

AN ACT relating to public-private partnerships and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 45A.030 is amended to read as follows:

As used in this code, unless the context requires otherwise:

- (1) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted;
- (2) "Change order" means a written order signed by the purchasing officer, directing the contractor to make changes that the changes clause of the contract authorizes the purchasing officer to order without the consent of the contractor;
- (3) "Chief purchasing officer" means the secretary of the Finance and Administration Cabinet, who shall be responsible for all procurement of the Commonwealth except as provided by KRS Chapters 175, **175B**, 176, 177, and 180;
- (4) "Construction" means the process of building, altering, repairing, improving, or demolishing any public structures or buildings, or other public improvements of any kind to any public real property. It does not include the routine maintenance of existing structures, buildings, or real property;
- (5) "Construction manager-agency" means services to assist the purchasing agency manage construction that are procured through a contract that is qualifications-based;
- (6) "Construction management-at-risk" means a project delivery method in which the purchasing officer enters into a single contract with an offeror that assumes the risk for construction at a contracted guaranteed maximum price as a general contractor, and provides consultation and collaboration regarding the construction during and after design of a capital project. The contract shall be subject to the bonding requirements of KRS 45A.190;
- (7) "Contract" means all types of state agreements, including grants and orders, for the

purchase or disposal of supplies, services, construction, or any other item. It includes: awards; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; purchase orders; **public-private partnership agreements**; and insurance contracts except as provided in KRS 45A.022. It includes supplemental agreements with respect to any of the foregoing;

- (8) "Contract modification" means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract. It includes bilateral actions, such as supplemental agreements, and unilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option;
- (9) "Contractor" means any person having a contract with a governmental body;
- (10) "Data" means recorded information, regardless of form or characteristic;
- (11) "Design-bid-build" means a project delivery method in which the purchasing officer sequentially awards separate contracts, the first for architectural, engineering, or engineering-related services to design the project and the second for construction of the capital project according to the design. The contract shall be subject to the bonding requirements of KRS 45A.185;
- (12) "Design-build" means a project delivery method in which the purchasing officer enters into a single contract for design and construction of a capital project. The contract shall be subject to the bonding requirements of KRS 45A.190;
- (13) "Designee" means a duly authorized representative of a person holding a superior position;
- (14) "Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof;

- (15) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any nonsalaried individual performing personal services for any governmental body;
- (16) "Governmental body" means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment of the executive or legislative branch of the state government;
- (17) "Meeting" means all gatherings of every kind, including video teleconferences;
- (18) "Negotiation" means contracting by either the method set forth in KRS 45A.085, 45A.090, or 45A.095;
- (19) "Person" means any business, individual, organization, or group of individuals;
- (20) **"Private partner" means any entity that is a partner in a public-private partnership other than:**
- (a) The Commonwealth of Kentucky, or any agency or department thereof;**
- (b) The federal government;**
- (c) Any other state government;**
- (d) Any agency of a state, federal, or local government; or**
- (e) Any nonprofit organization which has been granted tax-exempt status under Section 501(c)(3) of the United States Internal Revenue Code;**
- (21)** "Procurement" means the purchasing, buying, renting, leasing, or otherwise obtaining of any supplies, services, or construction. It includes all functions that pertain to the procurement of any supply, service, or construction item, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration;
- (22) "Public-private partnership" means an alternative method of procurement, construction, or financing of capital projects, as defined in KRS 45.750, or procurement of services, pursuant to a written public-private partnership agreement entered into pursuant to Section 3 of this Act and administrative**

regulations promulgated thereunder, between:

(a) At least one (1) private partner; and

(b) The Commonwealth of Kentucky, or any agency or department thereof;

(23)~~(21)~~ "Purchase request" or "purchase requisition" means that document whereby a using agency requests that a contract be obtained for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation of solicitees, suggested sources of supply, and information supplied for the making of any written determination and finding required by KRS 45A.025;

(24)~~(22)~~ "Purchasing agency" means any governmental body that is authorized by this code or its implementing administrative regulations or by way of delegation from the chief purchasing officer to contract on its own behalf rather than through the central contracting authority of the chief purchasing officer;

(25)~~(23)~~ "Purchasing officer" means any person authorized by a governmental body in accordance with procedures prescribed by administrative regulations to enter into and administer contracts and make written determinations and findings with respect thereto. The term includes an authorized representative acting within the limits of authority;

(26)~~(24)~~ "Services" means the rendering by a contractor of its time and effort rather than the furnishing of a specific end product, other than reports that are merely incidental to the required performance of services;

(27)~~(25)~~ "Supplemental agreement" means any contract modification that is accomplished by the mutual action of the parties;

(28)~~(26)~~ "Supplies" means all property, including but not limited to leases of real property, printing, and insurance, except land or a permanent interest in land;

