

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 2243

(SENATE AUTHORS: PEDERSON)

DATE	D-PG	OFFICIAL STATUS
03/05/2012	4106	Introduction and first reading Referred to Transportation
03/14/2012	4378	Comm report: To pass and re-referred to State Government Innovation and Veterans
03/22/2012	4778a	Comm report: To pass as amended
	4795	Second reading See SF2321, Sec. 59-64

A bill for an act
relating to transportation; contracts; establishing a public-private partnership
pilot program and related regulations.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM.**

(a) The commissioner of transportation is authorized to consider and utilize public-private partnership procurement methods for up to three pilot projects if objective analysis demonstrates that it provides better long-term value for the state than traditional procurement methods.

(b) Notwithstanding Minnesota Statutes, section 160.845, 160.98, or any other law to the contrary, the commissioner may consider for use in the pilot program any existing public-private partnership mechanism or any proposed mechanism that proves the best available option for the state. Mechanisms the commissioner may consider include, but are not limited to, toll facilities, BOT facilities, or BTO facilities. For the purposes of this paragraph, toll facilities, BOT facilities, and BTO facilities have the meanings given under section 160.84.

(c) As part of the pilot program, the commissioner is directed to form an independent advisory and oversight committee. The committee shall consist of the commissioner of management and budget, the legislative auditor, and one representative each from the American Council of Engineering Companies - Minnesota chapter, the Central Minnesota Transportation Alliance, and the Minnesota County Engineers Association, and its duties shall include, but are not limited to, reviewing and approving projects proposed under this section, reviewing any contractual or financial agreements to ensure program requirements are met, and ensuring that any proposed or executed agreement serves the public interest.

(d) Among the projects the commissioner may consider is the construction of the Interstate 94/US Highway 10 River Crossing near marked Minnesota Trunk Highway 24.

Sec. 2. **PILOT PROGRAM RESTRICTIONS.**

(a) The commissioner may not accept unsolicited proposals for a public-private initiative.

(b) The commissioner shall select a private entity or entities for all public-private partnerships on a competitive basis.

(c) When entering into a public-private partnership, the commissioner may not enter into any noncompete agreement that inhibits the state's ability to address ongoing or future infrastructure needs.

(d) If the commissioner enters into a public-private partnership agreement that includes a temporary transfer of ownership or control of a road, bridge, or other infrastructure investment to the private entity, the agreement must include a provision requiring the return of the road, bridge, or other infrastructure investment to the state after a specified period of time.

(e) The commissioner may only consider new projects for a public-private partnership. The commissioner is prohibited from considering projects involving existing infrastructure for a public-private partnership.

Sec. 3. **CONSIDERATIONS.**

(a) In soliciting, evaluating, and selecting a private entity with which to enter into a public-private project, the commissioner must consider:

(1) the ability of the proposed project to improve safety, reduce congestion, increase capacity, and promote economic growth;

(2) the proposed cost of and financial plan for the project;

(3) the general reputation, qualifications, industry experience, and financial capacity of the private entity;

(4) the project's proposed design, operation, and feasibility;

(5) comments from local citizens and affected jurisdictions;

(6) benefits to the public;

(7) the safety record of the private entity; and

(8) any other criteria the commissioner deems appropriate.

(b) The independent advisory and oversight committee established under section 1, paragraph (c), shall review proposals evaluated by the commissioner to ensure the requirements of this section are being met.

Sec. 4. **PUBLIC-PRIVATE AGREEMENT.**

(a) A public-private agreement between the commissioner and a private entity shall, at a minimum, specify:

(1) the planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing, or operation of the project;

(2) the term of the public-private agreement;

(3) the type of property interest, if any, that the private entity will have in the project;

(4) a description of the actions the commissioner may take to ensure proper maintenance of the project;

(5) whether user fees will be collected on the project and the basis by which the user fees shall be determined and modified;

(6) compliance with applicable federal, state, and local laws;

(7) grounds for termination of the public-private agreement by the commissioner; and

(8) procedures for amendment of the agreement.

(b) A public-private agreement between the commissioner and a private entity may provide for:

(1) review and approval by the commissioner of the private entity's plans for the development and operation of the project;

(2) inspection by the commissioner of construction and improvements to the project;

(3) maintenance by the private entity of a liability insurance policy;

(4) filing of appropriate financial statements by the private entity on a periodic basis;

(5) filing of traffic reports by the private entity on a periodic basis;

(6) financing obligations of the commissioner and the private entity;

(7) apportionment of expenses between the commissioner and the private entity;

(8) the rights and remedies available in the event of a default or delay;

(9) the rights and duties of the private entity, the commissioner, and other state or local governmental entities with respect to the use of the project;

(10) the terms and conditions of indemnification of the private entity by the commissioner;

(11) assignment, subcontracting, or other delegations of responsibilities of the private entity or commissioner under agreement to third parties, including other private entities or state agencies;

(12) if applicable, sale or lease to the private entity of private property related to the project;

(13) traffic enforcement and other policing issues; and

4.1 (14) any other terms and conditions the commissioner deems appropriate.

4.2 (c) The independent advisory and oversight committee established under section 1,
4.3 paragraph (c), shall review any proposed contractual agreement prior to execution in order
4.4 to ensure the requirements of this section are being met.

4.5 Sec. 5. **FUNDING FROM FEDERAL GOVERNMENT.**

4.6 (a) The commissioner may accept from the United States or any of its agencies
4.7 funds that are available to the state for carrying out the pilot program, whether the funds
4.8 are available by grant, loan, or other financial assistance.

4.9 (b) The commissioner may enter into agreements or other arrangements with the
4.10 United States or any of its agencies as necessary for carrying out the pilot program.

4.11 (c) The commissioner may combine federal, state, local, and private funds to finance
4.12 a public-private partnership pilot project.

4.13 Sec. 6. **REPORTING.**

4.14 By August 1, 2014, and annually by August 1 thereafter, the commissioner shall
4.15 submit to the chairs and ranking minority members of the house of representatives and
4.16 senate committees having jurisdiction over transportation policy and finance a listing of
4.17 all agreements executed under the pilot program authority. The listing must identify
4.18 each agreement, the contracting entities, contract amount and duration, any repayment
4.19 requirements, and provide an update on the project's progress. The listing may be
4.20 submitted electronically and is subject to Minnesota Statutes, section 3.195, subdivision 1.