



Government Operations Subcommittee

**Wednesday, March 6, 2013
10:00 AM
Webster Hall 212 Knott**

**Will Weatherford
Speaker**

**Jason T. Brodeur
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Subcommittee

Start Date and Time: Wednesday, March 06, 2013 10:00 am
End Date and Time: Wednesday, March 06, 2013 12:00 pm
Location: Webster Hall (212 Knott)
Duration: 2.00 hrs

Consideration of the following proposed committee bill(s):

PCB GVOPS 13-02 -- OGSR Victim of Domestic or Sexual Violence
PCB GVOPS 13-03 -- OGSR Organ and Tissue Donor Registry

Consideration of the following bill(s):

HB 23 Public Meetings by Rodrigues, R.
HB 85 Public-Private Partnerships by Steube
HB 145 Letters of Credit Issued by a Federal Home Loan Bank by Santiago
PCS for HB 247 -- Paper Reduction
HB 249 Pub. Rec./E-mail Addresses of Voter Registration Applicants & Voters by Nelson
HB 307 Preference in Award of State Contracts by Tobia

NOTICE FINALIZED on 03/04/2013 16:13 by Sims-Davis.Linda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 23 Public Meetings
SPONSOR(S): Rodrigues and others
TIED BILLS: IDEN./SIM. BILLS: CS/SB 50

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Stramski JS	Williamson Raw
2) Rulemaking Oversight & Repeal Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The State Constitution and the Florida Statutes set forth the state's public policy regarding access to government meetings; however, both are silent concerning whether citizens have a right to be heard at a public meeting. To date, Florida courts have heard two cases concerning whether a member of the public has a right to be heard at a meeting when he or she is not a party to the proceedings. Current case law provides that while Florida law requires meetings to be open to the public, it does not give the public the right to speak.

The bill requires members of the public to be given a reasonable opportunity to be heard on a proposition before a board or commission. However, the opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action if certain requirements are met. The bill also provides that the opportunity to be heard is not required at certain meetings of a board or commission.

The bill authorizes a board or commission to adopt limited rules or policies: limiting the time an individual has to address the board or commission; requiring that representatives speak on behalf of groups or factions at meetings where large numbers of individuals wish to be heard; prescribing procedures by which an individual may inform a board or commission of a desire to be heard; and designating a period of time for public comment. It is presumed that a board or commission is acting in compliance with the act if the board or commission adopts rules or policies in compliance with the act and follows such rules or policies when providing an opportunity for the public to be heard.

The bill provides that the circuit courts have jurisdiction to issue injunctions for the purpose of enforcing this section upon the filing of an application for such injunction by any citizen of Florida. Whenever an action is filed against a board or commission to enforce the provisions of the act, the court must assess reasonable attorney's fees against the appropriate state agency or authority if the court determines that the defendant acted in violation of the act. The bill also authorizes the court to assess reasonable attorney's fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous.

The bill provides that any action taken by a board or commission that is found to be in violation of the act is not void as a result of such violation.

The bill could have a negative fiscal impact on state and local governments.

This bill may be a county or municipality mandate. See Section III.A.1. of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Constitution: Open Meetings

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.

Article I, s. 24(c) of the State Constitution authorizes the Legislature to provide exemptions from the open meeting requirements upon a two-thirds vote of both legislative chambers, in a bill that specifies the public necessity giving rise to the exemption.

Government in the Sunshine Law

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., also 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 be open to public inspection.⁴

Right to Speak at Meetings

The State Constitution and the Florida Statutes are silent concerning whether citizens have a right to be heard at a public meeting. To date, Florida appellate courts have heard two cases directly addressing whether a member of the public has a right to be heard at a meeting when he or she is not a party to the proceedings.⁵

In *Keesler v. Community Maritime Park Associates, Inc.*⁶, the plaintiffs sued the Community Maritime Park Associates, Inc., (CMPA) alleging that the CMPA violated the Sunshine Law by not providing the plaintiffs with the opportunity to speak at a meeting concerning the development of certain waterfront property. The plaintiffs argued that the phrase "open to the public" granted citizens the right to speak at

¹ Section 286.011(1), F.S.

² *Id.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ Florida courts have heard numerous cases regarding Sunshine Law violations; however, only two appear to be on point regarding the public's right to speak at a public meeting. Other cases have merely opined that the public has an inalienable right to be present and to be heard. The courts have opined that "boards should not be allowed, through devious methods, to 'deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made.'" *See, for example, Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693, 699 (Fla. 1969) ("specified boards and commissions ... should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made"); *Krause v. Reno*, 366 So.2d 1244, 1250 (Fla. 3rd DCA 1979) ("citizen input factor" is an important aspect of public meetings); *Homestead-Miami Speedway, LLC v. City of Miami*, 828 So.2d 411 (Fla. 3rd DCA 2002) (city did not violate Sunshine Law when there was public participation and debate in some but not all meetings regarding a proposed contract).

⁶ 32 So.3d 659 (Fla. 1st DCA 2010).

public meetings. The First District Court of Appeal held:

[A]lthough the Sunshine Law requires that meetings be open to the public, the law does not give the public the right to speak at the meetings. Appellants have failed to point to any case construing the phrase “open to the public” to grant the public the right to speak, and in light of the clear and unambiguous language in *Marston*⁷ (albeit dicta), we are not inclined to broadly construe the phrase as granting such a right here.⁸

The second case, *Kennedy v. St. Johns Water Management District*⁹, was argued before the Fifth District Court of Appeal on October 13, 2011. At a meeting of the St. Johns Water Management District (District), the overflow crowd was put in other rooms and provided a video feed of the meeting. Additionally, the District limited participation in the meeting by members of a group called “The St. Johns Riverkeeper.” Only the St. Johns Riverkeeper representative and attorney were allowed to address the District board. Mr. Kennedy, who wanted to participate in the discussion, sued arguing that the Sunshine Law requires that citizens be given the opportunity to be heard. Mr. Kennedy also alleged that the District violated the Sunshine Law by failing to have a large enough facility to allow all who were interested in attending the meeting to be present in the meeting room. On October 25, 2011, the Fifth District Court of Appeal affirmed the trial court’s ruling that the District did not violate the Sunshine Law as alleged.

Effect of the Bill

The bill creates a new section of law governing the opportunity for the public to be heard at public meetings of a board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision (board or commission). It requires members of the public to be given a reasonable opportunity to be heard on a proposition before a board or commission. However, the opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action if the opportunity:

- Occurs at a meeting that meets the same notice requirements as the meeting at which the board or commission will take official action on the item;
- Occurs at a meeting that is during the decisionmaking process; and
- Is within reasonable proximity before the meeting at which the board or commission takes the official action.

It is unclear what is meant by the terms “proposition” and “reasonable proximity” because the terms are not defined.

The opportunity to be heard is not required for purposes of meetings that are exempt from open meeting requirements. In addition, the opportunity to be heard is not required when a board or commission is considering:

- An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, when compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
- An official act involving no more than a ministerial act; or
- A meeting in which the board or commission is acting in a quasi-judicial capacity with respect to the rights or interests of a person, except as otherwise provided by law.

⁷ In *Wood v Marston*, the Florida Supreme Court held that the University of Florida improperly closed meetings of a committee charged with soliciting and screening applicants for the deanship of the college of law. However, the *Marston* court noted “nothing in this decision gives the public the right to be more than spectators. The public has no authority to participate in or to interfere with the decision-making process.” *Wood v. Marston*, 442 So.2d 934, 941 (Fla. 1983).

⁸ *Keesler* at 660-661.

⁹ *Kennedy v. St. Johns River Water Management District*, No. 2009-0441-CA (Fla. 7th Cir. Ct. 2010), *per curiam affirmed* 84 So.3d 331 (Fla. 5th DCA 2011).

It is unclear what is considered an "unreasonable delay" when deciding if the public's opportunity to be heard should be curtailed.

If the board or commission adopts rules or policies to govern the opportunity to be heard, then those rules or policies must be limited to those that:

- Limit the time that an individual has to address the board or commission;
- Require, at meetings in which a large number of individuals wish to be heard, that a representative of a group or faction on an item, rather than all of the members of the group or faction, address the board or commission;
- Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard, to indicate his or her support, opposition, or neutrality on a proposition, and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
- Designate a specified period of time for public comment.

The bill authorizes the adoption of rules or policies that require representatives of factions or groups to address the board, but does not specifically address the manner of selecting such representatives. Neither does the bill define factions or groups.

It is presumed that the board or commission is acting in compliance with the act if the board or commission adopts rules or policies in compliance with the act and follows such rules or policies when providing an opportunity to be heard.

The bill provides that the circuit courts have jurisdiction to issue injunctions for the purpose of enforcing this section upon the filing of an application for such injunction by any citizen of Florida. Whenever an action is filed against a board or commission to enforce the provisions of this act, the court must assess reasonable attorney fees against the appropriate state agency or authority if the court determines that the defendant to such action acted in violation of the act. The bill also authorizes the court to assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. These provisions do not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of the act.

The bill provides that any action taken by a board or commission that is found to be in violation of the act is not void as a result of such violation.

B. SECTION DIRECTORY:

Section 1 creates s. 286.0114, F.S., providing that the public be provided with a reasonable opportunity to be heard at public meetings.

Section 2 provides an effective date of July 1, 2013.

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:

Governmental entities could incur additional meeting related expenses because longer and more frequent meetings could be required when considering items of great public interest. As a result, it is likely staff would have to be compensated, security would have to be provided, and other expenses related to the meeting and meeting facility would be incurred. The amount of those potential expenses is indeterminate and would vary depending on the magnitude of each issue and the specific associated meeting requirements.

In addition, the uncertainties in the bill could generate lawsuits over its meaning and application to particular situations. The cost of defending such suits would be indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision of Art. VII, s. 18 of the State Constitution may apply because this bill could cause counties and municipalities to incur additional expenses associated with longer meetings or increased meetings due to the new requirement that the public be provided with the opportunity to speak at such meetings; however, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. The exceptions to the mandates provision of Art. VII, s. 18, of the Florida Constitution appear to be inapplicable because the bill does not articulate a threshold finding of serving an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes a board or commission to adopt limited rules or policies governing the opportunity to be heard. The limited rules or policies may require, at meetings in which a large number of individuals wish to be heard, that representatives of groups or factions on an item, rather than all of the members of the groups or actions, address the board or commission. It requires representatives of factions or groups to address the board, but does not directly address the manner of selecting such representatives.

The bill might result in the same statutory provisions of s. 286.0114, F.S., being variously interpreted through rulemaking by multiple boards or commissions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Placement in Law

The bill creates s. 286.0114, F.S., to provide provisions governing the opportunity for the public to be heard at a public meeting of a board or commission. It is suggested that the provisions be created in s. 286.0110, F.S., in order to ensure that the provisions are placed in law behind the Sunshine Law. As currently drafted, the opportunity to speak provisions would be placed in law behind exemptions to the Sunshine Law.

Drafting Issues: Board or Commission

The reasonable opportunity to be heard provision in proposed s. 286.0114(1), F.S., applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision". The remaining provisions of s. 286.0114, F.S., only name boards and commissions. This is not wholly consistent with s. 286.011, F.S., where every subsection specifies at least that it applies to any "board or commission of any such state agency or authority"¹⁰, and in many cases is even more specific by stating that it applies "to any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision".¹¹ This inconsistency could be remedied if one uniform definition of "board or commission" was created and applied throughout proposed s. 286.0114, F.S.

Other Comments: Presumption of Compliance

Proposed s. 286.0114(4)(a), F.S., provides that if a board or commission adopts rules or policies in compliance with s. 286.0114, F.S., and acts in compliance with those rules, a board or commission will be presumed to be acting in accordance with s. 286.0114, F.S. It is unclear that this provision provides any substantive protection to boards or commissions. In order for the presumption to apply, it would first have to be found that rules or policies adopted and followed by a board or commission are in compliance with s. 286.0114, F.S. If a board or commission adopts rules pursuant to the act and acts in compliance with those rules, compliance with the act should be established, not merely presumed.

Other Comments: Remedies

The bill provides that a person may seek injunctive relief to enforce the right to a reasonable opportunity to be heard. However, the bill also provides that any act taken by a board or commission in violation of the bill is not void. A challenge brought by a person who alleges that he or she was not provided a reasonable opportunity to be heard before a board or commission about a proposition may be rendered moot if the board or commission has taken a final action on the proposition. Moot matters are generally not considered by courts. Injunctive relief, for example, might not be available in such a scenario as there would be no action of the board or commission that could be enjoined.¹² Declaratory relief may likewise be unavailable.¹³ On the other hand, there is a generally recognized exception to the rule of mootness where a matter is capable of repetition and evading review. Where a harm is capable of recurring, courts may consider a case even though the specifics of that particular case may render it moot.¹⁴

¹⁰ Section 286.011(2), F.S.

¹¹ Sections 286.011(1), 286.011(4), 286.011(5), 286.011(7), 286.011(8), F.S.

¹² See, for example, *Chafetz v. Greene*, 203 So.2d 18 (Fla. 3rd DCA 1967) (dismissing a suit seeking to enjoin an election as moot since the election had been held); *Halloran v. Pensacola Ass'n of Life Underwriters, Inc.*, 395 So.2d 554 (Fla. 1st DCA 1981) (dismissing as moot a suit seeking to enjoin a temporary suspension where the suspension had expired).

¹³ See *Boatman v. Florida Dep't of Corrections*, 924 So.2d 906 (Fla. 1st DCA 2008) (finding that portion of complaint dealing with conditions for which an inmate sought declaratory and injunctive relief were rendered moot by the inmate's transfer).

¹⁴ See *Gangloff v. Taylor*, 758 So.2d 1159 (Fla. 4th DCA 2000) (holding that action challenging a homeowner's association's assessments was not rendered moot by a change in the method of levying assessments as there was no guarantee that future boards would not attempt to reinstate the old method of levying assessments); *Z.R. v. State*, 596 So.2d 723 (Fla. 5th DCA 1992) (stating that a challenge to detention without an adjudicatory hearing in violation of statute could proceed even after the detention had terminated, as illegal detentions might otherwise be capable of repetition yet evading judicial review).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public meetings; creating s.
 3 286.0114, F.S.; requiring that a member of the public
 4 be given a reasonable opportunity to be heard before a
 5 board or commission takes official action on a
 6 proposition before a board or commission of any state
 7 agency or authority or of any agency or authority of
 8 any county, municipal corporation, or political
 9 subdivision; providing that the opportunity to be
 10 heard is subject to rules or policies adopted by the
 11 board or commission; specifying certain exceptions;
 12 providing requirements for rules or policies governing
 13 the opportunity to be heard; providing that compliance
 14 with the requirements of the act is presumed under
 15 certain circumstances; authorizing a court to assess
 16 reasonable attorney fees in actions filed against a
 17 board or commission; providing that any action taken
 18 by a board or commission which is found in violation
 19 of the act is not void; providing that circuit courts
 20 have jurisdiction to issue injunctions for purposes of
 21 the act; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Section 286.0114, Florida Statutes, is created
 26 to read:

27 286.0114 Public meetings; reasonable opportunity to be
 28 heard; attorney fees.-

29 (1) Members of the public shall be given a reasonable
 30 opportunity to be heard on a proposition before a board or
 31 commission of any state agency or authority or of any agency or
 32 authority of any county, municipal corporation, or political
 33 subdivision. The opportunity to be heard need not occur at the
 34 same meeting at which the board or commission takes official
 35 action on the item, if the opportunity occurs at a meeting that
 36 meets the same notice requirements as the meeting at which the
 37 board or commission takes official action on the item, occurs at
 38 a meeting that is during the decisionmaking process, and is
 39 within reasonable proximity before the meeting at which the
 40 board or commission takes the official action. The opportunity
 41 to be heard is subject to reasonable rules or policies adopted
 42 by the board or commission to ensure the orderly conduct of a
 43 public meeting, as provided in subsection (3).

44 (2) The requirements in subsection (1) do not apply to:

45 (a) An official act that must be taken to deal with an
 46 emergency situation affecting the public health, welfare, or
 47 safety, when compliance with the requirements would cause an
 48 unreasonable delay in the ability of the board or commission to
 49 act;

50 (b) An official act involving no more than a ministerial
 51 act;

52 (c) Any meeting that is exempt from the provisions of s.
 53 286.011; or

54 (d) A meeting in which the board or commission is acting
 55 in a quasi-judicial capacity with respect to the rights or
 56 interests of a person. This paragraph does not affect the right

57 of a person to be heard as otherwise provided by law.

58 (3) Rules or policies of a board or commission must be
 59 limited to rules or policies that:

60 (a) Limit the time an individual has to address the board
 61 or commission;

62 (b) Require, at meetings in which a large number of
 63 individuals wish to be heard, that representatives of groups or
 64 factions on an item, rather than all of the members of the
 65 groups or factions, address the board or commission;

66 (c) Prescribe procedures or forms for an individual to use
 67 in order to inform the board or commission of a desire to be
 68 heard; to indicate his or her support, opposition, or neutrality
 69 on a proposition; and to indicate his or her designation of a
 70 representative to speak for him or her or his or her group on a
 71 proposition if he or she so chooses; or

72 (d) Designate a specified period of time for public
 73 comment.

74 (4) (a) If a board or commission adopts rules or policies
 75 in compliance with this section and follows such rules or
 76 policies when providing an opportunity for members of the public
 77 to be heard, it is presumed that the board or commission is
 78 acting in compliance with this section.

79 (b) Whenever an action is filed against a board or
 80 commission of any state agency or authority of a county,
 81 municipal corporation, or political subdivision to enforce the
 82 provisions of this section, the court shall assess reasonable
 83 attorney fees against such agency or authority if the court
 84 determines that the defendant to such action acted in violation

85 of this section. The court may assess reasonable attorney fees
 86 against the individual filing such an action if the court finds
 87 that the action was filed in bad faith or was frivolous. This
 88 paragraph does not apply to a state attorney or his or her duly
 89 authorized assistants or any officer charged with enforcing the
 90 provisions of this section.

91 (c) Any action taken by a board or commission which is
 92 found to be in violation of this section is not void as a result
 93 of that violation.

94 (d) The circuit courts have jurisdiction to issue
 95 injunctions for the purpose of enforcing this section upon the
 96 filing of an application for such injunction by any citizen of
 97 this state.

98 Section 2. This act shall take effect July 1, 2013.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Government Operations

2 Subcommittee

3 Representative Rodrigues, R. offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 286.0114, Florida Statutes, is created
8 to read:

9 286.0114 Public meetings; reasonable opportunity to be
10 heard; attorney fees.-

11 (1) For purposes of this section, "board or commission"
12 means a board or commission of any state agency or authority or
13 of any agency or authority of a county, municipal corporation,
14 or political subdivision.

15 (2) Members of the public shall be given a reasonable
16 opportunity to be heard on a proposition before a board or
17 commission. The opportunity to be heard need not occur at the
18 same meeting at which the board or commission takes official
19 action on the proposition if the opportunity occurs at a meeting
20 that satisfies the same notice requirements as the meeting at



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21 which the board or commission takes official action on the
22 proposition, occurs at a meeting that is during the
23 decisionmaking process, and is within reasonable proximity in
24 time before the meeting at which the board or commission takes
25 the official action. This section does not prohibit a board or
26 commission from maintaining orderly conduct or proper decorum in
27 a public meeting. The opportunity to be heard is subject to
28 rules or policies adopted by the board or commission, as
29 provided in subsection (4).

30 (3) The requirements in subsection (2) do not apply to:

31 (a) An official act that must be taken to deal with an
32 emergency situation affecting the public health, welfare, or
33 safety, when compliance with the requirements would cause an
34 unreasonable delay in the ability of the board or commission to
35 act;

36 (b) An official act involving no more than a ministerial
37 act;

38 (c) A meeting that is exempt from s. 286.011; or

39 (d) A meeting during which the board or commission is
40 acting in a quasi-judicial capacity. This paragraph does not
41 affect the right of a person to be heard as otherwise provided
42 by law.

43 (4) Rules or policies of a board or commission which
44 govern the opportunity to be heard are limited to those that:

45 (a) Provide guidelines regarding the amount of time an
46 individual has to address the board or commission;

47 (b) Prescribe procedures for allowing representatives of
48 groups or factions on a proposition to address the board or



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49 commission, rather than all members of such groups or factions,
50 at meetings in which a large number of individuals wish to be
51 heard;

52 (c) Prescribe procedures or forms for an individual to use
53 in order to inform the board or commission of a desire to be
54 heard; to indicate his or her support, opposition, or neutrality
55 on a proposition; and to indicate his or her designation of a
56 representative to speak for him or her or his or her group on a
57 proposition if he or she so chooses; or

58 (d) Designate a specified period of time for public
59 comment.

60 (5) If a board or commission adopts rules or policies in
61 compliance with this section and follows such rules or policies
62 when providing an opportunity for members of the public to be
63 heard, the board or commission is deemed to be acting in
64 compliance with this section.

65 (6) A circuit court has jurisdiction to issue an
66 injunction for the purpose of enforcing this section upon the
67 filing of an application for such injunction by a citizen of
68 this state.

69 (7)(a) Whenever an action is filed against a board or
70 commission to enforce this section, the court shall assess
71 reasonable attorney fees against such board or commission if the
72 court determines that the defendant to such action acted in
73 violation of this section. The court may assess reasonable
74 attorney fees against the individual filing such an action if
75 the court finds that the action was filed in bad faith or was
76 frivolous. This paragraph does not apply to a state attorney or



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77 his or her duly authorized assistants or an officer charged with
78 enforcing this section.

79 (b) Whenever a board or commission appeals a court order
80 that has found the board or commission to have violated this
81 section, and such order is affirmed, the court shall assess
82 reasonable attorney fees for the appeal against such board or
83 commission.

84 (8) An action taken by a board or commission which is
85 found to be in violation of this section is not void as a result
86 of that violation.

87 Section 2. The Legislature finds that a proper and
88 legitimate state purpose is served when members of the public
89 have been given a reasonable opportunity to be heard on a
90 proposition before a board or commission of a state agency or
91 authority, or of an agency or authority of a county, municipal
92 corporation, or political subdivision. Therefore, the
93 Legislature determines and declares that this act fulfills an
94 important state interest.

