

1 A bill to be entitled

2 An act relating to public-private partnerships;
3 creating s. 1013.505, F.S.; providing for partnerships
4 between state universities and private entities;
5 providing definitions; providing legislative findings
6 and intent relating to the construction or improvement
7 by private entities of facilities or projects used
8 predominantly for a public purpose; providing
9 procurement procedures for a state university board of
10 trustees, including proposals for a qualifying project
11 and a comprehensive agreement for partnership
12 transactions; providing requirements for project
13 approval; providing project qualifications and
14 process; providing requirements for interim and
15 comprehensive agreements between a board of trustees
16 and a private entity; providing for use fees;
17 providing for various financing sources for projects;
18 providing powers and duties of private entities;
19 providing for expiration or termination of a
20 comprehensive agreement; providing for the
21 applicability of sovereign immunity for boards of
22 trustees with respect to qualified projects; providing
23 for construction of the act; providing an effective
24 date.

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

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Section 1. Section 1013.505, Florida Statutes, is created to read:

1013.505 Public-private partnerships; state universities and private entities.-

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

(a) "Board" means a state university board of trustees.

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

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

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

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

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

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

(h) "Proposal" means a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixing

53 costs, payment schedules, financing, deliverables, and project
 54 schedule are defined.

55 (i) "Qualifying project" means a facility or project that
 56 serves a public educational, research, housing, parking,
 57 infrastructure, recreational, or cultural purpose that is used
 58 or will be used by a state university or an improvement,
 59 including equipment, of a facility that will be principally used
 60 by a state university in serving the university's core mission.

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

68 (k) "Service contract" means a contract between a board
 69 and the private entity which defines the terms of the services
 70 to be provided with respect to a qualifying project.

71 (2) LEGISLATIVE FINDINGS AND INTENT.-

72 (a)1. The Legislature finds that there is a public need
 73 for the construction or upgrade of facilities that are used
 74 predominantly for public purposes and that it is in the public's
 75 interest to provide for the construction or upgrade of such
 76 facilities.

77 2. The Legislature also finds that:

78 a. There is a public need for timely and cost-effective

79 acquisition, design, construction, improvement, renovation,
80 expansion, equipping, maintenance, operation, implementation, or
81 installation of projects serving a public purpose, including
82 educational and auxiliary facilities and projects within the
83 state which serve a public need and purpose, and that such
84 public need may not be wholly satisfied by existing procurement
85 methods.

86 b. There are inadequate resources to develop new
87 educational and auxiliary facilities and projects for the
88 benefit of residents of this state, and that a public-private
89 partnership has demonstrated that it can meet the needs by
90 improving the schedule for delivery, lowering the cost, and
91 providing other benefits to the public.

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

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

98 (b) It is the intent of the Legislature to encourage
99 investment in the state by private entities; to facilitate
100 various bond financing mechanisms, private capital, and other
101 funding sources for the development and operation of qualifying
102 projects, including expansion and acceleration of such financing
103 to meet the public need; and to provide the greatest possible
104 flexibility to public and private entities contracting for the

105 provision of public services.

106 (3) PROCUREMENT PROCEDURES.—A board may receive
107 unsolicited proposals or may solicit proposals for qualifying
108 projects and may thereafter enter into an agreement with a
109 private entity, or a consortium of private entities, to build,
110 upgrade, operate, own, or finance facilities. A copy of all
111 proposals received by a board shall be submitted to the Board of
112 Governors.

113 (a) A board may establish a reasonable application fee for
114 the submission of an unsolicited proposal under this section.
115 The fee must be sufficient to pay the costs of evaluating the
116 proposal. A board may engage the services of a private
117 consultant to assist in the evaluation.

