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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2013	.	
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The Committee on Appropriations (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (f) of subsection (1) of section
154.11, Florida Statutes, is amended to read:

154.11 Powers of board of trustees.—

(1) The board of trustees of each public health trust shall
be deemed to exercise a public and essential governmental
function of both the state and the county and in furtherance
thereof it shall, subject to limitation by the governing body of
the county in which such board is located, have all of the



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13 powers necessary or convenient to carry out the operation and
14 governance of designated health care facilities, including, but
15 without limiting the generality of, the foregoing:

16 (f) To lease, either as lessee or lessor, or rent for any
17 number of years and upon any terms and conditions real property,
18 except that the board shall not lease or rent, as lessor, any
19 real property other than office space controlled by the Public
20 Health Trust, except in accordance with the requirements of s.
21 125.35 [F. S. 1973].

22 Section 2. Section 255.60, Florida Statutes, is amended to
23 read:

24 255.60 Special contracts with charitable not-for-profit
25 ~~youth~~ organizations.—The state, ~~or~~ the governing body of any
26 political subdivision of the state, or a public-private
27 partnership is authorized, but not required, to contract for
28 public service work with a not-for-profit organization ~~such as~~
29 ~~highway and park maintenance~~, notwithstanding competitive sealed
30 bid procedures required under this chapter, ~~or~~ chapter 287, or
31 any municipal or county charter, upon compliance with this
32 section.

33 (1) The contractor or supplier must meet the following
34 conditions:

35 (a) The contractor or supplier must be a not-for-profit
36 corporation incorporated under chapter 617 and in good standing.

37 (b) The contractor or supplier must hold exempt status
38 under s. 501(a) of the Internal Revenue Code, as an organization
39 described in s. 501(c)(3) of the Internal Revenue Code.

40 (c) For youth organizations, the corporate charter of the
41 contractor or supplier must state that the corporation is



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42 organized as a charitable youth organization exclusively for at-
43 risk youths enrolled in a work-study program.

44 (d) Administrative salaries and benefits for any such
45 corporation shall not exceed 15 percent of gross revenues. Field
46 supervisors shall not be considered administrative overhead.

47 (2) The contract, if approved by authorized agency
48 personnel of the state, ~~or~~ the governing body of a political
49 subdivision, or the public-private partnership, as appropriate,
50 must provide at a minimum that:

51 (a) For youth organizations, labor shall be performed
52 exclusively by at-risk youth and their direct supervisors; and
53 shall not be subject to subcontracting.

54 (b) For the preservation, maintenance, and improvement of
55 park land, the property must be at least 20 acres with
56 contiguous permanent public facilities that are capable of
57 seating at least 5,000 persons.

58 (c) For public education buildings, the building must be at
59 least 90,000 square feet.

60 (d) ~~(b)~~ Payment must be production-based.

61 (e) ~~(e)~~ The contract will terminate should the contractor or
62 supplier no longer qualify under subsection (1).

63 (f) ~~(d)~~ The supplier or contractor has instituted a drug-
64 free workplace program substantially in compliance with the
65 provisions of s. 287.087.

66 (g) ~~(e)~~ The contractor or supplier agrees to be subject to
67 review and audit at the discretion of the Auditor General in
68 order to ensure that the contractor or supplier has complied
69 with this section.

70 (3) A ~~No~~ contract under this section may not exceed the



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71 annual sum of \$250,000.

72 (4) Should a court find that a contract purporting to have
73 been entered into pursuant to this section does not so qualify,
74 the court may order that the contract be terminated on
75 reasonable notice to the parties. The court shall not require
76 disgorgement of any moneys earned for goods or services actually
77 delivered or supplied.

78 (5) Nothing in this section shall excuse any person from
79 compliance with ss. 287.132-287.134.

80 Section 3. Section 287.05712, Florida Statutes, is created
81 to read:

82 287.05712 Public-private partnerships.-

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

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

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

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

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

95 (e) "Material default" means nonperformance of duties by
96 the private entity of a qualifying project which jeopardizes
97 adequate service to the public from the project.

