

1 A bill to be entitled
2 An act relating to public-private partnerships;
3 amending s. 255.60, F.S.; authorizing certain public
4 entities to contract for public service works with
5 not-for-profit organizations; revising eligibility and
6 contract requirements for not-for-profit organizations
7 contracting with certain public entities; creating s.
8 287.05712, F.S.; providing definitions; providing
9 legislative findings and intent relating to the
10 construction or improvement by private entities of
11 facilities used predominantly for a public purpose;
12 creating a task force to establish specified
13 guidelines; providing procurement procedures;
14 providing requirements for project approval; providing
15 project qualifications and process; providing for
16 notice to affected local jurisdictions; providing for
17 interim and comprehensive agreements between a public
18 and a private entity; providing for use fees;
19 providing for financing sources for certain projects
20 by a private entity; providing powers and duties of
21 private entities; providing for expiration or
22 termination of agreements; providing for the
23 applicability of sovereign immunity for public
24 entities with respect to qualified projects; providing
25 for construction of the act; creating s. 336.71, F.S.;
26 authorizing counties to enter into public-private
27 partnership agreements to construct, extend, or
28 improve county roads; providing requirements and

29 | limitations for such agreements; providing procurement
 30 | procedures; requiring a fee for certain proposals;
 31 | providing an effective date.

32 |

33 | Be It Enacted by the Legislature of the State of Florida:

34 |

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

37 | 255.60 Special contracts with charitable not-for-profit
 38 | youth organizations.—The state, or the governing body of any
 39 | political subdivision of the state, or a public-private
 40 | partnership is authorized, but not required, to contract for
 41 | public service work with a not-for-profit organization ~~such as~~
 42 | ~~highway and park maintenance~~, notwithstanding competitive sealed
 43 | bid procedures required under this chapter, or chapter 287, or
 44 | any municipal or county charter, upon compliance with this
 45 | section.

46 | (1) The contractor or supplier must meet the following
 47 | conditions:

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

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

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

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

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

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

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

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

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

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

76 (f)~~(d)~~ The supplier or contractor has instituted a drug-
77 free workplace program substantially in compliance with the
78 provisions of s. 287.087.

79 (g)~~(e)~~ The contractor or supplier agrees to be subject to
80 review and audit at the discretion of the Auditor General in
81 order to ensure that the contractor or supplier has complied
82 with this section.

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

85 (4) Should a court find that a contract purporting to have
86 been entered into pursuant to this section does not so qualify,
87 the court may order that the contract be terminated on
88 reasonable notice to the parties. The court shall not require
89 disgorgement of any moneys earned for goods or services actually
90 delivered or supplied.

91 (5) Nothing in this section shall excuse any person from
92 compliance with ss. 287.132-287.134.

93 Section 2. Section 287.05712, Florida Statutes, is created
94 to read:

95 287.05712 Public-private partnerships.-

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

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

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

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

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

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

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

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

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

122 (i) "Qualifying project" means:

123 1. A facility or project that serves a public purpose,
124 including, but not limited to, any ferry or mass transit
125 facility, vehicle parking facility, airport or seaport facility,
126 rail facility or project, fuel supply facility, oil or gas
127 pipeline, medical or nursing care facility, recreational
128 facility, sporting or cultural facility, or educational facility
129 or other building or facility that is used or will be used by a
130 public educational institution, or any other public facility or
131 infrastructure that is used or will be used by the public at
132 large or in support of an accepted public purpose or activity;

133 2. An improvement, including equipment, of a building that
134 will be principally used by a public entity or the public at
135 large or that supports a service delivery system in the public
136 sector;

137 3. A water, wastewater, or surface water management
138 facility or other related infrastructure; or

139 4. Notwithstanding any provision of this section, for
140 projects that involve a facility owned or operated by the

141 governing board of a county, district, or municipal hospital or
142 health care system, only those projects that the governing board
143 designates as qualifying projects pursuant to this section.

144 (j) "Responsible public entity" means a county,
145 municipality, school board, or any other political subdivision
146 of the state; a public body corporate and politic; or a regional
147 entity that serves a public purpose and is authorized to develop
148 or operate a qualifying project.

