



490536

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2014	.	
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	.	

The Committee on Community Affairs (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

1013.505 Public-Private Partnerships; state universities.-

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

(a) "Debt" means bonds, including revenue bonds issued
pursuant to s. 11(d), Art. VII of the State Constitution, loans,



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11 promissory notes, lease-purchase agreements, certificates of
12 participation, installment sales, leases, or any other financing
13 mechanism or financial arrangement, whether or not a debt for
14 legal purposes, for financing or refinancing for or on behalf of
15 a state university or a direct-support organization or for the
16 acquisition, construction, improvement, or purchase of capital
17 outlay projects.

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

19 (c) "Comprehensive agreement" or "agreement" means an
20 agreement between a state university or a direct-support
21 organization and a private entity which permits the private
22 entity to assume financial and administrative responsibility for
23 the acquisition, construction, reconstruction, improvement,
24 purchase, management, or operation of a project of, or for the
25 benefit of, the state university or a direct-support
26 organization. Additionally, a public-private partnership
27 agreement may also provide for a state university or direct-
28 support organization to transfer to a private entity the
29 operation of a revenue-producing project to which the state
30 university or direct-support organization holds title, in
31 exchange for either a payment or payments to the state
32 university or direct-support organization or the construction of
33 a project to benefit the state university or direct-support
34 organization.

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

37 (e) "Direct-support organization" means an organization
38 created pursuant to s. 1004.28 or any entity specifically
39 established to incur debt.



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

43 (g) "Lease payment" means any form of payment, including a
44 land lease, by a board or direct-support organization to the
45 private entity of a qualifying project for the use of the
46 project.

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

50 (i) "Operate" means to finance, maintain, improve, equip,
51 modify, or repair.

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

56 (k) "Proposal" means a plan for a qualifying project with
57 detail beyond a conceptual level for which terms such as fixing
58 costs, payment schedules, financing, deliverables, and project
59 schedule are defined.

60 (l) "Qualifying project" means one or more buildings,
61 structures, or facilities that serves a public educational,
62 research, housing, parking, infrastructure, recreational, or
63 cultural purpose of a state university or direct-support
64 organization that will be used by or on behalf of a state
65 university or direct-support organization. It also means the
66 monetization of the operation of a revenue-producing project to
67 which the board or direct-support organization holds title, in
68 exchange for a guaranteed payment to the board or direct-support



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69 organization.

70 (m) "Revenues" means those revenues authorized under s.
71 1010.62, except that money received as grants or otherwise from
72 the Federal Government, a public entity, or an agency or
73 instrumentality in aid of a qualifying project or gifts from
74 private donors that are donated for the purpose of constructing
75 or equipping a facility may be used without limitation, unless a
76 gift is used to secure debt, in which event the maturity of the
77 debt shall not exceed 5 years.

78 (n) "Service contract" means a contract between a board or
79 direct-support organization and the private entity which defines
80 the terms of the services to be provided with respect to a
81 qualifying project.

82 (2) LEGISLATIVE FINDINGS AND INTENT.-

83 (a)1. The Legislature finds that there is a public need for
84 the construction or upgrade of facilities that are used
85 predominantly for public purposes and that it is in the public's
86 interest to provide for the construction or upgrade of such
87 facilities.

88 2. The Legislature also finds that:

89 a. There is a public need for timely and cost-effective
90 acquisition, design, construction, improvement, renovation,
91 expansion, equipping, maintenance, operation, implementation, or
92 installation of projects serving a public purpose, including
93 educational and auxiliary facilities and projects within the
94 state which serve a public need and purpose, and that such
95 public need may not be wholly satisfied by existing procurement
96 methods.

97 b. There are inadequate resources to develop new



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98 educational and auxiliary facilities and projects for the
99 benefit of residents of this state, and that a public-private
100 partnership has demonstrated that it can meet the needs by
101 improving the schedule for delivery, lowering the cost, and
102 providing other benefits to the public.

103 c. There may be state and federal tax incentives that
104 promote partnerships between public and private entities to
105 develop and operate qualifying projects.

106 d. A procurement under this section serves the public
107 purpose of this section if such procurement facilitates the
108 timely development or operation of a qualifying project.

109 (b) It is the intent of the Legislature to encourage
110 investment in the state by private entities; to facilitate
111 various bond financing mechanisms, private capital, and other
112 funding sources for the development and operation of qualifying
113 projects, including expansion and acceleration of such financing
114 to meet the public need; and to provide the greatest possible
115 flexibility to public and private entities contracting for the
116 provision of public services.

