

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED (Y/N)
 ADOPTED AS AMENDED (Y/N)
 ADOPTED W/O OBJECTION (Y/N)
 FAILED TO ADOPT (Y/N)
 WITHDRAWN (Y/N)
 OTHER

1 Committee/Subcommittee hearing bill: Appropriations Committee
 2 Representative Steube offered the following:

3
 4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:
 6 Section 1. Section 255.60, Florida Statutes, is amended to
 7 read:

8 255.60 Special contracts with charitable not-for-profit
 9 ~~youth~~ organizations.—The state, ~~or~~ the governing body of any
 10 political subdivision of the state, or a public-private
 11 partnership is authorized, but not required, to contract for
 12 public service work with a not-for-profit organization ~~such as~~
 13 ~~highway and park maintenance,~~ notwithstanding competitive sealed
 14 bid procedures required under this chapter, ~~or~~ chapter 287, or
 15 any municipal or county charter, upon compliance with this
 16 section.

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

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

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

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

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

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

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

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

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

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

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

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47 | ~~(f)~~ (d) The supplier or contractor has instituted a drug-
48 | free workplace program substantially in compliance with the
49 | provisions of s. 287.087.

50 | (g) (e) The contractor or supplier agrees to be subject to
51 | review and audit at the discretion of the Auditor General in
52 | order to ensure that the contractor or supplier has complied
53 | with this section.

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

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

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

64 | Section 2. Section 287.05712, Florida Statutes, is created
65 | to read:

66 | 287.05712 Public-private partnerships.-

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

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

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

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

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

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

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

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

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

93 (i) "Qualifying project" means:

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

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101 public educational institution, or any other public facility or
102 infrastructure that is used or will be used by the public at
103 large or in support of an accepted public purpose or activity;

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

108 3. A water, wastewater, or surface water management
109 facility or other related infrastructure; or

110 4. Notwithstanding any provision of this section, for
111 projects that involve a facility owned or operated by the
112 governing board of a county, district, or municipal hospital or
113 health care system, only those projects that the governing board
114 designates as qualifying projects 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,
121 lease payments, or other service payments relating to the
122 development or operation of a qualifying project, including, but
123 not limited to, money received as grants or otherwise from the
124 Federal Government, a public entity, or an agency or
125 instrumentality 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.

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

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

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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
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
201 developing 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
210 documentation timelines should be considered for proposals
211 involving a qualifying project that the responsible public
212 entity deems a priority.

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213 5. Procedures for financial review and analysis which, at
214 a 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.

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 to
223 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 by the task
240 force or the adoption of such guidelines by a public entity is

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241 not required for the public entity to request or receive
242 proposals for a qualifying project or to enter into a
243 comprehensive agreement for a qualifying project. A public
244 entity may adopt guidelines before or after the establishment of
245 guidelines by the task force, which may remain in effect as long
246 as such guidelines are not inconsistent with the guidelines
247 established by the task force. A guideline that is inconsistent
248 with the guidelines of the task force must be amended as
249 necessary to maintain consistency with the task force
250 guidelines.

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

257 (a) The responsible public entity may establish a
258 reasonable application fee for the submission of an unsolicited
259 proposal under this section. The fee must be sufficient to pay
260 the costs of evaluating the proposal. The responsible public
261 entity may engage the services of a private consultant to assist
262 in the evaluation.

263 (b) The responsible public entity may request a proposal
264 from private entities for a public-private project or, if the
265 public entity receives an unsolicited proposal for a public-
266 private project and the public entity intends to enter into a
267 comprehensive agreement for the project described in such
268 unsolicited proposal, the public entity shall publish notice in

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269 the Florida Administrative Register and a newspaper of general
270 circulation at least once a week for 2 weeks stating that the
271 public entity has received a proposal and will accept other
272 proposals for the same project. The timeframe within which the
273 public entity may accept other proposals shall be determined by
274 the public entity on a project-by-project basis based upon the
275 complexity of the project and the public benefit to be gained by
276 allowing a longer or shorter period of time within which other
277 proposals may be received; however, the timeframe for allowing
278 other proposals must be at least 21 days, but no more than 120
279 days, after the initial date of publication. A copy of the
280 notice must be mailed to each local government in the affected
281 area.

