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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1978

02/25/2014 Authored by Scott

The bill was read for the first time and referred to the Committee on Civil Law

1.1 A bill for an act
1.2 relating to data practices; clarifying enforceability of contracts that fail to include
1.3 certain data practices terms; requiring submission to an agency or municipality of
1.4 certain documents maintained by a contractor upon request; amending Minnesota
1.5 Statutes 2012, sections 13.05, subdivision 11; 16C.05, subdivision 2; 471.345, by
1.6 adding a subdivision.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2012, section 13.05, subdivision 11, is amended to read:

1.9 Subd. 11. **Privatization.** (a) If a government entity enters into a contract with a
1.10 private person to perform any of its functions, the government entity shall include in the
1.11 contract terms that make it clear that all of the data created, collected, received, stored,
1.12 used, maintained, or disseminated by the private person in performing those functions is
1.13 subject to the requirements of this chapter and that the private person must comply with
1.14 those requirements as if it were a government entity. A contract that fails to include the
1.15 terms required by this paragraph is unenforceable. The remedies in section 13.08 apply to
1.16 the private person under this subdivision.

1.17 (b) This subdivision does not create a duty on the part of the private person to
1.18 provide access to public data to the public if the public data are available from the
1.19 government entity, except as required by the terms of the contract.

1.20 **EFFECTIVE DATE.** This section is effective August 1, 2014, and applies to
1.21 contracts entered into on or after that date.

1.22 Sec. 2. Minnesota Statutes 2012, section 16C.05, subdivision 2, is amended to read:

Subd. 2. **Creation and validity of contracts.** (a) A contract is not valid and the state is not bound by it and no agency, without the prior written approval of the commissioner granted pursuant to subdivision 2a, may authorize work to begin on it unless:

(1) it has first been executed by the head of the agency or a delegate who is a party to the contract;

(2) it has been approved by the commissioner; and

(3) the accounting system shows an encumbrance for the amount of the contract liability, except as allowed by policy approved by the commissioner and commissioner of management and budget for routine, low-dollar procurements.

(b) The combined contract and amendments must not exceed five years without specific, written approval by the commissioner according to established policy, procedures, and standards, or unless otherwise provided for by law. The term of the original contract must not exceed two years unless the commissioner determines that a longer duration is in the best interest of the state.

(c) Grants, interagency agreements, purchase orders, work orders, and annual plans need not, in the discretion of the commissioner and attorney general, require the signature of the commissioner and/or the attorney general. A signature is not required for work orders and amendments to work orders related to Department of Transportation contracts. Bond purchase agreements by the Minnesota Public Facilities Authority do not require the approval of the commissioner.

(d) Amendments to contracts must entail tasks that are substantially similar to those in the original contract or involve tasks that are so closely related to the original contract that it would be impracticable for a different contractor to perform the work. The commissioner or an agency official to whom the commissioner has delegated contracting authority under section 16C.03, subdivision 16, must determine that an amendment would serve the interest of the state better than a new contract and would cost no more.

(e) A fully executed copy of every contract, amendments to the contract, and performance evaluations relating to the contract must be kept on file at the contracting agency for a time equal to that specified for contract vendors and other parties in subdivision 5.

(f) The attorney general must periodically review and evaluate a sample of state agency contracts to ensure compliance with laws.

(g) An agency contract must require the contractor, upon request of the agency, to submit to the agency a copy of any subcontract entered into under the prime contract. An agency may make a request under this paragraph at its own discretion, provided that it must request a copy of a subcontract from the contractor if an individual submits a request

3.1 to the agency for that document. A fully executed copy of every contract, subcontract,
3.2 amendment to a contract or subcontract, and performance evaluation related to the contract
3.3 received by the agency must be kept as required by section 15.17 and chapter 138. The
3.4 Minnesota State Colleges and Universities is an agency for purposes of this paragraph.

3.5 Sec. 3. Minnesota Statutes 2012, section 471.345, is amended by adding a subdivision
3.6 to read:

3.7 Subd. 20. **Subcontractor contracts.** (a) A municipal contract must require the
3.8 contractor, upon request of the municipality, to submit to the municipality a copy of any
3.9 subcontract entered into under the prime contract. A municipality may make a request
3.10 under this paragraph at its own discretion, provided that it must request a copy of a
3.11 subcontract from the contractor if an individual submits a request to the municipality
3.12 for that document.

3.13 (b) A fully executed copy of every contract, subcontract, amendment to a contract
3.14 or subcontract, and performance evaluation related to the contract received by the
3.15 municipality must be kept by the municipality as required by section 15.17 and chapter 138.

3.16 (c) For purposes of this subdivision, a contract includes the definition provided in
3.17 subdivision 2 and also includes a contract for professional services.