

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2010

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Legislative Document

No. 1639

H.P. 1167

House of Representatives, December 23, 2009

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

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 21, 2009. Referred to the Committee on Transportation pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative MacDONALD of Boothbay.  
Cosponsored by Senator DAMON of Hancock and  
Representatives: BEAUDETTE of Biddeford, BLODGETT of Augusta, BUTTERFIELD of  
Bangor, CAREY of Lewiston, CONNOR of Kennebunk, CROCKETT of Augusta, FITTS of  
Pittsfield, KENT of Woolwich, LOVEJOY of Portland, MARTIN of Eagle Lake, O'BRIEN of  
Lincolntonville, Speaker PINGREE of North Haven, STRANG BURGESS of Cumberland,  
THOMAS of Ripley, WEAVER of York, Senator: GOODALL of Sagadahoc.

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

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

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

14 1. Is in the public's best interest;

15 2. Would not require state funds to be used;

16 3. Would have adequate safeguards in place to ensure that no significant additional  
17 costs or service disruptions would be realized by the traveling public and residents of the  
18 State in the event of contractor default or cancellation of the agreement;

19 4. Would have adequate safeguards in place to ensure that the department or the  
20 private entity has the opportunity to add capacity to the proposed project and other  
21 transportation facilities serving similar origins and destinations; and

22 5. Would be owned or controlled in a manner set forth in the contract and  
23 satisfactory to the department.

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

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

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

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

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

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

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

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

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

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

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

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

