

SENATE
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NINETY-SECOND SESSION

S.F. No. 2421

(SENATE AUTHORS: SENJEM)

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OFFICIAL STATUS
Introduction and first reading
Referred to State Government Finance and Policy and Elections

1.1 A bill for an act
1.2 relating to infrastructure development; authorizing public-private partnerships for
1.3 certain infrastructure projects; proposing coding for new law as Minnesota Statutes,
1.4 chapter 16F.

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

1.6 Section 1. 16F.01 DEFINITIONS.

1.7 Subdivision 1. Applicability. For purposes of this chapter, the following terms have the
1.8 meanings given unless context clearly indicates otherwise.

1.9 Subd. 2. Affected jurisdiction. "Affected jurisdiction" means any political subdivision
1.10 in which all or a portion of a project is located.

1.11 Subd. 3. Comprehensive agreement. "Comprehensive agreement" means the contractual
1.12 agreement between the private entity and the governmental entity.

1.13 Subd. 4. Governmental entity. "Governmental entity" means:

1.14 (1) a board, commission, department, or other agency of the state; and

1.15 (2) a political subdivision of the state that elects, by adoption of a resolution by the
1.16 political subdivision's governing body, to operate under this chapter.

1.17 Subd. 5. Lease payment. "Lease payment" means any form of payment, including a
1.18 land lease, by a governmental entity to the private entity for project use.

1.19 Subd. 6. Material default. "Material default" means any default by a private entity in
1.20 the performance of duties imposed under an interim agreement or comprehensive agreement
1.21 that jeopardizes adequate service to the public from a project.

2.1 Subd. 7. **Private entity.** "Private entity" means any individual person, corporation,
2.2 general partnership, limited liability company, limited partnership, joint venture, business
2.3 trust, public benefit corporation, nonprofit entity, or other business entity.

2.4 Subd. 8. **Project.** "Project" means a proposed or executed public-private partnership for
2.5 an infrastructure project, including but not limited to public transportation infrastructure,
2.6 roads, highways, bridges, waste water transportation and waste water treatment facilities,
2.7 water treatment and water transportation facilities, rail facilities, soil and water conservation
2.8 facilities, land and ecology conservation facilities, education facilities, governmental
2.9 facilities, public works, oil and gas pipeline, medical facilities, port facilities, cultural
2.10 facilities, technology infrastructure and facilities, public housing, or other public
2.11 infrastructure.

2.12 Subd. 9. **Property.** "Property" means any matter or thing capable of public or private
2.13 ownership.

2.14 Subd. 10. **Proposer.** "Proposer" means a private entity that submits a proposal to a
2.15 responsible governmental entity or affected jurisdiction.

2.16 Subd. 11. **Revenue.** "Revenue" means all revenue, income, earnings, user fees, lease
2.17 payments, or other service payments that arise out of or in connection with the development
2.18 or operation of a qualifying project, including money received as a grant or otherwise from
2.19 the federal government, a governmental entity, or any agency or instrumentality of the
2.20 federal government or governmental entity in aid of a project.

2.21 Subd. 12. **User fee.** "User fee" means a rate, fee, or other charge imposed by a private
2.22 entity for the use of all or part of a project under a comprehensive agreement.

2.23 **Sec. 2. [16F.02] APPROVAL REQUIRED.**

2.24 (a) A private entity is prohibited from designing, building, constructing, financing,
2.25 operating, or maintaining a project unless:

2.26 (1) the governmental entity has complied with all of the requirements of this chapter;
2.27 and

2.28 (2) the private entity has entered into a valid comprehensive agreement with the
2.29 governmental entity, subject to all of the requirements of this chapter.

2.30 (b) Before using this chapter to procure a particular project, the governmental entity
2.31 must approve by official action that the governmental entity will comply with this chapter.

3.1 In the absence of approval by official action under this section, the procurement is governed
3.2 by existing applicable law.

