

1 AN ACT relating to state government and declaring an emergency.

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

3 ➔Section 1. KRS 153.215 is repealed, reenacted, and amended to read as follows:

- 4 (1) There is established the Kentucky Arts Council (hereinafter referred to as "the
5 council") which shall perform functions pursuant to KRS 153.210 to 153.235.
- 6 (2) The purpose of the council shall be to develop and promote a broadly conceived
7 state policy of support for the arts in Kentucky pursuant to KRS 153.210 to
8 153.235.
- 9 (3) The **Governor shall appoint members to the council. The**~~[membership of the]~~
10 council shall consist of not more than **fifteen (15)**~~[sixteen (16)]~~ members who have
11 an interest in the arts **and have the ability and experience to provide broad**
12 **expertise in operation of the council. Members shall reflect the diverse interests**
13 **of the arts community to the extent such diversity is possible. At least one (1)**
14 **member shall represent each of the following areas: education, economic**
15 **development, and workforce development.** ~~[On July 1, 1972, the]~~**The** Governor
16 shall appoint **three (3)**~~[not more than four (4)]~~ members for a term **to expire on**
17 **November 18, 2017**~~[of one (1) year]~~; **five (5)**~~[not more than four (4)]~~ members for a
18 term **to expire on November 18, 2018**~~[of two (2) years]~~; ~~[not more than]~~ four (4)
19 members for a term **to expire on November 18, 2019**~~[of three (3) years]~~; and **three**
20 **(3)**~~[not more than four (4)]~~ members for a term **to expire on November 18, 2020**~~[of~~
21 ~~four (4) years]~~. Thereafter the Governor shall make all appointments for a term of
22 four (4) years~~[, except that of the members appointed after July 15, 1998, four (4)~~
23 ~~members appointed to fill the terms expiring July 1, 1999, shall serve until February~~
24 ~~1, 2000; four (4) members appointed to fill the terms expiring July 1, 2000, shall~~
25 ~~serve until February 1, 2001; four (4) members appointed to fill the terms expiring~~
26 ~~July 1, 2001, shall serve until February 1, 2002; and members appointed to fill the~~
27 ~~terms expiring July 1, 2002, shall serve until February 1, 2003; and subsequent~~

- 1 ~~appointments shall be for four (4) year terms ending on February 1].~~ **Members may**
 2 **be reappointed to one (1) additional four (4) year term.**
- 3 (4) Council members shall not receive any compensation for their services, but may be
 4 reimbursed in accordance with the provisions of KRS Chapters 44 and 45 for actual
 5 and necessary expenses incurred in the performance of their duties under KRS
 6 153.210 to 153.235.
- 7 (5) From the council membership the Governor shall appoint a **chair**~~[chairman]~~ and a
 8 vice **chair**~~[chairman]~~ of the council **who shall serve at the pleasure of the**
 9 **Governor.** The council may elect by majority vote other officers deemed necessary.
 10 **The chair shall not be represented by a proxy. Should the chair be unavailable,**
 11 **the vice chair shall serve in the chair's stead.**
- 12 (6) The council shall meet at the call of the **chair**~~[chairman]~~, but not less often than
 13 **three (3) times**~~[twice]~~ during each calendar year. A majority of the members
 14 appointed to the council shall constitute a quorum.
- 15 (7) The council shall be attached to the Tourism, Arts and Heritage Cabinet as **a**
 16 **department within the meaning of KRS Chapter 12**~~[an independent administrative~~
 17 ~~body].~~
- 18 (8) The council shall be headed by an executive director appointed by the secretary of
 19 the Tourism, Arts and Heritage Cabinet **and confirmed by majority vote**~~[upon~~
 20 ~~recommendation]~~ of the council.
- 21 ➔Section 2. KRS 148.850 is amended to read as follows:
- 22 (1) The Tourism Development Finance Authority is created within the Tourism, Arts
 23 and Heritage Cabinet. The authority shall consist of **nine (9)**~~[seven (7)]~~ members
 24 appointed by the Governor, **at least one (1) of whom shall represent the film**
 25 **industry and at least one (1) of whom shall represent individuals with**
 26 **professional experience in financial management or economic development.** The
 27 members of the authority shall serve without compensation but shall be entitled to

1 reimbursement for their necessary expenses incurred in performing their duties. Of
2 the members initially appointed to the authority, two (2) members shall be
3 appointed for terms of one (1) year, three (3) members shall be appointed for terms
4 of two (2) years, and two (2) members shall be appointed for terms of three (3)
5 years. Thereafter, the members of the authority shall be appointed for terms of four
6 (4) years.

7 (2) The Governor shall appoint one (1) member as chairperson of the Tourism
8 Development Finance Authority. The members of the authority may elect other
9 officers as they deem necessary.

10 (3) No member of the Tourism Development Finance Authority shall either directly or
11 indirectly be a party to, or be in any manner interested in, any contract or agreement
12 with the authority for any matter, cause, or thing that creates any liability or
13 indebtedness against the authority.

14 (4) The Tourism Development Finance Authority shall have the powers necessary to
15 carry out the purposes of this section, KRS 139.536, and KRS 148.851 to 148.860,~~f~~
16 ~~and the Tourism Development Loan Program created by 2000 Ky. Acts ch. 549,~~
17 ~~Part IX, Section 47,]~~ including but not limited to the power to:

18 (a) ~~[Make and condition all loans from the Tourism Development Loan Program;~~

19 (b) ~~]~~Employ fiscal consultants, attorneys, appraisers, and other agents on behalf of
20 the authority whom the authority deems necessary or convenient for the
21 preparation and administration of agreements and documents necessary or
22 incidental to any project. The fees for the services provided by persons
23 employed on behalf of the authority shall be paid by the beneficiary of a loan
24 under this program directly to the person providing consultation, advisory,
25 legal, or other services; and

26 ~~(b)~~~~(e)]~~ Impose and collect fees and charges in connection with any transaction
27 and provide for reasonable penalties for delinquent payment of fees and

1 charges.

2 ➔Section 3. KRS 148.853 is amended to read as follows:

3 (1) The General Assembly finds and declares that:

4 (a) The general welfare and material well-being of the citizens of the
5 Commonwealth depend in large measure upon the development of tourism in
6 the Commonwealth;

7 (b) It is in the best interest of the Commonwealth to provide incentives for the
8 creation of new tourism attractions and the expansion of existing tourism
9 attractions within the Commonwealth in order to advance the public purposes
10 of relieving unemployment by preserving and creating jobs that would not
11 exist if not for the incentives offered by the authority to approved companies,
12 and by preserving and creating sources of tax revenues for the support of
13 public services provided by the Commonwealth;

14 (c) The authorities granted by KRS 148.851 to 148.860 are proper governmental
15 and public purposes for which public moneys may be expended; and

16 (d) That the creation or expansion of tourism development projects is of
17 paramount importance mandating that the provisions of KRS 139.536 and
18 KRS 148.851 to 148.860 be liberally construed and applied in order to
19 advance public purposes.

