



Minnesota Department of Transportation

Government Affairs
Mail Stop 140, 4th Floor South
395 John Ireland Boulevard
Saint Paul, MN 55155

Office Tel: 651-366-4824
Fax: 651-366-4797

Memo

TO: Department Managers
Public Affair Coordinators
Planning Directors

FROM: Scott Peterson, Director
Office of Government Affairs

DATE: June 1, 2010

SUBJECT: 2010 Legislative Session Summary

Attached is a summary of laws enacted in 2010 that may affect Mn/DOT.

The report is divided into three sections. The first section is a list of new laws that may affect Mn/DOT. The second section is a brief executive summary of the 2010 legislative session. The final section describes each new law that may affect Mn/DOT and shows the effective date.

Some of these new laws require specific action on the part of Mn/DOT, while others are simply informational items. It is important that the appropriate staff be made aware of pertinent issues. Managers should make assignments to assure follow-up on all laws requiring attention.

Please contact Erik Rudeen at 651-366-4823 to obtain a copy of the actual law or receive further background information.

The laws are also available online at www.leg.state.mn.us. Click on Statutes, Laws, and Rules and then select 2010 Session Laws. This website is an excellent resource for a variety of information on the legislature and the legislative process.

Attachment Below

An Equal Opportunity Employer



Minnesota Session Laws

Search

Key: (1) ~~language to be deleted~~ (2) new language

2010, Regular Session

This document represents the act as presented to the governor. The version passed by the legislature is the final engrossment. It does not represent the official 2010 session law, which will be available here summer 2010.

CHAPTER 350--S.F.No. 1060

An act

relating to transportation; modifying management, priorities, research, and planning provisions related to Department of Transportation; requiring reports; amending Minnesota Statutes 2008, sections 161.53; 165.03, by adding a subdivision; 174.02, subdivision 1a, by adding a subdivision; 174.03, subdivision 1a, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapters 167; 174.

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

Section 1. Minnesota Statutes 2008, section 161.53, is amended to read:

161.53 RESEARCH ACTIVITIES.

(a) The commissioner may set aside in each fiscal year up to two percent of the total amount of all funds appropriated to the commissioner other than county state-aid and municipal state-aid highway funds for transportation research including public and private research partnerships. The commissioner shall spend this money for (1) research to improve the design, construction, maintenance, management, and environmental compatibility of transportation systems, including research into and implementation of innovations in bridge-monitoring technology and bridge inspection technology; bridge inspection techniques and best practices; and the cost-effectiveness of deferred or lower cost highway and bridge design and maintenance activities and their impacts on long-term trunk highway costs and maintenance needs; (2) research on transportation policies that enhance energy efficiency and economic development; (3) programs for implementing and monitoring research results; and (4) development of transportation education and outreach activities.

(b) Of all funds appropriated to the commissioner other than state-aid funds, the commissioner shall spend at least 0.1 percent, but not exceeding \$1,200,000 in any fiscal year, for research and related activities performed by the Center for Transportation Studies of the University of Minnesota. The center shall establish a technology transfer and training center for Minnesota transportation professionals.

Sec. 2. Minnesota Statutes 2008, section 165.03, is amended by adding a subdivision to read:

Subd. 8. Biennial report on bridge inspection quality assurance. By February 1 of each odd-numbered year, the commissioner shall submit a report electronically to the members of the senate and house of representatives committees with jurisdiction over transportation policy and finance concerning quality assurance for bridge inspections.

At a minimum, the report must:

- (1) summarize the bridge inspection quality assurance and quality control procedures used in Minnesota;
- (2) identify any substantive changes to quality assurance and quality control procedures made in the previous two years;
- (3) summarize and provide a briefing on findings from bridge inspection quality reviews performed in the previous two years;
- (4) identify actions taken and planned in response to findings from bridge inspection quality reviews performed in the previous two years;
- (5) summarize the results of any bridge inspection compliance review by the Federal Highway Administration; and
- (6) identify actions in response to the Federal Highway Administration compliance review taken by the department in order to reach full compliance.

Sec. 3. [167.60] DEBT-FINANCING MANAGEMENT POLICY.