117 (3) PROCUREMENT PROCEDURES.—A board or direct-support
118 organization may receive unsolicited proposals or may solicit
119 proposals for qualifying projects and may thereafter enter into
120 an agreement with a private entity, or a consortium of private
121 entities, to build, upgrade, operate, own, or finance
122 facilities.

123 (a) The Board of Governors may establish a reasonable
124 application fee for the submission of an unsolicited proposal to
125 a board or direct-support organization under this section. The
126 fee must be sufficient to pay the costs of evaluating the



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127 proposal. A board or direct-support organization may engage the
128 services of a private consultant to assist in the evaluation.
129 The Board of Governors may also establish a reasonable fee that
130 may be charged by a board or direct-support organization to
131 cover the costs of evaluating all other proposals received by a
132 board or direct-support organization as part of a competitive
133 procurement process to select a private entity for purposes of
134 establishing a public-private partnership.

135 (b) A board or direct-support organization may request a
136 proposal from private entities for a public-private project or,
137 if the board or direct-support organization receives an
138 unsolicited proposal for a public-private project and the board
139 or direct-support organization intends to enter into a
140 comprehensive agreement for the project described in such
141 unsolicited proposal, the board or direct-support organization
142 shall publish notice in a newspaper of general circulation at
143 least once a week for 2 weeks stating that the board or direct-
144 support organization has received a proposal and will accept
145 other proposals for the same project. The timeframe within which
146 the board or direct-support organization may accept other
147 proposals shall be determined on a project-by-project basis
148 based upon the complexity of the project and the public benefit
149 to be gained by allowing a longer or shorter period of time
150 within which other proposals may be received; however, the
151 timeframe for allowing other proposals must be at least 21 days,
152 but no more than 120 days, after the initial date of
153 publication.

154 (c) In considering an unsolicited proposal, the board or
155 direct-support organization may require the private entity to



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156 provide a technical study prepared by a nationally recognized
157 expert with experience in preparing analyses for bond rating
158 agencies. In evaluating the technical study, the board or
159 direct-support organization may rely upon internal staff reports
160 prepared by personnel familiar with the operation of similar
161 facilities or the advice of external advisors or consultants who
162 have relevant experience. In addition, an unsolicited proposal
163 must be accompanied by the following information, unless waived
164 by the board or the direct-support organization:

165 1. A description of the qualifying project, including the
166 conceptual design of the facilities or a conceptual plan for the
167 provision of services, and a schedule for the initiation and
168 completion of the qualifying project.

169 2. If applicable, a description of the method by which the
170 private entity proposes to secure the necessary property
171 interests that are required for the qualifying project.

172 3. A description of the private entity's general plans for
173 financing the qualifying project, including the sources of the
174 private entity's funds and the identity of a dedicated revenue
175 source or proposed debt or equity investment on behalf of the
176 private entity.

177 4. The name and address of a person who may be contacted
178 for additional information concerning the proposal.

179 5. The proposed user fees, lease payments, or other service
180 payments over the term of a comprehensive agreement, and the
181 methodology for and circumstances that would allow changes to
182 the user fees, lease payments, and other service payments over
183 time.

184 6. Additional material or information that the board or



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185 direct-support organization reasonably requests.

186 (d) After the public notification period has expired in the
187 case of an unsolicited proposal or upon receipt of all proposals
188 if using the traditional process for competitive procurement
189 authorized under Board of Governors' and university regulations,
190 the board or direct-support organization shall rank the
191 proposals received in order of preference. The board or direct-
192 support organization may then begin negotiations for a
193 comprehensive agreement with the highest-ranked firm. If the
194 board or direct-support organization is not satisfied with the
195 results of the negotiations, the board or direct-support
196 organization may terminate negotiations with the proposer and
197 negotiate with the second-ranked or subsequent-ranked firms, in
198 the order consistent with this procedure. If only one proposal
199 is received, the board or direct-support organization may
200 negotiate in good faith, and if the board or direct-support
201 organization is not satisfied with the results of the
202 negotiations, the board or direct-support organization may
203 terminate negotiations with the proposer. Notwithstanding this
204 paragraph, the board or direct-support organization may reject
205 all proposals at any point in the process.

