

By the Committees on Appropriations; Governmental Oversight and Accountability; and Community Affairs; and Senators Diaz de la Portilla and Bean

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1 A bill to be entitled
2 An act relating to public-private partnerships;
3 amending s. 154.11, F.S.; revising the powers of a
4 public health trust; amending s. 255.60, F.S.;
5 authorizing certain public entities to contract for
6 public service works with not-for-profit
7 organizations; revising eligibility and contract
8 requirements for not-for-profit organizations
9 contracting with certain public entities; creating s.
10 287.05712, F.S.; providing definitions; providing
11 legislative findings and intent relating to the
12 construction or improvement by private entities of
13 facilities used predominantly for a public purpose;
14 creating a task force to establish specified
15 guidelines; providing procurement procedures;
16 providing requirements for project approval; providing
17 project qualifications and process; providing for
18 notice to affected local jurisdictions; providing for
19 interim and comprehensive agreements between a public
20 and a private entity; providing for use fees;
21 providing for financing sources for certain projects
22 by a private entity; providing powers and duties of
23 private entities; providing for expiration or
24 termination of agreements; providing for the
25 applicability of sovereign immunity for public
26 entities with respect to qualified projects; providing
27 for construction of the act; creating s. 336.71, F.S.;
28 authorizing counties to enter into public-private
29 partnership agreements for construction of roads under

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30 certain circumstances; providing bid exemption for
31 such projects under certain circumstances; providing
32 for a public notice and meeting; providing
33 applicability; providing an effective date.
34

35 Be It Enacted by the Legislature of the State of Florida:
36

37 Section 1. Paragraph (f) of subsection (1) of section
38 154.11, Florida Statutes, is amended to read:

39 154.11 Powers of board of trustees.—

40 (1) The board of trustees of each public health trust shall
41 be deemed to exercise a public and essential governmental
42 function of both the state and the county and in furtherance
43 thereof it shall, subject to limitation by the governing body of
44 the county in which such board is located, have all of the
45 powers necessary or convenient to carry out the operation and
46 governance of designated health care facilities, including, but
47 without limiting the generality of, the foregoing:

48 (f) To lease, either as lessee or lessor, or rent for any
49 number of years and upon any terms and conditions real property,
50 except that the board shall not lease or rent, as lessor, any
51 real property other than office space controlled by the Public
52 Health Trust, except in accordance with the requirements of s.
53 125.35 [F. S. 1973].

54 Section 2. Section 255.60, Florida Statutes, is amended to
55 read:

56 255.60 Special contracts with charitable not-for-profit
57 ~~youth~~ organizations.—The state, ~~or~~ the governing body of any
58 political subdivision of the state, or a public-private

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59 partnership is authorized, but not required, to contract for
60 public service work with a not-for-profit organization ~~such as~~
61 ~~highway and park maintenance,~~ notwithstanding competitive sealed
62 bid procedures required under this chapter, ~~or~~ chapter 287, or
63 any municipal or county charter, upon compliance with this
64 section.

65 (1) The contractor or supplier must meet the following
66 conditions:

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

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

72 (c) For youth organizations, the corporate charter of the
73 contractor or supplier must state that the corporation is
74 organized as a charitable youth organization exclusively for at-
75 risk youths enrolled in a work-study program.

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

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

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

86 (b) For the preservation, maintenance, and improvement of
87 park land, the property must be at least 20 acres with

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88 contiguous permanent public facilities that are capable of
89 seating at least 5,000 persons.

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

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

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

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

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

102 (3) A ~~No~~ contract under this section may not exceed the
103 annual sum of \$250,000.

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

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

112 Section 3. Section 287.05712, Florida Statutes, is created
113 to read:

114 287.05712 Public-private partnerships.-

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

116 (a) "Affected local jurisdiction" means a county,

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117 municipality, or special district in which all or a portion of a
118 qualifying project is located.