- (a) By July 1, 2010, the commissioner shall develop a debt-financing management policy for trunk highway bonds, federal advanced construction funds, and other forms of highway financing based on debt or future repayment. The policy must be used by the department to guide decision making related to debt financing. The commissioner may update the policy as necessary. In developing and updating the policy, the commissioner shall consult with the commissioner of management and budget and the chairs and ranking minority members of the senate and house of representatives committees with jurisdiction over transportation finance.
- (b) The debt-financing management policy must address relevant financial issues, including, but not limited to:
 - (1) limits on cumulative amounts of debt for the trunk highway system from all state and federal sources;
 - (2) eligibility of projects for debt-financing funds;
 - (3) allocation and use of funds;
 - (4) terms of debt service and methods of repayment;
 - (5) management of trunk highway fund balance impacts; and
 - (6) mitigation of risks from different forms of debt financing.
- (c) Upon creation or formal revision of the debt-financing management policy, the commissioner shall distribute electronic copies to the members of the senate and house of representatives committees with jurisdiction over transportation finance, and as required for reports to the legislature under section 3.195, subdivision 1.

* Sec. 4. Minnesota Statutes 2008, section 174.02, subdivision 1a, is amended to read:
 Subd. 1a. **Mission; efficiency; legislative report, recommendations.** It is part of the department's mission that within the department's resources the commissioner shall endeavor to:

- (1) prevent the waste or unnecessary spending of public money;
- (2) use innovative fiscal and human resource practices to manage the state's resources and operate the department as efficiently as possible;
- (3) minimize the degradation of air and water quality;
- (4) coordinate the department's activities wherever appropriate with the activities

of other governmental agencies;

(5) use technology where appropriate to increase agency productivity, improve customer service, increase public access to information about government, and increase public participation in the business of government;

(6) utilize constructive and cooperative labor-management practices to the extent otherwise required by chapters 43A and 179A;

(7) ensure that the safety, maintenance, and preservation of Minnesota's transportation infrastructure is a primary priority;

(8) report to the legislature on the performance of agency operations and the accomplishment of agency goals in the agency's biennial budget according to section 16A.10, subdivision 1; and

~~(8)~~ (9) recommend to the legislature appropriate changes in law necessary to carry out the mission and improve the performance of the department.

Sec. 5. Minnesota Statutes 2008, section 174.02, is amended by adding a subdivision to read:

Subd. 8. **Electronic reports.** For any legislative report required to be submitted by the commissioner by law, in which the report may or must be submitted electronically, the commissioner shall meet the requirements under section 3.195, subdivision 1.

* Sec. 6. Minnesota Statutes 2008, section 174.03, subdivision 1a, is amended to read:

Subd. 1a. **Revision of state statewide multimodal transportation plan.** (a) The commissioner shall revise the ~~state statewide multimodal transportation plan~~ by January ~~15, 1996, January 1, 2000, and, if the requirements of clauses (1) and (2) have been met in the previous revision~~ 2013, and by January ~~15~~ of every ~~third even-numbered year~~ four years thereafter. Before final adoption of a revised plan, the commissioner shall hold a hearing to receive public comment on the preliminary draft of the revised plan.

~~The~~ (b) Each revised ~~state statewide multimodal transportation plan~~ must:

- (1) incorporate the goals of the state transportation system in section 174.01; ~~and~~
- (2) establish objectives, policies, and strategies for achieving those goals; ~~and~~
- (3) identify performance targets for measuring progress and achievement of ~~transportation system goals, objectives, or policies.~~

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

* Sec. 7. Minnesota Statutes 2008, section 174.03, is amended by adding a subdivision to read:

Subd. 1c. **Statewide highway 20-year capital investment plan.** By January 15, 2013, and in conjunction with each future revision of the statewide multimodal transportation plan, the commissioner shall prepare a 20-year statewide highway capital investment plan that:

- (1) incorporates performance measures and targets for assessing progress and achievement of the state's transportation goals, objectives, and policies identified in this chapter for the state trunk highway system, and those goals, objectives, and policies established in the statewide multimodal transportation plan. Performance targets must be based on objectively verifiable measures, and address, at a minimum, preservation and maintenance of the structural condition of state highway bridges and pavements, safety,

and mobility;

(2) summarizes trends and impacts for each performance target over the past five years;

(3) summarizes the amount and analyzes the impact of the department's capital investments and priorities over the past five years on each performance target, including a comparison of prior plan projected costs with actual costs;

(4) identifies the investments required to meet the established performance targets over the next 20-year period;

(5) projects available state and federal funding over the 20-year period, including any unique, competitive, time-limited, or focused funding opportunities;

(6) identifies strategies to ensure the most efficient use of existing transportation infrastructure, and to maximize the performance benefits of projected available funding;

(7) establishes investment priorities for projected funding, including a schedule of major projects or improvement programs for the 20-year period together with projected costs and impact on performance targets; and

(8) identifies those performance targets identified under clause (1) not expected to meet the target outcome over the 20-year period together with alternative strategies that could be implemented to meet the targets.