149 (k) "Revenues" means the income, earnings, user fees,
150 lease payments, or other service payments relating to the
151 development or operation of a qualifying project, including, but
152 not limited to, money received as grants or otherwise from the
153 Federal Government, a public entity, or an agency or
154 instrumentality thereof in aid of the qualifying project.

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

158 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
159 that there is a public need for the construction or upgrade of
160 facilities that are used predominantly for public purposes and
161 that it is in the public's interest to provide for the
162 construction or upgrade of such facilities.

163 (a) The Legislature also finds that:

164 1. There is a public need for timely and cost-effective
165 acquisition, design, construction, improvement, renovation,
166 expansion, equipping, maintenance, operation, implementation, or
167 installation of projects serving a public purpose, including
168 educational facilities, transportation facilities, water or

169 wastewater management facilities and infrastructure, technology
170 infrastructure, roads, highways, bridges, and other public
171 infrastructure and government facilities within the state which
172 serve a public need and purpose, and that such public need may
173 not be wholly satisfied by existing procurement methods.

174 2. There are inadequate resources to develop new
175 educational facilities, transportation facilities, water or
176 wastewater management facilities and infrastructure, technology
177 infrastructure, roads, highways, bridges, and other public
178 infrastructure and government facilities for the benefit of
179 residents of this state, and that a public-private partnership
180 has demonstrated that it can meet the needs by improving the
181 schedule for delivery, lowering the cost, and providing other
182 benefits to the public.

183 3. There may be state and federal tax incentives that
184 promote partnerships between public and private entities to
185 develop and operate qualifying projects.

186 4. A procurement under this section serves the public
187 purpose of this section if such procurement facilitates the
188 timely development or operation of a qualifying project.

189 (b) It is the intent of the Legislature to encourage
190 investment in the state by private entities; to facilitate
191 various bond financing mechanisms, private capital, and other
192 funding sources for the development and operation of qualifying
193 projects, including expansion and acceleration of such financing
194 to meet the public need; and to provide the greatest possible
195 flexibility to public and private entities contracting for the
196 provision of public services.

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

198 (a) There is created the Partnership for Public Facilities
199 and Infrastructure Act Guidelines Task Force for the purpose of
200 recommending guidelines for the Legislature to consider for
201 purposes of creating a uniform process for establishing public-
202 private partnerships, including the types of factors responsible
203 public entities should review and consider when processing
204 requests for public-private partnership projects pursuant to
205 this section.

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

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

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

211 a. One county government official.

212 b. One municipal government official.

213 c. One district school board member.

214 d. Three representatives of the business community.

215 (c) Task force members must be appointed by July 31, 2013.
216 By August 31, 2013, the task force shall meet to establish
217 procedures for the conduct of its business and to elect a vice
218 chair. The task force shall meet at the call of the chair. A
219 majority of the members of the task force constitutes a quorum,
220 and a quorum is necessary for the purpose of voting on any
221 action or recommendation of the task force. All meetings shall
222 be held in Tallahassee, unless otherwise decided by the task
223 force, and then no more than two such meetings may be held in
224 other locations for the purpose of taking public testimony.

225 Administrative and technical support shall be provided by the
226 department. Task force members shall serve without compensation
227 and are not entitled to reimbursement for per diem or travel
228 expenses.

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

231 1. Opportunities for competition through public notice and
232 the availability of representatives of the responsible public
233 entity to meet with private entities considering a proposal.

234 2. Reasonable criteria for choosing among competing
235 proposals.

236 3. Suggested timelines for selecting proposals and
237 negotiating an interim or comprehensive agreement.

238 4. If an accelerated selection and review and
239 documentation timelines should be considered for proposals
240 involving a qualifying project that the responsible public
241 entity deems a priority.

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

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

249 7. Current exemptions from public records and public
250 meetings requirements, if any changes to those exemptions are
251 necessary, or if any new exemptions should be created in order

252 to maintain the confidentiality of financial and proprietary
253 information received as part of an unsolicited proposal.

