GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2016 REGULAR SESSION

HOUSE BILL NO. 309

FRIDAY, MARCH 25, 2016

The following bill was reported to the Senate from the House and ordered to be printed.

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

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

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

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

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

5 (1) "Business" means any corporation, partnership, individual, sole proprietorship, joint
6 stock company, joint venture, or any other legal entity through which business is
7 conducted;

8 (2) "Change order" means a written order signed by the purchasing officer, directing the
9 contractor to make changes that the changes clause of the contract authorizes the
10 purchasing officer to order without the consent of the contractor;

11 (3) "Chief purchasing officer" means the secretary of the Finance and Administration
12 Cabinet, who shall be responsible for all procurement of the Commonwealth except
13 as provided by KRS Chapters 175, ***175B,*** 176, 177, and 180;

14 (4) "Construction" means the process of building, altering, repairing, improving, or
15 demolishing any public structures or buildings, or other public improvements of any
16 kind to any public real property. It does not include the routine maintenance of
17 existing structures, buildings, or real property;

18 (5) "Construction manager-agency" means services to assist the purchasing agency
19 manage construction that are procured through a contract that is qualifications-
20 based;

21 (6) "Construction management-at-risk" means a project delivery method in which the
22 purchasing officer enters into a single contract with an offeror that assumes the risk
23 for construction at a contracted guaranteed maximum price as a general contractor,
24 and provides consultation and collaboration regarding the construction during and
25 after design of a capital project. The contract shall be subject to the bonding
26 requirements of KRS 45A.190;

27 (7) "Construction manager-general contractor" means a project delivery method in

1 which the purchasing officer enters into a single contract with an offeror to provide
2 preconstruction and construction services. During the preconstruction phase, the
3 successful offeror provides design consulting services. During the construction
4 phase, the successful offeror acts as general contractor by:
5 (a) Contracting with subcontractors; and
6 (b) Providing for management and construction at a fixed price with a completion
7 deadline;
8 (8) "Contract" means all types of state agreements, including grants and orders, for the
9 purchase or disposal of supplies, services, construction, or any other item. It
10 includes: awards; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive
11 type; contracts providing for the issuance of job or task orders; leases; letter
12 contracts; purchase orders; ***public-private partnership agreements;*** and insurance
13 contracts except as provided in KRS 45A.022. It includes supplemental agreements
14 with respect to any of the foregoing;
15 (9) "Contract modification" means any written alteration in the specifications, delivery
16 point, rate of delivery, contract period, price, quantity, or other contract provisions
17 of any existing contract, whether accomplished by unilateral action in accordance
18 with a contract provision or by mutual action of the parties to the contract. It
19 includes bilateral actions, such as supplemental agreements, and unilateral actions,
20 such as change orders, administrative changes, notices of termination, and notices
21 of the exercise of a contract option;
22 (10) "Contractor" means any person having a contract with a governmental body;
23 (11) "Data" means recorded information, regardless of form or characteristic;
24 (12) "Design-bid-build" means a project delivery method in which the purchasing officer
25 sequentially awards separate contracts, the first for architectural, engineering, or
26 engineering-related services to design the project and the second for construction of
27 the capital project according to the design. The contract shall be subject to the

1 bonding requirements of KRS 45A.185;
2 (13) "Design-build" means a project delivery method in which the purchasing officer
3 enters into a single contract for design and construction of a capital project. The
4 contract shall be subject to the bonding requirements of KRS 45A.190;
5 (14) "Designee" means a duly authorized representative of a person holding a superior
6 position;
7 (15) "Document" means any physical embodiment of information or ideas, regardless of
8 form or characteristic, including electronic versions thereof;
9 (16) "Employee" means an individual drawing a salary from a governmental body,
10 whether elected or not, and any nonsalaried individual performing personal services
11 for any governmental body;
12 (17) "Governmental body" means any department, commission, council, board, bureau,
13 committee, institution, legislative body, agency, government corporation, or other
14 establishment of the executive or legislative branch of the state government;
15 (18) "Meeting" means all gatherings of every kind, including video teleconferences;
16 (19) "Negotiation" means contracting by either the method set forth in KRS 45A.085,
17 45A.090, or 45A.095;
18 (20) "Person" means any business, individual, organization, or group of individuals;
19 (21) ***"Private partner" means any entity that is a partner in a public-private***
20 ***partnership other than:***
21 ***(a) The Commonwealth of Kentucky, or any agency or department thereof;***
22 ***(b) The federal government;***
23 ***(c) Any other state government; or***
24 ***(d) Any agency of a state, federal, or local government;***
25 ***(22)*** "Procurement" means the purchasing, buying, renting, leasing, or otherwise
26 obtaining of any supplies, services, or construction. It includes all functions that
27 pertain to the procurement of any supply, service, or construction item, including

1 description of requirements, selection and solicitation of sources, preparation and
2 award of contract, and all phases of contract administration;
3 ***(23)***[~~(22)~~] ***"Public-private partnership" means a project delivery method for***
4 ***construction or financing of capital projects, as defined in KRS 45.750, or***
5 ***procurement of services, pursuant to a written public-private partnership***
6 ***agreement entered into pursuant to Section 3 of this Act and administrative***
7 ***regulations promulgated thereunder, between:***
8 ***(a) At least one (1) private partner; and***
9 ***(b) The Commonwealth of Kentucky, or any agency or department thereof;***
10 ***(24)*** "Purchase request" or "purchase requisition" means that document whereby a using
11 agency requests that a contract be obtained for a specified need, and may include,
12 but is not limited to, the technical description of the requested item, delivery
13 schedule, transportation, criteria for evaluation of solicitees, suggested sources of
14 supply, and information supplied for the making of any written determination and
15 finding required by KRS 45A.025;
16 ***(25)***[~~(23)~~] "Purchasing agency" means any governmental body that is authorized by this
17 code or its implementing administrative regulations or by way of delegation from
18 the chief purchasing officer to contract on its own behalf rather than through the
19 central contracting authority of the chief purchasing officer;
20 ***(26)***[~~(24)~~] "Purchasing officer" means any person authorized by a governmental body in
21 accordance with procedures prescribed by administrative regulations to enter into
22 and administer contracts and make written determinations and findings with respect
23 thereto. The term includes an authorized representative acting within the limits of
24 authority;
25 ***(27)***[~~(25)~~] "Services" means the rendering by a contractor of its time and effort rather
26 than the furnishing of a specific end product, other than reports that are merely
27 incidental to the required performance of services;

1 *(28)*[~~(26)~~] "Supplemental agreement" means any contract modification that is
2 accomplished by the mutual action of the parties;
3 *(29)*[~~(27)~~] "Supplies" means all property, including but not limited to leases of real
4 property, printing, and insurance, except land or a permanent interest in land;
5 *(30)*[~~(28)~~] "Using agency" means any governmental body of the state that utilizes any
6 supplies, services, or construction purchased under this code;
7 *(31)*[~~(29)~~] "Video teleconference" means one (1) meeting, occurring in two (2) or more
8 locations, where individuals can see and hear each other by means of video and
9 audio equipment; and
10 *(32)*[~~(30)~~] "Writing" or "written" means letters, words, or numbers, or their equivalent,
11 set down by handwriting, typewriting, printing, photostating, photographing,
12 magnetic impulse, mechanical or electronic recording, or other form of data
13 compilation.
14 ➔Section 2. KRS 45A.075 is amended to read as follows:
15 Except as otherwise authorized by law, all state contracts shall be awarded by:
16 (1) Competitive sealed bidding, pursuant to KRS 45A.080;[~~ or~~]
17 (2) Competitive negotiation, pursuant to KRS 45A.085,[~~ and~~] 45A.090,[~~ or~~] 45A.180,
18 *or Section 3 of this Act*;[~~ or~~]
19 (3) Noncompetitive negotiation, pursuant to KRS 45A.095; or
20 (4) Small purchase procedures, pursuant to KRS 45A.100.
21 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO
22 READ AS FOLLOWS:
23 *(1) A public-private partnership delivery method may be utilized as provided in this*
24 *section and administrative regulations promulgated thereunder. State contracts*
25 *using this method shall be awarded by competitive negotiation.*
26 *(2) A contracting body utilizing a public-private partnership shall continue to be*
27 *responsible for oversight of any function that is delegated to or otherwise*

1 *performed by a private partner.*
2 *(3) On or before December 31, 2016, the secretary of the Finance and*
3 *Administration Cabinet shall promulgate administrative regulations setting forth*
4 *criteria to be used in determining when a public-private partnership is to be used*
5 *for a particular project. The administrative regulations shall reflect the intent of*
6 *the General Assembly to promote and encourage the use of public-private*
7 *partnerships in the Commonwealth. The secretary shall consult with design-*
8 *builders, construction managers, contractors, design professionals including*
9 *engineers and architects, and other appropriate professionals during the*
10 *development of these administrative regulations.*
11 *(4) A request for proposal for a project utilizing a public-private partnership shall*
12 *include at a minimum:*
13 *(a) The parameters of the proposed public-private partnership agreement;*
14 *(b) The duties and responsibilities to be performed by the private partner or*
15 *partners;*
16 *(c) The methods of oversight to be employed by the contracting body;*
17 *(d) The duties and responsibilities that are to be performed by the contracting*
18 *body and any other partners to the contract;*
19 *(e) The evaluation factors and the relative weight of each to be used in the*
20 *scoring of awards;*
21 *(f) Plans for financing and operating the qualifying project and the revenues,*
22 *service payments, bond financings, and appropriations of public funds*
23 *needed for the qualifying project;*
24 *(g) Comprehensive documentation of the experience, capabilities, capitalization*
25 *and financial condition, and other relevant qualifications of the private*
26 *entity;*
27 *(h) The ability of a private partner or partners to quickly respond to the needs*

