

By the Committees on Fiscal Policy; Governmental Oversight and Accountability; and Community Affairs; and Senator Evers

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1 A bill to be entitled
2 An act relating to public procurement practices;
3 transferring, renumbering, and amending s. 287.05712,
4 F.S.; revising definitions; deleting provisions
5 creating the Public-Private Partnership Guidelines
6 Task Force; requiring a private entity that submits an
7 unsolicited proposal to pay an initial application fee
8 and additional amounts if the fee does not cover
9 certain costs; specifying payment methods; authorizing
10 a responsible public entity to alter the statutory
11 timeframe for accepting proposals for a qualifying
12 project under certain circumstances; requiring a
13 responsible public entity to include a design criteria
14 package in a solicitation; specifying requirements for
15 the design criteria package; deleting a provision that
16 requires approval of the local governing body before a
17 school board enters into a comprehensive agreement;
18 revising the conditions necessary for a responsible
19 public entity to approve a comprehensive agreement;
20 deleting provisions relating to notice to affected
21 local jurisdictions; providing that fees imposed by a
22 private entity must be applied as set forth in the
23 comprehensive agreement; restricting provisions in
24 financing agreements that could result in a
25 responsible public entity's losing ownership of real
26 or tangible personal property; deleting a provision
27 that requires a responsible public entity to comply
28 with specific financial obligations; providing duties
29 of the Department of Management Services; revising

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30 provisions relating to construction of the act;
31 amending s. 287.0935, F.S.; increasing the dollar
32 threshold for a contract amount of a project for which
33 a person, the state, or a political subdivision is
34 prohibited from refusing a surety bond issued by a
35 surety company that meets certain criteria; revising
36 requirements for surety companies with respect to
37 bonds issued for certain publicly funded contracts;
38 providing an effective date.

39
40 Be It Enacted by the Legislature of the State of Florida:

41
42 Section 1. Section 287.05712, Florida Statutes, is
43 transferred, renumbered as section 255.065, Florida Statutes,
44 and amended to read:

45 255.065 ~~287.05712~~ Public-private partnerships.—

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

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

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

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

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

58 (e) "Material default" means a nonperformance of its duties

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59 by the private entity of a qualifying project which jeopardizes
60 adequate service to the public from the project.

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

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

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

71 (i) "Qualifying project" means:

72 1. A facility or project that serves a public purpose,
73 including, but not limited to, any ferry or mass transit
74 facility, vehicle parking facility, airport or seaport facility,
75 rail facility or project, fuel supply facility, oil or gas
76 pipeline, medical or nursing care facility, recreational
77 facility, sporting or cultural facility, or educational facility
78 or other building or facility that is used or will be used by a
79 public educational institution, or any other public facility or
80 infrastructure that is used or will be used by the public at
81 large or in support of an accepted public purpose or activity;

82 2. An improvement, including equipment, of a building that
83 will be principally used by a public entity or the public at
84 large or that supports a service delivery system in the public
85 sector;

86 3. A water, wastewater, or surface water management
87 facility or other related infrastructure; or

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88 4. Notwithstanding any provision of this section, for
89 projects that involve a facility owned or operated by the
90 governing board of a county, district, or municipal hospital or
91 health care system, or projects that involve a facility owned or
92 operated by a municipal electric utility, only those projects
93 that the governing board designates as qualifying projects
94 pursuant to this section.

95 (j) "Responsible public entity" means a county,
96 municipality, school district, special district, or Florida
97 College System institution ~~board~~, or any other political
98 subdivision of the state; a public body corporate and politic;
99 or a regional entity that serves a public purpose and is
100 authorized to develop or operate a qualifying project.

101 (k) "Revenues" means the income, earnings, user fees, lease
102 payments, or other service payments relating to the development
103 or operation of a qualifying project, including, but not limited
104 to, money received as grants or otherwise from the Federal
105 Government, a public entity, or an agency or instrumentality
106 thereof in aid of the qualifying project.

107 (l) "Service contract" means a contract between a
108 responsible public entity and the private entity which defines
109 the terms of the services to be provided with respect to a
110 qualifying project.

