The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 84
INTRODUCER:	Appropriations Committee; Governmental Oversight and Accountability Committee; Community Affairs Committee; and Senator Diaz de la Portilla
SUBJECT:	Public-Private Partnerships
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	**Fav/CS**
2.	McKay	McVaney	GO	**Fav/CS**
3.	Price	Eichin	TR	**Fav/2 amendments**
4.	Betta	Hansen	AP	**Fav/CS**
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/CS/SB 84 makes several changes to law relating to public-private partnerships. The bill authorizes certain public entities to contract for public service works with not-for-profit organizations, and revises eligibility and contract requirements for not-for-profit organizations contracting with certain public entities. The bill also revises the powers of a public health trust.

The bill has an indeterminate fiscal impact upon universities, school boards, counties, municipalities, and other public bodies and political subdivisions of the state that may enter public-private partnerships. In addition, there is an indeterminate fiscal impact relating to the administrative support of the task force.

The bill creates a new section of law to facilitate public-private partnerships, when cost-effective, to construct public-purpose projects. Specifically, the bill:

- Provides legislative findings and intent relating to the construction or improvement by private entities of facilities used predominantly for a public purpose.

- Creates a task force to provide guidelines for public entities on the types of factors public entities should review and consider when processing requests for public-private partnership projects.
- Provides for notice to affected local jurisdictions as well as for comprehensive agreements between a public and a private entity.
- Specifies the requirements for such partnership.
- Specifies the financing sources for certain projects by a private entity.
- Provides for the applicability of sovereign immunity for public entities with respect to qualified projects.

The bill amends chapter 336, F.S., to authorize procedures for the creation and operation of public-private partnerships for transportation facilities within a county.

The bill creates sections 287.05712 and 336.71, Florida Statutes. The bill amends sections 154.11 and 255.60, Florida Statutes.

II. Present Situation:

Public-Private Partnerships

Overview

A public-private partnership (PPP) is a contractual agreement formed between a public agency and a private sector entity that allows for greater private sector participation in the delivery and financing of public building and infrastructure projects.[1] Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for the use of the general public.[2] In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.[3]

There are different types of PPPs with varying levels of private sector involvement. The most common is called a Design-Build-Finance-Operate (DBFO) transaction, where the government grants a private sector partner the right to develop a new piece of public infrastructure.[4] The private entity takes on full responsibility and risk for delivery and operation of the public project against pre-determined standards of performance established by government. The private entity is paid through the revenue stream generated by the project, which could take the form of a user charge (such as a highway toll) or, in some cases, an annual government payment for performance (often called a "shadow toll" or "availability charge"). Any increases in the user charge or payment for performance typically are set out in advance and regulated by a binding contract.[5]

[1] *See* The Federal Highway Administration, United States Department of Transportation, Innovative Program Delivery webpage, available at: http://www.fhwa.dot.gov/ipd/p3/defined/index.htm (last visited on January 15, 2013).
[2] *See generally* The National Council for Public-Private Partnerships webpage, *How PPPs Work*, available at: http://ncppp.org/howpart/index.shtml#define (last visited on January 15, 2013).
[3] *Id.*
[4] *See* The Oregon Department of Transportation, The Power of Public-Private Partnerships, available at: http://www.oregon.gov/ODOT/HWY/OIPP/docs/PowerofPublicPrivate050806.pdf (last visited on January 15, 2013).
[5] *Id.*

Another PPP procurement process is the Unsolicited Proposal Procurement Model (UPPM). This allows for the receipt of unsolicited bids from private entities to contract for the design, construction, operation, and financing of public infrastructure.[6] Generally, the public entity requires a processing or review fee to cover costs for the technical and legal review.[7]

Florida Department of Transportation Public-Private Partnership

The Florida Department of Transportation (FDOT) currently has a public-private partnership program in place.[8] The Florida Legislature declared that there is a public need for rapid construction of safe and efficient transportation facilities for the purpose of travel within the state, and that it is in the public's interest to provide for the construction of additional safe, convenient, and economical transportation facilities.[9]