20 (2) To qualify for incentives provided in KRS 139.536 and 148.851 to 148.860, the
21 following requirements shall be met:

22 (a) For a tourism attraction project:

23 1. The total eligible costs shall exceed one million dollars (\$1,000,000),
24 except for a tourism attraction project located in a county designated as
25 an enhanced incentive county at the time the eligible company becomes
26 an approved company as provided in KRS 148.857(6), the total eligible
27 costs shall exceed five hundred thousand dollars (\$500,000);

- 1 2. In any year, including the first year of operation, the tourism attraction
2 project shall be open to the public at least one hundred (100) days; and
- 3 3. In any year following the third year of operation, the tourism attraction
4 project shall attract at least twenty-five percent (25%) of its visitors from
5 among persons who are not residents of the Commonwealth;
- 6 (b) For an entertainment destination center project:
 - 7 1. The total eligible costs shall exceed five million dollars (\$5,000,000);
 - 8 2. The facility shall contain a minimum of two hundred thousand (200,000)
9 square feet of building space adjacent or complementary to an existing
10 tourism attraction project or a major convention facility;
 - 11 3. The incentives shall be dedicated to a public infrastructure purpose that
12 shall relate to the entertainment destination center project;
 - 13 4. In any year, including the first year of operation, the entertainment
14 destination center project shall:
 - 15 a. Be open to the public at least one hundred (100) days per year;
 - 16 b. Maintain at least one (1) major theme restaurant and at least three
17 (3) additional entertainment venues, including but not limited to
18 live entertainment, multiplex theaters, large-format theater, motion
19 simulators, family entertainment centers, concert halls, virtual
20 reality or other interactive games, museums, exhibitions, or other
21 cultural and leisure-time activities; and
 - 22 c. Maintain a minimum occupancy of sixty percent (60%) of the total
23 gross area available for lease with entertainment and food and
24 drink options not including the retail sale of tangible personal
25 property; and
 - 26 5. In any year following the third year of operation, the entertainment
27 destination center project shall attract at least twenty-five percent (25%)

1 of its visitors from among persons who are not residents of the
2 Commonwealth;

3 (c) For a theme restaurant destination attraction project:

- 4 1. The total eligible costs shall exceed five million dollars (\$5,000,000);
- 5 2. In any year, including the first year of operation, the attraction shall:
 - 6 a. Be open to the public at least three hundred (300) days per year
7 and for at least eight (8) hours per day; and
 - 8 b. Generate no more than fifty percent (50%) of its revenue through
9 the sale of alcoholic beverages;
- 10 3. In any year following the third year of operation, the theme restaurant
11 destination attraction project shall attract a minimum of fifty percent
12 (50%) of its visitors from among persons who are not residents of the
13 Commonwealth; and
- 14 4. The theme restaurant destination attraction project shall:
 - 15 a. At the time of final approval, offer a unique dining experience that
16 is not available in the Commonwealth within a one hundred (100)
17 mile radius of the attraction;
 - 18 b. In any year, including the first year of operation, maintain seating
19 capacity of four hundred fifty (450) guests and offer live music or
20 live musical and theatrical entertainment during the peak business
21 hours that the facility is in operation and open to the public; or
 - 22 c. Within three (3) years of the completion date, the attraction shall
23 obtain a top two (2) tier rating by a nationally accredited service
24 and shall maintain a top two (2) tier rating through the term of the
25 agreement;

26 (d) For a lodging facility project:

- 27 1. a. The eligible costs shall exceed five million dollars (\$5,000,000)

1 unless the provisions of subdivision b. of this subparagraph apply.

2 b. i. If the lodging facility is an integral part of a major
3 convention or sports facility, the eligible costs shall exceed six
4 million dollars (\$6,000,000); and

5 ii. If the lodging facility includes five hundred (500) or more
6 guest rooms, the eligible costs shall exceed ten million
7 dollars (\$10,000,000); and

8 2. In any year, including the first year of operation, the lodging facility
9 shall:

10 a. Be open to the public at least one hundred (100) days; and

11 b. Attract at least twenty-five percent (25%) of its visitors from
12 among persons who are not residents of the Commonwealth; ~~and~~

13 (e) *Any tourism development project shall not be eligible for incentives if it*
14 *includes material determined to be lewd, offensive, or deemed to have a*
15 *negative impact on the tourism industry in the Commonwealth; and*

16 (f) An expansion of any tourism development project shall in all cases be treated
17 as a new stand-alone project.

18 (3) The incentives offered under the Kentucky Tourism Development Act shall be as
19 follows:

20 (a) An approved company may be granted a sales tax incentive based on the
21 Kentucky sales tax imposed on sales generated by or arising at the tourism
22 development project; and

23 (b) 1. For a tourism development project other than a lodging facility project
24 described in KRS 148.851(14)(e) or (f), or a tourism attraction project
25 described in subparagraph 2. of this paragraph:

26 a. A sales tax incentive shall be allowed to an approved company
27 over a period of ten (10) years, except as provided in subparagraph

- 1 5. of this paragraph; and
- 2 b. The sales tax incentive shall not exceed the lesser of the total
- 3 amount of the sales tax liability of the approved company and its
- 4 lessees or a percentage of the approved costs as specified by the
- 5 agreement, not to exceed twenty-five percent (25%);
- 6 2. For a tourism attraction project located in an enhanced incentive county
- 7 at the time the eligible company becomes an approved company as
- 8 provided in KRS 148.857(6):
- 9 a. A sales tax incentive shall be allowed to the approved company
- 10 over a period of ten (10) years; and
- 11 b. The sales tax incentive shall not exceed the lesser of the total
- 12 amount of the sales tax liability of the approved company and its
- 13 lessees or a percentage of the approved costs as specified by the
- 14 agreement, not to exceed thirty percent (30%);
- 15 3. For a lodging facility project described in KRS 148.851(14)(e) or (f):
- 16 a. A sales tax incentive shall be allowed to the approved company
- 17 over a period of twenty (20) years; and
- 18 b. The sales tax incentive shall not exceed the lesser of total amount
- 19 of the sales tax liability of the approved company and its lessees or
- 20 a percentage of the approved costs as specified by the agreement,
- 21 not to exceed fifty percent (50%);
- 22 4. Any unused incentives from a previous year may be carried forward to
- 23 any succeeding year during the term of the agreement until the entire
- 24 specified percentage of the approved costs has been received through
- 25 sales tax incentives; and
- 26 5. If the approved company is an entertainment destination center that has
- 27 dedicated at least thirty million dollars (\$30,000,000) of the incentives

1 provided under the agreement to a public infrastructure purpose, the
2 agreement may be amended to extend the term of the agreement up to
3 two (2) additional years if the approved company agrees to:

- 4 a. Reinvest in the original entertainment destination project one
5 hundred percent (100%) of any incentives received during the
6 extension that were outstanding at the end of the original term of
7 the agreement; and
- 8 b. Report to the authority at the end of each fiscal year the amount of
9 incentives received during the extension and how the incentives
10 were reinvested in the original entertainment destination project.

11 ➔Section 4. KRS 45.763 is amended to read as follows:

12 (1) Notwithstanding any statutory provisions to the contrary, any state agency as
13 defined in KRS 7A.010, institution of higher education defined as an institution in
14 KRS 164A.550, or affiliated corporation as defined in KRS 164A.550, shall obtain
15 authorization from the General Assembly prior to entering into an agreement
16 identified in subsection (2) of this section. The General Assembly authorization
17 shall occur only when the General Assembly enacts legislation specifically
18 authorizing the agreement.

19 (2) General Assembly authorization shall be required for an agreement for the use,
20 purchase, or acceptance of real property of any value, or equipment with a value in
21 excess of four hundred thousand dollars (\$400,000), if:

- 22 (a) The agreement provides that the state, a state agency, institution of higher
23 education, or affiliated corporation will become the owner of the real property
24 or equipment at any time; and
- 25 (b) All or any portion of the purchase price of the real property or equipment is
26 funded through the issuance of a financial instrument which requires payment
27 of principal and interest over time, including, but not limited to, notes, bonds,

1 securities, and certificates of participation, regardless of the identity of the
2 issuer.

3 **(3) For any capital projects authorized by Section 5 of this Act and utilizing the**
4 **public-private partnership delivery method, the General Assembly has**
5 **authorization through the Capital Projects and Bond Oversight Committee to**
6 **review and approve a project in accordance with KRS 45.800. The contracting**
7 **body shall report a capital project to the Capital Projects and Bond Oversight**
8 **Committee after negotiations are complete with the project partner but prior to**
9 **beginning work on the project for review and approval by the committee.**

10 ➔Section 5. KRS 45A.077 is amended to read as follows:

11 (1) A public-private partnership delivery method may be utilized as provided in this
12 section and administrative regulations promulgated thereunder. State contracts
13 using this method shall be awarded by competitive negotiation.

