

FIRST REGULAR SESSION

# SENATE BILL NO. 512

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAAF.

Read 1st time February 25, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2301S.011

## AN ACT

To repeal section 610.021, RSMo, and to enact in lieu thereof twenty-four new sections relating to the partnership for public facilities and infrastructure act.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 610.021, RSMo, is repealed and twenty-four new  
2 sections enacted in lieu thereof, to be known as sections 34.700, 34.703, 34.706,  
3 34.709, 34.712, 34.715, 34.718, 34.721, 34.724, 34.727, 34.730, 34.733, 34.736,  
4 34.739, 34.742, 34.745, 34.748, 34.751, 34.754, 34.757, 34.758, 34.760, 34.763, and  
5 610.021, to read as follows:

**34.700. 1. Sections 34.700 to 34.763 shall be known and may be  
2 cited as the "Partnership For Public Facilities And Infrastructure Act".**

**3 2. As used in sections 34.700 to 34.763, unless the context  
4 requires a different meaning, the following terms shall mean:**

**5 (1) "Affected jurisdiction", any county, city, or town in which all  
6 or a portion of a qualifying project is located;**

**7 (2) "Appropriating body", the body responsible for appropriating  
8 or authorizing funding to pay for a qualifying project;**

**9 (3) "Commission", the partnership for public infrastructure  
10 advisory commission created in section 34.760;**

**11 (4) "Competitive negotiation", a method of contractor selection  
12 that includes the following elements:**

**13 (a) Issuance of a written request for proposal indicating in  
14 general terms that which is sought to be procured, specifying the  
15 factors to be used in evaluating the proposal, and containing or  
16 incorporating by reference the other applicable contractual terms and**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

17 conditions, including any unique capabilities or qualifications that  
18 shall be required of the contractor;

19 (b) Public notice of the request for proposal at least ten days  
20 prior to the date set for receipt of proposals by posting on any  
21 appropriate website. Additionally, the public entity shall publish in a  
22 newspaper of general circulation in the area in which the contract is  
23 to be performed to provide reasonable notice to the maximum number  
24 of offerors that are reasonably anticipated to submit proposals in  
25 response to the particular request. Posting on the office of  
26 administration's website shall be required of any state public  
27 body. Local public bodies are encouraged to utilize the office of  
28 administration's website to provide the public with centralized  
29 visibility and access to the state's procurement opportunities. In  
30 addition, proposals may be solicited from potential contractors;

31 (c) With regard to the procurement solely of professional  
32 services under sections 34.500 to 34.570, the public body shall engage  
33 in individual discussions with two or more offerors deemed fully  
34 qualified, responsible, and suitable on the basis of initial responses and  
35 with emphasis on professional competence to provide the required  
36 services. Repetitive informal interviews shall be permissible. The  
37 offerors shall be encouraged to elaborate on their qualifications and  
38 performance data or staff expertise pertinent to the proposed project,  
39 as well as alternative concepts. In addition, offerors shall be informed  
40 of any ranking criteria to be used by the public entity in addition to the  
41 review of the professional competence of the offeror. The request for  
42 proposal shall not request that offerors furnish estimates of man-hours  
43 or cost for services. At the discussion stage, the public body may  
44 discuss nonbinding estimates of total project costs, including but not  
45 limited to life-cycle costing and, where appropriate, nonbinding  
46 estimates of price for services. Proprietary information from  
47 competing offerors shall not be disclosed to the public or to  
48 competitors. At the conclusion of discussion and on the basis of  
49 evaluation factors published in the request for proposal and all  
50 information developed in the selection process to such point, the public  
51 body shall select in the order of preference two or more offerors whose  
52 professional qualifications and proposed services are deemed most  
53 meritorious. Negotiations shall be conducted, beginning with the

54 offeror ranked first. If a contract satisfactory and advantageous to the  
55 public body is negotiated at a price considered fair and reasonable, the  
56 award shall be made to such offeror. Otherwise, negotiations with the  
57 offeror ranked first shall be formally terminated and negotiations  
58 conducted with the offeror ranked second, and so on until such a  
59 contract is negotiated at a fair and reasonable price. Notwithstanding  
60 the foregoing, if the terms and conditions for multiple awards are  
61 included in the request for proposal, a public body may award  
62 contracts to more than one offeror; and

63 (d) With regard to procurement not related to professional  
64 services under sections 34.500 to 34.570, selection shall be made of two  
65 or more offerors deemed fully qualified and best suited among those  
66 submitting proposals on the basis of the factors involved in the request  
67 for proposal, including price if so stated in the request for  
68 proposal. Negotiations shall be conducted with each of the offerors  
69 selected. Price shall be considered, but need not be the sole  
70 determining factor. After negotiations have been conducted with each  
71 offeror selected, the public entity shall select the offeror which, in its  
72 opinion, has made the best proposal and shall award the contract to  
73 that offeror. When the terms and conditions of multiple awards are  
74 provided in the request for proposal, awards may be made to more than  
75 one offeror.

76 If the public entity determines in writing and in its sole discretion that  
77 only one offeror is fully qualified or that one offeror is clearly more  
78 highly qualified than the others under consideration, a contract may be  
79 negotiated and awarded to such offeror;

80 (5) "Competitive sealed bidding", a method of contractor  
81 selection, other than for professional services, which includes the  
82 issuance of a written invitation to bid containing or incorporating by  
83 reference the specifications and contractual terms and conditions  
84 applicable to the procurement. Unless the public entity has provided  
85 for prequalification of bidders, the invitation to bid shall include a  
86 statement of any requisite qualifications of potential contractors. When  
87 it is impractical to prepare an initial purchase description to support  
88 an award based on prices, an invitation to bid shall be issued  
89 requesting the submission of unpriced offers to be followed by an  
90 invitation to bid limited to those bidders whose offers have been

91 qualified under the criteria set forth in the first solicitation. All bids  
92 shall be publically opened and announced. Evaluation of bids shall be  
93 based upon the requirements set forth in the invitation, which may  
94 include special qualifications of potential contractors and any other  
95 criteria the public entity deems fit to include;

96 (6) "Comprehensive agreement", the comprehensive agreement  
97 between the private entity and the responsible public entity required  
98 by section 34.724;

99 (7) "Develop" or "development", to plan, design, develop, finance,  
100 lease, acquire, install, construct, or expand;

101 (8) "Interim agreement", an agreement between a private entity  
102 and a responsible public entity that provides for phasing of the  
103 development or operation, or both, of a qualifying project;

104 (9) "Lease payment", any form of payment, including a land lease,  
105 by a public entity to the private entity for the use of a qualifying  
106 project;

107 (10) "Material default", any default by the private entity in the  
108 performance of its duties under subsection 5 of section 37.718 that  
109 jeopardizes adequate service to the public from a qualifying project;

110 (11) "Operate", to finance, maintain, improve, equip, modify, or  
111 repair;

112 (12) "Private entity", any natural person, corporation, general  
113 partnership, limited liability company, limited partnership, joint  
114 venture, business trust, public benefit corporation, or other business  
115 entity;

116 (13) "Professional services", work performed by an independent  
117 contractor within the scope of the practice of accounting, actuarial  
118 services, architecture, land surveying, landscape architecture, law,  
119 dentistry, medicine, optometry, pharmacy or professional  
120 engineering. "Professional services" shall also include the services of  
121 an economist procured by the secretary of state;

122 (14) "Public entity", the state of Missouri and any agency or  
123 authority thereof, any county, city or town and any other political  
124 subdivision of the state, or any public body politic and corporate;

