

175B.030 Projects connecting Kentucky and an adjoining state -- Bi-state authority -- Formation -- Members -- Bi-state agreement -- Financial plan -- Legislative findings and declarations -- Approval of project connecting Kentucky and Ohio.

- (1) (a) 1. This section shall apply to any project that connects Kentucky with any state that adjoins the Commonwealth. A proposal to construct a project that connects Kentucky with an adjoining state shall be contained in a financing plan prepared pursuant to subsection (6) of this section. If approved, the project shall be constructed under the supervision of the state authority, a bi-state authority, or both, and may be financed by the state authority, a bi-state authority, a public-private partnership, or any combination of these.
2. If the state authority, operating pursuant to KRS 175B.020, participates in any capacity in the construction or financing of a project that connects Kentucky with an adjoining state, the state authority may assume all or part of the role of the bi-state authority relative to that project.
- (b) Subsections (2) to (4) of this section shall only apply to a bi-state authority.
- (c) Subsections (1) and (5) to (8) of this section shall apply to both a bi-state authority and a public-private partnership.
- (2) (a) A local government that contains a portion of a proposed project may, by resolution of its governing body, request that its chief executive officer and the Governor appoint a group of Kentucky members to negotiate with a similar group from an adjoining state for the purpose of proposing the creation of a bi-state authority composed of members from both states, recognized under the laws of both states, and existing for the purpose of financing, constructing, and operating a project or projects mutually beneficial to both states.
- (b) If established, the Kentucky membership of the bi-state authority shall consist of seven (7) members, three (3) of whom shall be appointed by the Governor, and four (4) of whom shall be appointed by the chief executive of the local government in which the project is located. The four (4) local government appointees shall be residents of the county in which the project is located. If a project is located in a consolidated local government, no more than two (2) appointees shall reside in the same Kentucky senatorial district. If portions of the project are located in more than one (1) local government, the chief executive of the county or consolidated local government having the largest population shall make the appointments authorized in this paragraph.
- (c) Any proposed agreement to establish a bi-state authority shall be presented to the state authority for approval. If the state authority approves the agreement, it shall be submitted to the General Assembly for ratification. If the agreement is ratified by the General Assembly, the state authority shall authorize the establishment of a bi-state authority and shall enter into an agreement with the adjoining state for the creation of a bi-state authority.

- (3) (a) Kentucky members of a proposed bi-state authority who are appointed by the Governor shall be confirmed by the Senate in accordance with KRS 11.160. Members appointed by the chief executive of the local government shall be confirmed by the governing body of the local government.
 - (b) At least two (2) of the Governor's appointees and two (2) of the chief executive's appointees shall be familiar with road and bridge design or financing and administration of transportation infrastructure projects.
 - (c) Members of a bi-state authority appointed by the Governor shall serve for four (4) years, except that initial appointments shall be as follows:
 - 1. One (1) appointee shall serve a term of two (2) years;
 - 2. One (1) appointee shall serve a term of three (3) years; and
 - 3. One (1) appointee shall serve a term of four (4) years.
 - (d) The governing body of the local government requesting formation of the bi-state authority shall, by resolution, establish term lengths for the initial and succeeding members who are locally appointed, with each term not to exceed four (4) years.
 - (e) Members of a bi-state authority representing the Commonwealth may be reappointed upon the expiration of their terms. Members reappointed shall be reconfirmed in the same manner as newly appointed members.
- (4) (a) An agreement establishing a bi-state authority shall at a minimum:
 - 1. Establish the total number of members of the bi-state authority;
 - 2. Establish staffing and funding to support the work of the bi-state authority;
 - 3. Designate the process for selecting a presiding officer of the bi-state authority, which shall include a requirement that a member from each state share the duties of presiding; and
 - 4. Require the approval of a majority of the members from each state before any action may be taken or any change may be made by the bi-state authority.
 - (b) A bi-state authority created pursuant to this section shall take the legal form necessary to conform to the laws of both states. The Commonwealth shall consider the bi-state authority to be an independent de jure municipal corporation, constituting a governmental agency and instrumentality of the appropriate jurisdictions. The bi-state authority shall adopt a name indicative of its location and purpose.
 - (c) Any bi-state agreement approved pursuant to this section may be presented to the United States Congress for consent thereof by joint resolution as provided in Article 1, Section 10, Clause 3 of the United States Constitution.
- (5) (a) Members of a bi-state authority appointed from the Commonwealth shall be considered public servants subject to KRS Chapter 11A.
 - (b) Members of a bi-state authority appointed from the Commonwealth shall receive no compensation for their services, but shall be entitled to reimbursement for all reasonable expenses necessary and incidental to

the performance of their duties and functions as members of the bi-state authority.