1 *presented in the request for proposal, and the importance of economic*
2 *development opportunities represented by the qualifying project. In*
3 *evaluating proposals, preference shall be given to a plan that includes the*
4 *involvement of small businesses as subcontractors, to the extent that small*
5 *businesses can provide services in a competitive manner, unless any*
6 *preference interferes with the qualification for federal or other funds; and*
7 *(i) Other information required by the contracting body or the cabinet to*
8 *evaluate the proposals submitted by respondents and the overall proposed*
9 *public-private partnership.*
10 *(5) A private entity desiring to be a private partner shall demonstrate to the*
11 *satisfaction of the contracting body or the cabinet that it is capable of performing*
12 *any duty, responsibility, or function it may be authorized or directed to perform*
13 *as part of the public-private partnership agreement.*
14 *(6) When a request for proposal for a project utilizing a public-private partnership is*
15 *issued for a capital project, the contracting body shall transmit a copy of the*
16 *request for proposal to the Capital Projects and Bond Oversight Committee staff,*
17 *clearly identifying to the staff that a public-private partnership is being utilized.*
18 *(7) A request for proposal or other solicitation may be canceled, or all proposals may*
19 *be rejected, if it is determined in writing that the action is taken in the best*
20 *interest of the Commonwealth and approved by the purchasing officer.*
21 *(8) In the case of any public-private partnership for a capital project with an*
22 *aggregate value of twenty-five million dollars ($25,000,000) or more, the project*
23 *shall be authorized by the General Assembly, by inclusion in the branch budget*
24 *bill or by any other means, explicitly identifying and authorizing the utilization of*
25 *a public-private partnership delivery method for the applicable capital project.*
26 *The authorization of a capital project required by this subsection is in addition to*
27 *any other statutorily required authorization for a capital project.*

1 *(9) Upon issuance of a public-private partnership agreement, the contracting body*
2 *shall submit the contract to the Government Contract Review Committee for*
3 *review in accordance with KRS 45A.690 to 45A.725. The contracting body shall*
4 *ensure that the contract clearly identifies to the committee that a public-private*
5 *partnership is being utilized. Upon disapproval of or objection to the contract by*
6 *the committee, the contracting body shall determine whether the contract shall be*
7 *revised to comply with the objections of the committee, be canceled, or remain in*
8 *effect.*
9 *(10) Any corporation as described by KRS 45.750(2)(c), or as created under the*
10 *Kentucky Revised Statutes as a governmental agency and instrumentality of the*
11 *Commonwealth, that manages its capital construction program shall:*
12 *(a) Adhere to the administrative regulations promulgated under this section*
13 *when utilizing a public-private partnership for financing capital projects;*
14 *(b) Report to legislative committees as specified in this section; and*
15 *(c) Submit public-private partnership agreements issued by it to the General*
16 *Assembly for authorization as provided in subsection (8) of this section.*
17 *(11) (a) The governing body of a postsecondary institution that manages its capital*
18 *construction program under KRS 164A.580 shall:*
19 *1. Report to the Capital Projects and Bond Oversight Committee staff as*
20 *specified in this section; and*
21 *2. Not be required to comply with the provisions of subsection (9) of this*
22 *section.*
23 *(b) Any provision of a public-private partnership agreement issued by a*
24 *postsecondary institution which provides for a lease by or to the*
25 *postsecondary institution shall be valid and enforceable if approved by the*
26 *governing board of the institution.*
27 *(12) (a) A person or business may submit an unsolicited proposal to a governmental*

1 ***body, which may receive the unsolicited proposal.***
2 ***(b) Within thirty (30) days of receiving an unsolicited proposal, a governmental***
3 ***body may elect to consider further action on the proposal, at which point the***
4 ***governmental body shall provide public notice of the proposal, and shall:***
5 ***1. Provide specific information regarding the proposed nature, timing,***
6 ***and scope of the unsolicited proposal, except that trade secrets,***
7 ***financial records, or other records of the person or business making***
8 ***the proposal shall not be posted unless otherwise agreed to by the***
9 ***governmental body and the person or business; and***
10 ***2. Provide for a notice period of ninety (90) days for the submission of***
11 ***competing proposals.***
12 ***(c) Upon the end of the notice period provided under paragraph (b)2. of this***
13 ***subsection, the governmental body may consider the unsolicited proposal***
14 ***and any competing proposals received. If the governmental body determines***
15 ***it is in the best interest of the Commonwealth to implement some or all of***
16 ***the concepts contained within the unsolicited proposal or competing***
17 ***proposals received by it, the governmental body may begin an open,***
18 ***competitive procurement process to do so pursuant to this chapter.***
19 ***(d) An unsolicited proposal shall be deemed rejected if no written response is***
20 ***received from the governmental body within sixty (60) days of the end of the***
21 ***notice period provided under paragraph (b)2. of this subsection.***
22 ➔Section 4. KRS 65.025 is amended to read as follows:
23 (1) As used in this section:
24 (a) "Employ" means to hire, retain, or otherwise contract with an individual or
25 entity for goods or services;
26 (b) "Local government" means a city, county, charter county government, urban-
27 county government, consolidated local government, or a special district;

(c) "Construction manager" means a person who coordinates and communicates the entire project process, clarifying cost and time consequences of design decisions as well as clarifying construction feasibility, and who manages the bidding, awarding, and construction phases of the project;

(d) "Design-build" means a system of contracting under which one (1) entity performs both architecture/engineering and construction under one (1) single contract;~~[and]~~

(e) "Best value" means a procurement in which the decision is based on the primary objective of meeting the specific business requirements and best interests of the local government. These decisions shall be based on objective and quantifiable criteria that shall include price and that have been communicated to the offerors as set forth in the invitation for bids or request for proposals. Every invitation for bids or request for proposals shall provide that an item equal to that named or described in the specifications may be furnished. The specification may identify a sole brand in cases where, in the written opinion of the chief procurement officer, documented unique and valid conditions require compatibility, continuity, or conformity with established standards. An item shall be considered equal to the item named or described if, in the opinion of the owner and the design professional responsible for the specifications:

1. It is at least equal in quality, durability, appearance, strength, design, and other criteria deemed appropriate;
2. It will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased; and
3. It conforms substantially to the detailed requirements for the item in the specifications;

1 *(f) "Capital project" means the construction, reconstruction, acquisition,*
2 *installation, and improvement of public infrastructure that is owned by a*
3 *local government and that serves a public purpose of the local government;*
4 *(g) "Private partner" means any entity that is a partner in a public-private*
5 *partnership other than:*
6 *1. The Commonwealth of Kentucky, or any agency or department*
7 *thereof;*
8 *2. The federal government;*
9 *3. Any other local government;*
10 *4. Any other state government; or*
11 *5. Any agency of a state, federal, or local government; and*
12 *(h) 1. "Public-private partnership" means a project delivery method for*
13 *construction or financing of capital projects, or procurement of*
14 *services, pursuant to a written public-private partnership agreement*
15 *entered into pursuant to Section 5 of this Act and administrative*
16 *regulations promulgated thereunder, between:*
17 *a. At least one (1) private partner; and*
18 *b. A local government.*
19 *2. "Public-private partnership" does not include any traditional delivery*
20 *method or method of procurement of goods or services entered into by*
21 *a short-term contractual agreement between a local government and a*
22 *private seller that terminates when the good or service is delivered,*
23 *whether governed by the provisions of KRS 45A.343 to 45A.460 or*
24 *424.260*.
25 (2) A local government shall not employ the same entity to provide both architectural
26 services and construction management services on the same capital construction
27 project. No local government shall knowingly employ an officer, employee, or agent

1 of, or an immediate family member of an officer, employee, or agent of:
2 (a) The architectural firm that provided the architectural services to also provide
3 construction management services for the same capital construction project
4 for which the architectural firm provided architectural services; or
5 (b) The construction management firm that provided the construction
6 management services to also provide architectural services for the same
7 capital construction project for which the construction management firm
8 provided construction management services.
9 (3) A violation of subsection (2) of this section shall suspend the local government
10 from receiving any financial assistance from the state, or any state agency, with
11 respect to the project for which the architectural or construction management firm
12 was employed until the matter is resolved.
13 (4) Local governments initiating a capital construction project shall incorporate, or shall
14 require architects or construction managers in the employment of the local
15 government to incorporate, best value procurement criteria in all invitations for bids
16 or requests for proposals as provided for in subsection (1) of this section.
17 (5) Nothing in this section shall prohibit a local government from using***:***
18 ***(a)*** Design-build as a method of providing for capital construction services as
19 long as best value contracting principles are followed as specified in
20 subsection (1) of this section***; or***
21 ***(b) A public-private partnership as long as the provisions of Section 5 of this***
22 ***Act are followed***.
23 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO
24 READ AS FOLLOWS:
25 ***(1) As used in this section:***
26 ***(a) "Best value" has the same meaning as in Section 4 of this Act;***
27 ***(b) "Cabinet" means the Finance and Administration Cabinet;***

