

175B.035 Development of projects within Kentucky -- Project authority -- Financial plan -- Submission of project for legislative ratification -- Membership of project authority -- Development agreement -- Commonwealth owns project upon bond retirement or termination of partnership.

- (1) Potential projects that are within Kentucky may be developed by a project authority as provided in this section, or by a public-private partnership as provided in KRS 175B.037.
- (2) A local government that contains a portion of a proposed project may, by resolution of its governing body, request the state authority to evaluate the establishment of a project authority or a public-private partnership for the purpose of developing a project.
- (3) The state authority may request that the department evaluate the proposed project by preparation of a financial plan evaluating all aspects of the proposed project, including:
 - (a) The most effective location for the project;
 - (b) The impact on local governments and citizens at the location of or along the path of the project;
 - (c) A detailed analysis of the proposed cost of the project;
 - (d) The potential economic impact to the areas affected by the project;
 - (e) The anticipated level of use of the project;
 - (f) The amount and duration of per-vehicle tolls;
 - (g) Expected appropriations from the General Assembly to be used for the project; however, no financial plan shall be submitted or approved which seeks or purports to bind any future General Assembly to appropriate any moneys beyond those appropriated in the most recently enacted biennial highway construction plan;
 - (h) The ability of a potential contractor or service provider to quickly respond to the needs presented in a major transportation project, and the importance of economic development opportunities represented by the construction of any project under this chapter. In evaluating proposals, preference shall be given to a plan that includes the involvement of small businesses as subcontractors, to the extent that small businesses can provide services in a competitive manner, unless any preference interferes with the qualification for federal funds;
 - (i) Other sources of funds and expected amounts; and
 - (j) Any other provisions relating to the construction and financing of the project.
- (4) If, based on the project evaluation prepared pursuant to subsection (3) of this section, the state authority and the department determine that the development of the project is economically feasible, the state authority shall submit the proposal to the General Assembly for ratification. If ratified by the General Assembly, the state authority may request that the Governor establish a project authority in accordance with the following:
 - (a) The project authority shall be established as an independent de jure

municipal corporation and political subdivision of the Commonwealth constituting a governmental agency and instrumentality of the Commonwealth, with the power to contract and be contracted with, acquire and convey property, sue and be sued, and exercise all of the usual powers of corporations not inconsistent with the authority's specifically enumerated purpose and duties;

- (b) The project authority shall adopt a name that includes the name of the project and the words "Project Authority";
 - (c) The project authority shall be composed of seven (7) members, three (3) of whom shall be appointed by the Governor and confirmed by the Senate in accordance with KRS 11.160, and four (4) of whom shall be appointed by the chief executive of the local government that requested establishment of the project authority and confirmed by resolution of the local government's governing body;
 - (d) Each member of the project authority shall be appointed for a period of four (4) years, except that in making initial appointments, the Governor shall appoint members for one (1), three (3), and four (4) years, and the chief executive shall appoint two (2) members each for two (2) and four (4) years; and
 - (e) At least one (1) of the Governor's appointees and two (2) of the chief executive's appointees shall be familiar with road and bridge design or financing and administration of transportation infrastructure projects.
- (5) (a) Within ninety (90) days of its establishment under subsection (4) of this section, the project authority shall convene and organize. The project authority shall elect a chair and a vice chair, who shall be members of the project authority and elected by a majority of the project authority members. The project authority shall appoint a secretary and a treasurer who shall not be members of the project authority, each of whom shall serve at the pleasure of the project authority and shall receive compensation as determined and paid by the project authority.
- (b) The treasurer shall give bond in an amount prescribed by the project authority to the project authority and the state conditioned upon a faithful accounting for all the funds coming into the treasurer's custody, with corporate surety given by a surety company qualified to do business in the state, the premium of which shall be paid by the project authority.
 - (c) The project authority shall maintain an office, and the secretary of the project authority shall maintain in that office complete records of all the project authority's actions and proceedings, which shall be considered open records under KRS 61.870 to 61.884.
 - (d) A project authority shall comply with the applicable provisions of KRS Chapter 45A in the development of a project and the procurement of goods and services.
 - (e) The meetings of a project authority shall be considered open meetings pursuant to KRS 61.805 to 61.850.
- (6) A majority of the members of a project authority shall constitute a quorum for the transaction of business. The members of a project authority shall receive

no compensation for their services in that capacity, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as members.

- (7)
 - (a) Members of a project authority shall be considered public servants subject to the provisions of KRS Chapter 11A.
 - (b) The following individuals or entities shall be prohibited from entering into any contract or agreement with a project authority or a public-private partnership:
 1. Any member of a project authority, a bi-state authority, the state authority, or a public-private partnership;
 2. Any spouse, child, stepchild, parent, stepparent, or sibling of a member of a project authority, a bi-state authority, the state authority, or a public-private partnership; and
 3. Any corporation, limited liability entity, or other business entity of which a person identified in subparagraph 1. or 2. of this paragraph is an owner, a member, a partner, or has any other ownership interest.
- (8)
 - (a) The state authority shall enter into a development agreement with a project authority or a public-private partnership to establish the terms and conditions under which a project will be undertaken. No financial plan shall be submitted or approved which seeks or purports to bind any future General Assembly to appropriate any moneys beyond those appropriated in the most recently enacted biennial highway construction plan.
 - (b) The development agreement shall establish the duties, responsibilities, and powers of the state authority, the project authority, a public-private partnership, and, as necessary, the cabinet with regard to the project.
 - (c) The development agreement shall include, at a minimum, all information necessary relating to the creation, development, operation, and disposal of the project. No financial plan shall be submitted or approved which seeks or purports to bind any future General Assembly to appropriate any moneys beyond those appropriated in the most recently enacted biennial highway construction plan.
 - (d) After the proposed project has been approved and set forth in the development agreement, it shall not be changed or expanded without evaluation and approval by the state authority and ratification by the General Assembly.
 - (e) Additional agreements may be executed, as necessary, between the state authority, the project authority, a public-private partnership, the department, and the cabinet.
- (9) The provisions of this chapter relating to the duties, responsibilities, powers, and authorities of the state authority shall apply to a project authority or a public-private partnership to the extent that the duties, responsibilities, powers, and authorities are required for the project authority or public-private partnership to carry out its duties and responsibilities under a development agreement.
- (10) Upon retirement of all bonds associated with a project developed under this

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

Effective: March 27, 2017

History: Amended 2017 Ky. Acts ch. 132, sec. 10, effective March 27, 2017. -- Amended 2016 Ky. Acts ch. 67, sec. 12, effective April 8, 2016. -- Created 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 81, effective June 26, 2009.