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LEGISLATIVE ACTION

Senate

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House

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Senator Evers moved the following:

**Senate Amendment (with title amendment)**

Between lines 707 and 708

insert:

Section 7. Section 287.05712, Florida Statutes, is  
renumbered as section 255.065, Florida Statutes, and amended to  
read:

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

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

(a) "Affected local jurisdiction" means a county,  
municipality, or special district in which all or a portion of a



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12 qualifying project is located.

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

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

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

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

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

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

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

34 (i) "Qualifying project" means:

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



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41 or other building or facility that is used or will be used by a  
42 public educational institution, or any other public facility or  
43 infrastructure that is used or will be used by the public at  
44 large or in support of an accepted public purpose or activity;

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

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

51 4. Notwithstanding any provision of this section, for  
52 projects that involve a facility owned or operated by the  
53 governing board of a county, district, or municipal hospital or  
54 health care system, or projects that involve a facility owned or  
55 operated by a municipal electric utility, only those projects  
56 that the governing board designates as qualifying projects  
57 pursuant to this section.

58 (j) "Responsible public entity" means a county,  
59 municipality, school district, special district, or Florida  
60 College System institution board, or any other political  
61 subdivision of the state; a public body corporate and politic;  
62 or a regional entity that serves a public purpose and is  
63 authorized to develop or operate a qualifying project.

64 (k) "Revenues" means the income, earnings, user fees, lease  
65 payments, or other service payments relating to the development  
66 or operation of a qualifying project, including, but not limited  
67 to, money received as grants or otherwise from the Federal  
68 Government, a public entity, or an agency or instrumentality  
69 thereof in aid of the qualifying project.



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70 (1) "Service contract" means a contract between a  
71 responsible public entity and the private entity which defines  
72 the terms of the services to be provided with respect to a  
73 qualifying project.

74 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds  
75 that there is a public need for the construction or upgrade of  
76 facilities that are used predominantly for public purposes and  
77 that it is in the public's interest to provide for the  
78 construction or upgrade of such facilities.

79 (a) The Legislature also finds that:

80 1. There is a public need for timely and cost-effective  
81 acquisition, design, construction, improvement, renovation,  
82 expansion, equipping, maintenance, operation, implementation, or  
83 installation of projects serving a public purpose, including  
84 educational facilities, transportation facilities, water or  
85 wastewater management facilities and infrastructure, technology  
86 infrastructure, roads, highways, bridges, and other public  
87 infrastructure and government facilities within the state which  
88 serve a public need and purpose, and that such public need may  
89 not be wholly satisfied by existing procurement methods.

90 2. There are inadequate resources to develop new  
91 educational facilities, transportation facilities, water or  
92 wastewater management facilities and infrastructure, technology  
93 infrastructure, roads, highways, bridges, and other public  
94 infrastructure and government facilities for the benefit of  
95 residents of this state, and that a public-private partnership  
96 has demonstrated that it can meet the needs by improving the  
97 schedule for delivery, lowering the cost, and providing other  
98 benefits to the public.



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99           3. There may be state and federal tax incentives that  
100 promote partnerships between public and private entities to  
101 develop and operate qualifying projects.

102           4. A procurement under this section serves the public  
103 purpose of this section if such procurement facilitates the  
104 timely development or operation of a qualifying project.

105           (b) It is the intent of the Legislature to encourage  
106 investment in the state by private entities; to facilitate  
107 various bond financing mechanisms, private capital, and other  
108 funding sources for the development and operation of qualifying  
109 projects, including expansion and acceleration of such financing  
110 to meet the public need; and to provide the greatest possible  
111 flexibility to public and private entities contracting for the  
112 provision of public services.

