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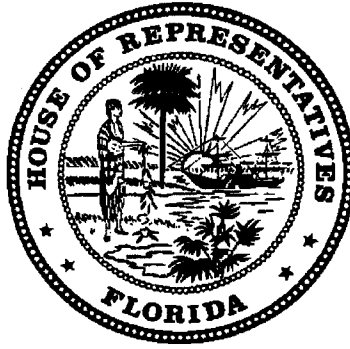
# Higher Education & Workforce Subcommittee

**Wednesday, March 5, 2014  
4:00 p.m. – 6:00 p.m.  
102 HOB**

**Meeting Packet**

**Will Weatherford  
Speaker**

**Jeanette Nuñez  
Chair**



## AGENDA

Higher Education & Workforce Subcommittee  
Wednesday, March 5, 2014  
4:00 p.m. – 6:00 p.m.  
102 HOB

- I. Call to Order/Roll Call
- II. Opening Remarks
- III. HB 541 – Public-Private Partnerships by Steube
- IV. HB 543 – Pub. Rec./Public-Private Partnerships/State Universities by Steube
- V. HB 487 – Agricultural Industry Certification by Raburn
- VI. PCS for HB 147 – Concrete Masonry Education
- VII. HB 355 – Postsecondary Education Textbook and Instructional Materials Affordability by Porter
- VIII. Closing Remarks and Adjournment

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

(AMENDED 3/3/2014 5:51:35PM)

Amended(1)

### Higher Education & Workforce Subcommittee

**Start Date and Time:** Wednesday, March 05, 2014 04:00 pm  
**End Date and Time:** Wednesday, March 05, 2014 06:00 pm  
**Location:** Reed Hall (102 HOB)  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 355 Postsecondary Education Textbook and Instructional Materials Affordability by Porter

HB 487 Agricultural Industry Certifications by Raburn

HB 541 Public-Private Partnerships by Steube

HB 543 Pub. Rec./Public-Private Partnerships/State Universities by Steube

PCS for HB 147 -- Concrete Masonry Education

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by a member who is not a member of the subcommittee shall be 6:00 pm, Tuesday, March 4, 2014.

By request of the Chair, all subcommittee members are asked to have amendments to bills on the agenda submitted by 6:00 pm, Tuesday, March 4, 2014.

**NOTICE FINALIZED on 03/03/2014 17:51 by Fudge.Jason**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 541 Public-Private Partnerships  
**SPONSOR(S):** Steube  
**TIED BILLS:** HB 543      **IDEN./SIM. BILLS:** SB 900

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee		Thomas <i>MT</i>	Sherry <i>SPS</i>
2) Government Operations Subcommittee			
3) Appropriations Committee			
4) Education Committee			

### SUMMARY ANALYSIS

The bill authorizes public-private partnerships between state universities and private entities. The purpose of a public-private partnership is to provide for the construction or upgrade of state university facilities that are used predominantly for public purposes and that is in the public's interest to provide for the construction or upgrade.

The bill:

- Provides definitions, procurement procedures, project qualifications and legislative findings and intent relating to the construction or improvement of facilities that will be principally used by a state university in serving the university's core mission.
- Outlines project approval requirements and instructions for interim and comprehensive agreements, including agreement termination.
- Identifies the duties and responsibilities of both the private entities and the state universities relating to public-private partnership agreements.
- Specifies that public-private partnership agreements are subject to the approval of the Board of Governors (BOG).
- Identifies BOG as the entity responsible for developing public-private partnership guidelines for the state universities.

The fiscal impact of the bill is indeterminate at this time. (See Fiscal Analysis & Economic Impact Statement)

The bill provides an effective date of July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Public Education Capital Outlay

The State University System (SUS) currently relies on state Public Education Capital Outlay (PECO) dollars as the primary source of both university construction and building maintenance.<sup>1</sup> The institutions utilize PECO not just for new teaching and research facilities but to keep existing buildings functional with deferred maintenance spending. PECO also can be utilized to retrofit older buildings into new uses, such as the comprehensive research labs critical to building a more stable, knowledge-based Florida economy.<sup>2</sup> However, PECO funds cannot be used to construct student life facilities, such as student unions, cafeterias, recreational fields, and wellness centers/fitness centers.

PECO funds have decreased significantly since 2010-11 from over \$300 million to less than \$10 million in the 2012-13.<sup>3</sup> The SUS estimates it needs between \$200 million and \$400 million each year to maintain and modernize the existing state investment in university buildings and utility infrastructure, according to national norms that evaluate factors such as square footage and age of assets. For FY 2012-13, total appropriations for this purpose were less than \$9 million to be shared across the System.<sup>4</sup> The BOG indicated that further PECO reductions will not only severely limit growth and student access to the SUS, but translate to reductions in the amount of usable space available by institutions.<sup>5</sup>

While minimal public-private partnerships exist between various entities and individual state universities, existing statutory authority does not directly address university public-private partnerships. Furthermore, the Public Facilities and Infrastructure Act established a framework for public-private partnerships; however, state universities are generally exempt from these provisions.<sup>6</sup>

##### **Effect of Proposed Changes**

The bill creates a new section of statute that authorizes public-private partnerships between state universities and private entities for the purpose of raising funds to build, upgrade, operate, own, or finance facilities in order to receive solicited or unsolicited proposals for qualifying projects and establishes definitions.

The bill includes language to support the need for public-private partnerships in Florida, which include a need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of projects serving a public purpose, including educational and auxiliary facilities and projects within the state which serve a public need and purpose, and that such public need may not be wholly satisfied by existing procurement methods. The bill declares that it is the intent of the Legislature to encourage investments

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<sup>1</sup> Florida Board of Governors, Task Force on Facilities Funding – 2012, *available at* <http://www.flbog.edu/about/taskforce/facilities.php> hereafter “Task Force Report.”

<sup>2</sup> State University System, Board of Governors, *FACT SHEET: Public Education Capital Outlay (PECO)*, July 17, 2012, *available at* <http://flbog.edu/pressroom/doc/7.2012-PECO-Fact-Sheet-Press-Room.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> Florida Board of Governors, Task Force on Facilities Funding – 2012, *available at* <http://www.flbog.edu/about/taskforce/facilities.php>.

<sup>5</sup> State University System, Board of Governors, *FACT SHEET: Public Education Capital Outlay (PECO)*, July 17, 2012, *available at* <http://flbog.edu/pressroom/doc/7.2012-PECO-Fact-Sheet-Press-Room.pdf>.

<sup>6</sup> State University System, Bill Analysis for HB 541 (Feb. 5, 2014). Section 287.05712, F.S.

in the state by private entities and to provide the greatest possible flexibility to public and private entities contracting for the provision of public services.

### Procurement Procedures

The bill provides that a state university board of trustees (board) 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, operation, ownership or finance of facilities.

### Unsolicited Proposals

The bill provides the following requirements for unsolicited proposals:

- The board may establish a reasonable application fee for the submission of an unsolicited proposal. The application fee must be sufficient to pay the cost of evaluating the proposal. A board may also engage the services of a private consultant to assist in the evaluation.
- If an unsolicited proposal is received and the board intends to enter into a comprehensive agreement for the project described in such unsolicited proposal, the board must publish notice in a newspaper of general circulation at least once a week for 2 weeks stating that the board has received a proposal and will accept other proposals for the same project. The timeframe within which the board may accept other proposals must be determined 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.

### Project Approval Requirements

The bill requires the board, before project approval, to determine that the proposed project:

- Is in the public's best interest;
- Is for a facility that is owned by the board or for a facility for which ownership will be conveyed to the board;
- 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 board;
- Has adequate safeguards in place to ensure that the board or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes;
- Will be owned by the board upon completion or termination of the agreement and upon payment of the amount financed; and
- Is supported by a reasonable finance plan; 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.

The bill requires, unless waived by the board, that an unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following:

- A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project;

- A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project;
- A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and the identity for a dedicated revenue sources or proposed debt or equity investment on behalf of the private entity;
- The name and address of the person who may be contacted for further information concerning the proposal;
- The proposed user fees, lease payments, or other services payments over the term of a comprehensive agreement, and the methodology for and circumstances that would allow changes to the user fees, lease payments, and other service payments over time; and
- Any Additional material or information that the board reasonably requests.

### Project Qualification and Process

The private entity must meet the minimum standards contained in the board's regulation or guidelines for qualifying professional services and contracts for traditional procurement projects.

The bill requires the board to:

- Ensure that provisions are made for the private entity's performance and payment of subcontractors;
- Ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors; and
- Ensure that the provisions are made for the transfer of the private's obligations if the comprehensive agreement is terminated or a material default occurs. The bill also requires that before the procurement process is initiated or before the contract is awarded, the board must perform an independent analysis of the proposed public-private partnership that demonstrates the cost-effectiveness and overall public benefit.

After the public notification period has expired for unsolicited proposals, the board must rank the proposals received in order of preference. For purposes of ranking, the board may consider, but is not limited to, professional qualification, general business terms, innovative design techniques or cost-reduction terms, and finance plans. The board may then begin negotiation for a comprehensive agreement with the highest-ranked firm. If the board is not satisfied with the results of the negotiations, the board may terminate negotiations with the highest ranked and negotiate with the second-ranked or subsequent-ranked firms. The bill does not require the board to choose any of the firms that apply or for more than one firm to respond to the solicitation.

The board may charge a reasonable fee to cover the cost 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.

The bill provides that the board may approve the development or operation of a qualifying project, or the design or equipping of a qualifying project that is developed or operated, if:

- There is a public need for or benefit derived from the project that the private entity proposes as the qualifying project and the project is included in the university's master plan;
- The estimated cost of the qualifying project is reasonable in relation to similar facilities; and
- The private entity's plan will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

Approval of a qualifying project by the board is subject to entering into a comprehensive agreement with the private entity. Upon approval of a qualifying project, the board must establish a date for the commencement of activities related to the qualifying project.



### Interim Agreement

The bill provides that before or in connection with the negotiation of a comprehensive agreement, the board may enter into an interim agreement with the private entity, which does not obligate the board to enter into a comprehensive agreement. The interim agreement must be limited to provisions that:

- Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project;
- Establish the process and timing of the negotiation of the comprehensive agreement; and
- Contain other provisions related to an aspect of the development or operation of a qualifying project that the board and the private entity deem appropriate.

### Comprehensive Agreement

The bill requires the private entity and board to enter into a comprehensive agreement prior to developing or operating the qualifying project. The comprehensive agreement must provide for:

- Delivery of performance and payment bonds, letters of credit, and other security in connection with the development or operation of the qualifying project;
- Review of plans and specifications for the project by the board. This does not require the private entity to complete the design of the project prior to executing the comprehensive agreement;
- Inspection of the qualifying project by the board;
- Maintenance of a policy of public liability insurance;
- Monitoring of the practices of the private entity by the responsive public entity to ensure the project is properly maintained;
- Filing of financial statements on a periodic basis by the private entity;
- Procedures governing the rights and responsibility of the board and private entity in the course of the construction and operation of the qualifying project and in the event of a termination of the agreement or a material default;
- Fees, lease payment, or service payments; and
- Duties of the private entity, including terms and conditions that the board determines serve the public purpose.

The bill provides that the comprehensive agreement may include the following:

- An agreement by the board to make grants or loans to the private entity from amounts received from federal, state, or local government or an agency or instrumentality thereof, or private donors.
- A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity, including, but not limited to, a provision regarding unavoidable delays.
- A provision that terminates the authority and duties of the private entity and dedicates the qualifying project to the board.

