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# **LOCAL GOVERNMENT AFFAIRS SUBCOMMITTEE**

## **MEETING PACKET**

**Wednesday, November 4, 2015**

**8:00 a.m.**

**Webster Hall (212 Knott)**

**Steve Crisafulli  
Speaker**

**Debbie Mayfield  
Chair**



# The Florida House of Representatives

## Local Government Affairs Subcommittee

**Steve Crisafulli**  
Speaker

**Debbie Mayfield**  
Chair

Meeting Agenda  
Wednesday, November 4, 2015  
Webster Hall (212 Knott)  
8:00 a.m. – 10:00 a.m.

- I. Call to Order
- II. Roll Call
- III. Pledge of Allegiance
- IV. Welcome and Opening Remarks
- V. Consideration of the Following Bill(s):
  - HB 59 Agritourism by Combee
  - CS/HB 91 Severe Injuries Caused by Dogs by Civil Justice Subcommittee, Steube
  - HB 95 Public-Private Partnerships by Steube
  - HB 97 Public Records and Public Meetings by Steube
  - HJR 165 Selection and Duties of County Officers by Artiles
  - HB 181 Public Works Projects by Van Zant, Tobia
- VI. Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 59 Agritourism  
**SPONSOR(S):** Combee  
**TIED BILLS:** IDEN./SIM. BILLS: SB 304

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Gregory	Harrington
2) Local Government Affairs Subcommittee		Darden 	Miller 
3) State Affairs Committee			

### SUMMARY ANALYSIS

An "agritourism activity" is any agricultural related activity consistent with a bona fide farm or ranch or in a working forest that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions. Agritourism is one of the many methods farmers use to diversify and increase their income.

In 2013, the Florida Legislature passed SB 1106, which prohibited local governments from adopting any ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land that has been classified as agricultural land under Florida's greenbelt law. However, some local governments continue to enforce such ordinances, etc., that were adopted prior to the passage of SB 1106.

The bill prohibits local governments from enforcing any local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under Florida's greenbelt law.

The bill may have an indeterminate fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

An "agritourism activity" is any agricultural related activity consistent with a bona fide farm or ranch or in a working forest that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions.<sup>1</sup> In order to continue farming, operators of small and medium-sized farms find ways to diversify and expand their incomes, either through new enterprises on the farm or off-farm employment.<sup>2</sup> Agritourism is one of the many methods farmers use to diversify and expand their income.

Agritourism has an extensive history in the United States. Farm-related recreation and tourism can be traced back to the late 1800s, when families visited farming relatives in an attempt to escape from the city's summer heat. Visiting the country became even more popular with the widespread use of the automobile in the 1920s. Rural recreation gained interest again in the 1930s and 1940s by people seeking an escape from the stresses of the Great Depression and World War II. These demands for rural recreation led to widespread interest in horseback riding, farm petting zoos, and farm nostalgia during the 1960s and 1970s. Farm vacations, bed and breakfasts, and commercial farm tours were popularized in the 1980s and 1990s.<sup>3</sup>

Today, agritourism may include farm tours or farm stays, fishing, hunting, festivals, historical recreations, workshops or educational activities, wildlife study, horseback riding, cannery tours, cooking classes, wine tastings, barn dances, and harvest-your-own activities. The use of these resources can have a positive effect on both the agricultural enterprise and the surrounding community. Not only does this tourism have the potential to add value to the operations themselves, but it also creates awareness about the importance of agriculture.

Twenty-eight states, including Florida, have adopted legislation to promote agritourism.<sup>4</sup> In 2007, the Florida Legislature passed HB 1427, authorizing the Department of Agriculture and Consumer Services to provide marketing advice, technical expertise, promotional support, and product development related to agritourism to assist the following entities in their agritourism initiatives:

- Enterprise Florida, Inc.;
- Convention and visitor bureaus;
- Tourist development councils;
- Economic development organizations; and
- Local governments.<sup>5</sup>

In addition, HB 1427 provided that conducting agritourism activities on a bona fide farm or on lands classified as agricultural pursuant to s. 193.461, F.S., would not result in the property owner having his or her agricultural land classification limited, restricted, or divested.<sup>6</sup> Section 193.461, F.S., also known

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<sup>1</sup> Section 570.86(1), F.S.

<sup>2</sup> Wendy Francesconi and Taylor Stein, *Expanding Florida's Farming Business to Incorporate Tourism*, University of Florida Institute of Food and Agricultural Sciences available at: <http://edis.ifas.ufl.edu/fr242> (last visited September 15, 2015).

<sup>3</sup> Considering an Agritainment Enterprise in Tennessee (Agricultural Extension Service, The University of Tennessee, PB 1648) available at: [http://trace.tennessee.edu/utk\\_agexmkt/12/](http://trace.tennessee.edu/utk_agexmkt/12/) (last visited September 15, 2015).

<sup>4</sup> A compilation of agritourism statutes can be found at: National AgLaw Center Research Publication, *State Agritourism Statutes*, <http://nationalaglawcenter.org/state-compilations/agritourism/> (last visited October 14, 2015).

<sup>5</sup> Ch. 2007-244, Laws of Fla., codified as s. 570.85, F.S.

<sup>6</sup> Section 570.87(1), F.S.

as Florida's "greenbelt law," allows properties classified as a bona fide agricultural operation to be taxed according to the "use" value of the agricultural operation, rather than the development value. Generally, tax assessments for qualifying lands are lower than tax assessments for other uses.

In 2013, the Florida Legislature passed SB 1106, codified in part as s. 570.85, F.S.<sup>7</sup> The statute prohibits a local government from adopting ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land that has been classified as agricultural land under Florida's greenbelt law.<sup>8</sup> The statute also provides limited liability protection for landowners conducting agritourism activities on their property.<sup>9</sup>

While local governments may not adopt ordinances, regulations, rules, or policies that limit agritourism activities on land classified as agricultural land under Florida's greenbelt law, some local governments continue to enforce such ordinances, etc., that were adopted prior to the passage of SB 1106 in 2013.

### **Effect of Proposed Changes**

The bill amends s. 570.85, F.S., to prohibit local governments from enforcing any local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under Florida's greenbelt law.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 570.85, F.S., relating to regulation of agritourism activities.

**Section 2.** Provides an effective date of July 1, 2016.

## **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:

The bill may have an indeterminate negative fiscal impact on local governments by prohibiting them from enforcing local ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land classified as agricultural under Florida's greenbelt law. Thus, counties and municipalities may be unable to collect certain fees or fines pertaining to the enforcement of such regulations. However, an increase in agritourism may also create a positive fiscal impact on local governments by increasing tourism.

2. Expenditures:

None.

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<sup>7</sup> Ch. 2013-179, Laws of Fla.

<sup>8</sup> Section 570.85, F.S.

<sup>9</sup> Ch. 2013-179, Laws of Fla.; codified as s. 570.88, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill encourages agritourism by lessening the regulations on agricultural land owners who engage in agritourism activities.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures 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 does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 59 (2016)

Amendment No. 1

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: Local Government Affairs  
2 Subcommittee

3 Representative Raburn offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 570.85, Florida Statutes, is amended to  
8 read:

9 570.85 Agritourism.—

10 (1) It is the intent of the Legislature to promote  
11 agritourism as a way to support bona fide agricultural  
12 production by providing a secondary stream of revenue and by  
13 education of the general public about the agricultural industry.

14 (2) ~~(1)~~ It is the intent of the Legislature to eliminate  
15 duplication of regulatory authority over agritourism as  
16 expressed in this section. Except as otherwise provided for in  
17 this section, and notwithstanding any other provision of law, a

## Amendment No. 1

18 local government may not adopt or enforce a local ~~an~~ ordinance,  
19 regulation, rule, or policy that prohibits, restricts,  
20 regulates, or otherwise limits an agritourism activity on land  
21 classified as agricultural land under s. 193.461. This  
22 subsection does not limit the powers and duties of a local  
23 government to address an emergency as provided in chapter 252.

24 ~~(3)(2)~~ The Department of Agriculture and Consumer Services  
25 may provide marketing advice, technical expertise, promotional  
26 support, and product development related to agritourism to  
27 assist the following in their agritourism initiatives:  
28 Enterprise Florida, Inc.; convention and visitor bureaus;  
29 tourist development councils; economic development  
30 organizations; and local governments. In carrying out this  
31 responsibility, the department shall focus its agritourism  
32 efforts on rural and urban communities.

33 Section 2. Subsection (1) of section 570.86, Florida  
34 Statutes, is amended to read:

35 570.86 Definitions.—As used in ss. 570.85-570.89, the  
36 term:

37 (1) "Agritourism activity" means any agricultural related  
38 activity consistent with a bona fide farm or ranch or in a  
39 working forest which allows members of the general public, for  
40 recreational, entertainment, or educational purposes, to view or  
41 enjoy activities, including farming, ranching, historical,  
42 cultural, civic, ceremonial, or harvest-your-own activities and  
43 attractions. An agritourism activity does not include the

Amendment No. 1

44 construction of new or additional structures or facilities  
45 intended primarily to house, shelter, transport, or otherwise  
46 accommodate members of the general public. An activity is an  
47 agritourism activity regardless of whether the participant paid  
48 to participate in the activity.

49 Section 3. Subsection (1) of section 570.87, Florida  
50 Statutes, is amended to read:

51 570.87 Agritourism participation impact on land  
52 classification.-

53 (1) In order to promote and perpetuate agriculture  
54 throughout the state, farm operations are encouraged to engage  
55 in agritourism. The conduct of agritourism activity on a bona  
56 fide farm or on agricultural lands classified as such pursuant  
57 to s. 193.461 shall not limit, restrict, or divest the land of  
58 that classification as long as such lands classified as  
59 agricultural remain used primarily for bona fide agricultural  
60 purposes.

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

64 Remove everything before the enacting clause and insert:  
65 An act relating to agritourism; amending s. 570.85, F.S.;  
66 providing legislative intent; prohibiting a local government  
67 from enforcing a local ordinance, regulation, rule, or policy  
68 that prohibits, restricts, regulates, or otherwise limits an  
69 agritourism activity on land classified as agricultural land;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 59 (2016)

Amendment No. 1

70 amending s. 570.86, F.S.; amending the definition of agritourism  
71 activity; providing that agritourism activity includes civic and  
72 ceremonial activities; amending s. 570.87, F.S.; specifying that  
73 the conduct of agritourism activity on a bona fide farm or  
74 agricultural lands shall not limit, restrict, or divest the land  
75 of that classification provided that such lands remain used  
76 primarily for bona fide agricultural purposes; providing an  
77 effective date.

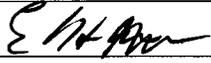


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 91 Severe Injuries Caused by Dogs

**SPONSOR(S):** Civil Justice Subcommittee; Steube

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 334

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Robinson	Bond
2) Local Government Affairs Subcommittee		Darder 	Miller 
3) Judiciary Committee			

### SUMMARY ANALYSIS

State laws governing the classification, control, and destruction of "dangerous dogs" are enforced by local animal control authorities. The overall purpose of such laws is to protect public safety by classifying certain dogs as "dangerous" and requiring their owners to follow specific safety restrictions.

Under current law, dogs which cause severe injury to human beings may either be classified as a dangerous dog subject to safety restrictions or immediately confiscated and destroyed. If an animal control authority proceeds under the classification provisions, the owner of the dog may raise certain affirmative defenses for the dog's bad acts. Affirmative defenses may not be raised in a destruction proceeding.

The bill requires that all cases involving the severe injury to a human being by an unclassified dog be resolved pursuant to a dangerous dog classification proceeding rather than a destruction proceeding. If classified as a dangerous dog, the dog may be destroyed or returned to its owner subject to the safety restrictions for dangerous dogs. The bill also expressly exempts law enforcement dogs from all provisions governing dangerous dogs.

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

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### **Dangerous Dogs**

Chapter 767, Florida Statutes, governs the classification, control, and disposition of “dangerous dogs.” A “dangerous dog”<sup>1</sup> is a dog that, according to the records of the appropriate authority, has:

- Aggressively bitten, attacked, or endangered or has inflicted severe injury<sup>2</sup> on a human being on public or private property.
- More than once severely injured or killed a domestic animal while off the owner’s property.
- Has, when unprovoked, chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority.

