

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; authorizing
10 a responsible public entity to alter the statutory
11 timeframe for accepting proposals for a qualifying
12 project under certain circumstances; deleting a
13 provision that requires approval of the local
14 governing body before a school board enters into a
15 comprehensive agreement; revising the conditions
16 necessary for a responsible public entity to approve a
17 comprehensive agreement; deleting provisions relating
18 to notice to affected local jurisdictions; providing
19 that fees imposed by a private entity must be applied
20 as set forth in the comprehensive agreement;
21 restricting provisions in financing agreements that
22 could result in a responsible public entity's losing
23 ownership of real or tangible personal property;
24 deleting a provision that required a responsible
25 public entity to comply with specific financial
26 obligations; providing duties of the Department of

27 Management Services; revising provisions relating to
 28 construction of the act; providing an effective date.

29
 30 Be It Enacted by the Legislature of the State of Florida:
 31

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

35 255.065 ~~287.05712~~ Public-private partnerships.-

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

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

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

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

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

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

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

53 (g) "Private entity" means any natural person,
54 corporation, general partnership, limited liability company,
55 limited partnership, joint venture, business trust, public
56 benefit corporation, nonprofit entity, or other private business
57 entity.

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

62 (i) "Qualifying project" means:

63 1. A facility or project that serves a public purpose,
64 including, but not limited to, any ferry or mass transit
65 facility, vehicle parking facility, airport or seaport facility,
66 rail facility or project, fuel supply facility, oil or gas
67 pipeline, medical or nursing care facility, recreational
68 facility, sporting or cultural facility, or educational facility
69 or other building or facility that is used or will be used by a
70 public educational institution, or any other public facility or
71 infrastructure that is used or will be used by the public at
72 large or in support of an accepted public purpose or activity;

73 2. An improvement, including equipment, of a building that
74 will be principally used by a public entity or the public at
75 large or that supports a service delivery system in the public
76 sector;

77 3. A water, wastewater, or surface water management
78 facility or other related infrastructure; or

79 4. Notwithstanding any provision of this section, for
 80 projects that involve a facility owned or operated by the
 81 governing board of a county, district, or municipal hospital or
 82 health care system, or projects that involve a facility owned or
 83 operated by a municipal electric utility, only those projects
 84 that the governing board designates as qualifying projects
 85 pursuant to this section.

86 (j) "Responsible public entity" means a county,
 87 municipality, school district, special district, Florida College
 88 System institution, or state university ~~board~~, or any other
 89 political subdivision of the state; a public body corporate and
 90 politic; or a regional entity that serves a public purpose and
 91 is authorized to develop or operate a qualifying project.

92 (k) "Revenues" means the income, earnings, user fees,
 93 lease payments, or other service payments relating to the
 94 development or operation of a qualifying project, including, but
 95 not limited to, money received as grants or otherwise from the
 96 Federal Government, a public entity, or an agency or
 97 instrumentality thereof in aid of the qualifying project.

98 (l) "Service contract" means a contract between a
 99 responsible public entity and the private entity which defines
 100 the terms of the services to be provided with respect to a
 101 qualifying project.

102 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
 103 that there is a public need for the construction or upgrade of
 104 facilities that are used predominantly for public purposes and

105 that it is in the public's interest to provide for the
106 construction or upgrade of such facilities.

107 (a) The Legislature also finds that:

108 1. There is a public need for timely and cost-effective
109 acquisition, design, construction, improvement, renovation,
110 expansion, equipping, maintenance, operation, implementation, or
111 installation of projects serving a public purpose, including
112 educational facilities, transportation facilities, water or
113 wastewater management facilities and infrastructure, technology
114 infrastructure, roads, highways, bridges, and other public
115 infrastructure and government facilities within the state which
116 serve a public need and purpose, and that such public need may
117 not be wholly satisfied by existing procurement methods.