118 (b) A board may request a proposal from private entities
119 for a public-private project or, if the board receives an
120 unsolicited proposal for a public-private project and the board
121 intends to enter into a comprehensive agreement for the project
122 described in such unsolicited proposal, the board shall publish
123 notice in a newspaper of general circulation at least once a
124 week for 2 weeks stating that the board has received a proposal
125 and will accept other proposals for the same project. The
126 timeframe within which the board may accept other proposals
127 shall be determined on a project-by-project basis based upon the
128 complexity of the project and the public benefit to be gained by
129 allowing a longer or shorter period of time within which other
130 proposals may be received; however, the timeframe for allowing

131 other proposals must be at least 21 days, but no more than 120
132 days, after the initial date of publication.

133 (c) A board may enter into a comprehensive agreement
134 subject to approval by the Board of Governors and pursuant to
135 guidelines adopted by the Board of Governors for public-private
136 partnership transactions.

137 (d) In considering proposals for a public-private
138 partnership, the board must determine that the proposed project:

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

140 2. Is for a facility that is owned by the board or for a
141 facility for which ownership will be conveyed to the board.

142 3. Has adequate safeguards in place to ensure that
143 additional costs or service disruptions are not imposed on the
144 public in the event of material default or cancellation of the
145 agreement by the board.

146 4. Has adequate safeguards in place to ensure that the
147 board or private entity has the opportunity to add capacity to
148 the proposed project or other facilities serving similar
149 predominantly public purposes.

150 5. Will be owned by the board upon completion or
151 termination of the agreement and upon payment of the amounts
152 financed.

153 6. Is supported by a reasonable finance plan that is
154 consistent with subsection (9); the project cost; revenues by
155 source; available financing; major assumptions; internal rate of
156 return on private investments, if governmental funds are assumed

157 in order to deliver a cost-feasible project; and a total cash-
158 flow analysis beginning with the implementation of the project
159 and extending for the term of the agreement.

160 (e) In considering an unsolicited proposal, the board may
161 require from the private entity a technical study prepared by a
162 nationally recognized expert with experience in preparing
163 analyses for bond rating agencies. In evaluating the technical
164 study, the board may rely upon internal staff reports prepared
165 by personnel familiar with the operation of similar facilities
166 or the advice of external advisors or consultants who have
167 relevant experience.

168 (4) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal
169 from a private entity for approval of a qualifying project must
170 be accompanied by the following material and information, unless
171 waived by the board:

172 (a) A description of the qualifying project, including the
173 conceptual design of the facilities or a conceptual plan for the
174 provision of services, and a schedule for the initiation and
175 completion of the qualifying project.

176 (b) If applicable, a description of the method by which
177 the private entity proposes to secure the necessary property
178 interests that are required for the qualifying project.

179 (c) A description of the private entity's general plans
180 for financing the qualifying project, including the sources of
181 the private entity's funds and the identity of a dedicated
182 revenue source or proposed debt or equity investment on behalf

183 of the private entity.

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

186 (e) The proposed user fees, lease payments, or other
187 service payments over the term of a comprehensive agreement, and
188 the methodology for and circumstances that would allow changes
189 to the user fees, lease payments, and other service payments
190 over time.

191 (f) Additional material or information that the board
192 reasonably requests.

193 (5) PROJECT QUALIFICATION AND PROCESS.—

194 (a) The private entity must meet the minimum standards
195 contained in the board's regulations or guidelines for
196 qualifying professional services and contracts for traditional
197 procurement projects.

198 (b) The board must:

199 1. Ensure that provision is made for the private entity's
200 performance and payment of subcontractors, including, but not
201 limited to, surety bonds, letters of credit, parent company
202 guarantees, and lender and equity partner guarantees. For the
203 components of the qualifying project which involve construction
204 performance and payment, bonds are required and are subject to
205 the recordation, notice, suit limitation, and other requirements
206 of s. 255.05.

207 2. Ensure the most efficient pricing of the security
208 package that provides for the performance and payment of

209 subcontractors.