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



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100 (g) "Private entity" means any natural person, corporation,
101 general partnership, limited liability company, limited
102 partnership, joint venture, business trust, public benefit
103 corporation, nonprofit entity, or other private business entity.

104 (h) "Proposal" means a plan for a qualifying project with
105 detail beyond a conceptual level for which terms such as fixing
106 costs, payment schedules, financing, deliverables, and the
107 project schedule are defined.

108 (i) "Qualifying project" means:

109 1. A facility or project that serves a public purpose,
110 including, but not limited to, any ferry or mass transit
111 facility, vehicle parking facility, airport or seaport facility,
112 rail facility or project, fuel supply facility, oil or gas
113 pipeline, medical or nursing care facility, recreational
114 facility, sporting or cultural facility, or educational facility
115 or other building or facility that is used or will be used by a
116 public educational institution, or any other public facility or
117 infrastructure that is used or will be used by the public at
118 large or in support of an accepted public purpose or activity;

119 2. An improvement, including equipment, of a building that
120 will be principally used by a public entity, the public at
121 large, or that supports a service delivery system in the public
122 sector;

123 3. A water, wastewater, or surface water management
124 facility or other related infrastructure; or

125 4. Notwithstanding any provision of this section, for
126 projects that involve a facility owned or operated by the
127 governing board of a county, district, or municipal hospital or
128 health care system, only those projects that the governing board



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129 designates as qualifying projects pursuant to this section.

130 (j) "Responsible public entity" means a county,
131 municipality, school board, or any other political subdivision
132 of the state; a public body corporate and politic; or a regional
133 entity that serves a public purpose and is authorized to develop
134 or operate a qualifying project.

135 (k) "Revenues" means the income, earnings, user fees, lease
136 payments, or other service payments relating to the development
137 or operation of a qualifying project, including, but not limited
138 to, money received as grants or otherwise from the Federal
139 Government, a public entity, or an agency or instrumentality
140 thereof in aid of the qualifying project.

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

144 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
145 that there is a public need for the construction or upgrade of
146 facilities that are used predominantly for public purposes and
147 that it is in the public's interest to provide for the
148 construction or upgrade of such facilities.

149 (a) The Legislature also finds that:

150 1. There is a public need for timely and cost-effective
151 acquisition, design, construction, improvement, renovation,
152 expansion, equipping, maintenance, operation, implementation, or
153 installation of projects serving a public purpose, including
154 educational facilities, transportation facilities, water or
155 wastewater management facilities and infrastructure, technology
156 infrastructure, roads, highways, bridges, and other public
157 infrastructure and government facilities within the state which



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158 serve a public need and purpose, and that such public need may
159 not be wholly satisfied by existing procurement methods.

160 2. There are inadequate resources to develop new
161 educational facilities, transportation facilities, water or
162 wastewater management facilities and infrastructure, technology
163 infrastructure, roads, highways, bridges, and other public
164 infrastructure and government facilities for the benefit of
165 residents of this state, and that a public-private partnership
166 has demonstrated that it can meet the needs by improving the
167 schedule for delivery, lowering the cost, and providing other
168 benefits to the public.

169 3. There may be state and federal tax incentives that
170 promote partnerships between public and private entities to
171 develop and operate qualifying projects.

172 4. A procurement under this section serves the public
173 purpose of this section if such procurement facilitates the
174 timely development or operation of a qualifying project.

175 (b) It is the intent of the Legislature to encourage
176 investment in the state by private entities; to facilitate
177 various bond financing mechanisms, private capital, and other
178 funding sources for the development and operation of qualifying
179 projects, including expansion and acceleration of such financing
180 to meet the public need; and to provide the greatest possible
181 flexibility to public and private entities contracting for the
182 provision of public services.

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

184 (a) There is created the Partnership for Public Facilities
185 and Infrastructure Act Guidelines Task Force for the purpose of
186 recommending guidelines for the Legislature to consider for



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187 purposes of creating a uniform process for establishing public-
188 private partnerships, including the types of factors responsible
189 public entities should review and consider when processing
190 requests for public-private partnership projects pursuant to
191 this section.

192 (b) The task force shall be composed of seven members as
193 follows:

194 1. The secretary of the Department of Management Services
195 or his or her designee, who shall serve as chair of the task
196 force.

