

HOUSE BILL No. 4961

May 19, 2009, Introduced by Reps. Gonzales, Donigan, Bauer, Kandreas, Polidori, LeBlanc, Geiss, Lahti, Melton, Byrnes and Dean and referred to the Committee on Transportation.

A bill to amend 1964 PA 286, entitled

"An act to provide for the organization, powers, and duties of the state transportation commission and the state transportation department; to provide for the appointment, powers, and duties of the state transportation director; to abolish the office of state highway commissioner and the commissioner's advisory board and to transfer their powers and duties; to provide for penalties and remedies; and to repeal certain acts and parts of acts,"

by amending the title and sections 1, 6a, 7, 7a, and 10 (MCL 247.801, 247.806a, 247.807, 247.807a, and 247.810), the title as amended by 1984 PA 398 and section 7a as amended by 1981 PA 122, and by adding sections 7b, 7c, 7d, 7e, 7f, and 7g.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to provide for the organization, powers, and duties of the state transportation commission and the state transportation department; to provide for the appointment, powers, and duties of

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1 the state transportation director; to abolish the office of state
 2 highway commissioner and the commissioner's advisory board and to
 3 transfer their powers and duties; **TO PROVIDE FOR PUBLIC-PRIVATE**
 4 **TRANSPORTATION FACILITIES; TO AUTHORIZE PUBLIC-PRIVATE AGREEMENTS**
 5 **RELATING TO RESEARCHING, PLANNING, STUDYING, DESIGNING, DEVELOPING,**
 6 **FINANCING, ACQUIRING, CONSTRUCTING, TOLLING, OPERATING, OR**
 7 **MAINTAINING A PUBLIC-PRIVATE TRANSPORTATION FACILITY, OR ANY**
 8 **COMBINATION OF THOSE ACTIVITIES, OR TO OTHER ARRANGEMENTS FOR THE**
 9 **CREATION AND OPERATION OF PUBLIC-PRIVATE TRANSPORTATION FACILITIES**
 10 **THAT MAY BE FINANCED BY TOLLS, CHARGES, AND OTHER REVENUE THAT MAY**
 11 **BE AVAILABLE, INCLUDING THE SALE OF REVENUE BONDS, OR FROM ANY**
 12 **OTHER AVAILABLE FUNDING SOURCE, AND FOR THE DEPARTMENT TO EXERCISE**
 13 **CERTAIN POWERS;** to provide for penalties and remedies; and to
 14 repeal ~~certain~~ acts and parts of acts.

15 Sec. 1. As used in this act:

16 (A) ~~(1)~~ "Commission" means the state transportation
 17 commission.

18 (B) ~~(2)~~ "Director" means the director of transportation.

19 (C) ~~(3)~~ "Department" means the department of transportation.

20 (D) "INSTRUMENTALITY OF GOVERNMENT" MEANS A LEGAL PUBLIC
 21 ENTITY CREATED OR EMPOWERED TO CARRY OUT FUNCTIONS COMMONLY CARRIED
 22 OUT BY UNITS OF GOVERNMENT.

23 (E) "OPERATOR" MEANS A PRIVATE ENTITY THAT HAS ENTERED INTO A
 24 PUBLIC-PRIVATE AGREEMENT UNDER SECTION 7B.

25 (F) "PRIVATE ENTITY" MEANS ANY NATURAL PERSON, CORPORATION,
 26 GENERAL PARTNERSHIP, LIMITED LIABILITY COMPANY, LIMITED
 27 PARTNERSHIP, JOINT VENTURE, BUSINESS TRUST, PUBLIC BENEFIT

1 CORPORATION, NONPROFIT ENTITY, OR OTHER NONGOVERNMENTAL BUSINESS
2 ENTITY.

3 (G) "PUBLIC-PRIVATE AGREEMENT" MEANS AN AGREEMENT BETWEEN A
4 PRIVATE ENTITY AND THE DEPARTMENT OR THE DEPARTMENT AND 1 OR MORE
5 GOVERNMENTAL ENTITIES THAT RELATES TO RESEARCHING, PLANNING,
6 STUDYING, DESIGNING, DEVELOPING, FINANCING, ACQUIRING,
7 CONSTRUCTING, TOLLING, OPERATING, OR MAINTAINING A TRANSPORTATION
8 FACILITY, OR ANY COMBINATION OF THOSE ACTIVITIES.

9 (H) "TRANSPORTATION FACILITY" MEANS ANY NEW OR EXISTING
10 HIGHWAY, ROAD, BRIDGE, TUNNEL, OVERPASS, RAMP, INTERCHANGE, FERRY,
11 AIRPORT, VEHICLE PARKING FACILITY, VEHICLE TRANSPORTATION FACILITY,
12 PORT FACILITY, LOCKS FACILITY, RAIL FACILITY, INTERMODAL OR OTHER
13 PUBLIC TRANSIT FACILITY, OR ANY OTHER EQUIPMENT, ROLLING STOCK,
14 SITE, OR FACILITY USED IN THE TRANSPORTATION OF PERSONS, GOODS,
15 SUBSTANCES, VEHICLES, INFORMATION, OR MATTER OF ANY KIND, AND ANY
16 BUILDING, STRUCTURE, PARKING AREA, APPURTENANCE, OR OTHER PROPERTY
17 NECESSARY OR DESIRABLE FOR THE FACILITY.

