



Government Operations Subcommittee

Tuesday, October 20, 2015
1:00 pm
Webster Hall (212 Knott)

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Subcommittee

Start Date and Time: Tuesday, October 20, 2015 01:00 pm
End Date and Time: Tuesday, October 20, 2015 03:00 pm
Location: Webster Hall (212 Knott)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 95 Public-Private Partnerships by Steube
HB 97 Public Records and Public Meetings by Steube
HB 181 Public Works Projects by Van Zant

NOTICE FINALIZED on 10/13/2015 4:03PM by Kaiser.Debbi

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 95 Public-Private Partnerships
SPONSOR(S): Steube
TIED BILLS: HB 97 **IDEN./SIM. BILLS:** SB 124

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Moore <i>AM</i>	Williamson <i>Raw</i>
2) Local Government Affairs Subcommittee			
3) Appropriations Committee			
4) State Affairs Committee			

SUMMARY ANALYSIS

Public-private partnerships (P3s) are contractual agreements formed between public entities and private sector entities that allow for greater private sector participation in the delivery and financing of public buildings and infrastructure projects. Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for use by the general public. In addition to the sharing of resources, each party shares in the risks and reward potential in the delivery of the service or facility. Current law authorizes P3s for specified public purpose projects if the responsible public entity determines the project is in the public's best interest, there is a need for or benefit derived from the project, the estimated cost of the project is reasonable, and the private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

Current law also establishes the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force (task force) for the purpose of recommending guidelines for the Legislature to consider for creating a uniform P3 process across the state. This bill incorporates many of the recommendations contained in the task force's final report.

The bill clarifies that the P3 process must be construed as cumulative and supplemental to any other authority or power vested in the governing body of a county, municipality, district, or municipal hospital or health care system. It also provides that the P3 process is an alternative method that may be used.

The bill expands the list of entities authorized to conduct P3s to include state universities. It clarifies that the list includes special districts, school districts rather than school boards, and Florida College System institutions.

The bill provides increased flexibility to the responsible public entity by permitting a responsible public entity to deviate from the provided procurement timeframes if approved by majority vote of the entity's governing body.

The bill requires that an unsolicited proposal be submitted concurrently with an initial application fee, which the responsible public entity may establish. The bill authorizes a responsible public entity to request additional funds if the initial fee does not cover the costs to evaluate the unsolicited proposal. The bill also requires the responsible public entity to return the initial application fee if it does not review the unsolicited proposal.

The bill authorizes the Department of Management Services to accept and maintain copies of comprehensive agreements received from responsible public entities.

The bill has an indeterminate fiscal impact on state and local governments. See Fiscal Comments section for further discussion.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Public-private partnerships (P3s) are contractual agreements formed between public entities and private sector entities that allow for greater private sector participation in the delivery and financing of public building and infrastructure projects.¹ Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for use by the general public. In addition to the sharing of resources, each party shares in the risks and reward potential in the delivery of the service or facility.²

Public-Private Partnerships Generally

Section 287.05712, F.S., governs the procurement process for P3s for public purpose projects. It authorizes a responsible public entity to enter into a P3 for a specified qualifying project if the responsible public entity determines the project is in the public's best interest.³

Section 287.05712(1)(j), F.S., defines "responsible public entity" as a county, municipality, school board, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

Section 287.05712(1)(i), F.S., defines "qualifying project" as:

- A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;
- An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;
- A water, wastewater, or surface water management facility or other related infrastructure; or
- For projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects.

Procurement Procedures

Responsible public entities may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into a comprehensive agreement with a private entity for the building, upgrading, operation, ownership, or financing of facilities.⁴ Responsible public entities may establish a reasonable application fee for the submission of unsolicited proposals. The fee must be sufficient to pay the costs of evaluating the proposals.⁵

¹ See Federal Highway Administration, United States Department of Transportation, Innovative Program Delivery, *P3 Defined*, <http://www.fhwa.dot.gov/ipd/p3/defined/index.htm> (last visited Sept. 23, 2015).

² *Id.*

³ Section 287.05712(4)(d), F.S.

⁴ Section 287.05712(4), F.S.

⁵ Section 287.05712(4)(a), F.S.

Unsolicited proposals from private entities must be accompanied by the following material and information, unless waived by the responsible public entity:

- A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
- A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project.
- A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
- The name and address of a person who may be contacted for further information concerning the proposal.
- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology for and circumstances that would allow changes to the user fees, lease payments, and other service payments over time.
- Any additional material or information the responsible public entity reasonably requests.⁶

If the responsible public entity receives an unsolicited proposal and intends to enter into a P3 agreement for the qualifying project, the responsible public entity must publish a notice in the Florida Administrative Register (FAR) and a newspaper of general circulation at least once a week for two weeks stating the entity has received a proposal and will accept other proposals for the same project.⁷ The responsible public entity must establish a timeframe within which to accept other proposals that is at least 21 days, but not more than 120 days, after the initial date of publication.⁸

After the period for accepting proposals has expired, the responsible public entity must rank the proposals received in order of preference.⁹ Next, the responsible public entity may begin negotiations for a comprehensive agreement with the highest-ranked firm. If negotiations with the highest-ranked firm are unsuccessful, the responsible public entity may terminate the negotiations and begin negotiations with each subsequent-ranked firm in order of preference.¹⁰ The responsible public entity may reject all proposals at any point in the process.¹¹

The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the requests, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors or consultants.¹²

The responsible public entity may approve a qualifying project if:

- There is a public need for or benefit derived from the project that the private entity proposes as the qualifying project.
- The estimated cost of the qualifying project is reasonable in relation to similar facilities.
- The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.¹³

Notice to Affected Local Jurisdictions

A responsible public entity must notify each affected local jurisdiction when considering a proposal for a qualifying project by furnishing a copy of the proposal to each affected local jurisdiction.¹⁴ The affected

⁶ Section 287.05712(5), F.S.

⁷ Section 287.05712(4)(b), F.S.

⁸ *Id.*

⁹ Section 287.05712(6)(c), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 287.05712(6)(f), F.S.

¹³ Section 287.05712(6)(e), F.S.

local jurisdictions may, within 60 days, submit written comments to the responsible public entity.¹⁵ The responsible public entity must consider the comments submitted by the affected local jurisdiction before entering into a comprehensive agreement with a private entity.¹⁶ In addition, a responsible public entity must mail a copy of the notice that is published in the FAR to each local government in the affected area.¹⁷

Agreements

Interim Agreement

Before entering into a comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity, which does not obligate the responsible public entity to enter into a comprehensive agreement.¹⁸ Interim agreements must be limited to provisions that:

- Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project.
- Establish the process and timing of the negotiation of the comprehensive agreement.
- Contain any other provision related to any aspect of the development or operation of a qualifying project.¹⁹

Comprehensive Agreement

The responsible public entity and private entity must enter into a comprehensive agreement prior to developing or operating a qualifying project.²⁰ The comprehensive agreement must provide for:

- Delivery of performance and payment bonds, letters of credit, or other security in connection with the development or operation of the qualifying project.
- Review of plans and specifications for the project by the responsible public entity. This does not require the private entity to complete the design of the project prior to executing the comprehensive agreement.
- Inspection of the qualifying project by the responsible public entity.
- Maintenance of a policy or policies of public liability insurance.
- Monitoring the maintenance practices of the private entity to ensure the qualifying project is properly maintained.
- Filing of financial statements on a periodic basis.
- Procedures governing the rights and responsibilities of the responsible public entity and private entity in the event of a termination of the comprehensive agreement or a material default.
- User fees, lease payments, or service payments as may be established.
- Duties of the private entity, including the terms and conditions that the responsible public entity determines serve the public purpose of the qualifying project.²¹

The comprehensive agreement may include the following:

- An agreement by the responsible public entity to make grants or loans to the private entity from amounts received from the federal, state, or local government or an agency or instrumentality thereof.
- A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity.
- A provision that terminates the authority and duties of the private entity and dedicates the qualifying project to the responsible public entity.²²

¹⁴ Section 287.05712(7)(a), F.S.