1 *(c) "Local government" means a city, county, charter county, urban-county*
2 *government, consolidated local government, or unified local government of*
3 *the Commonwealth;*
4 *(d) "Private partner" has the same meaning as in Section 4 of this Act; and*
5 *(e) "Public-private partnership" has the same meaning as in Section 4 of this*
6 *Act.*
7 *(2) A public-private partnership delivery method may be utilized by a local*
8 *government as provided in this section and administrative regulations*
9 *promulgated thereunder. Contracts using this method shall be awarded by*
10 *competitive negotiation on the basis of best value, and shall in all cases take*
11 *effect only if executed by the legislative body of the local government. The*
12 *provisions of subsections (2) to (4) of Section 4 of this Act shall not apply to*
13 *public-private partnerships utilized by local governments.*
14 *(3) A local government utilizing a public-private partnership shall continue to be*
15 *responsible for oversight of any function that is delegated to or otherwise*
16 *performed by a private partner.*
17 *(4) A public-private partnership shall not be used to circumvent any requirements or*
18 *restrictions placed upon any local government pursuant to any provision of the*
19 *Kentucky Revised Statutes.*
20 *(5) All public-private partnership agreements executed by a local government or any*
21 *of its agencies under this section shall be approved by the legislative body of the*
22 *local government at a public meeting, and shall include at a minimum the*
23 *following provisions:*
24 *(a) 1. Property owned by a local government shall not be sold, conveyed, or*
25 *disposed of in any way at any time; and*
26 *2. Leases issued by a local government to any party shall not be*
27 *transferred in any way by that party;*

1 *without the specific and express written consent of the legislative body of*
2 *the local government;*
3 *(b) Require the private partner to provide or cause to be provided performance*
4 *and payment bonds on the design and construction portion of the*
5 *agreement as required under KRS 45A.435 and maintenance bonds,*
6 *warranties, guarantees, and letters of credit in connection with the private*
7 *partner's other activities under the agreement, in the forms and amounts*
8 *satisfactory to the local government and in amounts necessary to provide*
9 *adequate protection to the local government;*
10 *(c) Review and approval of plans and specifications for the project by the local*
11 *government;*
12 *(d) Inspection of the project by the local government to ensure that the private*
13 *partner's actions are acceptable to the local government in accordance with*
14 *the agreement;*
15 *(e) Maintenance of public liability insurance or self-insurance, in form and*
16 *amount satisfactory to the local government and reasonably sufficient to*
17 *insure coverage of tort liability to the public and employees and to enable*
18 *the continued operation of the project;*
19 *(f) Reimbursement to be paid to the local government for services provided by*
20 *the local government;*
21 *(g) Filing of appropriate financial statements by the private partner on a*
22 *periodic basis;*
23 *(h) Policies and procedures governing the rights and responsibilities of the*
24 *local government and the private partner in the event the public-private*
25 *partnership agreement is terminated or there is a material default by the*
26 *private partner. These policies and procedures shall include conditions*
27 *governing assumption of the duties and responsibilities of the private*

1 *partner by the local government, and the transfer or purchase of property or*
2 *other interests of the private partner by the local government;*
3 *(i) Any fees or payments as may be established by agreement of the private*
4 *partner and the local government;*
5 *(j) A detailed description of all duties and requirements of the private partner;*
6 *(k) The ability of a private partner or partners to quickly respond to the needs*
7 *presented in the request for proposal, and the importance of economic*
8 *development opportunities represented by the qualifying project. In*
9 *evaluating proposals, preference shall be given to a plan that includes the*
10 *involvement of small businesses as subcontractors, to the extent that small*
11 *businesses can provide services in a competitive manner, unless any*
12 *preference interferes with the qualification for federal or other funds; and*
13 *(l) Any other information necessary to properly address the life cycle of the*
14 *agreement, including the disposition of assets if or when the public-private*
15 *partnership agreement is terminated or otherwise concludes.*
16 *(6) (a) On or before December 31, 2016, the secretary of the Finance and*
17 *Administration Cabinet shall promulgate administrative regulations setting*
18 *forth criteria to be used by a local government employing a public-private*
19 *partnership for a particular project, and establishing a process for public-*
20 *private partnership procurement undertaken by local governments*
21 *consistent with this section. Prior to submission of the proposed*
22 *administrative regulations pursuant to the regulatory process required by*
23 *KRS Chapter 13A, the proposed administrative regulations shall be*
24 *approved by the Kentucky Local Government Public-Private Partnership*
25 *Board established by subsection (11) of this section.*
26 *(b) The secretary shall consult with design-builders, construction managers,*
27 *contractors, design professionals including engineers and architects, and*

1 *other appropriate professionals during the development of these*
2 *administrative regulations.*
3 *(c) The secretary shall have the authority to contract with a consultant,*
4 *pursuant to KRS 45A.695, to assist the cabinet and the Kentucky Local*
5 *Government Public-Private Partnership Board with the review process*
6 *required in subsection (12) of this section. The secretary may, through*
7 *administrative regulation, impose a reasonable fee on the private partner to*
8 *defray the cost of the review required in subsection (12) of this section,*
9 *including any expenses or fees incurred in contracting with a consultant.*
10 *(d) If the secretary fails to timely promulgate administrative regulations*
11 *pursuant to this subsection, local governments may then act pursuant to*
12 *this section including compliance with the process outlined in subsection*
13 *(12) of this section, in the absence of administrative regulations.*
14 *(7) A request for proposal for a local government project utilizing a public-private*
15 *partnership shall include at a minimum:*
16 *(a) The parameters of the proposed public-private partnership agreement;*
17 *(b) The duties and responsibilities to be performed by the private partner or*
18 *partners;*
19 *(c) The methods of oversight to be employed by the local government;*
20 *(d) The duties and responsibilities that are to be performed by the local*
21 *government and any other partners to the contract;*
22 *(e) The evaluation factors and the relative weight of each to be used in the*
23 *scoring of awards; and*
24 *(f) Other information required by a local government to evaluate the proposals*
25 *submitted by respondents and the overall proposed public-private*
26 *partnership.*
27 *(8) A private entity desiring to be a private partner shall demonstrate to the*

1 *satisfaction of the local government that it is capable of performing any duty,*
2 *responsibility, or function it may be authorized or directed to perform as part of*
3 *the public-private partnership agreement.*
4 *(9) When a request for proposal for a project utilizing a public-private partnership is*
5 *issued, the local government shall transmit a copy of the request for proposal to*
6 *the cabinet and to the Department for Local Government.*
7 *(10) A request for proposal or other solicitation may be canceled, or all proposals may*
8 *be rejected, if it is determined in writing that the action is taken in the best*
9 *interest of the local government and approved by the legislative body.*
10 *(11) (a) There is established within the cabinet the Kentucky Local Government*
11 *Public-Private Partnership Board, composed of eleven (11) members as*
12 *follows:*
13 *1. The secretary of the cabinet, or the secretary's designee;*
14 *2. Two (2) individuals appointed by the Kentucky League of Cities, both*
15 *of whom shall have experience in municipal financial operations;*
16 *3. Two (2) individuals appointed by the Kentucky Association of*
17 *Counties, both of whom shall have experience in county financial*
18 *operations, one (1) to be recommended by the Kentucky County*
19 *Judges/Executive Association and one (1) to be recommended by the*
20 *Kentucky County Magistrates and Commissioners Association;*
21 *4. The commissioner of the Department for Local Government, or the*
22 *commissioner's designee;*
23 *5. The executive director of the Office of Financial Management within*
24 *the cabinet, or the executive director's designee;*
25 *6. The Auditor of Public Accounts, or the Auditor's designee;*
26 *7. One (1) citizen member appointed by the Governor, who shall have*
27 *experience and knowledge in local government debt and financial*

1 *operations; and*

2 *8. Two (2) members of the Kentucky General Assembly, one (1)*

3 *appointed by the President of the Senate and one (1) appointed by the*

4 *Speaker of the House of Representatives, each of whom shall serve in*

5 *a nonvoting ex officio capacity and shall not be considered for*

6 *purposes of determining a quorum.*

7 *(b) Members of the board shall begin their terms on August 1, 2016, and shall*

8 *serve for a term of four (4) years.*

9 *(c) Vacancies occurring in the term of any member shall be filled in the same*

10 *manner as the original appointment.*

11 *(d) The members of the board shall receive no compensation for their services.*

12 *(e) The secretary of the cabinet, or the secretary's designee, shall serve as chair*

13 *of the board and the members shall elect a vice chair from among the*

14 *membership of the board. The vice chair may preside over meetings of the*

15 *board in the absence of the chair.*

16 *(f) The board shall meet at least once per year, and as needed for the timely*