3.3 (c) If a project involves multiple affected jurisdictions, the governmental entities may
3.4 establish a joint powers board under section 471.59. For purposes of a joint powers board
3.5 project, the joint powers board is the governmental entity subject to the requirements of this
3.6 chapter.

3.7 **Sec. 3. [16F.03] PROJECT REQUIREMENTS.**

3.8 Subdivision 1. **Compliance required.** After approval to operate under section 16F.02
3.9 and before approving solicitation of competitive proposals for a project under this chapter,
3.10 the governmental entity must comply with this section.

3.11 Subd. 2. **Feasibility study.** (a) For each project the governmental entity seeks to procure
3.12 using this chapter, the governmental entity must conduct a study analyzing the project's
3.13 feasibility and impacts.

3.14 (b) The feasibility and impact study must investigate:

3.15 (1) the public need for the project;

3.16 (2) the anticipated scope and cost of the project;

3.17 (3) the financial, social, cultural, ecological, environmental, legal, and economic impacts
3.18 of the project to the public and all affected jurisdictions;

3.19 (4) the additional public benefit and value generated by procuring the project under this
3.20 chapter compared to the public benefit and value generated if the project was procured using
3.21 traditional public procurement methods;

3.22 (5) the cost savings or additional costs associated with using private financing in lieu of
3.23 traditional public financing;

3.24 (6) the risks and rewards associated with procuring the project under this chapter and
3.25 the risks associated with procuring the project using traditional procurement methods;

3.26 (7) the time savings or additional time associated with procurement of the project under
3.27 this chapter in lieu of traditional procurement methods; and

3.28 (8) other criteria that the governmental entity requires to analyze the feasibility and
3.29 impacts of the project.

3.30 (c) The results of the feasibility and impact study must be published on the governmental
3.31 entity's website in a written feasibility report.

4.1 (d) The governmental entity may elect to conduct additional feasibility and impact
4.2 studies.

4.3 Subd. 3. **Consultant use.** (a) Any private consultants retained by the governmental entity
4.4 to assist with any part of the feasibility and impact study must be selected and engaged
4.5 based on an advertised and open competitive process. The governmental entity must solicit
4.6 the services of private consultants through an advertised request for proposal that states the
4.7 qualifications, experience, and services sought for the feasibility and impact study. The
4.8 solicitation must encourage participation by local private entities or consultants and must
4.9 also encourage the disadvantaged business enterprise participation consistent with the goals
4.10 established by the governmental entity.

4.11 (b) The private consultants providing the best combination of appropriate qualifications,
4.12 local participation, disadvantaged business enterprise participation, experience, pricing, and
4.13 availability must be selected. For the first ten years after the effective date of this chapter,
4.14 a governmental entity is prohibited from considering a private consultant's prior experience
4.15 in public-private partnerships in other states when selecting private consultants to provide
4.16 services in connection with any portion of the feasibility and impact study.

4.17 (c) A private consultant or employee of the governmental entity that participated in the
4.18 feasibility and impact study is prohibited from being employed by a private entity seeking
4.19 or entering into the comprehensive agreement with the governmental entity. A private
4.20 consultant engaged to assist the governmental entity to prepare the feasibility and impact
4.21 study may be retained by the governmental entity to provide services in connection with
4.22 the preparation of the request for proposals and the proposal evaluation process or in
4.23 connection with the negotiation and administration of the comprehensive agreement between
4.24 the private entity and the governmental entity for the project.

4.25 Subd. 4. **Public hearing.** (a) After the feasibility study is complete, the governmental
4.26 entity must hold a public hearing on the results of the feasibility study and to take into
4.27 consideration public comment on the qualifying project. The governmental entity may elect
4.28 hold additional public hearings.

4.29 (b) If supplemental feasibility and impact studies are conducted, one public hearing on
4.30 the results of such supplemental feasibility and impact studies shall be held to take into
4.31 consideration public comment on the qualifying project.