210 3. Ensure that provision is made for the transfer of the
211 private entity's obligations if the comprehensive agreement is
212 terminated or a material default occurs.

213 (c) After the public notification period has expired in
214 the case of an unsolicited proposal, the board shall rank the
215 proposals received in order of preference. In ranking the
216 proposals, the board may consider factors that include, but are
217 not limited to, professional qualifications, general business
218 terms, innovative design techniques or cost-reduction terms, and
219 finance plans. The board may then begin negotiations for a
220 comprehensive agreement with the highest-ranked firm. If the
221 board is not satisfied with the results of the negotiations, the
222 board may terminate negotiations with the proposer and negotiate
223 with the second-ranked or subsequent-ranked firms, in the order
224 consistent with this procedure. If only one proposal is
225 received, the board may negotiate in good faith, and if the
226 board is not satisfied with the results of the negotiations, the
227 board may terminate negotiations with the proposer.

228 Notwithstanding this paragraph, the board may reject all
229 proposals at any point in the process until a contract with the
230 proposer is executed.

231 (d) The board shall perform an independent analysis of the
232 proposed public-private partnership which demonstrates the cost-
233 effectiveness and overall public benefit before the procurement
234 process is initiated or before the contract is awarded.

235 (e) The board may approve the development or operation of
236 a qualifying project, or the design or equipping of a qualifying
237 project that is developed or operated, if:

238 1. There is a public need for or benefit derived from a
239 project of the type that the private entity proposes as the
240 qualifying project, and the project is included in the
241 university's master plan.

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

244 3. The private entity's plans will result in the timely
245 acquisition, design, construction, improvement, renovation,
246 expansion, equipping, maintenance, or operation of the
247 qualifying project.

248 (f) The board may charge a reasonable fee to cover the
249 costs of processing, reviewing, and evaluating the request,
250 including, but not limited to, reasonable attorney fees and fees
251 for financial and technical advisors or consultants and for
252 other necessary advisors or consultants.

253 (g) Upon approval of a qualifying project, the board shall
254 establish a date for the commencement of activities related to
255 the qualifying project. The board may extend the commencement
256 date.

257 (h) Approval of a qualifying project by the board is
258 subject to entering into a comprehensive agreement with the
259 private entity.

260 (6) INTERIM AGREEMENT.—Before or in connection with the

261 negotiation of a comprehensive agreement, the board may enter
262 into an interim agreement with the private entity proposing the
263 development or operation of the qualifying project. An interim
264 agreement does not obligate the board to enter into a
265 comprehensive agreement. The interim agreement is discretionary
266 with the parties and is not required on a qualifying project for
267 which the parties may proceed directly to a comprehensive
268 agreement without the need for an interim agreement. An interim
269 agreement must be limited to provisions that:

270 (a) Authorize the private entity to commence activities
271 for which it may be compensated related to the proposed
272 qualifying project, including, but not limited to, project
273 planning and development, design, environmental analysis and
274 mitigation, survey, other activities concerning any part of the
275 proposed qualifying project, and ascertaining the availability
276 of financing for the proposed facility or facilities.

277 (b) Establish the process and timing of the negotiation of
278 the comprehensive agreement.

279 (c) Contain such other provisions related to an aspect of
280 the development or operation of a qualifying project that the
281 board and the private entity deem appropriate.

282 (7) COMPREHENSIVE AGREEMENT.—

283 (a) Before developing or operating the qualifying project,
284 the private entity must enter into a comprehensive agreement
285 with the board. The comprehensive agreement must provide for:

286 1. Delivery of performance and payment bonds, letters of

287 credit, or other security acceptable to the board in connection
288 with the development or operation of the qualifying project in
289 the form and amount satisfactory to the board. For the
290 components of the qualifying project which involve construction,
291 the form and amount of the bonds must comply with s. 255.05.