95 Section 3. This act shall take effect October 1, 2013.

96

97

98

99

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

100 Remove everything before the enacting clause and insert:

101 A bill to be entitled

102 An act relating to public meetings; creating s.

103 286.0114, F.S.; defining "board or commission";

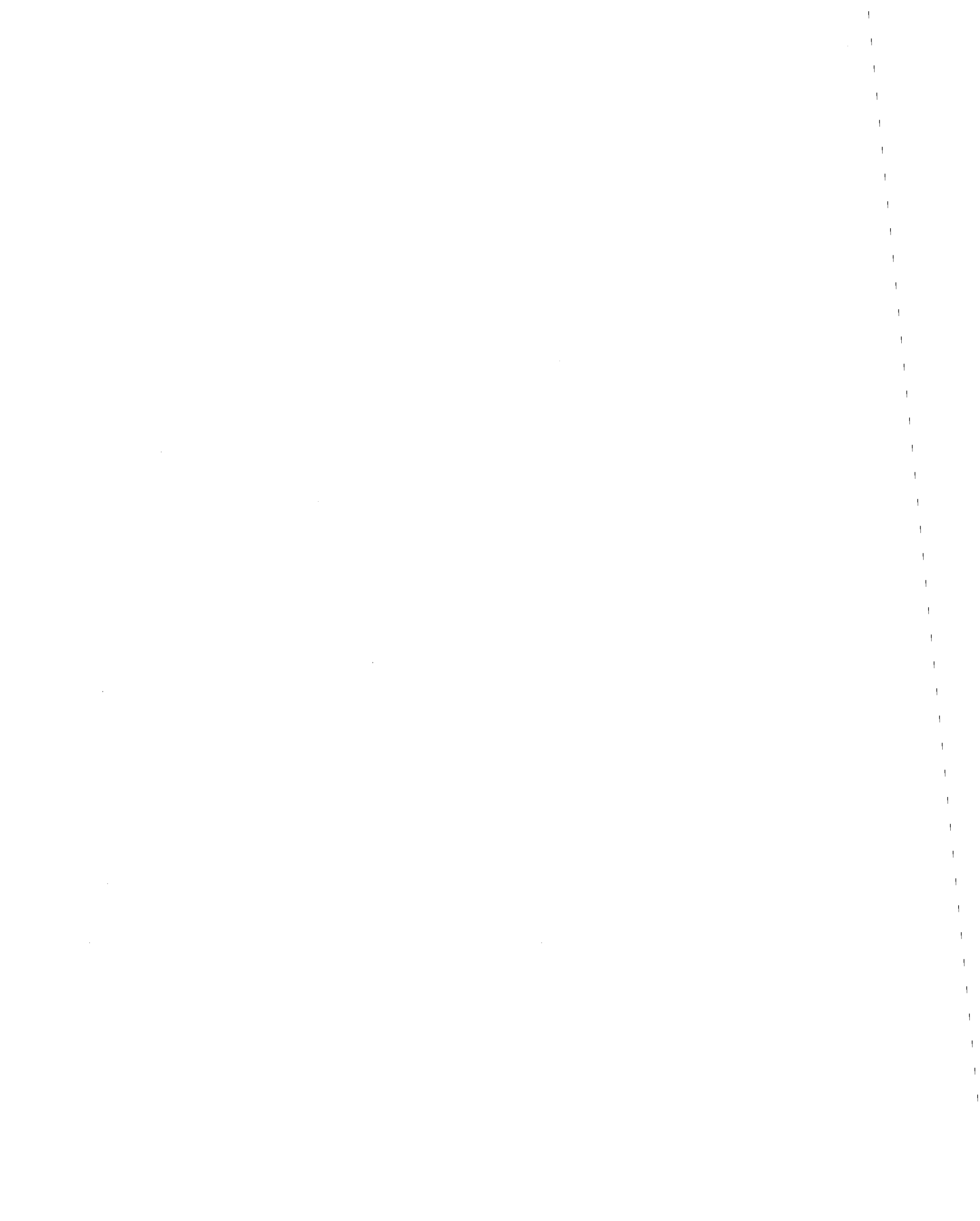
104 requiring that a member of the public be given a



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105 reasonable opportunity to be heard by a board or
106 commission before it takes official action on a
107 proposition; providing exceptions; establishing
108 requirements for rules or policies adopted by the
109 board or commission; providing that compliance with
110 the requirements of this section is deemed to have
111 occurred under certain circumstances; providing that a
112 circuit court has jurisdiction to issue an injunction
113 under certain circumstances; authorizing a court to
114 assess reasonable attorney fees in actions filed
115 against a board or commission; providing that an
116 action taken by a board or commission which is found
117 in violation of this section is not void; providing
118 that the act fulfills an important state interest;
119 providing an effective date.

120





Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Government Operations
2 Subcommittee

3 Representative Rodrigues, R. offered the following:

Amendment to Amendment (314461) by Representative

6 Remove lines 20-37 of the amendment and insert:
7 that is during the decisionmaking process and is within
8 reasonable proximity in time before the meeting at which the
9 board or commission takes the official action. This section does
10 not prohibit a board or commission from maintaining orderly
11 conduct or proper decorum in a public meeting. The opportunity
12 to be heard is subject to rules or policies adopted by the board
13 or commission, as provided in subsection (4).

14 (3) The requirements in subsection (2) do not apply to:

15 (a) An official act that must be taken to deal with an
16 emergency situation affecting the public health, welfare, or
17 safety, if compliance with the requirements would cause an
18 unreasonable delay in the ability of the board or commission to
19 act;

20 (b) An official act involving no more than a ministerial



Amendment No.

21 act, including, but not limited to, approval of minutes and
22 ceremonial proclamations;

23

24

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 85 Public-Private Partnerships
SPONSOR(S): Steube and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 84

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Harrington	Williamson <i>AW</i>
2) Appropriations Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Public-private partnerships 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 the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.

This bill creates an alternative procurement process and requirements for public-private partnerships to facilitate the construction of public-purpose projects. The bill specifies the requirements for such partnerships, which include provisions that require responsible public entities to provide notice of unsolicited proposals, conduct independent analyses of proposed partnerships, notify other affected local jurisdictions, and enter into comprehensive agreements for qualifying projects. The bill provides that responsible public entities may approve a qualifying project if 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.

The bill does not appear to have a fiscal impact on state government; however, the bill has an indeterminate fiscal impact on local governments.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public-Private Partnerships

Public-private partnerships (PPP) 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 the use of the general public.² In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.³

There are different types of PPPs each with varying levels of private sector involvement. The most common is called a Design-Build-Finance-Operate (DBFO) transaction, where the government contracts with a private vendor, granting the private sector partner the right to develop a new piece of public infrastructure.⁴ The private entity takes on full responsibility and risk for the delivery and operation of the public project in accordance with the terms of the partnership. The private entity is paid through the revenue stream generated by the project, which could take the form of a user charge (such as a highway toll) or, in some cases, an annual government payment for performance (often called a "shadow toll" or "availability charge"). Any increases in the user charge or payment for performance typically are set out in advance and regulated by a binding contract.⁵

Another PPP procurement process is the Unsolicited Proposal Procurement Model (UPPM). This procurement process allows for the receipt of unsolicited bids from private entities to contract for the design, construction, operation, and financing of public infrastructure.⁶ Generally, the public entity requires a processing or review fee to cover costs of the technical and legal review.⁷

Florida Department of Transportation Public-Private Partnership

The Florida Department of Transportation (FDOT) currently operates a public-private partnership program.⁸ The Florida Legislature declared that there is a public need for rapid construction of safe and efficient transportation facilities for the purpose of travel within the state, and that it is in the public's interest to provide for the construction of additional safe, convenient, and economical transportation facilities.⁹

Florida law provides that a private transportation facility constructed pursuant to s. 334.30, F.S., must comply with all requirements of federal, state, and local laws; state, regional, and local comprehensive plans; FDOT rules, policies, procedures, and standards for transportation facilities; and any other conditions that FDOT determines to be in the public's best interest.¹⁰

¹ See The Federal Highway Administration, United State Department of Transportation, Innovative Program Delivery website, available at: <http://www.fhwa.dot.gov/ipd/p3/defined/index.htm> (last visited on February 28, 2013).

² See generally The National Council for Public-Private Partnerships website, How PPPs Work, available at: <http://ncppp.org/howpart/index.shtml#define> (last visited on February 28, 2013).

³ *Id.*

⁴ See The Oregon Department of Transportation, the Power of Public-Private Partnerships, available at: <http://www.oregon.gov/ODOT/HWY/OIPP/docs/PowerofPublicPrivate050806.pdf> (last visited on February 28, 2013).

⁵ *Id.*

⁶ See *Innovative Models for the Design, Build, Operation and Financial of Public Infrastructure*, John J. Fumero, at 2.

⁷ *Id.*

⁸ See s. 334.30, F.S.

⁹ *Id.*

¹⁰ Section 334.30(3), F.S.

Current law allows FDOT to advance projects programmed in the adopted 5-year work program using funds provided by public-private partnerships or private entities to be reimbursed from FDOT funds for the project.¹¹ In accomplishing this, FDOT may use state resources to participate in funding and financing the project as provided for under FDOT's enabling legislation for projects on the State Highway System.¹²

FDOT may receive or solicit proposals and, with legislative approval as evidenced by approval of the project in the department's work program, enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of transportation facilities.¹³ If FDOT receives an unsolicited proposal, it is required to publish a notice in the Florida Administrative Weekly¹⁴ and a newspaper of general circulation stating that FDOT has received the proposal and it will accept other proposals for the same project.¹⁵ In addition, FDOT requires that an initial payment of \$50,000 accompany any unsolicited proposal to cover the costs of evaluating the proposal.¹⁶

Current law governing FDOT's PPP provides for a solicitation process that is similar to the Consultants' Competitive Negotiation Act.¹⁷ FDOT may request proposals from private entities for public-private transportation projects.¹⁸ The partnerships must be qualified by FDOT as part of the procurement process outlined in the procurement documents.¹⁹ These procurement documents must include provisions for performance of the private entity and payment of subcontractors, including surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees.²⁰ FDOT must rank the proposals in the order of preference.²¹ FDOT may then begin negotiations with the top firm. If that negotiation is unsuccessful, FDOT must terminate negotiations and move to the second-ranked firm. If negotiation with the second ranked firm is unsuccessful, FDOT must move to the third-ranked firm.²² FDOT must provide independent analyses of the proposed PPP that demonstrates the cost effectiveness and overall public benefit prior to moving forward with the procurement and prior to awarding the contract.²³

Current law authorizes FDOT to use innovative finance techniques associated with PPP's, including federal loans, commercial bank loans, and hedges against inflation from commercial banks or other private sources.²⁴ PPP agreements under s. 334.30, F.S., must be limited to a term not to exceed 50 years.²⁵ In addition, FDOT may not utilize more than 15 percent of total federal and state funding in any given year to fund PPP projects.²⁶

¹¹ Section 334.30(1), F.S.

¹² *Id.*

¹³ *Id.*

¹⁴ The Florida Administrative Weekly was renamed the Florida Administrative Register during the 2012 Session. Chapter 2012-63, L.O.F.

¹⁵ Section 334.30(6)(a), F.S.

¹⁶ See chapter 14-107.0011, F.A.C.

¹⁷ See s. 287.055, F.S.

¹⁸ Section 334.30(6)(a), F.S.

¹⁹ Section 334.30(6)(b), F.S.

²⁰ Section 334.30(6)(c), F.S.

²¹ See s. 334.30(6)(d), F.S. In ranking the proposals, the FDOT may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the project.

²² Section 334.30(6)(d), F.S.

²³ Section 334.30(6)(e), F.S.

²⁴ Section 334.30(7), F.S.

²⁵ Section 334.30(11), F.S.

²⁶ Section 334.30(12), F.S.

Procurement of Personal Property and Services

Chapter 287, F.S., regulates state agency²⁷ procurement of personal property and services. The Department of Management Services (department) is responsible for overseeing state purchasing activity including professional and contractual services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.²⁸ The department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.²⁹

Current law requires contracts for commodities or contractual services in excess of \$35,000 to be procured utilizing a competitive solicitation process.³⁰ Section 287.012(6), F.S., provides that competitive solicitation means "the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement."

The Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for design professional services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of design professionals.

Florida's Consultants' Competitive Negotiation Act (CCNA), was enacted in 1973,³¹ to specify the procedures to follow when procuring the services of architects and engineers. The CCNA did not prohibit discussion of compensation in the initial vendor selection phase until 1988, when the Legislature enacted a provision requiring that consideration of compensation occur only during the selection phase.³²

Currently, the CCNA specifies the process to follow when state and local government agencies procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper.³³ The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:

- A project, when the basic construction cost is estimated by the agency to exceed \$325,000.
- A planning or study activity, when the fee for professional services exceeds \$35,000.

The CCNA provides a two-phase selection process.³⁴ In the first phase, the "competitive selection," the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the three bidders ranked in order of preference that it considers most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the three most highly qualified bidders, including willingness to meet time and budget requirements; past performance; location; recent, current, and projected firm workloads; volume of work previously awarded to the firm; and whether the firm is certified as a minority business.³⁵

²⁷ Section 287.012(1), F.S., defines agency as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."

²⁸ See ss. 287.032 and 287.042, F.S.

²⁹ *Id.*

³⁰ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold provided in s. 287.017, F.S., to be competitively bid.

³¹ Chapter 73-19, L.O.F.

³² Chapter 88-108, L.O.F.

³³ Section 287.055, F.S.

³⁴ Section 287.055(4) and (5), F.S.

³⁵ See s. 287.055(4)(b), F.S.

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid. Current law defines the term "compensation" to mean "the amount paid by the agency for professional services," regardless of whether stated as compensation or as other types of rates.³⁶

In the second phase, the "competitive negotiation," the agency then negotiates compensation with the most qualified of the three selected firms. If a satisfactory contract cannot be negotiated, the agency must then negotiate with the second most qualified firm. The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract. If a satisfactory contract cannot be negotiated with any of the three selected, the agency must begin the selection process again.

Procurement of Construction Services

Chapter 255, F.S., regulates construction services³⁷ for public property and publically owned buildings. The Department of Management Services is responsible for establishing, through administrative rules, 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 modifications to contract documents when such negotiations are determined by the secretary of the Department of Management Services to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when the Department of Management Services determines the use of such contracts to be in the best interest of the state.³⁸

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.³⁹ In addition, such projects must be advertised in the Florida Administrative Weekly at least 21 days prior to the bid opening.⁴⁰ State construction projects that are projected to exceed \$500,000 are required to be published 30 days prior to a bid opening in the Florida Administrative Weekly, and at least once in a newspaper of general circulation in the county where the project is located.⁴¹ Counties, municipalities, special districts,⁴² 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 \$300,000.⁴³

Effect of the Bill

The bill creates s. 287.05712, F.S., specifying requirements for public-private partnerships.

Definitions

The bill provides for definitions to be used in the section, including the following:

- "Affected local jurisdiction" means a county, municipality, or special district in which all or a portion of a qualifying project is located.

³⁶ Section 287.055(2)(d), F.S.

³⁷ Section 255.072(2), F.S., defines construction services as "all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property." The term does not include contracts or work performed by the Department of Transportation.

³⁸ Section 255.29, F.S.

³⁹ See chapters 60D-5.002 and 60D-5.0073, F.A.C.; see also s. 255.0525, F.S.

⁴⁰ Section 255.0525(1), F.S.

⁴¹ *Id.*

⁴² Section 189.403(1), F.S., defines special district as a "local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet."

⁴³ See s. 255.20(1), F.S.

- “Qualifying project” means either:
 - 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, power-generating 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,⁴⁴ 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; or
 - A water, wastewater, or surface water management facility or other related infrastructure.
- “Responsible public entity” means a county, municipality, school board, or university, 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.

Legislative Intent

The bill provides legislative findings to support the need for public-private partnerships in Florida, which includes a need for timely and cost-effective acquisition, design, construction, and maintenance of public projects, and that such need may not be wholly satisfied by existing methods of procurement. The bill provides that it is the intent of the Legislature to encourage investment in the state by private entities and to provide the greatest possible flexibility to public and private entities contracting for the provision of public services.

Procurement Procedures

The bill provides that a responsible public entity 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, upgrade, operation, ownership, or financing of facilities.

Unsolicited Proposals

The bill provides the following requirements for unsolicited proposals:

- The responsible public entity may establish a reasonable application fee to accompany unsolicited proposals sufficient to pay the costs of evaluating the proposal.
- If an unsolicited proposal is received, the responsible public entity must publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks stating that the entity has received a proposal and will accept other proposals for the same project for 21 days after the initial publication. The scope of the proposal may be published in the notice, but the financial terms of the offer may not be disclosed.

Project Approval Requirements

Before project approval, the responsible public entity must determine that the proposed project is in the public’s best interest; is for a facility that is owned by a responsible public entity or for a facility for which ownership will be conveyed to the responsible public entity; has adequate safeguards to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the agreement by the responsible public entity; has adequate safeguards in place to ensure that the responsible public entity or the private entity has the opportunity to add capacity to the proposed project; and will be owned by the responsible public entity upon completion or termination and upon payments of the amounts financed.

⁴⁴ Inclusion of equipment appears to conflict with s. 287.063, F.S.

An unsolicited proposal from a private entity for approval of a qualifying project 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 projects, 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 the 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; and
- Any additional material or information the responsible public entity reasonably requests.

Project Qualification and Process

The private entity must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional architectural, engineering, and contractual services for traditional procurement projects.

The bill requires the responsible public entity to ensure that provisions are made for the private entity's performance and payment of subcontractors, ensure the most efficient pricing of the security package, and ensure that provisions are made for the transfer of the private entity's obligations if the comprehensive agreement is terminated or a material default occurs. Either before the procurement process is initiated, or before the contract is awarded, the responsible public entity must perform an independent analysis of the proposed public-private partnership that demonstrates the cost-effectiveness and overall public benefit.

After the notification period has expired for unsolicited proposals, the responsible public entity must rank the proposals received in order of preference. For purposes of ranking, the responsible public entity may consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, and finance plans. If negotiations with the first ranked firm are unsuccessful, the responsible public entity may begin negotiations with the second ranked firm. The bill does not require the responsible public entity to choose any of the firms that apply or for more than one firm to respond to the solicitation.

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 and consultants.

The bill provides that 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.

Notice to Affected Local Jurisdictions

The bill requires the responsible public entity to notify each affected local jurisdiction when considering a qualifying project. The bill provides that the affected local jurisdictions may, within 60 days, submit written comments to the responsible public entity. The responsible public entity is required to consider the comments submitted by the affected local jurisdiction.

Comprehensive Agreement

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

- Delivery of performance and payment bonds, letters of credit, and other security in connection with the development or operation of the qualifying project.
- Review of plans and specifications for the project by the 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 public entity.
- Maintenance of a policy or policies of public liability insurance.
- Monitoring the practices of the private entity to ensure the project is properly maintained.
- Filing of financial statements on a periodic basis.
- Policies and procedures governing the rights and responsibilities of the public and private entity in the event of a termination of the agreement or a material default.
- User fees, lease payments, or service payments as may be established by agreement of parties.
- Duties of the private entity, including terms and conditions that the public entity determines serve the public purpose of the project.

The bill provides that 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 any 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, including, but not limited to, a provision regarding unavoidable delays.
- A provision that terminates the authority and duties of the private entity and dedicates the qualifying project to the responsible public entity.

Fees

The bill provides that the comprehensive agreement may authorize the private entity to impose fees for the use of the facility.

Financing

The bill provides multiple financing options for public-private partnerships, which 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 private-public partnerships.

Powers and Duties of the Private Entity

The bill requires the private entity to 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.

Expiration or Termination of Agreements

The bill provides that, upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay 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. The bill provides that the assumption of the development or operation of the qualifying project does not obligate the responsible public entity to pay any obligation of the private entity from sources other than from revenues from the qualifying project unless stated otherwise in the comprehensive agreement.

Sovereign Immunity

The bill provides that sovereign immunity is not waived by the state, any responsible public entity, any affected local jurisdiction, or any officer or employee with respect to the qualifying project. In addition, it provides that cities, counties, and towns possess sovereign immunity with respect to the design, construction, and operation of the project.

Construction

The bill provides that it must be liberally construed to effectuate its purposes. In addition, the bill provides that it does not waive any requirement in s. 287.055, F.S., which is the Consultants' Competitive Negotiation Act.

Effective Date

The bill provides an effective date of July 1, 2013.

B. SECTION DIRECTORY:

Section 1. creates s. 287.05712, F.S., providing definitions; providing legislative findings and intent relating to the construction or improvement by private entities of facilities used predominately for a public purpose; providing procurement procedures; providing requirements for project approval; providing project qualifications and process; providing for notice to affected local jurisdictions; providing for comprehensive agreements between a public and private entity; providing for use fees; providing for financing sources for certain projects by a private entity; providing powers and duties for private entities; providing for expiration or termination of agreements; providing for the applicability of sovereign immunity for public entities with respect to qualified projects; providing for construction of the act.

Section 2. provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state governments.

2. Expenditures:

The bill does not appear to impact state governments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The fiscal impact on local governments is unknown.

2. Expenditures:

The fiscal impact on local governments is unknown.

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 local governments.

D. FISCAL COMMENTS:

The bill does not appear to have a fiscal impact on state government; however, the bill may have an indeterminate fiscal impact on local governments that enter into public-private partnerships. Local government expenditures would be based on currently unidentified agreements with public-private partnerships.

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 an 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 references guidelines that responsible public entities must adopt to guide the procurement process and selection of proposals from private entities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues:

On line 492, the bill references "the state" for purposes of sovereign immunity and, on line 503, the bill references "state agency" for purposes of construction of the section. The state is not otherwise included in the bill and these references could lead to confusion.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public-private partnerships;
 3 creating s. 287.05712, F.S.; providing definitions;
 4 providing legislative findings and intent relating to
 5 the construction or improvement by private entities of
 6 facilities used predominantly for a public purpose;
 7 providing procurement procedures; providing
 8 requirements for project approval; providing project
 9 qualifications and process; providing for notice to
 10 affected local jurisdictions; providing for
 11 comprehensive agreements between a public and a
 12 private entity; providing for use fees; providing for
 13 financing sources for certain projects by a private
 14 entity; providing powers and duties for private
 15 entities; providing for expiration or termination of
 16 agreements; providing for the applicability of
 17 sovereign immunity for public entities with respect to
 18 qualified projects; providing for construction of the
 19 act; providing an effective date.

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

22
 23 Section 1. Section 287.05712, Florida Statutes, is created
 24 to read:

25 287.05712 Public-private partnerships.-

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

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

29 qualifying project is located.

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

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

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

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

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

43 (g) "Private entity" means any natural person,
 44 corporation, general partnership, limited liability company,
 45 limited partnership, joint venture, business trust, public-
 46 benefit corporation, nonprofit entity, or other private business
 47 entity.

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

52 (i) "Qualifying project" means:

- 53 1. A facility or project that serves a public purpose,
 54 including, but not limited to, any ferry or mass transit
 55 facility, vehicle parking facility, airport or seaport facility,
 56 power-generating facility, rail facility or project, fuel supply

57 facility, oil or gas pipeline, medical or nursing care facility,
 58 recreational facility, sporting or cultural facility, or
 59 educational facility or other building or facility that is used
 60 or will be used by a public educational institution, or any
 61 other public facility or infrastructure that is used or will be
 62 used by the public at large or in support of an accepted public
 63 purpose or activity;

64 2. An improvement, including equipment, of a building that
 65 will be principally used by a public entity or the public at
 66 large or that supports a service delivery system in the public
 67 sector; or

68 3. A water, wastewater, or surface water management
 69 facility or other related infrastructure.

70 (j) "Responsible public entity" means a county,
 71 municipality, school board, or university, or any other
 72 political subdivision of the state; a public body politic and
 73 corporate; or a regional entity that serves a public purpose and
 74 is authorized to develop or operate a qualifying project.

75 (k) "Revenues" means the income, earnings, user fees,
 76 lease payments, or other service payments relating to the
 77 development or operation of a qualifying project, including, but
 78 not limited to, money received as grants or otherwise from the
 79 Federal Government, a public entity, or an agency or
 80 instrumentality thereof in aid of the qualifying project.

81 (l) "Service contract" means a contract entered into
 82 between a public entity and the private entity which defines the
 83 terms of the services to be provided with respect to a
 84 qualifying project.

85 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
 86 that there is a public need for the construction or upgrade of
 87 facilities that are used predominantly for public purposes and
 88 that it is in the public's interest to provide for the
 89 construction or upgrade of the facilities.

90 (a) The Legislature also finds that:

91 1. There is a public need for timely and cost-effective
 92 acquisition, design, construction, improvement, renovation,
 93 expansion, equipping, maintenance, operation, implementation, or
 94 installation of public projects, including educational
 95 facilities, transportation facilities, water or wastewater
 96 management facilities and infrastructure, technology
 97 infrastructure, roads, highways, bridges, and other public
 98 infrastructure and governmental facilities within the state
 99 which serve a public need and purpose, and that such public need
 100 may not be wholly satisfied by existing procurement methods.