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

114           ~~(a) There is created the Partnership for Public Facilities~~  
115 ~~and Infrastructure Act Guidelines Task Force for the purpose of~~  
116 ~~recommending guidelines for the Legislature to consider for~~  
117 ~~purposes of creating a uniform process for establishing public-~~  
118 ~~private partnerships, including the types of factors responsible~~  
119 ~~public entities should review and consider when processing~~  
120 ~~requests for public-private partnership projects pursuant to~~  
121 ~~this section.~~

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

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

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

127           ~~a. One county government official.~~



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128           ~~b. One municipal government official.~~  
129           ~~e. One district school board member.~~  
130           ~~d. Three representatives of the business community.~~  
131           ~~(c) Task force members must be appointed by July 31, 2013.~~  
132 ~~By August 31, 2013, the task force shall meet to establish~~  
133 ~~procedures for the conduct of its business and to elect a vice~~  
134 ~~chair. The task force shall meet at the call of the chair. A~~  
135 ~~majority of the members of the task force constitutes a quorum,~~  
136 ~~and a quorum is necessary for the purpose of voting on any~~  
137 ~~action or recommendation of the task force. All meetings shall~~  
138 ~~be held in Tallahassee, unless otherwise decided by the task~~  
139 ~~force, and then no more than two such meetings may be held in~~  
140 ~~other locations for the purpose of taking public testimony.~~  
141 ~~Administrative and technical support shall be provided by the~~  
142 ~~department. Task force members shall serve without compensation~~  
143 ~~and are not entitled to reimbursement for per diem or travel~~  
144 ~~expenses.~~  
145           ~~(d) In reviewing public-private partnerships and developing~~  
146 ~~recommendations, the task force must consider:~~  
147           ~~1. Opportunities for competition through public notice and~~  
148 ~~the availability of representatives of the responsible public~~  
149 ~~entity to meet with private entities considering a proposal.~~  
150           ~~2. Reasonable criteria for choosing among competing~~  
151 ~~proposals.~~  
152           ~~3. Suggested timelines for selecting proposals and~~  
153 ~~negotiating an interim or comprehensive agreement.~~  
154           ~~4. If an accelerated selection and review and documentation~~  
155 ~~timelines should be considered for proposals involving a~~  
156 ~~qualifying project that the responsible public entity deems a~~



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157 ~~priority.~~

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

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

165 ~~7. Current exemptions from public records and public~~  
166 ~~meetings requirements, if any changes to those exemptions are~~  
167 ~~necessary, or if any new exemptions should be created in order~~  
168 ~~to maintain the confidentiality of financial and proprietary~~  
169 ~~information received as part of an unsolicited proposal.~~

170 ~~8. Recommendations regarding the authority of the~~  
171 ~~responsible public entity to engage the services of qualified~~  
172 ~~professionals, which may include a Florida-registered~~  
173 ~~professional or a certified public accountant, not otherwise~~  
174 ~~employed by the responsible public entity, to provide an~~  
175 ~~independent analysis regarding the specifics, advantages,~~  
176 ~~disadvantages, and long-term and short-term costs of a request~~  
177 ~~by a private entity for approval of a qualifying project, unless~~  
178 ~~the governing body of the public entity determines that such~~  
179 ~~analysis should be performed by employees of the public entity.~~

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

183 ~~(f) The task force is terminated December 31, 2014. The~~  
184 ~~establishment of guidelines pursuant to this section or the~~  
185 ~~adoption of such guidelines by a responsible public entity is~~



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186 ~~not required for such entity to request or receive proposals for~~  
187 ~~a qualifying project or to enter into a comprehensive agreement~~  
188 ~~for a qualifying project. A responsible public entity may adopt~~  
189 ~~guidelines so long as such guidelines are not inconsistent with~~  
190 ~~this section.~~

191 (3)~~(4)~~ PROCUREMENT PROCEDURES.—A responsible public entity  
192 may receive unsolicited proposals or may solicit proposals for  
193 qualifying projects and may thereafter enter into a  
194 comprehensive an agreement with a private entity, or a  
195 consortium of private entities, for the building, upgrading,  
196 operating, ownership, or financing of facilities.

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

200 2. A private entity that submits an unsolicited proposal to  
201 a responsible public entity must concurrently pay an initial  
202 application fee, as determined by the responsible public entity.  
203 Payment must be made by cash, cashier's check, or other  
204 noncancelable instrument. Personal checks may not be accepted.

205 3. If the initial application fee does not cover the  
206 responsible public entity's costs to evaluate the unsolicited  
207 proposal, the responsible public entity must request in writing  
208 the additional amounts required. The private entity must pay the  
209 requested additional amounts within 30 days after receipt of the  
210 notice. The responsible public entity may stop its review of the  
211 unsolicited proposal if the private entity fails to pay the  
212 additional fee.

