

## **Partnership for Public Facilities and Infrastructure Act Guidelines Task Force Meeting**

**Meeting Date:** Jan. 9, 2014  
Betty Easley Conference Center  
4075 Esplanade Way, Room 148  
Tallahassee, FL 32399-0950

### **Agenda**

- I. Introductions and Adoption of Minutes
- II. Presentation and discussion of preliminary concepts for task force recommendations relating to the eight items required for task force consideration
- III. Other Business and Public Testimony
- IV. Adjourn

### **Call to Order**

Meeting called to order and welcome at 8:23 a.m.

### **Members present:**

Craig Nichols, Chair  
Frank Attkisson, Vice Chair  
George Burgess  
Sonya Little  
Michael Oelnick  
John (Jay) Smith (attending telephonically)  
Andy Tuck

### **Members absent:**

None

### **Business**

- I. Introductions and Adoption of Minutes

**Motion for Approval of Meeting Minutes from 12-06-13 task force meeting** at 8:24 a.m.

Vote: All in favor, 0 opposed, 0 abstained

Resolved: Motion carried

**Comments from Representative Greg Steube, sponsor of HB 85, on proposed public-private partnerships legislation and questions** at 8:24 a.m.

- II. Presentation and discussion of preliminary concepts for task force recommendations relating to the eight items required for task force consideration.

**Review of the eight items and the task force members to whom they were assigned. These are as follows:**

1. **(Solicited and Unsolicited Proposals).** Opportunities for competition through public notice and the availability of representatives of the responsible public entity to meet with private entities considering a proposal. Assigned to Andy Tuck.
  2. **(Selection Criteria).** Reasonable criteria for choosing among competing proposals. Assigned to Vice Chair Frank Attkisson.
  3. **(Process Timelines).** Suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement. Assigned to Sonya Little.
  4. **(Priority Exceptions).** If an accelerated selection and review and documentation timelines should be considered for proposals involving a qualifying project that the responsible public entity deems a priority. Assigned to Sonya Little.
  5. **(Financials).** Procedures for financial review and analysis which, at a minimum, include a cost-benefit analysis, an assessment of opportunity cost, and consideration of the results of all studies and analyses related to the proposed qualifying project. Assigned to George Burgess.
  6. **(Specifications for Proposals).** The adequacy of the information released when seeking competing proposals and providing for the enhancement of that information, if deemed necessary, to encourage competition. Assigned to Andy Tuck.
  7. **(Public Record and Public Meeting Exemptions).** Current exemptions from public records and public meetings requirements, if any changes to those exemptions are necessary, or if any new exemptions should be created in order to maintain the confidentiality of financial and proprietary information received as part of an unsolicited proposal. Assigned to Mike Olenick.
  8. **(Third Party Review).** Recommendations regarding the authority of the responsible public entity to engage the services of qualified professionals, which may include a Florida-registered professional or a certified public accountant, not otherwise employed by the responsible public entity, to provide an independent analysis regarding the specifics, advantages, disadvantages, and long-term and short-term costs of a request by a private entity for approval of a qualifying project, unless the governing body of the public entity determines that such analysis should be performed by employees of the public entity. Assigned to Jay Smith.
- The Chair then read and introduced each of the eight items and the corresponding point person. One at a time, he opened the floor for each member to present his or her findings, followed by group discussion on each item.

**Presentation of Research Findings by Andy Tuck and Group Discussion for Item 1 at 8:36 a.m.**

**Presentation of Research Findings by Vice Chair Frank Attkisson and Group Discussion on Item 2 at 9:09 a.m.**

**Presentation of Research Findings by Sonya Little and Group Discussion on Item 3 at 9:20 a.m.**

**Break at 10:05 a.m.**

**Reconvene at 10:23 a.m.**

**Presentation of Research Findings by Sonya Little and Group Discussion on Item 4 at 10:24 a.m.**

**Presentation of Research Findings by George Burgess and Group Discussion on Item 5 at 10:25 a.m.**

**Presentation of Research Findings by Andy Tuck and Group Discussion on Item 6** at 10:52 a.m.

**Presentation of Research Findings by Mike Olenick and Group Discussion on Item 7** at 11:16 a.m.

**Presentation of Research Findings by Jay Smith and Group Discussion on Item 8** at 11:23 a.m.

III. Other Business

**Discussion of next steps in the analysis and recommendation process** at 11:30 a.m.

- Chair discussed the task force's next steps in compiling the research presented and agreements reached in order to move toward compiling a report and opened the floor to discussion.