292 2. Review of the design for the qualifying project by the
293 board and, if the design conforms to standards acceptable to the
294 board, the approval of the board. This subparagraph does not
295 require the private entity to complete the design of the
296 qualifying project before the execution of the comprehensive
297 agreement.

298 3. Inspection of the qualifying project by the board to
299 ensure that the private entity's activities are acceptable to
300 the board in accordance with the comprehensive agreement.

301 4. Maintenance of a policy of public liability insurance,
302 a copy of which must be filed with the board and accompanied by
303 proofs of coverage, or self-insurance, each in the form and
304 amount satisfactory to the board and reasonably sufficient to
305 ensure coverage of tort liability to the public and employees
306 and to enable the continued operation of the qualifying project.

307 5. Monitoring by the board of the maintenance practices to
308 be performed by the private entity to ensure that the qualifying
309 project is properly maintained.

310 6. Periodic filing by the private entity of the
311 appropriate financial statements that pertain to the qualifying
312 project.

313 7. Procedures that govern the rights and responsibilities
314 of the board and the private entity in the course of the
315 construction and operation of the qualifying project and in the
316 event of the termination of the comprehensive agreement or a
317 material default by the private entity. The procedures must
318 include conditions that govern the assumption of the duties and
319 responsibilities of the private entity by an entity that funded,
320 in whole or part, the qualifying project or by the board, and
321 must provide for the transfer or purchase of property or other
322 interests of the private entity by the board.

323 8. Fees, lease payments, or service payments. In
324 negotiating user fees, the fees must be the same for persons
325 using the facility under like conditions and must not materially
326 discourage use of the qualifying project. The execution of the
327 comprehensive agreement or a subsequent amendment is conclusive
328 evidence that the fees, lease payments, or service payments
329 provided for in the comprehensive agreement comply with this
330 section. Fees or lease payments established in the comprehensive
331 agreement as a source of revenue may be in addition to, or in
332 lieu of, service payments.

333 9. Duties of the private entity, including the terms and
334 conditions that the board determines serve the public purpose of
335 this section.

336 (b) The comprehensive agreement may include:

337 1. An agreement by the board to make grants or loans to
338 the private entity from amounts received from federal, state, or

339 local government or an agency or instrumentality thereof, or
 340 private donors.

341 2. A provision under which each entity agrees to provide
 342 notice of default and cure rights for the benefit of the other
 343 entity, including, but not limited to, a provision regarding
 344 unavoidable delays.

345 3. A provision that terminates the authority and duties of
 346 the private entity under this section and dedicates the
 347 qualifying project to the board.

348 (8) FEES.—An agreement entered into pursuant to this
 349 section may authorize the private entity to impose fees to
 350 members of the public for the use of the facility. The following
 351 provisions apply to the agreement:

352 (a) The board may develop new facilities or increase
 353 capacity in existing facilities through agreements with public-
 354 private partnerships.

355 (b) The public-private partnership agreement must ensure
 356 that the facility is properly operated, maintained, or improved
 357 in accordance with standards set forth in the comprehensive
 358 agreement.

359 (c) The board may lease new facilities or existing fee-
 360 for-use facilities through a public-private partnership
 361 agreement.

362 (d) All revenues must be regulated by the board pursuant
 363 to the comprehensive agreement.

364 (e) A negotiated portion of revenues from fee-generating

365 uses must be returned to the board over the life of the
366 agreement.

367 (9) FINANCING.—

368 (a) A private entity may enter into a private-source
369 financing agreement between financing sources and the private
370 entity. A financing agreement and any liens on the property or
371 facility must be paid in full at the applicable closing that
372 transfers ownership or operation of the facility to the board at
373 the conclusion of the term of the comprehensive agreement.

374 (b) The board may use innovative finance techniques
375 associated with a public-private partnership under this section,
376 including, but not limited to, federal loans as provided in
377 Titles 23 and 49 C.F.R., commercial bank loans, and hedges
378 against inflation from commercial banks or other private
379 sources. In addition, the board may provide its own capital or
380 operating budget to support a qualifying project. The budget may
381 be from any legally permissible funding sources of the board,
382 including the proceeds of debt issuances. A financing agreement
383 may not subject the board's facility to liens in violation of s.
384 11.066(5).

