

By Senator Evers

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1                   A bill to be entitled  
2           An act relating to public procurement practices;  
3           transferring, renumbering, and amending s. 287.05712,  
4           F.S.; revising definitions; deleting provisions  
5           creating the Partnership for Public Facilities and  
6           Infrastructure Act Guidelines Task Force; requiring a  
7           private entity that submits an unsolicited proposal to  
8           pay an initial application fee and additional amounts  
9           if the fee does not cover certain costs; specifying  
10          payment methods; authorizing a responsible public  
11          entity to alter the statutory timeframe for accepting  
12          proposals for a qualifying project under certain  
13          circumstances; requiring a responsible public entity  
14          to include a design criteria package in a  
15          solicitation; specifying requirements for the design  
16          criteria package; deleting a provision that requires  
17          approval of the local governing body before a school  
18          board enters into a comprehensive agreement; revising  
19          the conditions necessary for a responsible public  
20          entity to approve a comprehensive agreement; deleting  
21          provisions relating to notice to affected local  
22          jurisdictions; requiring that fees imposed by a  
23          private entity be applied as set forth in the  
24          comprehensive agreement; restricting provisions in  
25          financing agreements which could result in a  
26          responsible public entity's loss of fee ownership of  
27          real or tangible personal property; deleting a  
28          provision that requires a responsible public entity to  
29          comply with specific financial obligations; specifying

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30 duties of the Department of Management Services;  
31 revising provisions relating to construction of the  
32 act; amending s. 287.0935, F.S.; increasing the dollar  
33 threshold for a contract amount of a project for which  
34 a person, the state, or a political subdivision is  
35 prohibited from refusing a surety bond issued by a  
36 surety company that meets certain requirements;  
37 revising the requirements for surety companies with  
38 respect to bonds issued for certain publicly funded  
39 contracts; providing an effective date.

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

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

46 255.065 ~~287.05712~~ Public-private partnerships.—

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

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

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

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

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

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

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

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

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

72 (i) "Qualifying project" means:

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

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

87 3. A water, wastewater, or surface water management

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88 facility or other related infrastructure; or

89 4. Notwithstanding any provision of this section, for  
90 projects that involve a facility owned or operated by the  
91 governing board of a county, district, or municipal hospital or  
92 health care system, or projects that involve a facility owned or  
93 operated by a municipal electric utility, only those projects  
94 that the governing board designates as qualifying projects  
95 pursuant to this section.

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

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

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

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

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117 (a) The Legislature also finds that:

118 1. There is a public need for timely and cost-effective  
119 acquisition, design, construction, improvement, renovation,  
120 expansion, equipping, maintenance, operation, implementation, or  
121 installation of projects serving a public purpose, including  
122 educational facilities, transportation facilities, water or  
123 wastewater management facilities and infrastructure, technology  
124 infrastructure, roads, highways, bridges, and other public  
125 infrastructure and government facilities within the state which  
126 serve a public need and purpose, and that such public need may  
127 not be wholly satisfied by existing procurement methods.

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

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

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

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

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146 funding sources for the development and operation of qualifying  
147 projects, including expansion and acceleration of such financing  
148 to meet the public need; and to provide the greatest possible  
149 flexibility to public and private entities contracting for the  
150 provision of public services.

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

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

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

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

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

165 ~~a. One county government official.~~

166 ~~b. One municipal government official.~~

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

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

169 ~~(c) Task force members must be appointed by July 31, 2013.~~  
170 ~~By August 31, 2013, the task force shall meet to establish~~  
171 ~~procedures for the conduct of its business and to elect a vice~~  
172 ~~chair. The task force shall meet at the call of the chair. A~~  
173 ~~majority of the members of the task force constitutes a quorum,~~  
174 ~~and a quorum is necessary for the purpose of voting on any~~

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175 ~~action or recommendation of the task force. All meetings shall~~  
176 ~~be held in Tallahassee, unless otherwise decided by the task~~  
177 ~~force, and then no more than two such meetings may be held in~~  
178 ~~other locations for the purpose of taking public testimony.~~  
179 ~~Administrative and technical support shall be provided by the~~  
180 ~~department. Task force members shall serve without compensation~~  
181 ~~and are not entitled to reimbursement for per diem or travel~~  
182 ~~expenses.~~

