

1 A bill to be entitled

2 An act relating to public-private partnerships;
3 amending s. 20.60, F.S.; creating the Division of
4 Public-Private Partnerships within the Department of
5 Economic Opportunity; providing duties of the
6 division; amending s. 287.055, F.S.; authorizing
7 certain design-build contracts to be awarded using
8 public-private partnerships; amending s. 287.05712,
9 F.S.; revising definitions; authorizing a responsible
10 public entity to alter the statutory timeframe for
11 accepting proposals for a project under certain
12 circumstances; deleting a provision that requires
13 approval of the local governing body before a school
14 board enters into a comprehensive agreement; revising
15 the conditions necessary for a responsible public
16 entity to approve a comprehensive agreement; requiring
17 an entity that submits an unsolicited proposal to pay
18 a specified initial fee and additional amounts if the
19 fee does not cover certain costs; specifying payment
20 methods; deleting provisions relating to notice to
21 affected local jurisdictions; providing that fees
22 imposed by a private entity must be applied as set
23 forth in the comprehensive agreement; restricting
24 provisions in financing agreements that could result
25 in a responsible public entity's losing ownership of
26 property; requiring a responsible public entity to

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

27 | comply with specific financial obligations; providing
 28 | effective dates.

29 |

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

31 |

32 | Section 1. Effective October 1, 2015, paragraph (f) is
 33 | added to subsection (3) and paragraph (d) is added to subsection
 34 | (5) of section 20.60, Florida Statutes, to read:

35 | 20.60 Department of Economic Opportunity; creation; powers
 36 | and duties.—

37 | (3) The following divisions of the Department of Economic
 38 | Opportunity are established:

39 | (f) The Division of Public-Private Partnerships.

40 | (5) The divisions within the department have specific
 41 | responsibilities to achieve the duties, responsibilities, and
 42 | goals of the department. Specifically:

43 | (d) The Division of Public-Private Partnerships shall:

44 | 1. Develop guidelines and best practices that must be
 45 | updated once every 2 years for the creation and management of
 46 | public-private partnerships.

47 | 2. Assist responsible public entities in the creation and
 48 | management of public-private partnerships.

49 | Section 2. Paragraph (c) of subsection (9) of section
 50 | 287.055, Florida Statutes, is amended to read:

51 | 287.055 Acquisition of professional architectural,
 52 | engineering, landscape architectural, or surveying and mapping

53 services; definitions; procedures; contingent fees prohibited;
54 penalties.—

55 (9) APPLICABILITY TO DESIGN-BUILD CONTRACTS.—

56 (c) Except as otherwise provided in s. 337.11(7), the
57 Department of Management Services shall adopt rules for the
58 award of design-build contracts to be followed by state
59 agencies. Each other agency must adopt rules or ordinances for
60 the award of design-build contracts. Municipalities, political
61 subdivisions, school districts, and school boards shall award
62 design-build contracts by the use of a competitive proposal
63 selection process as described in this subsection, by the use of
64 a public-private partnership as described in s. 287.05712, or by
65 the use of a qualifications-based selection process pursuant to
66 subsections (3), (4), and (5) for entering into a contract
67 whereby the selected firm will, subsequent to competitive
68 negotiations, establish a guaranteed maximum price and
69 guaranteed completion date. If the procuring agency elects the
70 option of qualifications-based selection, during the selection
71 of the design-build firm the procuring agency shall employ or
72 retain a licensed design professional appropriate to the project
73 to serve as the agency's representative. Procedures for the use
74 of a competitive proposal selection process must include as a
75 minimum the following:

- 76 1. The preparation of a design criteria package for the
77 design and construction of the public construction project.
- 78 2. The qualification and selection of no fewer than three

79 design-build firms as the most qualified, based on the
80 qualifications, availability, and past work of the firms,
81 including the partners or members thereof.

82 3. The criteria, procedures, and standards for the
83 evaluation of design-build contract proposals or bids, based on
84 price, technical, and design aspects of the public construction
85 project, weighted for the project.

