

1.1 A bill for an act

1.2 relating to highways; establishing a pilot program to authorize use of a  
1.3 design-build contracting process for certain highway construction projects.

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

1.5 Section 1. **DESIGN-BUILD PILOT PROGRAM.**

1.6 Subdivision 1. Definitions. The following terms have the meanings given:

1.7 (1) "commissioner" means the commissioner of transportation;

1.8 (2) "municipality" means the board of commissioners of Anoka or Dakota County;

1.9 (3) "design-build contract" means a single contract between a municipality and a  
1.10 design-build company or firm to furnish the architectural or engineering and related design  
1.11 services as well as the labor, material, supplies, equipment, and construction services  
1.12 for a pilot project;

1.13 (4) "design-build firm" means a proprietorship, partnership, limited liability  
1.14 partnership, joint venture, corporation, any type of limited liability company, professional  
1.15 corporation, or any legal entity;

1.16 (5) "design professional" means a person who holds a license under Minnesota  
1.17 Statutes, chapter 326B, that is required to be registered under Minnesota law;

1.18 (6) "design-build transportation project" means the procurement of both the design  
1.19 and construction of a pilot project in a single contract with a company or companies  
1.20 capable of providing the necessary engineering services and construction;

1.21 (7) "design-builder" means the design-build firm that proposes to design and build a  
1.22 pilot project governed by the procedures of this section;

1.23 (8) "pilot project" means (1) the reconstruction of the intersection at marked  
1.24 Trunk Highway 10 and Anoka County State-Aid Highway 83, or (2) construction of

2.1 an interchange at marked Trunk Highway 13 and Dakota County State-Aid Highway 5  
2.2 in Burnsville;

2.3 (9) "request for proposals" or "RFP" means the document by which the municipality  
2.4 solicits proposals from qualified design-build firms to design and construct a pilot project;

2.5 (10) "request for qualifications" or "RFQ" means a document to qualify potential  
2.6 design-build firms; and

2.7 (11) "responsive proposal" means a technical proposal of which no major component  
2.8 contradicts the goals of the project, significantly violates an RFP requirement, or places  
2.9 conditions on a proposal.

2.10 Subd. 2. **Pilot program established.** (a) Each municipality may participate in a  
2.11 design-build contracting pilot program as provided in this section. If either municipality  
2.12 determines to participate, the commissioner and each participating municipality shall  
2.13 conduct a design-build contracting pilot program to support and evaluate the use of the  
2.14 design-build method of contracting by counties and statutory and home rule charter cities  
2.15 in constructing, improving, and maintaining streets and highways on the state-aid system.

2.16 (b) Subject to the requirements of this section and as appropriate under that  
2.17 municipality's jurisdiction, a municipality may use the design-build method of contracting  
2.18 for (1) reconstruction of the intersection at marked Trunk Highway 10 and Anoka County  
2.19 State-Aid Highway 83, and (2) construction of an interchange at marked Trunk Highway  
2.20 13 and Dakota County State-Aid Highway 5 in Burnsville.

2.21 Subd. 3. **Licensing requirements.** (a) Each design-builder shall employ, or have  
2.22 as a partner, member, officer, coventurer, or subcontractor, a person duly licensed and  
2.23 registered to provide the design services required to complete the project and do business  
2.24 in the state.

2.25 (b) A design-builder may enter into a contract to provide professional or construction  
2.26 services for a project that the design-builder is not licensed, registered, or qualified to  
2.27 perform, so long as the design-builder provides those services through subcontractors with  
2.28 duly licensed, registered, or otherwise qualified individuals in accordance with Minnesota  
2.29 Statutes, sections 161.3410 to 161.3428.

2.30 (c) Nothing in this section authorizing design-build contracts is intended to limit or  
2.31 eliminate the responsibility or liability owed by a professional on a design-build project to  
2.32 the state, municipality, or other third party under existing law.

2.33 (d) The design service portion of a design-build contract must be considered a  
2.34 service and not a product.

2.35 Subd. 4. **Information session for municipal engineer.** The commissioner or the  
2.36 commissioner's designee with design-build experience shall conduct an information

3.1 session for the municipality's engineer for each pilot project, in which issues unique to  
3.2 design-build must be discussed, including, but not limited to, writing an RFP, project  
3.3 oversight requirements, assessing risk, and communication with the design-build firm.  
3.4 After participation in the information session, the municipality's engineer may solicit  
3.5 proposals under subdivision 6 for the pilot project.