254 8. Recommendations regarding the authority of the
255 responsible public entity to engage the services of qualified
256 professionals, which may include a Florida-registered
257 professional or a certified public accountant, not otherwise
258 employed by the responsible public entity, to provide an
259 independent analysis regarding the specifics, advantages,
260 disadvantages, and long-term and short-term costs of a request
261 by a private entity for approval of a qualifying project, unless
262 the governing body of the public entity determines that such
263 analysis should be performed by employees of the public entity.

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

267 (f) The task force is terminated December 31, 2014. The
268 establishment of guidelines pursuant to this section by the task
269 force or the adoption of such guidelines by a public entity is
270 not required for the public entity to request or receive
271 proposals for a qualifying project or to enter into a
272 comprehensive agreement for a qualifying project. A public
273 entity may adopt guidelines before or after the establishment of
274 guidelines by the task force, which may remain in effect as long
275 as such guidelines are not inconsistent with the guidelines
276 established by the task force. A guideline that is inconsistent
277 with the guidelines of the task force must be amended as
278 necessary to maintain consistency with the task force
279 guidelines.

280 (4) PROCUREMENT PROCEDURES.—A responsible public entity
281 may receive unsolicited proposals or may solicit proposals for
282 qualifying projects and may thereafter enter into an agreement
283 with a private entity, or a consortium of private entities, for
284 the building, upgrading, operating, ownership, or financing of
285 facilities.

286 (a) The responsible public entity may establish a
287 reasonable application fee for the submission of an unsolicited
288 proposal under this section. The fee must be sufficient to pay
289 the costs of evaluating the proposal. The responsible public
290 entity may engage the services of a private consultant to assist
291 in the evaluation.

292 (b) The responsible public entity may request a proposal
293 from private entities for a public-private project or, if the
294 public entity receives an unsolicited proposal for a public-
295 private project and the public entity intends to enter into a
296 comprehensive agreement for the project described in such
297 unsolicited proposal, the public entity shall publish notice in
298 the Florida Administrative Register and a newspaper of general
299 circulation at least once a week for 2 weeks stating that the
300 public entity has received a proposal and will accept other
301 proposals for the same project. The timeframe within which the
302 public entity may accept other proposals shall be determined by
303 the public entity on a project-by-project basis based upon the
304 complexity of the project and the public benefit to be gained by
305 allowing a longer or shorter period of time within which other proposals
306 may be received; however, the timeframe for allowing other proposals
307 must be at least 21 days, but no more than 120 days, after the

308 initial date of publication. A copy of the notice must be mailed
309 to each local government in the affected area.

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

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

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

316 2. Is for a facility that is owned by the responsible
317 public entity or for a facility for which ownership will be
318 conveyed to the responsible public entity.

319 3. Has adequate safeguards in place to ensure that
320 additional costs or service disruptions are not imposed on the
321 public in the event of material default or cancellation of the
322 agreement by the responsible public entity.

323 4. Has adequate safeguards in place to ensure that the
324 responsible public entity or private entity has the opportunity
325 to add capacity to the proposed project or other facilities
326 servicing similar predominantly public purposes.

327 5. Will be owned by the responsible public entity upon
328 completion or termination of the agreement and upon payment of
329 the amounts financed.

330 (e) Before signing a comprehensive agreement, the
331 responsible public entity must consider a reasonable finance
332 plan that is consistent with subsection (11); the project cost;
333 revenues by source; available financing; major assumptions;
334 internal rate of return on private investments, if governmental
335 funds are assumed in order to deliver a cost-feasible project;

336 and a total cash-flow analysis beginning with the implementation
337 of the project and extending for the term of the agreement.

338 (f) In considering an unsolicited proposal, the
339 responsible public entity may require from the private entity a
340 technical study prepared by a nationally recognized expert with
341 experience in preparing analysis for bond rating agencies. In
342 evaluating the technical study, the responsible public entity
343 may rely upon internal staff reports prepared by personnel
344 familiar with the operation of similar facilities or the advice
345 of external advisors or consultants who have relevant
346 experience.

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

351 (a) A description of the qualifying project, including the
352 conceptual design of the facilities or a conceptual plan for the
353 provision of services, and a schedule for the initiation and
354 completion of the qualifying project.

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

358 (c) A description of the private entity's general plans
359 for financing the qualifying project, including the sources of
360 the private entity's funds and the identity of any dedicated
361 revenue source or proposed debt or equity investment on behalf
362 of the private entity.

