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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2013	.	
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The Committee on Governmental Oversight and Accountability
(Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

287.05712 Public-private partnerships.-

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

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

(b) "Develop" means to plan, design, finance, lease,



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13 acquire, install, construct, or expand.

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

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

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

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

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

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

33 (i) "Qualifying project" means:

34 1. A facility or project that serves a public purpose,
35 including, but not limited to, any ferry or mass transit
36 facility, vehicle parking facility, airport or seaport facility,
37 rail facility or project, fuel supply facility, oil or gas
38 pipeline, medical or nursing care facility, recreational
39 facility, sporting or cultural facility, or educational facility
40 or other building or facility that is used or will be used by a
41 public educational institution, or any other public facility or



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42 infrastructure that is used or will be used by the public at
43 large or in support of an accepted public purpose or activity;

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

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

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

55 (k) "Revenues" means the income, earnings, user fees, lease
56 payments, or other service payments relating to the development
57 or operation of a qualifying project, including, but not limited
58 to, money received as grants or otherwise from the Federal
59 Government, a public entity, or an agency or instrumentality
60 thereof in aid of the qualifying project.

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

64 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
65 that there is a public need for the construction or upgrade of
66 facilities that are used predominantly for public purposes and
67 that it is in the public's interest to provide for the
68 construction or upgrade of such facilities.

69 (a) The Legislature also finds that:

70 1. There is a public need for timely and cost-effective



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71 acquisition, design, construction, improvement, renovation,
72 expansion, equipping, maintenance, operation, implementation, or
73 installation of projects serving a public purpose, including
74 educational facilities, transportation facilities, water or
75 wastewater management facilities and infrastructure, technology
76 infrastructure, roads, highways, bridges, and other public
77 infrastructure and government facilities within the state which
78 serve a public need and purpose, and that such public need may
79 not be wholly satisfied by existing procurement methods.

80 2. There are inadequate resources to develop new
81 educational facilities, transportation facilities, water or
82 wastewater management facilities and infrastructure, technology
83 infrastructure, roads, highways, bridges, and other public
84 infrastructure and government facilities for the benefit of
85 residents of this state, and that a public-private partnership
86 has demonstrated that it can meet the needs by improving the
87 schedule for delivery, lowering the cost, and providing other
88 benefits to the public.

89 3. There may be state and federal tax incentives that
90 promote partnerships between public and private entities to
91 develop and operate qualifying projects.

92 4. A procurement under this section serves the public
93 purpose of this section if such procurement facilitates the
94 timely development or operation of a qualifying project.

95 (b) It is the intent of the Legislature to encourage
96 investment in the state by private entities; to facilitate
97 various bond financing mechanisms, private capital, and other
98 funding sources for the development and operation of qualifying
99 projects, including expansion and acceleration of such financing



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100 to meet the public need; and to provide the greatest possible
101 flexibility to public and private entities contracting for the
102 provision of public services.

103 (3) PUBLIC-PRIVATE PARTNERSHIP GUIDELINES TASK FORCE.-

104 (a) The Partnership for Public Facilities and
105 Infrastructure Act Guidelines Task Force is created to establish
106 guidelines for public entities on the types of factors public
107 entities should review and consider when processing requests for
108 public-private partnership projects pursuant to this section,
109 including consistent requirements for private entities seeking
110 to participate in the construction or development of a
111 qualifying project throughout the state.

112 (b) The task force shall consist of nine members, as
113 follows:

114 1. One member of the Senate, appointed by the President of
115 the Senate.

116 2. One member of the House of Representatives, appointed by
117 the Speaker of the House of Representatives.

118 3. The Secretary of Management Services or his or her
119 designee.

120 4. Six members appointed by the Governor, as follows:

121 a. One county government official.

122 b. One municipal government official.

123 c. One district school board member.

124 d. Three representatives of the business community.