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

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

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

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

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

132 (g) "Private entity" means any natural person, corporation,
133 general partnership, limited liability company, limited
134 partnership, joint venture, business trust, public benefit
135 corporation, nonprofit entity, or other private business entity.

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

140 (i) "Qualifying project" means:

141 1. A facility or project that serves a public purpose,
142 including, but not limited to, any ferry or mass transit
143 facility, vehicle parking facility, airport or seaport facility,
144 rail facility or project, fuel supply facility, oil or gas
145 pipeline, medical or nursing care facility, recreational

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146 facility, sporting or cultural facility, or educational facility
147 or other building or facility that is used or will be used by a
148 public educational institution, or any other public facility or
149 infrastructure that is used or will be used by the public at
150 large or in support of an accepted public purpose or activity;

151 2. An improvement, including equipment, of a building that
152 will be principally used by a public entity, the public at
153 large, or that supports a service delivery system in the public
154 sector;

155 3. A water, wastewater, or surface water management
156 facility or other related infrastructure; or

157 4. Notwithstanding any provision of this section, for
158 projects that involve a facility owned or operated by the
159 governing board of a county, district, or municipal hospital or
160 health care system, only those projects that the governing board
161 designates as qualifying projects pursuant to this section.

162 (j) "Responsible public entity" means a county,
163 municipality, school board, or any other political subdivision
164 of the state; a public body corporate and politic; or a regional
165 entity that serves a public purpose and is authorized to develop
166 or operate a qualifying project.

167 (k) "Revenues" means the income, earnings, user fees, lease
168 payments, or other service payments relating to the development
169 or operation of a qualifying project, including, but not limited
170 to, money received as grants or otherwise from the Federal
171 Government, a public entity, or an agency or instrumentality
172 thereof in aid of the qualifying project.

173 (l) "Service contract" means a contract between a public
174 entity and the private entity which defines the terms of the

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175 services to be provided with respect to a qualifying project.

176 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
177 that there is a public need for the construction or upgrade of
178 facilities that are used predominantly for public purposes and
179 that it is in the public's interest to provide for the
180 construction or upgrade of such facilities.

181 (a) The Legislature also finds that:

182 1. There is a public need for timely and cost-effective
183 acquisition, design, construction, improvement, renovation,
184 expansion, equipping, maintenance, operation, implementation, or
185 installation of projects serving a public purpose, including
186 educational facilities, transportation facilities, water or
187 wastewater management facilities and infrastructure, technology
188 infrastructure, roads, highways, bridges, and other public
189 infrastructure and government facilities within the state which
190 serve a public need and purpose, and that such public need may
191 not be wholly satisfied by existing procurement methods.

192 2. There are inadequate resources to develop new
193 educational facilities, transportation facilities, water or
194 wastewater management facilities and infrastructure, technology
195 infrastructure, roads, highways, bridges, and other public
196 infrastructure and government facilities for the benefit of
197 residents of this state, and that a public-private partnership
198 has demonstrated that it can meet the needs by improving the
199 schedule for delivery, lowering the cost, and providing other
200 benefits to the public.

201 3. There may be state and federal tax incentives that
202 promote partnerships between public and private entities to
203 develop and operate qualifying projects.

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204 4. A procurement under this section serves the public
205 purpose of this section if such procurement facilitates the
206 timely development or operation of a qualifying project.

207 (b) It is the intent of the Legislature to encourage
208 investment in the state by private entities; to facilitate
209 various bond financing mechanisms, private capital, and other
210 funding sources for the development and operation of qualifying
211 projects, including expansion and acceleration of such financing
212 to meet the public need; and to provide the greatest possible
213 flexibility to public and private entities contracting for the
214 provision of public services.

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

216 (a) There is created the Partnership for Public Facilities
217 and Infrastructure Act Guidelines Task Force for the purpose of
218 recommending guidelines for the Legislature to consider for
219 purposes of creating a uniform process for establishing public-
220 private partnerships, including the types of factors responsible
221 public entities should review and consider when processing
222 requests for public-private partnership projects pursuant to
223 this section.