86 4. The solicitation of competitive proposals, pursuant to
87 a design criteria package, from those qualified design-build
88 firms and the evaluation of the responses or bids submitted by
89 those firms based on the evaluation criteria and procedures
90 established prior to the solicitation of competitive proposals.

91 5. For consultation with the employed or retained design
92 criteria professional concerning the evaluation of the responses
93 or bids submitted by the design-build firms, the supervision or
94 approval by the agency of the detailed working drawings of the
95 project; and for evaluation of the compliance of the project
96 construction with the design criteria package by the design
97 criteria professional.

98 6. In the case of public emergencies, for the agency head
99 to declare an emergency and authorize negotiations with the best
100 qualified design-build firm available at that time.

101 Section 3. Subsections (8) through (15) of section
102 287.05712, Florida Statutes, are renumbered as subsections (7)
103 through (14), respectively, and paragraphs (j) and (l) of
104 subsection (1), subsections (4) and (5), paragraphs (a) and (b)

105 of subsection (6), and present subsections (7), (10), and (11)
 106 of that section are amended to read:

107 287.05712 Public-private partnerships.—

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

109 (j) "Responsible public entity" means a county,
 110 municipality, school district, special district, Florida College
 111 System institution, or state university board, or any other
 112 political subdivision of the state; a public body corporate and
 113 politic; or a regional entity that serves a public purpose and
 114 is authorized to develop or operate a qualifying project.

115 (1) "Service contract" means a contract between a
 116 responsible public entity and the private entity which defines
 117 the terms of the services to be provided with respect to a
 118 qualifying project.

119 (4) PROCUREMENT PROCEDURES.—A responsible public entity
 120 may receive unsolicited proposals or may solicit proposals for
 121 qualifying projects and may thereafter enter into an agreement
 122 with a private entity, or a consortium of private entities, for
 123 the building, upgrading, operating, ownership, or financing of
 124 facilities.

125 (a) The responsible public entity may establish a
 126 reasonable application fee for the submission of an unsolicited
 127 proposal under this section. The fee must be sufficient to pay
 128 the costs of evaluating the proposal. The responsible public
 129 entity may engage the services of a private consultant to assist
 130 in the evaluation.

131 (b) The responsible public entity may request a proposal
132 from private entities for a public-private project or, if the
133 public entity receives an unsolicited proposal for a public-
134 private project and the public entity intends to enter into a
135 comprehensive agreement for the project described in such
136 unsolicited proposal, the public entity shall publish notice in
137 the Florida Administrative Register and a newspaper of general
138 circulation at least once a week for 2 weeks stating that the
139 public entity has received a proposal and will accept other
140 proposals for the same project. The timeframe within which the
141 public entity may accept other proposals shall be determined by
142 the public entity on a project-by-project basis based upon the
143 complexity of the project and the public benefit to be gained by
144 allowing a longer or shorter period of time within which other
145 proposals may be received; however, the timeframe for allowing
146 other proposals must be at least 21 days, but no more than 120
147 days, after the initial date of publication. If approved by
148 majority vote of the responsible public entity's governing body,
149 the responsible public entity may alter the timeframe for
150 accepting proposals to more adequately suit the needs of the
151 project. A copy of the notice must be mailed to each local
152 government in the affected area.

153 ~~(c) A responsible public entity that is a school board may~~
154 ~~enter into a comprehensive agreement only with the approval of~~
155 ~~the local governing body.~~

156 (c)(d) Before approving a comprehensive agreement

157 ~~approval~~, the responsible public entity must determine that the
158 proposed project:

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

160 2. Is for a facility that is owned by the responsible
161 public entity or for a facility for which ownership will be
162 conveyed to the responsible public entity.

163 3. Has adequate safeguards in place to ensure that
164 additional costs or service disruptions are not imposed on the
165 public in the event of material default or cancellation of the
166 agreement by the responsible public entity.

167 4. Has adequate safeguards in place to ensure that the
168 responsible public entity or private entity has the opportunity
169 to add capacity to the proposed project or other facilities
170 serving similar predominantly public purposes.

