

January 2023

Florida
TaxWatch



Using **Public-Private Partnerships**
and **Public-Public Partnerships**
to
Meet the **Growing Demands**
for **Public Infrastructure**

Dear Fellow Taxpayer

Florida faces a growing need to build and maintain critical infrastructure — everything from roads and bridges to airports and seaports to wastewater treatment plants — but with limited public funding to do the job. By year 2039, a continued underinvestment in Florida's infrastructure at current rates will have serious economic consequences — \$10 trillion in lost Gross Domestic Product (GDP), more than 3 million lost jobs, and \$2.4 trillion in lost exports. This will cost the average Florida household \$3,300 a year, or \$63 a week.

Encouraging private sector investment in the provision of much-needed public infrastructure is a critical part of the solution. But two promising tools --- public-private partnerships and public-public partnerships — are currently limited by Florida's onerous and burdensome procurement requirements.

Florida TaxWatch undertakes this independent research project to better understand public-private partnerships and public-public partnerships, and how they can be used to more effectively build, upgrade, operate, own, or finance public facilities and infrastructure. TaxWatch: (1) looked at how and how well public-private partnerships and public-public partnerships work in Florida and in other states; (2) looked at examples of well-planned and executed public-private partnerships and public-public partnerships; and (3) offers recommendations to help facilitate increased private sector investment in Florida's critical public infrastructure. The goal is to connect private capital to Florida infrastructure, thereby tapping billions of dollars that could be available for this purpose but is currently planned for use elsewhere.

Florida TaxWatch is pleased to present this report and its findings and looks forward to engaging policymakers in discussion during the upcoming legislative session and beyond.

Sincerely,



Dominic M. Calabro
President & Chief Executive Officer



TABLE OF CONTENTS

Executive Summary.....	i
Introduction.....	1
Public-Private Partnerships.....	3
Unsolicited PPP Proposals.....	3
Solicited P3 Proposals.....	5
PPP/PUP Legislation in Other States.....	6
I-595 Corridor Roadway Improvements Project.....	9
Port of Miami Tunnel.....	11
Fort Hamer Bridge.....	12
Public-Public Partnerships.....	14
Why Are There Not More PPP and PUP Projects?.....	16
Conclusions and Recommendations.....	17

EXECUTIVE SUMMARY

The gap between Florida's infrastructure needs and what Florida currently has is nearly \$2.59 trillion over ten years. By year 2039, a continued underinvestment in Florida's infrastructure at current rates will have serious economic consequences — \$10 trillion in lost Gross Domestic Product (GDP), more than 3 million lost jobs, and \$2.4 trillion in lost exports.

The Florida Legislature has acknowledged that the public resources needed to construct or upgrade these facilities are inadequate and encourages investment by private entities to provide the greatest possible flexibility to public and private entities that are contracting for the provision of public services. Two creative solutions are public-private partnerships (PPPs) and public-public partnerships (PUPs). Both approaches have been shown to lower project costs, improve the schedule for delivery, and provide other public benefits.

PPPs are contractual arrangements between public and private-sector partners that typically involve a government or public agency contracting with a private-sector partner to perform functions normally undertaken by a public agency, with the agency remaining ultimately responsible for the public function. One reason for their popularity is their ability to lower the cost of infrastructure to the public partner and to bring infrastructure projects online much sooner, allowing users to benefit much sooner than is typical under pay-as-you-go financing.

PUPs are collaborations between two or more public entities to provide or improve public services. Unlike PPPs, neither partner in a PUP expects to earn a profit from the collaboration - The goal is to improve efficiency and lower the costs. The public join forces and leverage their shared capacities and buying power to provide services and/or facilities.

The infrastructure-related PPPs and PUPs discussed in this report have been extremely successful, resulting in cost savings in the tens of millions of dollars and highway capacity improvements coming online years sooner than they would have under a traditional government procurement. By shifting responsibility for the construction, long-term operation, and/or maintenance to a private entity, these projects provide a powerful incentive to ensure quality construction, since the private partner will share the financial risk, thereby enabling the public partner to focus on the outcome-based public value they are trying to create. These projects also foster job creation, economic development, and competition.

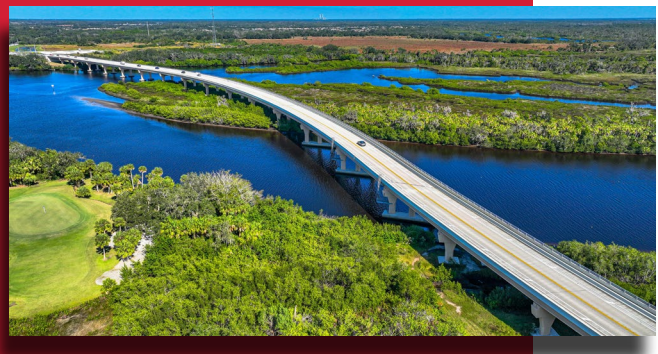
Why then, are there not more PPPs and PUPs? One reason is the onerous and burdensome requirements contained in Florida law. Florida TaxWatch believes that PPPs and PUPs can go a long way toward helping meet future demands for infrastructure; however, their usefulness is severely limited by the current slow pace of government procurement. Another reason is the absence of incentives for private

entities that submit an unsolicited proposal, who then have no advantage over competing bidders throughout the remainder of the process. As Florida continues to grow and develop, the demands placed on public facilities and services will grow accordingly. These demands will be exacerbated by Florida's changing climate, rising sea levels, and more frequent and more intense coastal storms.

Government procurement moves slowly, and Florida TaxWatch thinks every effort should be made to “fast track” infrastructure proposals where a private entity is sharing the financial risks for the project and the project has been shown to be in the public interest. For these projects, Florida TaxWatch supports the idea of a trade-off, where the project would be allowed to go forward sooner and with minimal obstacles, but not at the expense of transparency, accountability, and taxpayer value. To accomplish this, Florida TaxWatch urges the Florida Legislature to consider the following recommendations.

1. The legislature should make clear its expectations regarding the percentage of the state's multi-billion-dollar annual capital budget to be expended, and the number of additional jobs to be created, through the use of PPP and PUP projects annually.
2. The legislature should amend chapters Chapter 255 and 334, Florida Statutes, to eliminate the requirement that public entities, after receipt of an unsolicited proposal, continue to solicit and accept other proposals for the same project.
3. The legislature should amend chapters Chapter 255 and 334, Florida Statutes, to allow an unsolicited proposal for a qualifying project submitted by a private entity to go forward:
 - After review of the detailed project plan by the responsible public entity, other affected public entities, and the general public;
 - After a determination by the responsible public entity that the proposal provides a needed public infrastructure upgrade at a lower cost, with a faster schedule for delivery, as well as other public benefits (e.g., job creation, etc.);
 - After holding a duly-noticed public meeting at which the responsible public entity issues a “finding of public interest” report that, at a minimum, includes:
 - Benefits to the public;
 - Advantages/disadvantages of developing or operating the qualifying project as a public-private partnership versus a traditional procurement;
 - Funding sources and financing for the qualifying project;
 - General reputation, qualifications, industry experience and financial capacity of the private entity;
 - Compatibility of the project with regional infrastructure plans; and
 - Other criteria that the responsible public entity deems appropriate.