101 2. There are inadequate resources to develop new
 102 educational facilities, transportation facilities, water or
 103 wastewater management facilities and infrastructure, technology
 104 infrastructure, roads, highways, bridges, and other public
 105 infrastructure and governmental facilities for the benefit of
 106 residents of this state, and that a public-private partnership
 107 has demonstrated that it can meet the needs by improving the
 108 schedule for delivery, lowering the cost, and providing other
 109 benefits to the public.

110 3. There are state and federal tax incentives that promote
 111 partnerships between public and private entities to develop and
 112 operate qualifying projects.

113 4. A procurement under this section serves the public
114 purpose of this section if such action facilitates the timely
115 development or operation of a qualifying project.

116 (b) It is the intent of the Legislature to encourage
117 investment in the state by private entities; to facilitate
118 various bond financing mechanisms, private capital, and other
119 funding sources for the development and operation of qualifying
120 projects, including the expansion and acceleration of such
121 financing to meet the public need; and to provide the greatest
122 possible flexibility to public and private entities contracting
123 for the provision of public services.

124 (3) PROCUREMENT PROCEDURES.—A responsible public entity
125 may receive unsolicited proposals or may solicit proposals for
126 qualifying projects and may thereafter enter into an agreement
127 with a private entity, or a consortium of private entities, for
128 the building, upgrade, operation, ownership, or financing of
129 facilities.

130 (a) The responsible public entity may establish a
131 reasonable application fee for the submission of an unsolicited
132 proposal under this section. The fee must be sufficient to pay
133 the costs of evaluating the proposal. The responsible public
134 entity may engage the services of a private consultant to assist
135 in the evaluation.

136 (b) The responsible public entity may request a proposal
137 from private entities for a public-private project or, if the
138 public entity receives an unsolicited proposal, the public
139 entity shall publish notice in the Florida Administrative
140 Register and a newspaper of general circulation at least once a

141 | week for 2 weeks stating that the public entity has received a
 142 | proposal and will accept for 21 days after the initial date of
 143 | publication other proposals for the same project. A copy of the
 144 | notice must be mailed to each local government in the affected
 145 | area. The scope of the proposal may be publicized for the
 146 | purpose of soliciting competing proposals; however, the
 147 | financial terms of the proposal may not be disclosed until the
 148 | terms of all competing bids are simultaneously disclosed in
 149 | accordance with the applicable law governing procurement
 150 | procedures for the qualifying project.

151 | (c) A responsible public entity that is a school board may
 152 | enter into a comprehensive agreement only with the approval of
 153 | the local governing body.

154 | (d) Before approval, the responsible public entity must
 155 | determine that the proposed project:

- 156 | 1. Is in the public's best interest;
- 157 | 2. Is for a facility that is owned by the responsible
 158 | public entity or for a facility for which ownership will be
 159 | conveyed to the responsible public entity;
- 160 | 3. Has adequate safeguards in place to ensure that
 161 | additional costs or service disruptions are not imposed on the
 162 | public in the event of material default or cancellation of the
 163 | agreement by the responsible public entity;
- 164 | 4. Has adequate safeguards in place to ensure that the
 165 | responsible public entity or the private entity has the
 166 | opportunity to add capacity to the proposed project or other
 167 | facilities serving similar predominantly public purposes; and
- 168 | 5. Will be owned by the responsible public entity upon

169 completion or termination of the agreement and upon payment of
 170 the amounts financed.

171 (e) Before signing any comprehensive agreement, the
 172 responsible public entity must consider a reasonable finance
 173 plan that is consistent with subsection (9), the project cost,
 174 revenues by source, available financing, major assumptions,
 175 internal rate of return on private investments, if any
 176 governmental funds are assumed in order to deliver a cost-
 177 feasible project, and a total cash-flow analysis beginning with
 178 the implementation of the project and extending for the term of
 179 the agreement.

180 (f) In considering an unsolicited proposal, the
 181 responsible public entity may require from the private entity an
 182 investment-grade technical study prepared by a nationally
 183 recognized expert who is accepted by national bond rating
 184 agencies. In evaluating the technical study, the responsible
 185 public entity may rely upon internal staff reports prepared by
 186 personnel familiar with the operation of similar facilities or
 187 the advice of external advisors or consultants having relevant
 188 experience.

189 (4) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal
 190 from a private entity for approval of a qualifying project must
 191 be accompanied by the following material and information, unless
 192 waived by the responsible public entity:

193 (a) A description of the qualifying project, including the
 194 conceptual design of the facilities or a conceptual plan for the
 195 provision of services, and a schedule for the initiation and
 196 completion of the qualifying project.

197 (b) A description of the method by which the private
 198 entity proposes to secure any necessary property interests that
 199 are required for the qualifying project.

200 (c) A description of the private entity's general plans
 201 for financing the qualifying project, including the sources of
 202 the private entity's funds and identification of any dedicated
 203 revenue source or proposed debt or equity investment on behalf
 204 of the private entity.

205 (d) The name and address of a person who may be contacted
 206 for further information concerning the proposal.

207 (e) The proposed user fees, lease payments, or other
 208 service payments over the term of a comprehensive agreement, and
 209 the methodology and circumstances for changes to the user fees,
 210 lease payments, and other service payments over time.

211 (f) Any additional material or information that the
 212 responsible public entity reasonably requests.

213 (5) PROJECT QUALIFICATION AND PROCESS.—

214 (a) The private entity must meet the minimum standards
 215 contained in the responsible public entity's guidelines for
 216 qualifying professional architectural, engineering, and
 217 contracting services for traditional procurement projects.

218 (b) The responsible public entity must:

- 219 1. Ensure that provisions are made for the private
 220 entity's performance and payment of subcontractors, including,
 221 but not limited to, surety bonds, letters of credit, parent
 222 company guarantees, and lender and equity partner guarantees.
 223 For the components of the qualifying project which involve
 224 construction performance and payment, bonds are required and are

225 subject to the recordation, notice, suit limitation, and other
226 requirements of s. 255.05.

227 2. Ensure the most efficient pricing of the security
228 package that provides for the performance and payment of
229 subcontractors.

230 3. Ensure that provisions are made for the transfer of the
231 private entity's obligations if the comprehensive agreement is
232 terminated or a material default occurs.

233 (c) After the public notification period has expired in
234 the case of an unsolicited proposal, the responsible public
235 entity shall rank the proposals received in order of preference.
236 In ranking the proposals, the responsible public entity may
237 consider factors that include, but are not limited to,
238 professional qualifications, general business terms, innovative
239 engineering or cost-reduction terms, and finance plans. If the
240 responsible public entity is not satisfied with the results of
241 the negotiations, the responsible public entity may terminate
242 negotiations with the proposer and negotiate with the second-
243 ranked or subsequent-ranked firms, in the order consistent with
244 this procedure. If only one proposal is received, the
245 responsible public entity may negotiate in good faith, and if
246 the public entity is not satisfied with the results of the
247 negotiations, the public entity may terminate negotiations with
248 the proposer. Notwithstanding this paragraph, the responsible
249 public entity may reject all proposals at any point in the
250 process until a contract with the proposer is executed.

251 (d) The responsible public entity shall perform an
252 independent analysis of the proposed public-private partnership

253 which demonstrates the cost-effectiveness and overall public
 254 benefit before the procurement process is initiated or before
 255 the contract is awarded.

256 (e) The responsible public entity may approve the
 257 development or operation of an educational facility, a
 258 transportation facility, a water or wastewater management
 259 facility or related infrastructure, a technology infrastructure
 260 or other public infrastructure, or a governmental facility
 261 needed by the responsible public entity as a qualifying project,
 262 or the design or equipping of a qualifying project that is
 263 developed or operated, if:

264 1. There is a public need for or benefit derived from a
 265 project of the type that the private entity proposes as the
 266 qualifying project.

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

269 3. The private entity's plans will result in the timely
 270 acquisition, design, construction, improvement, renovation,
 271 expansion, equipping, maintenance, or operation of the
 272 qualifying project.

273 (f) The responsible public entity may charge a reasonable
 274 fee to cover the costs of processing, reviewing, and evaluating
 275 the request, including, but not limited to, reasonable attorney
 276 fees and fees for financial and technical advisors or
 277 consultants and for other necessary advisors or consultants.

278 (g) Upon approval of a qualifying project, the responsible
 279 public entity shall establish a date for the commencement of
 280 activities related to the qualifying project. The responsible

281 | public entity may extend the commencement date.

282 | (h) Approval of a qualifying project by the responsible
 283 | public entity is subject to entering into a comprehensive
 284 | agreement with the private entity.

285 | (6) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

286 | (a) The responsible public entity must notify each
 287 | affected local jurisdiction by furnishing a copy of the proposal
 288 | to each affected local jurisdiction when considering a proposal
 289 | for a qualifying project.

290 | (b) Each affected local jurisdiction that is not a
 291 | responsible public entity for the respective qualifying project
 292 | may, within 60 days after receiving the notice, submit in
 293 | writing any comments to the responsible public entity and
 294 | indicate whether the facility is incompatible with the local
 295 | comprehensive plan, the local infrastructure development plan,
 296 | the capital improvements budget, or other governmental spending
 297 | plan. The responsible public entity shall consider the comments
 298 | of the affected local jurisdiction before entering into a
 299 | comprehensive agreement with a private entity. If an affected
 300 | local jurisdiction fails to respond to the responsible public
 301 | entity within the time provided in this paragraph, such failure
 302 | to respond is deemed an acknowledgement by the affected local
 303 | jurisdiction that the qualifying project is compatible with the
 304 | local comprehensive plan, the local infrastructure development
 305 | plan, the capital improvements budget, or other governmental
 306 | spending plan.

307 | (7) COMPREHENSIVE AGREEMENT.—

308 | (a) Before developing or operating the qualifying project,

309 the private entity must enter into a comprehensive agreement
 310 with the responsible public entity. The comprehensive agreement
 311 must provide for:

312 1. The delivery of performance and payment bonds, letters
 313 of credit, or other security acceptable to the responsible
 314 public entity in connection with the development or operation of
 315 the qualifying project in the form and amount satisfactory to
 316 the responsible public entity. For the components of the
 317 qualifying project which involve construction, the form and
 318 amount of the bonds must comply with s. 255.05.

319 2. The review of the plans and specifications for the
 320 qualifying project by the responsible public entity and, if the
 321 plans and specifications conform to standards acceptable to the
 322 responsible public entity, the approval by the responsible
 323 public entity. This subparagraph does not require the private
 324 entity to complete the design of the qualifying project before
 325 the execution of the comprehensive agreement.

326 3. The inspection of the qualifying project by the
 327 responsible public entity to ensure that the private entity's
 328 activities are acceptable to the public entity in accordance
 329 with the comprehensive agreement.

330 4. The maintenance of a policy of public liability
 331 insurance, a copy of which must be filed with the responsible
 332 public entity and accompanied by proofs of coverage, or self-
 333 insurance, each in the form and amount satisfactory to the
 334 responsible public entity and reasonably sufficient to ensure
 335 coverage of tort liability to the public and employees and to
 336 enable the continued operation of the qualifying project.

337 5. The monitoring by the responsible public entity of the
 338 maintenance practices to be performed by the private entity to
 339 ensure that the qualifying project is properly maintained.

340 6. The periodic filing by the private entity of the
 341 appropriate financial statements that pertain to the qualifying
 342 project.

343 7. The procedures that govern the rights and
 344 responsibilities of the responsible public entity and the
 345 private entity in the course of the construction and operation
 346 of the qualifying project and in the event of the termination of
 347 the comprehensive agreement or a material default by the private
 348 entity. The procedures must include conditions that govern the
 349 assumption of the duties and responsibilities of the private
 350 entity by an entity that funded, in whole or part, the
 351 qualifying project or by the responsible public entity, and must
 352 provide for the transfer or purchase of property or other
 353 interests of the private entity by the responsible public
 354 entity.

355 8. The fees, lease payments, or service payments. In
 356 negotiating user fees, the fees must be the same for persons
 357 using the facility under like conditions and must not materially
 358 discourage use of the qualifying project. The execution of the
 359 comprehensive agreement or a subsequent amendment is conclusive
 360 evidence that the fees, lease payments, or service payments
 361 provided for in the comprehensive agreement comply with this
 362 section. Fees or lease payments established in the comprehensive
 363 agreement as a source of revenue may be in addition to, or in
 364 lieu of, service payments.

365 9. The duties of the private entity, including the terms
 366 and conditions that the responsible public entity determines
 367 serve the public purpose of this section.

368 (b) The comprehensive agreement may include:

369 1. An agreement by the responsible public entity to make
 370 grants or loans to the private entity from amounts received from
 371 the federal, state, or local government or any agency or
 372 instrumentality thereof.

373 2. A provision under which each entity agrees to provide
 374 notice of default and cure rights for the benefit of the other
 375 entity, including, but not limited to, a provision regarding
 376 unavoidable delays.

377 3. A provision that terminates the authority and duties of
 378 the private entity under this section and dedicates the
 379 qualifying project to the responsible public entity or, if the
 380 qualifying project was initially dedicated by an affected local
 381 jurisdiction, to the affected local jurisdiction for public use.

382 (8) FEES.—An agreement entered into pursuant to this
 383 section may authorize the private entity to impose fees for the
 384 use of the facility. The following provisions apply to the
 385 agreement:

386 (a) The responsible public entity may develop new
 387 facilities or increase capacity in existing facilities through
 388 agreements with public-private partnerships.

389 (b) The public-private partnership agreement must ensure
 390 that the facility is properly operated, maintained, or improved
 391 in accordance with standards set forth in the comprehensive
 392 agreement.

393 (c) The responsible public entity may lease existing fee-
 394 for-use facilities through a public-private partnership
 395 agreement.

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

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

401 (9) FINANCING.—

402 (a) A private entity may enter into a private-source
 403 financing agreement between financing sources and the private
 404 entity. A financing agreement and any liens on the property or
 405 facility must be paid in full at the applicable closing that
 406 transfers ownership or operation of the facility to the
 407 responsible public entity at the conclusion of the term of the
 408 comprehensive agreement.

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

412 (c) The responsible public entity may use innovative
 413 finance techniques associated with a public-private partnership
 414 under this section, including, but not limited to, federal loans
 415 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
 416 and hedges against inflation from commercial banks or other
 417 private sources. In addition, the responsible public entity may
 418 provide its own capital or operating budget to support a
 419 qualifying project. The budget may be from any legally
 420 permissible funding sources of the responsible public entity,

421 including the proceeds of debt issuances. A responsible public
 422 entity may use the model financing agreement provided in s.
 423 489.145(6) for its financing of a facility owned by a
 424 responsible public entity. A financing agreement may not require
 425 the responsible public entity to indemnify the financing source,
 426 subject the responsible public entity's facility to liens in
 427 violation of s. 11.066(5), or secure financing by the
 428 responsible public entity with a pledge of security interest,
 429 and any such provisions are void.

430 (d) A responsible public entity shall appropriate on a
 431 priority basis as required by the comprehensive agreement a
 432 contractual payment obligation, annual or otherwise, and the
 433 required payment obligation must be appropriated before other
 434 noncontractual obligations of the responsible public entity.

435 (10) POWERS AND DUTIES OF THE PRIVATE ENTITY.-

436 (a) The private entity shall:

437 1. Develop or operate the qualifying project in a manner
 438 that is acceptable to the responsible public entity in
 439 accordance with the comprehensive agreement.

440 2. Maintain, or provide by contract for the maintenance or
 441 improvement of, the qualifying project if required by the
 442 comprehensive agreement.

443 3. Cooperate with the responsible public entity in making
 444 best efforts to establish interconnection between the qualifying
 445 project and any other facility or infrastructure as requested by
 446 the responsible public entity.

447 4. Comply with the comprehensive agreement and any lease
 448 or service contract.

449 (b) Each private facility that is constructed pursuant to
 450 this section must comply with the requirements of federal,
 451 state, and local laws; state, regional, and local comprehensive
 452 plans; the responsible public entity's rules, procedures, and
 453 standards for facilities; and any other conditions that the
 454 responsible public entity determines to be in the public's best
 455 interest and that are included in the comprehensive agreement.

456 (c) The responsible public entity may provide services to
 457 the private entity. An agreement for maintenance and other
 458 services entered into pursuant to this section must provide for
 459 full reimbursement for services rendered for qualifying
 460 projects.

461 (d) A private entity of a qualifying project may provide
 462 additional services for the qualifying project to the public or
 463 to other private entities if the provision of additional
 464 services does not impair the private entity's ability to meet
 465 its commitments to the responsible public entity pursuant to the
 466 comprehensive agreement.

467 (11) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
 468 expiration or termination of a comprehensive agreement, the
 469 responsible public entity may use revenues from the qualifying
 470 project to pay current operation and maintenance costs of the
 471 qualifying project. If the private entity materially defaults
 472 under the comprehensive agreement, the compensation that is
 473 otherwise due to the private entity is payable to satisfy all
 474 financial obligations to investors and lenders on the qualifying
 475 project in the same way that is provided in the comprehensive
 476 agreement or any other agreement involving the qualifying

477 project, if the costs of operating and maintaining the
 478 qualifying project are paid in the normal course. Revenues in
 479 excess of the costs for operation and maintenance costs may be
 480 paid to the investors and lenders to satisfy payment obligations
 481 under their respective agreements. A responsible public entity
 482 may terminate with cause and without prejudice a comprehensive
 483 agreement and may exercise any other rights or remedies that may
 484 be available to it. The full faith and credit of the responsible
 485 public entity may not be pledged to secure the financing of the
 486 private entity. The assumption of the development or operation
 487 of the qualifying project does not obligate the responsible
 488 public entity to pay any obligation of the private entity from
 489 sources other than revenues from the qualifying project unless
 490 stated otherwise in the comprehensive agreement.

491 (12) SOVEREIGN IMMUNITY.—This section does not waive the
 492 sovereign immunity of the state, any responsible public entity,
 493 any affected local jurisdiction, or any officer or employee
 494 thereof with respect to participation in, or approval of, any
 495 part of a qualifying project or its operation, including, but
 496 not limited to, interconnection of the qualifying project with
 497 any other infrastructure or project. A county or municipality in
 498 which a qualifying project is located possesses sovereign
 499 immunity with respect to the project, including, but not limited
 500 to, its design, construction, and operation.

501 (13) CONSTRUCTION.—This section shall be liberally
 502 construed to effectuate the purposes of this section.

503 (a) This section does not limit any state agency or
 504 political subdivision of the state in the acquisition, design,

505 or construction of a public project pursuant to other statutory
 506 authority.

507 (b) Except as otherwise provided in this section, this
 508 section does not amend existing laws by granting additional
 509 powers to, or further restricting, a local governmental entity
 510 from regulating and entering into cooperative arrangements with
 511 the private sector for the planning, construction, or operation
 512 of a facility.

513 (c) This section does not waive any requirement of s.
 514 287.055.

515 Section 2. This act shall take effect July 1, 2013.



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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee

3 Representative Steube offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 287.05712, Florida Statutes, is created

8 to read:

9 287.05712 Public-private partnerships.-

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

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

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

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



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

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

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

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

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

36 (i) "Qualifying project" means:

37 1. A facility or project that serves a public purpose,
38 including, but not limited to, any ferry or mass transit
39 facility, vehicle parking facility, airport or seaport facility,
40 power-generating facility, rail facility or project, fuel supply
41 facility, oil or gas pipeline, medical or nursing care facility,
42 recreational facility, sporting or cultural facility, or
43 educational facility or other building or facility that is used
44 or will be used by a public educational institution, or any
45 other public facility or infrastructure that is used or will be



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46 used by the public at large or in support of an accepted public
47 purpose or activity;

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

52 3. A water, wastewater, or surface water management
53 facility or other related infrastructure.

54 (j) "Responsible public entity" means a county,
55 municipality, school board, or university, or any other
56 political subdivision of the state; a public body politic and
57 corporate; or a regional entity that serves a public purpose and
58 is authorized to develop or operate a qualifying project.

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

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

68 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
69 that there is a public need for the construction or upgrade of
70 facilities that are used predominantly for public purposes and
71 that it is in the public's interest to provide for the
72 construction or upgrade of the facilities.

73 (a) The Legislature also finds that:



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

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

93 3. There may be state and federal tax incentives that
94 promote partnerships between public and private entities to
95 develop and operate qualifying projects.

96 4. A procurement under this section serves the public
97 purpose of this section if such procurement facilitates the
98 timely development or operation of a qualifying project.

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



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102 funding sources for the development and operation of qualifying
103 projects, including expansion and acceleration of such financing
104 to meet the public need; and to provide the greatest possible
105 flexibility to public and private entities contracting for the
106 provision of public services.

107 (3) PUBLIC-PRIVATE PARTNERSHIP GUIDELINES TASK FORCE.-

108 (a) The Partnership for Public Facilities and
109 Infrastructure Act Guidelines Task Force is created to establish
110 guidelines for public entities on the types of factors public
111 entities should review and consider when processing requests for
112 public-private partnership projects pursuant to this section,
113 including consistent requirements for private entities seeking
114 to participate in the construction or development of a
115 qualifying project throughout the state.

116 (b) The task force shall consist of nine members, as
117 follows:

118 1. One member of the Senate, appointed by the President of
119 the Senate.

120 2. One member of the House of Representatives, appointed
121 by the Speaker of the House of Representatives.

122 3. The Secretary of Management Services or his or her
123 designee.

124 4. Six members appointed by the Governor, as follows:

125 a. One county government official.

126 b. One municipal government official.

127 c. One district school board member.

128 d. Three representatives of the business community.



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129 (c) Task force members shall serve for a term of 2 years
130 each and shall elect a chair and a vice chair. The task force
131 shall meet as necessary. Administrative and technical support
132 shall be provided by the department. Task force members shall
133 serve without compensation, but are entitled to reimbursement
134 for per diem and travel expenses pursuant to s. 112.061. The
135 task force shall terminate on July 1, 2015.

136 (d) The task force shall provide guidelines to public
137 entities no later than July 1, 2014. The guidelines shall
138 include:

139 1. Opportunities for competition through public notice and
140 the availability of representatives of the responsible public
141 entity to meet with private entities considering a proposal.

142 2. Reasonable criteria for choosing among competing
143 proposals.

144 3. Suggested timelines for selecting proposals and
145 negotiating an interim or comprehensive agreement.

146 4. Authorization for accelerated selection and review and
147 documentation timelines for proposals involving a qualifying
148 project that the responsible public entity deems a priority.

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

153 6. Consideration of the nonfinancial benefits of a
154 proposed qualifying project.

155 7. A mechanism for the appropriating body to review a
156 proposed comprehensive agreement before execution.



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157 | 8. Analysis of the adequacy of the information released
158 | when seeking competing proposals and providing for the
159 | enhancement of that information, if deemed necessary, to
160 | encourage competition, as well as establishing standards to
161 | maintain the confidentiality of financial and proprietary terms
162 | of an unsolicited proposal, which shall be disclosed only in
163 | accordance with the bidding procedures of competing proposals.

164 | 9. Authority for the responsible public entity to engage
165 | the services of qualified professionals, which may include a
166 | Florida-registered professional or a certified public
167 | accountant, not otherwise employed by the responsible public
168 | entity, to provide an independent analysis regarding the
169 | specifics, advantages, disadvantages, and long-term and short-
170 | term costs of a request by a private entity for approval of a
171 | qualifying project, unless the governing body of the public
172 | entity determines that such analysis should be performed by
173 | employees of the public entity. Professional services as defined
174 | in s. 287.055 must be engaged pursuant to s. 287.055.

