P3 in Minnesota

A Roadmap for establishing a Minnesota Transportation Public-Private Partnership Act

Jay R. Lindgren, Chair
Infrastructure Practice Group
You’ve heard what can be done...
…so what is the road ahead in Minnesota?
1. Minnesota’s Statutory Roadblocks to Comprehensive P3 Legislation

2. Eliminating the Roadblocks

3. MnDOT’s Proposed Legislation

Are we there yet?

Minnesota’s Statutory Roadblocks to Comprehensive P3 Legislation
1. Minnesota’s current P3 enabling legislation is limited.
   - Minn. Stat. §§ 160.84-160.98
   - Limited to toll facilities, defined as bridges, causeways, tunnels and approaches, road street, or highway; appurtenant buildings, structures, or other improvements; and land lying within applicable rights-of-way
2. Minnesota’s current P3 enabling legislation is restrictive.
   - Minn. Stat. §§ 160.84-160.98
   - Prohibition on converting, transferring, or utilizing any portion of a highway for use as a toll facility
   - Exception for toll facilities established before 9/1/2007, additional lanes added to a highway after 9/1/2007, and other general purpose lane that adds capacity
3. Minnesota’s current P3 enabling legislation is prohibitive.
   – Minn. Stat. §§ 160.84-160.98
   – A road authority may not relinquish management of a highway, if the highway is retained or utilized by the buyer, lessor, or operator for highway purposes.
Eliminating the Roadblocks

• Two Options
  – 1) Amend the existing law – piecemeal approach
  – 2) Enact a comprehensive Act authorizing public-private partnerships for transportation projects
Entering Construction Zone

MnDOT’s Proposed Legislation
MnDOT’s Proposed Legislation

- Proposal would add two new subdivisions to Minn. Stat. § 174.02
  - Subd. 8: would authorize the Commissioner to enter into agreements with private and nonprofit entities to finance or invest in transportation projects.
  - Subd. 9: would authorize the Commissioner to apply for and receive financial assistance under the federal Transportation Infrastructure and Innovation Act of 1998.
MnDOT’s Proposed Legislation

- Does not address/fix existing statutory roadblocks
- Is part of a piecemeal approach, not comprehensive legislation
- Does not effectively and explicitly define the players and their roles, powers, and responsibilities in public-private partnership agreements
Alternative Proposal:

The Minnesota Transportation Public-Private Partnership Act ("MTP3")
• Purpose and Intent
  – To provide sufficient quality public transportation infrastructure by authorizing private entities to undertake all or a portion of the study, planning, design, development, financing, acquisition, installation, construction, reconstruction, improvement, operation, and/or maintenance of public transportation infrastructure facilities.
Minnesota Transportation Public-Private Partnership Act

• Key Definitions
  – Private Partner: person, entity, or organization that is not the federal government, a state, or a political subdivision of a state.
  – Public Partner: any federal or state unit of government or any political subdivision of a state.
  – Eligible Project
    • Transportation projects that facilitate the safe transport of people or goods via any mode of travel.
    • Facilities, structures, operations, properties, vehicles, vessels, or the like that are developed concurrently with a transportation project.
Minnesota Transportation Public-Private Partnership Act

- MnDOT Powers
  - Oversight - approve Partnership Agreements between Public Partners and Private Partners
  - Adopt Rules
    - Types of projects allowed
    - Minimum standards
    - Procedures for solicitation, acceptance, review, and evaluation of projects
    - Criteria to be considered in the evaluation and selection of projects
• Public Partner Powers
  – May enter into public-private partnership agreements for eligible projects with private partners
  – May procure private partners and award public-private partnerships under this Act by:
    • Calls for project proposals
    • Solicitations using requests for qualifications, short-listing of qualified proposers, and requests for proposals
    • Unsolicited proposals
Minnesota Transportation Public-Private Partnership Act

• Private Partner Powers
  – May develop and/or operate eligible projects and impose user fees
  – May own, lease, or acquire any other right to use, develop, and/or operate the eligible project
  – May make and enforce reasonable rules with respect to an eligible project
  – May impose, collect, and enforce user fees with respect to an eligible project
• Partnership Agreement Terms
  – How the public and private partners will allocate risks of the project
  – How the public and private partners will share the costs of development, including responsibility for cost overruns
  – Penalties for nonperformance and incentives for performance
  – Accounting and auditing standards
  – Responsibility for reconstruction or renovations that are required before the project may revert to public ownership
  – Provisions for patrolling and law enforcement
Partnership Agreement Terms (continued)

- Mechanism for the private partner to impose, collect, and enforce user fees, tolls, fares, rents, or similar charges
- Mechanism for the public partner to accept payments and share revenue with the private partner
- Acquisition of rights-of-way and any necessary exercise of eminent domain
- Authorization for the private partner to receive a reasonable rate of return on its investment
Minnesota Transportation Public-Private Partnership Act

• Financing
  – Any lawful source of funds/financing may be utilized for the development or operation of an eligible project
    • Public partner may accept federal and state funds or loans
    • Public partner may accept private grants and donations
    • Public partner may impose and collect user fees, tolls, fares, rents, or similar charges and/or authorize private partner to impose and collect such charges
    • Public partner may issue debt
    • Any eligible project may be financed in whole or in part by the private partner
Minnesota Transportation Public-Private Partnership Act

- Existing Minnesota Statutes;
  - To the extent inconsistent with any provision of Minnesota law, the specific provisions of the Act supersede such inconsistent provision
  - Where not inconsistent, all other provisions of Minnesota law will apply
Questions?