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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **1204**

03/04/2013 Authored by Dorholt, Hornstein, FitzSimmons, Theis and Erhardt

The bill was read for the first time and referred to the Committee on Transportation Policy

03/20/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Transportation Finance

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

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

1.6 (a) The commissioner of transportation and Metropolitan Council are authorized to
1.7 consider and utilize public-private partnership procurement methods for up to three pilot
1.8 projects as provided in this act. Utilization of public-private partnerships is a recognition
1.9 of the importance to the state of an efficient and safe transportation system, and the
1.10 necessity of developing alternative funding sources to supplement traditional sources of
1.11 transportation revenues. A public-private partnership initiative must take advantage of
1.12 private sector efficiencies in design and construction, along with expertise in finance and
1.13 development, and provide a better long-term value for the state than could be obtained
1.14 through traditional procurement methods.

1.15 (b) Notwithstanding Minnesota Statutes, section 160.845, the commissioner or
1.16 council may only convert, transfer, or utilize a portion of a highway to impose tolls or for
1.17 use as a toll facility under the pilot program if the pilot project adds capacity to the highway
1.18 system. For purposes of this paragraph, added capacity includes a new or additional:
1.19 highway lane; priced dynamic shoulder lane as defined in Minnesota Statutes, section
1.20 160.02, subdivision 18a; high-occupancy vehicle lane; high-occupancy toll lane; or bridge.

1.21 (c) The commissioner or council may consider for use in the pilot program any
1.22 existing public-private partnership mechanism or any proposed mechanism that proves the
1.23 best available option for the state. Mechanisms the commissioner or council may consider
1.24 include, but are not limited to, a toll facility, a BOT facility, a BTO facility, user fees,

construction payments, joint development agreements, negotiated exactions, air rights development, street improvement districts, or tax increment financing districts for transit.

(d) As part of the pilot program, the commissioner and council are directed to form an independent advisory and oversight office, the Joint Program Office for Economic Development and Alternative Finance. The office shall consist of the commissioner of management and budget, the commissioner of employment and economic development, the commissioner of administration, the commissioner of transportation, the Metropolitan Council, and one representative each from the American Council of Engineering Companies - Minnesota chapter, the Central Minnesota Transportation Alliance, the Counties Transit Improvement Board, and the Minnesota County Engineers Association. In addition, the commissioner and Metropolitan Council shall invite the Federal Highway Administration and the Federal Transit Administration to participate in the office's activities. The office's 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.

(e) For the purposes of sections 1 to 6, the following terms have the meanings given them:

(1) "BOT facility" and "BTO facility" have the meanings given under Minnesota Statutes, section 160.84; and

(2) "toll facility" has the meaning given under Minnesota Statutes, section 160.84, subdivision 9, except that authorization for the project is as provided under this act and not under Minnesota Statutes, sections 160.84 to 160.92.

Sec. 2. PILOT PROGRAM RESTRICTIONS AND PROJECT SELECTION.

(a) The commissioner or council may receive or solicit and evaluate proposals to build, operate, and finance projects that are not inconsistent with the commissioner's most recent statewide transportation plan or the council's most recent transportation policy plan. If the department or council receives an unsolicited proposal, the department or council shall publish a notice in the State Register at least once a week for two weeks stating that the department or council has received the proposal and will accept, for 120 days after the initial date of publication, other proposals for the same project purpose. The private proposer must be selected on a competitive basis.

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

(c) If the commissioner or council 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.

(d) The commissioner and council may only consider new projects for a public-private partnership. The commissioner and council are prohibited from considering projects involving existing infrastructure for a public-private partnership, unless the proposed project adds capacity to the existing infrastructure.

(e) Among the projects the commissioner and council may consider are the construction of: a marked Interstate Highway 94/marked U.S. Highway 10 River Crossing near marked Trunk Highway 24; the Fish Lake interchange; the marked Interstate Highway 94 expansion from the Fish Lake interchange to marked Trunk Highway 24; the St. Croix River Crossing connecting Oak Park Heights, Minnesota, and St. Joseph, Wisconsin; and high-speed, commuter, and light rail projects.

Sec. 3. EVALUATION AND SELECTION OF PRIVATE ENTITY AND PROJECT.

