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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/01/2016	.	
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The Committee on Governmental Oversight and Accountability
(Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

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

(a) "Affected local jurisdiction" means a county,



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11 municipality, or special district in which all or a portion of a
12 qualifying project is located.

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

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

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

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

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

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

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

34 (i) "Qualifying project" means:

35 1. A facility or project that serves a public purpose,
36 including, but not limited to, any ferry or mass transit
37 facility, vehicle parking facility, airport or seaport facility,
38 rail facility or project, fuel supply facility, oil or gas
39 pipeline, medical or nursing care facility, recreational



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40 facility, sporting or cultural facility, or educational facility
41 or other building or facility that is used or will be used by a
42 public educational institution, or any other public facility or
43 infrastructure that is used or will be used by the public at
44 large or in support of an accepted public purpose or activity;

45 2. An improvement, including equipment, of a building that
46 will be principally used by a public entity or the public at
47 large or that supports a service delivery system in the public
48 sector;

49 3. A water, wastewater, or surface water management
50 facility or other related infrastructure; or

51 4. Notwithstanding any provision of this section, for
52 projects that involve a facility owned or operated by the
53 governing board of a county, district, or municipal hospital or
54 health care system, or projects that involve a facility owned or
55 operated by a municipal electric utility, only those projects
56 that the governing board designates as qualifying projects
57 pursuant to this section.

58 (j) "Responsible public entity" means a county,
59 municipality, school district, special district, ~~board,~~ or any
60 other political subdivision of the state; a public body
61 corporate and politic; or a regional entity that serves a public
62 purpose and is authorized to develop or operate a qualifying
63 project.

64 (k) "Revenues" means the income, earnings, user fees, lease
65 payments, or other service payments relating to the development
66 or operation of a qualifying project, including, but not limited
67 to, money received as grants or otherwise from the Federal
68 Government, a public entity, or an agency or instrumentality



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69 thereof in aid of the qualifying project.

70 (1) "Service contract" means a contract between a
71 responsible public entity and the private entity which defines
72 the terms of the services to be provided with respect to a
73 qualifying project.

74 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
75 that there is a public need for the construction or upgrade of
76 facilities that are used predominantly for public purposes and
77 that it is in the public's interest to provide for the
78 construction or upgrade of such facilities.

79 (a) The Legislature also finds that:

80 1. There is a public need for timely and cost-effective
81 acquisition, design, construction, improvement, renovation,
82 expansion, equipping, maintenance, operation, implementation, or
83 installation of projects serving a public purpose, including
84 educational facilities, transportation facilities, water or
85 wastewater management facilities and infrastructure, technology
86 infrastructure, roads, highways, bridges, and other public
87 infrastructure and government facilities within the state which
88 serve a public need and purpose, and that such public need may
89 not be wholly satisfied by existing procurement methods.

90 2. There are inadequate resources to develop new
91 educational facilities, transportation facilities, water or
92 wastewater management facilities and infrastructure, technology
93 infrastructure, roads, highways, bridges, and other public
94 infrastructure and government facilities for the benefit of
95 residents of this state, and that a public-private partnership
96 has demonstrated that it can meet the needs by improving the
97 schedule for delivery, lowering the cost, and providing other



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98 benefits to the public.

99 3. There may be state and federal tax incentives that
100 promote partnerships between public and private entities to
101 develop and operate qualifying projects.

102 4. A procurement under this section serves the public
103 purpose of this section if such procurement facilitates the
104 timely development or operation of a qualifying project.

105 (b) It is the intent of the Legislature to encourage
106 investment in the state by private entities; to facilitate
107 various bond financing mechanisms, private capital, and other
108 funding sources for the development and operation of qualifying
109 projects, including expansion and acceleration of such financing
110 to meet the public need; and to provide the greatest possible
111 flexibility to public and private entities contracting for the
112 provision of public services.