224 (b) The task force shall be composed of seven members as
225 follows:

226 1. The secretary of the Department of Management Services
227 or his or her designee, who shall serve as chair of the task
228 force.

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

230 a. One county government official.

231 b. One municipal government official.

232 c. One district school board member.

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233 d. Three representatives of the business community.

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

235 By August 31, 2013, the task force shall meet to establish
236 procedures for the conduct of its business and to elect a vice
237 chair. The task force shall meet at the call of the chair. A
238 majority of the members of the task force constitutes a quorum,
239 and a quorum is necessary for the purpose of voting on any
240 action or recommendation of the task force. All meetings shall
241 be held in Tallahassee unless otherwise decided by the task
242 force. No more than two meetings may be held in a location other
243 than Tallahassee for the purpose of taking public testimony.
244 Administrative and technical support shall be provided by the
245 department. Task force members shall serve without compensation
246 and are not entitled to reimbursement for per diem or travel
247 expenses.

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

250 1. Opportunities for competition through public notice and
251 the availability of representatives of the responsible public
252 entity to meet with private entities considering a proposal.

253 2. Reasonable criteria for choosing among competing
254 proposals.

255 3. Suggested timelines for selecting proposals and
256 negotiating an interim or comprehensive agreement.

257 4. Whether an accelerated selection, review, and
258 documentation timeline should be considered for proposals
259 involving a qualifying project that the responsible public
260 entity deems a priority.

261 5. Procedures for financial review and analysis which, at a

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262 minimum, include a cost-benefit analysis, an assessment of
263 opportunity cost, and consideration of the results of all
264 studies and analyses related to the proposed qualifying project.

265 6. The adequacy of the information released when seeking
266 competing proposals and providing for the enhancement of that
267 information, if necessary, to encourage competition.

268 7. Current exemptions from public records and public
269 meetings requirements, and if any changes to those exemptions
270 are necessary or if any new exemptions should be created in
271 order to maintain the confidentiality of financial and
272 proprietary information received as part of an unsolicited
273 proposal.

274 8. Recommendations regarding the authority of the
275 responsible public entity to engage the services of qualified
276 professionals, which may include a Florida-registered
277 professional or a certified public accountant, not otherwise
278 employed by the responsible public entity, to provide an
279 independent analysis regarding the specifics, advantages,
280 disadvantages, and long-term and short-term costs of a request
281 by a private entity for approval of a qualifying project, unless
282 the governing body of the public entity determines that such
283 analysis should be performed by employees of the public entity.

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

287 (f) The task force is terminated December 31, 2014. The
288 establishment of guidelines pursuant to this section by the task
289 force or the adoption of such guidelines by a public entity is
290 not required for the public entity to request or receive

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291 proposals for a qualifying project or to enter into a
292 comprehensive agreement for a qualifying project. A public
293 entity may adopt guidelines before or after the establishment of
294 guidelines by the task force, which may remain in effect if such
295 guidelines are not inconsistent with the guidelines established
296 by the task force. A guideline that is inconsistent with the
297 guidelines of the task force must be amended as necessary to
298 maintain consistency with the task force guidelines.

299 (4) PROCUREMENT PROCEDURES.—A responsible public entity may
300 receive unsolicited proposals or may solicit proposals for
301 qualifying projects and may thereafter enter into an agreement
302 with a private entity, or a consortium of private entities, for
303 the building, upgrading, operating, ownership, or financing of
304 facilities.

305 (a) The responsible public entity may establish a
306 reasonable application fee for the submission of an unsolicited
307 proposal under this section. The fee must be sufficient to pay
308 the costs of evaluating the proposal. The responsible public
309 entity may engage the services of a private consultant to assist
310 in the evaluation of the proposal.