**Public Comment** at 11:54 a.m.

- No public comment was provided.

IV. Adjourn

**Adjournment** at 11:55 a.m.

**Meeting Notice**

**Partnership for Public Facilities and Infrastructure Act Guidelines Task Force Meeting**

Jan. 31, 2014

9:00 a.m. – 12:00 noon

Betty Easley Conference Center  
4075 Esplanade Way, Room 148  
Tallahassee, FL 32399

**Meeting Agenda**

- I. Introductions and Adoption of Minutes
- II. Presentation and discussion of preliminary concepts for task force recommendations relating to the eight items required for task force consideration
- III. Discussion and Vote on Proposed Public Records Exemption for Unsolicited Proposals
- IV. Other Business and Public Testimony
- V. Adjourn

For information regarding this meeting, please contact Marlene Williams with the Department of Management Services at (850) 488-6285.

## Partnership for Public Facilities and Infrastructure Act Guidelines Task Force

### Member Point Person Designations

Member	Item
Frank C. Attkisson	Item 2
George M. Burgess	Item 5
Sonya C. Little	Items 3 and 4
Michael H. Olenick	Item 7
John "Jay" Smith	Item 8
Andy Tuck	Items 1 and 6

In reviewing public-private partnerships and developing recommendations, the task force must consider:

1. Opportunities for competition through public notice and the availability of representatives of the responsible public entity to meet with private entities considering a proposal. (Solicited and Unsolicited Proposals)
2. Reasonable criteria for choosing among competing proposals. (Selection Criteria)
3. Suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement. (Process Timelines)
4. If an accelerated selection and review and documentation timelines should be considered for proposals involving a qualifying project that the responsible public entity deems a priority. (Priority Exceptions)
5. Procedures for financial review and analysis which, at a minimum, include a cost-benefit analysis, an assessment of opportunity cost, and consideration of the results of all studies and analyses related to the proposed qualifying project. (Financial Review)
6. The adequacy of the information released when seeking competing proposals and providing for the enhancement of that information, if deemed necessary, to encourage competition. (Specifications for Proposals)
7. Current exemptions from public records and public meetings requirements, if any changes to those exemptions are necessary, or if any new exemptions should be created in order to maintain the confidentiality of financial and proprietary information received as part of an unsolicited proposal. (Public Record and Public Meeting Exemptions)
8. Recommendations regarding the authority of the responsible public entity to engage the services of qualified professionals, which may include a Florida-registered professional or a certified public accountant, not otherwise employed by the responsible public entity, to provide an independent analysis regarding the specifics, advantages, disadvantages, and long-term and short-term costs of a request by a private entity for approval of a qualifying project, unless the governing body of the public entity determines that such analysis should be performed by employees of the public entity. (Third Party Review)