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

365 (e) The proposed user fees, lease payments, or other
366 service payments over the term of a comprehensive agreement, and
367 the methodology for and circumstances that would allow changes
368 to the user fees, lease payments, and other service payments
369 over time.

370 (f) Additional material or information that the
371 responsible public entity reasonably requests.

372 (6) PROJECT QUALIFICATION AND PROCESS.—

373 (a) The private entity must meet the minimum standards
374 contained in the responsible public entity's guidelines for
375 qualifying professional services and contracts for traditional
376 procurement projects.

377 (b) The responsible public entity must:

378 1. Ensure that provision is made for the private entity's
379 performance and payment of subcontractors, including, but not
380 limited to, surety bonds, letters of credit, parent company
381 guarantees, and lender and equity partner guarantees. For the
382 components of the qualifying project which involve construction
383 performance and payment, bonds are required and are subject to
384 the recordation, notice, suit limitation, and other requirements
385 of s. 255.05.

386 2. Ensure the most efficient pricing of the security
387 package that provides for the performance and payment of
388 subcontractors.

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

392 (c) After the public notification period has expired in
393 the case of an unsolicited proposal, the responsible public
394 entity shall rank the proposals received in order of preference.
395 In ranking the proposals, the responsible public entity may
396 consider factors that include, but are not limited to,
397 professional qualifications, general business terms, innovative
398 design techniques or cost-reduction terms, and finance plans.
399 The responsible public entity may then begin negotiations for a
400 comprehensive agreement with the highest-ranked firm. If the
401 responsible public entity is not satisfied with the results of
402 the negotiations, the responsible public entity may terminate
403 negotiations with the proposer and negotiate with the second-
404 ranked or subsequent-ranked firms, in the order consistent with
405 this procedure. If only one proposal is received, the
406 responsible public entity may negotiate in good faith, and if
407 the public entity is not satisfied with the results of the
408 negotiations, the public entity may terminate negotiations with
409 the proposer. Notwithstanding this paragraph, the responsible
410 public entity may reject all proposals at any point in the
411 process until a contract with the proposer is executed.

412 (d) The responsible public entity shall perform an
413 independent analysis of the proposed public-private partnership
414 which demonstrates the cost-effectiveness and overall public
415 benefit before the procurement process is initiated or before
416 the contract is awarded.

417 (e) The responsible public entity may approve the
418 development or operation of an educational facility, a
419 transportation facility, a water or wastewater management
420 facility or related infrastructure, a technology infrastructure
421 or other public infrastructure, or a government facility needed
422 by the responsible public entity as a qualifying project, or the
423 design or equipping of a qualifying project that is developed or
424 operated, if:

425 1. There is a public need for or benefit derived from a
426 project of the type that the private entity proposes as the
427 qualifying project.

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

430 3. The private entity's plans will result in the timely
431 acquisition, design, construction, improvement, renovation,
432 expansion, equipping, maintenance, or operation of the
433 qualifying project.

434 (f) The responsible public entity may charge a reasonable
435 fee to cover the costs of processing, reviewing, and evaluating
436 the request, including, but not limited to, reasonable attorney
437 fees and fees for financial and technical advisors or
438 consultants and for other necessary advisors or consultants.

439 (g) Upon approval of a qualifying project, the responsible
440 public entity shall establish a date for the commencement of
441 activities related to the qualifying project. The responsible
442 public entity may extend the commencement date.

443 (h) Approval of a qualifying project by the responsible
444 public entity is subject to entering into a comprehensive
445 agreement with the private entity.

446 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

447 (a) The responsible public entity must notify each
448 affected local jurisdiction by furnishing a copy of the proposal
449 to each affected local jurisdiction when considering a proposal
450 for a qualifying project.