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

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

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

288 2. Is for a facility that is owned by the responsible
289 public entity or for a facility for which ownership will be
290 conveyed to the responsible public entity.

291 3. Has adequate safeguards in place to ensure that
292 additional costs or service disruptions are not imposed on the
293 public in the event of material default or cancellation of the
294 agreement by the responsible public entity.

295 4. Has adequate safeguards in place to ensure that the
296 responsible public entity or private entity has the opportunity

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297 to add capacity to the proposed project or other facilities
298 serving similar predominantly public purposes.

299 5. Will be owned by the responsible public entity upon
300 completion or termination of the agreement and upon payment of
301 the amounts financed.

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

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

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

323 (a) A description of the qualifying project, including the
324 conceptual design of the facilities or a conceptual plan for the

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325 provision of services, and a schedule for the initiation and
326 completion of the qualifying project.

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

330 (c) A description of the private entity's general plans
331 for financing the qualifying project, including the sources of
332 the private entity's funds and the identity of any dedicated
333 revenue source or proposed debt or equity investment on behalf
334 of the private entity.

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

337 (e) The proposed user fees, lease payments, or other
338 service payments over the term of a comprehensive agreement, and
339 the methodology for and circumstances that would allow changes
340 to the user fees, lease payments, and other service payments
341 over time.

342 (f) Additional material or information that the
343 responsible public entity reasonably requests.

344 (6) PROJECT QUALIFICATION AND PROCESS.—

345 (a) The private entity must meet the minimum standards
346 contained in the responsible public entity's guidelines for
347 qualifying professional services and contracts for traditional
348 procurement projects.

349 (b) The responsible public entity must:

350 1. Ensure that provision is made for the private entity's
351 performance and payment of subcontractors, including, but not
352 limited to, surety bonds, letters of credit, parent company

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353 guarantees, and lender and equity partner guarantees. For the
354 components of the qualifying project which involve construction
355 performance and payment, bonds are required and are subject to
356 the recordation, notice, suit limitation, and other requirements
357 of s. 255.05.

358 2. Ensure the most efficient pricing of the security
359 package that provides for the performance and payment of
360 subcontractors.

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

364 (c) After the public notification period has expired in
365 the case of an unsolicited proposal, the responsible public
366 entity shall rank the proposals received in order of preference.
367 In ranking the proposals, the responsible public entity may
368 consider factors that include, but are not limited to,
369 professional qualifications, general business terms, innovative
370 design techniques or cost-reduction terms, and finance plans.
371 The responsible public entity may then begin negotiations for a
372 comprehensive agreement with the highest-ranked firm. If the
373 responsible public entity is not satisfied with the results of
374 the negotiations, the responsible public entity may terminate
375 negotiations with the proposer and negotiate with the second-
376 ranked or subsequent-ranked firms in the order consistent with
377 this procedure. If only one proposal is received, the
378 responsible public entity may negotiate in good faith, and if
379 the public entity is not satisfied with the results of the
380 negotiations, the public entity may terminate negotiations with

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381 the proposer. Notwithstanding this paragraph, the responsible
382 public entity may reject all proposals at any point in the
383 process until a contract with the proposer is executed.

384 (d) The responsible public entity shall perform an
385 independent analysis of the proposed public-private partnership
386 which demonstrates the cost-effectiveness and overall public
387 benefit before the procurement process is initiated or before
388 the contract is awarded.

389 (e) The responsible public entity may approve the
390 development or operation of an educational facility, a
391 transportation facility, a water or wastewater management
392 facility or related infrastructure, a technology infrastructure
393 or other public infrastructure, or a government facility needed
394 by the responsible public entity as a qualifying project, or the
395 design or equipping of a qualifying project that is developed or
396 operated, if:

397 1. There is a public need for or benefit derived from a
398 project of the type that the private entity proposes as the
399 qualifying project.

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

402 3. The private entity's plans will result in the timely
403 acquisition, design, construction, improvement, renovation,
404 expansion, equipping, maintenance, or operation of the
405 qualifying project.

406 (f) The responsible public entity may charge a reasonable
407 fee to cover the costs of processing, reviewing, and evaluating
408 the request, including, but not limited to, reasonable attorney

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409 fees and fees for financial and technical advisors or
410 consultants and for other necessary advisors or consultants.