125 (c) Task force members shall serve for a term of 2 years
126 each and shall elect a chair and a vice chair. The task force
127 shall meet as necessary. Administrative and technical support
128 shall be provided by the department. Task force members shall



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129 serve without compensation, but are entitled to reimbursement
130 for per diem and travel expenses pursuant to s. 112.061. The
131 task force shall terminate on July 1, 2015.

132 (d) The task force shall provide guidelines to public
133 entities no later than July 1, 2014. The guidelines shall
134 include:

135 1. Opportunities for competition through public notice and
136 the availability of representatives of the responsible public
137 entity to meet with private entities considering a proposal.

138 2. Reasonable criteria for choosing among competing
139 proposals.

140 3. Suggested timelines for selecting proposals and
141 negotiating an interim or comprehensive agreement.

142 4. Authorization for accelerated selection and review and
143 documentation timelines for proposals involving a qualifying
144 project that the responsible public entity deems a priority.

145 5. Procedures for financial review and analysis which, at a
146 minimum, include a cost-benefit analysis, an assessment of
147 opportunity cost, and consideration of the results of all
148 studies and analyses related to the proposed qualifying project.

149 6. Consideration of the nonfinancial benefits of a proposed
150 qualifying project.

151 7. A mechanism for the appropriating body to review a
152 proposed comprehensive agreement before execution.

153 8. Analysis of the adequacy of the information released
154 when seeking competing proposals, and providing for the
155 enhancement of that information, if deemed necessary, to
156 encourage competition, as well as establishing standards to
157 maintain the confidentiality of financial and proprietary terms



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158 of an unsolicited proposal, which shall be disclosed only in
159 accordance with the bidding procedures of competing proposals.

160 9. Authority for the responsible public entity to engage
161 the services of qualified professionals, which may include a
162 Florida-registered professional or a certified public
163 accountant, not otherwise employed by the responsible public
164 entity, to provide an independent analysis regarding the
165 specifics, advantages, disadvantages, and long-term and short-
166 term costs of a request by a private entity for approval of a
167 qualifying project, unless the governing body of the public
168 entity determines that such analysis should be performed by
169 employees of the public entity. Professional services as defined
170 in s. 287.055 must be engaged pursuant to s. 287.055.

171 (e) The establishment of guidelines pursuant to this
172 section by the task force or the adoption of such guidelines by
173 a public entity is not required for the public entity to request
174 or receive proposals for a qualifying project or to enter into a
175 comprehensive agreement for a qualifying project. A public
176 entity may adopt guidelines before the establishment of
177 guidelines by the task force, which may remain in effect as long
178 as such guidelines are not inconsistent with the guidelines
179 established by the task force. A guideline that is inconsistent
180 with the guidelines of the task force must be amended as
181 necessary to maintain consistency with the task force
182 guidelines.

183 (4) PROCUREMENT PROCEDURES.—A responsible public entity may
184 receive unsolicited proposals or may solicit proposals for
185 qualifying projects and may thereafter enter into an agreement
186 with a private entity, or a consortium of private entities, for



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187 the building, upgrading, operating, ownership, or financing of
188 facilities.

189 (a) The responsible public entity may establish a
190 reasonable application fee for the submission of an unsolicited
191 proposal under this section. The fee must be sufficient to pay
192 the costs of evaluating the proposal. The responsible public
193 entity may engage the services of a private consultant to assist
194 in the evaluation.

195 (b) The responsible public entity may request a proposal
196 from private entities for a public-private project or, if the
197 public entity receives an unsolicited proposal, the public
198 entity shall publish notice in the Florida Administrative
199 Register and a newspaper of general circulation at least once a
200 week for 2 weeks stating that the public entity has received a
201 proposal and will accept other proposals for the same project.
202 The timeframe within which the public entity may accept other
203 proposals shall be determined by the public entity on a project-
204 by-project basis based upon the complexity of the project and
205 the public benefit to be gained by allowing a longer or shorter
206 period of time within which other proposals may be received;
207 however, the timeframe for allowing other proposals must be at
208 least 21 days, but no more than 120 days, after the initial date
209 of publication. A copy of the notice must be mailed to each
210 local government in the affected area. The scope of the proposal
211 may be publicized for the purpose of soliciting competing
212 proposals; however, the financial terms of the proposal may not
213 be disclosed until the terms of all competing bids are
214 simultaneously disclosed in accordance with the applicable law
215 governing procurement procedures for the qualifying project.



