

AN ACT relating to financing of transportation projects.

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

➔Section 1. KRS 175B.005 is amended to read as follows:

- (1) The purpose of this chapter is to establish a structure for the construction, operation, financing, and oversight of significant transportation projects within the Commonwealth and between the Commonwealth and ~~any~~<sup>the</sup> state ***adjoining the Commonwealth***~~of Indiana~~. To accomplish this purpose, the Kentucky Public Transportation Infrastructure Authority is established by KRS 175B.015 to review, approve, and monitor all projects eligible for construction and financing under this chapter and, if necessary, to assist with the operation, financing, and management of projects.
- (2) All projects approved by the Kentucky Public Transportation Infrastructure Authority shall be managed, constructed, and financed entirely or in part by:
  - (a) A bi-state authority as provided in KRS 175B.030;~~or~~
  - (b) A project authority as provided in KRS 175B.035; ***or***
  - (c) ***A public-private partnership as provided in Section 5 of this Act.***

➔Section 2. KRS 175B.010 is amended to read as follows:

As used in this chapter:

- (1) "Authority" means the state authority, or a bi-state authority, or a project authority, unless the specific use requires that it apply only to the state authority, or a bi-state authority, or a project authority;
- (2) "Bi-state authority" means an authority created under KRS 175B.030;
- (3) "Cabinet" means the Transportation Cabinet;
- (4) "Commonwealth" means the Commonwealth of Kentucky;
- (5) "Cost" means:
  - (a) The cost of construction of the project, including the acquisition of land, rights-of-way, property, rights in land, easements, and interests acquired by

- the authority for construction of a project;
- (b) The cost of preparing land or property, including demolishing or removing any buildings or structures, and the cost of acquiring any lands to which those buildings or structures may be moved;
  - (c) The pro-rata value of all machinery and equipment used in construction of the project;
  - (d) Financing charges and provisions for working capital in an amount the authority determines to be reasonable;
  - (e) Interest prior to and during construction and, if approved by the authority, for a period up to two (2) years after completion of construction;
  - (f) The cost of traffic estimates and of engineering, financial and legal services, plans, specifications, surveys, estimates of cost and revenues, or other expenses necessary or incidental to determining the feasibility or practicability of constructing any project;
  - (g) The cost and expense of the relocation or removal of public utilities impacted by a project, including the cost of installing the facilities in a new location, the cost of any lands or any rights or interests in lands, and the cost of any other rights acquired to accomplish the relocation or removal;
  - (h) Administrative expenses and any other expenses that are necessary for or incidental to the construction of a project, the financing of the construction, and the placing of the project in operation; and
  - (i) The cost of maintenance of the completed project.

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

- (6) "Department" means the Department of Highways;
- (7) "Developing authority" means the authority involved in the development of a

project;

(8) "Issuing authority" means the authority that will issue or has issued debt associated with a project;

(9) "Local government" means a consolidated local government, an urban-county government, a charter county government, a unified local government, or a county;

(10) **"Private partner" means any entity that is a partner in a public-private partnership other than:**

**(a) The Commonwealth of Kentucky;**

**(b) Any political subdivision of the Commonwealth;**

**(c) The federal government;**

**(d) Any other state government;**

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

**(f) An authority;**

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

1. Any highway or section of a highway designated as part of the federal interstate highway system; or

2. Any highway or section of highway built to the standards of the interstate highway system;

that would be designated a mega-project by the Federal Highway Administration;

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

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

**(13)**~~(12)~~ "Project revenue bonds" means revenue funding bonds, revenue refunding

bonds, notes, or other financial obligations issued under this chapter by the issuing authority;

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

**(a) An authority or authorities;**

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

**(c) The cabinet, if necessary; and**

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

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

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

➔Section 3. KRS 175B.020 is amended to read as follows:

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

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

1. To enter into a bi-state agreement;

2. To review and approve project financing plans and development agreements; and

3. To monitor agreements entered into by bi-state authorities; ~~and~~
- (b) Take the following actions relating to a project authority authorized pursuant to KRS 175B.035:
1. To request establishment of a project authority;
  2. To review and approve project financing plans and development agreements;
  3. To monitor activities of project authorities; and
  4. To enter into an agreement with the project authority; and
- (c) Take the following actions relating to a public-private partnership authorized pursuant to Section 5 of this Act:
1. To request establishment of a public-private partnership;
  2. To review and approve project financing plans;
  3. To monitor activities of public-private partnerships; and
  4. To enter into an agreement as a part of or with a public-private partnership.
- (2) The state authority, when authorized pursuant to subsection (4) of this section, may participate as a developing or issuing authority, or both, in the development, construction, or financing of a project by a bi-state or project authority, or the financing of a project by a public-private partnership, if necessary. If the state authority participates as a developing or issuing authority, the state authority shall have the powers and duties established in KRS 175B.025 as they apply to that project.
- (3) The state authority, as a function of its oversight of any other authority created pursuant to this chapter, shall report before the first issuance of bonds and no less than semiannually thereafter to the Capital Projects and Bond Oversight Committee and to the Interim Joint Committee on Appropriations and Revenue of the Legislative Research Commission, on any projects currently proposed or under

development by each authority. Current and proposed levels of bonding for each project shall be reviewed by the Capital Projects and Bond Oversight Committee in accordance with KRS 45.794 before the bonds shall be issued.

- (4) (a) Notwithstanding any other provision of this chapter, the following actions shall not take effect until ratified by the General Assembly:
1. The creation of a bi-state authority;
  2. The creation of a project authority;
  3. **The creation of a public-private partnership;**
  - 4.** The modification or amendment of the scope of any project; and
  - 5.**~~[4.]~~ The development of any project undertaken entirely by the state authority.
- (b) If any action described in paragraph (a) of this subsection is not ratified by the General Assembly, the creation, approval, or modification shall be considered void.

➔Section 4. KRS 175B.030 is amended to read as follows:

- (1) **(a) 1.** This section shall apply to any project that connects Kentucky with ~~any~~~~the~~ state **that adjoins the Commonwealth**~~[of Indiana]~~. A **proposal to construct a** project that connects Kentucky with **an adjoining**~~the~~ state~~[of Indiana]~~ shall be **contained in a financing plan prepared pursuant to subsection (6) of this section. If approved, the project shall be** constructed **under the supervision of the state authority, a bi-state authority, or both,** and **may be** financed by **the state authority,** a bi-state authority, **a public-private partnership, or any combination of these.**
- 2. If the state authority, operating pursuant to Section 3 of this Act, participates in any capacity in the construction or financing of a project that connects Kentucky with an adjoining state, the state**

*authority may assume all or part of the role of the bi-state authority relative to that project.*

*(b) Subsections (1) to (4) of this section shall only apply to a bi-state authority.*

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

- (2) (a) A local government that contains a portion of a proposed project may, by resolution of its governing body, request that its chief executive officer and the Governor appoint a group of Kentucky members to negotiate with a similar group from *an adjoining*~~the~~ state ~~of Indiana~~ for the purpose of proposing the creation of a bi-state authority composed of members from both states, recognized under the laws of both states, and existing for the purpose of financing, constructing, and operating a project or projects mutually beneficial to both states.
- (b) If established, the Kentucky membership of the bi-state authority shall consist of seven (7) members, three (3) of whom shall be appointed by the Governor, and four (4) of whom shall be appointed by the chief executive of the local government in which the project is located. The four (4) local government appointees shall be residents of the county in which the project is located. If a project is located in a consolidated local government, no more than two (2) appointees shall reside in the same Kentucky senatorial district. If portions of the project are located in more than one (1) local government, the chief executive of the county or consolidated local government having the largest population shall make the appointments authorized in this paragraph.
- (c) Any proposed agreement to establish a bi-state authority shall be presented to the state authority for approval. If the state authority approves the agreement, it shall be submitted to the General Assembly for ratification. If the agreement is ratified by the General Assembly, the state authority shall authorize the

establishment of a bi-state authority and shall enter into an agreement with the state of Indiana for the creation of a bi-state authority.

