

By the Committees on Governmental Oversight and Accountability;
and Community Affairs; and Senator Diaz de la Portilla

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1 A bill to be entitled
2 An act relating to public-private partnerships;
3 creating s. 287.05712, F.S.; providing definitions;
4 providing legislative findings and intent relating to
5 the construction or improvement by private entities of
6 facilities used predominantly for a public purpose;
7 creating a task force to establish specified
8 guidelines; providing procurement procedures;
9 providing requirements for project approval; providing
10 project qualifications and process; providing for
11 notice to affected local jurisdictions; providing for
12 interim and comprehensive agreements between a public
13 and a private entity; providing for use fees;
14 providing for financing sources for certain projects
15 by a private entity; providing powers and duties of
16 private entities; providing for expiration or
17 termination of agreements; providing for the
18 applicability of sovereign immunity for public
19 entities with respect to qualified projects; providing
20 for construction of the act; creating s. 336.71, F.S.;
21 authorizing counties to enter into public-private
22 partnership agreements for construction, operation,
23 ownership, and financing of transportation facilities;
24 providing requirements and limitations for such
25 agreements; providing procurement procedures;
26 requiring a fee for certain proposals; providing an
27 effective date.

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29 Be It Enacted by the Legislature of the State of Florida:

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

287.05712 Public-private partnerships.-

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

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

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

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

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

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

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

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

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

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59 (i) "Qualifying project" means:

60 1. A facility or project that serves a public purpose,
61 including, but not limited to, any ferry or mass transit
62 facility, vehicle parking facility, airport or seaport facility,
63 rail facility or project, fuel supply facility, oil or gas
64 pipeline, medical or nursing care facility, recreational
65 facility, sporting or cultural facility, or educational facility
66 or other building or facility that is used or will be used by a
67 public educational institution, or any other public facility or
68 infrastructure that is used or will be used by the public at
69 large or in support of an accepted public purpose or activity;

70 2. An improvement, including equipment, of a building that
71 will be principally used by a public entity or the public at
72 large or that supports a service delivery system in the public
73 sector; or

74 3. A water, wastewater, or surface water management
75 facility or other related infrastructure.

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

81 (k) "Revenues" means the income, earnings, user fees, lease
82 payments, or other service payments relating to the development
83 or operation of a qualifying project, including, but not limited
84 to, money received as grants or otherwise from the Federal
85 Government, a public entity, or an agency or instrumentality
86 thereof in aid of the qualifying project.

87 (l) "Service contract" means a contract between a public

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88 entity and the private entity which defines the terms of the
89 services to be provided with respect to a qualifying project.

90 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
91 that there is a public need for the construction or upgrade of
92 facilities that are used predominantly for public purposes and
93 that it is in the public's interest to provide for the
94 construction or upgrade of such facilities.

95 (a) The Legislature also finds that:

96 1. There is a public need for timely and cost-effective
97 acquisition, design, construction, improvement, renovation,
98 expansion, equipping, maintenance, operation, implementation, or
99 installation of projects serving a public purpose, including
100 educational facilities, transportation facilities, water or
101 wastewater management facilities and infrastructure, technology
102 infrastructure, roads, highways, bridges, and other public
103 infrastructure and government facilities within the state which
104 serve a public need and purpose, and that such public need may
105 not be wholly satisfied by existing procurement methods.

106 2. There are inadequate resources to develop new
107 educational facilities, transportation facilities, water or
108 wastewater management facilities and infrastructure, technology
109 infrastructure, roads, highways, bridges, and other public
110 infrastructure and government facilities for the benefit of
111 residents of this state, and that a public-private partnership
112 has demonstrated that it can meet the needs by improving the
113 schedule for delivery, lowering the cost, and providing other
114 benefits to the public.

115 3. There may be state and federal tax incentives that
116 promote partnerships between public and private entities to

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117 develop and operate qualifying projects.

118 4. A procurement under this section serves the public
119 purpose of this section if such procurement facilitates the
120 timely development or operation of a qualifying project.

121 (b) It is the intent of the Legislature to encourage
122 investment in the state by private entities; to facilitate
123 various bond financing mechanisms, private capital, and other
124 funding sources for the development and operation of qualifying
125 projects, including expansion and acceleration of such financing
126 to meet the public need; and to provide the greatest possible
127 flexibility to public and private entities contracting for the
128 provision of public services.