4.32 Subd. 5. **Request for proposals; solicitation.** (a) A governmental entity is prohibited
4.33 from entering into a comprehensive agreement for a project under this chapter unless the
4.34 governmental entity complies with this section. A governmental entity may, by official

5.1 action, authorize a request for proposals to be prepared and execution of a competitive
5.2 process for the project, as set forth under section 16F.04.

5.3 (b) Before soliciting proposals, the governmental entity must identify all permits of any
5.4 kind required in connection with the project, including but not limited to environmental,
5.5 wastewater, building, or other permits. All permits must be identified in the feasibility study,
5.6 which must also provide information regarding when such permits must be obtained. All
5.7 permits must be obtained as required by applicable law.

5.8 **Sec. 4. [16F.04] REQUEST FOR PROPOSALS; COMPETITIVE PROCESS.**

5.9 Subdivision 1. Consultant use. (a) The governmental entity may engage one or more
5.10 private consultants to assist with the request for proposals preparation and the proposal
5.11 evaluation process. The private consultants used may include but are not limited to architects,
5.12 engineers, attorneys, and financial consultants. Any consultant hired must be duly licensed
5.13 in Minnesota.

5.14 (b) A private consultant retained by the governmental entity to assist with any part of
5.15 the request for proposal preparation or the proposal evaluation process must be evaluated,
5.16 selected, and engaged based on an advertised and open competitive process. The
5.17 governmental entity must solicit the services of private consultants through an advertised
5.18 request for proposal that states the qualifications, experience, and services sought in
5.19 connection with the preparation of the request for proposals. The solicitation must encourage
5.20 participation by local entities or consultants and must also encourage disadvantaged business
5.21 enterprises participation consistent with the goals established by the governmental entity.

5.22 (c) The governmental entity must select the private consultant or consultants that provides
5.23 the best combination of appropriate qualifications, local participation, disadvantaged business
5.24 enterprise participation, experience, pricing, and availability. For the first ten years after
5.25 the effective date of this chapter, a governmental entity is prohibited from considering a
5.26 private consultant's prior experience with public-private partnerships in other states when
5.27 selecting private consultants to provide services in connection with request for proposal
5.28 preparation or the proposal evaluation process.

5.29 (d) A private consultant or governmental entity employee that participated in request
5.30 for proposals preparation is prohibited from being employed by a private entity seeking or
5.31 entering into the comprehensive agreement with the governmental entity. A private consultant
5.32 engaged to assist the governmental entity with the request for proposal preparation or the
5.33 proposal evaluation process may be retained by the governmental entity to provide services
5.34 to the governmental entity in connection with negotiation and administration of the

6.1 comprehensive agreement between the private entity and the governmental entity for the
6.2 project.

6.3 Subd. 2. Request for proposals; requirements. Each request for proposals must include:

6.4 (1) a description of the major programmatic and scope elements of the project;

6.5 (2) the technical requirements, performance requirements, and goals to be met by the
6.6 project, expressed affirmatively and in terms of adverse effects to be avoided;

6.7 (3) the governmental entity's schedule goals for the project, including any contemplated
6.8 major milestones for the completion of design and construction of the project, major design
6.9 and construction phases, and the minimum duration of any required operation and
6.10 maintenance services;

6.11 (4) preliminary conceptual drawings, specifications, and other preliminary design
6.12 information that illustrates the qualifying project's desired attributes;

6.13 (5) the proposed comprehensive agreement providing the design, construction, financing,
6.14 and, where applicable, the operation and maintenance of the project, to be entered into by
6.15 the governmental entity and the private entity;

6.16 (6) the bid bond, performance bonds, and payment bonds the successful proposer must
6.17 execute as a condition of entering into the comprehensive agreement. Bid bonds are required
6.18 to secure a proposer's proposal for a period of 120 days;

6.19 (7) any proposed additional documents related to additional security the successful
6.20 proposer must provide as a condition of entering into the comprehensive agreement;