17 *consideration of proposed projects. A majority of the members of the board*

18 *shall constitute a quorum.*

19 *(g) The secretary of the cabinet shall be responsible for providing staff support*

20 *and maintaining complete records of the board's actions and proceedings,*

21 *as public records open to inspection.*

22 *(12) (a) Upon the initial issuance of a public-private partnership agreement having*

23 *a total contractual value that equals or exceeds thirty percent (30%) of the*

24 *general fund revenues received by the local government in the immediately*

25 *preceding fiscal year, the local government shall submit the agreement to*

26 *the cabinet for the sole purpose of making an evaluation to the Kentucky*

27 *Local Government Public-Private Partnership Board of the following:*

1 *1. Whether the agreement meets the requirements of subsection (5) of*
2 *this section;*
3 *2. An analysis of the overall project's economic and financial viability*
4 *within the scope of available or proposed financing arrangements and*
5 *expected revenues; and*
6 *3. Whether the agreement adheres to the procurement process required*
7 *by subsection (2) of this section.*
8 *Public-private partnership agreements having a total contractual value that*
9 *is less than thirty percent (30%) of the general fund revenues received by*
10 *the local government in the immediately preceding fiscal year shall not be*
11 *required to be submitted to the cabinet.*
12 *(b) The local government shall submit any information required by the cabinet,*
13 *relating to the agreement and its procurement, to enable the cabinet to*
14 *conduct this evaluation.*
15 *(c) The cabinet shall acknowledge receipt of the agreement within thirty (30)*
16 *days, and after evaluation thereof shall, within ninety (90) days of its*
17 *receipt, forward the results of its evaluation separately to each individual*
18 *member of the Kentucky Local Government Public-Private Partnership*
19 *Board. The full board shall meet within sixty (60) days of the issuance of*
20 *the cabinet's evaluation to consider the evaluation provided by the cabinet*
21 *and approve or disapprove the proposed agreement. If the board*
22 *disapproves the project, the board shall provide specific reasons for its*
23 *disapproval. If the board approves the project, the cabinet shall return the*
24 *agreement to the local government legislative body for final execution*
25 *thereof. No public-private partnership agreement issued by a local*
26 *government shall take effect unless and until it is approved by the Kentucky*
27 *Local Government Public-Private Partnership Board pursuant to this*

1 *subsection and is found by the board to meet the requirements of this*
2 *section and to be economically viable as provided in this subsection.*
3 *(d) If an agreement is not approved by the board, the local government*
4 *submitting the agreement may modify the agreement and resubmit it for*
5 *reconsideration in accordance with this section.*
6 *(13) The Commonwealth shall bear no liability for public-private partnership*
7 *agreements approved pursuant to subsection (12) of this section.*
8 *(14) Upon approval and execution of a public-private partnership agreement, the local*
9 *government shall transmit a copy of the agreement to the Department for Local*
10 *Government.*
11 *(15) The Auditor of Public Accounts may periodically review public-private*
12 *partnership agreements executed by a local government pursuant to this section,*
13 *and any actions undertaken by private partners and local governments*
14 *thereunder, to evaluate compliance with the agreement and this section.*
15 *(16) Multiple local governments, acting in accordance with KRS 65.210 to 65.300,*
16 *may jointly enter into a public-private partnership pursuant to this section.*
17 *Public-private partnership agreements involving multiple local governments shall*
18 *only be required to be submitted to the cabinet for evaluation, as provided by*
19 *subsection (12) of this section, if the total contractual value equals or exceeds*
20 *thirty percent (30%) of the combined general fund revenues received in the*
21 *immediately preceding fiscal year by all local governments participating in the*
22 *agreement.*
23 *(17) (a) A person or business may submit an unsolicited proposal to a local*
24 *government, which may receive the unsolicited proposal.*
25 *(b) Within thirty (30) days of receiving an unsolicited proposal, a local*
26 *government may elect to consider further action on the proposal, at which*
27 *point the local government shall provide public notice of the proposal*

1 ***pursuant to KRS Chapter 424 or electronically on the Web site of the local***
2 ***government, and shall:***
3 ***1. Provide specific information regarding the proposed nature, timing,***
4 ***and scope of the unsolicited proposal, except that trade secrets,***
5 ***financial records, or other records of the person or business making***
6 ***the proposal shall not be posted unless otherwise agreed to by the local***
7 ***government and the person or business; and***
8 ***2. Provide for a notice period of ninety (90) days for the submission of***
9 ***competing proposals.***
10 ***(c) Upon the end of the notice period provided under paragraph (b)2. of this***
11 ***subsection, the local government may consider the unsolicited proposal and***
12 ***any competing proposals received. If the local government determines it is***
13 ***in the best interest of the local government to implement some or all of the***
14 ***concepts contained within the unsolicited proposal or competing proposals***
15 ***received by it, the local government may begin an open, competitive***
16 ***procurement process to do so pursuant to this section.***
17 ***(d) An unsolicited proposal shall be deemed rejected if no written response is***
18 ***received from the local government within sixty (60) days of the end of the***
19 ***notice period provided under paragraph (b)2. of this subsection.***
20 ➔Section 6. KRS 175B.005 is amended to read as follows:
21 (1) The purpose of this chapter is to establish a structure for the construction, operation,
22 financing, and oversight of significant transportation projects within the
23 Commonwealth and between the Commonwealth and ***any***[~~the~~] state ***adjoining the***
24 ***Commonwealth***[~~of Indiana~~]. To accomplish this purpose, the Kentucky Public
25 Transportation Infrastructure Authority is established by KRS 175B.015 to review,
26 approve, and monitor all projects eligible for construction and financing under this
27 chapter and, if necessary, to assist with the operation, financing, and management of

1 projects.
2 (2) All projects approved by the Kentucky Public Transportation Infrastructure
3 Authority ***may be operated,***[~~shall be~~] managed, constructed, and financed entirely
4 or in part ***only*** by:
5 (a) A bi-state authority as provided in KRS 175B.030;[~~ or~~]
6 (b) A project authority as provided in KRS 175B.035***;***
7 ***(c) A public-private partnership as provided in Sections 9 and 10 of this Act; or***
8 ***(d) A state authority as provided in Sections 8, 9, and 10 of this Act***.
9 ➔Section 7. KRS 175B.010 is amended to read as follows:
10 As used in this chapter:
11 (1) "Authority" means the state authority, or a bi-state authority, or a project authority,
12 unless the specific use requires that it apply only to the state authority, or a bi-state
13 authority, or a project authority;
14 (2) "Bi-state authority" means an authority created under KRS 175B.030;
15 (3) "Cabinet" means the Transportation Cabinet;
16 (4) "Commonwealth" means the Commonwealth of Kentucky;
17 (5) "Cost" means:
18 (a) The cost of construction of the project, including the acquisition of land,
19 rights-of-way, property, rights in land, easements, and interests acquired by
20 the authority for construction of a project;
21 (b) The cost of preparing land or property, including demolishing or removing
22 any buildings or structures, and the cost of acquiring any lands to which those
23 buildings or structures may be moved;
24 (c) The pro-rata value of all machinery and equipment used in construction of the
25 project;
26 (d) Financing charges and provisions for working capital in an amount the
27 authority determines to be reasonable;

1 (e) Interest prior to and during construction and, if approved by the authority, for
2 a period up to two (2) years after completion of construction;
3 (f) The cost of traffic estimates and of engineering, financial and legal services,
4 plans, specifications, surveys, estimates of cost and revenues, or other
5 expenses necessary or incidental to determining the feasibility or practicability
6 of constructing any project;
7 (g) The cost and expense of the relocation or removal of public utilities impacted
8 by a project, including the cost of installing the facilities in a new location, the
9 cost of any lands or any rights or interests in lands, and the cost of any other
10 rights acquired to accomplish the relocation or removal;
11 (h) Administrative expenses and any other expenses that are necessary for or
12 incidental to the construction of a project, the financing of the construction,
13 and the placing of the project in operation; and
14 (i) The cost of maintenance of the completed project.
15 Any obligation or expense incurred by and reimbursed to the Commonwealth in
16 connection with any of the items of cost set out in this subsection may be regarded
17 as a part of that cost;
18 (6) "Department" means the Department of Highways;
19 (7) "Developing authority" means the authority involved in the development of a
20 project;
21 (8) "Issuing authority" means the authority that will issue or has issued debt associated
22 with a project;
23 (9) "Local government" means a consolidated local government, an urban-county
24 government, a charter county government, a unified local government, or a county;
25 (10) ***"Private partner" means any entity that is a partner in a public-private***
26 ***partnership other than:***
27 ***(a) The Commonwealth of Kentucky;***