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

130 (a) The Partnership for Public Facilities and
131 Infrastructure Act Guidelines Task Force is created to establish
132 guidelines for public entities on the types of factors public
133 entities should review and consider when processing requests for
134 public-private partnership projects pursuant to this section,
135 including consistent requirements for private entities seeking
136 to participate in the construction or development of a
137 qualifying project throughout the state.

138 (b) The task force shall consist of nine members, as
139 follows:

140 1. One member of the Senate, appointed by the President of
141 the Senate.

142 2. One member of the House of Representatives, appointed by
143 the Speaker of the House of Representatives.

144 3. The Secretary of Management Services or his or her
145 designee.

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- 146 4. Six members appointed by the Governor, as follows:
147 a. One county government official.
148 b. One municipal government official.
149 c. One district school board member.
150 d. Three representatives of the business community.
- 151 (c) Task force members shall serve for a term of 2 years
152 each and shall elect a chair and a vice chair. The task force
153 shall meet as necessary. Administrative and technical support
154 shall be provided by the department. Task force members shall
155 serve without compensation, but are entitled to reimbursement
156 for per diem and travel expenses pursuant to s. 112.061. The
157 task force shall terminate on July 1, 2015.
- 158 (d) The task force shall provide guidelines to public
159 entities no later than July 1, 2014. The guidelines shall
160 include:
- 161 1. Opportunities for competition through public notice and
162 the availability of representatives of the responsible public
163 entity to meet with private entities considering a proposal.
- 164 2. Reasonable criteria for choosing among competing
165 proposals.
- 166 3. Suggested timelines for selecting proposals and
167 negotiating an interim or comprehensive agreement.
- 168 4. Authorization for accelerated selection and review and
169 documentation timelines for proposals involving a qualifying
170 project that the responsible public entity deems a priority.
- 171 5. Procedures for financial review and analysis which, at a
172 minimum, include a cost-benefit analysis, an assessment of
173 opportunity cost, and consideration of the results of all
174 studies and analyses related to the proposed qualifying project.

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175 6. Consideration of the nonfinancial benefits of a proposed
176 qualifying project.

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

179 8. Analysis of the adequacy of the information released
180 when seeking competing proposals, and providing for the
181 enhancement of that information, if deemed necessary, to
182 encourage competition, as well as establishing standards to
183 maintain the confidentiality of financial and proprietary terms
184 of an unsolicited proposal, which shall be disclosed only in
185 accordance with the bidding procedures of competing proposals.

186 9. Authority for the responsible public entity to engage
187 the services of qualified professionals, which may include a
188 Florida-registered professional or a certified public
189 accountant, not otherwise employed by the responsible public
190 entity, to provide an independent analysis regarding the
191 specifics, advantages, disadvantages, and long-term and short-
192 term costs of a request by a private entity for approval of a
193 qualifying project, unless the governing body of the public
194 entity determines that such analysis should be performed by
195 employees of the public entity. Professional services as defined
196 in s. 287.055 must be engaged pursuant to s. 287.055.

197 (e) The establishment of guidelines pursuant to this
198 section by the task force or the adoption of such guidelines by
199 a public entity is not required for the public entity to request
200 or receive proposals for a qualifying project or to enter into a
201 comprehensive agreement for a qualifying project. A public
202 entity may adopt guidelines before the establishment of
203 guidelines by the task force, which may remain in effect as long

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204 as such guidelines are not inconsistent with the guidelines
205 established by the task force. A guideline that is inconsistent
206 with the guidelines of the task force must be amended as
207 necessary to maintain consistency with the task force
208 guidelines.

209 (4) PROCUREMENT PROCEDURES.—A responsible public entity may
210 receive unsolicited proposals or may solicit proposals for
211 qualifying projects and may thereafter enter into an agreement
212 with a private entity, or a consortium of private entities, for
213 the building, upgrading, operating, ownership, or financing of
214 facilities.

215 (a) The responsible public entity may establish a
216 reasonable application fee for the submission of an unsolicited
217 proposal under this section. The fee must be sufficient to pay
218 the costs of evaluating the proposal. The responsible public
219 entity may engage the services of a private consultant to assist
220 in the evaluation.