##### Investigation and Classification of Dangerous Dogs

Section 767.12, F.S., requires that animal control authorities<sup>3</sup> investigate reported incidents involving any dog that may be a dangerous dog. While under investigation, the dog must be impounded with the authorities or securely confined by the owner pending the outcome.<sup>4</sup>

In determining whether a dog is a “dangerous dog”, an animal control authority must consider certain defenses for the dog’s bad acts. If the threat, injury, or damage that is the subject of the reported incident was sustained by a person who was unlawfully on the property where the attack occurred, by a person who was tormenting, abusing, or assaulting the dog, its owner, or a family member, the dog may not be classified as dangerous.<sup>5</sup> A dog may not be classified as dangerous if the dog was protecting a human being from an unjustified attack or assault.<sup>6</sup> Law enforcement dogs are also exempt from classification as a dangerous dog.<sup>7</sup>

In all other cases, if the animal control authority finds sufficient evidence that the dog meets the statutory criteria, it may make an initial determination that the dog should be classified as dangerous.<sup>8</sup> The owner may request a hearing within 7 days of receiving notice of the initial determination. The hearing must be held no earlier than 5 days, but no later than 21 days, after receipt of the owner’s request.<sup>9</sup>

Thereafter, the animal control authority issues a written final determination of the dog’s status as a dangerous dog. The owner may appeal the dangerous dog classification to the county court within 10 days after receipt of the final determination.<sup>10</sup>

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<sup>1</sup> Section 767.11(1), F.S.

<sup>2</sup> “Severe injury” means any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery. s. 767.11(3), F.S.

<sup>3</sup> “Animal control authority” means an entity acting alone or in concert with other local governmental units and authorized by them to enforce the animal control laws of the city, county, or state. In those areas not served by an animal control authority, the sheriff carries out such duties. s. 767.11(5), F.S.

<sup>4</sup> Section 767.12(1)(a), F.S.

<sup>5</sup> Section 767.12(1)(b), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 767.12(6), F.S.

<sup>8</sup> Section 767.12(1)(c), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 767.12(1)(d), F.S.

### Dangerous Dog Restrictions

The owner<sup>11</sup> of a dog that has been classified as a dangerous dog must comply with the following requirements and restrictions:

- Within 14 days of the final determination, or the completion of any appeal, the owner must obtain, and annually renew, a certificate of registration which requires proof of current rabies vaccination.<sup>12</sup>
- The dog must be marked with a form of permanent identification, such as a tattoo or electronic implant.<sup>13</sup>
- The owner must provide a proper enclosure<sup>14</sup> to confine the dog and post the premises with warning signs at each entry point.<sup>15</sup>
- The dog must be muzzled and restrained when outside a proper enclosure or when being transported within a vehicle.<sup>16</sup>
- The owner must notify animal control if the dog is moved to another address, and, if such address is in a different jurisdiction, inform the authorities of that jurisdiction of the presence of the dog.<sup>17</sup>
- The owner must notify animal control when the dog is loose or has attacked a human being or animal.<sup>18</sup>
- The owner must notify animal control prior to the dog being sold or given away and provide the contact information of the new owner.<sup>19</sup>
- The dog may not be used for hunting purposes.<sup>20</sup>

The owner of a dangerous dog is subject to civil penalties for violating any of the specified restrictions<sup>21</sup> and may be criminally charged if the dog subsequently attacks or bites a human being or domestic animal.<sup>22</sup>

### **Destruction of Dogs**

In addition to classifying dogs as “dangerous”, ch. 767, F.S. also requires animal control authorities to destroy dogs which display dangerous behaviors. The circumstances under which a dog must be destroyed depend upon whether or not the dog has been classified as a dangerous dog.

### Dangerous Dogs

A dog that has previously been classified as a dangerous dog must be destroyed if the dog subsequently:

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<sup>11</sup> Subsequent owners of a dog that has been declared dangerous must also comply with all the dangerous dog requirements and the implementing local ordinances, even if the dog is moved from one local jurisdiction to another within the state. S. 767.12(3), F.S.

<sup>12</sup> Section 767.12(2), F.S.

<sup>13</sup> Section 767.12(2)(c), F.S.

<sup>14</sup> “Proper enclosure of a dangerous dog” means, while on the owner’s property, a dangerous dog is securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure must have secure sides and a secure top to prevent the dog from escaping over, under, or through the structure and must also provide protection from the elements. s. 767.11(4), F.S.

<sup>15</sup> Section 767.12(2)(b), F.S.

<sup>16</sup> Section 767.12(4), F.S.

<sup>17</sup> Section 767.12(3), F.S.

<sup>18</sup> Section 767.12(3)(a)-(b), F.S.

<sup>19</sup> Section 767.12(3)(c), F.S.

<sup>20</sup> Section 767.12(5), F.S.

<sup>21</sup> Section 767.12(7), F.S.

<sup>22</sup> Section 767.13, F.S.

- Attacks or bites a human being or domestic animal without provocation.<sup>23</sup>
- Attacks and causes severe injury to a human being.<sup>24</sup>
- Attacks and causes the death of a human being.<sup>25</sup>

Upon the occurrence of any such event, the dog is immediately confiscated by the animal control authority and placed in quarantine, if necessary, or impounded. The dog is held for 10 business days from the notification of its owner, and then destroyed. During the 10 day time period, the owner may request a hearing before the animal control authority. If an appeal of the destruction order is filed to the county court, the dog may not be destroyed pending the appeal, although the owner will be liable for boarding costs and fees arising from holding the dog.<sup>26</sup>

### Unclassified Dogs

Previously unclassified dogs must be destroyed under a narrower set of circumstances. Section 767.13(2), F.S., provides in pertinent part:

If a dog that has not been declared dangerous attacks and causes severe injury to or death of any human, the dog shall be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time or held for 10 business days after the owner is given written notification under s. 767.12, and thereafter destroyed in an expeditious and humane manner.

The owner of a previously unclassified dog that causes severe injury or death to a human being possesses the same rights to a hearing and appeal as the owner of a dangerous dog.<sup>27</sup>

Difficulty has arisen in the resolution of destruction cases involving previously unclassified dogs that cause severe injuries. Rather than destruction, the classification scheme under s. 767.12, F.S. provides that a dog which causes severe injuries to a human being may be classified as “dangerous” and returned to its owner subject to compliance with certain safety restrictions.

Accordingly, under current law, the investigating animal control authority may treat such a previously unclassified dog as either a dangerous dog subject to restriction under s. 767.12, F.S., or as a candidate for destruction under s. 767.13(2), F.S. This dichotomy essentially gives animal control authorities unfettered discretion to determine whether a previously unclassified dog shall be confiscated and destroyed or returned to its owner. One county court<sup>28</sup> has found that “such discretion in the hands of the enforcement authority runs afoul of the constitutional doctrine of nondelegation.”<sup>29</sup> The court overturned an order mandating destruction of a dog that, alternately, could have been classified and restricted as a dangerous dog under s. 767.12.

Further, in classification proceedings, the dog owner may raise a number of affirmative defenses, such as provocation or abuse of the dog, to prevent the classification of his or her dog as dangerous.

<sup>23</sup> Section 767.13(1), F.S.

<sup>24</sup> Section 767.13(3), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Section 767.13(2), F.S.

<sup>28</sup> Order on Petitioner’s Motion for Rehearing at 4, *In Re: Petition of Gilbert Otero Regarding the Dog “Zeus,”* No. 2007-CC-2863-SC (Sarasota Cty. Ct. Jul. 27, 2007).

<sup>29</sup> The doctrine of nondelegation describes the principle that one branch of government may not authorize another entity to exercise the power or function which it is constitutionally authorized to exercise itself. The nondelegation doctrine is explicitly stated in Article II, Section 3 of the Florida Constitution, “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” *See also Dickinson v. State*, 227 So. 2d 36, 37 (Fla. 1969) (the legislative exercise of the police power should be so clearly defined, so limited in scope, that nothing is left to the unbridled discretion or whim of the administrative agency charged with responsibility of enforcing the act).

However, if the animal control authority pursues destruction under s. 767.13(2), F.S., the owner may raise no defense for the dog's bad acts. Section 767.13(2), F.S. is a strict liability statute and the fate of the dog is determined with finality the moment that the dog inflicts a severe injury or death, regardless of the reason or circumstances. The inability to raise affirmative defenses to the destruction of the dog led the county court in *In Re: "Cody"* to declare s. 767.13(2), F.S. unconstitutional as a violation of the owner's right to substantive due process.<sup>30</sup>

It truly does defy logic that the owner of a dog facing potential classification as "dangerous" may defend his or her pet by establishing that the dog had been provoked, or that the victim was unlawfully on the property, or that the dog was defending a family member, but no similar defense, no matter how valid or compelling, may be raised by a person trying to prevent *execution* of his or her pet. To compel execution of all dogs confiscated under Section 767.13(2) is arbitrary and unduly oppressive. The legislature has given animal control authorities unfettered authority to order the killing of any dog, who has not previously been declared dangerous and who causes "severe injury," regardless of the circumstances. Section 767.13(2), as it is currently written, does not further the government's interest of protecting society from "dangerous dogs."<sup>31</sup>

The constitutionality of s. 767.13(2), F.S. is currently being challenged in the Twelfth Judicial Circuit Court in and for Manatee County on similar due process grounds.<sup>32</sup>

### **Effect of Proposed Changes**

The bill amends ss. 767.12 and 767.13, F.S. to require that all cases involving severe injury to a human being by an unclassified dog be resolved pursuant to a dangerous dog classification proceeding rather than a destruction proceeding. In such cases an animal authority may, but is not required to, quarantine and confiscate the dog pending the outcome of the dangerous dog investigation. If not confiscated, the dog is subject to home confinement under s. 767.12(1)(a), F.S. until the completion of the investigation.

If the dog is classified as a dangerous dog, the animal control authority may impose one of the following penalties after considering the nature of the injury and the future likelihood of harm:

- Compliance with the dangerous dog safety restrictions; or
- Destruction of the dog in an expeditious and humane manner.

The animal control authority must notify the owner of the penalty imposed within the notice of sufficient cause. If the owner requests a hearing, the hearing officer may review and change the penalty.

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<sup>30</sup> The Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the State Constitution provide that no person shall be deprived of life, liberty, or property without due process of law. Dogs and other domestic animals, commonly referred to as pets, are subjects of property or ownership. *Levine v. Knowles*, 197 So. 2d 329, 330 (Fla. 3d DCA 1967). The owner of such animals may not be deprived of their use, except in accord with all of the elements of due process. *County of Pasco v. Riehl*, 620 So. 2d 229, 231 (Fla. 2d DCA 1993). Due process protects not only basic procedural rights, but also basic substantive rights. In considering whether a statute violates substantive due process, the basic test is whether the state can justify the infringement of its legislative activity upon personal rights and liberties. The statute must bear a reasonable relationship to the legislative objective and not be arbitrary, discriminatory, or oppressive. See *Young v. Broward County*, 570 So. 2d 309, 310 (Fla. 4th DCA 1990); *Joseph v. Henderson*, 834 So. 2d 373, 374 (Fla. 2d DCA 2003).

<sup>31</sup> Opinion of the Court at 5, *In Re: "Cody"*, an adult male, black and tan German Shepard dog, owned by Charles Henshall, No. 1999-33984-COCI (Volusia Cty. Ct. May 6, 2003).

<sup>32</sup> Dale White, *Attorney cites 'Stand your ground' in Padi case*, Sarasota Herald-Tribune, September 29, 2015, <http://www.heraldtribune.com/article/20150929/ARTICLE/150929611/2416/NEWS?Title=Attorney-cites-Stand-your-ground-in-Padi-case&tc=ar>.

The bill also expressly exempts law enforcement dogs from all provisions of the dangerous dog law and makes conforming changes to ch. 767, F.S.

The bill does not revise provisions governing unclassified dogs that cause the death of a human.

**B. SECTION DIRECTORY:**

Section 1 provides a directive to the Division of Law Revision and Information.

Section 2 amends s. 767.12, F.S., regarding the classification of dangerous dogs.

Section 3 transfers, renumbers, and amends s. 767.13(2), F.S., regarding the confiscation and destruction of dogs.

Section 4 creates s. 767.136, F.S., regarding criminal penalties for attack or bite by an unclassified dog.

Section 5 amends s. 767.16, F.S., regarding exemptions for police or service dogs.

