

HB 2053 -- PUBLIC FACILITIES AND INFRASTRUCTURE

SPONSOR: Curtman

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Downsizing State Government by a vote of 10 to 0.

This bill establishes the Partnership for Public Facilities and Infrastructure Act.

The bill requires a public entity seeking authorization to develop or operate a qualifying project as specified in the bill to first obtain approval of the responsible public entity. The private entity may initiate the approval process by making the request to the public entity accompanied by specified materials and information unless waived by the responsible public entity or the responsible public entity may request proposals or invite bids. The responsible public entity may reject any proposal initiated by a private entity 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 must specify the basis for the rejection.

Any public entity may dedicate any property interest to a private entity that it has for public use in a qualifying project if the public entity determines that doing so will serve the public purpose of Sections 34.500 to 34.570, RSMo, by minimizing the cost of the project or reducing the delivery time of the project. The property interest may include licenses, franchises, easements, or any other right or interest the public entity deems appropriate and in conformance with the law.

The responsible public entity may determine that the development or operation of the qualifying project serves public purpose if:

- (1) There is a public need for or benefit derived from the qualifying project of the type the private entity proposes as a qualifying project;
- (2) The estimated cost of the qualifying project is reasonable in relation to similar facilities; and
- (3) The private entity's plans will result in the timely development or operation of the qualifying project.

Prior to requesting or considering a proposal for a qualifying project, the responsible public entity is required to establish and comply with publicly available guidelines which include but are not limited to:

- (1) 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 time lines for selecting proposals and negotiating an interim or comprehensive agreement;
- (4) Authorization for accelerated selection and review and documentation time lines for proposals involving a qualifying project that the responsible public entity deems a priority;
- (5) Financial review and analysis procedures that include specified information related to the proposed qualifying project;
- (6) Consideration of the nonfinancial benefits of a proposed qualifying project;
- (7) A mechanism for the applicable appropriating body to review a proposed interim or comprehensive agreement prior to execution;
- (8) Establishment of criteria for the creation and responsibilities of an oversight committee for the proposed qualifying project or compliance with specified requirements;
- (9) Analysis of the adequacy of the information released when seeking competing proposals and providing for the enhancement of the information, if deemed necessary, to encourage competition;
- (10) Establishment of criteria, key decision points, and approvals required to ensure that the responsible public entity considers the extent of competition before selecting proposals and negotiating an interim or comprehensive agreement; and
- (11) The posting and publishing of public notice of a private entity's request for approval of a qualifying project.

The private entity must notify each affected jurisdiction, and the jurisdiction has 60 days to make comments on the proposed qualifying project.

If there is a material default by the private entity, the responsible public entity may:

- (1) Assume the responsibilities and duties of the private entity;
- (2) Acquire the qualifying project through the power of

condemnation;

(3) Terminate, with cause, the interim or comprehensive agreement;
or

(4) Elect to take over the development or operation of the
qualifying project.

The responsible public entity must hold a public hearing on the proposals during the review process but not later than 30 days prior to entering into an interim or comprehensive agreement. The responsible public entity may close meetings, records, and votes relating to memoranda, staff evaluations, or other records prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals.

The Partnership for Public Facilities and Infrastructure Advisory Commission is established to advise any and all responsible public entities that are state agencies, commissions, boards, or institutions supported wholly or partially by public funds on proposals received under these provisions. The 11-member commission is to consist of specified members of the General Assembly and state officials. The commission must hold meetings quarterly or upon the call of the chairperson. A copy of the proceedings of the commission must be filed with the Joint Committee on Legislative Research.

Each responsible public entity that is partially or fully funded by the state that receives detailed proposals from private entities for a qualifying project must provide copies of the proposals to the chairperson of the commission and other specified individuals prior to entering into the negotiation of an interim or comprehensive agreement with specified exceptions.

The bill prohibits the Governor, his or her political action committee, or any department directors, if the directors are responsible for an executive branch agency with jurisdiction over the matters at issue, from knowingly soliciting or accepting a contribution, gift, or other item with a value of more than \$50 from specified individuals who have submitted a bid or proposal to an executive branch agency during specified periods with specified exceptions. Any person who knowingly violates this provision must be subject to a fine of \$500 or up to two times the amount of the contribution or gift, whichever is greater.

PROPONENTS: Supporters say that different states have utilized these procedures and the effect has been extremely beneficial in promoting efficiency in state government.

Testifying for the bill was Representative Curtman.

OPPONENTS: There was no opposition voiced to the committee.

OTHERS: Others testifying on the bill say the growing role of the private sector in providing public infrastructure necessitates this legislation. Numerous states have enacted laws to authorize public/private partnerships ("PPP"). When these partnerships are entered into, the auditor's offices requests that they are authorized to examine the contracts and procedures to ensure the state's assets are secure. This bill authorizes this concept for not just state projects, but for any city or municipality. Where this concept is used, it requires a sophisticated set of staff with relevant skill sets. There is concern about the public notice requirements, specifically allowing notice on "any appropriate website" as there is no definition of what that term means.

Testifying on the bill were Leonard Gilroy; State Auditor's Office; Associated General Contractors of Missouri; Missouri Press Association; and American Institute of Architects of Missouri.