113 ~~(3) PUBLIC-PRIVATE PARTNERSHIP GUIDELINES TASK FORCE.~~

114 ~~(a) There is created the Partnership for Public Facilities~~
115 ~~and Infrastructure Act Guidelines Task Force for the purpose of~~
116 ~~recommending guidelines for the Legislature to consider for~~
117 ~~purposes of creating a uniform process for establishing public-~~
118 ~~private partnerships, including the types of factors responsible~~
119 ~~public entities should review and consider when processing~~
120 ~~requests for public-private partnership projects pursuant to~~
121 ~~this section.~~

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

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

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



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- 127 ~~a. One county government official.~~
- 128 ~~b. One municipal government official.~~
- 129 ~~c. One district school board member.~~
- 130 ~~d. Three representatives of the business community.~~
- 131 ~~(c) Task force members must be appointed by July 31, 2013.~~
- 132 ~~By August 31, 2013, the task force shall meet to establish~~
- 133 ~~procedures for the conduct of its business and to elect a vice~~
- 134 ~~chair. The task force shall meet at the call of the chair. A~~
- 135 ~~majority of the members of the task force constitutes a quorum,~~
- 136 ~~and a quorum is necessary for the purpose of voting on any~~
- 137 ~~action or recommendation of the task force. All meetings shall~~
- 138 ~~be held in Tallahassee, unless otherwise decided by the task~~
- 139 ~~force, and then no more than two such meetings may be held in~~
- 140 ~~other locations for the purpose of taking public testimony.~~
- 141 ~~Administrative and technical support shall be provided by the~~
- 142 ~~department. Task force members shall serve without compensation~~
- 143 ~~and are not entitled to reimbursement for per diem or travel~~
- 144 ~~expenses.~~
- 145 ~~(d) In reviewing public private partnerships and developing~~
- 146 ~~recommendations, the task force must consider:~~
- 147 ~~1. Opportunities for competition through public notice and~~
- 148 ~~the availability of representatives of the responsible public~~
- 149 ~~entity to meet with private entities considering a proposal.~~
- 150 ~~2. Reasonable criteria for choosing among competing~~
- 151 ~~proposals.~~
- 152 ~~3. Suggested timelines for selecting proposals and~~
- 153 ~~negotiating an interim or comprehensive agreement.~~
- 154 ~~4. If an accelerated selection and review and documentation~~
- 155 ~~timelines should be considered for proposals involving a~~



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156 ~~qualifying project that the responsible public entity deems a~~
157 ~~priority.~~

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

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

165 ~~7. Current exemptions from public records and public~~
166 ~~meetings requirements, if any changes to those exemptions are~~
167 ~~necessary, or if any new exemptions should be created in order~~
168 ~~to maintain the confidentiality of financial and proprietary~~
169 ~~information received as part of an unsolicited proposal.~~

170 ~~8. Recommendations regarding the authority of the~~
171 ~~responsible public entity to engage the services of qualified~~
172 ~~professionals, which may include a Florida-registered~~
173 ~~professional or a certified public accountant, not otherwise~~
174 ~~employed by the responsible public entity, to provide an~~
175 ~~independent analysis regarding the specifics, advantages,~~
176 ~~disadvantages, and long-term and short-term costs of a request~~
177 ~~by a private entity for approval of a qualifying project, unless~~
178 ~~the governing body of the public entity determines that such~~
179 ~~analysis should be performed by employees of the public entity.~~

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

183 ~~(f) The task force is terminated December 31, 2014. The~~
184 ~~establishment of guidelines pursuant to this section or the~~



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185 ~~adoption of such guidelines by a responsible public entity is~~
186 ~~not required for such entity to request or receive proposals for~~
187 ~~a qualifying project or to enter into a comprehensive agreement~~
188 ~~for a qualifying project. A responsible public entity may adopt~~
189 ~~guidelines so long as such guidelines are not inconsistent with~~
190 ~~this section.~~

191 (3)~~(4)~~ PROCUREMENT PROCEDURES.—A responsible public entity
192 may receive unsolicited proposals or may solicit proposals for a
193 qualifying project ~~projects~~ and may thereafter enter into a
194 comprehensive ~~an~~ agreement with a private entity, or a
195 consortium of private entities, for the building, upgrading,
196 operating, ownership, or financing of facilities.