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

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

188 ~~2. Reasonable criteria for choosing among competing~~  
189 ~~proposals.~~

190 ~~3. Suggested timelines for selecting proposals and~~  
191 ~~negotiating an interim or comprehensive agreement.~~

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

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

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

203 ~~7. Current exemptions from public records and public~~

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204 ~~meetings requirements, if any changes to those exemptions are~~  
205 ~~necessary, or if any new exemptions should be created in order~~  
206 ~~to maintain the confidentiality of financial and proprietary~~  
207 ~~information received as part of an unsolicited proposal.~~

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

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

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

229 ~~(3)(4)~~ PROCUREMENT PROCEDURES.—A responsible public entity  
230 may receive unsolicited proposals or may solicit proposals for  
231 qualifying projects and may thereafter enter into a  
232 comprehensive ~~an~~ agreement with a private entity, or a



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233 consortium of private entities, for the building, upgrading,  
234 operating, ownership, or financing of facilities.

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

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

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

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

257 (b) The responsible public entity may request a proposal  
258 from private entities for a qualifying ~~public-private~~ project  
259 or, if the responsible public entity receives an unsolicited  
260 proposal for a qualifying ~~public-private~~ project and the  
261 responsible public entity intends to enter into a comprehensive

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262 agreement for the project described in the ~~such~~ unsolicited  
263 proposal, the responsible public entity shall publish notice in  
264 the Florida Administrative Register and a newspaper of general  
265 circulation at least once a week for 2 weeks stating that the  
266 responsible public entity has received a proposal and will  
267 accept other proposals for the same project. The timeframe  
268 within which the responsible public entity may accept other  
269 proposals shall be determined by the responsible public entity  
270 on a project-by-project basis based upon the complexity of the  
271 qualifying project and the public benefit to be gained by  
272 allowing a longer or shorter period of time within which other  
273 proposals may be received; however, the timeframe for allowing  
274 other proposals must be at least 21 days, but no more than 120  
275 days, after the initial date of publication. If approved by a  
276 majority vote of the responsible public entity's governing body,  
277 the responsible public entity may alter the timeframe for  
278 accepting proposals to more adequately suit the needs of the  
279 qualifying project. A copy of the notice must be mailed to each  
280 local government in the affected area.

281 (c) If the responsible public entity solicits proposals  
282 under this section, the solicitation must include a design  
283 criteria package prepared by an architect, an engineer, or a  
284 landscape architect licensed in this state which is sufficient  
285 to allow private entities to prepare a bid or a response. The  
286 design criteria package must specify performance-based criteria  
287 for the project, including the legal description of the site,  
288 with survey information; interior space requirements; material  
289 quality standards; schematic layouts and conceptual design  
290 criteria for the project; cost or budget estimates; design and

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291 construction schedules; and site development and utility  
292 requirements ~~A responsible public entity that is a school board~~  
293 ~~may enter into a comprehensive agreement only with the approval~~  
294 ~~of the local governing body.~~

295 (d) Before approving a comprehensive agreement ~~approval~~,  
296 the responsible public entity must determine that the proposed  
297 project:

- 298 1. Is in the public's best interest.
- 299 2. Is for a facility that is owned by the responsible  
300 public entity or for a facility for which ownership will be  
301 conveyed to the responsible public entity.
- 302 3. Has adequate safeguards in place to ensure that  
303 additional costs or service disruptions are not imposed on the  
304 public in the event of material default or cancellation of the  
305 comprehensive agreement by the responsible public entity.
- 306 4. Has adequate safeguards in place to ensure that the  
307 responsible public entity or private entity has the opportunity  
308 to add capacity to the proposed project or other facilities  
309 serving similar predominantly public purposes.
- 310 5. Will be owned by the responsible public entity upon  
311 completion, expiration, or termination of the comprehensive  
312 agreement and upon payment of the amounts financed.

313 (e) Before signing a comprehensive agreement, the  
314 responsible public entity must consider a reasonable finance  
315 plan that is consistent with subsection (9) ~~(11)~~; the qualifying  
316 project cost; revenues by source; available financing; major  
317 assumptions; internal rate of return on private investments, if  
318 governmental funds are assumed in order to deliver a cost-  
319 feasible project; and a total cash-flow analysis beginning with

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320 the implementation of the project and extending for the term of  
321 the comprehensive agreement.

