

1.1 A bill for an act

1.2 relating to transportation; creating pilot program to authorize and evaluate use of
1.3 design-build method of contracting by municipalities; requiring report.

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

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

1.6 The commissioner of transportation shall conduct a design-build contracting pilot
1.7 program to select local transportation projects for participation in the program, to conduct
1.8 information sessions for engineers and contractors, to support and evaluate the use of the
1.9 design-build method of contracting by counties and statutory and home rule charter cities
1.10 in constructing, improving, and maintaining streets and highways on the state-aid system,
1.11 and to report to the legislature.

1.12 Sec. 2. **DESIGN-BUILD PROJECT SELECTION COUNCIL.**

1.13 Subdivision 1. **Establishment of council.** A Design-Build Project Selection
1.14 Council is established to select, evaluate, and support county and municipal transportation
1.15 projects on the state-aid system that are conducive to use of the design-build method of
1.16 contracting and to report to the legislature.

1.17 Subd. 2. **Duties of council.** In order to accomplish these purposes, the council shall:

1.18 (1) review applications for participation received by the commissioner from counties
1.19 and cities;

1.20 (2) select for participation in the pilot program a maximum of 15 projects on the
1.21 state-aid system, no more than ten of which may be on the county state-aid highway
1.22 system, and no more than ten of which may be on the municipal state-aid street system;

2.1 (3) determine that the use of design-build in the selected projects would serve the
2.2 public interest, after considering, at a minimum:

2.3 (i) the extent to which the municipality can adequately define the project
2.4 requirements in a proposed scope of the design and construction desired;

2.5 (ii) the time constraints for delivery of the project;

2.6 (iii) the capability of potential contractors with the design-build method of project
2.7 delivery;

2.8 (iv) the suitability of the project for use of the design-build method of project
2.9 delivery with respect to time, schedule, costs, and quality factors;

2.10 (v) the capability of the municipality to manage the project, including the
2.11 employment of experienced personnel or outside consultants; and

2.12 (vi) the original character of the product or the services;

2.13 (4) periodically review and evaluate the use of design-build in the selected projects;
2.14 and

2.15 (5) assist the commissioner in preparing a report to the legislature at the conclusion
2.16 of the pilot program.

2.17 Subd. 3. **Membership.** (a) The council is composed of the following members:

2.18 (1) two contractors, at least one of whom represents a small contracting firm,
2.19 selected by the Associated General Contractors, Minnesota chapter;

2.20 (2) two project designers selected by the American Council of Engineering
2.21 Companies, Minnesota chapter;

2.22 (3) one representative of a metropolitan area county selected by the Association
2.23 of Minnesota Counties;

2.24 (4) one representative of a greater Minnesota county selected by the Association
2.25 of Minnesota Counties;

2.26 (5) one representative of a metropolitan area city selected by the League of
2.27 Minnesota Cities;

2.28 (6) one representative of a greater Minnesota city selected by the League of
2.29 Minnesota Cities; and

2.30 (7) the commissioner of transportation or a designee from the Minnesota Department
2.31 of Transportation Division of State Aid for Local Transportation.

2.32 (b) All appointments required by paragraph (a) must be completed by August
2.33 1, 2009.

2.34 (c) The commissioner or the commissioner's designee shall convene the first meeting
2.35 of the council within two weeks after the members have been appointed to the council and
2.36 shall serve as chair of the council.

3.1 Sec. 3. **DESIGN-BUILD CONTRACTING PILOT PROGRAM.**

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

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

3.4 (2) "municipality" means a county or statutory or home rule charter city;

3.5 (3) "design-build contract" means a single contract between a municipality and a
3.6 design-build company or firm to furnish the architectural or engineering and related design
3.7 services as well as the labor, material, supplies, equipment, and construction services for
3.8 the transportation project;

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

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

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

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

3.19 (8) "request for proposals" or "RFP" means the document by which the municipality
3.20 solicits proposals from qualified design-build firms to design and construct the
3.21 transportation project; and

3.22 (9) "request for qualifications" or "RFQ" means a document to qualify potential
3.23 design-build firms.

3.24 Subd. 2. Licensing requirements. (a) Each design-builder shall employ, or have
3.25 as a partner, member, officer, coventurer, or subcontractor, a person duly licensed and
3.26 registered to provide the design services required to complete the project and do business
3.27 in the state.

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

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

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

4.3 Subd. 3. **Information session for municipal engineer.** After a project is selected
4.4 for participation in the design-build contracting pilot program, the commissioner or the
4.5 commissioner's designee with design-build experience shall conduct an information
4.6 session for the municipality's engineer for each selected project, in which issues unique
4.7 to design-build must be discussed, including, but not limited to, writing an RFP, project
4.8 oversight requirements, assessing risk, and communication with the design-build firm.
4.9 After participation in the information session, the municipality's engineer is qualified to
4.10 post the selected project, along with any future design-build project RFP in the pilot
4.11 program.