1 ***(b) Any political subdivision of the Commonwealth;***
2 ***(c) The federal government;***
3 ***(d) Any other state government;***
4 ***(e) Any agency of a state, federal, or local government; or***
5 ***(f) An authority;***
6 ***(11)*** (a) "Project" means:
7 1. Any highway or section of a highway designated as part of***, or built to***
8 ***the standards of,*** the federal interstate highway system ***and that would***
9 ***be designated a major project by the Federal Highway Administration***;
10 or
11 2. Any ***fully or partially controlled*** highway or section of ***a fully or***
12 ***partially controlled*** highway ***not designated as part of, or*** built to the
13 standards of***,*** the ***federal*** interstate highway system***, that exceeds one***
14 ***hundred million dollars ($100,000,000) in total cost***;
15 ***with funding authorized by the plan enacted pursuant to KRS***
16 ***48.300(2)(b)***[~~that would be designated a mega-project by the Federal Highway~~
17 ~~Administration~~];
18 (b) "Project" includes all bridges, tollhouses, garages, and other buildings and
19 facilities which the authority deems necessary for the operation of the project,
20 together with all property, rights, easements, and interests which may be
21 acquired by the authority or by the Commonwealth for the construction and
22 operation of a project;
23 ***(12)***[~~(11)~~] "Project authority" means an authority created pursuant to KRS 175B.035;
24 ***(13)***[~~(12)~~] "Project revenue bonds" means revenue funding bonds, revenue refunding
25 bonds, notes, or other financial obligations issued under this chapter by the issuing
26 authority;
27 ***(14)***[~~(13)~~] ***"Public-private partnership" means an entity operating pursuant to a***

1 ***written public-private partnership agreement, and composed of:***
2 ***(a) An authority or authorities;***
3 ***(b) At least one (1) private partner;***
4 ***(c) The cabinet, if necessary; and***
5 ***(d) An adjoining state, if necessary, if the public-private partnership is***
6 ***financing a project that is between the Commonwealth and an adjoining***
7 ***state;***
8 ***(15)*** "Public utility facilities" means tracks, pipes, mains, conduits, cables, wires, towers,
9 poles, and other equipment and appliances of any public utility in, on, along, over,
10 or under any project; and
11 ***(16)***[~~(14)~~] "State authority" means the Kentucky Public Transportation Infrastructure
12 Authority created under KRS 175B.015.
13 ➔Section 8. KRS 175B.020 is amended to read as follows:
14 (1) The state authority's primary purpose shall be to facilitate the construction,
15 financing, operation, and oversight of projects by entering into bi-state agreements
16 and by creating bi-state authorities,[~~ and~~] project authorities***, and public-private***
17 ***partnerships***. To accomplish these purposes, the state authority shall have the
18 power and duty to:
19 (a) Take the following actions relating to a bi-state authority authorized pursuant
20 to KRS 175B.030:
21 1. To enter into a bi-state agreement;
22 2. To review and approve project financing plans and development
23 agreements; and
24 3. To monitor agreements entered into by bi-state authorities;[~~ and~~]
25 (b) Take the following actions relating to a project authority authorized pursuant
26 to KRS 175B.035:
27 1. To request establishment of a project authority;

1 2. To review and approve project financing plans and development
2 agreements;
3 3. To monitor activities of project authorities; and
4 4. To enter into an agreement with the project authority***; and***
5 ***(c) Take the following actions relating to a public-private partnership***
6 ***authorized pursuant to Section 10 of this Act:***
7 ***1. To request establishment of a public-private partnership;***
8 ***2. To review and approve project financing plans;***
9 ***3. To monitor activities of public-private partnerships; and***
10 ***4. To enter into an agreement as a part of or with a public-private***
11 ***partnership, if necessary***.
12 (2) The state authority, when authorized pursuant to subsection ***(10)***[~~(4)~~] of this section,
13 may participate as a developing or issuing authority, or both, in the development,
14 construction, or financing of a project by a bi-state or project authority***, or by a***
15 ***public-private partnership***, if necessary. If the state authority participates as a
16 developing or issuing authority, the state authority shall have the powers and duties
17 established in KRS 175B.025 as they apply to that project.
18 (3) The state authority, as a function of its oversight of any other authority created
19 pursuant to this chapter, shall report before the first issuance of bonds and no less
20 than semiannually thereafter to the Capital Projects and Bond Oversight Committee
21 and to the Interim Joint Committee on Appropriations and Revenue of the
22 Legislative Research Commission, on any projects currently proposed or under
23 development by each authority. Current and proposed levels of bonding for each
24 project shall be reviewed by the Capital Projects and Bond Oversight Committee in
25 accordance with KRS 45.794 before the bonds shall be issued.
26 (4) ***The state authority, when proposing a project pursuant to this chapter, shall to***
27 ***the extent practical consult with the officials representing the units of local***

1 *government in which the proposed project is to be located in order to obtain the*
2 *advice and input on the local impact of the proposed project, including*
3 *information regarding land use planning, transportation planning, economic*
4 *development, and any other factors having a direct impact to the local*
5 *community.*
6 *(5) The state authority may receive an unsolicited proposal if the proposal contains:*
7 *(a) An executive summary of no more than three (3) pages that details the*
8 *revenue source for the proposed project, the amount of revenue expected to*
9 *be generated by the project, and the project costs;*
10 *(b) A certification from a financial expert stating that the contents of the*
11 *unsolicited proposal are true and correct; and*
12 *(c) A commitment to pay the costs incurred by the state authority and the*
13 *cabinet for evaluating the unsolicited proposal.*
14 *(6) The state authority shall respond to a person offering an unsolicited proposal*
15 *notifying the person that the proposal has been rejected or approved for further*
16 *review.*
17 *(7) If the state authority approves an unsolicited proposal for further review, the state*
18 *authority shall independently verify that it is in the best interest of the*
19 *Commonwealth.*
20 *(8) A person making an unsolicited proposal shall pay all costs of evaluating the*
21 *unsolicited proposal incurred by the state authority and the cabinet.*
22 *(9) If the state authority and the cabinet agree that an unsolicited proposal is in the*
23 *best interest of the Commonwealth, the state authority, with the assistance of the*
24 *cabinet, shall begin a competitive procurement process to implement some or all*
25 *of the concepts contained in the unsolicited proposal.*
26 *(10)* (a) Notwithstanding any other provision of this chapter, the following actions
27 shall not take effect until ratified by the General Assembly:

1 1. The creation of a bi-state authority;
2 2. The creation of a project authority;
3 3. ***The creation of a public-private partnership;***
4 ***4.*** The modification or amendment of the scope of any project; and
5 ***5.***[~~4.~~] The development of any project undertaken entirely by the state
6 authority.
7 (b) If any action described in paragraph (a) of this subsection is not ratified by the
8 General Assembly, the creation, approval, or modification shall be considered
9 void.
10 ➔Section 9. KRS 175B.030 is amended to read as follows:
11 (1) ***(a) 1.*** This section shall apply to any project that connects Kentucky with
12 ***any***[~~the~~] state ***that adjoins the Commonwealth***[~~of Indiana~~]. A ***proposal***
13 ***to construct a*** project that connects Kentucky with ***an adjoining***[~~the~~]
14 state[~~ of Indiana~~] shall be ***contained in a financing plan prepared***
15 ***pursuant to subsection (6) of this section. If approved, the project shall***
16 ***be*** constructed ***under the supervision of the state authority, a bi-state***
17 ***authority, or both,*** and ***may be*** financed by ***the state authority,*** a bi-state
18 authority***, a public-private partnership, or any combination of these***.
19 ***2. If the state authority, operating pursuant to Section 8 of this Act,***
20 ***participates in any capacity in the construction or financing of a***
21 ***project that connects Kentucky with an adjoining state, the state***
22 ***authority may assume all or part of the role of the bi-state authority***
23 ***relative to that project.***
24 ***(b) Subsections (2) to (4) of this section shall only apply to a bi-state authority.***
25 ***(c) Subsections (1) and (5) to (8) of this section shall apply to both a bi-state***
26 ***authority and a public-private partnership.***
27 (2) (a) A local government that contains a portion of a proposed project may, by

1 resolution of its governing body, request that its chief executive officer and
2 the Governor appoint a group of Kentucky members to negotiate with a
3 similar group from ***an adjoining***[~~the~~] state[~~ of Indiana~~] for the purpose of
4 proposing the creation of a bi-state authority composed of members from both
5 states, recognized under the laws of both states, and existing for the purpose
6 of financing, constructing, and operating a project or projects mutually
7 beneficial to both states.
8 (b) If established, the Kentucky membership of the bi-state authority shall consist
9 of seven (7) members, three (3) of whom shall be appointed by the Governor,
10 and four (4) of whom shall be appointed by the chief executive of the local
11 government in which the project is located. The four (4) local government
12 appointees shall be residents of the county in which the project is located. If a
13 project is located in a consolidated local government, no more than two (2)
14 appointees shall reside in the same Kentucky senatorial district. If portions of
15 the project are located in more than one (1) local government, the chief
16 executive of the county or consolidated local government having the largest
17 population shall make the appointments authorized in this paragraph.
18 (c) Any proposed agreement to establish a bi-state authority shall be presented to
19 the state authority for approval. If the state authority approves the agreement,
20 it shall be submitted to the General Assembly for ratification. If the agreement
21 is ratified by the General Assembly, the state authority shall authorize the
22 establishment of a bi-state authority and shall enter into an agreement with the
23 ***adjoining*** state[~~ of Indiana~~] for the creation of a bi-state authority.
24 (3) (a) Kentucky members of a proposed bi-state authority who are appointed by the
25 Governor shall be confirmed by the Senate in accordance with KRS 11.160.
26 Members appointed by the chief executive of the local government shall be
27 confirmed by the governing body of the local government.