175 | (e) The establishment of guidelines pursuant to this
176 | section by the task force or the adoption of such guidelines by
177 | a public entity is not required for the public entity to request
178 | or receive proposals for a qualifying project or to enter into a
179 | comprehensive agreement for a qualifying project. A public
180 | entity may adopt guidelines before the establishment of
181 | guidelines by the task force, which may remain in effect as long
182 | as such guidelines are not inconsistent with the guidelines
183 | established by the task force. A guideline that is inconsistent
184 | with the guidelines of the task force must be amended as



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185 necessary to maintain consistency with the task force
186 guidelines.

187 (4) PROCUREMENT PROCEDURES.—A responsible public entity
188 may receive unsolicited proposals or may solicit proposals for
189 qualifying projects and may thereafter enter into an agreement
190 with a private entity, or a consortium of private entities, for
191 the building, upgrading, operating, ownership, or financing of
192 facilities.

193 (a) The responsible public entity may establish a
194 reasonable application fee for the submission of an unsolicited
195 proposal under this section. The fee must be sufficient to pay
196 the costs of evaluating the proposal. The responsible public
197 entity may engage the services of a private consultant to assist
198 in the evaluation.

199 (b) The responsible public entity may request a proposal
200 from private entities for a public-private project or, if the
201 public entity receives an unsolicited proposal, the public
202 entity shall publish notice in the Florida Administrative
203 Register and a newspaper of general circulation at least once a
204 week for 2 weeks stating that the public entity has received a
205 proposal and will accept other proposals for the same project.
206 The timeframe within which the public entity may accept other
207 proposals shall be determined by the public entity on a project-
208 by-project basis based upon the complexity of the project and the
209 public benefit to be gained by allowing a longer or shorter period of
210 time within which other proposals may be received; however, the
211 timeframe for allowing other proposals must be at least 21 days, but
212 no more than 120 days, after the initial date of publication. A



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213 copy of the notice must be mailed to each local government in
214 the affected area. The scope of the proposal may be publicized
215 for the purpose of soliciting competing proposals; however, the
216 financial terms of the proposal may not be disclosed until the
217 terms of all competing bids are simultaneously disclosed in
218 accordance with the applicable law governing procurement
219 procedures for the qualifying project.

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

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

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

226 2. Is for a facility that is owned by the responsible
227 public entity or for a facility for which ownership will be
228 conveyed to the responsible public entity.

229 3. Has adequate safeguards in place to ensure that
230 additional costs or service disruptions are not imposed on the
231 public in the event of material default or cancellation of the
232 agreement by the responsible public entity.

233 4. Has adequate safeguards in place to ensure that the
234 responsible public entity or the private entity has the
235 opportunity to add capacity to the proposed project or other
236 facilities serving similar predominantly public purposes.

237 5. Will be owned by the responsible public entity upon
238 completion or termination of the agreement and upon payment of
239 the amounts financed.



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240 (e) Before signing a comprehensive agreement, the
241 responsible public entity must consider a reasonable finance
242 plan that is consistent with subsection (11), the project cost,
243 revenues by source, available financing, major assumptions,
244 internal rate of return on private investments, if governmental
245 funds are assumed in order to deliver a cost-feasible project,
246 and a total cash-flow analysis beginning with the implementation
247 of the project and extending for the term of the agreement.

248 (f) In considering an unsolicited proposal, the
249 responsible public entity may require from the private entity a
250 technical study prepared by a nationally recognized expert with
251 experience in preparing analysis for bond rating agencies. In
252 evaluating the technical study, the responsible public entity
253 may rely upon internal staff reports prepared by personnel
254 familiar with the operation of similar facilities or the advice
255 of external advisors or consultants having relevant experience.

256 (5) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal
257 from a private entity for approval of a qualifying project must
258 be accompanied by the following material and information, unless
259 waived by the responsible public entity:

260 (a) A description of the qualifying project, including the
261 conceptual design of the facilities or a conceptual plan for the
262 provision of services, and a schedule for the initiation and
263 completion of the qualifying project.

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



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267 (c) A description of the private entity's general plans
268 for financing the qualifying project, including the sources of
269 the private entity's funds and identification of any dedicated
270 revenue source or proposed debt or equity investment on behalf
271 of the private entity.

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

274 (e) The proposed user fees, lease payments, or other
275 service payments over the term of a comprehensive agreement, and
276 the methodology and circumstances for changes to the user fees,
277 lease payments, and other service payments over time.

278 (f) Additional material or information that the
279 responsible public entity reasonably requests.

280 (6) PROJECT QUALIFICATION AND PROCESS.—

281 (a) The private entity must meet the minimum standards
282 contained in the responsible public entity's guidelines for
283 qualifying professional services and contracts for traditional
284 procurement projects.

285 (b) The responsible public entity must:

286 1. Ensure that provisions are made for the private
287 entity's performance and payment of subcontractors, including,
288 but not limited to, surety bonds, letters of credit, parent
289 company guarantees, and lender and equity partner guarantees.
290 For the components of the qualifying project which involve
291 construction performance and payment, bonds are required and are
292 subject to the recordation, notice, suit limitation, and other
293 requirements of s. 255.05.



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294 2. Ensure the most efficient pricing of the security
295 package that provides for the performance and payment of
296 subcontractors.

297 3. Ensure that provisions are made for the transfer of the
298 private entity's obligations if the comprehensive agreement is
299 terminated or a material default occurs.

300 (c) After the public notification period has expired in
301 the case of an unsolicited proposal, the responsible public
302 entity shall rank the proposals received in order of preference.
303 In ranking the proposals, the responsible public entity may
304 consider factors that include, but are not limited to,
305 professional qualifications, general business terms, innovative
306 design techniques or cost-reduction terms, and finance plans. If
307 the responsible public entity is not satisfied with the results
308 of the negotiations, the responsible public entity may terminate
309 negotiations with the proposer and negotiate with the second-
310 ranked or subsequent-ranked firms, in the order consistent with
311 this procedure. If only one proposal is received, the
312 responsible public entity may negotiate in good faith, and if
313 the public entity is not satisfied with the results of the
314 negotiations, the public entity may terminate negotiations with
315 the proposer. Notwithstanding this paragraph, the responsible
316 public entity may reject all proposals at any point in the
317 process until a contract with the proposer is executed.

318 (d) The responsible public entity shall perform an
319 independent analysis of the proposed public-private partnership
320 which demonstrates the cost-effectiveness and overall public



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321 benefit before the procurement process is initiated or before
322 the contract is awarded.

323 (e) The responsible public entity may approve the
324 development or operation of an educational facility, a
325 transportation facility, a water or wastewater management
326 facility or related infrastructure, a technology infrastructure
327 or other public infrastructure, or a government facility needed
328 by the responsible public entity as a qualifying project, or the
329 design or equipping of a qualifying project that is developed or
330 operated, if:

331 1. There is a public need for or benefit derived from a
332 project of the type that the private entity proposes as the
333 qualifying project.

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

336 3. The private entity's plans will result in the timely
337 acquisition, design, construction, improvement, renovation,
338 expansion, equipping, maintenance, or operation of the
339 qualifying project.

340 (f) The responsible public entity may charge a reasonable
341 fee to cover the costs of processing, reviewing, and evaluating
342 the request, including, but not limited to, reasonable attorney
343 fees and fees for financial and technical advisors or
344 consultants and for other necessary advisors or consultants.

345 (g) Upon approval of a qualifying project, the responsible
346 public entity shall establish a date for the commencement of
347 activities related to the qualifying project. The responsible
348 public entity may extend the commencement date.



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349 (h) Approval of a qualifying project by the responsible
350 public entity is subject to entering into a comprehensive
351 agreement with the private entity.

352 (7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.-

353 (a) The responsible public entity must notify each
354 affected local jurisdiction by furnishing a copy of the proposal
355 to each affected local jurisdiction when considering a proposal
356 for a qualifying project.

357 (b) Each affected local jurisdiction that is not a
358 responsible public entity for the respective qualifying project
359 may, within 60 days after receiving the notice, submit in
360 writing any comments to the responsible public entity and
361 indicate whether the facility is incompatible with the local
362 comprehensive plan, the local infrastructure development plan,
363 the capital improvements budget, or other governmental spending
364 plan. The responsible public entity shall consider the comments
365 of the affected local jurisdiction before entering into a
366 comprehensive agreement with a private entity. If an affected
367 local jurisdiction fails to respond to the responsible public
368 entity within the time provided in this paragraph, the
369 nonresponse is deemed an acknowledgement by the affected local
370 jurisdiction that the qualifying project is compatible with the
371 local comprehensive plan, the local infrastructure development
372 plan, the capital improvements budget, or other governmental
373 spending plan.

374 (8) INTERIM AGREEMENT.-Before or in connection with the
375 negotiation of a comprehensive agreement, the public entity may
376 enter into an interim agreement with the private entity



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377 proposing the development or operation of the qualifying
378 project. An interim agreement does not obligate the responsible
379 public entity to enter into a comprehensive agreement. The
380 interim agreement is discretionary with the parties and is not
381 required on a qualifying project for which the parties may
382 proceed directly to a comprehensive agreement without the need
383 for an interim agreement. An interim agreement must be limited
384 to provisions that:

385 (a) Authorize the private entity to commence activities
386 for which it may be compensated related to the proposed
387 qualifying project, including, but not limited to, project
388 planning and development, design and engineering, environmental
389 analysis and mitigation, survey, other activities concerning any
390 part of the proposed qualifying project, and ascertaining the
391 availability of financing for the proposed facility or
392 facilities.

393 (b) Establish the process and timing of the negotiation of
394 the comprehensive agreement.

395 (c) Contain such other provisions related to an aspect of
396 the development or operation of a qualifying project that the
397 responsible public entity and the private entity deem
398 appropriate.

399 (9) COMPREHENSIVE AGREEMENT.-

400 (a) Before developing or operating the qualifying project,
401 the private entity must enter into a comprehensive agreement
402 with the responsible public entity. The comprehensive agreement
403 must provide for:



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404 1. The delivery of performance and payment bonds, letters
405 of credit, or other security acceptable to the responsible
406 public entity in connection with the development or operation of
407 the qualifying project in the form and amount satisfactory to
408 the responsible public entity. For the components of the
409 qualifying project which involve construction, the form and
410 amount of the bonds must comply with s. 255.05.

411 2. The review of the plans and specifications for the
412 qualifying project by the responsible public entity and, if the
413 plans and specifications conform to standards acceptable to the
414 responsible public entity, the approval of the responsible
415 public entity. This subparagraph does not require the private
416 entity to complete the design of the qualifying project before
417 the execution of the comprehensive agreement.

418 3. The inspection of the qualifying project by the
419 responsible public entity to ensure that the private entity's
420 activities are acceptable to the public entity in accordance
421 with the comprehensive agreement.

422 4. The maintenance of a policy of public liability
423 insurance, a copy of which must be filed with the responsible
424 public entity and accompanied by proofs of coverage, or self-
425 insurance, each in the form and amount satisfactory to the
426 responsible public entity and reasonably sufficient to ensure
427 coverage of tort liability to the public and employees and to
428 enable the continued operation of the qualifying project.

429 5. The monitoring by the responsible public entity of the
430 maintenance practices to be performed by the private entity to
431 ensure that the qualifying project is properly maintained.



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432 6. The periodic filing by the private entity of the
433 appropriate financial statements that pertain to the qualifying
434 project.

435 7. The procedures that govern the rights and
436 responsibilities of the responsible public entity and the
437 private entity in the course of the construction and operation
438 of the qualifying project and in the event of the termination of
439 the comprehensive agreement or a material default by the private
440 entity. The procedures must include conditions that govern the
441 assumption of the duties and responsibilities of the private
442 entity by an entity that funded, in whole or part, the
443 qualifying project or by the responsible public entity, and must
444 provide for the transfer or purchase of property or other
445 interests of the private entity by the responsible public
446 entity.

447 8. The fees, lease payments, or service payments. In
448 negotiating user fees, the fees must be the same for persons
449 using the facility under like conditions and must not materially
450 discourage use of the qualifying project. The execution of the
451 comprehensive agreement or a subsequent amendment is conclusive
452 evidence that the fees, lease payments, or service payments
453 provided for in the comprehensive agreement comply with this
454 section. Fees or lease payments established in the comprehensive
455 agreement as a source of revenue may be in addition to, or in
456 lieu of, service payments.

457 9. The duties of the private entity, including the terms
458 and conditions that the responsible public entity determines
459 serve the public purpose of this section.



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460 (b) The comprehensive agreement may include:

461 1. An agreement by the responsible public entity to make
462 grants or loans to the private entity from amounts received from
463 the federal, state, or local government or an agency or
464 instrumentality thereof.

465 2. A provision under which each entity agrees to provide
466 notice of default and cure rights for the benefit of the other
467 entity, including, but not limited to, a provision regarding
468 unavoidable delays.

469 3. A provision that terminates the authority and duties of
470 the private entity under this section and dedicates the
471 qualifying project to the responsible public entity or, if the
472 qualifying project was initially dedicated by an affected local
473 jurisdiction, to the affected local jurisdiction for public use.

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

478 (a) The responsible public entity may develop new
479 facilities or increase capacity in existing facilities through
480 agreements with public-private partnerships.

481 (b) The public-private partnership agreement must ensure
482 that the facility is properly operated, maintained, or improved
483 in accordance with standards set forth in the comprehensive
484 agreement.

485 (c) The responsible public entity may lease existing fee-
486 for-use facilities through a public-private partnership
487 agreement.



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

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

493 (11) FINANCING.—

494 (a) A private entity may enter into a private-source
495 financing agreement between financing sources and the private
496 entity. A financing agreement and any liens on the property or
497 facility must be paid in full at the applicable closing that
498 transfers ownership or operation of the facility to the
499 responsible public entity at the conclusion of the term of the
500 comprehensive agreement.

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

504 (c) The responsible public entity may use innovative
505 finance techniques associated with a public-private partnership
506 under this section, including, but not limited to, federal loans
507 as provided in Titles 23 and 49 C.F.R., commercial bank loans,
508 and hedges against inflation from commercial banks or other
509 private sources. In addition, the responsible public entity may
510 provide its own capital or operating budget to support a
511 qualifying project. The budget may be from any legally
512 permissible funding sources of the responsible public entity,
513 including the proceeds of debt issuances. A responsible public
514 entity may use the model financing agreement provided in s.
515 489.145(6) for its financing of a facility owned by a



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516 responsible public entity. A financing agreement may not require
517 the responsible public entity to indemnify the financing source,
518 subject the responsible public entity's facility to liens in
519 violation of s. 11.066(5), or secure financing by the
520 responsible public entity with a pledge of security interest,
521 and any such provisions are void.

522 (d) A responsible public entity shall appropriate on a
523 priority basis as required by the comprehensive agreement a
524 contractual payment obligation, annual or otherwise, from the
525 enterprise or other government fund from which the qualifying
526 projects will be funded. This required payment obligation must
527 be appropriated before other noncontractual obligations payable
528 from the same enterprise or other government fund.

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

530 (a) The private entity shall:

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

534 2. Maintain, or provide by contract for the maintenance or
535 improvement of, the qualifying project if required by the
536 comprehensive agreement.

537 3. Cooperate with the responsible public entity in making
538 best efforts to establish interconnection between the qualifying
539 project and any other facility or infrastructure as requested by
540 the responsible public entity in accordance with the provisions
541 of the comprehensive agreement.

542 4. Comply with the comprehensive agreement and any lease
543 or service contract.



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544 (b) Each private facility that is constructed pursuant to
545 this section must comply with the requirements of federal,
546 state, and local laws; state, regional, and local comprehensive
547 plans; the responsible public entity's rules, procedures, and
548 standards for facilities; and such other conditions that the
549 responsible public entity determines to be in the public's best
550 interest and that are included in the comprehensive agreement.

551 (c) The responsible public entity may provide services to
552 the private entity. An agreement for maintenance and other
553 services entered into pursuant to this section must provide for
554 full reimbursement for services rendered for qualifying
555 projects.

556 (d) A private entity of a qualifying project may provide
557 additional services for the qualifying project to the public or
558 to other private entities if the provision of additional
559 services does not impair the private entity's ability to meet
560 its commitments to the responsible public entity pursuant to the
561 comprehensive agreement.

562 (13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
563 expiration or termination of a comprehensive agreement, the
564 responsible public entity may use revenues from the qualifying
565 project to pay current operation and maintenance costs of the
566 qualifying project. If the private entity materially defaults
567 under the comprehensive agreement, the compensation that is
568 otherwise due to the private entity is payable to satisfy all
569 financial obligations to investors and lenders on the qualifying
570 project in the same way that is provided in the comprehensive
571 agreement or any other agreement involving the qualifying



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572 project, if the costs of operating and maintaining the
573 qualifying project are paid in the normal course. Revenues in
574 excess of the costs for operation and maintenance costs may be
575 paid to the investors and lenders to satisfy payment obligations
576 under their respective agreements. A responsible public entity
577 may terminate with cause and without prejudice a comprehensive
578 agreement and may exercise any other rights or remedies that may
579 be available to it in accordance with the provisions of the
580 comprehensive agreement. The full faith and credit of the
581 responsible public entity may not be pledged to secure the
582 financing of the private entity. The assumption of the
583 development or operation of the qualifying project does not
584 obligate the responsible public entity to pay any obligation of
585 the private entity from sources other than revenues from the
586 qualifying project unless stated otherwise in the comprehensive
587 agreement.

588 (14) SOVEREIGN IMMUNITY.—This section does not waive the
589 sovereign immunity of a responsible public entity, an affected
590 local jurisdiction, or an officer or employee thereof with
591 respect to participation in, or approval of, any part of a
592 qualifying project or its operation, including, but not limited
593 to, interconnection of the qualifying project with any other
594 infrastructure or project. A county or municipality in which a
595 qualifying project is located possesses sovereign immunity with
596 respect to the project, including, but not limited to, its
597 design, construction, and operation.

598 (15) CONSTRUCTION.—This section shall be liberally
599 construed to effectuate the purposes of this section.



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600 (a) This section does not limit a state agency or
601 political subdivision of the state in the acquisition, design,
602 or construction of a public project pursuant to other statutory
603 authority.

604 (b) Except as otherwise provided in this section, this
605 section does not amend existing laws by granting additional
606 powers to, or further restricting, a local governmental entity
607 from regulating and entering into cooperative arrangements with
608 the private sector for the planning, construction, or operation
609 of a facility.

610 (c) This section does not waive any requirement of s.
611 287.055.

612 Section 2. Section 336.70, Florida Statutes, is created to
613 read:

614 336.70 Public-private transportation facilities.-

615 (1) A county may receive or solicit proposals and enter
616 into agreements with private entities or consortia thereof to
617 build, operate, own, or finance highways, bridges, multimodal
618 transportation systems, transit-oriented development nodes,
619 transit stations, and related transportation facilities located
620 solely within the county, including municipalities therein.
621 Before approval, the county must determine that a proposed
622 project:

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

624 (b) Would not require county funds to be used unless the
625 project is on the county road system or would provide increased
626 mobility on the county road system.



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627 (c) Would have adequate safeguards to ensure that
628 additional costs or unreasonable service disruptions are not
629 realized by the traveling public and citizens of the state in
630 the event of default or cancellation of the agreement by the
631 county.

632 (d) Would be owned by the county upon completion or
633 termination of the agreement.

634 (2) The county shall ensure that all reasonable costs to
635 the county related to transportation facilities that are not
636 part of the county road system are borne by the private entity
637 that develops or operates the facilities. The county shall also
638 ensure that all reasonable costs to the county and substantially
639 affected local governments and utilities related to the private
640 transportation facility are borne by the private entity for
641 transportation facilities that are owned by private entities.
642 For projects on the county road system or that provide increased
643 mobility on the county road system, the county may use county
644 resources to participate in funding and financing the project
645 pursuant to the county's financial policies and ordinances.

646 (3) The county may request proposals and receive
647 unsolicited proposals for public-private transportation
648 facilities. Upon a determination by the governing body of the
649 county to issue a request for proposals, the governing body of
650 the county must publish a notice of the request for proposals in
651 a newspaper of general circulation in the county at least once a
652 week for 2 weeks. Upon receipt of an unsolicited proposal, the
653 governing body of the county must publish a notice in a
654 newspaper of general circulation in the county at least once a



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655 week for 2 weeks stating that it has received the proposal and
656 will accept, for 60 days after the initial date of publication,
657 other proposals for the same project purpose. A copy of the
658 notice must be mailed to each local government in the affected
659 area. After the public notification period has expired, the
660 governing body of the county shall rank the proposals in order
661 of preference. In ranking the proposals, the governing body of
662 the county shall consider professional qualifications, general
663 business terms, innovative engineering or cost-reduction terms,
664 finance plans, and the need for county funds to complete the
665 project. If the governing body of the county is not satisfied
666 with the results of the negotiations, it may terminate
667 negotiations with the proposer. If negotiations are
668 unsuccessful, the governing body of the county may negotiate
669 with the entity having the next highest ranked proposal, using
670 the same procedure. If only one proposal is received, the
671 governing body of the county may negotiate in good faith and
672 may, if not satisfied with the results, terminate negotiations
673 with the proposer. The governing body of the county may, at its
674 discretion, reject all proposals at any point in the process up
675 to completion of a contract with the proposer. Any person
676 submitting an unsolicited proposal shall submit with the
677 proposal the sum of \$25,000 to the county to be applied by the
678 governing body of the county to its costs of review and analysis
679 of the proposal, and such person shall remain liable for any
680 additional costs and expenses of the county incurred for the
681 review and analysis.



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682 (4) Agreements entered into pursuant to this section may
683 authorize the county or the private project owner, lessee, or
684 operator to impose, collect, and enforce tolls or fares for the
685 use of the transportation facility. However, the amount and use
686 of toll or fare revenue shall be regulated by the county to
687 avoid unreasonable costs to users of the facility.

688 (5) Each public-private transportation facility
689 constructed pursuant to this section shall comply with all
690 requirements of federal, state, and local laws; state, regional,
691 and local comprehensive plans; the county's rules, policies,
692 procedures, and standards for transportation facilities; and any
693 other conditions that the county determines to be in the best
694 interest of the public.

695 (6) The governing body of the county may exercise any of
696 its powers, including eminent domain, to facilitate the
697 development and construction of transportation projects pursuant
698 to this section. The governing body of the county may pay all or
699 part of the cost of operating and maintaining the facility and
700 may provide services to the private entity, for which services
701 it shall receive full or partial reimbursement.

702 (7) Except as otherwise provided in this section, this
703 section is not intended to amend existing law by granting
704 additional powers to or imposing further restrictions on local
705 governmental entities with regard to regulating and entering
706 into cooperative arrangements with the private sector for the
707 planning, construction, and operation of transportation
708 facilities.



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709 (8) Public-private partnership agreements under this
710 section shall be limited to a term not exceeding 75 years.

711 (9) This section does not authorize any county or counties
712 to enter into agreements with private entities or consortia
713 thereof to build, operate, own, or finance any transportation
714 facility that would extend beyond the geographical boundaries of
715 a single county.