14 (2) A contracting body utilizing a public-private partnership shall continue to be
15 responsible for oversight of any function that is delegated to or otherwise performed
16 by a private partner.

17 (3) On or before December 31, 2016, the secretary of the Finance and Administration
18 Cabinet shall promulgate administrative regulations setting forth criteria to be used
19 in determining when a public-private partnership is to be used for a particular
20 project. The administrative regulations shall reflect the intent of the General
21 Assembly to promote and encourage the use of public-private partnerships in the
22 Commonwealth. The secretary shall consult with design-builders, construction
23 managers, contractors, design professionals including engineers and architects, and
24 other appropriate professionals during the development of these administrative
25 regulations.

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

- 1 (a) The parameters of the proposed public-private partnership agreement;
- 2 (b) The duties and responsibilities to be performed by the private partner or
3 partners;
- 4 (c) The methods of oversight to be employed by the contracting body;
- 5 (d) The duties and responsibilities that are to be performed by the contracting
6 body and any other partners to the contract;
- 7 (e) The evaluation factors and the relative weight of each to be used in the scoring
8 of awards;
- 9 (f) Plans for financing and operating the qualifying project and the revenues,
10 service payments, bond financings, and appropriations of public funds needed
11 for the qualifying project;
- 12 (g) Comprehensive documentation of the experience, capabilities, capitalization
13 and financial condition, and other relevant qualifications of the private entity;
- 14 (h) The ability of a private partner or partners to quickly respond to the needs
15 presented in the request for proposal, and the importance of economic
16 development opportunities represented by the qualifying project. In evaluating
17 proposals, preference shall be given to a plan that includes the involvement of
18 small businesses as subcontractors, to the extent that small businesses can
19 provide services in a competitive manner, unless any preference interferes
20 with the qualification for federal or other funds; and
- 21 (i) Other information required by the contracting body or the cabinet to evaluate
22 the proposals submitted by respondents and the overall proposed public-
23 private partnership.
- 24 (5) A private entity desiring to be a private partner shall demonstrate to the satisfaction
25 of the contracting body or the cabinet that it is capable of performing any duty,
26 responsibility, or function it may be authorized or directed to perform as part of the
27 public-private partnership agreement.

- 1 (6) When a request for proposal for a project utilizing a public-private partnership is
2 issued for a capital project, the contracting body shall transmit a copy of the request
3 for proposal to the Capital Projects and Bond Oversight Committee staff, clearly
4 identifying to the staff that a public-private partnership is being utilized.
- 5 (7) A request for proposal or other solicitation may be canceled, or all proposals may be
6 rejected, if it is determined in writing that the action is taken in the best interest of
7 the Commonwealth and approved by the purchasing officer.
- 8 (8) In the case of any public-private partnership for a capital project with an aggregate
9 value of twenty-five million dollars (\$25,000,000) or more, the project shall be
10 authorized by the General Assembly, by inclusion in the branch budget bill or by
11 any other means, explicitly identifying and authorizing the utilization of a public-
12 private partnership delivery method for the applicable capital project. The
13 authorization of a capital project required by this subsection is in addition to any
14 other statutorily required authorization for a capital project.
- 15 (9) Upon issuance of a public-private partnership agreement, the contracting body shall
16 submit the contract to the Government Contract Review Committee for review in
17 accordance with KRS 45A.690 to 45A.725. The contracting body shall ensure that
18 the contract clearly identifies to the committee that a public-private partnership is
19 being utilized. Upon disapproval of or objection to the contract by the committee,
20 *the secretary of the Finance and Administration Cabinet in consultation with* the
21 contracting body shall determine whether the contract shall be revised to comply
22 with the objections of the committee, be canceled, or remain in effect *pursuant to*
23 *KRS 45A.705(6)*.
- 24 (10) Any corporation as described by KRS 45.750(2)(c), or as created under the
25 Kentucky Revised Statutes as a governmental agency and instrumentality of the
26 Commonwealth, that manages its capital construction program shall:
- 27 (a) Adhere to the administrative regulations promulgated under this section when

- 1 utilizing a public-private partnership for financing capital projects;
- 2 (b) Report to legislative committees as specified in this section; and
- 3 (c) Submit public-private partnership agreements issued by it to the General
- 4 Assembly for authorization as provided in subsection (8) of this section.
- 5 (11) (a) The governing body of a postsecondary institution that manages its capital
- 6 construction program under KRS 164A.580 shall:
- 7 1. Report to the Capital Projects and Bond Oversight Committee staff as
- 8 specified in this section; and
- 9 2. Not be required to comply with the provisions of subsection (9) of this
- 10 section.
- 11 (b) Any provision of a public-private partnership agreement issued by a
- 12 postsecondary institution which provides for a lease by or to the
- 13 postsecondary institution shall be valid and enforceable if approved by the
- 14 governing board of the institution.
- 15 (12) (a) A person or business may submit an unsolicited proposal to a governmental
- 16 body, which may receive the unsolicited proposal.
- 17 (b) Within ninety (90)~~thirty (30)~~ days of receiving an unsolicited proposal, a
- 18 governmental body may elect to consider further action on the proposal, at
- 19 which point the governmental body shall provide public notice of the
- 20 proposal, and shall:
- 21 1. Provide specific information regarding the proposed nature, timing, and
- 22 scope of the unsolicited proposal, except that trade secrets, financial
- 23 records, or other records of the person or business making the proposal
- 24 shall not be posted unless otherwise agreed to by the governmental body
- 25 and the person or business; and
- 26 2. Provide for a notice period ~~[of ninety (90) days]~~ for the submission of
- 27 competing proposals as follows:

- 1 *a. Unsolicited proposals valued below five million dollars*
 2 *(\$5,000,000) shall be posted for thirty (30) days;*
 3 *b. Unsolicited proposals valued between five million dollars*
 4 *(\$5,000,000) and twenty-five million dollars (\$25,000,000) shall*
 5 *be posted for sixty (60) days; and*
 6 *c. Unsolicited proposals valued over twenty-five million dollars*
 7 *(\$25,000,000) shall be posted for ninety (90) days.*

- 8 (c) Upon the end of the notice period provided under paragraph (b)2. of this
 9 subsection, the governmental body may consider the unsolicited proposal and
 10 any competing proposals received. If the governmental body determines it is
 11 in the best interest of the Commonwealth to implement some or all of the
 12 concepts contained within the unsolicited proposal or competing proposals
 13 received by it, the governmental body may begin an open, competitive
 14 procurement process to do so pursuant to this chapter.
- 15 (d) An unsolicited proposal shall be deemed rejected if no written response is
 16 received from the governmental body within *ninety (90)*~~[sixty (60)]~~ days of
 17 *submission, during which time the governmental body has not taken any*
 18 *action on the proposal*~~[the end of the notice period provided]~~ under paragraph
 19 (b)~~[2.]~~ of this subsection.