111 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
112 that there is a public need for the construction or upgrade of
113 facilities that are used predominantly for public purposes and
114 that it is in the public's interest to provide for the
115 construction or upgrade of such facilities.

116 (a) The Legislature also finds that:

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117 1. There is a public need for timely and cost-effective
118 acquisition, design, construction, improvement, renovation,
119 expansion, equipping, maintenance, operation, implementation, or
120 installation of projects serving a public purpose, including
121 educational facilities, transportation facilities, water or
122 wastewater management facilities and infrastructure, technology
123 infrastructure, roads, highways, bridges, and other public
124 infrastructure and government facilities within the state which
125 serve a public need and purpose, and that such public need may
126 not be wholly satisfied by existing procurement methods.

127 2. There are inadequate resources to develop new
128 educational facilities, transportation facilities, water or
129 wastewater management facilities and infrastructure, technology
130 infrastructure, roads, highways, bridges, and other public
131 infrastructure and government facilities for the benefit of
132 residents of this state, and that a public-private partnership
133 has demonstrated that it can meet the needs by improving the
134 schedule for delivery, lowering the cost, and providing other
135 benefits to the public.

136 3. There may be state and federal tax incentives that
137 promote partnerships between public and private entities to
138 develop and operate qualifying projects.

139 4. A procurement under this section serves the public
140 purpose of this section if such procurement facilitates the
141 timely development or operation of a qualifying project.

142 (b) It is the intent of the Legislature to encourage
143 investment in the state by private entities; to facilitate
144 various bond financing mechanisms, private capital, and other
145 funding sources for the development and operation of qualifying

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146 projects, including expansion and acceleration of such financing
147 to meet the public need; and to provide the greatest possible
148 flexibility to public and private entities contracting for the
149 provision of public services.

150 ~~(3) PUBLIC PRIVATE PARTNERSHIP GUIDELINES TASK FORCE.~~

151 ~~(a) There is created the Partnership for Public Facilities~~
152 ~~and Infrastructure Act Guidelines Task Force for the purpose of~~
153 ~~recommending guidelines for the Legislature to consider for~~
154 ~~purposes of creating a uniform process for establishing public-~~
155 ~~private partnerships, including the types of factors responsible~~
156 ~~public entities should review and consider when processing~~
157 ~~requests for public private partnership projects pursuant to~~
158 ~~this section.~~

159 ~~(b) The task force shall be composed of seven members, as~~
160 ~~follows:~~

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

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

164 ~~a. One county government official.~~

165 ~~b. One municipal government official.~~

166 ~~e. One district school board member.~~

167 ~~d. Three representatives of the business community.~~

168 ~~(c) Task force members must be appointed by July 31, 2013.~~
169 ~~By August 31, 2013, the task force shall meet to establish~~
170 ~~procedures for the conduct of its business and to elect a vice~~
171 ~~chair. The task force shall meet at the call of the chair. A~~
172 ~~majority of the members of the task force constitutes a quorum,~~
173 ~~and a quorum is necessary for the purpose of voting on any~~
174 ~~action or recommendation of the task force. All meetings shall~~

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175 ~~be held in Tallahassee, unless otherwise decided by the task~~
176 ~~force, and then no more than two such meetings may be held in~~
177 ~~other locations for the purpose of taking public testimony.~~
178 ~~Administrative and technical support shall be provided by the~~
179 ~~department. Task force members shall serve without compensation~~
180 ~~and are not entitled to reimbursement for per diem or travel~~
181 ~~expenses.~~

182 ~~(d) In reviewing public-private partnerships and developing~~
183 ~~recommendations, the task force must consider:~~

184 ~~1. Opportunities for competition through public notice and~~
185 ~~the availability of representatives of the responsible public~~
186 ~~entity to meet with private entities considering a proposal.~~

187 ~~2. Reasonable criteria for choosing among competing~~
188 ~~proposals.~~

189 ~~3. Suggested timelines for selecting proposals and~~
190 ~~negotiating an interim or comprehensive agreement.~~

191 ~~4. If an accelerated selection and review and documentation~~
192 ~~timelines should be considered for proposals involving a~~
193 ~~qualifying project that the responsible public entity deems a~~
194 ~~priority.~~

