



## 1997 SENATE BILL 414

January 22, 1998 - Introduced by Senators FARROW, HUELSMAN, DARLING, WELCH, ROSENZWEIG and RUDE, cosponsored by Representatives NASS, JENSEN, MUSSER, HUTCHISON, F. LASEE, HAHN, JOHNSRUD, KEDZIE, LADWIG, SERATTI, VRAKAS, MEYER, HUEBSCH, WALKER, STASKUNAS, PLALE and LA FAVE. Referred to Committee on Economic Development, Housing and Government Operations.

1     **AN ACT to create** 13.59, 20.765 (2) (c) and chapter 131 of the statutes; **relating**  
2           **to:** restricting state governmental units from engaging in certain commercial  
3           activities, state governmental procurement requirements and creating a  
4           legislative joint committee on public-private partnership.

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### *Analysis by the Legislative Reference Bureau*

This bill creates a standing legislative joint committee on public-private partnership consisting of 3 members of each house of the legislature (including 2 members of the majority party and one member of the minority party in each house), the secretary of administration or his or her designee and 4 other members appointed by the governor for 2-year terms, 2 of whom must be appointed to represent specified portions of the business community and 2 of whom must be appointed to represent specified portions of the labor community. Any person who is adversely affected by any action of a state governmental unit that is restricted by any provision of the bill or by any inaction of a state governmental unit with respect to a matter that requires action by that governmental unit under the bill may file a statement of objections with the joint committee, which must provide a hearing to the person. The bill permits the committee to recommend proposed legislation to the legislature or to recommend proposed administrative rule changes to any state agency which the committee considers appropriate to carry out its functions. Under the bill, either house of the legislature may refer proposed legislation to the committee. The committee is directed to examine the possibility of creating additional partnerships between state governmental units and for-profit or nonprofit private enterprises for

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the purpose of procurement of services from those enterprises when such action is appropriate. The committee is further directed to periodically review the performance of any private sector enterprise which contracts to provide a service to a state governmental unit to ensure that the enterprise is successfully and competently completing its contractual obligations. The committee is directed to advise state agencies in the executive branch concerning issues relating to public-private partnership. The cochairpersons of the committee may direct any legislative service agency to provide staffing assistance to the committee.

Under the bill, whenever a state governmental unit engages in a commercial activity, it must, upon request of a majority of the membership of the joint committee, also prepare a competitive impact statement concerning that activity, using uniform accounting principles, which describes the cost of the activity, the availability of the goods or services resulting from the activity from any for-profit or nonprofit private enterprise and the competitive impact upon for-profit and nonprofit private enterprises if the commercial activity is contracted by the state to a single for-profit or nonprofit private enterprise, and the effect that the creation of a public-private partnership may have upon employees of a state governmental unit who currently perform any service associated with the commercial activity. In addition, the bill requires state governmental units to prepare a competitive impact statement for any bill that is introduced in the legislature if the bill requires a fiscal estimate and it proposes to authorize or require a state governmental unit to engage in a commercial activity. The statement is also required for any such proposal that is contained within an executive budget bill. The joint committee receives all competitive impact statements and those concerning bills are printed in the same manner that fiscal estimates are printed currently.

This bill prohibits all state governmental units, including institutions of higher education, from engaging in any commercial activity for their own use, for the use of any other state governmental unit or for public use if the goods or services provided as a result of the activity can be procured from any for-profit or nonprofit private enterprise "through ordinary business channels". Under the bill, "commercial activity" means providing goods or performing services which can practically, in a cost-effective manner and consistently with state collective bargaining agreements and rules of the department of administration concerning conflicts of interests by proposed contractors, be obtained from a for-profit or nonprofit private enterprise. The prohibition does not apply if: 1) the activity is specifically authorized by law; 2) the activity is not available from any for-profit or nonprofit private enterprise; 3) the activity is inherently related to the state's defense; or 4) a state governmental unit can provide the goods or services resulting from the commercial activity to other state governmental units at a lower cost than if the goods or services were obtained from a for-profit or nonprofit private enterprise, using uniform accounting standards to make the cost comparison; 5) use of a for-profit or nonprofit private enterprise to engage in the activity would cause an unbearable delay or disruption of an essential program; 6) use of a for-profit or nonprofit private enterprise would impede the ability of a state governmental unit to fully comply with any collective bargaining agreement; or 7) the joint committee on public-private partnerships, taking into

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account any applicable competitive impact statement, and the views of private enterprises, state governmental units, and other affected persons, determines that the interests of the public are best served by maintaining existing practices used by a state governmental unit to obtain certain essential goods and services.