18 Sec. 6a. The director may do the following:

19 (a) Organize the department and its work, supervise the work
20 of the employees **AND AGENTS** of the department, create, merge, and
21 abolish organizational divisions within the department, and
22 transfer or merge functions among those divisions in the interest
23 of economy and efficiency.

24 (b) Employ personnel necessary to carry out the duties of the
25 director and the responsibilities of the department subject to laws
26 governing state employment **AND CONTRACTS**.

27 (c) Delegate to any employee of the department, subject to the

1 approval of the commission, any powers vested in the director or
2 delegated to the director by the commission **EXCEPT THE POWER TO**
3 **ENTER INTO A PUBLIC-PRIVATE AGREEMENT UNDER SECTION 7B.**

4 (d) Establish a program of current and long-range planning for
5 the transportation systems **AND TRANSPORTATION FACILITIES** under the
6 department's jurisdiction.

7 (e) Direct the preparation of budget requests, expenditures,
8 programs and periodical allotments.

9 (f) Purchase materials, supplies, **SERVICES**, and equipment as
10 necessary and proper to carry out the duties of the department as
11 provided by law governing state purchasing.

12 (g) Dispose of obsolete equipment, surplus supplies and
13 material that cannot be used by the department as provided by law
14 governing the disposal.

15 (h) Do anything necessary and proper to comply fully with the
16 provisions of present or future federal aid acts.

17 **(I) ENTER INTO PUBLIC-PRIVATE AGREEMENTS UNDER SECTION 7B WITH**
18 **THE APPROVAL OF THE COMMISSION.**

19 **(J) ~~(i)~~**—Do anything necessary and proper to carry out the
20 duties imposed upon the department by the constitution and other
21 duties as may be imposed by law.

22 Sec. 7. (1) The commission's powers and duties shall include:

23 (a) The awarding of all contracts for the construction,
24 improvement, and maintenance of the highways and transportation
25 facilities under its jurisdiction, as provided by law.

26 (b) The establishment of transportation policies for the
27 guidance and direction of the director.

1 (C) APPROVAL OR DISAPPROVAL OF PUBLIC-PRIVATE AGREEMENTS
2 ENTERED INTO BY THE DEPARTMENT UNDER SECTION 7B.

3 (2) The commission may do the following:

4 (a) Delegate to any member of the commission, the director, or
5 any subordinate, any powers, other than the power to establish
6 policy, vested in the commission as it considers necessary and
7 proper; and permit the director to delegate any powers delegated to
8 him or her by the commission **EXCEPT FOR THE POWER TO ENTER INTO**
9 **PUBLIC-PRIVATE AGREEMENTS UNDER SECTION 7B.**

10 (b) Acquire, own, and hold real and personal property in the
11 name of ~~the~~**THIS** state or the commission and sell, lease or
12 otherwise dispose of, or encumber, the same in connection with, and
13 in furtherance of, its duties and the purposes of this act.

14 (c) Do anything necessary and proper to carry out the duties
15 imposed upon it by the constitution and such other duties as may be
16 imposed by law.

17 Sec. 7a. (1) As used in this section:

18 (a) "Completion" means the date when the construction,
19 improvement, or maintenance of a bridge, highway, or other
20 transportation facility is accepted in accordance with the contract
21 documents, so that the bridge, highway, or other transportation
22 facility may be used for its intended purpose.

23 (b) "Construction contract" means an agreement between a
24 contractor and the department for the construction, improvement, or
25 maintenance of a bridge, highway, or other transportation facility.
26 **CONSTRUCTION CONTRACT DOES NOT INCLUDE A PUBLIC-PRIVATE AGREEMENT.**

27 (c) "Contractor" means ~~an individual, sole proprietorship,~~

1 ~~partnership, corporation, joint venture, or other legal~~ **A PERSON OR**
2 entity, other than ~~the~~ **THIS** state, or an agency or department of
3 the state, who is a party to a construction contract.

4 (d) "Project" means the specific ~~section 9 of the highway~~
5 ~~construction~~ **PORION OF A TRANSPORTATION FACILITY** to be performed
6 under the construction contract.

7 (2) A construction contract may provide for partial payments
8 to be made periodically to a contractor. The department may
9 establish specifications regarding the retention of a portion of
10 the total amount earned under the construction contract.

11 (3) At the request of the contractor and upon the approval of
12 the department, the portion retained pursuant to the specifications
13 established under subsection (2) shall be placed in an escrow
14 account pursuant to this section.

15 (4) An escrow agent may be selected by the contractor. For
16 purposes of this section, an escrow agent shall be a state or
17 national bank, a state or federally chartered savings and loan
18 association, or a state or federally chartered credit union whose
19 principal place of business is located in this state.

20 (5) An escrow agreement shall be entered into between the
21 contracting parties and the escrow agent. The escrow agreement
22 shall contain all of the following terms:

23 (a) That the escrow agent shall promptly invest all of the
24 escrowed funds.