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

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

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

222 2. Is for a facility that is owned by the responsible
223 public entity or for a facility for which ownership will be
224 conveyed to the responsible public entity.

225 3. Has adequate safeguards in place to ensure that
226 additional costs or service disruptions are not imposed on the
227 public in the event of material default or cancellation of the
228 agreement by the responsible public entity.

229 4. Has adequate safeguards in place to ensure that the
230 responsible public entity or the private entity has the
231 opportunity to add capacity to the proposed project or other
232 facilities serving similar predominantly public purposes.

233 5. Will be owned by the responsible public entity upon
234 completion or termination of the agreement and upon payment of
235 the amounts financed.

236 (e) Before signing a comprehensive agreement, the
237 responsible public entity must consider a reasonable finance
238 plan that is consistent with subsection (11), the project cost,
239 revenues by source, available financing, major assumptions,
240 internal rate of return on private investments, if governmental
241 funds are assumed in order to deliver a cost-feasible project,
242 and a total cash-flow analysis beginning with the implementation
243 of the project and extending for the term of the agreement.

244 (f) In considering an unsolicited proposal, the responsible



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245 public entity may require from the private entity a technical
246 study prepared by a nationally recognized expert with experience
247 in preparing analysis for bond rating agencies. In evaluating
248 the technical study, the responsible public entity may rely upon
249 internal staff reports prepared by personnel familiar with the
250 operation of similar facilities or the advice of external
251 advisors or consultants who have relevant experience.

252 (5) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal
253 from a private entity for approval of a qualifying project must
254 be accompanied by the following material and information, unless
255 waived by the responsible public entity:

256 (a) A description of the qualifying project, including the
257 conceptual design of the facilities or a conceptual plan for the
258 provision of services, and a schedule for the initiation and
259 completion of the qualifying project.

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

263 (c) A description of the private entity's general plans for
264 financing the qualifying project, including the sources of the
265 private entity's funds and the identity of any dedicated revenue
266 source or proposed debt or equity investment on behalf of the
267 private entity.

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

270 (e) The proposed user fees, lease payments, or other
271 service payments over the term of a comprehensive agreement, and
272 the methodology for and circumstances that would allow changes
273 to the user fees, lease payments, and other service payments



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274 over time.

275 (f) Additional material or information that the responsible
276 public entity reasonably requests.

277 (6) PROJECT QUALIFICATION AND PROCESS.-

278 (a) The private entity must meet the minimum standards
279 contained in the responsible public entity's guidelines for
280 qualifying professional services and contracts for traditional
281 procurement projects.

282 (b) The responsible public entity must:

283 1. Ensure that provision is made for the private entity's
284 performance and payment of subcontractors, including, but not
285 limited to, surety bonds, letters of credit, parent company
286 guarantees, and lender and equity partner guarantees. For the
287 components of the qualifying project which involve construction
288 performance and payment, bonds are required and are subject to
289 the recordation, notice, suit limitation, and other requirements
290 of s. 255.05.

291 2. Ensure the most efficient pricing of the security
292 package that provides for the performance and payment of
293 subcontractors.

294 3. Ensure that provision is made for the transfer of the
295 private entity's obligations if the comprehensive agreement is
296 terminated or a material default occurs.