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

198 a. One county government official.

199 b. One municipal government official.

200 c. One district school board member.

201 d. Three representatives of the business community.

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

203 By August 31, 2013, the task force shall meet to establish
204 procedures for the conduct of its business and to elect a vice
205 chair. The task force shall meet at the call of the chair. A
206 majority of the members of the task force constitutes a quorum,
207 and a quorum is necessary for the purpose of voting on any
208 action or recommendation of the task force. All meetings shall
209 be held in Tallahassee unless otherwise decided by the task
210 force. No more than two meetings may be held in a location other
211 than Tallahassee for the purpose of taking public testimony.
212 Administrative and technical support shall be provided by the
213 department. Task force members shall serve without compensation
214 and are not entitled to reimbursement for per diem or travel
215 expenses.



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216 (d) In reviewing public-private partnerships and developing
217 recommendations, the task force must consider:

218 1. Opportunities for competition through public notice and
219 the availability of representatives of the responsible public
220 entity to meet with private entities considering a proposal.

221 2. Reasonable criteria for choosing among competing
222 proposals.

223 3. Suggested timelines for selecting proposals and
224 negotiating an interim or comprehensive agreement.

225 4. Whether an accelerated selection, review, and
226 documentation timeline should be considered for proposals
227 involving a qualifying project that the responsible public
228 entity deems a priority.

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

233 6. The adequacy of the information released when seeking
234 competing proposals and providing for the enhancement of that
235 information, if necessary, to encourage competition.

236 7. Current exemptions from public records and public
237 meetings requirements, and if any changes to those exemptions
238 are necessary or if any new exemptions should be created in
239 order to maintain the confidentiality of financial and
240 proprietary information received as part of an unsolicited
241 proposal.

242 8. Recommendations regarding the authority of the
243 responsible public entity to engage the services of qualified
244 professionals, which may include a Florida-registered



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245 professional or a certified public accountant, not otherwise
246 employed by the responsible public entity, to provide an
247 independent analysis regarding the specifics, advantages,
248 disadvantages, and long-term and short-term costs of a request
249 by a private entity for approval of a qualifying project, unless
250 the governing body of the public entity determines that such
251 analysis should be performed by employees of the public entity.

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

255 (f) The task force is terminated December 31, 2014. The
256 establishment of guidelines pursuant to this section by the task
257 force or the adoption of such guidelines by a public entity is
258 not required for the public entity to request or receive
259 proposals for a qualifying project or to enter into a
260 comprehensive agreement for a qualifying project. A public
261 entity may adopt guidelines before or after the establishment of
262 guidelines by the task force, which may remain in effect if such
263 guidelines are not inconsistent with the guidelines established
264 by the task force. A guideline that is inconsistent with the
265 guidelines of the task force must be amended as necessary to
266 maintain consistency with the task force guidelines.

267 (4) PROCUREMENT PROCEDURES.—A responsible public entity may
268 receive unsolicited proposals or may solicit proposals for
269 qualifying projects and may thereafter enter into an agreement
270 with a private entity, or a consortium of private entities, for
271 the building, upgrading, operating, ownership, or financing of
272 facilities.

273 (a) The responsible public entity may establish a



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274 reasonable application fee for the submission of an unsolicited
275 proposal under this section. The fee must be sufficient to pay
276 the costs of evaluating the proposal. The responsible public
277 entity may engage the services of a private consultant to assist
278 in the evaluation of the proposal.

279 (b) The responsible public entity may request a proposal
280 from private entities for a public-private project; or, if the
281 public entity receives an unsolicited proposal for a public-
282 private project and the public entity intends to enter into a
283 comprehensive agreement for the project described in such
284 unsolicited proposal, the public entity shall publish notice in
285 the Florida Administrative Register and a newspaper of general
286 circulation at least once a week for 2 weeks stating that the
287 public entity has received a proposal and will accept other
288 proposals for the same project. The timeframe within which the
289 public entity may accept other proposals shall be determined by
290 the public entity on a project-by-project basis based upon the
291 complexity of the project and the public benefit to be gained by
292 allowing a longer or shorter period of time within which other
293 proposals may be received; however, the timeframe for allowing
294 other proposals must be at least 21 days, but no more than 120
295 days, after publication of the notice. A copy of the notice must
296 be mailed to each local government in the affected area.