3.6 Subd. 5. **Technical Review Committee.** During the phase one RFQ and before  
3.7 solicitation, the municipality shall appoint a Technical Review Committee of at least  
3.8 five individuals. The Technical Review Committee must include an individual whose  
3.9 name and qualifications are submitted to the municipality by the Minnesota chapter of  
3.10 the Associated General Contractors, after consultation with other commercial contractor  
3.11 associations in the state. Members of the Technical Review Committee who are not state  
3.12 employees are subject to the Minnesota Government Data Practices Act and Minnesota  
3.13 Statutes, section 16C.06, to the same extent that state agencies are subject to those  
3.14 provisions. A Technical Review Committee member may not participate in the review or  
3.15 discussion of responses to the RFQ or RFP when a design-build firm in which the member  
3.16 has a financial interest has responded to the RFQ or RFP. "Financial interest" includes,  
3.17 but is not limited to, being or serving as an owner, employee, partner, limited liability  
3.18 partner, shareholder, joint venturer, family member, officer, or director of a design-build  
3.19 firm responding to an RFQ or RFP for a specific project, or having any other economic  
3.20 interest in that design-build firm. The members of the Technical Review Committee must  
3.21 be treated as municipal employees in the event of litigation resulting from any action  
3.22 arising out of their service on the committee.

3.23 Subd. 6. **Phase one; design-build RFQ.** The municipality shall prepare an RFQ,  
3.24 which must include the following:

3.25 (1) the minimum qualifications of design-builders necessary to meet the requirements  
3.26 for acceptance;

3.27 (2) a scope of work statement and schedule;

3.28 (3) documents defining the project requirements;

3.29 (4) the form of contract to be awarded;

3.30 (5) the weighted selection criteria for compiling a short list and the number of firms  
3.31 to be included in the short list, which must be at least two but not more than five;

3.32 (6) a description of the request for proposals (RFP) requirements;

3.33 (7) the maximum time allowed for design and construction;

3.34 (8) the municipality's estimated cost of design and construction;

3.35 (9) requirements for construction experience, design experience, financial, personnel,  
3.36 and equipment resources available from potential design-builders for the project and

4.1 experience in other design-build transportation projects or similar projects, provided that  
4.2 these requirements may not unduly restrict competition; and

4.3 (10) a statement that "past performance" or "experience" or other criteria used in the  
4.4 RFQ evaluation process does not include the exercise or assertion of a person's legal rights.

4.5 Subd. 7. **Information session for prospective design-build firms.** After an RFQ  
4.6 solicitation for a pilot project is made, any prospective design-build firm shall attend a  
4.7 design-build information session conducted by the commissioner or the commissioner's  
4.8 designee with design-build experience. The information must include information about  
4.9 design-build contracts, including, but not limited to, communication with partner firms,  
4.10 project oversight requirements, assessing risk, and communication with the municipality's  
4.11 engineer. After participation in the information session, the design-build firm is eligible  
4.12 to bid on the pilot project and any future design-build pilot program projects under this  
4.13 section.

4.14 Subd. 8. **Evaluation; short list.** The selection team shall evaluate the design-build  
4.15 qualifications of responding firms and shall compile a short list of no more than five  
4.16 most highly qualified firms in accordance with qualifications criteria described in the  
4.17 RFQ. If only one design-build firm responds to the RFQ or remains on the short list, the  
4.18 municipality may readvertise or cancel the project as the municipality deems necessary.

4.19 Subd. 9. **Phase two; design-build RFP.** The municipality shall prepare an RFP,  
4.20 which must include:

4.21 (1) the scope of work, including (i) performance and technical requirements, (ii)  
4.22 conceptual design, (iii) specifications, and (iv) functional and operational elements for  
4.23 the delivery of the completed project, all of which must be prepared by a registered or  
4.24 licensed professional engineer;

4.25 (2) copies of the contract documents that the successful proposer will be expected to  
4.26 sign;

4.27 (3) the maximum time allowable for design and construction;

4.28 (4) the road authority's estimated cost of design and construction;

4.29 (5) the requirement that a submitted proposal be segmented into two parts, a  
4.30 technical proposal and a price proposal;

4.31 (6) the requirement that each proposal be in a separately sealed, clearly identified  
4.32 package and include the date and time of the submittal deadline;

4.33 (7) the requirement that the technical proposal include a critical path method,  
4.34 bar schedule of the work to be performed, or similar schematic; preliminary design  
4.35 plans and specifications; technical reports; calculations; permit requirements; applicable  
4.36 development fees; and other data requested in the RFP;

- 5.1 (8) the requirement that the price proposal contain all design, construction,  
5.2 engineering, inspection, and construction costs of the proposed project;  
5.3 (9) the date, time, and location of the public opening of the sealed price proposals;  
5.4 (10) the amount of, and eligibility for, a stipulated fee;  
5.5 (11) other information relevant to the project; and  
5.6 (12) a statement that "past performance," "experience," or other criteria used in the  
5.7 RFP evaluation process does not include the exercise or assertion of a person's legal rights.

5.8 Subd. 10. **Design-build award; computation; announcement.** (a) A design-build  
5.9 contract must be awarded as follows.

