

FIRST REGULAR SESSION

HOUSE BILL NO. 206

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CURTMAN.

0747L.011

D. ADAM CRUMBLISS, Chief Clerk

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, with a penalty provision.

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Section A. Section 610.021, RSMo, is repealed and twenty-four new sections enacted in lieu thereof, to be known as sections 34.500, 34.503, 34.506, 34.509, 34.512, 34.515, 34.518, 34.521, 34.524, 34.527, 34.530, 34.533, 34.536, 34.539, 34.542, 34.545, 34.548, 34.551, 34.554, 34.557, 34.560, 34.563, 34.570, and 610.021, to read as follows:

34.500. 1. Sections 34.500 to 34.570 shall be known and may be cited as the "Partnership for Public Facilities and Infrastructure Act".

2. As used in sections 34.500 to 34.570, the following terms shall mean:

(1) "Affected jurisdiction", any city, town, village, city not within a county, or county in which all or a portion of a qualifying project is located;

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

(3) "Commission", the partnership for public infrastructure advisory commission;

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

(a) Issuance of a written request for proposal indicating in general terms that which is sought to be procured, specifying the factors to be used in evaluating the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that shall be required of the contractor;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

25 **(c) With regard to the procurement solely of professional services under sections**
26 **34.500 to 34.570, the public body shall engage in individual discussions with two or more**
27 **offerors deemed fully qualified, responsible, and suitable on the basis of initial responses**
28 **and with emphasis on professional competence to provide the required services. Repetitive**
29 **informal interviews shall be permissible. The offerors shall be encouraged to elaborate on**
30 **their qualifications and performance data or staff expertise pertinent to the proposed**
31 **project, as well as alternative concepts. In addition, offerors shall be informed of any**
32 **ranking criteria to be used by the public entity in addition to the review of the professional**
33 **competence of the offeror. The request for proposal shall not request that offerors furnish**
34 **estimates of man-hours or cost for services. At the discussion stage, the public body may**
35 **discuss nonbinding estimates of total project costs, including but not limited to life-cycle**
36 **costing and, where appropriate, nonbinding estimates of price for services. Proprietary**
37 **information from competing offerors shall not be disclosed to the public or to competitors.**
38 **At the conclusion of discussion and on the basis of evaluation factors published in the**
39 **request for proposal and all information developed in the selection process to such point,**
40 **the public body shall select in the order of preference two or more offerors whose**
41 **professional qualifications and proposed services are deemed most meritorious.**
42 **Negotiations shall be conducted, beginning with the offeror ranked first. If a contract**
43 **satisfactory and advantageous to the public body is negotiated at a price considered fair**
44 **and reasonable, the award shall be made to such offeror. Otherwise, negotiations with the**
45 **offeror ranked first shall be formally terminated and negotiations conducted with the**
46 **offeror ranked second, and so on until such a contract is negotiated at a fair and**
47 **reasonable price. Notwithstanding the foregoing, if the terms and conditions for multiple**
48 **awards are included in the request for proposal, a public body may award contracts to**
49 **more than one offeror; and**

50 **(d) With regard to procurement not related to professional services under sections**
51 **34.500 to 34.570, selection shall be made of two or more offerors deemed fully qualified and**

52 best suited among those submitting proposals on the basis of the factors involved in the
53 request for proposal, including price if so stated in the request for proposal. Negotiations
54 shall be conducted with each of the offerors selected. Price shall be considered, but need
55 not be the sole determining factor. After negotiations have been conducted with each
56 offeror selected, the public entity shall select the offeror which, in its opinion, has made the
57 best proposal and shall award the contract to that offeror. When the terms and conditions
58 of multiple awards are provided in the request for proposal, awards may be made to more
59 than one offeror.

60

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

64 (5) "Competitive sealed bidding", a method of contractor selection, other than for
65 professional services, which includes the issuance of a written invitation to bid containing
66 or incorporating by reference the specifications and contractual terms and conditions
67 applicable to the procurement. Unless the public entity has provided for prequalification
68 of bidders, the invitation to bid shall include a statement of any requisite qualifications of
69 potential contractors. When it is impractical to prepare an initial purchase description to
70 support an award based on prices, an invitation to bid shall be issued requesting the
71 submission of unpriced offers to be followed by an invitation to bid limited to those bidders
72 whose offers have been qualified under the criteria set forth in the first solicitation. All
73 bids shall be publically opened and announced. Evaluation of bids shall be based upon the
74 requirements set forth in the invitation, which may include special qualifications of
75 potential contractors and any other criteria the public entity deems fit to include;

76 (6) "Comprehensive agreement", the agreement between the private entity and the
77 responsible public entity;

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

80 (8) "Interim agreement", an agreement between a private entity and a responsible
81 public entity that provides for phasing of the development or operation, or both, of a
82 qualifying project. Such phases may include but are not limited to designing, planning,
83 engineering, environmental analysis and mitigation, financial and revenue analysis, or any
84 other phase of the project that constitutes activity on any part of the qualifying project;

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

87 **(10) "Material default", any default by the private entity in the performance of its**
88 **duties that jeopardizes adequate service to the public from a qualifying project;**

89 **(11) "Operate", to finance, maintain, improve, equip, modify, repair, or operate;**

90 **(12) "Private entity", any natural person or entity, including a corporation, general**
91 **or limited partnership, trust, limited liability company, or any charitable organization**
92 **which is exempt from federal income tax;**

93 **(13) "Professional services", work performed by an independent contractor within**
94 **the scope of the practice of accounting, actuarial services, architecture, land surveying,**
95 **landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional**
96 **engineering. "Professional services" shall also include the services of an economist**
97 **procured by the secretary of state;**