322 (f) In considering an unsolicited proposal, the responsible  
323 public entity may require from the private entity a technical  
324 study prepared by a nationally recognized expert with experience  
325 in preparing analyses ~~analysis~~ for bond rating agencies. In  
326 evaluating the technical study, the responsible public entity  
327 may rely upon internal staff reports prepared by personnel  
328 familiar with the operation of similar facilities or the advice  
329 of external advisors or consultants who have relevant  
330 experience.

331 (4) ~~(5)~~ PROJECT APPROVAL REQUIREMENTS.—An unsolicited  
332 proposal from a private entity for approval of a qualifying  
333 project must be accompanied by the following material and  
334 information, unless waived by the responsible public entity:

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

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

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

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

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349 (e) The proposed user fees, lease payments, or other  
350 service payments over the term of a comprehensive agreement, and  
351 the methodology for and circumstances that would allow changes  
352 to the user fees, lease payments, and other service payments  
353 over time.

354 (f) Additional material or information that the responsible  
355 public entity reasonably requests.

356

357 Any pricing or financial terms included in an unsolicited  
358 proposal must be specific as to when the pricing or terms  
359 expire.

360 (5)~~(6)~~ PROJECT QUALIFICATION AND PROCESS.—

361 (a) The private entity, or the applicable party or parties  
362 of the private entity's team, must meet the minimum standards  
363 contained in the responsible public entity's guidelines for  
364 qualifying professional services and contracts for traditional  
365 procurement projects.

366 (b) The responsible public entity must:

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

375 2. Ensure the most efficient pricing of the security  
376 package that provides for the performance and payment of  
377 subcontractors.

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378           3. Ensure that ~~provision is made for the transfer of the~~  
379 ~~private entity's obligations if the comprehensive agreement~~  
380 addresses termination upon is terminated or a material default  
381 of the comprehensive agreement occurs.

382           (c) After the public notification period has expired in the  
383 case of an unsolicited proposal, the responsible public entity  
384 shall rank the proposals received in order of preference. In  
385 ranking the proposals, the responsible public entity may  
386 consider factors that include, but are not limited to,  
387 professional qualifications, general business terms, innovative  
388 design techniques or cost-reduction terms, and finance plans.  
389 The responsible public entity may then begin negotiations for a  
390 comprehensive agreement with the highest-ranked firm. If the  
391 responsible public entity is not satisfied with the results of  
392 the negotiations, the responsible public entity may terminate  
393 negotiations with the proposer and negotiate with the second-  
394 ranked or subsequent-ranked firms, in the order consistent with  
395 this procedure. If only one proposal is received, the  
396 responsible public entity may negotiate in good faith, and if  
397 the responsible public entity is not satisfied with the results  
398 of the negotiations, the responsible public entity may terminate  
399 negotiations with the proposer. Notwithstanding this paragraph,  
400 the responsible public entity may reject all proposals at any  
401 point in the process until a contract with the proposer is  
402 executed.

403           (d) The responsible public entity shall perform an  
404 independent analysis of the proposed public-private partnership  
405 which demonstrates the cost-effectiveness and overall public  
406 benefit before the procurement process is initiated or before

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407 the contract is awarded.

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

416 1. There is a public need for or benefit derived from a  
417 project of the type that the private entity proposes as the  
418 qualifying project.

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

421 3. The private entity's plans will result in the timely  
422 acquisition, design, construction, improvement, renovation,  
423 expansion, equipping, maintenance, or operation of the  
424 qualifying project.

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

430 (g) Upon approval of a qualifying project, the responsible  
431 public entity shall establish a date for the commencement of  
432 activities related to the qualifying project. The responsible  
433 public entity may extend the commencement date.

434 (h) Approval of a qualifying project by the responsible  
435 public entity is subject to entering into a comprehensive

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436 agreement with the private entity.