20 ➔Section 6. KRS 65.028 is amended to read as follows:

- 21 (1) As used in this section:
- 22 (a) "Best value" has the same meaning as in KRS 65.025;
- 23 (b) "Cabinet" means the Finance and Administration Cabinet;
- 24 (c) "Local government" means a city, county, charter county, urban-county
 25 government, consolidated local government, or unified local government of
 26 the Commonwealth;
- 27 (d) "Private partner" has the same meaning as in KRS 65.025; and

- 1 (e) "Public-private partnership" has the same meaning as in KRS 65.025.
- 2 (2) A public-private partnership delivery method may be utilized by a local government
3 as provided in this section and administrative regulations promulgated thereunder.
4 Contracts using this method shall be awarded by competitive negotiation on the
5 basis of best value, and shall in all cases take effect only if executed by the
6 legislative body of the local government. The provisions of KRS 65.025(2) to (4)
7 shall not apply to public-private partnerships utilized by local governments.
- 8 (3) A local government utilizing a public-private partnership shall continue to be
9 responsible for oversight of any function that is delegated to or otherwise performed
10 by a private partner.
- 11 (4) A public-private partnership shall not be used to circumvent any requirements or
12 restrictions placed upon any local government pursuant to any provision of the
13 Kentucky Revised Statutes.
- 14 (5) All public-private partnership agreements executed by a local government or any of
15 its agencies under this section shall be approved by the legislative body of the local
16 government at a public meeting, and shall include at a minimum the following
17 provisions:
- 18 (a) 1. Property owned by a local government shall not be sold, conveyed, or
19 disposed of in any way at any time; and
20 2. Leases issued by a local government to any party shall not be transferred
21 in any way by that party;
22 without the specific and express written consent of the legislative body of the
23 local government;
- 24 (b) Require the private partner to provide or cause to be provided performance
25 and payment bonds on the design and construction portion of the agreement as
26 required under KRS 45A.435 and maintenance bonds, warranties, guarantees,
27 and letters of credit in connection with the private partner's other activities

- 1 under the agreement, in the forms and amounts satisfactory to the local
2 government and in amounts necessary to provide adequate protection to the
3 local government;
- 4 (c) Review and approval of plans and specifications for the project by the local
5 government;
- 6 (d) Inspection of the project by the local government to ensure that the private
7 partner's actions are acceptable to the local government in accordance with the
8 agreement;
- 9 (e) Maintenance of public liability insurance or self-insurance, in form and
10 amount satisfactory to the local government and reasonably sufficient to
11 insure coverage of tort liability to the public and employees and to enable the
12 continued operation of the project;
- 13 (f) Reimbursement to be paid to the local government for services provided by
14 the local government;
- 15 (g) Filing of appropriate financial statements by the private partner on a periodic
16 basis;
- 17 (h) Policies and procedures governing the rights and responsibilities of the local
18 government and the private partner in the event the public-private partnership
19 agreement is terminated or there is a material default by the private partner.
20 These policies and procedures shall include conditions governing assumption
21 of the duties and responsibilities of the private partner by the local
22 government, and the transfer or purchase of property or other interests of the
23 private partner by the local government;
- 24 (i) Any fees or payments as may be established by agreement of the private
25 partner and the local government;
- 26 (j) A detailed description of all duties and requirements of the private partner;
- 27 (k) 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 evaluating
3 proposals, preference shall be given to a plan that includes the involvement of
4 small businesses as subcontractors, to the extent that small businesses can
5 provide services in a competitive manner, unless any preference interferes
6 with the qualification for federal or other funds; and

- 7 (l) Any other information necessary to properly address the life cycle of the
8 agreement, including the disposition of assets if or when the public-private
9 partnership agreement is terminated or otherwise concludes.
- 10 (6) (a) On or before December 31, 2016, the secretary of the Finance and
11 Administration Cabinet shall promulgate administrative regulations setting
12 forth criteria to be used by a local government employing a public-private
13 partnership for a particular project, and establishing a process for public-
14 private partnership procurement undertaken by local governments consistent
15 with this section. Prior to submission of the proposed administrative
16 regulations pursuant to the regulatory process required by KRS Chapter 13A,
17 the proposed administrative regulations shall be approved by the Kentucky
18 Local Government Public-Private Partnership Board established by subsection
19 (11) of this section.
- 20 (b) The secretary shall consult with design-builders, construction managers,
21 contractors, design professionals including engineers and architects, and other
22 appropriate professionals during the development of these administrative
23 regulations.
- 24 (c) The secretary shall have the authority to contract with a consultant, pursuant
25 to KRS 45A.695, to assist the cabinet and the Kentucky Local Government
26 Public-Private Partnership Board with the review process required in
27 subsection (12) of this section. The secretary may, through administrative

- 1 regulation, impose a reasonable fee on the private partner to defray the cost of
2 the review required in subsection (12) of this section, including any expenses
3 or fees incurred in contracting with a consultant.
- 4 (d) If the secretary fails to timely promulgate administrative regulations pursuant
5 to this subsection, local governments may then act pursuant to this section
6 including compliance with the process outlined in subsection (12) of this
7 section, in the absence of administrative regulations.
- 8 (7) A request for proposal for a local government project utilizing a public-private
9 partnership shall include at a minimum:
- 10 (a) The parameters of the proposed public-private partnership agreement;
11 (b) The duties and responsibilities to be performed by the private partner or
12 partners;
13 (c) The methods of oversight to be employed by the local government;
14 (d) The duties and responsibilities that are to be performed by the local
15 government and any other partners to the contract;
16 (e) The evaluation factors and the relative weight of each to be used in the scoring
17 of awards; and
18 (f) Other information required by a local government to evaluate the proposals
19 submitted by respondents and the overall proposed public-private partnership.
- 20 (8) A private entity desiring to be a private partner shall demonstrate to the satisfaction
21 of the local government that it is capable of performing any duty, responsibility, or
22 function it may be authorized or directed to perform as part of the public-private
23 partnership agreement.
- 24 (9) When a request for proposal for a project utilizing a public-private partnership is
25 issued, the local government shall transmit a copy of the request for proposal to the
26 cabinet and to the Department for Local Government.
- 27 (10) A request for proposal or other solicitation may be canceled, or all proposals may be

1 rejected, if it is determined in writing that the action is taken in the best interest of
2 the local government and approved by the legislative body.

3 (11) (a) There is established within the cabinet the Kentucky Local Government
4 Public-Private Partnership Board, composed of eleven (11) members as
5 follows:

- 6 1. The secretary of the cabinet, or the secretary's designee;
- 7 2. Two (2) individuals appointed by the Kentucky League of Cities, both of
8 whom shall have experience in municipal financial operations;
- 9 3. Two (2) individuals appointed by the Kentucky Association of Counties,
10 both of whom shall have experience in county financial operations, one
11 (1) to be recommended by the Kentucky County Judge/Executive
12 Association and one (1) to be recommended by the Kentucky County
13 Magistrates and Commissioners Association;
- 14 4. The commissioner of the Department for Local Government, or the
15 commissioner's designee;
- 16 5. The executive director of the Office of Financial Management within the
17 cabinet, or the executive director's designee;
- 18 6. The Auditor of Public Accounts, or the Auditor's designee;
- 19 7. One (1) citizen member appointed by the Governor, who shall have
20 experience and knowledge in local government debt and financial
21 operations; and
- 22 8. Two (2) members of the Kentucky General Assembly, one (1) appointed
23 by the President of the Senate and one (1) appointed by the Speaker of
24 the House of Representatives, each of whom shall serve in a nonvoting
25 ex officio capacity and shall not be considered for purposes of
26 determining a quorum.

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

1 serve for a term of four (4) years.

2 (c) **Board members appointed under paragraph (a)2. and 3. of this subsection**
3 **may send a designee with similar experience to meetings for which they are**
4 **unavailable.**

5 (d) Vacancies occurring in the term of any member shall be filled in the same
6 manner as the original appointment.

7 (e)~~(d)~~ The members of the board shall receive no compensation for their
8 services.

9 (f)~~(e)~~ The secretary of the cabinet, or the secretary's designee, shall serve as
10 chair of the board and the members shall elect a vice chair from among the
11 membership of the board. The vice chair may preside over meetings of the
12 board in the absence of the chair.

13 (g)~~(f)~~ The board shall meet at least once per year, and as needed for the timely
14 consideration of proposed projects. A majority of the members of the board
15 shall constitute a quorum.

16 (h)~~(g)~~ The secretary of the cabinet shall be responsible for providing staff
17 support and maintaining complete records of the board's actions and
18 proceedings, as public records open to inspection.

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

- 25 1. Whether the agreement meets the requirements of subsection (5) of this
26 section;
- 27 2. An analysis of the overall project's economic and financial viability

1 within the scope of available or proposed financing arrangements and
2 expected revenues; and

3 3. Whether the agreement adheres to the procurement process required by
4 subsection (2) of this section.