195 ~~5. Procedures for financial review and analysis which, at a~~
196 ~~minimum, include a cost-benefit analysis, an assessment of~~
197 ~~opportunity cost, and consideration of the results of all~~
198 ~~studies and analyses related to the proposed qualifying project.~~

199 ~~6. The adequacy of the information released when seeking~~
200 ~~competing proposals and providing for the enhancement of that~~
201 ~~information, if deemed necessary, to encourage competition.~~

202 ~~7. Current exemptions from public records and public~~
203 ~~meetings requirements, if any changes to those exemptions are~~

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204 ~~necessary, or if any new exemptions should be created in order~~
205 ~~to maintain the confidentiality of financial and proprietary~~
206 ~~information received as part of an unsolicited proposal.~~

207 ~~8. Recommendations regarding the authority of the~~
208 ~~responsible public entity to engage the services of qualified~~
209 ~~professionals, which may include a Florida-registered~~
210 ~~professional or a certified public accountant, not otherwise~~
211 ~~employed by the responsible public entity, to provide an~~
212 ~~independent analysis regarding the specifics, advantages,~~
213 ~~disadvantages, and long-term and short-term costs of a request~~
214 ~~by a private entity for approval of a qualifying project, unless~~
215 ~~the governing body of the public entity determines that such~~
216 ~~analysis should be performed by employees of the public entity.~~

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

220 ~~(f) The task force is terminated December 31, 2014. The~~
221 ~~establishment of guidelines pursuant to this section or the~~
222 ~~adoption of such guidelines by a responsible public entity is~~
223 ~~not required for such entity to request or receive proposals for~~
224 ~~a qualifying project or to enter into a comprehensive agreement~~
225 ~~for a qualifying project. A responsible public entity may adopt~~
226 ~~guidelines so long as such guidelines are not inconsistent with~~
227 ~~this section.~~

228 (3)~~(4)~~ PROCUREMENT PROCEDURES.—A responsible public entity
229 may receive unsolicited proposals or may solicit proposals for
230 qualifying projects and may thereafter enter into a
231 comprehensive ~~an~~ agreement with a private entity, or a
232 consortium of private entities, for the building, upgrading,

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233 operating, ownership, or financing of facilities.

234 (a)1. The responsible public entity may establish a
235 reasonable application fee for the submission of an unsolicited
236 proposal under this section.

237 2. A private entity that submits an unsolicited proposal to
238 a responsible public entity must concurrently pay an initial
239 application fee, as determined by the responsible public entity.
240 Payment must be made by cash, cashier's check, or other
241 noncancelable instrument. Personal checks may not be accepted.

242 3. If the initial application fee does not cover the
243 responsible public entity's costs to evaluate the unsolicited
244 proposal, the responsible public entity must request in writing
245 the additional amounts required. The private entity must pay the
246 requested additional amounts within 30 days after receipt of the
247 notice. The responsible public entity may stop its review of the
248 unsolicited proposal if the private entity fails to pay the
249 additional fee.

250 4. If the responsible public entity does not evaluate the
251 unsolicited proposal, the responsible public entity must return
252 the application fee ~~The fee must be sufficient to pay the costs~~
253 ~~of evaluating the proposal. The responsible public entity may~~
254 ~~engage the services of a private consultant to assist in the~~
255 ~~evaluation.~~

256 (b) The responsible public entity may request a proposal
257 from private entities for a qualifying ~~public-private~~ project
258 or, if the responsible public entity receives an unsolicited
259 proposal for a qualifying ~~public-private~~ project and the
260 responsible public entity intends to enter into a comprehensive
261 agreement for the project described in the ~~such~~ unsolicited

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262 proposal, the responsible public entity shall publish notice in
263 the Florida Administrative Register and a newspaper of general
264 circulation at least once a week for 2 weeks stating that the
265 responsible public entity has received a proposal and will
266 accept other proposals for the same project. The timeframe
267 within which the responsible public entity may accept other
268 proposals shall be determined by the responsible public entity
269 on a project-by-project basis based upon the complexity of the
270 qualifying project and the public benefit to be gained by
271 allowing a longer or shorter period of time within which other
272 proposals may be received; however, the timeframe for allowing
273 other proposals must be at least 21 days, but no more than 120
274 days, after the initial date of publication. If approved by a
275 majority vote of the responsible public entity's governing body,
276 the responsible public entity may alter the timeframe for
277 accepting proposals to more adequately suit the needs of the
278 qualifying project. A copy of the notice must be mailed to each
279 local government in the affected area.