311 (b) The responsible public entity may request a proposal
312 from private entities for a public-private project; or, if the
313 public entity receives an unsolicited proposal for a public-
314 private project and the public entity intends to enter into a
315 comprehensive agreement for the project described in such
316 unsolicited proposal, the public entity shall publish notice in
317 the Florida Administrative Register and a newspaper of general
318 circulation at least once a week for 2 weeks stating that the
319 public entity has received a proposal and will accept other

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320 proposals for the same project. The timeframe within which the
321 public entity may accept other proposals shall be determined by
322 the public entity on a project-by-project basis based upon the
323 complexity of the project and the public benefit to be gained by
324 allowing a longer or shorter period of time within which other
325 proposals may be received; however, the timeframe for allowing
326 other proposals must be at least 21 days, but no more than 120
327 days, after publication of the notice. A copy of the notice must
328 be mailed to each local government in the affected area.

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

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

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

335 2. Is for a facility that is owned by the responsible
336 public entity or for a facility for which ownership will be
337 conveyed to the responsible public entity.

338 3. Has adequate safeguards in place to ensure that
339 additional costs or service disruptions are not imposed on the
340 public in the event of material default or cancellation of the
341 agreement by the responsible public entity.

342 4. Has adequate safeguards in place to ensure that the
343 responsible public entity or private entity has the opportunity
344 to add capacity to the proposed project or to add capacity to
345 other facilities serving similar predominantly public purposes.

346 5. Will be owned by the responsible public entity upon
347 completion or termination of the agreement and upon payment of
348 the amounts financed.

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349 (e) Before signing a comprehensive agreement, the
350 responsible public entity must consider a reasonable finance
351 plan that is consistent with subsection (11), the project cost,
352 revenues by source, available financing, major assumptions,
353 internal rate of return on private investments if governmental
354 funds are assumed in order to deliver a cost-feasible project,
355 and the total cash-flow analysis beginning with the
356 implementation of the project and extending for the term of the
357 agreement.

358 (f) In considering an unsolicited proposal, the responsible
359 public entity may require from the private entity a technical
360 study prepared by a nationally recognized expert with experience
361 preparing analysis for bond rating agencies. In evaluating the
362 technical study, the responsible public entity may rely upon
363 internal staff reports prepared by personnel familiar with the
364 operation of similar facilities or the advice of external
365 advisors or consultants who have relevant experience.

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

370 (a) A description of the qualifying project, including the
371 conceptual design of the facilities or a conceptual plan for the
372 provision of services, and a schedule for the initiation and
373 completion of the qualifying project.

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

377 (c) A description of the private entity's general plans for

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378 financing the qualifying project, including the sources of the
379 private entity's funds and the identity of any dedicated revenue
380 source or proposed debt or equity investment on behalf of the
381 private entity.

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

384 (e) The proposed user fees, lease payments, or other
385 service payments over the term of a comprehensive agreement, and
386 the methodology and circumstances that would allow changes to
387 such user fees, lease payments, and service payments in the
388 future.

389 (f) Reasonable additional material or information requested
390 by the responsible public entity.

391 (6) PROJECT QUALIFICATION AND PROCESS.—

392 (a) The private entity must meet the minimum standards
393 contained in the responsible public entity's guidelines for
394 qualifying professional services and contracts for traditional
395 procurement projects.

396 (b) The responsible public entity must ensure:

397 1. That provision is made for the private entity's
398 performance and payment of subcontractors, including, but not
399 limited to, surety bonds, letters of credit, parent company
400 guarantees, and lender and equity partner guarantees. For the
401 components of the qualifying project which involve construction
402 performance and payment, bonds are required and are subject to
403 the recordation, notice, suit limitation, and other requirements
404 of s. 255.05.