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

Sec. 8. [174.93] **GUIDEWAY INVESTMENT.**

Subdivision 1. Definitions. (a) For purposes of this section, the following terms have the meanings given:

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

(2) "guideway" means a form of transportation service provided to the public on a regular and ongoing basis, that operates on exclusive or controlled rights-of-way or rails in whole or in part, and includes each line for intercity passenger rail, commuter rail, light rail transit, streetcars, and bus rapid transit.

(b) For purposes of this section, "sources of funds" includes, but is not limited to, money from federal aid, state appropriations, the Metropolitan Council, special taxing districts, local units of government, fare box recovery, and nonpublic sources.

Subd. 2. Legislative report. (a) By November 15 in every odd-numbered year, the commissioner shall prepare, in collaboration with the Metropolitan Council, and submit a report electronically to the chairs and ranking minority members of the house of representatives and senate committees with jurisdiction over transportation policy and finance concerning the status of guideway projects (1) currently in study, planning, development, or construction; (2) identified in the transportation policy plan under section 473.146; or (3) identified in the comprehensive statewide freight and passenger rail plan under section 174.03, subdivision 1b.

(b) At a minimum, the report must include, for each guideway project:

(1) a brief description of the project, including projected ridership;

(2) a summary of the overall status and current phase of the project;

(3) a timeline that includes (i) project phases or milestones; (ii) expected and known dates of commencement of each phase or milestone; and (iii) expected and known dates of completion of each phase or milestone;

(4) a brief progress update on specific project phases or milestones completed since

the last previous submission of a report under this subdivision; and
(5) a summary financial plan that identifies, to the extent available:
(i) capital expenditures, including expenditures to date and total projected expenditures, with a breakdown by committed and proposed sources of funds for the project; and
(ii) estimated annual operations and maintenance expenditures reflecting the level of detail available in the current phase of the project development, with a breakdown by committed and proposed sources of funds for the projects in the Metropolitan Council's transportation policy plan.

* **Sec. 9. REPORT ON DEPARTMENT OF TRANSPORTATION MANAGEMENT CHANGES.**

(a) By February 1, 2011, the commissioner of transportation shall submit a report electronically to the members of the senate and house of representatives committees with jurisdiction over transportation policy and finance concerning recent changes in the department's organizational structure, internal procedures and practices, and anticipated budget. The report must include, but is not limited to:
(1) a summary and review of the department organizational structure for bridge management, maintenance, and inspections, including a brief explanation of any relevant structural or organizational changes made since August 1, 2007;
(2) an analysis of the division of bridge-related duties and decision-making responsibilities between districts and central administration;
(3) a summary of current agency procedures and processes, and any changes made since August 1, 2007, related to:
(i) initiation of bridge re-rating and use of bridge inspection findings in the re-rating process;
(ii) implementation of agencywide standards for documenting bridge inspection findings and decision making for postinspection bridge maintenance; and
(iii) other changes designed to ensure or enhance the safety of Minnesota's transportation infrastructure; and
(4) a budget analysis of anticipated funding and funding allocations for pavement preservation and highway maintenance, safety projects, mobility enhancement projects, and highway and bridge construction, for fiscal years 2012 through 2018, including a discussion of any anticipated budgetary challenges or risks.
(b) In addition to an electronic report, the commissioner shall prepare a summary of findings from the report for distribution and oral testimony to the chairs of the senate and house of representatives committees with jurisdiction over transportation finance, who shall make every reasonable effort to arrange testimony from the department during the 2011 legislative session.

Sec. 38. Minnesota Statutes 2008, section 174.01, subdivision 1, is amended to read:

Subdivision 1. **Department created.** In order to provide ~~a balanced~~ an integrated transportation system, ~~including~~ of aeronautics, highways, motor carriers, ports, public transit, railroads, and pipelines, ~~and including facilities for walking and bicycling,~~ a Department of Transportation is created. The department is the principal agency of the state for development, implementation, administration, consolidation, and coordination of state transportation policies, plans, and programs.