280 (c) If the responsible public entity solicits proposals
281 under this section, the solicitation must include a design
282 criteria package prepared by an architect, engineer, or
283 landscape architect licensed in this state which is sufficient
284 to allow private entities to prepare a bid or a response. The
285 design criteria package must specify performance-based criteria
286 for the project, including the legal description of the site,
287 with survey information; interior space requirements; material
288 quality standards; schematic layouts and conceptual design
289 criteria for the project; cost or budget estimates; design and
290 construction schedules; and site development and utility

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291 requirements ~~A responsible public entity that is a school board~~
292 ~~may enter into a comprehensive agreement only with the approval~~
293 ~~of the local governing body.~~

294 (d) Before approving a comprehensive agreement ~~approval~~,
295 the responsible public entity must determine that the proposed
296 project:

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

298 2. Is for a facility that is owned by the responsible
299 public entity or for a facility for which ownership will be
300 conveyed to the responsible public entity.

301 3. Has adequate safeguards in place to ensure that
302 additional costs or service disruptions are not imposed on the
303 public in the event of material default or cancellation of the
304 comprehensive agreement by the responsible public entity.

305 4. Has adequate safeguards in place to ensure that the
306 responsible public entity or private entity has the opportunity
307 to add capacity to the proposed project or other facilities
308 serving similar predominantly public purposes.

309 5. Will be owned by the responsible public entity upon
310 completion, expiration, or termination of the comprehensive
311 agreement and upon payment of the amounts financed.

312 (e) Before signing a comprehensive agreement, the
313 responsible public entity must consider a reasonable finance
314 plan that is consistent with subsection (9) ~~(11)~~; the qualifying
315 project cost; revenues by source; available financing; major
316 assumptions; internal rate of return on private investments, if
317 governmental funds are assumed in order to deliver a cost-
318 feasible project; and a total cash-flow analysis beginning with
319 the implementation of the project and extending for the term of

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320 the comprehensive agreement.

321 (f) In considering an unsolicited proposal, the responsible
322 public entity may require from the private entity a technical
323 study prepared by a nationally recognized expert with experience
324 in preparing analysis for bond rating agencies. In evaluating
325 the technical study, the responsible public entity may rely upon
326 internal staff reports prepared by personnel familiar with the
327 operation of similar facilities or the advice of external
328 advisors or consultants who have relevant experience.

329 (4)~~(5)~~ PROJECT APPROVAL REQUIREMENTS.—An unsolicited
330 proposal from a private entity for approval of a qualifying
331 project must be accompanied by the following material and
332 information, unless waived by the responsible public entity:

333 (a) A description of the qualifying project, including the
334 conceptual design of the facilities or a conceptual plan for the
335 provision of services, and a schedule for the initiation and
336 completion of the qualifying project.

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

340 (c) A description of the private entity's general plans for
341 financing the qualifying project, including the sources of the
342 private entity's funds and the identity of any dedicated revenue
343 source or proposed debt or equity investment on behalf of the
344 private entity.

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

347 (e) The proposed user fees, lease payments, or other
348 service payments over the term of a comprehensive agreement, and

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349 the methodology for and circumstances that would allow changes
350 to the user fees, lease payments, and other service payments
351 over time.

352 (f) Additional material or information that the responsible
353 public entity reasonably requests.

354

355 Any pricing or financial terms included in an unsolicited
356 proposal must be specific as to when the pricing or terms
357 expire.

358 (5)-(6) PROJECT QUALIFICATION AND PROCESS.-

359 (a) The private entity, or the applicable party or parties
360 of the private entity's team, must meet the minimum standards
361 contained in the responsible public entity's guidelines for
362 qualifying professional services and contracts for traditional
363 procurement projects.

