

**73-10d-4 Notice of intention to enter privatization project -- Petition for election -- Election procedures -- Powers of political subdivision -- Public bidding laws not to apply.**

- (1) The governing authority of any political subdivision considering entering into a privatization project agreement shall issue a notice of intention setting forth a brief summary of the agreement provisions and the time within which and place at which petitions may be filed requesting the calling of an election in the political subdivision to determine whether the agreement should be approved. The notice of intention shall specify the form of the petitions. If, within 30 days after the publication of the notice of intention, petitions are filed with the clerk, recorder, or similar officer of the political subdivision, signed by at least 5% of the qualified electors of the political subdivision (as certified by the county clerks of the respective counties within which the political subdivision is located) requesting an election be held to authorize the agreement, then the governing authority shall proceed to call and hold an election. If an adequate petition is not filed within 30 days, the governing authority may adopt a resolution so finding and may proceed to enter into the agreement.
- (2) If, under Subsection (1), the governing authority of a political subdivision is required to call an election to authorize an agreement, the governing authority shall adopt a resolution directing that an election be held in the political subdivision for the purpose of determining whether the political subdivision may enter into the agreement. The resolution calling the election shall be adopted, notice of the election shall be given, voting precincts shall be established, the election shall be held, voters' qualifications shall be determined, and the results shall be canvassed in the manner and subject to the conditions provided for in Title 11, Chapter 14, Local Government Bonding Act.
- (3) A political subdivision may, upon approval of an agreement as provided by Subsections (1) and (2) and subject to the powers and rules of the supervising agency:
  - (a) supervise and regulate the construction, maintenance, ownership, and operation of all privatization projects within its jurisdiction or in which it has a contractual interest;
  - (b) contract, by entry into agreements with private owner/operators for the provision within its jurisdiction of the services of privatization projects;
  - (c) levy and collect taxes, as otherwise provided by law, and impose and collect assessments, fees, or charges for services provided by privatization projects, as appropriate, and, subject to any limitation imposed by the constitution, pledge, assign, or otherwise convey as security for the payment of its obligations under any agreements any revenues and receipts derived from any assessments, fees, or charges for services provided by privatization projects;
  - (d) require the private owner/operator to obtain any and all licenses as appropriate under federal, state, and local law and impose other requirements which are necessary or desirable to discharge the responsibility of the political subdivision to supervise and regulate the construction, maintenance, ownership, and operation of any privatization project;
  - (e) control the right to contract, maintain, own, and operate any privatization project and the services provided in connection with that project within its jurisdiction;
  - (f) purchase, lease, or otherwise acquire all or any part of a privatization project;
  - (g) with respect to the services of any privatization project, control the right to establish or regulate the rates paid by the users of the services within the jurisdiction of the political subdivision;
  - (h) agree that the sole and exclusive right to provide the services within its jurisdiction related to privatization projects be assumed by any private owner/operator;
  - (i) contract for the lease or purchase of land, facilities, equipment, and vehicles for the operation of privatization projects;

- (j) lease, sell, or otherwise convey, as permitted by state and local law, but without any requirement of competitive public bidding, land, facilities, equipment, and vehicles, previously used in connection with privatization projects, to private owner/operators; and
  - (k) establish policies for the operation of any privatization project within its jurisdiction or with respect to which it has a contractual interest, including hours of operation, the character and kinds of services, and other rules necessary for the safety of operating personnel.
- (4) Any political subdivision may enter into agreements with respect to privatization projects. Agreements may contain provisions relating to, without limitation, any matter provided for in this section or consistent with the purposes of this chapter.
- (5) Any agreement entered into between a political subdivision and a private owner/operator for the provision of the services of a privatization project is considered an exercise of that political subdivision's business or proprietary power binding upon its succeeding governing authorities. Any agreement made by a political subdivision with a private owner/operator for payment for services provided or to be provided may not be construed to be an indebtedness or a lending of credit of the political subdivision within the meaning of any constitutional or statutory restriction.
- (6) The provisions of the various laws of the state and the rules or ordinances of a political subdivision which would otherwise require public bidding in respect to any matter provided for in this chapter shall have no application to that matter.

Amended by Chapter 105, 2005 General Session