

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Simpson, Chair
Senator Thompson, Vice Chair

MEETING DATE: Wednesday, January 23, 2013
TIME: 4:00 —6:00 p.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Simpson, Chair; Senator Thompson, Vice Chair; Senators Bradley, Hukill, Latvala, Smith, Soto, Stargel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 84 Diaz de la Portilla (Similar H 85, Compare S 238)	Public-private Partnerships; Providing legislative findings and intent relating to the construction or improvement by private entities of facilities used predominantly for a public purpose; providing for notice to affected local jurisdictions; providing for comprehensive agreements between a public and a private entity; providing for financing sources for certain projects by a private entity; providing for the applicability of sovereign immunity for public entities with respect to qualified projects, etc. CA 01/23/2013 Fav/CS GO AGG AP	Fav/CS Yeas 9 Nays 0
2	Presentation by Department of Economic Opportunity on proposed changes to the Small Cities Community Development Block Grant Program.		Presented
3	Florida League of Cities 2013 Legislative Priorities.		Presented
4	Florida Association of Counties 2013 Legislative Priorities.		Presented

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 84

INTRODUCER: Community Affairs Committee and Senator Diaz de la Portilla

SUBJECT: Public-private Partnerships

DATE: January 23, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	Fav/CS
2.			GO	
3.			AGG	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This committee substitute (CS) creates a new section of law to facilitate public-private partnerships, when cost-effective, to construct public-purpose projects. The CS provides legislative findings and intent relating to the construction or improvement by private entities of facilities used predominantly for a public purpose. The CS provides for notice to affected local jurisdictions as well as for comprehensive agreements between a public and a private entity. The CS specifies the requirements for such partnership. The CS lays out the financing sources for certain projects by a private entity. The applicability of sovereign immunity for public entities with respect to qualified projects is provided for in the CS.

The CS creates section 287.05712 of the Florida Statutes.

II. Present Situation:

Public-Private Partnerships

Overview

A public-private partnership (PPP) is a contractual agreement formed between a public agency and a private sector entity that allows for greater private sector participation in the delivery and financing of public building and infrastructure projects.¹ Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for the use of the general public.² In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.³

There are different types of PPPs with varying levels of private sector involvement. The most common is called a Design-Build-Finance-Operate (DBFO) transaction, where the government grants a private sector partner the right to develop a new piece of public infrastructure.⁴ The private entity takes on full responsibility and risk for delivery and operation of the public project against pre-determined standards of performance established by government. The private entity is paid through the revenue stream generated by the project, which could take the form of a user charge (such as a highway toll) or, in some cases, an annual government payment for performance (often called a “shadow toll” or “availability charge”). Any increases in the user charge or payment for performance typically are set out in advance and regulated by a binding contract.⁵

Another PPP procurement process is the Unsolicited Proposal Procurement Model (UPPM). This allows for the receipt of unsolicited bids from private entities to contract for the design, construction, operation, and financing of public infrastructure.⁶ Generally, the public entity requires a processing or review fee to cover costs for the technical and legal review.⁷

Florida Department of Transportation Public-Private Partnership

The Florida Department of Transportation (FDOT) currently has a public-private partnership program in place.⁸ The Florida Legislature declared that there is a public need for rapid construction of safe and efficient transportation facilities for the purpose of travel within the state, and that it is in the public's interest to provide for the construction of additional safe, convenient, and economical transportation facilities.⁹

¹ See The Federal Highway Administration, United States Department of Transportation, Innovative Program Delivery webpage, available at: <http://www.fhwa.dot.gov/ipd/p3/defined/index.htm> (last visited on January 15, 2013).

² See generally The National Council for Public-Private Partnerships webpage, *How PPPs Work*, available at: <http://ncppp.org/howpart/index.shtml#define> (last visited on January 15, 2013).

³ *Id.*

⁴ See The Oregon Department of Transportation, The Power of Public-Private Partnerships, available at: <http://www.oregon.gov/ODOT/HWY/OIPP/docs/PowerofPublicPrivate050806.pdf> (last visited on January 15, 2013).

⁵ *Id.*

⁶ See *Innovative Models for the Design, Build, Operation and Financing of Public Infrastructure*, John J. Fumero, at 3.

⁷ *Id.*

⁸ See s. 334.30, F.S.

⁹ Section 334.30, F.S.

Florida law provides that a private transportation facility constructed pursuant to s. 334.30, F.S., must comply with all requirements of federal, state, and local laws; state, regional, and local comprehensive plans; FDOT rules, policies, procedures, and standards for transportation facilities; and any other conditions that FDOT determines to be in the public's best interest.¹⁰

Current law allows FDOT to advance projects programmed in the adopted 5-year work program using funds provided by public-private partnerships or private entities to be reimbursed from FDOT funds for the project.¹¹ In accomplishing this, FDOT may use state resources to participate in funding and financing the project as provided for under FDOT's enabling legislation for projects on the State Highway System.¹²

FDOT may receive or solicit proposals and, with legislative approval as evidenced by approval of the project in the department's work program, enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of transportation facilities.¹³ If FDOT receives an unsolicited solicitation or proposal, it is required to publish a notice in the Florida Administrative Register and a newspaper of general circulation stating that FDOT has received the proposal and it will accept other proposals for the same project.¹⁴ In addition, FDOT requires an initial payment of \$50,000 accompany any unsolicited proposal to cover the costs of evaluating the proposal.¹⁵

Current law governing FDOT's PPP provides for a solicitation process that is similar to the Consultants' Competitive Negotiation Act.¹⁶ FDOT may request proposals from private entities for public-private transportation projects.¹⁷ The partnerships must be qualified by FDOT as part of the procurement process outlined in the procurement documents.¹⁸ These procurement documents must include provisions for performance of the private entity and payment of subcontractors, including surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees.¹⁹ FDOT must rank the proposals in the order of preference.²⁰ FDOT may then begin negotiations with the top firm. If that negotiation is unsuccessful, FDOT must terminate negotiations and move to the second-ranked firm, and if unsuccessful again, move to the third-ranked firm.²¹ FDOT must provide independent analyses of the proposed PPP that demonstrates the cost effectiveness and overall public benefit prior to moving forward with the procurement and prior to awarding the contract.²²

¹⁰ Section 334.30(3), F.S.

¹¹ Section 334.30(1), F.S.

¹² *Id.*

¹³ *Id.*

¹⁴ Section 334.30(6)(a), F.S.

¹⁵ See Fla. Admin. Code R. 14-107.0011.

¹⁶ See s. 287.055, F.S.

¹⁷ Section 334.30(6)(a), F.S.

¹⁸ Section 334.30(6)(b), F.S.

¹⁹ Section 334.30(6)(c).

²⁰ See s. 334.30(6)(d), F.S., [i]n ranking the proposals, the department may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the project.

²¹ Section 334.30(6)(d), F.S.

²² Section 334.30(6)(e), F.S.

Current law authorizes FDOT to use innovative finance techniques associated with PPPs, including federal loans, commercial bank loans, and hedges against inflation from commercial banks or other private sources.²³ PPP agreements under s. 334.30, F.S., must be limited to a term not to exceed 50 years. In addition, FDOT may not utilize more than 15 percent of total federal and state funding in any given year to fund PPP projects.²⁴

Procurement of Personal Property and Services

Chapter 287, F.S., regulates state agency²⁵ procurement of personal property and services. The Department of Management Services (department) is responsible for overseeing state purchasing activity including professional and contractual services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.²⁶ The Division of State Purchasing in the department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.²⁷

Current law requires contracts for commodities or contractual services in excess of \$35,000 to be procured utilizing a competitive solicitation process.^{28,29}

The Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for design professional services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of design professionals.

Florida's Consultants' Competitive Negotiation Act (CCNA), was enacted in 1973,³⁰ to specify the procedures to follow when procuring the services of architects and engineers. The CCNA did not prohibit discussion of compensation in the initial vendor selection phase until 1988, when the Legislature enacted a provision requiring that consideration of compensation occur only during the selection phase.³¹

Currently, the CCNA specifies the process to follow when state and local government agencies procure the professional services of an architect, professional engineer, landscape architect, or

²³ Section 334.30(7), F.S.