125 (15) "Qualifying project":

126 (a) Any education facility, including, but not limited to a school  
127 building, any functionally related and subordinate facility and land to

128 a school building (including any stadium or other facility primarily  
129 used for school events), and any depreciable property provided for use  
130 in a school facility that is operated as part of the public school system  
131 or as an institution of higher education;

132 (b) Any building or facility that meets a public purpose and is  
133 developed or operated by or for any public entity;

134 (c) Any improvements, together with equipment, necessary to  
135 enhance public safety and security of buildings to be principally used  
136 by a public entity;

137 (d) Utility and telecommunications and other communications  
138 infrastructure;

139 (e) Technology infrastructure, services, and applications,  
140 including, but not limited to, telecommunications, automated data  
141 processing, word processing and management information systems, and  
142 related information, equipment, goods and services;

143 (f) Any services designed to increase the productivity or  
144 efficiency of the responsible public entity through the use of technology  
145 or other means;

146 (g) Any technology, equipment, or infrastructure designed to  
147 deploy wireless broadband services to schools, businesses, or  
148 residential areas; or

149 (h) Any improvements necessary to any unimproved locally- or  
150 state-owned real estate;

151 (16) "Responsible public entity", a public entity that has the  
152 power to develop or operate the applicable qualifying project;

153 (17) "Revenues", all income, earnings, user fees, lease payments,  
154 or other service payments arising out of or in connection with  
155 supporting the development or operation of a qualifying project;

156 (18) "Service contract", a contract entered into between a public  
157 entity and the private entity under section 34.712;

158 (19) "Service payments", payments to the private entity of a  
159 qualifying project under a service contract;

160 (20) "State", the state of Missouri;

161 (21) "User fees", the rates, fees or other charges imposed by the  
162 private entity of a qualifying project for use of all or a portion of such  
163 qualifying project under the comprehensive agreement under section  
164 34.724.

34.703. 1. Any private entity seeking authorization under sections 34.700 to 34.763 to develop or operate a qualifying project shall first obtain approval of the responsible public entity under section 34.709. Such private entity may initiate the approval process by requesting approval under subsection 1 of section 34.709 or the responsible public entity may request proposals or invite bids under subsection 2 of section 34.709.

2. Any facility, building, infrastructure, or improvement included in a proposal as a part of a qualifying project shall be identified specifically or conceptually.

3. Upon receipt by the responsible public entity of a proposal submitted by a private entity initiating the approval process under subsection 1 of section 34.709, the responsible public entity shall determine whether to accept such proposal for consideration in accordance with section 34.748. If the responsible public entity determines not to accept for consideration the proposal submitted by the private entity under subsection 1 of section 34.709, it shall return the proposal, together with all fees and accompanying documentation, to the private entity.

4. The responsible public entity may reject any proposal initiated by a private entity under subsection 1 of section 34.709 at any time. If the responsible public entity rejects a proposal initiated by a private entity that purports to develop specific cost savings, the public entity shall specify the basis for the rejection.

34.706. 1. A responsible public entity shall, prior to requesting or considering a proposal for a qualifying project, adopt and make publicly available guidelines that are sufficient to enable the responsible public entity to comply with sections 34.700 to 34.763. Such guidelines shall be reasonable, encourage competition, and guide the selection of projects under the purview of the responsible public entity.

2. For a responsible public entity that is an agency or institution of the state, the guidelines shall include, but not be limited to:

(1) Opportunities for competition through public notice and availability of representatives of the responsible public entity to meet with private entities considering a proposal;

(2) Reasonable criteria for choosing among competing proposals;

(3) Suggested timelines for selecting proposals and negotiating

14 an interim or comprehensive agreement;

15 (4) Authorization for accelerated selection and review and  
16 documentation time lines for proposals involving a qualifying project  
17 that the responsible public entity deems a priority;

18 (5) Financial review and analysis procedures that shall include,  
19 at a minimum, a cost-benefit analysis, an assessment of opportunity  
20 cost, and consideration of the results of all studies and analyses related  
21 to the proposed qualifying project. These procedures shall also include  
22 requirements for the disclosure of such analysis to the appropriating  
23 body for review prior to execution of an interim or comprehensive  
24 agreement;

25 (6) Consideration of the nonfinancial benefits of a proposed  
26 qualifying project;

27 (7) A mechanism for the appropriating body to review a proposed  
28 interim or comprehensive agreement prior to execution, which shall be  
29 in compliance with applicable law and the provisions of subsection 9  
30 of section 34.709 pertaining to the approval of qualifying projects;

31 (8) Establishment of criteria for:

32 (a) The creation of and the responsibilities of a public-private  
33 partnership oversight committee with members representing the  
34 responsible public entity and the appropriating body; or

35 (b) Compliance with the requirements of section 34.763.

36 Such criteria shall include the scope, costs, and duration of the  
37 qualifying project, as well as whether the project involves or impacts  
38 multiple public entities. The oversight committee, if formed, shall be  
39 an advisory committee to review the terms of any proposed interim or  
40 comprehensive agreement;

41 (9) Analysis of the adequacy of the information released when  
42 seeking competing proposals and providing for the enhancement of that  
43 information, if deemed necessary, to encourage competition under  
44 subsection 7 of section 34.709;

45 (10) Establishment of criteria, key decision points, and approvals  
46 required to ensure that the responsible public entity considers the  
47 extent of competition before selecting proposals and negotiating an  
48 interim or comprehensive agreement; and

49 (11) The posting and publishing of public notice of a private  
50 entity's request for approval of a qualifying project, including:

51           **(a) Specific information and documentation to be released**  
52 **regarding the nature, timing, and scope of the qualifying project under**  
53 **subsection 1 of section 34.709;**

54           **(b) A reasonable time period as determined by the responsible**  
55 **public entity to encourage competition in accordance with the goals of**  
56 **sections 34.700 to 34.763, such reasonable period not to be less than**  
57 **forty-five days, during which time the responsible public entity shall**  
58 **receive competing proposals under subsection 1 of section 35.709; and**

59           **(c) A requirement for giving public notice and posting a notice**  
60 **on the office of administration's website shall be included.**

61           **3. For a responsible public entity that is not an agency or**  
62 **institution of the state, the guidelines may include the provisions set**  
63 **forth in subsection 2 of this section in the discretion of such public**  
64 **entity. However, the guidelines of a responsible public entity that is**  
65 **not an agency or institution of the state shall include:**

66           **(1) A requirement that it engage the services of qualified**  
67 **professionals, which may include an architect, professional engineer,**  
68 **or certified public accountant, not otherwise employed by the**  
69 **responsible public entity, to provide independent analysis regarding**  
70 **the specifics, advantages, disadvantages, and the long- and short-term**  
71 **costs of any request by a private entity for approval of a qualifying**  
72 **project unless the governing body of the responsible public entity**  
73 **determines that such analysis of a request by a private entity for**  
74 **approval of a qualifying project shall be performed by employees of the**  
75 **responsible public entity; and**

76           **(2) A mechanism for the appropriating body to review a proposed**  
77 **interim or comprehensive agreement prior to execution.**

**34.709. 1. A private entity may request approval of a qualifying**  
2 **project by the responsible public entity. Any such request shall be**  
3 **accompanied by the following material and information unless waived**  
4 **by the responsible public entity:**

5           **(1) A map of appropriate scale indicating the location of the**  
6 **qualifying project;**