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

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

13 (c) The cabinet shall acknowledge receipt of the agreement within thirty (30)
14 days, and after evaluation thereof shall, within ninety (90) days of its receipt,
15 forward the results of its evaluation separately to each individual member of
16 the Kentucky Local Government Public-Private Partnership Board. The full
17 board shall meet within sixty (60) days of the issuance of the cabinet's
18 evaluation to consider the evaluation provided by the cabinet and approve or
19 disapprove the proposed agreement. If the board disapproves the project, the
20 board shall provide specific reasons for its disapproval. If the board approves
21 the project, the cabinet shall return the agreement to the local government
22 legislative body for final execution thereof. No public-private partnership
23 agreement issued by a local government **that is subject to evaluation by the**
24 **cabinet and review and approval by the Kentucky Local Government**
25 **Public-Private Partnership Board pursuant to paragraph (a) of this**
26 **subsection** 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 section
2 and to be economically viable as provided in this subsection.

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

6 (13) The Commonwealth shall bear no liability for public-private partnership agreements
7 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 partnership
12 agreements executed by a local government pursuant to this section, and any actions
13 undertaken by private partners and local governments thereunder, to evaluate
14 compliance with the agreement and this section.

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

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

26 (b) Within ninety (90)~~thirty (30)~~ days of receiving an unsolicited proposal, a
27 local government may elect to consider further action on the proposal, at

1 which point the local government shall provide public notice of the proposal
 2 pursuant to KRS Chapter 424 or electronically on the Web site of the local
 3 government, and shall:

- 4 1. Provide specific information regarding the proposed nature, timing, and
 5 scope of the unsolicited proposal, except that trade secrets, financial
 6 records, or other records of the person or business making the proposal
 7 shall not be posted unless otherwise agreed to by the local government
 8 and the person or business; and
- 9 2. Provide for a notice period of at least thirty (30) days and no more than
 10 ninety (90) days for the submission of competing proposals.

11 (c) Upon the end of the notice period provided under paragraph (b)2. of this
 12 subsection, the local government may consider the unsolicited proposal and
 13 any competing proposals received. If the local government determines it is in
 14 the best interest of the local government to implement some or all of the
 15 concepts contained within the unsolicited proposal or competing proposals
 16 received by it, the local government may begin an open, competitive
 17 procurement process to do so pursuant to this section.

18 (d) An unsolicited proposal shall be deemed rejected if no written response is
 19 received from the local government within ninety (90)~~sixty (60)~~ days after
 20 submission, during which time the governmental body has not taken any
 21 action on the proposal~~[of the end of the notice period provided]~~ under
 22 paragraph (b)~~[2.]~~ of this subsection.

23 ➔Section 7. KRS 175B.015 is amended to read as follows:

24 (1) The Kentucky Public Transportation Infrastructure Authority is hereby established
 25 as an independent de jure municipal corporation and political subdivision of the
 26 Commonwealth constituting a governmental agency and instrumentality of the
 27 Commonwealth. The General Assembly hereby finds and declares that in carrying

1 out its functions, powers, and duties as prescribed in this chapter, the state authority
2 will be performing essential public and government functions that improve the
3 public welfare and prosperity of the people of the Commonwealth by promoting the
4 availability of and enhancing accessibility to improved transportation services
5 within the Commonwealth.

6 (2) (a) The state authority shall be composed of the following eleven (11) voting
7 members:

- 8 1. The secretary of the Finance and Administration Cabinet, or the
9 secretary's designee;
- 10 2. The secretary of the Transportation Cabinet;
- 11 3. A representative of the Kentucky Association of Counties, to be
12 appointed by the Governor;
- 13 4. A representative of the Kentucky County Judges/Executive Association,
14 to be appointed by the Governor;
- 15 5. A representative of the Kentucky League of Cities, to be appointed by
16 the Governor; and
- 17 6. Six (6) citizen members to be appointed by the Governor and confirmed
18 by the Senate in accordance with KRS 11.160, at least two (2) of whom
19 shall be familiar with road and bridge design or the financing and
20 administration of transportation infrastructure projects; and

21 (b) Each Kentucky member who shares duties as a presiding officer of a bi-state
22 authority pursuant to KRS 175B.030(4)(a)3. shall serve as a nonvoting ex
23 officio member.

24 (3) The ex officio members shall serve for the term of their respective offices.

25 (4) Members appointed pursuant to subsection (2)(a)3. to 6. of this section shall begin
26 their terms on October 1, 2009, and shall be appointed for a term of four (4) years;
27 however, in making initial appointments, the members appointed pursuant to

- 1 subsection (2)(a)6. of this section shall include two (2) members for a term of two
2 (2) years, two (2) members for a term of three (3) years, and two (2) members for a
3 term of four (4) years.
- 4 (5) Vacancies occurring during the term of any member shall be filled in the same
5 manner as the original appointment.
- 6 (6) The members of the state authority shall receive no compensation for their services,
7 but shall be entitled to reimbursement for all reasonable expenses necessary and
8 incidental to the performance of their duties and functions as members of the state
9 authority.
- 10 (7) (a) Members of the state authority shall be considered public servants subject to
11 KRS Chapter 11A.
- 12 (b) The following individuals or entities shall be prohibited from entering into
13 any contract or agreement with the state authority:
- 14 1. Any member of the state authority, a project authority, or a bi-state
15 authority;
- 16 2. Any spouse, child, stepchild, parent, stepparent, or sibling of a member
17 of the state authority, a project authority, or a bi-state authority; and
- 18 3. Any corporation, limited liability entity, or other business entity of
19 which a person identified in subparagraph 1. or 2. of this paragraph is an
20 owner, member, or partner or has any other ownership interest.
- 21 (8) (a) The chairman of the state authority shall be the secretary of the Transportation
22 Cabinet.
- 23 (b) The members of the state authority shall elect a vice chairman and a secretary
24 from the membership.
- 25 (9) The Finance and Administration Cabinet shall provide fiscal consultant services to
26 the state authority.
- 27 (10) The state authority shall hold its initial meeting no later than November 1, 2009,

1 and shall meet as needed thereafter, ~~for at least quarterly if any bi-state authority or~~
2 ~~project authority exists,~~ with adequate notice at the call of the chair. A quorum of
3 at least fifty percent (50%) of the members of the state authority must be present for
4 the state authority to take any action. At least eight (8) members shall vote in the
5 affirmative for the state authority to approve a new project. All other business shall
6 be approved by a majority vote of the members present.

7 (11) (a) The state authority shall be attached for administrative purposes to the
8 Transportation Cabinet. The state authority shall establish and maintain an
9 office, and the secretary of the state authority shall maintain complete records
10 of the state authority's actions and proceedings as public records open to
11 inspection.

12 (b) The state authority shall employ staff as needed in the conduct of its duties
13 and functions, and shall fix their compensation.

14 (12) The state authority may promulgate administrative regulations in accordance with
15 KRS Chapter 13A as needed:

16 (a) Establishing collection and enforcement procedures, including fines, charges,
17 assessments, and other enforcement mechanisms, for the violation of KRS
18 175B.040(4), and for violation of any administrative regulation promulgated
19 under this subsection;

20 (b) Establishing an appeals process by which a person may contest a violation of
21 KRS 175B.040(4), or a violation of any administrative regulation promulgated
22 under this subsection, by way of an administrative hearing to be conducted in
23 accordance with KRS Chapter 13B;

24 (c) Relating to any matters necessary to the efficient administration of tolls when
25 implemented for a project developed under this chapter; and

26 (d) To fulfill any other requirements of this chapter.

27 (13) The state authority shall comply with applicable provisions of KRS Chapter 45A in

1 the development of a project and the procurement of goods and services.

2 (14) The records of the state authority shall be considered open records pursuant to KRS
3 61.870 to 61.884.

4 (15) The meetings of the state authority shall be considered open meetings pursuant to
5 KRS 61.805 to 61.850.