6.21 (8) the governmental entity's initial budget estimates for the project, including known
6.22 revenue sources, appropriations available to the governmental entity at the time of the
6.23 proposal, potential future appropriation risks, a financial plan, proposed key financial terms,
6.24 and desired financing terms;

6.25 (9) the qualifications and skill sets sought from the proposer, including the qualifications
6.26 of any architects, engineers, and construction contractors engaged by the proposer to
6.27 participate in the comprehensive agreement;

6.28 (10) a statement that all private lenders providing financing for the project must be duly
6.29 authorized by the state of Minnesota, and are subject to and must comply with all laws and
6.30 regulations applicable to banking institutions in Minnesota;

7.1 (11) the due date by which proposers must provide the qualifications submittal for the
7.2 governmental entity to evaluate, which must be at least 60 days after the date the request
7.3 for proposals is published;

7.4 (12) the date by which the governmental entity must announce the short-listed proposers
7.5 selected to advance to proposal evaluation phase. The governmental entity is prohibited
7.6 from short-listing more than four proposers. If the proposal is an unsolicited proposal
7.7 submitted under section 16F.11, the proposer that submitted the unsolicited proposal must
7.8 be a short-listed proposer;

7.9 (13) the due date by which proposers must submit sealed proposals to the governmental
7.10 entity to evaluate under the criteria in the request for proposals. For projects with estimated
7.11 budgets up to \$50,000,000, the due date must be at least three months after the short-listed
7.12 proposers are announced. For projects with estimated budgets greater than \$50,000,000,
7.13 the due date must be at least nine months after the short-listed proposers are announced;

7.14 (14) the stipend paid to unsuccessful proposers for submitting a responsive proposal,
7.15 which must be at least one-half percent of the governmental entity's estimated budget for
7.16 the design and construction of the project. Each unsuccessful responsive proposal must
7.17 receive an equal share of the stipend. The successful proposer must apply for stipend payment
7.18 in the first payment application under the comprehensive agreement and must pay a pro
7.19 rata share to each unsuccessful proposer that submitted a responsive proposal. Each
7.20 unsuccessful proposer must pay equitable portions of the stipend to the architects, engineers,
7.21 contractors, and subcontractors that materially participated in the proposal process;

7.22 (15) the procedures to protect any confidential or proprietary information in the proposals,
7.23 and to return any confidential or proprietary information to unsuccessful proposers.
7.24 Information in a proposal relating to pricing, the cost of financing, or lending terms is not
7.25 confidential or proprietary;

7.26 (16) the criteria by which proposals will be evaluated; and

7.27 (17) the date by which the successful proposer must be announced or all proposals
7.28 rejected.

7.29 Subd. 3. **Evaluation criteria.** (a) The criteria used to evaluate proposals must be
7.30 objective, assigned numerical weights, and be reasonably designed to objectively compare
7.31 and evaluate proposals. Criteria that are not expressly listed in the request for proposals
7.32 must not be considered. Criteria related to personal characteristics of a proposer, such as
7.33 the proposer's prior experience with the governmental entity or the governmental entity's

8.1 private consultants on public-private partnership projects in states other than Minnesota
8.2 must not be used.

8.3 (b) The minimum criteria must include:

8.4 (1) the project's proposed cost, including the cost of the design, construction, and
8.5 financing components of the proposal and, where applicable, operating and maintenance
8.6 costs;

8.7 (2) the project's proposed design and construction quality, which must meet or exceed
8.8 all project goals and performance requirements specified in the request for proposal;

8.9 (3) the degree to which the proposal allows the governmental entity to take advantage
8.10 of available financing from federal, state, local, or other private funding sources;

8.11 (4) the proposer's plan to employ local architects, engineers, contractors, subcontractors,
8.12 and residents for the project;

8.13 (5) the proposer's plan to meet or make good faith efforts to meet the governmental
8.14 entity's established disadvantaged business enterprise goals;

8.15 (6) for a project that involves a continuing role beyond design, construction, and
8.16 financing, the private entity's proposed rate of return and revenue sharing opportunities;