Florida law provides that a private transportation facility constructed pursuant to s. 334.30, F.S., must comply with all requirements of federal, state, and local laws; state, regional, and local comprehensive plans; FDOT rules, policies, procedures, and standards for transportation facilities; and any other conditions that FDOT determines to be in the public's best interest.[10]

Current law allows FDOT to advance projects programmed in the adopted five-year work program using funds provided by public-private partnerships or private entities to be reimbursed from FDOT funds for the project.[11] In accomplishing this, FDOT may use state resources to participate in funding and financing the project as provided for under FDOT's enabling legislation for projects on the State Highway System.[12]

FDOT may receive or solicit proposals and, with legislative approval as evidenced by approval of the project in the department's work program, enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of transportation facilities.[13] If FDOT receives an unsolicited solicitation or proposal, it is required to publish a notice in the Florida Administrative Register and a newspaper of general circulation stating that FDOT has received the proposal and it will accept other proposals for the same project.[14] In addition, FDOT requires an initial payment of $50,000 accompany any unsolicited proposal to cover the costs of evaluating the proposal.[15]

Current law governing FDOT's PPP provides for a solicitation process that is similar to the Consultants' Competitive Negotiation Act.[16] FDOT may request proposals from private entities for public-private transportation projects.[17] The partnerships must be qualified by FDOT as part

[6] *See Innovative Models for the Design, Build, Operation and Financing of Public Infrastructure*, John J. Fumero, at 3.
[7] *Id.*
[8] *See* s. 334.30, F.S.
[9] Section 334.30, F.S.
[10] Section 334.30(3), F.S.
[11] Section 334.30(1), F.S.
[12] *Id.*
[13] *Id.*
[14] Section 334.30(6)(a), F.S.
[15] *See* Fla. Admin. Code R. 14-107.0011.
[16] *See* s. 287.055, F.S.
[17] Section 334.30(6)(a), F.S.

of the procurement process outlined in the procurement documents.[18] These procurement documents must include provisions for performance of the private entity and payment of subcontractors, including surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees.[19] FDOT must rank the proposals in the order of preference.[20] FDOT may then begin negotiations with the top firm. If that negotiation is unsuccessful, FDOT must terminate negotiations and move to the second-ranked firm. If unsuccessful again, FDOT must move to the third-ranked firm.[21] FDOT must provide independent analyses of the proposed PPP that demonstrates the cost effectiveness and overall public benefit prior to moving forward with the procurement and prior to awarding the contract.[22]

Current law authorizes FDOT to use innovative finance techniques associated with PPPs, including federal loans, commercial bank loans, and hedges against inflation from commercial banks or other private sources.[23] PPP agreements under s. 334.30, F.S., must be limited to a term not to exceed 50 years. In addition, FDOT may not utilize more than 15 percent of total federal and state funding in any given year to fund PPP projects.[24]

Procurement of Personal Property and Services

Chapter 287, F.S., regulates state agency[25] procurement of personal property and services. The Department of Management Services (department) is responsible for overseeing state purchasing activity including professional and contractual services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.[26] The Division of State Purchasing in the department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.[27]

Current law requires contracts for commodities or contractual services in excess of $35,000 to be procured utilizing a competitive solicitation process.[28,29]

[18] Section 334.30(6)(b), F.S.
[19] Section 334.30(6)(c).
[20] *See* s. 334.30(6)(d), F.S., [i]n ranking the proposals, the department may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the project.
[21] Section 334.30(6)(d), F.S.
[22] Section 334.30(6)(e), F.S.
[23] Section 334.30(7), F.S.
[24] Section 334.30(12), F.S.
[25] As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[26] *See* ss. 287.032 and 287.042, F.S.
[27] Chapter 287, F.S., provides requirements for the procurement of personal property and services. Part I of that chapter pertains to commodities, insurance, and contractual services, and part II pertains to motor vehicles.
[28] Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold provided in s. 287.017, F.S., to be competitively bid.
[29] As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

The Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for design professional services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of design professionals.