7           **(2) A description of the qualifying project, including the**  
8 **conceptual design of such facility or facilities or a conceptual plan for**  
9 **the provision of services or technology infrastructure, and a schedule**  
10 **for the initiation of and completion of the qualifying project to include**

11 the proposed major responsibilities and time line for activities to be  
12 performed by both the public and private entity;

13 (3) A statement setting forth the method by which the private  
14 entity proposes to secure necessary property interests required for the  
15 qualifying project;

16 (4) Information relating to the current plans for development of  
17 facilities or technology infrastructure to be used by a public entity that  
18 are similar to the qualifying project being proposed by the private  
19 entity, if any, of each affected jurisdiction;

20 (5) A list of all permits and approvals required for the qualifying  
21 project from local, state, or federal agencies and a projected schedule  
22 for obtaining such permits and approvals;

23 (6) A list of public utility facilities, if any, that will be crossed by  
24 the qualifying project and a statement of the plans of the private entity  
25 to accommodate such crossings;

26 (7) A statement setting forth the private entity's general plans  
27 for financing the qualifying project including the sources of the private  
28 entity's funds and identification of any dedicated revenue source or  
29 proposed debt or equity investment on the behalf of the private entity;

30 (8) The names and addresses of the persons who may be  
31 contacted for further information concerning the request;

32 (9) User fees, lease payments, and other service payments over  
33 the term of the interim or comprehensive agreement under section  
34 34.724 or 34.727 and the methodology and circumstances for changes to  
35 such user fees, lease payments, and other service payments over time;  
36 and

37 (10) Such additional material and information as the responsible  
38 public entity may reasonably request.

39 2. The responsible public entity may request proposals or invite  
40 bids from private entities for the development or operation of  
41 qualifying projects.

42 3. The responsible public entity may grant approval of the  
43 qualifying project, or the design or equipping of a qualifying project so  
44 developed or operated, if the responsible public entity determines that  
45 the project serves the public purpose of sections 34.700 to 34.763. The  
46 responsible public entity may determine that the development or  
47 operation of the qualifying project as a qualifying project serves such

48 **public purpose if:**

49 **(1) There is a public need for the qualifying project of the type**  
50 **the private entity proposes as a qualifying project;**

51 **(2) The estimated cost of the qualifying project is reasonable in**  
52 **relation to similar facilities; and**

53 **(3) The private entity's plans will result in the timely**  
54 **development or operation of the qualifying project.**

55 **In evaluating any request, the responsible public entity may rely upon**  
56 **internal staff reports prepared by personnel familiar with the**  
57 **operation of similar facilities or the advice of outside advisors or**  
58 **consultants having relevant experience.**

59 **4. The responsible public entity may charge a reasonable fee to**  
60 **cover the costs of processing, reviewing, and evaluating the request,**  
61 **including without limitation, reasonable attorney's fees and fees for**  
62 **financial, technical, and other necessary advisors or consultants.**

63 **5. The approval of the responsible public entity shall be subject**  
64 **to the private entity's entering into an interim or comprehensive**  
65 **agreement under section 34.724 with the responsible public entity.**

66 **6. In connection with its approval of the qualifying project, the**  
67 **responsible public entity shall establish a date for the commencement**  
68 **of activities related to the qualifying project. The responsible public**  
69 **entity may extend such date from time to time.**

70 **7. The responsible public entity shall take appropriate action to**  
71 **protect confidential and proprietary information provided by the**  
72 **private entity under an agreement under subdivision (24) of section**  
73 **610.021.**

74 **8. Nothing in sections 34.700 to 34.763 or in an interim or**  
75 **comprehensive agreement entered into under sections 34.700 to 34.763**  
76 **shall be deemed to enlarge, diminish, or affect the authority, if any,**  
77 **otherwise possessed by the responsible public entity to take action that**  
78 **would impact the debt capacity of the state.**

79 **9. Prior to entering into the negotiation of an interim or**  
80 **comprehensive agreement, each responsible public entity that is an**  
81 **agency or institution of the state shall submit copies of detailed**  
82 **proposals to the commission as provided by 34.763.**

83 **10. Any proposed comprehensive agreement for a qualifying**  
84 **project where the responsible public entity is an agency or institution**

85 of the state that:

86 (1) Creates state tax-supported debt;

87 (2) Requires a level of appropriation significantly beyond the  
88 appropriation received by the responsible public entity in the most  
89 recent appropriation act; or

90 (3) Significantly alters the state's discretion to change the level  
91 of services or the funding for such services over time;

92 shall be reviewed by the appropriating body prior to execution.

34.712. In addition to any authority otherwise conferred by law,  
2 any public entity may contract with a private entity for the delivery of  
3 services to be provided as part of a qualifying project in exchange for  
4 such service payments and other consideration as such public entity  
5 may deem appropriate.

34.715. 1. Any private entity requesting approval from, or  
2 submitting a proposal to, a responsible public entity under section  
3 34.709 shall notify each affected jurisdiction by furnishing a copy of its  
4 request or proposal to each affected jurisdiction.

5 2. Each affected jurisdiction that is not a responsible public  
6 entity for the respective qualifying project shall, within sixty days after  
7 receiving such notice, submit any comments it may have in writing on  
8 the proposed qualifying project to the responsible public entity and  
9 indicate whether the facility is compatible with the local  
10 comprehensive plan, local infrastructure development plans, the capital  
11 improvements budget, or other government spending plan. Such  
12 comments shall be given consideration by the responsible public entity  
13 prior to entering a comprehensive agreement under section 34.724 with  
14 a private entity.

34.718. Any public entity may dedicate any property interest,  
2 including land, improvements, and tangible personal property, that it  
3 has for public use in a qualifying project if it finds that so doing will  
4 serve the public purpose of sections 34.700 to 34.763 by minimizing the  
5 cost of a qualifying project to the public entity or reducing the delivery  
6 time of a qualifying project. In connection with such dedication, a  
7 public entity may convey any property interest that it has, subject to  
8 the conditions imposed by general law governing such conveyances, to  
9 the private entity subject to the provisions of sections 34.700 to 34.763,  
10 for such consideration as such public entity may

11 determine. Consideration may include, without limitation, the  
12 agreement of the private entity to develop or operate the qualifying  
13 project. The property interests that the public entity may convey to the  
14 private entity in connection with a dedication under this section may  
15 include licenses, franchises, easements, or any other right or interest  
16 the public entity deems appropriate.

34.721. 1. The private entity shall have all power allowed by law  
2 generally to a private entity having the same form of organization as  
3 the private entity and shall have the power to develop or operate the  
4 qualifying project and collect lease payments, impose user fees, or  
5 enter into service contracts in connection with the use thereof.

6 2. The private entity may own, lease, or acquire any other right  
7 to use or operate the qualifying project.

8 3. Any financing of the qualifying project may be in such  
9 amounts and upon such terms and conditions as may be determined by  
10 the private entity. Without limiting the generality, the private entity  
11 may issue debt, equity, or other securities or obligations, enter into sale  
12 and leaseback transactions, and secure any financing with a pledge of,  
13 security interest in, or lien on, any or all of its property, including all  
14 of its property interests in the qualifying project.

15 4. In operating the qualifying project, the private entity may:

16 (1) Make classifications according to reasonable categories for  
17 assessment of user fees; and

18 (2) With the consent of the responsible public entity, make and  
19 enforce reasonable rules to the same extent that the responsible public  
20 entity may make and enforce rules with respect to similar facilities.