The bill provides that, unless otherwise required by law, if a state governmental unit is authorized by law to engage in a commercial activity, it must impose and collect a fee for that activity that includes all costs related to engaging in the activity.

Currently, there is no general restriction upon commercial activity by state governmental units. However, state governmental units are generally not authorized to engage in any activity unless a law so permits or requires.

Under current law, state governmental units are required to bargain collectively in good faith with labor organizations representing their employes before subcontracting any services performed by those employes to a nonstate source. The bill does not alter that duty.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 13.59 of the statutes is created to read:

2           **13.59 Joint committee on public-private partnership. (1) CREATION.**

3           There is created a joint standing committee on public-private partnership composed  
4           of the following members:

5           (a) Two majority party senators, one minority party senator, 2 majority party  
6           representatives to the assembly and one minority party representative to the  
7           assembly, selected as are the members of standing committees in their respective  
8           houses.

9           (b) The secretary of administration or his or her designee.

10           (c) The following members appointed by the governor to serve for 2-year terms  
11           expiring on December 31 of each even-numbered year:

12           1. Two owners or officers of private enterprises as defined in s. 131.01 (6) or  
13           members or representatives of trade associations, one of whom shall be an owner or

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1 officer of a private enterprise having less than \$1.5 million in gross annual sales in  
2 the most recent calendar or fiscal year or a member or representative of a trade  
3 association that is composed of such enterprises.

4 2. One member or representative of a labor organization that is certified to  
5 represent state employes under subch. V of ch. 111.

6 3. One member or representative of a labor organization that is recognized or  
7 certified to represent employes in the private sector.

8 **(2) LIMITATION ON SERVICES.** (a) No member appointed under sub. (1) (c) may  
9 serve for more than 5 consecutive full terms.

10 (b) A member appointed under sub. (1) (c) who ceases to maintain the member's  
11 status required for membership under that paragraph vacates his or her office.

12 **(3) OFFICERS.** The officers of the joint committee shall be a senate chairperson  
13 and vice chairperson, an assembly chairperson and vice chairperson and a secretary.  
14 The senate chairperson and vice chairperson shall be selected as are chairpersons  
15 and vice chairpersons of senate committees. The assembly chairperson and vice  
16 chairperson shall be appointed by the speaker. The secretary shall be elected by the  
17 committee from among its nonlegislator members.

18 **(4) COMPLAINTS; HEARINGS; RECOMMENDATIONS.** (a) In this subsection, "state  
19 governmental unit" has the meaning given in s. 131.01 (8).

20 (b) Any person who is adversely affected by any action of a state governmental  
21 unit which is restricted by ch. 131, or by any inaction of a state governmental unit  
22 with respect to a matter that requires action by a state governmental unit under ch.  
23 131, may file a written statement of objections with the joint committee stating the  
24 reasons why the person is adversely affected. Upon receipt of such statement:

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1           1. The committee shall immediately transmit a copy of the statement to the  
2 head of the state governmental unit which is referred to in the statement.

3           2. The head of the state governmental unit which is referred to in the statement  
4 shall respond to the joint committee in writing within 30 days after receipt of the  
5 statement and shall, if the action concerns a commercial activity and the state  
6 governmental unit has not previously submitted a competitive impact statement  
7 under s. 131.02 (4) with respect to that activity, submit a competitive impact  
8 statement together with its response. In the response, the head of the state  
9 governmental unit shall fully address the objections made in the statement and shall  
10 indicate whether remedial action should be taken to correct the situation that gave  
11 rise to the objections.