8.17 (7) the proposer's safety record and safety plan;

8.18 (8) the financial stability and capacity of any private lender proposed to be used to
8.19 finance any portion of the design and construction of the project;

8.20 (9) the proposer's plan to mitigate risks and negative impacts identified in the feasibility
8.21 and impact study, and any other risks identified by the proposer;

8.22 (10) the nature and extent of the proposer's proposed modifications to the governmental
8.23 entity's proposed comprehensive agreement;

8.24 (11) the proposer's project schedule;

8.25 (12) the degree to which the private entity's proposal mitigates any of the project's adverse
8.26 social, cultural, ecological, environmental, legal, and economic impacts;

8.27 (13) any generated user fees, lease payments, or other revenue the proposer guarantees
8.28 upon successful completion of the project; and

8.29 (14) other objective criteria the governmental entity deems appropriate.

8.30 Subd. 4. **Meetings.** The governmental entity may conduct one or more confidential
8.31 meetings with each proposer during the request for proposals phase to discuss each proposer's

9.1 request for proposal documents. The governmental entity may also conduct interviews with
9.2 each team that submitted a compliant proposal. The sole purpose of an interview under this
9.3 subdivision is to facilitate the governmental entity's review of the proposals.

9.4 Subd. 5. **Noncompliant proposals.** The governmental entity must reject all nonresponsive
9.5 proposals. The governmental entity may request clarifications to remedy minor
9.6 nonconformities or discrepancies that do not otherwise affect the responsiveness of the
9.7 proposal.

9.8 Subd. 6. **Fees.** The responsible governmental entity may charge a reasonable fee to cover
9.9 the costs of processing, reviewing, and evaluating unsolicited proposals submitted under
9.10 section 16F.11. A fee charged under this subdivision may include reasonable legal fees and
9.11 fees for financial and technical consultants.

9.12 **Sec. 5. [16F.05] COMPREHENSIVE AGREEMENT REQUIREMENTS.**

9.13 The comprehensive agreement must include minimum requirements and provisions as
9.14 follows:

9.15 (1) the private entity must design, construct, and finance the project, and, where
9.16 applicable, operate and maintain the project;

9.17 (2) the form of payment and performance bonds the private entity and any construction
9.18 contractor engaged by the private entity to provide construction services in connection with
9.19 the project must obtain;

9.20 (3) the bonds and security the private entity must furnish for the project;

9.21 (4) the standards that apply to the project's design, including any performance and quality
9.22 requirements;

9.23 (5) the project schedule, including milestones for the design, construction, and financing
9.24 phases of the project;

9.25 (6) the duration of the project's operation and maintenance phase, if any;

9.26 (7) requirements regarding the insurance policies the private entity must procure in
9.27 connection with the project, including any builder's risk insurance policies, liability insurance
9.28 policies, professional errors and omissions policies, and other insurance policies necessary
9.29 or advisable in connection with the project;

9.30 (8) liquidated damages must be paid to the governmental entity in the event of delays
9.31 to project completion;

10.1 (9) the rights of the governmental entity to provide administration, oversight, and
10.2 monitoring of the private entity's performance of duties and obligations under the
10.3 comprehensive agreement;

10.4 (10) the rights of the parties in the event the comprehensive agreement is terminated for
10.5 cause or for convenience;

10.6 (11) reimbursement must be paid to the governmental entity for services the governmental
10.7 entity provides;

10.8 (12) filing of appropriate financial statements on a periodic basis;

10.9 (13) dispute resolution, including a requirement that the parties attempt to mediate
10.10 disputes before initiating any legal proceedings in the state or federal court having jurisdiction
10.11 over the project;

10.12 (14) the user fee, lease payment, or service payment established by agreement of the
10.13 parties, which must be established as a payment or fee that is an equal amount for individuals
10.14 using a project facility under like conditions and that does not materially discourage use of
10.15 the project. An executed comprehensive agreement or an amendment to the comprehensive
10.16 agreement is conclusive evidence that the user fee, lease payment, or service payment
10.17 complies with this chapter. A user fee or lease payment established as a revenue source in
10.18 the comprehensive agreement may be in addition to or in lieu of a service payment;