716 Section 3. This act shall take effect July 1, 2013.

717

718 -----

719 **T I T L E A M E N D M E N T**

720 Remove everything before the enacting clause and insert:

721 A bill to be entitled

722 An act relating to public-private partnerships;
723 creating s. 287.05712, F.S.; providing definitions;
724 providing legislative findings and intent relating to
725 the construction or improvement by private entities of
726 facilities used predominantly for a public purpose;
727 creating a task force to establish specified
728 guidelines; providing procurement procedures;
729 providing requirements for project approval; providing
730 project qualifications and process; providing for
731 notice to affected local jurisdictions; providing for
732 interim and comprehensive agreements between a public
733 and a private entity; providing for use fees;
734 providing for financing sources for certain projects
735 by a private entity; providing powers and duties of
736 private entities; providing for expiration or



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737 termination of agreements; providing for the
738 applicability of sovereign immunity for public
739 entities with respect to qualified projects; providing
740 for construction of the act; creating s. 336.70, F.S.;
741 authorizing counties to enter specified public-private
742 agreements; providing financial requirements;
743 providing procurement procedures; providing notice
744 requirements; providing requirements for project
745 selection and approval; providing for fees for the
746 review and analysis of proposals; requiring compliance
747 with all other applicable laws; limiting specified
748 public-private partnerships to specified terms;
749 limiting geographical scope of specified agreements;
750 providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 145 Letters of Credit Issued by a Federal Home Loan Bank
SPONSOR(S): Santiago
TIED BILLS: IDEN./SIM. **BILLS:** SB 558

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N	Bauer	Cooper
2) Government Operations Subcommittee		Harrington	Williamson
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Chapter 280, Florida Statutes, is the Florida Security for Public Deposits Act (act), which authorizes state and local governments to deposit public deposits with qualified public depositories (QPDs). Public deposits are funds in excess of amounts required to meet disbursement needs or expenses, and QPDs are banks, savings banks, or savings associations that meet specific criteria under the act. Qualified public depositories must secure public deposits in accordance with the act and the collateral requirements and pledging levels as set for by rule of the Chief Financial Officer (CFO). Qualified public depositories may meet this collateral requirement by pledging, depositing, or issuing eligible collateral to the CFO, or to a CFO's designee in some instances. The Department of Financial Services, as headed by the CFO, administers a collateral management program which ensures compliance with the act.

The act's collateral requirements protect public deposits against loss in the event of a QPD's insolvency or default. Losses are satisfied first through the standard maximum federal deposit insurance of \$250,000, and then through the CFO's demand for payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD. Any shortfall would then be covered by the CFO's authority to impose assessments against the other QPDs.

Qualified public depositories are permitted to use Federal Home Loan Bank (FHLB) letters of credit to meet collateral requirements if certain requirements are met under the act. One such condition is that obligations issued by the FHLB remain triple-A rated (the highest credit rating available) by a nationally recognized source. The three major credit rating agencies are Standard & Poor's (S&P), Fitch Ratings, and Moody's.

On August 5, 2011, S&P downgraded the credit rating of the United States' long-term sovereign debt from triple-A to AA+. Standard & Poor's also downgraded the credit rating of FHLB obligations from triple-A to AA+. While Fitch Ratings and Moody's have maintained their triple-A ratings of both U.S. sovereign debt and FHLB obligations, they have given negative outlooks in light of the current debate and uncertainty regarding U.S. fiscal and economic policy. In the event these two agencies also downgrade their credit ratings for FHLB obligations, QPDs could no longer use FHLB letters of credit as eligible collateral under current law. This would require QPDs to use other assets as replacement collateral, which in turn could affect their liquidity and lending ability.

The bill allows QPDs to continue securing and retaining FHLB letters of credit as eligible collateral in the event the other major credit agencies downgrade their ratings of FHLB obligations below triple-A. The bill permits QPDs to use FHLB letters of credit, if no longer triple-A rated, if FHLB obligations are rated by a nationally recognized source at not lower than its rating of the long-term sovereign credit of the U.S.

The bill does not have an impact on the private sector, and it is not likely that the bill will have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 280, Florida Statutes, is the Florida Security for Public Deposits Act (act), which authorizes state and local governments to deposit funds in excess of amounts required to meet disbursement needs or expenses in a qualified public depository (QPD), which is a bank, savings bank, or savings association that meets specific criteria. Qualified public depositories must secure public deposits in accordance with the act and the collateral requirements and pledging levels as set forth by rule of the Chief Financial Officer (CFO).¹ Qualified public depositories may meet this collateral requirement by pledging, depositing, or issuing eligible collateral to the CFO, or to a CFO's designee in some instances. Eligible collateral consists of securities, Federal Home Loan Bank (FHLB) letters of credit, and cash, as designated by the act.² The Department of Financial Services, as headed by the CFO, administers a collateral management program which ensures compliance with the act.³

The act's collateral requirements protect public deposits against loss in the event of certain triggering events, most notably, a QPD's insolvency or default.⁴ Losses are satisfied first through the standard maximum federal deposit insurance of \$250,000, and then through the CFO's demand for payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD.⁵ Any remaining shortfall would then be covered by the CFO's authority to impose assessments against the other QPDs.⁶

Qualified public depositories are permitted to use Federal Home Loan Bank (FHLB) letters of credit as a collateral option, if certain requirements are met.⁷ Unlike the other eligible collateral types, FHLB letters of credit do not involve a custodial arrangement and instead name the CFO as a beneficiary.⁸ According to the Florida Bankers Association, FHLB letters of credit are stable, irrevocable, and cost-efficient. Additionally, the use of FHLB letters of credit provide operational efficiencies to the CFO who can directly make a demand on the FHLB letters of credit in the event of a QPD's default, without having to sell and transfer pledged securities.⁹ As of October 29, 2012, 17 QPDs have pledged a total of \$1.88 billion in FLHB letters of credit as collateral.¹⁰

One prerequisite for QPDs to use FHLB letters of credit is that obligations issued by the FHLB remain triple-A rated by a nationally recognized source.¹¹ Currently, FHLB letters of credit are the only eligible collateral type that the act imposes a credit rating requirement, even though other eligible collateral forms, such as Treasury bonds and other federal agency obligations, receive credit ratings.

¹ See chapter 280, F.S., and chapter 69C-2, F.A.C.

² Sections 280.02(12) and 280.13, F.S.

³ More information about the Bureau of Collateral Management can be found at: https://apps8.fldfs.com/cap_web/, last accessed February 26, 2013.

⁴ Section 280.041(6), F.S.

⁵ Section 280.08(3)(a), F.S.

⁶ Section 280.08(3)(b), F.S.

⁷ Section 280.13(5), F.S.

⁸ Section 280.13(5)(b)4., F.S.

⁹ Florida Bankers Association's analysis of HB 145, on file with the Insurance & Banking Subcommittee.

¹⁰ Policy & Research Memorandum from the Department of Financial Services, on file with the Insurance & Banking Subcommittee.

¹¹ Section 280.13(5)(c), F.S.

According to Standard & Poor's (S&P), a nationally recognized source and one of the "Big Three" credit rating agencies (the other two being Moody's and Fitch Ratings):

Credit ratings are forward-looking opinions about credit risk...[and] the ability and willingness of an issuer...to meet its financial obligations in full and on time. Credit ratings can also speak to the credit quality of an individual debt issue...and the relative likelihood that the issue may default...Each agency applies its own methodology in measuring creditworthiness and using a specific rating scale to publish its ratings opinions. Typically, ratings are expressed as letter grades that range, for example, from 'AAA' to "D" to communicate the agency's opinion of relative level of credit risk.¹²

On August 5, 2011, S&P issued an unprecedented downgrade of the U.S.'s sovereign long-term credit rating from triple-A (the highest credit rating available) to AA+ (very strong capacity to meet financial commitments). Standard & Poor's attributed its downgrade to its negative outlook of the current debate and uncertainty surrounding U.S. fiscal and economic policy.¹³ Due to the FHLB System's status as a government-sponsored enterprise, its credit ratings are integrally tied to those of the U.S. Accordingly, S&P similarly lowered its credit ratings on 10 of 12 FHLBs from triple-A to AA+:

The downgrades reflect the interplay between the sovereign rating and the entities' stand-alone credit profiles. The ratings continue to reflect our opinion that there is a very high likelihood the U.S. government would provide timely and sufficient extraordinary support to these entities in the event of financial distress.¹⁴

However, Moody's gave its highest ratings to long-term debt (Aaa) and short-term debt (Prime-1) issued by the FHLBs,¹⁵ and Fitch Ratings affirmed its triple-A rating of several FHLBs.¹⁶ In addition, both Moody's and Fitch Ratings have maintained their triple-A ratings of U.S. long-term sovereign debt, although subject to a negative outlook based on concerns over the federal deficit.¹⁷

In the event all nationally recognized sources downgrade their ratings of FHLB obligations below triple-A, current law would not permit QPDs to use FHLB letters of credit as eligible collateral. Consequently, QPDs would have to turn to other assets (such as Treasury notes and Fannie Mae securities) as replacement collateral, which could affect their liquidity and lending ability.

Effect of the Bill

This bill enables QPDs to continue using FHLB letters of credit as eligible collateral, in the event the other major credit agencies downgrade their ratings of FHLB obligations below triple-A. The bill permits the use of FHLB letters of credit, if no longer triple-A rated, if FHLB obligations are rated by a nationally recognized source at not lower than its rating of the long-term sovereign credit of the U.S.

The bill provides an effective date of July 1, 2013.

¹² <http://www.standardandpoors.com/ratings/definitions-and-faqs/en/us>, last accessed February 26, 2013.

¹³ *United States of America Long-Term Rating Lowered to 'AA+' Due to Political Risks, Rising Debt Burden; Outlook Negative*, S&P's press release, August 5, 2011, <http://www.standardandpoors.com/ratings/articles/en/us/?assetID=1245316529563>, last accessed February 26, 2013.

¹⁴ *Credit Matters: Special Report on the U.S. Rating Downgrade and Its Global Effects*, Standard & Poor's CreditWeek, Vol. 31, No. 31, Page 19 (August 17, 2011). A copy of the article is available online at: www.standardandpoors.com/spf/swf/creditweek/data/document.pdf

¹⁵ http://www.fhlb-of.com/ofweb_userWeb/pageBuilder/credit-ratings-31, last accessed February 26, 2013.

¹⁶ <http://www.reuters.com/article/2011/08/16/idUS209276+16-Aug-2011+BW20110816>, last accessed February 26, 2013.

¹⁷ <http://www.reuters.com/article/2013/01/28/us-usa-rating-fitch-idUSBRE90R0WS20130128>, last accessed February 26, 2013.

B. SECTION DIRECTORY:

Section 1 amends s. 280.13, F.S., revising circumstances under which letters of credit issued by a Federal Home Loan Bank are eligible as collateral.

Section 2 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

A fiscal impact to state government revenues is not likely.

2. Expenditures:

A fiscal impact to state government expenditures is not likely.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

A fiscal impact on local government revenues is not likely.

2. Expenditures:

A fiscal impact on local government expenditures is not likely.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The ability to continue using FHLB letters of credit as eligible collateral may be beneficial to QPDs, as FHLB letters of credit are stable, irrevocable, and cost-efficient. Additionally, there are operational efficiencies to the CFO who can directly make a demand on the FHLB letters of credit in the event of a QPD's default without having to sell and transfer pledged securities.

The Department of Financial Services does not anticipate that the bill will have a fiscal impact.

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 an 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 a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Current law authorizes the Chief Financial Officer to adopt rules to determine collateral requirements and procedures by rule, which have been set forth in chapter 69C-2, F.A.C.¹⁸ However, it is not anticipated that the bill will require amendments to current rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹⁸ See ss. 280.04(1) and (9), F.S.

1 A bill to be entitled
 2 An act relating to letters of credit issued by a
 3 Federal Home Loan Bank; amending s. 280.13, F.S.;
 4 revising circumstances under which letters of credit
 5 issued by a Federal Home Loan Bank are eligible as
 6 collateral; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraph (c) of subsection (5) of section
 11 280.13, Florida Statutes, is amended to read:

12 280.13 Eligible collateral.—

13 (5) Letters of credit issued by a Federal Home Loan Bank
 14 are eligible as collateral under this section provided that:

15 (c) Obligations issued by the Federal Home Loan Bank
 16 remain triple-A ~~triple-A~~ rated by a nationally recognized source
 17 or, if no longer triple-A rated, rated by a nationally
 18 recognized source at not lower than its rating of the long-term
 19 sovereign credit of the United States.

20 Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 247 Paper Reduction
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: HB 249 **IDEN./SIM. BILLS:** SB 1352

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Stramski <i>JS</i>	Williamson <i>AW</i>

SUMMARY ANALYSIS

It is a stated goal of the State of Florida to decrease the paperwork burden associated with the conduct of state business. This bill furthers that goal by permitting the use of an electronic medium to collect and disseminate information as required by law in selected settings.

The bill:

- Requires the statewide voter registration application to elicit the voter registration applicant's e-mail address and an indication of whether the applicant wishes to receive sample ballots by e-mail.
- Authorizes the supervisor of elections to provide electronic sample ballots to electors if certain requirements are met.
- Requires the clerk of a board of county commissioners to electronically transmit to the Department of State enacted ordinances, amendments, and emergency ordinances, and requires the Department to electronically confirm by e-mail the receipt and the effective date of such filings with the clerk.
- Permits the clerk of a value adjustment board to electronically notify the taxpayer and property appraiser of the board's decision in certain hearings if electronic means is selected by the taxpayer.
- Authorizes the property appraiser to notify taxpayers by postcard or electronically that proposed property tax rates and non-ad valorem assessments are available on the property appraiser's website.
- Requires the property appraiser to prepare and make available certain tax information on his or her office's website.
- Requires a licensed bail bond agent to provide notice of a change of e-mail address to specified entities, and requires a bail bond agent who executes or countersigns a transfer bond to indicate the agent's e-mail address on the bond.
- Provides that the posting of a bail bond agent's e-mail address is a permissible form of print advertising in jails.
- Permits bail bonds to be posted in person or electronically at the election of the receiving agency.
- Authorizes bonds to be transmitted electronically between a sheriff's office and the clerk of the court.
- Requires an affidavit filed with a bond to be submitted in the same manner as the bond.
- Provides that all licensed bail bond agents shall have equal access to jails for the purpose of making bonds, whether in person or electronically.
- Permits the clerk of court to electronically provide notice of a required appearance and of bond forfeiture, and allows a clerk to electronically furnish certain documents and notices required in bond forfeiture proceedings.
- Allows a clerk of court to electronically furnish a certificate of cancellation of a bond to the surety without cost.
- Provides that guaranteed traffic arrest bonds may be presented in person or electronically.

The bill has an indeterminate fiscal impact on state and local governments.

This bill may be a county or municipal mandate. See Section III.A.1. of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Florida Legislature has on various occasions expressed that the reduction of the use of paper, where feasible, is the policy of the state.¹ This bill furthers the goal of lowering the use of paper by permitting the use of an electronic medium to collect and disseminate information as required by law in selected settings.

Voter Registration and Sample Ballots

Background

Current law requires the Department of State to prescribe by rule a uniform statewide voter registration application.² The application must elicit certain information from the voter applicant, such as the applicant's name, date of birth, and address of legal residence.³ The application does not request a voter's e-mail address.

Current law also requires the supervisor of elections to publish a sample ballot in a newspaper of general circulation in the county, prior to the day of the election. If the county has an addressograph or similar system, the supervisor may mail a sample ballot to each registered elector in lieu of publication. The sample ballot must be mailed at least seven days prior to any election.⁴

Effect of the Bill

The bill requires the statewide voter registration application to include a field for an applicant's e-mail address and an indication of whether the applicant wishes to receive sample ballots by e-mail.

The bill permits a supervisor of elections to provide electronic sample ballots to electors who have provided e-mail addresses and opted into the electronic ballot delivery system. It allows a supervisor of elections to mail or e-mail sample ballots to registered electors in lieu of publishing such ballots in a newspaper of general circulation in the county.

Transmittal of Enacted Ordinances

Background

Current law provides requirements for counties to adhere to when exercising the ordinance-making powers conferred by the State Constitution.⁵ It establishes the following regular enactment procedure:

The board of county commissioners at any regular or special meeting may enact or amend any ordinance ... if notice of intent to consider such ordinance is given at least 10 days prior to said meeting by publication in a newspaper of general circulation in the county. A copy of such notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the board of county commissioners. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the

¹ See sections 23.20-23.22, F.S. "The state must minimize the paperwork burden by evaluating its need for information, determining whether it already has access to the necessary information, and coordinating data collection initiatives at their source." Section 23.20(4), F.S. See also section 120.74(1)(e), F.S. "[E]ach agency shall perform a formal review of its rules every 2 years. In the review, each agency must [s]eek to improve efficiency, reduce paperwork, or decrease costs to government and the private sector."

² Section 97.052(1), F.S.

³ Section 97.052(2), F.S.

⁴ Section 101.20(2), F.S.

⁵ Section 125.66(1), F.S.

place or places within the county where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.⁶

Certified copies of ordinances or amendments thereto must be filed with the Department of State by the clerk of the board of county commissioners within 10 days after enactment by the board. The ordinances or amendments take effect upon filing with the Department of State, unless the ordinance prescribes a later effective date.⁷

Effect of the Bill

The bill requires a clerk of a board of county commissioners to electronically transmit to the Department of State enacted ordinances, amendments, and emergency ordinances. It requires the Department of State to electronically confirm by e-mail the receipt and the effective date of such filings with the clerk of the board of county commissioners.

Value Adjustment Boards

Background

Value adjustment boards are constituted in each county to conduct administrative hearings relating to assessments, complaints relating to homestead exemptions, appeals from tax exemptions denied, and appeals concerning ad valorem deferrals and classifications.⁸ The value adjustment board must render a written decision within 20 calendar days after the last day the board is in session. The clerk must then provide notice of the board's decision by first-class mail.⁹

Effect of the Bill

The bill permits the clerk of a value adjustment board to electronically notify the taxpayer and property appraiser of the value adjustment board's decision in a hearing held pursuant to s. 194.034, F.S., if electronic means is selected by the taxpayer on the originally filed petition.

Property Appraisers

Background

Current law requires each property appraiser to provide notice of proposed property taxes and non-ad valorem assessments by first-class mail to each taxpayer listed on the current year's assessments. Elements that must be included on such notice are prescribed by statute.¹⁰

Effect of the Bill

The bill authorizes a property appraiser to notify taxpayers by postcard that the notice of proposed property taxes and non-ad valorem assessments is available for viewing and download at the appraiser's website. The bill provides approved language for such postcards. It also authorizes a property appraiser to provide notification by e-mail to property owners or other interested parties who have registered an e-mail address with the appraiser.

The property appraiser must prepare and make available on his or her office's website a notice of proposed property taxes and non-ad valorem assessments for each taxpayer listed on the year's assessment roll as a separate web page, link, attachment, or document. Such online notice from the appraiser must meet specified criteria, including, but not limited to, specifying all substantive elements required for such notice. The property appraiser may display the required substantive elements in a format different from that prescribed by the Department of Revenue only upon receiving prior written

⁶ Section 125.66(2)(a), F.S.

⁷ Section 125.66(2)(b), F.S.

⁸ Section 194.032(1)(a), F.S.

⁹ Section 194.034(2), F.S.

¹⁰ Section 200.069, F.S.

permission from the executive director of the Department. The format may contain additional substantive elements deemed important by the appraiser, in addition to the elements provided for by law.

Bail Bond Agents and Bail Bonds

Background

The Department of Financial Services is charged with licensing bail bond agents, and may only issue a bail bond license to an individual.¹¹ A person must be qualified, licensed, and appointed in order to act in the capacity of a bail bond agent or temporary bail bond agent and to perform any of the functions, duties, or powers of such agents.¹² Current law requires a licensed bail bond agent to notify the Department of Financial Services, the insurer, the managing general agent, and the clerk of each court where the licensee is registered of a change of business address or telephone number within 10 days of such a change.¹³

The Legislature has declared that it is the policy of the state that a bond for the pretrial or appellate release of a criminal defendant for which fees or premiums are charged must be executed by a bail bond agent licensed pursuant to chapter 648, F.S., and must be construed as a commitment by and obligation upon the bail bond agent to ensure that the defendant appears at all subsequent criminal proceedings.¹⁴ A bail bond agent who executes or countersigns a bond is required to indicate the name and address of the referring bail bond agent.

A bail bond agent is prohibited from soliciting business in a jail, prison, or other location where prisoners are generally held. Permissible print advertising in the jail is limited to a listing in a telephone directory and the posting of the bail bond agent's or agency's name, address, and telephone number in a designated location within the jail.¹⁵

If there is a breach of a bond, the bond or money deposited as bail may be forfeited only if the clerk of court gives the surety at least 72 hour notice of a required appearance by a defendant.¹⁶ A notice of bond forfeiture has to be provided by mail.¹⁷

Effect of the Bill

The bill requires a licensed bail bond agent to provide notice of a change of e-mail address to specified entities within 10 days of such change. It also requires a bail bond agent who executes or countersigns a transfer bond to indicate the agent's e-mail address on the bond.

The bill provides that the posting of a bail bond agent's e-mail address is a permissible form of print advertising in jails.

The bill permits bail bonds to be posted in person or electronically at the election of the receiving agency. It authorizes bonds to be transmitted electronically between a sheriff's office and the clerk of the court. An affidavit filed with a bond must be submitted in the same manner as the bond.

The bill provides that all licensed bail bond agents shall have equal access to jails for the purpose of making bonds, whether in person or electronically.

¹¹ Section 648.27(1), F.S.

¹² Section 648.30(1), F.S.

¹³ Section 648.421, F.S.

¹⁴ Section 648.24, F.S.

¹⁵ Section 648.44, F.S.

¹⁶ Section 903.26(1)(b), F.S.

¹⁷ Section 903.26(2)(a), F.S.

The bill permits the clerk of court to electronically provide notice of a required appearance and of bond forfeiture. It allows the clerk of court to electronically furnish certain documents and notices required in bond forfeiture proceedings.

The bill allows a clerk of court to electronically furnish a certificate of cancellation of a bond to the surety without cost.

The bill provides that guaranteed traffic arrest bonds may be presented in person or electronically.

B. SECTION DIRECTORY:

Section 1: Amends s. 97.052, F.S., requiring that the uniform statewide voter registration application be designed to elicit the e-mail address of an applicant and whether the applicant desires to receive sample ballots by e-mail.

Section 2: Amends s. 101.20, F.S., authorizing a supervisor of elections to send a sample ballot to a registered elector by e-mail under certain circumstances.

Section 3: Amends s. 125.66, F.S., requiring the clerk of a board of county commissioners to electronically transmit enacted ordinances, amendments, and emergency ordinances to the Department of State.

Section 4: Amends s. 194.034, F.S., permitting a value adjustment board to electronically provide the taxpayer and property appraiser with notice of the decision of the board.

Section 5: Amends s. 200.069, F.S., authorizing the property appraiser to notify taxpayers of proposed property taxes by postcard in lieu of first-class mail; providing notice language; authorizing the property appraiser to prepare and make available on the appraiser's website the notice of proposed property taxes; providing additional notice requirements.

Section 6: Amends s. 648.421, F.S., requiring a licensed bail bond agent to provide notice of a change of e-mail address to specified entities.

Section 7: Amends s. 648.43, F.S., requiring a bail bond agent who executes or countersigns a transfer bond to indicate the agent's e-mail address.

Section 8: Amends s. 648.44, F.S., providing that a bail bond agent's e-mail address is permissible print advertising in jails.

Section 9: Creates s. 903.012, F.S., permitting bonds to be posted electronically at the election of the receiving agency.

Section 10: Amends 903.101, F.S., providing that every licensed surety shall have equal access to jails for the purpose of making bonds either in person or electronically.

Section 11: Amends s. 903.14, F.S., requiring a surety who submits an affidavit pertaining to any bond to file such affidavit in the same manner as the bond.

Section 12: Amends s. 903.26, F.S., providing that notices from the clerk of court relating to bond forfeiture proceedings may be transmitted electronically.

