

1.1 A bill for an act

1.2 relating to highways; prohibiting toll roads; making conforming changes;
1.3 amending Minnesota Statutes 2008, sections 117.226; 160.93, subdivision 3;
1.4 proposing coding for new law in Minnesota Statutes, chapter 160; repealing
1.5 Minnesota Statutes 2008, sections 160.84; 160.85; 160.86; 160.87; 160.88;
1.6 160.89; 160.90; 160.91; 160.92.

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

1.8 Section 1. Minnesota Statutes 2008, section 117.226, is amended to read:

1.9 **117.226 RIGHT OF FIRST REFUSAL.**

1.10 (a) Except as provided in sections 15.16, ~~160.85~~, 161.16, 161.20, 161.202, 161.23,
1.11 161.24, 161.241, 161.43, 161.46, and 222.63, if the governing body of the condemning
1.12 authority determines that publicly owned property acquired under this chapter has not
1.13 been used and is no longer needed for a public use, the authority must offer to sell the
1.14 property to the owner from whom it was acquired, if the former owner can be located. The
1.15 offer must be at the original price determined by the condemnation process or the current
1.16 fair market value of the property, whichever is lower, except to the extent that a different
1.17 value is required for a property interest obtained with federal highway funding under
1.18 United States Code, title 23. Before offering surplus property to local governments or for
1.19 public sale under section 16B.282 or 94.10, the commissioner of administration or natural
1.20 resources must offer to sell the property to the former owner as provided in this section.

1.21 (b) If the former owner cannot be located after a due and diligent search or declines
1.22 to repurchase the property, the attorney for the condemning authority shall prepare a
1.23 certificate attesting to the same and record the certificate in the office of the county
1.24 recorder or county registrar of titles, as appropriate, to evidence the termination of the

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2.1 right of first refusal. A recorded certificate to that effect is prima facie evidence that the
2.2 right of first refusal has terminated.

2.3 Sec. 2. Minnesota Statutes 2008, section 160.93, subdivision 3, is amended to read:

2.4 Subd. 3. **Rules exemption.** With respect to this section, the commissioner is exempt
2.5 from statutory rulemaking requirements, including section 14.386, and from sections
2.6 ~~160.84 to 160.92~~ and 161.162 to 161.167.

2.7 Sec. 3. **[160.94] TOLL FACILITIES PROHIBITED.**

2.8 Neither the commissioner nor a road authority may impose or authorize the
2.9 imposition of a toll for the use of a highway or highway lane, except for a highway or
2.10 highway lane having a toll imposed on or before July 1, 2006, under section 160.93.

2.11 Sec. 4. **REPEALER.**

2.12 Minnesota Statutes 2008, sections 160.84; 160.85; 160.86; 160.87; 160.88; 160.89;
2.13 160.90; 160.91; and 160.92, are repealed.

160.84 DEFINITIONS.

Subdivision 1. **Scope.** The terms used in sections 160.84 to 160.98 have the meanings given them in this section and section 160.02.

Subd. 2. **BOT facility.** "BOT facility" means a build-operate-transfer toll facility developed, financed, designed, constructed, improved, rehabilitated, and operated by a private operator who holds title to the facility subject to a development agreement providing that title will be transferred to the road authority on expiration of an agreed term.

Subd. 3. **BTO facility.** "BTO facility" means a build-transfer-operate toll facility developed, financed, designed, constructed, improved, or rehabilitated by a private operator who: (1) transfers any interest it may have in the toll facility to the road authority before operation begins; and (2) operates the toll facility for an agreed term under a lease, management, or toll concession agreement.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Transportation.

Subd. 5. **Development agreement.** "Development agreement" means a written agreement between a road authority and a private operator that provides for the development, financing, design, construction, improvement, rehabilitation, ownership, and operation of a toll facility.

Subd. 6. **Metropolitan area.** "Metropolitan area" has the meaning given it in section 473.121, subdivision 2.

Subd. 7. **Private operator.** "Private operator" means an individual, corporation, partnership, cooperative or unincorporated association, joint venture, or consortium that develops, finances, designs, constructs, improves, rehabilitates, owns, or operates a toll facility subject to sections 160.84 to 160.92.

Subd. 8. **Road authority.** "Road authority" has the meaning given it in section 160.02, subdivision 25, and also refers to a joint powers authority formed under section 160.91.