(29)~~(27)~~ "Using agency" means any governmental body of the state that utilizes any supplies, services, or construction purchased under this code;

~~(30)~~~~(28)~~ "Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment; and

~~(31)~~~~(29)~~ "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

➔Section 2. KRS 45A.075 is amended to read as follows:

Except as otherwise authorized by law, all state contracts shall be awarded by:

- (1) Competitive sealed bidding, pursuant to KRS 45A.080 or Section 3 of this Act; ~~or~~
- (2) Competitive negotiation, pursuant to KRS 45A.085, ~~and~~ 45A.090, ~~or~~ 45A.180, or Section 3 of this Act; ~~or~~
- (3) Noncompetitive negotiation, pursuant to KRS 45A.095; or
- (4) Small purchase procedures, pursuant to KRS 45A.100.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

- (1) A public-private partnership method may be utilized as provided in this section and administrative regulations promulgated thereunder. State contracts using this method shall be awarded by competitive sealed bidding or by competitive negotiation.
- (2) A contracting body utilizing a public-private partnership shall continue to be responsible for oversight of any function that is delegated to or otherwise performed by a private partner.
- (3) A public-private partnership shall not be used to circumvent any requirements or restrictions placed upon any contracting body pursuant to this chapter.
- (4) On or before December 31, 2015, the secretary of the Finance and Administration Cabinet shall promulgate administrative regulations setting forth

criteria to be used in determining when a public-private partnership is to be used for a particular project. The administrative regulations shall reflect the intent of the General Assembly to promote and encourage the use of public-private partnerships in the Commonwealth. The secretary shall consult with design-builders, construction managers, contractors, design professionals, including engineers and architects, the Associated General Contractors of Kentucky, the Kentucky Chamber of Commerce, the Kentucky Bankers Association, and other appropriate professionals during the development of these administrative regulations.

(5) The purchasing officer shall submit a written statement setting forth the facts recommending the delivery method to be used for a particular project.

(6) A request for proposal for a project utilizing a public-private partnership shall include at a minimum:

(a) The parameters of the proposed public-private partnership agreement;

(b) The duties and responsibilities to be performed by the private partner or partners;

(c) The methods of oversight to be employed by the contracting body;

(d) The duties and responsibilities that are to be performed by the contracting body and any other partners to the contract;

(e) The evaluation factors and the relative weight of each to be used in the scoring of awards;

(f) Plans for financing and operating the qualifying project and the revenues, service payments, bond financings, and appropriations of public funds needed for the qualifying project;

(g) Comprehensive documentation of the experience, capabilities, capitalization and financial condition, and other relevant qualifications of the private entity;

- (h) The ability of a private partner or partners to quickly respond to the needs presented in the request for proposal, and the importance of economic development opportunities represented by the qualifying project. 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 or other funds; and
- (i) Other information required by the contracting body or the cabinet to evaluate the proposals submitted by respondents and the overall proposed public-private partnership.
- (7) A private entity desiring to be a private partner shall demonstrate to the satisfaction of the contracting body and the cabinet that it is capable of performing any duty, responsibility, or function it may be authorized or directed to perform as part of the public-private partnership agreement.
- (8) When a request for proposal for a project utilizing a public-private partnership is issued for a capital project, the contracting body shall transmit a copy of the request for proposal to the Capital Projects and Bond Oversight Committee staff, clearly identifying to the staff that a public-private partnership is being utilized.
- (9) A request for proposal or other solicitation may be canceled, or all proposals may be rejected, if it is determined in writing that such action is taken in the best interest of the Commonwealth and approved by the purchasing officer.
- (10) In the case of any public-private partnership for a capital project with an aggregate value of ten million dollars (\$10,000,000) or more, the project shall be authorized by the General Assembly by inclusion in the branch budget bill or by any other means.
- (11) A state agency proposing a project pursuant to this section shall, to the extent practical, consult with the officials representing the units of local government in

which the proposed project is to be located in order to obtain the advice and input on the local impact of the proposed project, including information regarding land use planning, transportation planning, economic development, and any other factors having a direct impact on the local community.

(12) Upon issuance of a public-private partnership agreement, the contracting body shall submit the contract to the Government Contract Review Committee for review in accordance with KRS 45A.690 to 45A.725. The contracting body shall ensure the contract clearly identifies to the committee that a public-private partnership is being utilized. Upon disapproval of or objection to the contract by the committee, the contracting body shall determine whether the contract shall be revised to comply with the objections of the committee, be canceled, or remain in effect.