1 (b) At least two (2) of the Governor's appointees and two (2) of the chief
2 executive's appointees shall be familiar with road and bridge design or
3 financing and administration of transportation infrastructure projects.
4 (c) Members of a bi-state authority appointed by the Governor shall serve for four
5 (4) years, except that initial appointments shall be as follows:
6 1. One (1) appointee shall serve a term of two (2) years;
7 2. One (1) appointee shall serve a term of three (3) years; and
8 3. One (1) appointee shall serve a term of four (4) years.
9 (d) The governing body of the local government requesting formation of the bi-
10 state authority shall, by resolution, establish term lengths for the initial and
11 succeeding members who are locally appointed, with each term not to exceed
12 four (4) years.
13 (e) Members of a bi-state authority representing the Commonwealth may be
14 reappointed upon the expiration of their terms. Members reappointed shall be
15 reconfirmed in the same manner as newly appointed members.
16 (4) (a) An agreement establishing a bi-state authority shall at a minimum:
17 1. Establish the total number of members of the bi-state authority;
18 2. Establish staffing and funding to support the work of the bi-state
19 authority;
20 3. Designate the process for selecting a presiding officer of the bi-state
21 authority, which shall include a requirement that a member from each
22 state share the duties of presiding; and
23 4. Require the approval of a majority of the members from each state
24 before any action may be taken or any change may be made by the bi-
25 state authority.
26 (b) A bi-state authority created pursuant to this section shall take the legal form
27 necessary to conform to the laws of both states. The Commonwealth shall

1 consider the bi-state authority to be an independent de jure municipal
2 corporation, constituting a governmental agency and instrumentality of the
3 appropriate jurisdictions. The bi-state authority shall adopt a name indicative
4 of its location and purpose.
5 (c) Any bi-state agreement approved pursuant to this section may be presented to
6 the United States Congress for consent thereof by joint resolution as provided
7 in Article 1, Section 10, Clause 3 of the United States Constitution.
8 (5) (a) Members of a bi-state authority appointed from the Commonwealth shall be
9 considered public servants subject to KRS Chapter 11A.
10 (b) Members of a bi-state authority appointed from the Commonwealth shall
11 receive no compensation for their services, but shall be entitled to
12 reimbursement for all reasonable expenses necessary and incidental to the
13 performance of their duties and functions as members of the bi-state authority.
14 (c) The following individuals or entities shall be prohibited from entering into
15 any contract or agreement with a bi-state authority ***or a public-private***
16 ***partnership***:
17 1. Any member of the bi-state authority appointed to represent the
18 Commonwealth or any member of the state authority,~~[or]~~ a project
19 authority***, or a public-private partnership***;
20 2. Any spouse, child, stepchild, parent, stepparent, or sibling of a member
21 of the bi-state authority appointed to represent the Commonwealth or
22 any spouse, child, stepchild, parent, stepparent, or sibling of a member
23 of the state authority,~~[or]~~ a project authority***, or a public-private***
24 ***partnership***; and
25 3. Any corporation, limited liability entity, or other business entity of
26 which a person identified in subparagraph 1. or 2. of this paragraph is an
27 owner, member, or partner or has any other ownership interest.

1 (d) A bi-state authority ***or public-private partnership*** shall comply with the
2 procurement laws of both states that are a party to the agreement creating the
3 bi-state authority ***or public-private partnership***, including the provisions of
4 KRS Chapter 45A, in the development of a project and the procurement of
5 goods and services.
6 (e) A bi-state authority ***or public-private partnership*** shall comply with the laws
7 of both states concerning the inspection and disclosure of public records,
8 including KRS 61.870 to 61.884.
9 (f) A bi-state authority ***or public-private partnership*** shall comply with the laws
10 of both states concerning the conduct of open meetings, including KRS
11 61.805 to 61.850.
12 (6) ***(a)*** ~~[After creation of the bi-state authority and]~~Prior to the execution of any
13 agreements for the construction of the project, ***the state authority,*** the bi-state
14 authority***, a public-private partnership, or any combination of these, if***
15 ***appropriate,*** shall prepare a financial plan specifying the construction and
16 financing parameters of the project, including:
17 ***1.***~~[(a)]~~ A timeline for construction of the project, including financing
18 requirements throughout the construction of the project;
19 ***2.***~~[(b)]~~ The amount and duration of per-vehicle tolls;
20 ***3.***~~[(c)]~~ Expected appropriations from the General Assembly to be used for
21 project costs; however, no financial plan shall be submitted or approved
22 which contains expected appropriations by the General Assembly
23 beyond those appropriated in the most recently enacted biennial highway
24 construction plan;
25 ***4.***~~[(d)]~~ Other sources of funds and expected amounts; and
26 ***5.***~~[(e)]~~ Other provisions relating to the construction and financing of the
27 project.

1 [——]***(b) 1. If the financial plan is prepared by a bi-state authority,*** the
2 Kentucky members of the bi-state authority shall consult with the
3 involved local governments in Kentucky, the department, and the
4 Finance and Administration Cabinet, Office of Financial Management,
5 during the development of the financial plan. Upon completion and
6 approval of the financial plan by the bi-state authority, the plan shall be
7 submitted to the state authority for approval.
8 ***2. If the financial plan is prepared by the state authority, the state***
9 ***authority shall consult with the involved local governments in***
10 ***Kentucky, the department, and the Finance and Administration***
11 ***Cabinet, Office of Financial Management, during the development of***
12 ***the financial plan. If the financial plan is viable based on all***
13 ***information available to the state authority, the state authority shall***
14 ***recommend the plan.***
15 ***3. If the financial plan is prepared by a public-private partnership, the***
16 ***public-private partnership shall consult with the involved local***
17 ***governments in Kentucky, the department, and the Finance and***
18 ***Administration Cabinet, Office of Financial Management, during the***
19 ***development of the financial plan. Upon completion and approval of***
20 ***the financial plan by the public-private partnership, the plan shall be***
21 ***submitted to the state authority for approval.***
22 ***(c)*** The state authority shall not approve ***or recommend*** a financial plan which
23 contains expected appropriations by the General Assembly beyond those
24 appropriated in the most recently enacted biennial highway construction plan.
25 If the financial plan is approved ***or recommended*** by the state authority, the
26 cabinet and, as necessary, other state agencies or local governments may enter
27 into a development agreement as provided in subsection (7) of this section

1 with all necessary parties for the development of a project.
2 ***(d) Every financial plan prepared pursuant to this section shall include an***
3 ***evaluation of the ability of a potential contractor or service provider to***
4 ***quickly respond to the needs presented in a major transportation project,***
5 ***and the importance of economic development opportunities represented by***
6 ***the construction of any project under this chapter. In evaluating proposals,***
7 ***preference shall be given to a plan that includes the involvement of small***
8 ***businesses as subcontractors, to the extent that small businesses can provide***
9 ***services in a competitive manner, unless any preference interferes with the***
10 ***qualification for federal funds.***
11 (7) (a) Upon approval ***or recommendation*** of the financial plan as provided in
12 subsection (6) of this section, a development agreement may be entered into
13 establishing the terms and conditions under which a project will be undertaken
14 and the duties, responsibilities, powers, and authorities of the parties to the
15 agreement. The development agreement shall, at a minimum:
16 1. Require the bi-state authority ***or public-private partnership*** to submit an
17 annual report to the cabinet and the Legislative Research Commission;
18 2. Require that an annual audit of the bi-state authority ***or public-private***
19 ***partnership*** be performed by a certified public accountant;
20 3. Include the relevant provisions from the financial plan required by
21 subsection (6) of this section;
22 4. Include provisions detailing the duties, responsibilities, and obligations
23 of each party in relation to the financing, development, operation, and
24 maintenance of the project, and the servicing and retirement of all
25 bonds;
26 5. Establish limits on any reserve funds created for operation, maintenance,
27 or bond servicing, which shall be at a level to adequately operate and

1 maintain the project and ensure proper bond servicing;
2 6. Prohibit the amendment of the project or the financial plan without the
3 prior evaluation and approval by the state authority. No amendment shall
4 be approved that provides for expected appropriations by the General
5 Assembly beyond those appropriated in the most recently enacted
6 biennial highway construction plan;
7 7. ***If applicable,*** establish a process for the transfer of ownership of the
8 portion of the project that is within the Commonwealth to the
9 Commonwealth upon retirement of all bonds associated with the project
10 ***or, if the project utilizes a public-private partnership, upon***
11 ***termination of that partnership***; and
12 8. ***a. For a bi-state authority,*** require the approval of a majority of the
13 members from each state before any action may be taken or any
14 changes may be made by the bi-state authority***; or***
15 ***b. For a public-private partnership, require approval of the cabinet***
16 ***before any action may be taken or any changes may be made by***
17 ***the public-private partnership***.
18 (b) The parties to the agreement from the Commonwealth shall consult with the
19 department and the Finance and Administration Cabinet, Office of Financial
20 Management, in the development of the agreement.
21 (c) Additional agreements may be executed, as necessary to complete the project.
22 ***(d) The development agreement may take the form of a public-private***
23 ***partnership agreement.***
24 (8) The General Assembly hereby finds and declares that in carrying out the functions,
25 powers, and duties as prescribed in this chapter, a bi-state authority ***or public-***
26 ***private partnership*** authorized under this section will be performing essential
27 public and government functions that improve the public welfare and prosperity of