Sec. 39. Minnesota Statutes 2008, section 174.01, subdivision 2, is amended to read:

Subd. 2. **Transportation goals.** The goals of the state transportation system are as follows:

- (1) to ~~provide safe transportation~~ minimize fatalities and injuries for transportation users throughout the state;
- (2) to provide multimodal and intermodal transportation ~~that enhances mobility and economic development and provides access to all persons and businesses in Minnesota while ensuring that there is no~~ facilities and services to increase access for all persons and businesses and to ensure economic well-being and quality of life without undue burden placed on any community;
- (3) to provide a reasonable travel time for commuters;
- (4) to enhance economic development and provide for the economical, efficient, and safe movement of goods to and from markets by rail, highway, and waterway;
- (5) to encourage tourism by providing appropriate transportation to Minnesota facilities designed to attract tourists and to enhance the appeal, through transportation investments, of tourist destinations across the state;
- (6) to provide transit services throughout to all counties in the state to meet the needs of transit users;
- (7) to promote ~~productivity~~ accountability through system ~~system~~ systematic management of ~~system performance and productivity through the~~ utilization of technological advancements;
- (8) to maximize the long-term benefits received for each state transportation investment;
- (9) to provide for and prioritize funding for of transportation investments that, at a minimum, preserves the transportation infrastructure ensures that the state's transportation infrastructure is maintained in a state of good repair;
- (10) to ensure that the planning and implementation of all modes of transportation are consistent with the environmental and energy goals of the state;
- (11) to promote and increase the use of high-occupancy vehicles and low-emission vehicles;
- (12) to provide an air transportation system sufficient to encourage economic growth and allow all regions of the state the ability to participate in the global economy;
- (13) to increase ~~transit~~ use of transit as a percentage of all trips statewide by giving highest priority to the transportation modes with the greatest people-moving capacity and lowest long-term economic and environmental cost;
- (14) to promote and increase bicycling and walking as a percentage of all trips as an energy-efficient, nonpolluting, and ~~healthful form~~ healthy forms of transportation;
- (15) to reduce greenhouse gas emissions from the state's transportation sector; and

(16) to accomplish these goals with minimal impact on the environment.

Sec. 40. Minnesota Statutes 2008, section 174.02, subdivision 1a, is amended to read:

Subd. 1a. **Mission; efficiency; legislative report, recommendations.** It is part of the department's mission that within the department's resources the commissioner shall endeavor to:

- (1) prevent the waste or unnecessary spending of public money;
- (2) use innovative fiscal and human resource practices to manage the state's resources and operate the department as efficiently as possible;
- (3) minimize the degradation of air ~~and~~, water quality, and the climate, including reduction in greenhouse gas emissions;
- (4) coordinate the department's activities wherever appropriate with the activities of other governmental agencies;
- (5) use technology where appropriate to increase agency productivity, improve customer service, increase public access to information about government, and increase public participation in the business of government;
- (6) utilize constructive and cooperative labor-management practices to the extent otherwise required by chapters 43A and 179A;
- (7) report to the legislature on the performance of agency operations and the accomplishment of agency goals in the agency's biennial budget according to section 16A.10, subdivision 1; and
- (8) recommend to the legislature appropriate changes in law necessary to carry out the mission and improve the performance of the department.



Minnesota House of Representatives

Legislature Home | Links to the World | Help | Advanced Search

House | Senate | Joint Departments and Commissions | Bill Search and Status | Statutes, Laws, and Rules

H.F. No. 3646, as introduced - 86th Legislative Session (2009-2010) Posted on Mar 11, 2010