221 (b) The responsible public entity may request a proposal
222 from private entities for a public-private project or, if the
223 public entity receives an unsolicited proposal, the public
224 entity shall publish notice in the Florida Administrative
225 Register and a newspaper of general circulation at least once a
226 week for 2 weeks stating that the public entity has received a
227 proposal and will accept other proposals for the same project.
228 The timeframe within which the public entity may accept other
229 proposals shall be determined by the public entity on a project-
230 by-project basis based upon the complexity of the project and
231 the public benefit to be gained by allowing a longer or shorter
232 period of time within which other proposals may be received;

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233 however, the timeframe for allowing other proposals must be at
234 least 21 days, but no more than 120 days, after the initial date
235 of publication. A copy of the notice must be mailed to each
236 local government in the affected area. The scope of the proposal
237 may be publicized for the purpose of soliciting competing
238 proposals; however, the financial terms of the proposal may not
239 be disclosed until the terms of all competing bids are
240 simultaneously disclosed in accordance with the applicable law
241 governing procurement procedures for the qualifying project.

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

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

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

248 2. Is for a facility that is owned by the responsible
249 public entity or for a facility for which ownership will be
250 conveyed to the responsible public entity.

251 3. Has adequate safeguards in place to ensure that
252 additional costs or service disruptions are not imposed on the
253 public in the event of material default or cancellation of the
254 agreement by the responsible public entity.

255 4. Has adequate safeguards in place to ensure that the
256 responsible public entity or the private entity has the
257 opportunity to add capacity to the proposed project or other
258 facilities serving similar predominantly public purposes.

259 5. Will be owned by the responsible public entity upon
260 completion or termination of the agreement and upon payment of
261 the amounts financed.

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262 (e) Before signing a comprehensive agreement, the
263 responsible public entity must consider a reasonable finance
264 plan that is consistent with subsection (11), the project cost,
265 revenues by source, available financing, major assumptions,
266 internal rate of return on private investments, if governmental
267 funds are assumed in order to deliver a cost-feasible project,
268 and a total cash-flow analysis beginning with the implementation
269 of the project and extending for the term of the agreement.

270 (f) In considering an unsolicited proposal, the responsible
271 public entity may require from the private entity a technical
272 study prepared by a nationally recognized expert with experience
273 in preparing analysis for bond rating agencies. In evaluating
274 the technical study, the responsible public entity may rely upon
275 internal staff reports prepared by personnel familiar with the
276 operation of similar facilities or the advice of external
277 advisors or consultants who have relevant experience.

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

282 (a) A description of the qualifying project, including the
283 conceptual design of the facilities or a conceptual plan for the
284 provision of services, and a schedule for the initiation and
285 completion of the qualifying project.

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

289 (c) A description of the private entity's general plans for
290 financing the qualifying project, including the sources of the

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291 private entity's funds and the identity of any dedicated revenue
292 source or proposed debt or equity investment on behalf of the
293 private entity.

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

296 (e) The proposed user fees, lease payments, or other
297 service payments over the term of a comprehensive agreement, and
298 the methodology for and circumstances that would allow changes
299 to the user fees, lease payments, and other service payments
300 over time.

301 (f) Additional material or information that the responsible
302 public entity reasonably requests.

303 (6) PROJECT QUALIFICATION AND PROCESS.—

304 (a) The private entity must meet the minimum standards
305 contained in the responsible public entity's guidelines for
306 qualifying professional services and contracts for traditional
307 procurement projects.

308 (b) The responsible public entity must:

309 1. Ensure that provision is made for the private entity's
310 performance and payment of subcontractors, including, but not
311 limited to, surety bonds, letters of credit, parent company
312 guarantees, and lender and equity partner guarantees. For the
313 components of the qualifying project which involve construction
314 performance and payment, bonds are required and are subject to
315 the recordation, notice, suit limitation, and other requirements
316 of s. 255.05.

317 2. Ensure the most efficient pricing of the security
318 package that provides for the performance and payment of
319 subcontractors.

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

323 (c) After the public notification period has expired in the
324 case of an unsolicited proposal, the responsible public entity
325 shall rank the proposals received in order of preference. In
326 ranking the proposals, the responsible public entity may
327 consider factors that include, but are not limited to,
328 professional qualifications, general business terms, innovative
329 design techniques or cost-reduction terms, and finance plans. If
330 the responsible public entity is not satisfied with the results
331 of the negotiations, the responsible public entity may terminate
332 negotiations with the proposer and negotiate with the second-
333 ranked or subsequent-ranked firms in the order consistent with
334 this procedure. If only one proposal is received, the
335 responsible public entity may negotiate in good faith, and if
336 the public entity is not satisfied with the results of the
337 negotiations, the public entity may terminate negotiations with
338 the proposer. Notwithstanding this paragraph, the responsible
339 public entity may reject all proposals at any point in the
340 process until a contract with the proposer is executed.