(13) Any corporation as described by KRS 45.750(2)(c), or as created under the Kentucky Revised Statutes as a governmental agency and instrumentality of the Commonwealth, that manages its capital construction program shall:

- (a) Adhere to the administrative regulations promulgated under this section when utilizing a public-private partnership for financing capital projects;
- (b) Report to legislative committees as specified in this section; and
- (c) Submit public-private partnership agreements issued by it to the General Assembly for authorization as provided in subsection (10) of this section.

(14) (a) The governing body of a postsecondary institution that manages its capital construction program under KRS 164A.580 shall:

- 1. Report to the Capital Projects and Bond Oversight Committee staff as specified in this section; and
- 2. Not be required to comply with the provisions of subsections (10) and (12) of this section.

(b) Any provision of a public-private partnership agreement issued by a

postsecondary institution which provides for a lease by or to the postsecondary institution shall be valid and enforceable if approved by the governing board of the institution.

(15) (a) A person or business may submit an unsolicited proposal to a governmental body.

(b) A governmental body may receive, consider, and evaluate an unsolicited proposal.

(c) If the governmental body determines it is in the best interest of the Commonwealth to implement some or all of the concepts contained within the unsolicited proposal, it may award a contract pursuant to Section 2 of this Act.

➔Section 4. KRS 175B.005 is amended to read as follows:

- (1) The purpose of this chapter is to establish a structure for the construction, operation, financing, and oversight of significant transportation projects within the Commonwealth and between the Commonwealth and ~~any~~^{the} state adjoining the Commonwealth~~of Indiana~~. To accomplish this purpose, the Kentucky Public Transportation Infrastructure Authority is established by KRS 175B.015 to review, approve, and monitor all projects eligible for construction and financing under this chapter and, if necessary, to assist with the operation, financing, and management of projects.
- (2) All projects approved by the Kentucky Public Transportation Infrastructure Authority may be operated,~~shall be~~ managed, constructed, and financed entirely or in part only by:
 - (a) A bi-state authority as provided in KRS 175B.030;~~or~~
 - (b) A project authority as provided in KRS 175B.035; or
 - (c) A public-private partnership as provided in Sections 7 and 8 of this Act.

➔Section 5. KRS 175B.010 is amended to read as follows:

As used in this chapter:

- (1) "Authority" means the state authority, or a bi-state authority, or a project authority, unless the specific use requires that it apply only to the state authority, or a bi-state authority, or a project authority;
- (2) "Bi-state authority" means an authority created under KRS 175B.030;
- (3) "Cabinet" means the Transportation Cabinet;
- (4) "Commonwealth" means the Commonwealth of Kentucky;
- (5) "Cost" means:
 - (a) The cost of construction of the project, including the acquisition of land, rights-of-way, property, rights in land, easements, and interests acquired by the authority for construction of a project;
 - (b) The cost of preparing land or property, including demolishing or removing any buildings or structures, and the cost of acquiring any lands to which those buildings or structures may be moved;
 - (c) The pro-rata value of all machinery and equipment used in construction of the project;
 - (d) Financing charges and provisions for working capital in an amount the authority determines to be reasonable;
 - (e) Interest prior to and during construction and, if approved by the authority, for a period up to two (2) years after completion of construction;
 - (f) The cost of traffic estimates and of engineering, financial and legal services, plans, specifications, surveys, estimates of cost and revenues, or other expenses necessary or incidental to determining the feasibility or practicability of constructing any project;
 - (g) The cost and expense of the relocation or removal of public utilities impacted by a project, including the cost of installing the facilities in a new location, the cost of any lands or any rights or interests in lands, and the cost of any other

rights acquired to accomplish the relocation or removal;

- (h) Administrative expenses and any other expenses that are necessary for or incidental to the construction of a project, the financing of the construction, and the placing of the project in operation; and
- (i) The cost of maintenance of the completed project.

Any obligation or expense incurred by and reimbursed to the Commonwealth in connection with any of the items of cost set out in this subsection may be regarded as a part of that cost;

- (6) "Department" means the Department of Highways;
- (7) "Developing authority" means the authority involved in the development of a project;
- (8) "Issuing authority" means the authority that will issue or has issued debt associated with a project;
- (9) "Local government" means a consolidated local government, an urban-county government, a charter county government, a unified local government, or a county;
- (10) **"Private partner" means any entity that is a partner in a public-private partnership other than:**

(a) The Commonwealth of Kentucky, or any agency or department thereof;

(b) Any political subdivision of the Commonwealth;

(c) The federal government;

(d) Any other state government;

(e) Any agency of a state, federal, or local government; or

(f) An authority;

- (11)** (a) "Project" means:

- 1. Any highway or section of a highway designated as part of, **or built to the standards of,** the federal interstate highway system **and that would be designated a major project by the Federal Highway Administration;**

or

2. Any fully or partially controlled highway or section of a fully or partially controlled highway not designated as part of, or built to the standards of, the federal interstate highway system; that exceeds one hundred million dollars (\$100,000,000) in total cost