Section 13: Amends s. 903.27, F.S., permitting a clerk of court to furnish certain required documents and notices relating to bond forfeitures by mail or electronic means; removing an outdated provision.

Section 14: Amends s. 903.31, F.S., providing that a certificate of cancellation of an original bond may be furnished electronically.

Section 15: Amends s. 903.36, F.S., providing that traffic arrest bond certificates may be presented electronically.

Section 16: Provides an effective date of July 1, 2013.

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:

None.

D. FISCAL COMMENTS:

There may be undetermined costs associated with modifying the uniform statewide voter application; however, the Department of State does not foresee any fiscal impact based on this requirement.¹⁸

There may be an undetermined fiscal impact on supervisors of elections who have to maintain e-mail addresses of voters and voter registration applicants, and to monitor which registered voters wish to receive sample ballots electronically. Additionally, there may be costs to supervisors of elections related to setting up a system to send out sample ballots electronically. Some, if not most, of these costs may be offset by savings resulting from the electronic provision of sample ballots.

There may be an undetermined fiscal impact on property appraisers who seek to implement an electronic method of providing notice of proposed property taxes and non-ad valorem assessments. However, the modifications to s. 200.069, F.S. which provide for electronic notice of proposed property tax rates and non-ad valorem assessments are permissive, not mandatory. It is therefore expected that counties will adopt electronic methods of providing notice of proposed property taxes and non-ad valorem assessments when such methods will reduce expenditures. There will be undetermined costs associated with the requirement that a property appraiser prepare and make available on his or her office's website notice of proposed property taxes and non-ad valorem assessments for each taxpayer listed on the year's assessment roll.

¹⁸ Analysis of HB 247 (2013) by the Department of State, at 1 (January 29, 2013) (on file with the Government Operations Subcommittee).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision of Art. VII, s. 18 of the State Constitution may apply because this bill could cause counties to incur additional expenses associated with the requirement that the property appraiser post certain tax information on his or her office's website; however, an exemption may apply if the bill results in an insignificant fiscal impact to county governments. The exceptions to the mandates provision of Art. VII, s. 18, of the Florida Constitution appear to be inapplicable because the bill does not articulate a threshold finding of serving an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Preclearance Requirement

The Department of State provided the following comments regarding preclearance:

Under section 5 of the Voting Rights Act, new statewide legislation that implements a voting change, including but not limited to, a change in the manner of voting, change in registration, balloting, and the counting of votes, change in candidacy requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting the creation or abolition of an elective office, is subject to preclearance by the U.S. Department of Justice or the federal District Court for the District of Columbia. The preclearance review is to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe counties. Until precleared, the legislation is unenforceable in these five counties.¹⁹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁹ Analysis of HB 247 (2013) by the Department of State, at 2 (January 29, 2013) (on file with the Government Operations Subcommittee).

1 A bill to be entitled
2 An act relating to paper reduction; amending s.
3 97.052, F.S.; providing that the uniform statewide
4 voter registration application be designed to elicit
5 the e-mail address of an applicant and whether the
6 applicant desires to receive sample ballots by e-mail;
7 amending s. 101.20, F.S.; authorizing a supervisor of
8 elections to send a sample ballot to a registered
9 elector by e-mail under certain circumstances;
10 amending s. 125.66, F.S.; requiring the clerk of a
11 board of county commissioners to electronically
12 transmit enacted ordinances, amendments, and emergency
13 ordinances to the Department of State; amending s.
14 194.034, F.S.; permitting a value adjustment board to
15 electronically provide the taxpayer and property
16 appraiser with notice of the decision of the board;
17 amending s. 200.069, F.S.; authorizing the property
18 appraiser to notify taxpayers of proposed property
19 taxes by postcard or e-mail in lieu of first-class
20 mail; providing notice language; authorizing the
21 property appraiser to prepare and make available on
22 the appraiser's website the notice of proposed
23 property taxes; providing additional notice
24 requirements; amending s. 648.421, F.S.; requiring a
25 licensed bail bond agent to provide notice of a change
26 of e-mail address to specified entities; amending s.
27 648.43, F.S.; requiring a bail bond agent who executes
28 or countersigns a transfer bond to indicate the

29 agent's e-mail address; amending s. 648.44, F.S.;

30 providing that a bail bond agent's e-mail address is

31 permissible print advertising in certain places;

32 creating s. 903.012, F.S.; permitting bonds to be

33 posted in person or electronically at the election of

34 the receiving agency; permitting the electronic

35 transmission of bonds between certain entities;

36 amending s. 903.101, F.S.; providing that every

37 licensed surety shall have equal access to jails for

38 the purpose of making bonds either in person or

39 electronically; amending s. 903.14, F.S.; requiring a

40 surety who submits an affidavit pertaining to any bond

41 to file an affidavit in the same manner as the bond;

42 amending s. 903.26, F.S.; authorizing a clerk of court

43 to mail or electronically transmit a notice relating

44 to a bond forfeiture proceeding; amending s. 903.27,

45 F.S.; permitting a clerk of court to furnish certain

46 required documents and notices relating to bond

47 forfeitures by mail or electronic means; deleting an

48 outdated provision; amending s. 903.31, F.S.;

49 providing that a certificate of cancellation of an

50 original bond may be furnished by mail or

51 electronically; amending s. 903.36, F.S.; providing

52 that traffic arrest bond certificates may be presented

53 in person or electronically; providing an effective

54 date.

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

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Section 1. Paragraphs (e) through (t) of subsection (2) of section 97.052, Florida Statutes, are redesignated as paragraphs (f) through (u), respectively, and a new paragraph (e) is added to that section, to read:

97.052 Uniform statewide voter registration application.—

(2) The uniform statewide voter registration application must be designed to elicit the following information from the applicant:

(e) E-mail address and whether the applicant wishes to receive sample ballots by e-mail.

The registration application must be in plain language and designed so that convicted felons whose civil rights have been restored and persons who have been adjudicated mentally incapacitated and have had their voting rights restored are not required to reveal their prior conviction or adjudication.

Section 2. Subsection (2) of section 101.20, Florida Statutes, is amended to read:

101.20 Publication of ballot form; sample ballots.—

(2) Upon completion of the list of qualified candidates, a sample ballot shall be published by the supervisor of elections in a newspaper of general circulation in the county, before ~~prior to~~ the day of election. In lieu of publication, a supervisor may send a sample ballot to each registered elector by e-mail at least 7 days before any election if an e-mail address has been provided and the elector has opted to receive a sample ballot by electronic delivery. If an e-mail address has

85 | not been provided, or if the elector has not opted for
 86 | electronic delivery, ~~If the county has an addressograph or~~
 87 | ~~equivalent system for mailing to registered electors,~~ a sample
 88 | ballot may be mailed to each registered elector or to each
 89 | household in which there is a registered elector, in lieu of
 90 | publication, at least 7 days before ~~prior to~~ any election.

91 | Section 3. Paragraph (b) of subsection (2) and subsection
 92 | (3) of section 125.66, Florida Statutes, are amended to read:

93 | 125.66 Ordinances; enactment procedure; emergency
 94 | ordinances; rezoning or change of land use ordinances or
 95 | resolutions.—

96 | (2)

97 | (b) Certified copies of ordinances or amendments thereto
 98 | enacted under this regular enactment procedure shall be filed
 99 | with the Department of State by the clerk of the board of county
 100 | commissioners within 10 days after enactment by said board and
 101 | shall take effect upon filing with the Department of State.
 102 | However, any ordinance may prescribe a later effective date. In
 103 | lieu of delivery of the certified copies of the enacted
 104 | ordinances or amendments by first-class mail, the clerk of the
 105 | board of county commissioners shall transmit the enacted
 106 | ordinances or amendments to the department by e-mail. The
 107 | department shall confirm by e-mail the receipt and effective
 108 | date of the ordinances or amendments with the clerk of the board
 109 | of county commissioners.

110 | (3) The emergency enactment procedure shall be as follows:
 111 | The board of county commissioners at any regular or special
 112 | meeting may enact or amend any ordinance with a waiver of the

113 notice requirements of subsection (2) by a four-fifths vote of
 114 the membership of such board, declaring that an emergency exists
 115 and that the immediate enactment of said ordinance is necessary.
 116 However, no emergency ordinance or resolution shall be enacted
 117 which establishes or amends the actual zoning map designation of
 118 a parcel or parcels of land or changes the actual list of
 119 permitted, conditional, or prohibited uses within a zoning
 120 category. Emergency enactment procedures for land use plans
 121 adopted pursuant to part II of chapter 163 shall be pursuant to
 122 that part. Certified copies of ordinances or amendments thereto
 123 enacted under this emergency enactment procedure by a county
 124 shall be filed with the Department of State by the clerk of the
 125 board of county commissioners as soon after enactment by said
 126 board as is practicable. An emergency ordinance enacted under
 127 this procedure shall be transmitted by the clerk of the board of
 128 county commissioners by e-mail to the Department of State. It
 129 shall be deemed to be filed and shall take effect when a copy
 130 has been accepted and confirmed by the department by e-mail
 131 ~~deemed to be filed and shall take effect when a copy has been~~
 132 ~~accepted by the postal authorities of the Government of the~~
 133 ~~United States for special delivery by certified mail to the~~
 134 ~~Department of State.~~

135 Section 4. Subsection (2) of section 194.034, Florida
 136 Statutes, is amended to read:

137 194.034 Hearing procedures; rules.-

138 (2) In each case, except if the complaint is withdrawn by
 139 the petitioner or if the complaint is acknowledged as correct by
 140 the property appraiser, the value adjustment board shall render

141 a written decision. All such decisions shall be issued within 20
 142 calendar days after the last day the board is in session under
 143 s. 194.032. The decision of the board must contain findings of
 144 fact and conclusions of law and must include reasons for
 145 upholding or overturning the determination of the property
 146 appraiser. If a special magistrate has been appointed, the
 147 recommendations of the special magistrate shall be considered by
 148 the board. The clerk, upon issuance of a decision, shall, on a
 149 form provided by the Department of Revenue, notify each taxpayer
 150 and the property appraiser of the decision of the board. This
 151 notification shall be by first-class mail or by electronic means
 152 if selected by the taxpayer on the originally filed petition
 153 ~~each taxpayer and the property appraiser of the decision of the~~
 154 ~~board.~~ If requested by the Department of Revenue, the clerk
 155 shall provide to the department a copy of the decision or
 156 information relating to the tax impact of the findings and
 157 results of the board as described in s. 194.037 in the manner
 158 and form requested.

159 Section 5. Section 200.069, Florida Statutes, is amended
 160 to read:

161 200.069 Notice of proposed property taxes and non-ad
 162 valorem assessments.—Pursuant to s. 200.065(2)(b), the property
 163 appraiser, in the name of the taxing authorities and local
 164 governing boards levying non-ad valorem assessments within his
 165 or her jurisdiction and at the expense of the county, shall
 166 prepare and deliver by first-class mail to each taxpayer to be
 167 listed on the current year's assessment roll a notice of
 168 proposed property taxes, which notice shall contain the elements

169 and use the format provided in the following form.
 170 Notwithstanding the provisions of s. 195.022, no county officer
 171 shall use a form other than that provided herein. The Department
 172 of Revenue may adjust the spacing and placement on the form of
 173 the elements listed in this section as it considers necessary
 174 based on changes in conditions necessitated by various taxing
 175 authorities. If the elements are in the order listed, the
 176 placement of the listed columns may be varied at the discretion
 177 and expense of the property appraiser, and the property
 178 appraiser may use printing technology and devices to complete
 179 the form, the spacing, and the placement of the information in
 180 the columns. A county officer may use a form other than that
 181 provided by the department for purposes of this part, but only
 182 if his or her office pays the related expenses and he or she
 183 obtains prior written permission from the executive director of
 184 the department; however, a county officer may not use a form the
 185 substantive content of which is at variance with the form
 186 prescribed by the department. The county officer may continue to
 187 use such an approved form until the law that specifies the form
 188 is amended or repealed or until the officer receives written
 189 disapproval from the executive director. In lieu of delivery of
 190 the notice of proposed property taxes by first-class mail, the
 191 property appraiser may prepare and mail a postcard to each
 192 taxpayer listed on the current year's assessment roll, which
 193 shall contain at a minimum the following statement:

ATTENTION PROPERTY OWNER

This postcard is your official notification pursuant to
sections 192.0105 and 200.069, Florida Statutes, that your

197 notice of proposed property taxes and non-ad valorem
 198 assessments is available for viewing and download on my
 199 website at ...(website address).... If you are unable to
 200 access my website, you are entitled to have a copy of your
 201 notice mailed to you for free by contacting my office at
 202 ...(telephone number).... Please note: your final tax bill
 203 may contain non-ad valorem assessments that may not be
 204 reflected on your notice, such as assessments for roads,
 205 fire, garbage, lighting, drainage, water, sewer, or other
 206 governmental services and facilities that may be levied by
 207 your county, city, or special district.

208
 209 The property appraiser may also provide notification by e-mail
 210 to property owners or other interested parties who have
 211 registered an e-mail address with the property appraiser that
 212 the notice of proposed property taxes and non-ad valorem
 213 assessments is available for viewing and download on the
 214 property appraiser office's website. The property appraiser
 215 shall prepare and make available for viewing, printing, and
 216 downloading on the property appraiser office's website a notice
 217 of proposed property taxes and non-ad valorem assessments for
 218 each taxpayer to be listed on the current year's assessment
 219 roll, which shall be a separate web page, weblink, attachment,
 220 or document, and shall contain all the substantive elements as
 221 outlined in this section. The property appraiser may use a
 222 format for web display of all substantive elements as outlined
 223 in this section other than that provided by the department for
 224 purposes of this part, but only if the property appraiser's

225 | office obtains prior written permission from the executive
 226 | director of the department. The format may contain substantive
 227 | elements deemed important by the property appraiser, in addition
 228 | to the elements outlined in this section. The property appraiser
 229 | may continue to use the approved format until the law that
 230 | specifies the form is amended or repealed or until the officer
 231 | receives written disapproval from the executive director of the
 232 | department.

233 | (1) The first page of the notice shall read:

234 | NOTICE OF PROPOSED PROPERTY TAXES

235 | DO NOT PAY—THIS IS NOT A BILL

236 | The taxing authorities which levy property taxes against
 237 | your property will soon hold PUBLIC HEARINGS to adopt budgets
 238 | and tax rates for the next year.

239 | The purpose of these PUBLIC HEARINGS is to receive opinions
 240 | from the general public and to answer questions on the proposed
 241 | tax change and budget PRIOR TO TAKING FINAL ACTION.

242 | Each taxing authority may AMEND OR ALTER its proposals at
 243 | the hearing.

244 | (2) (a) The notice shall include a brief legal description
 245 | of the property, the name and mailing address of the owner of
 246 | record, and the tax information applicable to the specific
 247 | parcel in question. The information shall be in columnar form.
 248 | There shall be seven column headings which shall read: "Taxing
 249 | Authority," "Your Property Taxes Last Year," "Last Year's
 250 | Adjusted Tax Rate (Millage)," "Your Taxes This Year IF NO Budget
 251 | Change Is Adopted," "Tax Rate This Year IF PROPOSED Budget Is
 252 | Adopted (Millage)," "Your Taxes This Year IF PROPOSED Budget

253 Change Is Adopted," and "A Public Hearing on the Proposed Taxes
 254 and Budget Will Be Held:."

255 (b) As used in this section, the term "last year's
 256 adjusted tax rate" means the rolled-back rate calculated
 257 pursuant to s. 200.065(1).

258 (3) There shall be under each column heading an entry for
 259 the county; the school district levy required pursuant to s.
 260 1011.60(6); other operating school levies; the municipality or
 261 municipal service taxing unit or units in which the parcel lies,
 262 if any; the water management district levying pursuant to s.
 263 373.503; the independent special districts in which the parcel
 264 lies, if any; and for all voted levies for debt service
 265 applicable to the parcel, if any.

266 (4) For each entry listed in subsection (3), there shall
 267 appear on the notice the following:

268 (a) In the first column, a brief, commonly used name for
 269 the taxing authority or its governing body. The entry in the
 270 first column for the levy required pursuant to s. 1011.60(6)
 271 shall be "By State Law." The entry for other operating school
 272 district levies shall be "By Local Board." Both school levy
 273 entries shall be indented and preceded by the notation "Public
 274 Schools:". For each voted levy for debt service, the entry shall
 275 be "Voter Approved Debt Payments."

276 (b) In the second column, the gross amount of ad valorem
 277 taxes levied against the parcel in the previous year. If the
 278 parcel did not exist in the previous year, the second column
 279 shall be blank.

280 (c) In the third column, last year's adjusted tax rate or,

281 | in the case of voted levies for debt service, the tax rate
 282 | previously authorized by referendum.

283 | (d) In the fourth column, the gross amount of ad valorem
 284 | taxes which will apply to the parcel in the current year if each
 285 | taxing authority levies last year's adjusted tax rate or, in the
 286 | case of voted levies for debt service, the amount previously
 287 | authorized by referendum.

288 | (e) In the fifth column, the tax rate that each taxing
 289 | authority must levy against the parcel to fund the proposed
 290 | budget or, in the case of voted levies for debt service, the tax
 291 | rate previously authorized by referendum.

292 | (f) In the sixth column, the gross amount of ad valorem
 293 | taxes that must be levied in the current year if the proposed
 294 | budget is adopted.

295 | (g) In the seventh column, the date, the time, and a brief
 296 | description of the location of the public hearing required
 297 | pursuant to s. 200.065(2)(c).

298 | (5) Following the entries for each taxing authority, a
 299 | final entry shall show: in the first column, the words "Total
 300 | Property Taxes:" and in the second, fourth, and sixth columns,
 301 | the sum of the entries for each of the individual taxing
 302 | authorities. The second, fourth, and sixth columns shall,
 303 | immediately below said entries, be labeled Column 1, Column 2,
 304 | and Column 3, respectively. Below these labels shall appear, in
 305 | boldfaced type, the statement: SEE REVERSE SIDE FOR EXPLANATION.

306 | (6) (a) The second page of the notice shall state the
 307 | parcel's market value and for each taxing authority that levies
 308 | an ad valorem tax against the parcel:

309 1. The assessed value, value of exemptions, and taxable
 310 value for the previous year and the current year.

311 2. Each assessment reduction and exemption applicable to
 312 the property, including the value of the assessment reduction or
 313 exemption and tax levies to which they apply.

314 (b) The reverse side of the second page shall contain
 315 definitions and explanations for the values included on the
 316 front side.

317 (7) The following statement shall appear after the values
 318 listed on the front of the second page:

319 If you feel that the market value of your property is
 320 inaccurate or does not reflect fair market value, or if you are
 321 entitled to an exemption or classification that is not reflected
 322 above, contact your county property appraiser at ...(phone
 323 number)... or ...(location)....

324 If the property appraiser's office is unable to resolve the
 325 matter as to market value, classification, or an exemption, you
 326 may file a petition for adjustment with the Value Adjustment
 327 Board. Petition forms are available from the county property
 328 appraiser and must be filed ON OR BEFORE ...(date)....

329 (8) The reverse side of the first page of the form shall
 330 read:

331 EXPLANATION

332 *COLUMN 1—"YOUR PROPERTY TAXES LAST YEAR"

333 This column shows the taxes that applied last year to your
 334 property. These amounts were based on budgets adopted last year
 335 and your property's previous taxable value.

336 *COLUMN 2—"YOUR TAXES IF NO BUDGET CHANGE IS ADOPTED"

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337 | This column shows what your taxes will be this year IF EACH
 338 | TAXING AUTHORITY DOES NOT CHANGE ITS PROPERTY TAX LEVY. These
 339 | amounts are based on last year's budgets and your current
 340 | assessment.

341 | *COLUMN 3—"YOUR TAXES IF PROPOSED BUDGET CHANGE IS ADOPTED"

342 | This column shows what your taxes will be this year under the
 343 | BUDGET ACTUALLY PROPOSED by each local taxing authority. The
 344 | proposal is NOT final and may be amended at the public hearings
 345 | shown on the front side of this notice. The difference between
 346 | columns 2 and 3 is the tax change proposed by each local taxing
 347 | authority and is NOT the result of higher assessments.

348 | *Note: Amounts shown on this form do NOT reflect early payment
 349 | discounts you may have received or may be eligible to receive.
 350 | (Discounts are a maximum of 4 percent of the amounts shown on
 351 | this form.)

352 | (9) The bottom portion of the notice shall further read in
 353 | bold, conspicuous print:

354 | "Your final tax bill may contain non-ad valorem assessments
 355 | which may not be reflected on this notice such as assessments
 356 | for roads, fire, garbage, lighting, drainage, water, sewer, or
 357 | other governmental services and facilities which may be levied
 358 | by your county, city, or any special district."

359 | (10)(a) If requested by the local governing board levying
 360 | non-ad valorem assessments and agreed to by the property
 361 | appraiser, the notice specified in this section may contain a
 362 | notice of proposed or adopted non-ad valorem assessments. If so
 363 | agreed, the notice shall be titled:

364 | NOTICE OF PROPOSED PROPERTY TAXES

365 AND PROPOSED OR ADOPTED
 366 NON-AD VALOREM ASSESSMENTS
 367 DO NOT PAY—THIS IS NOT A BILL

368 There must be a clear partition between the notice of proposed
 369 property taxes and the notice of proposed or adopted non-ad
 370 valorem assessments. The partition must be a bold, horizontal
 371 line approximately 1/8-inch thick. By rule, the department
 372 shall provide a format for the form of the notice of proposed or
 373 adopted non-ad valorem assessments which meets the following
 374 minimum requirements:

375 1. There must be subheading for columns listing the
 376 levying local governing board, with corresponding assessment
 377 rates expressed in dollars and cents per unit of assessment, and
 378 the associated assessment amount.

379 2. The purpose of each assessment must also be listed in
 380 the column listing the levying local governing board if the
 381 purpose is not clearly indicated by the name of the board.

382 3. Each non-ad valorem assessment for each levying local
 383 governing board must be listed separately.

384 4. If a county has too many municipal service benefit
 385 units or assessments to be listed separately, it shall combine
 386 them by function.

387 5. A brief statement outlining the responsibility of the
 388 tax collector and each levying local governing board as to any
 389 non-ad valorem assessment must be provided on the form,
 390 accompanied by directions as to which office to contact for
 391 particular questions or problems.

392 (b) If the notice includes all adopted non-ad valorem

393 assessments, the provisions contained in subsection (9) shall
 394 not be placed on the notice.

395 Section 6. Section 648.421, Florida Statutes, is amended
 396 to read:

397 648.421 Notice of change of address or telephone number.—
 398 Each licensee under this chapter shall notify in writing the
 399 department, insurer, managing general agent, and the clerk of
 400 each court in which the licensee is registered within 10 working
 401 days after a change in the licensee's principal business
 402 address, e-mail address, or telephone number. The licensee shall
 403 also notify the department within 10 working days after a change
 404 of the name, address, or telephone number of each agency or firm
 405 for which he or she writes bonds and any change in the
 406 licensee's name, home address, e-mail address, or telephone
 407 number.

408 Section 7. Subsection (3) of section 648.43, Florida
 409 Statutes, is amended to read:

410 648.43 Power of attorney; to be approved by department;
 411 filing of copies; notification of transfer bond.—

412 (3) Every bail bond agent who executes or countersigns a
 413 transfer bond shall indicate in writing on the bond the name,
 414 ~~and~~ address, and e-mail address of the referring bail bond
 415 agent.