6 ➔Section 8. KRS 175B.020 is amended to read as follows:

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

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

- 14 1. To enter into a bi-state agreement;
- 15 2. To review and approve project financing plans and development
16 agreements; and
- 17 3. To monitor agreements entered into by bi-state authorities;

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

- 20 1. To request establishment of a project authority;
- 21 2. To review and approve project financing plans and development
22 agreements;
- 23 3. To monitor activities of project authorities; and
- 24 4. To enter into an agreement with the project authority; and

25 (c) Take the following actions relating to a public-private partnership authorized
26 pursuant to KRS 175B.037:

- 27 1. To request establishment of a public-private partnership;

- 1 2. To review and approve project financing plans;
- 2 3. To monitor activities of public-private partnerships; and
- 3 4. To enter into an agreement as a part of or with a public-private
- 4 partnership, if necessary.

5 (2) The state authority, when authorized pursuant to subsection (10) of this section,
6 may participate as a developing or issuing authority, or both, in the development,
7 construction, or financing of a project by a bi-state or project authority, or by a
8 public-private partnership, if necessary. If the state authority participates as a
9 developing or issuing authority, the state authority shall have the powers and duties
10 established in KRS 175B.025 as they apply to that project.

11 (3) The state authority, as a function of its oversight of any other authority created
12 pursuant to this chapter, shall report before the first issuance of bonds and no less
13 than semiannually thereafter to the Capital Projects and Bond Oversight Committee
14 and to the Interim Joint Committee on Appropriations and Revenue of the
15 Legislative Research Commission, on any projects currently proposed or under
16 development by each authority. Current and proposed levels of bonding for each
17 project shall be reviewed by the Capital Projects and Bond Oversight Committee in
18 accordance with KRS 45.794 before the bonds shall be issued.

19 (4) The state authority, when proposing a project pursuant to this chapter, shall to the
20 extent practical consult with the officials representing the units of local government
21 in which the proposed project is to be located in order to obtain the advice and input
22 on the local impact of the proposed project, including information regarding land
23 use planning, transportation planning, economic development, and any other factors
24 having a direct impact to the local community.

25 (5) The state authority may receive an unsolicited proposal if the proposal contains:
26 (a) An executive summary of no more than three (3) pages that details the
27 revenue source for the proposed project, the amount of revenue expected to be

- 1 generated by the project, and the project costs;
- 2 (b) A certification from a financial expert stating that the contents of the
3 unsolicited proposal are true and correct; and
- 4 (c) A fee for the review of the executive summary~~[A commitment to pay the
5 costs incurred by the state authority and the cabinet for evaluating the
6 unsolicited proposal].~~
- 7 (6) The state authority shall respond to a person offering an unsolicited proposal
8 notifying the person that the proposal has been rejected or approved for further
9 review.
- 10 (7) If the state authority approves an unsolicited proposal for further review, the state
11 authority shall independently verify that it is in the best interest of the
12 Commonwealth.
- 13 (8) If the state authority approves a proposal for further review, the~~[A]~~ person
14 making the~~[an]~~ unsolicited proposal shall pay all costs of evaluating the unsolicited
15 proposal incurred by the state authority and the cabinet pursuant to an agreement
16 negotiated between the state authority and the person making the unsolicited
17 proposal.
- 18 (9) If the state authority and the cabinet agree that an unsolicited proposal is in the best
19 interest of the Commonwealth, the state authority, with the assistance of the cabinet,
20 shall begin a competitive procurement process to implement some or all of the
21 concepts contained in the unsolicited proposal.
- 22 (10) (a) Notwithstanding any other provision of this chapter, the following actions
23 shall not take effect until ratified by the General Assembly:
- 24 1. The creation of a bi-state authority;
- 25 2. The creation of a project authority;
- 26 3. The creation of a public-private partnership;
- 27 4. The modification or amendment of the scope of any project; and

1 5. The development of any project undertaken entirely by the state
2 authority.

3 (b) If any action described in paragraph (a) of this subsection is not ratified by the
4 General Assembly, the creation, approval, or modification shall be considered
5 void.

6 **(11) The state authority shall promulgate an administrative regulation in accordance**
7 **with KRS Chapter 13A to determine the fee required by subsection (5)(c) of this**
8 **section for the review of the executive summary.**

9 ➔Section 9. KRS 175B.030 is amended to read as follows:

10 (1) (a) 1. This section shall apply to any project that connects Kentucky with any
11 state that adjoins the Commonwealth. A proposal to construct a project
12 that connects Kentucky with an adjoining state shall be contained in a
13 financing plan prepared pursuant to subsection (6) of this section. If
14 approved, the project shall be constructed under the supervision of the
15 state authority, a bi-state authority, or both, and may be financed by the
16 state authority, a bi-state authority, a public-private partnership, or any
17 combination of these.

18 2. If the state authority, operating pursuant to KRS 175B.020, participates
19 in any capacity in the construction or financing of a project that connects
20 Kentucky with an adjoining state, the state authority may assume all or
21 part of the role of the bi-state authority relative to that project.

22 (b) Subsections (2) to (4) of this section shall only apply to a bi-state authority.

23 (c) Subsections (1) and (5) to (8) of this section shall apply to both a bi-state
24 authority and a public-private partnership.

25 (2) (a) A local government that contains a portion of a proposed project may, by
26 resolution of its governing body, request that its chief executive officer and
27 the Governor appoint a group of Kentucky members to negotiate with a

1 similar group from an adjoining state for the purpose of proposing the creation
2 of a bi-state authority composed of members from both states, recognized
3 under the laws of both states, and existing for the purpose of financing,
4 constructing, and operating a project or projects mutually beneficial to both
5 states.

6 (b) If established, the Kentucky membership of the bi-state authority shall consist
7 of seven (7) members, three (3) of whom shall be appointed by the Governor,
8 and four (4) of whom shall be appointed by the chief executive of the local
9 government in which the project is located. The four (4) local government
10 appointees shall be residents of the county in which the project is located. If a
11 project is located in a consolidated local government, no more than two (2)
12 appointees shall reside in the same Kentucky senatorial district. If portions of
13 the project are located in more than one (1) local government, the chief
14 executive of the county or consolidated local government having the largest
15 population shall make the appointments authorized in this paragraph.

16 (c) Any proposed agreement to establish a bi-state authority shall be presented to
17 the state authority for approval. If the state authority approves the agreement,
18 it shall be submitted to the General Assembly for ratification. If the agreement
19 is ratified by the General Assembly, the state authority shall authorize the
20 establishment of a bi-state authority and shall enter into an agreement with the
21 adjoining state for the creation of a bi-state authority.

22 (3) (a) Kentucky members of a proposed bi-state authority who are appointed by the
23 Governor shall be confirmed by the Senate in accordance with KRS 11.160.
24 Members appointed by the chief executive of the local government shall be
25 confirmed by the governing body of the local government.

26 (b) At least two (2) of the Governor's appointees and two (2) of the chief
27 executive's appointees shall be familiar with road and bridge design or

1 financing and administration of transportation infrastructure projects.

2 (c) Members of a bi-state authority appointed by the Governor shall serve for four
3 (4) years, except that initial appointments shall be as follows:

- 4 1. One (1) appointee shall serve a term of two (2) years;
- 5 2. One (1) appointee shall serve a term of three (3) years; and
- 6 3. One (1) appointee shall serve a term of four (4) years.

7 (d) The governing body of the local government requesting formation of the bi-
8 state authority shall, by resolution, establish term lengths for the initial and
9 succeeding members who are locally appointed, with each term not to exceed
10 four (4) years.

11 (e) Members of a bi-state authority representing the Commonwealth may be
12 reappointed upon the expiration of their terms. Members reappointed shall be
13 reconfirmed in the same manner as newly appointed members.

14 (4) (a) An agreement establishing a bi-state authority shall at a minimum:

- 15 1. Establish the total number of members of the bi-state authority;
- 16 2. Establish staffing and funding to support the work of the bi-state
17 authority;
- 18 3. Designate the process for selecting a presiding officer of the bi-state
19 authority, which shall include a requirement that a member from each
20 state share the duties of presiding; and
- 21 4. Require the approval of a majority of the members from each state
22 before any action may be taken or any change may be made by the bi-
23 state authority.