~~[that would be designated a mega project by the Federal Highway Administration];~~

- (b) "Project" includes all bridges, tollhouses, garages, and other buildings and facilities which the authority deems necessary for the operation of the project, together with all property, rights, easements, and interests which may be acquired by the authority or by the Commonwealth for the construction and operation of a project;

~~(12)~~~~(11)~~ "Project authority" means an authority created pursuant to KRS 175B.035;

~~(13)~~~~(12)~~ "Project revenue bonds" means revenue funding bonds, revenue refunding bonds, notes, or other financial obligations issued under this chapter by the issuing authority;

~~(14)~~~~(13)~~ "Public-private partnership" means an entity operating pursuant to a written public-private partnership agreement, and composed of:

(a) An authority or authorities;

(b) At least one (1) private partner;

(c) The cabinet, if necessary; and

(d) An adjoining state, if necessary, if the public-private partnership is financing a project that is between the Commonwealth and an adjoining state;

~~(15)~~ "Public-private partnership agreement" means an agreement that sets forth the terms of a public-private partnership, including but not limited to design-build agreements and availability payment agreements;

(16) "Public utility facilities" means tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances of any public utility in, on, along, over, or under any project; and

(17)~~(14)~~ "State authority" means the Kentucky Public Transportation Infrastructure Authority created under KRS 175B.015.

➔Section 6. KRS 175B.020 is amended to read as follows:

(1) The state authority's primary purpose shall be to facilitate the construction, financing, operation, and oversight of projects by entering into bi-state agreements and by creating bi-state authorities and project authorities. To accomplish these purposes, the state authority shall have the power and duty to:

(a) Take the following actions relating to a bi-state authority authorized pursuant to KRS 175B.030:

1. To enter into a bi-state agreement;
2. To review and approve project financing plans and development agreements; and
3. To monitor agreements entered into by bi-state authorities, **including but not limited to public-private partnership agreements**; and

(b) Take the following actions relating to a project authority authorized pursuant to KRS 175B.035:

1. To request establishment of a project authority;
2. To review and approve project financing plans and development agreements;
3. To monitor activities of project authorities;~~and~~
4. To enter into an agreement with the project authority; **and**
5. **To monitor agreements entered into by a project authority, including but not limited to public-private partnership agreements.**

(2) The state authority, when authorized pursuant to subsection **(10)**~~(4)~~ of this section,

may participate as a developing or issuing authority, or both, in the development, construction, or financing of a project by a bi-state or project authority, or by a public-private partnership entered into by a bi-state authority or project authority, if necessary. If the state authority participates as a developing or issuing authority, the state authority shall have the powers and duties established in KRS 175B.025 as they apply to that project.

- (3) The state authority, as a function of its oversight of any other authority created pursuant to this chapter, shall report before the first issuance of bonds and no less than semiannually thereafter to the Capital Projects and Bond Oversight Committee and to the Interim Joint Committee on Appropriations and Revenue of the Legislative Research Commission, on any projects currently proposed or under development by each authority. Current and proposed levels of bonding for each project shall be reviewed by the Capital Projects and Bond Oversight Committee in accordance with KRS 45.794 before the bonds shall be issued.
- (4) The state authority, when proposing a project pursuant to this chapter, shall to the extent practical consult with the officials representing the units of local government in which the proposed project is to be located in order to obtain the advice and input on the local impact of the proposed project, including information regarding land use planning, transportation planning, economic development, and any other factors having a direct impact on the local community.
- (5) The state authority may receive an unsolicited proposal if the proposal contains:
 - (a) An executive summary of no more than three (3) pages that details the revenue source for the proposed project, the amount of revenue expected to be generated by the project, and the project costs;
 - (b) A certification from a financial expert stating that the contents of the unsolicited proposal are true and correct; and

- (c) A commitment to pay the costs incurred by the state authority and the cabinet for evaluating the unsolicited proposal.
- (6) The state authority shall respond to a person offering an unsolicited proposal notifying the person that the proposal has been rejected or approved for further review.
- (7) If the state authority approves an unsolicited proposal for further review, the state authority shall independently verify that it is in the best interest of the Commonwealth.
- (8) A person making an unsolicited proposal shall pay all costs of evaluating the unsolicited proposal incurred by the state authority and the cabinet.
- (9) If the state authority and the cabinet agree that an unsolicited proposal is in the best interest of the Commonwealth, the state authority, with the assistance of the cabinet, shall begin a competitive procurement process to implement some or all of the concepts contained in the unsolicited proposal.
- (10) (a) Notwithstanding any other provision of this chapter, the following actions shall not take effect until ratified by the General Assembly:
1. The creation of a bi-state authority;
 2. The creation of a project authority;
 3. The modification or amendment of the scope of any project; and
 4. The development of any project undertaken entirely by the state authority.
- (b) If any action described in paragraph (a) of this subsection is not ratified by the General Assembly, the creation, approval, or modification shall be considered void.
- (11) Notwithstanding any provision of this chapter to the contrary, in the case of any project proposed pursuant to this chapter that exceeds one hundred million dollars (\$100,000,000) in total cost, the following provisions shall apply: in