Section 6 provides that the bill is effective upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill does not appear to have any direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The 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

On October 7, 2015, the Civil Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The strike all amendment:

- Requires that cases involving the severe injury of a human being by an unclassified dog be resolved pursuant to a classification proceeding rather than a destruction proceeding.
- Provides that confiscation and impoundment of a dog which has caused severe injuries to a human is discretionary.
- Establishes penalties for dangerous dogs that cause severe injuries to humans.
- Exempts law enforcement dogs from all provisions of the dangerous dog law.
- Makes conforming and technical changes to ch. 767, F.S.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1                   A bill to be entitled  
 2           An act relating to severe injuries caused by dogs;  
 3           providing a directive to the Division of Law Revision  
 4           and Information; amending s. 767.12, F.S.; providing  
 5           for discretionary, rather than mandatory, impoundment  
 6           of dogs that cause severe injuries to humans;  
 7           specifying circumstances under which a dangerous dog  
 8           that has caused severe injuries to a human may be  
 9           euthanized or returned to its owner; transferring,  
 10          renumbering, and amending a provision of s. 767.13,  
 11          F.S.; repealing a requirement for automatic euthanasia  
 12          for unclassified dogs that cause severe injuries to  
 13          humans; deleting a criminal penalty related to severe  
 14          injuries or death caused by a dog; creating s.  
 15          767.136, F.S.; re-creating an existing criminal  
 16          penalty related to severe injuries or death caused by  
 17          a dog in a new statutory section; amending s. 767.16,  
 18          F.S.; exempting law enforcement dogs from dangerous  
 19          dog law; providing an effective date.

20  
 21   Be It Enacted by the Legislature of the State of Florida:  
 22

23           Section 1. The Division of Law Revision and Information is  
 24 directed to designate ss. 767.01-767.07, Florida Statutes, as  
 25 part I of chapter 767, Florida Statutes, entitled "Damage By  
 26 Dogs," and ss. 767.10-767.16, Florida Statutes, as part II of

27 that chapter, entitled "Dangerous Dogs."

28 Section 2. Section 767.12, Florida Statutes, is amended to  
29 read:

30 767.12 Classification of dogs as dangerous; certification  
31 of registration; notice and hearing requirements; confinement of  
32 animal; exemption; appeals; unlawful acts.—

33 (1)~~(a)~~ An animal control authority shall investigate  
34 reported incidents involving any dog that may be dangerous and  
35 shall, if possible, interview the owner and require a sworn  
36 affidavit from any person, including any animal control officer  
37 or enforcement officer, desiring to have a dog classified as  
38 dangerous.

39 (a) An animal that is the subject of a dangerous dog  
40 investigation because of severe injury to a human being may be  
41 immediately confiscated by an animal control authority, placed  
42 in quarantine, if necessary, for the proper length of time, or  
43 impounded and held pending the outcome of the investigation and  
44 any hearings related to the determination of a dangerous dog  
45 classification. In the event that the dog is to be destroyed,  
46 the dog may not be destroyed while an appeal is pending.  
47 However, the owner is responsible for payment of all boarding  
48 costs and other fees as may be required to humanely and safely  
49 keep the animal during any appeal procedure.

50 (b) Any animal that is the subject of a dangerous dog  
51 investigation, that is not impounded with the animal control  
52 authority, shall be humanely and safely confined by the owner in

53 | a securely fenced or enclosed area pending the outcome of the  
 54 | investigation and resolution of any hearings related to the  
 55 | dangerous dog classification. The address of where the animal  
 56 | resides shall be provided to the animal control authority. No  
 57 | dog that is the subject of a dangerous dog investigation may be  
 58 | relocated or ownership transferred pending the outcome of an  
 59 | investigation or any hearings related to the determination of a  
 60 | dangerous dog classification. In the event that a dog is to be  
 61 | destroyed, the dog shall not be relocated or ownership  
 62 | transferred.

63 | (2)~~(b)~~ A dog shall not be declared dangerous if:

64 | (a) The threat, injury, or damage was sustained by a  
 65 | person who, at the time, was unlawfully on the property or,  
 66 | while lawfully on the property, was tormenting, abusing, or  
 67 | assaulting the dog or its owner or a family member.

68 | (b) ~~No dog may be declared dangerous if~~ The dog was  
 69 | protecting or defending a human being within the immediate  
 70 | vicinity of the dog from an unjustified attack or assault.

71 | (3)~~(e)~~ After the investigation, the animal control  
 72 | authority shall make an initial determination as to whether  
 73 | there is sufficient cause to classify the dog as dangerous and  
 74 | shall afford the owner an opportunity for a hearing prior to  
 75 | making a final determination. The animal control authority shall  
 76 | provide written notification of the sufficient cause finding, to  
 77 | the owner, by registered mail, certified hand delivery, or  
 78 | service in conformance with the provisions of chapter 48

79 relating to service of process. The owner may file a written  
 80 request for a hearing within 7 calendar days from the date of  
 81 receipt of the notification of the sufficient cause finding and,  
 82 if requested, the hearing shall be held as soon as possible, but  
 83 not more than 21 calendar days and no sooner than 5 days after  
 84 receipt of the request from the owner. Each applicable local  
 85 governing authority shall establish hearing procedures that  
 86 conform to this subsection ~~paragraph~~.

87 (4) ~~(d)~~ Once a dog is classified as a dangerous dog, the  
 88 animal control authority shall provide written notification to  
 89 the owner by registered mail, certified hand delivery or  
 90 service, and the owner may file a written request for a hearing  
 91 in the county court to appeal the classification within 10  
 92 business days after receipt of a written determination of  
 93 dangerous dog classification and must confine the dog in a  
 94 securely fenced or enclosed area pending a resolution of the  
 95 appeal. Each applicable local governing authority must establish  
 96 appeal procedures that conform to this subsection ~~paragraph~~.

97 (5) Except as otherwise provided in subsection (6), the  
 98 owner of a dog classified as a dangerous dog shall comply with  
 99 this subsection:

100 (a) ~~(2)~~ Within 14 days after a dog has been classified as  
 101 dangerous by the animal control authority or a dangerous dog  
 102 classification is upheld by the county court on appeal, the  
 103 owner of the dog must obtain a certificate of registration for  
 104 the dog from the animal control authority serving the area in

105 | which he or she resides, and the certificate shall be renewed  
 106 | annually. Animal control authorities are authorized to issue  
 107 | such certificates of registration, and renewals thereof, only to  
 108 | persons who are at least 18 years of age and who present to the  
 109 | animal control authority sufficient evidence of:

110 |     1.~~(a)~~ A current certificate of rabies vaccination for the  
 111 | dog.

112 |     2.~~(b)~~ A proper enclosure to confine a dangerous dog and  
 113 | the posting of the premises with a clearly visible warning sign  
 114 | at all entry points that informs both children and adults of the  
 115 | presence of a dangerous dog on the property.

116 |     3.~~(c)~~ Permanent identification of the dog, such as a  
 117 | tattoo on the inside thigh or electronic implantation.

118 |  
 119 | The appropriate governmental unit may impose an annual fee for  
 120 | the issuance of certificates of registration required by this  
 121 | section.

122 |     (b)~~(3)~~ The owner shall immediately notify the appropriate  
 123 | animal control authority when a dog that has been classified as  
 124 | dangerous:

125 |         1.~~(a)~~ Is loose or unconfined.

126 |         2.~~(b)~~ Has bitten a human being or attacked another animal.

127 |         3.~~(c)~~ Is sold, given away, or dies.

128 |         4.~~(d)~~ Is moved to another address.

129 |  
 130 | Prior to a dangerous dog being sold or given away, the owner

131 shall provide the name, address, and telephone number of the new  
 132 owner to the animal control authority. The new owner must comply  
 133 with all of the requirements of this section ~~act~~ and  
 134 implementing local ordinances, even if the animal is moved from  
 135 one local jurisdiction to another within the state. The animal  
 136 control officer must be notified by the owner of a dog  
 137 classified as dangerous that the dog is in his or her  
 138 jurisdiction.

139 ~~(c)(4)~~ It is unlawful for the owner of a dangerous dog to  
 140 permit the dog to be outside a proper enclosure unless the dog  
 141 is muzzled and restrained by a substantial chain or leash and  
 142 under control of a competent person. The muzzle must be made in  
 143 a manner that will not cause injury to the dog or interfere with  
 144 its vision or respiration but will prevent it from biting any  
 145 person or animal. The owner may exercise the dog in a securely  
 146 fenced or enclosed area that does not have a top, without a  
 147 muzzle or leash, if the dog remains within his or her sight and  
 148 only members of the immediate household or persons 18 years of  
 149 age or older are allowed in the enclosure when the dog is  
 150 present. When being transported, such dogs must be safely and  
 151 securely restrained within a vehicle.

152 (6) If a dog is classified as a dangerous dog as the  
 153 result of an incident that causes severe injury to a human  
 154 being, based upon the nature and circumstances of the injury and  
 155 the likelihood of a future threat to the public safety, health,  
 156 and welfare, the dog may be destroyed in an expeditious and

157 humane manner, or, alternatively, the owner shall be required to  
 158 comply with subsection (5). The animal control authority shall  
 159 inform the owner of the penalty imposed within the notice of  
 160 sufficient cause. If the owner requests a hearing under  
 161 subsection (3), the hearing officer may review the penalty  
 162 imposed by the animal control authority and rule upon the proper  
 163 penalty under this subsection.

164 (7)-(5) Hunting dogs are exempt from ~~the provisions of this~~  
 165 section ~~act~~ when engaged in any legal hunt or training  
 166 procedure. Dogs engaged in training or exhibiting in legal  
 167 sports such as obedience trials, conformation shows, field  
 168 trials, hunting/retrieving trials, and herding trials are exempt  
 169 from the provisions of this section ~~act~~ when engaged in any  
 170 legal procedures. However, such dogs at all other times in all  
 171 other respects shall be subject to this and local laws. Dogs  
 172 that have been classified as dangerous shall not be used for  
 173 hunting purposes.

174 ~~(6) This section does not apply to dogs used by law~~  
 175 ~~enforcement officials for law enforcement work.~~

176 (8)-(7) Any person who violates any provision of this  
 177 section commits ~~is guilty of~~ a noncriminal infraction,  
 178 punishable by a fine not exceeding \$500.

179 Section 3. Subsection (2) of section 767.13, Florida  
 180 Statutes, is transferred, renumbered as section 767.135, Florida  
 181 Statutes, and amended, to read:

182 767.135 ~~767.13~~ Attack or bite by ~~dangerous~~ dog that has

183 not been declared dangerous; penalties; confiscation;  
 184 destruction.-

185 ~~(2)~~ If a dog that has not been declared dangerous attacks  
 186 and causes the severe injury to or death of any human, the dog  
 187 shall be immediately confiscated by an animal control authority,  
 188 placed in quarantine, if necessary, for the proper length of  
 189 time or held for 10 business days after the owner is given  
 190 written notification under s. 767.12, and thereafter destroyed  
 191 in an expeditious and humane manner. This 10-day time period  
 192 shall allow the owner to request a hearing under s. 767.12. If  
 193 the owner files a written appeal under s. 767.12 or this  
 194 section, the dog must be held and may not be destroyed while the  
 195 appeal is pending. The owner shall be responsible for payment of  
 196 all boarding costs and other fees as may be required to humanely  
 197 and safely keep the animal during any appeal procedure. ~~In~~  
 198 ~~addition, if the owner of the dog had prior knowledge of the~~  
 199 ~~dog's dangerous propensities, yet demonstrated a reckless~~  
 200 ~~disregard for such propensities under the circumstances, the~~  
 201 ~~owner of the dog is guilty of a misdemeanor of the second~~  
 202 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

203 Section 4. Section 767.136, Florida Statutes, is created  
 204 to read:

205 767.136 Attack or bite by unclassified dog that causes  
 206 severe injury or death; penalties.-

207 (1) If the owner of a dog that has not been declared  
 208 dangerous, but which attacks and causes severe injury to, or the

209 death of, a human, had knowledge of the dog's dangerous  
 210 propensities, yet demonstrated a reckless disregard for such  
 211 propensities under the circumstances, the owner of the dog  
 212 commits a misdemeanor of the second degree, punishable as  
 213 provided in s. 775.082 or s. 775.083.

214 (2) If the dog attacks or bites a person who is engaged in  
 215 or attempting to engage in a criminal activity at the time of  
 216 the attack, the owner is not guilty of any crime under this  
 217 section.

218 Section 5. Section 767.16, Florida Statutes, is amended to  
 219 read:

220 767.16 ~~Bite by a~~ Police or service dog; exemption ~~from~~  
 221 ~~quarantine.~~-

222 (1) Any dog that is owned, or the service of which is  
 223 employed, by a law enforcement agency, is exempt from this part.