¹⁵ Section 287.05712(7)(b), F.S.

¹⁶ *Id.*

¹⁷ Section 287.05712(4)(b), F.S.

¹⁸ Section 287.05712(8), F.S.

¹⁹ *Id.*

²⁰ Section 287.05712(9)(a), F.S.

²¹ *Id.*

Fees

The comprehensive agreement may authorize the private entity to impose fees to members of the public for use of the facility.²³

Financing

Section 287.05712(11), F.S., authorizes the use of multiple financing options for P3s. The options include the private entity obtaining private-source financing, the responsible public entity lending funds to the private entity, or the use of other innovative finance techniques associated with P3s.

Powers and Duties of the Private Entity

The private entity must develop, operate, and maintain the qualifying project in accordance with the comprehensive agreement. The private entity must cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and other facilities and infrastructure. The private entity must comply with the terms of the comprehensive agreement and any other lease or contract.²⁴

Expiration or Termination of Agreements

Upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay the current operation and maintenance costs of the qualifying project. If the private entity materially defaults, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the project are paid in the normal course. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity.²⁵

Partnership for Public Facilities and Infrastructure Act Guidelines Task Force

Section 287.05712(3), F.S., creates the Partnership for Public Facilities and Infrastructure Act Guidelines Task Force (task force). The task force was created to recommend guidelines for the Legislature to consider for purposes of creating a uniform P3 process across the state.²⁶ The seven-member task force was comprised of the Secretary of the Department of Management Services (department) and six members appointed by the Governor who represented the county government, municipal government, district school board, and business community.²⁷ The department provided administrative and technical support to the task force.²⁸

In July 2014, the task force completed its duties and submitted a final report of its recommendations.²⁹ The task force was terminated on December 31, 2014.³⁰

Public-Private Partnerships for State Universities

Section 1013.171, F.S., authorizes a state university board of trustees to enter into P3s for the construction of facilities and accommodations necessary and desirable to serve the needs and

²² Section 287.05712(9)(b), F.S.

²³ Section 287.05712(10), F.S.

²⁴ Section 287.05712(12)(a), F.S.

²⁵ Section 287.05712(13), F.S.

²⁶ Section 287.05712(3)(a), F.S.

²⁷ Section 287.05712(3)(b), F.S.

²⁸ Section 287.05712(3)(c), F.S.

²⁹ The task force report can be found online at:

http://www.dms.myflorida.com/agency_administration/communications/partnership_for_public_facilities_infrastructure_act (last visited Sept. 23, 2015).

³⁰ Section 287.05712(3)(f), F.S.

purposes of the university. The Board of Governors has promulgated guidelines for the universities to use in reviewing and approving these P3s.³¹

EFFECT OF PROPOSED CHANGES

This bill incorporates many of the recommendations contained in the task force report, which include best practice recommendations as well as recommendations relating to needed clarification of s. 287.05712, F.S., which may facilitate the implementation of P3s.

Responsible Public Entity Definition

The bill expands the definition of "responsible public entity" to include state universities³² and clarifies that it includes special districts, school districts rather than school boards, and Florida College System institutions.³³

Task Force

The bill deletes the task force provisions, as the task force was terminated on December 31, 2014.

Application Fees

The bill provides that when a private entity submits an unsolicited proposal, the private entity must concurrently submit the initial application fee. The application fee must be paid by cash, cashier's check, or other noncancelable instrument. The bill provides that if the initial fee, as determined by the responsible public entity, is not sufficient to cover the costs associated with evaluating the unsolicited proposal, the responsible public entity must request in writing the additional amount required. If the private entity fails to pay the additional amount requested within 30 days of the notice, the responsible public entity may stop reviewing the proposal. The bill requires the responsible public entity to return the application fee if the responsible public entity does not evaluate the unsolicited proposal.³⁴

Solicitation Timeframes

The bill provides flexibility to the responsible public entity for accepting proposals if an alternative timeframe is approved by majority vote of the entity's governing body.³⁵ It also removes the provision that requires a school board to obtain the approval of the local governing body.³⁶

Design Criteria Package

The bill requires a responsible public entity that solicits proposals to include in the solicitation a design criteria package prepared by a licensed architect, engineer, or landscape architect. The design criteria package must include performance-based criteria for the project.

Ownership by the Responsible Public Entity

The bill clarifies that the project will be owned by the responsible public entity upon expiration of the comprehensive agreement, rather than solely upon completion or termination of the agreement.³⁷

³¹ State University System of Florida Board of Governors, *Public-Private Partnership Guidelines*, available at http://www.flbog.edu/documents_regulations/guidelines/Public-Private%20Partnership%20Guidelines.pdf.

³² The task force recommended adding state universities to the list of entities that are included in the definition of "responsible public entity." Partnership for Public Facilities and Infrastructure Act Guidelines Task Force, *Final Report and Recommendations* (July 2014), at 16.

³³ The task force recommended amending the definition of "responsible public entity" to reference school district, rather than board, as the district is the unit that provides public primary education. It also recommended clarifying that the definition includes both special districts and the Florida College System. *Id.* at 18.

³⁴ The task force recommended amending the fee provisions to ensure that the fees were related to actual, reasonable costs associated with reviewing an unsolicited proposal and not revenue generation. *Id.* at 9.

³⁵ The task force determined that increased flexibility may be necessary when dealing with complex proposals to ensure sufficient time is allowed for the receipt of competing proposals. *Id.* at 7.

³⁶ The task force recommended striking this provision because school boards are not subject to governance by a local governing body. *Id.* at 18.

³⁷ This change was recommended by the task force. *Id.* at 13-14.

Pricing or Financial Terms

The bill clarifies that any pricing or financial terms included in an unsolicited proposal must be specific as to when the pricing or terms expire.³⁸

Notice to Affected Local Jurisdictions

The bill deletes the requirement that a responsible public entity notify each affected local jurisdiction of an unsolicited proposal by furnishing a copy of the proposal to each affected local jurisdiction when considering it.³⁹ The responsible public entity must still provide each affected local jurisdiction a copy of the notice published in the FAR concerning solicitations for a qualifying project.

Financing

The bill clarifies that a financing agreement may not require the responsible public entity to secure financing by a mortgage on, or security interest in, the real or tangible personal property of the responsible public entity in a manner that could result in the loss of the fee ownership of the property by the responsible public entity.⁴⁰

The bill also deletes a provision that requires the responsible public entity to appropriate on a priority basis a contractual payment obligation from the government fund from which the qualifying project will be funded.⁴¹ Current law raised concerns regarding infringement upon a responsible public entity's appropriation powers. Additionally, if the provision were to remain in current law, it is unclear how this provision would apply to state universities or Florida College System institutions.