addition to any other evaluation or review required by this chapter, a separate, independent cost-benefit analysis shall be conducted to determine if any proposed use of a public-private partnership for the project is in the best interests of the public as it relates to the project. The analysis shall:

- (a) Identify both the potential benefits and the likely public costs, including all costs external to the proposed public-private partnership agreement itself; and
- (b) Take into account all relevant variables, including but not limited to material, maintenance, and funding costs, considered as inputs into either a discounted cash flow or an internal rate of return calculation.

(12) Notwithstanding any provision of this chapter to the contrary, in the case of any project proposed pursuant to this chapter that exceeds one hundred million dollars (\$100,000,000) in total cost, the following provisions shall apply: any and all tolls imposed as part of the project by any entity, if a public-private partnership is being utilized for the project, shall expire upon the repayment of the initial construction debt.

→ Section 7. KRS 175B.030 is amended to read as follows:

- (1) (a) This section shall apply to any project that connects Kentucky with ~~any~~the state ~~that adjoins the Commonwealth~~of Indiana]. A ~~proposal to construct a~~ project that connects Kentucky with ~~an adjoining~~the state ~~of Indiana~~ shall be contained in a financing plan prepared pursuant to subsection (6) of this section. If approved, the project shall be constructed and financed by a bi-state authority, a public-private partnership operating pursuant to a public-private partnership agreement entered into by a bi-state authority, or a combination of these.
- (b) If the state authority, operating pursuant to Section 6 of this Act, 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.

- (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*~~the~~ state ~~of Indiana~~ 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 ~~of Indiana~~ 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 entered into by a bi-state authority:
1. Any member of the bi-state authority appointed to represent the Commonwealth or any member of the state authority, ~~or~~ 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, ~~or~~ 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 entered into by a bi-state authority* 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 entered into by a bi-state authority*, 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 entered into by a bi-state authority* 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 entered into by a bi-state authority* shall comply with the laws of both states concerning the conduct of open meetings, including KRS 61.805 to 61.850.
- (6) *(a)* ~~[After creation of the bi-state authority and]~~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)* A timeline for construction of the project, including financing requirements throughout the construction of the project;
- 2.(b)* The amount and duration of per-vehicle tolls;
- 3.(c)* Expected appropriations from the General Assembly to be used for project costs; however, no financial plan shall be submitted or approved which contains expected appropriations by the General Assembly beyond those appropriated in the most recently enacted biennial highway

construction plan;

~~4.[(d)]~~ Other sources of funds and expected amounts; and

~~5.[(e)]~~ 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 entered into by a bi-state authority, 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 bi-state authority for approval, and if approved by it, the plan shall then be submitted to the state authority for approval.

- (c) The state authority shall not approve or recommend a financial plan which contains expected appropriations by the General Assembly 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 entered into by a bi-state authority 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 entered into by a bi-state authority 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 provides for expected appropriations by the General Assembly 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. 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 by any public-private partnership entered into by the bi-state authority**.
- (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 if entered into by a bi-state authority.

(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) Neither a bi-state authority nor the state authority shall 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.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

(1) The state authority, a bi-state authority, or a project authority may, subject to the approval required by subsection (9) of Section 7 of this Act, utilize a public-private partnership.

(2) An authority utilizing a public-private partnership shall continue to be responsible for oversight of any function authorized by this chapter that is delegated to or otherwise performed by a public-private partnership.

(3) A public-private partnership shall not be used to circumvent any requirements or restrictions placed upon any authority pursuant to this chapter.

(4) An authority proposing to utilize a public-private partnership shall include in the financial plan required by Section 7 or 10 of this Act:

(a) The parameters of the public-private partnership agreement;

(b) The duties and responsibilities to be performed by the private partner or partners;

- (c) The methods of oversight to be employed by the authority;
- (d) The duties and responsibilities of the project that are to be performed by the authority, the cabinet, and any other partners to the agreement; and
- (e) Other information required by the state authority or the cabinet to evaluate the financial plan and the proposed public-private partnership.
- (5) A private entity desiring to be a private partner shall demonstrate to the satisfaction of the state authority and the cabinet that it is capable of performing any function to be authorized by the public-private partnership.
- (6) A public-private partnership authorized or utilized pursuant to this section shall be subject to subsections (5) to (8) of Section 7 of this Act.
- (7) The state authority shall promulgate administrative regulations detailing the procurement approach and proposal review process to be used for a public-private partnership by December 31, 2015.