213 4. If the responsible public entity does not evaluate the  
214 unsolicited proposal, the responsible public entity must return



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215 ~~the application fee~~ ~~The fee must be sufficient to pay the costs~~  
216 ~~of evaluating the proposal. The responsible public entity may~~  
217 ~~engage the services of a private consultant to assist in the~~  
218 ~~evaluation.~~

219 (b) The responsible public entity may request a proposal  
220 from private entities for a qualifying public-private project  
221 or, if the responsible public entity receives an unsolicited  
222 proposal for a qualifying public-private project and the  
223 responsible public entity intends to enter into a comprehensive  
224 agreement for the project described in the such unsolicited  
225 proposal, the responsible public entity shall publish notice in  
226 the Florida Administrative Register and a newspaper of general  
227 circulation at least once a week for 2 weeks stating that the  
228 responsible public entity has received a proposal and will  
229 accept other proposals for the same project. The timeframe  
230 within which the responsible public entity may accept other  
231 proposals shall be determined by the responsible public entity  
232 on a project-by-project basis based upon the complexity of the  
233 qualifying project and the public benefit to be gained by  
234 allowing a longer or shorter period of time within which other  
235 proposals may be received; however, the timeframe for allowing  
236 other proposals must be at least 21 days, but no more than 120  
237 days, after the initial date of publication. If approved by a  
238 majority vote of the responsible public entity's governing body,  
239 the responsible public entity may alter the timeframe for  
240 accepting proposals to more adequately suit the needs of the  
241 qualifying project. A copy of the notice must be mailed to each  
242 local government in the affected area.

243 (c) If the responsible public entity solicits proposals



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244 under this section, the solicitation must include a design  
245 criteria package prepared by an architect, engineer, or  
246 landscape architect licensed in this state which is sufficient  
247 to allow private entities to prepare a bid or a response. The  
248 design criteria package must specify performance-based criteria  
249 for the project, including the legal description of the site,  
250 with survey information; interior space requirements; material  
251 quality standards; schematic layouts and conceptual design  
252 criteria for the project; cost or budget estimates; design and  
253 construction schedules; and site development and utility  
254 requirements ~~A responsible public entity that is a school board~~  
255 ~~may enter into a comprehensive agreement only with the approval~~  
256 ~~of the local governing body.~~

257 (d) Before approving a comprehensive agreement ~~approval~~,  
258 the responsible public entity must determine that the proposed  
259 project:

- 260 1. Is in the public's best interest.
- 261 2. Is for a facility that is owned by the responsible  
262 public entity or for a facility for which ownership will be  
263 conveyed to the responsible public entity.
- 264 3. Has adequate safeguards in place to ensure that  
265 additional costs or service disruptions are not imposed on the  
266 public in the event of material default or cancellation of the  
267 comprehensive agreement by the responsible public entity.
- 268 4. Has adequate safeguards in place to ensure that the  
269 responsible public entity or private entity has the opportunity  
270 to add capacity to the proposed project or other facilities  
271 serving similar predominantly public purposes.
- 272 5. Will be owned by the responsible public entity upon



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273 completion, expiration, or termination of the comprehensive  
274 agreement and upon payment of the amounts financed.

275 (e) Before signing a comprehensive agreement, the  
276 responsible public entity must consider a reasonable finance  
277 plan that is consistent with subsection (9) ~~(11)~~; the qualifying  
278 project cost; revenues by source; available financing; major  
279 assumptions; internal rate of return on private investments, if  
280 governmental funds are assumed in order to deliver a cost-  
281 feasible project; and a total cash-flow analysis beginning with  
282 the implementation of the project and extending for the term of  
283 the comprehensive agreement.

284 (f) In considering an unsolicited proposal, the responsible  
285 public entity may require from the private entity a technical  
286 study prepared by a nationally recognized expert with experience  
287 in preparing analysis for bond rating agencies. In evaluating  
288 the technical study, the responsible public entity may rely upon  
289 internal staff reports prepared by personnel familiar with the  
290 operation of similar facilities or the advice of external  
291 advisors or consultants who have relevant experience.