98 **(14) "Public entity", the state or any officer, official, authority, board, or**
99 **commission of the state and any county, city, or other political subdivision of the state, or**
100 **any institution supported in whole or in part by public funds;**

101 **(15) "Qualifying project":**

102 **(a) Any education facility, including but not limited to a school building, any**
103 **functionally related and subordinate facility and land to a school building including any**
104 **stadium or other facility primarily used for school events, and any depreciable property**
105 **provided for use in a school facility that is operated as part of the public school system or**
106 **as an institution of higher education;**

107 **(b) Any building or facility that meets a public purpose or use and is developed or**
108 **operated by or for any public entity;**

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

111 **(d) Utility and telecommunications and other communications infrastructure;**

112 **(e) A recreational facility;**

113 **(f) Technology infrastructure, services, and applications, including but not limited**
114 **to telecommunications, automated data processing, word processing and management**
115 **information systems, and related information, equipment, goods and services;**

116 **(g) Any services designed to increase the productivity or efficiency of the**
117 **responsible public entity through the use of technology or other means;**

118 **(h) Any technology, equipment, or infrastructure designed to deploy wireless**
119 **broadband services to schools, businesses, or residential areas;**

120 **(i) Any improvements necessary or desirable to any unimproved locally or state-**
121 **owned real estate; or**

122 (j) Any solid waste management facility that produces electric energy derived from
123 solid waste;

124 (16) "Responsible public entity", a public entity that has the authority to develop
125 or operate the applicable qualifying project;

126 (17) "Revenue", all revenues, income, earnings, user fees, lease payments, or other
127 service payments arising out of or in connection with supporting the development or
128 operation of a qualifying project, including without limitation money received as grants
129 or otherwise from the federal government, from any public entity, or from any agency or
130 instrumentality of the foregoing in aid of such facility;

131 (18) "Reverse auctions" a procurement method wherein bidders are invited to bid
132 on specified goods or nonprofessional services through real-time electronic bidding, with
133 the award being made to the lowest responsive and responsible bidder. During the bidding
134 process, bidders' prices are revealed and bidders shall have the opportunity to modify their
135 bid prices for the duration of the time period established for bid opening;

136 (19) "Service contract", a contract entered into between a public entity and a
137 private entity under section 34.512;

138 (20) "Service payment", payments to a private entity of a qualifying project made
139 under a service contract;

140 (21) "State", the state of Missouri;

141 (22) "User fee", the rates, fees, or other charges imposed by a private entity of a
142 qualifying project for use of all or a portion of such qualifying project made under a
143 comprehensive agreement.

34.503. 1. Any private entity seeking authorization under sections 34.500 to 34.570
2 to develop or operate a qualifying project shall first obtain approval of the responsible
3 public entity under section 34.509. Such private entity may initiate the approval process
4 by requesting approval under subsection 1 of section 34.509 or the responsible public entity
5 may request proposals or invite bids under subsection 2 of section 34.509.

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

8 3. Upon receipt by the responsible public entity of a proposal submitted by a
9 private entity initiating the approval process under subsection 1 of section 34.509, the
10 responsible public entity shall determine whether to accept such proposal for consideration
11 in accordance with section 34.545. If the responsible public entity determines not to accept
12 for consideration the proposal submitted by the private entity under subsection 1 of section
13 34.509, such entity shall return the proposal, together with all fees and accompanying
14 documentation, to the private entity.

15 **4. The responsible public entity may reject any proposal initiated by a private**
16 **entity under subsection 1 of section 34.509 at any time. If the responsible public entity**
17 **rejects a proposal initiated by a private entity that purports to develop specific cost savings,**
18 **the public entity shall specify the basis for the rejection.**

34.506. 1. A responsible public entity shall, prior to requesting or considering a
2 **proposal for a qualifying project, adopt and make publicly available guidelines that are**
3 **sufficient to enable the responsible public entity to comply with sections 34.500 to 34.570.**
4 **Such guidelines shall be reasonable, encourage competition, and guide the selection of**
5 **projects under the purview of the responsible public entity.**

6 **2. For a responsible public entity that is a state agency or institution supported in**
7 **whole or in part by public funds, the guidelines shall include but not be limited to:**

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

11 **(2) Reasonable criteria for choosing among competing proposals;**

12 **(3) Suggested timelines for selecting proposals and negotiating an interim or**
13 **comprehensive agreement;**

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

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

23 **(6) Consideration of the nonfinancial benefits of a proposed qualifying project;**

24 **(7) A mechanism for the applicable appropriating body to review a proposed**
25 **interim or comprehensive agreement prior to execution, which shall be in compliance with**
26 **applicable law and the provisions of subsection 9 of section 34.509;**

27 **(8) Establishment of criteria for:**

28 **(a) The creation of and the responsibilities of a public-private partnership oversight**
29 **committee with members representing the responsible public entity and the appropriating**
30 **body; or**

31 **(b) Compliance with the requirements of section 34.557.**

32

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

37 (9) Analysis of the adequacy of the information released when seeking competing
38 proposals and providing for the enhancement of such information, if deemed necessary,
39 to encourage competition under subsection 7 of section 34.509;

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

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

45 (a) Specific information and documentation to be released regarding the nature,
46 timing, and scope of the qualifying project under subsection 1 of section 34.509;

47 (b) A reasonable time period as determined by the responsible public entity to
48 encourage competition and public-private partnerships, but not less than forty-five days,
49 during which time the responsible public entity shall receive competing proposals under
50 subsection 1 of section 34.509; and

51 (c) A requirement for advertising the public notice on the state's online bidding
52 system maintained by the office of administration.