- (3) (a) Kentucky members of a proposed bi-state authority who are appointed by the Governor shall be confirmed by the Senate in accordance with KRS 11.160. Members appointed by the chief executive of the local government shall be confirmed by the governing body of the local government.
- (b) At least two (2) of the Governor's appointees and two (2) of the chief executive's appointees shall be familiar with road and bridge design or financing and administration of transportation infrastructure projects.
- (c) Members of a bi-state authority appointed by the Governor shall serve for four (4) years, except that initial appointments shall be as follows:
1. One (1) appointee shall serve a term of two (2) years;
  2. One (1) appointee shall serve a term of three (3) years; and
  3. One (1) appointee shall serve a term of four (4) years.
- (d) The governing body of the local government requesting formation of the bi-state authority shall, by resolution, establish term lengths for the initial and succeeding members who are locally appointed, with each term not to exceed four (4) years.
- (e) Members of a bi-state authority representing the Commonwealth may be reappointed upon the expiration of their terms. Members reappointed shall be reconfirmed in the same manner as newly appointed members.
- (4) (a) An agreement establishing a bi-state authority shall at a minimum:
1. Establish the total number of members of the bi-state authority;
  2. Establish staffing and funding to support the work of the bi-state authority;
  3. Designate the process for selecting a presiding officer of the bi-state authority, which shall include a requirement that a member from each



- state share the duties of presiding; and
4. Require the approval of a majority of the members from each state before any action may be taken or any change may be made by the bi-state authority.
- (b) A bi-state authority created pursuant to this section shall take the legal form necessary to conform to the laws of both states. The Commonwealth shall consider the bi-state authority to be an independent de jure municipal corporation, constituting a governmental agency and instrumentality of the appropriate jurisdictions. The bi-state authority shall adopt a name indicative of its location and purpose.
  - (c) Any bi-state agreement approved pursuant to this section may be presented to the United States Congress for consent thereof by joint resolution as provided in Article 1, Section 10, Clause 3 of the United States Constitution.
- (5)
    - (a) Members of a bi-state authority appointed from the Commonwealth shall be considered public servants subject to KRS Chapter 11A.
    - (b) Members of a bi-state authority appointed from the Commonwealth shall receive no compensation for their services, but shall be entitled to reimbursement for all reasonable expenses necessary and incidental to the performance of their duties and functions as members of the bi-state authority.
    - (c) The following individuals or entities shall be prohibited from entering into any contract or agreement with a bi-state authority or a public-private partnership:
      1. Any member of the bi-state authority appointed to represent the Commonwealth or any member of the state authority, ~~or~~ a project authority, or a public-private partnership;
      2. Any spouse, child, stepchild, parent, stepparent, or sibling of a member of the bi-state authority appointed to represent the Commonwealth or

- any spouse, child, stepchild, parent, stepparent, or sibling of a member of the state authority, ~~or~~ a project authority, or a public-private partnership; and
3. Any corporation, limited liability entity, or other business entity of which a person identified in subparagraph 1. or 2. of this paragraph is an owner, member, or partner or has any other ownership interest.
- (d) A bi-state authority or public-private partnership shall comply with the procurement laws of both states that are a party to the agreement creating the bi-state authority or public-private partnership, including the provisions of KRS Chapter 45A, in the development of a project and the procurement of goods and services.
- (e) A bi-state authority or public-private partnership shall comply with the laws of both states concerning the inspection and disclosure of public records, including KRS 61.870 to 61.884.
- (f) A bi-state authority or public-private partnership shall comply with the laws of both states concerning the conduct of open meetings, including KRS 61.805 to 61.850.
- (6) (a) ~~[After creation of the bi-state authority and ]~~Prior to the execution of any agreements for the construction of the project, the state authority, the bi-state authority, a public-private partnership, or any combination of these, if appropriate, shall prepare a financial plan specifying the construction and financing parameters of the project, including:
- 1.~~(a)~~ A timeline for construction of the project, including financing requirements throughout the construction of the project;
  - 2.~~(b)~~ The amount and duration of per-vehicle tolls;
  - 3.~~(c)~~ Expected appropriations from the General Assembly to be used for project costs; however, no financial plan shall be submitted or approved

which contains expected appropriations by the General Assembly beyond those appropriated in the most recently enacted biennial highway construction plan;

~~4.{(d)}~~ Other sources of funds and expected amounts; and

~~5.{(e)}~~ Other provisions relating to the construction and financing of the project.