224 (2) ~~or~~ Any dog that is used as a service dog for blind,  
 225 hearing impaired, or disabled persons, and that bites another  
 226 animal or human is exempt from any quarantine requirement  
 227 following such bite if the dog has a current rabies vaccination  
 228 that was administered by a licensed veterinarian.

229 Section 6. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 91 (2016)

Amendment No. 1

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: Local Government Affairs  
 2 Subcommittee

3 Representative Steube offered the following:

4

5 **Amendment (with title amendment)**

6 Between lines 217 and 218, insert:

7 Section 5. Section 767.14, Florida Statutes, is amended to read:

8 767.14 Additional local restrictions authorized. -

9 Nothing in this act shall limit any local government from  
 10 adopting an ordinance to address the safety and welfare concerns  
 11 caused by attacks on persons or domestic animals, placing  
 12 further restrictions or additional requirements on owners of  
 13 dangerous dogs that have bitten or attacked persons or domestic  
 14 animals or developing procedures and criteria for the  
 15 implementation of this act, provided that no such regulation is  
 16 specific to breed and that the provisions of this act are not  
 17 lessened by such additional regulations or requirements. This

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 91 (2016)

Amendment No. 1

18 section shall not apply to any local ordinance adopted prior to  
19 October 1, 1990.

20

21

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22

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

23

Remove line 17 and insert:

24

a dog in a new statutory section; amending s. 767.14, F.S.;

25

providing that local governments have the authority to adopt

26

certain ordinances pertaining to dogs that have bitten or

27

attacked persons or domestic animals; amending s. 767.16,



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	Moore	Williamson
2) Local Government Affairs Subcommittee		Monroe <i>KDSM</i>	Miller <i>EMH</i>
3) Appropriations Committee			
4) State Affairs Committee			

**SUMMARY ANALYSIS**

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

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

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

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

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

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

The bill authorizes the Department of Management Services to accept and maintain copies of comprehensive agreements received from responsible public entities, for the purpose of sharing them with other responsible public entities.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **BACKGROUND**

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

##### **Public-Private Partnerships Generally**

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

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

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

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

##### **Procurement Procedures**

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

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

<sup>2</sup> *Id.*

<sup>3</sup> Section 287.05712(4)(d), F.S.

<sup>4</sup> Section 287.05712(4), F.S.

<sup>5</sup> Section 287.05712(4)(a), F.S.

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

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

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

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

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

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.<sup>13</sup>

#### Notice to Affected Local Jurisdictions

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

---

<sup>6</sup> Section 287.05712(5), F.S.

<sup>7</sup> Section 287.05712(4)(b), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 287.05712(6)(c), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Section 287.05712(6)(f), F.S.

<sup>13</sup> Section 287.05712(6)(e), F.S.

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

## Agreements

### *Interim Agreement*

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

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

### *Comprehensive Agreement*

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

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

The comprehensive agreement may include the following:

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

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<sup>14</sup> Section 287.05712(7)(a), F.S.

<sup>15</sup> Section 287.05712(7)(b), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Section 287.05712(4)(b), F.S.

<sup>18</sup> Section 287.05712(8), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Section 287.05712(9)(a), F.S.

<sup>21</sup> *Id.*

### Fees

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

### Financing

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

### Powers and Duties of the Private Entity

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

### Expiration or Termination of Agreements

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

### Partnership for Public Facilities and Infrastructure Act Guidelines Task Force

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

In July 2014, the task force completed its duties and submitted a final report of its recommendations.<sup>29</sup> The task force was terminated on December 31, 2014.<sup>30</sup>

### **Public-Private Partnerships for State Universities**

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

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<sup>22</sup> Section 287.05712(9)(b), F.S.

<sup>23</sup> Section 287.05712(10), F.S.

<sup>24</sup> Section 287.05712(12)(a), F.S.

<sup>25</sup> Section 287.05712(13), F.S.

<sup>26</sup> Section 287.05712(3)(a), F.S.

<sup>27</sup> Section 287.05712(3)(b), F.S.

<sup>28</sup> Section 287.05712(3)(c), F.S.

<sup>29</sup> The task force report can be found online at:

[http://www.dms.myflorida.com/agency\\_administration/communications/partnership\\_for\\_public\\_facilities\\_infrastructure\\_act](http://www.dms.myflorida.com/agency_administration/communications/partnership_for_public_facilities_infrastructure_act) (last visited Sept. 23, 2015).

<sup>30</sup> Section 287.05712(3)(f), F.S.

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

### **EFFECT OF PROPOSED CHANGES**

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

### **Responsible Public Entity Definition**

The bill expands the definition of “responsible public entity” to include state universities<sup>32</sup> and clarifies that it includes special districts, school districts rather than school boards, and Florida College System institutions.<sup>33</sup>

### **Task Force**

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

### **Application Fee**

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

### **Solicitation Timeframes**

The bill provides flexibility to the responsible public entity for accepting proposals if an alternative timeframe is approved by majority vote of the entity’s governing body.<sup>35</sup> It

### **Design Criteria Package**

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

### **School Projects**

The bill removes the provision that requires a school board to obtain the approval of the local governing body.<sup>36</sup>

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<sup>31</sup> State University System of Florida Board of Governors, *Public-Private Partnership Guidelines*, available at [http://www.flbog.edu/documents\\_regulations/guidelines/Public-Private%20Partnership%20Guidelines.pdf](http://www.flbog.edu/documents_regulations/guidelines/Public-Private%20Partnership%20Guidelines.pdf).

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

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

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

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

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

### **Ownership by the Responsible Public Entity**

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

### **Pricing or Financial Terms**

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

### **Notice to Affected Local Jurisdictions**

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

### **Financing**

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

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

### **Department of Management Services**

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

### **Construction**

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

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

<sup>38</sup> This change was recommended by the task force. *Id.* at 7.

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

<sup>40</sup> This change was recommended by the task force. *Id.* at 20.

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

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

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

**Miscellaneous**

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

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

**B. SECTION DIRECTORY:**

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

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

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

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

**D. FISCAL COMMENTS:**

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

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

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<sup>44</sup> Department of Management Services, Agency Analysis of House Bill 63, p. 5 (Feb. 11, 2015) (on file with the Government Operations Subcommittee). The provision of HB 95 authorizing the department to accept and maintain copies of comprehensive agreements from responsible public entities was also included in HB 63 from the 2015 Session.  
STORAGE NAME: h0095c.LGAS.DOCX  
DATE: 10/28/2015

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

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

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Drafting Issue: State Universities

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

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.



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

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

37  
 38 Section 1. Section 287.05712, Florida Statutes, is  
 39 transferred, renumbered as section 255.065, Florida Statutes,  
 40 and amended to read:

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

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

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

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

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

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

53 | qualifying project for the use of the project.

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

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

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

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

68 |       (i) "Qualifying project" means:

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

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

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

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

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

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

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

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

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

113 |         (a) The Legislature also finds that:

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

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

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

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

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

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

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

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

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

157 ~~follows:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

234 2. A private entity that submits an unsolicited proposal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

356 | (5)~~(6)~~ PROJECT QUALIFICATION AND PROCESS.—

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

362 | (b) The responsible public entity must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

480 (7)~~(9)~~ COMPREHENSIVE AGREEMENT.—

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

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

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

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

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

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

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

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

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

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

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

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

540 |       (b) The comprehensive agreement may include:

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

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

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

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

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

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

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

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

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

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

576 (9)~~(11)~~ FINANCING.—

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

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

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

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

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

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

617 (a) The private entity shall:

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

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

624 3. Cooperate with the responsible public entity in making

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

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

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

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

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

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

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

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

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

685 (13) DEPARTMENT OF MANAGEMENT SERVICES.-

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

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

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

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

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

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

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

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

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

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

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	Moore	Williamson
2) Local Government Affairs Subcommittee		Monroe <i>ADP</i>	Miller <i>E Miller</i>
3) State Affairs Committee			

### SUMMARY ANALYSIS

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

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

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

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

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

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

The bill may have a minimal fiscal impact on state universities, Florida College System institutions, and local governments; however, these costs would be absorbed as they are part of the entities' day-to-day responsibilities.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Public Records Law

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

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

##### Public Meetings Law

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

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision at which official acts are to be taken be open to the public at all times.<sup>1</sup> The board or commission must provide reasonable notice of all public meetings.<sup>2</sup> 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.<sup>3</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>4</sup>

##### Public Record and Public Meeting Exemptions

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

Furthermore, the Open Government Sunset Review Act<sup>6</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

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<sup>1</sup> Section 286.011(1), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 286.011(6), F.S.

<sup>4</sup> Section 286.011(2), F.S.

<sup>5</sup> Section 24(c), Art. I, Fla. Const.

<sup>6</sup> Section 119.15, F.S.

- Protects trade or business secrets.

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

#### Public-Private Partnerships

Section 287.05712, F.S., governs the procurement process for public-private partnerships (P3s) for public purpose projects. It authorizes a responsible public entity<sup>7</sup> to enter into a P3 for specified qualifying projects<sup>8</sup> if the responsible public entity determines the project is in the public's best interest.<sup>9</sup>

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

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

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

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

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

<sup>9</sup> Section 287.05712(4)(d), F.S.

<sup>10</sup> Section 287.05712(5), F.S.

<sup>11</sup> Section 287.05712(4)(b), F.S.

<sup>12</sup> *Id.*

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

#### Public Record and Public Meeting Exemptions

Current law does not provide a public record exemption for unsolicited proposals. However, sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation<sup>16</sup> are exempt<sup>17</sup> from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.<sup>18</sup> If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the agency provides notice of its intended decision or withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.<sup>19</sup>

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

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

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<sup>13</sup> Section 287.05712(6)(c), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

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

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

<sup>18</sup> Section 119.071(1)(b), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Section 286.0113(2)(b), F.S.

<sup>21</sup> Section 286.0113(2)(c), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

## **Effect of Proposed Changes**

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

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

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

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

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

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

### **B. SECTION DIRECTORY:**

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

Section 2. provides a public necessity statement.

Section 3. provides a contingent effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

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

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

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

**B. RULE-MAKING AUTHORITY:**

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

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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

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

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

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

27 (15) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.-  
 28 (a) As used in this subsection, the term "competitive  
 29 solicitation" has the same meaning as provided in s. 119.071(1).  
 30 (b)1. An unsolicited proposal received by a responsible  
 31 public entity is exempt from s. 119.07(1) and s. 24(a), Art. I  
 32 of the State Constitution until such time as the responsible  
 33 public entity provides notice of an intended decision for a  
 34 qualifying project.  
 35 2. If the responsible public entity rejects all proposals  
 36 submitted pursuant to a competitive solicitation for a  
 37 qualifying project and such entity concurrently provides notice  
 38 of its intent to seek additional proposals for such project, the  
 39 unsolicited proposal remains exempt until the responsible public  
 40 entity provides notice of an intended decision concerning the  
 41 reissued competitive solicitation for the qualifying project or  
 42 until the responsible public entity withdraws the reissued  
 43 competitive solicitation for such project.  
 44 3. An unsolicited proposal is not exempt for longer than  
 45 90 days after the initial notice by the responsible public  
 46 entity rejecting all proposals.  
 47 (c) If the responsible public entity does not issue a  
 48 competitive solicitation for a qualifying project, the  
 49 unsolicited proposal ceases to be exempt 180 days after receipt  
 50 of the unsolicited proposal by such entity.  
 51 (d)1. Any portion of a meeting of a responsible public  
 52 entity during which an unsolicited proposal that is exempt is

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

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

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

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

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

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

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

81 Section 2. (1) The Legislature finds that it is a public  
 82 necessity that an unsolicited proposal received by a responsible  
 83 public entity pursuant to s. 287.05712, Florida Statutes, be  
 84 made exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
 85 Article I of the State Constitution until a time certain.