292 ~~(4)~~ ~~(5)~~ PROJECT APPROVAL REQUIREMENTS.—An unsolicited  
293 proposal from a private entity for approval of a qualifying  
294 project must be accompanied by the following material and  
295 information, unless waived by the responsible public entity:

296 (a) A description of the qualifying project, including the  
297 conceptual design of the facilities or a conceptual plan for the  
298 provision of services, and a schedule for the initiation and  
299 completion of the qualifying project.

300 (b) A description of the method by which the private entity  
301 proposes to secure the necessary property interests that are



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302 required for the qualifying project.

303 (c) A description of the private entity's general plans for  
304 financing the qualifying project, including the sources of the  
305 private entity's funds and the identity of any dedicated revenue  
306 source or proposed debt or equity investment on behalf of the  
307 private entity.

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

310 (e) The proposed user fees, lease payments, or other  
311 service payments over the term of a comprehensive agreement, and  
312 the methodology for and circumstances that would allow changes  
313 to the user fees, lease payments, and other service payments  
314 over time.

315 (f) Additional material or information that the responsible  
316 public entity reasonably requests.

317

318 Any pricing or financial terms included in an unsolicited  
319 proposal must be specific as to when the pricing or terms  
320 expire.

321 (5) ~~(6)~~ PROJECT QUALIFICATION AND PROCESS.-

322 (a) The private entity, or the applicable party or parties  
323 of the private entity's team, must meet the minimum standards  
324 contained in the responsible public entity's guidelines for  
325 qualifying professional services and contracts for traditional  
326 procurement projects.

327 (b) The responsible public entity must:

328 1. Ensure that provision is made for the private entity's  
329 performance and payment of subcontractors, including, but not  
330 limited to, surety bonds, letters of credit, parent company



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331 guarantees, and lender and equity partner guarantees. For the  
332 components of the qualifying project which involve construction  
333 performance and payment, bonds are required and are subject to  
334 the recordation, notice, suit limitation, and other requirements  
335 of s. 255.05.

336 2. Ensure the most efficient pricing of the security  
337 package that provides for the performance and payment of  
338 subcontractors.

339 3. Ensure that ~~provision is made for the transfer of the~~  
340 ~~private entity's obligations if the comprehensive agreement~~  
341 addresses termination upon is terminated or a material default  
342 of the comprehensive agreement occurs.

343 (c) After the public notification period has expired in the  
344 case of an unsolicited proposal, the responsible public entity  
345 shall rank the proposals received in order of preference. In  
346 ranking the proposals, the responsible public entity may  
347 consider factors that include, but are not limited to,  
348 professional qualifications, general business terms, innovative  
349 design techniques or cost-reduction terms, and finance plans.  
350 The responsible public entity may then begin negotiations for a  
351 comprehensive agreement with the highest-ranked firm. If the  
352 responsible public entity is not satisfied with the results of  
353 the negotiations, the responsible public entity may terminate  
354 negotiations with the proposer and negotiate with the second-  
355 ranked or subsequent-ranked firms, in the order consistent with  
356 this procedure. If only one proposal is received, the  
357 responsible public entity may negotiate in good faith, and if  
358 the responsible public entity is not satisfied with the results  
359 of the negotiations, the responsible public entity may terminate



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360 negotiations with the proposer. Notwithstanding this paragraph,  
361 the responsible public entity may reject all proposals at any  
362 point in the process until a contract with the proposer is  
363 executed.

364 (d) The responsible public entity shall perform an  
365 independent analysis of the proposed public-private partnership  
366 which demonstrates the cost-effectiveness and overall public  
367 benefit before the procurement process is initiated or before  
368 the contract is awarded.

369 (e) The responsible public entity may approve the  
370 development or operation of an educational facility, a  
371 transportation facility, a water or wastewater management  
372 facility or related infrastructure, a technology infrastructure  
373 or other public infrastructure, or a government facility needed  
374 by the responsible public entity as a qualifying project, or the  
375 design or equipping of a qualifying project that is developed or  
376 operated, if:

377 1. There is a public need for or benefit derived from a  
378 project of the type that the private entity proposes as the  
379 qualifying project.