206 (4) PROJECT FEASIBILITY.-Prior to entering into a
207 comprehensive agreement, a board or direct-support organization
208 shall conduct an analysis of the feasibility and desirability of
209 the project or the activities proposed to be funded under the
210 comprehensive agreement, and shall develop sufficient
211 information to determine:

212 (a) That the agreement is in the best interest of the
213 public, the state, and the state university;



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214 (b) The conformity of any project with the master plan of
215 the state university and a determination that the project or
216 activities are essential to the state university's core mission;

217 (c) The need for the project or the activities proposed to
218 be funded under the agreement based on quantitative metrics;

219 (d) The amount and source of funds to be used to fully fund
220 the capital, operation, maintenance, or other expenses under the
221 agreement;

222 (e) The cost of any investment to be made under the
223 agreement by the board or a direct-support organization;

224 (f) The economic and financial feasibility of any project
225 or activities proposed to be funded under the agreement;

226 (g) That the projected demand for use of any project is
227 adequate in relation to the cost of the project;

228 (h) The expected return on investment or internal rate of
229 return for a revenue-generating project or another appropriate
230 quantitative measure for a non-revenue-generating project;

231 (i) That the cost of any project is reasonable in relation
232 to similar facilities;

233 (j) The financial, operational, or technological risk
234 associated with any project;

235 (k) That any increase in the cost of financing the project
236 over the cost of financing the project under s. 1010.62 will be
237 offset by quantifiable savings in operational costs or other
238 activities that will be performed by the private entity and
239 specifies the anticipated amount of such savings;

240 (l) Any impact to the state's finances of undertaking the
241 project or the activities proposed to be funded under the
242 agreement by the state university or direct-support



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243 organization;

244 (m) The impact of the agreement on similar activities of
245 the state university or direct-support organization that will
246 not be placed under the agreement;

247 (o) The anticipated use of money to be received by the
248 state university or direct-support organization under the
249 agreement;

250 (p) The relationship between the source of any funds
251 committed by the board or direct-support organization pursuant
252 to subsection (8) and the project or activities proposed to be
253 funded under the agreement;

254 (q) The private entity has the available sources of funding
255 or other financial resources that are necessary to carry out the
256 agreement;

257 (r) That the staff of the private entity have sufficient
258 experience and qualifications to perform the managerial,
259 organizational, and technical activities proposed to be funded
260 under the agreement;

261 (s) That no director, officer, partner, owner, or other
262 individual with direct and significant control over the policy
263 of the private entity has been convicted of corruption or fraud;
264 and

265 (t) Any other factors determined to be appropriate by the
266 board, direct-support organization or the Board of Governors.

267 (5) APPROVAL OF COMPREHENSIVE AGREEMENTS.-All comprehensive
268 agreements are contingent upon approval by the Board of
269 Governors. A comprehensive agreement between a direct-support
270 organization and a private entity must be approved by the
271 university board prior to submission to the Board of Governors



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272 for approval.

273 (a) In addition to Board of Governors' approval, approval
274 of the Governor and Cabinet is required for any comprehensive
275 agreement that:

276 1. Has a term of over ten years, including any renewals or
277 extensions;

278 2. Provides for an up-front payment from the private entity
279 to the board or direct-support organization which constitutes
280 more than 10 percent of the total compensation anticipated to be
281 paid by the private entity to the board or direct-support
282 organization over the initial term or any renewal term or
283 extension of the agreement;

284 3. Provides for the creation of debt of the board or a
285 direct-support organization as permitted pursuant to s. 1010.62;

286 4. Pledges or uses revenues permitted under s. 1010.62 to
287 secure or pay amounts due under the agreement; or

288 5. Is implemented pursuant to paragraph (b).

289 (b) Before a board or direct-support organization enters
290 into an agreement under which the board or a direct-support
291 organization is expected to receive over \$10 million, the state
292 university must provide a summary of the proposal to the Board
293 of Governors, the Governor, the members of the Cabinet, the
294 President of the Senate, and the Speaker of the House of
295 Representatives. The summary must include a description of the
296 anticipated use of money to be received by the board or direct-
297 support organization under the public-private partnership
298 agreement and any other information requested by a recipient of
299 the summary. If the President of the Senate or the Speaker of
300 the House of Representatives objects to the proposed agreement



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301 in writing within 14 days after receipt of the summary, the
302 board or direct-support organization may not proceed with the
303 agreement unless all objections are resolved.

304 (c) The Board of Governors shall establish a process for
305 the evaluation and approval of comprehensive agreements by a
306 university board, the Board of Governors or other state
307 officers, and requirements for additional information to be
308 provided by a state university in obtaining approval for a
309 comprehensive agreement.