4. As an alternative, the legislature should amend chapters 255 and 334, Florida Statutes, to provide incentives to private entities that submit an unsolicited proposal that meets all requirements and who then have no advantage over competing bidders throughout the remainder of the process. These incentives may include, but be limited to, bonuses (additional points during bid evaluation); automatic short listing; and the right to match a more competitive bid.
5. The legislature should create an Office of Infrastructure Investment that reports to the Governor and is independent of other agencies and departments of the state. The Office would provide technical assistance and expertise to responsible public entities on using public-private partnerships to develop or operate infrastructure projects (including analyzing their benefits and costs and the innovative financing options available to support them). At the end of each fiscal year, the Office should provide to the legislative committees having jurisdiction over transportation or infrastructure a report that:
 - Identifies PPP projects that are expected to be soliciting bids within the next fiscal year; are in progress; were completed during the prior fiscal year; or were removed from consideration during the prior fiscal year; and
 - Summarizes actions taken by the Office to fulfill its duties.
6. The legislature should create a task force to support the Office of Infrastructure Investment and make recommendations on a uniform process for the review, solicitation, evaluation, award, and delivery of public-private partnerships.



Florida’s resident population continues to grow. Over the past decade, Florida’s population has increased annually by an average of 299,781 residents, or about 821 new residents a day, every day, for the past ten years¹. State economists predict that this steady growth will continue in the coming years, projecting a population of 24.47 million (722 new residents a day) in 2030.² This continued growth will place considerable demands on public infrastructure and services.

Every four years, the American Society of Civil Engineers (ASCE) evaluates the investment needed to maintain public infrastructure in “good repair” and earn a grade of “B.” In its 2021 analysis, the ASCE estimates the gap between Florida’s infrastructure needs and what Florida currently has at nearly \$2.59 trillion over ten years.³ By year 2039, a continued underinvestment in Florida’s infrastructure at current rates will have serious economic consequences — \$10 trillion in lost Gross Domestic Product (GDP), more than 3 million lost jobs, and \$2.4 trillion in lost exports. This will cost the average household \$3,300 a year, or \$63 a week.⁴

The ASCE evaluated Florida’s infrastructure in terms of funding, condition, future needs, public safety, capacity, operation and maintenance, innovation, and resilience, and provided an overall grade of “C” based on its findings. Grades for each individual category of infrastructure are shown in Table 1.

Table 1. Florida’s Infrastructure Grades (2021)

Category	Grade	Category	Grade
Aviation	C+	Ports	B
Bridges	B	Roads	C+
Coastal Areas	C-	Schools	D+
Dams	D-	Solid Waste	B+
Drinking Water	C	Stormwater	C-
Energy	C+	Transit	C
Levees	D+	Wastewater	C

Source: ASCE 2021 Infrastructure Report Card

¹Office of Economic and Demographic Research, “Florida Demographic Estimating Conference Tables,” December 13, 2021.

²Ibid.

³ASCE Florida Section, “2021 Infrastructure Report Card: A Comprehensive Assessment of Florida’s Infrastructure,” 2021.

⁴Ibid.

The Florida Legislature has acknowledged that, although there is a continuing need for the construction or upgrade of infrastructure and facilities that serve a public purpose, the public resources needed to construct or upgrade these facilities are inadequate.⁵ The delivery of public infrastructure and facilities will struggle to keep pace with the state's growth, and community trust in government to provide infrastructure and services at necessary levels of service will likely diminish. This will force both public and private sector stakeholders to develop and implement creative solutions to relieve this pressure and improve the quality of life for all Floridians. Two such creative solutions are public-private partnerships (PPPs) and public-public partnerships (PUPs). Both approaches have been shown to lower project costs, improve the schedule for delivery, and provide other public benefits.

PPPs are contractual arrangements between public and private-sector partners that typically involve a government or public agency contracting with a private-sector partner to perform functions normally undertaken by a public agency, with the agency remaining ultimately responsible for the public function. One reason for their popularity is their ability to lower the cost of infrastructure to the public partner by reducing construction costs and overall life cycle costs. PPPs allow the investment costs to be spread over the lifetime of the asset instead of the "pay-as-you-go" financing that is typical of many public infrastructure projects.⁶ This allows infrastructure projects to come online much sooner, allowing users to benefit much sooner than is typical under pay-as-you-go financing.

PUPs are partnerships between a government body or public authority and another such body or a non-profit organization to join forces and leverage their shared capacities to provide services and/or facilities. PUPs allow multiple public entities to pool resources, buying powers and technical expertise. The benefits of scale and shared resources can deliver higher public efficiencies and lower costs. As a public collaboration, no PUP partner can generate a profit through the partnership. In short, PUPs provide the collaborative advantages of private partnerships without the profit-extracting focus of private operators, and they promote the public interest.⁷

Florida TaxWatch undertakes this independent research project to better understand PPPs and PUPs, and how they can be used to more effectively build, upgrade, operate, own, or finance public facilities and infrastructure. Florida TaxWatch: (1) looked at how and how well PPPs and PUPs work in Florida and in other states; (2) looked at examples of well-planned and executed PPPs and PUPs; and offers recommendations to increase the use of PPPs and PUPs as ways to help meet Florida's increasing demand for public infrastructure and services.

⁵§255.065(2), Fla. Stat.

⁶Deloitte Research, "Closing America's Infrastructure Gap: The Role of Public-Private Partnerships."

⁷European Water Movement, "Public-Public Partnerships: An Alternative Model," retrieved from <http://europeanwater.org/european-water-resources/reports-publications/99-public-public-partnerships>, September 19, 2022.

PUBLIC-PRIVATE PARTNERSHIPS

The process for procuring a PPP agreement, as described in the following sections, is outlined in the following Florida Statutes:

- Section 255.065, Florida Statutes --- establishes the procedures to be followed in the establishment of a PPP for public property and publicly owned buildings; and
- Section 334.30, Florida Statutes --- establishes the procedures to be followed in the establishment of a PPP for public transportation facilities.