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

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

410 (c) After the public notification period has expired in the
411 case of an unsolicited proposal, the responsible public entity
412 shall rank the proposals received in order of preference. In
413 ranking the proposals, the responsible public entity may
414 consider factors that include, but are not limited to,
415 professional qualifications, general business terms, innovative
416 design techniques or cost-reduction terms, and finance plans.
417 The responsible public entity may then begin negotiations for a
418 comprehensive agreement with the highest-ranked proposer. If the
419 responsible public entity is not satisfied with the results of
420 the negotiations, the responsible public entity may terminate
421 negotiations with the highest-ranked proposer and negotiate with
422 the second- or subsequent-ranked proposers in the order
423 consistent with this procedure. If only one proposal is
424 received, the responsible public entity may negotiate in good
425 faith, and if the public entity is not satisfied with the
426 results of the negotiations, the public entity may terminate
427 negotiations with the proposer. Notwithstanding this paragraph,
428 the responsible public entity may reject all proposals at any
429 point in the process until a contract with the proposer is
430 executed.

431 (d) The responsible public entity shall perform an
432 independent analysis of the proposed public-private partnership
433 which demonstrates the cost-effectiveness and overall public
434 benefit before the procurement process is initiated or before
435 the contract is awarded.

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436 (e) The responsible public entity may approve the
437 development or operation of an educational facility, a
438 transportation facility, a water or wastewater management
439 facility or related infrastructure, a technology infrastructure
440 or other public infrastructure, or a government facility needed
441 by the responsible public entity as a qualifying project, or the
442 design or equipping of a qualifying project that is developed or
443 operated, if:

444 1. There is a public need for or benefit derived from a
445 project of the type that the private entity proposes as the
446 qualifying project.

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

449 3. The private entity's plans will result in the timely
450 acquisition, design, construction, improvement, renovation,
451 expansion, equipping, maintenance, or operation of the
452 qualifying project.

453 (f) The responsible public entity may charge a reasonable
454 fee to cover the costs of processing, reviewing, and evaluating
455 the request, including, but not limited to, reasonable attorney
456 fees and fees for financial and technical advisors or
457 consultants and for other necessary advisors or consultants.

458 (g) Upon approval of a qualifying project, the responsible
459 public entity shall establish a date for the commencement of
460 activities related to the qualifying project. The responsible
461 public entity may extend the commencement date.

462 (h) Approval of a qualifying project by the responsible
463 public entity is subject to entering into a comprehensive
464 agreement with the private entity.

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465 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.-

466 (a) The responsible public entity must notify each affected
467 local jurisdiction by furnishing a copy of the proposal to each
468 affected local jurisdiction when considering a proposal for a
469 qualifying project.

470 (b) Each affected local jurisdiction that is not a
471 responsible public entity for the respective qualifying project
472 may, within 60 days after receiving the notice, submit written
473 comments to the responsible public entity to indicate whether
474 the facility is incompatible with the local comprehensive plan,
475 the local infrastructure development plan, the capital
476 improvements budget, any development of regional impact
477 processes or timelines, or other governmental spending plan. The
478 responsible public entity shall consider the comments of the
479 affected local jurisdiction before entering into a comprehensive
480 agreement with a private entity. If an affected local
481 jurisdiction fails to respond to the responsible public entity
482 within the time provided in this paragraph, such nonresponse is
483 deemed an acknowledgement by the affected local jurisdiction
484 that the qualifying project is compatible with the local
485 comprehensive plan, the local infrastructure development plan,
486 the capital improvements budget, or other governmental spending
487 plan.

488 (8) INTERIM AGREEMENT.-Before or in connection with the
489 negotiation of a comprehensive agreement, the public entity may
490 enter into an interim agreement with the private entity
491 proposing the development or operation of the qualifying
492 project. An interim agreement does not obligate the responsible
493 public entity to enter into a comprehensive agreement. The

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494 interim agreement is discretionary with the parties and is not
495 required on a qualifying project for which the parties may
496 proceed directly to a comprehensive agreement without the need
497 for an interim agreement. An interim agreement must be limited
498 to provisions that:

499 (a) Authorize the private entity to commence activities for
500 which it may be compensated related to the proposed qualifying
501 project, including, but not limited to, project planning and
502 development, design, environmental analysis and mitigation,
503 survey, other activities concerning any part of the proposed
504 qualifying project, and ascertaining the availability of
505 financing for the proposed facility or facilities.