12           3. The joint committee shall hold a public hearing on the statement where all  
13 parties are afforded an opportunity to present information unless remedial action  
14 agreed to be taken by the state governmental unit is acceptable to the person  
15 submitting the statement and to the joint committee. The hearing shall be held  
16 within 30 days after receipt of the response under subd. 2. unless the committee  
17 determines that additional time is needed for negotiations between the state  
18 governmental unit and the person submitting the statement.

19           4. Within 30 days after any public hearing under subd. 3., the joint committee  
20 shall make a recommendation with respect to the matter addressed in the statement  
21 and provide a copy to the person submitting the statement and to the head of the  
22 state governmental unit.

23           **(5) FORMS.** The joint committee shall prescribe forms for the preparation of  
24 competitive impact statements as defined in s. 131.01 (2).

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1           **(6) LEGISLATION; RULE CHANGES.** The joint committee may recommend proposed  
2 legislation to the legislature or may recommend changes in administrative rules to  
3 any agency, as defined in s. 227.01 (1), which the committee considers appropriate  
4 to carry out its functions.

5           **(7) REFERRAL.** Either house may refer proposed legislation to the joint  
6 committee.

7           **(8) PARTNERSHIPS FOR CONTRACTUAL SERVICE PROCUREMENTS.** The joint committee  
8 shall examine the possibility of creating additional partnerships between state  
9 governmental units and for-profit or nonprofit private enterprises for the purpose  
10 of procurement of services from such enterprises on behalf of the state when such  
11 action is appropriate. When examining the possibility of creating such partnerships,  
12 the committee shall consider competitive impact statements submitted to it by state  
13 governmental units. As a part of its examination, the committee shall also review  
14 the impact of any such proposed partnerships on collective bargaining agreements  
15 under subch. I or V of ch. 111 to ensure that state governmental units remain in  
16 compliance with the agreements.

17           **(9) PERFORMANCE REVIEW.** When a public-private partnership is created to  
18 provide a service, the joint committee shall periodically review the performance of  
19 the private sector enterprise in providing the service to ensure that the enterprise  
20 is successfully and competently completing the obligations agreed to in the contract  
21 between the state and the enterprise.

22           **(10) ADVICE.** The joint committee shall advise state agencies in the executive  
23 branch concerning issues relating to public-private partnership.

24           **(11) STAFF.** The cochairpersons of the joint committee may direct any legislative  
25 service agency, as defined in s. 13.90 (1m), to provide staff assistance to the

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1 committee. The committee shall pay any employe who is assigned to provide  
2 assistance to the committee from the appropriation under s. 20.765 (2) (c).

3 **SECTION 2.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert  
4 the following amounts for the purposes indicated:

5		<b>1997-98</b>	<b>1998-99</b>
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6 **20.765 Legislature**

7 (2) SPECIAL STUDY GROUPS

8	(c) Joint committee on public-private partnership	GPR	B	-0-	-0-
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10 **SECTION 3.** 20.765 (2) (c) of the statutes is created to read:

11 20.765 (2) (c) *Joint committee on public-private partnership.* For the joint  
12 committee on public-private partnership, biennially, the amounts in the schedule to  
13 carry out the functions of the committee under s. 13.59.

14 **SECTION 4.** Chapter 131 of the statutes is created to read:

15 **CHAPTER 131**

16 **UNFAIR COMPETITION**

17 **131.01 Definitions.** In this chapter, unless the context otherwise requires:

18 (1) "Commercial activity" means providing goods or performing services which  
19 can practically, in a cost-effective manner and consistently with rules of the  
20 department of administration promulgated under s. 16.705 (5) and applicable  
21 collective bargaining agreements under subch. I or V of ch. 111, be obtained from a  
22 for-profit or nonprofit private enterprise, including the manufacturing, processing,  
23 managing, sale, offering for sale, rental, leasing, delivering, dispensing, distributing  
24 or advertising of any goods or services.

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1           **(2)** “Competitive impact statement” means a cost analysis using uniform  
2 accounting principles to determine:

3           (a) The total cost of a commercial activity.

4           (b) The availability of the goods or services resulting from the commercial  
5 activity from any for-profit or nonprofit private enterprise.