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

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

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



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303 2. Is for a facility that is owned by the responsible
304 public entity or for a facility for which ownership will be
305 conveyed to the responsible public entity.

306 3. Has adequate safeguards in place to ensure that
307 additional costs or service disruptions are not imposed on the
308 public in the event of material default or cancellation of the
309 agreement by the responsible public entity.

310 4. Has adequate safeguards in place to ensure that the
311 responsible public entity or private entity has the opportunity
312 to add capacity to the proposed project or to add capacity to
313 other facilities serving similar predominantly public purposes.

314 5. Will be owned by the responsible public entity upon
315 completion or termination of the agreement and upon payment of
316 the amounts financed.

317 (e) Before signing a comprehensive agreement, the
318 responsible public entity must consider a reasonable finance
319 plan that is consistent with subsection (11), the project cost,
320 revenues by source, available financing, major assumptions,
321 internal rate of return on private investments if governmental
322 funds are assumed in order to deliver a cost-feasible project,
323 and the total cash-flow analysis beginning with the
324 implementation of the project and extending for the term of the
325 agreement.

326 (f) In considering an unsolicited proposal, the responsible
327 public entity may require from the private entity a technical
328 study prepared by a nationally recognized expert with experience
329 preparing analysis for bond rating agencies. In evaluating the
330 technical study, the responsible public entity may rely upon
331 internal staff reports prepared by personnel familiar with the



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332 operation of similar facilities or the advice of external
333 advisors or consultants who have relevant experience.

334 (5) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal
335 from a private entity for approval of a qualifying project must
336 be accompanied by the following material and information unless
337 waived by the responsible public entity:

338 (a) A description of the qualifying project, including the
339 conceptual design of the facilities or a conceptual plan for the
340 provision of services, and a schedule for the initiation and
341 completion of the qualifying project.

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

345 (c) A description of the private entity's general plans for
346 financing the qualifying project, including the sources of the
347 private entity's funds and the identity of any dedicated revenue
348 source or proposed debt or equity investment on behalf of the
349 private entity.

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

352 (e) The proposed user fees, lease payments, or other
353 service payments over the term of a comprehensive agreement, and
354 the methodology and circumstances that would allow changes to
355 such user fees, lease payments, and service payments in the
356 future.

357 (f) Reasonable additional material or information requested
358 by the responsible public entity.

359 (6) PROJECT QUALIFICATION AND PROCESS.—

360 (a) The private entity must meet the minimum standards



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361 contained in the responsible public entity's guidelines for
362 qualifying professional services and contracts for traditional
363 procurement projects.

364 (b) The responsible public entity must ensure:

365 1. That provision is made for the private entity's
366 performance and payment of subcontractors, including, but not
367 limited to, surety bonds, letters of credit, parent company
368 guarantees, and lender and equity partner guarantees. For the
369 components of the qualifying project which involve construction
370 performance and payment, bonds are required and are subject to
371 the recordation, notice, suit limitation, and other requirements
372 of s. 255.05.

373 2. The most efficient pricing of the security package that
374 provides for the performance and payment of subcontractors.

375 3. That provision is made for the transfer of the private
376 entity's obligations if the comprehensive agreement is
377 terminated or a material default occurs.

378 (c) After the public notification period has expired in the
379 case of an unsolicited proposal, the responsible public entity
380 shall rank the proposals received in order of preference. In
381 ranking the proposals, the responsible public entity may
382 consider factors that include, but are not limited to,
383 professional qualifications, general business terms, innovative
384 design techniques or cost-reduction terms, and finance plans.
385 The responsible public entity may then begin negotiations for a
386 comprehensive agreement with the highest-ranked proposer. If the
387 responsible public entity is not satisfied with the results of
388 the negotiations, the responsible public entity may terminate
389 negotiations with the highest-ranked proposer and negotiate with



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390 the second- or subsequent-ranked proposers in the order
391 consistent with this procedure. If only one proposal is
392 received, the responsible public entity may negotiate in good
393 faith, and if the public entity is not satisfied with the
394 results of the negotiations, the public entity may terminate
395 negotiations with the proposer. Notwithstanding this paragraph,
396 the responsible public entity may reject all proposals at any
397 point in the process until a contract with the proposer is
398 executed.