### Fees

The bill provides that the comprehensive agreement may authorize the private entity to impose fees to members of the public for the use of the facility. The following provisions apply to the comprehensive agreement:

- The board may develop new facilities or increase capacity in existing facilities through the agreements with public-private partnerships;
- The facility must be properly operated, maintained, or improved in accordance with standards set forth in the agreement;
- The board may lease new facilities or existing fee-for-use facilities through the agreement;

- Any revenue must be regulated by the board pursuant to the comprehensive agreement; and
- A negotiated portion of revenue from fee-generating use must be returned to the board over the life of the agreement.

### Financing

The bill provides financing options for public-private partnerships which include the private entity, entering into a private-source financial agreement between financing sources and the private entity. A financing agreement and any liens on the property or facility must be paid in full at the applicable closing that transfers ownership or operation of the facility to the board at the conclusion of the term of the comprehensive agreement. The board may use innovative finance techniques associated with a public-private partnership including, but not limited to, federal loans as provided in Titles 23 and 49 C.F.R., commercial bank loans, and hedges against inflation from commercial banks or other private sources. In addition the board may provide its own capital or operating budget to support a qualifying project. The budget may be from any legally permissible funding sources of the board, including the proceeds of debt issuances. A financing agreement may not subject the boards' facility to liens in violation of s. 11.066(5).F.S.

### Powers and Duties of the Private Entity

The bill requires the private entity to develop, operate, and maintain the qualifying project in accordance with the comprehensive agreement. The private entity must also:

- Cooperate with the board in making best efforts to establish interconnection between the qualifying project and other facilities and infrastructure;
- Maintain, or provide by contract for the maintenance or improvement of, the qualifying project if required by the comprehensive agreement; and
- Comply with the terms of the comprehensive agreement and a lease or service contract.

### Expiration or Termination of Agreements

The bill provides that, upon the expiration or termination of a comprehensive agreement, the board may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the cost of operating and maintaining the project are paid in the normal course. The full faith and credit of the board may not be pledged to secure the financing of the private entity. The bill specifies that the assumption of the development or operation of the qualifying project does not obligate the board to pay any obligation of the private entity from sources other than from revenues from the qualifying project unless stated otherwise in the comprehensive agreement.

### Sovereign Immunity

The bill provides that sovereign immunity is not waived by a board, or any officer or employee thereof, with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project.

## Construction

The bill does not:

- Affect an agreement or existing relationship with a supporting organization involving a board in effect as of January 1, 2014;
- Amend existing laws by granting additional powers to, or further restricting, a board from regulating and entering into cooperative arrangement with the private sector for the planning, construction, or operation of a facility; or
- Waive any requirements of s. 1013.45 relating to educational facilities contracting and construction.

### B. SECTION DIRECTORY:

**Section 1.** Creates s. 1013.505, F.S., providing for partnerships between state universities and private entities; providing definitions; providing legislative findings and intent relating to the construction or improvement by private entities of facilities or projects used predominately for public purpose; providing procurement procedures for a state university board of trustees, including proposals or a qualifying project and a comprehensive agreement for partnership transactions; providing project qualifications and process, providing requirements for interim and comprehensive agreements between a board of trustees, a d a private entity; providing for use fees; providing for various financial sources for projects; providing powers and duties of private entities; providing for expiration or termination of a comprehensive agreement; providing for the applicability of sovereign immunity for boards of trustees with respect to qualified projects; providing for construction of the act.

**Section 2.** Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes the state university board of trustees to establish a reasonable application fee for unsolicited proposals; therefore, a private entity that provides an unsolicited proposal may be required to pay an application fee. The amount of the application fee is unknown as there is no range identified in the bill.

The bill authorizes the board to charge a reasonable fee to cover the cost 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. According to the BOG, this fee would apply to solicited proposals.<sup>7</sup> The amount of this fee is unknown as there is no range identified in the bill.

The bill provides that the comprehensive agreement may authorize the private entity to impose fees to members of the public for the use of the facility. Any fee must be regulated by the board pursuant to the comprehensive agreement, and a negotiated portion of the revenue generated from the fee must be returned to the board over the life of the agreement. The fee imposed on the public using the facility is not specified in the bill therefore, the revenue generated from the fee is indeterminate.

#### D. FISCAL COMMENTS:

According to the BOG, SUS institutions have generally issued tax-exempt bonds to finance the construction of auxiliary facilities such as parking garages, and the state has issued tax-exempt PECO bonds to construct educational facilities. It is not expected that public-private partnerships will result in lower interest rates. Rather, potential savings may be realized in that partnership agreements legally commit both parties to the long-term maintenance of the subject facilities. Making repairs on a scheduled basis can result in long-term cost savings. The ability to defer critical maintenance items due to short-term budget obligations will be significantly reduced if public partnership agreements are properly structured and adequately enforced.<sup>8</sup>

BOG also anticipates that there will be an increased workload associated with the development of system-wide guidelines and BOG review and approval of partnership agreements. However, BOG believes that current staffing resources will be sufficient to address the increased workload.<sup>9</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require municipalities or counties to expend funds or to take any action requiring the expenditure of funds, reduce the authority that municipalities or counties have to raise revenues in the aggregate, or reduce the percentage of state tax shared with municipalities or counties.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Florida courts have held that the Legislature, when delegating authority to executive agencies or other entities, must establish minimal standards and guidelines ascertainable by reference to the legislation.<sup>10</sup>

<sup>7</sup> Telephone conversation with staff of the Board of Governors. (Feb. 28, 2014)

<sup>8</sup> Staff of the Board of Governors, *Legislative Bill Analysis for HB 541(2014)*.

<sup>9</sup> *Id.*

<sup>10</sup> See *Askew v. Cross Key Waterways*, 372 So.2d 913, 924 (Fla. 1978); *Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998).

Lines 113 - 117: The bill authorizes the state university board of trustees to establish a reasonable application fee for unsolicited proposals. The amount of the application fee is unknown as there is no range identified in the bill.

Lines 248 - 252: The bill authorizes the board to charge a reasonable fee to cover the cost of processing, reviewing, and evaluating solicited proposals. The amount of the fee is unknown as there is no range identified in the bill.

Lines 348 - 351: The bill provides that the comprehensive agreement may authorize the private entity to impose fees to members of the public for the use of the facility. The fee imposed on the public using the facility is not specified in the bill.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

71 (2) LEGISLATIVE FINDINGS AND INTENT.—

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

77 2. The Legislature also finds that:

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



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

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

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

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

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

105 provision of public services.

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

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

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

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

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

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

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

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

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

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

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

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

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

160 (e) In considering an unsolicited proposal, the board may  
 161 require from the private entity a technical study prepared by a  
 162 nationally recognized expert with experience in preparing  
 163 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

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.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 543 Pub. Rec./Public-Private Partnerships/State Universities

SPONSOR(S): Steube

TIED BILLS: HB 541 IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee		Thomas <i>MTS</i>	Sherry <i>HPS</i>
2) Government Operations Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

HB 543, which is tied to the passage of HB 541, creates an exemption from public records requirements for unsolicited proposals for public-private projects for the upgrade of state university facilities and infrastructure.

The bill exempts unsolicited proposals from public records request for no more than 12 months after the state university board of trustees rejects all proposals received for the project described in the unsolicited proposals. If the board of trustees does not intend to enter into an agreement for the project the unsolicited proposals are exempt from public records request on the date they were received.

The public records exemption is subject to the Open Government Sunset Review Act<sup>1</sup> and must stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

The bill does not appear to have a fiscal impact.

The bill provides a contingent effective date of July 1, 2014. This bill must take effect on the same date that HB 541 or similar legislation takes effect.

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record and public meeting exemption; thus, it requires a two-thirds vote for final passage.**

<sup>1</sup> The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meeting exemptions. It requires the automatic repeal of such an October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

##### Public Record Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>2</sup>

Furthermore, the Open Government Sunset Review Act<sup>3</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.

##### Effect of Proposed Changes

The bill, which is tied to the passage of HB 541, creates an exemption from public records requirements for unsolicited proposals for public-private projects for the upgrade of state university facilities and infrastructure.

The unsolicited proposals are exempt from public records request for no more than 12 months after the state university board of trustees rejects all proposals received for the project described in the unsolicited proposal. If the board of trustees does not intend to enter into the agreement for the project the unsolicited proposals are exempt from public records request on the date they were received.

The public records exemption is subject to the Open Government Sunset Review Act<sup>4</sup> and must stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

#### B. SECTION DIRECTORY:

<sup>2</sup> Art. I, s. 24(c), Fla. Const.

<sup>3</sup> Section 119.15, F.S.

<sup>4</sup> The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meeting exemptions. It requires the automatic repeal of such an October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

**Section 1.** Amends s. 1013.505, F.S., relating to public-private projects for the upgrade of state university facilities and infrastructure; providing an exemption for public records requirements for unsolicited proposals held by a state university board of trustees for a specified period; providing for future legislative review and repeal of the exemption.

**Section 2.** Provided a statement of public necessity.

**Section 3.** Provides a contingent effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require municipalities or counties to expend funds or to take any action requiring the expenditure of funds, reduce the authority that municipalities or counties have to raise revenues in the aggregate, or reduce the percentage of state tax shared with municipalities or counties.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new public record exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new public record exemptions; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

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.







Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Higher Education &  
 2 Workforce Subcommittee  
 3 Representative Raburn offered the following:  
 4

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
 7 Section 1. Subsection (43) is added to section 570.07,  
 8 Florida Statutes, to read:

9 570.07 Department of Agriculture and Consumer Services;  
 10 functions, powers, and duties.—The department shall have and  
 11 exercise the following functions, powers, and duties:

12 (43) In cooperation with the Institute of Food and  
 13 Agricultural Sciences at the University of Florida and the  
 14 College of Agriculture and Food Sciences at Florida Agriculture  
 15 and Mechanical University, annually provide to the State Board  
 16 of Education and the Department of Education information and  
 17 industry certifications for farm occupations to be considered



Amendment No. 1

18 for placement on the Industry Certification Funding List and the  
19 Postsecondary Industry Certification Funding List pursuant to s.  
20 1008.44. Information and industry certifications provided by the  
21 department must be based upon the best available data.

22 Section 2. Section 1003.492, Florida Statutes, is amended  
23 to read:

24 1003.492 Industry-certified career education programs.—

25 (1) Secondary schools offering career-themed courses, as  
26 defined in s. 1003.493(1)(b), and career and professional  
27 academies shall be coordinated with the relevant and appropriate  
28 industry to prepare a student for further education or for  
29 employment in that industry.

30 (2) Industry certification as used in this section is a  
31 voluntary process through which students are assessed by an  
32 independent, third-party certifying entity using predetermined  
33 standards for knowledge, skills, and competencies, resulting in  
34 the award of a time-limited credential that is nationally  
35 recognized and must be at least one of the following:

36 (a) Within an industry that addresses a critical local or  
37 statewide economic need;

38 (b) Linked to an occupation that is included in the  
39 workforce system's targeted occupation list; or

40 (c) Linked to an occupation that is identified as  
41 emerging.

42 (3) ~~(2)~~ The State Board of Education shall use the  
43 expertise of Workforce Florida, Inc., and the Department of



Amendment No. 1

44 Agriculture and Consumer Services, to develop and adopt rules  
45 pursuant to ss. 120.536(1) and 120.54 for implementing an  
46 industry certification process.