²⁴ Section 334.30(12), F.S.

²⁵ As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

²⁶ See ss. 287.032 and 287.042, F.S.

²⁷ Chapter 287, F.S., provides requirements for the procurement of personal property and services. Part I of that chapter pertains to commodities, insurance, and contractual services, and part II pertains to motor vehicles.

²⁸ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold provided in s. 287.017, F.S., to be competitively bid.

²⁹ As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

³⁰ Chapter 73-19, L.O.F.

³¹ Chapter 88-108, L.O.F.

registered surveyor and mapper.³² The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:

- A project, when the basic construction cost is estimated by the agency to exceed \$325,000.
- A planning or study activity, when the fee for professional services exceeds \$35,000.

The CCNA provides a two-phase selection process.³³ In the first phase, the “competitive selection,” the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the three bidders, ranked in order of preference, that it considers most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the three most highly qualified bidders including: willingness to meet time and budget requirements; past performance; location; recent, current, and projected firm workloads; volume of work previously awarded to the firm; and whether the firm is certified as a minority business.³⁴

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid. Current law defines the term “compensation” to mean “the amount paid by the agency for professional services,” regardless of whether stated as compensation or as other types of rates.³⁵

In the second phase, the “competitive negotiation,” the agency then negotiates compensation with the most qualified of the three selected firms. If a satisfactory contract cannot be negotiated, the agency must then negotiate with the second most qualified firm. The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract. If a satisfactory contract cannot be negotiated with any of the three selected, the agency must begin the selection process again.

Procurement of Construction Services

Chapter 255, F.S., regulates construction services³⁶ for public property and publically owned buildings. The Department of Management Services is responsible for establishing, through administrative rules, the following:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the secretary of the Department of Management Services to be in the best interest of the state; and

³² Section 287.055, F.S.

³³ Section 287.055(4) and (5), F.S.

³⁴ See s. 287.055(4)(b), F.S.

³⁵ Section 287.055(2)(d), F.S.

³⁶ As defined in s. 255.072(2), F.S., “construction services” means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property. The term “construction services” does not include contracts or work performed for the Department of Transportation.

- Procedures for entering into performance-based contracts for the development of public facilities when the Department of Management Services determines the use of such contracts to be in the best interest of the state.³⁷

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.³⁸ In addition, such projects must be advertised in the Florida Administrative Register at least 21 days prior to the bid opening.^{39,40} Counties, municipalities, special districts,⁴¹ or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of \$300,000.⁴²

III. Effect of Proposed Changes:

Section 1 creates s. 287.05712, F.S., relating to public-private partnerships.

Definitions

Subsection (1) provides the following relevant definitions, amongst others. “Responsible public entity” means a county, municipality, school board, or university, or any other political subdivision of the state; a public body politic and corporate; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project. “Qualifying project” means a facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, power-generating facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity; an improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; or a water, wastewater, or surface water management facility or other related infrastructure.

Legislative Findings and Intent

In subsection (2), the CS specifies that the Legislature finds that there is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion,

³⁷ Section 255.29, F.S.

³⁸ See 60D-5.0073, F.A.C.; *see also* s. 255.0525, F.S.

³⁹ Section 255.0525(1), F.S.

⁴⁰ State construction projects that are projected to exceed \$500,000 are required to be published 30 days prior to bid opening in the Florida Administrative Register, and at least once in a newspaper of general circulation in the county where the project is located. *See* s. 255.0525(1), F.S.

⁴¹ As defined in s. 189.403(1), F.S., “special district” means a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. For the purpose of s. 196.199(1), F.S., special districts must be treated as municipalities. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

⁴² *See* s. 255.20(1), F.S.

equipping, maintenance, operation, implementation, or installation of public projects, that such public need may not be wholly satisfied by existing methods of procurement, and that it has been demonstrated that public-private partnerships can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public. The Legislature declares it is the intent of this CS is to encourage investment in the state by private entities, to facilitate various bond financing mechanisms, private capital, and other funding sources for the development and operation of qualifying projects, including expansion and acceleration of such financing to meet the public need, and to provide the greatest possible flexibility to public and private entities to contract for the provision of public services.

Procurement Procedures

Subsection (3) provides that a responsible public entity may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into an agreement with a private entity, or a consortium of private entities, for the building, upgrade, operation, ownership, or financing of facilities. The responsible public entity may establish a reasonable application fee for the submission of an unsolicited proposal.

The responsible public entity may request a proposal from private entities for a public-private project or, if the public entity receives an unsolicited proposal, the public entity shall publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for 2 weeks stating that the public entity has received a proposal and will accept for 21 days after the initial date of publication other proposals for the same project.

A public entity that is a school board may enter into a comprehensive agreement under this section of law only with the approval of the local governing body.

Projects Approval Requirements

Subsection (4) provides that an unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following material and information, unless waived by the responsible public entity:

- A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
- A description of the method by which the private entity proposes to secure any necessary property interests that are required for the qualifying project.
- A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
- The name and address of a person who may be contacted for further information concerning the proposal.
- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.
- Any additional material or information that the responsible public entity reasonably requests.

Project Qualification and Process

Subsection (5) specifies that the private entity must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional services and contracts for traditional procurement projects. The responsible public entity must ensure that provisions are made for the private entity's performance and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of s. 255.05, F.S. Also the responsible public entity must ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors as well as ensure that provisions are made for the transfer of the private entity's obligations if the comprehensive agreement is terminated or a material default occurs.

Notice to Affected Local Jurisdictions

Subsection (6) provides that the responsible public entity must notify each affected local jurisdiction by furnishing a copy of the proposal to each affected local jurisdiction when considering a proposal for a qualifying project. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project may, within 60 days after receiving the notice, submit in writing any comments to the responsible public entity and indicate whether the facility is incompatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan. The responsible public entity shall consider the comments of the affected local jurisdiction before entering into a comprehensive agreement with a private entity. If an affected local jurisdiction fails to respond to the responsible public entity within the time provided in this paragraph, the nonresponse is deemed an acknowledgement by the affected local jurisdiction that the qualifying project is compatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan.

Comprehensive Agreements

Subsection (7) specifies that before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement must provide for:

- The delivery of performance and payment bonds, letters of credit, or other security acceptable to the responsible public entity in connection with the development or operation of the qualifying project in the form and amount satisfactory to the responsible public entity.
- The review of the plans and specifications for the qualifying project by the responsible public entity and, if the plans and specifications conform to standards acceptable to the responsible public entity, the approval by the responsible public entity.
- The inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the public entity in accordance with the comprehensive agreement.

- The maintenance of a policy of public liability insurance, a copy of which must be filed with the responsible public entity and accompanied by proofs of coverage, or self insurance.
- The monitoring by the responsible public entity of the maintenance practices to be performed by the private entity to ensure that the qualifying project is properly maintained.
- The periodic filing by the private entity of the appropriate financial statements that pertain to the qualifying project.
- The procedures that govern the rights and responsibilities of the responsible public entity and the private entity in the course of the construction and operation of the qualifying project and in the event of the termination of the comprehensive agreement or a material default by the private entity.
- The fees, lease payments, or service payments. In negotiating user fees, the fees must be the same for persons using the facility under like conditions and must not materially discourage use of the qualifying project.
- The duties of the private entity, including the terms and conditions that the responsible public entity determine serve the public purpose of this Act.

The comprehensive agreement may include other specified provisions.