411 (g) Upon approval of a qualifying project, the responsible
412 public entity shall establish a date for the commencement of
413 activities related to the qualifying project. The responsible
414 public entity may extend the commencement date.

415 (h) Approval of a qualifying project by the responsible
416 public entity is subject to entering into a comprehensive
417 agreement with the private entity.

418 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

419 (a) The responsible public entity must notify each
420 affected local jurisdiction by furnishing a copy of the proposal
421 to each affected local jurisdiction when considering a proposal
422 for a qualifying project.

423 (b) Each affected local jurisdiction that is not a
424 responsible public entity for the respective qualifying project
425 may, within 60 days after receiving the notice, submit in
426 writing any comments to the responsible public entity and
427 indicate whether the facility is incompatible with the local
428 comprehensive plan, the local infrastructure development plan,
429 the capital improvements budget, any development of regional
430 impact processes or timelines, or other governmental spending
431 plan. The responsible public entity shall consider the comments
432 of the affected local jurisdiction before entering into a
433 comprehensive agreement with a private entity. If an affected
434 local jurisdiction fails to respond to the responsible public
435 entity within the time provided in this paragraph, the
436 nonresponse is deemed an acknowledgement by the affected local

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437 jurisdiction that the qualifying project is compatible with the
438 local comprehensive plan, the local infrastructure development
439 plan, the capital improvements budget, or other governmental
440 spending plan.

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

452 (a) Authorize the private entity to commence activities
453 for which it may be compensated related to the proposed
454 qualifying project, including, but not limited to, project
455 planning and development, design, environmental analysis and
456 mitigation, survey, other activities concerning any part of the
457 proposed qualifying project, and ascertaining the availability
458 of financing for the proposed facility or facilities.

459 (b) Establish the process and timing of the negotiation of
460 the comprehensive agreement.

461 (c) Contain such other provisions related to an aspect of
462 the development or operation of a qualifying project that the
463 responsible public entity and the private entity deem
464 appropriate.

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465 (9) COMPREHENSIVE AGREEMENT.—

466 (a) Before developing or operating the qualifying project,
467 the private entity must enter into a comprehensive agreement
468 with the responsible public entity. The comprehensive agreement
469 must provide for:

470 1. The delivery of performance and payment bonds, letters
471 of credit, or other security acceptable to the responsible
472 public entity in connection with the development or operation of
473 the qualifying project in the form and amount satisfactory to
474 the responsible public entity. For the components of the
475 qualifying project which involve construction, the form and
476 amount of the bonds must comply with s. 255.05.

477 2. The review of the design for the qualifying project by
478 the responsible public entity and, if the design conforms to
479 standards acceptable to the responsible public entity, the
480 approval of the responsible public entity. This subparagraph
481 does not require the private entity to complete the design of
482 the qualifying project before the execution of the comprehensive
483 agreement.

484 3. The inspection of the qualifying project by the
485 responsible public entity to ensure that the private entity's
486 activities are acceptable to the public entity in accordance
487 with the comprehensive agreement.

488 4. The maintenance of a policy of public liability
489 insurance, a copy of which must be filed with the responsible
490 public entity and accompanied by proofs of coverage, or self-
491 insurance, each in the form and amount satisfactory to the
492 responsible public entity and reasonably sufficient to ensure

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493 coverage of tort liability to the public and employees and to
494 enable the continued operation of the qualifying project.

495 5. The monitoring by the responsible public entity of the
496 maintenance practices to be performed by the private entity to
497 ensure that the qualifying project is properly maintained.

498 6. The periodic filing by the private entity of the
499 appropriate financial statements that pertain to the qualifying
500 project.

501 7. The procedures that govern the rights and
502 responsibilities of the responsible public entity and the
503 private entity in the course of the construction and operation
504 of the qualifying project and in the event of the termination of
505 the comprehensive agreement or a material default by the private
506 entity. The procedures must include conditions that govern the
507 assumption of the duties and responsibilities of the private
508 entity by an entity that funded, in whole or part, the
509 qualifying project or by the responsible public entity, and must
510 provide for the transfer or purchase of property or other
511 interests of the private entity by the responsible public
512 entity.