**(b) 1. If the financial plan is prepared by a bi-state authority,** the Kentucky members of the bi-state authority shall consult with the involved local governments in Kentucky, the department, and the Finance and Administration Cabinet, Office of Financial Management, during the development of the financial plan. Upon completion and approval of the financial plan by the bi-state authority, the plan shall be submitted to the state authority for approval.

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

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

(c) The state authority shall not approve or recommend a financial plan which contains expected appropriations by the General Assembly beyond those appropriated in the most recently enacted biennial highway construction plan. If the financial plan is approved or recommended by the state authority, the cabinet and, as necessary, other state agencies or local governments may enter into a development agreement as provided in subsection (7) of this section with all necessary parties for the development of a project.

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

1. Require the bi-state authority or public-private partnership to submit an annual report to the cabinet and the Legislative Research Commission;
2. Require that an annual audit of the bi-state authority or public-private partnership be performed by a certified public accountant;
3. Include the relevant provisions from the financial plan required by subsection (6) of this section;
4. Include provisions detailing the duties, responsibilities, and obligations of each party in relation to the financing, development, operation, and maintenance of the project, and the servicing and retirement of all bonds;
5. Establish limits on any reserve funds created for operation, maintenance, or bond servicing, which shall be at a level to adequately operate and maintain the project and ensure proper bond servicing;
6. Prohibit the amendment of the project or the financial plan without the prior evaluation and approval by the state authority. No amendment

shall be approved that provides for expected appropriations by the General Assembly beyond those appropriated in the most recently enacted biennial highway construction plan;

7. Establish a process for the transfer of ownership of the portion of the project that is within the Commonwealth to the Commonwealth upon retirement of all bonds associated with the project; and
8. **a. For a bi-state authority,** require the approval of a majority of the members from each state before any action may be taken or any changes may be made by the bi-state authority.
  - b. For a public-private partnership, require approval of a majority of the partners, and separate approval by the transportation agency of each state involved, before any action may be taken or any changes may be made by the public-private partnership.**
    - (b) The parties to the agreement from the Commonwealth shall consult with the department and the Finance and Administration Cabinet, Office of Financial Management, in the development of the agreement.
    - (c) Additional agreements may be executed, as necessary to complete the project.
- (8) The General Assembly hereby finds and declares that in carrying out the functions, powers, and duties as prescribed in this chapter, a bi-state authority authorized under this section will be performing essential public and government functions that improve the public welfare and prosperity of the people of the Commonwealth by promoting the availability of and enhancing accessibility to improved transportation services within the Commonwealth.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 175B IS CREATED TO READ AS FOLLOWS:

**(1) The state authority, a bi-state authority, or a project authority may, with approval of the General Assembly pursuant to subsection (4) of Section 3 of this Act,**

utilize a public-private partnership in financing a project.

- (2) An authority utilizing a public-private partnership shall continue to be responsible for oversight of any function authorized by this chapter that is delegated to or otherwise performed by a public-private partnership.
- (3) A public-private partnership shall not be used to circumvent any requirements or restrictions placed upon any authority pursuant to this chapter. A private partner shall be subject to the same requirements, restrictions, and standards placed upon the authority by this chapter.
- (4) An authority proposing to utilize a public-private partnership shall include in the financial plan required by KRS 175B.030 or 175B.035:
- (a) The parameters of the public-private partnership agreement;
  - (b) The duties and responsibilities to be performed by the private partner or partners;
  - (c) The methods of oversight to be employed by the authority;
  - (d) The duties and responsibilities of the project that are to be performed by the authority, the cabinet, and any other partners to the agreement; and
  - (e) Other information required by the state authority or the cabinet to evaluate the financial plan and the proposed public-private partnership.
- (5) A private entity desiring to be a private partner shall demonstrate to the satisfaction of the state authority and the cabinet that it is capable of performing any function to be authorized by the public-private partnership.
- (6) A public-private partnership authorized or utilized pursuant to this section shall be subject to the provisions of subsections (5) to (9) of Section 4 of this Act.