310 (6) COMPREHENSIVE AGREEMENT.—

311 (a) Before developing or operating the qualifying project,
312 the private entity must enter into a comprehensive agreement
313 with the board or direct-support organization. The comprehensive
314 agreement must provide for:

315 1. Delivery of performance and payment bonds, letters of
316 credit, or other security acceptable to the board or direct-
317 support organization in connection with the development or
318 operation of the qualifying project in the form and amount
319 satisfactory to the board or direct-support organization. For
320 the components of the qualifying project which involve
321 construction, the form and amount of the bonds must comply with
322 s. 255.05 and s. 1013.47.

323 2. Review of the design for the qualifying project by the
324 board or direct-support organization and, if the design conforms
325 to acceptable standards, the approval of the board or the
326 direct-support organization. This subparagraph does not require
327 the private entity to complete the design of the qualifying
328 project before the execution of the comprehensive agreement.

329 3. Inspection of the qualifying project by the board or



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330 direct-support organization to ensure that the private entity's
331 activities are acceptable to the board or direct-support
332 organization in accordance with the comprehensive agreement.

333 4. Maintenance of a policy of public liability insurance, a
334 copy of which must be filed with the board or direct-support
335 organization and accompanied by proofs of coverage, or self-
336 insurance, each in the form and amount satisfactory to the board
337 or direct-support organization and reasonably sufficient to
338 ensure coverage of tort liability to the public and employees
339 and to enable the continued operation of the qualifying project.

340 5. Monitoring by the board or direct-support organization
341 of the maintenance practices to be performed by the private
342 entity to ensure that the qualifying project is properly
343 maintained.

344 6. Periodic filing by the private entity of the appropriate
345 financial statements that pertain to the qualifying project.

346 7. Procedures that govern the rights and responsibilities
347 of the board or direct-support organization and the private
348 entity in the course of the construction and operation of the
349 qualifying project and in the event of the termination of the
350 comprehensive agreement or a material default by the private
351 entity. The procedures must include conditions that govern the
352 assumption of the duties and responsibilities of the private
353 entity by an entity that funded, in whole or part, the
354 qualifying project or by the board or direct-support
355 organization, and must provide for the transfer or purchase of
356 property or other interests of the private entity by the board
357 or direct-support organization.

358 8. In negotiating user fees, the fees must be the same for



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

367 9. Duties of the private entity, including the terms and
368 conditions that the board or direct-support organization
369 determines serve the public purpose of this section.

370 10. A limitation on the term of the comprehensive agreement
371 not to exceed 30 years, inclusive of all renewal terms.

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

376 12. A provision that terminates the authority and duties of
377 the private entity under this section and dedicates the
378 qualifying project to the board or direct-support organization.

379 (b) A comprehensive agreement may not obligate the full
380 faith and credit of the state, a state university, or the Board
381 of Governors, but shall only be secured by the revenues of the
382 board or direct-support organization pledged for such purpose.
383 Revenues of a board or direct-support organization may not be
384 pledged to secure, or be used to make payments on or in relation
385 to, a comprehensive agreement, nor shall any debt of a board or
386 direct-support organization be created, except as provided in s.
387 1010.62, and only the revenues authorized to be used pursuant to



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388 s. 1010.62 may be used to secure or pay obligations under or
389 related to such agreement. In addition, a comprehensive
390 agreement may not contain any provisions limiting the ability of
391 the state university or direct-support organization to perform
392 its functions, including any limitation on the ability to
393 perform responsibilities and duties relating to debt issued for,
394 by or on behalf of the state university or direct-support
395 organization.

396 (7) FINANCING.—

397 (a) A private entity may enter into a private-source
398 financing agreement between financing sources and the private
399 entity. A financing agreement must be paid in full at the
400 applicable closing that transfers ownership or operation of the
401 facility to the board or direct-support organization at the
402 conclusion of the term of the comprehensive agreement. In the
403 event of a material default by the private entity, the board or
404 the direct-support organization will assume ownership or
405 operation of the qualifying project pursuant to the terms of the
406 comprehensive agreement.

407 (b) The board or direct-support organization may use
408 innovative finance techniques associated with a public-private
409 partnership under this section, including, but not limited to,
410 federal loans as provided in Titles 23 and 49 C.F.R., commercial
411 bank loans, and hedges against inflation from commercial banks
412 or other private sources. In addition, the board or direct-
413 support organization may provide its own capital or operating
414 budget to support a qualifying project. The budget may be from
415 any legally permissible funding sources of the board or direct-
416 support organization, including the proceeds of debt issuances.