53 3. For a responsible public entity that is not a state agency or an institution
54 supported in whole or in part by public funds the guidelines may include the provisions set
55 forth in subsection 2 of this section at the discretion of such public entity. However, the
56 guidelines of a responsible public entity that is not a state agency or an institution
57 supported in whole or in part by public funds shall include:

58 (1) A requirement that such public entity engage the services of qualified
59 professionals, which may include an architect, professional engineer, or certified public
60 accountant, not otherwise employed by the responsible public entity to provide
61 independent analysis regarding the specifics, advantages, disadvantages, and the long- and
62 short-term costs of any request by a private entity for approval of a qualifying project,
63 unless the governing body of the responsible public entity determines that such analysis of
64 a request by a private entity for approval of a qualifying project shall be performed by
65 employees of the responsible public entity; and

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

2 **34.509. 1. A private entity may request approval of a qualifying project by the**
3 **responsible public entity. Any such request shall be accompanied by the following material**
4 **and information unless waived by the responsible public entity:**

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

6 **(2) A description of the qualifying project, including the conceptual design of such**
7 **facility or facilities or a conceptual plan for the provision of services or technology**
8 **infrastructure, and a schedule for the initiation of and completion of the qualifying project**
9 **to include the proposed major responsibilities and time line for activities to be performed**
10 **by both the public and private entity;**

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

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

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

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

21 **(7) A statement setting forth the private entity's general plans for financing the**
22 **qualifying project, including the sources of the private entity's funds and identification of**
23 **any dedicated revenue source or proposed debt or equity investment on the behalf of the**
24 **private entity;**

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

27 **(9) User fees, lease payments, and other service payments over the term of the**
28 **interim or comprehensive agreement under section 34.524 or 34.527 and the methodology**
29 **and circumstances for changes to such user fees, lease payments, and other service**
30 **payments over time; and**

31 **(10) Such additional material and information as the responsible public entity may**
32 **reasonably request.**

33 **2. The responsible public entity may request proposals or invite bids from private**
34 **entities for the development or operation of qualifying projects.**

35 **3. The responsible public entity may grant approval of the development or**
36 **operation of the education facility, technology infrastructure or other public**
infrastructure, or government facility needed by a public entity as a qualifying project, or

37 the design or equipping of a qualifying project developed or operated if the responsible
38 public entity determines that the project serves the public purpose of sections 34.500 to
39 34.570. The responsible public entity may determine that the development or operation
40 of the qualifying project as a qualifying project serves such public purpose if:

41 (1) There is a public need for or benefit derived from the qualifying project of the
42 type the private entity proposes as a qualifying project;

43 (2) The estimated cost of the qualifying project is reasonable in relation to similar
44 facilities; and

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

47

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

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

55 5. The approval of the responsible public entity shall be subject to the private
56 entity's entering into an interim or comprehensive agreement under section 34.524 or
57 34.527 with the responsible public entity.

58 6. In connection with its approval of the qualifying project, the responsible public
59 entity shall establish a date for the commencement of activities related to the qualifying
60 project. The responsible public entity may extend such date from time to time.

61 7. The responsible public entity shall take appropriate action to protect confidential
62 and proprietary information provided by the private entity in accordance with an
63 agreement under subdivision (24) of section 610.021.

64 8. Nothing in sections 34.500 to 34.570 or in an interim or comprehensive
65 agreement entered into under sections 34.500 to 34.570 shall be deemed to enlarge,
66 diminish or affect the authority, if any, otherwise possessed by the responsible public entity
67 to take action that would impact the debt capacity of the state.

68 9. Prior to entering into the negotiation of an interim or comprehensive agreement,
69 each responsible public entity that is a state agency or institution supported in whole or in
70 part by public funds shall submit copies of detailed proposals to the commission as
71 provided in section 34.557.

72 **10. Any proposed comprehensive agreement for a qualifying project where the**
73 **responsible public entity is a state agency or**
74 **institution supported in whole or in part by public funds that:**

75 **(1) Creates state tax-supported debt;**

76 **(2) Requires a level of appropriation significantly beyond the appropriation**
77 **received by the responsible public entity in the most recent appropriation act; or**

78 **(3) Significantly alters the state's discretion to change the level of services or the**
79 **funding for such services over time shall be reviewed by the applicable appropriating body**
80 **prior to execution.**

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

34.515. 1. Any private entity requesting approval from or submitting a proposal
2 **to a responsible public entity under section 34.509 shall notify and furnish a copy of its**
3 **request or proposal to each affected jurisdiction.**

4 **2. Each affected jurisdiction that is not a responsible public entity for the respective**
5 **qualifying project shall, within sixty days after receiving such notice, submit any comments**
6 **it may have in writing on the proposed qualifying project to the responsible public entity**
7 **and indicate whether the facility is compatible with the local comprehensive plan, local**
8 **infrastructure development plans, the capital improvements budget, or other government**
9 **spending plan. Such comments shall be given consideration by the responsible public**
10 **entity prior to entering a comprehensive agreement under section 34.524 with a**
11 **private entity.**

34.518. Any public entity may dedicate any property interest, including land,
2 **improvements, and tangible personal property that it has for public use in a qualifying**
3 **project if it finds that so doing will serve the public purpose of sections 34.500 to 34.570 by**
4 **minimizing the cost of a qualifying project to the public entity or reducing the delivery time**
5 **of a qualifying project. Such dedication may include use of any property interest that the**
6 **public entity has, subject to the conditions imposed by general law governing such uses, to**
7 **the private entity subject to the provisions of sections 34.500 to 34.570 for such**
8 **consideration as such public entity may determine. The consideration may include,**
9 **without limitation, the agreement of the private entity to develop or operate the qualifying**
10 **project. The use of property interests that the public entity may permit by the private**
11 **entity in connection with a dedication under this section may include licenses, franchises,**

12 easements, or any other right or interest the public entity deems appropriate and in
13 conformance with law.