341 (d) The responsible public entity shall perform an
342 independent analysis of the proposed public-private partnership
343 which demonstrates the cost-effectiveness and overall public
344 benefit before the procurement process is initiated or before
345 the contract is awarded.

346 (e) The responsible public entity may approve the
347 development or operation of an educational facility, a
348 transportation facility, a water or wastewater management

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349 facility or related infrastructure, a technology infrastructure
350 or other public infrastructure, or a government facility needed
351 by the responsible public entity as a qualifying project, or the
352 design or equipping of a qualifying project that is developed or
353 operated, if:

354 1. There is a public need for or benefit derived from a
355 project of the type that the private entity proposes as the
356 qualifying project.

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

359 3. The private entity's plans will result in the timely
360 acquisition, design, construction, improvement, renovation,
361 expansion, equipping, maintenance, or operation of the
362 qualifying project.

363 (f) The responsible public entity may charge a reasonable
364 fee to cover the costs of processing, reviewing, and evaluating
365 the request, including, but not limited to, reasonable attorney
366 fees and fees for financial and technical advisors or
367 consultants and for other necessary advisors or consultants.

368 (g) Upon approval of a qualifying project, the responsible
369 public entity shall establish a date for the commencement of
370 activities related to the qualifying project. The responsible
371 public entity may extend the commencement date.

372 (h) Approval of a qualifying project by the responsible
373 public entity is subject to entering into a comprehensive
374 agreement with the private entity.

375 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

376 (a) The responsible public entity must notify each affected
377 local jurisdiction by furnishing a copy of the proposal to each

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378 affected local jurisdiction when considering a proposal for a
379 qualifying project.

380 (b) Each affected local jurisdiction that is not a
381 responsible public entity for the respective qualifying project
382 may, within 60 days after receiving the notice, submit in
383 writing any comments to the responsible public entity and
384 indicate whether the facility is incompatible with the local
385 comprehensive plan, the local infrastructure development plan,
386 the capital improvements budget, or other governmental spending
387 plan. The responsible public entity shall consider the comments
388 of the affected local jurisdiction before entering into a
389 comprehensive agreement with a private entity. If an affected
390 local jurisdiction fails to respond to the responsible public
391 entity within the time provided in this paragraph, the
392 nonresponse is deemed an acknowledgement by the affected local
393 jurisdiction that the qualifying project is compatible with the
394 local comprehensive plan, the local infrastructure development
395 plan, the capital improvements budget, or other governmental
396 spending plan.

397 (8) INTERIM AGREEMENT.—Before or in connection with the
398 negotiation of a comprehensive agreement, the public entity may
399 enter into an interim agreement with the private entity
400 proposing the development or operation of the qualifying
401 project. An interim agreement does not obligate the responsible
402 public entity to enter into a comprehensive agreement. The
403 interim agreement is discretionary with the parties and is not
404 required on a qualifying project for which the parties may
405 proceed directly to a comprehensive agreement without the need
406 for an interim agreement. An interim agreement must be limited

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407 to provisions that:

408 (a) Authorize the private entity to commence activities for
409 which it may be compensated related to the proposed qualifying
410 project, including, but not limited to, project planning and
411 development, design, environmental analysis and mitigation,
412 survey, other activities concerning any part of the proposed
413 qualifying project, and ascertaining the availability of
414 financing for the proposed facility or facilities.

415 (b) Establish the process and timing of the negotiation of
416 the comprehensive agreement.

417 (c) Contain such other provisions related to an aspect of
418 the development or operation of a qualifying project that the
419 responsible public entity and the private entity deem
420 appropriate.

421 (9) COMPREHENSIVE AGREEMENT.—

422 (a) Before developing or operating the qualifying project,
423 the private entity must enter into a comprehensive agreement
424 with the responsible public entity. The comprehensive agreement
425 must provide for:

426 1. The delivery of performance and payment bonds, letters
427 of credit, or other security acceptable to the responsible
428 public entity in connection with the development or operation of
429 the qualifying project in the form and amount satisfactory to
430 the responsible public entity. For the components of the
431 qualifying project which involve construction, the form and
432 amount of the bonds must comply with s. 255.05.