Department of Management Services

The bill provides that the department may accept and maintain copies of comprehensive agreements received from responsible public entities for the purpose of sharing the comprehensive agreements with other responsible public entities.⁴² Responsible public entities are not required to provide copies to the department; however, if a responsible public entity provides a copy, the responsible public entity must first redact any confidential or exempt information from the comprehensive agreement.

Construction

The bill clarifies that the P3 process must be construed as cumulative and supplemental to any other authority or power vested in the governing body of a county, municipality, district, or municipal hospital or health care system. The bill provides that the P3 process is an alternative method that may be used, but that it does not limit a county, municipality, district, or other political subdivision of the state in the acquisition, design, or construction of a public project pursuant to other statutory or constitutional authority.⁴³

³⁸ This change was recommended by the task force. *Id.* at 7.

³⁹ The report provided a discussion on the notice that is already provided to affected local jurisdictions through the permitting process and stated a mandatory P3 notice process could delay project timelines. *Id.* at 12.

⁴⁰ This change was recommended by the task force. *Id.* at 20.

⁴¹ The report recommended the current provision regarding the appropriating of funds be revised, not deleted. *Id.* at 14-15. Even though the report recommended that the Legislature consider specifically authorizing the State University System to utilize P3s as a project delivery method, it does not specifically address the applicability of an appropriations requirement to universities. *Id.* at 16.

⁴² The report recommended authorizing a state agency to provide assistance to responsible public entities concerning P3s. *Id.* at 11.

⁴³ The report discussed the need for flexibility in the creation of P3s and noted that clarification is needed to ensure that the process is considered supplemental and alternative to any other applicable statutory authority. *Id.* at 19.

Miscellaneous

The bill transfers and renumbers s. 287.05712, F.S., as s. 255.065, F.S., because chapter 255, F.S., relates to procurement of construction services and P3s are primarily construction-related projects.

The bill also makes other changes to provide for the consistent use of terminology and to provide clarity.

B. SECTION DIRECTORY:

Section 1. transfers, renumbers, and amends s. 287.05712, F.S., relating to public-private partnerships.

Section 2. provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may provide for more opportunities for the private sector to enter into contracts for construction services with state universities and local governments.

D. FISCAL COMMENTS:

The bill will have an insignificant negative fiscal impact on the Department of Management Services for the purpose of receiving comprehensive agreements and acting as a depository for such comprehensive agreements. According to the department, the costs should be absorbed within current resources.⁴⁴

The bill has an indeterminate fiscal impact on universities and local governments that enter into P3s. State and local government expenditures would be based on currently unidentified P3s.

⁴⁴ Department of Management Services, Agency Analysis of House Bill 63, p. 5 (Feb. 11, 2015) (on file with the Government Operations Subcommittee). The provision of HB 181 authorizing the department to accept and maintain copies of comprehensive agreements from responsible public entities was also included in HB 63 from the 2015 Session.
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III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Additional rulemaking authority does not appear necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: State Universities

On lines 699-724, the bill specifies that the P3 process in s. 287.05712, F.S., is cumulative and supplemental to any other authority or power vested in or exercised by the governing body of a county, municipality, special district, or municipal hospital or health care system. The bill also specifies that this section provides an alternative method and does not limit a county, municipality, special district, or other political subdivision of the state in the procurement or operation of a qualifying project pursuant to other statutory or constitutional authority. Because state universities currently have statutory authority to enter into P3s under s. 1013.171, F.S., the bill sponsor may want to consider including state universities in the lists of entities whose authority is not limited by the P3 process in ch. 287, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to public-private partnerships;
3 transferring, renumbering, and amending s. 287.05712,
4 F.S.; revising definitions; deleting provisions
5 creating the Public-Private Partnership Guidelines
6 Task Force; requiring a private entity that submits an
7 unsolicited proposal to pay an initial application fee
8 and additional amounts if the fee does not cover
9 certain costs; specifying payment methods; authorizing
10 a responsible public entity to alter the statutory
11 timeframe for accepting proposals for a qualifying
12 project under certain circumstances; requiring a
13 design criteria package to be submitted to a
14 responsible public entity if such entity solicits
15 specific proposals; deleting a provision that requires
16 approval of the local governing body before a school
17 board enters into a comprehensive agreement; revising
18 the conditions necessary for a responsible public
19 entity to approve a comprehensive agreement; deleting
20 provisions relating to notice to affected local
21 jurisdictions; providing that fees imposed by a
22 private entity must be applied as set forth in the
23 comprehensive agreement; authorizing a negotiated
24 portion of revenues from fee-generating uses to be
25 returned to the responsible public entity; restricting
26 provisions in financing agreements that could result

27 in a responsible public entity's losing ownership of
 28 real or tangible personal property; deleting a
 29 provision that required a responsible public entity to
 30 comply with specific financial obligations; providing
 31 duties of the Department of Management Services
 32 relating to comprehensive agreements; revising
 33 provisions relating to construction of the act;
 34 providing an effective date.

35

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

37

38 Section 1. Section 287.05712, Florida Statutes, is
 39 transferred, renumbered as section 255.065, Florida Statutes,
 40 and amended to read:

41 255.065 ~~287.05712~~ Public-private partnerships.—

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

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

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

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

51 (d) "Lease payment" means any form of payment, including a
 52 land lease, by a public entity to the private entity of a

53 qualifying project for the use of the project.

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

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

59 (g) "Private entity" means any natural person,
60 corporation, general partnership, limited liability company,
61 limited partnership, joint venture, business trust, public
62 benefit corporation, nonprofit entity, or other private business
63 entity.

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

68 (i) "Qualifying project" means:

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

79 2. An improvement, including equipment, of a building that
80 will be principally used by a public entity or the public at
81 large or that supports a service delivery system in the public
82 sector;

83 3. A water, wastewater, or surface water management
84 facility or other related infrastructure; or

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

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

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

104 (l) "Service contract" means a contract between a

105 responsible public entity and the private entity which defines
106 the terms of the services to be provided with respect to a
107 qualifying project.

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

113 (a) The Legislature also finds that:

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

124 2. There are inadequate resources to develop new
125 educational facilities, transportation facilities, water or
126 wastewater management facilities and infrastructure, technology
127 infrastructure, roads, highways, bridges, and other public
128 infrastructure and government facilities for the benefit of
129 residents of this state, and that a public-private partnership
130 has demonstrated that it can meet the needs by improving the

131 schedule for delivery, lowering the cost, and providing other
 132 benefits to the public.

133 3. There may be state and federal tax incentives that
 134 promote partnerships between public and private entities to
 135 develop and operate qualifying projects.

136 4. A procurement under this section serves the public
 137 purpose of this section if such procurement facilitates the
 138 timely development or operation of a qualifying project.

139 (b) It is the intent of the Legislature to encourage
 140 investment in the state by private entities; to facilitate
 141 various bond financing mechanisms, private capital, and other
 142 funding sources for the development and operation of qualifying
 143 projects, including expansion and acceleration of such financing
 144 to meet the public need; and to provide the greatest possible
 145 flexibility to public and private entities contracting for the
 146 provision of public services.