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

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

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

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

HB 97

2016

131 extension thereof and becomes a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 165 Selection and Duties of County Officers  
**SPONSOR(S):** Artiles  
**TIED BILLS:** IDEN./SIM. BILLS: SJR 648

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee		Walker 	Miller 
2) Judiciary Committee			
3) Local & Federal Affairs Committee			

### SUMMARY ANALYSIS

HJR 165 proposes to amend the State Constitution by limiting the authority to alter the manner of selecting certain county officers or to abolish a county office and transfer all duties prescribed by general law to another office, either by charter counties or by special law approved by the county electors. As a result, the offices of sheriff, property appraiser, supervisor of elections, and clerk of the circuit court would be filled only by vote of the county electors and for terms of four years. The office of tax collector also would be filled in the same manner unless the county charter or a special law approved by the county electors provided otherwise. As proposed in the joint resolution, the clerk of the circuit court would be the ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of county funds unless otherwise provided by special law approved by the county voters.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. HJR 165 provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

HJR 165 impacts state funds to the extent that the cost of placing the constitutional amendment on the ballot must be administered by the Department of State. The department has estimated the printing and publication costs for advertising the joint resolution and other necessary materials could be approximately from a minimum of \$96,130.79 to \$100,735.77, possibly greater, depending on the final wording of the joint resolution and the resulting ballot language.

**A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.**

**The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Article VIII of the State Constitution establishes the authority for home rule by counties and municipalities in Florida. The Legislature is required to divide the state into counties<sup>1</sup> and has the authority to choose to create municipalities.<sup>2</sup>

Pursuant either to general<sup>3</sup> or special law, a county government may be adopted by charter approved by the county voters. A county without a charter has such powers of self-government as provided by general<sup>4</sup> or special law.<sup>5</sup> A county with a charter has all powers of self-government *not inconsistent* with general law or special law approved by the county voters.<sup>6</sup> A special constitutional provision provides unique authorization for the Miami-Dade County home rule charter.<sup>7</sup> Currently, twenty Florida counties have adopted charters.<sup>8</sup>

The Constitution creates five specific county officers: sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court (collectively, the Five Constitutional Offices/Officers).<sup>9</sup> The clerk of the circuit court also serves as the ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of county funds. Each officer is elected separately by the voters of the county for terms of four years. These officers have prescribed duties provided for in general law.<sup>10</sup>

The Five Constitutional Offices can only be altered through charter provision or by special act approved by the voters of the county.<sup>11</sup> All non-charter counties have the Five Constitutional Officers with statutorily prescribed duties. Eight charter counties have changed the manner of selection of at least one of the Five Constitutional Officers or restructured or abolished at least one of the Five Constitutional Offices and transferred the powers to another county office.<sup>12</sup>

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<sup>1</sup> Art. VIII, s. 1(a), Fla. Const.

<sup>2</sup> Art. VIII, s. 2(a), Fla. Const.

<sup>3</sup> Section 125.60, F.S.

<sup>4</sup> Ch. 125, Part I, F.S.

<sup>5</sup> Art. VIII, s. 1(f), Fla. Const.

<sup>6</sup> Art. VIII, s. 1(g), Fla. Const.

<sup>7</sup> In 1956, an amendment to the 1885 Florida Constitution provided Dade County with the authority to adopt, revise, and amend from time to time a home rule charter government for the county. The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home rule status. Article VIII, s. 11(5) of the 1885 State Constitution, now incorporated by reference in art. VIII, s. 6(e), Fla. Const. (1968), further provided the Metropolitan Dade County Home Rule Charter, and any subsequent ordinances enacted pursuant to the charter, may conflict with, modify, or nullify any existing local, special, or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Charter may implicitly, as well as expressly, amend or repeal a special act that conflicts with a Miami-Dade County ordinance. Effectively, the Miami-Dade Charter can only be altered through constitutional amendment, general law, or County actions approved by referendum. , *Chase v. Cowart*, 102 So. 2d 147, 149-50 (Fla. 1958).

<sup>8</sup> Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval (consolidated government with the City of Jacksonville, ch. 67-1320, Laws of Fla.), Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla Counties. The Local Government Formation Manual 2015-2016, Appendix B, at 101-107.

<sup>9</sup> Art. VIII, s. 1(d), Fla. Const. In a separate subsection, the Constitution provides for counties to be governed by a board of county commissioners unless otherwise provided in their respective charters, if any. Art. VIII, s. 1(e), Fla. Const., which is not affected by the joint resolution.

<sup>10</sup> See ch. 30, F.S. (setting forth certain duties of the sheriff as a Constitutional officer); ch. 197, F.S. (setting forth certain duties of the tax collector as a Constitutional officer); ch. 193, Part I, F.S. (setting forth certain duties of the property appraiser as a Constitutional officer); ch. 102, F.S. (setting forth certain duties of the supervisor of elections as a Constitutional officer); ch. 28, F.S. (setting forth certain duties of the clerk of the circuit court as a Constitutional officer).

<sup>11</sup> Art. VIII, s. 1(d), Fla. Const.

<sup>12</sup> Brevard, Broward, Clay, Duval, Miami-Dade, Orange, Osceola, and Volusia Counties.

## Brevard County

Brevard “expressly preserved” the offices of the sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court as departments of county government, rather than constitutional offices.<sup>13</sup> The county reiterated the ability to transfer or add to the powers of each of the county officers.<sup>14</sup> The county has transferred the powers of the clerk of circuit court as auditor, and custodian of county funds to the county manager.<sup>15</sup> Each of the officers remains elected for four year terms.<sup>16</sup>

## Broward County

Broward County has not altered the constitutionally elected offices and duties of the sheriff, property appraiser, and supervisor of elections.<sup>17</sup> However, the office of the tax collector was abolished and the duties were transferred to the Department of Finance and Administrative Services, headed by the Finance and Administrative Services Director appointed by the county administrator.<sup>18</sup> Though the clerk of the circuit court also retains the status of constitutional officer, the clerk’s constitutional duties as clerk of the county commission were transferred to the county administrator.<sup>19</sup>

## Clay County

Clay County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.<sup>20</sup> Although the clerk of the circuit court also retains the status of constitutional officer, the clerk’s constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county administrator.<sup>21</sup>

## Duval County

Duval County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.<sup>22</sup> The clerk of the circuit court retains the status of constitutional officer but the clerk’s duties as clerk of the county commission were transferred to the Council Secretary and the constitutional duties as auditor were transferred to the Council Auditor.<sup>23</sup>

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<sup>13</sup> Brevard County Florida, Code of Ordinances, Part I s. 4.1, Sept. 15, 2015, *available at*

[https://www.municode.com/library/fl/osceola\\_county/codes/code\\_of\\_ordinances?nodeId=11534](https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534).

<sup>14</sup> Brevard County Florida, Charter, Part I ss. 4.2.1, 4.2.2, 4.2.3, 4.2.4 & 4.2.5, Sept. 15, 2015, *available at*

[https://www.municode.com/library/fl/osceola\\_county/codes/code\\_of\\_ordinances?nodeId=11534](https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534).

<sup>15</sup> Brevard County Florida, Code of Ordinances, s. 2-73, Sept. 15, 2015, *available at*

[https://www.municode.com/library/fl/osceola\\_county/codes/code\\_of\\_ordinances?nodeId=11534](https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534).

<sup>16</sup> Brevard County Florida, Code of Ordinances, Part I s. 4.1.1, Sept. 15, 2015, *available at*

[https://www.municode.com/library/fl/osceola\\_county/codes/code\\_of\\_ordinances?nodeId=11534](https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534).

<sup>17</sup> BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter, “Definitions”, Oct. 21, 2015 *available at*

[https://www.municode.com/library/fl/broward\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances).

<sup>18</sup> BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter ss. 2.12 & 3.06, Oct. 21, 2015 *available at*,

[https://www.municode.com/library/fl/broward\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances).

<sup>19</sup> BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter, “Definitions” & s. 3.03G., Oct. 21, 2015 *available at*

[https://www.municode.com/library/fl/broward\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances).

<sup>20</sup> CLAY COUNTY FLORIDA, Home Rule Charter, Article III s. 3.1, 2014 Edition, *available at*, <http://www.claycountygov.com/about-us>.

<sup>21</sup> CLAY COUNTY FLORIDA, Home Rule Charter, Article III ss. 3.1 & 2.3, 2014 Edition, *available at*

<http://www.claycountygov.com/about-us>.

<sup>22</sup> JACKSONVILLE COUNTY FLORIDA, Charter and Related Laws, Part A. ss. 8.01, 9.01, 10.01 & 11.01, *available at*

[https://www.municode.com/library/fl/jacksonville/codes/code\\_of\\_ordinances?nodeId=CHRELA](https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA). Duval County currently does not have the authority to abolish the office of the sheriff or the clerk of court. Art. VIII, s. 6(e), Fla. Const. (1968), incorporating by reference Art. VIII, s. 9, Fla. Const. (1885, as amended in 1934). The consolidated government of the City of Jacksonville was created by ch. 67-1320, Laws of Florida, adopted pursuant to Art. VIII, s. 9, Fla. Const. (1885).

<sup>23</sup> JACKSONVILLE COUNTY FLORIDA, Charter and Related Laws, Part A. s. 12.06, *available at*,

[https://www.municode.com/library/fl/jacksonville/codes/code\\_of\\_ordinances?nodeId=CHRELA](https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA); JACKSONVILLE COUNTY FLORIDA,

## Miami-Dade County

Miami-Dade County abolished the constitutional offices of the sheriff, tax collector, supervisor of elections,<sup>24</sup> and property appraiser,<sup>25</sup> transferred these powers to the mayor, and granted the mayor the discretion to sub-delegate the powers.<sup>26</sup> The duties of the sheriff were transferred to the Police Department, the director of which is appointed by the mayor.<sup>27</sup> The duties of the tax collector were transferred to the Department of Finance<sup>28</sup>, the director of which is jointly appointed by the mayor and the clerk of court.<sup>29</sup> The county property appraiser, although not retained as a constitutional office, remains an elected position.<sup>30</sup> The duties of the supervisor of elections were transferred to the Elections Department, the director of which is appointed by the mayor.<sup>31</sup> The clerk of the circuit court remains a constitutional, elected officer with some changes in duties.<sup>32</sup> Although the clerk is still the clerk of the County Commission, the clerk's financial recorder and custodian duties were transferred to the Department of Financial Services and the clerk's auditing duties were transferred to the Commission Auditor.<sup>33</sup>

## Orange County

Orange County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser,<sup>34</sup> and supervisor of elections.<sup>35</sup> Although the clerk of the circuit court also retains the status of constitutional officer,<sup>36</sup> the clerk's constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county comptroller.<sup>37</sup>

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Code of Ordinances, Title II ss. 11.103 & 13.103, *available at*,  
[https://www.municode.com/library/fl/jacksonville/codes/code\\_of\\_ordinances?nodeId=CHRELA](https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA).

<sup>24</sup> Referred to in the Miami-Dade Charter as the "supervisor of registration." See MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 9.01, Nov. 4, 2014, *available at* [https://www.municode.com/library/fl/miami\\_-dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTICOAMCH](https://www.municode.com/library/fl/miami_-dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH).

<sup>25</sup> Referred to in the Miami-Dade Charter as the "county surveyor." See MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 9.01, Nov. 4, 2014, *available at* [https://www.municode.com/library/fl/miami\\_-dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTICOAMCH](https://www.municode.com/library/fl/miami_-dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH).

<sup>26</sup> MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 9.01, Nov. 4, 2014, *available at* [https://www.municode.com/library/fl/miami\\_-dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTICOAMCH](https://www.municode.com/library/fl/miami_-dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH).

<sup>27</sup> Historically, the Miami-Dade Police Director was appointed by the county manager. This appointment power was subsequently reallocated to the mayor when the office of county manager was abolished. See Miami-Dade County Florida, Code of Ordinances, ss. 2-91, 2-92 & 1-4.4 *available at* [https://www.municode.com/library/fl/miami\\_-dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH2AD\\_ARTXIIMIDEPODE](https://www.municode.com/library/fl/miami_-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTXIIMIDEPODE).

<sup>28</sup> MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 5.03, Nov. 4, 2014, *available at* [https://www.municode.com/library/fl/miami\\_-dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTICOAMCH](https://www.municode.com/library/fl/miami_-dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH). See also MIAMIDADE.GOV, Miami-Dade County Finance Department, <http://www.miamidade.gov/finance/> (last visited Oct. 27, 2015, 1:33 PM).

<sup>29</sup> MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 5.03, Nov. 4, 2014, *available at* [https://www.municode.com/library/fl/miami\\_-dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTICOAMCH](https://www.municode.com/library/fl/miami_-dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH).

<sup>30</sup> MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments> (last visited Oct. 27, 2015, 1:33 PM).

<sup>31</sup> Though the Miami-Dade charter and ordinances do not expressly so state, the supervisor of elections is an appointed official. See MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments> (last visited Oct. 27, 2015, 1:33 PM).

<sup>32</sup> MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments> (last visited Oct. 27, 2015, 1:33 PM).

