

By the Committee on Governmental Oversight and Accountability;
and Senator Evers

585-02882-16

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1 A bill to be entitled
2 An act relating to public-private partnerships;
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; requiring a
10 professional review and evaluation of design and
11 construction to be completed for certain unsolicited
12 proposals; specifying requirements; authorizing a
13 responsible public entity to alter the statutory
14 timeframe for accepting proposals for a qualifying
15 project under certain circumstances; requiring a
16 design criteria package to be submitted to a
17 responsible public entity if such entity solicits
18 specific proposals; deleting a provision that requires
19 approval of the local governing body before a school
20 board enters into a comprehensive agreement; revising
21 the conditions necessary for a responsible public
22 entity to approve a comprehensive agreement; deleting
23 provisions relating to notice to affected local
24 jurisdictions; providing that fees imposed by a
25 private entity must be applied as set forth in the
26 comprehensive agreement; authorizing a negotiated
27 portion of revenues from fee-generating uses to be
28 returned to the responsible public entity; restricting
29 provisions in financing agreements that could result
30 in a responsible public entity's losing ownership of
31 real or tangible personal property; deleting a

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32 provision that required a responsible public entity to
33 comply with specific financial obligations; providing
34 duties of the Department of Management Services
35 relating to comprehensive agreements; revising
36 provisions relating to construction of the act;
37 providing an effective date.
38

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

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

44 255.065 ~~287.05712~~ Public-private partnerships.—

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

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

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

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

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

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

60 (f) "Operate" means to finance, maintain, improve, equip,

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61 modify, or repair.

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

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

70 (i) "Qualifying project" means:

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

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

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

87 4. Notwithstanding any provision of this section, for
88 projects that involve a facility owned or operated by the
89 governing board of a county, district, or municipal hospital or

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90 health care system, or projects that involve a facility owned or
91 operated by a municipal electric utility, only those projects
92 that the governing board designates as qualifying projects
93 pursuant to this section.

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

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

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

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

115 (a) The Legislature also finds that:

116 1. There is a public need for timely and cost-effective
117 acquisition, design, construction, improvement, renovation,
118 expansion, equipping, maintenance, operation, implementation, or

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119 installation of projects serving a public purpose, including
120 educational facilities, transportation facilities, water or
121 wastewater management facilities and infrastructure, technology
122 infrastructure, roads, highways, bridges, and other public
123 infrastructure and government facilities within the state which
124 serve a public need and purpose, and that such public need may
125 not be wholly satisfied by existing procurement methods.

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

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

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

141 (b) It is the intent of the Legislature to encourage
142 investment in the state by private entities; to facilitate
143 various bond financing mechanisms, private capital, and other
144 funding sources for the development and operation of qualifying
145 projects, including expansion and acceleration of such financing
146 to meet the public need; and to provide the greatest possible
147 flexibility to public and private entities contracting for the

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148 provision of public services.

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

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

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

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

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

163 ~~a. One county government official.~~

164 ~~b. One municipal government official.~~

165 ~~c. One district school board member.~~

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

167 ~~(c) Task force members must be appointed by July 31, 2013.~~
168 ~~By August 31, 2013, the task force shall meet to establish~~
169 ~~procedures for the conduct of its business and to elect a vice~~
170 ~~chair. The task force shall meet at the call of the chair. A~~
171 ~~majority of the members of the task force constitutes a quorum,~~
172 ~~and a quorum is necessary for the purpose of voting on any~~
173 ~~action or recommendation of the task force. All meetings shall~~
174 ~~be held in Tallahassee, unless otherwise decided by the task~~
175 ~~force, and then no more than two such meetings may be held in~~
176 ~~other locations for the purpose of taking public testimony.~~

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177 ~~Administrative and technical support shall be provided by the~~
178 ~~department. Task force members shall serve without compensation~~
179 ~~and are not entitled to reimbursement for per diem or travel~~
180 ~~expenses.~~

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

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

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

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

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

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

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

201 ~~7. Current exemptions from public records and public~~
202 ~~meetings requirements, if any changes to those exemptions are~~
203 ~~necessary, or if any new exemptions should be created in order~~
204 ~~to maintain the confidentiality of financial and proprietary~~
205 ~~information received as part of an unsolicited proposal.~~

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

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

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

227 ~~(3)(4)~~ PROCUREMENT PROCEDURES.—A responsible public entity
228 may receive unsolicited proposals or may solicit proposals for a
229 qualifying project ~~projects~~ and may thereafter enter into a
230 comprehensive ~~an~~ agreement with a private entity, or a
231 consortium of private entities, for the building, upgrading,
232 operating, ownership, or financing of facilities.