34.521. 1. The private entity shall have the power to develop or operate the
2 qualifying project and collect lease payments, impose user fees, or enter into service
3 contracts in connection with the use thereof.

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

6 3. Any financing of the qualifying project may be in such amounts and upon such
7 terms and conditions as may be determined by the private entity. The private entity may
8 issue debt, equity, or other securities or obligations; enter into sale and leaseback
9 transactions; and secure any financing with security interest in or lien on any or all of its
10 property, including all of its property interests in the qualifying project.

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

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

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

17 5. The private entity shall:

18 (1) Develop or operate the qualifying project in a manner that is acceptable to the
19 responsible public entity in accordance with the provisions of the interim or comprehensive
20 agreement entered into under section 34.524 or 34.527;

21 (2) Keep the qualifying project open for use by the members of the public at all
22 times, or as appropriate based upon the use of the facility, after its initial opening upon
23 payment of the applicable user fees, lease payments, or service payments; provided that,
24 the qualifying project may be temporarily closed due to emergencies or, with the consent
25 of the responsible public entity, to protect the safety of the public, or for reasonable
26 construction or maintenance activities. If a qualifying project is technology infrastructure,
27 access may be limited as determined by the conditions of the interim or comprehensive
28 agreement;

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

31 (4) Cooperate with the responsible public entity in making best efforts to establish
32 any interconnection with the qualifying project requested by the responsible public entity;
33 and

34 **(5) Comply with the provisions of the interim or comprehensive agreement and any**
35 **lease or service contract.**

36 **6. Nothing in this section shall prohibit a private entity of a qualifying project from**
37 **providing additional services for the qualifying project to public or private entities other**
38 **than the responsible public entity so long as the provision of additional service does not**
39 **impair the private entity's ability to meet its commitments to the responsible public entity**
40 **under the interim or comprehensive agreement as provided for in section 34.524 or 34.527.**

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

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

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

12 **(3) Inspection of the qualifying project by the responsible public entity to ensure**
13 **that the private entity's activities are acceptable to the responsible public entity in**
14 **accordance with the provisions of the comprehensive agreement;**

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

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

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

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

25 **(8) Policies and procedures governing the rights and responsibilities of the**
26 **responsible public entity and the private entity in the event the comprehensive agreement**
27 **is terminated or there is a material default by the private entity. Such policies and**
28 **guidelines shall include conditions governing assumption of the duties and responsibilities**

29 of the private entity by the responsible public entity and the transfer or purchase of
30 property or other interests of the private entity by the responsible public entity.

31 **2. The comprehensive agreement shall provide for such user fees, lease payments,**
32 **or service payments as may be established from time to time by agreement of the parties.**
33 **A copy of any service contract shall be filed with the responsible public entity. In**
34 **negotiating user fees under this section, the parties shall establish payments or fees that are**
35 **the same for persons using the facility under like conditions and that shall not materially**
36 **discourage use of the qualifying project. The execution of the comprehensive agreement**
37 **or any amendment thereto shall constitute conclusive evidence that the user fees, lease**
38 **payments, or service payments provided for comply with sections 34.500 to 34.570. User**
39 **fees or lease payments established in the comprehensive agreement as a source of revenues**
40 **may be in addition to or in lieu of service payments.**

41 **3. In the comprehensive agreement, the responsible public entity may agree to make**
42 **grants or loans to the private entity from time to time from amounts received from the**
43 **federal, state, or local government or any agency or instrumentality thereof.**

44 **4. The comprehensive agreement shall incorporate the duties of the private entity**
45 **under sections 34.500 to 34.570 and may contain such other terms and conditions that the**
46 **responsible public entity determines serve the public purpose of sections 34.500 to 34.570.**
47 **Without limitation, the comprehensive agreement may contain provisions under which the**
48 **responsible public entity agrees to provide notice of default and cure rights for the benefit**
49 **of the private entity and the persons specified therein as providing financing for the**
50 **qualifying project. The comprehensive agreement may contain such other lawful terms**
51 **and conditions to which the private entity and the responsible public entity mutually agree,**
52 **including, without limitation, provisions regarding unavoidable delays or provisions**
53 **providing for a loan of public funds to the private entity to develop or operate one or more**
54 **qualifying projects. The comprehensive agreement may also contain provisions where the**
55 **authority and duties of the private entity under sections 34.500 to 34.570 shall cease, and**
56 **the qualifying project is dedicated to the responsible public entity or, if the qualifying**
57 **project was initially dedicated by an affected jurisdiction, to such affected jurisdiction for**
58 **public use.**

59 **5. Any changes in the terms of the comprehensive agreement, as may be agreed**
60 **upon by the parties from time to time, shall be added to the comprehensive agreement by**
61 **written amendment.**

62 **6. When a responsible public entity that is not a state agency enters into a**
63 **comprehensive agreement under sections 34.500 to 34.570, it shall within thirty days**
64 **thereafter submit a copy of the comprehensive agreement to the state auditor.**

65 7. The comprehensive agreement may provide for the development or operation of
66 phases or segments of the qualifying project.