433 2. The review of the plans and specifications for the
434 qualifying project by the responsible public entity and, if the
435 plans and specifications conform to standards acceptable to the

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436 responsible public entity, the approval of the responsible
437 public entity. This subparagraph does not require the private
438 entity to complete the design of the qualifying project before
439 the execution of the comprehensive agreement.

440 3. The inspection of the qualifying project by the
441 responsible public entity to ensure that the private entity's
442 activities are acceptable to the public entity in accordance
443 with the comprehensive agreement.

444 4. The maintenance of a policy of public liability
445 insurance, a copy of which must be filed with the responsible
446 public entity and accompanied by proofs of coverage, or self-
447 insurance, each in the form and amount satisfactory to the
448 responsible public entity and reasonably sufficient to ensure
449 coverage of tort liability to the public and employees and to
450 enable the continued operation of the qualifying project.

451 5. The monitoring by the responsible public entity of the
452 maintenance practices to be performed by the private entity to
453 ensure that the qualifying project is properly maintained.

454 6. The periodic filing by the private entity of the
455 appropriate financial statements that pertain to the qualifying
456 project.

457 7. The procedures that govern the rights and
458 responsibilities of the responsible public entity and the
459 private entity in the course of the construction and operation
460 of the qualifying project and in the event of the termination of
461 the comprehensive agreement or a material default by the private
462 entity. The procedures must include conditions that govern the
463 assumption of the duties and responsibilities of the private
464 entity by an entity that funded, in whole or part, the

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465 qualifying project or by the responsible public entity, and must
466 provide for the transfer or purchase of property or other
467 interests of the private entity by the responsible public
468 entity.

469 8. In negotiating user fees, the fees must be the same for
470 persons using the facility under like conditions and must not
471 materially discourage use of the qualifying project. The
472 execution of the comprehensive agreement or a subsequent
473 amendment is conclusive evidence that the fees, lease payments,
474 or service payments provided for in the comprehensive agreement
475 comply with this section. Fees or lease payments established in
476 the comprehensive agreement as a source of revenue may be in
477 addition to, or in lieu of, service payments.

478 9. The duties of the private entity, including the terms
479 and conditions that the responsible public entity determines
480 serve the public purpose of this section.

481 (b) The comprehensive agreement may include:

482 1. An agreement by the responsible public entity to make
483 grants or loans to the private entity from amounts received from
484 the federal, state, or local government or an agency or
485 instrumentality thereof.

486 2. A provision under which each entity agrees to provide
487 notice of default and cure rights for the benefit of the other
488 entity, including, but not limited to, a provision regarding
489 unavoidable delays.

490 3. A provision that terminates the authority and duties of
491 the private entity under this section and dedicates the
492 qualifying project to the responsible public entity or, if the
493 qualifying project was initially dedicated by an affected local

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494 jurisdiction, to the affected local jurisdiction for public use.

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

499 (a) The responsible public entity may develop new
500 facilities or increase capacity in existing facilities through
501 agreements with public-private partnerships.

502 (b) The public-private partnership agreement must ensure
503 that the facility is properly operated, maintained, or improved
504 in accordance with standards set forth in the comprehensive
505 agreement.

506 (c) The responsible public entity may lease existing fee-
507 for-use facilities through a public-private partnership
508 agreement.

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

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

514 (11) FINANCING.—

515 (a) A private entity may enter into a private-source
516 financing agreement between financing sources and the private
517 entity. A financing agreement and any liens on the property or
518 facility must be paid in full at the applicable closing that
519 transfers ownership or operation of the facility to the
520 responsible public entity at the conclusion of the term of the
521 comprehensive agreement.

522 (b) The responsible public entity may lend funds to private

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523 entities that construct projects containing facilities that are
524 approved under this section.

525 (c) The responsible public entity may use innovative
526 finance techniques associated with a public-private partnership
527 under this section, including, but not limited to, federal loans
528 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
529 and hedges against inflation from commercial banks or other
530 private sources. In addition, the responsible public entity may
531 provide its own capital or operating budget to support a
532 qualifying project. The budget may be from any legally
533 permissible funding sources of the responsible public entity,
534 including the proceeds of debt issuances. A responsible public
535 entity may use the model financing agreement provided in s.
536 489.145(6) for its financing of a facility owned by a
537 responsible public entity. A financing agreement may not require
538 the responsible public entity to indemnify the financing source,
539 subject the responsible public entity's facility to liens in
540 violation of s. 11.066(5), or secure financing by the
541 responsible public entity with a pledge of security interest,
542 and any such provision is void.