118 2. There are inadequate resources to develop new
119 educational facilities, transportation facilities, water or
120 wastewater management facilities and infrastructure, technology
121 infrastructure, roads, highways, bridges, and other public
122 infrastructure and government facilities for the benefit of
123 residents of this state, and that a public-private partnership
124 has demonstrated that it can meet the needs by improving the
125 schedule for delivery, lowering the cost, and providing other
126 benefits to the public.

127 3. There may be state and federal tax incentives that
128 promote partnerships between public and private entities to
129 develop and operate qualifying projects.

130 4. A procurement under this section serves the public

131 purpose of this section if such procurement facilitates the
 132 timely development or operation of a qualifying project.

133 (b) It is the intent of the Legislature to encourage
 134 investment in the state by private entities; to facilitate
 135 various bond financing mechanisms, private capital, and other
 136 funding sources for the development and operation of qualifying
 137 projects, including expansion and acceleration of such financing
 138 to meet the public need; and to provide the greatest possible
 139 flexibility to public and private entities contracting for the
 140 provision of public services.

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

142 ~~(a) There is created the Partnership for Public Facilities~~
 143 ~~and Infrastructure Act Guidelines Task Force for the purpose of~~
 144 ~~recommending guidelines for the Legislature to consider for~~
 145 ~~purposes of creating a uniform process for establishing public-~~
 146 ~~private partnerships, including the types of factors responsible~~
 147 ~~public entities should review and consider when processing~~
 148 ~~requests for public-private partnership projects pursuant to~~
 149 ~~this section.~~

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

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

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

155 ~~a. One county government official.~~

156 ~~b. One municipal government official.~~

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

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

159 ~~(c) Task force members must be appointed by July 31, 2013.~~

160 ~~By August 31, 2013, the task force shall meet to establish~~
161 ~~procedures for the conduct of its business and to elect a vice~~
162 ~~chair. The task force shall meet at the call of the chair. A~~
163 ~~majority of the members of the task force constitutes a quorum,~~
164 ~~and a quorum is necessary for the purpose of voting on any~~
165 ~~action or recommendation of the task force. All meetings shall~~
166 ~~be held in Tallahassee, unless otherwise decided by the task~~
167 ~~force, and then no more than two such meetings may be held in~~
168 ~~other locations for the purpose of taking public testimony.~~
169 ~~Administrative and technical support shall be provided by the~~
170 ~~department. Task force members shall serve without compensation~~
171 ~~and are not entitled to reimbursement for per diem or travel~~
172 ~~expenses.~~

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

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

178 ~~2. Reasonable criteria for choosing among competing~~
179 ~~proposals.~~

180 ~~3. Suggested timelines for selecting proposals and~~
181 ~~negotiating an interim or comprehensive agreement.~~

182 ~~4. If an accelerated selection and review and~~

183 ~~documentation timelines should be considered for proposals~~
184 ~~involving a qualifying project that the responsible public~~
185 ~~entity deems a priority.~~

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

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

193 ~~7. Current exemptions from public records and public~~
194 ~~meetings requirements, if any changes to those exemptions are~~
195 ~~necessary, or if any new exemptions should be created in order~~
196 ~~to maintain the confidentiality of financial and proprietary~~
197 ~~information received as part of an unsolicited proposal.~~

198 ~~8. Recommendations regarding the authority of the~~
199 ~~responsible public entity to engage the services of qualified~~
200 ~~professionals, which may include a Florida-registered~~
201 ~~professional or a certified public accountant, not otherwise~~
202 ~~employed by the responsible public entity, to provide an~~
203 ~~independent analysis regarding the specifics, advantages,~~
204 ~~disadvantages, and long-term and short-term costs of a request~~
205 ~~by a private entity for approval of a qualifying project, unless~~
206 ~~the governing body of the public entity determines that such~~
207 ~~analysis should be performed by employees of the public entity.~~

208 ~~(c) The task force must submit a final report of its~~

209 ~~recommendations to the Governor, the President of the Senate,~~
 210 ~~and the Speaker of the House of Representatives by July 1, 2014.~~