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

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

156 ~~(b) The task force shall be composed of seven members, as~~

157 follows:

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

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

161 a. ~~One county government official.~~

162 b. ~~One municipal government official.~~

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

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

165 ~~(e) Task force members must be appointed by July 31, 2013.~~

166 ~~By August 31, 2013, the task force shall meet to establish~~
 167 ~~procedures for the conduct of its business and to elect a vice~~
 168 ~~chair. The task force shall meet at the call of the chair. A~~
 169 ~~majority of the members of the task force constitutes a quorum,~~
 170 ~~and a quorum is necessary for the purpose of voting on any~~
 171 ~~action or recommendation of the task force. All meetings shall~~
 172 ~~be held in Tallahassee, unless otherwise decided by the task~~
 173 ~~force, and then no more than two such meetings may be held in~~
 174 ~~other locations for the purpose of taking public testimony.~~
 175 ~~Administrative and technical support shall be provided by the~~
 176 ~~department. Task force members shall serve without compensation~~
 177 ~~and are not entitled to reimbursement for per diem or travel~~
 178 ~~expenses.~~

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

181 1. ~~Opportunities for competition through public notice and~~
 182 ~~the availability of representatives of the responsible public~~

183 ~~entity to meet with private entities considering a proposal.~~

184 ~~2. Reasonable criteria for choosing among competing~~
 185 ~~proposals.~~

186 ~~3. Suggested timelines for selecting proposals and~~
 187 ~~negotiating an interim or comprehensive agreement.~~

188 ~~4. If an accelerated selection and review and~~
 189 ~~documentation timelines should be considered for proposals~~
 190 ~~involving a qualifying project that the responsible public~~
 191 ~~entity deems a priority.~~

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

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

199 ~~7. Current exemptions from public records and public~~
 200 ~~meetings requirements, if any changes to these exemptions are~~
 201 ~~necessary, or if any new exemptions should be created in order~~
 202 ~~to maintain the confidentiality of financial and proprietary~~
 203 ~~information received as part of an unsolicited proposal.~~

204 ~~8. Recommendations regarding the authority of the~~
 205 ~~responsible public entity to engage the services of qualified~~
 206 ~~professionals, which may include a Florida-registered~~
 207 ~~professional or a certified public accountant, not otherwise~~
 208 ~~employed by the responsible public entity, to provide an~~

209 ~~independent analysis regarding the specifics, advantages,~~
 210 ~~disadvantages, and long-term and short-term costs of a request~~
 211 ~~by a private entity for approval of a qualifying project, unless~~
 212 ~~the governing body of the public entity determines that such~~
 213 ~~analysis should be performed by employees of the public entity.~~

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

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

225 (3)(4) PROCUREMENT PROCEDURES.—A responsible public entity
 226 may receive unsolicited proposals or may solicit proposals for a
 227 qualifying project ~~projects~~ and may thereafter enter into a
 228 comprehensive ~~an~~ agreement with a private entity, or a
 229 consortium of private entities, for the building, upgrading,
 230 operating, ownership, or financing of facilities.

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

234 2. A private entity that submits an unsolicited proposal

235 to a responsible public entity must concurrently pay an initial
236 application fee, as determined by the responsible public entity.
237 Payment must be made by cash, cashier's check, or other
238 noncancelable instrument. Personal checks may not be accepted.

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

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

253 (b) The responsible public entity may request a proposal
254 from private entities for a qualifying ~~public-private~~ project
255 or, if the responsible public entity receives an unsolicited
256 proposal for a qualifying ~~public-private~~ project and the
257 responsible public entity intends to enter into a comprehensive
258 agreement for the project described in the ~~such~~ unsolicited
259 proposal, the responsible public entity shall publish notice in
260 the Florida Administrative Register and a newspaper of general

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

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

287 construction schedules; and site and utility requirements A
288 ~~responsible public entity that is a school board may enter into~~
289 ~~a comprehensive agreement only with the approval of the local~~
290 ~~governing body.~~

291 (d) Before approving a comprehensive agreement approval,
292 the responsible public entity must determine that the proposed
293 project:

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

295 2. Is for a facility that is owned by the responsible
296 public entity or for a facility for which ownership will be
297 conveyed to the responsible public entity.

298 3. Has adequate safeguards in place to ensure that
299 additional costs or service disruptions are not imposed on the
300 public in the event of material default or cancellation of the
301 comprehensive agreement by the responsible public entity.

302 4. Has adequate safeguards in place to ensure that the
303 responsible public entity or private entity has the opportunity
304 to add capacity to the proposed project or other facilities
305 serving similar predominantly public purposes.

306 5. Will be owned by the responsible public entity upon
307 completion, expiration, or termination of the comprehensive
308 agreement and upon payment of the amounts financed.

309 (e) Before signing a comprehensive agreement, the
310 responsible public entity must consider a reasonable finance
311 plan that is consistent with subsection (9) ~~(11)~~; the qualifying
312 project cost; revenues by source; available financing; major

313 assumptions; internal rate of return on private investments, if
314 governmental funds are assumed in order to deliver a cost-
315 feasible project; and a total cash-flow analysis beginning with
316 the implementation of the project and extending for the term of
317 the comprehensive agreement.

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

327 (4)~~(5)~~ PROJECT APPROVAL REQUIREMENTS.—An unsolicited
328 proposal from a private entity for approval of a qualifying
329 project must be accompanied by the following material and
330 information, unless waived by the responsible public entity:

331 (a) A description of the qualifying project, including the
332 conceptual design of the facilities or a conceptual plan for the
333 provision of services, and a schedule for the initiation and
334 completion of the qualifying project.

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

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

339 for financing the qualifying project, including the sources of
 340 the private entity's funds and the identity of any dedicated
 341 revenue source or proposed debt or equity investment on behalf
 342 of the private entity.

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

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

350 (f) Additional material or information that the
 351 responsible public entity reasonably requests.

352
 353 Any pricing or financial terms included in an unsolicited
 354 proposal must be specific as to when the pricing or terms
 355 expire.

356 ~~(5)(6)~~ PROJECT QUALIFICATION AND PROCESS.-

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

362 (b) The responsible public entity must:

363 1. Ensure that provision is made for the private entity's
 364 performance and payment of subcontractors, including, but not

365 limited to, surety bonds, letters of credit, parent company
366 guarantees, and lender and equity partner guarantees. For the
367 components of the qualifying project which involve construction
368 performance and payment, bonds are required and are subject to
369 the recordation, notice, suit limitation, and other requirements
370 of s. 255.05.

371 2. Ensure the most efficient pricing of the security
372 package that provides for the performance and payment of
373 subcontractors.

374 3. Ensure that ~~provision is made for the transfer of the~~
375 ~~private entity's obligations if the comprehensive agreement~~
376 addresses termination upon is terminated or a material default
377 of the comprehensive agreement occurs.

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

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

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

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

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

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

417 3. The private entity's plans will result in the timely
 418 acquisition, design, construction, improvement, renovation,
 419 expansion, equipping, maintenance, or operation of the
 420 qualifying project.