<sup>33</sup> MIAMIDADE.GOV, Miami-Dade County Finance Department, <http://www.miamidade.gov/finance/> (last visited Oct. 27, 2015, 1:33 PM); MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 9.10, Nov. 4, 2014, *available at* [https://www.municode.com/library/fl/miami\\_-dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTICOAMCH](https://www.municode.com/library/fl/miami_-dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH).

<sup>34</sup> At one point the county abolished the constitutional offices of sheriff, tax collector, and property appraiser but ultimately reconstituted the constitutional offices. ORANGE COUNTY FLORIDA, *Charter*, s. 703, Sept. 28, 2015 *available at* [https://www.municode.com/library/fl/orange\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances).

<sup>35</sup> ORANGE COUNTY FLORIDA SUPERVISOR OF ELECTIONS, *About the Supervisor*, <http://www.ocfelections.com/aboutbillcowles.aspx> (last visited Oct. 28, 2015).

<sup>36</sup> ORANGE COUNTY FLORIDA, Code of Ordinances, Part I s. 2-66, Sept. 28, 2015, *available at* [https://www.municode.com/library/fl/orange\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances).

<sup>37</sup> ORANGE COUNTY FLORIDA, Code of Ordinances, Part I s. 2-67, Sept. 28, 2015, *available at* [https://www.municode.com/library/fl/orange\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances).

## Osceola County

Osceola County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.<sup>38</sup> The clerk of the circuit court retains the status of constitutional officer but the clerk's duties as clerk of the county commission, auditor, and custodian of funds were transferred to the county manager.

## Volusia County

Volusia County abolished the constitutional offices of the sheriff, tax collector, supervisor of elections, and property appraiser. The county transferred these officer's powers to new charter offices. The duties of the sheriff were transferred to and divided between the Department of Public Safety and the Department of Corrections.<sup>39</sup> The duties of the tax collector were transferred to the Department of Finance.<sup>40</sup> The duties of the property appraiser were transferred to Department of Property Appraisal.<sup>41</sup> The duties of the supervisor of elections were transferred to the Department of Elections.<sup>42</sup> The sheriff, property appraiser, and supervisor of elections are elected directors of their respective offices.<sup>43</sup> The tax collector is appointed by the county manager and confirmed by the county council.<sup>44</sup> The clerk of the circuit court remains a constitutionally elected officer except that the clerk's constitutional duties as clerk of the county commission were transferred to and divided between the Department of Central Services and the Department of Finance.<sup>45</sup>

## Selection & Removal Procedures

In addition to whether the Five Constitutional Officers are elected or appointed, some counties provide in their charters for term limits, recall procedures, or the non-partisan election of these officers. While not expressly identified in art. VIII, s. 1(d), of the Constitution, these additional "selection and removal procedures" could be interpreted as affecting the selection of the Five Constitutional Officers.

There is no constitutional or statutory prohibition limiting the ability of charter counties to impose additional selection and removal procedures on the Five Constitutional Officers. The broad home rule power of counties allows them to act so long as the action taken is not "inconsistent with general law, or . . . special law."<sup>46</sup> This suggests that counties can currently modify their selection or removal procedures within the existing art. VIII, s. 1(d) framework through charter amendment or special law.<sup>47</sup>

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<sup>38</sup> OSCEOLA COUNTY FLORIDA, Home Rule Charter, Article III s. 3.01, Aug. 11, 2015, *available at* [https://www.municode.com/library/fl/osceola\\_county/codes/code\\_of\\_ordinances?nodeId=11534](https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534).

<sup>39</sup> VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1(2), [https://www.municode.com/library/fl/volusia\\_county/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTVIADDEGO](https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO).

<sup>40</sup> VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1(1), [https://www.municode.com/library/fl/volusia\\_county/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTVIADDEGO](https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO).

<sup>41</sup> VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1(3), [https://www.municode.com/library/fl/volusia\\_county/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTVIADDEGO](https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO).

<sup>42</sup> VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1(4), [https://www.municode.com/library/fl/volusia\\_county/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTVIADDEGO](https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO).

<sup>43</sup> VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter ss. 401 & 601.1(1)(b), [https://www.municode.com/library/fl/volusia\\_county/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTVIADDEGO](https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO).

<sup>44</sup> VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 2-111(a), [https://www.municode.com/library/fl/volusia\\_county/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTVIADDEGO](https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO); VOLUSIA.ORG, Revenue Division-Tax Collection, <http://www.volusia.org/services/financial-and-administrative-services/revenue-services/> (last visited Oct. 28, 2015).

<sup>45</sup> CLERK OF THE CIRCUIT COURT, VOLUSIA COUNTY FLORIDA, Overview, <https://www.clerk.org/html/about.aspx#Overview> (last visited Oct. 28, 2015); VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1 (1)(b) & (5) [https://www.municode.com/library/fl/volusia\\_county/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTVIADDEGO](https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO).

<sup>46</sup> Art. VIII, s. 1(g), Fla. Const.

<sup>47</sup> Current statute and case law also supports this principle. *See* s. 100.361, F.S. (providing that whether or not a charter county adopts a recall provision, the county may exercise recall authority); *Telli v. Broward County*, 94 So. 3d 504, 512-13 (Fla. 2012) (allowing

### Term Limits

Three charter counties have imposed term limits on one or more of the Five Constitutional Officers.<sup>48</sup> Although the imposition of term limits on the Five Constitutional Officers is neither constitutionally or statutorily prohibited nor expressly endorsed, the imposition of term limits currently is interpreted to be within the broad home rule power of charter.<sup>49</sup>

### Recall

Five counties have charters expressly providing for the recall of one or more of the Five Constitutional Officers.<sup>50</sup> Regardless of whether a county charter includes a recall provision, counties have independent statutory authority to conduct a recall of any of the Five Constitutional Officers.<sup>51</sup>

### Non-partisan Elections

Seven counties require non-partisan elections for some or all elections of the Five Constitutional Officers.<sup>52</sup> Non-partisan election of the Five Constitutional Officers is neither constitutionally nor statutorily prohibited and is therefore within the broad home rule power of charter counties.<sup>53</sup>

### Effect of the Joint Resolution

If the joint resolution is adopted and the proposed amendment is approved by the voters, the resulting limitation on revising the status of certain county officers will have no impact on non-charter counties,<sup>54</sup> those charter counties that retained the Five Constitutional Officers without any changes to their selection or authority,<sup>55</sup> and those counties that only revised the manner of selecting the tax collector. Those charter counties which changed the selection or authority of any other of the Five Constitutional Officers will be required to revise their charters and ordinances to conform to the revised constitutional requirement.<sup>56</sup>

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The joint resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

#### B. SECTION DIRECTORY:

As this legislation is a joint resolution proposing a constitutional amendment, it does not contain bill sections. The joint resolution proposes to amend Art. VIII, s. 1(d) of the State Constitution, to limit the authority for counties to alter the manner of selecting certain county officers or to abolish a county office and transfer all duties prescribed by general law to another office.

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charter counties to adopt term limits on county commissioners and explicitly overruling a prior case which barred this in the case of the Five Constitutional Officers).

<sup>48</sup> Duval, Orange, and Sarasota Counties.

<sup>49</sup> *Telli v. Broward County*, supra at n. 47.

<sup>50</sup> Brevard, Clay, Duval, Miami-Dade, and Sarasota Counties.

<sup>51</sup> Section 100.361, F.S.

<sup>52</sup> Lee, Leon, Miami-Dade, Orange, Palm Beach, Polk, and Volusia Counties.

<sup>53</sup> See Art. III s. 11(a)(1), Fla. Const. (prohibiting the Legislature from enacting special laws which alter local election procedure but excepting charter counties); Ch. 105, F.S. (providing for non-partisan elections and procedure).

<sup>54</sup> Baker, Bay, Bradford, Calhoun, Citrus, Collier, DeSoto, Dixie, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lake, Levy, Liberty, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okaloosa, Okeechobee, Pasco, Putnam, Santa Rosa, St. Johns, St. Lucie, Sumter, Suwannee, Taylor, Union, Walton, and Washington Counties.

<sup>55</sup> Alachua, Charlotte, Columbia, Hillsborough, Lee, Leon, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Wakulla Counties.

<sup>56</sup> See supra at n. 12.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The joint resolution does not have a fiscal impact on state revenues.

#### 2. Expenditures:

Article XI, s. 5(d) of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately before the week the election is held. The Department of State, Division of Elections estimated the average cost per word to advertise an amendment to the State Constitution is \$135.97 for this fiscal year. The department has estimated the publication costs for advertising the joint resolution will be at least \$96,130.79 to \$100,735.77, possibly greater, depending on the final wording of the joint resolution and the resulting ballot language.<sup>57</sup>

The department normally is the defendant in lawsuits challenging proposed amendments to the Florida Constitution. The cost for defending these lawsuits has ranged from \$10,000 to \$150,000, depending on a number of variables.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The joint resolution does not appear to have a fiscal impact on local revenues.

#### 2. Expenditures:

The joint resolution will have no impact on non-charter counties, those charter counties that retained the Five Constitutional Officers without any changes to their selection or authority, or those counties that only revised the manner of selecting the tax collector. Those charter counties which changed the selection or authority of any of the remaining Five Constitutional Officers will incur an indeterminate negative fiscal impact to the extent of having to revise their charters and ordinances to conform to the revised constitutional requirement.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

### D. FISCAL COMMENTS:

See, Fiscal Impact on State Government and Local Governments, above.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The joint resolution will not create a general law requiring a county or municipality to spend funds or take an action requiring expenditures, reducing the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate, or reducing the

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<sup>57</sup> 2016 Agency Legislative Bill Analysis, Department of State, HJR 165 (10/27/2015), available to Legislators and staff at <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=5939&yr=2016> (accessed 10/29/2015), and a copy of which is maintained on file by the Local Government Affairs Subcommittee.

percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

Adoption of Proposed Amendment

Article XI, s. 1 of the State Constitution, provides for proposed changes to the Constitution by the Legislature:

**SECTION 1: Proposal by legislature.** – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

If passed by the Legislature, the proposed amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. Submission of a proposed amendment at an earlier special election requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.<sup>58</sup> The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published.<sup>59</sup>

Sixty percent voter approval is required for a proposed constitutional amendment to pass. A proposed amendment or revision approved by the requisite vote of the electors is effective as an amendment to or revision of the state constitution on the first Tuesday after the first Monday in January following the election.<sup>60</sup>

Term Limits on Constitutional Officers

Imposing term limits on some or all of the Five Constitutional Officers could be seen as impacting the manner in which these officers are selected, an authority that will be removed if the amendment proposed in the joint resolution is approved by the voters. The current interpretation of art. VIII, s. 1(d) by the Florida Supreme Court is that charter counties have the ability to impose term limits on elected county officers.<sup>61</sup> However, while this interpretation references the present authority of charter counties to revise the manner of selecting the Five Constitutional Officers, the Court clearly based its decision on the “broad home rule authority granted charter counties under the Florida Constitution”<sup>62</sup> and the fact that the Constitution does not expressly prohibit the imposition of term limits by charter counties on the Five Constitutional Officers.<sup>63</sup> Therefore, removing the authority of a charter county to change the manner of election or to abolish and reconstitute the powers of the Five Constitutional Officers under county offices will not impact the ability of charter counties to impose term limits on elected county officers.

Non-Partisan Elections of Constitutional Officers

Amending art. VIII, s. 1(d) to restrict the ability of counties in their charters to choose the Five Constitutional Officers “in another manner therein specified” could be interpreted to limit the ability of charter counties to require that the Constitutional Officers other than the tax collector be selected in

<sup>58</sup> Art. XI, s. 5(a), Fla. Const.

<sup>59</sup> Art. XI, s. 5(d), Fla. Const.

<sup>60</sup> Art. XI, s. 5(e), Fla. Const.

<sup>61</sup> *Telli v. Broward County*, supra at n. 47, adopting with approval the rationale of the dissent in *Cook v. City of Jacksonville*, 823 So. 2d 86, 95-96 (2002) (Anstead, J., dissenting).

<sup>62</sup> *Telli v. Broward County*, supra at n. 47, 512.