25 (b) That the escrow agent shall hold the escrowed funds until
26 receipt of notice from the department. Upon receipt of a notice of
27 release from the department, the escrow agent shall promptly remit

1 the designated portion of escrowed funds to the contractor involved
2 in the contract. Upon receipt of a notice of overpayment or default
3 of the contract, the escrow agent shall promptly remit the
4 designated portion of escrowed funds to the department.

5 (c) That the escrow agent is responsible for all investments
6 and money as a result of the deposit of the amount until released
7 from responsibility pursuant to the escrow agreement.

8 (d) That the contractor shall pay all expenses regarding the
9 deposit, investment, and administration of the retained amount and
10 all other charges made by the escrow agent.

11 (e) Any other provision agreed to by the contracting parties
12 and the escrow agent necessary or proper for purposes of this
13 section.

14 **SEC. 7B. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE**
15 **DEPARTMENT MAY ENTER INTO A PUBLIC-PRIVATE AGREEMENT WITH A PRIVATE**
16 **ENTITY OR WITH A PRIVATE ENTITY AND 1 OR MORE OTHER**
17 **INSTRUMENTALITIES OF GOVERNMENT, TO PROVIDE FOR RESEARCHING,**
18 **PLANNING, STUDYING, DESIGNING, DEVELOPING, FINANCING, ACQUIRING,**
19 **CONSTRUCTING, TOLLING, GOVERNING, OPERATING, OR MAINTAINING A**
20 **TRANSPORTATION FACILITY OR ANY COMBINATION OF THOSE ACTIVITIES. THE**
21 **AGREEMENT SHALL INCLUDE TERMS DESIGNED TO PROTECT THE PUBLIC**
22 **INTEREST AND ASSURE ACCOUNTABILITY OF AN OPERATOR TO THE**
23 **DEPARTMENT. A PUBLIC-PRIVATE AGREEMENT MAY CONTAIN TERMS AND**
24 **CONDITIONS THAT THE DEPARTMENT MAY DETERMINE OR NEGOTIATE TO**
25 **FACILITATE THE RESEARCHING, PLANNING, STUDYING, DESIGNING,**
26 **DEVELOPING, FINANCING, ACQUIRING, CONSTRUCTING, TOLLING, GOVERNING,**
27 **OPERATING, OR MAINTAINING OF A TRANSPORTATION FACILITY IN THE**

1 PUBLIC INTEREST.

2 (2) A PUBLIC-PRIVATE AGREEMENT SHALL PROVIDE FOR THE TERMS OF
3 THE USE AND OPERATION OF A TRANSPORTATION FACILITY BY AN OPERATOR
4 FOR A PERIOD DETERMINED NECESSARY FOR THE ECONOMIC VIABILITY OF THE
5 ARRANGEMENT. THE AGREEMENT MAY PROVIDE FOR AN INITIAL TERM AND 1 OR
6 MORE OPTIONAL TERMS. THE AGREEMENT SHALL PROVIDE THAT THE OWNERSHIP
7 OF A TRANSPORTATION FACILITY WITHIN THIS STATE SHALL BE VESTED IN
8 AN INSTRUMENTALITY OF GOVERNMENT AND THAT TITLE TO THE
9 TRANSPORTATION FACILITY SHALL NOT BE ENCUMBERED. NO PROVISION OF A
10 PUBLIC-PRIVATE AGREEMENT SHALL ALLOW THE PUBLIC TO BE DEPRIVED OF
11 THE USE AND BENEFIT OF A TRANSPORTATION FACILITY EXCEPT AS
12 NECESSARY TO IMPLEMENT TOLLS OR OTHER CHARGES AUTHORIZED BY THIS
13 SECTION OR TO REGULATE THE LEVEL OR CHARACTER OF PERMISSIBLE USES
14 OF THE TRANSPORTATION FACILITY. A PUBLIC-PRIVATE AGREEMENT SHALL
15 PROVIDE FOR THE TERMINATION OF THE AGREEMENT.

16 (3) A PUBLIC-PRIVATE AGREEMENT MAY PROVIDE FOR THE CHARGING
17 AND COLLECTION OF REASONABLE TOLLS AND OTHER CHARGES FOR THE USE OF
18 A TRANSPORTATION FACILITY, INCLUDING, BUT NOT LIMITED TO, TOLLS FOR
19 MANAGED LANES OR CONGESTION-PRICING-BASED TOLLS. A TOLL MAY BE
20 IMPOSED ON A HIGHWAY ONLY IF IMPOSED FOR THE USE OF NEW HIGHWAYS,
21 OR THE USE OF EXPANDED HIGHWAY CAPACITY BEYOND HIGHWAY CAPACITY IN
22 PLACE ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
23 SECTION. TOLLS AND OTHER CHARGES IMPOSED FOR THE USE OF A
24 TRANSPORTATION FACILITY ARE NOT SUBJECT TO REGULATION BY ANY OTHER
25 GOVERNMENTAL AGENCY. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO
26 ALLOW THE CONVERSION OF ANY NONTOLL OR NONUSER-FEE LANES EXISTING
27 ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION

1 INTO TOLLED OR USER-FEE LANES WITH THE EXCEPTION OF A HIGH-
2 OCCUPANCY VEHICLE LANE THAT MAY BE OPERATED AS A HIGH-OCCUPANCY
3 TOLL LANE FOR VEHICLES NOT OTHERWISE MEETING THE REQUIREMENTS FOR
4 USE OF THAT LANE.