297 (c) After the public notification period has expired in the
298 case of an unsolicited proposal, the responsible public entity
299 shall rank the proposals received in order of preference. In
300 ranking the proposals, the responsible public entity may
301 consider factors that include, but are not limited to,
302 professional qualifications, general business terms, innovative



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303 design techniques or cost-reduction terms, and finance plans. If
304 the responsible public entity is not satisfied with the results
305 of the negotiations, the responsible public entity may terminate
306 negotiations with the proposer and negotiate with the second-
307 ranked or subsequent-ranked firms in the order consistent with
308 this procedure. If only one proposal is received, the
309 responsible public entity may negotiate in good faith, and if
310 the public entity is not satisfied with the results of the
311 negotiations, the public entity may terminate negotiations with
312 the proposer. Notwithstanding this paragraph, the responsible
313 public entity may reject all proposals at any point in the
314 process until a contract with the proposer is executed.

315 (d) The responsible public entity shall perform an
316 independent analysis of the proposed public-private partnership
317 which demonstrates the cost-effectiveness and overall public
318 benefit before the procurement process is initiated or before
319 the contract is awarded.

320 (e) The responsible public entity may approve the
321 development or operation of an educational facility, a
322 transportation facility, a water or wastewater management
323 facility or related infrastructure, a technology infrastructure
324 or other public infrastructure, or a government facility needed
325 by the responsible public entity as a qualifying project, or the
326 design or equipping of a qualifying project that is developed or
327 operated, if:

328 1. There is a public need for or benefit derived from a
329 project of the type that the private entity proposes as the
330 qualifying project.

331 2. The estimated cost of the qualifying project is



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332 reasonable in relation to similar facilities.

333 3. The private entity's plans will result in the timely
334 acquisition, design, construction, improvement, renovation,
335 expansion, equipping, maintenance, or operation of the
336 qualifying project.

337 (f) The responsible public entity may charge a reasonable
338 fee to cover the costs of processing, reviewing, and evaluating
339 the request, including, but not limited to, reasonable attorney
340 fees and fees for financial and technical advisors or
341 consultants and for other necessary advisors or consultants.

342 (g) Upon approval of a qualifying project, the responsible
343 public entity shall establish a date for the commencement of
344 activities related to the qualifying project. The responsible
345 public entity may extend the commencement date.

346 (h) Approval of a qualifying project by the responsible
347 public entity is subject to entering into a comprehensive
348 agreement with the private entity.

349 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

350 (a) The responsible public entity must notify each affected
351 local jurisdiction by furnishing a copy of the proposal to each
352 affected local jurisdiction when considering a proposal for a
353 qualifying project.

354 (b) Each affected local jurisdiction that is not a
355 responsible public entity for the respective qualifying project
356 may, within 60 days after receiving the notice, submit in
357 writing any comments to the responsible public entity and
358 indicate whether the facility is incompatible with the local
359 comprehensive plan, the local infrastructure development plan,
360 the capital improvements budget, or other governmental spending



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361 plan. The responsible public entity shall consider the comments
362 of the affected local jurisdiction before entering into a
363 comprehensive agreement with a private entity. If an affected
364 local jurisdiction fails to respond to the responsible public
365 entity within the time provided in this paragraph, the
366 nonresponse is deemed an acknowledgement by the affected local
367 jurisdiction that the qualifying project is compatible with the
368 local comprehensive plan, the local infrastructure development
369 plan, the capital improvements budget, or other governmental
370 spending plan.

371 (8) INTERIM AGREEMENT.—Before or in connection with the
372 negotiation of a comprehensive agreement, the public entity may
373 enter into an interim agreement with the private entity
374 proposing the development or operation of the qualifying
375 project. An interim agreement does not obligate the responsible
376 public entity to enter into a comprehensive agreement. The
377 interim agreement is discretionary with the parties and is not
378 required on a qualifying project for which the parties may
379 proceed directly to a comprehensive agreement without the need
380 for an interim agreement. An interim agreement must be limited
381 to provisions that:

382 (a) Authorize the private entity to commence activities for
383 which it may be compensated related to the proposed qualifying
384 project, including, but not limited to, project planning and
385 development, design, environmental analysis and mitigation,
386 survey, other activities concerning any part of the proposed
387 qualifying project, and ascertaining the availability of
388 financing for the proposed facility or facilities.