385 (10) POWERS AND DUTIES OF THE PRIVATE ENTITY.—

386 (a) The private entity shall:

387 1. Develop or operate the qualifying project in a manner
388 that is acceptable to the board in accordance with the
389 provisions of the comprehensive agreement.

390 2. Maintain, or provide by contract for the maintenance or

391 improvement of, the qualifying project if required by the
392 comprehensive agreement.

393 3. Cooperate with the board in making best efforts to
394 establish interconnection between the qualifying project and any
395 other facility or infrastructure as requested by the board in
396 accordance with the provisions of the comprehensive agreement.

397 4. Comply with the comprehensive agreement and a lease or
398 service contract.

399 (b) Each private facility that is constructed pursuant to
400 this section must comply with the requirements of federal,
401 state, and local laws; state, regional, and local comprehensive
402 plans; the board's rules, regulations, procedures, and standards
403 for facilities; and such other conditions that the board
404 determines to be in the public's best interest and that are
405 included in the comprehensive agreement.

406 (c) The board may provide services to the private entity.
407 An agreement for maintenance and other services entered into
408 pursuant to this section must provide for full reimbursement for
409 services rendered for qualifying projects.

410 (d) A private entity of a qualifying project may provide
411 additional services for the qualifying project to the public or
412 to other private entities if the provision of additional
413 services does not impair the private entity's ability to meet
414 its commitments to the board pursuant to the comprehensive
415 agreement.

416 (11) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the

417 expiration or termination of a comprehensive agreement, the
418 board may use revenues from the qualifying project to pay
419 current operation and maintenance costs of the qualifying
420 project. If the private entity materially defaults under the
421 comprehensive agreement, the compensation that is otherwise due
422 to the private entity is payable to satisfy all financial
423 obligations to investors and lenders on the qualifying project
424 in the same way that is provided in the comprehensive agreement
425 or any other agreement involving the qualifying project, if the
426 costs of operating and maintaining the qualifying project are
427 paid in the normal course. Revenues in excess of the costs for
428 operation and maintenance costs may be paid to the investors and
429 lenders to satisfy payment obligations under their respective
430 agreements. A board may terminate with cause and without
431 prejudice a comprehensive agreement and may exercise other
432 rights or remedies that may be available to it in accordance
433 with the provisions of the comprehensive agreement. The full
434 faith and credit of the board may not be pledged to secure the
435 financing of the private entity. The assumption of the
436 development or operation of the qualifying project does not
437 obligate the board to pay an obligation of the private entity
438 from sources other than revenues from the qualifying project
439 unless stated otherwise in the comprehensive agreement.

440 (12) SOVEREIGN IMMUNITY.—This section does not waive the
441 sovereign immunity of a board, or an officer or employee
442 thereof, with respect to participation in, or approval of, any

443 part of a qualifying project or its operation, including, but
444 not limited to, interconnection of the qualifying project with
445 any other infrastructure or project.

446 (13) CONSTRUCTION.—This section shall be liberally
447 construed to effectuate the purposes of this section. This
448 section shall be construed as cumulative and supplemental to any
449 other authority or power vested in or exercised by a board. This
450 section does not affect an agreement or existing relationship
451 with a supporting organization involving a board in effect as of
452 January 1, 2014.

453 (a) Except as otherwise provided in this section, this
454 section does not amend existing laws by granting additional
455 powers to, or further restricting, a board from regulating and
456 entering into cooperative arrangements with the private sector
457 for the planning, construction, or operation of a facility.

458 (b) This section does not waive any requirement of s.
459 1013.45.

460 Section 2. This act shall take effect July 1, 2014.