513 8. In negotiating user fees, the fees must be the same for
514 persons using the facility under like conditions and must not
515 materially discourage use of the qualifying project. The
516 execution of the comprehensive agreement or a subsequent
517 amendment is conclusive evidence that the fees, lease payments,
518 or service payments provided for in the comprehensive agreement
519 comply with this section. Fees or lease payments established in

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520 the comprehensive agreement as a source of revenue may be in
521 addition to, or in lieu of, service payments.

522 9. The duties of the private entity, including the terms
523 and conditions that the responsible public entity determines
524 serve the public purpose of this section.

525 (b) The comprehensive agreement may include:

526 1. An agreement by the responsible public entity to make
527 grants or loans to the private entity from amounts received from
528 the federal, state, or local government or an agency or
529 instrumentality thereof.

530 2. A provision under which each entity agrees to provide
531 notice of default and cure rights for the benefit of the other
532 entity, including, but not limited to, a provision regarding
533 unavoidable delays.

534 3. A provision that terminates the authority and duties of
535 the private entity under this section and dedicates the
536 qualifying project to the responsible public entity or, if the
537 qualifying project was initially dedicated by an affected local
538 jurisdiction, to the affected local jurisdiction for public use.

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

543 (a) The responsible public entity may develop new
544 facilities or increase capacity in existing facilities through
545 agreements with public-private partnerships.

546 (b) The public-private partnership agreement must ensure
547 that the facility is properly operated, maintained, or improved

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548 in accordance with standards set forth in the comprehensive
549 agreement.

550 (c) The responsible public entity may lease existing fee-
551 for-use facilities through a public-private partnership
552 agreement.

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

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

558 (11) FINANCING.-

559 (a) A private entity may enter into a private-source
560 financing agreement between financing sources and the private
561 entity. A financing agreement and any liens on the property or
562 facility must be paid in full at the applicable closing that
563 transfers ownership or operation of the facility to the
564 responsible public entity at the conclusion of the term of the
565 comprehensive agreement.

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

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

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576 qualifying project. The budget may be from any legally
577 permissible funding sources of the responsible public entity,
578 including the proceeds of debt issuances. A responsible public
579 entity may use the model financing agreement provided in s.
580 489.145(6) for its financing of a facility owned by a
581 responsible public entity. A financing agreement may not require
582 the responsible public entity to indemnify the financing source,
583 subject the responsible public entity's facility to liens in
584 violation of s. 11.066(5), or secure financing by the
585 responsible public entity with a pledge of security interest,
586 and any such provision is void.

587 (d) A responsible public entity shall appropriate on a
588 priority basis as required by the comprehensive agreement a
589 contractual payment obligation, annual or otherwise, from the
590 enterprise or other government fund from which the qualifying
591 projects will be funded. This required payment obligation must
592 be appropriated before other noncontractual obligations payable
593 from the same enterprise or other government fund.

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

595 (a) The private entity shall:

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

599 2. Maintain, or provide by contract for the maintenance or
600 improvement of, the qualifying project if required by the
601 comprehensive agreement.

602 3. Cooperate with the responsible public entity in making
603 best efforts to establish interconnection between the qualifying

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604 project and any other facility or infrastructure as requested by
605 the responsible public entity in accordance with the provisions
606 of the comprehensive agreement.

607 4. Comply with the comprehensive agreement and any lease
608 or service contract.

609 (b) Each private facility that is constructed pursuant to
610 this section must comply with the requirements of federal,
611 state, and local laws; state, regional, and local comprehensive
612 plans; the responsible public entity's rules, procedures, and
613 standards for facilities; and such other conditions that the
614 responsible public entity determines to be in the public's best
615 interest and that are included in the comprehensive agreement.

616 (c) The responsible public entity may provide services to
617 the private entity. An agreement for maintenance and other
618 services entered into pursuant to this section must provide for
619 full reimbursement for services rendered for qualifying
620 projects.

621 (d) A private entity of a qualifying project may provide
622 additional services for the qualifying project to the public or
623 to other private entities if the provision of additional
624 services does not impair the private entity's ability to meet
625 its commitments to the responsible public entity pursuant to the
626 comprehensive agreement.