47 (a) For nonfarm occupations, ~~industry certification shall~~  
48 ~~be defined by the Department of Economic Opportunity,~~ based upon  
49 the highest available national standards for specific industry  
50 certification, to ensure student skill proficiency and to  
51 address emerging labor market and industry trends. A regional  
52 workforce board or a school principal may apply to Workforce  
53 Florida, Inc., to request additions to the approved list of  
54 industry certifications based on high-skill, high-wage, and  
55 high-demand job requirements in the regional economy. ~~The list~~  
56 ~~of industry certifications approved by Workforce Florida, Inc.,~~  
57 ~~and the Department of Education shall be published and updated~~  
58 ~~annually by a date certain, to be included in the adopted rule.~~

59 (b) For farm occupations submitted pursuant to s. 570.07,  
60 industry certification shall demonstrate student skill  
61 proficiency and be based upon the best available data to address  
62 critical local or statewide economic needs.

63 (4) The list of industry certifications approved by  
64 Workforce Florida, Inc., the Department of Agriculture and  
65 Consumer Services, and the Department of Education shall be  
66 published and updated annually by a date certain, to be included  
67 in the adopted rule.

68 (5) ~~(3)~~ The Department of Education shall collect student  
69 achievement and performance data in industry-certified career



Amendment No. 1

70 education programs and career-themed courses and shall work with  
71 Workforce Florida, Inc., and the Department of Agriculture and  
72 Consumer Services in the analysis of collected data. The data  
73 collection and analyses shall examine the performance of  
74 participating students over time. Performance factors shall  
75 include, but not be limited to, graduation rates, retention  
76 rates, Florida Bright Futures Scholarship awards, additional  
77 educational attainment, employment records, earnings, industry  
78 certification, and employer satisfaction. The results of this  
79 study shall be submitted to the President of the Senate and the  
80 Speaker of the House of Representatives annually by December 31.

81 Section 3. Subsection (3) of section 1003.4935, Florida  
82 Statutes, is amended to read:

83 1003.4935 Middle grades career and professional academy  
84 courses and career-themed courses.—

85 (3) Beginning with the 2012-2013 school year, if a school  
86 district implements a middle school career and professional  
87 academy or a career-themed course, the Department of Education  
88 shall collect and report student achievement data pursuant to  
89 performance factors identified under s. 1003.492(5) ~~1003.492(3)~~  
90 for students enrolled in an academy or a career-themed course.

91 Section 4. This act shall take effect July 1, 2014.

92  
93  
94 -----  
95 **T I T L E A M E N D M E N T**



Amendment No. 1

96 Remove everything before the enacting clause and insert:  
97 An act relating to agricultural industry certifications;  
98 amending s. 570.07, F.S.; requiring the Department of  
99 Agriculture and Consumer Services to annually provide to the  
100 State Board of Education and the Department of Education  
101 information and industry certifications for farm occupations to  
102 be considered for placement on industry certification funding  
103 lists; amending s. 1003.492, F.S.; defining industry  
104 certification as part of career education programs; requiring  
105 the state board to adopt rules for implementing an industry  
106 certification process for farm occupations; amending s.  
107 1003.4935, F.S.; conforming a cross-reference; providing an  
108 effective date

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 487 Agricultural Industry Certifications  
SPONSOR(S): Raburn and others  
TIED BILLS: IDEN./SIM. BILLS: SB 1206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee		Thomas <i>MA</i>	Sherry <i>ARS</i>
2) Agriculture & Natural Resources Subcommittee			
3) Appropriations Committee			
4) Education Committee			

SUMMARY ANALYSIS

HB 487 requires the Department of Agriculture and Consumer Services, in cooperation with the Institute of Food and Agricultural Science at the University of Florida, Florida Agriculture and Mechanical University, schools, and other agencies, to annually provide to the State Board of Education (state board) and the Department of Education information and industry certifications for farm occupations to be placed on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List. The information and industry certification provide must be based on the best available data.

The bill codifies in law the Department of Economic Opportunity's current definition of industry certification.

The bill requires the state board to use the expertise of the Department of Agriculture and Consumer Services to develop and adopt rules for implementing an industry certification process for farm occupations by July 2015. The list of farm occupation industry certifications approved by the Department of Agriculture and Consumer Services and the Department of Education must be published and updated annually.

The bill requires industry certification for farm occupations meeting the requirements established by rules adopted by the state board, to be placed on the Industry Certification Funding List and Postsecondary industry Certification Funding List annually.

The bill requires the Department of Education to include the Department of Agriculture and Consumer Services in the analysis of collected student achievement and performance data in industry-certified career education programs and career-themed courses

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Industry Certifications

Section 1003.492, F.S., requires the State Board of Education (state board) to work with Workforce Florida, Inc., to develop and adopt rules for implementing an industry certification process. The Department of Economic Opportunity (DEO) must identify an industry certification based on the highest available national standards for specific industry certification to ensure student skill proficiency and to address emerging labor market and industry trends.<sup>1</sup>

Current law requires DEO to define industry certification.<sup>2</sup> DEO currently defines industry certification as "a voluntary process, through which individuals are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills and competencies, resulting in the award of a time-limited credential that is nationally recognized and applicable to an occupation that is included in the workforce system's targeted occupation list or determined to be an occupation that is critical, emerging, or addresses a local need."<sup>3</sup>

The selection of industry certifications for academy courses and career-themed courses occurs in two phases. First, Workforce Florida, Inc. must identify industry certifications that meet the DEO definition and compile them into a comprehensive list.<sup>4</sup> Second, the Department of Education (DOE) must:

- Review the comprehensive list;<sup>5</sup>
- Identify certifications that are academically rigorous and at least 150 hours in length;<sup>6</sup>
- Compile a preliminary list of industry certifications that qualify for additional weighted funding;<sup>7</sup>
- Consider district requests that industry certifications be added to the approved list;<sup>8</sup> and
- Annually publish a final list.<sup>9</sup>

However, a regional workforce board or a school principal may apply to Workforce Florida, Inc., to request additions to the approved list of industry certification based on high-skill, high-wage, and high-demanding job requirements in the regional economy.<sup>10</sup>

Workforce Florida, Inc.'s, comprehensive list includes 428 industry certifications.<sup>11</sup> From this list, DOE has identified 201 industry certifications and 287 postsecondary industry certifications as funding-

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<sup>1</sup> Section 1003.492(2), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Florida Department of Education, Division of Career and Adult Education, *Career and Professional Education Act CAPE*, at 1 (2012), available at <http://www.fldoe.org/workforce/pdf/CAPE-Act-TechAssist.pdf>.

<sup>4</sup> Section 1003.492(2), F.S.; rule 6A-6.0573(1)-(3), F.A.C.; A regional workforce board or a school principal may apply to Workforce Florida, Inc., to request additions to the approved list of industry certification based on high-skills, high-wage, and high-demand job requirements in the regional economy.

<sup>5</sup> Rule 6A-6.0573(3), F.A.C.

<sup>6</sup> Rule 6A-6.0573(3)(b), F.A.C.

<sup>7</sup> Rule 6A-6.0573(4), F.A.C.

<sup>8</sup> Rule 6A-6.0573(4)(a) and (4)(b), F.A.C.

<sup>9</sup> Rule 6A-6.0573(8), F.A.C.

<sup>10</sup> Section 1003.492(2), F.S.

<sup>11</sup> Workforce Florida, Inc. Career and Professional Education (CAPE), *2013-14 Comprehensive Industry Certification List*, <http://www.workforceflorida.com/PrioritiesInitiatives/EducationalInitiatives/cape/2013-14ComprehensiveDocumentFINALDetailedtoDOE.pdf>.

eligible for the 2013 - 2014 school year.<sup>12</sup> Most industry certifications require passage of a subject area examination and some combination of work experience, educational attainment, or on-the job training. DOE has approved industry certification in such career fields as information technology, automotive and aircraft mechanics, welding, and nursing. Certifying entities include Adobe System, Apple Computer, Inc., Hewlett-Packard, Microsoft Corporation, the National Institute for Automotive Services Excellence, the American Welding Society, the Federal Aviation Administration, and Florida Department of Health.<sup>13</sup>

Industry certifications on the final approved list are eligible for additional weighted funding through the Florida Education Finance Program (FEFP).<sup>14</sup> The list may include both industry certifications that are achievable in a secondary education program and those that have minimum age, grade-level, diploma or degree, post-graduation work experience of at least 12 months, or other requirements that make it impossible for the student to obtain full certification while in a public secondary school program. Funding industry certifications in which full certification cannot be achieved in a secondary program allows students to begin working toward these certifications while in high school, without having to fulfill all requirements before graduation.<sup>15</sup>

DOE must also collect student achievement and performance data in industry-certified career education programs and career-themed courses and must work with Workforce Florida, Inc., in the analysis of collected data. The data collection and analyses must examine the performance of participating students over time. Performance factors must include, but are not limited to, graduation rates, retention rates, Florida Bright Futures Scholarship awards, additional educational attainment, employment records, earnings, industry certification, and employer satisfaction.<sup>16</sup>

### **Effect of Proposed Change**

The bill requires the Department of Agriculture and Consumer Services, in cooperation with the Institute of Food and Agricultural Science at the University of Florida, Florida Agriculture and Mechanical University, schools, and other agencies, to annually provide to the State Board of Education (state board) and the Department of Education information and industry certifications for farm occupations to be placed on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List. The information and industry certification provided must be based on the best available data.

The bill codifies in law the Department of Economic Opportunity's current definition of industry certification: "a voluntary process, through which individuals are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills and competencies, resulting in the award of a time-limited credential that is nationally recognized and applicable to an occupation that is included in the workforce system's targeted occupation list or determined to be an occupation that is critical, emerging, or addresses a local need."

The bill requires the state board to use the expertise of the Department of Agriculture and Consumer Services to develop and adopt rules for implementing an industry certification process for farm

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<sup>12</sup> Rule 6A-6.0573(6), F.A.C. The Industry Certification Funding List is incorporated by reference in the rule. *See also* Florida Department of Education, Division of Career and Adult Education, *2013-14 Final Industry Certification Funding List* (2013), available at [www.fldoe.org/workforce/fcpea/pdf/1314icfl.pdf](http://www.fldoe.org/workforce/fcpea/pdf/1314icfl.pdf).

<sup>13</sup> *See* Florida Department of Education, Division of Career and Adult Education, *Industry Certification Descriptions*, <http://www.fldoe.org/workforce/programs/IndustryCert> (last visited Feb 6, 2014).

<sup>14</sup> Section 1011.62(1)(p), F.S.; rule 6A-6.0573(3), F.A.C.

<sup>15</sup> Section 1008.44(3), F.S. For industry certifications in which full certification cannot be achieved in a secondary program, the Commissioner of Education must differentiate the content, instructional, and assessment requirements for such industry certifications in determining funding. This allows students to work toward these certifications while in high school, without having to fulfill all requirements before graduation. *Id.*

<sup>16</sup> Section 1003.492(3), F.S. A report of data on academies and career-themed courses must be submitted to the President of the Senate and Speaker of the House of Representatives by December 31, each year.



occupations by July 2015. The list of farm occupation industry certifications approved by the Department of Agriculture and Consumer Services and the Department of Education must be published and updated annually.

The bill requires industry certification for farm occupations meeting the requirements established by rules adopted by the state board, to be placed on the Industry Certification Funding List and Postsecondary industry Certification Funding List annually.

The bill requires the Department of Education to include the Department of Agriculture and Consumer Services in the analysis of collected student achievement and performance data in industry-certified career education programs and career-themed courses.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 570.07, F.S., requiring the Department of Agriculture and Consumer Services to annually provide to the State Board of Education and the Department of Education industry certifications for farm occupations to be considered for placement on industry certification funding lists.