- (c) The following individuals or entities shall be prohibited from entering into any contract or agreement with a bi-state authority or a public-private partnership:
 - 1. Any member of the bi-state authority appointed to represent the Commonwealth or any member of the state authority, a project authority, or a public-private partnership;
 - 2. Any spouse, child, stepchild, parent, stepparent, or sibling of a member of the bi-state authority appointed to represent the Commonwealth or any spouse, child, stepchild, parent, stepparent, or sibling of a member of the state authority, a project authority, or a public-private partnership; and
 - 3. Any corporation, limited liability entity, or other business entity of which a person identified in subparagraph 1. or 2. of this paragraph is an owner, member, or partner or has any other ownership interest.
- (d) A bi-state authority or public-private partnership shall comply with the procurement laws of both states that are a party to the agreement creating the bi-state authority or public-private partnership, including the provisions of KRS Chapter 45A, in the development of a project and the procurement of goods and services.
- (e) A bi-state authority or public-private partnership shall comply with the laws of both states concerning the inspection and disclosure of public records, including KRS 61.870 to 61.884.
- (f) A bi-state authority or public-private partnership shall comply with the laws of both states concerning the conduct of open meetings, including KRS 61.805 to 61.850.
- (6) (a) Prior to the execution of any agreements for the construction of the project, the state authority, the bi-state authority, a public-private partnership, or any combination of these, if appropriate, shall prepare a financial plan specifying the construction and financing parameters of the project, including:
 - 1. A timeline for construction of the project, including financing requirements throughout the construction of the project;
 - 2. The amount and duration of per-vehicle tolls;
 - 3. Expected appropriations from the General Assembly to be used for project costs; however, no financial plan shall be submitted or approved which seeks or purports to bind any future General Assembly to appropriate any moneys beyond those appropriated in the most recently enacted biennial highway construction plan;
 - 4. Other sources of funds and expected amounts; and
 - 5. Other provisions relating to the construction and financing of the project.
- (b) 1. If the financial plan is prepared by a bi-state authority, the Kentucky

members of the bi-state authority shall consult with the involved local governments in Kentucky, the department, and the Finance and Administration Cabinet, Office of Financial Management, during the development of the financial plan. Upon completion and approval of the financial plan by the bi-state authority, the plan shall be submitted to the state authority for approval.

2. If the financial plan is prepared by the state authority, the state authority shall consult with the involved local governments in Kentucky, the department, and the Finance and Administration Cabinet, Office of Financial Management, during the development of the financial plan. If the financial plan is viable based on all information available to the state authority, the state authority shall recommend the plan.
 3. If the financial plan is prepared by a public-private partnership, the public-private partnership shall consult with the involved local governments in Kentucky, the department, and the Finance and Administration Cabinet, Office of Financial Management, during the development of the financial plan. Upon completion and approval of the financial plan by the public-private partnership, the plan shall be submitted to the state authority for approval.
- (c) The state authority shall not approve or recommend a financial plan which seeks or purports to bind any future General Assembly to appropriate any moneys beyond those appropriated in the most recently enacted biennial highway construction plan. If the financial plan is approved or recommended by the state authority, the cabinet and, as necessary, other state agencies or local governments may enter into a development agreement as provided in subsection (7) of this section with all necessary parties for the development of a project.
- (d) Every financial plan prepared pursuant to this section shall include an evaluation of the ability of a potential contractor or service provider to quickly respond to the needs presented in a major transportation project, and the importance of economic development opportunities represented by the construction of any project under this chapter. In evaluating proposals, preference shall be given to a plan that includes the involvement of small businesses as subcontractors, to the extent that small businesses can provide services in a competitive manner, unless any preference interferes with the qualification for federal funds.
- (7) (a) Upon approval or recommendation of the financial plan as provided in subsection (6) of this section, a development agreement may be entered into establishing the terms and conditions under which a project will be undertaken and the duties, responsibilities, powers, and authorities of the parties to the agreement. The development agreement shall, at a minimum:
1. Require the bi-state authority or public-private partnership to submit an annual report to the cabinet and the Legislative Research Commission;
 2. Require that an annual audit of the bi-state authority or

public-private partnership be performed by a certified public accountant;

3. Include the relevant provisions from the financial plan required by subsection (6) of this section;
 4. Include provisions detailing the duties, responsibilities, and obligations of each party in relation to the financing, development, operation, and maintenance of the project, and the servicing and retirement of all bonds;
 5. Establish limits on any reserve funds created for operation, maintenance, or bond servicing, which shall be at a level to adequately operate and maintain the project and ensure proper bond servicing;
 6. Prohibit the amendment of the project or the financial plan without the prior evaluation and approval by the state authority. No amendment shall be approved that seeks or purports to bind any future General Assembly to appropriate any moneys beyond those appropriated in the most recently enacted biennial highway construction plan;
 7. If applicable, establish a process for the transfer of ownership of the portion of the project that is within the Commonwealth to the Commonwealth upon retirement of all bonds associated with the project or, if the project utilizes a public-private partnership, upon termination of that partnership; and
 8.
 - a. For a bi-state authority, require the approval of a majority of the members from each state before any action may be taken or any changes may be made by the bi-state authority; or
 - b. For a public-private partnership, require approval of the cabinet before any action may be taken or any changes may be made by the public-private partnership.
- (b) The parties to the agreement from the Commonwealth shall consult with the department and the Finance and Administration Cabinet, Office of Financial Management, in the development of the agreement.
 - (c) Additional agreements may be executed, as necessary to complete the project.
 - (d) The development agreement may take the form of a public-private partnership agreement.
- (8) The General Assembly hereby finds and declares that in carrying out the functions, powers, and duties as prescribed in this chapter, a bi-state authority or public-private partnership authorized under this section will be performing essential public and government functions that improve the public welfare and prosperity of the people of the Commonwealth by promoting the availability of and enhancing accessibility to improved transportation services within the Commonwealth.
 - (9) The state authority shall not enter into a public-private partnership related to a project connecting the Commonwealth with the State of Ohio unless the General Assembly expressly authorizes it by passing a joint resolution.

Effective: March 27, 2017

History: Amended 2017 Ky. Acts ch. 132, sec. 9, effective March 27, 2017. -- Amended 2016 Ky. Acts ch. 67, sec. 9, effective April 8, 2016. -- Created 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 80, effective June 26, 2009.