

1 AN ACT relating to public-private partnerships.

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

3 ➔Section 1. KRS 65.028 is amended to read as follows:

4 (1) As used in this section:

5 (a) "Best value" has the same meaning as in KRS 65.025;

6 (b) "Cabinet" means the Finance and Administration Cabinet;

7 (c) "Local government" means a city, county, charter county, urban-county
8 government, consolidated local government,~~[-or]~~ unified local government, ***or***
9 ***local school district*** of the Commonwealth;

10 (d) "Private partner" has the same meaning as in KRS 65.025; and

11 (e) "Public-private partnership" has the same meaning as in KRS 65.025.

12 (2) A public-private partnership delivery method may be utilized by a local government
13 as provided in this section and administrative regulations promulgated thereunder.
14 Contracts using this method shall be awarded by competitive negotiation on the
15 basis of best value, and shall in all cases take effect only if executed by the
16 legislative body of the local government, ***which in the case of a school district***
17 ***shall be the local board of education.*** The provisions of KRS 65.025(2) to (4) shall
18 not apply to public-private partnerships utilized by local governments.

19 (3) A local government utilizing a public-private partnership shall continue to be
20 responsible for oversight of any function that is delegated to or otherwise performed
21 by a private partner.

22 (4) A public-private partnership shall not be used to circumvent any requirements or
23 restrictions placed upon any local government pursuant to any provision of the
24 Kentucky Revised Statutes.

25 (5) All public-private partnership agreements executed by a local government or any of
26 its agencies under this section shall be approved by the legislative body of the local
27 government, ***which in the case of a school district shall be the local board of***

1 education, at a public meeting, and shall include at a minimum the following
2 provisions:

- 3 (a) 1. Property owned by a local government shall not be sold, conveyed, or
4 disposed of in any way at any time; and
5 2. Leases issued by a local government to any party shall not be transferred
6 in any way by that party;

7 without the specific and express written consent of the legislative body, which
8 in the case of a school district shall be the local board of education, of the
9 local government;

- 10 (b) Require the private partner to provide or cause to be provided performance
11 and payment bonds on the design and construction portion of the agreement as
12 required under KRS 45A.435 and maintenance bonds, warranties, guarantees,
13 and letters of credit in connection with the private partner's other activities
14 under the agreement, in the forms and amounts satisfactory to the local
15 government and in amounts necessary to provide adequate protection to the
16 local government;

- 17 (c) Review and approval of plans and specifications for the project by the local
18 government;

- 19 (d) Inspection of the project by the local government to ensure that the private
20 partner's actions are acceptable to the local government in accordance with the
21 agreement;

- 22 (e) Maintenance of public liability insurance or self-insurance, in form and
23 amount satisfactory to the local government and reasonably sufficient to
24 insure coverage of tort liability to the public and employees and to enable the
25 continued operation of the project;

- 26 (f) Reimbursement to be paid to the local government for services provided by
27 the local government;

- 1 (g) Filing of appropriate financial statements by the private partner on a periodic
2 basis;
- 3 (h) Policies and procedures governing the rights and responsibilities of the local
4 government and the private partner in the event the public-private partnership
5 agreement is terminated or there is a material default by the private partner.
6 These policies and procedures shall include conditions governing assumption
7 of the duties and responsibilities of the private partner by the local
8 government, and the transfer or purchase of property or other interests of the
9 private partner by the local government;
- 10 (i) Any fees or payments as may be established by agreement of the private
11 partner and the local government;
- 12 (j) A detailed description of all duties and requirements of the private partner;
- 13 (k) The ability of a private partner or partners to quickly respond to the needs
14 presented in the request for proposal, and the importance of economic
15 development opportunities represented by the qualifying project. In evaluating
16 proposals, preference shall be given to a plan that includes the involvement of
17 small businesses as subcontractors, to the extent that small businesses can
18 provide services in a competitive manner, unless any preference interferes
19 with the qualification for federal or other funds; and
- 20 (l) Any other information necessary to properly address the life cycle of the
21 agreement, including the disposition of assets if or when the public-private
22 partnership agreement is terminated or otherwise concludes.
- 23 (6) (a) On or before December 31, 2016, the secretary of the Finance and
24 Administration Cabinet shall promulgate administrative regulations setting
25 forth criteria to be used by a local government employing a public-private
26 partnership for a particular project, and establishing a process for public-
27 private partnership procurement undertaken by local governments consistent

1 with this section. Prior to submission of the proposed administrative
2 regulations pursuant to the regulatory process required by KRS Chapter 13A,
3 the proposed administrative regulations shall be approved by the Kentucky
4 Local Government Public-Private Partnership Board established by subsection
5 (11) of this section.