5 (4) COMPENSATION PAID TO THE DEPARTMENT IN CONNECTION WITH A
6 PUBLIC-PRIVATE AGREEMENT AND TOLLS AND CHARGES IMPOSED FOR USE OF A
7 TRANSPORTATION FACILITY MAY BE USED FOR THE COSTS OF RESEARCHING,
8 PLANNING, STUDYING, DESIGNING, DEVELOPING, FINANCING, ACQUIRING,
9 CONSTRUCTING, TOLLING, GOVERNING, OPERATING, OR MAINTAINING THE
10 FACILITY, OR OTHER TRANSPORTATION FACILITIES, INCLUDING THE
11 REPAYMENT OF BONDS SOLD FOR THOSE PURPOSES. AS PROVIDED BY THE
12 TERMS OF A PUBLIC-PRIVATE AGREEMENT, A PORTION OF THE REVENUE MAY
13 BE ALLOTTED TO THE OPERATOR.

14 (5) IN ACCORDANCE WITH THE TERMS OF A PUBLIC-PRIVATE
15 AGREEMENT, THE DEPARTMENT SHALL OVERSEE THE ACTIVITIES OF AN
16 OPERATOR CARRYING OUT THE TERMS OF A PUBLIC-PRIVATE AGREEMENT. A
17 PUBLIC-PRIVATE AGREEMENT MAY PROVIDE FOR THE USE OF ARBITRATION,
18 MEDIATION, OR OTHER ALTERNATIVE DISPUTE RESOLUTION MECHANISM FOR
19 THE RESOLUTION OF DISPUTES BETWEEN THE DEPARTMENT AND AN OPERATOR.

20 (6) THE PUBLIC-PRIVATE AGREEMENT MAY PROVIDE THAT WHEN AN
21 OPERATOR IS PERFORMING FUNCTIONS ON BEHALF OF THE DEPARTMENT OR
22 OTHER INSTRUMENTALITY OF GOVERNMENT UNDER THE AGREEMENT THAT THE
23 OPERATOR IS CLOAKED WITH THE SAME IMMUNITY FROM TORT LIABILITY AS
24 THE DEPARTMENT OR INSTRUMENTALITY OF GOVERNMENT. THE PUBLIC-PRIVATE
25 AGREEMENT MAY PROVIDE FOR THE DEPARTMENT OR OTHER INSTRUMENTALITY
26 OF GOVERNMENT TO BE RELIEVED OF ANY LIABILITY FOR THE ACTS OR
27 OMISSIONS OF THE OPERATOR OR OTHER PARTY TO THE AGREEMENT.

1 (7) A PUBLIC-PRIVATE AGREEMENT MAY PERMIT THE CONDUCT OF
2 COMMERCIAL ACTIVITIES AT A TRANSPORTATION FACILITY IF THE
3 ACTIVITIES ARE RELATED TO THE TRANSPORTATION PURPOSES OF THE
4 FACILITY AND TO THE EXTENT NOT RESTRICTED BY APPLICABLE LAW.

5 (8) THE CONSTRUCTION AND OPERATION OF A TRANSPORTATION
6 FACILITY AUTHORIZED BY THIS SECTION SHALL BE IN CONFORMITY WITH ALL
7 LAWS APPLICABLE TO A TRANSPORTATION FACILITY CONSTRUCTED OR
8 OPERATED BY THIS STATE UNDER DIRECT CONTRACT WITH THE DEPARTMENT
9 USING STATE OR FEDERAL FUNDS. A PUBLIC-PRIVATE AGREEMENT MAY
10 AUTHORIZE AN OPERATOR OR A CONTRACTOR FOR A TRANSPORTATION FACILITY
11 AUTHORIZED BY A PUBLIC-PRIVATE AGREEMENT TO PROVIDE A LETTER OF
12 CREDIT IN LIEU OF A PAYMENT OR PERFORMANCE BOND.

13 (9) THE DEPARTMENT MAY MAKE AND ENTER INTO ALL CONTRACTS AND
14 AGREEMENTS AND TAKE ANY OTHER ACTION NECESSARY OR INCIDENTAL TO THE
15 PERFORMANCE OF ITS DUTIES AND THE EXECUTION OF ITS POWERS UNDER
16 THIS ACT AND A PUBLIC-PRIVATE AGREEMENT.