Proposals for PPP projects can be unsolicited or solicited. Before the procurement process is initiated, or before a contract is awarded, the public entity must perform an independent analysis of the proposed PPP to demonstrate its overall cost-effectiveness and public benefit.

Unsolicited PPP Proposals

A private entity or consortium of private entities may submit an unsolicited proposal for a “qualifying” project.⁸ The proposal includes a detailed project plan that includes, among other things: a description of the project; a schedule for starting and completing the project; the general plan for financing the project; a description of how necessary property interests (e.g., right-of-way, etc.) will be secured; a description of any proposed user fees (e.g., tolls, etc.), lease payments, or other service payments; and a description of the methodology to be used to allow changes to any of these fees and payments.

The private entity submitting the unsolicited proposal must also include an initial application fee that is sufficient to cover the public entity's cost to review and evaluate the proposal. This requirement may help to discourage private entities from submitting an incomplete or poor-quality unsolicited proposal. The public entity may also require that the private entity provide a technical study that has been prepared by a “nationally recognized expert” with experience in preparing analyses for bond rating agencies.

⁸A qualifying project is a facility or project that serves a public purpose or supports a public activity, as defined in §255.065(1)(i), Fla. Stat., or is included in the state's five-year work program or ten-year strategic intermodal plan.

At this stage in the process, the private entity has approached the public entity with an unsolicited and detailed proposal for the qualifying project. The private entity has underwritten the public entity's cost to review and evaluate the proposal and, if required by the public entity, provided a technical study conducted by a nationally recognized expert. If the public entity determines that the unsolicited proposal meets all the requirements and has been shown to provide the infrastructure upgrade at a lower cost, with a faster schedule for delivery, and provide other public benefits, then one would reasonably expect the next step to be negotiating an agreement for the project.

This is where the “perfect” becomes the enemy of the “good.” Instead of starting contract negotiations with the private entity, the public entity is required to publish a notice in the Florida Administrative Register⁹ and a newspaper of general circulation at least once a week for two weeks. The notice must state that the public entity has received a proposal and will continue to accept other proposals for the same project (emphasis added). The timeframe for allowing other proposals to be submitted must be at least 21 days but not more than 120 days. Copies of the notice must be mailed to local governments within the affected area.

After the notice period has ended, the public entity ranks the proposals received in order of preference. Negotiations begin with the highest-ranked firm. If these negotiations fail, the public entity can end negotiations with the highest-ranked firm and negotiate with the second-highest or subsequent firm. Any and all negotiations may be rejected at any point in the process until a contract with an appropriate private entity is executed.

As a result, the private entity that originally approached the public entity with a detailed project plan for the qualifying project; that paid an application fee sufficient to cover the public entity's cost to review and evaluate the proposal; that paid for a technical study (if required by the public entity); and whose unsolicited proposal meets all the requirements and has been shown to provide the infrastructure upgrade at a lower cost, with a faster schedule for delivery, and provide other public benefits; has nothing to show for its good intentions.

Florida TaxWatch considers the provisions in sections 255.065 and 334.30, Florida Statutes, governing unsolicited PPP proposals to be unfair and contrary to the legislature’s intent to encourage investment by private entities and provide the “greatest possible flexibility” to public and private entities contracting for the provision of public facilities or services.

⁹The Florida Administrative Register (FAR) is a daily publication that gives the public current information about the status of administrative rules moving through the rulemaking process (including proposed rules; emergency rules; and notices of change, corrections, and withdrawals).

Solicited P3 Proposals

A public entity may also initiate a PPP by soliciting a proposal for a qualifying project. If the project includes design work, the solicitation must include design criteria prepared by a licensed architect, engineer, or landscape architect. The design professional who prepared the design criteria must then be retained by the public entity through the design and construction of the project.

The process for soliciting proposals is outlined in section 287.057, Florida Statutes. In response to a request for proposals (RFPs) by the public entity, one or more private entities submit written proposals which are then scored against criteria specified in the RFP. A contract is then awarded to the responsible¹⁰ and responsive¹¹ vendor whose proposal is determined to be the most advantageous to the public entity, considering the price and other criteria set forth in the RFP.

The process for challenging the public entity's decision to award a contract is outlined in section 120.57, Florida Statutes. Anyone who is adversely affected by the decision or intended to award the contract may file a bid protest, which stops the award process until the subject of the protest is resolved. Bid protests are expensive and are often used to delay contract awards and to force concessions (settlement agreements) from agencies or the winning bidders. The procurement process affords limited access to relevant information in advance of the award, so many bidders feel compelled to file a protest just to gain a better understanding of why they lost.

If the parties to the bid protest are unable to mutually agree on a resolution, the matter is forwarded to the Division of Administrative Hearings for an informal hearing. An Administrative Law Judge (ALJ) is assigned and will schedule a hearing within 30 days. The ALJ will enter a recommended final order within 30 days after the hearing or within 30 days after receipt of the hearing transcript, whichever is later. After allowing each party ten days in which to submit exceptions to the ALJ's recommended order, the public entity has 30 days in which to enter a final order.

Consider the state of Florida's efforts to procure a new non-proprietary, mission-critical Statewide Law Enforcement Radio System (SLERS-2) that would improve and expand SLERS coverage, reliability, and audio clarity. After a seven-month bid protest process, the state spent 14 months negotiating with the new vendor before both parties decided to "walk away." Almost two years after issuing the notice of intent to award this contract, the state had no new SLERS-2 contract.¹²

¹⁰A responsible vendor has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.

¹¹A responsive vendor has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation.

¹²Florida TaxWatch, "Calling all Cars? Florida's Statewide Law Enforcement Radio System (SLERS-2) Underscores the Need for Procurement Reform," April 2021.

PPP/PUP LEGISLATION IN OTHER STATES

Thirty-three (33) states (along with the District of Columbia and Puerto Rico) have, by statute, enacted some sort of PPP enabling legislation. The result is a patchwork of laws that has met with varying degrees of success and public support. The Bipartisan Policy Center has reviewed the best practices of these states and has offered model legislation for states that are adopting PPP legislation for the first time or for states that are updating their existing laws may want to use this model as a tool. Key components of the model legislation include:

- **Enables PPP projects for a wide range of infrastructure projects** — only a handful support PPP projects for all types of infrastructure and at all levels of government. This model legislation allows for all government entities within a state that are authorized to develop and operate infrastructure projects to contract with private partners for a wide range of projects (e.g., roads, bridges, ports, stormwater management systems, broadband infrastructure, and courthouses, etc.).
- **Creates a state office dedicated to providing PPP expertise and assistance** — the Office of Infrastructure Investment created by the model legislation would be a resource in this not only for state-level agencies and transportation departments, but for local governments that may be unfamiliar with alternative methods of procurement but interested in the benefits they could bring. The legislation leaves it to each state to decide how best to fund the Office’s operations.
- **Standardizes and promotes best practices** — The model legislation is a template that can be customized to suit each state’s particular circumstances and needs. Providing some degree of standardization and promotion of best practices may, however, encourage greater private infrastructure investment and establish clear “rules of the road.”
- **Protects the public interest** — the model legislation provides a process for public education and input in the development of PPP projects. The legislation requires an evaluation of the life-cycle costs and benefits of a potential PPP project, and before a contract can be signed, there must be a finding of public interest and compatibility with regional plans to ensure that the public agency has fully assessed the costs and benefits of the project and disclosed that information to the public.¹⁵

¹³Bipartisan Policy Center, “Public-Private Partnership (P3) Model State Legislation,” December 2015.