<sup>63</sup> *Id.* See also *State ex rel. Askew v. Thomas*, 293 So. 2d 40, 42-43 (Fla. 1974).

non-partisan elections. However, because the Constitution prohibits neither the Legislature, through general law, nor charter counties from requiring non-partisan elections for county officers.<sup>64</sup> imposing non-partisan election requirements may well be interpreted as outside of the scope of art. VIII, s. 1(d), just as term limits were so found by the Florida Supreme Court of Florida.<sup>65</sup>

Recall of Constitutional Officers

Recall of county officers by charter counties is statutorily authorized.<sup>66</sup> The amendment proposed by this joint resolution would have no impact on the ability of charter counties to recall the Five Constitutional Officers.

B. RULE-MAKING AUTHORITY:

The resolution does not provide authority or require implementation by administrative agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>64</sup> See n. 53, supra.

<sup>65</sup> See *Telli v. Broward County*, supra at n. 47.

<sup>66</sup> Section 100.361, F.S.

House Joint Resolution

A joint resolution proposing an amendment to Section 1 of Article VIII of the State Constitution to remove authority for certain county officers to be chosen in a manner other than election, any county office to be abolished, or certain ex officio duties of the clerk of the circuit court to be transferred to another officer.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 1 of Article VIII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VIII

LOCAL GOVERNMENT

SECTION 1. Counties.—

(a) POLITICAL SUBDIVISIONS. The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.

(b) COUNTY FUNDS. The care, custody and method of disbursing county funds shall be provided by general law.

(c) GOVERNMENT. Pursuant to general or special law, a

27 | county government may be established by charter which shall be  
 28 | adopted, amended or repealed only upon vote of the electors of  
 29 | the county in a special election called for that purpose.

30 |       (d) COUNTY OFFICERS. There shall be elected by the  
 31 | electors of each county, for terms of four years, a sheriff, a  
 32 | tax collector, a property appraiser, a supervisor of elections,  
 33 | and a clerk of the circuit court; except, when provided by  
 34 | county charter or special law approved by vote of the electors  
 35 | of the county, the tax collector ~~any county officer~~ may be  
 36 | chosen in another manner therein specified, ~~or any county office~~  
 37 | ~~may be abolished when all the duties of the office prescribed by~~  
 38 | ~~general law are transferred to another office.~~ When not  
 39 | otherwise provided by ~~county charter or~~ special law approved by  
 40 | vote of the electors, the clerk of the circuit court shall be ex  
 41 | officio clerk of the board of county commissioners, auditor,  
 42 | recorder, and custodian of all county funds.

43 |       (e) COMMISSIONERS. Except when otherwise provided by  
 44 | county charter, the governing body of each county shall be a  
 45 | board of county commissioners composed of five or seven members  
 46 | serving staggered terms of four years. After each decennial  
 47 | census the board of county commissioners shall divide the county  
 48 | into districts of contiguous territory as nearly equal in  
 49 | population as practicable. One commissioner residing in each  
 50 | district shall be elected as provided by law.

51 |       (f) NON-CHARTER GOVERNMENT. Counties not operating under  
 52 | county charters shall have such power of self-government as is

53 provided by general or special law. The board of county  
 54 commissioners of a county not operating under a charter may  
 55 enact, in a manner prescribed by general law, county ordinances  
 56 not inconsistent with general or special law, but an ordinance  
 57 in conflict with a municipal ordinance shall not be effective  
 58 within the municipality to the extent of such conflict.

59 (g) CHARTER GOVERNMENT. Counties operating under county  
 60 charters shall have all powers of local self-government not  
 61 inconsistent with general law, or with special law approved by  
 62 vote of the electors. The governing body of a county operating  
 63 under a charter may enact county ordinances not inconsistent  
 64 with general law. The charter shall provide which shall prevail  
 65 in the event of conflict between county and municipal  
 66 ordinances.

67 (h) TAXES; LIMITATION. Property situate within  
 68 municipalities shall not be subject to taxation for services  
 69 rendered by the county exclusively for the benefit of the  
 70 property or residents in unincorporated areas.

71 (i) COUNTY ORDINANCES. Each county ordinance shall be  
 72 filed with the custodian of state records and shall become  
 73 effective at such time thereafter as is provided by general law.

74 (j) VIOLATION OF ORDINANCES. Persons violating county  
 75 ordinances shall be prosecuted and punished as provided by law.

76 (k) COUNTY SEAT. In every county there shall be a county  
 77 seat at which shall be located the principal offices and  
 78 permanent records of all county officers. The county seat may

79 | not be moved except as provided by general law. Branch offices  
 80 | for the conduct of county business may be established elsewhere  
 81 | in the county by resolution of the governing body of the county  
 82 | in the manner prescribed by law. No instrument shall be deemed  
 83 | recorded until filed at the county seat, or a branch office  
 84 | designated by the governing body of the county for the recording  
 85 | of instruments, according to law.

86 | BE IT FURTHER RESOLVED that the following statement be  
 87 | placed on the ballot:

88 | CONSTITUTIONAL AMENDMENT

89 | ARTICLE VIII, SECTION 1

90 | SELECTION AND DUTIES OF COUNTY OFFICERS.—Proposing an  
 91 | amendment to the State Constitution to remove the authority of a  
 92 | county, by county charter or special law, to choose certain  
 93 | county officers in a manner other than election and to abolish  
 94 | any county office when its duties are transferred to another  
 95 | office. The amendment also removes authority for a county  
 96 | charter to transfer certain ex officio duties of the clerk of  
 97 | the circuit court to another officer.

98 | BE IT FURTHER RESOLVED that the following statement be  
 99 | placed on the ballot if a court declares the preceding statement  
 100 | defective and the decision of the court is not reversed:

101 | CONSTITUTIONAL AMENDMENT

102 | ARTICLE VIII, SECTION 1

103 | SELECTION AND DUTIES OF COUNTY OFFICERS.—Proposing an  
 104 | amendment to the State Constitution to remove the authority of a

105 | county, by county charter or special law approved by the  
106 | county's voters, to choose its sheriff, property appraiser,  
107 | supervisor of elections, and clerk of the circuit court in a  
108 | manner other than election and to abolish any county office when  
109 | its duties are transferred to another office. The amendment also  
110 | removes authority for a county charter to transfer to another  
111 | officer the duties of the clerk of the circuit court to serve as  
112 | ex officio clerk of the board of county commissioners, auditor,  
113 | recorder, and custodian of all county funds.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HJR 165 (2016)

Amendment No. 1

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	_____	

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1 Committee/Subcommittee hearing bill: Local Government Affairs  
2 Subcommittee

3 Representative Artiles offered the following:

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

6 Remove everything after the resolving clause and insert:  
7 That the following amendment to Section 1 of Article VIII and  
8 the creation of Section 34 of Article XII of the State  
9 Constitution is agreed to and shall be submitted to the electors  
10 of this state for approval or rejection at the next general  
11 election or at an earlier special election specifically  
12 authorized by law for that purpose:

13 ARTICLE VIII

14 LOCAL GOVERNMENT

15 SECTION 1. Counties.-

16 (a) POLITICAL SUBDIVISIONS. The state shall be divided by  
17 law into political subdivisions called counties. Counties may be

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HJR 165 (2016)

Amendment No. 1

18 created, abolished or changed by law, with provision for payment  
19 or apportionment of the public debt.

20 (b) COUNTY FUNDS. The care, custody and method of  
21 disbursing county funds shall be provided by general law.

22 (c) GOVERNMENT. Pursuant to general or special law, a  
23 county government may be established by charter which shall be  
24 adopted, amended or repealed only upon vote of the electors of  
25 the county in a special election called for that purpose.

26 (d) COUNTY OFFICERS. There shall be elected by the  
27 electors of each county, for terms of four years, a sheriff, a  
28 tax collector, a property appraiser, a supervisor of elections,  
29 and a clerk of the circuit court; except, when provided by  
30 county charter or special law approved by vote of the electors  
31 of the county, the tax collector any county officer may be  
32 chosen in another manner therein specified., ~~or any~~ Any county  
33 office may be abolished when all the duties of the office  
34 prescribed by general law are transferred to another office as  
35 provided by special law approved by vote of the electors of the  
36 county. When not otherwise provided by ~~county charter or~~ special  
37 law approved by vote of the electors, the clerk of the circuit  
38 court shall be ex officio clerk of the board of county  
39 commissioners, auditor, recorder, and custodian of all county  
40 funds. Notwithstanding Section 6(e) of this article, the  
41 provisions of this subsection (1)(d) shall provide the exclusive  
42 manner of selection, length of terms, abolition of office, and  
43 transfer of duties of the sheriff, tax collector, property

Amendment No. 1

44 appraiser, supervisor of elections, and clerk of the circuit  
45 court in each county.

46 (e) COMMISSIONERS. Except when otherwise provided by  
47 county charter, the governing body of each county shall be a  
48 board of county commissioners composed of five or seven members  
49 serving staggered terms of four years. After each decennial  
50 census the board of county commissioners shall divide the county  
51 into districts of contiguous territory as nearly equal in  
52 population as practicable. One commissioner residing in each  
53 district shall be elected as provided by law.

54 (f) NON-CHARTER GOVERNMENT. Counties not operating under  
55 county charters shall have such power of self-government as is  
56 provided by general or special law. The board of county  
57 commissioners of a county not operating under a charter may  
58 enact, in a manner prescribed by general law, county ordinances  
59 not inconsistent with general or special law, but an ordinance  
60 in conflict with a municipal ordinance shall not be effective  
61 within the municipality to the extent of such conflict.

62 (g) CHARTER GOVERNMENT. Counties operating under county  
63 charters shall have all powers of local self-government not  
64 inconsistent with general law, or with special law approved by  
65 vote of the electors. The governing body of a county operating  
66 under a charter may enact county ordinances not inconsistent  
67 with general law. The charter shall provide which shall prevail  
68 in the event of conflict between county and municipal  
69 ordinances.

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70 (h) TAXES; LIMITATION. Property situate within  
71 municipalities shall not be subject to taxation for services  
72 rendered by the county exclusively for the benefit of the  
73 property or residents in unincorporated areas.

74 (i) COUNTY ORDINANCES. Each county ordinance shall be  
75 filed with the custodian of state records and shall become  
76 effective at such time thereafter as is provided by general law.

77 (j) VIOLATION OF ORDINANCES. Persons violating county  
78 ordinances shall be prosecuted and punished as provided by law.

79 (k) COUNTY SEAT. In every county there shall be a county  
80 seat at which shall be located the principal offices and  
81 permanent records of all county officers. The county seat may  
82 not be moved except as provided by general law. Branch offices  
83 for the conduct of county business may be established elsewhere  
84 in the county by resolution of the governing body of the county  
85 in the manner prescribed by law. No instrument shall be deemed  
86 recorded until filed at the county seat, or a branch office  
87 designated by the governing body of the county for the recording  
88 of instruments, according to law.

89 ARTICLE XII

90 SCHEDULE

91 SECTION 34. SELECTION AND DUTIES OF COUNTY OFFICERS.—The  
92 amendment to Section 1 of Article VIII removing the authority  
93 for a county charter or special law to require choosing certain  
94 county officers other than by election, permitting abolishing  
95 any county office and transferring its duties only by special

COMMITTEE/SUBCOMMITTEE AMENDMENT

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96 law approved by county voters, and removing authority for a  
97 county charter to transfer certain ex officio duties of the  
98 clerk of the circuit court, shall take effect on January 8,  
99 2019.

100 BE IT FURTHER RESOLVED that the following statement be  
101 placed on the ballot:

102 CONSTITUTIONAL AMENDMENT

103 ARTICLE VIII, SECTION 1

104 ARTICLE XII, SECTION 34

105 SELECTION AND DUTIES OF COUNTY OFFICERS.— Proposing an  
106 amendment to the State Constitution, applicable to all counties,  
107 removing the authority for a county charter or special law to  
108 require choosing certain county officers other than by election,  
109 permitting abolishing any county office and transferring its  
110 duties only by approval of county voters, removing authority for  
111 a county charter to transfer certain duties of the clerk of the  
112 circuit court, and scheduling the amendment to take effect on  
113 January 8, 2019.

114 BE IT FURTHER RESOLVED that the following statement be  
115 placed on the ballot if a court declares the preceding statement  
116 defective and the decision of the court is not reversed:

117 CONSTITUTIONAL AMENDMENT

118 ARTICLE VIII, SECTION 1

119 ARTICLE XII, SECTION 34

120 SELECTION AND DUTIES OF COUNTY OFFICERS.—Proposing an  
121 amendment to the State Constitution, applicable to all counties,

COMMITTEE/SUBCOMMITTEE AMENDMENT

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122 to remove the authority of a county, by county charter or  
123 special law approved by the county's voters, to choose its  
124 sheriff, property appraiser, supervisor of elections, and clerk  
125 of the circuit court in a manner other than election. The  
126 amendment would permit abolishing any county office when its  
127 duties are transferred to another office but only by special law  
128 approved by the county voters. The amendment also removes  
129 authority for a county charter to transfer to another officer  
130 the duties of the clerk of the circuit court to serve as ex  
131 officio clerk of the board of county commissioners, auditor,  
132 recorder, and custodian of all county funds. The amendment would  
133 take effect on January 8, 2019, if adopted.