Fees

Subsection (8) provides that an agreement entered into pursuant to this CS may authorize the private entity to impose fees for the use of the facility. The responsible public entity may develop new facilities or increase capacity in existing facilities through agreements with public-private partnerships. The public-private partnership agreement must ensure that the facility is properly operated, maintained, or improved in accordance with standards set forth in the comprehensive agreement. The responsible public entity may lease existing fee for-use facilities through a public-private partnership agreement. Any revenues must be regulated by the responsible public entity pursuant to the comprehensive agreement. A negotiated portion of revenues from fee-generating uses must be returned to the public entity over the life of the agreement.

Financing

Subsection (9) provides that a private entity may enter into a private-source financing agreement between financing sources and the private entity. A financing agreement and any liens on the property or facility must be paid in full at the applicable closing that transfers ownership or operation of the facility to the responsible public entity at the conclusion of the term of the comprehensive agreement. The responsible public entity may lend funds to private entities that construct projects containing facilities that are approved under this Act. The responsible public entity may use innovative finance techniques associated with a public-private partnership under this Act, including, but not limited to, federal loans as provided in Titles 23 and 49 C.F.R., commercial bank loans, and hedges against inflation from commercial banks or other private sources. A responsible public entity shall appropriate on a priority basis as required by the comprehensive agreement a contractual payment obligation, annual or otherwise, and the required payment obligation must be appropriated before other noncontractual obligations of the responsible public entity.

Powers and Duties of the Private Entity

Subsection (10) specifies that the private entity shall develop or operate the qualifying project in a manner that is acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement. The private entity shall maintain, or provide by contract for the maintenance or improvement of, the qualifying project if required by the comprehensive agreement. Also, the private entity shall cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by the responsible public entity. And the private entity shall comply with the comprehensive agreement and any lease or service contract.

Expiration or Termination of Agreements

Subsection (11) provides that upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the qualifying project are paid in the normal course. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity.

Sovereign Immunity

Subsection (12) provides that this CS does not waive the sovereign immunity of the state, any responsible public entity, any affected local jurisdiction, or any officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. A county or municipality in which a qualifying project is located possesses sovereign immunity with respect to the project, including, but not limited to, its design, construction, and operation.

Construction

Subsection (13) provides that the CS is to be liberally construed to effectuate its purposes. The Act does not waive any requirement of s. 287.055, F.S.

Section 2 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

An agreement entered into pursuant to this CS may authorize the private entity to impose fees for the use of the facility. A negotiated portion of revenues from fee-generating uses must be returned to the public entity over the life of the agreement.

B. Private Sector Impact:

The CS may provide for more opportunities for the private sector to enter into contracts for certain qualified projects with political subdivisions of the state.

C. Government Sector Impact:

The CS has an indeterminate fiscal impact on political subdivisions of the state that enter into public-private partnerships. Expenditures would be based on currently unidentified agreements with public-private partnerships. This CS may provide for more projects at a lower risk to political subdivisions of the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on January 23, 2013:

The CS makes technical and clarifying changes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



389616

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/24/2013	.	
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The Committee on Community Affairs (Latvala) recommended the following:

Senate Amendment

Delete line 137
and insert:
entity shall publish notice in the Florida Administrative Weekly
Register



620314

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/24/2013	.	
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The Committee on Community Affairs (Latvala) recommended the following:

Senate Amendment

Delete lines 213 - 214
and insert:
qualifying professional architectural, engineering, and
contracting services and contracts for traditional procurement
projects.

Delete line 236
and insert:
engineering design techniques or cost-reduction terms, and
finance plans. If the

By Senator Diaz de la Portilla

40-00062-13

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1 A bill to be entitled
 2 An act relating to public-private partnerships;
 3 creating s. 287.05712, F.S.; providing definitions;
 4 providing legislative findings and intent relating to
 5 the construction or improvement by private entities of
 6 facilities used predominantly for a public purpose;
 7 providing procurement procedures; providing
 8 requirements for project approval; providing project
 9 qualifications and process; providing for notice to
 10 affected local jurisdictions; providing for
 11 comprehensive agreements between a public and a
 12 private entity; providing for use fees; providing for
 13 financing sources for certain projects by a private
 14 entity; providing powers and duties for private
 15 entities; providing for expiration or termination of
 16 agreements; providing for the applicability of
 17 sovereign immunity for public entities with respect to
 18 qualified projects; providing for construction of the
 19 act; providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Section 287.05712, Florida Statutes, is created
 24 to read:

25 287.05712 Public-private partnerships.-

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

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

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30 (b) "Develop" means to plan, design, finance, lease,
 31 acquire, install, construct, or expand.
 32 (c) "Fees" means charges imposed by the private entity of a
 33 qualifying project for use of all or a portion of such
 34 qualifying project pursuant to a comprehensive agreement.
 35 (d) "Lease payment" means any form of payment, including a
 36 land lease, by a public entity to the private entity of a
 37 qualifying project for the use of the project.
 38 (e) "Material default" means a nonperformance of its duties
 39 by the private entity of a qualifying project which jeopardizes
 40 adequate service to the public from the project.
 41 (f) "Operate" means to finance, maintain, improve, equip,
 42 modify, or repair.
 43 (g) "Private entity" means any natural person, corporation,
 44 general partnership, limited liability company, limited
 45 partnership, joint venture, business trust, public-benefit
 46 corporation, nonprofit entity, or other private business entity.
 47 (h) "Proposal" means a plan for a qualifying project with
 48 detail beyond a conceptual level for which terms such as fixing
 49 costs, payment schedules, financing, deliverables, and project
 50 schedule are defined.
 51 (i) "Qualifying project" means:
 52 1. A facility or project that serves a public purpose,
 53 including, but not limited to, any ferry or mass transit
 54 facility, vehicle parking facility, airport or seaport facility,
 55 power-generating facility, rail facility or project, fuel supply
 56 facility, oil or gas pipeline, medical or nursing care facility,
 57 recreational facility, sporting or cultural facility, or
 58 educational facility or other building or facility that is used

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59 or will be used by a public educational institution, or any
 60 other public facility or infrastructure that is used or will be
 61 used by the public at large or in support of an accepted public
 62 purpose or activity;

63 2. An improvement, including equipment, of a building that
 64 will be principally used by a public entity or the public at
 65 large or that supports a service delivery system in the public
 66 sector; or

67 3. A water, wastewater, or surface water management
 68 facility or other related infrastructure.

69 (j) "Responsible public entity" means a county,
 70 municipality, school board, or university, or any other
 71 political subdivision of the state; a public body politic and
 72 corporate; or a regional entity that serves a public purpose and
 73 is authorized to develop or operate a qualifying project.

74 (k) "Revenues" means the income, earnings, user fees, lease
 75 payments, or other service payments relating to the development
 76 or operation of a qualifying project, including, but not limited
 77 to, money received as grants or otherwise from the Federal
 78 Government, a public entity, or an agency or instrumentality
 79 thereof in aid of the qualifying project.

80 (l) "Service contract" means a contract between a public
 81 entity and the private entity which defines the terms of the
 82 services to be provided with respect to a qualifying project.

83 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
 84 that there is a public need for the construction or upgrade of
 85 facilities that are used predominantly for public purposes and
 86 that it is in the public's interest to provide for the
 87 construction or upgrade of the facilities.

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88 (a) The Legislature also finds that:

89 1. There is a public need for timely and cost-effective
 90 acquisition, design, construction, improvement, renovation,
 91 expansion, equipping, maintenance, operation, implementation, or
 92 installation of public projects, including educational
 93 facilities, transportation facilities, water or wastewater
 94 management facilities and infrastructure, technology
 95 infrastructure, roads, highways, bridges, and other public
 96 infrastructure and government facilities within the state which
 97 serve a public need and purpose, and that such public need may
 98 not be wholly satisfied by existing procurement methods.

99 2. There are inadequate resources to develop new
 100 educational facilities, transportation facilities, water or
 101 wastewater management facilities and infrastructure, technology
 102 infrastructure, roads, highways, bridges, and other public
 103 infrastructure and government facilities for the benefit of
 104 residents of this state, and that a public-private partnership
 105 has demonstrated that it can meet the needs by improving the
 106 schedule for delivery, lowering the cost, and providing other
 107 benefits to the public.