17 SEC. 7C. (1) THE DEPARTMENT MAY SOLICIT PROPOSALS OR RECEIVE
18 UNSOLICITED PROPOSALS FOR A PUBLIC-PRIVATE AGREEMENT AND MAY CHARGE
19 AND USE FEES TO OFFSET THE ADMINISTRATIVE COSTS OF RECEIVING AND
20 EVALUATING PROPOSALS. PRIOR TO RECEIVING A SUBMISSION, THE
21 DEPARTMENT MAY AGREE TO REIMBURSE A PRIVATE ENTITY FOR DESIGNATED
22 COSTS INCURRED IN THE PREPARATION AND PRESENTATION OF A PROPOSAL IN
23 RETURN FOR THE RIGHT TO USE ANY WORK PRODUCT CONTAINED IN THE
24 PROPOSAL, INCLUDING, BUT NOT LIMITED TO, THE TECHNOLOGIES, METHODS,
25 PROCESSES, AND INFORMATION CONTAINED IN THE MATERIAL SUBMITTED IN
26 CONNECTION WITH THE PROPOSAL. THE DEPARTMENT HAS THE SOLE
27 DISCRETION WHETHER, AND TO WHAT EXTENT, TO CONSIDER AN UNSOLICITED

1 PROPOSAL. BEFORE ENTERING INTO AN PUBLIC-PRIVATE AGREEMENT FOR A
2 TRANSPORTATION FACILITY PROPOSED BY AN UNSOLICITED PROPOSAL, THE
3 DEPARTMENT SHALL SOLICIT COMPETING PROPOSALS AND ENTER INTO ANY
4 PUBLIC-PRIVATE AGREEMENT USING THE CRITERIA IN SUBSECTION (4).

5 (2) IN SOLICITING OR SELECTING A PRIVATE ENTITY WITH WHICH TO
6 ENTER INTO A PUBLIC-PRIVATE AGREEMENT, THE DEPARTMENT MAY UTILIZE 1
7 OR MORE OF THE FOLLOWING PROCUREMENT APPROACHES:

8 (A) SEALED BIDDING.

9 (B) SELECTION OF PROPOSALS, WITH OR WITHOUT NEGOTIATIONS,
10 BASED ON QUALIFICATIONS, DEVELOPMENT PROPOSALS, TECHNICAL
11 PROPOSALS, FINANCIAL PROPOSALS, BEST VALUE, OR ANY COMBINATION OF
12 THEM.

13 (C) ANY COMPETITIVE SELECTION PROCESS THAT THE DEPARTMENT
14 DETERMINES TO BE APPROPRIATE OR REASONABLE.

15 (3) THE DEPARTMENT SHALL SELECT A PRIVATE ENTITY OR ENTITIES
16 FOR PARTICIPATION IN A PUBLIC-PRIVATE AGREEMENT USING A COMPETITIVE
17 SELECTION PROCESS WHEN TO THE EXTENT PRACTICABLE.

18 (4) THE DEPARTMENT MAY CONSIDER 1 OR MORE OF THE FOLLOWING
19 FACTORS IN EVALUATING AND SELECTING A BID OR PROPOSAL TO ENTER INTO
20 A PUBLIC-PRIVATE AGREEMENT WITH A PRIVATE ENTITY:

21 (A) THE ABILITY OF THE TRANSPORTATION FACILITY TO IMPROVE
22 SAFETY OR OPERATIONS, REDUCE CONGESTION, REDUCE TRAVEL TIMES,
23 INCREASE CAPACITY, ENHANCE ENVIRONMENTAL QUALITY, PROMOTE ECONOMIC
24 DEVELOPMENT, OR ANY COMBINATION OF THOSE OR SIMILAR FACTORS.

25 (B) THE PROPOSED COST OF AND FINANCIAL PLAN FOR THE
26 TRANSPORTATION FACILITY.

27 (C) THE GENERAL REPUTATION, QUALIFICATIONS, INDUSTRY

1 EXPERIENCE, AND FINANCIAL CAPACITY OF THE PRIVATE ENTITY.

2 (D) THE PROPOSED DESIGN, OPERATION, AND FEASIBILITY OF THE
3 TRANSPORTATION FACILITY.

4 (E) COMMENTS FROM AFFECTED RESIDENTS AND INSTRUMENTALITIES OF
5 GOVERNMENT.

6 (F) BENEFITS TO THE PUBLIC.

7 (G) THE SAFETY RECORD OF THE PRIVATE ENTITY.

8 (H) ABILITY TO INCREASE FEDERAL OR OTHER NONSTATE REVENUE TO
9 THIS STATE.

10 (I) ANY OTHER CRITERIA THAT THE DEPARTMENT CONSIDERS NECESSARY
11 OR APPROPRIATE IN THE BEST INTERESTS OF THIS STATE OR THE PEOPLE OF
12 THIS STATE.

13 (5) THE DEPARTMENT MAY SELECT MULTIPLE PRIVATE ENTITIES WITH
14 WHICH TO ENTER INTO PUBLIC-PRIVATE AGREEMENTS FOR A TRANSPORTATION
15 FACILITY IF IT IS DETERMINED BY THE DEPARTMENT TO BE IN THE PUBLIC
16 INTEREST TO DO SO.