399 (d) The responsible public entity shall perform an
400 independent analysis of the proposed public-private partnership
401 which demonstrates the cost-effectiveness and overall public
402 benefit before the procurement process is initiated or before
403 the contract is awarded.

404 (e) The responsible public entity may approve the
405 development or operation of an educational facility, a
406 transportation facility, a water or wastewater management
407 facility or related infrastructure, a technology infrastructure
408 or other public infrastructure, or a government facility needed
409 by the responsible public entity as a qualifying project, or the
410 design or equipping of a qualifying project that is developed or
411 operated, if:

412 1. There is a public need for or benefit derived from a
413 project of the type that the private entity proposes as the
414 qualifying project.

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

417 3. The private entity's plans will result in the timely
418 acquisition, design, construction, improvement, renovation,



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419 expansion, equipping, maintenance, or operation of the
420 qualifying project.

421 (f) The responsible public entity may charge a reasonable
422 fee to cover the costs of processing, reviewing, and evaluating
423 the request, including, but not limited to, reasonable attorney
424 fees and fees for financial and technical advisors or
425 consultants and for other necessary advisors or consultants.

426 (g) Upon approval of a qualifying project, the responsible
427 public entity shall establish a date for the commencement of
428 activities related to the qualifying project. The responsible
429 public entity may extend the commencement date.

430 (h) Approval of a qualifying project by the responsible
431 public entity is subject to entering into a comprehensive
432 agreement with the private entity.

433 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

434 (a) The responsible public entity must notify each affected
435 local jurisdiction by furnishing a copy of the proposal to each
436 affected local jurisdiction when considering a proposal for a
437 qualifying project.

438 (b) Each affected local jurisdiction that is not a
439 responsible public entity for the respective qualifying project
440 may, within 60 days after receiving the notice, submit written
441 comments to the responsible public entity to indicate whether
442 the facility is incompatible with the local comprehensive plan,
443 the local infrastructure development plan, the capital
444 improvements budget, any development of regional impact
445 processes or timelines, or other governmental spending plan. The
446 responsible public entity shall consider the comments of the
447 affected local jurisdiction before entering into a comprehensive



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448 agreement with a private entity. If an affected local
449 jurisdiction fails to respond to the responsible public entity
450 within the time provided in this paragraph, such nonresponse is
451 deemed an acknowledgement by the affected local jurisdiction
452 that the qualifying project is compatible with the local
453 comprehensive plan, the local infrastructure development plan,
454 the capital improvements budget, or other governmental spending
455 plan.

456 (8) INTERIM AGREEMENT.—Before or in connection with the
457 negotiation of a comprehensive agreement, the public entity may
458 enter into an interim agreement with the private entity
459 proposing the development or operation of the qualifying
460 project. An interim agreement does not obligate the responsible
461 public entity to enter into a comprehensive agreement. The
462 interim agreement is discretionary with the parties and is not
463 required on a qualifying project for which the parties may
464 proceed directly to a comprehensive agreement without the need
465 for an interim agreement. An interim agreement must be limited
466 to provisions that:

467 (a) Authorize the private entity to commence activities for
468 which it may be compensated related to the proposed qualifying
469 project, including, but not limited to, project planning and
470 development, design, environmental analysis and mitigation,
471 survey, other activities concerning any part of the proposed
472 qualifying project, and ascertaining the availability of
473 financing for the proposed facility or facilities.

474 (b) Establish the process and timing of the negotiation of
475 the comprehensive agreement.

476 (c) Relate to an aspect of the development or operation of



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477 a qualifying project that the responsible public entity and the
478 private entity deem appropriate.

479 (9) COMPREHENSIVE AGREEMENT.—

480 (a) Before developing or operating the qualifying project,
481 the private entity must enter into a comprehensive agreement
482 with the responsible public entity. The comprehensive agreement
483 must provide for:

484 1. The delivery of performance and payment bonds, letters
485 of credit, or other security acceptable to the responsible
486 public entity in connection with the development or operation of
487 the qualifying project in a form and amount satisfactory to the
488 responsible public entity. For the components of the qualifying
489 project which involve construction, the form and amount of the
490 bonds must comply with s. 255.05.