108 3. There are state and federal tax incentives that promote
 109 partnerships between public and private entities to develop and
 110 operate qualifying projects.

111 4. A procurement under this section serves the public
 112 purpose of this section if such action facilitates the timely
 113 development or operation of a qualifying project.

114 (b) It is the intent of the Legislature to encourage
 115 investment in the state by private entities; to facilitate
 116 various bond financing mechanisms, private capital, and other

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 117 funding sources for the development and operation of qualifying
 118 projects, including expansion and acceleration of such financing
 119 to meet the public need; and to provide the greatest possible
 120 flexibility to public and private entities contracting for the
 121 provision of public services.

122 (3) PROCUREMENT PROCEDURES.—A responsible public entity may
 123 receive unsolicited proposals or may solicit proposals for
 124 qualifying projects and may thereafter enter into an agreement
 125 with a private entity, or a consortium of private entities, for
 126 the building, upgrade, operation, ownership, or financing of
 127 facilities.

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

134 (b) The responsible public entity may request a proposal
 135 from private entities for a public-private project or, if the
 136 public entity receives an unsolicited proposal, the public
 137 entity shall publish notice in the Florida Administrative Weekly
 138 and a newspaper of general circulation at least once a week for
 139 2 weeks stating that the public entity has received a proposal
 140 and will accept for 21 days after the initial date of
 141 publication other proposals for the same project. A copy of the
 142 notice must be mailed to each local government in the affected
 143 area. The scope of the proposal may be publicized for the
 144 purpose of soliciting competing proposals; however, the
 145 financial terms of the proposal may not be disclosed until the

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 146 terms of all competing bids are simultaneously disclosed in
 147 accordance with the applicable law governing procurement
 148 procedures for the qualifying project.

149 (c) A responsible public entity that is a school board may
 150 enter into a comprehensive agreement only with the approval of
 151 the local governing body.

152 (d) Before approval, the responsible public entity must
 153 determine that the proposed project:

- 154 1. Is in the public's best interest;
- 155 2. Is for a facility that is owned by the responsible
 156 public entity or for a facility for which ownership will be
 157 conveyed to the responsible public entity;
- 158 3. Has adequate safeguards in place to ensure that
 159 additional costs or service disruptions are not imposed on the
 160 public in the event of material default or cancellation of the
 161 agreement by the responsible public entity;
- 162 4. Has adequate safeguards in place to ensure that the
 163 responsible public entity or the private entity has the
 164 opportunity to add capacity to the proposed project or other
 165 facilities serving similar predominantly public purposes; and
- 166 5. Will be owned by the responsible public entity upon
 167 completion or termination of the agreement and upon payment of
 168 the amounts financed.

169 (e) Before signing any comprehensive agreement, the
 170 responsible public entity must consider a reasonable finance
 171 plan that is consistent with subsection (9), the project cost,
 172 revenues by source, available financing, major assumptions,
 173 internal rate of return on private investments, if any
 174 governmental funds are assumed in order to deliver a cost-

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175 feasible project, and a total cash-flow analysis beginning with
 176 the implementation of the project and extending for the term of
 177 the agreement.

178 (f) In considering an unsolicited proposal, the responsible
 179 public entity may require from the private entity an investment-
 180 grade technical study prepared by a nationally recognized expert
 181 who is accepted by national bond rating agencies. In evaluating
 182 the technical study, the responsible public entity may rely upon
 183 internal staff reports prepared by personnel familiar with the
 184 operation of similar facilities or the advice of external
 185 advisors or consultants having relevant experience.

186 (4) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal
 187 from a private entity for approval of a qualifying project must
 188 be accompanied by the following material and information, unless
 189 waived by the responsible public entity:

190 (a) A description of the qualifying project, including the
 191 conceptual design of the facilities or a conceptual plan for the
 192 provision of services, and a schedule for the initiation and
 193 completion of the qualifying project.

194 (b) A description of the method by which the private entity
 195 proposes to secure any necessary property interests that are
 196 required for the qualifying project.

197 (c) A description of the private entity's general plans for
 198 financing the qualifying project, including the sources of the
 199 private entity's funds and identification of any dedicated
 200 revenue source or proposed debt or equity investment on behalf
 201 of the private entity.

202 (d) The name and address of a person who may be contacted
 203 for further information concerning the proposal.

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204 (e) The proposed user fees, lease payments, or other
 205 service payments over the term of a comprehensive agreement, and
 206 the methodology and circumstances for changes to the user fees,
 207 lease payments, and other service payments over time.

208 (f) Any additional material or information that the
 209 responsible public entity reasonably requests.

210 (5) PROJECT QUALIFICATION AND PROCESS.—

211 (a) The private entity must meet the minimum standards
 212 contained in the responsible public entity's guidelines for
 213 qualifying professional architectural, engineering, and
 214 contracting services for traditional procurement projects.

215 (b) The responsible public entity must:

216 1. Ensure that provisions are made for the private entity's
 217 performance and payment of subcontractors, including, but not
 218 limited to, surety bonds, letters of credit, parent company
 219 guarantees, and lender and equity partner guarantees. For the
 220 components of the qualifying project which involve construction
 221 performance and payment, bonds are required and are subject to
 222 the recordation, notice, suit limitation, and other requirements
 223 of s. 255.05.

224 2. Ensure the most efficient pricing of the security
 225 package that provides for the performance and payment of
 226 subcontractors.

227 3. Ensure that provisions are made for the transfer of the
 228 private entity's obligations if the comprehensive agreement is
 229 terminated or a material default occurs.

230 (c) After the public notification period has expired in the
 231 case of an unsolicited proposal, the responsible public entity
 232 shall rank the proposals received in order of preference. In

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233 ranking the proposals, the responsible public entity may
 234 consider factors that include, but are not limited to,
 235 professional qualifications, general business terms, innovative
 236 engineering or cost-reduction terms, and finance plans. If the
 237 responsible public entity is not satisfied with the results of
 238 the negotiations, the responsible public entity may terminate
 239 negotiations with the proposer and negotiate with the second-
 240 ranked or subsequent-ranked firms, in the order consistent with
 241 this procedure. If only one proposal is received, the
 242 responsible public entity may negotiate in good faith, and if
 243 the public entity is not satisfied with the results of the
 244 negotiations, the public entity may terminate negotiations with
 245 the proposer. Notwithstanding this paragraph, the responsible
 246 public entity may reject all proposals at any point in the
 247 process until a contract with the proposer is executed.

248 (d) The responsible public entity shall perform an
 249 independent analysis of the proposed public-private partnership
 250 which demonstrates the cost-effectiveness and overall public
 251 benefit before the procurement process is initiated or before
 252 the contract is awarded.

253 (e) The responsible public entity may approve the
 254 development or operation of an educational facility, a
 255 transportation facility, a water or wastewater management
 256 facility or related infrastructure, a technology infrastructure
 257 or other public infrastructure, or a governmental facility
 258 needed by the responsible public entity as a qualifying project,
 259 or the design or equipping of a qualifying project that is
 260 developed or operated, if:

261 1. There is a public need for or benefit derived from a

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262 project of the type that the private entity proposes as the
 263 qualifying project.

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

266 3. The private entity's plans will result in the timely
 267 acquisition, design, construction, improvement, renovation,
 268 expansion, equipping, maintenance, or operation of the
 269 qualifying project.

270 (f) The responsible public entity may charge a reasonable
 271 fee to cover the costs of processing, reviewing, and evaluating
 272 the request, including, but not limited to, reasonable attorney
 273 fees and fees for financial and technical advisors or
 274 consultants and for other necessary advisors or consultants.

275 (g) Upon approval of a qualifying project, the responsible
 276 public entity shall establish a date for the commencement of
 277 activities related to the qualifying project. The responsible
 278 public entity may extend the commencement date.

279 (h) Approval of a qualifying project by the responsible
 280 public entity is subject to entering into a comprehensive
 281 agreement with the private entity.