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

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

205 3. If the initial application fee does not cover the
206 responsible public entity's costs to evaluate the unsolicited
207 proposal, the responsible public entity must request in writing
208 the additional amounts required. The private entity must pay the
209 requested additional amounts within 30 days after receipt of the
210 notice. The responsible public entity may stop its review of the
211 unsolicited proposal if the private entity fails to pay the
212 additional amounts.

213 4. If the responsible public entity does not evaluate the



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214 unsolicited proposal, the responsible public entity must return
215 the application fee ~~The fee must be sufficient to pay the costs~~
216 ~~of evaluating the proposal. The responsible public entity may~~
217 ~~engage the services of a private consultant to assist in the~~
218 ~~evaluation.~~

219 5. If the responsible public entity chooses to evaluate an
220 unsolicited proposal involving architecture, engineering or
221 landscape architecture, it must ensure a professional review and
222 evaluation of the design and construction proposed by the
223 initial or subsequent proposers to assure material quality
224 standards, interior space utilization, budget estimates, design
225 and construction schedules and sustainable design and
226 construction standards consistent with public projects. Such
227 review shall be performed by an architect, a landscape architect
228 or an engineer licensed in this state qualified to perform the
229 review and such professional shall advise the responsible public
230 entity through completion of the design and construction of the
231 project.

232 (b) The responsible public entity may request a proposal
233 from private entities for a qualifying ~~public-private~~ project
234 or, if the responsible public entity receives an unsolicited
235 proposal for a qualifying ~~public-private~~ project and the
236 responsible public entity intends to enter into a comprehensive
237 agreement for the project described in the ~~such~~ unsolicited
238 proposal, the responsible public entity shall publish notice in
239 the Florida Administrative Register and a newspaper of general
240 circulation at least once a week for 2 weeks stating that the
241 responsible public entity has received a proposal and will
242 accept other proposals for the same project. The timeframe



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243 within which the responsible public entity may accept other
244 proposals shall be determined by the responsible public entity
245 on a project-by-project basis based upon the complexity of the
246 qualifying project and the public benefit to be gained by
247 allowing a longer or shorter period of time within which other
248 proposals may be received; however, the timeframe for allowing
249 other proposals must be at least 21 days, but no more than 120
250 days, after the initial date of publication. If approved by a
251 majority vote of the responsible public entity's governing body,
252 the responsible public entity may alter the timeframe for
253 accepting proposals to more adequately suit the needs of the
254 qualifying project. A copy of the notice must be mailed to each
255 local government in the affected area.

256 (c) If the solicited qualifying project provided in
257 paragraph (b) includes design work, the solicitation must
258 include a design criteria package prepared by an architect, a
259 landscape architect, or an engineer licensed in this state which
260 is sufficient to allow private entities to prepare a bid or a
261 response. The design criteria package must specify reasonably
262 specific criteria for the qualifying project such as the legal
263 description of the site, with survey information; interior space
264 requirements; material quality standards; schematic layouts and
265 conceptual design criteria for the qualifying project; cost or
266 budget estimates; design and construction schedules; and site
267 development and utility requirements. The licensed design
268 professional who prepares the design criteria package shall be
269 retained to serve the responsible public entity through
270 completion of the design and construction of the project ~~A~~
271 ~~responsible public entity that is a school board may enter into~~



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272 a ~~comprehensive agreement only with the approval of the local~~
273 ~~governing body.~~

274 (d) Before approving a comprehensive agreement approval,
275 the responsible public entity must determine that the proposed
276 project:

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

278 2. Is for a facility that is owned by the responsible
279 public entity or for a facility for which ownership will be
280 conveyed to the responsible public entity.

281 3. Has adequate safeguards in place to ensure that
282 additional costs or service disruptions are not imposed on the
283 public in the event of material default or cancellation of the
284 comprehensive agreement by the responsible public entity.