171 5. Will be owned by the responsible public entity upon
172 completion, expiration, or termination of the comprehensive
173 agreement, including expiration or termination of any ground
174 lease related to the project between the responsible public
175 entity and the private entity, and upon payment of the amounts
176 financed.

177 (d) ~~(e)~~ Before signing a comprehensive agreement, the
178 responsible public entity must consider a reasonable finance
179 plan that is consistent with subsection (10) ~~(11)~~; the project
180 cost; revenues by source; available financing; major
181 assumptions; internal rate of return on private investments, if
182 governmental funds are assumed in order to deliver a cost-

183 feasible project; and a total cash-flow analysis beginning with
184 the implementation of the project and extending for the term of
185 the agreement.

186 (e)~~(f)~~ In considering an unsolicited proposal, the
187 responsible public entity may require from the private entity a
188 technical study prepared by a nationally recognized expert with
189 experience in preparing analysis for bond rating agencies. In
190 evaluating the technical study, the responsible public entity
191 may rely upon internal staff reports prepared by personnel
192 familiar with the operation of similar facilities or the advice
193 of external advisors or consultants who have relevant
194 experience.

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

199 (a) A description of the qualifying project, including the
200 conceptual design of the facilities or a conceptual plan for the
201 provision of services, and a schedule for the initiation and
202 completion of the qualifying project.

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

206 (c) A description of the private entity's general plans
207 for financing the qualifying project, including the sources of
208 the private entity's funds and the identity of any dedicated

209 revenue source or proposed debt or equity investment on behalf
210 of the private entity.

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

213 (e) The proposed user fees, lease payments, or other
214 service payments over the term of a comprehensive agreement, and
215 the methodology for and circumstances that would allow changes
216 to the user fees, lease payments, and other service payments
217 over time.

218 (f) An entity that submits an unsolicited proposal to a
219 public entity shall concurrently pay an initial fee of \$50,000
220 as follows:

221 1. Payment shall be made by cash, cashier's check, or
222 other noncancelable instrument. Personal checks may not be
223 accepted.

224 2. If the initial fee does not cover the responsible
225 public entity's costs to evaluate the unsolicited proposal, the
226 responsible public entity shall request in writing the
227 additional amounts required. The private entity shall pay the
228 requested additional amounts within 30 days after receipt of the
229 notice. Failure to pay the additional fee shall result in the
230 proposal's being rejected.

231 (g) ~~(f)~~ Additional material or information that the
232 responsible public entity reasonably requests. Any pricing or
233 financial terms included pursuant to this subsection must be
234 specific as to if and when such pricing or terms expire.

235 (6) PROJECT QUALIFICATION AND PROCESS.—

236 (a) The private entity must meet the minimum standards
237 contained in the responsible public entity's guidelines for
238 qualifying professional services and contracts for traditional
239 procurement projects.

240 (b) The responsible public entity must:

241 1. Ensure that provision is made for the private entity's
242 performance and payment of subcontractors, including, but not
243 limited to, surety bonds, letters of credit, parent company
244 guarantees, and lender and equity partner guarantees. For the
245 components of the qualifying project which involve construction
246 performance and payment, bonds are required and are subject to
247 the recordation, notice, suit limitation, and other requirements
248 of s. 255.05.

249 2. Ensure ~~the most~~ efficient pricing of the security
250 package that provides for the performance and payment of
251 subcontractors.

252 3. Ensure that ~~provision is made for the transfer of the~~
253 ~~private entity's obligations if the comprehensive agreement~~
254 addresses termination upon is terminated or a material default
255 of the comprehensive agreement occurs.