Florida's Consultants' Competitive Negotiation Act (CCNA), was enacted in 1973,[30] to specify the procedures to follow when procuring the services of architects and engineers. The CCNA did not prohibit discussion of compensation in the initial vendor selection phase until 1988, when the Legislature enacted a provision requiring that consideration of compensation occur only during the selection phase.[31]

Currently, the CCNA specifies the process to follow when state and local government agencies procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper.[32] The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:

- A project, when the basic construction cost is estimated by the agency to exceed $325,000.
- A planning or study activity, when the fee for professional services exceeds $35,000.

The CCNA provides a two-phase selection process.[33] In the first phase, the "competitive selection," the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the three bidders, ranked in order of preference, that it considers most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the three most highly qualified bidders including: willingness to meet time and budget requirements; past performance; location; recent, current, and projected firm workloads; volume of work previously awarded to the firm; and whether the firm is certified as a minority business.[34]

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid. Current law defines the term "compensation" to mean "the amount paid by the agency for professional services," regardless of whether stated as compensation or as other types of rates.[35]

In the second phase, the "competitive negotiation," the agency then negotiates compensation with the most qualified of the three selected firms. If a satisfactory contract cannot be negotiated, the agency must then negotiate with the second most qualified firm. The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to

[30] Chapter 73-19, L.O.F.
[31] Chapter 88-108, L.O.F.
[32] Section 287.055, F.S.
[33] Section 287.055(4) and (5), F.S.
[34] *See* s. 287.055(4)(b), F.S.
[35] Section 287.055(2)(d), F.S.

produce a satisfactory contract. If a satisfactory contract cannot be negotiated with any of the three selected, the agency must begin the selection process again.

Procurement of Construction Services

Chapter 255, F.S., regulates construction services[36] for public property and publically owned buildings. The Department of Management Services is responsible for establishing, through administrative rules, the following:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the secretary of the Department of Management Services to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when the Department of Management Services determines the use of such contracts to be in the best interest of the state.[37]

State contracts for construction projects that are projected to cost in excess of $200,000 must be competitively bid.[38] In addition, such projects must be advertised in the Florida Administrative Register at least 21 days prior to the bid opening.[39,40] Counties, municipalities, special districts,[41] or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of $300,000.[42]

Public Health Trusts

There may be created in and for each county of the state a public body corporate and politic, to be known as the "public health trust" of such county, for the purpose of exercising the powers described in Florida Statutes with respect to "designated facilities" as that term is defined in s. 154.08, F.S. No trust created may transact any business or exercise any powers until the governing body of the county of such trust declares that there is a need for such trust to function

[36] As defined in s. 255.072(2), F.S., "construction services" means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property. The term "construction services" does not include contracts or work performed for the Department of Transportation.
[37] Section 255.29, F.S.
[38] *See* 60D-5.0073, F.A.C.; *see also* s. 255.0525, F.S.
[39] Section 255.0525(1), F.S.
[40] State construction projects that are projected to exceed $500,000 are required to be published 30 days prior to bid opening in the Florida Administrative Register, and at least once in a newspaper of general circulation in the county where the project is located. *See* s. 255.0525(1), F.S.
[41] As defined in s. 189.403(1), F.S., "special district" means a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. For the purpose of s. 196.199(1), F.S., special districts must be treated as municipalities. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.
[42] *See* s. 255.20(1), F.S.

and shall appoint the members thereof. The board of trustees of each public health trust is authorized to become the operator of, and governing body for, any designated facility. The term "designated facility" means any county-owned or county-operated facility used in connection with the delivery of health care, the operation, governance, or maintenance of which has been designated by the governing body of such county for transfer to the public health trust of that county.