285 4. Has adequate safeguards in place to ensure that the
286 responsible public entity or private entity has the opportunity
287 to add capacity to the proposed project or other facilities
288 serving similar predominantly public purposes.

289 5. Will be owned by the responsible public entity upon
290 completion, expiration, or termination of the comprehensive
291 agreement and upon payment of the amounts financed.

292 (e) Before signing a comprehensive agreement, the
293 responsible public entity must consider a reasonable finance
294 plan that is consistent with subsection (9) ~~(11)~~; the qualifying
295 project cost; revenues by source; available financing; major
296 assumptions; internal rate of return on private investments, if
297 governmental funds are assumed in order to deliver a cost-
298 feasible project; and a total cash-flow analysis beginning with
299 the implementation of the project and extending for the term of
300 the comprehensive agreement.



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301 (f) In considering an unsolicited proposal, the responsible
302 public entity may require from the private entity a technical
303 study prepared by a nationally recognized expert with experience
304 in preparing analysis for bond rating agencies. In evaluating
305 the technical study, the responsible public entity may rely upon
306 internal staff reports prepared by personnel familiar with the
307 operation of similar facilities or the advice of external
308 advisors or consultants who have relevant experience.

309 (4)~~(5)~~ PROJECT APPROVAL REQUIREMENTS.—An unsolicited
310 proposal from a private entity for approval of a qualifying
311 project must be accompanied by the following material and
312 information, unless waived by the responsible public entity:

313 (a) A description of the qualifying project, including the
314 conceptual design of the facilities or a conceptual plan for the
315 provision of services, and a schedule for the initiation and
316 completion of the qualifying project.

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

320 (c) A description of the private entity's general plans for
321 financing the qualifying project, including the sources of the
322 private entity's funds and the identity of any dedicated revenue
323 source or proposed debt or equity investment on behalf of the
324 private entity.

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

327 (e) The proposed user fees, lease payments, or other
328 service payments over the term of a comprehensive agreement, and
329 the methodology for and circumstances that would allow changes



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330 to the user fees, lease payments, and other service payments
331 over time.

332 (f) Additional material or information that the responsible
333 public entity reasonably requests.

334

335 Any pricing or financial terms included in an unsolicited
336 proposal must be specific as to when the pricing or terms
337 expire.

338 (5)(6) PROJECT QUALIFICATION AND PROCESS.-

339 (a) The private entity, or the applicable party or parties
340 of the private entity's team, must meet the minimum standards
341 contained in the responsible public entity's guidelines for
342 qualifying professional services and contracts for traditional
343 procurement projects.

344 (b) The responsible public entity must:

345 1. Ensure that provision is made for the private entity's
346 performance and payment of subcontractors, including, but not
347 limited to, surety bonds, letters of credit, parent company
348 guarantees, and lender and equity partner guarantees. For the
349 components of the qualifying project which involve construction
350 performance and payment, bonds are required and are subject to
351 the recordation, notice, suit limitation, and other requirements
352 of s. 255.05.

353 2. Ensure the most efficient pricing of the security
354 package that provides for the performance and payment of
355 subcontractors.

356 3. Ensure that ~~provision is made for the transfer of the~~
357 ~~private entity's obligations if the comprehensive agreement~~
358 addresses termination upon is terminated or a material default



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359 of the comprehensive agreement ~~occurs~~.

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

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

386 (e) The responsible public entity may approve the
387 development or operation of an educational facility, a



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388 transportation facility, a water or wastewater management
389 facility or related infrastructure, a technology infrastructure
390 or other public infrastructure, or a government facility needed
391 by the responsible public entity as a qualifying project, or the
392 design or equipping of a qualifying project that is developed or
393 operated, if:

394 1. There is a public need for or benefit derived from a
395 project of the type that the private entity proposes as the
396 qualifying project.