**Partnership for Public Facilities and Infrastructure Act Guidelines Task Force – Tracking Document**

**DRAFT**

	Discussion Point	Corresponding Item Number	Discussion/Determination
<b>A</b>	<b>Develop model guidelines for use by Responsible Public Entities (RPE)</b>	N/A	Should model guidelines be developed for responsible public entity (RPE) use? Who should develop these guidelines? Models can quickly become outdated – how often should the models be updated?  <b>Determination:</b>
<b>B</b>	<b>Develop best practices guidance for use by RPE comprised of commentary and explanations</b>	N/A	Should best practices guidance be developed for RPE use? Should such guidance be included in the model guidelines? Should such guidance include a checklist or other resources?  <b>Determination:</b>
<b>C</b>	<b>Develop model comprehensive agreements and interim agreements</b>	N/A	Should model agreements be developed for RPE use? Would these agreements be used as a template to start from rather than a model document? Should multiple templates be considered to cover different types of projects? Who should develop? Models can quickly become outdated – how often should templates be updated?  <b>Determination:</b>
<b>D</b>	<b>Support entity to provide guidance to RPE and to encourage the use of public-private partnerships at the local level</b>	N/A	Should an entity be created to provide guidance to RPE? Will this entity be responsible for supporting RPE analysis/review or will the entity be responsible for providing information to the RPE? Should this entity be tasked with encouraging private companies to engage in public-private partnerships with Florida RPE?  If so, what is the appropriate entity for such a functional role? Should an established program be developed within a state agency or the legislature? How will staffing for this entity be provided?  <b>Determination:</b>

	Discussion Point	Corresponding Item Number	Discussion/Determination
E	<p><b>Does the public-private partnership process, in particular when unsolicited proposals are involved, provide for an adequate level of competition?</b></p> <p><b>Consider requiring accepted proposals be posted on a RPE’s website to enhance competition?</b></p>	Item 1	<p>The public-private partnerships law (<a href="#">s. 287.05712, F.S.</a>) provides for notice process and timelines for public and potential competing proposers. The best prospect for success in generating competing proposals is the amount of time and the extent that it is publicly advertised.</p> <p>What information should be provided during the solicitation of competing proposers? Should more flexibility be included in the timeline to ensure competing proposers have time to develop a quality competing proposal?</p> <p>Should such a proposal be posted on the RPE’s website to enhance competition?</p> <p><b>Determination:</b></p>
F	<p><b>Information released when seeking competing proposals and requests for additional or enhanced information</b></p>	Item 6	<p>If an unsolicited proposal <b>is</b> exempted from public record (see below), the RPE will be required to develop its own solicitation documents to solicit competing proposals. What project information should be released when soliciting competing proposals?</p> <p><b>Determination:</b></p>
G	<p><b>Exemption from public records requirements for unsolicited proposals</b></p>	Item 7	<p>Language has been filed for universities relating to exempting unsolicited proposals from public records. The proposal provides the following:</p> <ul style="list-style-type: none"> <li>• If a board receives an unsolicited proposal for public-private partnerships, the proposal would be exempt from public records until such time that the board receives and ranks the proposals as described in subsection (5) [Project Approval Requirements]. <ul style="list-style-type: none"> <li>○ Note: The ranking of proposals takes place <u>after</u> soliciting competing proposals. Under this proposal, responsible public entities (RPE) would not be allowed to release an unsolicited proposal to solicit competing proposals.</li> </ul> </li> <li>• An unsolicited proposal would not be exempt for more than 12 months after the RPE rejects all proposals received for the project in the unsolicited proposal or, if the RPE does not intend to enter into an agreement for the project, 12 months after the date that the unsolicited proposal was received.</li> </ul>

	Discussion Point	Corresponding Item Number	Discussion/Determination
			<ul style="list-style-type: none"> <li>• This exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the legislature.</li> <li>• Public Necessity Statement: The legislature would find that it is a public necessity that an unsolicited proposal, which may identify proprietary business information, be exempt from public records requirements. Because unsolicited proposals may contain proprietary information and trade secrets, such as patent-pending designs and financing terms, should such information be made publicly available before the RPE makes a decision, competitors could determine the creative financing used to fund these projects. Therefore, the Legislature would find that the harm that may result from the release of such information outweighs any public benefit that may be derived from the disclosure of the information.</li> </ul> <p>Does the task force support such exemption for unsolicited proposals? Alternatively, should the exemption be only for information deemed proprietary and confidential or trade secret? Can a private entity deem its entire proposal proprietary and confidential or trade secret?</p> <p><b>Determination:</b></p>
H	<b>Availability of representatives of the responsible public entity to meet with private entities considering a proposal</b>	Item 1	<p>Current laws in place governing open meetings and procurements are sufficient to cover public-private partnerships.</p> <p><b>Determination:</b></p>
I	<b>Criteria for choosing among competing proposals</b>	Item 2	<p>The responsible public entity may consider factors that include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• professional qualifications</li> <li>• general business terms</li> <li>• innovative design techniques or cost-reduction terms</li> <li>• Finance plans.</li> </ul> <p>Local governments should have the flexibility to rank and select proposals as</p>