233 (a)1. The responsible public entity may establish a
234 reasonable application fee for the submission of an unsolicited

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235 proposal under this section.

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

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

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

255 5. If the responsible public entity chooses to evaluate an
256 unsolicited proposal involving architecture, engineering or
257 landscape architecture, it must ensure a professional review and
258 evaluation of the design and construction proposed by the
259 initial or subsequent proposers to assure material quality
260 standards, interior space utilization, budget estimates, design
261 and construction schedules and sustainable design and
262 construction standards consistent with public projects. Such
263 review shall be performed by an architect, a landscape architect

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264 or an engineer licensed in this state qualified to perform the
265 review and such professional shall advise the responsible public
266 entity through completion of the design and construction of the
267 project.

268 (b) The responsible public entity may request a proposal
269 from private entities for a qualifying public-private project
270 or, if the responsible public entity receives an unsolicited
271 proposal for a qualifying public-private project and the
272 responsible public entity intends to enter into a comprehensive
273 agreement for the project described in the such unsolicited
274 proposal, the responsible public entity shall publish notice in
275 the Florida Administrative Register and a newspaper of general
276 circulation at least once a week for 2 weeks stating that the
277 responsible public entity has received a proposal and will
278 accept other proposals for the same project. The timeframe
279 within which the responsible public entity may accept other
280 proposals shall be determined by the responsible public entity
281 on a project-by-project basis based upon the complexity of the
282 qualifying project and the public benefit to be gained by
283 allowing a longer or shorter period of time within which other
284 proposals may be received; however, the timeframe for allowing
285 other proposals must be at least 21 days, but no more than 120
286 days, after the initial date of publication. If approved by a
287 majority vote of the responsible public entity's governing body,
288 the responsible public entity may alter the timeframe for
289 accepting proposals to more adequately suit the needs of the
290 qualifying project. A copy of the notice must be mailed to each
291 local government in the affected area.

292 (c) If the solicited qualifying project provided in

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293 paragraph (b) includes design work, the solicitation must
294 include a design criteria package prepared by an architect, a
295 landscape architect, or an engineer licensed in this state which
296 is sufficient to allow private entities to prepare a bid or a
297 response. The design criteria package must specify reasonably
298 specific criteria for the qualifying project such as the legal
299 description of the site, with survey information; interior space
300 requirements; material quality standards; schematic layouts and
301 conceptual design criteria for the qualifying project; cost or
302 budget estimates; design and construction schedules; and site
303 development and utility requirements. The licensed design
304 professional who prepares the design criteria package shall be
305 retained to serve the responsible public entity through
306 completion of the design and construction of the project ~~A~~
307 ~~responsible public entity that is a school board may enter into~~
308 ~~a comprehensive agreement only with the approval of the local~~
309 ~~governing body.~~

310 (d) Before approving a comprehensive agreement ~~approval~~,
311 the responsible public entity must determine that the proposed
312 project:

- 313 1. Is in the public's best interest.
- 314 2. Is for a facility that is owned by the responsible
315 public entity or for a facility for which ownership will be
316 conveyed to the responsible public entity.
- 317 3. Has adequate safeguards in place to ensure that
318 additional costs or service disruptions are not imposed on the
319 public in the event of material default or cancellation of the
320 comprehensive agreement by the responsible public entity.
- 321 4. Has adequate safeguards in place to ensure that the

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322 responsible public entity or private entity has the opportunity
323 to add capacity to the proposed project or other facilities
324 serving similar predominantly public purposes.

325 5. Will be owned by the responsible public entity upon
326 completion, expiration, or termination of the comprehensive
327 agreement and upon payment of the amounts financed.

328 (e) Before signing a comprehensive agreement, the
329 responsible public entity must consider a reasonable finance
330 plan that is consistent with subsection (9) ~~(11)~~; the qualifying
331 project cost; revenues by source; available financing; major
332 assumptions; internal rate of return on private investments, if
333 governmental funds are assumed in order to deliver a cost-
334 feasible project; and a total cash-flow analysis beginning with
335 the implementation of the project and extending for the term of
336 the comprehensive agreement.

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

345 (4) ~~(5)~~ PROJECT APPROVAL REQUIREMENTS.—An unsolicited
346 proposal from a private entity for approval of a qualifying
347 project must be accompanied by the following material and
348 information, unless waived by the responsible public entity:

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

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351 provision of services, and a schedule for the initiation and
352 completion of the qualifying project.