Special Contracts with Charitable Youth Organizations

The state, or the governing body of any political subdivision of the state, is authorized, but not required, to contract for public service work such as highway and park maintenance, notwithstanding competitive sealed bid procedures required under this chapter or chapter 287, upon compliance with s. 255.60, F.S. This provision of law permits specified not-for-profit charitable youth organizations to receive no-bid public service contracts if the following conditions are satisfied:

- The contract may not exceed the annual sum of $250,000.
- The organization must be a not-for-profit corporation pursuant to ch. 617, F.S., and s. 501(c)(3) of the Internal Revenue Code.
- The corporate charter of the organization must state that it is organized as a charitable youth organization exclusively for at-risk youths enrolled in a work-study program.
- Administrative salaries and benefits of the corporation may not exceed 15 percent of gross revenues, excluding field supervisors' salaries and benefits.
- The contract must be approved by state agency personnel or the governing body of a political subdivision.
- No subcontracting may be implemented and all labor must be performed exclusively by at-risk youth and their direct supervisors.
- Payment must be production-based.
- The contractor must institute a drug-free workplace program substantially in compliance with s. 287.087, F.S.
- The contractor must agree to be subject to Auditor General review.
- The contractor may not be in violation of ss. 287.132 through 287.134, F.S., which proscribe the state from contracting with persons convicted of public entity crimes or found to have violated specified discrimination laws.

Further, the law provides that a court may terminate a contract that does not meet the section's requirements, but shall not require disgorgement of monies earned for goods or services actually delivered or supplied.

III. Effect of Proposed Changes:

Section 1 amends s. 154.11, F.S., to revise the powers of a public health trust to allow leasing of office space controlled by the Public Health Trust.

Section 2 amends s. 255.60, F.S., to revise the existing authority that enables governmental entities to enter into no-bid contracts for public service work with charitable youth organizations, expanding it to also include public-private partnerships with other not-for-profit organizations. A

suggested type of public service work envisioned by the existing statute (highway and park maintenance) is removed.

The bill also provides additional requirements for contracts relating to certain types of work performed by the not-for-profit organization. Specifically, for contracts relating to the preservation, maintenance, and improvement of park land, such property must be at least 20 acres with contiguous public facilities that are capable of seating at least 5,000 people in a permanent structure; and, for nondescript work "for public education buildings", that the building must be at least 90,000 square feet. Thus, contracts with youth organizations involving properties not meeting these requirements would no longer be authorized. The bill clarifies that contracts written under this section are limited to no more than $250,000 annually.

Section 3 creates s. 287.05712, F.S., relating to public-private partnerships.

Definitions

Subsection (1) provides the following relevant definitions, amongst others. "Responsible public entity" means a county, municipality, school board, or university, or any other political subdivision of the state; a public body politic and corporate; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.[43] "Qualifying project" means a facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, power-generating facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity; an improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; or a water, wastewater, or surface water management facility or other related infrastructure.

Legislative Findings and Intent

In subsection (2), the bill specifies that the Legislature finds that there is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of public projects, that such public need may not be wholly satisfied by existing methods of procurement, and that it has been demonstrated that public-private partnerships can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public. The Legislature declares it is the intent of this bill is to encourage investment in the state by private entities, to facilitate various bond financing mechanisms, private capital, and other funding sources for the development and operation of qualifying projects, including expansion and acceleration of such financing to meet the public need, and to provide the greatest possible flexibility to public and private entities to contract for the provision of public services.

[43] This definition does not include state agencies.

Public-Private Partnership Guidelines Task Force

Subsection (3) creates a Partnership for Public Facilities and Infrastructure Act Guidelines Task Force to establish guidelines for public entities on the types of factors public entities should review and consider when processing requests for public-private partnership projects. The task force members are follows:

- One member of the Senate, appointed by the President of the Senate.
- One member of the House of Representatives, appointed by the Speaker of the House of Representatives.
- The Secretary of Management Services or his or her designee.
- Six members appointed by the Governor, as follows:
  - One county government official.
  - One municipal government official.
  - One district school board member.
  - Three representatives of the business community.