5.10 (b) The Technical Review Committee shall score the technical proposals of the  
5.11 proposers selected under subdivision 8 using the selection criteria in the RFP. The  
5.12 Technical Review Committee shall then submit a technical proposal score for each  
5.13 design-builder to the municipality. The Technical Review Committee shall reject any  
5.14 nonresponsive proposal. The municipality shall review the technical proposal scores.

5.15 (c) The commissioner or the commissioner's designee shall review the technical  
5.16 proposal scores. The commissioner shall submit the final technical proposal scores to the  
5.17 municipality.

5.18 (d) The municipality shall announce the technical proposal score for each  
5.19 design-builder and shall publicly open the sealed price proposals and shall divide each  
5.20 design-builder's price by the technical score that the commissioner has given to it to obtain  
5.21 an adjusted score. The design-builder selected must be that responsive and responsible  
5.22 design-builder whose adjusted score is the lowest.

5.23 (e) If a time factor is included with the selection criteria in the RFP package, the  
5.24 municipality may use a value of the time factor established by the municipality as a  
5.25 criterion in the RFP.

5.26 (f) Unless all proposals are rejected, the municipality shall award the contract  
5.27 to the responsive and responsible design-builder with the lowest adjusted score. The  
5.28 municipality shall reserve the right to reject all proposals.

5.29 (g) The municipality shall award a stipulated fee not less than two-tenths of  
5.30 one percent of the municipality's estimated cost of design and construction to each  
5.31 short-listed, responsible proposer who provides a responsive but unsuccessful proposal.  
5.32 If the municipality does not award a contract, all short-listed proposers must receive the  
5.33 stipulated fee. If the municipality cancels the contract before reviewing the technical  
5.34 proposals, the municipality shall award each design-builder on the short list a stipulated  
5.35 fee of not less than two-tenths of one percent of the municipality's estimated cost of  
5.36 design and construction. The municipality shall pay the stipulated fee to each proposer

6.1 within 90 days after the award of the contract or the decision not to award a contract.  
6.2 In consideration for paying the stipulated fee, the municipality may use any ideas or  
6.3 information contained in the proposals in connection with any contract awarded for the  
6.4 project or in connection with a subsequent procurement, without any obligation to pay  
6.5 any additional compensation to the unsuccessful proposers. Notwithstanding the other  
6.6 provisions of this subdivision, an unsuccessful short-list proposer may elect to waive  
6.7 the stipulated fee. If an unsuccessful short-list proposer elects to waive the stipulated  
6.8 fee, the municipality may not use ideas and information contained in that proposer's  
6.9 proposal. Upon the request of the municipality, a proposer who waived a stipulated fee  
6.10 may withdraw the waiver, in which case the municipality shall pay the stipulated fee to the  
6.11 proposer and thereafter may use ideas and information in the proposer's proposal.

6.12 Subd. 11. **Low-bid design-build process.** (a) The municipality may also use  
6.13 low-bid, design-build procedures to award a design-build contract where the scope of  
6.14 the work can be clearly defined.

6.15 (b) Low-bid design-build projects may require an RFQ and short-listing, and must  
6.16 require an RFP.

6.17 (c) Submitted proposals under this subdivision must include separately a technical  
6.18 proposal and a price proposal. The low-bid, design-build procedures must follow a  
6.19 two-step process for review of the responses to the RFP as follows:

6.20 (1) the first step is the review of the technical proposal by the Technical Review  
6.21 Committee as provided in subdivision 5. The Technical Review Committee must open  
6.22 the technical proposal first and must determine if it complies with the requirements of the  
6.23 RFP and is responsive. The Technical Review Committee may not perform any ranking  
6.24 or scoring of the technical proposals; and

6.25 (2) the second step is the determination of the low bidder based on the price  
6.26 proposal. The municipality may not open the price proposal until the review of the  
6.27 technical proposal is complete.

6.28 (d) The contract award under low-bid, design-build procedures must be made to the  
6.29 proposer whose sealed bid is responsive to the technical requirements as determined by  
6.30 the Technical Review Committee and that is also the lowest bid.

6.31 (e) A stipulated fee may be paid for unsuccessful bids on low-bid, design-build  
6.32 projects only when the municipality has required an RFQ and short-listed the most highly  
6.33 qualified responsive bidders.

6.34 Subd. 12. **Legislative report.** By December 15, 2011, the commissioner shall  
6.35 submit a report on the pilot program to the chairs and ranking minority members of the

7.1 house of representatives and senate committees with jurisdiction over transportation  
7.2 policy and finance. The report must, at a minimum:

7.3 (1) summarize each pilot project, including the contracting process and project costs;

7.4 (2) evaluate the process and results applying the performance-based measures with  
7.5 which the commissioner evaluates trunk highway design-build projects; and

7.6 (3) identify any recommendations for future legislation.

7.7 **EFFECTIVE DATE.** This section is effective the day following final enactment.