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

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

403 (f) The responsible public entity may charge a reasonable
404 fee to cover the costs of processing, reviewing, and evaluating
405 the request, including, but not limited to, reasonable attorney
406 fees and fees for financial and technical advisors or
407 consultants and for other necessary advisors or consultants.

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

412 (h) Approval of a qualifying project by the responsible
413 public entity is subject to entering into a comprehensive
414 agreement with the private entity.

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

416 ~~(a) The responsible public entity must notify each affected~~



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417 ~~local jurisdiction by furnishing a copy of the proposal to each~~
418 ~~affected local jurisdiction when considering a proposal for a~~
419 ~~qualifying project.~~

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

438 ~~(6)(8)~~ INTERIM AGREEMENT.—Before or in connection with the
439 negotiation of a comprehensive agreement, the responsible public
440 entity may enter into an interim agreement with the private
441 entity proposing the development or operation of the qualifying
442 project. An interim agreement does not obligate the responsible
443 public entity to enter into a comprehensive agreement. The
444 interim agreement is discretionary with the parties and is not
445 required on a qualifying project for which the parties may



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446 proceed directly to a comprehensive agreement without the need
447 for an interim agreement. An interim agreement must be limited
448 to provisions that:

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

456 (b) Establish the process and timing of the negotiation of
457 the comprehensive agreement.

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

462 (7)~~(9)~~ COMPREHENSIVE AGREEMENT.—

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

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

474 2. Review of the design for the qualifying project by the



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475 responsible public entity and, if the design conforms to
476 standards acceptable to the responsible public entity, the
477 approval of the responsible public entity. This subparagraph
478 does not require the private entity to complete the design of
479 the qualifying project before the execution of the comprehensive
480 agreement.

481 3. Inspection of the qualifying project by the responsible
482 public entity to ensure that the private entity's activities are
483 acceptable to the responsible public entity in accordance with
484 the comprehensive agreement.

485 4. Maintenance of a policy of public liability insurance, a
486 copy of which must be filed with the responsible public entity
487 and accompanied by proofs of coverage, or self-insurance, each
488 in the form and amount satisfactory to the responsible public
489 entity and reasonably sufficient to ensure coverage of tort
490 liability to the public and employees and to enable the
491 continued operation of the qualifying project.

492 5. Monitoring by the responsible public entity of the
493 maintenance practices to be performed by the private entity to
494 ensure that the qualifying project is properly maintained.

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

497 7. Procedures that govern the rights and responsibilities
498 of the responsible public entity and the private entity in the
499 course of the construction and operation of the qualifying
500 project and in the event of the termination of the comprehensive
501 agreement or a material default by the private entity. The
502 procedures must include conditions that govern the assumption of
503 the duties and responsibilities of the private entity by an



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504 entity that funded, in whole or part, the qualifying project or
505 by the responsible public entity, and must provide for the
506 transfer or purchase of property or other interests of the
507 private entity by the responsible public entity.

508 8. Fees, lease payments, or service payments. In
509 negotiating user fees, the fees must be the same for persons
510 using the facility under like conditions and must not materially
511 discourage use of the qualifying project. The execution of the
512 comprehensive agreement or a subsequent amendment is conclusive
513 evidence that the fees, lease payments, or service payments
514 provided for in the comprehensive agreement comply with this
515 section. Fees or lease payments established in the comprehensive
516 agreement as a source of revenue may be in addition to, or in
517 lieu of, service payments.

518 9. Duties of the private entity, including the terms and
519 conditions that the responsible public entity determines serve
520 the public purpose of this section.

521 (b) The comprehensive agreement may include:

522 1. An agreement by the responsible public entity to make
523 grants or loans to the private entity from amounts received from
524 the federal, state, or local government or an agency or
525 instrumentality thereof.

526 2. A provision under which each entity agrees to provide
527 notice of default and cure rights for the benefit of the other
528 entity, including, but not limited to, a provision regarding
529 unavoidable delays.