256 ~~(7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—~~

257 ~~(a) The responsible public entity must notify each~~
258 ~~affected local jurisdiction by furnishing a copy of the proposal~~
259 ~~to each affected local jurisdiction when considering a proposal~~
260 ~~for a qualifying project.~~

261 ~~(b) Each affected local jurisdiction that is not a~~
262 ~~responsible public entity for the respective qualifying project~~
263 ~~may, within 60 days after receiving the notice, submit in~~
264 ~~writing any comments to the responsible public entity and~~
265 ~~indicate whether the facility is incompatible with the local~~
266 ~~comprehensive plan, the local infrastructure development plan,~~
267 ~~the capital improvements budget, any development of regional~~
268 ~~impact processes or timelines, or other governmental spending~~
269 ~~plan. The responsible public entity shall consider the comments~~
270 ~~of the affected local jurisdiction before entering into a~~
271 ~~comprehensive agreement with a private entity. If an affected~~
272 ~~local jurisdiction fails to respond to the responsible public~~
273 ~~entity within the time provided in this paragraph, the~~
274 ~~nonresponse is deemed an acknowledgment by the affected local~~
275 ~~jurisdiction that the qualifying project is compatible with the~~
276 ~~local comprehensive plan, the local infrastructure development~~
277 ~~plan, the capital improvements budget, or other governmental~~
278 ~~spending plan.~~

279 (9)~~(10)~~ FEES.—An agreement entered into pursuant to this
280 section may authorize the private entity to impose fees to
281 members of the public for the use of the facility. The following
282 provisions apply to the agreement:

283 (a) The responsible public entity may develop new
284 facilities or increase capacity in existing facilities through
285 agreements with public-private partnerships.

286 (b) The public-private partnership agreement must ensure

287 that the facility is properly operated, maintained, or improved
288 in accordance with standards set forth in the comprehensive
289 agreement.

290 (c) The responsible public entity may lease existing fee-
291 for-use facilities through a public-private partnership
292 agreement.

293 (d) Any revenues must be authorized by and applied in the
294 manner set forth in the comprehensive agreement ~~regulated by the~~
295 ~~responsible public entity pursuant to the comprehensive~~
296 ~~agreement.~~

297 (e) A negotiated portion of revenues from fee-generating
298 uses may ~~must~~ be returned to the public entity over the life of
299 the agreement.

300 (10) ~~(11)~~ FINANCING.—

301 (a) A private entity may enter into a private-source
302 financing agreement between financing sources and the private
303 entity. A financing agreement and any liens on the property or
304 facility must be paid in full at the applicable closing that
305 transfers ownership or operation of the facility to the
306 responsible public entity at the conclusion of the term of the
307 comprehensive agreement.

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

311 (c) The responsible public entity may use innovative
312 finance techniques associated with a public-private partnership

313 under this section, including, but not limited to, federal loans
314 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
315 and hedges against inflation from commercial banks or other
316 private sources. In addition, the responsible public entity may
317 provide its own capital or operating budget to support a
318 qualifying project. The budget may be from any legally
319 permissible funding sources of the responsible public entity,
320 including the proceeds of debt issuances. A responsible public
321 entity may use the model financing agreement provided in s.
322 489.145(6) for its financing of a facility owned by a
323 responsible public entity. A financing agreement may not require
324 the responsible public entity to indemnify the financing source,
325 subject the responsible public entity's facility to liens in
326 violation of s. 11.066(5), or secure financing of ~~by~~ the
327 responsible public entity by a mortgage on, or security interest
328 in, the real or tangible personal property of the responsible
329 public entity in a manner that could result in the loss of the
330 fee ownership of the property by the responsible public entity
331 ~~with a pledge of security interest~~, and any such provision is
332 void.

333 (d) A responsible public entity shall comply with its
334 financial and payment obligations in accordance with the terms
335 of the comprehensive agreement and shall appropriate sufficient
336 funds to satisfy such obligations from the sources and in the
337 manner provided in the comprehensive agreement, subject to the
338 express terms and conditions of the comprehensive agreement,

339 including any prioritization of security or payment, conditional
340 or discretionary appropriation undertakings, and existing and
341 reserved contractual obligations and rights ~~appropriate on a~~
342 ~~priority basis as required by the comprehensive agreement a~~
343 ~~contractual payment obligation, annual or otherwise, from the~~
344 ~~enterprise or other government fund from which the qualifying~~
345 ~~projects will be funded. This required payment obligation must~~
346 ~~be appropriated before other noncontractual obligations payable~~
347 ~~from the same enterprise or other government fund.~~

348 Section 4. Except as otherwise expressly provided in this
349 act, this act shall take effect July 1, 2015.