211 ~~(f) The task force is terminated December 31, 2014. The~~
 212 ~~establishment of guidelines pursuant to this section or the~~
 213 ~~adoption of such guidelines by a responsible public entity is~~
 214 ~~not required for such entity to request or receive proposals for~~
 215 ~~a qualifying project or to enter into a comprehensive agreement~~
 216 ~~for a qualifying project. A responsible public entity may adopt~~
 217 ~~guidelines so long as such guidelines are not inconsistent with~~
 218 ~~this section.~~

219 (3)~~(4)~~ PROCUREMENT PROCEDURES.—A responsible public entity
 220 may receive unsolicited proposals or may solicit proposals for
 221 qualifying projects and may thereafter enter into a
 222 comprehensive ~~an~~ agreement with a private entity, or a
 223 consortium of private entities, for the building, upgrading,
 224 operating, ownership, or financing of facilities.

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

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

233 3. If the initial application fee does not cover the
 234 responsible public entity's costs to evaluate the unsolicited

235 proposal, the responsible public entity must request in writing
236 the additional amounts required. The private entity must pay the
237 requested additional amounts within 30 days after receipt of the
238 notice. The responsible public entity may stop its review of the
239 unsolicited proposal if the private entity fails to pay the
240 additional fee.

241 4. If the responsible public entity does not evaluate the
242 unsolicited proposal, the responsible public entity must return
243 the application fee ~~The fee must be sufficient to pay the costs~~
244 ~~of evaluating the proposal. The responsible public entity may~~
245 ~~engage the services of a private consultant to assist in the~~
246 ~~evaluation.~~

247 (b) The responsible public entity may request a proposal
248 from private entities for a qualifying ~~public-private~~ project
249 or, if the responsible public entity receives an unsolicited
250 proposal for a qualifying ~~public-private~~ project and the
251 responsible public entity intends to enter into a comprehensive
252 agreement for the project described in the ~~such~~ unsolicited
253 proposal, the responsible public entity shall publish notice in
254 the Florida Administrative Register and a newspaper of general
255 circulation at least once a week for 2 weeks stating that the
256 responsible public entity has received a proposal and will
257 accept other proposals for the same project. The timeframe
258 within which the responsible public entity may accept other
259 proposals shall be determined by the responsible public entity
260 on a project-by-project basis based upon the complexity of the

261 qualifying project and the public benefit to be gained by
262 allowing a longer or shorter period of time within which other
263 proposals may be received; however, the timeframe for allowing
264 other proposals must be at least 21 days, but no more than 120
265 days, after the initial date of publication. If approved by a
266 majority vote of the responsible public entity's governing body,
267 the responsible public entity may alter the timeframe for
268 accepting proposals to more adequately suit the needs of the
269 qualifying project. A copy of the notice must be mailed to each
270 local government in the affected area.

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

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

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

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

313 information, unless waived by the responsible public entity:

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

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

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

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

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

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

335

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

339 (5)~~(6)~~ PROJECT QUALIFICATION AND PROCESS.—

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

345 (b) The responsible public entity must:

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

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

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

361 (c) After the public notification period has expired in
 362 the case of an unsolicited proposal, the responsible public
 363 entity shall rank the proposals received in order of preference.
 364 In ranking the proposals, the responsible public entity may

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

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

387 (e) The responsible public entity may approve the
388 development or operation of an educational facility, a
389 transportation facility, a water or wastewater management
390 facility or related infrastructure, a technology infrastructure

391 or other public infrastructure, or a government facility needed
 392 by the responsible public entity as a qualifying project, or the
 393 design or equipping of a qualifying project that is developed or
 394 operated, if:

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

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

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

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

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

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

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

417 ~~(a) The responsible public entity must notify each~~
418 ~~affected local jurisdiction by furnishing a copy of the proposal~~
419 ~~to each affected local jurisdiction when considering a proposal~~
420 ~~for a qualifying project.~~

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

439 ~~(6)-(8)~~ INTERIM AGREEMENT.—Before or in connection with the
440 negotiation of a comprehensive agreement, the responsible public
441 entity may enter into an interim agreement with the private
442 entity proposing the development or operation of the qualifying