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

438 ~~(a) The responsible public entity must notify each affected~~  
439 ~~local jurisdiction by furnishing a copy of the proposal to each~~  
440 ~~affected local jurisdiction when considering a proposal for a~~  
441 ~~qualifying project.~~

442 ~~(b) Each affected local jurisdiction that is not a~~  
443 ~~responsible public entity for the respective qualifying project~~  
444 ~~may, within 60 days after receiving the notice, submit in~~  
445 ~~writing any comments to the responsible public entity and~~  
446 ~~indicate whether the facility is incompatible with the local~~  
447 ~~comprehensive plan, the local infrastructure development plan,~~  
448 ~~the capital improvements budget, any development of regional~~  
449 ~~impact processes or timelines, or other governmental spending~~  
450 ~~plan. The responsible public entity shall consider the comments~~  
451 ~~of the affected local jurisdiction before entering into a~~  
452 ~~comprehensive agreement with a private entity. If an affected~~  
453 ~~local jurisdiction fails to respond to the responsible public~~  
454 ~~entity within the time provided in this paragraph, the~~  
455 ~~nonresponse is deemed an acknowledgment by the affected local~~  
456 ~~jurisdiction that the qualifying project is compatible with the~~  
457 ~~local comprehensive plan, the local infrastructure development~~  
458 ~~plan, the capital improvements budget, or other governmental~~  
459 ~~spending plan.~~

460 ~~(6)~~(8) INTERIM AGREEMENT.—Before or in connection with the  
461 negotiation of a comprehensive agreement, the responsible public  
462 entity may enter into an interim agreement with the private  
463 entity proposing the development or operation of the qualifying  
464 project. An interim agreement does not obligate the responsible



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465 public entity to enter into a comprehensive agreement. The  
466 interim agreement is discretionary with the parties and is not  
467 required on a qualifying project for which the parties may  
468 proceed directly to a comprehensive agreement without the need  
469 for an interim agreement. An interim agreement must be limited  
470 to provisions that:

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

478 (b) Establish the process and timing of the negotiation of  
479 the comprehensive agreement.

480 (c) Contain such other provisions related to an aspect of  
481 the development or operation of a qualifying project that the  
482 responsible public entity and the private entity deem  
483 appropriate.

484 (7)~~(9)~~ COMPREHENSIVE AGREEMENT.—

485 (a) Before developing or operating the qualifying project,  
486 the private entity must enter into a comprehensive agreement  
487 with the responsible public entity. The comprehensive agreement  
488 must provide for:

489 1. Delivery of performance and payment bonds, letters of  
490 credit, or other security acceptable to the responsible public  
491 entity in connection with the development or operation of the  
492 qualifying project in the form and amount satisfactory to the  
493 responsible public entity. For the components of the qualifying

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494 project which involve construction, the form and amount of the  
495 bonds must comply with s. 255.05.

496 2. Review of the design for the qualifying project by the  
497 responsible public entity and, if the design conforms to  
498 standards acceptable to the responsible public entity, the  
499 approval of the responsible public entity. This subparagraph  
500 does not require the private entity to complete the design of  
501 the qualifying project before the execution of the comprehensive  
502 agreement.

503 3. Inspection of the qualifying project by the responsible  
504 public entity to ensure that the private entity's activities are  
505 acceptable to the responsible public entity in accordance with  
506 the comprehensive agreement.

507 4. Maintenance of a policy of public liability insurance, a  
508 copy of which must be filed with the responsible public entity  
509 and accompanied by proofs of coverage, or self-insurance, each  
510 in the form and amount satisfactory to the responsible public  
511 entity and reasonably sufficient to ensure coverage of tort  
512 liability to the public and employees and to enable the  
513 continued operation of the qualifying project.

514 5. Monitoring by the responsible public entity of the  
515 maintenance practices to be performed by the private entity to  
516 ensure that the qualifying project is properly maintained.

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

519 7. Procedures that govern the rights and responsibilities  
520 of the responsible public entity and the private entity in the  
521 course of the construction and operation of the qualifying  
522 project and in the event of the termination of the comprehensive

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523 agreement or a material default by the private entity. The  
524 procedures must include conditions that govern the assumption of  
525 the duties and responsibilities of the private entity by an  
526 entity that funded, in whole or in part, the qualifying project  
527 or by the responsible public entity, and must provide for the  
528 transfer or purchase of property or other interests of the  
529 private entity by the responsible public entity.

530 8. Fees, lease payments, or service payments. In  
531 negotiating user fees, the fees must be the same for persons  
532 using the facility under like conditions and must not materially  
533 discourage use of the qualifying project. The execution of the  
534 comprehensive agreement or a subsequent amendment is conclusive  
535 evidence that the fees, lease payments, or service payments  
536 provided for in the comprehensive agreement comply with this  
537 section. Fees or lease payments established in the comprehensive  
538 agreement as a source of revenue may be in addition to, or in  
539 lieu of, service payments.