Subd. 9. **Toll facility.** "Toll facility" means a bridge, causeway, or tunnel, and its approaches; a road, street, or highway; an appurtenant building, structure, or other improvement; land lying within applicable rights-of-way; and other appurtenant rights or hereditaments that together comprise a project for which a road authority or private operator is authorized to develop, finance, design, operate, and impose tolls under sections 160.84 to 160.92.

160.85 AUTHORITY FOR TOLL FACILITY.

Subdivision 1. **Road authority.** A road authority may solicit or accept proposals from and enter into development agreements with private operators for developing, financing, designing, constructing, improving, rehabilitating, owning, and operating toll facilities wholly or partly within the road authority's jurisdiction. If a road authority solicits toll facility proposals, it must publish a notice of solicitation in the State Register.

Subd. 2. **Private operators.** Private operators are authorized to develop, finance, design, construct, improve, rehabilitate, own, and operate toll facilities subject to the terms of sections 160.84 to 160.92. Private operators may mortgage, grant security interests in, and pledge their interests in: (1) toll facilities and their components; (2) development, lease, management, toll concessions, and other related agreements; and (3) income, profits, and proceeds of the toll facility.

Subd. 3. **Approval.** No road authority and private operator may execute a development agreement without the approval of the final agreement by the commissioner. A road authority and private operator in the metropolitan area must obtain the approvals required in sections 161.162 to 161.167 and 473.166. Except as otherwise provided in sections 161.162 to 161.167, the governing body of a county or municipality through which a facility passes may veto the project within 30 days of approval by the commissioner.

Subd. 3a. **Information meeting.** Before approving or denying a development agreement, the commissioner shall hold a public information meeting in any municipality or county in which any portion of the proposed toll facility runs. The commissioner shall determine the time and place of the information meeting.

Subd. 4. **Development agreement.** (a) A development agreement for toll facilities may provide for any mode of ownership or operation approved by the road authority, including ownership by the private operator with or without reversion of title, operation of the facilities under leases or management contracts, toll concessions, or BOT or BTO facilities.

(b) A development agreement may permit the private operator to assemble funds from any available source and to incorporate an existing road or highway, bridge, and approach

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structures, and related improvements, into the toll facility. The agreement must provide the terms and conditions of the incorporation.

(c) A development agreement may include grants of title, easements, rights-of-way, and leasehold estates necessary to the toll facility.

(d) A development agreement may authorize the private operator to charge variable rate tolls based on time of day, vehicle characteristics, or other factors approved by the road authority.

(e) A development agreement may provide for maintenance, snow removal, and police standards that exceed the standards of the road authority for facilities of the same functional classification.

(f) A development agreement may include authorization by the road authority to the private operator to exercise powers possessed by the road authority for similar facilities.

Subd. 5. **Right-of-way acquisition.** A private operator may acquire right-of-way by donation, lease, or purchase. A road authority may acquire right-of-way by eminent domain and may donate, sell, or lease a right-of-way to a private operator.

Subd. 6. **Restriction.** No toll facility may be used for any purpose other than the purposes specified in the development agreement for the term of the agreement.

Subd. 7. **Toll facility acquired by road authority.** A development agreement that requires transfer or reversion of a toll facility to a road authority must provide the terms and conditions of the transfer or reversion. The facility shall meet at least the maintenance standards of the road authority for facilities of the same functional classification during the term of the agreement.

Subd. 8. **Application of other law.** A private operator must have environmental, navigational, design, or safety approvals as if the toll facility were constructed or operated by a road authority.

160.86 TOLL FACILITY DEVELOPMENT AGREEMENT; REQUIREMENTS.

A development agreement must include the following provisions:

(a) The toll facility must meet the road authority's standards of design and construction for roads and bridges of the same functional classification.

(b) The commissioner must review and approve the location and design of a bridge over navigable waters as if the bridge were constructed by a road authority. This requirement does not diminish the private operator's responsibility for bridge safety.

(c) The private operator shall manage and operate the toll facility in cooperation with the road authority and subject to the development agreement.

(d) The toll facility is subject to regular inspections by the road authority and the commissioner.

(e) The agreement must provide the terms and conditions of maintenance, snow removal, and police services to the toll facility. The road authority must provide the services. The services must meet at least the road authority's standards for facilities of the same functional classification.

(f) The agreement must establish a reasonable rate of return on investment and capital during the term of the agreement.