364 (b) The responsible public entity must:

365 1. Ensure that provision is made for the private entity's
366 performance and payment of subcontractors, including, but not
367 limited to, surety bonds, letters of credit, parent company
368 guarantees, and lender and equity partner guarantees. For the
369 components of the qualifying project which involve construction
370 performance and payment, bonds are required and are subject to
371 the recordation, notice, suit limitation, and other requirements
372 of s. 255.05.

373 2. Ensure the most efficient pricing of the security
374 package that provides for the performance and payment of
375 subcontractors.

376 3. Ensure that ~~provision is made for the transfer of the~~
377 ~~private entity's obligations if~~ the comprehensive agreement

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378 addresses termination upon ~~is terminated or~~ a material default
379 of the comprehensive agreement ~~occurs~~.

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

401 (d) The responsible public entity shall perform an
402 independent analysis of the proposed public-private partnership
403 which demonstrates the cost-effectiveness and overall public
404 benefit before the procurement process is initiated or before
405 the contract is awarded.

406 (e) The responsible public entity may approve the

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407 development or operation of an educational facility, a
408 transportation facility, a water or wastewater management
409 facility or related infrastructure, a technology infrastructure
410 or other public infrastructure, or a government facility needed
411 by the responsible public entity as a qualifying project, or the
412 design or equipping of a qualifying project that is developed or
413 operated, if:

414 1. There is a public need for or benefit derived from a
415 project of the type that the private entity proposes as the
416 qualifying project.

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

419 3. The private entity's plans will result in the timely
420 acquisition, design, construction, improvement, renovation,
421 expansion, equipping, maintenance, or operation of the
422 qualifying project.

423 (f) The responsible public entity may charge a reasonable
424 fee to cover the costs of processing, reviewing, and evaluating
425 the request, including, but not limited to, reasonable attorney
426 fees and fees for financial and technical advisors or
427 consultants and for other necessary advisors or consultants.

428 (g) Upon approval of a qualifying project, the responsible
429 public entity shall establish a date for the commencement of
430 activities related to the qualifying project. The responsible
431 public entity may extend the commencement date.

432 (h) Approval of a qualifying project by the responsible
433 public entity is subject to entering into a comprehensive
434 agreement with the private entity.

435 ~~(7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.~~

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436 ~~(a) The responsible public entity must notify each affected~~
437 ~~local jurisdiction by furnishing a copy of the proposal to each~~
438 ~~affected local jurisdiction when considering a proposal for a~~
439 ~~qualifying project.~~

440 ~~(b) Each affected local jurisdiction that is not a~~
441 ~~responsible public entity for the respective qualifying project~~
442 ~~may, within 60 days after receiving the notice, submit in~~
443 ~~writing any comments to the responsible public entity and~~
444 ~~indicate whether the facility is incompatible with the local~~
445 ~~comprehensive plan, the local infrastructure development plan,~~
446 ~~the capital improvements budget, any development of regional~~
447 ~~impact processes or timelines, or other governmental spending~~
448 ~~plan. The responsible public entity shall consider the comments~~
449 ~~of the affected local jurisdiction before entering into a~~
450 ~~comprehensive agreement with a private entity. If an affected~~
451 ~~local jurisdiction fails to respond to the responsible public~~
452 ~~entity within the time provided in this paragraph, the~~
453 ~~nonresponse is deemed an acknowledgment by the affected local~~
454 ~~jurisdiction that the qualifying project is compatible with the~~
455 ~~local comprehensive plan, the local infrastructure development~~
456 ~~plan, the capital improvements budget, or other governmental~~
457 ~~spending plan.~~

458 (6) ~~(8)~~ INTERIM AGREEMENT.—Before or in connection with the
459 negotiation of a comprehensive agreement, the responsible public
460 entity may enter into an interim agreement with the private
461 entity proposing the development or operation of the qualifying
462 project. An interim agreement does not obligate the responsible
463 public entity to enter into a comprehensive agreement. The
464 interim agreement is discretionary with the parties and is not

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465 required on a qualifying project for which the parties may
466 proceed directly to a comprehensive agreement without the need
467 for an interim agreement. An interim agreement must be limited
468 to provisions that:

469 (a) Authorize the private entity to commence activities for
470 which it may be compensated related to the proposed qualifying
471 project, including, but not limited to, project planning and
472 development, design, environmental analysis and mitigation,
473 survey, other activities concerning any part of the proposed
474 qualifying project, and ascertaining the availability of
475 financing for the proposed facility or facilities.