491 2. The review of the design for the qualifying project by
492 the responsible public entity and, if the design conforms to
493 standards acceptable to the responsible public entity, the
494 approval of the responsible public entity. This subparagraph
495 does not require the private entity to complete the design of
496 the qualifying project before the execution of the comprehensive
497 agreement.

498 3. The inspection of the qualifying project by the
499 responsible public entity to ensure that the private entity's
500 activities are acceptable to the public entity in accordance
501 with the comprehensive agreement.

502 4. The maintenance by the private entity of a policy of
503 public liability insurance, a copy of which must be filed with
504 the responsible public entity and accompanied by proofs of
505 coverage, or self-insurance, each in a form and amount



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506 satisfactory to the responsible public entity and reasonably
507 sufficient to ensure coverage of tort liability to the public
508 and employees and to enable the continued operation of the
509 qualifying project.

510 5. The monitoring by the responsible public entity of the
511 maintenance practices to be performed by the private entity to
512 ensure that the qualifying project is properly maintained.

513 6. The periodic filing by the private entity of the
514 appropriate financial statements that pertain to the qualifying
515 project.

516 7. The procedures that govern the rights and
517 responsibilities of the responsible public entity and the
518 private entity in the course of the construction and operation
519 of the qualifying project and in the event of the termination of
520 the comprehensive agreement or a material default by the private
521 entity. The procedures must include conditions that govern the
522 assumption of the duties and responsibilities of the private
523 entity by an entity that funded, in whole or part, the
524 qualifying project or by the responsible public entity, and must
525 provide for the transfer or purchase of property or other
526 interests of the private entity by the responsible public
527 entity.

528 8. In negotiating user fees, the fees must be the same for
529 persons using the facility under like conditions and must not
530 materially discourage use of the qualifying project. The
531 execution of the comprehensive agreement or a subsequent
532 amendment is conclusive evidence that the fees, lease payments,
533 or service payments provided for in the comprehensive agreement
534 comply with this section. Fees or lease payments established in



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535 the comprehensive agreement as a source of revenue may be in
536 addition to, or in lieu of, service payments.

537 9. The duties of the private entity, including the terms
538 and conditions that the responsible public entity determines
539 serve the public purpose of this section.

540 (b) The comprehensive agreement may include:

541 1. An agreement by the responsible public entity to make
542 grants or loans to the private entity from amounts received from
543 the federal, state, or local government or an agency or
544 instrumentality thereof.

545 2. A provision under which each entity agrees to provide
546 notice of default and cure rights for the benefit of the other
547 entity, including, but not limited to, a provision regarding
548 unavoidable delays.

549 3. A provision that terminates the authority and duties of
550 the private entity under this section and dedicates the
551 qualifying project to the responsible public entity or, if the
552 qualifying project was initially dedicated by an affected local
553 jurisdiction, to the affected local jurisdiction for public use.

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

558 (a) The responsible public entity may develop new
559 facilities or increase capacity in existing facilities through
560 agreements with public-private partnerships.

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



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564 agreement.

565 (c) The responsible public entity may lease existing fee-
566 for-use facilities through a public-private partnership
567 agreement.

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

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

573 (11) FINANCING.—

574 (a) A private entity may enter into a private-source
575 financing agreement between financing sources and the private
576 entity. A financing agreement and any liens on the property or
577 facility must be paid in full at the applicable closing that
578 transfers ownership or operation of the facility to the
579 responsible public entity at the conclusion of the term of the
580 comprehensive agreement.