(a) The commissioner and council shall contract with one or more consultants to assist in proposal evaluation. The consultant must possess expertise and experience in public-private partnership project evaluation methodology, such as value for money, costs of public-private partnership compared with costs of public project delivery, and cost-benefit analysis.

(b) When soliciting, evaluating, and selecting a private entity with which to enter into a public-private partnership and before selecting a project, the commissioner or council 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) length and extent of transportation and transit service disruption;

(6) comments from local citizens and affected jurisdictions;

(7) benefits to the public;

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

4.1 (9) any other criteria the commissioner or council deems appropriate.

4.2 (c) The independent advisory and oversight office established under section 1,
4.3 paragraph (d), shall review proposals evaluated by the commissioner or council to ensure
4.4 the requirements of this section are being met. The independent advisory and oversight
4.5 office shall first determine whether the project, as proposed, serves the public interest.
4.6 In making this determination, the office must identify and consider advantages and
4.7 disadvantages for various stakeholders, including taxpayers, workers, transportation and
4.8 transit providers and operators, transportation and transit users, commercial vehicle
4.9 operators, and the general public, including the impact on the state's economy. If the
4.10 proposed project serves the public interest, the office must evaluate the proposals
4.11 according to the criteria specified in this section.

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

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

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

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

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

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

4.22 (5) whether user fees will be collected on the project and the basis by which the user
4.23 fees shall be determined and modified along with identification of the public agency that
4.24 will determine and modify fees;

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

4.26 (7) grounds for termination of the public-private agreement by the commissioner
4.27 or council;

4.28 (8) adequate safeguards for the traveling public and residents of the state in event of
4.29 default on the contract;

4.30 (9) financial protection for the state in the event of default; and

4.31 (10) procedures for amendment of the agreement.

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

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

5.1 (2) inspection by the commissioner or council of construction and improvements
5.2 to the project;
5.3 (3) maintenance by the private entity of a liability insurance policy;
5.4 (4) filing of appropriate financial statements by the private entity on a periodic basis;
5.5 (5) filing of traffic reports by the private entity on a periodic basis;
5.6 (6) financing obligations of the commissioner or council and the private entity;
5.7 (7) apportionment of expenses between the commissioner or council and the private
5.8 entity;
5.9 (8) the rights and remedies available in the event of a default or delay;
5.10 (9) the rights and duties of the private entity, the commissioner or council, and other
5.11 state or local governmental entities with respect to the use of the project;
5.12 (10) the terms and conditions of indemnification of the private entity by the
5.13 commissioner or council;
5.14 (11) assignment, subcontracting, or other delegations of responsibilities of (i)
5.15 the private entity, or (ii) the commissioner or council under agreement to third parties,
5.16 including other private entities or state agencies;
5.17 (12) if applicable, sale or lease to the private entity of private property related to
5.18 the project;
5.19 (13) traffic enforcement and other policing issues; and
5.20 (14) any other terms and conditions the commissioner or council deems appropriate.
5.21 (c) The independent advisory and oversight office established under section 1,
5.22 paragraph (d), shall review any proposed contractual agreement prior to execution in
5.23 order to ensure that the contract serves the public interest and the requirements of this
5.24 section are met.

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

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

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

5.31 (c) The commissioner or council shall seek to maximize project funding from
5.32 nonstate sources and may combine federal, state, local, and private funds to finance a
5.33 public-private partnership pilot project.

5.34 **Sec. 6. REPORTING.**

6.1 By August 1, 2015, and annually by August 1 thereafter, the commissioner
6.2 and council shall submit to the chairs and ranking minority members of the house of
6.3 representatives and senate committees having jurisdiction over transportation policy
6.4 and finance a list of all agreements executed under the pilot program authority. The list
6.5 must identify each agreement, the contracting entities, contract amount and duration, any
6.6 repayment requirements, and provide an update on the project's progress. The list may be
6.7 submitted electronically and is subject to Minnesota Statutes, section 3.195, subdivision 1.

6.8 Sec. 7. **EFFECTIVE DATE.**

6.9 This act is effective the day after an appropriation is effective to pay administrative
6.10 expenses creating and operating the Joint Program Office for Economic Development and
6.11 Alternative Finance, hiring a consultant, and preparing required reports.