389 (b) Establish the process and timing of the negotiation of



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390 the comprehensive agreement.

391 (c) Contain such other provisions related to an aspect of
392 the development or operation of a qualifying project that the
393 responsible public entity and the private entity deem
394 appropriate.

395 (9) COMPREHENSIVE AGREEMENT.—

396 (a) Before developing or operating the qualifying project,
397 the private entity must enter into a comprehensive agreement
398 with the responsible public entity. The comprehensive agreement
399 must provide for:

400 1. The delivery of performance and payment bonds, letters
401 of credit, or other security acceptable to the responsible
402 public entity in connection with the development or operation of
403 the qualifying project in the form and amount satisfactory to
404 the responsible public entity. For the components of the
405 qualifying project which involve construction, the form and
406 amount of the bonds must comply with s. 255.05.

407 2. The review of the plans and specifications for the
408 qualifying project by the responsible public entity and, if the
409 plans and specifications conform to standards acceptable to the
410 responsible public entity, the approval of the responsible
411 public entity. This subparagraph does not require the private
412 entity to complete the design of the qualifying project before
413 the execution of the comprehensive agreement.

414 3. The inspection of the qualifying project by the
415 responsible public entity to ensure that the private entity's
416 activities are acceptable to the public entity in accordance
417 with the comprehensive agreement.

418 4. The maintenance of a policy of public liability



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419 insurance, a copy of which must be filed with the responsible
420 public entity and accompanied by proofs of coverage, or self-
421 insurance, each in the form and amount satisfactory to the
422 responsible public entity and reasonably sufficient to ensure
423 coverage of tort liability to the public and employees and to
424 enable the continued operation of the qualifying project.

425 5. The monitoring by the responsible public entity of the
426 maintenance practices to be performed by the private entity to
427 ensure that the qualifying project is properly maintained.

428 6. The periodic filing by the private entity of the
429 appropriate financial statements that pertain to the qualifying
430 project.

431 7. The procedures that govern the rights and
432 responsibilities of the responsible public entity and the
433 private entity in the course of the construction and operation
434 of the qualifying project and in the event of the termination of
435 the comprehensive agreement or a material default by the private
436 entity. The procedures must include conditions that govern the
437 assumption of the duties and responsibilities of the private
438 entity by an entity that funded, in whole or part, the
439 qualifying project or by the responsible public entity, and must
440 provide for the transfer or purchase of property or other
441 interests of the private entity by the responsible public
442 entity.

443 8. In negotiating user fees, the fees must be the same for
444 persons using the facility under like conditions and must not
445 materially discourage use of the qualifying project. The
446 execution of the comprehensive agreement or a subsequent
447 amendment is conclusive evidence that the fees, lease payments,



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448 or service payments provided for in the comprehensive agreement
449 comply with this section. Fees or lease payments established in
450 the comprehensive agreement as a source of revenue may be in
451 addition to, or in lieu of, service payments.

452 9. The duties of the private entity, including the terms
453 and conditions that the responsible public entity determines
454 serve the public purpose of this section.

455 (b) The comprehensive agreement may include:

456 1. An agreement by the responsible public entity to make
457 grants or loans to the private entity from amounts received from
458 the federal, state, or local government or an agency or
459 instrumentality thereof.

460 2. A provision under which each entity agrees to provide
461 notice of default and cure rights for the benefit of the other
462 entity, including, but not limited to, a provision regarding
463 unavoidable delays.

464 3. A provision that terminates the authority and duties of
465 the private entity under this section and dedicates the
466 qualifying project to the responsible public entity or, if the
467 qualifying project was initially dedicated by an affected local
468 jurisdiction, to the affected local jurisdiction for public use.

469 (10) FEES.—An agreement entered into pursuant to this
470 section may authorize the private entity to impose fees to
471 members of the public for the use of the facility. The following
472 provisions apply to the agreement:

473 (a) The responsible public entity may develop new
474 facilities or increase capacity in existing facilities through
475 agreements with public-private partnerships.