¹⁴Founded in 2007 by former U.S. Senate Majority Leaders Howard Baker, Tom Daschle, Bob Dole and George Mitchell, the Bipartisan Policy Center (BPC) is a non-profit organization that drives principled solutions through rigorous analysis, reasoned negotiation, and respectful dialogue.

¹⁵Bipartisan Policy Center, “Public-Private Partnership (P3) Model State Legislation,” December 2015.

One key feature of the model legislation is the creation of an Office of Infrastructure Investment (“Office”), which reports to the Governor and is independent of other agencies and departments of the state. The Office should be headed by an Executive Director, appointed by the Governor for a fixed term, who has demonstrated knowledge, training, or experience in large-scale infrastructure projects. Among the duties and responsibilities of the Office are:

- Assisting responsible public entities with identifying projects, including opportunities for project aggregation, for which a public-private partnership may be appropriate;
- Providing technical assistance and expertise to responsible public entities on using public-private partnerships to develop or operate infrastructure projects (including analyzing their benefits and costs and the innovative financing options available to support them);
- Coordinating with responsible public entities on state environmental reviews and permitting for all qualifying projects subject to the model legislation;
- Promoting best practices, including standardized methodologies and processes; and
- Attracting private investment in infrastructure to the state.¹⁶

At the end of each fiscal year, the Executive Director should provide to the legislative committees having jurisdiction over transportation or infrastructure a report that:

- Identifies PPP projects that are expected to be soliciting bids within the next fiscal year; are in progress; were completed during the prior fiscal year; or were removed from consideration during the prior fiscal year; and
- Summarizes actions taken by the Office to fulfill its duties.

A copy of the annual report should be posted on the Office’s website.¹⁷

The model legislation envisions the establishment of a task force to make recommendations on a uniform process for the review, solicitation, evaluation, award, and delivery of public-private partnerships that would include:

- A process for accepting unsolicited proposals by a responsible public entity;
- A schedule for review of unsolicited proposals by the responsible public entity that includes public solicitation of additional proposals prior to entering into a contract for the project;
- Timeframes and requirements for public outreach prior to entering into a comprehensive agreement on a selected proposal, whether solicited or unsolicited; and
- Cost thresholds for qualifying projects, depending on type of project and type of responsible public entity.

¹⁶Ibid., 6.

¹⁷Ibid.

The task force would also be responsible for making recommendations to the governor and legislature on any changes deemed necessary to carry out the purposes of the model legislation.¹⁸

Under the model legislation, a responsible public entity would be permitted to request proposals from private entities for the development or operation of a qualifying project, or a private entity could request approval by the public entity of an unsolicited proposal. The public entity could charge a reasonable fee to cover its costs to process and review unsolicited proposals.¹⁹

Before entering into a contract or agreement to initiate a PPP project, the following must occur. First, the responsible public entity would be required to publicly issue a “finding of public interest” report that, at a minimum, includes:

- Benefits to the public;
- Advantages/disadvantages of developing or operating the qualifying project as a public-private partnership versus a traditional procurement;
- Funding sources and financing for the qualifying project;
- General reputation, qualifications, industry experience and financial capacity of the private entity;
- Compatibility of the project with regional infrastructure plans; and
- Other criteria that the responsible public entity deems appropriate.

Second, there must be a reasonable period for public comment. Third, the responsible public entity must notify affected jurisdictions by furnishing a copy of the (unsolicited) proposal to each affected jurisdiction and allow 60 days for written comments on the project’s potential impact or compatibility with local and regional budgets and infrastructure plans.²⁰

In addition to other terms stipulating the obligations of the parties, the contract or agreement between the public and private entities should include:

- Descriptions of which party will assume responsibility for specific project elements and when;
- How the parties will share management of the risks of the project;
- How the parties will share costs of development or operation of the project;
- How the parties will allocate financial responsibility for cost overruns;
- Any safeguards to mitigate additional costs or service disruptions to the public in the event of material default or cancellation of the agreement;
- Performance standards and any damages for nonperformance;
- Any performance incentives;
- Accounting and auditing standards to be used to evaluate work on the project;
- For a project that reverts to public ownership, the responsibility for reconstruction or renovations required for a qualifying project to meet all applicable government standards upon reversion to the state; and
- Any other terms and conditions agreed to mutually by the responsible public entity and private entity.²¹

¹⁸ Ibid., 6.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

Despite the onerous and burdensome processes established in sections 255.065(3), 287.057, and 334.30, Florida Statutes, there are examples of PPPs that have been successful, resulting in cost savings in the tens of millions of dollars and highway capacity improvements coming online years sooner than they would have under a traditional government procurement. Three such projects are the I-595 Corridor Roadway Improvements Project (Broward County), the Port of Miami Tunnel Project (Miami-Dade County), and the Fort Hamer Bridge (Manatee County).

I-595 Corridor Roadway Improvements Project

In response to limited financial resources, the Florida Department of Transportation (FDOT) entered into a \$1.3-1.8 billion, 35-year, Design-Build-Finance-Operate (DBFO) PPP agreement with I-595 Express, LLC, a consortium of private entities, to expand a 12-mile stretch of I-595 in Broward County (Figure 1). FDOT originally estimated that it would take the state up to 20 years to complete this project, given an estimated \$700 million funding shortfall.²²



Source: U.S. Department of Transportation

A key feature of this PPP is the use of a unique financial model that involves annual performance-based “availability payments” whereby the public entity makes regular payments to the private entity based on the availability and operation of the project.²³ The benefits of the project include cost savings (for both government and taxpayers); profitability (for I-595 Express, LLC); and a safe and functioning roadway completed in a much shorter period of time. The economic impacts of this PPP include the injection of nearly \$1 million per day into South Florida’s economy and the creation of approximately 30,000 jobs.²⁴

²²Brian Rowson, “Public Private Partnerships: The Future of Public Construction in Florida?,” Florida Bar Journal, Vol.86, No. 7, July/August 2012.