- 1.1 A bill for an act
- 1.2 relating to transportation; providing for job order contracts; providing for
- 1.3 construction manager at risk contracts for transportation projects; modifying
- 1.4 provisions relating to design-build contracts; amending Minnesota Statutes 2008,
- 1.5 section 161.3426, subdivision 3, by adding a subdivision; proposing coding for
- 1.6 new law in Minnesota Statutes, chapter 161.
- 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.8 Section 1. [161.3204] INDEFINITE DELIVERY/INDEFINITE QUANTITY
- 1.9 CONTRACTING.
- 1.10 Subdivision 1. Authority. The commissioner may undertake construction utilizing
- 1.11 indefinite delivery/indefinite quantity contracting for contracts that do not exceed a
- 1.12 construction cost of \$1,000,000.
- 1.13 Subd. 2. Indefinite delivery/indefinite quantity contracting request for
- 1.14 proposals. (a) The commissioner may issue a request for proposals that includes the
- 1.15 criteria that will be used for the project, provided that these criteria do not unduly
- 1.16 restrict competition, do not impose conditions beyond reasonable requirements to ensure
- 1.17 maximum participation of all qualified contractors, and do not relate to the collective
- 1.18 bargaining status of the contractor. The request for proposal must include:
- 1.19 (1) the scope of work;
- 1.20 (2) copies of the contract documents that the successful proposer will be expected to
- 1.21 sign;
- 1.22 (3) the minimum and maximum amounts of the contract;
- 1.23 (4) the maximum duration of the contract;
- 1.24 (5) a description of the qualifications required and criteria for determining if the
- 1.25 contractor meets the minimum criteria;
- 2.1 (6) the requirement that the technical proposal and price proposal be submitted in
- 2.2 separate packages;
- 2.3 (7) the date, time, and location of the public opening of the sealed price proposals;
- 2.4 and
- 2.5 (8) other information relative to the project.
- 2.6 (b) The request for proposals must be publicized as designated under section 161.32,
- 2.7 subdivision 1.
- 2.8 Subd. 3. Award. (a) Before opening the price proposals, the commissioner shall
- 2.9 review the technical proposals and determine if the responder meets the minimum
- 2.10 qualifications in order to be deemed responsive. The commissioner shall not open any
- 2.11

- 2.11 nonresponsive price proposal.
- 2.12 (b) Unless all proposals are rejected, the commissioner shall award a master contract to the responsive and responsible bidder proposing the lowest price. The master contract
- 2.14 must include provisions on executing work orders for specific tasks related to the contract.

Sec. 2. [161.3207] CONSTRUCTION MANAGER AT RISK CONTRACTS;

2.16 **DEFINITIONS.**

- 2.17 Subdivision 1. **Scope.** The terms used in sections 161.3207 to 161.3209 have the meanings given them in this section.

Subd. 2. **Acceptance.** "Acceptance" means an action of the commissioner authorizing the execution of a construction manager at risk contracting contract.

- 2.21 Subd. 3. **Commissioner.** "Commissioner" means the commissioner of
- 2.22 transportation.

- 2.23 Subd. 4. **Construction manager at risk.** "Construction manager at risk" means
- 2.25 a proprietorship, partnership, limited liability partnership, joint venture, corporation,
- 2.27 any type of limited liability company, professional corporation, or any legal entity
- 2.28 selected by the commissioner to act as a construction manager to manage the construction
- 2.29 process, which includes, but is not limited to, responsibility for the price, schedule, and workmanship of preconstruction services or the construction performed in accordance with the procedures of section 161.3209, or both.

- Subd. 5. **Construction manager at risk contract.** "Construction manager at risk contract" means a contract for construction of a project between a construction manager at risk and the commissioner, which must include terms providing for a guaranteed maximum price, construction schedule, and workmanship of the construction performed. The construction manager at risk contract may include provisions for incremental guaranteed maximum prices for specific work packages, adding additional work, contingencies, or other contract clauses that will allow the commissioner to negotiate time and cost changes to the contract.
- 2.32
- 2.33
- 2.35

- 3.3 Subd. 6. **Guaranteed maximum price.** "Guaranteed maximum price" means the maximum amount that a construction manager at risk must be paid pursuant to a contract to perform a defined scope of work. The guaranteed maximum price can be either an amount determined at one time for the entire project or the sum of all the incremental guaranteed maximum prices if the project is designed and constructed in phases.
- 3.5
- 3.6

Subd. 7. **Incremental guaranteed maximum price.** "Incremental guaranteed maximum price" means the maximum amount that a construction manager at risk must be paid pursuant to a contract to perform a defined scope of work on a single work package.

- 3.11 Subd. 8. **Past performance.** "Past performance" or "experience" does not include the exercise or assertion of a person's legal rights.