6 (b) The secretary shall consult with design-builders, construction managers,
7 contractors, design professionals including engineers and architects, and other
8 appropriate professionals during the development of these administrative
9 regulations.

10 (c) The secretary shall have the authority to contract with a consultant, pursuant
11 to KRS 45A.695, to assist the cabinet and the Kentucky Local Government
12 Public-Private Partnership Board with the review process required in
13 subsection (12) of this section. The secretary may, through administrative
14 regulation, impose a reasonable fee on the private partner to defray the cost of
15 the review required in subsection (12) of this section, including any expenses
16 or fees incurred in contracting with a consultant.

17 (d) If the secretary fails to timely promulgate administrative regulations pursuant
18 to this subsection, local governments may then act pursuant to this section
19 including compliance with the process outlined in subsection (12) of this
20 section, in the absence of administrative regulations.

21 (7) A request for proposal for a local government project utilizing a public-private
22 partnership shall include at a minimum:

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

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

26 (c) The methods of oversight to be employed by the local government;

27 (d) The duties and responsibilities that are to be performed by the local

- 1 government and any other partners to the contract;
- 2 (e) The evaluation factors and the relative weight of each to be used in the
3 scoring of awards; and
- 4 (f) Other information required by a local government to evaluate the proposals
5 submitted by respondents and the overall proposed public-private partnership.
- 6 (8) A private entity desiring to be a private partner shall demonstrate to the satisfaction
7 of the local government that it is capable of performing any duty, responsibility, or
8 function it may be authorized or directed to perform as part of the public-private
9 partnership agreement.
- 10 (9) When a request for proposal for a project utilizing a public-private partnership is
11 issued, the local government shall transmit a copy of the request for proposal to the
12 cabinet and to the Department for Local Government.
- 13 (10) A request for proposal or other solicitation may be canceled, or all proposals may
14 be rejected, if it is determined in writing that the action is taken in the best interest
15 of the local government and approved by the legislative body, **which in the case of**
16 **a school district shall be the local board of education.**
- 17 (11) (a) There is established within the cabinet the Kentucky Local Government
18 Public-Private Partnership Board, composed of eleven (11) members as
19 follows:
- 20 1. The secretary of the cabinet, or the secretary's designee;
 - 21 2. Two (2) individuals appointed by the Kentucky League of Cities, both
22 of whom shall have experience in municipal financial operations;
 - 23 3. Two (2) individuals appointed by the Kentucky Association of Counties,
24 both of whom shall have experience in county financial operations, one
25 (1) to be recommended by the Kentucky County Judge/Executive
26 Association and one (1) to be recommended by the Kentucky County
27 Magistrates and Commissioners Association;

- 1 4. The commissioner of the Department for Local Government, or the
2 commissioner's designee;
- 3 5. The executive director of the Office of Financial Management within the
4 cabinet, or the executive director's designee;
- 5 6. The Auditor of Public Accounts, or the Auditor's designee;
- 6 7. One (1) citizen member appointed by the Governor, who shall have
7 experience and knowledge in local government debt and financial
8 operations; and
- 9 8. Two (2) members of the Kentucky General Assembly, one (1) appointed
10 by the President of the Senate and one (1) appointed by the Speaker of
11 the House of Representatives, each of whom shall serve in a nonvoting
12 ex officio capacity and shall not be considered for purposes of
13 determining a quorum.
- 14 (b) Members of the board shall begin their terms on August 1, 2016, and shall
15 serve for a term of four (4) years.
- 16 (c) Board members appointed under paragraph (a)2. and 3. of this subsection may
17 send a designee with similar experience to meetings for which they are
18 unavailable.
- 19 (d) Vacancies occurring in the term of any member shall be filled in the same
20 manner as the original appointment.
- 21 (e) The members of the board shall receive no compensation for their services.
- 22 (f) The secretary of the cabinet, or the secretary's designee, shall serve as chair of
23 the board and the members shall elect a vice chair from among the
24 membership of the board. The vice chair may preside over meetings of the
25 board in the absence of the chair.
- 26 (g) The board shall meet at least once per year, and as needed for the timely
27 consideration of proposed projects. A majority of the members of the board

1 shall constitute a quorum.

2 (h) The secretary of the cabinet shall be responsible for providing staff support
3 and maintaining complete records of the board's actions and proceedings, as
4 public records open to inspection.