The task force must provide guidelines to public entities no later than July 1, 2014, to include:

- Opportunities for competition through public notice and the availability of representatives of the responsible public entity to meet with private entities considering a proposal.
- Reasonable criteria for choosing among competing proposals.
- Suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement.
- Authorization for accelerated selection and review and documentation timelines for proposals involving a qualifying project that the responsible public entity deems a priority.
- Procedures for financial review and analysis.
- Consideration of the nonfinancial benefits of a proposed qualifying project.
- A mechanism for the appropriating body to review a proposed comprehensive agreement before execution.
- Analysis of the adequacy of the information released when seeking competing proposals, and providing for the enhancement of that information, if deemed necessary, to encourage competition, as well as establishing standards to maintain the confidentiality of financial and proprietary terms of an unsolicited proposal, which shall be disclosed only in accordance with the bidding procedures of competing proposals.
- Authority for the responsible public entity to engage the services of qualified professionals.

Procurement Procedures

Subsection (4) provides that a responsible public entity may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into an agreement with a private entity, or a consortium of private entities, for the building, upgrade, operation, ownership, or financing of facilities. The responsible public entity may establish a reasonable application fee for the submission of an unsolicited proposal.

The responsible public entity may request a proposal from private entities for a public-private project or, if the public entity receives an unsolicited proposal for a public private project and the public entity intends to enter into a comprehensive agreement for the project described in such

unsolicited proposal, the public entity shall publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks stating that the public entity has received a proposal and will accept other proposals for the same project. The timeframe in which other proposals may be accepted may be determined by the public entity, but must be no less than 21 days, and no more than 120 days.

A public entity that is a school board may enter into a comprehensive agreement under this section of law only with the approval of the local governing body.

Before approval, the responsible public entity must determine that the proposed project:

- Is in the public's best interest.
- Is for a facility that is owned by the responsible public entity or will be conveyed to the responsible public entity.
- Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the agreement by the responsible public entity.
- Has adequate safeguards in place to ensure that the responsible public entity or the private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.
- Will be owned by the responsible public entity upon completion or termination of the agreement and upon payment of the amounts financed.

Projects Approval Requirements

Subsection (5) provides that an unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following material and information, unless waived by the responsible public entity:

- A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
- A description of the method by which the private entity proposes to secure any necessary property interests that are required for the qualifying project.
- A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
- The name and address of a person who may be contacted for further information concerning the proposal.
- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.
- Any additional material or information that the responsible public entity reasonably requests.

Project Qualification and Process

Subsection (6) specifies that the private entity must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional services and contracts for

traditional procurement projects. The responsible public entity must ensure that provisions are made for the private entity's performance and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of s. 255.05, F.S. Also the responsible public entity must ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors as well as ensure that provisions are made for the transfer of the private entity's obligations if the comprehensive agreement is terminated or a material default occurs.

Notice to Affected Local Jurisdictions

Subsection (7) provides that the responsible public entity must notify each affected local jurisdiction by furnishing a copy of the proposal to each affected local jurisdiction when considering a proposal for a qualifying project. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project may, within 60 days after receiving the notice, submit in writing any comments to the responsible public entity and indicate whether the facility is incompatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan. The responsible public entity shall consider the comments of the affected local jurisdiction before entering into a comprehensive agreement with a private entity. If an affected local jurisdiction fails to respond to the responsible public entity within the time provided in this paragraph, the nonresponse is deemed an acknowledgement by the affected local jurisdiction that the qualifying project is compatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan.