- Subd. 9. **Preconstruction services.** "Preconstruction services" means all non-construction-related services that a construction manager at risk is allowed to perform prior to execution of a construction manager at risk contract or work package.
- 3.14
- 3.15

- 3.16 Subd. 10. **Preconstruction services contract.** "Preconstruction services contract" means a contract under which a construction manager is paid on the basis of the actual cost to perform the work specified in the contract plus an amount for overhead and profit for all preconstruction services.
- 3.17
- 3.18
- 3.19

- 3.20 Subd. 11. **Project.** "Project" means any project selected by the commissioner as a
- 3.21

- 3.21 construction manager at risk project under section 169.3208.
- 3.22 Subd. 12. **Request for proposals; RFP.** "Request for proposals" or "RFP" means the document or publication soliciting proposals for a construction manager at risk contract.
- 3.24 Subd. 13. **Work package.** "Work package" means the scope of work for a defined portion of a project. A defined portion includes construction services on any project aspect, including procuring materials or services.
- 3.26
- 3.27 **Sec. 3. [161.3208] CONSTRUCTION MANAGER AT RISK AUTHORITY.**
- Subdivision 1. Construction manager at risk selection.** Notwithstanding sections 16C.25, 161.32, and 161.321, or any other law to the contrary, the commissioner may select a construction manager at risk as provided in section 161.3209, and award a
- 3.31 construction manager at risk contract. The commissioner may not award more than two
- 3.32 construction manager at risk projects that are funded in whole or in part with proceeds from the sale of state general obligation bonds.
- 3.34 **Subd. 2. Determination.** Final determination to use a construction manager at risk contracting procedure may be made only by the commissioner.
- 4.1 **Subd. 3. Reporting.** The commissioner shall notify the chairs of the senate and house of representatives committees with jurisdiction over transportation policy and
- 4.3 transportation finance each time the commissioner decides to use the construction manager at risk method of procurement and explain why that method was chosen.
- Subd. 4. Cancellation.** The solicitation of construction manager at risk requests for
- 4.6 qualifications or proposals does not obligate the commissioner to enter into a construction
- 4.7 manager at risk contract. In accordance with the stated criteria and subcriteria for
- 4.9 evaluating qualifications or proposals, the commissioner may accept or reject any or
- 4.10 all responses received as a result of the request. The solicitation of proposals may be canceled at any time at the commissioner's sole discretion if it is considered to be in the public's best interest. If the commissioner rejects all responses or cancels the solicitation for proposals, the commissioner may resolicit a request for proposals using the same or different requirements.
- 4.14 **Sec. 4. [161.3209] CONSTRUCTION MANAGER AT RISK.**
- 4.15 **Subdivision 1. Solicitation of proposals.** If the commissioner determines that a construction manager at risk method of procurement is appropriate for a project, the commissioner shall establish a two-phase procedure for awarding the construction manager at risk contract, as described in subdivisions 2 and 3.
- Subd. 2. Phase 1 - request for proposals.** (a) The commissioner shall prepare or
- 4.20 have prepared an RFP for each construction manager at risk contract as provided in this section. The RFP must contain, at a minimum, the following elements:
- 4.23 (1) minimum qualifications of the construction manager at risk;
- 4.24 (2) procedures for submitting proposals and the criteria for evaluation of
- 4.25 qualifications and the relative weight for each criteria;
- 4.26 (3) the form of the contract to be awarded;
- 4.27 (4) the scope of intended construction work;
- 4.28 (5) a listing of the types of preconstruction services that will be required;
- 4.29 (6) an anticipated schedule for commencement and completion of the project;
- 4.30 (7) any applicable budget limits for the project;