476 (b) Establish the process and timing of the negotiation of
477 the comprehensive agreement.

478 (c) Contain such other provisions related to an aspect of
479 the development or operation of a qualifying project that the
480 responsible public entity and the private entity deem
481 appropriate.

482 (7)~~(9)~~ COMPREHENSIVE AGREEMENT.—

483 (a) Before developing or operating the qualifying project,
484 the private entity must enter into a comprehensive agreement
485 with the responsible public entity. The comprehensive agreement
486 must provide for:

487 1. Delivery of performance and payment bonds, letters of
488 credit, or other security acceptable to the responsible public
489 entity in connection with the development or operation of the
490 qualifying project in the form and amount satisfactory to the
491 responsible public entity. For the components of the qualifying
492 project which involve construction, the form and amount of the
493 bonds must comply with s. 255.05.

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494 2. Review of the design for the qualifying project by the
495 responsible public entity and, if the design conforms to
496 standards acceptable to the responsible public entity, the
497 approval of the responsible public entity. This subparagraph
498 does not require the private entity to complete the design of
499 the qualifying project before the execution of the comprehensive
500 agreement.

501 3. Inspection of the qualifying project by the responsible
502 public entity to ensure that the private entity's activities are
503 acceptable to the responsible public entity in accordance with
504 the comprehensive agreement.

505 4. Maintenance of a policy of public liability insurance, a
506 copy of which must be filed with the responsible public entity
507 and accompanied by proofs of coverage, or self-insurance, each
508 in the form and amount satisfactory to the responsible public
509 entity and reasonably sufficient to ensure coverage of tort
510 liability to the public and employees and to enable the
511 continued operation of the qualifying project.

512 5. Monitoring by the responsible public entity of the
513 maintenance practices to be performed by the private entity to
514 ensure that the qualifying project is properly maintained.

515 6. Periodic filing by the private entity of the appropriate
516 financial statements that pertain to the qualifying project.

517 7. Procedures that govern the rights and responsibilities
518 of the responsible public entity and the private entity in the
519 course of the construction and operation of the qualifying
520 project and in the event of the termination of the comprehensive
521 agreement or a material default by the private entity. The
522 procedures must include conditions that govern the assumption of

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523 the duties and responsibilities of the private entity by an
524 entity that funded, in whole or part, the qualifying project or
525 by the responsible public entity, and must provide for the
526 transfer or purchase of property or other interests of the
527 private entity by the responsible public entity.

528 8. Fees, lease payments, or service payments. In
529 negotiating user fees, the fees must be the same for persons
530 using the facility under like conditions and must not materially
531 discourage use of the qualifying project. The execution of the
532 comprehensive agreement or a subsequent amendment is conclusive
533 evidence that the fees, lease payments, or service payments
534 provided for in the comprehensive agreement comply with this
535 section. Fees or lease payments established in the comprehensive
536 agreement as a source of revenue may be in addition to, or in
537 lieu of, service payments.

538 9. Duties of the private entity, including the terms and
539 conditions that the responsible public entity determines serve
540 the public purpose of this section.

541 (b) The comprehensive agreement may include:

542 1. An agreement by the responsible public entity to make
543 grants or loans to the private entity from amounts received from
544 the federal, state, or local government or an agency or
545 instrumentality thereof.

546 2. A provision under which each entity agrees to provide
547 notice of default and cure rights for the benefit of the other
548 entity, including, but not limited to, a provision regarding
549 unavoidable delays.

550 3. A provision that terminates the authority and duties of
551 the private entity under this section and dedicates the

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552 qualifying project to the responsible public entity or, if the
553 qualifying project was initially dedicated by an affected local
554 jurisdiction, to the affected local jurisdiction for public use.

555 (8)-(10) FEES.-A comprehensive ~~An~~ agreement entered into
556 pursuant to this section may authorize the private entity to
557 impose fees to members of the public for the use of the
558 facility. The following provisions apply to the comprehensive
559 agreement:

560 (a) The responsible public entity may develop new
561 facilities or increase capacity in existing facilities through a
562 comprehensive agreement with a private entity ~~agreements with~~
563 ~~public-private partnerships.~~

564 (b) The comprehensive ~~public-private partnership~~ agreement
565 must ensure that the facility is properly operated, maintained,
566 or improved in accordance with standards set forth in the
567 comprehensive agreement.