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

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

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

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

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

438 ~~(b) Each affected local jurisdiction that is not a~~
 439 ~~responsible public entity for the respective qualifying project~~
 440 ~~may, within 60 days after receiving the notice, submit in~~
 441 ~~writing any comments to the responsible public entity and~~
 442 ~~indicate whether the facility is incompatible with the local~~

443 ~~comprehensive plan, the local infrastructure development plan,~~
 444 ~~the capital improvements budget, any development of regional~~
 445 ~~impact processes or timelines, or other governmental spending~~
 446 ~~plan. The responsible public entity shall consider the comments~~
 447 ~~of the affected local jurisdiction before entering into a~~
 448 ~~comprehensive agreement with a private entity. If an affected~~
 449 ~~local jurisdiction fails to respond to the responsible public~~
 450 ~~entity within the time provided in this paragraph, the~~
 451 ~~nonresponse is deemed an acknowledgment by the affected local~~
 452 ~~jurisdiction that the qualifying project is compatible with the~~
 453 ~~local comprehensive plan, the local infrastructure development~~
 454 ~~plan, the capital improvements budget, or other governmental~~
 455 ~~spending plan.~~

456 (6)~~(8)~~ INTERIM AGREEMENT.—Before or in connection with the
 457 negotiation of a comprehensive agreement, the responsible public
 458 entity may enter into an interim agreement with the private
 459 entity proposing the development or operation of the qualifying
 460 project. An interim agreement does not obligate the responsible
 461 public entity to enter into a comprehensive agreement. The
 462 interim agreement is discretionary with the parties and is not
 463 required on a qualifying project for which the parties may
 464 proceed directly to a comprehensive agreement without the need
 465 for an interim agreement. An interim agreement must be limited
 466 to provisions that:

467 (a) Authorize the private entity to commence activities
 468 for which it may be compensated related to the proposed

469 | qualifying project, including, but not limited to, project
 470 | planning and development, design, environmental analysis and
 471 | mitigation, survey, other activities concerning any part of the
 472 | proposed qualifying project, and ascertaining the availability
 473 | of financing for the proposed facility or facilities.

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

476 | (c) Contain such other provisions related to an aspect of
 477 | the development or operation of a qualifying project that the
 478 | responsible public entity and the private entity deem
 479 | appropriate.

480 | (7)(9) COMPREHENSIVE AGREEMENT.-

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

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

492 | 2. Review of the design for the qualifying project by the
 493 | responsible public entity and, if the design conforms to
 494 | standards acceptable to the responsible public entity, the

495 approval of the responsible public entity. This subparagraph
 496 does not require the private entity to complete the design of
 497 the qualifying project before the execution of the comprehensive
 498 agreement.

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

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

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

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

516 7. Procedures that govern the rights and responsibilities
 517 of the responsible public entity and the private entity in the
 518 course of the construction and operation of the qualifying
 519 project and in the event of the termination of the comprehensive
 520 agreement or a material default by the private entity. The

521 | procedures must include conditions that govern the assumption of
522 | the duties and responsibilities of the private entity by an
523 | entity that funded, in whole or part, the qualifying project or
524 | by the responsible public entity, and must provide for the
525 | transfer or purchase of property or other interests of the
526 | private entity by the responsible public entity.

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

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

540 | (b) The comprehensive agreement may include:

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

545 | 2. A provision under which each entity agrees to provide
546 | notice of default and cure rights for the benefit of the other

547 entity, including, but not limited to, a provision regarding
 548 unavoidable delays.

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

554 (8)(10) FEES.—A comprehensive ~~An~~ agreement entered into
 555 pursuant to this section may authorize the private entity to
 556 impose fees to members of the public for the use of the
 557 facility. The following provisions apply to the comprehensive
 558 agreement:

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

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

567 (c) The responsible public entity may lease existing fee-
 568 for-use facilities through a comprehensive ~~public-private~~
 569 ~~partnership~~ agreement.

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

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

576 (9)~~(11)~~ FINANCING.—

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

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

587 (c) The responsible public entity may use innovative
 588 finance techniques associated with a public-private partnership
 589 under this section, including, but not limited to, federal loans
 590 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
 591 and hedges against inflation from commercial banks or other
 592 private sources. In addition, the responsible public entity may
 593 provide its own capital or operating budget to support a
 594 qualifying project. The budget may be from any legally
 595 permissible funding sources of the responsible public entity,
 596 including the proceeds of debt issuances. A responsible public
 597 entity may use the model financing agreement provided in s.
 598 489.145(6) for its financing of a facility owned by a

599 responsible public entity. A financing agreement may not require
600 the responsible public entity to indemnify the financing source,
601 subject the responsible public entity's facility to liens in
602 violation of s. 11.066(5), or secure financing of ~~by~~ the
603 responsible public entity by a mortgage on, or security interest
604 in, the real or tangible personal property of the responsible
605 public entity in a manner that could result in the loss of the
606 fee ownership of the property by the responsible public entity
607 ~~with a pledge of security interest~~, and any such provision is
608 void.

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

616 (10) ~~(12)~~ POWERS AND DUTIES OF THE PRIVATE ENTITY.-

617 (a) The private entity shall:

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

621 2. Maintain, or provide by contract for the maintenance or
622 improvement of, the qualifying project if required by the
623 comprehensive agreement.

624 3. Cooperate with the responsible public entity in making

625 best efforts to establish interconnection between the qualifying
626 project and any other facility or infrastructure as requested by
627 the responsible public entity in accordance with the provisions
628 of the comprehensive agreement.

629 4. Comply with the comprehensive agreement and any lease
630 or service contract.

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

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

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

649 (11)~~(13)~~ EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
650 expiration or termination of a comprehensive agreement, the

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

675 (12)~~(14)~~ SOVEREIGN IMMUNITY.—This section does not waive
676 the sovereign immunity of a responsible public entity, an

677 affected local jurisdiction, or an officer or employee thereof
 678 with respect to participation in, or approval of, any part of a
 679 qualifying project or its operation, including, but not limited
 680 to, interconnection of the qualifying project with any other
 681 infrastructure or project. A county or municipality in which a
 682 qualifying project is located possesses sovereign immunity with
 683 respect to the project, including, but not limited to, its
 684 design, construction, and operation.

685 (13) DEPARTMENT OF MANAGEMENT SERVICES.-

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

692 (b) The Department of Management Services may accept and
 693 maintain copies of comprehensive agreements received from
 694 responsible public entities for the purpose of sharing
 695 comprehensive agreements with other responsible public entities.

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

699 (14)~~(15)~~ CONSTRUCTION.-

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

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

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

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

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

723 **(f)**~~(e)~~ This section does not waive any requirement of s.
724 287.055.

725 Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 97 Public Records and Public Meetings
SPONSOR(S): Steube
TIED BILLS: HB 95 **IDEN./SIM. BILLS:** SB 126

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Moore <i>AM</i>	Williamson <i>Law</i>
2) Local Government Affairs Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law authorizes public-private partnerships (P3s) for specified public purpose projects. It authorizes responsible public entities to enter into a P3 for specified qualifying projects if the public entity determines the project is in the public's best interest.

This bill, which is linked to the passage of House Bill 95, creates an exemption from public record and public meeting requirements for unsolicited proposals for P3 projects for public facilities and infrastructure.