- 4:38 (8) requirements for insurance, statutorily required performance, and payment bonds;
- 4.31 (9) requirements that the construction manager at risk provide a letter from a surety or insurance company stating that the construction manager at risk is capable of obtaining
- 4.33 a performance bond and payment bond covering the estimated contract cost;
- 4.35 (10) the method for how construction manager at risk fees for the preconstruction services contract will be negotiated;
- 5.1 (11) a statement that past performance or experience does not include the exercise or assertion of a person's legal rights; and
- (12) any other information desired by the commissioner.
- (b) Before receiving any responses to the RFP:
- 5.5 (1) The commissioner shall appoint a technical review committee of at least five
- 5.6 individuals, of which one is a Department of Transportation manager who is also a
- 5.7 licensed professional engineer in Minnesota.
- 5.9 (2) The technical review committee shall evaluate the construction managers' proposals according to criteria and subcriteria published in the RFP and procedures established by the commissioner. If the commissioner does not receive at least two
- 5.11 proposals from construction managers, the commissioner may:
- 5.12 (i) solicit new proposals;
- 5.13 (ii) revise the RFP and thereafter solicit new proposals using the revised RFP;
- (iii) select another allowed procurement method; or
- (iv) reject all proposals.
- 5.16 (3) The technical review committee shall evaluate the responses to the request
- 5.17 for proposals and rank the construction managers at risk using the elements described in subdivision 2, paragraph (a).
- 5.19 (c) Unless all proposals are rejected, the commissioner shall conduct contract negotiations for a preconstruction services contract with the construction manager at risk with the highest ranking. If the construction manager at risk with the highest ranking declines or is unable to reach an agreement, the commissioner may begin contract
- 5.22 negotiations with the next highest ranked construction manager at risk.
- 5.24 Subd. 3. **Phase 2 - construction manager at risk contract.** (a) Before conducting
- 5.25 any construction-related services, the commissioner shall:
- (1) conduct an independent cost estimate for the project or each work package; and
- (2) conduct contract negotiations with the construction manager at risk to develop a construction manager at risk contract.
- (b) If the construction manager at risk and the commissioner are unable to negotiate
- 5.30 a guaranteed maximum price contract or an incremental guaranteed maximum price for a work package, the commissioner may use other contract procurement processes or may re-advertise the construction manager at risk contract. The construction manager at
- 5.33 risk may not bid on the project or work packages if advertised under section 161.32. If
- 5.34 the project or work packages are advertised under sections 161.3410 to 161.3428, the
- 5.35 construction manager at risk may not join a design-build team before execution of a
- 5.36 design-build contract, or participate in the response to any design-build RFQ or RFP.

6.1 Sec. 5. Minnesota Statutes 2008, section 161.3426, subdivision 3, is amended to read:

6.2 Subd. 3. **Stipulated fee.** The commissioner shall award a stipulated fee not less than

6.3 two-tenths of one percent of the department's estimated cost of design and construction

6.4

8:4 to each ~~unsuccessful~~ short-listed, responsible proposer who ~~provides a responsive~~
6.6 ~~but unsuccessful proposal~~ obtains the minimum technical proposal score established
6.7 by the commissioner in the RFP. If the commissioner does not award a contract, all
6.8 short-listed proposers must receive the stipulated fee. If the commissioner cancels the
contract before reviewing the technical proposals, the commissioner shall award each
design-builder on the short list a stipulated fee of not less than two-tenths of one percent
of the commissioner's estimated cost of design and construction. The commissioner shall
pay the stipulated fee to each proposer within 90 days after the award of the contract or
6.12 the decision not to award a contract. In consideration for paying the stipulated fee, the
commissioner may use any ideas or information contained in the proposals in connection
6.14 with any contract awarded for the project or in connection with a subsequent procurement,
without any obligation to pay any additional compensation to the unsuccessful proposers.
Notwithstanding the other provisions of this subdivision, an unsuccessful short-list
proposer may elect to waive the stipulated fee. If an unsuccessful short-list proposer
elects to waive the stipulated fee, the commissioner may not use ideas and information
6.19 contained in that proposer's proposal. Upon the request of the commissioner, a proposer
who waived a stipulated fee may withdraw the waiver, in which case the commissioner
shall pay the stipulated fee to the proposer and thereafter may use ideas and information in
6.22 the proposer's proposal.

6.23 Sec. 6. Minnesota Statutes 2008, section 161.3426, is amended by adding a subdivision
6.24 to read:

6.25 Subd. 6. **Reissue of RFP.** If the commissioner rejects all bids or does not execute
6.26 the contract, the commissioner may reissue the RFP and allow only short-listed teams
6.27 to resubmit proposals. The commissioner shall then pay a reasonable stipulated fee to
6.28 each unsuccessful short-listed, responsible proposer who obtains the minimum technical
6.29 proposal score established by the commissioner in the reissued RFP.

Please direct all comments concerning issues or legislation
to your [House Member](#) or [State Senator](#).

For Legislative Staff or for directions to the Capitol, visit the [Contact Us](#) page.

[General questions or comments.](#)

last updated: 04/15/2009