**Section 2.** Amends s. 1003.492, F.S., defining industry certification as part of career education programs; requiring the state board to adopt rules for implementing an industry certification process for farm occupations; requiring placement of funding list to determine annual funding distributions to school districts and postsecondary institutions.

**Section 3.** Amends s. 1003.4935, F.S., conforming a cross-reference.

**Section 4.** Provides an effective date of July 1, 2014.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

**D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require municipalities or counties to expend funds or to take any action requiring the expenditure of funds, reduce the authority that municipalities or counties have to raise revenues in the aggregate, or reduce the percentage of state tax shared with municipalities or counties.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill requires the state board to adopt rules using the expertise of the Department of Agriculture and Consumer Services by July 1, 2015, for implementing an industry certification process for farm occupations. The state board would have to adopt separate rules for farm and non-farm occupations for industry certification.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires the Department of Agriculture and Consumer Services to provide the state board and DOE industry certification for farm occupations to be placed on the Industry Certification Funding List and the Postsecondary Industry Certification Funding List. The bill also requires that farm occupations meeting rules adopted by the state board must be placed on the Industry Certification Funding List and the postsecondary Industry Certification Funding List. This language is contradictory.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1                   A bill to be entitled  
 2           An act relating to agricultural industry  
 3           certifications; amending s. 570.07, F.S.; requiring  
 4           the Department of Agriculture and Consumer Services to  
 5           annually provide to the State Board of Education and  
 6           the Department of Education information and industry  
 7           certifications for farm occupations to be placed on  
 8           industry certification funding lists; amending s.  
 9           1003.492, F.S.; defining industry certification as  
 10          part of career education programs; requiring the state  
 11          board to adopt rules for implementing an industry  
 12          certification process for farm occupations; requiring  
 13          placement on funding lists to determine annual funding  
 14          distributions to school districts and postsecondary  
 15          institutions; amending s. 1003.4935, F.S.; conforming  
 16          a cross-reference; providing an effective date.

17  
 18   Be It Enacted by the Legislature of the State of Florida:

19  
 20           Section 1. Subsection (43) is added to section 570.07,  
 21   Florida Statutes, to read:

22           570.07 Department of Agriculture and Consumer Services;  
 23   functions, powers, and duties.—The department shall have and  
 24   exercise the following functions, powers, and duties:

25           (43) In cooperation with the Institute of Food and  
 26   Agricultural Sciences at the University of Florida, Florida

27 Agriculture and Mechanical University, schools, and other  
 28 agencies, to annually provide to the State Board of Education  
 29 and the Department of Education information and industry  
 30 certifications for farm occupations to be placed on the Industry  
 31 Certification Funding List and the Postsecondary Industry  
 32 Certification Funding List pursuant to s. 1008.44. The  
 33 information and industry certifications provided by the  
 34 department must be based upon the best available data. In  
 35 determining the best available data, the department shall  
 36 consult with the agricultural industry, the Institute of Food  
 37 and Agricultural Sciences at the University of Florida, Florida  
 38 Agriculture and Mechanical University, schools, and other  
 39 agencies.

40 Section 2. Section 1003.492, Florida Statutes, is amended  
 41 to read:

42 1003.492 Industry-certified career education programs.—

43 (1) Secondary schools offering career-themed courses, as  
 44 defined in s. 1003.493(1)(b), and career and professional  
 45 academies shall be coordinated with the relevant and appropriate  
 46 industry to prepare a student for further education or for  
 47 employment in that industry.

48 (2) Industry certification as used in this section is a  
 49 voluntary process through which students are assessed by an  
 50 independent, third-party certifying entity using predetermined  
 51 standards for knowledge, skills, and competencies, resulting in  
 52 the award of a time-limited credential that is nationally

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53 recognized and applicable to an occupation that is included in  
54 the workforce system's targeted occupation list or determined to  
55 be an occupation that is critical or emerging or addresses a  
56 local need.

57 (3)~~(2)~~ The State Board of Education shall use the  
58 expertise of Workforce Florida, Inc., to develop and adopt rules  
59 pursuant to ss. 120.536(1) and 120.54 for implementing an  
60 industry certification process for nonfarm occupations. Industry  
61 certification shall be ~~defined by the Department of Economic~~  
62 ~~Opportunity,~~ based upon the highest available national standards  
63 for specific industry certification, to ensure student skill  
64 proficiency and to address emerging labor market and industry  
65 trends. A regional workforce board or a school principal may  
66 apply to Workforce Florida, Inc., to request additions to the  
67 approved list of industry certifications based on high-skill,  
68 high-wage, and high-demand job requirements in the regional  
69 economy. The list of industry certifications approved by  
70 Workforce Florida, Inc., and the Department of Education shall  
71 be published and updated annually by a date certain, to be  
72 included in the adopted rule.

73 (4) The Legislature finds that the agricultural industry  
74 is critical to the state's economy and declares that industry  
75 certification for farm occupations is critical, addresses a  
76 local need, and is required for job growth. The State Board of  
77 Education shall use the expertise of the Department of  
78 Agriculture and Consumer Services to develop and adopt rules by

79 July 1, 2015, pursuant to ss. 120.536(1) and 120.54 for  
 80 implementing an industry certification process for farm  
 81 occupations. Industry certifications for farm occupations  
 82 meeting the rules adopted by the State Board of Education shall  
 83 be placed on the Industry Certification Funding List and the  
 84 Postsecondary Industry Certification Funding List annually  
 85 pursuant to s. 1008.44.

86 ~~(5)(3)~~ The Department of Education shall collect student  
 87 achievement and performance data in industry-certified career  
 88 education programs and career-themed courses and shall work with  
 89 Workforce Florida, Inc., and the Department of Agriculture and  
 90 Consumer Services in the analysis of collected data. The data  
 91 collection and analyses shall examine the performance of  
 92 participating students over time. Performance factors shall  
 93 include, but not be limited to, graduation rates, retention  
 94 rates, Florida Bright Futures Scholarship awards, additional  
 95 educational attainment, employment records, earnings, industry  
 96 certification, and employer satisfaction. The results of this  
 97 study shall be submitted to the President of the Senate and the  
 98 Speaker of the House of Representatives annually by December 31.

99 Section 3. Subsection (3) of section 1003.4935, Florida  
 100 Statutes, is amended to read:

101 1003.4935 Middle grades career and professional academy  
 102 courses and career-themed courses.—

103 (3) Beginning with the 2012-2013 school year, if a school  
 104 district implements a middle school career and professional

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105 academy or a career-themed course, the Department of Education  
106 shall collect and report student achievement data pursuant to  
107 performance factors identified under s. 1003.492(5) ~~1003.492(3)~~  
108 for students enrolled in an academy or a career-themed course.



109       Section 4. This act shall take effect July 1, 2014.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 147 Concrete Masonry Education  
**SPONSOR(S):** Higher Education & Workforce Subcommittee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Higher Education & Workforce Subcommittee		Ammel 	Sherry 

**SUMMARY ANALYSIS**

The proposed committee substitute for HB 147 creates the "Concrete Masonry Education Act," and establishes the Florida Concrete Masonry Council, Inc., (council) as a nonprofit corporation operating as a direct-support organization of the Department of Economic Opportunity (DEO). The bill:

- Outlines administrative powers and duties of the council including the power to plan, implement, and conduct educational programs related to the field of concrete masonry, particularly for individuals seeking employment.
- Provides for the appointment of a 13 member governing board.
- Allows the council to accept grants, donations, contributions, gifts, and to collect self-imposed, voluntary assessments on concrete masonry units produced and sold by concrete masonry manufacturers in the state.
- Requires the council to adopt bylaws that must be approved by DEO.
- Prohibits the council from participating or intervening in any political campaign on behalf of or in opposition to any candidate for public office or any state or local ballot initiative.

The fiscal impact of the bill is indeterminate. (SEE FISCAL COMMENTS)

The bill provides an effective date of July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Concrete Masonry Education Programs

Educational programs to train individuals in the field of concrete masonry are currently offered by school districts, colleges and apprenticeship programs throughout Florida. The Florida Department of Education develops Career and Technical Education programs in 'Concrete Masonry' as well as 'Brick and Block Masonry.' These programs are provided through a "network of service providers, which include District Technical Centers, Adult Education Providers and Florida colleges."<sup>1</sup> Career and Technical Education programs are reviewed on a three-year cycle by programmatic review committees,<sup>2</sup> with industry members comprising 50 percent of the review committees in the case of masonry programs.<sup>3</sup> The 2012 review of the Concrete Masonry program recommended deletion of the program due to low enrollment.<sup>4</sup> The program will be removed from inventory in the 2014-2015 school year.<sup>5</sup>

The Florida Masonry Apprentice and Educational Foundation, Inc., was created in 2002 as a non-profit educational foundation associated with the Masonry Association of Florida and the Florida Concrete & Products Association. The foundation coordinates and provides apprenticeship education of the masonry trade. Voluntary contributions are the sole financial support of the Florida Masonry Apprentice & Educational Foundation.<sup>6</sup>

#### EXAMPLES OF STATE INDUSTRY MARKETING STRUCTURES

##### Citrus Industry

The Florida Department of Citrus (department) has regulatory responsibility for all aspects of the citrus industry. The department is funded by the "box tax" and the equalizing excise tax. The box tax is an excise tax levied on each standard field box of fruit grown and placed into the primary channel of trade in Florida. The equalizing excise tax is assessed on processed citrus products imported into the state at a rate equal to the box tax. The majority of the proceeds of these taxes must be used by the department to advertise Florida citrus products.<sup>7</sup>

##### Florida Beef Council

The Florida Beef Council is a wholly-owned corporation of the Florida Cattlemen's Association. Created by the Beef Market Development Act, the Council functions as the promotional and educational arm of the beef industry in the state of Florida.<sup>8</sup>

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<sup>1</sup> Florida Department of Education, Career and Adult Education, available at [http://www.fldoe.org/workforce/dwdframe/arch\\_cluster\\_frame13.asp](http://www.fldoe.org/workforce/dwdframe/arch_cluster_frame13.asp) (last visited Feb. 7, 2014).

<sup>2</sup> Section 1004.92(2)(b)4, F.S.

<sup>3</sup> Department of Education, *Senate Bill 286 Agency Legislative Bill Analysis* (Oct. 23, 2013).

<sup>4</sup> In the 2012-2013 school year, the concrete masonry program was offered in three school districts with only 24 students statewide. Conversation with Florida Department of Education representative (Dec. 11, 2013).

<sup>5</sup> *Id.*

<sup>6</sup> Fourteen apprentice programs throughout the state have approximately 300 enrollees. Florida Masonry Apprentice & Educational Foundation, About Us, available at <http://www.masonryeducation.org/about.html> (last visited Feb. 7, 2014).

<sup>7</sup> Section 601.15, F.S.

<sup>8</sup> Section 570.9135, F.S.