282 (6) NOTICE TO AFFECTED LOCAL JURISDICTIONS.-

283 (a) The responsible public entity must notify each affected
 284 local jurisdiction by furnishing a copy of the proposal to each
 285 affected local jurisdiction when considering a proposal for a
 286 qualifying project.

287 (b) Each affected local jurisdiction that is not a
 288 responsible public entity for the respective qualifying project
 289 may, within 60 days after receiving the notice, submit in
 290 writing any comments to the responsible public entity and

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291 indicate whether the facility is incompatible with the local
 292 comprehensive plan, the local infrastructure development plan,
 293 the capital improvements budget, or other governmental spending
 294 plan. The responsible public entity shall consider the comments
 295 of the affected local jurisdiction before entering into a
 296 comprehensive agreement with a private entity. If an affected
 297 local jurisdiction fails to respond to the responsible public
 298 entity within the time provided in this paragraph, the
 299 nonresponse is deemed an acknowledgement by the affected local
 300 jurisdiction that the qualifying project is compatible with the
 301 local comprehensive plan, the local infrastructure development
 302 plan, the capital improvements budget, or other governmental
 303 spending plan.

304 (7) COMPREHENSIVE AGREEMENT.—

305 (a) Before developing or operating the qualifying project,
 306 the private entity must enter into a comprehensive agreement
 307 with the responsible public entity. The comprehensive agreement
 308 must provide for:

309 1. The delivery of performance and payment bonds, letters
 310 of credit, or other security acceptable to the responsible
 311 public entity in connection with the development or operation of
 312 the qualifying project in the form and amount satisfactory to
 313 the responsible public entity. For the components of the
 314 qualifying project which involve construction, the form and
 315 amount of the bonds must comply with s. 255.05.

316 2. The review of the plans and specifications for the
 317 qualifying project by the responsible public entity and, if the
 318 plans and specifications conform to standards acceptable to the
 319 responsible public entity, the approval by the responsible

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320 public entity. This subparagraph does not require the private
 321 entity to complete the design of the qualifying project before
 322 the execution of the comprehensive agreement.

323 3. The inspection of the qualifying project by the
 324 responsible public entity to ensure that the private entity's
 325 activities are acceptable to the public entity in accordance
 326 with the comprehensive agreement.

327 4. The maintenance of a policy of public liability
 328 insurance, a copy of which must be filed with the responsible
 329 public entity and accompanied by proofs of coverage, or self-
 330 insurance, each in the form and amount satisfactory to the
 331 responsible public entity and reasonably sufficient to ensure
 332 coverage of tort liability to the public and employees and to
 333 enable the continued operation of the qualifying project.

334 5. The monitoring by the responsible public entity of the
 335 maintenance practices to be performed by the private entity to
 336 ensure that the qualifying project is properly maintained.

337 6. The periodic filing by the private entity of the
 338 appropriate financial statements that pertain to the qualifying
 339 project.

340 7. The procedures that govern the rights and
 341 responsibilities of the responsible public entity and the
 342 private entity in the course of the construction and operation
 343 of the qualifying project and in the event of the termination of
 344 the comprehensive agreement or a material default by the private
 345 entity. The procedures must include conditions that govern the
 346 assumption of the duties and responsibilities of the private
 347 entity by an entity that funded, in whole or part, the
 348 qualifying project or by the responsible public entity, and must

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349 provide for the transfer or purchase of property or other
 350 interests of the private entity by the responsible public
 351 entity.

352 8. The fees, lease payments, or service payments. In
 353 negotiating user fees, the fees must be the same for persons
 354 using the facility under like conditions and must not materially
 355 discourage use of the qualifying project. The execution of the
 356 comprehensive agreement or a subsequent amendment is conclusive
 357 evidence that the fees, lease payments, or service payments
 358 provided for in the comprehensive agreement comply with this
 359 section. Fees or lease payments established in the comprehensive
 360 agreement as a source of revenue may be in addition to, or in
 361 lieu of, service payments.

362 9. The duties of the private entity, including the terms
 363 and conditions that the responsible public entity determine
 364 serve the public purpose of this section.

365 (b) The comprehensive agreement may include:

366 1. An agreement by the responsible public entity to make
 367 grants or loans to the private entity from amounts received from
 368 the federal, state, or local government or any agency or
 369 instrumentality thereof.

370 2. A provision under which each entity agrees to provide
 371 notice of default and cure rights for the benefit of the other
 372 entity, including, but not limited to, a provision regarding
 373 unavoidable delays.

374 3. A provision that terminates the authority and duties of
 375 the private entity under this section and dedicates the
 376 qualifying project to the responsible public entity or, if the
 377 qualifying project was initially dedicated by an affected local

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378 jurisdiction, to the affected local jurisdiction for public use.

379 (8) FEES.—An agreement entered into pursuant to this
 380 section may authorize the private entity to impose fees for the
 381 use of the facility. The following provisions apply to the
 382 agreement:

383 (a) The responsible public entity may develop new
 384 facilities or increase capacity in existing facilities through
 385 agreements with public-private partnerships.

386 (b) The public-private partnership agreement must ensure
 387 that the facility is properly operated, maintained, or improved
 388 in accordance with standards set forth in the comprehensive
 389 agreement.

390 (c) The responsible public entity may lease existing fee-
 391 for-use facilities through a public-private partnership
 392 agreement.

393 (d) Any revenues must be regulated by the responsible
 394 public entity pursuant to the comprehensive agreement.

395 (e) A negotiated portion of revenues from fee-generating
 396 uses must be returned to the public entity over the life of the
 397 agreement.

398 (9) FINANCING.—

399 (a) A private entity may enter into a private-source
 400 financing agreement between financing sources and the private
 401 entity. A financing agreement and any liens on the property or
 402 facility must be paid in full at the applicable closing that
 403 transfers ownership or operation of the facility to the
 404 responsible public entity at the conclusion of the term of the
 405 comprehensive agreement.

406 (b) The responsible public entity may lend funds to private

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407 entities that construct projects containing facilities that are
 408 approved under this section.

409 (c) The responsible public entity may use innovative
 410 finance techniques associated with a public-private partnership
 411 under this section, including, but not limited to, federal loans
 412 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
 413 and hedges against inflation from commercial banks or other
 414 private sources. In addition, the responsible public entity may
 415 provide its own capital or operating budget to support a
 416 qualifying project. The budget may be from any legally
 417 permissible funding sources of the responsible public entity,
 418 including the proceeds of debt issuances. A responsible public
 419 entity may use the model financing agreement provided in s.
 420 489.145(6) for its financing of a facility owned by a
 421 responsible public entity. A financing agreement may not require
 422 the responsible public entity to indemnify the financing source,
 423 subject the responsible public entity's facility to liens in
 424 violation of s. 11.066(5), or secure financing by the
 425 responsible public entity with a pledge of security interest,
 426 and any such provisions are void.

427 (d) A responsible public entity shall appropriate on a
 428 priority basis as required by the comprehensive agreement a
 429 contractual payment obligation, annual or otherwise, and the
 430 required payment obligation must be appropriated before other
 431 noncontractual obligations of the responsible public entity.

432 (10) POWERS AND DUTIES OF THE PRIVATE ENTITY.—

433 (a) The private entity shall:

434 1. Develop or operate the qualifying project in a manner
 435 that is acceptable to the responsible public entity in

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436 accordance with the provisions of the comprehensive agreement.

437 2. Maintain, or provide by contract for the maintenance or
 438 improvement of, the qualifying project if required by the
 439 comprehensive agreement.

440 3. Cooperate with the responsible public entity in making
 441 best efforts to establish interconnection between the qualifying
 442 project and any other facility or infrastructure as requested by
 443 the responsible public entity.

444 4. Comply with the comprehensive agreement and any lease or
 445 service contract.