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

382 3. The private entity's plans will result in the timely  
383 acquisition, design, construction, improvement, renovation,  
384 expansion, equipping, maintenance, or operation of the  
385 qualifying project.

386 (f) The responsible public entity may charge a reasonable  
387 fee to cover the costs of processing, reviewing, and evaluating  
388 the request, including, but not limited to, reasonable attorney



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389 fees and fees for financial and technical advisors or  
390 consultants and for other necessary advisors or consultants.

391 (g) Upon approval of a qualifying project, the responsible  
392 public entity shall establish a date for the commencement of  
393 activities related to the qualifying project. The responsible  
394 public entity may extend the commencement date.

395 (h) Approval of a qualifying project by the responsible  
396 public entity is subject to entering into a comprehensive  
397 agreement with the private entity.

398 ~~(7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—~~

399 ~~(a) The responsible public entity must notify each affected~~  
400 ~~local jurisdiction by furnishing a copy of the proposal to each~~  
401 ~~affected local jurisdiction when considering a proposal for a~~  
402 ~~qualifying project.~~

403 ~~(b) Each affected local jurisdiction that is not a~~  
404 ~~responsible public entity for the respective qualifying project~~  
405 ~~may, within 60 days after receiving the notice, submit in~~  
406 ~~writing any comments to the responsible public entity and~~  
407 ~~indicate whether the facility is incompatible with the local~~  
408 ~~comprehensive plan, the local infrastructure development plan,~~  
409 ~~the capital improvements budget, any development of regional~~  
410 ~~impact processes or timelines, or other governmental spending~~  
411 ~~plan. The responsible public entity shall consider the comments~~  
412 ~~of the affected local jurisdiction before entering into a~~  
413 ~~comprehensive agreement with a private entity. If an affected~~  
414 ~~local jurisdiction fails to respond to the responsible public~~  
415 ~~entity within the time provided in this paragraph, the~~  
416 ~~nonresponse is deemed an acknowledgment by the affected local~~  
417 ~~jurisdiction that the qualifying project is compatible with the~~



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418 ~~local comprehensive plan, the local infrastructure development~~  
419 ~~plan, the capital improvements budget, or other governmental~~  
420 ~~spending plan.~~

421 (6)~~(8)~~ INTERIM AGREEMENT.—Before or in connection with the  
422 negotiation of a comprehensive agreement, the responsible public  
423 entity may enter into an interim agreement with the private  
424 entity proposing the development or operation of the qualifying  
425 project. An interim agreement does not obligate the responsible  
426 public entity to enter into a comprehensive agreement. The  
427 interim agreement is discretionary with the parties and is not  
428 required on a qualifying project for which the parties may  
429 proceed directly to a comprehensive agreement without the need  
430 for an interim agreement. An interim agreement must be limited  
431 to provisions that:

432 (a) Authorize the private entity to commence activities for  
433 which it may be compensated related to the proposed qualifying  
434 project, including, but not limited to, project planning and  
435 development, design, environmental analysis and mitigation,  
436 survey, other activities concerning any part of the proposed  
437 qualifying project, and ascertaining the availability of  
438 financing for the proposed facility or facilities.

439 (b) Establish the process and timing of the negotiation of  
440 the comprehensive agreement.

441 (c) Contain such other provisions related to an aspect of  
442 the development or operation of a qualifying project that the  
443 responsible public entity and the private entity deem  
444 appropriate.

445 (7)~~(9)~~ COMPREHENSIVE AGREEMENT.—

446 (a) Before developing or operating the qualifying project,



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447 the private entity must enter into a comprehensive agreement  
448 with the responsible public entity. The comprehensive agreement  
449 must provide for:

450 1. Delivery of performance and payment bonds, letters of  
451 credit, or other security acceptable to the responsible public  
452 entity in connection with the development or operation of the  
453 qualifying project in the form and amount satisfactory to the  
454 responsible public entity. For the components of the qualifying  
455 project which involve construction, the form and amount of the  
456 bonds must comply with s. 255.05.

457 2. Review of the design for the qualifying project by the  
458 responsible public entity and, if the design conforms to  
459 standards acceptable to the responsible public entity, the  
460 approval of the responsible public entity. This subparagraph  
461 does not require the private entity to complete the design of  
462 the qualifying project before the execution of the comprehensive  
463 agreement.