627 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
628 expiration or termination of a comprehensive agreement, the
629 responsible public entity may use revenues from the qualifying
630 project to pay current operation and maintenance costs of the
631 qualifying project. If the private entity materially defaults

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

653 (14) SOVEREIGN IMMUNITY.—This section does not waive the
654 sovereign immunity of a responsible public entity, an affected
655 local jurisdiction, or an officer or employee thereof with
656 respect to participation in, or approval of, any part of a
657 qualifying project or its operation, including, but not limited
658 to, interconnection of the qualifying project with any other
659 infrastructure or project. A county or municipality in which a

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660 qualifying project is located possesses sovereign immunity with
661 respect to the project, including, but not limited to, its
662 design, construction, and operation.

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

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

676 (b) Except as otherwise provided in this section, this
677 section does not amend existing laws by granting additional
678 powers to, or further restricting, a local governmental entity
679 from regulating and entering into cooperative arrangements with
680 the private sector for the planning, construction, or operation
681 of a facility.

682 (c) This section does not waive any requirement of s.
683 287.055.

684 Section 3. Section 336.71, Florida Statutes, is created to
685 read:

686 336.71 Public-private cooperation in construction of
687 county roads.-

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688 (1) If a county receives a proposal, solicited or
689 unsolicited, from a private entity seeking to construct, extend,
690 or improve a county road or portion thereof, the county may
691 enter into an agreement with the private entity for completion
692 of the road construction project, which agreement may provide
693 for payment to the private entity, from public funds, if the
694 county conducts a noticed public hearing and finds that the
695 proposed county road construction project:

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

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

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

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

704 (e) Would result in a financial benefit to the public by
705 completing the subject project at a cost to the public
706 significantly lower than if the project were constructed by the
707 county using the normal procurement process.

708 (2) The notice for the public hearing provided for in
709 subsection (1) must be published at least 14 days before the
710 date of the public meeting at which the governing board takes
711 final action. The notice must identify the project, the
712 estimated cost of the project, and specify that the purpose for
713 the public meeting is to consider whether it is in the public's
714 best interest to accept the proposal and enter into an agreement
715 pursuant thereto. The determination of cost savings pursuant to

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716 paragraph (1)(e) must be supported by a professional engineer's
717 cost estimate made available to the public at least 14 days
718 before the public meeting and placed in the record for that
719 meeting.

720 (3) If the process in subsection (1) is followed, the
721 project and agreement are exempt from s. 255.20 pursuant to s.
722 255.20(1)(c)11.

723 (4) Except as otherwise expressly provided in this
724 section, this section does not affect existing law by granting
725 additional powers to or imposing further restrictions on local
726 government entities.

727 Section 4. This act shall take effect July 1, 2013.

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729

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

731

732 Remove everything before the enacting clause and insert:

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734

A bill to be entitled

735

An act relating to public-private partnerships; amending s.

736

255.60, F.S.; authorizing certain public entities to contract

737

for public service works with not-for-profit organizations;

738

revising eligibility and contract requirements for not-for-

739

profit organizations contracting with certain public entities;

740

creating s. 287.05712, F.S.; providing definitions; providing

741

legislative findings and intent relating to the construction or

742

improvement by private entities of facilities used predominantly

743

for a public purpose; creating a task force to establish

COMMITTEE/SUBCOMMITTEE AMENDMENT

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744 specified guidelines; providing procurement procedures;
745 providing requirements for project approval; providing project
746 qualifications and process; providing for notice to affected
747 local jurisdictions; providing for interim and comprehensive
748 agreements between a public and a private entity; providing for
749 use fees; providing for financing sources for certain projects
750 by a private entity; providing powers and duties of private
751 entities; providing for expiration or termination of agreements;
752 providing for the applicability of sovereign immunity for public
753 entities with respect to qualified projects; providing for
754 construction of the act; creating s. 336.71, F.S.; authorizing
755 counties to enter into public-private partnership agreements for
756 construction, operation, ownership, and financing of
757 transportation facilities; providing requirements and
758 limitations for such agreements; providing procurement
759 procedures; requiring a fee for certain proposals; providing an
760 effective date
761