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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2473

02/23/2012 Authored by Banaian

The bill was read for the first time and referred to the Committee on Transportation Policy and 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 is authorized to consider and utilize
1.7 public-private partnership procurement methods for up to three pilot projects if objective
1.8 analysis demonstrates that it provides better long-term value for the state than traditional
1.9 procurement methods.

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

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

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

1.20 (a) The commissioner may not receive, consider, evaluate, or accept unsolicited
1.21 proposals for a public-private initiative.

1.22 (b) The commissioner shall select a private entity or entities for a public-private
1.23 partnership on a competitive basis to the maximum extent possible.

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

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

2.9 Sec. 3. **CONSIDERATIONS.**

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

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

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

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

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

2.18 (5) comments from local citizens and affected jurisdictions;

2.19 (6) benefits to the public;

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

2.21 (8) any other criteria the commissioner deems appropriate.

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

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

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

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

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

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

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

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

3.1 (7) grounds for termination of the public-private agreement by the commissioner; and
 3.2 (8) procedures for amendment of the agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

3.23 (13) traffic enforcement and other policing issues; and

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

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

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

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

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

3.33 **Sec. 6. REPORTING.**

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