476 (b) The public-private partnership agreement must ensure



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477 that the facility is properly operated, maintained, or improved
478 in accordance with standards set forth in the comprehensive
479 agreement.

480 (c) The responsible public entity may lease existing fee-
481 for-use facilities through a public-private partnership
482 agreement.

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

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

488 (11) FINANCING.—

489 (a) A private entity may enter into a private-source
490 financing agreement between financing sources and the private
491 entity. A financing agreement and any liens on the property or
492 facility must be paid in full at the applicable closing that
493 transfers ownership or operation of the facility to the
494 responsible public entity at the conclusion of the term of the
495 comprehensive agreement.

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

499 (c) The responsible public entity may use innovative
500 finance techniques associated with a public-private partnership
501 under this section, including, but not limited to, federal loans
502 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
503 and hedges against inflation from commercial banks or other
504 private sources. In addition, the responsible public entity may
505 provide its own capital or operating budget to support a



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506 qualifying project. The budget may be from any legally
507 permissible funding sources of the responsible public entity,
508 including the proceeds of debt issuances. A responsible public
509 entity may use the model financing agreement provided in s.
510 489.145(6) for its financing of a facility owned by a
511 responsible public entity. A financing agreement may not require
512 the responsible public entity to indemnify the financing source,
513 subject the responsible public entity's facility to liens in
514 violation of s. 11.066(5), or secure financing by the
515 responsible public entity with a pledge of security interest,
516 and any such provision is void.

517 (d) A responsible public entity shall appropriate on a
518 priority basis as required by the comprehensive agreement a
519 contractual payment obligation, annual or otherwise, from the
520 enterprise or other government fund from which the qualifying
521 projects will be funded. This required payment obligation must
522 be appropriated before other noncontractual obligations payable
523 from the same enterprise or other government fund.

524 (12) POWERS AND DUTIES OF THE PRIVATE ENTITY.-

525 (a) The private entity shall:

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

529 2. Maintain, or provide by contract for the maintenance or
530 improvement of, the qualifying project if required by the
531 comprehensive agreement.

532 3. Cooperate with the responsible public entity in making
533 best efforts to establish interconnection between the qualifying
534 project and any other facility or infrastructure as requested by



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535 the responsible public entity in accordance with the provisions
536 of the comprehensive agreement.

537 4. Comply with the comprehensive agreement and any lease or
538 service contract.

539 (b) Each private facility that is constructed pursuant to
540 this section must comply with the requirements of federal,
541 state, and local laws; state, regional, and local comprehensive
542 plans; the responsible public entity's rules, procedures, and
543 standards for facilities; and such other conditions that the
544 responsible public entity determines to be in the public's best
545 interest and that are included in the comprehensive agreement.

546 (c) The responsible public entity may provide services to
547 the private entity. An agreement for maintenance and other
548 services entered into pursuant to this section must provide for
549 full reimbursement for services rendered for qualifying
550 projects.

551 (d) A private entity of a qualifying project may provide
552 additional services for the qualifying project to the public or
553 to other private entities if the provision of additional
554 services does not impair the private entity's ability to meet
555 its commitments to the responsible public entity pursuant to the
556 comprehensive agreement.

557 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
558 expiration or termination of a comprehensive agreement, the
559 responsible public entity may use revenues from the qualifying
560 project to pay current operation and maintenance costs of the
561 qualifying project. If the private entity materially defaults
562 under the comprehensive agreement, the compensation that is
563 otherwise due to the private entity is payable to satisfy all