451 (b) Each affected local jurisdiction that is not a
452 responsible public entity for the respective qualifying project
453 may, within 60 days after receiving the notice, submit in
454 writing any comments to the responsible public entity and
455 indicate whether the facility is incompatible with the local
456 comprehensive plan, the local infrastructure development plan,
457 the capital improvements budget, any development of regional
458 impact processes or timelines, or other governmental spending
459 plan. The responsible public entity shall consider the comments
460 of the affected local jurisdiction before entering into a
461 comprehensive agreement with a private entity. If an affected
462 local jurisdiction fails to respond to the responsible public
463 entity within the time provided in this paragraph, the
464 nonresponse is deemed an acknowledgement by the affected local
465 jurisdiction that the qualifying project is compatible with the
466 local comprehensive plan, the local infrastructure development
467 plan, the capital improvements budget, or other governmental
468 spending plan.

469 (8) INTERIM AGREEMENT.—Before or in connection with the
470 negotiation of a comprehensive agreement, the public entity may

471 enter into an interim agreement with the private entity
472 proposing the development or operation of the qualifying
473 project. An interim agreement does not obligate the responsible
474 public entity to enter into a comprehensive agreement. The
475 interim agreement is discretionary with the parties and is not
476 required on a qualifying project for which the parties may
477 proceed directly to a comprehensive agreement without the need
478 for an interim agreement. An interim agreement must be limited
479 to provisions that:

480 (a) Authorize the private entity to commence activities
481 for which it may be compensated related to the proposed
482 qualifying project, including, but not limited to, project
483 planning and development, design, environmental analysis and
484 mitigation, survey, other activities concerning any part of the
485 proposed qualifying project, and ascertaining the availability
486 of financing for the proposed facility or facilities.

487 (b) Establish the process and timing of the negotiation of
488 the comprehensive agreement.

489 (c) Contain such other provisions related to an aspect of
490 the development or operation of a qualifying project that the
491 responsible public entity and the private entity deem
492 appropriate.

493 (9) COMPREHENSIVE AGREEMENT.—

494 (a) Before developing or operating the qualifying project,
495 the private entity must enter into a comprehensive agreement
496 with the responsible public entity. The comprehensive agreement
497 must provide for:

498 | 1. Delivery of performance and payment bonds, letters of
499 | credit, or other security acceptable to the responsible public
500 | entity in connection with the development or operation of the
501 | qualifying project in the form and amount satisfactory to the
502 | responsible public entity. For the components of the qualifying
503 | project which involve construction, the form and amount of the
504 | bonds must comply with s. 255.05.

505 | 2. Review of the design for the qualifying project by the
506 | responsible public entity and, if the design conforms to
507 | standards acceptable to the responsible public entity, the
508 | approval of the responsible public entity. This subparagraph
509 | does not require the private entity to complete the design of
510 | the qualifying project before the execution of the comprehensive
511 | agreement.

512 | 3. Inspection of the qualifying project by the responsible
513 | public entity to ensure that the private entity's activities are
514 | acceptable to the public entity in accordance with the
515 | comprehensive agreement.

516 | 4. Maintenance of a policy of public liability insurance,
517 | a copy of which must be filed with the responsible public entity
518 | and accompanied by proofs of coverage, or self-insurance, each
519 | in the form and amount satisfactory to the responsible public
520 | entity and reasonably sufficient to ensure coverage of tort
521 | liability to the public and employees and to enable the
522 | continued operation of the qualifying project.

523 | 5. Monitoring by the responsible public entity of the
524 | maintenance practices to be performed by the private entity to
525 | ensure that the qualifying project is properly maintained.

526 6. Periodic filing by the private entity of the
527 appropriate financial statements that pertain to the qualifying
528 project.

529 7. Procedures that govern the rights and responsibilities
530 of the responsible public entity and the private entity in the
531 course of the construction and operation of the qualifying
532 project and in the event of the termination of the comprehensive
533 agreement or a material default by the private entity. The
534 procedures must include conditions that govern the assumption of
535 the duties and responsibilities of the private entity by an
536 entity that funded, in whole or part, the qualifying project or
537 by the responsible public entity, and must provide for the
538 transfer or purchase of property or other interests of the
539 private entity by the responsible public entity.

540 8. Fees, lease payments, or service payments. In
541 negotiating user fees, the fees must be the same for persons
542 using the facility under like conditions and must not materially
543 discourage use of the qualifying project. The execution of the
544 comprehensive agreement or a subsequent amendment is conclusive
545 evidence that the fees, lease payments, or service payments
546 provided for in the comprehensive agreement comply with this
547 section. Fees or lease payments established in the comprehensive
548 agreement as a source of revenue may be in addition to, or in
549 lieu of, service payments.