	Discussion Point	Corresponding Item Number	Discussion/Determination
			determined at the local level, including application of a local preference or other adopted preference. Is current statute adequate for this item?  <b>Determination:</b>
J	Should there be a time limit on how long an RPE can review a proposal?	Item 3	Public entity representatives should have the flexibility to perform adequate review. If a time limit is set, would it result in the rejection of most proposals? From a private entity perspective, it was noted that the review period should have a time limit for any pricing included in the proposal. Is current statute adequate for this item?  <b>Determination:</b>
K	Accelerated selection and review and documentation timelines for proposals involving a qualifying project prioritized by the RPE.	Item 4	Should an RPE have the option to accelerate proposals they deem a priority? How expedited should timelines be? What scenarios would prompt expedited process and should this be determined by the RPE? How will the RPE ensure public access to project information? How can the RPE ensure expediting timelines does not deter competition?  <b>Determination:</b>
L	Clarify applicability of mandatory procurement requirements relating to public-private partnerships	N/A	The public-private partnerships law ( <a href="#">s. 287.05712, F.S.</a> ) provides that public-private partnership statute does not waive the requirements of <a href="#">s. 287.055, F.S.</a> , relating to the Consultant's Competitive Negotiation Act, which applies to the acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services. Should this nuance be resolved through legislative action?  <b>Determination:</b>
M	Clarify the intent of <a href="#">s. 287.05712(4), F.S.</a> , relating to procurement procedures and <a href="#">s. 287.05712(6), F.S.</a> , relating to project qualification and process	N/A	Subsections (4) and (6) of <a href="#">s. 287.05712, F.S.</a> , include provisions that are mandatory for a RPE. Such provisions include language such as must or shall, which create a requirement in law. Should these provisions be reviewed to make procedures more permissive (using language such as may) to allow the statute to serve as guidance rather than mandate?  <b>Determination:</b>

	Discussion Point	Corresponding Item Number	Discussion/Determination
N	Guidance regarding application fee for the submission of an unsolicited proposal and RPE use of qualified professionals to conduct an independent analysis of a proposal	Item 5, Item 8	<p>The public-private partnerships law allows an RPE to establish a reasonable application fee for the submission of an unsolicited proposal. The fee must be sufficient to pay the costs of evaluating the proposal. The RPE may engage the services of a private consultant to assist in the evaluation.</p> <p>Should there be guidance for the RPE regarding the financial analysis? Are the requirements in statute adequate for the RPE? Should there be guidance for the RPE in selecting a qualified professional? Should the RPE be required to utilize a Florida-registered professional or CPA?</p> <p>Such fees vary and should be related to actual, reasonable costs of reviewing the proposal. It is fundamental that such fee is for cost recovery, but not revenue generation. Should guidance regarding what is reasonable be a recommendation of the task force or should such guidance be included generally in a best practices document?</p> <p><b>Determination:</b></p>
15	Clarify the intent of s. 287.05712(4)(c), F.S., relating to an RPE that is a school board	N/A	<p><a href="#">S. 287.05712(4)(c), F.S.</a>, states: "A responsible public entity that is a school board may enter into a comprehensive agreement only with the approval of the local governing body."</p> <p>Since school boards are not subject to governance by a local governing body, should the task force recommend this language be removed from statute?</p> <p><b>Determination:</b></p>

1                                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           1013.505, F.S., relating to public-private projects  
 4           for the upgrade of state university facilities and  
 5           infrastructure; providing an exemption from public  
 6           records requirements for unsolicited proposals held by  
 7           a state university board of trustees for a specified  
 8           period; providing for future legislative review and  
 9           repeal of the exemption; providing a statement of  
 10          public necessity; providing a contingent effective  
 11          date.