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564 financial obligations to investors and lenders on the qualifying
565 project in the same way that is provided in the comprehensive
566 agreement or any other agreement involving the qualifying
567 project, if the costs of operating and maintaining the
568 qualifying project are paid in the normal course. Revenues in
569 excess of the costs for operation and maintenance costs may be
570 paid to the investors and lenders to satisfy payment obligations
571 under their respective agreements. A responsible public entity
572 may terminate with cause and without prejudice a comprehensive
573 agreement and may exercise any other rights or remedies that may
574 be available to it in accordance with the provisions of the
575 comprehensive agreement. The full faith and credit of the
576 responsible public entity may not be pledged to secure the
577 financing of the private entity. The assumption of the
578 development or operation of the qualifying project does not
579 obligate the responsible public entity to pay any obligation of
580 the private entity from sources other than revenues from the
581 qualifying project unless stated otherwise in the comprehensive
582 agreement.

583 (14) SOVEREIGN IMMUNITY.—This section does not waive the
584 sovereign immunity of a responsible public entity, an affected
585 local jurisdiction, or an officer or employee thereof with
586 respect to participation in, or approval of, any part of a
587 qualifying project or its operation, including, but not limited
588 to, interconnection of the qualifying project with any other
589 infrastructure or project. A county or municipality in which a
590 qualifying project is located possesses sovereign immunity with
591 respect to the project, including, but not limited to, its
592 design, construction, and operation.



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593 (15) CONSTRUCTION.—This section shall be liberally
594 construed to effectuate the purposes of this section.

595 (a) This section does not limit a state agency or political
596 subdivision of the state in the acquisition, design, or
597 construction of a public project pursuant to other statutory
598 authority.

599 (b) Except as otherwise provided in this section, this
600 section does not amend existing laws by granting additional
601 powers to, or further restricting, a local governmental entity
602 from regulating and entering into cooperative arrangements with
603 the private sector for the planning, construction, or operation
604 of a facility.

605 (c) This section does not waive any requirement of s.
606 287.055.

607 Section 2. Section 336.71, Florida Statutes, is created to
608 read:

609 336.71 Public-private transportation facilities.—

610 (1) A county may receive or solicit proposals and enter
611 into agreements with private entities or consortia thereof to
612 build, operate, own, or finance highways, bridges, multimodal
613 transportation systems, transit-oriented development nodes,
614 transit stations, and related transportation facilities located
615 solely within the county, including municipalities therein.

616 Before approval, the county must determine that a proposed
617 project:

618 (a) Is in the best interest of the public.

619 (b) Would not require county funds to be used unless the
620 project is on the county road system or would provide increased
621 mobility on the county road system.



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622 (c) Would have adequate safeguards to ensure that
623 additional costs or unreasonable service disruptions are not
624 realized by the traveling public and citizens of the state in
625 the event of default or cancellation of the agreement by the
626 county.

627 (d) Would be owned by the county upon completion or
628 termination of the agreement.

629 (2) The county shall ensure that all reasonable costs to
630 the county related to transportation facilities that are not
631 part of the county road system are borne by the private entity
632 that develops or operates the facilities. The county shall also
633 ensure that all reasonable costs to the county and substantially
634 affected local governments and utilities related to the private
635 transportation facility are borne by the private entity for
636 transportation facilities that are owned by private entities.
637 For projects on the county road system or that provide increased
638 mobility on the county road system, the county may use county
639 resources to participate in funding and financing the project
640 pursuant to the county's financial policies and ordinances.

641 (3) The county may request proposals and receive
642 unsolicited proposals for public-private transportation
643 facilities. Upon a determination by the governing body of the
644 county to issue a request for proposals, the governing body of
645 the county must publish a notice of the request for proposals in
646 a newspaper of general circulation in the county at least once a
647 week for 2 weeks. Upon receipt of an unsolicited proposal, the
648 governing body of the county must publish a notice in a
649 newspaper of general circulation in the county at least once a
650 week for 2 weeks stating that it has received the proposal and