416 Section 8. Paragraph (b) of subsection (1) of section
 417 648.44, Florida Statutes, is amended to read:

418 648.44 Prohibitions; penalty.—

419 (1) A bail bond agent or temporary bail bond agent may
 420 not:

421 (b) Directly or indirectly solicit business in or on the
 422 property or grounds of a jail, prison, or other place where
 423 prisoners are confined or in or on the property or grounds of
 424 any court. The term "solicitation" includes the distribution of
 425 business cards, print advertising, or other written or oral
 426 information directed to prisoners or potential indemnitors,
 427 unless a request is initiated by the prisoner or a potential
 428 indemnitor. Permissible print advertising in the jail is
 429 strictly limited to a listing in a telephone directory and the
 430 posting of the bail bond agent's or agency's name, address, e-
 431 mail address, and telephone number in a designated location
 432 within the jail.

433 Section 9. Section 903.012, Florida Statutes, is created
 434 to read:

435 903.012 Posting and transmittal of bonds.—Bonds may be
 436 posted in person or electronically at the election of the
 437 receiving agency. Bonds may be transmitted electronically
 438 between the sheriff's office and the office of the clerk of
 439 court.

440 Section 10. Section 903.101, Florida Statutes, is amended
 441 to read:

442 903.101 Sureties; licensed persons; to have equal access.—
 443 Subject to rules adopted by the Department of Financial Services
 444 and by the Financial Services Commission, every surety who meets
 445 the requirements of ss. 903.05, 903.06, 903.08, and 903.09, and
 446 every person who is currently licensed by the Department of
 447 Financial Services and registered as required by s. 648.42 shall
 448 have equal access to the jails of this state for the purpose of

449 making bonds either in person or electronically.

450 Section 11. Subsection (1) of section 903.14, Florida
451 Statutes, is amended to read:

452 903.14 Contracts to indemnify sureties.—

453 (1) A surety shall file with the bond an affidavit stating
454 the amount and source of any security or consideration which the
455 surety or anyone for his or her use has received or been
456 promised for the bond. The affidavit shall be filed in the same
457 manner as the bond.

458 Section 12. Paragraph (b) of subsection (1), paragraph (a)
459 of subsection (2), and subsection (3) of section 903.26, Florida
460 Statutes, are amended to read:

461 903.26 Forfeiture of the bond; when and how directed;
462 discharge; how and when made; effect of payment.—

463 (1) A bail bond shall not be forfeited unless:

464 (b) The clerk of court gave the surety at least 72 hours'
465 notice, exclusive of Saturdays, Sundays, and holidays, before
466 the time of the required appearance of the defendant. Notice
467 shall not be necessary if the time for appearance is within 72
468 hours from the time of arrest, or if the time is stated on the
469 bond. Such notice may be mailed or electronically transmitted.

470 (2) (a) If there is a breach of the bond, the court shall
471 declare the bond and any bonds or money deposited as bail
472 forfeited. The clerk of the court shall mail or electronically
473 transmit a notice to the surety agent and surety company ~~in~~
474 ~~writing~~ within 5 days after ~~of~~ the forfeiture. A certificate
475 signed by the clerk of the court or the clerk's designee,
476 certifying that the notice required herein was mailed or

477 | electronically transmitted on a specified date and accompanied
 478 | by a copy of the required notice, shall constitute sufficient
 479 | proof that such mailing or electronic transmission was properly
 480 | accomplished as indicated therein. If such mailing or electronic
 481 | transmission was properly accomplished as evidenced by such
 482 | certificate, the failure of the surety agent, of a company, or
 483 | of a defendant to receive such ~~mail~~ notice shall not constitute
 484 | a defense to such forfeiture and shall not be grounds for
 485 | discharge, remission, reduction, set aside, or continuance of
 486 | such forfeiture. The forfeiture shall be paid within 60 days of
 487 | the date the notice was mailed or electronically transmitted.

488 | (3) Sixty days after the forfeiture notice has been mailed
 489 | or electronically transmitted:

490 | (a) State and county officials having custody of forfeited
 491 | money shall deposit the money in the fine and forfeiture fund
 492 | established pursuant to s. 142.01.†

493 | (b) Municipal officials having custody of forfeited money
 494 | shall deposit the money in a designated municipal fund.†

495 | (c) Officials having custody of bonds as authorized by s.
 496 | 903.16 shall transmit the bonds to the clerk of the circuit
 497 | court who shall sell them at market value and disburse the
 498 | proceeds as provided in paragraphs (a) and (b).

499 | Section 13. Subsections (1), (2), and (6) of section
 500 | 903.27, Florida Statutes, are amended to read:

501 | 903.27 Forfeiture to judgment.—

502 | (1) If the forfeiture is not paid or discharged by order
 503 | of a court of competent jurisdiction within 60 days and the bond
 504 | is secured other than by money and bonds authorized in s.

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505 | 903.16, the clerk of the circuit court for the county where the
 506 | order was made shall enter a judgment against the surety for the
 507 | amount of the penalty and issue execution. However, in any case
 508 | in which the bond forfeiture has been discharged by the court of
 509 | competent jurisdiction conditioned upon the payment by the
 510 | surety of certain costs or fees as allowed by statute, the
 511 | amount for which judgment may be entered may not exceed the
 512 | amount of the unpaid fees or costs upon which the discharge had
 513 | been conditioned. Judgment for the full amount of the forfeiture
 514 | shall not be entered if payment of a lesser amount will satisfy
 515 | the conditions to discharge the forfeiture. Within 10 days, the
 516 | clerk shall furnish the Department of Financial Services and the
 517 | Office of Insurance Regulation of the Financial Services
 518 | Commission with a certified copy of the judgment docket and
 519 | shall furnish the surety company at its home office a copy of
 520 | the judgment, which shall include the power of attorney number
 521 | of the bond and the name of the executing agent. If the judgment
 522 | is not paid within 35 days, the clerk shall furnish the
 523 | Department of Financial Services, the Office of Insurance
 524 | Regulation, and the sheriff of the county in which the bond was
 525 | executed, or the official responsible for operation of the
 526 | county jail, if other than the sheriff, two copies of the
 527 | judgment and a certificate stating that the judgment remains
 528 | unsatisfied. When and if the judgment is properly paid or an
 529 | order to vacate the judgment has been entered by a court of
 530 | competent jurisdiction, the clerk shall immediately notify the
 531 | sheriff, or the official responsible for the operation of the
 532 | county jail, if other than the sheriff, and the Department of

533 Financial Services and the Office of Insurance Regulation, if
 534 the department and office had been previously notified of
 535 nonpayment, of such payment or order to vacate the judgment. The
 536 clerk may furnish documents or give notice as required in this
 537 subsection by mail or electronic means. The clerk shall also
 538 immediately prepare and record in the public records a
 539 satisfaction of the judgment or record the order to vacate
 540 judgment. If the defendant is returned to the county of
 541 jurisdiction of the court, whenever a motion to set aside the
 542 judgment is filed, the operation of this section is tolled until
 543 the court makes a disposition of the motion.

544 (2) A certificate signed by the clerk of the court or her
 545 or his designee, certifying that the notice required in
 546 subsection (1) was mailed or electronically delivered on a
 547 specified date, and accompanied by a copy of the required notice
 548 constitutes sufficient proof that such mailing or electronic
 549 delivery was properly accomplished as indicated therein. If such
 550 mailing or electronic delivery was properly accomplished as
 551 evidenced by such certificate, the failure of a company to
 552 receive a copy of the judgment as prescribed in subsection (1)
 553 does not constitute a defense to the forfeiture and is not a
 554 ground for the discharge, remission, reduction, set-aside, or
 555 continuance of such forfeiture.

556 ~~(6) The failure of a state attorney to file, or of the~~
 557 ~~clerk of the circuit court to make, a certified copy of the~~
 558 ~~order of forfeiture as required by law applicable prior to July~~
 559 ~~1, 1982, shall not invalidate any judgment entered by the clerk~~
 560 ~~prior to June 12, 1981.~~

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561 Section 14. Subsection (1) of section 903.31, Florida
 562 Statutes, is amended to read:

563 903.31 Canceling the bond.—

564 (1) Within 10 business days after the conditions of a bond
 565 have been satisfied or the forfeiture discharged or remitted,
 566 the court shall order the bond canceled and, if the surety has
 567 attached a certificate of cancellation to the original bond, the
 568 clerk of the court shall mail or electronically furnish an
 569 executed certificate of cancellation to the surety without cost.
 570 An adjudication of guilt or innocence, an acquittal, or a
 571 withholding of an adjudication of guilt shall satisfy the
 572 conditions of the bond. The original appearance bond shall
 573 expire 36 months after such bond has been posted for the release
 574 of the defendant from custody. This subsection does not apply to
 575 cases in which a bond has been declared forfeited.

576 Section 15. Subsection (2) of section 903.36, Florida
 577 Statutes, is amended to read:

578 903.36 Guaranteed arrest bond certificates as cash bail.—

579 (2) The execution of a bail bond by a licensed general
 580 lines agent of a surety insurer for the automobile club or
 581 association member identified in the guaranteed traffic arrest
 582 bond certificate, as provided in s. 627.758(4), shall be
 583 accepted as bail in an amount not to exceed \$5,000 for the
 584 appearance of the person named in the certificate in any court
 585 to answer for the violation of a provision of chapter 316 or a
 586 similar traffic law or ordinance, except driving under the
 587 influence of alcoholic beverages, chemical substances, or
 588 controlled substances, as prohibited by s. 316.193. Presentation

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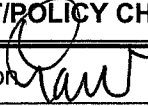
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589 | of the guaranteed traffic arrest bond certificate and a power of
590 | attorney from the surety insurer for its licensed general lines
591 | agents is authorization for such agent to execute the bail bond.
592 | Presentation may be made in person or by electronic means.

593 | Section 16. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 249 Pub. Rec./E-mail Addresses of Voter Registration Applicants & Voters
SPONSOR(S): Nelson
TIED BILLS: HB 247 **IDEN./SIM. BILLS:** SB 1260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Stramski JS	Williamson 
2) Local & Federal Affairs Committee			
3) Regulatory Affairs Committee			
4) State Affairs Committee			

SUMMARY ANALYSIS

House Bill 247 requires the uniform statewide voter registration application to include a field for a voter registration applicant's e-mail address. Current law does not provide a public record exemption for the e-mail address of a voter or voter registration applicant.

This bill provides that the e-mail address of a voter registration applicant or a voter is confidential and exempt from public record requirements.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill provides that the exemption will take effect on the same date as House Bill 247 or similar legislation if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

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 or expanded public record or public meeting exemption. The bill expands the current public record exemption for certain voter information; 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. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) 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.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² 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.
- Protects trade or business secrets.

Voter Registration

Current law requires the Department of State to prescribe by rule a uniform statewide voter registration application.³ The application must elicit certain information from the voter applicant, such as the applicant's name, date of birth, and address of legal residence.⁴

Public Record Exemption for Voter Registration Information

Current law also provides a public record exemption for certain information held by an agency⁵ for purposes of voter registration.⁶ Specifically, the following information is confidential and exempt⁷ from

¹ Art I., s. 24(c), Fla. Const.

² See s. 119.15, F.S.

³ Section 97.052(1), F.S.

⁴ Section 97.052(2), F.S.

⁵ The exemption applies to information held by an agency as defined in s. 119.011, F.S. Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

⁶ Section 97.0585, F.S.

⁷ 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 the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

public record requirements:

- All declinations to register to vote made pursuant to ss. 97.057 and 97.058, F.S.
- Information relating to the place where a person registered to vote or where a person updated a voter registration.
- The social security number, driver's license number, and Florida identification number of a voter registration applicant or voter.

In addition, the signature of a voter registration applicant or a voter is exempt from copying requirements.⁸

The public record exemption applies to information held by an agency before, on, or after the effective date of the exemption.⁹

House Bill 247

House Bill 247 requires the uniform statewide voter registration application to include a field for a voter registration applicant's e-mail address and an indication of whether the applicant wishes to receive sample ballots by e-mail.

Effect of Proposed Changes

This bill expands the current public record exemption for voter registration information. It provides that the e-mail address of a voter registration applicant or voter is confidential and exempt from public record requirements.

Current law provides for retroactive application of the public record exemption. As such, the exemption for e-mail addresses also will apply retroactively.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

The bill provides that the exemption will take effect on the same date as House Bill 247 or similar legislation if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

B. SECTION DIRECTORY:

Section 1: Amends s. 97.0585, F.S., providing an exemption from public records requirements for the e-mail addresses of voter registration applicants and voters; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act.

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.

⁸ Section 97.0585(2), F.S.

⁹ Section 97.0585(4), F.S.

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 likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, those agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

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 an 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:

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 or expanded public record or public meeting exemption. The bill expands the current public record exemption for voter information; 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 or expanded public record or public meeting exemption. The bill expands the current public record exemption for voter information; 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 a public record exemption limited to the e-mail address of a voter or voter registration applicant. 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:

This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 97.0585, F.S.; providing an exemption from public
 4 records requirements for the e-mail addresses of voter
 5 registration applicants and voters; providing for
 6 future legislative review and repeal of the exemption
 7 under the Open Government Sunset Review Act; providing
 8 a statement of public necessity; providing a
 9 contingent effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Section 97.0585, Florida Statutes, is amended to
 14 read:

15 97.0585 Public records exemption; information regarding
 16 voters and voter registration; confidentiality.—

17 (1) The following information held by an agency as defined
 18 in s. 119.011 is confidential and exempt from s. 119.07(1) and
 19 s. 24(a), Art. I of the State Constitution and may be used only
 20 for purposes of voter registration:

21 (a) All declinations to register to vote made pursuant to
 22 ss. 97.057 and 97.058.

23 (b) Information relating to the place where a person
 24 registered to vote or where a person updated a voter
 25 registration.

26 (c) The social security number, driver's license number,
 27 and Florida identification number of a voter registration
 28 applicant or voter.

29 (d) The e-mail address of a voter registration applicant
 30 or voter.

31 (2) The signature of a voter registration applicant or a
 32 voter is exempt from the copying requirements of s. 119.07(1)
 33 and s. 24(a), Art. I of the State Constitution.

34 (3) The names, addresses, and telephone numbers of persons
 35 who are victims of stalking or aggravated stalking are exempt
 36 from s. 119.071(1) and s. 24(a), Art. I of the State
 37 Constitution in the same manner that the names, addresses, and
 38 telephone numbers of participants in the Address Confidentiality
 39 Program for Victims of Domestic Violence which are held by the
 40 Attorney General under s. 741.465 are exempt from disclosure,
 41 provided that the victim files a sworn statement of stalking
 42 with the Office of the Attorney General and otherwise complies
 43 with the procedures in ss. 741.401-741.409.

44 (4) This section applies to information held by an agency
 45 before, on, or after the effective date of this exemption.

46 (5) (a) Subsection (3) is subject to the Open Government
 47 Sunset Review Act in accordance with s. 119.15 and shall stand
 48 repealed on October 2, 2015, unless reviewed and saved from
 49 repeal through reenactment by the Legislature.

50 (b) Paragraph (d) of subsection (1) is subject to the Open
 51 Government Sunset Review Act in accordance with s. 119.15 and
 52 shall stand repealed on October 2, 2018, unless reviewed and
 53 saved from repeal through reenactment by the Legislature.

54 Section 2. The Legislature finds that it is a public
 55 necessity that the e-mail address of a voter registration
 56 applicant or voter that is held by an agency be made

57 | confidential and exempt from public record requirements. E-mail
 58 | addresses are personal information that could be misused and
 59 | could result in voter fraud if released. A voter may request an
 60 | absentee ballot using an e-mail address. Public access to that
 61 | e-mail address could make others aware of those voters intending
 62 | to vote using an absentee ballot and could result in
 63 | confiscation and misuse of a mailed absentee ballot by a person
 64 | other than the registered voter before the registered voter
 65 | receives the requested absentee ballot. In addition, collection
 66 | of the e-mail address of a voter registration applicant or a
 67 | registered voter would allow the supervisors of elections to
 68 | send sample ballots electronically, thereby saving counties
 69 | money. If a voter registration applicant or a registered voter
 70 | knows that his or her e-mail address is subject to public
 71 | disclosure, he or she may be less willing to provide the address
 72 | to the supervisor of elections. Accordingly, the effective and
 73 | efficient administration of a government program would be
 74 | significantly impaired.

75 | Section 3. This act shall take effect on the same date
 76 | that HB 247 or similar legislation takes effect, if such
 77 | legislation is adopted in the same legislative session or an
 78 | extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 307 Preference in Award of State Contracts
SPONSOR(S): Tobia
TIED BILLS: IDEN./SIM. BILLS: SB 684

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Harrington	Williamson
2) Local & Federal Affairs Committee			
3) Government Operations Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

Current law requires each state agency, university, college, school district, or other political subdivision of this state to award a preference to Florida based businesses for the purchase of personal property, through competitive solicitation, when the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is another state, or political subdivision of that state. If the out-of-state bidder's home state offers an in-state preference, then the preference given to Florida based vendors is limited to the preference provided by the out-of-state bidder's home state. In a competitive solicitation in which the lowest bid is submitted by a vendor whose principal place of business is located outside the state and the out of state bidder's home state does not grant a preference in competitive solicitation to vendors having a principal place of business in that state, a 5 percent preference is given to the lowest responsible and responsive vendor having a principal place of business in Florida.

The bill expands the preference provided in current law to include counties and municipalities, as well as construction services. It provides that for a competitive solicitation in which payment is to be made, in whole or in part, from funds appropriated by the state, Florida's preference preempts and supersedes any local ordinance or regulation based upon specified criteria. The bill also provides that other than the requirements imposed for solicitations involving state funds, a university, college, county, municipality, school district, or other political subdivision of the state is not prevented from awarding a contract to any vendor in accordance with the applicable state laws or local ordinances or regulations.

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

This bill may be a county or municipal mandate. See Section III.A.1. of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency¹ procurement of personal property and services. The Department of Management Services (department) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.² The department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.³

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:⁴

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process.⁵ Section 287.012(6), F.S., provides that competitive solicitation means "the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement."

Local governmental units are not subject to the provisions of chapter 287, F.S.

Florida In-state Preference

State agencies, universities, colleges, school districts, and other political subdivisions are required to grant a preference in the award for contracts for the purchase of personal property, when competitive solicitation is required and when the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in another state, or political subdivision of that state.⁶ The preference is mandatory and is utilized by the procuring entity to award a preference to the lowest responsible and responsive vendor having a principal place of business in this state. The preference awarded is the same preference provided by the out-of-state bidder's home state.

¹ Section 287.012(1), F.S., defines agency as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."

² See ss. 287.032 and 287.042, F.S.

³ *Id.*

⁴ See ss. 287.012(6) and 287.057, F.S.

⁵ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

⁶ Section 287.084(1)(a), F.S.

If the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is another state, or political subdivision of that state, and that state does not award a preference for in-state vendors, state agencies, universities, colleges, school districts, and other political subdivisions must award a 5 percent preference to Florida based vendors.⁷

A vendor whose principal place of business is outside of this state must submit with the bid, proposal, or reply documents a written opinion of an attorney at law licensed to practice law in that foreign state as to the preferences, if any, granted by the law of that state to a business entity whose principal place of business is in that foreign state.⁸

Florida's preference law does not apply to transportation projects for which federal aid funds are available,⁹ or to counties or cities.¹⁰ It also does not apply in the award of contracts for the purchase of construction services.

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 is responsible for establishing by rule the following:¹¹

- 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 those contracts are determined to be in the best interest of the state.

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.¹² 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 \$300,000.¹³

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 Weekly¹⁴ at least 21 days prior to the established bid opening. If the construction project is projected to exceed \$500,000, the advertisement must be published at least 30 days prior to the bid opening in the Florida Administrative Weekly, 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.¹⁵

Florida Preference to State Residents

Florida law provides a preference for the employment of state residents in construction contracts funded by money appropriated 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

⁷ *Id.*

⁸ Section 287.084(2), F.S.

⁹ Section 287.084(1)(b), F.S.

¹⁰ Section 287.084(1)(c), F.S.

¹¹ Section 255.29, F.S.

¹² See chapters 60D-5.002 and 60D-5.0073, F.A.C.; see also s. 255.0525, F.S.

¹³ See s. 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

¹⁴ The Florida Administrative Weekly was renamed the Florida Administrative Register during the 2012 Session. Chapter 2012-63, L.O.F.

¹⁵ For counties, municipalities, and political subdivisions, similar publishing provisions apply. Section 255.0525(2), F.S.

state residents have substantially equal qualifications¹⁶ to those of non-residents.¹⁷ If a construction contract is funded by local funds, the contract may contain such a provision.¹⁸ In addition, the 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.¹⁹

Effect of the Bill

The bill expands the preference provided in chapter 287, F.S., to include counties and municipalities, as well as construction services. Currently, the preference is required only when personal property is required to be purchased through competitive solicitation by an agency, university, college, school district, or other political subdivision of the state.

When payment for the purchase of personal property or construction services is to be in whole or in part from state appropriated funds, the bill provides a preemption of any local ordinance or regulation that restricts a contractor certified under s. 489.105(8), F.S.,²⁰ from competing for an award based upon:

- The vendor maintaining an office or place of business within a particular local jurisdiction;
- The vendor hiring employees or subcontractors from within a particular local jurisdiction; or
- The vendor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

When payment for the purchase of personal property or construction services is to be in whole or in part from state appropriated funds, a university, college, county, municipality, school district, or other political subdivision must disclose in the solicitation document the funding source as well as the amount of such funds or the percentage of such funds as compared to the anticipated total cost of the purchase.

The bill provides that except for when state appropriated funds are used for the purchase of personal property or construction services, a university, college, county, municipality, school district, or other political subdivision is not prevented from awarding a contract to any vendor in accordance with applicable state laws or local ordinances or regulations.

The bill provides an effective date of July 1, 2013.

B. SECTION DIRECTORY:

Section 1. amends s. 287.084, F.S., expanding provisions that require an agency, university, college, school district, or other political subdivision of the state to provide preferential consideration to a Florida business in awarding competitively bid contracts to purchase personal property to include the purchase of construction services; requiring counties and municipalities to provide such preferential consideration; providing that for specified competitive solicitations the authority to grant a preference supersedes any local ordinance or regulation that restricts specified contractors from competing for an award based upon certain conditions; requiring a university, college, county, municipality, school district, or other political subdivision to make specified disclosures in competitive solicitation documents.

Section 2. provides an effective date of July 1, 2013.

¹⁶ 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."

¹⁷ Section 255.099(1), F.S.

¹⁸ *Id.*

¹⁹ Section 255.099(1)(b), F.S.

²⁰ Section 489.105(8), F.S., defines certified contractor as a contractor who possess a certificate of competency issued by the Department of Business and Professional Regulation, and who is authorized to contract statewide.

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:

This bill could result in more business being awarded to in-state vendors as a result of the state preference being given for construction services.

D. FISCAL COMMENTS:

The bill may have an unknown negative fiscal impact on both the state and local governments. The bill may have a negative effect as the state and local governments may experience increased expenditures with the possibility of higher contract prices for construction services as a result of the preference. The bill may also have an operational impact as the statute would preempt local ordinances or regulations in certain circumstances.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision of Art. VII, s. 18 of the State Constitution may apply because this bill requires cities and counties to spend money or take an action that requires the expenditure of money; however, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. The exceptions to the mandates provision of Art. VII, s. 18 of the State Constitution appear to be inapplicable because the bill does not articulate a threshold finding of serving an important state interest.