Interim Agreement

Subsection (8) specifies that before or in connection with the negotiation of a comprehensive agreement, the public entity may enter into an interim agreement with the private entity proposing the qualifying project. An interim agreement does not obligate the responsible public entity to enter into a comprehensive agreement. The interim agreement is discretionary with the parties and is not required on a qualifying project for which the parties may proceed directly to a comprehensive agreement without the need for an interim agreement. An interim agreement must be limited to provisions that:

- Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning and development, design, environmental analysis and mitigation, survey, other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities.
- Establish the process and timing of the negotiation of the comprehensive agreement.
- Contain such other provisions related to an aspect of the development or operation of a qualifying project that the responsible public entity and the private entity deem appropriate.

Comprehensive Agreements

Subsection (9) specifies that before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement must provide for:

- The delivery of performance and payment bonds, letters of credit, or other security acceptable to the responsible public entity in connection with the development or operation of the qualifying project in the form and amount satisfactory to the responsible public entity.
- The review of the plans and specifications for the qualifying project by the responsible public entity and, if the plans and specifications conform to standards acceptable to the responsible public entity, the approval by the responsible public entity.
- The inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the public entity in accordance with the comprehensive agreement.
- The maintenance of a policy of public liability insurance, a copy of which must be filed with the responsible public entity and accompanied by proofs of coverage, or self insurance.
- The monitoring by the responsible public entity of the maintenance practices to be performed by the private entity to ensure that the qualifying project is properly maintained.
- The periodic filing by the private entity of the appropriate financial statements that pertain to the qualifying project.
- The procedures that govern the rights and responsibilities of the responsible public entity and the private entity in the course of the construction and operation of the qualifying project and in the event of the termination of the comprehensive agreement or a material default by the private entity.
- The fees, lease payments, or service payments. In negotiating user fees, the fees must be the same for persons using the facility under like conditions and must not materially discourage use of the qualifying project.
- The duties of the private entity, including the terms and conditions that the responsible public entity determine serve the public purpose of this Act.

The comprehensive agreement may include other specified provisions.

Fees

Subsection (10) provides that an agreement entered into pursuant to this bill may authorize the private entity to impose fees for the use of the facility. The responsible public entity may develop new facilities or increase capacity in existing facilities through agreements with public-private partnerships. The public-private partnership agreement must ensure that the facility is properly operated, maintained, or improved in accordance with standards set forth in the comprehensive agreement. The responsible public entity may lease existing fee for-use facilities through a public-private partnership agreement. Any revenues must be regulated by the responsible public entity pursuant to the comprehensive agreement. A negotiated portion of revenues from fee-generating uses must be returned to the public entity over the life of the agreement.

Financing

Subsection (11) provides that a private entity may enter into a private-source financing agreement between financing sources and the private entity. A financing agreement and any liens on the property or facility must be paid in full at the applicable closing that transfers ownership or operation of the facility to the responsible public entity at the conclusion of the term of the comprehensive agreement. The responsible public entity may lend funds to private entities that construct projects containing facilities that are approved under this Act. The responsible public entity may use innovative finance techniques associated with a public-private partnership under this Act, including, but not limited to, federal loans as provided in Titles 23 and 49 C.F.R., commercial bank loans, and hedges against inflation from commercial banks or other private sources. A responsible public entity shall appropriate on a priority basis as required by the comprehensive agreement a contractual payment obligation, annual or otherwise, and the required payment obligation must be appropriated before other noncontractual obligations of the responsible public entity.

Powers and Duties of the Private Entity

Subsection (12) specifies that the private entity shall develop or operate the qualifying project in a manner that is acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement. The private entity shall maintain, or provide by contract for the maintenance or improvement of, the qualifying project if required by the comprehensive agreement. Also, the private entity shall cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by the responsible public entity. The private entity shall also comply with the comprehensive agreement and any lease or service contract.

Expiration or Termination of Agreements

Subsection (13) provides that upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the qualifying project are paid in the normal course. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity.

Sovereign Immunity

Subsection (14) provides that this bill does not waive the sovereign immunity of the state, any responsible public entity, any affected local jurisdiction, or any officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. A county or municipality in which a qualifying project is located

possesses sovereign immunity with respect to the project, including, but not limited to, its design, construction, and operation.