10.19 (15) whether the governmental entity may make grants or loans to the private entity
10.20 from money received from the federal, state, or local government or any agency or
10.21 instrumentality of the government;

10.22 (16) the private entity's duties under this chapter including any terms the governmental
10.23 entity determines serve the public interest;

10.24 (17) the notice and cure rights of the parties in the event of a default;

10.25 (18) any change in the terms of the comprehensive agreement that the parties agree to
10.26 must be added to the comprehensive agreement by written amendment;

10.27 (19) the comprehensive agreement may provide for the development or operation of
10.28 phases or segments of the project;

10.29 (20) the comprehensive agreement must provide that a security document or other
10.30 instrument purporting to mortgage, pledge, encumber, or create a lien, charge, or security
10.31 interest on or against the private entity's interest does not extend to or affect the state's fee
10.32 simple interest in the project or the state's rights or interests under the comprehensive

11.1 agreement. Any debt holder must acknowledge that the mortgage, pledge, or encumbrance
 11.2 or a lien, charge, or security interest on or against the private entity's interest is subordinate
 11.3 to the state's fee simple interest in the project;

11.4 (21) where the governmental entity pledges to make future appropriations to pay for
 11.5 portions of the project, the governmental entity must provide in the comprehensive agreement
 11.6 the mechanisms by which the appropriations are made. The risk that the governmental entity
 11.7 does not make future appropriations is borne by the private entity and not by architects,
 11.8 engineers, contractors, or subcontractors performing design and construction services in
 11.9 connection with the project;

11.10 (22) the private entity is prohibited from charging any liquidated damages owed to the
 11.11 governmental entity by the private entity to any architects, engineers, contractors, or
 11.12 subcontractors performing design and construction services in connection with the project;

11.13 (23) a governmental entity is not prohibited from developing any project of any kind,
 11.14 and the comprehensive agreement must not include any noncompetition clause or other
 11.15 provision limiting the governmental entity's ability to procure any future project;

11.16 (24) the private entity must use the architects, engineers, contractors, and subcontractors
 11.17 who contributed materially to the proposal; and

11.18 (25) upon financial closing of loans to finance the project, the funds used for project
 11.19 construction must be set into escrow and held in trust for the benefit and protection of
 11.20 contractors and subcontractors performing the work.

11.21 **Sec. 6. [16F.06] POWERS AND DUTIES; PRIVATE ENTITIES.**

11.22 (a) A private entity has the power to:

11.23 (1) design, build, finance and, where applicable, operate and maintain the project; and

11.24 (2) collect lease payments, impose user fees, or enter into service contracts in connection
 11.25 with the project.

11.26 (b) A private entity is prohibited from imposing a user fee or increasing a user fee amount
 11.27 unless the fee or increase is approved by the governmental entity.

11.28 (c) A private entity may own, lease, or acquire any other right to use or operate the
 11.29 project.

11.30 (d) A private entity may finance a project in the amounts and on the terms determined
 11.31 by the private entity. A private entity may issue debt, equity, or other securities or obligations,
 11.32 enter into sale and leaseback transactions, or secure any financing with a pledge of, security

12.1 interest in, or lien on any or all of the private entity's property, including property interests
12.2 in the project.

12.3 (e) When operating the project, a private entity may:

12.4 (1) establish classifications, using reasonable categories, to assess user fees; and

12.5 (2) with the consent of the governmental entity, adopt and enforce reasonable rules for
12.6 the project to the same extent as the governmental entity.