464 3. Inspection of the qualifying project by the responsible  
465 public entity to ensure that the private entity's activities are  
466 acceptable to the responsible public entity in accordance with  
467 the comprehensive agreement.

468 4. Maintenance of a policy of public liability insurance, a  
469 copy of which must be filed with the responsible public entity  
470 and accompanied by proofs of coverage, or self-insurance, each  
471 in the form and amount satisfactory to the responsible public  
472 entity and reasonably sufficient to ensure coverage of tort  
473 liability to the public and employees and to enable the  
474 continued operation of the qualifying project.

475 5. Monitoring by the responsible public entity of the



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476 maintenance practices to be performed by the private entity to  
477 ensure that the qualifying project is properly maintained.

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

480         7. Procedures that govern the rights and responsibilities  
481 of the responsible public entity and the private entity in the  
482 course of the construction and operation of the qualifying  
483 project and in the event of the termination of the comprehensive  
484 agreement or a material default by the private entity. The  
485 procedures must include conditions that govern the assumption of  
486 the duties and responsibilities of the private entity by an  
487 entity that funded, in whole or part, the qualifying project or  
488 by the responsible public entity, and must provide for the  
489 transfer or purchase of property or other interests of the  
490 private entity by the responsible public entity.

491         8. Fees, lease payments, or service payments. In  
492 negotiating user fees, the fees must be the same for persons  
493 using the facility under like conditions and must not materially  
494 discourage use of the qualifying project. The execution of the  
495 comprehensive agreement or a subsequent amendment is conclusive  
496 evidence that the fees, lease payments, or service payments  
497 provided for in the comprehensive agreement comply with this  
498 section. Fees or lease payments established in the comprehensive  
499 agreement as a source of revenue may be in addition to, or in  
500 lieu of, service payments.

501         9. Duties of the private entity, including the terms and  
502 conditions that the responsible public entity determines serve  
503 the public purpose of this section.

504         (b) The comprehensive agreement may include:



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505           1. An agreement by the responsible public entity to make  
506 grants or loans to the private entity from amounts received from  
507 the federal, state, or local government or an agency or  
508 instrumentality thereof.

509           2. A provision under which each entity agrees to provide  
510 notice of default and cure rights for the benefit of the other  
511 entity, including, but not limited to, a provision regarding  
512 unavoidable delays.

513           3. A provision that terminates the authority and duties of  
514 the private entity under this section and dedicates the  
515 qualifying project to the responsible public entity or, if the  
516 qualifying project was initially dedicated by an affected local  
517 jurisdiction, to the affected local jurisdiction for public use.

518           (8) ~~(10)~~ FEES.—A comprehensive ~~An~~ agreement entered into  
519 pursuant to this section may authorize the private entity to  
520 impose fees to members of the public for the use of the  
521 facility. The following provisions apply to the comprehensive  
522 agreement:

523           (a) The responsible public entity may develop new  
524 facilities or increase capacity in existing facilities through a  
525 comprehensive agreement with a private entity ~~agreements with~~  
526 ~~public-private partnerships~~.

527           (b) The comprehensive ~~public-private partnership~~ agreement  
528 must ensure that the facility is properly operated, maintained,  
529 or improved in accordance with standards set forth in the  
530 comprehensive agreement.

531           (c) The responsible public entity may lease existing fee-  
532 for-use facilities through a comprehensive ~~public-private~~  
533 ~~partnership~~ agreement.



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

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

540 (9) ~~(11)~~ FINANCING.—

541 (a) A private entity may enter into a private-source  
542 financing agreement between financing sources and the private  
543 entity. A financing agreement and any liens on the property or  
544 facility must be paid in full at the applicable closing that  
545 transfers ownership or operation of the facility to the  
546 responsible public entity at the conclusion of the term of the  
547 comprehensive agreement.