1 the people of the Commonwealth by promoting the availability of and enhancing
2 accessibility to improved transportation services within the Commonwealth.
3 *(9) The state authority shall not enter into a public-private partnership related to a*
4 *project connecting the Commonwealth with the State of Ohio unless the General*
5 *Assembly expressly authorizes it by passing a joint resolution.*
6 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 175B IS CREATED
7 TO READ AS FOLLOWS:
8 *(1) The state authority, a bi-state authority, or a project authority may, with approval*
9 *of the General Assembly pursuant to subsection (10) of Section 8 of this Act, and*
10 *if applicable, subsection (9) of Section 9 of this Act, utilize a public-private*
11 *partnership.*
12 *(2) An authority utilizing a public-private partnership shall continue to be*
13 *responsible for oversight of any function authorized by this chapter that is*
14 *delegated to or otherwise performed by a public-private partnership.*
15 *(3) A public-private partnership shall not be used to circumvent any requirements or*
16 *restrictions placed upon any authority pursuant to this chapter.*
17 *(4) An authority proposing to utilize a public-private partnership shall include in the*
18 *financial plan required by Section 9 or 12 of this Act:*
19 *(a) The parameters of the public-private partnership agreement;*
20 *(b) The duties and responsibilities to be performed by the private partner or*
21 *partners;*
22 *(c) The methods of oversight to be employed by the authority;*
23 *(d) The duties and responsibilities of the project that are to be performed by the*
24 *authority, the cabinet, and any other partners to the agreement; and*
25 *(e) Other information required by the state authority or the cabinet to evaluate*
26 *the financial plan and the proposed public-private partnership.*
27 *(5) A private entity desiring to be a private partner shall demonstrate to the*

1 ***satisfaction of the state authority and the cabinet that it is capable of performing***
2 ***any function to be authorized by the public-private partnership.***
3 ***(6) A public-private partnership authorized or utilized pursuant to this section shall***
4 ***be subject to subsections (5) to (8) of Section 9 of this Act.***
5 ***(7) The cabinet shall promulgate administrative regulations detailing the***
6 ***procurement approach and proposal review process to be used for a public-***
7 ***private partnership by December 31, 2016.***
8 ➔Section 11. KRS 175B.040 is amended to read as follows:
9 (1) If imposed as part of the financing plan, tolls shall be fixed and adjusted by the
10 developing authority to provide a fund sufficient with other revenues, if any, to:
11 (a) Pay the cost of maintaining, repairing, and operating the project, unless the
12 cost or any part thereof is being paid by the Commonwealth as authorized by
13 this chapter;
14 (b) Pay the principal of and interest on the project revenue bonds; and
15 (c) Create reserves not to exceed amounts specified in the development
16 agreement.
17 (2) Unless a transfer of ownership of a project occurs pursuant to KRS 175B.095 ***or the***
18 ***project utilizes a public-private partnership pursuant to Sections 9 and 10 of this***
19 ***Act***, the developing authority shall at all times maintain ownership and control of all
20 tolls and other revenues generated by the project. Tolls shall not be subject to
21 supervision or regulation by any other department, division, authority, board,
22 bureau, or agency of a local government or the Commonwealth.
23 (3) (a) The tolls and all other revenues derived from the project, except those
24 revenues necessary to***:***
25 ***1.*** Pay the cost of maintenance, repair, and operation***;***~~[and to]~~
26 ***2.*** Establish and maintain reserves as may be provided for in the
27 authorization of the issuance of the project revenue bonds or in the trust

1 indenture securing the project revenue bonds***; or***

2 ***3. Satisfy the requirements of a public-private partnership agreement or***

3 ***a development agreement;***[~~,~~]

4 shall be set aside in a sinking fund which shall be pledged to, and charged

5 with, the payment of principal and interest on the project revenue bonds as

6 they become due, and the redemption price or the purchase price of project

7 revenue bonds retired by call or purchase as provided in the authorization of

8 issuance.

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

10 the pledge is made.

11 (c) The tolls or other revenues received and pledged by the developing authority

12 shall immediately be subject to the lien of the pledge without any physical

13 delivery or further action, and the lien on any pledge shall be valid and

14 binding against all parties having claims of any kind in tort, contract, or

15 otherwise against the developing authority, whether the parties have received

16 notice or not.

17 (d) Neither the proceedings nor any trust indenture by which a pledge is created

18 need be filed or recorded, except in the records of the issuing authority.

19 (e) The use and disposition of moneys to the credit of the sinking fund shall be

20 subject to the provisions of the proceedings authorizing the issuance of the

21 project revenue bonds or the trust indenture.

22 (4) (a) Every person utilizing a project developed and tolled under this chapter shall

23 pay the appropriate toll.

24 (b) Any person who violates the provisions of this subsection shall be subject to

25 the provisions of administrative regulations promulgated pursuant to KRS

26 175B.015(12).

27 (5) Upon receiving notice, the cabinet shall suspend or withhold the annual registration

1 of a vehicle used in the commission of a toll violation until:
2 (a) The fine, charge, or assessment has been paid; or
3 (b) The violation of subsection (4) of this section has been determined not to have
4 occurred.
5 (6) (a) Toll collection customer account information shall be confidential and not
6 subject to disclosure under KRS 61.870 to 61.884. Contracts relating to toll
7 collection for a project developed and tolled under this chapter shall ensure
8 the confidentiality of all toll collection customer account information.
9 (b) For the purposes of this section, "toll collection customer account
10 information" means any information collected or received from or about any
11 person who is assessed a toll, including contact information, payment
12 information, trip data, and any other relevant data.
13 ➔Section 12. KRS 175B.035 is amended to read as follows:
14 (1) Potential projects that are within Kentucky may be developed by a project authority
15 as provided in this section***, or by a public-private partnership as provided in***
16 ***Section 10 of this Act***.
17 (2) A local government that contains a portion of a proposed project may, by resolution
18 of its governing body, request the state authority to evaluate the establishment of a
19 project authority ***or a public-private partnership*** for the purpose of developing a
20 project.
21 (3) The state authority may request that the department evaluate the proposed project by
22 preparation of a financial plan evaluating all aspects of the proposed project,
23 including:
24 (a) The most effective location for the project;
25 (b) The impact on local governments and citizens at the location of or along the
26 path of the project;
27 (c) A detailed analysis of the proposed cost of the project;

1 (d) The potential economic impact to the areas affected by the project;
2 (e) The anticipated level of use of the project;
3 (f) The amount and duration of per-vehicle tolls;
4 (g) Expected appropriations from the General Assembly to be used for the
5 project; however, no financial plan shall be submitted or approved which
6 contains expected appropriations by the General Assembly beyond those
7 appropriated in the most recently enacted biennial highway construction plan;
8 (h) ***The ability of a potential contractor or service provider to quickly respond to***
9 ***the needs presented in a major transportation project, and the importance of***
10 ***economic development opportunities represented by the construction of any***
11 ***project under this chapter. In evaluating proposals, preference shall be***
12 ***given to a plan that includes the involvement of small businesses as***
13 ***subcontractors, to the extent that small businesses can provide services in a***
14 ***competitive manner, unless any preference interferes with the qualification***
15 ***for federal funds;***
16 ***(i)*** Other sources of funds and expected amounts; and
17 ***(j)***[~~(i)~~] Any other provisions relating to the construction and financing of the
18 project.
19 (4) If, based on the project evaluation prepared pursuant to subsection (3) of this
20 section, the state authority and the department determine that the development of
21 the project is economically feasible, the state authority shall submit the proposal to
22 the General Assembly for ratification. If ratified by the General Assembly, the state
23 authority may request that the Governor establish a project authority in accordance
24 with the following:
25 (a) The project authority shall be established as an independent de jure municipal
26 corporation and political subdivision of the Commonwealth constituting a
27 governmental agency and instrumentality of the Commonwealth, with the

1 power to contract and be contracted with, acquire and convey property, sue
2 and be sued, and exercise all of the usual powers of corporations not
3 inconsistent with the authority's specifically enumerated purpose and duties;
4 (b) The project authority shall adopt a name that includes the name of the project
5 and the words "Project Authority";
6 (c) The project authority shall be composed of seven (7) members, three (3) of
7 whom shall be appointed by the Governor and confirmed by the Senate in
8 accordance with KRS 11.160, and four (4) of whom shall be appointed by the
9 chief executive of the local government that requested establishment of the
10 project authority and confirmed by resolution of the local government's
11 governing body;
12 (d) Each member of the project authority shall be appointed for a period of four
13 (4) years, except that in making initial appointments, the Governor shall
14 appoint members for one (1), three (3), and four (4) years, and the chief
15 executive shall appoint two (2) members each for two (2) and four (4) years;
16 and
17 (e) At least one (1) of the Governor's appointees and two (2) of the chief
18 executive's appointees shall be familiar with road and bridge design or
19 financing and administration of transportation infrastructure projects.
20 (5) (a) Within ninety (90) days of its establishment under subsection (4) of this
21 section, the project authority shall convene and organize. The project authority
22 shall elect a chair and a vice chair, who shall be members of the project
23 authority and elected by a majority of the project authority members. The
24 project authority shall appoint a secretary and a treasurer who shall not be
25 members of the project authority, each of whom shall serve at the pleasure of
26 the project authority and shall receive compensation as determined and paid
27 by the project authority.