21 5. The private entity shall:

22 (1) Develop or operate the qualifying project in a manner that is  
23 acceptable to the responsible public entity, all in accordance with the  
24 provisions of the interim or comprehensive agreement under section  
25 34.724 or 34.727;

26 (2) Keep the qualifying project open for use by the members of  
27 the public at all times, or as appropriate based upon the use of the  
28 facility, after its initial opening upon payment of the applicable user  
29 fees, lease payments, or service payments; provided that the qualifying  
30 project may be temporarily closed because of emergencies or, with the  
31 consent of the responsible public entity, to protect the safety of the

32 public or for reasonable construction or maintenance activities. In the  
33 event that a qualifying project is technology infrastructure, access may  
34 be limited as determined by the conditions of the interim or  
35 comprehensive agreement;

36 (3) Maintain, or provide by contract for the maintenance or  
37 upgrade of the qualifying project, if required by the interim or  
38 comprehensive agreement;

39 (4) Cooperate with the responsible public entity in making best  
40 efforts to establish any interconnection with the qualifying project  
41 requested by the responsible public entity; and

42 (5) Comply with the provisions of the interim or comprehensive  
43 agreement and any lease or service contract.

44 6. Nothing shall prohibit a private entity of a qualifying project  
45 from providing additional services for the qualifying project to public  
46 or private entities other than the responsible public entity so long as  
47 the provision of additional service does not impair the private entity's  
48 ability to meet its commitments to the responsible public entity under  
49 the interim or comprehensive agreement as provided for in section  
50 34.724 or 34.727.

34.724. 1. Prior to developing or operating the qualifying  
2 project, the private entity shall enter into a comprehensive agreement  
3 with the responsible public entity. The comprehensive agreement shall  
4 provide for:

5 (1) Delivery of maintenance, performance, and payment bonds,  
6 letters of credit in connection with the development or operation of the  
7 qualifying project, in the forms and amounts satisfactory to the  
8 responsible public entity;

9 (2) Review of plans and specifications for the qualifying project  
10 by the responsible public entity and approval by the responsible public  
11 entity if the plans and specifications conform to standards acceptable  
12 to the responsible public entity. This shall not be construed as  
13 requiring the private entity to complete design of a qualifying project  
14 prior to the execution of a comprehensive agreement;

15 (3) Inspection of the qualifying project by the responsible public  
16 entity to ensure that the private entity's activities are acceptable to the  
17 responsible public entity in accordance with the provisions of the  
18 comprehensive agreement;

19           **(4) Maintenance of a policy or policies of public liability**  
20 **insurance, copies of which shall be filed with the responsible public**  
21 **entity accompanied by proofs of coverage, or self-insurance, each in**  
22 **form and amount satisfactory to the responsible public entity and**  
23 **reasonably sufficient to insure coverage of tort liability to the public**  
24 **and employees and to enable the continued operation of the qualifying**  
25 **project;**

26           **(5) Monitoring of the practices of the private entity by the**  
27 **responsible public entity to ensure that the qualifying project is**  
28 **properly maintained;**

29           **(6) Reimbursement to be paid to the responsible public entity for**  
30 **services provided by the responsible public entity;**

31           **(7) Filing of appropriate financial statements on a periodic basis;**  
32 **and**

33           **(8) Policies and procedures governing the rights and**  
34 **responsibilities of the responsible public entity and the private entity**  
35 **in the event the comprehensive agreement is terminated or there is a**  
36 **material default by the private entity. Such policies and guidelines**  
37 **shall include conditions governing assumption of the duties and**  
38 **responsibilities of the private entity by the responsible public entity**  
39 **and the transfer or purchase of property or other interests of the**  
40 **private entity by the responsible public entity.**

41           **2. The comprehensive agreement shall provide for such user fees,**  
42 **lease payments, or service payments as may be established from time**  
43 **to time by agreement of the parties. A copy of any service contract**  
44 **shall be filed with the responsible public entity. In negotiating user**  
45 **fees under this section, the parties shall establish payments or fees that**  
46 **are the same for persons using the facility under like conditions and**  
47 **that will not materially discourage use of the qualifying project. The**  
48 **execution of the comprehensive agreement or any amendment thereto**  
49 **shall constitute conclusive evidence that the user fees, lease payments,**  
50 **or service payments provided for comply with sections 34.700 to**  
51 **34.763. User fees or lease payments established in the comprehensive**  
52 **agreement as a source of revenues may be in addition to, or in lieu of,**  
53 **service payments.**

54           **3. In the comprehensive agreement, the responsible public entity**  
55 **may agree to make grants or loans to the private entity from time to**

56 time from amounts received from the federal, state, or local government  
57 or any agency or instrumentality thereof. However, any grants or loans  
58 shall not bind or obligate the state to take further legislative or  
59 regulatory action without approval from the general assembly.

60 4. The comprehensive agreement shall incorporate the duties of  
61 the private entity under sections 34.700 to 34.763 and may contain such  
62 other terms and conditions that the responsible public entity  
63 determines serve the public purpose of sections 34.700 to  
64 34.763. Without limitation, the comprehensive agreement may contain  
65 provisions under which the responsible public entity agrees to provide  
66 notice of default and cure rights for the benefit of the private entity  
67 and the persons specified therein as providing financing for the  
68 qualifying project. The comprehensive agreement may contain such  
69 other lawful terms and conditions to which the private entity and the  
70 responsible public entity mutually agree, including, without limitation,  
71 provisions regarding unavoidable delays or provisions providing for a  
72 loan of public funds to the private entity to develop or operate one or  
73 more qualifying projects. The comprehensive agreement may also  
74 contain provisions where the authority and duties of the private entity  
75 under sections 34.700 to 34.763 shall cease, and the qualifying project  
76 is dedicated to the responsible public entity or, if the qualifying project  
77 was initially dedicated by an affected jurisdiction, to such affected  
78 jurisdiction for public use.

79 5. Any changes in the terms of the comprehensive agreement, as  
80 may be agreed upon by the parties from time to time, shall be added to  
81 the comprehensive agreement by written amendment.

82 6. When a responsible public entity that is not an agency or  
83 authority of the state enters into a comprehensive agreement under  
84 sections 34.700 to 34.763, it shall within thirty days thereafter submit  
85 a copy of the comprehensive agreement to the state auditor.

86 7. The comprehensive agreement may provide for the  
87 development or operation of phases or segments of the qualifying  
88 project.

34.727. Prior to or in connection with the negotiation of the  
2 comprehensive agreement, the responsible public entity may enter into  
3 an interim agreement with the private entity proposing the  
4 development or operation of the qualifying project. Such interim

5 agreement may:

6 (1) Permit the private entity to commence activities for which it  
7 may be compensated relating to the proposed qualifying project,  
8 including, but not limited to, project planning and development, design  
9 and engineering, environmental analysis and mitigation, survey, and  
10 ascertaining the availability of financing for the proposed facility or  
11 facilities;

12 (2) Establish the process and timing of the negotiation of the  
13 comprehensive agreement; and

14 (3) Contain any other provisions related to any aspect of the  
15 development or operation of a qualifying project that the parties may  
16 deem appropriate.

34.730. 1. Any financing of a qualifying facility may be in such  
2 amounts and upon such terms and conditions as may be determined by  
3 the parties to the interim or comprehensive agreement. Without  
4 limiting the generality of the terms and conditions of the financing, the  
5 private entity and the responsible public entity may propose to utilize  
6 any and all funding resources that may be available to them and may,  
7 to the fullest extent permitted by applicable law, issue debt, equity, or  
8 other securities or obligations, enter into leases, borrow or accept  
9 grants from any state infrastructure bank, and secure any financing  
10 with a pledge of, security interest in, or lien on, any or all of its  
11 property, including all of its property interests in the qualifying  
12 facility.