6           (c) If a state governmental unit is authorized under existing law or under a bill  
7 to engage in the commercial activity, the competitive impact upon for-profit and  
8 nonprofit private enterprises if the commercial activity is contracted by the state to  
9 a single for-profit or nonprofit private enterprise.

10           (d) The effect that the creation of a public-private partnership may have upon  
11 employes of a state governmental unit who currently perform any service associated  
12 with the commercial activity.

13           **(3)** “Institution of higher education” means an institution of the University of  
14 Wisconsin System.

15           **(4)** “Invited guest” means any individual who enters onto a campus of an  
16 institution of higher education for an educational, research, or public service activity  
17 and not primarily to purchase or receive goods and services not related to the  
18 educational, research, or public service activity.

19           **(5)** “Organization” means every person other than an individual and every  
20 combination of 2 or more individuals.

21           **(6)** “Private enterprise” means a private person engaging in the  
22 manufacturing, processing, sale, offering for sale, rental, leasing, delivery,  
23 dispensing, distributing, or advertising of goods or services on a for-profit or  
24 nonprofit basis.



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1           (7) “Public service” means an activity normally and generally associated with  
2 colleges and universities and other educational institutions in this state, a purpose  
3 or significant result of which is not to engage in competition with any for-profit or  
4 nonprofit private enterprise.

5           (8) “State governmental unit” means this state, and every subunit or  
6 instrumentality of this state, including any institution or authority, regardless of  
7 whether moneys are appropriated to the unit.

8           (9) “Student” means a person seeking a degree or a certificate from an  
9 institution of higher education.

10          (10) “Uniform accounting standards” means a system of accounting for costs  
11 and expenses which applies accepted accounting practices and customs, including  
12 those limited to specific industries, to provide a fair and complete total of the direct  
13 and indirect costs and expenses of or reasonably allocable to any activity, including:

14           (a) Direct and indirect labor costs and compensatory benefits.

15           (b) Direct materials costs.

16           (c) Other allocable indirect costs, including indirect manufacturing or  
17 operational costs such as costs of utilities, parts and supplies, insurance and  
18 depreciation on plant and equipment.

19           (d) Selling, general and administrative expenses.

20           (e) The imputed cost that represents the fair and complete total of the federal,  
21 state and local tax obligations, from which the activity is exempt in whole or in part,  
22 to the extent of such exemption.

23           **131.02 Competition by state governmental units with for-profit or**  
24 **nonprofit private enterprises restricted; exceptions.** (1) Except as permitted  
25 in sub. (2) and s. 131.03, no state governmental unit may engage in any commercial

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1 activity for its own use, for the use of any other state governmental unit or for public  
2 use if the goods or services provided as a result of that activity can be procured from  
3 any for-profit or nonprofit private enterprise through ordinary business channels.

4 (2) A state governmental unit may engage in a commercial activity if any of the  
5 following applies:

6 (a) The commercial activity is specifically authorized by law.

7 (b) The commercial activity is not available from any for-profit or nonprofit  
8 private enterprise.

9 (c) The commercial activity is inherently related to the state's defense.

10 (d) The state governmental unit can provide the goods or services resulting  
11 from the commercial activity to other state governmental units at a lower total cost  
12 than if goods or services were obtained from a for-profit or nonprofit private  
13 enterprise, using uniform accounting standards to make the cost comparison.

14 (e) Use of a for-profit or nonprofit private enterprise to engage in the activity  
15 would cause an unbearable delay or disruption of an essential program.

16 (f) Use of a for-profit or nonprofit private enterprise would impede the ability  
17 of the state governmental unit to fully comply with any collective bargaining  
18 agreement under subch. I or V of ch. 111.

19 (g) The joint committee on public-private partnership, taking into account any  
20 applicable competitive impact statement, and the views of private enterprises, state  
21 governmental units, and other affected persons, determines that the interests of the  
22 public are best served by maintaining existing practices used by the state  
23 governmental unit to obtain certain essential goods and services.

24 (3) Unless otherwise required by law, if a state governmental unit is authorized  
25 by law to engage in a commercial activity, the state governmental unit shall impose

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1 and collect a fee for that activity which shall include all costs related to engaging in  
2 the activity by the state governmental unit.