The bill provides that an unsolicited proposal is exempt from public record requirements until such time that the responsible public entity provides notice of its intended decision. If the responsible public entity rejects all proposals and concurrently provides notice of its intent to seek additional proposals, the unsolicited proposal remains exempt for a specified period of time; however, it does not remain exempt for more than 90 days after the responsible public entity rejects all proposals received for the project described in the unsolicited proposal.

If the responsible public entity does not issue a competitive solicitation, the unsolicited proposal is not exempt for more than 180 days.

The bill creates a public meeting exemption for any portion of a meeting during which the exempt unsolicited proposal is discussed. A recording must be made of the closed portion of the meeting. The recording, and any records generated during the closed meeting, are exempt from public record requirements until such time as the underlying public record exemption expires.

The public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

The bill may have a minimal fiscal impact on state universities, Florida College System institutions, and local governments.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person the right to inspect and copy any state, county, or municipal record.

Public Meetings Law

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district at which official acts are to be taken or at which public business of such body is to be transacted or discussed be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision at which official acts are to be taken be open to the public at all times.¹ The board or commission must provide reasonable notice of all public meetings.² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.³ Minutes of a public meeting must be promptly recorded and open to public inspection.⁴

Public Record and Public Meeting Exemptions

The Legislature may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.⁵

Furthermore, the Open Government Sunset Review Act⁶ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or

¹ Section 286.011(1), F.S.

² *Id.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ Section 24(c), Art. I, Fla. Const.

⁶ Section 119.15, F.S.

- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

Public-Private Partnerships

Section 287.05712, F.S., governs the procurement process for public-private partnerships (P3s) for public purpose projects. It authorizes a responsible public entity⁷ to enter into a P3 for specified qualifying projects⁸ if the responsible public entity determines the project is in the public's best interest.⁹

Responsible public entities may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into an agreement with a private entity for the building, upgrading, operation, ownership, or financing of facilities. Unsolicited proposals from private entities must be accompanied by the following material and information, unless waived by the responsible public entity:

- A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
- A description of the method by which the private entity proposes to secure any necessary property interests that are required for the qualifying project.
- A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
- The name and address of a person who may be contacted for further information concerning the proposal.
- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.
- Any additional material or information the responsible public entity reasonably requests.¹⁰

If the responsible public entity receives an unsolicited proposal and intends to enter into a P3 agreement for the project, the responsible public entity must publish a notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks stating the entity has received a proposal and will accept other proposals.¹¹ The responsible public entity must establish a timeframe in which to accept other proposals.¹²

⁷ Section 287.05712(1)(j), F.S., defines the term "responsible public entity" as a county, municipality, school board, or any other political subdivision of the state; a public body politic and corporate; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

⁸ Section 287.05712(1)(i), F.S., defines the term "qualifying project" as a facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity; an improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; a water, wastewater, or surface water management facility or other related infrastructure; or for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects.

⁹ Section 287.05712(4)(d), F.S.

¹⁰ Section 287.05712(5), F.S.

¹¹ Section 287.05712(4)(b), F.S.

¹² *Id.*

After the public notification period has expired, the responsible public entity must rank the proposals received in order of preference.¹³ If negotiations with the highest-ranked firm are unsuccessful, the responsible public entity may terminate negotiations and begin negotiations with each subsequent-ranked firm in order of preference.¹⁴ The responsible public entity may reject all proposals at any point in the process.¹⁵

Public Record and Public Meeting Exemptions

Current law does not provide a public record exemption for unsolicited proposals. However, sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation¹⁶ are exempt¹⁷ from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.¹⁸ If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the agency provides notice of its intended decision or withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.¹⁹

Current law does not provide a public meeting exemption for meetings during which an unsolicited proposal is discussed. However, public meetings in which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation are exempt from public meeting requirements.²⁰ A complete recording of the closed meeting must be made and no portion of the exempt meeting may be held off the record.²¹

The recording of, and any records presented at, the exempt meeting are exempt from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.²² If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from public record requirements until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation.²³ A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.²⁴

¹³ Section 287.05712(6)(c), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ A competitive solicitation is defined as "the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement." Section 119.071(1)(b)1., F.S.

¹⁷ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹⁸ Section 119.071(1)(b), F.S.

¹⁹ *Id.*

²⁰ Section 286.0113(2)(b), F.S.

²¹ Section 286.0113(2)(c), F.S.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

Effect of Proposed Changes

The bill creates an exemption from public record and public meeting requirements for unsolicited proposals for P3 projects for public facilities and infrastructure.

The bill creates a public record exemption for an unsolicited proposal held by a responsible public entity until the responsible public entity provides notice of its intended decision. If the responsible public entity rejects all proposals and concurrently provides notice of its intent to seek additional proposals, the unsolicited proposal remains exempt until such time that the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation or until the responsible public entity withdraws the reissued competitive solicitation for the project. An unsolicited proposal is not exempt for more than 90 days after the responsible public entity rejects all proposals received for the project described in the unsolicited proposal.

If the responsible public entity does not issue a competitive solicitation, the unsolicited proposal is not exempt for more than 180 days.

The bill creates a public meeting exemption for any portion of a meeting during which the exempt unsolicited proposal is discussed. A recording must be made of the closed portion of the meeting. The recording, and any records generated during the closed meeting, are exempt from public record requirements until such time as the underlying public record exemption expires.

The public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

The bill becomes effective on the same date that House Bill 95 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

B. SECTION DIRECTORY:

Section 1. amends s. 287.05712, F.S., as transferred, renumbered, and amended by HB 95, to create public record and public meeting exemptions for unsolicited proposals received by a responsible public entity for a specified period.

Section 2. provides a public necessity statement.

Section 3. provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on state universities, Florida College System institutions, and local governments that receive unsolicited P3 proposals because staff responsible for complying with public record requests could require training related to the public record exemption. State universities, Florida College System institutions, and local governments could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of their day-to-day responsibilities. In addition, state universities, Florida College System institutions, and local governments may incur minimal fiscal costs associated with recording that portion of a closed meeting during which an unsolicited proposal that is exempt is discussed.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require municipalities or counties to expend funds or take any action requiring the expenditure of funds, reduce the authority that municipalities or counties have to raise revenues in the aggregate, or reduce the percentage of state tax shared with municipalities or counties.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created public record or public meeting exemption. The bill creates new public record and public meeting exemptions; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates public record and public meeting exemptions for unsolicited proposals for P3 projects that expire after a certain time. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to public records and public meetings;
 3 amending s. 287.05712, F.S., relating to qualifying
 4 public-private projects for public facilities and
 5 infrastructure; providing a definition; providing an
 6 exemption from public records requirements for
 7 unsolicited proposals received by a responsible public
 8 entity for a specified period; providing an exemption
 9 from public meeting requirements for any portion of a
 10 meeting of a responsible public entity during which
 11 exempt proposals are discussed; requiring that a
 12 recording be made of the closed meeting; providing an
 13 exemption from public records requirements for the
 14 recording of, and any records generated during, a
 15 closed meeting for a specified period; providing for
 16 future legislative review and repeal of the
 17 exemptions; providing a statement of public necessity;
 18 providing a contingent effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Subsection (15) is added to section 287.05712,
 23 Florida Statutes, as transferred, renumbered, and amended by HB
 24 95, to read:

25 255.065 ~~287.05712~~ Public-private partnerships; public
 26 records and public meetings exemptions.-

(15) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.-

(a) As used in this subsection, the term "competitive solicitation" has the same meaning as provided in s. 119.071(1).