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**T I T L E   A M E N D M E N T**

138

Remove everything before the resolving clause and insert:

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A joint resolution proposing an amendment to Section 1 of

140

Article VIII and creation of Section 34 of Article XII of the

141

State Constitution to remove authority for certain county

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officers to be chosen in a manner other than election, revise

143

authority for any county office to be abolished provided powers

144

are transferred as approved by the county electors, or certain

145

ex officio duties of the clerk of the circuit court to be

146

transferred to another officer, making this amendment applicable

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HJR 165 (2016)

Amendment No. 1

147 | to all counties in Florida, and scheduling this amendment to  
148 | take effect January 8, 2019, if adopted.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 181 Public Works Projects  
**SPONSOR(S):** Van Zant and Tobia  
**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	8 Y, 4 N	Moore	Williamson
2) Local Government Affairs Subcommittee		Darden 	Miller 
3) State Affairs Committee			

### SUMMARY ANALYSIS

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

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

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

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

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

The bill provides an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### Federal Labor and Wage Laws

The National Labor Relations Act of 1935<sup>1</sup> and the Labor Management Relations Act of 1947<sup>2</sup> constitute a comprehensive scheme of regulations guaranteeing employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce.

The Fair Labor Standards Act (FLSA or act) establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States.<sup>3</sup> A state may set the rate higher than the federal minimum, but not lower.<sup>4</sup> The act also requires employers to pay time and a half to their employees for overtime hours worked,<sup>5</sup> and establishes standards for recordkeeping<sup>6</sup> and child labor.<sup>7</sup> Over 135 million workers are covered under the act;<sup>8</sup> most, but not all, jobs are covered by the FLSA. In addition, some jobs covered by the act are considered “exempt” from the FLSA overtime requirements.<sup>9</sup>

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

The Davis-Bacon<sup>12</sup> Act (Davis-Bacon) apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.<sup>13</sup> Contractors and subcontractors subject to Davis-Bacon are required to pay their employees at the locally prevailing wage, as determined by the

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

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

<sup>3</sup> 29 U.S.C. s. 206.

<sup>4</sup> 29 U.S.C. s. 218(a).

<sup>5</sup> 29 U.S.C. s. 207(a)(1).

<sup>6</sup> 29 U.S.C. s. 211.

<sup>7</sup> 29 U.S.C. s. 212.

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

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

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

<sup>11</sup> *Id.*

<sup>12</sup> Davis-Bacon Act, 40 U.S.C. s. 1341, *et seq.*

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

Department of Labor, for similar projects in the area where construction is occurring.<sup>14</sup> The provisions of Davis-Bacon apply to contractors and subcontractors performing work on federal or District of Columbia contracts, as well federally funded projects through the “related Acts.”<sup>15</sup>

### State Labor and Wage Regulations

The State Constitution protects the right for workers to bargain collectively, including public sector employees.<sup>16</sup> It provides, in pertinent part, that “[t]he right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” The Florida Supreme Court has held that public employees maintain the same rights to bargain collectively as do private employees.<sup>17</sup>

In addition, the State Constitution provides that “[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.”<sup>18</sup> Employers must pay employees no less than the minimum wage for all hours worked in Florida.<sup>19</sup> The current state minimum wage is \$8.05 per hour,<sup>20</sup> which is higher than the federal rate.<sup>21</sup>

### Procurement of Construction Services

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

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids for public building construction contracts;<sup>22</sup>
- Procedures for awarding each state agency construction project to the lowest qualified bidder;<sup>23</sup>
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state;<sup>24</sup> and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.<sup>25</sup>

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.<sup>26</sup> A county, municipality, special district, or other political subdivision seeking to

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<sup>14</sup> *Id.*

<sup>15</sup> United States Department of Labor, *Fact Sheet #66: The Davis-Bacon and Related Acts (DBRA)*, <http://www.dol.gov/whd/regs/compliance/whdfs66.pdf>. (last visited Oct. 27, 2015). The “related Acts” include the Federal Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.

<sup>16</sup> Art. I, s. 6, Fla. Const.

<sup>17</sup> See *Hillsborough Cnty. Gov’tl Emps. Ass’n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So. 2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm’n*, 410 So. 2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass’n v. Legislature of Fla.*, 269 So. 2d 684 (Fla. 1972).

<sup>18</sup> Art. X, s. 24(a), FLA. CONST.

<sup>19</sup> Art. X, s. 24(c), FLA. CONST.

<sup>20</sup> Department of Economic Opportunity, *Display Posters and Required Notices*, <http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notice> (last visited Sept. 30, 2015).

<sup>21</sup> The federal minimum wage is \$7.25 per hour. For more information about federal minimum wage provisions, see <http://www.dol.gov/whd/minimumwage.htm> (last visited Sept. 30, 2015).

<sup>22</sup> Section 255.29(1), F.S.

<sup>23</sup> Section 255.29(2), F.S.

<sup>24</sup> Section 255.29(3), F.S.

<sup>25</sup> Section 255.29(4), F.S.

<sup>26</sup> Section 255.0525, F.S.; see also Rules 60D-5.002 and 60D-5.0073, F.A.C.

construct or improve a public building must competitively bid the project if the estimated cost is in excess of \$300,000.<sup>27</sup>

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 to be publicly advertised in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening. If the cost of the construction project is projected to exceed \$500,000, the advertisement must be published at least 30 days prior to the bid opening in the FAR, and at least once 30 days prior to the bid opening in a newspaper of general circulation in the county where the project is located.<sup>28</sup>

Florida law provides a preference for the employment of state residents in construction contracts funded with state funds. Such contracts must contain a provision requiring the contractor to give preference to employing state residents to perform the work if such residents have substantially equal qualifications<sup>29</sup> to those of non-residents.<sup>30</sup> If a construction contract is funded by local funds, the contract may contain such a provision.<sup>31</sup> In addition, a contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.<sup>32</sup>

Several counties and municipalities have adopted ordinances requiring companies bidding on contracts to pay their employees a "living wage,"<sup>33</sup> while others have adopted ordinances requiring apprenticeship programs.<sup>34</sup>

#### Department of Transportation Construction Projects

Chapter 337, F.S., governs contracting by the Department of Transportation (DOT). Any person who wants to bid for a construction contract in excess of \$250,000 must be certified by DOT as qualified.<sup>35</sup> Certification is also required to bid on road, bridge, or public transportation construction projects of more than \$250,000.<sup>36</sup> The purpose of certification is to ensure professional and financial competence relating to the performance of construction contracts by evaluating bidders "with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification."<sup>37</sup>

#### **Effect of Proposed Changes**

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

- "Political subdivision" means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to,

<sup>27</sup> Section 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

<sup>28</sup> For counties, municipalities, and political subdivisions, similar publishing provisions apply. See Section 255.0525(2), F.S.

<sup>29</sup> 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."

<sup>30</sup> Section 255.099(1), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> Section 255.099(1)(b), F.S.

<sup>33</sup> E.g. Broward County Code of Ordinances s. 26-102, Palm Beach County Code of Ordinances s. 2-147 to 2-250.1, Miami-Dade County Code of Ordinances s. 2-8.9.

<sup>34</sup> See Charlie Frago, *St. Pete council approves mandatory apprentice program for city projects*, Tampa Bay Times (May 7, 2015), <http://www.tampabay.com/news/localgovernment/st-pete-council-approves-mandatory-apprentice-program-for-city-projects/2228783>.

<sup>35</sup> Section 337.14(1), F.S. and ch. 14-22, F.A.C.

<sup>36</sup> Section 337.14(2), F.S.

<sup>37</sup> Section 337.14(1), F.S.

a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body authorized to expend public funds for construction, maintenance, repair, or improvement of public works.

- “Public works” or “public works project” means a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof, including repair, renovation, or remodeling, owned in whole or in part by any political subdivision for which a project for construction, maintenance, repair, or improvement of public works is to be paid for in whole or in part with state funds.

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

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

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

#### B. SECTION DIRECTORY:

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

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to impact state revenues.

##### 2. Expenditures:

The bill does not appear to impact state expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to impact local government revenues.

##### 2. Expenditures:

The bill does not appear to impact local government expenditures.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Definition of Public Works and Public Works Project

The bill provides a definition for “public works” and “public works project” and repeats portions of the definition throughout the bill when using these terms. Amending the repetitive provisions may improve the bill’s clarity.

Other Comments: Bidder Qualifications

According to the Department of Transportation, the bill may be inconsistent with existing bidder pre-certification requirements in ch. 337, F.S., which require bidders to first be certified by the department as qualified pursuant to statute and the department’s rules. According to the department, this process may be undermined by allowing bids to be submitted by entities that are either “qualified, licensed, or certified.”<sup>38</sup>

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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<sup>38</sup> Department of Transportation, Agency Analysis for 2016 House Bill 181 (Oct. 29, 2015) (on file with the Government Operations Subcommittee).

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

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

Section 1. (1) As used in this section, the term:  
(a) "Political subdivision" means a separate agency or  
unit of local government created or established by law or  
ordinance and the officers thereof. The term includes, but is  
not limited to, a county; a city, town, or other municipality;  
or a department, commission, authority, school district, taxing  
district, water management district, board, public corporation,  
institution of higher education, or other public agency or body  
authorized to expend public funds for construction, maintenance,  
repair, or improvement of public works.  
(b) "Public works" or "public works project" means a  
building, road, street, sewer, storm drain, water system, site

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

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

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

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

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

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

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

HB 181

2016

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

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 181 (2016)

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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                                     \_\_\_\_\_

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1 Committee/Subcommittee hearing bill: Local Government Affairs  
2 Subcommittee

3 Representative Van Zant offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 255.0992, Florida Statutes, is created  
8 to read:

9 255.0992 .- Public works projects; prohibited governmental  
10 actions.

11 (1) As used in this section, the term:

12 (a) "Political subdivision" means a separate agency or unit  
13 of local government created or established by law or ordinance  
14 and the officers thereof. The term includes, but is not limited  
15 to, a county; a city, town or other municipality; or a  
16 department, commission, authority, school district, taxing  
17 district, water management district, board, public corporation,

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18 institution of higher education, or other public agency or body  
19 thereof authorized to expend public funds for construction,  
20 maintenance, repair or improvement of public works.

21 (b) "Public works project" means an activity that is paid  
22 for in whole or in part with state funds and that consists of  
23 the construction, maintenance, repair, renovation, remodeling,  
24 or improvement of a building, road, street, sewer, storm drain,  
25 water system, site development, irrigation system, reclamation  
26 project, gas or electrical distribution system, gas or  
27 electrical substation, or other facility, project, or portion  
28 thereof that is owned in whole or in part by any political  
29 subdivision. This section does not apply to contracts executed  
30 under chapter 337.

31 (2) (a) Except as required by federal or state law, the  
32 state or any political subdivision that contracts for a public  
33 works project may not require that a contractor, subcontractor,  
34 or material supplier or carrier engaged in such project:

35 1. Pay employees a predetermined amount of wages or  
36 prescribe any wage rate;

37 2. Provide employees a specified type, amount, or rate of  
38 employee benefits;

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

40 4. Recruit train, or hire employees from a designated,  
41 restricted, or single source.

42 (b) The state or any political subdivision that contracts  
43 for a public works project may not prohibit any contractor,

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44 subcontractor, or material supplier or carrier able to perform  
45 such work who is qualified, licensed, or certified as required  
46 by state law to perform such work from submitting a bid on the  
47 public works project or being awarded any contract, subcontract,  
48 material order, or carrying order thereunto appertaining.

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

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

53

Remove everything before the enacting clause and insert:

54

An act relating to public works projects; creating s. 255.0992,

55

F.S.; providing definitions; prohibiting state and political

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subdivisions that contract for public works projects from

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imposing restrictive conditions on certain contractors,

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subcontractors, or material suppliers or carriers; providing an

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exception; prohibiting the state and political subdivisions from

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restricting qualified bidders from submitting bids; providing an

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effective date.