530 3. A provision that terminates the authority and duties of
531 the private entity under this section and dedicates the
532 qualifying project to the responsible public entity or, if the



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533 qualifying project was initially dedicated by an affected local
534 jurisdiction, to the affected local jurisdiction for public use.

535 (8)-(10) FEES.—A comprehensive ~~An~~ agreement entered into
536 pursuant to this section may authorize the private entity to
537 impose fees to members of the public for the use of the
538 facility. The following provisions apply to the comprehensive
539 agreement:

540 (a) The responsible public entity may develop new
541 facilities or increase capacity in existing facilities through a
542 comprehensive agreement with a private entity ~~agreements with~~
543 ~~public-private partnerships.~~

544 (b) The comprehensive ~~public-private partnership~~ agreement
545 must ensure that the facility is properly operated, maintained,
546 or improved in accordance with standards set forth in the
547 comprehensive agreement.

548 (c) The responsible public entity may lease existing fee-
549 for-use facilities through a comprehensive ~~public-private~~
550 ~~partnership~~ agreement.

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

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

557 (9)-(11) FINANCING.—

558 (a) A private entity may enter into a private-source
559 financing agreement between financing sources and the private
560 entity. A financing agreement and any liens on the property or
561 facility must be paid in full at the applicable closing that



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562 transfers ownership or operation of the facility to the
563 responsible public entity at the conclusion of the term of the
564 comprehensive agreement.

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

568 (c) The responsible public entity may use innovative
569 finance techniques associated with a public-private partnership
570 under this section, including, but not limited to, federal loans
571 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
572 and hedges against inflation from commercial banks or other
573 private sources. In addition, the responsible public entity may
574 provide its own capital or operating budget to support a
575 qualifying project. The budget may be from any legally
576 permissible funding sources of the responsible public entity,
577 including the proceeds of debt issuances. A responsible public
578 entity may use the model financing agreement provided in s.
579 489.145(6) for its financing of a facility owned by a
580 responsible public entity. A financing agreement may not require
581 the responsible public entity to indemnify the financing source,
582 subject the responsible public entity's facility to liens in
583 violation of s. 11.066(5), or secure financing of by the
584 responsible public entity by a mortgage on, or security interest
585 in, the real or tangible personal property of the responsible
586 public entity in a manner that could result in the loss of the
587 fee ownership of the property by the responsible public entity
588 ~~with a pledge of security interest, and any such provision is~~
589 void.

590 ~~(d) A responsible public entity shall appropriate on a~~



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591 ~~priority basis as required by the comprehensive agreement a~~
592 ~~contractual payment obligation, annual or otherwise, from the~~
593 ~~enterprise or other government fund from which the qualifying~~
594 ~~projects will be funded. This required payment obligation must~~
595 ~~be appropriated before other noncontractual obligations payable~~
596 ~~from the same enterprise or other government fund.~~

597 (10) ~~(12)~~ POWERS AND DUTIES OF THE PRIVATE ENTITY.-

598 (a) The private entity shall:

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

602 2. Maintain, or provide by contract for the maintenance or
603 improvement of, the qualifying project if required by the
604 comprehensive agreement.

605 3. Cooperate with the responsible public entity in making
606 best efforts to establish interconnection between the qualifying
607 project and any other facility or infrastructure as requested by
608 the responsible public entity in accordance with the provisions
609 of the comprehensive agreement.

610 4. Comply with the comprehensive agreement and any lease or
611 service contract.

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

619 (c) The responsible public entity may provide services to



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620 the private entity. An agreement for maintenance and other
621 services entered into pursuant to this section must provide for
622 full reimbursement for services rendered for qualifying
623 projects.