443 project. An interim agreement does not obligate the responsible
 444 public entity to enter into a comprehensive agreement. The
 445 interim agreement is discretionary with the parties and is not
 446 required on a qualifying project for which the parties may
 447 proceed directly to a comprehensive agreement without the need
 448 for an interim agreement. An interim agreement must be limited
 449 to provisions that:

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

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

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

463 (7)~~(9)~~ COMPREHENSIVE AGREEMENT.—

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

468 1. Delivery of performance and payment bonds, letters of

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

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

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

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

493 5. Monitoring by the responsible public entity of the
494 maintenance practices to be performed by the private entity to

495 ensure that the qualifying project is properly maintained.

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

499 7. Procedures that govern the rights and responsibilities
500 of the responsible public entity and the private entity in the
501 course of the construction and operation of the qualifying
502 project and in the event of the termination of the comprehensive
503 agreement or a material default by the private entity. The
504 procedures must include conditions that govern the assumption of
505 the duties and responsibilities of the private entity by an
506 entity that funded, in whole or part, the qualifying project or
507 by the responsible public entity, and must provide for the
508 transfer or purchase of property or other interests of the
509 private entity by the responsible public entity.

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

520 9. Duties of the private entity, including the terms and

521 conditions that the responsible public entity determines serve
 522 the public purpose of this section.

523 (b) The comprehensive agreement may include:

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

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

532 3. A provision that terminates the authority and duties of
 533 the private entity under this section and dedicates the
 534 qualifying project to the responsible public entity or, if the
 535 qualifying project was initially dedicated by an affected local
 536 jurisdiction, to the affected local jurisdiction for public use.

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

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

546 (b) The comprehensive ~~public-private partnership~~ agreement

547 must ensure that the facility is properly operated, maintained,
548 or improved in accordance with standards set forth in the
549 comprehensive agreement.

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

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

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

559 (9) ~~(11)~~ FINANCING.—

560 (a) A private entity may enter into a private-source
561 financing agreement between financing sources and the private
562 entity. A financing agreement and any liens on the property or
563 facility must be paid in full at the applicable closing that
564 transfers ownership or operation of the facility to the
565 responsible public entity at the conclusion of the term of the
566 comprehensive agreement.

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

570 (c) The responsible public entity may use innovative
571 finance techniques associated with a public-private partnership
572 under this section, including, but not limited to, federal loans

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

592 ~~(d) A responsible public entity shall appropriate on a~~
593 ~~priority basis as required by the comprehensive agreement a~~
594 ~~contractual payment obligation, annual or otherwise, from the~~
595 ~~enterprise or other government fund from which the qualifying~~
596 ~~projects will be funded. This required payment obligation must~~
597 ~~be appropriated before other noncontractual obligations payable~~
598 ~~from the same enterprise or other government fund.~~

599 | (10)~~(12)~~ POWERS AND DUTIES OF THE PRIVATE ENTITY.—

600 | (a) The private entity shall:

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

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

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

612 | 4. Comply with the comprehensive agreement and any lease
613 | or service contract.

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

621 | (c) The responsible public entity may provide services to
622 | the private entity. An agreement for maintenance and other
623 | services entered into pursuant to this section must provide for
624 | full reimbursement for services rendered for qualifying

625 projects.

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

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

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

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

668 (13) DEPARTMENT OF MANAGEMENT SERVICES.—

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

675 (b) The Department of Management Services may accept and
676 maintain copies of comprehensive agreements received from

677 responsible public entities for the purpose of sharing
 678 comprehensive agreements with other responsible public entities.

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

682 (14)-(15) CONSTRUCTION.-

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

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

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

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

700 (e)-(b) Except as otherwise provided in this section, this
 701 section does not amend existing laws by granting additional
 702 powers to, or further restricting, a local governmental entity

CS/HB 63

2015

703 | from regulating and entering into cooperative arrangements with
704 | the private sector for the planning, construction, or operation
705 | of a facility.

706 | (f)~~(e)~~ This section does not waive any requirement of s.
707 | 287.055.

708 | Section 2. This act shall take effect July 1, 2015.