Council activities are funded by beef producers through a federally mandated check-off program, paying one dollar per head on all cattle sold in the state. Half of those funds collected in Florida are designated for national promotion, research, consumer information, and industry information programs. The other half is used in Florida to disseminate nutritional and product information to the media, food service and retail industries, school educators, health professionals, consumers, and producers.<sup>9</sup>

The Florida Beef Council's activities are governed by a board of directors comprised of representatives from all segments of the beef industry.<sup>10</sup>

### Florida Building Commission

The Florida Building Commission is established in ch. 553, F.S., within the Department of Business and Professional Regulation (DBPR) and consists of 25 members that are appointed by the Governor and confirmed by the Senate.<sup>11</sup> The Commission is responsible for adopting and enforcing the Florida Building Code as a single, unified state building code used to provide effective and reasonable protection for the public safety, health and welfare.<sup>12</sup> The Florida Building Code is required to be updated every three years by the Florida Building Commission.<sup>13</sup> Pursuant to s. 553.73, F.S., the Commission is authorized to adopt internal administrative rules, impose fees for binding code interpretations, and use the rule adoption procedures listed under ch. 120, F.S., to approve amendments to the building code.<sup>14</sup>

### **Effect of Proposed Changes**

The proposed committee substitute creates the Concrete Masonry Education Act and establishes the Florida Concrete Masonry Council (council) as a nonprofit corporation acting as a direct-support organization of DEO. The council must operate under a written contract with DEO, and the contract requires, at a minimum, that the council's articles of incorporation, bylaws, and budget be approved by DEO. The contract also provides for a reversion of funds to DEO should the council cease to exist.

The proposed committee substitute requires the council to:

- Plan, implement, and conduct programs of education to train individuals in the field of concrete masonry.
- Develop and improve access to education for individuals seeking employment in the field of concrete masonry.
- Develop and implement outreach programs to ensure diversity among individuals trained in the programs.
- Coordinate educational programs with national programs and programs of other states.
- Inform and educate the public about the sustainability and economic benefits of concrete masonry products in order to increase employment opportunities.
- Develop, implement, and monitor a system for the collection of self-imposed voluntary assessments.
- Keep a separate accounting of all money received through voluntary assessments and provide for an annual financial audit in accordance with s. 215.981, F.S.
- Adopt bylaws by September 30, 2014.
- Provide a report, by January 15 of each year, to the Governor, President of the Senate and Speaker of the House of Representatives outlining the following: revenues received; use of

<sup>9</sup> Florida Cattlemen's Association, Beef Council, available at <http://www.floridacattlemen.org/fbc.html> (last visited Feb. 7, 2014).

<sup>10</sup> *Id.*

<sup>11</sup> See s. 553.74(1)(a)-(w), F.S.

<sup>12</sup> Sections 553.73 and 553.74, F.S.

<sup>13</sup> Section 553.73(7)(a), F.S. See also Florida Department of Business & Professional Regulation, Florida Building Commission, [http://www.floridabuilding.org/fbc/information/building\\_commission.htm](http://www.floridabuilding.org/fbc/information/building_commission.htm) (last visited Feb. 7, 2014).

<sup>14</sup> See ss. 553.76, 553.775, and 553.73(7), F.S., respectively.

funds received; annual goals and objectives and methods for achieving those; the number of individuals who received training or assistance from the programs; and information related to job placements and industry workforce needs.

The proposed committee substitute provides that the council may:

- Provide to governmental bodies, upon request, information relating to the concrete masonry industry.
- Sue and be sued as a council.
- Maintain a financial reserve for emergency use, not to exceed 10 percent of the council's anticipated income.
- Employ officers and employees of the council, prescribe their duties, and determine their compensation and terms of employment.
- Cooperate with other agencies or organizations in work or activities consistent with the council's objectives.
- Meet with masonry manufacturers to coordinate the collection of self-imposed voluntary assessments.
- Accept grants, donations, contributions, or gifts to be used for activities consistent with the council's objectives.
- Make payments to other organizations for work or services performed and if so, must secure a written agreement that recipients submit, at least annually, a written report detailing the activities and use of such funds.

The proposed committee substitute prohibits the council from:

- Participating in a political campaign, or state or local ballot initiatives.
- Using receipts to benefit directors, officers, or other private persons, not including reasonable compensation for services.
- Participating in activities prohibited for non-profit corporations under federal tax law.

The proposed committee substitute provides that each manufacturer who agrees to pay the self-imposed voluntary assessment shall collect such moneys and submit them quarterly to the council and must commit to paying the assessment for at least one year. The assessment shall be paid for each masonry unit produced and sold by the manufacturer.

The proposed committee substitute also establishes a 13-member board of directors for the council. Members are appointed by the Governor, President of the Senate, and the Speaker of the House as follows:

The Governor shall appoint three members:

- Two representing concrete masonry manufacturers.
- One representing a major building industry association in the state.

The President of the Senate shall appoint five members:

- Three representing concrete masonry manufacturers.
- One who is a stakeholder in the masonry industry, but is not a masonry contractor or manufacturer or employee of such.
- One who is a masonry contractor and is a member of the Masonry Association of Florida.

The Speaker of the House of Representatives shall appoint five members:

- Three representing concrete masonry manufacturers.

- One who has expertise in apprenticeship or has workforce education training.
- One who is a masonry contractor and is also a member of the Masonry Association of Florida.

The initial board members will be assigned to staggered terms. Thereafter, members shall be appointed to 3-year terms and may be reappointed to serve an additional consecutive term. All members serve without compensation but may be reimbursed for per diem and travel expenses.

**B. SECTION DIRECTORY:**

**Section 1.** Creates the Concrete Masonry Education Act in an unspecified section of Florida Statutes.

**Section 2.** Establishes the Concrete Masonry Education Council as a direct-support organization to DEO; outlines specific duties, responsibilities, and prohibitions for the council; establishes a 13-member governing board with specific membership requirements; and requires an annual report to the Governor, President of the Senate and Speaker of the House of Representatives.

**Section 3.** Provides an effective date of July 1, 2014.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Proposed payments by concrete masonry manufacturers to Florida Concrete Masonry Council, Inc., are self-imposed voluntary assessments on concrete masonry units produced and sold in the state. Additionally, the council may accept grants, donations, contributions, or gifts.

The fiscal impact cannot be determined because of the voluntary nature of the anticipated revenue.

**D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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1                                                    A bill to be entitled  
2            An act relating to concrete masonry education;  
3            providing a short title; creating the Florida Concrete  
4            Masonry Education Council, Inc.; requiring the council  
5            to operate under a written contract with the  
6            Department of Economic Opportunity; providing powers  
7            and duties of the council; providing restrictions;  
8            providing for appointment and terms of the governing  
9            board of the council; authorizing the council to  
10           accept grants, donations, contributions, and gifts  
11           under certain circumstances; authorizing the council  
12           to make payments to other organizations under certain  
13           circumstances; providing for collection of a voluntary  
14           assessment on concrete masonry units; requiring  
15           manufacturers who elect to pay the assessment to  
16           commit to paying the assessment for a specified  
17           period; requiring the council to adopt bylaws;  
18           providing for the adoption of bylaws and amendments to  
19           bylaws; providing an effective date.

20  
21    Be It Enacted by the Legislature of the State of Florida:

22  
23            Section 1. This section may be cited as the "Concrete  
24            Masonry Education Act."

25            Section 2. Concrete masonry education.—

26            (1) (a) The Florida Concrete Masonry Education Council,

27 Inc., is created as a nonprofit corporation organized under the  
 28 laws of this state and operating as a direct-support  
 29 organization of the Department of Economic Opportunity.

30 (b) The council shall operate under a written contract  
 31 with the department which provides, at a minimum, for:

32 1. Approval of the articles of incorporation and bylaws of  
 33 the council by the department.

34 2. Submission of an annual budget for approval by the  
 35 department.

36 3. Reversion of moneys and property held in trust by the  
 37 council for concrete masonry education to the department if the  
 38 council ceases to exist or to the state if the department ceases  
 39 to exist.

40 (c) The council shall:

41 1. Plan, implement, and conduct programs of education for  
 42 the purpose of training individuals in the field of concrete  
 43 masonry.

44 2. Develop and improve access to education for individuals  
 45 seeking employment in the field of concrete masonry.

46 3. Develop and implement outreach programs to ensure  
 47 diversity among individuals trained in the programs conducted  
 48 pursuant to this section.

49 4. Coordinate educational programs with national programs  
 50 or programs of other states.

51 5. Inform and educate the public about the sustainability  
 52 and economic benefits of concrete masonry products in order to



53 increase employment opportunities for individuals trained in the  
 54 programs conducted pursuant to this section.

55 6. Develop, implement, and monitor a system for the  
 56 collection of a self-imposed voluntary assessment on each  
 57 concrete masonry unit produced and sold by concrete masonry  
 58 manufacturers in this state.

59 7. Submit a report to the Governor, the President of the  
 60 Senate, and the Speaker of the House of Representatives by  
 61 January 15 of each year outlining the revenues received by the  
 62 council, the percentage of the industry participating in the  
 63 programs, the use of the funds received, goals and objectives  
 64 for the year and methods of achieving such goals and objectives,  
 65 the number of individuals who have received training or  
 66 assistance from the programs supported by the council, and  
 67 information relating to job placements and industry workforce  
 68 needs.

69 (d) The council may:

70 1. Provide to governmental bodies, on request, information  
 71 relating to subjects of concern to the concrete masonry industry  
 72 and act jointly or in cooperation with the state or Federal  
 73 Government, and agencies thereof, in the development or  
 74 administration of programs that the council considers to be  
 75 consistent with the objectives of this section.

76 2. Sue and be sued as a council without individual  
 77 liability of the members for actions of the council when acting  
 78 within the scope of the powers conferred by this section and in

79 the manner prescribed by the laws of this state.

80 3. Maintain a financial reserve for emergency use, the  
 81 total of which must not exceed 10 percent of the council's  
 82 anticipated annual income.

83 4. Employ subordinate officers and employees of the  
 84 council, prescribe their duties, and fix their compensation and  
 85 terms of employment.

86 5. Cooperate with any local, state, regional, or  
 87 nationwide organization or agency engaged in work or activities  
 88 consistent with the objectives of this section.

89 6. Meet with concrete masonry manufacturers in this state  
 90 to coordinate the collection of self-imposed voluntary  
 91 assessments on concrete masonry units.

92 (e)1. The council may not participate or intervene in any  
 93 political campaign on behalf of or in opposition to any  
 94 candidate for public office or any state or local ballot  
 95 initiative, including, but not limited to, the publication or  
 96 distribution of any statement.

97 2. The net receipts of the council may not in any part  
 98 inure to the benefit of or be distributable to its directors,  
 99 its officers, or other private persons; however, the council may  
 100 pay reasonable compensation for services rendered by council  
 101 officers and employees and may make payments and distributions  
 102 in furtherance of the purposes of this section.

103 3. Notwithstanding any other provision of law, the council  
 104 may not carry on any other activity not permitted to be carried

105 on by a corporation:

106 a. That is exempt from federal income taxation under s.  
 107 501(c)(3) of the Internal Revenue Code; or

108 b. To which charitable contributions are deductible under  
 109 s. 170(c)(2) of the Internal Revenue Code.

110 (2)(a) The Florida Concrete Masonry Education Council,  
 111 Inc., shall be governed by a board of directors composed of 13  
 112 voting members as follows:

113 1. Eight members representing concrete masonry  
 114 manufacturers of various sizes. After receiving recommendations  
 115 from the Masonry Association of Florida, the Governor shall  
 116 appoint two of these board members, and the President of the  
 117 Senate and the Speaker of the House of Representatives shall  
 118 each appoint three of these board members. Of the eight board  
 119 members appointed under this subparagraph, at least five members  
 120 must be representatives of manufacturers that are members of the  
 121 Masonry Association of Florida. A manufacturer may not be  
 122 represented by more than one board member.

123 2. One member representing a major building industry  
 124 association in the state appointed by the Governor.