13 2. The responsible public entity may take any action to obtain  
14 federal, state, or local assistance for a qualifying project that serves the  
15 public purpose of sections 34.700 to 34.763 and may enter into any  
16 contracts required to receive such assistance. If the responsible public  
17 entity is a state agency, any funds received from the state or federal  
18 government or any agency or instrumentality thereof shall be subject  
19 to appropriation by the general assembly. The responsible public  
20 entity may determine that it serves the public purpose of sections  
21 34.700 to 34.763 for all or any portion of the costs of a qualifying project  
22 to be paid, directly or indirectly, from the proceeds of a grant or loan  
23 made by the local, state, or federal government or any agency or  
24 instrumentality thereof.

34.733. 1. In the event of a material default by the private entity,

2 the responsible public entity may elect to assume the responsibilities  
3 and duties of the private entity of the qualifying project, and in such  
4 case, it shall succeed to all of the right, title and interest in such  
5 qualifying project, subject to any liens on revenues previously granted  
6 by the private entity to any person providing financing thereof.

7 2. Any responsible public entity having the power of  
8 condemnation under state law may exercise such power of  
9 condemnation to acquire the qualifying project in the event of a  
10 material default by the private entity. Any person who has provided  
11 financing for the qualifying project, and the private entity, to the  
12 extent of its capital investment, may participate in the condemnation  
13 proceedings with the standing of a property owner.

14 3. The responsible public entity may terminate, with cause, the  
15 interim or comprehensive agreement and exercise any other rights and  
16 remedies that may be available to it at law or in equity.

17 4. The responsible public entity may make or cause to be made  
18 any appropriate claims under the maintenance, performance, or  
19 payment bonds; or lines of credit required by subdivision (1) of  
20 subsection 1 of section 34.724.

21 5. In the event the responsible public entity elects to take over  
22 a qualifying project under subsection 1 of this section, the responsible  
23 public entity may develop or operate the qualifying project, impose  
24 user fees, impose and collect lease payments for the use thereof, and  
25 comply with any service contracts as if it were the private entity. Any  
26 revenues that are subject to a lien shall be collected for the benefit of  
27 and paid to secured parties, as their interests may appear, to the extent  
28 necessary to satisfy the private entity's obligations to secured parties,  
29 including the maintenance of reserves. Such liens shall be  
30 correspondingly reduced and, when paid off, released. Before any  
31 payments to, or for the benefit of, secured parties, the responsible  
32 public entity may use revenues to pay current operation and  
33 maintenance costs of the qualifying project, including compensation to  
34 the responsible public entity for its services in operating and  
35 maintaining the qualifying project. The right to receive such payment,  
36 if any, shall be considered just compensation for the qualifying  
37 project. The full faith and credit of the responsible public entity shall  
38 not be pledged to secure any financing of the private entity by the

39 election to take over the qualifying project. Assumption of operation  
40 of the qualifying project shall not obligate the responsible public entity  
41 to pay any obligation of the private entity from sources other than  
42 revenues.

34.736. At the request of the private entity, the responsible  
2 public entity may exercise any power of condemnation that it has  
3 under law for the purpose of acquiring any lands or estates or interests  
4 therein to the extent that the responsible public entity finds that such  
5 action serves the public purpose of sections 34.700 to 34.763. Any  
6 amounts to be paid in any such condemnation proceeding shall be paid  
7 by the private entity.

34.739. The private entity and each public service company,  
2 public utility, railroad, and cable television provider, whose facilities  
3 are to be crossed or affected shall cooperate fully with the other entity  
4 in planning and arranging the manner of the crossing or relocation of  
5 the facilities. Any such entity possessing the power of condemnation  
6 is hereby expressly granted such powers in connection with the moving  
7 or relocation of facilities to be crossed by the qualifying project or that  
8 must be relocated to the extent that such moving or relocation is made  
9 necessary or desirable by construction of, renovation to, or  
10 improvements to the qualifying project, which shall be construed to  
11 include construction of, renovation to, or improvements to temporary  
12 facilities for the purpose of providing service during the period of  
13 construction or improvement. Any amount to be paid for such crossing,  
14 construction, moving, or relocating of facilities shall be paid for by the  
15 private entity. If the private entity and any such public service  
16 company, public utility, railroad, and cable television provider not be  
17 able to agree upon a plan for the crossing or relocation, the public  
18 service commission may determine the manner in which the crossing  
19 or relocation is to be accomplished and any damages due arising out of  
20 the crossing or relocation. The public service commission may employ  
21 expert engineers who shall examine the location and plans for such  
22 crossing or relocation, hear any objections and consider modifications,  
23 and make a recommendation to the public service commission. In such  
24 a case, the cost of the experts is to be borne by the private entity. Such  
25 determination shall be made by the public service commission within  
26 ninety days of notification by the private entity that the qualifying

27 project will cross utilities subject to the public service commission's  
28 jurisdiction.

34.742. All police officers of the state and of each affected  
2 jurisdiction shall have the same powers and jurisdiction within the  
3 limits of such qualifying project as they have in their respective areas  
4 of jurisdiction and such police officers shall have access to the  
5 qualifying project at any time for the purpose of exercising such  
6 powers and jurisdiction.

34.745. Nothing in sections 34.700 to 34.763 shall be construed as  
2 or deemed a waiver of the sovereign immunity of the state, any  
3 responsible public entity or any affected jurisdiction or any officer or  
4 employee thereof with respect to the participation in, or approval of all  
5 or any part of the qualifying project or its operation, including but not  
6 limited to interconnection of the qualifying project with any other  
7 infrastructure or project. Counties, cities, and towns in which a  
8 qualifying project is located shall possess sovereign immunity with  
9 respect to its design, construction, and operation.

34.748. 1. Notwithstanding the provisions of section 8.250, 88.940,  
2 177.086, 182.270, or 248.110, or this chapter, or any other state  
3 purchasing requirements and any interpretations, regulations, or  
4 guidelines of the office of administration to the contrary, a responsible  
5 public entity may enter into a comprehensive agreement only in  
6 accordance with guidelines adopted by it as follows:

7 (1) A responsible public entity may enter into a comprehensive  
8 agreement in accordance with guidelines adopted by it that are  
9 consistent with procurement through competitive sealed bidding as set  
10 forth in sections 34.700 to 34.763;

11 (2) A responsible public entity may enter into a comprehensive  
12 agreement in accordance with guidelines adopted by it that are  
13 consistent with the procurement of other than professional services  
14 through competitive negotiation. Such responsible public entity shall  
15 not be required to select the proposal with the lowest price offer, but  
16 may consider price as one factor in evaluating the proposals  
17 received. Other factors that may be considered include:

18 (a) The proposed cost of the qualifying facility;

19 (b) The general reputation, industry experience, and financial  
20 capacity of the private entity;