550 9. Duties of the private entity, including the terms and
551 conditions that the responsible public entity determines serve
552 the public purpose of this section.

553 (b) The comprehensive agreement may include:

554 1. An agreement by the responsible public entity to make
555 grants or loans to the private entity from amounts received from
556 the federal, state, or local government or an agency or
557 instrumentality thereof.

558 2. A provision under which each entity agrees to provide
559 notice of default and cure rights for the benefit of the other
560 entity, including, but not limited to, a provision regarding
561 unavoidable delays.

562 3. A provision that terminates the authority and duties of
563 the private entity under this section and dedicates the
564 qualifying project to the responsible public entity or, if the
565 qualifying project was initially dedicated by an affected local
566 jurisdiction, to the affected local jurisdiction for public use.

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

571 (a) The responsible public entity may develop new
572 facilities or increase capacity in existing facilities through
573 agreements with public-private partnerships.

574 (b) The public-private partnership agreement must ensure
575 that the facility is properly operated, maintained, or improved
576 in accordance with standards set forth in the comprehensive
577 agreement.

578 (c) The responsible public entity may lease existing fee-
579 for-use facilities through a public-private partnership
580 agreement.

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

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

586 (11) FINANCING.—

587 (a) A private entity may enter into a private-source
 588 financing agreement between financing sources and the private
 589 entity. A financing agreement and any liens on the property or
 590 facility must be paid in full at the applicable closing that
 591 transfers ownership or operation of the facility to the
 592 responsible public entity at the conclusion of the term of the
 593 comprehensive agreement.

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

597 (c) The responsible public entity may use innovative
 598 finance techniques associated with a public-private partnership
 599 under this section, including, but not limited to, federal loans
 600 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
 601 and hedges against inflation from commercial banks or other
 602 private sources. In addition, the responsible public entity may
 603 provide its own capital or operating budget to support a
 604 qualifying project. The budget may be from any legally
 605 permissible funding sources of the responsible public entity,
 606 including the proceeds of debt issuances. A responsible public
 607 entity may use the model financing agreement provided in s.
 608 489.145(6) for its financing of a facility owned by a

609 responsible public entity. A financing agreement may not require
 610 the responsible public entity to indemnify the financing source,
 611 subject the responsible public entity's facility to liens in
 612 violation of s. 11.066(5), or secure financing by the
 613 responsible public entity with a pledge of security interest,
 614 and any such provision is void.

615 (d) A responsible public entity shall appropriate on a
 616 priority basis as required by the comprehensive agreement a
 617 contractual payment obligation, annual or otherwise, from the
 618 enterprise or other government fund from which the qualifying
 619 projects will be funded. This required payment obligation must
 620 be appropriated before other noncontractual obligations payable
 621 from the same enterprise or other government fund.

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

623 (a) The private entity shall:

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

627 2. Maintain, or provide by contract for the maintenance or
 628 improvement of, the qualifying project if required by the
 629 comprehensive agreement.

630 3. Cooperate with the responsible public entity in making
 631 best efforts to establish interconnection between the qualifying
 632 project and any other facility or infrastructure as requested by
 633 the responsible public entity in accordance with the provisions
 634 of the comprehensive agreement.

635 4. Comply with the comprehensive agreement and any lease
 636 or service contract.

637 (b) Each private facility that is constructed pursuant to
638 this section must comply with the requirements of federal,
639 state, and local laws; state, regional, and local comprehensive
640 plans; the responsible public entity's rules, procedures, and
641 standards for facilities; and such other conditions that the
642 responsible public entity determines to be in the public's best
643 interest and that are included in the comprehensive agreement.

644 (c) The responsible public entity may provide services to
645 the private entity. An agreement for maintenance and other
646 services entered into pursuant to this section must provide for
647 full reimbursement for services rendered for qualifying
648 projects.

649 (d) A private entity of a qualifying project may provide
650 additional services for the qualifying project to the public or
651 to other private entities if the provision of additional
652 services does not impair the private entity's ability to meet
653 its commitments to the responsible public entity pursuant to the
654 comprehensive agreement.