1 (b) The treasurer shall give bond in an amount prescribed by the project authority
2 to the project authority and the state conditioned upon a faithful accounting
3 for all the funds coming into the treasurer's custody, with corporate surety
4 given by a surety company qualified to do business in the state, the premium
5 of which shall be paid by the project authority.
6 (c) The project authority shall maintain an office, and the secretary of the project
7 authority shall maintain in that office complete records of all the project
8 authority's actions and proceedings, which shall be considered open records
9 under KRS 61.870 to 61.884.
10 (d) A project authority shall comply with the applicable provisions of KRS
11 Chapter 45A in the development of a project and the procurement of goods
12 and services.
13 (e) The meetings of a project authority shall be considered open meetings
14 pursuant to KRS 61.805 to 61.850.
15 (6) A majority of the members of a project authority shall constitute a quorum for the
16 transaction of business. The members of a project authority shall receive no
17 compensation for their services in that capacity, but shall be entitled to
18 reimbursement for all reasonable expenses necessarily incurred in connection with
19 performance of their duties and functions as members.
20 (7) (a) Members of a project authority shall be considered public servants subject to
21 the provisions of KRS Chapter 11A.
22 (b) The following individuals or entities shall be prohibited from entering into
23 any contract or agreement with a project authority ***or a public-private***
24 ***partnership***:
25 1. Any member of a project authority, a bi-state authority,~~[or]~~ the state
26 authority***, or a public-private partnership***;
27 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***

1 ***partnership*** to the extent that the duties, responsibilities, powers, and authorities are
2 required for the project authority ***or public-private partnership*** to carry out its
3 duties and responsibilities under a development agreement.
4 (10) Upon retirement of all bonds associated with a project developed under this section
5 ***or, if the project utilizes a public-private partnership, upon termination of that***
6 ***partnership***, the ownership of the project shall be transferred to the Commonwealth
7 pursuant to KRS 175B.095.
8 ➔Section 13. KRS 175B.095 is amended to read as follows:
9 (1) Not more than one (1) year prior to the scheduled retirement of all bonds issued to
10 finance a project, the department shall undertake an evaluation of the condition of
11 the project to determine if the project has significant maintenance, reconstruction,
12 or rebuilding needs. The evaluation shall be completed no less than one hundred
13 eighty (180) days prior to the scheduled retirement of the bonds.
14 (2) If significant maintenance, reconstruction, or rebuilding is needed, the department
15 shall determine if funds and reserves held by the developing authority for the
16 project are adequate to accomplish the maintenance, reconstruction, or rebuilding. If
17 additional funds are needed, additional bonds shall be authorized and issued by the
18 same entity that issued the original bonds for the project, pursuant to this chapter.
19 (3) Tolls for the project shall continue until all bonds are retired.
20 (4) Notwithstanding any other provisions of this chapter, any portion of a project
21 located within the Commonwealth and financed by an authority shall become the
22 property of the Commonwealth upon the retirement of all bonds issued to finance
23 the project ***or, if the project utilizes a public-private partnership, upon***
24 ***termination of that partnership***.
25 (5) Upon the transfer of any project to the Commonwealth pursuant to this section, the
26 department shall evaluate the need for the continuance of any tolls. Tolls may be
27 continued if significant rebuilding, expansion, or maintenance is needed. Tolls

1 collected after ownership of a project has transferred to the Commonwealth shall be
2 deposited into the road fund and used for current and future costs of the project,
3 including maintenance, expansion, rebuilding, reconstruction, or other similar
4 purposes.
5 (6) When an authority has transferred a project to the Commonwealth pursuant to this
6 section, remaining fund reserves relating to that project shall be transferred to the
7 road fund.
8 ➔Section 14. KRS 175B.025 is amended to read as follows:
9 (1) The developing authority and issuing authority may be the same authority or
10 separate authorities, depending on the needs of the project. The developing
11 authority and issuing authority shall have the following powers and duties, as
12 necessary to complete, operate, and maintain the project, subject to the limitations
13 provided in KRS 175B.020***(10)***~~[(4)]~~:
14 (a) To enter into agreements as necessary to facilitate the development,
15 construction, maintenance, operation, repair, or financing of projects;
16 (b) To directly or indirectly construct, reconstruct, maintain, repair, operate, and
17 regulate projects within the Commonwealth, or contract with another entity
18 for these services;
19 (c) To issue project revenue bonds of the issuing authority payable solely from
20 the tolls, revenues, rentals, funds from any grant anticipation revenue vehicle
21 (GARVEE), funds appropriated by the state or federal government, and any
22 other funds pledged for their payment, for the purpose of paying all or any
23 cost of a project, and to refund any of its bonds;
24 (d) ***1.*** To fix, revise, charge, and collect tolls for transit over any project
25 constructed by it, and for any ancillary or connector routes affected by
26 the project.~~[;]~~
27 ***2. No tolls shall be authorized by any developing or issuing authority as***

1 ***a part of any development agreement or any financial plan for:***
2 ***a. Any project involving the federal interstate highway system that***
3 ***connects the Commonwealth with the State of Ohio; or***
4 ***b. Any project constituting a fully or partially controlled highway,***
5 ***whether or not involving the federal interstate highway system,***
6 ***that connects the Commonwealth with the State of Ohio,***
7 ***including but not limited to a qualifying highway that constitutes***
8 ***a bypass of a major metropolitan area;***
9 (e) To establish and enforce rules and regulations for the use of a project;
10 (f) To acquire and hold any of the following in the name of the developing
11 authority, and to dispose of them as the developing authority deems necessary:
12 1. Real and personal property, including lands and structures;
13 2. Rights;
14 3. Rights-of-way;
15 4. Franchises;
16 5. Easements and other interests in lands, including lands lying under water
17 and riparian rights; and
18 6. Any other item or asset necessary to accomplish its mission;
19 (g) To designate the locations and establish, limit, and control points of access to
20 the project, and to prohibit access to the project from any undesignated point;
21 (h) To make and enter into contracts and agreements in the performance of duties
22 and the execution of powers under this chapter;
23 (i) To employ any consultants and to fix their compensation;
24 (j) To receive and accept contributions and grants from any source for or in aid of
25 the construction of a project or the operation of the developing or issuing
26 authority;
27 (k) To accept interest rate subsidies, rebates, tax credits, or guarantees as provided

1 in the American Recovery and Reinvestment Act of 2009, or as may be
2 provided in subsequent federal legislation providing support to or credit
3 enhancement of governmental obligations;
4 (l) To expend any funds provided under this chapter in advertising the facilities
5 and services of a project to the traveling public;
6 (m) To enter into lease agreements with the department; and
7 (n) To do acts necessary or convenient to carry out the powers expressly granted
8 in this chapter.
9 (2) Projects may be developed in conjunction with other road development efforts of
10 the Commonwealth that are in compliance with Federal Highway Administration
11 requirements.
12 (3) Projects developed pursuant to this chapter shall:
13 (a) Comply with the requirements of KRS Chapters 45A, 174, and 176;
14 (b) Be included in the most recently enacted biennial highway construction plan;
15 and
16 (c) Comply with all relevant requirements of the Federal Highway
17 Administration.
18 ➔Section 15. KRS 175B.045 is amended to read as follows:
19 (1) Each project, upon completion, shall continuously constitute a link between parts of
20 the highway system of the Commonwealth, or between the Commonwealth and
21 ***any***~~[the]~~ state ***adjoining the Commonwealth***~~[of Indiana]~~, and shall always be open
22 to public travel, subject to any tolls or restrictions established by the developing
23 authority. All projects shall be subject to evaluation and inspection by the
24 department, and shall meet the standards for public roadways established by the
25 department.
26 (2) Projects may be developed in coordination with existing and proposed public transit
27 systems.

1 ➔Section 16. The provisions of Sections 1, 2, and 3 of this Act shall apply only to
2 a project for which the procurement process is initiated on or after the effective date of
3 this Act, either through the initial invitation for bids, request for proposals, or otherwise.
4 ➔Section 17. Whereas the ability to advance necessary infrastructure projects is
5 enhanced by this Act, and this Act places agencies under a deadline to promulgate
6 administrative regulations, an emergency is declared to exist, and this Act takes effect
7 upon its passage and approval by the Governor or upon its otherwise becoming a law.

Speaker-House of Representatives

President of Senate

Attest: Dean T. Durgin
Chief Clerk of House of Representatives

Approved
Governor

Date 8 APRIL 2016