- 21           (c) The proposed design of the qualifying project;
- 22           (d) The eligibility of the facility for accelerated selection, review,  
23 and documentation time lines under the responsible public entity's  
24 guidelines;
- 25           (e) Local citizen and government comments;
- 26           (f) Benefits to the public;
- 27           (g) The private entity's plans to employ local contractors and  
28 residents; and
- 29           (h) Other criteria that the responsible public entity deems  
30 appropriate;
- 31           (3) A responsible public entity shall proceed in accordance with  
32 the guidelines adopted by it under subdivision (1) of this subsection  
33 unless it determines that proceeding in accordance with the guidelines  
34 adopted by it under this subdivision is likely to be advantageous to the  
35 responsible public entity and the public, based on:
- 36           (a) The probable scope, complexity, or priority of the project;
- 37           (b) Risk sharing including guaranteed cost or completion  
38 guarantees, added value, or debt or equity investments proposed by the  
39 private entity; or
- 40           (c) An increase in funding, dedicated revenue source, or other  
41 economic benefit that would not otherwise be available. When the  
42 responsible public entity determines to proceed according to the  
43 guidelines adopted by it under this subdivision, it shall state the  
44 reasons for its determination in writing. If a state agency is the  
45 responsible public entity, the approval of the responsible department  
46 director, or the governor, shall be required before the responsible  
47 public entity may enter into a comprehensive agreement under this  
48 subdivision.
- 49           2. Nothing in sections 34.700 to 34.763 shall authorize or require  
50 that a responsible public entity obtain professional services through  
51 any process except in accordance with guidelines adopted by it that are  
52 consistent with the procurement of professional services through  
53 competitive negotiation.
- 54           3. A responsible public entity shall not proceed to consider any  
55 request by a private entity for approval of a qualifying project until the  
56 responsible public entity has adopted and made publicly available  
57 guidelines under section 34.706 that are sufficient to enable the

58 responsible public entity to comply with sections 34.700 to 34.763.

59         4. A responsible public entity that is a school board or a county,  
60 city, or town may enter into an interim or comprehensive agreement  
61 under sections 34.700 to 34.763 only with the approval of the local  
62 governing body.

63         5. Notwithstanding the provisions of sections 290.210 to 290.250  
64 to the contrary, for any comprehensive agreement under this section,  
65 a contractor or subcontractor may pay his or her workmen, as defined  
66 in section 290.210, a prevailing wage.

34.751. 1. Conceptual proposals submitted in accordance with  
2 subsection 1 or 2 of section 34.709 to a responsible public entity shall  
3 be posted by the responsible public entity within ten working days  
4 after acceptance of such proposals as follows:

5         (1) For responsible public entities that are state agencies,  
6 authorities, departments, institutions, and other units of state  
7 government, posting shall be on the office of administration's electronic  
8 procurement website; and

9         (2) For responsible public entities that are local bodies, posting  
10 shall be on the responsible public entity's website or on the office of  
11 administration's website. In addition, such public bodies may publish  
12 in a newspaper of general circulation in the area in which the contract  
13 is to be performed a summary of the proposals and the location where  
14 copies of the proposals are available for public inspection. Such local  
15 public bodies are encouraged to utilize the office of administration's  
16 website to provide the public with centralized visibility and access to  
17 the state's procurement opportunities.

18 In addition to the posting requirements, at least one copy of the  
19 proposals shall be made available for public inspection. Nothing in this  
20 section shall be construed to prohibit the posting of the conceptual  
21 proposals by additional means deemed appropriate by the responsible  
22 public entity so as to provide maximum notice to the public of the  
23 opportunity to inspect the proposals. Trade secrets, financial records,  
24 or other records of the private entity excluded from disclosure under  
25 the provisions of subdivision (24) of section 610.021 shall not be  
26 required to be posted, except as otherwise agreed to by the responsible  
27 public entity and the private entity.

28         2. The responsible public entity shall hold a public hearing on

29 the proposals during the proposal review process, but not later than  
30 thirty days prior to entering into an interim or comprehensive  
31 agreement.

32 3. Once the negotiation phase for the development of an interim  
33 or a comprehensive agreement is complete, but before an interim  
34 agreement or a comprehensive agreement is entered into, a responsible  
35 public entity shall make available the proposed agreement in a manner  
36 provided in subsection 1 of this section.

37 4. Once an interim agreement or a comprehensive agreement has  
38 been entered into, a responsible public entity shall make procurement  
39 records available for public inspection, upon request. For the purposes  
40 of this subsection, procurement records shall not be interpreted to  
41 include:

42 (1) Trade secrets of the private entity as defined in sections  
43 417.450 to 417.467; or

44 (2) Financial records, including balance sheets or financial  
45 statements of the private entity that are not generally available to the  
46 public through regulatory disclosure or otherwise.

47 5. Cost estimates relating to a proposed procurement transaction  
48 prepared by or for a responsible public entity shall not be open to  
49 public inspection.

50 6. Any inspection of procurement transaction records under this  
51 section shall be subject to reasonable restrictions to ensure the security  
52 and integrity of the records.

53 7. The provisions of this section shall apply to accepted  
54 proposals regardless of whether the process of bargaining will result  
55 in an interim or a comprehensive agreement.

34.754. 1. No private entity that has submitted a bid or proposal  
2 to a public entity that is an executive branch agency directly  
3 responsible to the governor and is seeking to develop or operate a  
4 qualifying project under sections 34.700 to 34.763, and no individual  
5 who is an officer or director of such a private entity, shall provide a  
6 contribution, gift, or other item with a value greater than fifty dollars  
7 or make an express or implied promise to make such a contribution or  
8 gift to the governor, his continuing committee, or any department  
9 directors, if the directors are responsible for an executive branch  
10 agency with jurisdiction over the matters at issue, following the

11 submission of a proposal under sections 34.700 to 34.763 until the  
12 execution of a comprehensive agreement thereunder.

13 2. Any person who knowingly violates this section shall be  
14 subject to a civil penalty of five hundred dollars or up to two times the  
15 amount of the contribution or gift, whichever is greater. The attorney  
16 general shall initiate civil proceedings to enforce the civil  
17 penalties. Any civil penalties collected shall be payable to the state  
18 treasurer for deposit to the general revenue fund.

34.757. The state auditor shall have the power and authority to  
2 review and audit any agreements entered into under sections 34.700 to  
3 34.763 to ensure compliance with the provisions of sections 34.700 to  
4 34.763.

34.758. Copies of the agreements and supporting documents shall  
2 be electronically filed with the office of administration, and electronic  
3 agreements shall be made available on the office of administration's  
4 electronic procurement website, as allowed by law.

34.760. 1. There is hereby established a "Partnership for Public  
2 Facilities and Infrastructure Advisory Commission". The purpose of the  
3 commission shall be to advise any and all responsible public entities  
4 that are state agencies, commissions, boards, or institutions supported  
5 in whole or in part by public funds on proposals received under  
6 sections 34.700 to 34.760.

7 2. The commission shall consist of eleven members as follows:

8 (1) The chairperson of the house appropriations committee, or  
9 his or her designee;

10 (2) Four members of the house of representatives, appointed by  
11 the speaker of the house of representatives;

12 (3) The chairperson of the senate appropriations committee, or  
13 his or her designee;

14 (4) Two members of the senate, appointed by the president pro  
15 tempore of the senate;

16 (5) The state treasurer, the commissioner of the office of  
17 administration and the budget director of the office of administration,  
18 or their designees.

19 Legislative members and the state treasurer shall serve on the  
20 commission until the expiration of their terms of office or until their  
21 successors are appointed. Office of administration members shall serve

22 as long as they are the commissioner or budget director.

23           3. The members of the commission shall elect from among the  
24 legislative membership a chairperson and a vice-chairperson who shall  
25 serve for two-year terms. The commission shall hold meetings  
26 quarterly or upon the call of the chairperson. A majority of the  
27 commission shall constitute a quorum.