160.87 TOLL FACILITY COST RECOVERY.

Subdivision 1. **Use of toll revenues.** Toll revenues must be applied to repayment of indebtedness incurred for the toll facility; payments to a road authority under the development agreement or a related lease, management, or toll concession agreement; costs of operation necessary to meet applicable standards of the road authority; and reasonable reserves for future capital outlays. The enumeration of uses in this subdivision does not state priorities for the use of these revenues.

Subd. 2. **Residual toll revenues.** Residual toll revenues after the payments specified in subdivision 1 are made belong to the private operator.

Subd. 3. **Continuation of tolls.** After expiration of a lease for a BTO facility, or after title has reverted for a BOT facility, the road authority may continue to charge tolls for the facility.

160.88 PUBLIC TOLL FACILITIES.

A road authority may develop, finance, design, construct, improve, rehabilitate, own, and operate a toll facility.

160.89 TOLL FACILITY REVENUE BONDS.

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To provide money to acquire, develop, finance, design, construct, improve, rehabilitate, and operate a toll facility and to establish a reserve for bonds issued under this section, the commissioner of finance, or a road authority by resolution of its governing body, may authorize, issue, and sell revenue bonds payable solely from all or a portion of the revenues derived from a toll facility, including any payments agreed to be made by a private operator. The bonds may be additionally secured by a mortgage of all or any portion of a toll facility or other property of the private operator. The bonds shall mature, bear the date or dates, bear interest at the rate or rates, be in denomination or denominations, be executed in the manner, be payable in such manner and be subject to redemption, with or without premium as may be provided by the resolution authorizing their issuance or any trust indenture approved by the governing body of the road authority. The bonds may be sold at private sale at the price approved pursuant to the authorizing resolution. The bonds must contain a recital that they are issued in aid of a toll facility under this section and the recital is conclusive evidence of the validity and enforceability of the bonds and the security for the bonds. Neither the road authority nor any director, commissioner, council member, officer, employee, or agent of the road authority is personally liable on the bonds by reason of their issuance. The road authority may make covenants it considers necessary to secure payment of the bonds, including, without limitation, establishing and maintaining reserves, and imposing and collecting tolls and other charges for use of the facility to provide net revenues adequate to provide for principal and interest on the bonds, and providing for the operation of the toll facility. The bonds must not be payable from nor a charge against any funds of the road authority other than the revenues or property pledged or mortgaged to secure their payment. The road authority is not subject to any liability on the bonds and it does not have any power to obligate itself to pay the bonds from funds other than the revenues and properties pledged and mortgaged. No holder or holders of the bonds has the right to compel any exercise of taxing power of the road authority or any other public body, other than as authorized by and pledged pursuant to this section, to pay the principal of or interest on the bonds, nor to enforce payment of the bonds against any property of the road authority or other public body other than that expressly pledged or mortgaged for payment; and the bonds must so state. Bonds payable from the net revenues of a toll facility and property pledged under this section are considered payable wholly from the income of a revenue-producing convenience within the meaning of chapter 475. Sections 474A.01 to 474A.21 apply to any issue of obligations under this section that are subject to limitation under a federal volume limitation act or existing federal tax law as defined in section 474A.02, subdivision 8.

160.90 LAW ENFORCEMENT ON TOLL FACILITIES.

State and local law enforcement authorities have the same powers and authority on a toll facility within their respective jurisdictions as they have on any other highway, road, or street within their jurisdiction. Law enforcement officers have free access to the toll facility at any time to exercise those powers. State and local traffic and motor vehicle laws apply to persons driving or occupying motor vehicles on the toll facility.

160.91 JOINT AUTHORITY OVER TOLL FACILITY.

Two or more road authorities with jurisdiction over a toll facility may enter into a joint powers agreement under section 471.59, to exercise the powers, duties, and functions of the road authorities related to the toll facility, including negotiation and administration of the development agreement and related lease, management, and toll concession agreements. If all road authorities with jurisdiction over a toll facility concur, title to or authority over the facility may be tendered to the commissioner who may accept the title or authority pursuant to the development agreement and this section.

160.92 TOLL FACILITY REPLACEMENT PROJECTS.

When a highway project in the metropolitan area has been scheduled in the department's six-year work program but is designated as a toll facility, the commissioner shall substitute in the work program a similar highway project in the metropolitan area.