12

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

14

15           Section 1. Subsection (14) is added to section 1013.505,  
 16 Florida Statutes, as created by HB 541, 2014 Regular Session, to  
 17 read:

18           1013.505 Public-private partnerships; state universities  
 19 and private entities.—

20           (14) PUBLIC RECORDS EXEMPTION.—

21           (a) If a board receives an unsolicited proposal under this  
 22 section, the proposal is exempt from s. 119.07(1) and s. 24(a),  
 23 Art. I of the State Constitution until such time that the board  
 24 receives and ranks the proposals as described in subsection (5)  
 25 and provides notice of its intended decision.

26           (b) An unsolicited proposal is not exempt for more than 12

27 months after the board rejects all proposals received for the  
28 project described in the unsolicited proposal or, if the board  
29 does not intend to enter into an agreement for the project, the  
30 date that the unsolicited proposal was received.

31 (c) This subsection is subject to the Open Government  
32 Sunset Review Act in accordance with s. 119.15 and shall stand  
33 repealed on October 2, 2019, unless reviewed and saved from  
34 repeal through reenactment by the Legislature.

35 Section 2. The Legislature finds that it is a public  
36 necessity that an unsolicited proposal held by a state  
37 university board of trustees pursuant to s. 1013.505, Florida  
38 Statutes, which may identify proprietary business information,  
39 be made exempt from s. 119.07(1), Florida Statutes, and s.  
40 24(a), Article I of the State Constitution until the board  
41 provides notification of its decision or its intent to make a  
42 decision after ranking proposals under s. 1013.505(5)(c),  
43 Florida Statutes. An unsolicited proposal is not exempt for more  
44 than 12 months after the board rejects all proposals received  
45 for the project described in the unsolicited proposal or, if the  
46 board does not intend to enter into an agreement for the  
47 project, the date that the unsolicited proposal was received.  
48 The protection of information contained in unsolicited  
49 proposals, as set forth in s. 1013.505, Florida Statutes,  
50 submitted to a state university board of trustees that serve the  
51 public purpose of procuring the timely development or operation  
52 of a qualifying project as defined in s. 1013.505(1)(i), Florida

53 Statutes, and serve a public need for timely and cost-effective  
54 acquisition, design, construction, improvement, renovation,  
55 expansion, equipping, maintenance, operation, implementation, or  
56 installation of projects that will be principally used by a  
57 state university in serving the university's core mission may  
58 not be wholly satisfied by existing procurement methods. These  
59 unsolicited proposals may contain proprietary information and  
60 trade secrets, such as patent-pending designs and financing  
61 terms. If such information is publicly available before the  
62 state university board of trustees makes a decision, competitors  
63 could determine the creative financing used to fund these  
64 projects. Therefore, the Legislature finds that the harm that  
65 may result from the release of such information outweighs any  
66 public benefit that may be derived from disclosure of the  
67 information.

68 Section 3. This act shall take effect on the same date  
69 that HB 541 or similar legislation takes effect, if such  
70 legislation is adopted in the same legislative session or an  
71 extension thereof and becomes law.

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.

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:

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  
 37 a 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  
 43 duties by the private entity of a qualifying project which  
 44 jeopardizes 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 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 analysis 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

HB 541

2014

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.

**287.05712 Public-private Partnerships. —**

**(4) PROCUREMENT PROCEDURES.**—A responsible public entity **MAY** receive unsolicited proposals or **MAY** solicit proposals for qualifying projects and **MAY** thereafter enter into an agreement with a private entity, or a consortium of private entities, for the building, upgrading, operating, ownership, or financing of facilities.