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

630 (11)~~(13)~~ EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
631 expiration or termination of a comprehensive agreement, the
632 responsible public entity may use revenues from the qualifying
633 project to pay current operation and maintenance costs of the
634 qualifying project. If the private entity materially defaults
635 under the comprehensive agreement, the compensation that is
636 otherwise due to the private entity is payable to satisfy all
637 financial obligations to investors and lenders on the qualifying
638 project in the same way that is provided in the comprehensive
639 agreement or any other agreement involving the qualifying
640 project, if the costs of operating and maintaining the
641 qualifying project are paid in the normal course. Revenues in
642 excess of the costs for operation and maintenance costs may be
643 paid to the investors and lenders to satisfy payment obligations
644 under their respective agreements. A responsible public entity
645 may terminate with cause and without prejudice a comprehensive
646 agreement and may exercise any other rights or remedies that may
647 be available to it in accordance with the provisions of the
648 comprehensive agreement. The full faith and credit of the



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649 responsible public entity may not be pledged to secure the
650 financing of the private entity. The assumption of the
651 development or operation of the qualifying project does not
652 obligate the responsible public entity to pay any obligation of
653 the private entity from sources other than revenues from the
654 qualifying project unless stated otherwise in the comprehensive
655 agreement.

656 (12)~~(14)~~ SOVEREIGN IMMUNITY.—This section does not waive
657 the sovereign immunity of a responsible public entity, an
658 affected local jurisdiction, or an officer or employee thereof
659 with respect to participation in, or approval of, any part of a
660 qualifying project or its operation, including, but not limited
661 to, interconnection of the qualifying project with any other
662 infrastructure or project. A county or municipality in which a
663 qualifying project is located possesses sovereign immunity with
664 respect to the project, including, but not limited to, its
665 design, construction, and operation.

666 (13) DEPARTMENT OF MANAGEMENT SERVICES.—

667 (a) A responsible public entity may provide a copy of its
668 comprehensive agreement to the Department of Management
669 Services. A responsible public entity must redact any
670 confidential or exempt information from the copy of the
671 comprehensive agreement before providing it to the Department of
672 Management Services.

673 (b) The Department of Management Services may accept and
674 maintain copies of comprehensive agreements received from
675 responsible public entities for the purpose of sharing
676 comprehensive agreements with other responsible public entities.

677 (c) This subsection does not require a responsible public



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678 entity to provide a copy of its comprehensive agreement to the
679 Department of Management Services.

680 (14)~~(15)~~ CONSTRUCTION.—

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

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

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

692 (d)~~(a)~~ This section provides an alternative method and does
693 not limit a county, municipality, special district, or other
694 political subdivision of the state in the procurement or
695 operation of a qualifying project ~~acquisition, design, or~~
696 ~~construction of a public project~~ pursuant to other statutory or
697 constitutional authority.

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

704 (f)~~(e)~~ This section does not waive any requirement of s.
705 287.055.

706 Section 2. This act shall take effect July 1, 2016.



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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to public-private partnerships;
transferring, renumbering, and amending s. 287.05712,
F.S.; revising definitions; deleting provisions
creating the Public-Private Partnership Guidelines
Task Force; requiring a private entity that submits an
unsolicited proposal to pay an initial application fee
and additional amounts if the fee does not cover
certain costs; specifying payment methods; requiring a
professional review and evaluation of design and
construction to be completed for certain unsolicited
proposals; specifying requirements; authorizing a
responsible public entity to alter the statutory
timeframe for accepting proposals for a qualifying
project under certain circumstances; requiring a
design criteria package to be submitted to a
responsible public entity if such entity solicits
specific proposals; deleting a provision that requires
approval of the local governing body before a school
board enters into a comprehensive agreement; revising
the conditions necessary for a responsible public
entity to approve a comprehensive agreement; deleting
provisions relating to notice to affected local
jurisdictions; providing that fees imposed by a



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736 private entity must be applied as set forth in the
737 comprehensive agreement; authorizing a negotiated
738 portion of revenues from fee-generating uses to be
739 returned to the responsible public entity; restricting
740 provisions in financing agreements that could result
741 in a responsible public entity's losing ownership of
742 real or tangible personal property; deleting a
743 provision that required a responsible public entity to
744 comply with specific financial obligations; providing
745 duties of the Department of Management Services
746 relating to comprehensive agreements; revising
747 provisions relating to construction of the act;
748 providing an effective date.