

By Senator Latvala

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1 A bill to be entitled
2 An act relating to public-private partnerships;
3 creating s. 1013.505, F.S.; providing definitions;
4 providing legislative findings and intent relating to
5 the construction or improvement by private entities of
6 facilities or projects used predominantly for a public
7 purpose; providing for partnerships between state
8 universities and private entities; 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.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Section 1013.505, Florida Statutes, is created
29 to read:

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30 1013.505 Public-private partnerships; state universities
31 and private entities.-

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

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

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

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

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

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

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

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

51 (h) "Proposal" means a plan for a qualifying project with
52 detail beyond a conceptual level for which terms such as fixed
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 and that is
58 used or will be used by a state university or an improvement,

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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, lease
62 payments, or other service payments relating to the development
63 or operation of a qualifying project, including, but not limited
64 to, money received as grants or otherwise from the Federal
65 Government, a public entity, or an agency or instrumentality
66 thereof to fund the qualifying project, and gifts from private
67 donors.

68 (k) "Service contract" means a contract between a board and
69 a private entity which defines the terms of the services to be
70 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 for
73 the construction or improvement 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 improvement 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,
81 and 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

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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 unsolicited
107 proposals or may solicit proposals for qualifying projects and
108 may thereafter enter into an agreement with a private entity, or
109 a consortium of private entities, to develop, improve, operate,
110 own, or finance facilities. A copy of all proposals received by
111 a board shall be submitted to the Board of Governors.

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

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117 (b) A board may request a proposal from private entities
118 for a qualified project. If the board receives an unsolicited
119 proposal for a qualified project and the board intends to enter
120 into a comprehensive agreement for the project described in such
121 unsolicited proposal, the board shall publish notice in a
122 newspaper of general circulation at least once a week for 2
123 weeks stating that the board has received a proposal and will
124 accept other proposals for the same project. The timeframe
125 within which the board may accept other proposals shall be
126 determined on a project-by-project basis based upon the
127 complexity of the project and the public benefit to be gained by
128 allowing a longer or shorter period of time within which other
129 proposals may be received; however, the timeframe for allowing
130 other proposals must be at least 21 days, but no more than 120
131 days, after the initial date of publication.

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

136 (d) In considering proposals for a public-private
137 partnership, the board shall determine whether the proposed
138 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.

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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; if governmental
156 funds are assumed in order to deliver a cost-feasible project,
157 internal rate of return on private investments; and a total
158 cash-flow analysis beginning with the implementation of the
159 project 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

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175 completion of the qualifying project.

176 (b) If applicable, a description of the method by which the
177 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 for
180 financing the qualifying project, including the sources of the
181 private entity's funds and the identity of a dedicated revenue
182 source or proposed debt or equity investment on behalf of the
183 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, or other service payments over
190 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

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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 the
214 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 including, but not
217 limited to, professional qualifications, general business terms,
218 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 private entity.
221 If the board is not satisfied with the results of the
222 negotiations, the board may terminate negotiations with the
223 private entity and negotiate with the second-ranked or
224 subsequent-ranked private entities, in the order consistent with
225 this procedure. If only one proposal is received, the board may
226 negotiate in good faith, and if the board is not satisfied with
227 the results of the negotiations, the board may terminate
228 negotiations with the private entity. Notwithstanding this
229 paragraph, the board may reject all proposals at any point in
230 the process until a contract with the private entity is
231 executed.

232 (d) The board shall perform an independent analysis of the

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233 proposed public-private partnership which must demonstrate the
234 cost-effectiveness and overall public benefit before the
235 procurement process is initiated or before the contract is
236 awarded.

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

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

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

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

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

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

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

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

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262 negotiation of a comprehensive agreement, the board may enter
263 into an interim agreement with the private entity proposing the
264 development or operation of the qualifying project. An interim
265 agreement does not obligate the board to enter into a
266 comprehensive agreement. The interim agreement is discretionary
267 with the parties and is not required for a qualifying project
268 for which the parties proceed directly to a comprehensive
269 agreement. An interim agreement must be limited to provisions
270 that:

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

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

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

283 (7) COMPREHENSIVE AGREEMENT.—

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

287 1. Delivery of performance and payment bonds, letters of
288 credit, or other security acceptable to the board in connection
289 with the development or operation of the qualifying project in
290 the form and amount satisfactory to the board. For the

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291 components of the qualifying project which involve construction,
292 the form and amount of the bonds must comply with s. 255.05.

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

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

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

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

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

313 7. Procedures that govern the rights and responsibilities
314 of the board and the private entity in the course of the
315 development, construction, and operation of the qualifying
316 project and in the event of the termination of the comprehensive
317 agreement or a material default by the private entity. The
318 procedures must include conditions that govern the assumption of
319 the duties and responsibilities of the private entity by an

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320 entity that funded, in whole or part, the qualifying project or
321 by the board and must provide for the transfer or purchase of
322 property or other interests of the private entity by the board.

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

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

335 (b) The comprehensive agreement may include:

336 1. An agreement by the board to make grants or loans to the
337 private entity from amounts received from federal, state, or
338 local government, or an agency or instrumentality thereof, or
339 private donors.

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

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

347 (8) FEES.—An agreement entered into pursuant to this
348 section may authorize the private entity to impose fees on

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349 members of the public for the use of the facility. The following
350 provisions apply to the agreement:

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

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

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

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

362 (e) A negotiated portion of revenues from fee-generating
363 uses must be returned to the board over the life of the
364 agreement.

365 (9) FINANCING.—

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

372 (b) The board may use innovative finance techniques
373 associated with a public-private partnership under this section,
374 including, but not limited to, federal loans as provided in
375 Titles 23 and 49 C.F.R., commercial bank loans, and hedges
376 against inflation from commercial banks or other private
377 sources. In addition, the board may provide its own capital or

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378 operating budget to support a qualifying project. The budget may
379 be from any legally permissible funding sources of the board,
380 including the proceeds of debt issuances. A financing agreement
381 may not subject the board's facility to liens in violation of s.
382 11.066(5).

383 (10) POWERS AND DUTIES OF THE PRIVATE ENTITY.-

384 (a) The private entity shall:

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

388 2. Maintain, or provide by contract for the maintenance or
389 improvement of, the qualifying project if required by the
390 comprehensive agreement.

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

395 4. Comply with the comprehensive agreement and a lease or
396 service contract.

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

404 (c) The board may provide services to the private entity.
405 An agreement for maintenance and other services entered into
406 pursuant to this section must provide for full reimbursement for

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407 services rendered for qualifying projects.

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

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

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436 from sources other than revenues from the qualifying project
437 unless stated otherwise in the comprehensive agreement.

438 (12) SOVEREIGN IMMUNITY.—This section does not waive the
439 sovereign immunity of a board, or an officer or employee
440 thereof, with respect to participation in, or approval of, any
441 part of a qualifying project or its operation, including, but
442 not limited to, interconnection of the qualifying project with
443 any other infrastructure or project.

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

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

456 (b) This section does not waive any requirement of s.
457 1013.45.

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