²³|*ibid.*

²⁴BMichael Turnbull, “Florida Signs \$1.2 Billion Construction Contract to Rebuild Interstate 595,” South Florida Sun-Sentinel, March 9, 2009; Michael Turnbull, “Interstate 595 Project to Create Jobs,” South FL Sun Sentinel, March 4, 2009.

Figure 1.



Under the comprehensive agreement, the private entity assumes all responsibility for the financing, construction, and operation of the roadway improvements, and for the operation of the toll roads. FDOT is not required to make any payments until the project is substantially complete — until then, the private entity bears all responsibility for funding the project and FDOT bears none of this risk. This funding arrangement is significant in that Florida taxpayers are protected from any cost overruns (which are absorbed by the private entity), and the arrangement provides tremendous motivation to complete the project on or ahead of schedule.

It was estimated that this PPP would complete the I-595 expansion about 15 years sooner than if the project was undertaken using only public funds. This would save the state an estimated \$275 million in construction costs that would have been incurred using the traditional Design-Bid-Build (DBB) method and would allow the private entity to realize an approximate 12 percent return on its investment.²⁵ The I-595 expansion was selected by the American Association of State Highway and Transportation Officials (AASHTO), AAA, and the U.S. Chamber of Commerce as the People's Choice award in the 2015 America's Transportation Awards competition.²⁶

²⁵Rowlson, *Supra*, see footnote 22.

²⁶American Association of State Highway and Transportation Officials, "Florida DOT Wins Top Prizes in America's Transportation Awards National Competition," News Release, September 27, 2015.

Port of Miami Tunnel

In 2009, the FDOT entered into a \$667 million, 35-year Design-Build-Finance-Operate-Maintain (DBFOM) PPP agreement with MAT Concessionaire LLC, a consortium of private interests, to construct two 4,200' tunnels connecting Watson Island and the Port of Miami roadway system underneath Government Cut (the main shipping channel in Biscayne Bay). The project also includes widening of the MacArthur Causeway Bridge, realigning State Road A1A and MacArthur Causeway eastbound lanes and the reconstruction of the Parrot Jungle Trail frontage road (Figure 2.).

Subcontractor Bouygues Civil Works Florida was responsible for the design and construction of the projects and subcontractor Transfield Services Infrastructure is responsible for the operation and maintenance.²⁷ Construction teams had to build the tunnel through a difficult system of limestone and coralline formations, creating the largest soft-ground-bored road tunnel in North America.²⁸ The project was completed in August 2014.



Source: U.S. Department of Transportation

The project is a 35-year concession agreement with a total estimated cost of \$668.5 million. FDOT will make “milestone” payments to MAT during the construction period, as contractual milestones are reached. Upon completion, FDOT will make availability payments, contingent upon lane availability and service quality. FDOT will pay for 50 percent of the capital costs (e.g., design and construction) and all of the operations and maintenance. Miami-Dade County and the City of Miami will pay the remaining 50 percent of the capital costs. At the end of the contract (October 2044), the tunnel will be returned to FDOT.²⁹ The Port of Miami Tunnel project was selected by the American Association of State Highway and Transportation Officials (AASHTO), AAA, and the U.S. Chamber of Commerce as the Grand Prize award winner in the 2015 America's Transportation Awards competition.³⁰

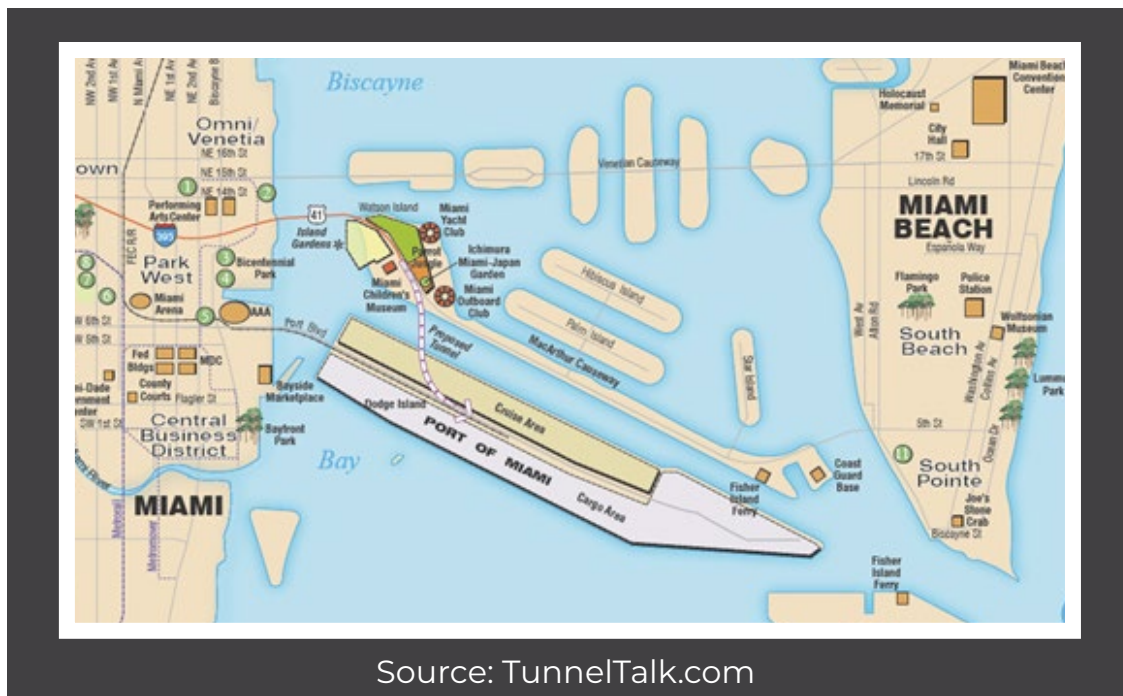
²⁷Port of Miami Tunnel, “Project Overview Fact Sheet,” 2014.

²⁸ASupra, American Association of State Highway and Transportation Officials, see footnote 26.

²⁹Port of Miami Tunnel, “Project Overview,” retrieved from <http://www.portofmiamitunnel.com/project-overview/project-overview-1/>, July 29, 2022.

³⁰American Association of State Highway and Transportation Officials, Supra, see footnote 26.

Figure 2.