28           4. Members of the commission shall serve without compensation,  
29 but shall be reimbursed for all actual and necessary expenses incurred  
30 in the performance of their official duties.

31           5. The office of the chief clerk of the house of representatives or  
32 the secretary of the senate shall provide clerical and administrative  
33 support based upon the house of the chairperson of the  
34 commission. The committee on legislative research shall provide legal,  
35 research, and policy analysis services to the commission. Technical  
36 assistance shall be provided by the staffs of the house and senate  
37 appropriations offices and the state auditor. Additional assistance as  
38 needed shall be provided by the office of administration.

39           6. A copy of the proceedings of the commission shall be filed with  
40 the committee on legislative research.

          34.763. 1. Each responsible public entity that is partially or fully  
2 funded by the state receiving detailed proposals from private entities  
3 for a qualifying project shall provide copies of such proposals to the  
4 chairperson of the commission, the chairperson of the house  
5 appropriations committee, and the chairperson of the senate  
6 appropriations committee or their designees, and the commissioner of  
7 the office of administration prior to entering into the negotiation of an  
8 interim or comprehensive agreement.

9           2. The following qualifying projects shall not be subject to review  
10 by the commission:

11           (1) Any proposed qualifying project with a total cost of less than  
12 three million dollars;

13           (2) Any proposed qualifying project with a total cost of three  
14 million dollars or more but less than fifty million dollars for which  
15 funds have been specifically appropriated as a public-private  
16 partnership in a general appropriation act or capital construction  
17 projects that have been authorized in an appropriation act, provided  
18 such projects do not increase in size more than five percent beyond the

19 plans and justifications that were the basis of the appropriation. For  
20 any qualifying project that will be completed in phases and for which  
21 no appropriation has been made for phases other than the current  
22 phase of the project, the commission may undertake additional reviews  
23 of such projects.

24       3. Within ten days of receipt of a complete copy of the detailed  
25 proposals for a qualifying project, the commission shall determine  
26 whether to accept or reject such proposals for review and notify the  
27 responsible public entity of its decision. If the commission accepts a  
28 proposal for review, the findings and recommendations of the  
29 commission shall be provided to the responsible public entity within  
30 forty-five days of receiving complete copies of the detailed proposals.  
31 If no findings or recommendations are provided by the commission to  
32 the responsible public entity within the forty-five-day period, the  
33 commission shall be deemed to have no findings or  
34 recommendations. Upon acceptance for review, the responsible public  
35 entity shall provide any additional information regarding the  
36 qualifying project upon the request of the commission, provided such  
37 information is available to or can be obtained by the responsible public  
38 entity.

39       4. The commission shall review accepted detailed proposals and  
40 provide findings and recommendations to the responsible public entity,  
41 including:

42           (1) Whether the terms and conditions of the proposals and  
43 proposed qualifying project create state tax-supported debt taking into  
44 consideration the specific findings of the commissioner of the office of  
45 administration with respect to such recommendation;

46           (2) An analysis of the potential financial impact of the qualifying  
47 project;

48           (3) A review of the policy aspects of the detailed proposals and  
49 the qualifying project; and

50           (4) Proposed general business terms and conditions. Review by  
51 the commission shall not be construed to constitute approval of any  
52 appropriations necessary to implement any subsequent interim or  
53 comprehensive agreement.

54       5. The responsible public entity shall not commence negotiation  
55 of an interim or comprehensive agreement until the commission has

56 **submitted its recommendations or rejected the detailed proposals for**  
57 **review.**

58 **6. The responsible public entity shall submit a copy of the**  
59 **proposed interim or comprehensive agreement to the commission, the**  
60 **chairperson of the house appropriations committee, and the**  
61 **chairperson of the senate appropriations committee or their designees,**  
62 **and the commissioner of the office of administration at least thirty days**  
63 **prior to execution of the agreement along with a report describing the**  
64 **extent to which the commission's recommendations were addressed in**  
65 **the proposed interim or comprehensive agreement.**

610.021. Except to the extent disclosure is otherwise required by law, a  
2 public governmental body is authorized to close meetings, records and votes, to  
3 the extent they relate to the following:

4 (1) Legal actions, causes of action or litigation involving a public  
5 governmental body and any confidential or privileged communications between  
6 a public governmental body or its representatives and its attorneys. However,  
7 any minutes, vote or settlement agreement relating to legal actions, causes of  
8 action or litigation involving a public governmental body or any agent or entity  
9 representing its interests or acting on its behalf or with its authority, including  
10 any insurance company acting on behalf of a public government body as its  
11 insured, shall be made public upon final disposition of the matter voted upon or  
12 upon the signing by the parties of the settlement agreement, unless, prior to final  
13 disposition, the settlement agreement is ordered closed by a court after a written  
14 finding that the adverse impact to a plaintiff or plaintiffs to the action clearly  
15 outweighs the public policy considerations of section 610.011, however, the  
16 amount of any moneys paid by, or on behalf of, the public governmental body  
17 shall be disclosed; provided, however, in matters involving the exercise of the  
18 power of eminent domain, the vote shall be announced or become public  
19 immediately following the action on the motion to authorize institution of such  
20 a legal action. Legal work product shall be considered a closed record;

21 (2) Leasing, purchase or sale of real estate by a public governmental body  
22 where public knowledge of the transaction might adversely affect the legal  
23 consideration therefor. However, any minutes, vote or public record approving  
24 a contract relating to the leasing, purchase or sale of real estate by a public  
25 governmental body shall be made public upon execution of the lease, purchase or  
26 sale of the real estate;

27 (3) Hiring, firing, disciplining or promoting of particular employees by a  
28 public governmental body when personal information about the employee is  
29 discussed or recorded. However, any vote on a final decision, when taken by a  
30 public governmental body, to hire, fire, promote or discipline an employee of a  
31 public governmental body shall be made available with a record of how each  
32 member voted to the public within seventy-two hours of the close of the meeting  
33 where such action occurs; provided, however, that any employee so affected shall  
34 be entitled to prompt notice of such decision during the seventy-two-hour period  
35 before such decision is made available to the public. As used in this subdivision,  
36 the term "personal information" means information relating to the performance  
37 or merit of individual employees;

38 (4) The state militia or national guard or any part thereof;

39 (5) Nonjudicial mental or physical health proceedings involving  
40 identifiable persons, including medical, psychiatric, psychological, or alcoholism  
41 or drug dependency diagnosis or treatment;

42 (6) Scholastic probation, expulsion, or graduation of identifiable  
43 individuals, including records of individual test or examination scores; however,  
44 personally identifiable student records maintained by public educational  
45 institutions shall be open for inspection by the parents, guardian or other  
46 custodian of students under the age of eighteen years and by the parents,  
47 guardian or other custodian and the student if the student is over the age of  
48 eighteen years;

49 (7) Testing and examination materials, before the test or examination is  
50 given or, if it is to be given again, before so given again;

51 (8) Welfare cases of identifiable individuals;

52 (9) Preparation, including any discussions or work product, on behalf of  
53 a public governmental body or its representatives for negotiations with employee  
54 groups;

55 (10) Software codes for electronic data processing and documentation  
56 thereof;

57 (11) Specifications for competitive bidding, until either the specifications  
58 are officially approved by the public governmental body or the specifications are  
59 published for bid;

60 (12) Sealed bids and related documents, until the bids are opened; and  
61 sealed proposals and related documents or any documents related to a negotiated  
62 contract until a contract is executed, or all proposals are rejected;