2. Other:

Equal Protection Clause

The United States Constitution provides that “[n]o State shall...deny to any person within its jurisdiction the equal protection of the laws.”²¹ The expansion of the in-state preference provisions in this bill may constitute an equal protection violation. If such legislation is challenged, the court would use a rational basis test to determine the constitutionality of the alleged discriminatory treatment.²²

²¹ U.S. Const. amend. XIV, s. 1; *see also* FLA. Const. art. I, s. 2.

²² *Nordlinger v. Hahn*, 505 U.S. 1, 33-34 (1992) (stating that a “classification rationally furthers a state interest when there is some fit between the disparate treatment and the legislative purpose.”)

Under the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.²³

Commerce Clause

The U.S. Constitution provides that Congress shall have the power to “regulate commerce...among the states.”²⁴ The Commerce Clause acts not only as a positive grant of powers to Congress, but also as a negative constraint upon the states.²⁵ When a state or local government is acting as a “market participant” rather than a “market regulator,” it is not subject to the limitations of the Commerce Clause.²⁶ A state is considered to be a “market participant” when it is acting as an economic actor such as a purchaser of goods and services.²⁷ Since the state is acting as a “market participant” under this bill, the in-state preference provisions herein are likely to be upheld as an exception to the Commerce Clause.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority for the Department of Management Services; however, the department may need to adopt rules for purposes of implementing the bill. The department does not appear to have a general grant of rulemaking authority in chapter 287, F.S., which may be needed if the department determines that rulemaking is necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Relating to Clause

The relating to clause for the bill provides that it is “[a]n act relating to preference in award of state contracts”; however, the bill creates provisions applicable to state and local contracts. As such, the sponsor may want to consider an amendment to correct the drafting error in the relating to clause to provide that the bill is an act relating to “preference in award of governmental entity contracts.”

Drafting Issues: Construction Services

The bill amends s. 287.084, F.S., to expand the in-state preference in current law to include the purchase of construction services; however, chapter 287, F.S., regulates state agency procurement of personal property and services. Chapter 255, F.S., relates to public property and publicly owned buildings and regulates contracts pertaining to construction services. As such, the sponsor may want to consider an amendment to remove the reference to “construction services” in s. 287.084, F.S., and instead create the same preference for construction services in chapter 255, F.S.

Drafting Issues: Technical Error

On lines 19 and 20, the provision “providing for construction” appears to be unnecessary and can be removed.

Other Comments: Principal Place of Business

Current law does not provide for a definition of “principal place of business.” There are two competing tests to determine where a company’s principal place of business is located.

The first is the “substantial predominance” test, which analyzes the following criteria: the location of its employees, where sales took place, its production activities, its tangible property, its sources of income, the value of land owned and leased, and the replacement cost of assets located in a certain state.²⁸

²³ *Id.*

²⁴ U.S. Const. art. I, s. 8, cl. 3.

²⁵ *See Gibbons v. Ogden*, 22 U.S. 1 (1824).

²⁶ *National Collegiate Athletic Ass’n v. Associated Press*, 18 So.3d 1201, 1211-1212 (Fla. 1st DCA 2009) (citing *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 578-579).

²⁷ *Id.*

²⁸ *Ghaderi v. United Airlines, Inc.*, 136 F.Supp.2d 1041, 1044-46 (N.D. Cal 2001).

The second test is the “nerve center test.” Under this test, a company’s principal places of business refers to the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities.²⁹ The Department of Management Services has previously utilized the “nerve center” test to determine the company’s principal place of business.³⁰

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²⁹ *Hertz Corp v. Friend et al.*, 130 S.Ct. 1181 (2010).

³⁰ In a 2010 memorandum to purchasing directors, the department indicated it intended to use the nerve center test when applying the Florida based business preference found in s. 49 of ch. 2010-151, L.O.F., to both state term contracts and other department issued solicitations. Memorandum to Purchasing Directors, Department of Management Services, September 2, 2010 at 3 (on file with the Government Operations Subcommittee).

1 A bill to be entitled
 2 An act relating to preference in award of state
 3 contracts; amending s. 287.084, F.S.; expanding
 4 provisions that require an agency, university,
 5 college, school district, or other political
 6 subdivision of the state to provide preferential
 7 consideration to a Florida business in awarding
 8 competitively bid contracts to purchase personal
 9 property to include the purchase of construction
 10 services; requiring counties and municipalities to
 11 provide such preferential consideration; providing
 12 that for specified competitive solicitations the
 13 authority to grant preference supersedes any local
 14 ordinance or regulation that restricts specified
 15 contractors from competing for an award based upon
 16 certain conditions; requiring a university, college,
 17 county, municipality, school district, or other
 18 political subdivision to make specified disclosures in
 19 competitive solicitation documents; providing for
 20 construction; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:
 23

24 Section 1. Subsection (1) of section 287.084, Florida
 25 Statutes, is amended to read:

26 287.084 Preference to Florida businesses.—

27 (1)(a) When an agency, university, college, school
 28 district, or other political subdivision of the state is

29 required to make purchases of personal property or construction
 30 services through competitive solicitation and the lowest
 31 responsible and responsive bid, proposal, or reply is by a
 32 vendor whose principal place of business is in a state or
 33 political subdivision thereof which grants a preference for the
 34 purchase of such personal property or construction services to a
 35 person whose principal place of business is in such state, then
 36 the agency, university, college, school district, or other
 37 political subdivision of this state shall award a preference to
 38 the lowest responsible and responsive vendor having a principal
 39 place of business within this state, which preference is equal
 40 to the preference granted by the state or political subdivision
 41 thereof in which the lowest responsible and responsive vendor
 42 has its principal place of business. In a competitive
 43 solicitation in which the lowest bid is submitted by a vendor
 44 whose principal place of business is located outside the state
 45 and that state does not grant a preference in competitive
 46 solicitation to vendors having a principal place of business in
 47 that state, the preference to the lowest responsible and
 48 responsive vendor having a principal place of business in this
 49 state shall be 5 percent.

50 (b) Paragraph (a) does not apply to transportation
 51 projects for which federal aid funds are available.

52 (c)1. For a competitive solicitation in which payment for
 53 the personal property or construction services is to be made in
 54 whole or in part from funds appropriated by the state, this
 55 section preempts and supersedes any local ordinance or

56 regulation that restricts a contractor certified under s.
 57 489.105(8) from competing for an award based upon:
 58 a. The vendor maintaining an office or place of business
 59 within a particular local jurisdiction;
 60 b. The vendor hiring employees or subcontractors from
 61 within a particular local jurisdiction; or
 62 c. The vendor's prior payment of local taxes, assessments,
 63 or duties within a particular local jurisdiction.
 64 2. In any competitive solicitation subject to this
 65 section, a university, college, county, municipality, school
 66 district, or other political subdivision shall disclose in the
 67 solicitation document whether payment will come from funds
 68 appropriated by the state and, if known, the amount of such
 69 funds or the percentage of such funds as compared to the
 70 anticipated total cost of the personal property or construction
 71 services.
 72 3. Except as provided in subparagraph 1., this section
 73 does not prevent a university, college, county, municipality,
 74 school district, or other political subdivision of this state
 75 from awarding a contract to any vendor in accordance with
 76 applicable state laws or local ordinances or regulations.
 77 ~~(c) As used in this section, the term "other political~~
 78 ~~subdivision of this state" does not include counties or~~
 79 ~~municipalities.~~
 80 Section 2. This act shall take effect July 1, 2013.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Government Operations
2 Subcommittee

3 Representative Tobia offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 255.0991, Florida Statutes, is created
8 to read:

9 255.0991 Preference to Florida businesses.-

10 (1) (a) When an agency, university, college, school
11 district, or other political subdivision of the state is
12 required to make purchases of construction services through
13 competitive solicitation and the lowest responsible and
14 responsive bid, proposal, or reply is by a vendor whose
15 principal place of business is in a state or political
16 subdivision thereof which grants a preference for the purchase
17 of such construction services to a person whose principal place
18 of business is in such state, then the agency, university,
19 college, school district, or other political subdivision of this
20 state shall award a preference to the lowest responsible and



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21 responsive vendor having a principal place of business within
22 this state, which preference is equal to the preference granted
23 by the state or political subdivision thereof in which the
24 lowest responsible and responsive vendor has its principal place
25 of business. In a competitive solicitation in which the lowest
26 bid is submitted by a vendor whose principal place of business
27 is located outside the state and that state does not grant a
28 preference in competitive solicitation to vendors having a
29 principal place of business in that state, the preference to the
30 lowest responsible and responsive vendor having a principal
31 place of business in this state shall be 5 percent.

32 (b) Paragraph (a) does not apply to transportation
33 projects for which federal aid funds are available.

34 (c)1. For a competitive solicitation in which payment for
35 the construction services is to be made in whole or in part from
36 funds appropriated by the state, this section preempts and
37 supersedes any local ordinance or regulation that restricts a
38 contractor certified under s. 489.105(8) from competing for an
39 award based upon:

40 a. The vendor maintaining an office or place of business
41 within a particular local jurisdiction;

42 b. The vendor hiring employees or subcontractors from
43 within a particular local jurisdiction; or

44 c. The vendor's prior payment of local taxes, assessments,
45 or duties within a particular local jurisdiction.

46 2. In any competitive solicitation subject to this
47 section, a university, college, county, municipality, school
48 district, or other political subdivision shall disclose in the



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49 solicitation document whether payment will come from funds
50 appropriated by the state and, if known, the amount of such
51 funds or the percentage of such funds as compared to the
52 anticipated total cost of the construction services.

53 3. Except as provided in subparagraph 1., this section
54 does not prevent a university, college, county, municipality,
55 school district, or other political subdivision of this state
56 from awarding a contract to any vendor in accordance with
57 applicable state laws or local ordinances or regulations.

58 (2) A vendor whose principal place of business is outside
59 this state must accompany any written bid, proposal, or reply
60 documents with a written opinion of an attorney at law licensed
61 to practice law in that foreign state, as to the preferences, if
62 any or none, granted by the law of that state to its own
63 business entities whose principal places of business are in that
64 foreign state in the letting of any or all public contracts.

65 Section 2. Subsection (1) of section 287.084, Florida
66 Statutes, is amended to read:

67 287.084 Preference to Florida businesses.—

68 (1)(a) When an agency, university, college, school
69 district, or other political subdivision of the state is
70 required to make purchases of personal property through
71 competitive solicitation and the lowest responsible and
72 responsive bid, proposal, or reply is by a vendor whose
73 principal place of business is in a state or political
74 subdivision thereof which grants a preference for the purchase
75 of such personal property to a person whose principal place of
76 business is in such state, then the agency, university, college,



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77 school district, or other political subdivision of this state
78 shall award a preference to the lowest responsible and
79 responsive vendor having a principal place of business within
80 this state, which preference is equal to the preference granted
81 by the state or political subdivision thereof in which the
82 lowest responsible and responsive vendor has its principal place
83 of business. In a competitive solicitation in which the lowest
84 bid is submitted by a vendor whose principal place of business
85 is located outside the state and that state does not grant a
86 preference in competitive solicitation to vendors having a
87 principal place of business in that state, the preference to the
88 lowest responsible and responsive vendor having a principal
89 place of business in this state shall be 5 percent.

90 (b) Paragraph (a) does not apply to transportation
91 projects for which federal aid funds are available.

92 (c)1. For a competitive solicitation in which payment for
93 the personal property is to be made in whole or in part from
94 funds appropriated by the state, this section preempts and
95 supersedes any local ordinance or regulation that grants
96 preference to a vendor based upon:

97 a. The vendor maintaining an office or place of business
98 within a particular local jurisdiction;

99 b. The vendor hiring employees or subcontractors from
100 within a particular local jurisdiction; or

101 c. The vendor's prior payment of local taxes, assessments,
102 or duties within a particular local jurisdiction.

103 2. In any competitive solicitation subject to this
104 section, a university, college, county, municipality, school



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105 district, or other political subdivision shall disclose in the
106 solicitation document whether payment will come from funds
107 appropriated by the state and, if known, the amount of such
108 funds or the percentage of such funds as compared to the
109 anticipated total cost of the personal property.

110 3. Except as provided in subparagraph 1., this section
111 does not prevent a university, college, county, municipality,
112 school district, or other political subdivision of this state
113 from awarding a contract to any vendor in accordance with
114 applicable state laws or local ordinances or regulations.

115 ~~(c) As used in this section, the term "other political~~
116 ~~subdivision of this state" does not include counties or~~
117 ~~municipalities.~~

118 Section 3. This act shall take effect July 1, 2013.
119
120

121 -----

122 **T I T L E A M E N D M E N T**

123 Remove everything before the enacting clause and insert:
124 An act relating to preference in award of governmental
125 entity contracts; creating s. 255.0991, F.S.; authorizing
126 an agency, university, college, school district, or other
127 political subdivision of the state to provide preferential
128 consideration to a Florida business in awarding
129 competitively bid contracts to purchase construction
130 services; providing that for specified competitive
131 solicitations the authority to grant preference supersedes
132 any local ordinance or regulation which grants preference




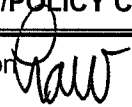
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133 to specified vendors; requiring an agency, university
134 college, school district, or other political subdivision to
135 make specified disclosures in competitive solicitation
136 documents; requiring legal written opinions to accompany
137 specified bids, proposals, and reply documents; amending s.
138 287.084, F.S.; expanding provisions that require an agency,
139 university, college, school district, or other political
140 subdivision of the state to provide preferential
141 consideration to a Florida business in awarding
142 competitively bid contracts to purchase personal property
143 to require counties and municipalities to provide such
144 preferential consideration; providing that for specified
145 competitive solicitations the authority to grant preference
146 supersedes any local ordinance or regulation which grants
147 preference to specified vendors; requiring a university,
148 college, county, municipality, school district, or other
149 political subdivision to make specified disclosures in
150 competitive solicitation documents; providing an effective
151 date.

152

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 13-02 OGSR Victim of Domestic or Sexual Violence
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. **BILLS:** SB 304

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson 	Williamson 

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law requires an employer to permit an employee to request and take up to three working days of leave from work in any 12-month period if the employee, or a family or household member of an employee, is the victim of domestic or sexual violence. This applies to public or private employers with 50 or more employees and to employees who have been employed by an employer for at least three months. An employee must provide sufficient documentation of the act of domestic violence or sexual violence as well as advance notice of the leave, except in cases of imminent danger to the employee or the employee's family. Additionally, the employee must use all available annual or vacation leave, personal leave, and sick leave, unless this requirement is waived by the employer.

Current law provides a public record exemption for certain information documenting an act of domestic violence or sexual violence submitted to an agency by an agency employee. Specifically, personal identifying information that is contained in records documenting an act of domestic or sexual violence and that is submitted to an agency by an agency employee is confidential and exempt from public record requirements. In addition, a written request for leave that is submitted by an agency employee, and any agency timesheet that reflects such a request, are confidential and exempt until one year after the leave has been taken.

The bill reenacts this public record exemption, which will repeal on October 2, 2013, if this bill does not become law.

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

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Employee Leave for Domestic Violence or Sexual Violence

Current law requires an employer to permit an employee to request and take up to three working days of leave from work in any 12-month period if the employee, or a family or household member of an employee, is the victim of domestic or sexual violence.⁴ This applies to public or private employers with 50 or more employees and to employees who have been employed by an employer for at least three months.⁵

An employee may use the leave from work to:

- Seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence;
- Obtain medical care or mental health counseling, or both, for the employee or a family or household member to address physical or psychological injuries resulting from the act of domestic violence or sexual violence;
- Obtain services from a victim services organization, including, but not limited to, a domestic violence shelter or program or a rape crisis center as a result of the act of domestic violence or sexual violence;
- Make the employee's home secure from the perpetrator of the domestic violence or sexual violence or to seek new housing to escape the perpetrator; or

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ The leave may be with or without pay, at the discretion of the employer. Section 741.313(2)(a), F.S.

⁵ Section 741.313(3), F.S.

- Seek legal assistance in addressing issues arising from the act of domestic violence or sexual violence or to attend and prepare for court-related proceedings arising from the act of domestic violence or sexual violence.⁶

An employee must provide sufficient documentation of the act of domestic or sexual violence as well as advance notice of the leave, except in cases of imminent danger to the employee or the employee's family.⁷ Additionally, the employee must use all available annual or vacation leave, personal leave, and sick leave, unless this requirement is waived by the employer.⁸

Public Record Exemption under Review

In 2007, the Legislature created a public record exemption for certain information documenting an act of domestic violence submitted to an agency⁹ by an agency employee.¹⁰ Specifically, personal identifying information that is contained in records documenting an act of domestic violence and that is submitted to an agency by an agency employee is confidential and exempt¹¹ from public record requirements.¹² In addition, a written request for leave that is submitted by an agency employee, and any agency timesheet that reflects such a request, are confidential and exempt until one year after the leave has been taken.¹³

In 2008, the public record exemption was amended to include victims of sexual violence.¹⁴

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2013, unless reenacted by the Legislature.

During the 2012 interim, subcommittee staff sent questionnaires to state and local government agencies as part of the Open Government Sunset Review process. In addition, those organizations representing victims of domestic violence or sexual violence were contacted for input regarding the public record exemption under review. Those contacted indicated that there is a public necessity to continue to protect the confidential and exempt information, and recommended reenactment of the public record exemption under review.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for personal identifying information contained in agency records documenting an act of domestic violence or sexual violence, and reenacting the public record exemption for a written request for leave and any agency time sheet reflecting such a request. The bill also makes editorial changes.

⁶ Section 741.313(2)(b), F.S.

⁷ Section 741.313(4)(a), F.S.

⁸ Section 741.313(4)(b), F.S.

⁹ For purposes of the public record exemption, "agency" means an agency as defined in chapter 119, F.S. Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

¹⁰ Chapter 2007-108, L.O.F.; codified as s. 741.313(7), F.S.

¹¹ 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 the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

¹² Section 741.313(7)(a), F.S.

¹³ Section 741.313(7)(b), F.S.

¹⁴ Chapter 2008-254, L.O.F.

B. SECTION DIRECTORY:

Section 1 amends s. 741.313, F.S., to save from repeal the public record exemption for certain information submitted to an agency by an agency employee that documents an act of domestic violence or sexual violence.

Section 2 provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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 an 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 741.313, F.S., relating
 4 to an exemption from public record requirements for
 5 certain information submitted to an agency by an
 6 agency employee who is a victim of domestic violence
 7 or sexual violence; making clarifying changes;
 8 removing the scheduled repeal of the exemption;
 9 providing an effective date.

10

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

12

13 Section 1. Subsection (7) of section 741.313, Florida
 14 Statutes, is amended to read:

15 741.313 Unlawful action against employees seeking
 16 protection.—

17 (7) (a) Personal identifying information that is contained
 18 in records documenting an act of domestic violence or sexual
 19 violence, and that is submitted by an agency employee to an
 20 agency, as defined in chapter 119, ~~by an agency employee~~ under
 21 the requirements of this section is confidential and exempt from
 22 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

23 (b) A written request for leave that is submitted by an
 24 agency employee under the requirements of this section, and any
 25 agency time sheet that reflects such a request, are confidential
 26 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 27 Constitution until 1 year after the leave has been taken.

28 ~~(c) This subsection is subject to the Open Government~~

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ORIGINAL

2013

29 | ~~Sunset Review Act in accordance with s. 119.15, and shall stand~~
30 | ~~repealed on October 2, 2013, unless reviewed and saved from~~
31 | ~~repeal through reenactment by the Legislature.~~

32 | Section 2. This act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 13-03 OGSR Organ and Tissue Donor Registry
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 452

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson <i>Raw</i>	Williamson <i>Raw</i>

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law establishes the Joshua Abbott Organ and Tissue Registry (donor registry), which is an interactive web-based organ and tissue donor registry that allows for online organ donor registration. Donate Life Florida runs the donor registry and maintains donor records on behalf of the state.

Current law provides a public record exemption for certain information held in the donor registry. Specifically, information that identifies a donor is confidential and exempt from public record requirements. Such information may be disclosed to procurement organizations that have been certified by the agency for purposes of ascertaining or effectuating the existence of a gift, and to persons engaged in bona fide research who agree to certain requirements.

The bill reenacts this public record exemption, which will repeal on October 2, 2013, if this bill does not become law.

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

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Organ Donations

Organ recovery and allocation is regulated by the Centers for Medicare and Medicaid Services, a division of the United States Department of Health and Human Services. Florida has four federally designated, non-profit organ procurement organizations that are exclusively responsible for facilitating the process.⁴ Each organization serves a different region of the state.⁵ In addition to federal certification by the United States Centers for Medicare and Medicaid Services, the Agency for Health Care Administration also certifies the organizations.⁶

Joshua Abbott Organ and Tissue Registry⁷

In 2008, the Legislature found that there was a shortage of organ and tissue donors in Florida, and found that there was a need to encourage the various minority populations of Florida to donate organs and tissue. As such, the Legislature directed the Agency for Health Care Administration (agency) and the Department of Highway Safety and Motor Vehicles (department) to competitively procure and jointly

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ FAQs About Donation, Donate Life Florida, available at: http://www.donateliflorida.org/content/about/facts/faq/#faq_47 (last visited March 3, 2013).

⁵ LifeLink of Florida serves west Florida, LifeQuest Organ Recovery Services serves north Florida, TransLife Organ and Tissue Donation Services serves east Florida, and LifeAlliance Organ Recovery Services serves south Florida. Available at: <http://organdonor.gov/materialsresources/materialsopolist.html> (last visited March 3, 2013).

⁶ See s. 765.541, F.S.

⁷ Section 765.5155(5), F.S., designates the donor registry as the Joshua Abbott Organ and Tissue Registry.

contract for the operation of a donor registry and education program.⁸ The agency and department selected Donate Life Florida to run the donor registry and maintain donor records. Donate Life Florida is responsible, in part, for maintaining an interactive web-based organ and tissue donor registry that allows for online organ donor registration.⁹

Public Record Exemption under Review

In 2008, the Legislature created a public record exemption for certain information held in the donor registry.¹⁰ Specifically, information that identifies a donor is confidential and exempt¹¹ from public record requirements.¹² Such information may be disclosed to procurement organizations that have been certified by the agency for purposes of ascertaining or effectuating the existence of a gift, and to persons engaged in bona fide research who agree to certain requirements^{13, 14}

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2013, unless reenacted by the Legislature.

During the 2012 interim, subcommittee staff sent questionnaires to the agency, department, and four organ and tissue procurement agencies as part of the Open Government Sunset Review process. Those responding to the questionnaire recommended reenactment of the public record exemption under review.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for information that identifies a donor and that is held in the donor registry.

B. SECTION DIRECTORY:

Section 1 amends s. 765.51551, F.S., to save from repeal the public record exemption for certain information held in the donor registry.

Section 2 provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁸ Section 765.5155(2), F.S.

⁹ Section 765.5155(3), F.S.

¹⁰ Chapter 2008-222, L.O.F.; codified as s. 765.51551, F.S.

¹¹ 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 the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹² Section 765.51551(1), F.S.

¹³ Persons engaged in bona fide research must agree to:

- Submit a research plan to the agency that specifies the exact nature of the information requested and the intended use of the information;
- Maintain the confidentiality of the records or information if personal identifying information is made available to the researcher;
- Destroy any confidential records or information obtained after the research is concluded; and
- Not directly or indirectly contact any donor or done.

¹⁴ Section 765.51551(2), F.S.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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 affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

PCB GVOPS 13-03

ORIGINAL

2013

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 765.51551, F.S.,
4 relating to an exemption from public record
5 requirements for information identifying a donor that
6 is held in the organ and tissue donor registry;
7 removing the scheduled repeal of the exemption;
8 providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (3) of section 765.51551, Florida
13 Statutes, is repealed.

14 Section 2. This act shall take effect October 1, 2013.