568 (c) The responsible public entity may lease existing fee-
569 for-use facilities through a comprehensive ~~public-private~~
570 ~~partnership~~ agreement.

571 (d) Any revenues must be authorized by and applied in the
572 manner set forth in ~~regulated by the responsible public entity~~
573 ~~pursuant to~~ the comprehensive agreement.

574 (e) A negotiated portion of revenues from fee-generating
575 uses ~~may~~ must be returned to the responsible public entity over
576 the life of the comprehensive agreement.

577 (9)-(11) FINANCING.-

578 (a) A private entity may enter into a private-source
579 financing agreement between financing sources and the private
580 entity. A financing agreement and any liens on the property or

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581 facility must be paid in full at the applicable closing that
582 transfers ownership or operation of the facility to the
583 responsible public entity at the conclusion of the term of the
584 comprehensive agreement.

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

588 (c) The responsible public entity may use innovative
589 finance techniques associated with a public-private partnership
590 under this section, including, but not limited to, federal loans
591 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
592 and hedges against inflation from commercial banks or other
593 private sources. In addition, the responsible public entity may
594 provide its own capital or operating budget to support a
595 qualifying project. The budget may be from any legally
596 permissible funding sources of the responsible public entity,
597 including the proceeds of debt issuances. A responsible public
598 entity may use the model financing agreement provided in s.
599 489.145(6) for its financing of a facility owned by a
600 responsible public entity. A financing agreement may not require
601 the responsible public entity to indemnify the financing source,
602 subject the responsible public entity's facility to liens in
603 violation of s. 11.066(5), or secure financing of ~~by~~ the
604 responsible public entity by a mortgage on, or security interest
605 in, the real or tangible personal property of the responsible
606 public entity in a manner that could result in the loss of the
607 fee ownership of the property by the responsible public entity
608 ~~with a pledge of security interest~~, and any such provision is
609 void.

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

617 (10)~~(12)~~ POWERS AND DUTIES OF THE PRIVATE ENTITY.—

618 (a) The private entity shall:

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

622 2. Maintain, or provide by contract for the maintenance or
623 improvement of, the qualifying project if required by the
624 comprehensive agreement.

625 3. Cooperate with the responsible public entity in making
626 best efforts to establish interconnection between the qualifying
627 project and any other facility or infrastructure as requested by
628 the responsible public entity in accordance with the provisions
629 of the comprehensive agreement.

630 4. Comply with the comprehensive agreement and any lease or
631 service contract.

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

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639 (c) The responsible public entity may provide services to
640 the private entity. An agreement for maintenance and other
641 services entered into pursuant to this section must provide for
642 full reimbursement for services rendered for qualifying
643 projects.

644 (d) A private entity of a qualifying project may provide
645 additional services for the qualifying project to the public or
646 to other private entities if the provision of additional
647 services does not impair the private entity's ability to meet
648 its commitments to the responsible public entity pursuant to the
649 comprehensive agreement.

650 (11)~~(13)~~ EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
651 expiration or termination of a comprehensive agreement, the
652 responsible public entity may use revenues from the qualifying
653 project to pay current operation and maintenance costs of the
654 qualifying project. If the private entity materially defaults
655 under the comprehensive agreement, the compensation that is
656 otherwise due to the private entity is payable to satisfy all
657 financial obligations to investors and lenders on the qualifying
658 project in the same way that is provided in the comprehensive
659 agreement or any other agreement involving the qualifying
660 project, if the costs of operating and maintaining the
661 qualifying project are paid in the normal course. Revenues in
662 excess of the costs for operation and maintenance costs may be
663 paid to the investors and lenders to satisfy payment obligations
664 under their respective agreements. A responsible public entity
665 may terminate with cause and without prejudice a comprehensive
666 agreement and may exercise any other rights or remedies that may
667 be available to it in accordance with the provisions of the

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668 comprehensive agreement. The full faith and credit of the
669 responsible public entity may not be pledged to secure the
670 financing of the private entity. The assumption of the
671 development or operation of the qualifying project does not
672 obligate the responsible public entity to pay any obligation of
673 the private entity from sources other than revenues from the
674 qualifying project unless stated otherwise in the comprehensive
675 agreement.