125 3. One member having expertise in apprenticeship or  
 126 workforce education training appointed by the Speaker of the  
 127 House of Representatives.

128 4. One member who is not a masonry contractor or  
 129 manufacturer or an employee of a masonry contractor or  
 130 manufacturer but who is otherwise a stakeholder in the masonry

131 industry. This member shall be appointed by the President of the  
 132 Senate.

133 5. Two members who are masonry contractors and who are  
 134 members of the Masonry Association of Florida, one of whom shall  
 135 be appointed by the President of the Senate and one of whom  
 136 shall be appointed by the Speaker of the House of  
 137 Representatives.

138 (b)1. Five of the initial board members shall be appointed  
 139 to serve 1-year terms. Of the five members, one shall be  
 140 appointed by the Governor, two shall be appointed by the  
 141 President of the Senate, and two shall be appointed by the  
 142 Speaker of the House of Representatives.

143 2. Four of the initial board members shall be appointed to  
 144 serve 2-year terms. Of the four members, one shall be appointed  
 145 by the Governor, one shall be appointed by the President of the  
 146 Senate, and two shall be appointed by the Speaker of the House  
 147 of Representatives.

148 3. Four of the initial board members shall be appointed to  
 149 serve 3-year terms. Of the four members, one shall be appointed  
 150 by the Governor, two shall be appointed by the President of the  
 151 Senate, and one shall be appointed by the Speaker of the House  
 152 of Representatives.

153 4. Each subsequent vacancy on the board of directors shall  
 154 be filled in accordance with the initial appointment.  
 155 Thereafter, each board member shall be appointed to serve a 3-  
 156 year term and may be reappointed to serve an additional

157 consecutive term. However, a member may not serve more than two  
 158 consecutive terms.

159 (c) A board member may not be required to participate in a  
 160 voluntary assessment on concrete masonry units as a condition of  
 161 appointment. A member representing a manufacturer must have been  
 162 employed by a manufacturer engaging in the trade of manufacture  
 163 of concrete masonry products for at least 5 years immediately  
 164 preceding the first day of his or her service on the board. All  
 165 members of the board shall serve without compensation but are  
 166 entitled to reimbursement for per diem and travel expenses  
 167 incurred in carrying out the intents and purposes of this  
 168 section in accordance with s. 112.061, Florida Statutes.

169 (d) In addition to the 13 voting members described in  
 170 paragraph (a), the executive director of the Department of  
 171 Economic Opportunity, or his or her designee, shall serve ex  
 172 officio as a nonvoting member of the board of directors of the  
 173 council.

174 (3) The council may accept grants, donations,  
 175 contributions, or gifts from any source if the use of such  
 176 resources is not restricted in a manner that the council  
 177 considers to be inconsistent with the objectives of this  
 178 section.

179 (4) (a) The council may make payments to other  
 180 organizations for work or services performed that are consistent  
 181 with the objectives of this section.

182 (b) Before making payments described in this subsection,

183 the council must secure a written agreement that the  
 184 organization receiving payment will furnish at least annually,  
 185 or more frequently upon request of the council, written or  
 186 printed reports of program activities and reports of financial  
 187 data that are relative to the council's funding of such  
 188 activities.

189 (c) The council may require adequate proof of security  
 190 bonding on the payments to any individual, business, or other  
 191 organization.

192 (5) (a) The self-imposed voluntary assessment shall be paid  
 193 for each masonry unit produced and sold by the manufacturer.

194 (b) Each manufacturer that elects to pay the self-imposed  
 195 voluntary assessment must commit to paying the assessment for at  
 196 least 1 year. Thereafter, the manufacturer may elect to  
 197 terminate payment or continue payment for the next year.

198 (c) The manufacturer shall collect all such moneys and  
 199 forward them quarterly to the council.

200 (d) The council shall maintain within its financial  
 201 records a separate accounting of all moneys received under this  
 202 subsection. The council shall provide for an annual financial  
 203 audit of its accounts and records in accordance with s. 215.981,  
 204 Florida Statutes.

205 (6) (a) The council shall, by September 30, 2014, adopt  
 206 bylaws to carry out the intents and purposes of this section.  
 207 Before adoption by the council, the bylaws must be approved by  
 208 the department. The bylaws must conform to the requirements of

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209 this section but may also address any matter not in conflict  
210 with the general laws of this state.

211 (b) Amendments to adopted bylaws may be proposed with 30  
212 days' notice to board members at any regular or special meeting  
213 called for such purpose and may be adopted by the council  
214 following approval by the department.

215 Section 3. This act shall take effect July 1, 2014.







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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Higher Education &  
 2 Workforce Subcommittee  
 3 Representative Porter offered the following:

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 1004.085, Florida Statutes, is amended  
 8 to read:

9 1004.085 Textbook and instructional materials  
 10 affordability.-

11 (1) As used in this section, the term "instructional  
 12 materials" means educational materials for use within a course  
 13 that may be available in printed or digital format.

14 (2)-(1) An ~~No~~ employee of a Florida College System  
 15 institution or state university may not demand or receive any  
 16 payment, loan, subscription, advance, deposit of money, service,  
 17 or anything of value, present or promised, in exchange for



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18 requiring students to purchase a specific textbook or  
19 instructional material for coursework or instruction.

20 ~~(3)~~(2) An employee may receive:

21 (a) Sample copies, instructor copies, or instructional  
22 materials. These materials may not be sold for any type of  
23 compensation if they are specifically marked as free samples not  
24 for resale.

25 (b) Royalties or other compensation from sales of  
26 textbooks or instructional materials that include the  
27 instructor's own writing or work.

28 (c) Honoraria for academic peer review of course  
29 materials.

30 (d) Fees associated with activities such as reviewing,  
31 critiquing, or preparing support materials for textbooks or  
32 instructional materials pursuant to guidelines adopted by the  
33 State Board of Education or the Board of Governors.

34 (e) Training in the use of course materials and learning  
35 technologies.

36 ~~(4)~~(3) Each Florida College System institution  
37 ~~institutions~~ and state university ~~universities~~ shall post  
38 prominently in the course registration system and on its website  
39 ~~on their websites~~, as early as is feasible, but at least 14 ~~not~~  
40 ~~less than 30~~ days before ~~prior to~~ the first day of student  
41 registration ~~class~~ for each term, a hyperlink to lists ~~list~~ of  
42 ~~each textbook~~ required and recommended textbooks and  
43 instructional materials for each course and course section



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44 offered at the institution during the upcoming term. The lists  
45 ~~posted list~~ must include:

46 (a) The International Standard Book Number (ISBN) for each  
47 required and recommended textbook and instructional material.

48 (b) For a textbook or instructional material for which an  
49 ISBN is not available, ~~textbook or~~ other identifying  
50 information, which must include, at a minimum, all of the  
51 following: the title, all authors listed, publishers, edition  
52 number, copyright date, published date, and other relevant  
53 information necessary to identify the specific textbook or  
54 instructional material ~~textbooks~~ required and recommended for  
55 each course.

56 (c) The new and used retail price and the rental price, if  
57 applicable, for a required and recommended textbook or  
58 instructional material for purchase at the institution's  
59 designated bookstore or other specified vendor, including the  
60 website or other contact information for the bookstore.

61  
62 The State Board of Education and the Board of Governors shall  
63 include in the policies, procedures, and guidelines adopted  
64 under subsection (5) ~~(4)~~ certain limited exceptions to this  
65 notification requirement for courses ~~classes~~ added after the  
66 notification deadline.

67 (5) ~~(4)~~ The State Board of Education and the Board of  
68 Governors each shall adopt textbook and instructional materials  
69 affordability policies, procedures, and guidelines for

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70 implementation by Florida College System institutions and state  
71 universities, respectively, that further efforts to minimize the  
72 cost of textbooks and instructional materials for students  
73 attending such institutions while maintaining the quality of  
74 education and academic freedom. The policies, procedures, and  
75 guidelines shall, at a minimum, require ~~provide for~~ the  
76 following:

77 (a) That textbook and instructional material adoptions are  
78 made with sufficient lead time to bookstores so as to confirm  
79 availability of the requested materials and, where possible,  
80 ensure maximum availability of used textbooks and instructional  
81 materials ~~books~~.

82 (b) That, in the textbook and instructional material  
83 adoption process, the intent to use all items ordered,  
84 particularly each individual item sold as part of a bundled  
85 package, is confirmed by the course instructor or the academic  
86 department offering the course before the adoption is finalized.

87 (c) That a course instructor or the academic department  
88 offering the course determines, before a textbook or  
89 instructional material is adopted, the extent to which a new  
90 edition differs significantly and substantively from earlier  
91 versions and the value to the student of changing to a new  
92 edition or the extent to which an open-access textbook or  
93 instructional material may exist and be used.

94 (d) That a textbook or instructional material for an  
95 undergraduate course shall remain in use for a minimum of 3



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96 years in that undergraduate course, unless an exception is  
97 approved by the institution's president or designee. An  
98 exception must be based upon a determination that the new  
99 edition differs significantly and substantially from earlier  
100 versions and that there is value to the student in changing to  
101 the new edition. The institution's president or designee shall  
102 annually report to the institution's board of trustees all  
103 exceptions granted, including the rationale used to approve each  
104 exception. The annual report shall be maintained on the  
105 institution's website.

106 (e)~~(d)~~ That the establishment of policies shall address  
107 the availability of required and recommended textbooks and  
108 instructional materials to students otherwise unable to afford  
109 the cost, including consideration of the extent to which an  
110 open-access textbook or instructional material may be used.

111 (f)~~(e)~~ That course instructors and academic departments  
112 are encouraged to participate in the development, adaptation,  
113 and review of open-access textbooks and instructional materials  
114 and, in particular, open-access textbooks and instructional  
115 materials for high-demand general education courses.

116 (6) Each Florida College System institution and state  
117 university shall report annually to the Chancellor of the  
118 Florida College System or the Chancellor of the State University  
119 System, as applicable, the cost of undergraduate textbooks and  
120 instructional materials, by course and course section; the  
121 adoption cycles for high-enrollment courses as determined by the



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122 chancellors; specific initiatives of the institution that reduce  
123 the cost of textbooks and instructional materials; the number of  
124 courses and course sections that were not able to meet the  
125 textbook and instructional materials posting deadline; and  
126 additional information as determined by the chancellors.

127 Annually, by December 31, the chancellors shall compile the  
128 institution reports and submit a comprehensive report to the  
129 Governor, the President of the Senate, and the Speaker of the  
130 House of Representatives.

131 (7) Each Florida College System institution and state  
132 university shall send annually to the State Board of Education  
133 or the Board of Governors, as applicable, electronic copies of  
134 its current textbook and instructional materials affordability  
135 policies and procedures. The State Board of Education and the  
136 Board of Governors shall provide a link to this information on  
137 their respective websites.

138 (8) (a) The Governor shall appoint a task force which  
139 includes the Chancellor of the Florida College System, the  
140 Chancellor of the State University System, students who are  
141 currently enrolled in a public postsecondary institution, and  
142 representatives from Florida College System institutions, state  
143 universities, textbook and instructional materials publishers,  
144 and bookstore owners or managers.

145 (b) The task force shall research options to reduce the  
146 cost of print and digital textbooks and instructional materials  
147 for all students. The task force shall use the information



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148 provided pursuant to subsections (5) and (6) to determine the  
149 best methods to reduce costs and must, at a minimum, consider  
150 the following:

151 1. An existing Florida College System or State University  
152 System initiative to reduce the cost of textbooks and  
153 instructional materials.