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

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

10 (2) Establish the process and timing of the negotiation of the comprehensive
11 agreement; and

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

 34.530. 1. Any financing of a qualifying facility may be in such amounts and upon
2 such terms and conditions as may be determined by the parties to the interim or
3 comprehensive agreement. The private entity and the responsible public entity may
4 propose to utilize any and all funding resources that may be available to them and may,
5 to the fullest extent permitted by applicable law, issue debt, equity, or other securities or
6 obligations, enter into leases, access any designated trust funds, and secure any financing
7 with security interest in or lien on, any or all of its property, including all of its property
8 interests in the qualifying facility.

9 2. The responsible public entity may take any action to obtain federal, state, or local
10 assistance for a qualifying project that serves the public purpose of sections 34.500 to
11 34.570 and may enter into any contracts required to receive such assistance. If the
12 responsible public entity is a state agency, any funds received from the state or federal
13 government or any agency or instrumentality thereof shall be subject to appropriation by
14 the general assembly. The responsible public entity may determine that it serves the public
15 purpose of sections 34.500 to 34.570 for all or any portion of the costs of a qualifying
16 project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the
17 local, state, or federal government or any agency or instrumentality thereof.

 34.533. 1. In the event of a material default by the private entity, the responsible
2 public entity may elect to assume the responsibilities and duties of the private entity of the
3 qualifying project, and in such case, it shall succeed to all of the right, title, and interest in

4 such qualifying project, subject to any liens on revenues previously granted by the private
5 entity to any person providing financing thereof.

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

11 3. The responsible public entity may terminate, with cause, the interim or
12 comprehensive agreement and exercise any other rights and remedies that may be
13 available to it.

14 4. The responsible public entity may make or cause to be made any appropriate
15 claims under the maintenance, performance, or payment bonds, or lines of credit required
16 by section 34.524.

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

 34.536. The private entity and each public service company, public utility, railroad,
2 and cable television provider whose facilities are to be crossed or affected shall cooperate
3 fully with the other entity in planning and arranging the manner of the crossing or
4 relocation of the facilities. Any such entity possessing the power of condemnation is hereby
5 expressly granted such powers in connection with the moving or relocation of facilities to
6 be crossed by the qualifying project or that is required to be relocated to the extent that
7 such moving or relocation is made necessary or desirable by construction of, renovation

8 to, or improvements to the qualifying project, which shall be construed to include
9 construction of, renovation to, or improvements to temporary facilities for the purpose of
10 providing service during the period of construction or improvement. Any amount to be
11 paid for such crossing, construction, moving or relocating of facilities shall be paid by the
12 private entity. If the private entity and any such public service company, public utility,
13 railroad, and cable television provider not be able to agree upon a plan for the crossing or
14 relocation, the public service commission may determine the manner in which the crossing
15 or relocation is to be accomplished and any damages due arising out of the crossing or
16 relocation. The public service commission may employ expert engineers who shall examine
17 the location and plans for such crossing or relocation, hear any objections and consider
18 modifications, and make a recommendation to the public service commission. In such a
19 case, the cost of the experts is to be borne by the private entity. Such determination shall
20 be made by the public service commission within ninety days of notification by the private
21 entity that the qualifying project will cross utilities subject to the public service
22 commission's jurisdiction.

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

34.542. Nothing in sections 34.500 to 34.570 shall be construed as or deemed a
2 waiver of the sovereign immunity of the state, any responsible public entity or any affected
3 jurisdiction or any officer or employee thereof with respect to the participation in, or
4 approval of all or any part of the qualifying project or its operation, including but not
5 limited to interconnection of the qualifying project with any other infrastructure or
6 project. Political subdivisions in which a qualifying project is located shall possess
7 sovereign immunity with respect to its design, construction, and operation.

8 34.545. 1. Notwithstanding the provisions of section 8.250, 50.660, 88.940, 177.086,
9 182.270, or 248.110, or chapter 34, or any other state purchasing requirements and any
10 interpretations, regulations, or guidelines of the office of administration to the contrary,
11 a responsible public entity may enter into a comprehensive agreement only in accordance
12 with guidelines adopted by it as follows:

13 (1) A responsible public entity may enter into a comprehensive agreement in
14 accordance with guidelines adopted by it that are consistent with procurement through
15 competitive sealed bidding as defined in sections 34.500 to 34.570;

16 (2) A responsible public entity may enter into a comprehensive agreement in
17 accordance with guidelines adopted by it that are consistent with the procurement of other

18 than professional services through competitive negotiation. Such responsible public entity
19 shall not be required to select the proposal with the lowest price offer, but may consider
20 price as one factor in evaluating the proposals received. Other factors that may be
21 considered include:

- 22 (a) The proposed cost of the qualifying facility;
- 23 (b) The general reputation, industry experience, and financial capacity of the
24 private entity;
- 25 (c) The proposed design of the qualifying project;
- 26 (d) The eligibility of the facility for accelerated selection, review, and
27 documentation time lines under the responsible public entity's guidelines;
- 28 (e) Local citizen and government comments;
- 29 (f) Benefits to the public;
- 30 (g) The private entity's compliance with a minority business enterprise
31 participation plan or good faith effort to comply with the goals of such plan;
- 32 (h) The private entity's plans to employ local contractors and residents; and
- 33 (i) Other criteria that the responsible public entity deems appropriate;
- 34 (3) A responsible public entity may enter into a comprehensive agreement in
35 accordance with the guidelines adopted by it that are consistent with procurement of
36 guaranteed energy cost savings contracts under sections 8.231 and 8.235.

37 2. (1) A responsible public entity shall be authorized to hold reverse auctions for
38 the purchase of specific commodities.