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417 A financing agreement may not subject the board's or direct-
418 support organization's facility to liens in violation of s.
419 11.066(5).

420 (8) RESPONSIBILITIES OF THE PRIVATE ENTITY.-

421 (a) The private entity shall:

422 1. Develop or operate the qualifying project in a manner
423 that is acceptable to the board or direct-support organization
424 in accordance with the provisions of the comprehensive
425 agreement.

426 2. Maintain, or provide by contract for the maintenance or
427 improvement of, the qualifying project if required by the
428 comprehensive agreement.

429 3. Cooperate with the board or direct-support organization
430 in making best efforts to establish interconnection between the
431 qualifying project and any other facility or infrastructure as
432 requested by the board or direct-support organization in
433 accordance with the provisions of the comprehensive agreement.

434 4. Comply with the comprehensive agreement and a lease or
435 service contract.

436 (b) Each private facility that is constructed pursuant to
437 this section must comply with the requirements of federal,
438 state, and local laws; state, regional, and local comprehensive
439 plans; the regulations, procedures, and standards for facilities
440 of the board or direct-support organization, as applicable; and
441 such other conditions that the board or direct-support
442 organization determines to be in the public's best interest and
443 that are included in the comprehensive agreement.

444 (c) The board or direct-support organization may provide
445 services to the private entity. An agreement for maintenance and



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446 other services entered into pursuant to this section must
447 provide for full reimbursement for services rendered for
448 qualifying projects.

449 (d) A private entity of a qualifying project may provide
450 additional services for the qualifying project to the public or
451 to other private entities if the provision of additional
452 services does not impair the private entity's ability to meet
453 its commitments to the board or direct-support organization
454 pursuant to the comprehensive agreement and the services do not
455 differ in kind from those provided under the agreement.

456 (9) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the
457 expiration or termination of a comprehensive agreement, the
458 board or direct-support organization may use revenues from the
459 qualifying project to pay current operation and maintenance
460 costs of the qualifying project. Revenues in excess of the costs
461 for operation and maintenance costs may be paid to the investors
462 and lenders to satisfy payment obligations under their
463 respective agreements if allowed under the provisions of the
464 comprehensive agreement. A board or direct-support organization
465 may terminate with cause and without prejudice a comprehensive
466 agreement and may exercise other rights or remedies that may be
467 available to it in accordance with the provisions of the
468 comprehensive agreement. The assumption of the development or
469 operation of the qualifying project does not obligate the board
470 or direct-support organization to pay an obligation of the
471 private entity from sources other than revenues from the
472 qualifying project.

473 (10) SOLE AUTHORITY.—This section shall provide the sole
474 authority for a state university or direct-support organization



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475 to enter into a comprehensive agreement.

476 (11) SOVEREIGN IMMUNITY.-A comprehensive agreement may not
477 be construed as waiving the sovereign immunity of the state or
478 as a grant of sovereign immunity to a private entity.

479 (12) ANNUAL REPORT.-For any comprehensive agreement
480 executed by a state university or direct-support organization
481 after the effective date of this act, the university shall
482 prepare an annual report to the Board of Governors which updates
483 information provided for the initial approval of the public-
484 private partnership and provides any other information required
485 by the Board of Governors. The format and specific timeframe for
486 reporting shall be as specified by the Board of Governors.
487 However, the initial annual report shall be filed no later than
488 November 30th after the public-private partnership has been in
489 effect for one full fiscal year.

490 (13) RULES.-The Board of Governors may adopt such rules as
491 may be necessary for carrying out all of the requirements of
492 this section and may do all things necessary to carry out the
493 powers granted under this section. The Board of Governors may
494 establish additional restrictions relating to public-private
495 partnerships but may not take any action which would reduce the
496 requirements of this section.

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

498
499 ===== T I T L E A M E N D M E N T =====

500 And the title is amended as follows:

501 Delete everything before the enacting clause
502 and insert:

503 A bill to be entitled



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504 An act relating to public private partnerships;
505 creating s. 1013.505, F.S.; providing definitions;
506 providing for partnerships between state universities
507 or direct-support organizations and private entities;
508 providing for approval of the Board of Governors and
509 the Governor and Cabinet for certain public-private
510 partnership agreements; providing for a summary of
511 certain proposed projects; providing for an analysis
512 of the feasibility and desirability of the proposed
513 project; providing requirements of a private entity
514 and the Board of Governors; providing terms of a
515 public-private partnership agreement; providing for an
516 annual report; providing authority to the Board of
517 Governors to adopt certain rules and policies;
518 providing an effective date.