12.7 (f) The private entity must:

12.8 (1) design, construct, finance, and, where applicable, operate and maintain the project
12.9 in a manner that is (i) acceptable to the governmental entity, and (ii) compliant with the
12.10 comprehensive agreement;

12.11 (2) open the project for public use at all times, or at appropriate times based on the public
12.12 use of the project, subject to (i) payment of applicable user fees, lease payments, or service
12.13 payments, and (ii) paragraph (g);

12.14 (3) maintain, or contract for the maintenance or upgrade of, the project if required by
12.15 any applicable interim or comprehensive agreement;

12.16 (4) cooperate with the governmental entity to establish any interconnection with the
12.17 project requested by the governmental entity; and

12.18 (5) comply with any applicable interim or comprehensive agreement, lease, or service
12.19 contract.

12.20 (g) The project may be temporarily closed due to an emergency or, with the consent of
12.21 the governmental entity, to protect public safety or perform reasonable construction or
12.22 maintenance activities.

12.23 (h) This chapter does not prohibit a private entity project from providing additional
12.24 services to the public or persons other than the governmental entity with respect to the
12.25 project, provided the additional service does not impair the private entity's ability to meet
12.26 the commitments to the governmental entity under any applicable interim or comprehensive
12.27 agreement.

12.28 **Sec. 7. [16F.07] FEDERAL, STATE, AND LOCAL ASSISTANCE.**

12.29 (a) A private entity and the governmental entity may use any funding resources available
12.30 to the parties, including:

12.31 (1) accessing any designated trust funds; and

13.1 (2) borrowing or accepting grants from any political subdivision of the state.

13.2 (b) The governmental entity may obtain federal, state, or local assistance for a project
 13.3 under this chapter and may enter into any contracts required to receive the assistance.

13.4 (c) The governmental entity may determine that paying for all or part of the costs of a
 13.5 project directly or indirectly from the proceeds of a grant or loan made by the local, state,
 13.6 or federal government or any agency or instrumentality of the government serves a public
 13.7 purpose under this chapter.

13.8 **Sec. 8. [16F.08] PERFORMANCE AND PAYMENT BONDS REQUIRED.**

13.9 (a) The construction, remodel, or repair of a qualifying project may be performed only
 13.10 after performance and payment bonds for the construction, remodel, or repair have been
 13.11 executed in compliance with sections 574.26 to 574.32, regardless of whether the project
 13.12 is on public or private property or is publicly or privately owned. The obligee under a
 13.13 performance bond under this section may be a public entity, a private person, or an entity
 13.14 consisting of both a public entity and a private person.

13.15 (b) For purposes of this section, a project is considered private for purposes of chapter
 13.16 514. Any improvement made due to a project under this chapter is subject to the liens
 13.17 provided for under chapter 514.

13.18 **Sec. 9. [16F.09] MATERIAL DEFAULT; REMEDIES.**

13.19 (a) If a private entity commits a material default, the governmental entity assumes the
 13.20 responsibilities and duties of the private entity with respect to the project. If the governmental
 13.21 entity assumes the responsibilities and duties of the private entity, the governmental entity
 13.22 has all the rights, title, and interest in the project, subject to any liens under chapter 514,
 13.23 and any liens on revenue previously granted by the private entity to any person financing
 13.24 the project.

13.25 (b) A governmental entity that possesses the power of eminent domain under state law
 13.26 may exercise that power to acquire the project in the event of a material default by the
 13.27 private entity. Any person who provided financing for the project, the private entity with
 13.28 respect to its capital investment in the project, and any person possessing any lien rights
 13.29 under chapter 514, may participate in the eminent domain proceedings.

13.30 (c) The governmental entity may terminate, with cause, any comprehensive agreement
 13.31 and exercise any other rights and remedies available to the governmental entity at law or
 13.32 in equity.

14.1 (d) The governmental entity may make any appropriate claim under the performance
14.2 bonds and other security required by this chapter.

14.3 (e) If the governmental entity elects to assume the responsibilities and duties for a project
14.4 under paragraph (a), the governmental entity may:

14.5 (1) develop or operate the qualifying project;

14.6 (2) impose user fees;

14.7 (3) impose and collect lease payments for the project's use; and

14.8 (4) comply with any applicable contract to provide services.