63 (13) Individually identifiable personnel records, performance ratings or  
64 records pertaining to employees or applicants for employment, except that this  
65 exemption shall not apply to the names, positions, salaries and lengths of service  
66 of officers and employees of public agencies once they are employed as such, and  
67 the names of private sources donating or contributing money to the salary of a  
68 chancellor or president at all public colleges and universities in the state of  
69 Missouri and the amount of money contributed by the source;

70 (14) Records which are protected from disclosure by law;

71 (15) Meetings and public records relating to scientific and technological  
72 innovations in which the owner has a proprietary interest;

73 (16) Records relating to municipal hotlines established for the reporting  
74 of abuse and wrongdoing;

75 (17) Confidential or privileged communications between a public  
76 governmental body and its auditor, including all auditor work product; however,  
77 all final audit reports issued by the auditor are to be considered open records  
78 pursuant to this chapter;

79 (18) Operational guidelines, policies and specific response plans  
80 developed, adopted, or maintained by any public agency responsible for law  
81 enforcement, public safety, first response, or public health for use in responding  
82 to or preventing any critical incident which is or appears to be terrorist in nature  
83 and which has the potential to endanger individual or public safety or  
84 health. Financial records related to the procurement of or expenditures relating  
85 to operational guidelines, policies or plans purchased with public funds shall be  
86 open. When seeking to close information pursuant to this exception, the public  
87 governmental body shall affirmatively state in writing that disclosure would  
88 impair the public governmental body's ability to protect the security or safety of  
89 persons or real property, and shall in the same writing state that the public  
90 interest in nondisclosure outweighs the public interest in disclosure of the  
91 records;

92 (19) Existing or proposed security systems and structural plans of real  
93 property owned or leased by a public governmental body, and information that is  
94 voluntarily submitted by a nonpublic entity owning or operating an infrastructure  
95 to any public governmental body for use by that body to devise plans for  
96 protection of that infrastructure, the public disclosure of which would threaten  
97 public safety:

98 (a) Records related to the procurement of or expenditures relating to

99 security systems purchased with public funds shall be open;

100 (b) When seeking to close information pursuant to this exception, the  
101 public governmental body shall affirmatively state in writing that disclosure  
102 would impair the public governmental body's ability to protect the security or  
103 safety of persons or real property, and shall in the same writing state that the  
104 public interest in nondisclosure outweighs the public interest in disclosure of the  
105 records;

106 (c) Records that are voluntarily submitted by a nonpublic entity shall be  
107 reviewed by the receiving agency within ninety days of submission to determine  
108 if retention of the document is necessary in furtherance of a state security  
109 interest. If retention is not necessary, the documents shall be returned to the  
110 nonpublic governmental body or destroyed;

111 (20) The portion of a record that identifies security systems or access  
112 codes or authorization codes for security systems of real property;

113 (21) Records that identify the configuration of components or the  
114 operation of a computer, computer system, computer network, or  
115 telecommunications network, and would allow unauthorized access to or unlawful  
116 disruption of a computer, computer system, computer network, or  
117 telecommunications network of a public governmental body. This exception shall  
118 not be used to limit or deny access to otherwise public records in a file, document,  
119 data file or database containing public records. Records related to the  
120 procurement of or expenditures relating to such computer, computer system,  
121 computer network, or telecommunications network, including the amount of  
122 moneys paid by, or on behalf of, a public governmental body for such computer,  
123 computer system, computer network, or telecommunications network shall be  
124 open;

125 (22) Credit card numbers, personal identification numbers, digital  
126 certificates, physical and virtual keys, access codes or authorization codes that  
127 are used to protect the security of electronic transactions between a public  
128 governmental body and a person or entity doing business with a public  
129 governmental body. Nothing in this section shall be deemed to close the record  
130 of a person or entity using a credit card held in the name of a public  
131 governmental body or any record of a transaction made by a person using a credit  
132 card or other method of payment for which reimbursement is made by a public  
133 governmental body; [and]

134 (23) Records submitted by an individual, corporation, or other business

135 entity to a public institution of higher education in connection with a proposal to  
136 license intellectual property or perform sponsored research and which contains  
137 sales projections or other business plan information the disclosure of which may  
138 endanger the competitiveness of a business; and

139 **(24) (a) Memoranda, staff evaluations, or other records prepared**  
140 **by a responsible public entity, its staff, outside advisors, or consultants**  
141 **exclusively for the evaluation and negotiation of proposals filed under**  
142 **sections 34.700 to 34.760, where:**

143 **a. Notwithstanding the provisions of section 34.751, such records**  
144 **were made public prior to or after the execution of an interim or a**  
145 **comprehensive agreement;**

146 **b. The financial interest or bargaining position of the public**  
147 **entity would be adversely affected;**

148 **c. The basis for the determination required in subparagraph a.**  
149 **is documented in writing by the responsible public entity; and**

150 **(b) Records provided by a private entity to a responsible public**  
151 **entity or affected jurisdiction under the provisions of sections 34.700**  
152 **to 34.760, to the extent that such records contain:**

153 **a. Trade secrets of the private entity as defined in the Missouri**  
154 **uniform trade secrets act;**

155 **b. Financial records of the private entity, including balance**  
156 **sheets and financial statements, that are not generally available to the**  
157 **public through regulatory disclosure or otherwise; or**

158 **c. Other information submitted by the private entity, where, if**  
159 **the records were made public prior to the execution of an interim**  
160 **agreement or a comprehensive agreement, the financial interest or**  
161 **bargaining position of the public or private entity would be adversely**  
162 **affected.**

163 **In order for the records specified in subparagraphs a., b., and c. of**  
164 **paragraph (b) of this subdivision to be excluded from the provisions of**  
165 **this chapter, the private entity shall make a written request to the**  
166 **responsible public entity invoking such exclusion upon submission of**  
167 **the data or other materials for which protection from disclosure is**  
168 **sought; identifying with specificity the data or other materials for**  
169 **which protection is sought; and stating the reasons why protection is**  
170 **necessary. The responsible public entity shall determine whether the**  
171 **requested exclusion from disclosure is necessary to protect the trade**

172 secrets or financial records of the private entity. To protect other  
173 records submitted by the private entity from disclosure, the responsible  
174 public entity shall determine whether public disclosure prior to the  
175 execution of an interim agreement or a comprehensive agreement  
176 would adversely affect the financial interest or bargaining position of  
177 the public or private entity. The responsible public entity shall make  
178 a written determination of the nature and scope of the protection to be  
179 afforded by the responsible public entity under this subdivision. Once  
180 a written determination is made by the responsible public entity, the  
181 records afforded protection under this subdivision shall continue to be  
182 protected from disclosure when in the possession of any affected  
183 jurisdiction. Except as specifically provided in paragraph (a) of this  
184 subdivision, nothing in this subdivision shall be construed to authorize  
185 the withholding of procurement records as required by section 34.751;  
186 information concerning the terms and conditions of any interim or  
187 comprehensive agreement, service contract, lease, partnership, or any  
188 agreement of any kind entered into by the responsible public entity and  
189 the private entity; information concerning the terms and conditions of  
190 any financing arrangement that involves the use of any public funds;  
191 or information concerning the performance of any private entity  
192 developing or operating a qualifying project. For the purposes of this  
193 subdivision, the terms "affected jurisdiction", "comprehensive  
194 agreement", "interim agreement", "qualifying project", "responsible public  
195 entity", and "private entity" shall have the same meaning as those terms  
196 are defined in section 34.700.

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