5 (12) (a) Upon the initial issuance of a public-private partnership agreement having a
6 total contractual value that equals or exceeds thirty percent (30%) of the
7 general fund revenues received by the local government in the immediately
8 preceding fiscal year, the local government shall submit the agreement to the
9 cabinet for the sole purpose of making an evaluation to the Kentucky Local
10 Government Public-Private Partnership Board of the following:

- 11 1. Whether the agreement meets the requirements of subsection (5) of this
12 section;
- 13 2. An analysis of the overall project's economic and financial viability
14 within the scope of available or proposed financing arrangements and
15 expected revenues; and
- 16 3. Whether the agreement adheres to the procurement process required by
17 subsection (2) of this section.

18 Public-private partnership agreements having a total contractual value that is
19 less than thirty percent (30%) of the general fund revenues received by the
20 local government in the immediately preceding fiscal year shall not be
21 required to be submitted to the cabinet or the Kentucky Local Government
22 Public-Private Partnership Board.

23 (b) The local government shall submit any information required by the cabinet,
24 relating to the agreement and its procurement, to enable the cabinet to conduct
25 this evaluation.

26 (c) The cabinet shall acknowledge receipt of the agreement within thirty (30)
27 days, and after evaluation thereof shall, within ninety (90) days of its receipt,

1 forward the results of its evaluation separately to each individual member of
2 the Kentucky Local Government Public-Private Partnership Board. The full
3 board shall meet within sixty (60) days of the issuance of the cabinet's
4 evaluation to consider the evaluation provided by the cabinet and approve or
5 disapprove the proposed agreement. If the board disapproves the project, the
6 board shall provide specific reasons for its disapproval. If the board approves
7 the project, the cabinet shall return the agreement to the local government
8 legislative body, *which in the case of a school district shall be the local*
9 *board of education.* for final execution thereof. No public-private partnership
10 agreement issued by a local government that is subject to evaluation by the
11 cabinet and review and approval by the Kentucky Local Government Public-
12 Private Partnership Board pursuant to paragraph (a) of this subsection shall
13 take effect unless and until it is approved by the Kentucky Local Government
14 Public-Private Partnership Board pursuant to this subsection and is found by
15 the board to meet the requirements of this section and to be economically
16 viable as provided in this subsection.

17 (d) If an agreement is not approved by the board, the local government submitting
18 the agreement may modify the agreement and resubmit it for reconsideration
19 in accordance with this section.

20 (13) The Commonwealth shall bear no liability for public-private partnership
21 agreements approved pursuant to subsection (12) of this section.

22 (14) Upon approval and execution of a public-private partnership agreement, the local
23 government shall transmit a copy of the agreement to the Department for Local
24 Government.

25 (15) The Auditor of Public Accounts may periodically review public-private partnership
26 agreements executed by a local government pursuant to this section, and any
27 actions undertaken by private partners and local governments thereunder, to

1 evaluate compliance with the agreement and this section.

2 (16) Multiple local governments, acting in accordance with KRS 65.210 to 65.300, may
3 jointly enter into a public-private partnership pursuant to this section. Public-private
4 partnership agreements involving multiple local governments shall only be required
5 to be submitted to the cabinet for evaluation and to the Kentucky Local
6 Government Public-Private Partnership Board for review and approval, as provided
7 by subsection (12) of this section, if the total contractual value equals or exceeds
8 thirty percent (30%) of the combined general fund revenues received in the
9 immediately preceding fiscal year by all local governments participating in the
10 agreement.

11 (17) (a) A person or business may submit an unsolicited proposal to a local
12 government, which may receive the unsolicited proposal.

13 (b) Within ninety (90) days of receiving an unsolicited proposal, a local
14 government may elect to consider further action on the proposal, at which
15 point the local government shall provide public notice of the proposal
16 pursuant to KRS Chapter 424 or electronically on the website~~[Web site]~~ of the
17 local government, and shall:

18 1. Provide specific information regarding the proposed nature, timing, and
19 scope of the unsolicited proposal, except that trade secrets, financial
20 records, or other records of the person or business making the proposal
21 shall not be posted unless otherwise agreed to by the local government
22 and the person or business; and

23 2. Provide for a notice period of at least thirty (30) days and no more than
24 ninety (90) days for the submission of competing proposals.

25 (c) Upon the end of the notice period provided under paragraph (b)2. of this
26 subsection, the local government may consider the unsolicited proposal and
27 any competing proposals received. If the local government determines it is in

1 the best interest of the local government to implement some or all of the
2 concepts contained within the unsolicited proposal or competing proposals
3 received by it, the local government may begin an open, competitive
4 procurement process to do so pursuant to this section.

5 (d) An unsolicited proposal shall be deemed rejected if no written response is
6 received from the local government within ninety (90) days after submission,
7 during which time the governmental body has not taken any action on the
8 proposal under paragraph (b) of this subsection.