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

551 (c) The responsible public entity may use innovative  
552 finance techniques associated with a public-private partnership  
553 under this section, including, but not limited to, federal loans  
554 as provided in Titles 23 and 49 C.F.R., commercial bank loans,  
555 and hedges against inflation from commercial banks or other  
556 private sources. In addition, the responsible public entity may  
557 provide its own capital or operating budget to support a  
558 qualifying project. The budget may be from any legally  
559 permissible funding sources of the responsible public entity,  
560 including the proceeds of debt issuances. A responsible public  
561 entity may use the model financing agreement provided in s.  
562 489.145(6) for its financing of a facility owned by a



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563 responsible public entity. A financing agreement may not require  
564 the responsible public entity to indemnify the financing source,  
565 subject the responsible public entity's facility to liens in  
566 violation of s. 11.066(5), or secure financing of ~~by~~ the  
567 responsible public entity by a mortgage on, or security interest  
568 in, the real or tangible personal property of the responsible  
569 public entity in a manner that could result in the loss of the  
570 fee ownership of the property by the responsible public entity  
571 ~~with a pledge of security interest,~~ and any such provision is  
572 void.

573 ~~(d) A responsible public entity shall appropriate on a~~  
574 ~~priority basis as required by the comprehensive agreement a~~  
575 ~~contractual payment obligation, annual or otherwise, from the~~  
576 ~~enterprise or other government fund from which the qualifying~~  
577 ~~projects will be funded. This required payment obligation must~~  
578 ~~be appropriated before other noncontractual obligations payable~~  
579 ~~from the same enterprise or other government fund.~~

580 (10) ~~(12)~~ POWERS AND DUTIES OF THE PRIVATE ENTITY.—

581 (a) The private entity shall:

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

585 2. Maintain, or provide by contract for the maintenance or  
586 improvement of, the qualifying project if required by the  
587 comprehensive agreement.

588 3. Cooperate with the responsible public entity in making  
589 best efforts to establish interconnection between the qualifying  
590 project and any other facility or infrastructure as requested by  
591 the responsible public entity in accordance with the provisions



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592 of the comprehensive agreement.

593 4. Comply with the comprehensive agreement and any lease or  
594 service contract.

595 (b) Each private facility that is constructed pursuant to  
596 this section must comply with the requirements of federal,  
597 state, and local laws; state, regional, and local comprehensive  
598 plans; the responsible public entity's rules, procedures, and  
599 standards for facilities; and such other conditions that the  
600 responsible public entity determines to be in the public's best  
601 interest and that are included in the comprehensive agreement.

602 (c) The responsible public entity may provide services to  
603 the private entity. An agreement for maintenance and other  
604 services entered into pursuant to this section must provide for  
605 full reimbursement for services rendered for qualifying  
606 projects.

607 (d) A private entity of a qualifying project may provide  
608 additional services for the qualifying project to the public or  
609 to other private entities if the provision of additional  
610 services does not impair the private entity's ability to meet  
611 its commitments to the responsible public entity pursuant to the  
612 comprehensive agreement.

613 (11)~~(13)~~ EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the  
614 expiration or termination of a comprehensive agreement, the  
615 responsible public entity may use revenues from the qualifying  
616 project to pay current operation and maintenance costs of the  
617 qualifying project. If the private entity materially defaults  
618 under the comprehensive agreement, the compensation that is  
619 otherwise due to the private entity is payable to satisfy all  
620 financial obligations to investors and lenders on the qualifying



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621 project in the same way that is provided in the comprehensive  
622 agreement or any other agreement involving the qualifying  
623 project, if the costs of operating and maintaining the  
624 qualifying project are paid in the normal course. Revenues in  
625 excess of the costs for operation and maintenance costs may be  
626 paid to the investors and lenders to satisfy payment obligations  
627 under their respective agreements. A responsible public entity  
628 may terminate with cause and without prejudice a comprehensive  
629 agreement and may exercise any other rights or remedies that may  
630 be available to it in accordance with the provisions of the  
631 comprehensive agreement. The full faith and credit of the  
632 responsible public entity may not be pledged to secure the  
633 financing of the private entity. The assumption of the  
634 development or operation of the qualifying project does not  
635 obligate the responsible public entity to pay any obligation of  
636 the private entity from sources other than revenues from the  
637 qualifying project unless stated otherwise in the comprehensive  
638 agreement.