506 (b) Establish the process and timing of the negotiation of
507 the comprehensive agreement.

508 (c) Relate to an aspect of the development or operation of
509 a qualifying project that the responsible public entity and the
510 private entity deem appropriate.

511 (9) COMPREHENSIVE AGREEMENT.—

512 (a) Before developing or operating the qualifying project,
513 the private entity must enter into a comprehensive agreement
514 with the responsible public entity. The comprehensive agreement
515 must provide for:

516 1. The delivery of performance and payment bonds, letters
517 of credit, or other security acceptable to the responsible
518 public entity in connection with the development or operation of
519 the qualifying project in a form and amount satisfactory to the
520 responsible public entity. For the components of the qualifying
521 project which involve construction, the form and amount of the
522 bonds must comply with s. 255.05.

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523 2. The review of the design for the qualifying project by
524 the responsible public entity and, if the design conforms to
525 standards acceptable to the responsible public entity, the
526 approval of the responsible public entity. This subparagraph
527 does not require the private entity to complete the design of
528 the qualifying project before the execution of the comprehensive
529 agreement.

530 3. The inspection of the qualifying project by the
531 responsible public entity to ensure that the private entity's
532 activities are acceptable to the public entity in accordance
533 with the comprehensive agreement.

534 4. The maintenance by the private entity of a policy of
535 public liability insurance, a copy of which must be filed with
536 the responsible public entity and accompanied by proofs of
537 coverage, or self-insurance, each in a form and amount
538 satisfactory to the responsible public entity and reasonably
539 sufficient to ensure coverage of tort liability to the public
540 and employees and to enable the continued operation of the
541 qualifying project.

542 5. The monitoring by the responsible public entity of the
543 maintenance practices to be performed by the private entity to
544 ensure that the qualifying project is properly maintained.

545 6. The periodic filing by the private entity of the
546 appropriate financial statements that pertain to the qualifying
547 project.

548 7. The procedures that govern the rights and
549 responsibilities of the responsible public entity and the
550 private entity in the course of the construction and operation
551 of the qualifying project and in the event of the termination of

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552 the comprehensive agreement or a material default by the private
553 entity. The procedures must include conditions that govern the
554 assumption of the duties and responsibilities of the private
555 entity by an entity that funded, in whole or part, the
556 qualifying project or by the responsible public entity, and must
557 provide for the transfer or purchase of property or other
558 interests of the private entity by the responsible public
559 entity.

560 8. In negotiating user fees, the fees must be the same for
561 persons using the facility under like conditions and must not
562 materially discourage use of the qualifying project. The
563 execution of the comprehensive agreement or a subsequent
564 amendment is conclusive evidence that the fees, lease payments,
565 or service payments provided for in the comprehensive agreement
566 comply with this section. Fees or lease payments established in
567 the comprehensive agreement as a source of revenue may be in
568 addition to, or in lieu of, service payments.

569 9. The duties of the private entity, including the terms
570 and conditions that the responsible public entity determines
571 serve the public purpose of this section.

572 (b) The comprehensive agreement may include:

573 1. An agreement by the responsible public entity to make
574 grants or loans to the private entity from amounts received from
575 the federal, state, or local government or an agency or
576 instrumentality thereof.

577 2. A provision under which each entity agrees to provide
578 notice of default and cure rights for the benefit of the other
579 entity, including, but not limited to, a provision regarding
580 unavoidable delays.

