts a noticed public hearing and finds that the
688 proposed county road construction project:

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

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

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

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

697 (e) Would result in a financial benefit to the public by
698 completing the subject project at a cost to the public
699 significantly lower than if the project were constructed by the
700 county using the normal procurement process.

701 (2) The notice for the public hearing provided for in
702 subsection (1) must be published at least 14 days before the
703 date of the public meeting at which the governing board takes
704 final action. The notice must identify the project, the
705 estimated cost of the project, and specify that the purpose for
706 the public meeting is to consider whether it is in the public's
707 best interest to accept the proposal and enter into an agreement
708 pursuant thereto. The determination of cost savings pursuant to
709 paragraph (1) (e) must be supported by a professional engineer's



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710 cost estimate made available to the public at least 14 days
711 before the public meeting and placed in the record for that
712 meeting.

713 (3) If the process in subsection (1) is followed, the
714 project and agreement are exempt from s. 255.20 pursuant to s.
715 255.20(1)(c)11.

716 (4) Except as otherwise expressly provided in this section,
717 this section does not affect existing law by granting additional
718 powers to or imposing further restrictions on local government
719 entities.

720 Section 4. Paragraph (d) of subsection (2) of section
721 348.754, Florida Statutes, is amended to read:

722 348.754 Purposes and powers.—

723 (2) The authority is hereby granted, and shall have and may
724 exercise all powers necessary, appurtenant, convenient or
725 incidental to the carrying out of the aforesaid purposes,
726 including, but without being limited to, the following rights
727 and powers:

728 (d) To enter into and make leases for terms not exceeding
729 99 ~~40~~ years, as either lessee or lessor, in order to carry out
730 the right to lease as set forth in this part.

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

732
733 ===== T I T L E A M E N D M E N T =====

734 And the title is amended as follows:

735 Delete everything before the enacting clause
736 and insert:

737 A bill to be entitled

738 An act relating to public-private partnerships;



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739 amending s. 255.60, F.S.; authorizing certain public
740 entities to contract for public service works with
741 not-for-profit organizations; revising eligibility and
742 contract requirements for not-for-profit organizations
743 contracting with certain public entities; creating s.
744 287.05712, F.S.; providing definitions; providing
745 legislative findings and intent relating to the
746 construction or improvement by private entities of
747 facilities used predominantly for a public purpose;
748 creating a task force to establish specified
749 guidelines; providing procurement procedures;
750 providing requirements for project approval; providing
751 project qualifications and process; providing for
752 notice to affected local jurisdictions; providing for
753 interim and comprehensive agreements between a public
754 and a private entity; providing for use fees;
755 providing for financing sources for certain projects
756 by a private entity; providing powers and duties of
757 private entities; providing for expiration or
758 termination of agreements; providing for the
759 applicability of sovereign immunity for public
760 entities with respect to qualified projects; providing
761 for construction of the act; creating s. 336.71, F.S.;
762 authorizing counties to enter into public-private
763 partnership agreements to construct, extend, or
764 improve county roads; providing requirements and
765 limitations for such agreements; providing procurement
766 procedures; requiring a fee for certain proposals;
767 amending s. 348.754, F.S.; revising the limit on terms



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for leases that the Orlando-Orange County Expressway
Authority may enter; providing an effective date.