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

584 (c) The responsible public entity may use innovative
585 finance techniques associated with a public-private partnership
586 under this section, including, but not limited to, federal loans
587 as provided in Titles 23 and 49 of the Code of Federal
588 Regulations, commercial bank loans, and hedges against inflation
589 from commercial banks or other private sources. In addition, the
590 responsible public entity may provide its own capital or
591 operating budget to support a qualifying project. The budget may
592 be from any legally permissible funding sources of the



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593 responsible public entity, including the proceeds of debt
594 issuances. A responsible public entity may use the model
595 financing agreement provided for in s. 489.145(6) for its
596 financing of a facility owned by a responsible public entity. A
597 financing agreement may not require the responsible public
598 entity to indemnify the financing source, subject the
599 responsible public entity's facility to liens in violation of s.
600 11.066(5), or secure financing by the responsible public entity
601 with a pledge of security interest, and any such provision is
602 void.

603 (d) A responsible public entity shall appropriate on a
604 priority basis as required by the comprehensive agreement a
605 contractual payment obligation, annual or otherwise, from the
606 enterprise or other government fund from which the qualifying
607 projects will be funded. This required payment obligation must
608 be appropriated before other noncontractual obligations payable
609 from the same enterprise or other government fund.

610 (12) POWERS AND DUTIES OF THE PRIVATE ENTITY.—

611 (a) The private entity shall:

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

615 2. Maintain, or provide by contract for the maintenance or
616 improvement of, the qualifying project if required by the
617 comprehensive agreement.

618 3. Cooperate with the responsible public entity in making
619 best efforts to establish interconnection between the qualifying
620 project and any other facility or infrastructure as requested by
621 the responsible public entity in accordance with the provisions



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622 of the comprehensive agreement.

623 4. Comply with the comprehensive agreement and any lease or
624 service contract.

625 (b) Each private facility that is constructed pursuant to
626 this section must comply with the requirements of federal,
627 state, and local laws; state, regional, and local comprehensive
628 plans; the responsible public entity's rules, procedures, and
629 standards for facilities; and such other conditions that the
630 responsible public entity determines to be in the public's best
631 interest and that are included in the comprehensive agreement.

632 (c) The responsible public entity may provide services to
633 the private entity. An agreement for maintenance and other
634 services entered into pursuant to this section must provide for
635 full reimbursement for services rendered for qualifying
636 projects.

637 (d) A private entity of a qualifying project may provide
638 additional services for the qualifying project to the public or
639 to other private entities if the provision of additional
640 services does not impair the private entity's ability to meet
641 its commitments to the responsible public entity pursuant to the
642 comprehensive agreement.

643 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
644 expiration or termination of a comprehensive agreement, the
645 responsible public entity may use revenues from the qualifying
646 project to pay current operation and maintenance costs of the
647 qualifying project. If the private entity materially defaults
648 under the comprehensive agreement, the compensation that is
649 otherwise due to the private entity is payable to satisfy all
650 financial obligations to investors and lenders on the qualifying



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651 project in the same way that is provided in the comprehensive
652 agreement or any other agreement involving the qualifying
653 project, if the costs of operating and maintaining the
654 qualifying project are paid in the normal course. Revenues in
655 excess of the costs for operation and maintenance costs may be
656 paid to the investors and lenders to satisfy payment obligations
657 under their respective agreements. A responsible public entity
658 may terminate with cause and without prejudice a comprehensive
659 agreement and may exercise any other rights or remedies that may
660 be available to it in accordance with the provisions of the
661 comprehensive agreement. The full faith and credit of the
662 responsible public entity may not be pledged to secure the
663 financing of the private entity. The assumption of the
664 development or operation of the qualifying project does not
665 obligate the responsible public entity to pay any obligation of
666 the private entity from sources other than revenues from the
667 qualifying project unless stated otherwise in the comprehensive
668 agreement.

669 (14) SOVEREIGN IMMUNITY.—This section does not waive the
670 sovereign immunity of a responsible public entity, an affected
671 local jurisdiction, or an officer or employee thereof with
672 respect to participation in, or approval of, any part of a
673 qualifying project or its operation, including, but not limited
674 to, interconnection of the qualifying project with any other
675 infrastructure or project. A county or municipality in which a
676 qualifying project is located possesses sovereign immunity with
677 respect to the project, including, but not limited to, its
678 design, construction, and operation.