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581 3. A provision that terminates the authority and duties of
582 the private entity under this section and dedicates the
583 qualifying project to the responsible public entity or, if the
584 qualifying project was initially dedicated by an affected local
585 jurisdiction, to the affected local jurisdiction for public use.

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

590 (a) The responsible public entity may develop new
591 facilities or increase capacity in existing facilities through
592 agreements with public-private partnerships.

593 (b) The public-private partnership agreement must ensure
594 that the facility is properly operated, maintained, or improved
595 in accordance with standards set forth in the comprehensive
596 agreement.

597 (c) The responsible public entity may lease existing fee-
598 for-use facilities through a public-private partnership
599 agreement.

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

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

605 (11) FINANCING.—

606 (a) A private entity may enter into a private-source
607 financing agreement between financing sources and the private
608 entity. A financing agreement and any liens on the property or
609 facility must be paid in full at the applicable closing that

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610 transfers ownership or operation of the facility to the
611 responsible public entity at the conclusion of the term of the
612 comprehensive agreement.

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

616 (c) The responsible public entity may use innovative
617 finance techniques associated with a public-private partnership
618 under this section, including, but not limited to, federal loans
619 as provided in Titles 23 and 49 of the Code of Federal
620 Regulations, commercial bank loans, and hedges against inflation
621 from commercial banks or other private sources. In addition, the
622 responsible public entity may provide its own capital or
623 operating budget to support a qualifying project. The budget may
624 be from any legally permissible funding sources of the
625 responsible public entity, including the proceeds of debt
626 issuances. A responsible public entity may use the model
627 financing agreement provided for in s. 489.145(6) for its
628 financing of a facility owned by a responsible public entity. A
629 financing agreement may not require the responsible public
630 entity to indemnify the financing source, subject the
631 responsible public entity's facility to liens in violation of s.
632 11.066(5), or secure financing by the responsible public entity
633 with a pledge of security interest, and any such provision is
634 void.

635 (d) A responsible public entity shall appropriate on a
636 priority basis as required by the comprehensive agreement a
637 contractual payment obligation, annual or otherwise, from the
638 enterprise or other government fund from which the qualifying

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639 projects will be funded. This required payment obligation must
640 be appropriated before other noncontractual obligations payable
641 from the same enterprise or other government fund.

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

643 (a) The private entity shall:

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

647 2. Maintain, or provide by contract for the maintenance or
648 improvement of, the qualifying project if required by the
649 comprehensive agreement.

650 3. Cooperate with the responsible public entity in making
651 best efforts to establish interconnection between the qualifying
652 project and any other facility or infrastructure as requested by
653 the responsible public entity in accordance with the provisions
654 of the comprehensive agreement.

655 4. Comply with the comprehensive agreement and any lease or
656 service contract.

657 (b) Each private facility that is constructed pursuant to
658 this section must comply with the requirements of federal,
659 state, and local laws; state, regional, and local comprehensive
660 plans; the responsible public entity's rules, procedures, and
661 standards for facilities; and such other conditions that the
662 responsible public entity determines to be in the public's best
663 interest and that are included in the comprehensive agreement.

664 (c) The responsible public entity may provide services to
665 the private entity. An agreement for maintenance and other
666 services entered into pursuant to this section must provide for
667 full reimbursement for services rendered for qualifying

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668 projects.

669 (d) A private entity of a qualifying project may provide
670 additional services for the qualifying project to the public or
671 to other private entities if the provision of additional
672 services does not impair the private entity's ability to meet
673 its commitments to the responsible public entity pursuant to the
674 comprehensive agreement.