446 (b) Each private facility that is constructed pursuant to
 447 this section must comply with the requirements of federal,
 448 state, and local laws; state, regional, and local comprehensive
 449 plans; the responsible public entity's rules, procedures, and
 450 standards for facilities; and any other conditions that the
 451 responsible public entity determines to be in the public's best
 452 interest and that are included in the comprehensive agreement.

453 (c) The responsible public entity may provide services to
 454 the private entity. An agreement for maintenance and other
 455 services entered into pursuant to this section must provide for
 456 full reimbursement for services rendered for qualifying
 457 projects.

458 (d) A private entity of a qualifying project may provide
 459 additional services for the qualifying project to the public or
 460 to other private entities if the provision of additional
 461 services does not impair the private entity's ability to meet
 462 its commitments to the responsible public entity pursuant to the
 463 comprehensive agreement.

464 (11) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the

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465 expiration or termination of a comprehensive agreement, the
 466 responsible public entity may use revenues from the qualifying
 467 project to pay current operation and maintenance costs of the
 468 qualifying project. If the private entity materially defaults
 469 under the comprehensive agreement, the compensation that is
 470 otherwise due to the private entity is payable to satisfy all
 471 financial obligations to investors and lenders on the qualifying
 472 project in the same way that is provided in the comprehensive
 473 agreement or any other agreement involving the qualifying
 474 project, if the costs of operating and maintaining the
 475 qualifying project are paid in the normal course. Revenues in
 476 excess of the costs for operation and maintenance costs may be
 477 paid to the investors and lenders to satisfy payment obligations
 478 under their respective agreements. A responsible public entity
 479 may terminate with cause and without prejudice a comprehensive
 480 agreement and may exercise any other rights or remedies that may
 481 be available to it. The full faith and credit of the responsible
 482 public entity may not be pledged to secure the financing of the
 483 private entity. The assumption of the development or operation
 484 of the qualifying project does not obligate the responsible
 485 public entity to pay any obligation of the private entity from
 486 sources other than revenues from the qualifying project unless
 487 stated otherwise in the comprehensive agreement.

488 (12) SOVEREIGN IMMUNITY.—This section does not waive the
 489 sovereign immunity of the state, any responsible public entity,
 490 any affected local jurisdiction, or any officer or employee
 491 thereof with respect to participation in, or approval of, any
 492 part of a qualifying project or its operation, including, but
 493 not limited to, interconnection of the qualifying project with

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

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494 any other infrastructure or project. A county or municipality in
 495 which a qualifying project is located possesses sovereign
 496 immunity with respect to the project, including, but not limited
 497 to, its design, construction, and operation.

498 (13) CONSTRUCTION.—This section shall be liberally
 499 construed to effectuate the purposes of this section.

500 (a) This section does not limit any state agency or
 501 political subdivision of the state in the acquisition, design,
 502 or construction of a public project pursuant to other statutory
 503 authority.

504 (b) Except as otherwise provided in this section, this
 505 section does not amend existing laws by granting additional
 506 powers to, or further restricting, a local governmental entity
 507 from regulating and entering into cooperative arrangements with
 508 the private sector for the planning, construction, or operation
 509 of a facility.

510 (c) This section does not waive any requirement of s.
 511 287.055.

512 Section 2. This act shall take effect July 1, 2013.

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FLORIDA
DEPARTMENT *of*
ECONOMIC
OPPORTUNITY

Proposed Revisions to the Florida Small Cities Community Development Block Grant (CDBG) Program Act

*Senate Community Affairs Committee
January 23, 2013*



FLORIDA DEPARTMENT *of* ECONOMIC OPPORTUNITY



Small Cities CDBG TODAY

- Provides primarily rural communities with resources to address a wide range of community development needs.
- Annual federal allocations to DEO through the U.S. Department of Housing & Urban Development (HUD) have ranged from \$22.8 to 29.5 million since 2008
 - FFY 2012 allocation was \$22.8 million
- DEO administers grants to “non-entitlement” local governments through a competitive application process
 - Cities/towns with populations of less than 50,000
 - Counties with populations of less than 200,000
- Projects must meet at least one National Objective
 - **Benefit low-to-moderate income (LMI) persons**
 - Prevent or eliminate slum or blight
 - Address urgent community development needs



WHAT CDBG DOES

Typical CDBG Grant Projects

- Economic development and job creation activities for low-to-moderate income LMI individuals
- Rehabilitation and preservation of housing
- Water/sewer/drainage improvements (Neighborhood Revitalization)
- Street/park/parking improvements (Commercial Revitalization)



WHY MAKE CHANGES TO THE ACT?



- 🌐 *Florida Statute is currently more restrictive than Federal Regulations*
- 🌐 *Proposed changes to the Act give DEO the ability and latitude to use the funding in ways that could provide more effective economic development outcomes and to remove burdensome and unnecessary requirements*



Proposed Revisions to the Act

- *Removes grant categories allowing an expansion of the economic development uses the funding can be used for*
- *Establishes that criteria for distributing funds will be in Rule*
- *Requires local governments to share risk in Section 108 Loan defaults*
- *Establishes application procedures by Rule*
- *Clarifies language on how many applications a local government can submit per cycle*
- *Provides framework by which competitive criteria in Rule will be based*
- *Streamlines confusing public notice requirements that are more stringent than those required by HUD*
- *Removes Citizens Advisory Task Force requirement*
- *Removes Advisory Council requirement*



EFFECTS OF CHANGES

- Revising the Act will give DEO latitude to craft the Small Cities CDBG program toward a more effective economic development outcome and remove burdensome and unnecessary requirements.
- Once statutory impediments are removed, DEO intends to explore administering an **expanded economic development portfolio** with the annual U.S. HUD funding, not used before in the Florida's Small Cities CDBG program.
 - Business incubators
 - Entrepreneurship training
 - Microenterprise grants and loans



FOR MORE INFORMATION

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Florida's Municipal Governments

**SCOTT DUDLEY
LEGISLATIVE DIRECTOR
FLORIDA LEAGUE OF CITIES, INC.**



What is the Florida League of Cities?

Created: 1922

Purpose: To serve the needs of Florida's cities and promote local self-government

Membership: 410 cities, towns and villages

Governance: Board of Directors comprised of elected municipal officials

Location: Headquarters in Tallahassee, Insurance & Technology services located in Orlando



Municipal Governments

- Article VIII, Florida's Constitution establishes municipal government creation, powers
- Only level of government a person chooses among governments
- No legal difference between city, town or village
- Chapter 165, F.S. outlines incorporation process with Legislative review & establishes a vote for the community to incorporate



City Facts in Florida

Of the 410:

- 60% have population of 10,000 or less
- 19 cities have populations of 100,000 or above
- 50% of FI population resides in a city; 50-51% since 1980s
- 23 incorporations since 1990; mostly to have own comprehensive plan & land use
- Largest population: Jacksonville 822,000
- Smallest population: Weekie Wachee: 9



Municipal Powers

Prior to 1968: counties and cities derived powers from State (“Dillon’s Rule” from 1860s court case)

Florida Constitution of 1968: included Article VIII, section 2 Home Rule powers for cities

Home Rule: power to make own ordinances or provide services provided no conflict w/ state or federal law; most important power and doesn’t exist in every state



Limitations on Home Rule Powers

Florida law provides four fundamental limitations on the exercise of municipal home rule authority:

The state legislature;

The citizens of the municipality;

The state constitution; and,

A county's charter (only 20 counties are charter counties).



More on Powers

Home Rule Powers Act 1973: codified the changes of 1968; ended legal challenges of whether Home Rule applied to each city

Every city has a charter: not the case in each state; charter outlines legislative body; powers & responsibilities; chain of command

City ordinances: laws for city; cities also use administrative policies for internal functions



City Structures

Elected body is called a council or commission; act as legislative entity and adopt ordinances, adopt policies and appropriate all funds with budget adoption

A handful of cities have an elected clerk or elected law enforcement – less than 3%

Charter identifies terms, election processes, etc.