24 (b) A bi-state authority created pursuant to this section shall take the legal form
25 necessary to conform to the laws of both states. The Commonwealth shall
26 consider the bi-state authority to be an independent de jure municipal
27 corporation, constituting a governmental agency and instrumentality of the

1 appropriate jurisdictions. The bi-state authority shall adopt a name indicative
2 of its location and purpose.

3 (c) Any bi-state agreement approved pursuant to this section may be presented to
4 the United States Congress for consent thereof by joint resolution as provided
5 in Article 1, Section 10, Clause 3 of the United States Constitution.

6 (5) (a) Members of a bi-state authority appointed from the Commonwealth shall be
7 considered public servants subject to KRS Chapter 11A.

8 (b) Members of a bi-state authority appointed from the Commonwealth shall
9 receive no compensation for their services, but shall be entitled to
10 reimbursement for all reasonable expenses necessary and incidental to the
11 performance of their duties and functions as members of the bi-state authority.

12 (c) The following individuals or entities shall be prohibited from entering into
13 any contract or agreement with a bi-state authority or a public-private
14 partnership:

15 1. Any member of the bi-state authority appointed to represent the
16 Commonwealth or any member of the state authority, a project authority,
17 or a public-private partnership;

18 2. Any spouse, child, stepchild, parent, stepparent, or sibling of a member
19 of the bi-state authority appointed to represent the Commonwealth or
20 any spouse, child, stepchild, parent, stepparent, or sibling of a member
21 of the state authority, a project authority, or a public-private partnership;
22 and

23 3. Any corporation, limited liability entity, or other business entity of
24 which a person identified in subparagraph 1. or 2. of this paragraph is an
25 owner, member, or partner or has any other ownership interest.

26 (d) A bi-state authority or public-private partnership shall comply with the
27 procurement laws of both states that are a party to the agreement creating the

1 bi-state authority or public-private partnership, including the provisions of
2 KRS Chapter 45A, in the development of a project and the procurement of
3 goods and services.

4 (e) A bi-state authority or public-private partnership shall comply with the laws of
5 both states concerning the inspection and disclosure of public records,
6 including KRS 61.870 to 61.884.

7 (f) A bi-state authority or public-private partnership shall comply with the laws of
8 both states concerning the conduct of open meetings, including KRS 61.805 to
9 61.850.

10 (6) (a) Prior to the execution of any agreements for the construction of the project,
11 the state authority, the bi-state authority, a public-private partnership, or any
12 combination of these, if appropriate, shall prepare a financial plan specifying
13 the construction and financing parameters of the project, including:

14 1. A timeline for construction of the project, including financing
15 requirements throughout the construction of the project;

16 2. The amount and duration of per-vehicle tolls;

17 3. Expected appropriations from the General Assembly to be used for
18 project costs; however, no financial plan shall be submitted or approved

19 which seeks or purports to bind any future General Assembly to

20 appropriate any moneys~~[contains expected appropriations by the~~
21 ~~General Assembly]~~ beyond those appropriated in the most recently

22 enacted biennial highway construction plan;

23 4. Other sources of funds and expected amounts; and

24 5. Other provisions relating to the construction and financing of the
25 project.

26 (b) 1. If the financial plan is prepared by a bi-state authority, the Kentucky
27 members of the bi-state authority shall consult with the involved local

1 governments in Kentucky, the department, and the Finance and
2 Administration Cabinet, Office of Financial Management, during the
3 development of the financial plan. Upon completion and approval of the
4 financial plan by the bi-state authority, the plan shall be submitted to the
5 state authority for approval.

6 2. If the financial plan is prepared by the state authority, the state authority
7 shall consult with the involved local governments in Kentucky, the
8 department, and the Finance and Administration Cabinet, Office of
9 Financial Management, during the development of the financial plan. If
10 the financial plan is viable based on all information available to the state
11 authority, the state authority shall recommend the plan.

12 3. If the financial plan is prepared by a public-private partnership, the
13 public-private partnership shall consult with the involved local
14 governments in Kentucky, the department, and the Finance and
15 Administration Cabinet, Office of Financial Management, during the
16 development of the financial plan. Upon completion and approval of the
17 financial plan by the public-private partnership, the plan shall be
18 submitted to the state authority for approval.

19 (c) The state authority shall not approve or recommend a financial plan which
20 seeks or purports to bind any future General Assembly to appropriate any
21 moneys~~[contains expected appropriations by the General Assembly]~~ beyond
22 those appropriated in the most recently enacted biennial highway construction
23 plan. If the financial plan is approved or recommended by the state authority,
24 the cabinet and, as necessary, other state agencies or local governments may
25 enter into a development agreement as provided in subsection (7) of this
26 section with all necessary parties for the development of a project.

27 (d) Every financial plan prepared pursuant to this section shall include an

1 evaluation of the ability of a potential contractor or service provider to quickly
2 respond to the needs presented in a major transportation project, and the
3 importance of economic development opportunities represented by the
4 construction of any project under this chapter. In evaluating proposals,
5 preference shall be given to a plan that includes the involvement of small
6 businesses as subcontractors, to the extent that small businesses can provide
7 services in a competitive manner, unless any preference interferes with the
8 qualification for federal funds.

9 (7) (a) Upon approval or recommendation of the financial plan as provided in
10 subsection (6) of this section, a development agreement may be entered into
11 establishing the terms and conditions under which a project will be undertaken
12 and the duties, responsibilities, powers, and authorities of the parties to the
13 agreement. The development agreement shall, at a minimum:

- 14 1. Require the bi-state authority or public-private partnership to submit an
15 annual report to the cabinet and the Legislative Research Commission;
- 16 2. Require that an annual audit of the bi-state authority or public-private
17 partnership be performed by a certified public accountant;
- 18 3. Include the relevant provisions from the financial plan required by
19 subsection (6) of this section;
- 20 4. Include provisions detailing the duties, responsibilities, and obligations
21 of each party in relation to the financing, development, operation, and
22 maintenance of the project, and the servicing and retirement of all
23 bonds;
- 24 5. Establish limits on any reserve funds created for operation, maintenance,
25 or bond servicing, which shall be at a level to adequately operate and
26 maintain the project and ensure proper bond servicing;
- 27 6. Prohibit the amendment of the project or the financial plan without the

1 prior evaluation and approval by the state authority. No amendment shall
 2 be approved that seeks or purports to bind any future General
 3 Assembly to appropriate any moneys~~[provides for expected~~
 4 ~~appropriations by the General Assembly]~~ beyond those appropriated in
 5 the most recently enacted biennial highway construction plan;

6 7. If applicable, establish a process for the transfer of ownership of the
 7 portion of the project that is within the Commonwealth to the
 8 Commonwealth upon retirement of all bonds associated with the project
 9 or, if the project utilizes a public-private partnership, upon termination
 10 of that partnership; and

11 8. a. For a bi-state authority, require the approval of a majority of the
 12 members from each state before any action may be taken or any
 13 changes may be made by the bi-state authority; or

14 b. For a public-private partnership, require approval of the cabinet
 15 before any action may be taken or any changes may be made by the
 16 public-private partnership.

17 (b) The parties to the agreement from the Commonwealth shall consult with the
 18 department and the Finance and Administration Cabinet, Office of Financial
 19 Management, in the development of the agreement.

20 (c) Additional agreements may be executed, as necessary to complete the project.

21 (d) The development agreement may take the form of a public-private partnership
 22 agreement.

23 (8) The General Assembly hereby finds and declares that in carrying out the functions,
 24 powers, and duties as prescribed in this chapter, a bi-state authority or public-
 25 private partnership authorized under this section will be performing essential public
 26 and government functions that improve the public welfare and prosperity of the
 27 people of the Commonwealth by promoting the availability of and enhancing

1 accessibility to improved transportation services within the Commonwealth.

2 (9) The state authority shall not enter into a public-private partnership related to a
3 project connecting the Commonwealth with the State of Ohio unless the General
4 Assembly expressly authorizes it by passing a joint resolution.