17 (6) THE DEPARTMENT MAY PROMISE TO KEEP TRADE SECRETS OR
18 PROPRIETARY COMMERCIAL OR FINANCIAL INFORMATION PROVIDED BY A
19 PRIVATE ENTITY CONFIDENTIAL ONLY FOR PURPOSES OF SEEKING OR
20 ENTERING INTO A PUBLIC PRIVATE AGREEMENT. UPON RECEIPT OF A
21 SUFFICIENTLY DETAILED REQUEST BY A PRIVATE ENTITY, THE DEPARTMENT
22 SHALL PROVIDE A DESCRIPTION OF THE INFORMATION TO WHICH ITS PROMISE
23 OF CONFIDENTIALITY WILL EXTEND. INFORMATION SUBMITTED UNDER SUCH A
24 PROMISE OF CONFIDENTIALITY SHALL NOT BE SUBJECT TO DISCLOSURE UNDER
25 THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.
26 SUBMISSION OF A SOLICITED OR UNSOLICITED PROPOSAL CONSTITUTES
27 CONSENT FOR THE DEPARTMENT TO USE THE INFORMATION AND IDEAS

1 PROVIDED BY A PRIVATE ENTITY FOR A TRANSPORTATION FACILITY OR FOR
2 PURPOSES OF SEEKING OR ENTERING INTO A PUBLIC-PRIVATE AGREEMENT,
3 INCLUDING TO SOLICIT COMPETING PROPOSALS UNLESS THE DEPARTMENT
4 AGREES OTHERWISE IN A WRITING EXECUTED BY THE DEPARTMENT BEFORE THE
5 SUBMISSION.

6 (7) NO ACTION SHALL LIE AGAINST THE DEPARTMENT FOR ITS USE OF
7 IDEAS AND INFORMATION PROVIDED BY A PRIVATE ENTITY FOR PURPOSES OF
8 SEEKING OR ENTERING INTO A PUBLIC-PRIVATE AGREEMENT.

9 SEC. 7D. (1) WHETHER USED BY THE DEPARTMENT, ANOTHER
10 INSTRUMENTALITY OF GOVERNMENT, OR A PRIVATE ENTITY UNDER A PUBLIC-
11 PRIVATE AGREEMENT, A TRANSPORTATION FACILITY, INCLUDING, BUT NOT
12 LIMITED TO, TANGIBLE PERSONAL PROPERTY USED EXCLUSIVELY WITH A
13 TRANSPORTATION FACILITY, THAT IS OWNED BY THE DEPARTMENT OR ANOTHER
14 INSTRUMENTALITY OF GOVERNMENT IS EXEMPT FROM ALL AD VALOREM
15 PROPERTY TAXES AND ALL ASSESSMENTS LEVIED AGAINST PROPERTY BY THIS
16 STATE OR ANY POLITICAL SUBDIVISION OF THE STATE.

17 (2) NO PERSON SHALL BY REASON OF THE USE OF MOTOR FUEL WITHIN
18 THE LIMITS OF A TRANSPORTATION FACILITY AUTHORIZED BY A PUBLIC-
19 PRIVATE AGREEMENT BE EXEMPT FROM OR ELIGIBLE FOR A REFUND OF A
20 MOTOR FUEL TAX IMPOSED BY THIS STATE OR A POLITICAL SUBDIVISION OF
21 THIS STATE.

22 (3) SUBJECT TO APPROVAL FROM THE COMMISSION AND COMPLIANCE
23 WITH APPLICABLE FEDERAL LAWS, THE DEPARTMENT HAS EXCLUSIVE
24 AUTHORITY TO DETERMINE WHERE AND WHETHER TO ESTABLISH A
25 TRANSPORTATION FACILITY AUTHORIZED BY A PUBLIC-PRIVATE AGREEMENT
26 AND THE SCOPE AND NATURE OF THE FACILITY.

27 (4) REVENUE ATTRIBUTABLE TO A TRANSPORTATION FACILITY

1 AUTHORIZED BY A PUBLIC-PRIVATE AGREEMENT THAT IS PAYABLE TO THE
2 DEPARTMENT SHALL BE DEPOSITED IN THE STATE TRUNK LINE FUND,
3 COMPREHENSIVE TRANSPORTATION FUND, OR AERONAUTICS FUND, AS
4 INDICATED BY THE NATURE OF THE TRANSPORTATION FACILITY AND PROVIDED
5 IN THE PUBLIC-PRIVATE AGREEMENT.

6 SEC. 7E. (1) THE DEPARTMENT MAY ISSUE AND SELL BONDS OR NOTES
7 FOR THE PURPOSE OF PROVIDING FUNDS TO CARRY OUT THE PROVISIONS OF
8 THIS ACT WITH RESPECT TO THE DEVELOPMENT, ACQUISITION,
9 CONSTRUCTION, FINANCING, MAINTENANCE, OR OPERATION OF A
10 TRANSPORTATION FACILITY PROVIDED FOR BY A PUBLIC-PRIVATE AGREEMENT
11 OR THE REFUNDING OF ANY BONDS OR NOTES, TOGETHER WITH ANY COSTS
12 ASSOCIATED WITH THE TRANSACTION.