543 (d) A responsible public entity shall appropriate on a
544 priority basis as required by the comprehensive agreement a
545 contractual payment obligation, annual or otherwise, from the
546 enterprise or other government fund from which the qualifying
547 projects will be funded. This required payment obligation must
548 be appropriated before other noncontractual obligations payable
549 from the same enterprise or other government fund.

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

551 (a) The private entity shall:

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

555 2. Maintain, or provide by contract for the maintenance or
556 improvement of, the qualifying project if required by the
557 comprehensive agreement.

558 3. Cooperate with the responsible public entity in making
559 best efforts to establish interconnection between the qualifying
560 project and any other facility or infrastructure as requested by
561 the responsible public entity in accordance with the provisions
562 of the comprehensive agreement.

563 4. Comply with the comprehensive agreement and any lease or
564 service contract.

565 (b) Each private facility that is constructed pursuant to
566 this section must comply with the requirements of federal,
567 state, and local laws; state, regional, and local comprehensive
568 plans; the responsible public entity's rules, procedures, and
569 standards for facilities; and such other conditions that the
570 responsible public entity determines to be in the public's best
571 interest and that are included in the comprehensive agreement.

572 (c) The responsible public entity may provide services to
573 the private entity. An agreement for maintenance and other
574 services entered into pursuant to this section must provide for
575 full reimbursement for services rendered for qualifying
576 projects.

577 (d) A private entity of a qualifying project may provide
578 additional services for the qualifying project to the public or
579 to other private entities if the provision of additional
580 services does not impair the private entity's ability to meet

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581 its commitments to the responsible public entity pursuant to the
582 comprehensive agreement.

583 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
584 expiration or termination of a comprehensive agreement, the
585 responsible public entity may use revenues from the qualifying
586 project to pay current operation and maintenance costs of the
587 qualifying project. If the private entity materially defaults
588 under the comprehensive agreement, the compensation that is
589 otherwise due to the private entity is payable to satisfy all
590 financial obligations to investors and lenders on the qualifying
591 project in the same way that is provided in the comprehensive
592 agreement or any other agreement involving the qualifying
593 project, if the costs of operating and maintaining the
594 qualifying project are paid in the normal course. Revenues in
595 excess of the costs for operation and maintenance costs may be
596 paid to the investors and lenders to satisfy payment obligations
597 under their respective agreements. A responsible public entity
598 may terminate with cause and without prejudice a comprehensive
599 agreement and may exercise any other rights or remedies that may
600 be available to it in accordance with the provisions of the
601 comprehensive agreement. The full faith and credit of the
602 responsible public entity may not be pledged to secure the
603 financing of the private entity. The assumption of the
604 development or operation of the qualifying project does not
605 obligate the responsible public entity to pay any obligation of
606 the private entity from sources other than revenues from the
607 qualifying project unless stated otherwise in the comprehensive
608 agreement.

609 (14) SOVEREIGN IMMUNITY.—This section does not waive the

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610 sovereign immunity of a responsible public entity, an affected
611 local jurisdiction, or an officer or employee thereof with
612 respect to participation in, or approval of, any part of a
613 qualifying project or its operation, including, but not limited
614 to, interconnection of the qualifying project with any other
615 infrastructure or project. A county or municipality in which a
616 qualifying project is located possesses sovereign immunity with
617 respect to the project, including, but not limited to, its
618 design, construction, and operation.

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

621 (a) This section does not limit a state agency or political
622 subdivision of the state in the acquisition, design, or
623 construction of a public project pursuant to other statutory
624 authority.

625 (b) Except as otherwise provided in this section, this
626 section does not amend existing laws by granting additional
627 powers to, or further restricting, a local governmental entity
628 from regulating and entering into cooperative arrangements with
629 the private sector for the planning, construction, or operation
630 of a facility.

631 (c) This section does not waive any requirement of s.
632 287.055.