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

6 (1) Potential projects that are within Kentucky may be developed by a project authority
7 as provided in this section, or by a public-private partnership as provided in KRS
8 175B.037.

9 (2) A local government that contains a portion of a proposed project may, by resolution
10 of its governing body, request the state authority to evaluate the establishment of a
11 project authority or a public-private partnership for the purpose of developing a
12 project.

13 (3) The state authority may request that the department evaluate the proposed project by
14 preparation of a financial plan evaluating all aspects of the proposed project,
15 including:

16 (a) The most effective location for the project;

17 (b) The impact on local governments and citizens at the location of or along the
18 path of the project;

19 (c) A detailed analysis of the proposed cost of the project;

20 (d) The potential economic impact to the areas affected by the project;

21 (e) The anticipated level of use of the project;

22 (f) The amount and duration of per-vehicle tolls;

23 (g) Expected appropriations from the General Assembly to be used for the
24 project; however, no financial plan shall be submitted or approved which

25 *seeks or purports to bind any future General Assembly to appropriate any*

26 *moneys*~~[contains expected appropriations by the General Assembly]~~ beyond

27 those appropriated in the most recently enacted biennial highway construction

1 plan;

2 (h) The ability of a potential contractor or service provider to quickly respond to
3 the needs presented in a major transportation project, and the importance of
4 economic development opportunities represented by the construction of any
5 project under this chapter. In evaluating proposals, preference shall be given
6 to a plan that includes the involvement of small businesses as subcontractors,
7 to the extent that small businesses can provide services in a competitive
8 manner, unless any preference interferes with the qualification for federal
9 funds;

10 (i) Other sources of funds and expected amounts; and

11 (j) Any other provisions relating to the construction and financing of the project.

12 (4) If, based on the project evaluation prepared pursuant to subsection (3) of this
13 section, the state authority and the department determine that the development of
14 the project is economically feasible, the state authority shall submit the proposal to
15 the General Assembly for ratification. If ratified by the General Assembly, the state
16 authority may request that the Governor establish a project authority in accordance
17 with the following:

18 (a) The project authority shall be established as an independent de jure municipal
19 corporation and political subdivision of the Commonwealth constituting a
20 governmental agency and instrumentality of the Commonwealth, with the
21 power to contract and be contracted with, acquire and convey property, sue
22 and be sued, and exercise all of the usual powers of corporations not
23 inconsistent with the authority's specifically enumerated purpose and duties;

24 (b) The project authority shall adopt a name that includes the name of the project
25 and the words "Project Authority";

26 (c) The project authority shall be composed of seven (7) members, three (3) of
27 whom shall be appointed by the Governor and confirmed by the Senate in

1 accordance with KRS 11.160, and four (4) of whom shall be appointed by the
2 chief executive of the local government that requested establishment of the
3 project authority and confirmed by resolution of the local government's
4 governing body;

5 (d) Each member of the project authority shall be appointed for a period of four
6 (4) years, except that in making initial appointments, the Governor shall
7 appoint members for one (1), three (3), and four (4) years, and the chief
8 executive shall appoint two (2) members each for two (2) and four (4) years;
9 and

10 (e) At least one (1) of the Governor's appointees and two (2) of the chief
11 executive's appointees shall be familiar with road and bridge design or
12 financing and administration of transportation infrastructure projects.

13 (5) (a) Within ninety (90) days of its establishment under subsection (4) of this
14 section, the project authority shall convene and organize. The project authority
15 shall elect a chair and a vice chair, who shall be members of the project
16 authority and elected by a majority of the project authority members. The
17 project authority shall appoint a secretary and a treasurer who shall not be
18 members of the project authority, each of whom shall serve at the pleasure of
19 the project authority and shall receive compensation as determined and paid
20 by the project authority.

21 (b) The treasurer shall give bond in an amount prescribed by the project authority
22 to the project authority and the state conditioned upon a faithful accounting
23 for all the funds coming into the treasurer's custody, with corporate surety
24 given by a surety company qualified to do business in the state, the premium
25 of which shall be paid by the project authority.

26 (c) The project authority shall maintain an office, and the secretary of the project
27 authority shall maintain in that office complete records of all the project

1 authority's actions and proceedings, which shall be considered open records
2 under KRS 61.870 to 61.884.

3 (d) A project authority shall comply with the applicable provisions of KRS
4 Chapter 45A in the development of a project and the procurement of goods
5 and services.

6 (e) The meetings of a project authority shall be considered open meetings
7 pursuant to KRS 61.805 to 61.850.

8 (6) A majority of the members of a project authority shall constitute a quorum for the
9 transaction of business. The members of a project authority shall receive no
10 compensation for their services in that capacity, but shall be entitled to
11 reimbursement for all reasonable expenses necessarily incurred in connection with
12 performance of their duties and functions as members.

13 (7) (a) Members of a project authority shall be considered public servants subject to
14 the provisions of KRS Chapter 11A.

15 (b) The following individuals or entities shall be prohibited from entering into
16 any contract or agreement with a project authority or a public-private
17 partnership:

18 1. Any member of a project authority, a bi-state authority, the state
19 authority, or a public-private partnership;

20 2. Any spouse, child, stepchild, parent, stepparent, or sibling of a member
21 of a project authority, a bi-state authority, the state authority, or a public-
22 private partnership; and

23 3. Any corporation, limited liability entity, or other business entity of
24 which a person identified in subparagraph 1. or 2. of this paragraph is an
25 owner, a member, a partner, or has any other ownership interest.

26 (8) (a) The state authority shall enter into a development agreement with a project
27 authority or a public-private partnership to establish the terms and conditions

1 under which a project will be undertaken. No financial plan shall be submitted
2 or approved which seeks or purports to bind any future General Assembly to
3 appropriate any moneys~~[contains expected appropriations by the General~~
4 ~~Assembly]~~ beyond those appropriated in the most recently enacted biennial
5 highway construction plan.

6 (b) The development agreement shall establish the duties, responsibilities, and
7 powers of the state authority, the project authority, a public-private
8 partnership, and, as necessary, the cabinet with regard to the project.

9 (c) The development agreement shall include, at a minimum, all information
10 necessary relating to the creation, development, operation, and disposal of the
11 project. No financial plan shall be submitted or approved which seeks or
12 purports to bind any future General Assembly to appropriate any
13 moneys~~[contains expected appropriations by the General Assembly]~~ beyond
14 those appropriated in the most recently enacted biennial highway construction
15 plan.

16 (d) After the proposed project has been approved and set forth in the development
17 agreement, it shall not be changed or expanded without evaluation and
18 approval by the state authority and ratification by the General Assembly.

19 (e) Additional agreements may be executed, as necessary, between the state
20 authority, the project authority, a public-private partnership, the department,
21 and the cabinet.

22 (9) The provisions of this chapter relating to the duties, responsibilities, powers, and
23 authorities of the state authority shall apply to a project authority or a public-private
24 partnership to the extent that the duties, responsibilities, powers, and authorities are
25 required for the project authority or public-private partnership to carry out its duties
26 and responsibilities under a development agreement.

27 (10) Upon retirement of all bonds associated with a project developed under this section

1 or, if the project utilizes a public-private partnership, upon termination of that
2 partnership, the ownership of the project shall be transferred to the Commonwealth
3 pursuant to KRS 175B.095.

4 ➔Section 11. Notwithstanding KRS 12.028(5), the General Assembly hereby
5 confirms Executive Order 2016-824, dated November 18, 2016, and Executive Order
6 2016-210, dated April 20, 2016, to the extent they are not otherwise confirmed or
7 superseded by this Act.

8 ➔Section 12. Whereas, it is critical for the health, safety, and economic well-
9 being of the Commonwealth and its citizens to not delay any capital projects, an
10 emergency is declared to exist and Sections 4 to 10 of this Act take effect upon its
11 passage and approval by the Governor or upon its otherwise becoming a law.