Forms of City Government in Florida

Council-Weak Mayor: original system brought over from England; council administers all programs collectively through departments

Council-Strong Mayor: elected executive oversees day-to-day operations and usually isn't voting member of council

Council-Manager: most prevalent form nationally & in FL; professional administrator appointed by mayor & council

Commission: municipal departments run by an elected official (only 5 in Florida)



Municipal Services

Cities are service delivery 'machines': economies of scale, unique ordinances tailored to individual community

Most common in FL: comprehensive planning, land-use and zoning, water, wastewater, public works, redevelopment, police/fire, parks & recreation, economic development, storm water utility

Less common: electric, natural gas utilities, airports, seaports, mass transit systems

Economic development and community redevelopment



Municipal Fiscal Structure

Constitution authorizes Property Tax (Ad Valorem Tax): levied by all but 24 cities currently

Legislature authorizes levy of: Public Service Tax (also called Utility Tax); Local Business Tax; portions of Communications Services Tax

State-shared revenues also include: Alcoholic Beverage Tax, Sales Tax

Municipal Revenue Sharing: % of Sales Tax; n gas taxes; city must qualify annually



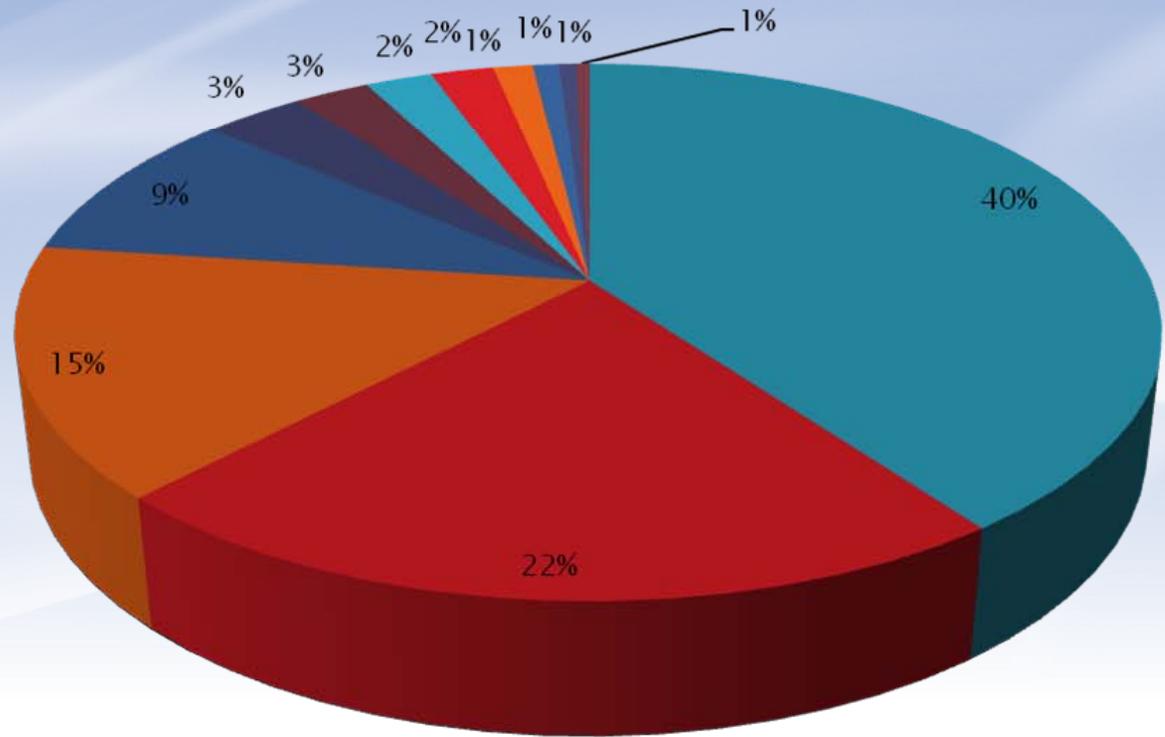
FY 2010 Municipal Revenues

- Service Charges
- Miscellaneous (1)
- Property Tax
- Intergovernmental Revenue (2)
- Utility Service Tax
- Franchise Fees
- Permits, Assessments & Impact Fees
- Local Option & Gas Tax
- Communications Service Tax
- Other Governmental Taxes (3)
- Judgements, Fines & Forefeits
- Local Business Tax

1). Includes interest earnings, increase/decrease of investments, sale of fixed assets and proprietary non-operating revenue

2.) Includes Insurance premium tax for firefighter pension & casualty insurance tax for police retirement

3.) Includes state sharing revenue





More on Fiscal Structure

- On average: fees and charges for service are 50% of city budget (includes utilities); fees are created by Home Rule powers unless otherwise specified in FL Statutes
- State-shared revenues average 8% of city budget
- **Property Tax averages 15%-17% of budget for cities who levy it**



Major Sources of Taxation

Property Tax	\$4,097,865,796.00 (46.1%)
Intergovernmental Revenue	\$2,548,307,058.00 (28.6%)
Utility Service Tax	\$930,174,647.00 (10.5%)
Local Option & Gas Tax	\$582,284,147.00 (6.5%)
Communications Service Tax	\$365,935,265.00 (4.1%)
Other Governmental Taxes	\$244,170,861.00 (2.7%)
Local Business Tax	\$128,084,624.00 (1.4%)



Unfunded Mandates

- A mandate that requires cities to expend funds or take actions requiring expenditure of funds without providing funding
- Article VII, Section 18, Florida Constitution, limits unfunded mandates.
- Numerous exceptions to constitutional restriction provided
 - finding "important state interest"
 - 2/3 vote of House and Senate



Issues Facing Florida Cities

Decline in property values: Since 2006 property values have declined. Since then, cities levied 18% less (\$757 Million) in property taxes

Financing Infrastructure: bond market problems since 2008; many cities catching up on water, sewer, road systems since growth boom of 1970s to 2000

Unfunded Mandates: Extra Pension Benefits for Police and Firefighters

Preemptions: Legislature restricting home rule authority of local government. Limiting ability of local elected officials to respond to local conditions or citizen concerns.



More Issues Facing Florida Cities

State Tax Structure: mostly written in 1940s; have sought updates/changes to keep pace with changes in FL

Constitutional Amendments: put on the ballot by the legislature limiting local revenues

Pension Liability: impact from accounting changes, state mandated benefit levels and economic downturn

Doing More with Less: economic recessions in 1991 and 2006 to present cause cities to limit, cut services or eliminate programs

Miscellaneous: declining gas tax revenues, constitutional initiatives limiting property taxes,



FLC Legislative Priorities

Police and Firefighter Pensions/Disability Presumptions: Repealing existing requirement relating to use of Insurance Premium Tax Dollars. Revise standard of proof in disability hearings so that cities can present evidence to overcome presumption.

Communications Services Tax/Local Business Tax: Oppose legislation restricting or eliminating municipal revenues generated by CST and LBT

Economic Development: Support legislation dedicating state economic development resources towards small businesses and urban infill projects



FLC Legislative Priorities

Housing: Directing \$300 million from national foreclosure settlement to existing local government affordable housing initiatives

Sober Homes: Support legislation that defines and establishes minimum regulatory standards for sober homes and allow more stringent local regulation of these facilities

Billboards: Support legislation maintaining home rule authority of local governments to regulate outdoor advertising.

Transportation Funding: Preserve local control of transportation planning and enhance local government authority to raise \$\$ for municipal transportation infrastructure projects.



FLC Legislative Priorities

Synthetic Marijuana/Drugs: Support a ban on the manufacture, possession, distribution, purchase or sale of all synthetic marijuana/drugs and encourage drug abuse education efforts.

Water: Maintain local government authority to adopt, implement and enforce regulations that protect water quality and enhance water supply. E.G. Fertilizer Ordinances, etc.

Energy: Support legislation that establishes a comprehensive statewide policy on sustainable energy development and conservation. Also, support legislative action to authorize the use of the \$192 M in federal funds for Qualified Energy Conservation Bonds.