675 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
676 expiration or termination of a comprehensive agreement, the
677 responsible public entity may use revenues from the qualifying
678 project to pay current operation and maintenance costs of the
679 qualifying project. If the private entity materially defaults
680 under the comprehensive agreement, the compensation that is
681 otherwise due to the private entity is payable to satisfy all
682 financial obligations to investors and lenders on the qualifying
683 project in the same way that is provided in the comprehensive
684 agreement or any other agreement involving the qualifying
685 project, if the costs of operating and maintaining the
686 qualifying project are paid in the normal course. Revenues in
687 excess of the costs for operation and maintenance costs may be
688 paid to the investors and lenders to satisfy payment obligations
689 under their respective agreements. A responsible public entity
690 may terminate with cause and without prejudice a comprehensive
691 agreement and may exercise any other rights or remedies that may
692 be available to it in accordance with the provisions of the
693 comprehensive agreement. The full faith and credit of the
694 responsible public entity may not be pledged to secure the
695 financing of the private entity. The assumption of the
696 development or operation of the qualifying project does not

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697 obligate the responsible public entity to pay any obligation of
698 the private entity from sources other than revenues from the
699 qualifying project unless stated otherwise in the comprehensive
700 agreement.

701 (14) SOVEREIGN IMMUNITY.—This section does not waive the
702 sovereign immunity of a responsible public entity, an affected
703 local jurisdiction, or an officer or employee thereof with
704 respect to participation in, or approval of, any part of a
705 qualifying project or its operation, including, but not limited
706 to, interconnection of the qualifying project with any other
707 infrastructure or project. A county or municipality in which a
708 qualifying project is located possesses sovereign immunity with
709 respect to the project, including, but not limited to, its
710 design, construction, and operation.

711 (15) CONSTRUCTION.—This section shall be liberally
712 construed to effectuate the purposes of this section. This
713 section shall be construed as cumulative and supplemental to any
714 other authority or power vested in or exercised by the governing
715 board of a county, district, or municipal hospital or health
716 care system including those contained in acts of the Legislature
717 establishing such public hospital boards or s. 155.40. This
718 section does not affect any agreement or existing relationship
719 with a supporting organization involving such governing board or
720 system in effect as of January 1, 2013.

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

724 (b) Except as otherwise provided in this section, this
725 section does not amend existing laws by granting additional

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726 powers to, or further restricting, a local governmental entity
727 from regulating and entering into cooperative arrangements with
728 the private sector for the planning, construction, or operation
729 of a facility.

730 (c) This section does not waive any requirement of s.
731 287.055.

732 Section 4. Section 336.71, Florida Statutes, is created to
733 read:

734 336.71 Public-private cooperation in construction of county
735 roads.-

736 (1) If a county receives a proposal, solicited or
737 unsolicited, from a private entity seeking to construct, extend,
738 or improve a county road or portion thereof, the county may
739 enter into an agreement with the private entity for completion
740 of the road construction project, which agreement may provide
741 for payment to the private entity, from public funds, if the
742 county conducts a noticed public hearing and finds that the
743 proposed county road construction project:

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

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

747 (c) Has adequate safeguards to ensure that additional costs
748 or unreasonable service disruptions are not realized by the
749 public.

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

752 (e) Results in a financial benefit to the public by
753 completing the project at a cost to the public significantly
754 lower than if the project were completed by the county using the

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755 normal procurement process.

756 (2) The notice for the public hearing provided for in
757 subsection (1) must be published at least 14 days before the
758 date of the public meeting at which the governing board takes
759 final action. The notice must identify the project, the
760 estimated cost of the project, and specify that the purpose for
761 the public meeting is to consider whether it is in the public's
762 best interest to accept the proposal and enter into an agreement
763 pursuant thereto. The determination of cost savings pursuant to
764 paragraph (1) (e) must be supported by a professional engineer's
765 cost estimate made available to the public at least 14 days
766 before the public meeting and placed in the record for that
767 meeting.

768 (3) Upon compliance with subsection (1), the project and
769 agreement are exempt from s. 255.20 pursuant to s.
770 255.20(1)(c)11.

771 (4) Except as otherwise expressly provided in this section,
772 this section does not affect existing law by granting additional
773 powers to or imposing further restrictions on local government
774 entities.

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