540 9. Duties of the private entity, including the terms and  
541 conditions that the responsible public entity determines serve  
542 the public purpose of this section.

543 (b) The comprehensive agreement may include:

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

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

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

557 (8)~~(10)~~ FEES.—A comprehensive ~~An~~ agreement entered into  
 558 pursuant to this section may authorize the private entity to  
 559 impose fees on ~~to~~ members of the public for the use of the  
 560 facility. The following provisions apply to the comprehensive  
 561 agreement:

562 (a) The responsible public entity may develop new  
 563 facilities or increase capacity in existing facilities through a  
 564 comprehensive agreement with a private entity ~~agreements with~~  
 565 ~~public-private partnerships~~.

566 (b) The comprehensive ~~public-private partnership~~ agreement  
 567 must ensure that the facility is properly operated, maintained,  
 568 or improved in accordance with standards set forth in the  
 569 comprehensive agreement.

570 (c) The responsible public entity may lease existing fee-  
 571 for-use facilities through a comprehensive ~~public-private~~  
 572 ~~partnership~~ agreement.

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

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

579 (9)~~(11)~~ FINANCING.—

580 (a) A private entity may enter into a private-source

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581 financing agreement between financing sources and the private  
582 entity. A financing agreement and any liens on the property or  
583 facility must be paid in full at the applicable closing that  
584 transfers ownership or operation of the facility to the  
585 responsible public entity at the conclusion of the term of the  
586 comprehensive agreement.

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

590 (c) The responsible public entity may use innovative  
591 finance techniques associated with a public-private partnership  
592 under this section, including, but not limited to, federal loans  
593 as provided in Titles 23 and 49 C.F.R., commercial bank loans,  
594 and hedges against inflation from commercial banks or other  
595 private sources. In addition, the responsible public entity may  
596 provide its own capital or operating budget to support a  
597 qualifying project. The budget may be from any legally  
598 permissible funding sources of the responsible public entity,  
599 including the proceeds of debt issuances. A responsible public  
600 entity may use the model financing agreement provided in s.  
601 489.145(6) for its financing of a facility owned by a  
602 responsible public entity. A financing agreement may not require  
603 the responsible public entity to indemnify the financing source,  
604 subject the responsible public entity's facility to liens in  
605 violation of s. 11.066(5), or secure financing of by the  
606 responsible public entity by a mortgage on, or security interest  
607 in, the real or tangible personal property of the responsible  
608 public entity in a manner that could result in the loss of the  
609 fee ownership of the property by the responsible public entity

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610 with a pledge of security interest, and any such provision is  
611 void.

612 ~~(d) A responsible public entity shall appropriate on a~~  
613 ~~priority basis as required by the comprehensive agreement a~~  
614 ~~contractual payment obligation, annual or otherwise, from the~~  
615 ~~enterprise or other government fund from which the qualifying~~  
616 ~~projects will be funded. This required payment obligation must~~  
617 ~~be appropriated before other noncontractual obligations payable~~  
618 ~~from the same enterprise or other government fund.~~

619 (10) ~~(12)~~ POWERS AND DUTIES OF THE PRIVATE ENTITY.—

620 (a) The private entity shall:

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

624 2. Maintain, or provide by contract for the maintenance or  
625 improvement of, the qualifying project if required by the  
626 comprehensive agreement.

627 3. Cooperate with the responsible public entity in making  
628 best efforts to establish interconnection between the qualifying  
629 project and any other facility or infrastructure as requested by  
630 the responsible public entity in accordance with the provisions  
631 of the comprehensive agreement.

632 4. Comply with the comprehensive agreement and any lease or  
633 service contract.

634 (b) Each private facility that is constructed pursuant to  
635 this section must comply with the requirements of federal,  
636 state, and local laws; state, regional, and local comprehensive  
637 plans; the responsible public entity's rules, procedures, and  
638 standards for facilities; and such other conditions that the

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639 responsible public entity determines to be in the public's best  
640 interest and that are included in the comprehensive agreement.

641 (c) The responsible public entity may provide services to  
642 the private entity. An agreement for maintenance and other  
643 services entered into pursuant to this section must provide for  
644 full reimbursement for services rendered for qualifying  
645 projects.

646 (d) A private entity of a qualifying project may provide  
647 additional services for the qualifying project to the public or  
648 to other private entities if the provision of additional  
649 services does not impair the private entity's ability to meet  
650 its commitments to the responsible public entity pursuant to the  
651 comprehensive agreement.