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

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

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

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

368 (f) Additional material or information that the responsible
369 public entity reasonably requests.

370

371 Any pricing or financial terms included in an unsolicited
372 proposal must be specific as to when the pricing or terms
373 expire.

374 (5)-(6) PROJECT QUALIFICATION AND PROCESS.-

375 (a) The private entity, or the applicable party or parties
376 of the private entity's team, must meet the minimum standards
377 contained in the responsible public entity's guidelines for
378 qualifying professional services and contracts for traditional
379 procurement projects.

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380 (b) The responsible public entity must:

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

389 2. Ensure the most efficient pricing of the security
390 package that provides for the performance and payment of
391 subcontractors.

392 3. Ensure that ~~provision is made for the transfer of the~~
393 ~~private entity's obligations if the comprehensive agreement~~
394 addresses termination upon is terminated or a material default
395 of the comprehensive agreement occurs.

396 (c) After the public notification period has expired in the
397 case of an unsolicited proposal, the responsible public entity
398 shall rank the proposals received in order of preference. In
399 ranking the proposals, the responsible public entity may
400 consider factors that include, but are not limited to,
401 professional qualifications, general business terms, innovative
402 design techniques or cost-reduction terms, and finance plans.
403 The responsible public entity may then begin negotiations for a
404 comprehensive agreement with the highest-ranked firm. If the
405 responsible public entity is not satisfied with the results of
406 the negotiations, the responsible public entity may terminate
407 negotiations with the proposer and negotiate with the second-
408 ranked or subsequent-ranked firms, in the order consistent with

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409 this procedure. If only one proposal is received, the
410 responsible public entity may negotiate in good faith, and if
411 the responsible public entity is not satisfied with the results
412 of the negotiations, the responsible public entity may terminate
413 negotiations with the proposer. Notwithstanding this paragraph,
414 the responsible public entity may reject all proposals at any
415 point in the process until a contract with the proposer is
416 executed.

417 (d) The responsible public entity shall perform an
418 independent analysis of the proposed public-private partnership
419 which demonstrates the cost-effectiveness and overall public
420 benefit before the procurement process is initiated or before
421 the contract is awarded.

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

430 1. There is a public need for or benefit derived from a
431 project of the type that the private entity proposes as the
432 qualifying project.

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

435 3. The private entity's plans will result in the timely
436 acquisition, design, construction, improvement, renovation,
437 expansion, equipping, maintenance, or operation of the

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438 qualifying project.

439 (f) The responsible public entity may charge a reasonable
440 fee to cover the costs of processing, reviewing, and evaluating
441 the request, including, but not limited to, reasonable attorney
442 fees and fees for financial and technical advisors or
443 consultants and for other necessary advisors or consultants.

444 (g) Upon approval of a qualifying project, the responsible
445 public entity shall establish a date for the commencement of
446 activities related to the qualifying project. The responsible
447 public entity may extend the commencement date.

448 (h) Approval of a qualifying project by the responsible
449 public entity is subject to entering into a comprehensive
450 agreement with the private entity.

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

452 ~~(a) The responsible public entity must notify each affected~~
453 ~~local jurisdiction by furnishing a copy of the proposal to each~~
454 ~~affected local jurisdiction when considering a proposal for a~~
455 ~~qualifying project.~~

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

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467 ~~local jurisdiction fails to respond to the responsible public~~
468 ~~entity within the time provided in this paragraph, the~~
469 ~~nonresponse is deemed an acknowledgment by the affected local~~
470 ~~jurisdiction that the qualifying project is compatible with the~~
471 ~~local comprehensive plan, the local infrastructure development~~
472 ~~plan, the capital improvements budget, or other governmental~~
473 ~~spending plan.~~

474 (6) ~~(8)~~ INTERIM AGREEMENT.—Before or in connection with the
475 negotiation of a comprehensive agreement, the responsible public
476 entity may enter into an interim agreement with the private
477 entity proposing the development or operation of the qualifying
478 project. An interim agreement does not obligate the responsible
479 public entity to enter into a comprehensive agreement. The
480 interim agreement is discretionary with the parties and is not
481 required on a qualifying project for which the parties may
482 proceed directly to a comprehensive agreement without the need
483 for an interim agreement. An interim agreement must be limited
484 to provisions that:

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

492 (b) Establish the process and timing of the negotiation of
493 the comprehensive agreement.

494 (c) Contain such other provisions related to an aspect of
495 the development or operation of a qualifying project that the

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496 responsible public entity and the private entity deem
497 appropriate.