(a) The responsible public entity **MAY** establish a reasonable application fee for the submission of an unsolicited proposal under this section. The fee **MUST** be sufficient to pay the costs of evaluating the proposal. The responsible public entity **MAY** engage the services of a private consultant to assist in the evaluation.

(b) The responsible public entity **MAY** request a proposal from private entities for a public-private project or, if the public entity receives an unsolicited proposal for a public-private project and the public entity intends to enter into a comprehensive agreement for the project described in such unsolicited proposal, the public entity **SHALL** publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for 2 weeks stating that the public entity has received a proposal and will accept other proposals for the same project. The timeframe within which the public entity **MAY** accept other proposals **SHALL** be determined by the public entity on a project-by-project basis based upon the complexity of the project and the public benefit to be gained by allowing a longer or shorter period of time within which other proposals **MAY** be received; however, the timeframe for allowing other proposals **MUST** be at least 21 days, but no more than 120 days, after the initial date of publication. A copy of the notice **MUST** be mailed to each local government in the affected area.

(c) A responsible public entity that is a school board **MAY** enter into a comprehensive agreement only with the approval of the local governing body.

(d) Before approval, the responsible public entity **MUST** determine that the proposed project:

1. Is in the public's best interest.
2. Is for a facility that is owned by the responsible public entity or for a facility for which ownership will be conveyed to the responsible public entity.
3. Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the agreement by the responsible public entity.
4. Has adequate safeguards in place to ensure that the responsible public entity or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.
5. Will be owned by the responsible public entity upon completion or termination of the agreement and upon payment of the amounts financed.

(e) Before signing a comprehensive agreement, the responsible public entity **MUST** consider a reasonable finance plan that is consistent with subsection (11); the project cost; revenues by source; available financing; major assumptions; internal rate of return on private investments, if governmental funds are assumed in order to deliver a cost-feasible project; and a total cash-flow analysis beginning with the implementation of the project and extending for the term of the agreement.

(f) In considering an unsolicited proposal, the responsible public entity **MAY** require from the private entity a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies. In evaluating the technical study, the responsible public entity **MAY** rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of external advisors or consultants who have relevant experience.



**(6) PROJECT QUALIFICATION AND PROCESS.—**

(a) The private entity **MUST** meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional services and contracts for traditional procurement projects.

(b) The responsible public entity **MUST**:

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

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

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

(c) After the public notification period has expired in the case of an unsolicited proposal, the responsible public entity **SHALL** rank the proposals received in order of preference. In ranking the proposals, the responsible public entity **MAY** consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, and finance plans. The responsible public entity **MAY** then begin negotiations for a comprehensive agreement with the highest-ranked firm. If the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity **MAY** terminate negotiations with the proposer and negotiate with the second-ranked or subsequent-ranked firms, in the order consistent with this procedure. If only one proposal is received, the responsible public entity **MAY** negotiate in good faith, and if the public entity is not satisfied with the results of the negotiations, the public entity **MAY** terminate negotiations with the proposer. Notwithstanding this paragraph, the responsible public entity **MAY** reject all proposals at any point in the process until a contract with the proposer is executed.

(d) The responsible public entity **SHALL** perform an independent analysis of the proposed public-private partnership which demonstrates the cost-effectiveness and overall public benefit before the procurement process is initiated or before the contract is awarded.

(e) The responsible public entity **MAY** approve the development or operation of an educational facility, a transportation facility, a water or wastewater management facility or related infrastructure, a technology infrastructure or other public infrastructure, or a government facility needed by the responsible public entity as a qualifying project, or the design or equipping of a qualifying project that is developed or operated, if:

1. There is a public need for or benefit derived from a project of the type that the private entity proposes as the qualifying project.

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

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

(f) The responsible public entity **MAY** charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the request, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors or consultants.

(g) Upon approval of a qualifying project, the responsible public entity **SHALL** establish a date for the commencement of activities related to the qualifying project. The responsible public entity **MAY** extend the commencement date.

(h) Approval of a qualifying project by the responsible public entity is subject to entering into a comprehensive agreement with the private entity.