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

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 if objective analysis demonstrates that it provides better long-term value for the
1.9 state than traditional procurement methods.

1.10 (b) Notwithstanding Minnesota Statutes, section 160.845, 160.98, or any other law to
1.11 the contrary, the commissioner or Metropolitan Council may consider for use in the pilot
1.12 program any existing public-private partnership mechanism or any proposed mechanism
1.13 that proves the best available option for the state. Mechanisms the commissioner or
1.14 Metropolitan Council may consider include, but are not limited to, toll facilities, BOT
1.15 facilities, BTO facilities, user fees, construction payments, joint development agreements,
1.16 negotiated exactions, air rights development, street improvement districts, or tax increment
1.17 financing districts for transit. For the purposes of sections 1 to 6, toll facilities, BOT
1.18 facilities, and BTO facilities have the meanings given under section 160.84.

1.19 (c) As part of the pilot program, the commissioner and Metropolitan Council are
1.20 directed to form an independent advisory and oversight office, the Joint Program Office
1.21 for Economic Development and Alternative Finance. The office shall consist of the
1.22 commissioner of management and budget, the commissioner of employment and economic
1.23 development, the commissioner of administration, the commissioner of transportation,
1.24 the Metropolitan Council, the legislative auditor, and one representative each from the

2.1 American Council of Engineering Companies - Minnesota chapter, the Central Minnesota
2.2 Transportation Alliance, the Counties Transit Improvement Board, and the Minnesota
2.3 County Engineers Association. In addition, the commissioner and Metropolitan Council
2.4 shall invite the Federal Highway Administration and the Federal Transit Administration to
2.5 participate in the office's activities. The office's duties shall include, but are not limited to,
2.6 reviewing and approving projects proposed under this section, reviewing any contractual
2.7 or financial agreements to ensure program requirements are met, and ensuring that any
2.8 proposed or executed agreement serves the public interest.

2.9 (d) Among the projects the commissioner and Metropolitan Council may consider
2.10 are the construction of an Interstate 94/US Highway 10 River Crossing near marked
2.11 Minnesota Trunk Highway 24, the Fish Lake interchange, the marked Interstate 94
2.12 expansion from the Fish Lake interchange to marked Trunk Highway 24, and high-speed,
2.13 commuter, and light rail projects.

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

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

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

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

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

2.29 **Sec. 3. CONSIDERATIONS.**

2.30 (a) When soliciting, evaluating, and selecting a private entity with which to enter into
2.31 a public-private partnership, the commissioner or Metropolitan Council must consider:

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

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

- 3.1 (3) the general reputation, qualifications, industry experience, and financial capacity
 3.2 of the private entity;
 3.3 (4) the project's proposed design, operation, and feasibility;
 3.4 (5) comments from local citizens and affected jurisdictions;
 3.5 (6) benefits to the public;
 3.6 (7) the safety record of the private entity; and
 3.7 (8) any other criteria the commissioner or Metropolitan Council deems appropriate.
 3.8 (b) The independent advisory and oversight office established under section 1,
 3.9 paragraph (c), shall review proposals evaluated by the commissioner or Metropolitan
 3.10 Council to ensure the requirements of this section are being met.

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

- 3.12 (a) A public-private agreement between the commissioner or the Metropolitan
 3.13 Council and a private entity shall, at a minimum, specify:
 3.14 (1) the planning, acquisition, financing, development, design, construction,
 3.15 reconstruction, replacement, improvement, maintenance, management, repair, leasing, or
 3.16 operation of the project;
 3.17 (2) the term of the public-private agreement;
 3.18 (3) the type of property interest, if any, that the private entity will have in the project;
 3.19 (4) a description of the actions the commissioner or Metropolitan Council may take
 3.20 to ensure proper maintenance of the project;
 3.21 (5) whether user fees will be collected on the project and the basis by which the
 3.22 user fees shall be determined and modified;
 3.23 (6) compliance with applicable federal, state, and local laws;
 3.24 (7) grounds for termination of the public-private agreement by the commissioner or
 3.25 Metropolitan Council; and
 3.26 (8) procedures for amendment of the agreement.
 3.27 (b) A public-private agreement between the commissioner or Metropolitan Council
 3.28 and a private entity may provide for:
 3.29 (1) review and approval by the commissioner or Metropolitan Council of the private
 3.30 entity's plans for the development and operation of the project;
 3.31 (2) inspection by the commissioner or Metropolitan Council of construction and
 3.32 improvements to the project;
 3.33 (3) maintenance by the private entity of a liability insurance policy;
 3.34 (4) filing of appropriate financial statements by the private entity on a periodic basis;
 3.35 (5) filing of traffic reports by the private entity on a periodic basis;

4.1 (6) financing obligations of the commissioner or Metropolitan Council and the
 4.2 private entity;

4.3 (7) apportionment of expenses between the commissioner or Metropolitan Council
 4.4 and the private entity;

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

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

4.8 (10) the terms and conditions of indemnification of the private entity by the
 4.9 commissioner or Metropolitan Council;

4.10 (11) assignment, subcontracting, or other delegations of responsibilities of (i) the
 4.11 private entity, or (ii) the commissioner or Metropolitan Council under agreement to third
 4.12 parties, including other private entities or state agencies;

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

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

4.16 (14) any other terms and conditions the commissioner or Metropolitan Council
 4.17 deems appropriate.

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

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

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

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

4.28 (c) The commissioner or Metropolitan Council may combine federal, state, local,
 4.29 and private funds to finance a public-private partnership pilot project.

4.30 **Sec. 6. REPORTING.**

4.31 By August 1, 2015, and annually by August 1 thereafter, the commissioner and
 4.32 Metropolitan Council shall submit to the chairs and ranking minority members of the
 4.33 house of representatives and senate committees having jurisdiction over transportation
 4.34 policy and finance a listing of all agreements executed under the pilot program authority.

- 5.1 The listing must identify each agreement, the contracting entities, contract amount and
5.2 duration, any repayment requirements, and provide an update on the project's progress.
5.3 The listing may be submitted electronically and is subject to Minnesota Statutes, section
5.4 3.195, subdivision 1.