655 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
656 expiration or termination of a comprehensive agreement, the
657 responsible public entity may use revenues from the qualifying
658 project to pay current operation and maintenance costs of the
659 qualifying project. If the private entity materially defaults
660 under the comprehensive agreement, the compensation that is
661 otherwise due to the private entity is payable to satisfy all
662 financial obligations to investors and lenders on the qualifying
663 project in the same way that is provided in the comprehensive
664 agreement or any other agreement involving the qualifying

665 project, if the costs of operating and maintaining the
666 qualifying project are paid in the normal course. Revenues in
667 excess of the costs for operation and maintenance costs may be
668 paid to the investors and lenders to satisfy payment obligations
669 under their respective agreements. A responsible public entity
670 may terminate with cause and without prejudice a comprehensive
671 agreement and may exercise any other rights or remedies that may
672 be available to it in accordance with the provisions of the
673 comprehensive agreement. The full faith and credit of the
674 responsible public entity may not be pledged to secure the
675 financing of the private entity. The assumption of the
676 development or operation of the qualifying project does not
677 obligate the responsible public entity to pay any obligation of
678 the private entity from sources other than revenues from the
679 qualifying project unless stated otherwise in the comprehensive
680 agreement.

681 (14) SOVEREIGN IMMUNITY.—This section does not waive the
682 sovereign immunity of a responsible public entity, an affected
683 local jurisdiction, or an officer or employee thereof with
684 respect to participation in, or approval of, any part of a
685 qualifying project or its operation, including, but not limited
686 to, interconnection of the qualifying project with any other
687 infrastructure or project. A county or municipality in which a
688 qualifying project is located possesses sovereign immunity with
689 respect to the project, including, but not limited to, its
690 design, construction, and operation.

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

693 section shall be construed as cumulative and supplemental to any
 694 other authority or power vested in or exercised by the governing
 695 board of a county, district, or municipal hospital or health
 696 care system including those contained in acts of the Legislature
 697 establishing such public hospital boards or s. 155.40. This
 698 section does not affect any agreement or existing relationship
 699 with a supporting organization involving such governing board or
 700 system in effect as of January 1, 2013.

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

704 (b) Except as otherwise provided in this section, this
 705 section does not amend existing laws by granting additional
 706 powers to, or further restricting, a local governmental entity
 707 from regulating and entering into cooperative arrangements with
 708 the private sector for the planning, construction, or operation
 709 of a facility.

710 (c) This section does not waive any requirement of s.
 711 287.055.

712 Section 3. Section 336.71, Florida Statutes, is created to
 713 read:

714 336.71 Public-private cooperation in construction of
 715 county roads.-

716 (1) If a county receives a proposal, solicited or
 717 unsolicited, from a private entity seeking to construct, extend,
 718 or improve a county road or portion thereof, the county may
 719 enter into an agreement with the private entity for completion
 720 of the road construction project, which agreement may provide

721 for payment to the private entity, from public funds, if the
722 county conducts a noticed public hearing and finds that the
723 proposed county road construction project:

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

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

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

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

732 (e) Would result in a financial benefit to the public by
733 completing the subject project at a cost to the public
734 significantly lower than if the project were constructed by the
735 county using the normal procurement process.

736 (2) The notice for the public hearing provided for in
737 subsection (1) must be published at least 14 days before the
738 date of the public meeting at which the governing board takes
739 final action. The notice must identify the project, the
740 estimated cost of the project, and specify that the purpose for
741 the public meeting is to consider whether it is in the public's
742 best interest to accept the proposal and enter into an agreement
743 pursuant thereto. The determination of cost savings pursuant to
744 paragraph (1)(e) must be supported by a professional engineer's
745 cost estimate made available to the public at least 14 days
746 before the public meeting and placed in the record for that
747 meeting.

748 (3) If the process in subsection (1) is followed, the

CS/CS/HB 85

2013

749 project and agreement are exempt from s. 255.20 pursuant to s.
750 255.20(1)(c)11.

751 (4) Except as otherwise expressly provided in this
752 section, this section does not affect existing law by granting
753 additional powers to or imposing further restrictions on local
754 government entities.

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