4.12 Subd. 4. **Design-build RFQ and RFP.** (a) The municipality shall appoint a
4.13 Technical Review Committee of at least five individuals. The Technical Review
4.14 Committee must include an individual whose name and qualifications are submitted
4.15 to the municipality by the Minnesota chapter of the Associated General Contractors,
4.16 after consultation with other commercial contractor associations in the state. Members
4.17 of the Technical Review Committee who are not state employees are subject to the
4.18 Minnesota Government Data Practices Act and Minnesota Statutes, section 16C.06, to
4.19 the same extent that state agencies are subject to those provisions. A Technical Review
4.20 Committee member may not participate in the review or discussion of any proposal when
4.21 a design-build firm in which the member has a financial interest has submitted a proposal.
4.22 "Financial interest" includes, but is not limited to, being or serving as an owner, employee,
4.23 partner, limited liability partner, shareholder, joint venturer, family member, officer, or
4.24 director of a design-build firm submitting a proposal for a specific project, or having any
4.25 other economic interest in that design-build firm. The members of the Technical Review
4.26 Committee must be treated as municipal employees in the event of litigation resulting
4.27 from any action arising out of their service on the committee.

4.28 (b) The municipality shall solicit proposals based on an RFQ and RFP. The RFQ
4.29 must include the following:

4.30 (1) the minimum necessary qualifications of design-builders;

4.31 (2) the weighted selection criteria;

4.32 (3) requirements for (i) construction experience, (ii) design experience, (iii)
4.33 financial, personnel, and equipment resources available from potential design-builders for
4.34 the project, and (iv) experience in other design-build transportation projects or similar
4.35 projects, provided that these requirements may not unduly restrict competition; and

5.1 (4) a statement that "past performance" or "experience" does not include the exercise
5.2 or assertion of a person's legal rights.

5.3 (c) The RFP must include:

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

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

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

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

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

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

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

5.20 (8) the requirement that the price proposal contain all design, construction,
5.21 engineering, inspection, and construction costs of the proposed project;

5.22 (9) the date, time, and location of the public opening of the sealed price proposals;

5.23 (10) the amount of, and eligibility for, a stipulated fee; and

5.24 (11) other information relevant to the project.

5.25 **Subd. 5. Information session for prospective design-build firms.** After a
5.26 design-build project is advertised, any prospective design-build firm shall attend a
5.27 design-build information session conducted by the commissioner or the commissioner's
5.28 designee with design-build experience. The information must include information about
5.29 design-build contracts, including, but not limited to, communication with partner firms,
5.30 project oversight requirements, assessing risk, and communication with the municipality's
5.31 engineer. After participation in the information session, the design-build firm is eligible to
5.32 bid on the design-build project and any future design-build pilot program projects.

5.33 **Subd. 6. Design-build award; computation; announcement.** A design-build
5.34 contract shall be awarded as follows:

5.35 (a) The Technical Review Committee shall evaluate the qualifications of proposers
5.36 and select the most highly qualified proposers.

6.1 (b) The Technical Review Committee shall score the technical proposals of the
6.2 proposers selected under paragraph (a) using the selection criteria in the RFP. The
6.3 Technical Review Committee shall then submit a technical proposal score for each
6.4 design-builder to the municipality. The Technical Review Committee shall reject any
6.5 nonresponsive proposal. The municipality shall review the technical proposal scores.

6.6 (c) The commissioner or the commissioner's designee shall review the technical
6.7 proposal scores. The commissioner shall submit the final technical proposal scores to the
6.8 municipality.

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

6.14 (e) If a time factor is included with the selection criteria in the RFP package, the
6.15 municipality may also adjust the bids using a value of the time factor established by
6.16 the municipality. The value of the time factor must be expressed as a value per day.
6.17 The adjustment must be based on the total time value. The total time value is the
6.18 design-builder's total number of days to complete the project multiplied by the factor.
6.19 The time-adjusted price is the total time value plus the bid amount. An adjusted score
6.20 must then be obtained by dividing each design-builder's time-adjusted price by the score
6.21 given by the commissioner. The municipality shall select the responsive and responsible
6.22 design-builder whose adjusted score is the lowest.

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

6.26 **Sec. 4. REPORT TO LEGISLATURE.**

6.27 Annually, by October 1, the council shall submit a report to the chairs of the
6.28 legislative committees with jurisdiction over transportation budget and policy, and to
6.29 the legislature as provided under Minnesota Statutes, section 15.059. The report must
6.30 summarize the design-build pilot program selection process, including the number of
6.31 applications considered; the proposal process for each project that was selected; the
6.32 contracting process for each project that was completed; and project costs. The report
6.33 must evaluate the process and results applying the performance-based measures with
6.34 which the commissioner evaluates trunk highway design-build projects. The report must
6.35 include any recommendations for future legislation.

7.1 Sec. 5. **EXPIRATION.**

7.2 The Design-Build Project Selection Council and the pilot program expire on October
7.3 1, 2012, or upon completion of nine design-build projects under this pilot program,
7.4 whichever occurs first.

7.5 Sec. 6. **EFFECTIVE DATE.**

7.6 This act is effective the day following final enactment.