Fort Hamer Bridge

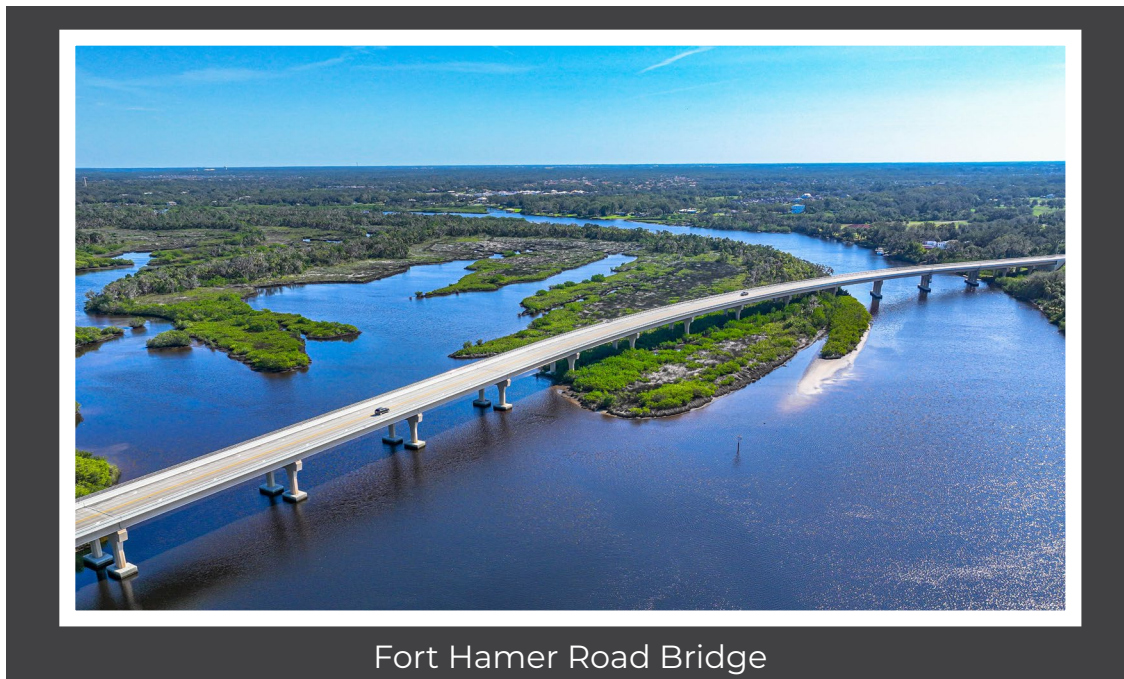
Initially started in 2015, this two-year project was commissioned by Manatee County at the urging of community developers who wanted a more accessible route between Parrish and Lakewood Ranch. Completed in 2017 at a cost of \$32 million (as compared to the original budget of \$92 million), the Fort Hamer Bridge is a 2,300-foot bridge that spans the Manatee River (including freshwater and tidally influenced wetlands) between Lakewood Ranch and Parrish. In addition to building the bridge, the project also included improvements to the roadway connecting the existing Upper Manatee River Road south of the river to the existing Fort Hamer Road north of the river (Figure 3).

Improvements to the Upper Manatee River Road included widening the existing shoulders, relocating existing roadside ditches, adding sidewalks, adding turn lanes at each intersection, and constructing utility adjustments on existing Upper Manatee River Road from the SR64 intersection south to the beginning of the new Fort Hamer Road Bridge.³¹ In addition, roadside ditches and sidewalks were relocated and utility adjustments were constructed on the existing Fort Hamer Road from Britt Road south to the end of the new Fort Hamer Road Bridge.³²

³¹Southland Holdings, "Fort Hamer Bridge Project," retrieved from <https://www.southlandholdings.com/services/fort-hamer-bridge-project/>, October 3, 2022

³²American Association of State Highway and Transportation Officials, "Florida DOT Wins Top Prizes in America's Transportation Awards National Competition," News Release, September 27, 2015.

Figure 3.



The project crosses freshwater and tidally influenced wetlands, which required the partnership to modify the fashion in which the bridge was built to avoid dredging in the environmentally sensitive Manatee River. After consideration of several possible alignments, the alignment selected was the one with the fewest environmental impacts. The public-private partnership worked closely with state and federal agencies to mitigate any environmental impacts in accordance with state and federal permitting requirements. The United South and Eastern Tribes (USET) wanted to protect Fort Hamer, a site they believed to contain historic artifacts left by Native American tribes during the Second Seminole War (1835-1842), and also a site they believed to be part of the "Trail of Tears."³³ After negotiating with the state and federal agencies and the Native American tribes, the public-private partnership was able to bid the project on behalf of Manatee County resulting in a price that was about \$60 million (two-thirds) less than the original project budget.

The Fort Hamer Bridge was ranked No. 7 on [Roads & Bridges](#) Top 10 Bridges for 2017. This list includes bridges constructed in North America and rates bridges based on project challenges, impact to the region, and scope of work.³⁴ The project was also awarded "Highway/Bridge Best Project" in [ENR](#) as part of *ENR Southeast's 2018 Best Projects*.³⁵

³³The Trail of Tears was an [ethnic cleansing](#) and [forced displacement](#) of people of the "[Five Civilized Tribes](#)" between 1830 and 1850 by the [U.S. government](#). As part of the [Indian removal](#), members of the [Seminole](#) and other tribal nations were forcibly removed from their ancestral homelands in the [Southeastern U.S.](#) to newly designated [Indian Territory](#) west of the [Mississippi River](#).

³⁴Roads and Bridges, "No. 7 – Fort Hamer Bridge," retrieved from <https://www.roadbridges.com/awards/article/10650237/no-7-fort-hamer-bridge>, October 3, 2022.

³⁵Engineering News-Record, "Highway/Bridge Best Project: Fort Hamer Bridge," ENR Southeast's 2018 Best Projects, retrieved from <https://www.enr.com/articles/45668-highwaybridge-best-project-fort-hamer-bridge>, October 3, 2022.

PUBLIC-PUBLIC PARTNERSHIPS

A public-public partnership is simply a collaboration between two or more public entities to provide or improve public services. Unlike PPPs, neither partner in a PUP expects to earn a profit from the collaboration — The goal is to improve efficiency and lower the costs. Although Florida has no specific law governing PUPs (as there is with PPPs), the Florida Interlocal Cooperation Act of 1969³⁶ is designed to permit local governmental units and public agencies to make the most efficient use of their powers through cooperation with other localities and public agencies. The term “public agency” is defined to include (among others) political subdivisions and single and multi-purpose special districts, and single and multi-purpose special authorities.³⁷

There is no law in Florida requiring public entities to award contracts with other public entities through competitive bids. Absent a specific provision in statute or ordinance, Florida public entities are under no obligation to establish a competitive bidding procedure. This permits two or more public entities to contract directly with each other, or in any manner that is not “arbitrary or capricious.”