498 ~~(7)~~~~(9)~~ COMPREHENSIVE AGREEMENT.—

499 (a) Before developing or operating the qualifying project,
500 the private entity must enter into a comprehensive agreement
501 with the responsible public entity. The comprehensive agreement
502 must provide for:

503 1. Delivery of performance and payment bonds, letters of
504 credit, or other security acceptable to the responsible public
505 entity in connection with the development or operation of the
506 qualifying project in the form and amount satisfactory to the
507 responsible public entity. For the components of the qualifying
508 project which involve construction, the form and amount of the
509 bonds must comply with s. 255.05.

510 2. Review of the design for the qualifying project by the
511 responsible public entity and, if the design conforms to
512 standards acceptable to the responsible public entity, the
513 approval of the responsible public entity. This subparagraph
514 does not require the private entity to complete the design of
515 the qualifying project before the execution of the comprehensive
516 agreement.

517 3. Inspection of the qualifying project by the responsible
518 public entity to ensure that the private entity's activities are
519 acceptable to the responsible public entity in accordance with
520 the comprehensive agreement.

521 4. Maintenance of a policy of public liability insurance, a
522 copy of which must be filed with the responsible public entity
523 and accompanied by proofs of coverage, or self-insurance, each
524 in the form and amount satisfactory to the responsible public

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525 entity and reasonably sufficient to ensure coverage of tort
526 liability to the public and employees and to enable the
527 continued operation of the qualifying project.

528 5. Monitoring by the responsible public entity of the
529 maintenance practices to be performed by the private entity to
530 ensure that the qualifying project is properly maintained.

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

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

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

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554 9. Duties of the private entity, including the terms and
555 conditions that the responsible public entity determines serve
556 the public purpose of this section.

557 (b) The comprehensive agreement may include:

558 1. An agreement by the responsible public entity to make
559 grants or loans to the private entity from amounts received from
560 the federal, state, or local government or an agency or
561 instrumentality thereof.

562 2. A provision under which each entity agrees to provide
563 notice of default and cure rights for the benefit of the other
564 entity, including, but not limited to, a provision regarding
565 unavoidable delays.

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

571 (8)~~(10)~~ FEES.—A comprehensive ~~An~~ agreement entered into
572 pursuant to this section may authorize the private entity to
573 impose fees to members of the public for the use of the
574 facility. The following provisions apply to the comprehensive
575 agreement:

576 (a) The responsible public entity may develop new
577 facilities or increase capacity in existing facilities through a
578 comprehensive agreement with a private entity ~~agreements with~~
579 ~~public-private partnerships.~~

580 (b) The comprehensive ~~public-private partnership~~ agreement
581 must ensure that the facility is properly operated, maintained,
582 or improved in accordance with standards set forth in the

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583 comprehensive agreement.

584 (c) The responsible public entity may lease existing fee-
585 for-use facilities through a comprehensive ~~public-private~~
586 ~~partnership~~ agreement.

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

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

593 (9) ~~(11)~~ FINANCING.—

594 (a) A private entity may enter into a private-source
595 financing agreement between financing sources and the private
596 entity. A financing agreement and any liens on the property or
597 facility must be paid in full at the applicable closing that
598 transfers ownership or operation of the facility to the
599 responsible public entity at the conclusion of the term of the
600 comprehensive agreement.

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

604 (c) The responsible public entity may use innovative
605 finance techniques associated with a public-private partnership
606 under this section, including, but not limited to, federal loans
607 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
608 and hedges against inflation from commercial banks or other
609 private sources. In addition, the responsible public entity may
610 provide its own capital or operating budget to support a
611 qualifying project. The budget may be from any legally

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612 permissible funding sources of the responsible public entity,
613 including the proceeds of debt issuances. A responsible public
614 entity may use the model financing agreement provided in s.
615 489.145(6) for its financing of a facility owned by a
616 responsible public entity. A financing agreement may not require
617 the responsible public entity to indemnify the financing source,
618 subject the responsible public entity's facility to liens in
619 violation of s. 11.066(5), or secure financing of by the
620 responsible public entity by a mortgage on, or security interest
621 in, the real or tangible personal property of the responsible
622 public entity in a manner that could result in the loss of the
623 fee ownership of the property by the responsible public entity
624 ~~with a pledge of security interest, and any such provision is~~
625 void.