(b)1. An unsolicited proposal received by a responsible public entity is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project.

2. If the responsible public entity rejects all proposals submitted pursuant to a competitive solicitation for a qualifying project and such entity concurrently provides notice of its intent to seek additional proposals for such project, the unsolicited proposal remains exempt until the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation for the qualifying project or until the responsible public entity withdraws the reissued competitive solicitation for such project.

3. An unsolicited proposal is not exempt for longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.

(c) If the responsible public entity does not issue a competitive solicitation for a qualifying project, the unsolicited proposal ceases to be exempt 180 days after receipt of the unsolicited proposal by such entity.

(d)1. Any portion of a meeting of a responsible public entity during which an unsolicited proposal that is exempt is

53 discussed is exempt from s. 286.011 and s. 24(b), Art. I of the
54 State Constitution.

55 2.a. A complete recording must be made of any portion of
56 an exempt meeting. No portion of the exempt meeting may be held
57 off the record.

58 b. The recording of, and any records generated during, the
59 exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I
60 of the State Constitution until such time as the responsible
61 public entity provides notice of an intended decision for a
62 qualifying project or 180 days after receipt of the unsolicited
63 proposal by the responsible public entity if such entity does
64 not issue a competitive solicitation for the project.

65 c. If the responsible public entity rejects all proposals
66 and concurrently provides notice of its intent to reissue a
67 competitive solicitation, the recording and any records
68 generated at the exempt meeting remain exempt from s. 119.07(1)
69 and s. 24(a), Art. I of the State Constitution until such time
70 as the responsible public entity provides notice of an intended
71 decision concerning the reissued competitive solicitation or
72 until the responsible public entity withdraws the reissued
73 competitive solicitation for such project.

74 d. A recording and any records generated during an exempt
75 meeting are not exempt for longer than 90 days after the initial
76 notice by the responsible public entity rejecting all proposals.

77 (e) This subsection is subject to the Open Government
78 Sunset Review Act in accordance with s. 119.15 and shall stand

79 repealed on October 2, 2021, unless reviewed and saved from
80 repeal through reenactment by the Legislature.

81 Section 2. (1) The Legislature finds that it is a public
82 necessity that an unsolicited proposal received by a responsible
83 public entity pursuant to s. 287.05712, Florida Statutes, be
84 made exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
85 Article I of the State Constitution until a time certain.
86 Prohibiting the public release of unsolicited proposals until a
87 time certain ensures the effective and efficient administration
88 of the public-private partnership process established in s.
89 287.05712, Florida Statutes. Temporarily protecting unsolicited
90 proposals protects the public-private partnership process by
91 encouraging private entities to submit such proposals, which
92 will facilitate the timely development and operation of a
93 qualifying project. Protecting such information ensures that
94 other private entities do not gain an unfair competitive
95 advantage. The public records exemption preserves public
96 oversight of the public-private partnership process by providing
97 for disclosure of the unsolicited proposal when the responsible
98 public entity provides notice of an intended decision; no longer
99 than 90 days after the responsible public entity rejects all
100 proposals received in a competitive solicitation for a
101 qualifying project; or 180 days after receipt of an unsolicited
102 proposal if such entity does not issue a competitive
103 solicitation for a qualifying project related to the proposal.

104 (2) The Legislature further finds that it is a public

105 necessity that any portion of a meeting of the responsible
106 public entity during which an unsolicited proposal that is
107 exempt from public records requirements is discussed be made
108 exempt from s. 286.011, Florida Statutes, and s. 24(b), Article
109 I of the State Constitution. The Legislature also finds that it
110 is a public necessity that the recording of, and any records
111 generated during, a closed meeting be made temporarily exempt
112 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
113 the State Constitution. Failure to close any portion of a
114 meeting during which such unsolicited proposal is discussed, and
115 failure to protect the release of the recording and records
116 generated during that closed meeting, would defeat the purpose
117 of the public records exemption. In addition, the Legislature
118 finds that public oversight is maintained because the public
119 records exemption for the recording and records generated during
120 any closed portion of a meeting of the responsible public entity
121 are subject to public disclosure when such entity provides
122 notice of an intended decision; no longer than 90 days after the
123 responsible public entity rejects all proposals received in a
124 competitive solicitation for a qualifying project; or 180 days
125 after receipt of an unsolicited proposal if the responsible
126 public entity does not issue a competitive solicitation for a
127 qualifying project related to the proposal.

128 Section 3. This act shall take effect on the same date
129 that HB 95 or similar legislation takes effect, if such
130 legislation is adopted in the same legislative session or an

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2016

131 | extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 181 Public Works Projects

SPONSOR(S): Van Zant

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Moore <i>AM</i>	Williamson <i>Raw</i>
2) Local Government Affairs Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Contracts for construction services that are projected to cost more than a specified threshold must be competitively awarded. Specifically, state contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid. Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of \$300,000. The solicitation of competitive bids or proposals must be publicly advertised in the Florida Administrative Register.

The bill creates an unnumbered section of law relating to public works projects. The bill defines the terms "political subdivision," "public works," and "public works project." It prohibits the state or a political subdivision, except when required by state or federal law, from requiring a contractor, subcontractor, or material supplier or carrier engaged in the public works project to:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.

In addition, the bill provides that the state or a political subdivision that contracts for a public works project may not prohibit a contractor, subcontractor, or material supplier or carrier from submitting a bid on the project if such individual is otherwise qualified to do the work described.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Federal Labor and Wage Laws

The National Labor Relations Act of 1935¹ and the Labor Management Relations Act of 1947² constitute a comprehensive scheme of regulations guaranteeing employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce.

The Fair Labor Standards Act (FLSA or act) establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States.³ A state may set the rate higher than the federal minimum, but not lower.⁴ It also requires employers to pay time and a half to their employees for overtime hours worked,⁵ and establishes standards for recordkeeping⁶ and child labor.⁷ Over 135 million workers are covered under the act;⁸ most, but not all, jobs are covered by the FLSA. In addition, some jobs covered by the act are considered "exempt" from the FLSA overtime requirements.⁹

On February 12, 2014, the President signed Executive Order 13658, which establishes a minimum wage for certain federal contractors.¹⁰ The Executive Order requires parties who contract with the federal government to pay workers performing work on or in connection with covered federal contracts at least \$10.10 per hour beginning January 1, 2015. Beginning January 1, 2016, and annually thereafter, such workers must be paid an amount determined by the Secretary of Labor in accordance with the Executive Order. The order stated that "[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs."¹¹

The Davis-Bacon and Related Acts apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act directs the Department of Labor to determine such locally prevailing

¹ 29 U.S.C. ss. 151-169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

² 29 U.S.C. ss. 141-197 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

³ 29 U.S.C. s. 206.

⁴ 29 U.S.C. s. 218(a).

⁵ 29 U.S.C. s. 207(a)(1).

⁶ 29 U.S.C. s. 211.