13 (2) ANY BOND OR NOTE ISSUED UNDER SUBSECTION (1) DOES NOT
14 CONSTITUTE A PLEDGE OF THE FAITH AND CREDIT OR INDEBTEDNESS OF THIS
15 STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE WITHIN THE MEANING
16 OR APPLICATION OF ANY CONSTITUTIONAL PROVISION OR LIMITATION. A
17 BOND OR NOTE ISSUED UNDER SUBSECTION (1) IS PAYABLE SOLELY AS TO
18 BOTH PRINCIPAL AND INTEREST FROM REVENUES GENERATED FROM USE OF THE
19 TRANSPORTATION FACILITY AUTHORIZED BY THE PUBLIC-PRIVATE AGREEMENT,
20 THE PROCEEDS OF BONDS OR NOTES SOLD TO FINANCE THE REFUNDING OF THE
21 OUTSTANDING BONDS OR NOTES, IF ANY, OR INVESTMENT EARNINGS ON THE
22 PROCEEDS OF THE BONDS OR NOTES.

23 (3) THE DEPARTMENT MAY RETAIN SUCH SERVICES AND ENTER INTO
24 SUCH CONTRACTS AS MAY BE NECESSARY OR USEFUL FOR THE ISSUANCE AND
25 SALE OF BONDS, NOTES, OR OTHER FINANCIAL INSTRUMENTS UNDER THIS
26 SECTION.

27 (4) FOR THE PURPOSE OF FINANCING A TRANSPORTATION FACILITY,

1 THE DEPARTMENT, ANOTHER INSTRUMENTALITY OF GOVERNMENT, OR THE
2 OPERATOR MAY APPLY FOR, OBTAIN, ISSUE, AND USE PRIVATE ACTIVITY
3 BONDS OR OTHER FINANCIAL INSTRUMENTS AVAILABLE UNDER ANY STATE OR
4 FEDERAL LAW OR PROGRAM. AN INSTRUMENTALITY OF GOVERNMENT MAY ACT AS
5 A CONDUIT ISSUER AND TRANSFER THE PROCEEDS OF PRIVATE ACTIVITY
6 BONDS OR SIMILAR FINANCIAL INSTRUMENTS TO AN OPERATOR IF AUTHORIZED
7 BY A PUBLIC-PRIVATE AGREEMENT. THE BONDS OR INSTRUMENTS SHALL NOT
8 PLEDGE THE FULL FAITH AND CREDIT OF THIS STATE OR ANY POLITICAL
9 SUBDIVISION OF THIS STATE AND SHALL NOT BE A DEBT OF THIS STATE OR
10 ANY POLITICAL SUBDIVISION OF THIS STATE.

11 (5) THIS SECTION DOES NOT LIMIT A GOVERNMENTAL ENTITY'S
12 AUTHORITY TO ISSUE BONDS OR OTHER FINANCIAL INSTRUMENTS FOR
13 TRANSPORTATION PROJECTS UNDER OTHER LAWS OR FROM FINANCING A
14 TRANSPORTATION FACILITY WITH FUNDS PROVIDED OR RAISED UNDER OTHER
15 LAWS, INCLUDING, BUT NOT LIMITED TO, LAWS AUTHORIZING THE SALE OF
16 BONDS.

17 SEC. 7F. (1) THE DEPARTMENT MAY ACCEPT FROM THE UNITED STATES
18 OR ANY OF ITS AGENCIES, INCLUDING, BUT NOT LIMITED TO, A FEDERAL
19 INFRASTRUCTURE BANK, FUNDS THAT ARE AVAILABLE TO THE DEPARTMENT FOR
20 CARRYING OUT A PUBLIC-PRIVATE AGREEMENT, WHETHER THE FUNDS ARE MADE
21 AVAILABLE BY GRANT, LOAN, LINE OF CREDIT, LOAN GUARANTEE, OR OTHER
22 FINANCIAL ASSISTANCE.

23 (2) THE DEPARTMENT MAY ASSENT TO ANY FEDERAL REQUIREMENTS,
24 CONDITIONS, OR TERMS OF ANY FEDERAL FUNDING ACCEPTED UNDER THIS
25 SECTION OTHER THAN A PLEDGE OF THE FAITH AND CREDIT OF THIS STATE
26 OR ANY POLITICAL SUBDIVISION OF THIS STATE OR ANOTHER REQUIREMENT,
27 CONDITION, OR TERM PROHIBITED BY THE STATE CONSTITUTION OF 1963.

1 (3) THE DEPARTMENT MAY ENTER INTO AGREEMENTS OR OTHER
2 ARRANGEMENTS WITH THE UNITED STATES OR ANY OF ITS AGENCIES AS MAY
3 BE NECESSARY FOR IMPLEMENTING A PUBLIC-PRIVATE AGREEMENT.

4 (4) THE DEPARTMENT MAY ACCEPT FROM ANY SOURCE, AND USE FOR
5 SUPPORTING A TRANSPORTATION FACILITY AUTHORIZED BY A PUBLIC-PRIVATE
6 PARTNERSHIP, ANY GRANT, DONATION, GIFT, OR OTHER FORM OF CONVEYANCE
7 OF LAND, MONEY, OTHER REAL OR PERSONAL PROPERTY, OR OTHER ITEM OF
8 VALUE. A TRANSPORTATION FACILITY AUTHORIZED BY A PUBLIC-PRIVATE
9 AGREEMENT MAY BE FINANCED IN WHOLE OR IN PART BY CONTRIBUTION OF
10 ANY FUNDS OR PROPERTY MADE BY ANY PERSON OR ENTITY.