3 (4) (a) Except as provided in par. (b), if the joint committee on public-private  
4 partnership determines that a specific program administered by a state  
5 governmental unit constitutes a restricted commercial activity, the state  
6 governmental unit shall, upon request of a majority of the membership of the  
7 committee, submit to the committee a competitive impact statement concerning such  
8 activity.

9 (b) If a state governmental unit implements a new program under which it  
10 proposes to engage in a commercial activity, the state governmental unit and the  
11 department of administration shall jointly, upon request of a majority of the  
12 membership of the joint committee on public-private partnership, submit a  
13 competitive impact statement for the program under par. (a).

14 (5) Whenever any bill for which a fiscal estimate is required under s. 13.093  
15 (2) (a) or any executive budget bill under s. 16.47 (1) is introduced, the legislative  
16 reference bureau shall promptly send a copy of the bill to the department of  
17 administration. The department shall then determine whether the bill proposes to  
18 authorize or require any state governmental unit to engage in a commercial activity.  
19 If the bill so proposes, the department shall prepare or direct one or more appropriate  
20 state governmental units to prepare, and submit to the joint committee on  
21 public-private partnership, the competitive impact statement concerning such  
22 activity. The statement shall be printed with the fiscal estimate, if any, or in the case  
23 of the executive budget bill, shall be printed as an appendix to the bill in the same  
24 manner as amendments to the bill are printed.

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1           **131.03 Competition by institutions of higher education with for-profit**  
2           **or nonprofit private enterprises restricted; exceptions. (1)** No institution of  
3 higher education may, unless specifically authorized by law:

4           (a) Engage in any commercial activity for students, faculty, staff, invited guests  
5 or the general public that can be procured from any for-profit or nonprofit private  
6 enterprise through ordinary business channels, unless the commercial activity:

7           1. Is authorized under s. 131.02 (2);

8           2. Requires the participation of students as part of an educational program in  
9 order to obtain a degree or certificate;

10          3. Is a recognized and integral part of a teaching, educational or research  
11 program leading to a degree or certificate;

12          4. Is considered by the joint committee on public-private partnership to be  
13 essential to providing affordable education to the students of the institution; or

14          5. Consists of on-campus activities, including any of the following:

15           a. Food service.

16           b. Student housing.

17           c. Sponsoring cultural and athletic events.

18           d. Providing facilities for recreation to students, faculty and staff.

19           e. Sales of course books and course-related supplies, excluding electronic  
20 equipment or devices and peripherals and software.

21           f. Sale of personal items bearing the institution's insignia that are incidental  
22 to the sale of textbooks and other items permitted in this subdivision.

23          (b) Engage in any commercial activity for or through another institution of  
24 higher education or state governmental unit.

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1 (c) Provide for the disposal by sale of goods or services that are part of research  
2 or instruction conducted by students and faculty of the institution of higher  
3 education and leading to a student degree or certificate unless all of the following  
4 apply:

- 5 1. The sale is an integral part of the research or instruction.
- 6 2. There is no other practical way of disposing of the goods.
- 7 3. The goods or services are sold at their market value utilizing uniform  
8 accounting standards.

9 **(2)** In determining whether a commercial activity is directly related to a  
10 teaching, educational or research program leading to a degree or certificate, an  
11 institution of higher education shall consider the following:

12 (a) Whether the activity is necessary for the student to pursue a degree or  
13 certificate or for faculty or staff to engage in research or teaching.

14 (b) Whether the commercial activity is not generally available to the public.

15 (c) Whether the fee charged for the commercial activity reflects the direct and  
16 indirect costs and overhead costs of the activity and the price in the private  
17 marketplace.

18 (d) Whether measures have been taken to ensure that the commercial activity  
19 is available only to students, faculty, staff or invited guests of the institution and not  
20 to the general public.

21 **SECTION 5. Nonstatutory provisions; initial terms.**

22 (1) Notwithstanding section 13.59 (1) (c) of the statutes, as created by this act,  
23 the members of the joint committee on public-private partnership who are initially

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1 appointed to serve under section 13.59 (1) (c) of the statutes, as created by this act,  
2 shall serve for terms expiring on December 31, 1998.

3 (END)