39 (2) Prior to the commencement of bidding, all criteria of a bid shall be established
40 and any vendor participating shall meet all the requirements at the time of bidding.

41 (3) Participating vendors shall be able to see the best price offered at all times
42 during the reverse auction.

43 (4) The use of reverse auctions shall be limited to purchases of large quantities of
44 highly standardized, readily available commodities whose selection depends solely on price
45 and obtainability from a reasonable number of qualified competitors.

46 3. A responsible public entity shall proceed in accordance with the guidelines
47 adopted by it under subsection 1 of this section unless it determines that proceeding in
48 accordance with the guidelines adopted by it under this section is likely to be advantageous
49 to the responsible public entity and the public based on:

50 (1) The probable scope, complexity, or priority of the project;

51 (2) Risk sharing, including guaranteed cost or completion guarantees, added value,
52 debt, or equity investments proposed by the private entity; or

53 **(3) An increase in funding, dedicated revenue source, or other economic benefit**
54 **that would not otherwise be available. When the responsible public entity determines to**
55 **proceed according to the guidelines adopted by it in accordance with this section, it shall**
56 **state the reasons for its determination in writing. If a state agency is the responsible public**
57 **entity, the approval of the responsible department director or the governor shall be**
58 **required before the responsible public entity may enter into a comprehensive agreement**
59 **under this section.**

60 **4. Nothing in sections 34.500 to 34.570 shall authorize or require that a responsible**
61 **public entity obtain professional services through any process except in accordance with**
62 **guidelines adopted by it that are consistent with the procurement of professional services**
63 **through competitive negotiation.**

64 **5. A responsible public entity shall not proceed to consider any request by a private**
65 **entity for approval of a qualifying project until the responsible public entity has adopted**
66 **and made publicly available guidelines under section 34.506 that are sufficient to enable**
67 **the responsible public entity to comply with sections 34.500 to 34.570.**

68 **6. Notwithstanding the provisions of sections 290.210 to 290.250 to the contrary, for**
69 **any comprehensive agreement under this section, a contractor or subcontractor may pay**
70 **his or her workmen, as defined in section 290.210, a prevailing wage.**

34.548. 1. Conceptual proposals submitted in accordance with subsection 1 or 2 of
2 **section 34.509 to a responsible public entity shall be posted by the responsible public entity**
3 **within ten working days after acceptance of such proposals as follows:**

4 **(1) For responsible public entities that are state agencies, departments, and**
5 **institutions funded in whole or in part by public funds, posting shall be on the office of**
6 **administration's electronic procurement website; and**

7 **(2) For responsible public entities that are local bodies, posting shall be on the**
8 **responsible public entity's website or by publication in a newspaper of general circulation**
9 **in the area in which the contract is to be performed of a summary of the proposals and the**
10 **location where copies of the proposals are available for public inspection. Posting may also**
11 **be on the office of administration's website at the discretion of the local responsible public**
12 **entity.**

13

14 **In addition to the posting requirements, at least one copy of the proposals shall be made**
15 **available for public inspection. Nothing in this section shall be construed to prohibit the**
16 **posting of the conceptual proposals by additional means deemed appropriate by the**
17 **responsible public entity so as to provide maximum notice to the public of the opportunity**
18 **to inspect the proposals. Trade secrets, financial records, or other records of the private**

19 entity excluded from disclosure under the provisions of subdivision (24) of section 610.021
20 shall not be required to be posted, except as otherwise agreed to by the responsible public
21 entity and the private entity.

22 2. The responsible public entity shall hold a public hearing on the proposals during
23 the proposal review process, but not later than thirty days prior to entering into an interim
24 or comprehensive agreement.

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

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

33 (1) Trade secrets of the private entity as defined in the Missouri uniform trade
34 secrets act; or

35 (2) Financial records, including balance sheets or financial statements of the private
36 entity that are not generally December 11, 2014 available to the public through regulatory
37 disclosure or otherwise.

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

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

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

34.551. The state auditor shall periodically review interim and comprehensive
2 agreements entered into under sections 34.500 to 34.570 to ensure compliance with the
3 provisions of sections 34.500 to 34.570. Copies of the agreements and supporting
4 documents shall be electronically filed with the state auditor. Electronic agreements shall
5 be made available in the online database maintained by the state auditor.

34.554. 1. There is hereby established a "Partnership for Public Facilities and
2 Infrastructure Advisory Commission". The purpose of the commission shall be to advise
3 any and all responsible public entities that are state agencies, commissions, boards, or
4 institutions supported in whole or in part by public funds on proposals received under
5 sections 34.500 to 34.570.

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

- 7 **(1) The chairperson of the house appropriations committee, or his or her designee;**
8 **(2) Four members of the house of representatives, appointed by the speaker of the**
9 **house;**
10 **(3) The chairperson of the senate appropriations committee, or his or her designee;**
11 **(4) Two members of the senate, appointed by the president pro tem of the senate;**
12 **(5) The state treasurer, the commissioner of the office of administration and the**
13 **budget director of the office of administration, or their designees.**

14

15 **Legislative members and the state treasurer shall serve on the commission until the**
16 **expiration of their terms of office or until their successors are appointed. Office of**
17 **administration members shall serve as long as they are the commissioner or budget**
18 **director.**

19 **3. The members of the commission shall elect from among the legislative**
20 **membership a chairperson and a vice-chairperson who shall serve for two-year terms. The**
21 **commission shall hold meetings quarterly or upon the call of the chairperson. A majority**
22 **of the commission shall constitute a quorum.**

23 **4. Members of the commission shall serve without compensation, but shall be**
24 **reimbursed for all actual and necessary expenses incurred in the performance of their**
25 **official duties.**