676 (12)~~(14)~~ SOVEREIGN IMMUNITY.—This section does not waive
677 the sovereign immunity of a responsible public entity, an
678 affected local jurisdiction, or an officer or employee thereof
679 with respect to participation in, or approval of, any part of a
680 qualifying project or its operation, including, but not limited
681 to, interconnection of the qualifying project with any other
682 infrastructure or project. A county or municipality in which a
683 qualifying project is located possesses sovereign immunity with
684 respect to the project, including, but not limited to, its
685 design, construction, and operation.

686 (13) DEPARTMENT OF MANAGEMENT SERVICES.—

687 (a) A responsible public entity may provide a copy of its
688 comprehensive agreement to the Department of Management
689 Services. A responsible public entity must redact any
690 confidential or exempt information from the copy of the
691 comprehensive agreement before providing it to the Department of
692 Management Services.

693 (b) The Department of Management Services may accept and
694 maintain copies of comprehensive agreements received from
695 responsible public entities for the purpose of sharing
696 comprehensive agreements with other responsible public entities.

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697 (c) This subsection does not require a responsible public
698 entity to provide a copy of its comprehensive agreement to the
699 Department of Management Services.

700 (14)~~(15)~~ CONSTRUCTION.—

701 (a) This section shall be liberally construed to effectuate
702 the purposes of this section.

703 (b) This section shall be construed as cumulative and
704 supplemental to any other authority or power vested in or
705 exercised by the governing body ~~board~~ of a county, municipality,
706 special district, or municipal hospital or health care system
707 including those contained in acts of the Legislature
708 ~~establishing such public hospital boards or s. 155.40.~~

709 (c) This section does not affect any agreement or existing
710 relationship with a supporting organization involving such
711 governing body ~~board~~ or system in effect as of January 1, 2013.

712 (d)~~(a)~~ This section provides an alternative method and does
713 not limit a county, municipality, special district, or other
714 political subdivision of the state in the procurement or
715 operation of a qualifying project ~~acquisition, design, or~~
716 ~~construction of a public project~~ pursuant to other statutory or
717 constitutional authority.

718 (e)~~(b)~~ Except as otherwise provided in this section, this
719 section does not amend existing laws by granting additional
720 powers to, or further restricting, a local governmental entity
721 from regulating and entering into cooperative arrangements with
722 the private sector for the planning, construction, or operation
723 of a facility.

724 (f)~~(e)~~ This section does not waive any requirement of s.
725 287.055.

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726 Section 2. Section 287.0935, Florida Statutes, is amended
727 to read:

728 287.0935 Surety bond insurers.—When the contract amount of
729 a project that uses public funds does not exceed \$5 million
730 ~~\$500,000 and when public funds are utilized for the project,~~ a
731 person, the state, or a political subdivision may ~~shall~~ not
732 refuse, ~~as surety for the project,~~ bid bonds, performance bonds,
733 labor and materials payment bonds, or any other surety bonds as
734 surety for the project if such bonds ~~which~~ are issued by a
735 surety company that meets all ~~which fulfills each~~ of the
736 following requirements ~~provisions~~:

737 (1) The surety company is licensed to do business in this
738 state. ~~the State of Florida;~~

739 (2) The surety company holds a certificate of authority
740 authorizing it to write surety bonds in this state. ~~†~~

741 (3) The surety company has twice the minimum surplus and
742 capital required by the Florida Insurance Code at the time the
743 invitation to bid is issued, or has an "A-" minimum rating of
744 performance in the latest publication of Best's Key Rating Guide
745 by A.M. Best Company. ~~†~~

746 (4) The surety company is otherwise in compliance with the
747 provisions of the Florida Insurance Code. ~~† and~~

748 (5) The surety company holds a currently valid certificate
749 of authority issued by the United States Department of the
750 Treasury under 31 U.S.C. ss. 9304-9308.

751 Section 3. This act shall take effect July 1, 2015.