➔Section 9. KRS 175B.040 is amended to read as follows:

- (1) If imposed as part of the financing plan, tolls shall be fixed and adjusted by the developing authority to provide a fund sufficient with other revenues, if any, to:
- (a) Pay the cost of maintaining, repairing, and operating the project, unless the cost or any part thereof is being paid by the Commonwealth as authorized by this chapter;
 - (b) Pay the principal of and interest on the project revenue bonds; and
 - (c) Create reserves not to exceed amounts specified in the development agreement.
- (2) Unless a transfer of ownership of a project occurs pursuant to KRS 175B.095 or the project utilizes a public-private partnership pursuant to Sections 7 and 8 of this Act, the developing authority shall at all times maintain ownership and control of all tolls and other revenues generated by the project. Tolls shall not be subject to supervision or regulation by any other department, division, authority, board,

bureau, or agency of a local government or the Commonwealth.

(3) (a) The tolls and all other revenues derived from the project, except those revenues necessary to:

1. Pay the cost of maintenance, repair, and operation;~~[- and to]~~

2. Establish and maintain reserves as may be provided for in the authorization of the issuance of the project revenue bonds or in the trust indenture securing the project revenue bonds; or

3. *Satisfy the requirements of a public-private partnership agreement or a development agreement;*~~[-]~~

shall be set aside in a sinking fund which shall be pledged to, and charged with, the payment of principal and interest on the project revenue bonds as they become due, and the redemption price or the purchase price of project revenue bonds retired by call or purchase as provided in the authorization of issuance.

(b) The pledge of the sinking fund shall be valid and binding from the time when the pledge is made.

(c) The tolls or other revenues received and pledged by the developing authority shall immediately be subject to the lien of the pledge without any physical delivery or further action, and the lien on any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the developing authority, whether the parties have received notice or not.

(d) Neither the proceedings nor any trust indenture by which a pledge is created need be filed or recorded, except in the records of the issuing authority.

(e) The use and disposition of moneys to the credit of the sinking fund shall be subject to the provisions of the proceedings authorizing the issuance of the project revenue bonds or the trust indenture.

- (4) (a) Every person utilizing a project developed and tolled under this chapter shall pay the appropriate toll.
- (b) Any person who violates the provisions of this subsection shall be subject to the provisions of administrative regulations promulgated pursuant to KRS 175B.015(12).
- (5) Upon receiving notice, the cabinet shall suspend or withhold the annual registration of a vehicle used in the commission of a toll violation until:
 - (a) The fine, charge, or assessment has been paid; or
 - (b) The violation of subsection (4) of this section has been determined not to have occurred.
- (6) (a) Toll collection customer account information shall be confidential and not subject to disclosure under KRS 61.870 to 61.884. Contracts relating to toll collection for a project developed and tolled under this chapter shall ensure the confidentiality of all toll collection customer account information.
- (b) For the purposes of this section, "toll collection customer account information" means any information collected or received from or about any person who is assessed a toll, including contact information, payment information, trip data, and any other relevant data.

➔Section 10. KRS 175B.035 is amended to read as follows:

- (1) Potential projects that are within Kentucky may be developed by a project authority as provided in this section, *or by a public-private partnership as provided in Section 8 of this Act.*
- (2) A local government that contains a portion of a proposed project may, by resolution of its governing body, request the state authority to evaluate the establishment of a project authority *or a public-private partnership* for the purpose of developing a project.
- (3) The state authority may request that the department evaluate the proposed project by

preparation of a financial plan evaluating all aspects of the proposed project, including:

- (a) The most effective location for the project;
 - (b) The impact on local governments and citizens at the location of or along the path of the project;
 - (c) A detailed analysis of the proposed cost of the project;
 - (d) The potential economic impact to the areas affected by the project;
 - (e) The anticipated level of use of the project;
 - (f) The amount and duration of per-vehicle tolls;
 - (g) Expected appropriations from the General Assembly to be used for the project; however, no financial plan shall be submitted or approved which contains expected appropriations by the General Assembly beyond those appropriated in the most recently enacted biennial highway construction plan;
 - (h) **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 or other funds;**
 - (i) Other sources of funds and expected amounts; and
 - (j) Any other provisions relating to the construction and financing of the project.
- (4) If, based on the project evaluation prepared pursuant to subsection (3) of this section, the state authority and the department determine that the development of the project is economically feasible, the state authority shall submit the proposal to

the General Assembly for ratification. If ratified by the General Assembly, the state authority may request that the Governor establish a project authority in accordance with the following:

- (a) The project authority shall be established as an independent de jure municipal corporation and political subdivision of the Commonwealth constituting a governmental agency and instrumentality of the Commonwealth, with the power to contract and be contracted with, acquire and convey property, sue and be sued, and exercise all of the usual powers of corporations not inconsistent with the authority's specifically enumerated purpose and duties;
 - (b) The project authority shall adopt a name that includes the name of the project and the words "Project Authority";
 - (c) The project authority shall be composed of seven (7) members, three (3) of whom shall be appointed by the Governor and confirmed by the Senate in accordance with KRS 11.160, and four (4) of whom shall be appointed by the chief executive of the local government that requested establishment of the project authority and confirmed by resolution of the local government's governing body;
 - (d) Each member of the project authority shall be appointed for a period of four (4) years, except that in making initial appointments, the Governor shall appoint members for one (1), three (3), and four (4) years, and the chief executive shall appoint two (2) members each for two (2) and four (4) years; and
 - (e) At least one (1) 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.
- (5) (a) Within ninety (90) days of its establishment under subsection (4) of this section, the project authority shall convene and organize. The project authority

shall elect a chair and a vice chair, who shall be members of the project authority and elected by a majority of the project authority members. The project authority shall appoint a secretary and a treasurer who shall not be members of the project authority, each of whom shall serve at the pleasure of the project authority and shall receive compensation as determined and paid by the project authority.

- (b) The treasurer shall give bond in an amount prescribed by the project authority to the project authority and the state conditioned upon a faithful accounting for all the funds coming into the treasurer's custody, with corporate surety given by a surety company qualified to do business in the state, the premium of which shall be paid by the project authority.
 - (c) The project authority shall maintain an office, and the secretary of the project authority shall maintain in that office complete records of all the project authority's actions and proceedings, which shall be considered open records under KRS 61.870 to 61.884.
 - (d) A project authority shall comply with the applicable provisions of KRS Chapter 45A in the development of a project and the procurement of goods and services.
 - (e) The meetings of a project authority shall be considered open meetings pursuant to KRS 61.805 to 61.850.
- (6) A majority of the members of a project authority shall constitute a quorum for the transaction of business. The members of a project authority shall receive no compensation for their services in that capacity, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as members.
- (7) (a) Members of a project authority shall be considered public servants subject to the provisions of KRS Chapter 11A.

- (b) The following individuals or entities shall be prohibited from entering into any contract or agreement with a project authority or a public-private partnership:
1. Any member of a project authority, a bi-state authority,~~[-or]~~ the state authority, or a public-private partnership;
 2. Any spouse, child, stepchild, parent, stepparent, or sibling of a member of a project authority, a bi-state authority,~~[-or]~~ the state 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, a member, a partner, or has any other ownership interest.
- (8) (a) The state authority shall enter into a development agreement with a project authority or a public-private partnership to establish the terms and conditions under which a project will be undertaken. No financial plan shall be submitted or approved which contains expected appropriations by the General Assembly beyond those appropriated in the most recently enacted biennial highway construction plan.
- (b) The development agreement shall establish the duties, responsibilities, and powers of the state authority, the project authority, a public-private partnership, and, as necessary, the cabinet with regard to the project.
- (c) The development agreement shall include, at a minimum, all information necessary relating to the creation, development, operation, and disposal of the project. No financial plan shall be submitted or approved which contains expected appropriations by the General Assembly beyond those appropriated in the most recently enacted biennial highway construction plan.
- (d) After the proposed project has been approved and set forth in the development agreement, it shall not be changed or expanded without evaluation and

approval by the state authority and ratification by the General Assembly.

- (e) Additional agreements may be executed, as necessary, between the state authority, the project authority, a public-private partnership, the department, and the cabinet.
- (9) The provisions of this chapter relating to the duties, responsibilities, powers, and authorities of the state authority shall apply to a project authority or a public-private partnership to the extent that the duties, responsibilities, powers, and authorities are required for the project authority or public-private partnership to carry out its duties and responsibilities under a development agreement.
- (10) Upon retirement of all bonds associated with a project developed under this section or, if the project utilizes a public-private partnership, upon termination of that partnership, the ownership of the project shall be transferred to the Commonwealth pursuant to KRS 175B.095.

