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## Expanded New Legislation for P3s in Florida

Public-Private Partnerships, commonly referred to as P3s, are contractual agreements between public and private entities that provide for significant involvement of private entities in the delivery and financing of public buildings and infrastructure projects. Under such agreements, the private entity will assume the financing for the project and in turn be entitled to either revenue-generating, project-related activities or government payments based on performance.

One of the major benefits of a P3 project is that it enables public entities to undertake projects they might otherwise postpone or ignore due to lack of funds. P3 projects also create tens of thousands of jobs and project completion is dramatically accelerated over traditional Design-Bid-Build. There are several different types of P3 delivery options; however, the most common P3 system is a Design-Build-Finance-Operate-Maintain (DBFOM) transaction.

Florida has enjoyed the benefits of P3s under existing legislation for state transportation projects. See Florida Statute §334.30. Now Florida has expanded its P3 legislation to allow local government to use P3s to construct government buildings and related social infrastructure. Also, county-owned roads in Florida can now be rebuilt using P3.

Indeed, during the 2013 legislative session, the Florida's House of Representatives and Florida Senate passed the House of Representatives Bill 85 (HB85), which establishes this broadened framework for such P3 projects. This bill is expected to go before Florida's Governor for enactment in the near future.

HB85 creates a P3 procurement process for use by counties, cities, school boards, and regional entities. The bill sets forth the requirements for such P3 agreements, which allows for both solicited and unsolicited proposals. The bill also requires public entities to provide notice of unsolicited proposals, conduct independent analyses of proposed P3s, notify other affected local jurisdictions, and enter into comprehensive agreements for qualifying projects. In accordance with HB85, a public entity may approve a qualifying project if there is a public 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 and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation implementation, or installation of the qualifying project.

Below are some key points of the bill:

1. The bill amends Florida Statute § 255.60, to authorize P3 agreements for public service work with not-for-profit organizations. The bill sets forth certain parameters for park lands and public education buildings. With regard to the agreements for the preservation, maintenance, and improvement of park land, the property must be at least 20 acres with public facilities capable of seating at least 5,000 people in a permanent structure. As for agreements associated with public education buildings, the building must be at least 90,000 square feet.
2. The bill creates Florida Statute § 287.05712, which creates an alternative procurement process and requirements for P3s to facilitate the construction of public-purpose projects, and creates a Public Facilities and Infrastructure Act Guidelines Task Force to foster uniformity across the state.
  - THE PUBLIC FACILITIES AND INFRASTRUCTURE ACT GUIDELINES TASK FORCE was formed to recommend guidelines for the Legislature to consider for purposes of creating a uniform process for establishing P3s across the state. The seven-member task force must submit a final report of its recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2014. During the interim period, public entities may receive proposals and enter into P3 agreements prior to the adoption of any guidelines by the state. The task force expires December 31, 2014.
  - PROCUREMENT PROCEDURES – The bill provides that a public entity may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into an agreement with a private entity for the building, upgrading, operating, ownership, or financing of facilities.

**Unsolicited Proposals** | The bill sets forth the following requirements for unsolicited proposals:

- A reasonable application fee for the submission of unsolicited proposals must be established. The fee should be sufficient to cover the costs of evaluating the proposal.
- If the public entity intends to enter into a P3 Agreement as a result of an unsolicited proposal, the public entity must publish notice in the *Florida Administrative Register* and a newspaper of general circulation at least once a week for two weeks stating that the entity has received a proposal and will accept other proposals. Based on the complexity of the project at hand, the public entity will determine the timeframe in which other proposals may be received; however, the timeframe for accepting other proposals must be at least 21 days, but no more than 120 days, after the initial date of publication.

**Project Approval Requirements** | Before approval the public entity must determine that the proposed P3 project:

- Is in the public's best interest.
- Is for a facility owned by the public entity or for which ownership will be conveyed to the public entity.
- Would have safeguards in place to ensure that additional costs or service disruption are not imposed on the public in the event of a material default or cancellation of the agreement.
- Would have safeguards in place to ensure that the public or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar public purposes.
- Would be owned by the public entity upon completion or termination of the agreement and upon payment of amounts financed.

**Comprehensive Agreement** | The bill requires the public entity and private entity to enter into a comprehensive agreement prior to developing or operating a P3 project. The bill further sets forth required provisions that must be part of said comprehensive agreement.

- **SOVEREIGN IMMUNITY** – The bill provides that sovereign immunity is not waived by any public entity, any affected local jurisdiction, or any officer or employee thereof with respect to the P3 project. Moreover, the bill provides that cities, counties, and towns possess sovereign immunity with respect to the P3 project, including, but not limited to, its design, construction, and operation.

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3. The bill creates Florida Statute § 336.71, which authorizes counties the use of P3s for purposes of county road projects. It permits counties to receive or solicit proposals and enter into agreements with private entities to construct, extend, or improve a county road.

Before the county can approve such a P3, the county must conduct a noticed public hearing and determine that the P3 project:

- Is in the best interest of the public.
- Would only use county funds for portions of the project that are part of the county road system.
- Would have adequate safeguards to ensure that additional costs or unreasonable service disruptions are not realized by the traveling public and citizens of the state.
- Upon completion of the project the subject road system would be owned by the county.
- Would result in a financial benefit to the public by completing the project at a cost to the public significantly lower than if the project was constructed by the county using the normal procurement process.

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