26 **5. The office of the chief clerk of the house of representatives or the secretary of the**
27 **senate shall provide clerical and administrative support based upon the house of the**
28 **chairperson of the commission. The committee on legislative research shall provide legal,**
29 **research, and policy analysis services to the commission. Technical assistance shall be**
30 **provided by the staffs of the house and senate appropriations offices and the state auditor.**
31 **Additional assistance as needed shall be provided by the office of administration.**

32 **6. A copy of the proceedings of the commission shall be filed with the committee on**
33 **legislative research.**

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

7 **2. The following qualifying projects shall not be subject to review by the**
8 **commission:**

9 **(1) Any proposed qualifying project with a total cost of less than three million**
10 **dollars;**

11 **(2) Any proposed qualifying project with a total cost of three million dollars or**
12 **more but less than fifty million dollars for which funds have been specifically appropriated**
13 **as a public-private partnership in a general appropriation act or capital construction**
14 **projects that have been authorized in an appropriation act, provided such projects do not**
15 **increase in size more than five percent beyond the plans and justifications that were the**
16 **basis of the appropriation. For any qualifying project that will be completed in phases and**
17 **for which no appropriation has been made for phases other than the current phase of the**
18 **project, the commission may undertake additional reviews of such projects.**

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

30 **4. The commission shall review accepted detailed proposals and provide findings**
31 **and recommendations to the responsible public entity, including:**

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

35 **(2) An analysis of the potential financial impact of the qualifying project;**

36 **(3) A review of the policy aspects of the detailed proposals and the qualifying**
37 **project; and**

38 **(4) Proposed general business terms and conditions. Review by the commission**
39 **shall not be construed to constitute approval of any appropriations necessary to implement**
40 **any subsequent interim or comprehensive agreement.**

41 **5. The responsible public entity shall not commence negotiation of an interim or**
42 **comprehensive agreement until the commission has submitted its recommendations or**
43 **rejected the detailed proposals for review.**

44 **6. The responsible public entity shall submit a copy of the proposed interim or**
45 **comprehensive agreement to the commission, the chairperson of the house appropriations**
46 **committee, and the chairperson of the senate appropriations committee or their designees,**
47 **and the commissioner of the office of administration at least thirty days prior to execution**
48 **of the agreement along with a report describing the extent to which the commission's**
49 **recommendations were addressed in the proposed interim or comprehensive agreement.**

34.560. Records and information afforded to protection under subdivision (24) of
2 **section 610.021 that are provided by a responsible public entity to the commission shall**
3 **continue to be protected from disclosure when in the possession of the commission.**

34.563. 1. Neither the governor, his or her political action committee, or any
2 **department directors, if the directors are responsible for an executive branch agency with**
3 **jurisdiction over the matters at issue, shall knowingly solicit or accept a contribution, gift,**
4 **or other item with a value greater than fifty dollars from any bidder, offeror, or private**
5 **entity, or from an officer or director of such bidder, offeror, or private entity, who has**
6 **submitted a bid or proposal to an executive branch agency:**

7 **(1) During the period between the submission of the bid and the award of the**
8 **public contract under sections 34.500 to 34.570; or**

9 **(2) Following the submission of a proposal under sections 34.500 to 34.570 until the**
10 **execution of a comprehensive agreement thereunder.**

11 **2. The provisions of this section shall apply only for public contracts, proposals, or**
12 **comprehensive agreements where the stated or expected value of the contract is five million**
13 **dollars or more. The provisions of this section shall not apply to contracts awarded as the**
14 **result of competitive sealed bidding.**

15 **3. Any person who knowingly violates this section shall be subject to a fine of five**
16 **hundred dollars or up to two times the amount of the contribution or gift, whichever is**
17 **greater. The attorney general shall initiate proceedings to enforce the provisions of this**
18 **section. Any fines collected shall be payable to the state treasurer for deposit to the general**
19 **fund.**

34.570. Notwithstanding the provisions of section 1.140, sections 34.500 to 34.570
2 **and subdivision (24) of section 610.021 shall not be severable. In the event a court of**
3 **competent jurisdiction determines that any part of sections 34.500 to 34.570 or subdivision**
4 **(24) of section 610.021 is unenforceable, all of sections 34.500 to 34.570 and subdivision (24)**
5 **of section 610.021 are rendered null and void.**

6 **610.021. Except to the extent disclosure is otherwise required by law, a public**
7 **governmental body is authorized to close meetings, records and votes, to the extent they relate**
8 **to the following:**

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

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

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

42 (6) Scholastic probation, expulsion, or graduation of identifiable individuals, including
43 records of individual test or examination scores; however, personally identifiable student records
44 maintained by public educational institutions shall be open for inspection by the parents,