14.9 (f) The governmental entity must collect and pay to secured parties any revenue subject
14.10 to a lien, and to parties having lien claims under chapter 514, amounts necessary to satisfy
14.11 the private entity's obligations to secured parties, including the maintenance of reserves.
14.12 The liens must be correspondingly reduced and released when paid in full.

14.13 (g) After lien claimants with liens under chapter 514 are paid in full, and before any
14.14 payment is made to or for the benefit of a secured party, the governmental entity may use
14.15 revenue to pay a project's current operation and maintenance costs, including compensation
14.16 to the governmental entity for the fair value of services to operate and maintain the project.

14.17 (h) A governmental entity is prohibited from pledging the governmental entity's full
14.18 faith and credit to secure any of the private entity's financing that was assumed by the
14.19 governmental entity when the governmental entity assumed responsibility for the project.

14.20 **Sec. 10. [16F.10] PROCUREMENT GUIDELINES.**

14.21 (a) Section 471.345 does not apply to a project under this chapter.

14.22 (b) A private entity is prohibited from substituting or replacing team members, including
14.23 an architect, engineer, or builder, after a project is approved and an interim or comprehensive
14.24 agreement is executed.

14.25 **Sec. 11. [16F.11] UNSOLICITED PROPOSALS.**

14.26 A governmental entity may accept unsolicited proposals submitted by a private entity
14.27 for a project. The unsolicited proposal may include information related to the factors a
14.28 governmental entity must evaluate as part of a feasibility and impact study. If the
14.29 governmental entity elects to pursue the project identified in the unsolicited proposal, the
14.30 governmental entity must comply with this chapter.

15.1 Sec. 12. **[16F.12] CONFLICT OF INTEREST.**

15.2 A governmental entity employee or a person related to the employee within the second
15.3 degree by consanguinity or affinity is prohibited from accepting money, a financial benefit,
15.4 or other consideration from a private entity participating in the bidding process for a project
15.5 or party to a comprehensive agreement with the governmental entity.

15.6 Sec. 13. **[16F.13] PROHIBITED EMPLOYMENT WITH FORMER OR RETIRED**
15.7 **GOVERNMENTAL ENTITY EMPLOYEES.**

15.8 A private entity is prohibited from employing or entering into a professional services
15.9 or consulting services contract with a former or retired governmental entity employee if the
15.10 private entity has entered into a comprehensive agreement with the governmental entity
15.11 within two years of the date the former or retired governmental entity employee terminated
15.12 employment with the governmental entity.

15.13 Sec. 14. **[16F.14] GOVERNMENTAL ENTITY EMPLOYEES; PROHIBITED**
15.14 **EMPLOYMENT.**

15.15 (a) A governmental entity employee is prohibited from being employed or hired by a
15.16 private entity to perform duties related to the employee's specific duties in developing and
15.17 implementing a project under this chapter, including reviewing, evaluating, developing,
15.18 and negotiating a project proposal.

15.19 (b) The governmental entity must obtain from each employee sufficient information to
15.20 determine whether:

15.21 (1) the employee is employed by a private entity; and

15.22 (2) a potential conflict of interest exists between the employee's duties for the
15.23 governmental entity and the employee's duties with the private entity.

15.24 (c) Each governmental entity employee whose duties relate to a project under this chapter
15.25 must attest that the employee is aware of and agrees to the governmental entity's ethics and
15.26 conflict-of-interest policies.

15.27 (d) To the extent the other employment is authorized by the governmental entity's policy,
15.28 this section does not prohibit a governmental entity employee from obtaining additional
15.29 employment that is unrelated to a project under this chapter.

16.1 Sec. 15. [16F.15] CONSTRUCTION; EFFECT.

16.2 The provisions of this chapter must be liberally construed to encourage execution of
16.3 public-private partnerships for infrastructure projects in Minnesota.