This has opened the door for developers to utilize some creative solutions, such as the creation of community development districts (CDDs), as a way to provide much-needed public infrastructure and services. A community development district (CDD) is an independent local unit of special purpose government created under Florida law³⁸ to serve the specific needs of the community. The main power of a CDD is to “plan, finance, construct, operate, and maintain community-wide infrastructure and services specifically for the benefit of its residents” (instead of existing taxpayers paying the burden of growth).³⁹

CDDs were originally designed for use by municipalities to stimulate redevelopment and economic growth; however, the concept has been enthusiastically embraced and adopted by the private sector. Before the advent of CDDs, developers would traditionally borrow money from a bank sufficient to design a new community; obtain required regulatory permits and approvals; and construct infrastructure (e.g., roads, sanitary sewer systems, etc.) and recreational amenities (e.g., parks, pools, clubhouses, etc.). These costs would be built into the price of the lots and the developers would then pay down their loan as they sold the lots to builders or homebuyers.⁴⁰

³⁶§163.01, Fla. Stat.

³⁷§163.01(3)(b), Fla. Stat.

³⁸Chapter 190, Florida Statutes.

³⁹CFM Community Development District, “Community Development Districts – What You Should Know,” retrieved from <https://www.cfmccd.org/questions/>, July 12, 2022.

⁴⁰René Rutan, “What Are Community Development Districts (“CDDs”) and How Do They Work?,” Attorneys’ Real Estate Councils of Florida, Inc., retrieved from <https://www.flarecs.com/resources/blog/185-what-are-community-development-districts-cdds-and-how-do-they-work>, October 25, 2022.

Today, developers can create a CDD⁴¹ and borrow the money by issuing bonds and then selling the bonds to investors. The CDD then uses the money raised through bond sales to fund the construction of the infrastructure and amenities. CDDs typically issue special assessment revenue bonds to finance community infrastructure. Property owners within the CDD are assessed a capital debt service assessment annually to pay back those bonds. Property owners are also assessed annually for facility maintenance and for the administration of the CDD. These assessments appear as a non-ad valorem assessment on the property owner's annual property tax bill. Residents within a CDD can expect to receive the following benefits:

- Consistently high levels of public facilities and services managed and financed through self-imposed fees and assessments;
- Assurance that community development facilities and services will be completed concurrently with other parts of the development;
- The ability to choose the Board of Supervisors, which is able to determine the type, quality and expense of CDD facilities and services;
- The ability to borrow money to finance facilities and services at lower, tax-exempt, interest rates, like cities and counties; and
- The ability to set the standards of quality, which are then managed by the CDD.⁴²

CDDs are popular with developers because the developers do not have to borrow money, and they are popular with local governments because they provide more property tax revenue and a growing tax base without increased government spending.⁴³ It is easy to understand why there are more than 800 CDDs in Florida.⁴⁴

One of the major tenets of Sarasota 2050, a 50-year comprehensive land use plan to guide and manage future growth in Sarasota County, is that new developments, not current taxpayers, would pay for the construction and maintenance of public infrastructure. It is expressly clear and understood in Policy VOS 2.10 (Financial Strategy for Infrastructure Development and Maintenance) that CDDs are the “preferred financing technique for infrastructure needs.” It seems appropriate then to look at how Sarasota County and the CDDs within the county are working together to help meet the demand for public infrastructure and facilities.

⁴¹CDDs of less than 1,000 acres can be created by cities and counties; however, CDDs larger than 1,000 acres can only be created by action of the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission (FLWAC).

⁴²CFM Community Development District, “Community Development Districts – What You Should Know,” retrieved from <https://www.agc.org/public-private-partnership-p3-basics>, July 12, 2022.

⁴³Rutan, Supra, see footnote 40. “What Are Community Development Districts (“CDDs”) and How Do They Work?,” Attorneys’ Real Estate Councils of Florida, Inc., retrieved from <https://www.flarecs.com/resources/blog/185-what-are-community-development-districts-cdds-and-how-do-they-work>, October 25, 2022.

⁴⁴Florida Department of Economic Opportunity, “Special District Accountability Program,” Community Development Spreadsheet, retrieved from <http://specialdistrictreports.floridajobs.org/webreports/createspreadsheet.aspx>, October 24, 2022.

WHY ARE THERE NOT MORE PPP and PUP PROJECTS?

The infrastructure-related PPPs and PUPs discussed in the previous sections have been extremely successful, resulting in cost savings in the tens of millions of dollars and highway capacity improvements coming online years sooner than they would have under a traditional government procurement. By shifting responsibility for the construction, long-term operation, and/or maintenance to the private entity, these projects provide a powerful incentive to ensure quality construction, since the private partner will share the financial risk, thereby enabling the public partner to focus on the outcome-based public value they are trying to create.⁴⁵ These projects also foster job creation, economic development, and competition.

Why then, are there not more PPPs and PUPs? One reason is the onerous and burdensome requirements contained in Florida law. Florida TaxWatch believes that PPPs and PUPs can go a long way toward helping meet future demands for infrastructure; however, their usefulness is severely limited by the current slow pace of government procurement. Another reason is the absence of incentives for private entities that submit an unsolicited proposal, who then have no advantage over competing bidders throughout the remainder of the process. The three most common incentive mechanisms available to reward private entities that submit an unsolicited proposal are:

- **Bonuses** — the public entity may provide a bonus, usually in the form of additional points during the evaluation of bids. Keeping the bonus small helps to encourage more equal bidding conditions and maximize the value of money.
- **Automatic Short Listing** — the private entity is automatically included in either the initial or final bidding stage. This, of course, is contingent upon the private entity's proposal meeting all the qualifications criteria.
- **Right to match** — the private entity submitting the unsolicited proposal has the right to match a more competitive bid to win the contract. Competing bidders have little incentive to expend resources to prepare a bid if their bid can be matched.⁴⁶

⁴⁵Deloitte Research, "Closing America's Infrastructure Gap: The Role of Public-Private Partnerships."

⁴⁶World Bank Group, "Policy Guidelines for Managing Unsolicited Proposals in Infrastructure Projects, Volume II: Guidelines for the Development of a Policy for Managing Unsolicited Proposals in Infrastructure Projects."

CONCLUSIONS and RECOMMENDATIONS

On the one hand, Florida’s procurement system is designed to ensure that public agencies procure goods and services in a manner that ensures fair, open, and transparent competition. A competitive procurement system helps ensure that goods and services procured are more cost effective; protects the public entity, the taxpayers, and the bidders; and avoids the appearance of favoritism in awarding contracts. Florida TaxWatch considers this to be a good thing.