Construction

Subsection (15) provides that the bill is to be liberally construed to effectuate its purposes. The Act does not waive any requirement of s. 287.055, F.S.

Section 4 creates s. 336.71, F.S., on the creation of public-private transportation facilities in a county. The provisions in this section appear to mirror provisions in s. 334.30, F.S.

A county may receive or solicit proposals and enter into agreements with private entities or consortia thereof to build, operate, own, or finance highways, bridges, multimodal transportation systems, transit-oriented development nodes, transit stations, and related transportation facilities located solely within the county, including municipalities therein. Before approval, the county must determine that a proposed project:

- Is in the best interest of the public.
- Would not require county funds to be used unless the project is on the county road system or would provide increased mobility on the county road system.
- Would have adequate safeguards.
- Would be owned by the county upon completion or termination of the agreement.

The county shall ensure that all reasonable costs to the county related to transportation facilities that are not part of the county road system are borne by the private entity that develops or operates the facilities.

The county may request proposals and receive unsolicited proposals for public-private transportation facilities. Agreements entered into pursuant to this section may authorize the county or the private project owner, lessee, or operator to impose, collect, and enforce tolls or fares for the use of the transportation facility. Each public-private transportation facility constructed pursuant to this section must comply with all requirements of federal, state, and local laws. The governing body of the county may exercise any of its powers, including eminent domain, to facilitate the development and construction of transportation projects pursuant to this section. Except as otherwise provided in this section, this section is not intended to amend existing law by granting additional powers to or imposing further restrictions on local governmental entities with regard to regulating and entering into cooperative arrangements with the private sector for the planning, construction, and operation of transportation facilities. This section does not authorize a county or counties to enter into agreements with private entities or consortia thereof to build, operate, own, or finance a transportation facility that would extend beyond the geographical boundaries of a single county.

Public-private partnership agreements under this section shall be limited to a term not exceeding 75 years.

Section 5 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

An agreement entered into pursuant to this bill may authorize the private entity to impose fees for the use of the facility. A negotiated portion of revenues from fee-generating uses must be returned to the public entity over the life of the agreement.

B. Private Sector Impact:

The bill may provide for more opportunities for the private sector to enter into contracts for certain qualified projects with political subdivisions of the state.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact on political subdivisions of the state that enter into public-private partnerships. Expenditures would be based on currently unidentified agreements with public-private partnerships. This bill may provide for more projects at a lower risk to political subdivisions of the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides, "administrative and technical support shall be provided by the department." The bill does not specify which department to which it is referring.

The provisions of the bill address partnerships between local governments and private contractors, so the Legislature may wish to consider whether someone from the Department of Economic Opportunity should be on the task force, instead of the Secretary of the Department of Management Services.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Appropriations Committee on April 23, 2013:
The CS/CS/CS makes the following changes:

- Revising the powers of a public health trust to allow leasing of office space controlled by the Public Health Trust;
- Authorizes certain public entities to contract for public service works with a not-for-profit organization despite competitive sealed bid requirements;
- Revises eligibility and contract requirements for not-for-profit organizations contracting with certain public entities; and
- Provides that when a responsible public entity receives an unsolicited proposal for a public-private project, the public entity must publish notice of the proposal *only* if it intends to enter into a comprehensive agreement for the project described in the unsolicited proposal.

CS/CS by Governmental Oversight and Accountability on March 14, 2013:
The CS/CS makes the following changes to the CS:

- Creates a Partnership for Public Facilities and Infrastructure Act Guidelines Task Force;
- Extends the timeframe in which proposals may be accepted;
- Authorizes the use of interim agreements, which allow for specified terms to be agreed to prior to entering into a comprehensive agreement;
- Authorizes the creation of public-private partnerships for transportation facilities within a county; and
- Makes technical and clarifying changes.

CS by Community Affairs on January 23, 2013:
The CS makes technical and clarifying changes.

B. Amendments:

None.