- 45 guardian or other custodian of students under the age of eighteen years and by the parents,
46 guardian or other custodian and the student if the student is over the age of eighteen years;
- 47 (7) Testing and examination materials, before the test or examination is given or, if it
48 is to be given again, before so given again;
- 49 (8) Welfare cases of identifiable individuals;
- 50 (9) Preparation, including any discussions or work product, on behalf of a public
51 governmental body or its representatives for negotiations with employee groups;
- 52 (10) Software codes for electronic data processing and documentation thereof;
- 53 (11) Specifications for competitive bidding, until either the specifications are officially
54 approved by the public governmental body or the specifications are published for bid;
- 55 (12) Sealed bids and related documents, until the bids are opened; and sealed proposals
56 and related documents or any documents related to a negotiated contract until a contract is
57 executed, or all proposals are rejected;
- 58 (13) Individually identifiable personnel records, performance ratings or records
59 pertaining to employees or applicants for employment, except that this exemption shall not apply
60 to the names, positions, salaries and lengths of service of officers and employees of public
61 agencies once they are employed as such, and the names of private sources donating or
62 contributing money to the salary of a chancellor or president at all public colleges and
63 universities in the state of Missouri and the amount of money contributed by the source;
- 64 (14) Records which are protected from disclosure by law;
- 65 (15) Meetings and public records relating to scientific and technological innovations in
66 which the owner has a proprietary interest;
- 67 (16) Records relating to municipal hotlines established for the reporting of abuse and
68 wrongdoing;
- 69 (17) Confidential or privileged communications between a public governmental body
70 and its auditor, including all auditor work product; however, all final audit reports issued by the
71 auditor are to be considered open records pursuant to this chapter;
- 72 (18) Operational guidelines, policies and specific response plans developed, adopted, or
73 maintained by any public agency responsible for law enforcement, public safety, first response,
74 or public health for use in responding to or preventing any critical incident which is or appears
75 to be terrorist in nature and which has the potential to endanger individual or public safety or
76 health. Financial records related to the procurement of or expenditures relating to operational
77 guidelines, policies or plans purchased with public funds shall be open. When seeking to close
78 information pursuant to this exception, the public governmental body shall affirmatively state
79 in writing that disclosure would impair the public governmental body's ability to protect the

80 security or safety of persons or real property, and shall in the same writing state that the public
81 interest in nondisclosure outweighs the public interest in disclosure of the records;

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

87 (a) Records related to the procurement of or expenditures relating to security systems
88 purchased with public funds shall be open;

89 (b) When seeking to close information pursuant to this exception, the public
90 governmental body shall affirmatively state in writing that disclosure would impair the public
91 governmental body's ability to protect the security or safety of persons or real property, and shall
92 in the same writing state that the public interest in nondisclosure outweighs the public interest
93 in disclosure of the records;

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

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

100 (21) Records that identify the configuration of components or the operation of a
101 computer, computer system, computer network, or telecommunications network, and would
102 allow unauthorized access to or unlawful disruption of a computer, computer system, computer
103 network, or telecommunications network of a public governmental body. This exception shall
104 not be used to limit or deny access to otherwise public records in a file, document, data file or
105 database containing public records. Records related to the procurement of or expenditures
106 relating to such computer, computer system, computer network, or telecommunications network,
107 including the amount of moneys paid by, or on behalf of, a public governmental body for such
108 computer, computer system, computer network, or telecommunications network shall be open;

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

116 (23) Records submitted by an individual, corporation, or other business entity to a public
117 institution of higher education in connection with a proposal to license intellectual property or
118 perform sponsored research and which contains sales projections or other business plan
119 information the disclosure of which may endanger the competitiveness of a business; **and**

120 **(24) (a) Memoranda, staff evaluations, or other records prepared by a responsible**
121 **public entity, its staff, outside advisors, or consultants exclusively for the evaluation and**
122 **negotiation of proposals filed under sections 34.500 to 34.570, where:**

123 **a. Notwithstanding the provisions of section 34.548, such records were made public**
124 **prior to or after the execution of an interim or a comprehensive agreement;**

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

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

129 **(b) Records provided by a private entity to a responsible public entity or affected**
130 **jurisdiction under the provisions of sections 34.500 to 34.570, to the extent that such**
131 **records contain:**

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

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

137 **c. Other information submitted by the private entity, where, if the records were**
138 **made public prior to the execution of an interim agreement or a comprehensive agreement,**
139 **the financial interest or bargaining position of the public or private entity would be**
140 **adversely affected.**

141

142 **In order for the records specified in subparagraphs a., b., and c. of paragraph (b) of this**
143 **subdivision to be excluded from the provisions of this chapter, the private entity shall make**
144 **a written request to the responsible public entity invoking such exclusion upon submission**
145 **of the data or other materials for which protection from disclosure is sought; identifying**
146 **with specificity the data or other materials for which protection is sought; and stating the**
147 **reasons why protection is necessary. The responsible public entity shall determine whether**
148 **the requested exclusion from disclosure is necessary to protect the trade secrets or financial**
149 **records of the private entity. To protect other records submitted by the private entity from**
150 **disclosure, the responsible public entity shall determine whether public disclosure prior**
151 **to the execution of an interim agreement or a comprehensive agreement would adversely**

152 **affect the financial interest or bargaining position of the public or private entity. The**
153 **responsible public entity shall make a written determination of the nature and scope of the**
154 **protection to be afforded by the responsible public entity under this subdivision. Once a**
155 **written determination is made by the responsible public entity, the records afforded**
156 **protection under this subdivision shall continue to be protected from disclosure when in**
157 **the possession of any affected jurisdiction. Except as specifically provided in paragraph**
158 **(a) of this subdivision, nothing in this subdivision shall be construed to authorize the**
159 **withholding of procurement records as required by section 34.548; information concerning**
160 **the terms and conditions of any interim or comprehensive agreement, service contract,**
161 **lease, partnership, or any agreement of any kind entered into by the responsible public**
162 **entity and the private entity; information concerning the terms and conditions of any**
163 **financing arrangement that involves the use of any public funds; or information**
164 **concerning the performance of any private entity developing or operating a qualifying**
165 **transportation facility or a qualifying project. For the purposes of this subdivision, the**
166 **terms "affected jurisdiction", "comprehensive agreement", "interim agreement",**
167 **"qualifying project", "qualifying transportation facility", "responsible public entity", and**
168 **"private entity" shall have the same meaning as those terms are defined in section 34.500.**

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