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651 will accept, for 60 days after the initial date of publication,
652 other proposals for the same project purpose. A copy of the
653 notice must be mailed to the governing body of each local
654 government in the affected area. After the public notification
655 period has expired, the governing body of the county shall rank
656 the proposals in order of preference. In ranking the proposals,
657 the governing body of the county shall consider professional
658 qualifications, general business terms, innovative engineering
659 or cost-reduction terms, finance plans, and the need for county
660 funds to complete the project. If the governing body of the
661 county is not satisfied with the results of the negotiations, it
662 may terminate negotiations with the proposer. If negotiations
663 are unsuccessful, the governing body of the county may negotiate
664 with the private entity that has the next highest ranked
665 proposal, using the same procedure. If only one proposal is
666 received, the governing body of the county may negotiate in good
667 faith and may, if not satisfied with the results, terminate
668 negotiations with the proposer. The governing body of the county
669 may, at its discretion, reject all proposals at any point in the
670 process up to completion of a contract with the proposer. Any
671 private entity submitting an unsolicited proposal shall submit
672 with the proposal a fee of \$25,000 to be used by the governing
673 body of the county for the costs associated with the review and
674 analysis of the proposal, and such entity shall remain liable
675 for any additional costs and expenses incurred by the governing
676 body of the county for such review and analysis.

677 (4) Agreements entered into pursuant to this section may
678 authorize the county or the private project owner, lessee, or
679 operator to impose, collect, and enforce tolls or fares for the



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680 use of the transportation facility. However, the amount and use
681 of toll or fare revenue shall be regulated by the county to
682 avoid unreasonable costs to users of the facility.

683 (5) Each public-private transportation facility constructed
684 pursuant to this section shall comply with all requirements of
685 federal, state, and local laws; state, regional, and local
686 comprehensive plans; the county's rules, policies, procedures,
687 and standards for transportation facilities; and any other
688 conditions that the county determines to be in the best interest
689 of the public.

690 (6) The governing body of the county may exercise any of
691 its powers, including eminent domain, to facilitate the
692 development and construction of transportation projects pursuant
693 to this section. The governing body of the county may pay all or
694 part of the cost of operating and maintaining the facility and
695 may provide services to the private entity, for which services
696 it shall receive full or partial reimbursement.

697 (7) Except as otherwise provided in this section, this
698 section is not intended to amend existing law by granting
699 additional powers to or imposing further restrictions on local
700 governmental entities with regard to regulating and entering
701 into cooperative arrangements with the private sector for the
702 planning, construction, and operation of transportation
703 facilities.

704 (8) Public-private partnership agreements under this
705 section shall be limited to a term not exceeding 75 years.

706 (9) This section does not authorize a county or counties to
707 enter into agreements with private entities or consortia thereof
708 to build, operate, own, or finance a transportation facility



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709 that would extend beyond the geographical boundaries of a single
710 county.

711 Section 3. This act shall take effect July 1, 2013.

712
713 ===== T I T L E A M E N D M E N T =====

714 And the title is amended as follows:

715 Delete everything before the enacting clause
716 and insert:

717 A bill to be entitled
718 An act relating to public-private partnerships;
719 creating s. 287.05712, F.S.; providing definitions;
720 providing legislative findings and intent relating to
721 the construction or improvement by private entities of
722 facilities used predominantly for a public purpose;
723 creating a task force to establish specified
724 guidelines; providing procurement procedures;
725 providing requirements for project approval; providing
726 project qualifications and process; providing for
727 notice to affected local jurisdictions; providing for
728 interim and comprehensive agreements between a public
729 and a private entity; providing for use fees;
730 providing for financing sources for certain projects
731 by a private entity; providing powers and duties of
732 private entities; providing for expiration or
733 termination of agreements; providing for the
734 applicability of sovereign immunity for public
735 entities with respect to qualified projects; providing
736 for construction of the act; creating s. 336.71, F.S.;

737 authorizing counties to enter into public-private



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738 partnership agreements for construction, operation,
739 ownership, and financing of transportation facilities;
740 providing requirements and limitations for such
741 agreements; providing procurement procedures;
742 requiring a fee for certain proposals; providing an
743 effective date.