652 (11)~~(13)~~ EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the  
653 expiration or termination of a comprehensive agreement, the  
654 responsible public entity may use revenues from the qualifying  
655 project to pay current operation and maintenance costs of the  
656 qualifying project. If the private entity materially defaults  
657 under the comprehensive agreement, the compensation that is  
658 otherwise due to the private entity is payable to satisfy all  
659 financial obligations to investors and lenders on the qualifying  
660 project in the same way that is provided in the comprehensive  
661 agreement or any other agreement involving the qualifying  
662 project, if the costs of operating and maintaining the  
663 qualifying project are paid in the normal course. Revenues in  
664 excess of the costs for operation and maintenance costs may be  
665 paid to the investors and lenders to satisfy payment obligations  
666 under their respective agreements. A responsible public entity  
667 may terminate with cause and without prejudice a comprehensive

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668 agreement and may exercise any other rights or remedies that may  
669 be available to it in accordance with the provisions of the  
670 comprehensive agreement. The full faith and credit of the  
671 responsible public entity may not be pledged to secure the  
672 financing of the private entity. The assumption of the  
673 development or operation of the qualifying project does not  
674 obligate the responsible public entity to pay any obligation of  
675 the private entity from sources other than revenues from the  
676 qualifying project unless stated otherwise in the comprehensive  
677 agreement.

678 (12) ~~(14)~~ SOVEREIGN IMMUNITY.—This section does not waive  
679 the sovereign immunity of a responsible public entity, an  
680 affected local jurisdiction, or an officer or employee thereof  
681 with respect to participation in, or approval of, any part of a  
682 qualifying project or its operation, including, but not limited  
683 to, interconnection of the qualifying project with any other  
684 infrastructure or project. A county or municipality in which a  
685 qualifying project is located possesses sovereign immunity with  
686 respect to the project, including, but not limited to, its  
687 design, construction, and operation.

688 (13) DEPARTMENT OF MANAGEMENT SERVICES.—

689 (a) A responsible public entity may provide a copy of its  
690 comprehensive agreement to the Department of Management  
691 Services. A responsible public entity must redact any  
692 confidential or exempt information from the copy of the  
693 comprehensive agreement before providing it to the Department of  
694 Management Services.

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



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697 responsible public entities for the purpose of sharing  
 698 comprehensive agreements with other responsible public entities.

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

702 (14)~~(15)~~ CONSTRUCTION.—

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

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

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

714 (d)~~(a)~~ This section provides an alternative method and does  
 715 not limit a county, municipality, special district, or other  
 716 political subdivision of the state in the procurement or  
 717 operation of a qualifying project ~~acquisition, design, or~~  
 718 ~~construction of a public project~~ pursuant to other statutory or  
 719 constitutional authority.

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

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726        (f)~~(e)~~ This section does not waive any requirement of s.  
727 287.055.

728        Section 2. Section 287.0935, Florida Statutes, is amended  
729 to read:

730        287.0935 Surety bond insurers.—When the contract amount of  
731 a project that uses public funds does not exceed \$5 million  
732 ~~\$500,000 and when public funds are utilized for the project, a~~  
733 ~~person, the state, or a political subdivision~~ may ~~shall~~ not  
734 ~~refuse, as surety for the project,~~ bid bonds, performance bonds,  
735 labor and materials payment bonds, or any other surety bonds as  
736 surety for the project if such bonds ~~which~~ are issued by a  
737 surety company that meets all ~~which fulfills each~~ of the  
738 following requirements ~~provisions~~:

739        (1) The surety company is licensed to do business in this  
740 state. ~~the State of Florida.~~

741        (2) The surety company holds a certificate of authority  
742 authorizing it to write surety bonds in this state.~~†~~

743        (3) The surety company has twice the minimum surplus and  
744 capital required by the Florida Insurance Code at the time the  
745 invitation to bid is issued, or is currently rated "A-" or  
746 higher by A.M. Best Company.~~†~~

747        (4) The surety company is otherwise in compliance with the  
748 provisions of the Florida Insurance Code.~~†~~ ~~and~~

749        (5) The surety company holds a currently valid certificate  
750 of authority issued by the United States Department of the  
751 Treasury under 31 U.S.C. ss. 9304-9308.

752        Section 3. This act shall take effect July 1, 2016.