633 Section 2. Section 336.71, Florida Statutes, is created to
634 read:

635 336.71 Public-private transportation facilities.—

636 (1) A county may receive or solicit proposals and enter
637 into agreements with private entities or consortia thereof to
638 build, operate, own, or finance highways, bridges, multimodal

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639 transportation systems, transit-oriented development nodes,
640 transit stations, and related transportation facilities located
641 solely within the county, including municipalities therein.

642 Before approval, the county must determine that a proposed
643 project:

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

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

648 (c) Would have adequate safeguards to ensure that
649 additional costs or unreasonable service disruptions are not
650 realized by the traveling public and citizens of the state in
651 the event of default or cancellation of the agreement by the
652 county.

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

655 (2) The county shall ensure that all reasonable costs to
656 the county related to transportation facilities that are not
657 part of the county road system are borne by the private entity
658 that develops or operates the facilities. The county shall also
659 ensure that all reasonable costs to the county and substantially
660 affected local governments and utilities related to the private
661 transportation facility are borne by the private entity for
662 transportation facilities that are owned by private entities.
663 For projects on the county road system or that provide increased
664 mobility on the county road system, the county may use county
665 resources to participate in funding and financing the project
666 pursuant to the county's financial policies and ordinances.

667 (3) The county may request proposals and receive

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668 unsolicited proposals for public-private transportation
669 facilities. Upon a determination by the governing body of the
670 county to issue a request for proposals, the governing body of
671 the county must publish a notice of the request for proposals in
672 a newspaper of general circulation in the county at least once a
673 week for 2 weeks. Upon receipt of an unsolicited proposal, the
674 governing body of the county must publish a notice in a
675 newspaper of general circulation in the county at least once a
676 week for 2 weeks stating that it has received the proposal and
677 will accept, for 60 days after the initial date of publication,
678 other proposals for the same project purpose. A copy of the
679 notice must be mailed to the governing body of each local
680 government in the affected area. After the public notification
681 period has expired, the governing body of the county shall rank
682 the proposals in order of preference. In ranking the proposals,
683 the governing body of the county shall consider professional
684 qualifications, general business terms, innovative engineering
685 or cost-reduction terms, finance plans, and the need for county
686 funds to complete the project. If the governing body of the
687 county is not satisfied with the results of the negotiations, it
688 may terminate negotiations with the proposer. If negotiations
689 are unsuccessful, the governing body of the county may negotiate
690 with the private entity that has the next highest ranked
691 proposal, using the same procedure. If only one proposal is
692 received, the governing body of the county may negotiate in good
693 faith and may, if not satisfied with the results, terminate
694 negotiations with the proposer. The governing body of the county
695 may, at its discretion, reject all proposals at any point in the
696 process up to completion of a contract with the proposer. Any

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697 private entity submitting an unsolicited proposal shall submit
698 with the proposal a fee of \$25,000 to be used by the governing
699 body of the county for the costs associated with the review and
700 analysis of the proposal, and such entity shall remain liable
701 for any additional costs and expenses incurred by the governing
702 body of the county for such review and analysis.

703 (4) Agreements entered into pursuant to this section may
704 authorize the county or the private project owner, lessee, or
705 operator to impose, collect, and enforce tolls or fares for the
706 use of the transportation facility. However, the amount and use
707 of toll or fare revenue shall be regulated by the county to
708 avoid unreasonable costs to users of the facility.

709 (5) Each public-private transportation facility constructed
710 pursuant to this section shall comply with all requirements of
711 federal, state, and local laws; state, regional, and local
712 comprehensive plans; the county's rules, policies, procedures,
713 and standards for transportation facilities; and any other
714 conditions that the county determines to be in the best interest
715 of the public.

716 (6) The governing body of the county may exercise any of
717 its powers, including eminent domain, to facilitate the
718 development and construction of transportation projects pursuant
719 to this section. The governing body of the county may pay all or
720 part of the cost of operating and maintaining the facility and
721 may provide services to the private entity, for which services
722 it shall receive full or partial reimbursement.

723 (7) Except as otherwise provided in this section, this
724 section is not intended to amend existing law by granting
725 additional powers to or imposing further restrictions on local

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726 governmental entities with regard to regulating and entering
727 into cooperative arrangements with the private sector for the
728 planning, construction, and operation of transportation
729 facilities.

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

732 (9) This section does not authorize a county or counties to
733 enter into agreements with private entities or consortia thereof
734 to build, operate, own, or finance a transportation facility
735 that would extend beyond the geographical boundaries of a single
736 county.

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