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An Act To Stimulate the Maine Economy and Promote the Development of Maine's Priority Transportation Infrastructure Needs

Be it enacted by the People of the State of Maine as follows:

Sec. 1. Department of Transportation; receive, solicit proposals. The Department of Transportation, referred to in this Act as "the department," may receive or solicit proposals and may, with the approval of the Legislature, enter into an agreement with a private entity for the building, operation, ownership, leasing or financing of any transportation facilities as prioritized by Public Law 2007, chapter 470, Part B, section 2.

Sec. 2. Rules. The department shall by routine technical rule pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A establish an application fee for the submission of an unsolicited proposal from a private entity for a project set forth in Public Law 2007, chapter 470, Part B, section 2. The fee must be sufficient to pay the costs of evaluating the proposal. The department may engage the services of private consultants to assist in the evaluation. Before approval, the department must determine that the proposed project:

1. Is in the public's best interest;
2. Would not require state funds to be used;
3. Would have adequate safeguards in place to ensure that no significant additional costs or service disruptions would be realized by the traveling public and residents of the State in the event of contractor default or cancellation of the agreement;
4. Would have adequate safeguards in place to ensure that the department or the private entity has the opportunity to add capacity to the proposed project and other transportation facilities serving similar origins and destinations; and
5. Would be owned or controlled in a manner set forth in the contract and satisfactory to the department.

Sec. 3. Cost borne by private entity. The department shall ensure that all reasonable costs to the State related to transportation facilities are borne by the private entity under section 1. The department shall also ensure that all reasonable costs to the State and substantially affected local governments and utilities related to the private transportation facility are borne by the private entity or as otherwise provided for by law for transportation facilities that are owned by the private entity.

Sec. 4. Tolls; fares. Agreements entered into pursuant to section 1 may authorize the private entity to impose tolls or fares for the use of the facility. The following provisions apply to such agreements:

1. The agreement must ensure that the transportation facility is properly operated, maintained and renewed in accordance with department standards;

2. The agreement must ensure that a toll facility is properly operated, maintained and renewed in accordance with department standards;

3. The rules governing the future increase of toll or fare revenues must be included in the agreement;

4. The department may require provisions in the agreement that ensure a negotiated portion of revenues from toll-generating or fare-generating projects are returned to the department over the life of the agreement; and

5. The private entity shall provide a traffic and revenue study prepared by a traffic and revenue expert that is accepted by the department and national bond rating agencies. The private entity shall also provide a finance plan consistent with the traffic and revenue study that identifies the project cost, revenues by source, financing, major assumptions, internal rate of return on private investments and whether any government funds are assumed to deliver a cost-feasible project and a total cash flow analysis beginning with implementation of the project and extending for the term of the agreement.

Sec. 5. Compliance with laws. Each private transportation facility constructed pursuant to this Act must comply with all requirements of applicable federal, state and local laws and department rules, policies, procedures and standards for transportation facilities.

Sec. 6. Exercise of powers. The department may exercise any power provided by law, including eminent domain, with respect to the development and construction of state transportation projects to facilitate the development and construction of transportation projects pursuant to this Act. The department may provide services to the private entity. Agreements for maintenance, law enforcement and other services entered into pursuant to this Act must provide for full reimbursement by the private entity for services rendered by any agency of the State.

Sec. 7. Public-private partnership. The department shall by routine technical rule pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A establish procurement provisions that are consistent with this section.

1. The department may request proposals from private entities for a public-private partnership for a transportation facility set forth in Public Law 2007, chapter 470, Part B, section 2 or, if the department receives an unsolicited proposal, the department shall publish a notice on the department's publicly accessible website or through advertisements in newspapers. If such a notice is published exclusively in newspapers, the notice must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed work is to be done if any such newspaper is circulated in that county, stating that the department has received the proposal and accepts, for 120 days after the initial date of publication, other proposals for the same project. A copy of the notice must be mailed to each local government in the affected area.

2. Public-private partnerships must be qualified by the department as part of the procurement process as outlined in the procurement documents. The process must ensure that the private firm meets at least the minimum department standards for qualification in department rule for professional engineering services and contracting.

3. The department shall ensure that procurement documents include provisions for performance of the private entity and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees and lender and equity partner guarantees.

4. After the proposal or proposals have been received, and any public notification period has expired, the department shall rank the proposals in order of preference. In ranking the proposals, the department may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans and the need for state funds to deliver the project. If the department is not satisfied with the results of the negotiations, the department may, at its sole discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the department may go to the 2nd-ranked and lower-ranked firms, in order, using this same procedure. If only one proposal is received, the department may negotiate in good faith and, if the department is not satisfied with the results of the negotiations, the department may, at its sole discretion, terminate negotiations with the proposer.

5. The department shall undertake an independent analysis of the proposed public-private partnership that demonstrates the cost-effectiveness and overall public benefit at the following times:

- A. Prior to moving forward with the procurement; and
- B. If the procurement moves forward, prior to awarding the contract.

Sec. 8. Summary of projects. The department shall provide to the joint standing committee of the Legislature having jurisdiction over transportation matters a summary of proposed, rejected or approved public-private partnership projects each year. This summary must include identification of planned funding, including discussion of the planned use of future funds to deliver the project.

Sec. 9. Term of agreement. Public-private partnership agreements under this Act are limited to a term not exceeding 50 years. Upon making written findings that an agreement under this Act requires a term in excess of 50 years, the Commissioner of Transportation may authorize a term of up to 75 years. Agreements under this Act may not have a term in excess of 75 years unless specifically approved by the Legislature.

SUMMARY

The purpose of this bill is to stimulate the Maine economy by allowing the Department of Transportation to receive and solicit proposals and enter into agreements with private entities for the building, ownership, leasing or financing of certain transportation projects set forth in Public Law 2007, chapter 470.