On the other hand, the Florida Legislature has acknowledged that there is a public need for the construction or upgrade of facilities that are used predominantly for public purposes, and that it is in the public’s interest to provide for the construction or upgrade of such facilities. The legislature has also acknowledged that such public need may not be satisfied by existing procurement methods.⁴⁷ To help meet this need, the legislature encourages investment by private entities and affording the greatest possible flexibility to public and private entities that are contracting for the provision of public services. Florida TaxWatch also considers this to be a good thing.

Given these two countervailing public goods, the public policy question becomes “which is the better of the two goods?” As Florida continues to grow and develop, the demands placed on public facilities and services will grow accordingly. These demands will be exacerbated by Florida’s changing climate, rising sea levels, and more frequent and more intense coastal storms.

For qualifying public projects that are initiated by a public entity and funded entirely with public moneys, Florida TaxWatch has no objection to the public entity contracting with the vendor whose proposal is determined to be the most advantageous to the public entity, considering the price and other criteria set forth in the solicitation. Fair and open competition in pursuit of the lowest reasonable cost is appropriate when the public and the taxpayers are footing the total bill, but when a private entity is sharing the risk, including the financial risk, the lowest cost is not as important as a lower cost, coupled with a much faster schedule for delivery and the provision of other benefits to the public (e.g., job creation).

Government procurement moves slowly and Florida TaxWatch thinks every effort should be made to “fast track” infrastructure proposals where a private entity is sharing the financial risks for the project and the project has been shown to be in the public interest. For these projects, Florida TaxWatch supports the idea of a trade-off, where the project would be allowed to go forward sooner and with minimal obstacles, but not at the expense of transparency, accountability, and taxpayer value. To accomplish this, Florida TaxWatch urges the Florida Legislature to consider the following recommendations.

⁴⁷§255.065(2), Fla. Stat.



1. The legislature should make clear its expectations regarding the percentage of the state's multi-billion-dollar annual capital budget to be expended, and the number of additional jobs to be created, through the use of PPP and PUP projects annually.
2. The legislature should amend chapters Chapter 255 and 334, Florida Statutes, to eliminate the requirement that public entities, after receipt of an unsolicited proposal, continue to solicit and accept other proposals for the same project.
3. The legislature should amend chapters Chapter 255 and 334, Florida Statutes, to allow an unsolicited proposal for a qualifying project submitted by a private entity to go forward:
 - After review of the detailed project plan by the responsible public entity, other affected public entities, and the general public;
 - After a determination by the responsible public entity that the proposal provides a needed public infrastructure upgrade at a lower cost, with a faster schedule for delivery, as well as other public benefits (e.g., job creation, etc.);
 - After holding a duly-noticed public meeting at which the responsible public entity issues a "finding of public interest" report that, at a minimum, includes:
 - Benefits to the public;
 - Advantages/disadvantages of developing or operating the qualifying project as a public-private partnership versus a traditional procurement;
 - Funding sources and financing for the qualifying project;
 - General reputation, qualifications, industry experience and financial capacity of the private entity;
 - Compatibility of the project with regional infrastructure plans; and
 - Other criteria that the responsible public entity deems appropriate.
4. As an alternative, the legislature should amend chapters 255 and 334, Florida Statutes, to provide incentives to private entities that submit an unsolicited proposal that meets all requirements and who then have no advantage over competing bidders throughout the remainder of the process. These incentives may include, but be limited to, bonuses (additional points during bid evaluation); automatic short listing; and the right to match a more competitive bid.

5. The legislature should create an Office of Infrastructure Investment that reports to the Governor and is independent of other agencies and departments of the state. The Office would provide technical assistance and expertise to responsible public entities on using public-private partnerships to develop or operate infrastructure projects (including analyzing their benefits and costs and the innovative financing options available to support them). At the end of each fiscal year, the Office should provide to the legislative committees having jurisdiction over transportation or infrastructure a report that:
- Identifies PPP projects that are expected to be soliciting bids within the next fiscal year; are in progress; were completed during the prior fiscal year; or were removed from consideration during the prior fiscal year; and
 - Summarizes actions taken by the Office to fulfill its duties.
6. The legislature should create a task force to support the Office of Infrastructure Investment and make recommendations on a uniform process for the review, solicitation, evaluation, award, and delivery of public-private partnerships.

This page intentionally left blank for printing purposes.

ABOUT FLORIDA TAXWATCH

As an independent, nonpartisan, nonprofit taxpayer research institute and government watchdog, it is the mission of Florida TaxWatch to provide the citizens of Florida and public officials with high quality, independent research and analysis of issues related to state and local government taxation, expenditures, policies, and programs. Florida TaxWatch works to improve the productivity and accountability of Florida government. Its research recommends productivity enhancements and explains the statewide impact of fiscal and economic policies and practices on citizens and businesses.

Florida TaxWatch is supported by voluntary, tax-deductible donations and private grants. Donations provide a solid, lasting foundation that has enabled Florida TaxWatch to bring about a more effective, responsive government that is accountable to the citizens it serves since 1979.

FLORIDA TAXWATCH RESEARCH LEADERSHIP

Dominic M. Calabro	President & CEO
Tony Carvajal	Executive VP
Robert G. Nave	Sr. VP of Research
Kurt Wenner	Sr. VP of Research
Steve Evans	Senior Advisor

FLORIDA TAXWATCH VOLUNTEER LEADERSHIP

Piyush Patel	Chairman
James Repp	Chairman-Elect
Marva Brown Johnson	Treasurer
David Casey	Secretary
US Senator George LeMieux	Imm. Past Chairman

RESEARCH PROJECT TEAM

Tony Carvajal	Executive Vice President	
Robert G. Nave	Sr. Vice President of Research	<i>Lead Researcher & Author</i>

All Florida TaxWatch research done under the direction of Dominic M. Calabro, President, CEO, Publisher & Editor.

The findings in this Report are based on the data and sources referenced. Florida TaxWatch research is conducted with every reasonable attempt to verify the accuracy and reliability of the data, and the calculations and assumptions made herein. Please feel free to contact us if you feel that this paper is factually inaccurate.

The research findings and recommendations of Florida TaxWatch do not necessarily reflect the view of its members, staff, Executive Committee, or Board of Trustees; and are not influenced by the individuals or organizations who may have sponsored the research.

Florida TaxWatch

Stay Informed



floridataxwatch.org



[@floridataxwatch](https://www.facebook.com/floridataxwatch)



[@floridataxwatch](https://twitter.com/floridataxwatch)



[@fltaxwatch](https://www.youtube.com/channel/UC...)

Florida TaxWatch
106 N. Bronough St.
Tallahassee, FL 32301

o: 850.222.5052
f: 850.222.7476

Copyright © 2023
Florida TaxWatch
Research Institute, Inc.
All Rights Reserved