Want to learn more?

Florida League of Cities website:

www.floridaleagueofcities.com

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2013 Legislative Priorities

Senate Community Affairs Committee

1/23/2013

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About the Florida Association of Counties

- Founded in 1929
 - 83 years of history
- Provides one voice for Florida's 67 counties and 377 commissioners elected by the citizens of Florida
- Governed by a Board of Directors
- FAC President: Leon County Commissioner Bryan Desloge



FAC's Mission

Mission

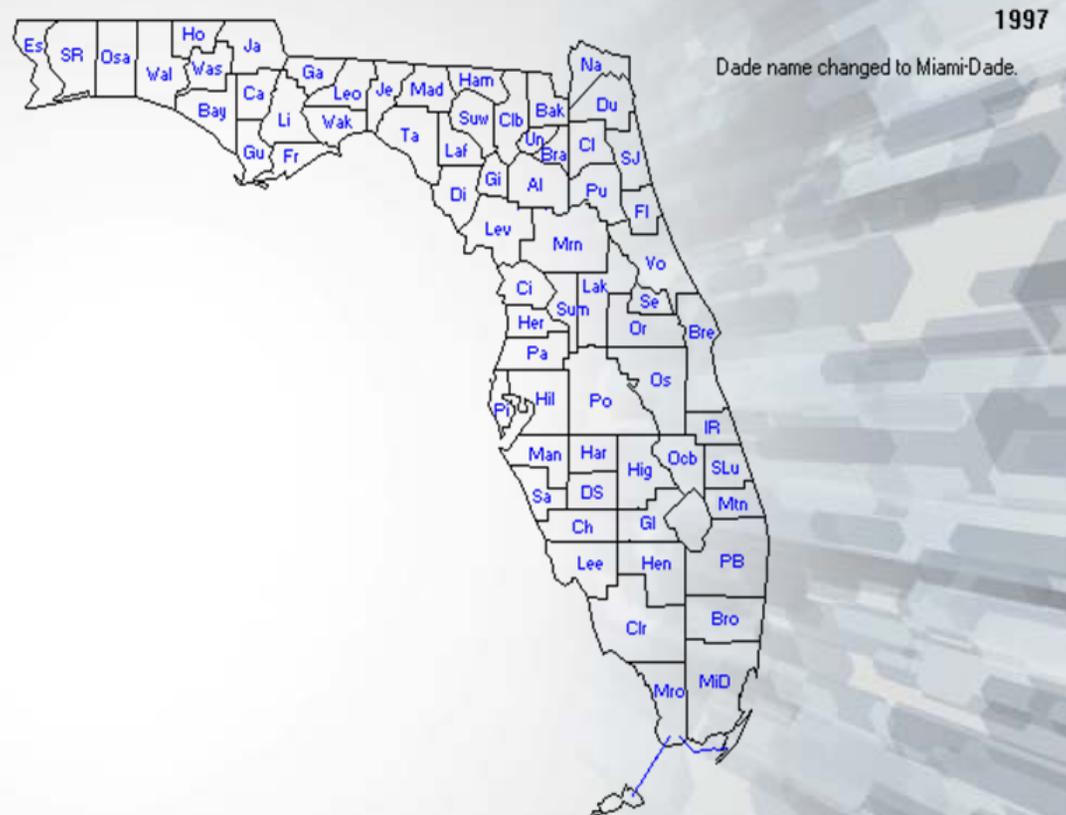
- The Florida Association of Counties helps counties effectively serve and represent Floridians by strengthening and preserving county home rule through advocacy, education and collaboration

Activities

- Advocate for home rule before the Governor, Cabinet, Legislature, state agencies and court system
- Provide education programs with a focus on ethics, leadership, Sunshine Law and county functions

Role of Florida's Counties

- Assessment of property
- Record keeping
- Maintain rural roads
- Administer elections
- Perform judicial functions
- Public health and welfare
- Consumer protection
- Economic development
- Employment and training
- Planning and zoning
- Water quality
- Fire protection
- Emergency management
- Regulatory functions



FAC Advocacy Areas

- Health and Human Services
- Finance, Transportation and Administration
- Growth Management, Environmental Planning and Agriculture
- Public Safety
- Federal Issues

2013 FAC Priorities

Health and Human Services

- County Medicaid Cost-Share
 - Eliminate administrative burden for state and counties and equitably mitigate any potential fiscal impact for all affected parties
 - Support the dissolution of the current county-state Medicaid contributory relationship
- Fix Current Billing System

2013 FAC Priorities

Public Safety

- Juvenile Justice
 - Establish a more collaborative and equitable detention model
 - Support dissolution of the current shared state-county detention relationship
 - Eliminate administrative burden for all parties

2013 FAC Priorities

Finance & Administration

- Communications Services Tax
 - Support amending/revising current law to simplify administration and collection and provide for a broad and equitable tax base; enhance stability and reliability as an important revenue source for local government; provide opportunity for market-based growth
 - Report by Florida Communications Services Tax Working Group due by February 1, 2013

2013 FAC Priorities

Growth Management

- Monitor Growth Management Reforms of 2009 / 2011
- Transportation Funding
 - Reexamine Proportionate Share Funding Process
- Urban Growth and Redevelopment
- Affordable Housing
 - Support Full Funding of State & Local House Trust Funds
- Regional Planning Councils

Contact Us



Legislative Division

(850) 922-4300

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CourtSmart Tag Report

Room: SB 301
Caption: Senate Community Affairs

Case:
Judge:

Type:

Started: 1/23/2013 4:04:40 PM
Ends: 1/23/2013 5:19:34 PM **Length:** 01:14:55

4:04:59 PM Secretary call role
4:05:57 PM Tab 1 - SB 84
4:06:12 PM Senator Diaz de la Portilla
4:08:07 PM Senator Latvala
4:08:31 PM Senator Diaz de la Portilla
4:09:01 PM Senator Latvala
4:09:18 PM Senator Diaz de la Portilla
4:09:55 PM Senator Latvala
4:10:20 PM Senator Soto
4:10:35 PM Senator Diaz de la Portilla
4:11:48 PM Senator Soto
4:12:41 PM Senator Diaz de la Portilla
4:13:19 PM Senator Thompson
4:13:35 PM Senator Diaz de la Portilla
4:14:15 PM Senator Thompson
4:14:48 PM Senator Diaz de la Portilla
4:15:36 PM Senator Thrasher
4:15:49 PM Senator Diaz de la Portilla
4:16:31 PM Senator Thrasher
4:17:03 PM Amendment Barcode 620314
4:17:26 PM Senator Diaz de la Portilla
4:18:13 PM Waive close on the bill
4:18:51 PM Rick Watson, Associated Builders & Contractors of FL
4:19:36 PM Warren Husband, FL Associated General Contractors, waive in support
4:19:46 PM Senator Thrasher
4:19:58 PM Senator Diaz de la Portilla
4:20:58 PM Senator Simpson
4:21:15 PM Senator Thompson
4:21:54 PM Senator Latvala
4:23:10 PM Vote SB 84
4:24:06 PM Tab 2
4:24:35 PM Ken Reecy, DEO
4:32:23 PM Senator Hukill
4:33:51 PM Ken Reecy
4:35:26 PM Tab 3
4:35:54 PM Scott Dudley Florida League of Cities 2013 Legislative Priorities
5:04:39 PM Senator Smith
5:04:50 PM Scott Dudley
5:06:02 PM Senator Soto
5:06:28 PM Scott Dudley
5:07:09 PM Senator Soto
5:07:58 PM Tab 4
5:08:20 PM Eric Poole Florida Association of Counties 2013 Legislative Priorities
5:15:04 PM Senator Smith
5:15:21 PM Eric Poole
5:15:33 PM Senator Thrasher
5:16:16 PM Eric Poole
5:18:19 PM Senator Thrasher
5:19:24 PM Meeting adjourned