➔Section 11. KRS 175B.095 is amended to read as follows:

- (1) Not more than one (1) year prior to the scheduled retirement of all bonds issued to finance a project, the department shall undertake an evaluation of the condition of the project to determine if the project has significant maintenance, reconstruction, or rebuilding needs. The evaluation shall be completed no less than one hundred eighty (180) days prior to the scheduled retirement of the bonds.
- (2) If significant maintenance, reconstruction, or rebuilding is needed, the department shall determine if funds and reserves held by the developing authority for the project are adequate to accomplish the maintenance, reconstruction, or rebuilding. If additional funds are needed, additional bonds shall be authorized and issued by the same entity that issued the original bonds for the project, pursuant to this chapter.
- (3) Tolls for the project shall continue until all bonds are retired.
- (4) Notwithstanding any other provisions of this chapter, any portion of a project located within the Commonwealth and financed by an authority shall become the

property of the Commonwealth upon the retirement of all bonds issued to finance the project or, if the project utilizes a public-private partnership, upon termination of that partnership.

- (5) Upon the transfer of any project to the Commonwealth pursuant to this section, the department shall evaluate the need for the continuance of any tolls. Tolls may be continued if significant rebuilding, expansion, or maintenance is needed. Tolls collected after ownership of a project has transferred to the Commonwealth shall be deposited into the road fund and used for current and future costs of the project, including maintenance, expansion, rebuilding, reconstruction, or other similar purposes.
- (6) When an authority has transferred a project to the Commonwealth pursuant to this section, remaining fund reserves relating to that project shall be transferred to the road fund.

➔Section 12. KRS 175B.045 is amended to read as follows:

- (1) Each project, upon completion, shall continuously constitute a link between parts of the highway system of the Commonwealth, or between the Commonwealth and any~~the~~ state that adjoins the Commonwealth~~[of Indiana]~~, and shall always be open to public travel, subject to any tolls or restrictions established by the developing authority. All projects shall be subject to evaluation and inspection by the department, and shall meet the standards for public roadways established by the department.
- (2) Projects may be developed in coordination with existing and proposed public transit systems.

➔Section 13. KRS 175B.025 is amended to read as follows:

- (1) The developing authority and issuing authority may be the same authority or separate authorities, depending on the needs of the project. The developing authority and issuing authority shall have the following powers and duties, as

necessary to complete, operate, and maintain the project, subject to the limitations provided in KRS 175B.020(~~10~~)(~~4~~):

- (a) To enter into agreements as necessary to facilitate the development, construction, maintenance, operation, repair, or financing of projects;
- (b) To directly or indirectly construct, reconstruct, maintain, repair, operate, and regulate projects within the Commonwealth, or contract with another entity for these services;
- (c) To issue project revenue bonds of the issuing authority payable solely from the tolls, revenues, rentals, funds from any grant anticipation revenue vehicle (GARVEE), funds appropriated by the state or federal government, and any other funds pledged for their payment, for the purpose of paying all or any cost of a project, and to refund any of its bonds;
- (d) To fix, revise, charge, and collect tolls for transit over any project constructed by it, and for any ancillary or connector routes affected by the project;
- (e) To establish and enforce rules and regulations for the use of a project;
- (f) To acquire and hold any of the following in the name of the developing authority, and to dispose of them as the developing authority deems necessary:
 - 1. Real and personal property, including lands and structures;
 - 2. Rights;
 - 3. Rights-of-way;
 - 4. Franchises;
 - 5. Easements and other interests in lands, including lands lying under water and riparian rights; and
 - 6. Any other item or asset necessary to accomplish its mission;
- (g) To designate the locations and establish, limit, and control points of access to the project, and to prohibit access to the project from any undesignated point;
- (h) To make and enter into contracts and agreements in the performance of duties

- and the execution of powers under this chapter;
- (i) To employ any consultants and to fix their compensation;
 - (j) To receive and accept contributions and grants from any source for or in aid of the construction of a project or the operation of the developing or issuing authority;
 - (k) To accept interest rate subsidies, rebates, tax credits, or guarantees as provided in the American Recovery and Reinvestment Act of 2009, or as may be provided in subsequent federal legislation providing support to or credit enhancement of governmental obligations;
 - (l) To expend any funds provided under this chapter in advertising the facilities and services of a project to the traveling public;
 - (m) To enter into lease agreements with the department; and
 - (n) To do acts necessary or convenient to carry out the powers expressly granted in this chapter.
- (2) Projects may be developed in conjunction with other road development efforts of the Commonwealth that are in compliance with Federal Highway Administration requirements.
- (3) Projects developed pursuant to this chapter shall:
- (a) Comply with the requirements of KRS Chapters 45A, 174, and 176;
 - (b) Be included in the most recently enacted biennial highway construction plan; and
 - (c) Comply with all relevant requirements of the Federal Highway Administration.

➔Section 14. The provisions of Sections 1 to 3 of this Act shall apply only to a project for which the purchasing officer has submitted a written statement, pursuant to subsection (5) of Section 3 of this Act, on or after the effective date of this Act.

➔Section 15. Whereas the ability to advance necessary infrastructure projects is

enhanced by this Act, and the Act places agencies under a deadline to promulgate administrative regulations, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.