⁷ 29 U.S.C. s. 212.

⁸ United States Department of Labor, *Wage and Hour Division: Resources for Workers*, <http://www.dol.gov/whd/workers.htm> (last visited Sept. 30, 2015).

⁹ 29 U.S.C. s. 213; United States Department of Labor, *Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)*, www.dol.gov/whd/regs/compliance/whdfs14.pdf (last visited Sept. 30, 2015).

¹⁰ Exec. Order 13658, 79 Fed. Reg. 9851 (Feb. 12, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors>.

¹¹ *Id.*

wage rates. The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts. The Davis-Bacon Act prevailing wage provisions apply to the "Related Acts," under which federal agencies provide assistance for construction projects through grants, loans, loan guarantees, and insurance.¹²

State Labor and Wage Regulations

Article I, s. 6 of the State Constitution creates a constitutional right to collectively bargain for all workers, including public sector employees. It provides, in pertinent part, that "[t]he right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged." The Florida Supreme Court has held that public employees maintain the same rights to collectively bargain as do private employees.¹³

In addition, the State Constitution provides that "[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship."¹⁴ The State Constitution requires employers to pay employees no less than the minimum wage for all hours worked in Florida.¹⁵ The current state minimum wage is \$8.05 per hour,¹⁶ which is higher than the federal rate.¹⁷

Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. The Department of Management Services is responsible for establishing by rule the following:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.¹⁸

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.¹⁹ A county, municipality, special district, or other political subdivision seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of \$300,000.²⁰

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 to be publicly advertised in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening. If the cost of the

¹² United States Department of Labor, *Wage and Hour Division: Davis-Bacon and Related Acts*, <http://www.dol.gov/whd/govcontracts/dbra.htm> (last visited Oct. 13, 2015).

¹³ See *Hillsborough Cnty. Gov'tl Emps. Ass'n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So. 2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm'n*, 410 So. 2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass'n v. Legislature of Fla.*, 269 So. 2d 684 (Fla. 1972).

¹⁴ Article X, s. 24(a), FLA. CONST.

¹⁵ Article X, s. 24(c), FLA. CONST.

¹⁶ Department of Economic Opportunity, *Display Posters and Required Notices*, <http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notice> (last visited Sept. 30, 2015).

¹⁷ The federal minimum wage is \$7.25 per hour. For more information about federal minimum wage provisions, see <http://www.dol.gov/whd/minimumwage.htm> (last visited Sept. 30, 2015).

¹⁸ Section 255.29, F.S.

¹⁹ See s. 255.0525, F.S.; see also chapters 60D-5.002 and 60D-5.0073, F.A.C.

²⁰ Section 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

construction project is projected to exceed \$500,000, the advertisement must be published at least 30 days prior to the bid opening in the FAR, and at least once 30 days prior to the bid opening in a newspaper of general circulation in the county where the project is located.²¹

Florida law provides a preference for the employment of state residents in construction contracts funded with state funds. Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have substantially equal qualifications²² to those of non-residents.²³ If a construction contract is funded by local funds, the contract may contain such a provision.²⁴ In addition, a contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.²⁵

Effect of Proposed Changes

The bill creates an unnumbered section of law relating to public works projects. It defines the following terms:

- "Political subdivision" means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body authorized to expend public funds for construction, maintenance, repair, or improvement of public works.
- "Public works" or "public works project" means a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof, including repair, renovation, or remodeling, owned in whole or in part by any political subdivision for which a project for construction, maintenance, repair, or improvement of public works is to be paid for in whole or in part with state funds.

The bill provides that except as required by federal or state law, the state or any political subdivision that contracts for the construction, maintenance, repair, or improvement of public works may not require specified employment provisions. Specifically, the state or any political subdivision may not require a contractor, subcontractor, or material supplier or carrier engaged in the construction, maintenance, repair, or improvement of public works to:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.

In addition, the bill provides that the state or any political subdivision that contracts for the construction, maintenance, repair, or improvement of a public works project may not prohibit a contractor, subcontractor, or material supplier or carrier from submitting a bid on the project if such individual is able to perform the work described and is qualified, licensed, or certified as required by state law.

B. SECTION DIRECTORY:

Section 1. creates an unnumbered section of law relating to public works projects.

²¹ For counties, municipalities, and political subdivisions, similar publishing provisions apply. See Section 255.0525(2), F.S.

²² Section 255.099(1)(a), F.S., defines substantially equal qualifications as the "qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons."

²³ Section 255.099(1), F.S.

²⁴ *Id.*

²⁵ Section 255.099(1)(b), F.S.

Section 2. provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state revenues.

2. Expenditures:

The bill does not appear to impact state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides rulemaking authority nor requires implementation by executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Definition of Public Works and Public Works Project

The bill provides a definition for "public works" and "public works project" and repeats portions of the definition throughout the bill when using these terms. The bill sponsor may want to consider amending the repetitive provisions to improve the bill's clarity.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to public works projects; providing
 3 definitions; prohibiting state and political
 4 subdivisions that contract for the construction,
 5 maintenance, repair, or improvement of public works
 6 from imposing restrictive conditions on certain
 7 contractors, subcontractors, or material suppliers or
 8 carriers; providing an exception; prohibiting the
 9 state and political subdivisions from restricting
 10 qualified bidders from submitting bids; providing an
 11 effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. (1) As used in this section, the term:

16 (a) "Political subdivision" means a separate agency or
 17 unit of local government created or established by law or
 18 ordinance and the officers thereof. The term includes, but is
 19 not limited to, a county; a city, town, or other municipality;
 20 or a department, commission, authority, school district, taxing
 21 district, water management district, board, public corporation,
 22 institution of higher education, or other public agency or body
 23 authorized to expend public funds for construction, maintenance,
 24 repair, or improvement of public works.

25 (b) "Public works" or "public works project" means a
 26 building, road, street, sewer, storm drain, water system, site

27 development, irrigation system, reclamation project, gas or
28 electrical distribution system, gas or electrical substation, or
29 other facility, project, or portion thereof, including repair,
30 renovation, or remodeling, owned in whole or in part by any
31 political subdivision for which a project for construction,
32 maintenance, repair, or improvement of public works is to be
33 paid for in whole or in part with state funds.

34 (2) (a) Except as required by federal or state law, the
35 state or any political subdivision that contracts for the
36 construction, maintenance, repair, or improvement of public
37 works may not require that a contractor, subcontractor, or
38 material supplier or carrier engaged in the construction,
39 maintenance, repair, or improvement of public works:

40 1. Pay employees a predetermined amount of wages or
41 prescribe any wage rate;

42 2. Provide employees a specified type, amount, or rate of
43 employee benefits;

44 3. Control, limit, or expand staffing; or

45 4. Recruit, train, or hire employees from a designated,
46 restricted, or single source.

47 (b) The state or any political subdivision that contracts
48 for any construction, maintenance, repair, or improvement of a
49 public works project may not prohibit any contractor,
50 subcontractor, or material supplier or carrier able to perform
51 the construction, maintenance, repair, or improvement of public
52 works who is qualified, licensed, or certified as required by

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53 | state law to perform such work from submitting a bid on any
54 | public works project.

55 | Section 2. This act shall take effect July 1, 2016.