679 (15) CONSTRUCTION.—This section shall be liberally



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680 construed to effectuate the purposes of this section. This
681 section shall be construed as cumulative and supplemental to any
682 other authority or power vested in or exercised by the governing
683 board of a county, district, or municipal hospital or health
684 care system including those contained in acts of the Legislature
685 establishing such public hospital boards or s. 155.40. This
686 section does not affect any agreement or existing relationship
687 with a supporting organization involving such governing board or
688 system in effect as of January 1, 2013.

689 (a) This section does not limit a political subdivision of
690 the state in the acquisition, design, or construction of a
691 public project pursuant to other statutory authority.

692 (b) Except as otherwise provided in this section, this
693 section does not amend existing laws by granting additional
694 powers to, or further restricting, a local governmental entity
695 from regulating and entering into cooperative arrangements with
696 the private sector for the planning, construction, or operation
697 of a facility.

698 (c) This section does not waive any requirement of s.
699 287.055.

700 Section 4. Section 336.71, Florida Statutes, is created to
701 read:

702 336.71 Public-private cooperation in construction of county
703 roads.-

704 (1) If a county receives a proposal, solicited or
705 unsolicited, from a private entity seeking to construct, extend,
706 or improve a county road or portion thereof, the county may
707 enter into an agreement with the private entity for completion
708 of the road construction project, which agreement may provide



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709 for payment to the private entity, from public funds, if the
710 county conducts a noticed public hearing and finds that the
711 proposed county road construction project:

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

713 (b) Uses county funds only for portions of the project that
714 will be part of the county road system.

715 (c) Has adequate safeguards to ensure that additional costs
716 or unreasonable service disruptions are not realized by the
717 public.

718 (d) Will, upon completion, be a part of the county road
719 system owned by the county.

720 (e) Results in a financial benefit to the public by
721 completing the project at a cost to the public significantly
722 lower than if the project were completed by the county using the
723 normal procurement process.

724 (2) The notice for the public hearing provided for in
725 subsection (1) must be published at least 14 days before the
726 date of the public meeting at which the governing board takes
727 final action. The notice must identify the project, the
728 estimated cost of the project, and specify that the purpose for
729 the public meeting is to consider whether it is in the public's
730 best interest to accept the proposal and enter into an agreement
731 pursuant thereto. The determination of cost savings pursuant to
732 paragraph (1) (e) must be supported by a professional engineer's
733 cost estimate made available to the public at least 14 days
734 before the public meeting and placed in the record for that
735 meeting.

736 (3) Upon compliance with subsection (1), the project and
737 agreement are exempt from s. 255.20 pursuant to s.



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738 255.20(1)(c)11.

739 (4) Except as otherwise expressly provided in this section,
740 this section does not affect existing law by granting additional
741 powers to or imposing further restrictions on local government
742 entities.

743 Section 5. This act shall take effect July 1, 2013.

744

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

746 And the title is amended as follows:

747 Delete everything before the enacting clause
748 and insert:

749 A bill to be entitled

750 An act relating to public-private partnerships;
751 amending s. 154.11, F.S.; revising the powers of a
752 public health trust; amending s. 255.60, F.S.;

753 authorizing certain public entities to contract for
754 public service works with not-for-profit
755 organizations; revising eligibility and contract
756 requirements for not-for-profit organizations
757 contracting with certain public entities; creating s.
758 287.05712, F.S.; providing definitions; providing
759 legislative findings and intent relating to the
760 construction or improvement by private entities of
761 facilities used predominantly for a public purpose;
762 creating a task force to establish specified
763 guidelines; providing procurement procedures;
764 providing requirements for project approval; providing
765 project qualifications and process; providing for
766 notice to affected local jurisdictions; providing for



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767 interim and comprehensive agreements between a public
768 and a private entity; providing for use fees;
769 providing for financing sources for certain projects
770 by a private entity; providing powers and duties of
771 private entities; providing for expiration or
772 termination of agreements; providing for the
773 applicability of sovereign immunity for public
774 entities with respect to qualified projects; providing
775 for construction of the act; creating s. 336.71, F.S.;
776 authorizing counties to enter into public-private
777 partnership agreements for construction of roads under
778 certain circumstances; providing bid exemption for
779 such projects under certain circumstances; providing
780 for a public notice and meeting; providing
781 applicability; providing an effective date.