639 (12) ~~(14)~~ SOVEREIGN IMMUNITY.—This section does not waive  
640 the sovereign immunity of a responsible public entity, an  
641 affected local jurisdiction, or an officer or employee thereof  
642 with respect to participation in, or approval of, any part of a  
643 qualifying project or its operation, including, but not limited  
644 to, interconnection of the qualifying project with any other  
645 infrastructure or project. A county or municipality in which a  
646 qualifying project is located possesses sovereign immunity with  
647 respect to the project, including, but not limited to, its  
648 design, construction, and operation.

649 (13) DEPARTMENT OF MANAGEMENT SERVICES.—



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650       (a) A responsible public entity may provide a copy of its  
651 comprehensive agreement to the Department of Management  
652 Services. A responsible public entity must redact any  
653 confidential or exempt information from the copy of the  
654 comprehensive agreement before providing it to the Department of  
655 Management Services.

656       (b) The Department of Management Services may accept and  
657 maintain copies of comprehensive agreements received from  
658 responsible public entities for the purpose of sharing  
659 comprehensive agreements with other responsible public entities.

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

663       (14)-(15) CONSTRUCTION.-

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

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

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

675       (d)-(a) This section provides an alternative method and does  
676 not limit a county, municipality, special district, or other  
677 political subdivision of the state in the procurement or  
678 operation of a qualifying project ~~acquisition, design, or~~



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679 ~~construction of a public project~~ pursuant to other statutory or  
680 constitutional authority.

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

687 (f) ~~(e)~~ This section does not waive any requirement of s.  
688 287.055.

689 Section 8. Section 287.0935, Florida Statutes, is amended  
690 to read:

691 287.0935 Surety bond insurers.—When the contract amount of  
692 a project that uses public funds does not exceed \$5 million  
693 ~~\$500,000 and when public funds are utilized for the project~~, a  
694 person, the state, or a political subdivision may ~~shall~~ not  
695 refuse, ~~as surety for the project~~, bid bonds, performance bonds,  
696 labor and materials payment bonds, or any other surety bonds as  
697 surety for the project if such bonds ~~which~~ are issued by a  
698 surety company that meets all ~~which fulfills each~~ of the  
699 following requirements ~~provisions~~:

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

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

704 (3) The surety company has twice the minimum surplus and  
705 capital required by the Florida Insurance Code at the time the  
706 invitation to bid is issued, or has at least an "A-" rating of  
707 performance in the most recent edition of Best's Key Rating



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708 Guide by A.M. Best Company.~~†~~

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

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

714

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

716 And the title is amended as follows:

717 Delete line 12

718 and insert:

719 capital investment"; renumbering and amending s.  
720 287.05712, F.S.; revising definitions; deleting  
721 provisions creating the Public-Private Partnership  
722 Guidelines Task Force; requiring a private entity that  
723 submits an unsolicited proposal to pay an initial  
724 application fee and additional amounts if the fee does  
725 not cover certain costs; specifying payment methods;  
726 authorizing a responsible public entity to alter the  
727 statutory timeframe for accepting proposals for a  
728 qualifying project under certain circumstances;  
729 requiring a responsible public entity to include a  
730 design criteria package in a solicitation; specifying  
731 requirements for the design criteria package; deleting  
732 a provision that requires approval of the local  
733 governing body before a school board enters into a  
734 comprehensive agreement; revising the conditions  
735 necessary for a responsible public entity to approve a  
736 comprehensive agreement; deleting provisions relating



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737 to notice to affected local jurisdictions; providing  
738 that fees imposed by a private entity must be applied  
739 as set forth in the comprehensive agreement;  
740 restricting provisions in financing agreements that  
741 could result in a responsible public entity's losing  
742 ownership of real or tangible personal property;  
743 deleting a provision that requires a responsible  
744 public entity to comply with specific financial  
745 obligations; providing duties of the Department of  
746 Management Services; revising provisions relating to  
747 construction of the act; amending s. 287.0935, F.S.;  
748 increasing the dollar threshold for a contract amount  
749 of a project for which a person, the state, or a  
750 political subdivision is prohibited from refusing a  
751 surety bond issued by a surety company that meets  
752 certain criteria; revising requirements for surety  
753 companies with respect to bonds issued for certain  
754 publicly funded contracts; amending s. 288.0001, F.S.;