154 2. Bulk purchasing of e-textbooks.

155 3. Expanding the use of open-access textbooks and  
156 instructional materials.

157 4. Textbook and instructional materials rental options.

158 5. Statewide agreements with publishers and vendors.

159 6. The development of online portals at each institution  
160 that will assist students in buying, renting, selling, and  
161 sharing textbooks and instructional materials.

162 (c) By July 1, 2015, the task force shall submit  
163 recommendations to the Governor, the President of the Senate,  
164 and the Speaker of the House of Representatives.

165 Section 2. Paragraph (k) of subsection (4) of section  
166 1001.7065, Florida Statutes, is amended to read:

167 1001.7065 Preeminent state research universities program.-

168 (4) PREEMINENT STATE RESEARCH UNIVERSITY INSTITUTE FOR  
169 ONLINE LEARNING.-A state research university that, as of July 1,  
170 2013, meets all 12 of the academic and research excellence  
171 standards identified in subsection (2), as verified by the Board  
172 of Governors, shall establish an institute for online learning.  
173 The institute shall establish a robust offering of high-quality,



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174 fully online baccalaureate degree programs at an affordable cost  
175 in accordance with this subsection.

176 (k) The university shall establish a tuition structure for  
177 its online institute in accordance with this paragraph,  
178 notwithstanding any other provision of law.

179 1. For students classified as residents for tuition  
180 purposes, tuition for an online baccalaureate degree program  
181 shall be set at no more than 75 percent of the tuition rate as  
182 specified in the General Appropriations Act pursuant to s.  
183 1009.24(4) and 75 percent of the tuition differential pursuant  
184 to s. 1009.24(16). No distance learning fee, fee for campus  
185 facilities, or fee for on-campus services may be assessed,  
186 except that online students shall pay the university's  
187 technology fee, financial aid fee, and Capital Improvement Trust  
188 Fund fee. The revenues generated from the Capital Improvement  
189 Trust Fund fee shall be dedicated to the university's institute  
190 for online learning.

191 2. For students classified as nonresidents for tuition  
192 purposes, tuition may be set at market rates in accordance with  
193 the business plan.

194 3. Tuition for an online degree program shall include all  
195 costs associated with instruction, materials, and enrollment,  
196 excluding costs associated with the provision of textbooks and  
197 instructional materials pursuant to s. 1004.085 and physical  
198 laboratory supplies.

199 4. Subject to the limitations in subparagraph 1., tuition





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200 may be differentiated by degree program as appropriate to the  
201 instructional and other costs of the program in accordance with  
202 the business plan. Pricing must incorporate innovative  
203 approaches that incentivize persistence and completion,  
204 including, but not limited to, a fee for assessment, a bundled  
205 or all-inclusive rate, and sliding scale features.

206 5. The university must accept advance payment contracts  
207 and student financial aid.

208 6. Fifty percent of the net revenues generated from the  
209 online institute of the university shall be used to enhance and  
210 enrich the online institute offerings, and 50 percent of the net  
211 revenues generated from the online institute shall be used to  
212 enhance and enrich the university's campus state-of-the-art  
213 research programs and facilities.

214 7. The institute may charge additional local user fees  
215 pursuant to s. 1009.24(14) upon the approval of the Board of  
216 Governors.

217 8. The institute shall submit a proposal to the president  
218 of the university authorizing additional user fees for the  
219 provision of voluntary student participation in activities and  
220 additional student services.

221 Section 3. This act shall take effect July 1, 2014.

222

223

224

225

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**T I T L E   A M E N D M E N T**

Remove everything before the enacting clause and insert:



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226 A bill to be entitled  
227 An act relating to postsecondary education textbook  
228 and instructional materials affordability; amending s.  
229 1004.085, F.S.; defining the term "instructional  
230 materials"; requiring the State Board of Education and  
231 the Board of Governors to adopt textbook and  
232 instructional materials affordability policies,  
233 procedures, and guidelines; providing requirements for  
234 the use of adopted undergraduate textbooks and  
235 instructional materials and authorizing exceptions;  
236 requiring a public postsecondary institution to post  
237 in its course registration system and on its website  
238 information relating to required and recommended  
239 textbooks and instructional materials and prices  
240 thereof; requiring annual reporting of textbook and  
241 instructional materials cost information and  
242 affordability policies and procedures; requiring the  
243 Governor to appoint a task force to research options  
244 to reduce the cost of textbooks and instructional  
245 materials; providing task force membership and duties;  
246 amending s. 1001.7065, F.S.; conforming provisions;  
247 providing an effective date.

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 355 Postsecondary Education Textbook and Instructional Materials Affordability  
**SPONSOR(S):** Porter  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 530

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee		Ammel <i>JA</i>	Sherry <i>HRS</i>
2) Education Appropriations Subcommittee			
3) Education Committee			

**SUMMARY ANALYSIS**

The bill provides additional information to students regarding costs for textbooks and instructional materials by:

- Applying provisions of the textbook affordability law to instructional materials.
- Requiring Florida College System (FCS) institutions and state universities to post on their registrar's schedule of courses a list of required and recommended textbooks and other instructional materials for each class 14 days prior to the first day of class registration for each term.
- Clarifying the information that must be posted for textbooks and other instructional materials that do not have an International Standard Book Number (ISBN).
- Requiring institutes to post new, used, and if applicable, rental price information for textbooks and other instructional materials for each course and course section, including the website or contact information for the bookstore.
- Requiring each FCS institution and university to annually report to its chancellor the average cost of textbooks, adoption cycles for high-enrollment courses, and additional criteria determined by the chancellors. The chancellors must then submit a comprehensive report to the Governor, the Board of Governors (BOG), the President of the Senate, and the Speaker of the House of Representatives.
- Requiring the SBE and BOG to submit recommendations, by December 31, 2014, to the Governor, President of the Senate, and Speaker of the House of Representatives for negotiating statewide agreements with textbook publishers and vendors of instructional content, both print and digital.
- Requiring, annually, FCS and SUS institutions to provide their textbook and other instructional materials affordability policies and procedures and bookstore contracts to the Florida Virtual Campus (FLVC). The FLVC shall submit a compiled report to the chancellors and post the report on the FLVC website.
- Requiring the preeminent state research university institute for online learning to include the cost of instructional materials in their determination of tuition for the online degree program.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

In 2008, the legislature created a new section in law to address textbook affordability by: prohibiting employees of a Florida College System (FCS) institution or state university from receiving anything of value in exchange for requiring a student to purchase a specific textbook; requiring the FCS institutions and universities to provide specific information for textbooks to students prior to the first day of classes; and requiring the State Board of Education (SBE) and the Board of Governors (BOG) to adopt policies, procedures, and guidelines that would further efforts to minimize the cost of textbooks.<sup>1</sup>

##### Employee Requirements

The law prohibits an employee of a FCS institution or state university from demanding or receiving any payment, loan, subscription, advance, deposit of money, service, or anything of value in exchange for requiring students to purchase specific textbooks.<sup>2</sup> The law permits employees to receive:

- Sample copies, instructor copies, or instructional materials that may not be sold for any type of compensation if specifically marked as free samples not for resale.
- Royalties or other compensation from sales of textbooks that include the instructor's own writing or work.
- Honoraria for academic peer review of course materials.
- Fees associated with activities such as reviewing, critiquing, or preparing support materials for textbooks pursuant to guidelines adopted by the SBE or BOG.
- Training in the use of course materials and learning technologies.<sup>3</sup>

##### Textbook Information Requirements

State universities and FCS institutions are required to post on their websites, as early as is feasible, but not less than 30 days prior to the first day of class for each term, a list of each textbook required for each course for the term. The list must include the International Standard Book Number (ISBN) for each required textbook and, at a minimum, the following: the title; all authors listed; publishers, edition number, copyright date, published date, and other relevant information necessary to identify the specific textbook.<sup>4</sup>

##### Rules and Regulations

The SBE adopted Rule 6A-14.092, F.A.C.<sup>5</sup>, in January 2009, and the BOG adopted Regulation 8.003 in March 2009,<sup>6</sup> each in accordance with the following statutory requirements that:

- Textbook adoptions are made with sufficient lead time to bookstores in order to confirm availability of textbooks and ensure maximum availability of used books.

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<sup>1</sup> Section 1, ch. 2008-78, L.O.F

<sup>2</sup> Section 1004.085(1), F.S.

<sup>3</sup> Section 1004.085(2), F.S.

<sup>4</sup> Section 1004.085(3), F.S.

<sup>5</sup> See <https://www.flrules.org/gateway/ruleNo.asp?id=6A-14.092>

<sup>6</sup> See [http://www.flbog.edu/documents\\_regulations/regulations/8\\_003\\_Textbook\\_Adoption.pdf](http://www.flbog.edu/documents_regulations/regulations/8_003_Textbook_Adoption.pdf)

- The course instructor or academic department offering the course confirms that all items ordered, including individual items as part of a bundled package, are going to be used.
- The course instructor or academic department offering the course determines, before adoption of the textbook, that a new edition differs significantly and substantially enough from earlier versions that there is value in changing to the new edition.
- The policies shall address the availability of required textbooks to students otherwise unable to afford the cost.<sup>7</sup>

### **Effect of Proposed Changes**

The bill includes instructional materials and applies the same statutory provisions of textbook affordability to instructional materials.

#### Employee Requirements

The bill applies the same provisions to instructional materials as it does to textbooks with regard to prohibiting employees from receiving any kind of payment for requiring students to purchase specific textbooks or instructional materials.

#### Textbook Information Requirements

The bill specifies that FCS institutions and state universities must post the specified information for required and recommended textbooks and instructional materials in the registrar's schedule of courses as well as on the website. An ISBN number, if applicable, must be provided for other instructional materials. For any textbook or instructional material that does not have an ISBN, the following information, at a minimum, must be included: title, all authors listed, publishers, edition number, copyright date, published date, and other relevant information necessary for identification. The information must be posted for each course and each course section at least 14 days before the first day of student registration for each term.

The list must also include the new and used retail price and the rental price, if applicable, for required and recommended textbooks and other instructional materials for purchase at the institution's bookstore or other bookstore. It must include the website or other contact information for the bookstore.

#### Rules and Regulations

The bill requires each FCS institution and state university, rather than the SBE and BOG, to adopt policies and procedures to minimize the cost of textbooks. The policies and procedures must also include recommended textbooks and other instructional materials.

#### Reporting Requirements

The bill requires each FCS institution and state university to annually report to the Chancellor of the FCS or the Chancellor of the State University System (SUS), as applicable, the following:

- The average cost of textbooks and other instructional materials,
- The adoption cycles for high-demand courses as determined by the chancellors, and
- Additional information as determined by the chancellors.

The chancellors must compile the institution reports and submit, no later than December 31 each year, a comprehensive report to the Governor, BOG, the President of the Senate, and the Speaker of the House of Representatives.

<sup>7</sup> Section 1004.085(4), F.S. Note - The Legislature amended 1004.085, F.S. in 2011 to include the consideration of open-access textbooks within the policies and procedures. The SBE rule and BOG regulation have not been updated to include these provisions.

The bill also requires the SBE and BOG to submit, by December 31, 2014, recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives for negotiating statewide agreements with publishers and vendors of textbooks and other instructional materials, both print and digital, to reduce student costs.

Additionally, the bill requires each FCS institution and state university to annually report to the Florida Virtual Campus (FLVC) its textbook and other instructional materials affordability policies and procedures and bookstore contracts. The FLVC shall annually report this information to the chancellors of the FCS and SUS, and the information must be available on the FLVC website.