626 ~~(d) A responsible public entity shall appropriate on a~~
627 ~~priority basis as required by the comprehensive agreement a~~
628 ~~contractual payment obligation, annual or otherwise, from the~~
629 ~~enterprise or other government fund from which the qualifying~~
630 ~~projects will be funded. This required payment obligation must~~
631 ~~be appropriated before other noncontractual obligations payable~~
632 ~~from the same enterprise or other government fund.~~

633 (10) ~~(12)~~ POWERS AND DUTIES OF THE PRIVATE ENTITY.—

634 (a) The private entity shall:

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

638 2. Maintain, or provide by contract for the maintenance or
639 improvement of, the qualifying project if required by the
640 comprehensive agreement.

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641 3. Cooperate with the responsible public entity in making
642 best efforts to establish interconnection between the qualifying
643 project and any other facility or infrastructure as requested by
644 the responsible public entity in accordance with the provisions
645 of the comprehensive agreement.

646 4. Comply with the comprehensive agreement and any lease or
647 service contract.

648 (b) Each private facility that is constructed pursuant to
649 this section must comply with the requirements of federal,
650 state, and local laws; state, regional, and local comprehensive
651 plans; the responsible public entity's rules, procedures, and
652 standards for facilities; and such other conditions that the
653 responsible public entity determines to be in the public's best
654 interest and that are included in the comprehensive agreement.

655 (c) The responsible public entity may provide services to
656 the private entity. An agreement for maintenance and other
657 services entered into pursuant to this section must provide for
658 full reimbursement for services rendered for qualifying
659 projects.

660 (d) A private entity of a qualifying project may provide
661 additional services for the qualifying project to the public or
662 to other private entities if the provision of additional
663 services does not impair the private entity's ability to meet
664 its commitments to the responsible public entity pursuant to the
665 comprehensive agreement.

666 (11)~~(13)~~ EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
667 expiration or termination of a comprehensive agreement, the
668 responsible public entity may use revenues from the qualifying
669 project to pay current operation and maintenance costs of the

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670 qualifying project. If the private entity materially defaults
671 under the comprehensive agreement, the compensation that is
672 otherwise due to the private entity is payable to satisfy all
673 financial obligations to investors and lenders on the qualifying
674 project in the same way that is provided in the comprehensive
675 agreement or any other agreement involving the qualifying
676 project, if the costs of operating and maintaining the
677 qualifying project are paid in the normal course. Revenues in
678 excess of the costs for operation and maintenance costs may be
679 paid to the investors and lenders to satisfy payment obligations
680 under their respective agreements. A responsible public entity
681 may terminate with cause and without prejudice a comprehensive
682 agreement and may exercise any other rights or remedies that may
683 be available to it in accordance with the provisions of the
684 comprehensive agreement. The full faith and credit of the
685 responsible public entity may not be pledged to secure the
686 financing of the private entity. The assumption of the
687 development or operation of the qualifying project does not
688 obligate the responsible public entity to pay any obligation of
689 the private entity from sources other than revenues from the
690 qualifying project unless stated otherwise in the comprehensive
691 agreement.

692 (12) ~~(14)~~ SOVEREIGN IMMUNITY.—This section does not waive
693 the sovereign immunity of a responsible public entity, an
694 affected local jurisdiction, or an officer or employee thereof
695 with respect to participation in, or approval of, any part of a
696 qualifying project or its operation, including, but not limited
697 to, interconnection of the qualifying project with any other
698 infrastructure or project. A county or municipality in which a

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699 qualifying project is located possesses sovereign immunity with
 700 respect to the project, including, but not limited to, its
 701 design, construction, and operation.

702 (13) DEPARTMENT OF MANAGEMENT SERVICES.—

703 (a) A responsible public entity may provide a copy of its
 704 comprehensive agreement to the Department of Management
 705 Services. A responsible public entity must redact any
 706 confidential or exempt information from the copy of the
 707 comprehensive agreement before providing it to the Department of
 708 Management Services.

709 (b) The Department of Management Services may accept and
 710 maintain copies of comprehensive agreements received from
 711 responsible public entities for the purpose of sharing
 712 comprehensive agreements with other responsible public entities.

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

716 (14)~~(15)~~ CONSTRUCTION.—

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

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

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

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728 (d)~~(a)~~ This section provides an alternative method and does
729 not limit a county, municipality, special district, or other
730 political subdivision of the state in the procurement or
731 operation of a qualifying project ~~acquisition, design, or~~
732 ~~construction of a public project~~ pursuant to other statutory or
733 constitutional authority.

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

740 (f)~~(e)~~ This section does not waive any requirement of s.
741 287.055.

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