Preeminent State Research University Institute for Online Learning

The bill requires that the preeminent state research university institute for online learning include costs for instructional materials when determining tuition for the online degree program.

**B. SECTION DIRECTORY:**

**Section 1.** Amends 1004.085, F.S., to apply textbook affordability policies and procedures to instructional materials; require FCS institutions and state universities to adopt such policies and procedures; requires an institution and university to post on its course schedule information relating to required and recommended textbooks and other instructional materials; requires annual reporting by institutions and universities to the chancellors of FCS and SUS; requires an annual comprehensive report from the chancellors to the Governor, BOG, the President of the Senate, and the Speaker of the House of Representatives; requires SBE and BOG to submit recommendations to the Governor and Legislature by December 31, 2014; and requires FLVC to publish on its website a report of textbook and other instructional materials affordability policies and procedures and bookstore contracts.

**Section 2.** Amends 1001.7065, F.S., to include the cost of instructional materials in determining tuition for an online degree program offered by the preeminent state research university institute for online learning.

**Section 3.** Provides an effective date of July 1, 2014.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Students may spend less on textbooks if they have ample time and information to search for best prices.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

None.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None. The bill does require each FCS institution and state university to adopt policies and procedures to minimize the cost of textbooks and other instructional materials.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to postsecondary education textbook  
 3           and instructional materials affordability; amending s.  
 4           1004.085, F.S.; revising textbook affordability  
 5           policies and procedures to include other instructional  
 6           materials; requiring the policies and procedures to be  
 7           adopted by Florida College System institutions and  
 8           state universities; requiring an institution to post  
 9           on its course schedule information relating to  
 10          required and recommended textbooks and other  
 11          instructional materials and cost information;  
 12          requiring annual reporting of textbook and other  
 13          instructional material costs; requiring the State  
 14          Board of Education and the Board of Governors to  
 15          submit recommendations to the Governor and the  
 16          Legislature to reduce student costs; requiring the  
 17          Florida Virtual Campus to report textbook and other  
 18          instructional materials affordability policies and  
 19          procedures and bookstore contracts; amending s.  
 20          1001.7065, F.S.; conforming provisions; providing an  
 21          effective date.

22  
 23   Be It Enacted by the Legislature of the State of Florida:

24  
 25           Section 1.   Section 1004.085, Florida Statutes, is amended  
 26   to read:



27 1004.085 Textbook and instructional materials  
 28 affordability.—

29 (1) An ~~Ne~~ employee of a Florida College System institution  
 30 or state university may not demand or receive any payment, loan,  
 31 subscription, advance, deposit of money, service, or anything of  
 32 value, present or promised, in exchange for requiring students  
 33 to purchase a specific textbook or other instructional materials  
 34 for coursework or instruction.

35 (2) An employee may receive:

36 (a) Sample copies, instructor copies, or instructional  
 37 materials. These materials may not be sold for any type of  
 38 compensation if they are specifically marked as free samples not  
 39 for resale.

40 (b) Royalties or other compensation from sales of  
 41 textbooks or other instructional materials that include the  
 42 instructor's own writing or work.

43 (c) Honoraria for academic peer review of course  
 44 materials.

45 (d) Fees associated with activities such as reviewing,  
 46 critiquing, or preparing support materials for textbooks or  
 47 other instructional materials pursuant to policies and  
 48 procedures ~~guidelines~~ adopted by the Florida College System  
 49 institution ~~State Board of Education~~ or state university ~~the~~  
 50 ~~Board of Governors~~.

51 (e) Training in the use of course materials and learning  
 52 technologies.

53           (3) Each Florida College System institution ~~institutions~~  
 54 and state university ~~universities~~ shall post on the registrar's  
 55 schedule of courses ~~their websites~~, as early as is feasible, but  
 56 at least 14 ~~not less than 30~~ days before ~~prior to~~ the first day  
 57 of student registration ~~class~~ for each term, a list of ~~each~~  
 58 ~~textbook~~ required and recommended textbooks and other  
 59 instructional materials for each course and course section  
 60 offered at the institution during the upcoming term. The posted  
 61 list must include:

62           (a) The International Standard Book Number (ISBN) for each  
 63 required and recommended textbook and other instructional  
 64 material.

65           (b) For textbooks or other instructional materials for  
 66 which an ISBN is not available, other identifying information,  
 67 which must include, at a minimum, all of the following: the  
 68 title, all authors listed, publishers, edition number, copyright  
 69 date, published date, and other relevant information necessary  
 70 to identify the specific textbook or textbooks or other  
 71 instructional materials required and recommended for each  
 72 course.

73           (c) The new and used retail price and the rental price, if  
 74 applicable, for required and recommended textbooks and other  
 75 instructional materials for purchase at the institution's  
 76 bookstore or other bookstore, including the website or other  
 77 contact information for the bookstore.

78

79 | A Florida College System institution and a state university ~~The~~  
 80 | ~~State Board of Education and the Board of Governors~~ shall  
 81 | include in the policies and, ~~procedures, and guidelines~~ adopted  
 82 | under subsection (4) certain limited exceptions to this  
 83 | notification requirement for courses ~~classes~~ added after the  
 84 | notification deadline.

85 |       (4) ~~The State Board of Education and the Board of~~  
 86 | ~~Governors~~ Each Florida College System institution and state  
 87 | university shall adopt policies and, ~~procedures, and guidelines~~  
 88 | ~~for implementation by Florida College System institutions and~~  
 89 | ~~state universities, respectively, that further efforts to~~  
 90 | minimize the cost of textbooks and other instructional materials  
 91 | for students attending such institutions while maintaining the  
 92 | quality of education and academic freedom. The policies and,  
 93 | ~~procedures, and guidelines~~ shall, at a minimum, require ~~provide~~  
 94 | ~~for~~ the following:

95 |       (a) That textbook and other instructional material  
 96 | adoptions are made with sufficient lead time to bookstores so as  
 97 | to confirm availability of the requested materials and, where  
 98 | possible, ensure maximum availability of used textbooks and  
 99 | other instructional materials ~~books~~.

100 |       (b) That, in the textbook and other instructional  
 101 | materials adoption process, the intent to use all items ordered,  
 102 | particularly each individual item sold as part of a bundled  
 103 | package, is confirmed by the course instructor or the academic  
 104 | department offering the course before the adoption is finalized.

105 (c) That a course instructor or the academic department  
106 offering the course determines, before a textbook or other  
107 instructional material is adopted, the extent to which a new  
108 edition differs significantly and substantively from earlier  
109 versions and the value of changing to a new edition or the  
110 extent to which an open-access textbook or other instructional  
111 material may exist and be used.

112 (d) That the establishment of policies shall address the  
113 availability of required and recommended textbooks and other  
114 instructional materials to students otherwise unable to afford  
115 the cost, including consideration of the extent to which an  
116 open-access textbook or other instructional material may be  
117 used.

118 (e) That course instructors and academic departments are  
119 encouraged to participate in the development, adaptation, and  
120 review of open-access textbooks and other instructional  
121 materials and, in particular, open-access textbooks and other  
122 instructional materials for high-demand general education  
123 courses.

124 (5) Each Florida College System institution and state  
125 university shall report annually to the Chancellor of the  
126 Florida College System or the Chancellor of the State University  
127 System, as applicable, the average cost of textbooks and other  
128 instructional materials, the adoption cycles for high-demand  
129 courses as determined by the chancellors, and additional  
130 information as determined by the chancellors. Annually, by

131 December 31, the Chancellor of the Florida College System and  
 132 the Chancellor of the State University System shall compile the  
 133 institution reports and submit a comprehensive report to the  
 134 Governor, the Board of Governors, the President of the Senate,  
 135 and the Speaker of the House of Representatives.

136 (6) By December 31, 2014, the State Board of Education and  
 137 the Board of Governors shall submit recommendations to the  
 138 Governor, the President of the Senate, and the Speaker of the  
 139 House of Representatives for negotiating statewide agreements  
 140 with publishers and vendors of textbooks and other instructional  
 141 materials, both print and digital, to reduce student costs.

142 (7) Each Florida College System institution and state  
 143 university shall report annually to the Florida Virtual Campus  
 144 its textbook and other instructional materials affordability  
 145 policies and procedures and bookstore contracts. The Florida  
 146 Virtual Campus shall annually report this information to the  
 147 Chancellor of the Florida College System and the Chancellor of  
 148 the State University System and make the information available  
 149 on the Florida Virtual Campus website.

150 Section 2. Paragraph (k) of subsection (4) of section  
 151 1001.7065, Florida Statutes, is amended to read:

152 1001.7065 Preeminent state research universities program.-

153 (4) PREEMINENT STATE RESEARCH UNIVERSITY INSTITUTE FOR  
 154 ONLINE LEARNING.-A state research university that, as of July 1,  
 155 2013, meets all 12 of the academic and research excellence  
 156 standards identified in subsection (2), as verified by the Board

157 of Governors, shall establish an institute for online learning.  
 158 The institute shall establish a robust offering of high-quality,  
 159 fully online baccalaureate degree programs at an affordable cost  
 160 in accordance with this subsection.

161 (k) The university shall establish a tuition structure for  
 162 its online institute in accordance with this paragraph,  
 163 notwithstanding any other provision of law.

164 1. For students classified as residents for tuition  
 165 purposes, tuition for an online baccalaureate degree program  
 166 shall be set at no more than 75 percent of the tuition rate as  
 167 specified in the General Appropriations Act pursuant to s.  
 168 1009.24(4) and 75 percent of the tuition differential pursuant  
 169 to s. 1009.24(16). No distance learning fee, fee for campus  
 170 facilities, or fee for on-campus services may be assessed,  
 171 except that online students shall pay the university's  
 172 technology fee, financial aid fee, and Capital Improvement Trust  
 173 Fund fee. The revenues generated from the Capital Improvement  
 174 Trust Fund fee shall be dedicated to the university's institute  
 175 for online learning.

176 2. For students classified as nonresidents for tuition  
 177 purposes, tuition may be set at market rates in accordance with  
 178 the business plan.

179 3. Tuition for an online degree program shall include all  
 180 costs associated with instruction, materials, and enrollment,  
 181 excluding costs associated with the provision of textbooks and  
 182 instructional materials pursuant to s. 1004.085 and physical

183 laboratory supplies.

184 4. Subject to the limitations in subparagraph 1., tuition  
 185 may be differentiated by degree program as appropriate to the  
 186 instructional and other costs of the program in accordance with  
 187 the business plan. Pricing must incorporate innovative  
 188 approaches that incentivize persistence and completion,  
 189 including, but not limited to, a fee for assessment, a bundled  
 190 or all-inclusive rate, and sliding scale features.

191 5. The university must accept advance payment contracts  
 192 and student financial aid.

193 6. Fifty percent of the net revenues generated from the  
 194 online institute of the university shall be used to enhance and  
 195 enrich the online institute offerings, and 50 percent of the net  
 196 revenues generated from the online institute shall be used to  
 197 enhance and enrich the university's campus state-of-the-art  
 198 research programs and facilities.

199 7. The institute may charge additional local user fees  
 200 pursuant to s. 1009.24(14) upon the approval of the Board of  
 201 Governors.

202 8. The institute shall submit a proposal to the president  
 203 of the university authorizing additional user fees for the  
 204 provision of voluntary student participation in activities and  
 205 additional student services.

206 Section 3. This act shall take effect July 1, 2014.