11 (5) THE DEPARTMENT MAY COMBINE FEDERAL, STATE, LOCAL, AND
12 PRIVATE FUNDS TO FINANCE A TRANSPORTATION FACILITY AUTHORIZED BY A
13 PUBLIC-PRIVATE AGREEMENT.

14 SEC. 7G. (1) ALL LAW ENFORCEMENT OFFICERS OF THIS STATE AND
15 LOCAL UNITS OF GOVERNMENT IN WHICH ALL OR PART OF A TRANSPORTATION
16 FACILITY AUTHORIZED BY A PUBLIC-PRIVATE AGREEMENT IS LOCATED SHALL
17 HAVE THE SAME POWERS AND JURISDICTION WITHIN THE LIMITS OF THE
18 TRANSPORTATION FACILITY AS THEY HAVE IN THEIR RESPECTIVE AREAS OF
19 JURISDICTION TO ENFORCE TRAFFIC AND MOTOR VEHICLE LAWS. PUBLIC
20 SAFETY, FIRE, AND EMERGENCY RESPONSE PERSONNEL SHALL BE AFFORDED
21 ACCESS TO A TRANSPORTATION FACILITY WHILE IN THE PERFORMANCE OF AN
22 OFFICIAL DUTY WITHOUT THE PAYMENT OF A TOLL OR OTHER CHARGE.

23 (2) PUNISHMENT FOR VIOLATIONS OF TRAFFIC AND MOTOR VEHICLE
24 LAWS WITHIN THE LIMITS OF A TRANSPORTATION FACILITY AUTHORIZED BY A
25 PUBLIC-PRIVATE AGREEMENT SHALL BE AS GENERALLY PRESCRIBED BY LAW.

26 (3) A PERSON WHO FAILS TO PAY A TOLL IMPOSED FOR USE OF A
27 TRANSPORTATION FACILITY AUTHORIZED BY A PUBLIC-PRIVATE AGREEMENT IS

1 LIABLE FOR, AND SHALL PAY, 3 TIMES THE AMOUNT OF THE TOLL TO
2 ACCOUNT FOR THE COSTS OF ADMINISTRATION AND COLLECTION. IF THE
3 REQUIRED SUM REMAINS UNPAID FOR 180 DAYS AFTER THE PERSON'S USE OF
4 THE TRANSPORTATION FACILITY, THE DEPARTMENT, OR A PRIVATE ENTITY
5 AUTHORIZED TO DO SO BY THE DEPARTMENT, MAY BRING A CIVIL ACTION
6 AGAINST THE PERSON TO COLLECT THE UNPAID CHARGES IN A COURT HAVING
7 JURISDICTION. IF THE CIVIL ACTION RESULTS IN A JUDGMENT FOR UNPAID
8 CHARGES, THE DEFENDANT SHALL ALSO BE REQUIRED TO REIMBURSE THE
9 PLAINTIFF FOR ALL FILING FEES INCURRED BY THE PLAINTIFF PLUS
10 \$500.00 IN COMPENSATION FOR THE COSTS OF BRINGING THE CIVIL ACTION.

11 (4) A PERSON WHO FAILS TO PAY A TOLL IMPOSED FOR USE OF A
12 TRANSPORTATION FACILITY MORE THAN 3 TIMES IN A 12-MONTH PERIOD
13 SHALL BE LIABLE TO THE PLAINTIFF FOR 2 TIMES THE CHARGES, FEES, AND
14 COSTS IMPOSED UNDER SUBSECTION (3) FOR EACH ADDITIONAL FAILURE TO
15 PAY THE TOLL WITHIN A 12-MONTH PERIOD.

16 (5) DURING THE PERIOD THAT A PERSON OWES AND HAS FAILED TO PAY
17 CHARGES, FEES, AND COSTS UNDER SUBSECTION (3) OR (4), THE PERSON
18 AND A MOTOR VEHICLE USED BY THE PERSON MAY BE BARRED FROM USING THE
19 TRANSPORTATION FACILITY.

20 (6) EXCEPT AS PROVIDED IN SECTION 675B OF THE MICHIGAN VEHICLE
21 CODE, 1949 PA 300, MCL 257.675B, INVOLVING LEASED VEHICLES, PROOF
22 THAT A PARTICULAR VEHICLE USED A TRANSPORTATION FACILITY WITHOUT
23 PAYMENT OF THE APPLICABLE TOLL, TOGETHER WITH PROOF FROM THE
24 DEPARTMENT OF STATE OF THE NAME OF THE VEHICLE'S REGISTERED OWNER,
25 CREATES A PRESUMPTION THAT THE VEHICLE'S REGISTERED OWNER WAS THE
26 PERSON WHO USED THE TRANSPORTATION FACILITY, WHO FAILED TO PAY THE
27 TOLL, AND WHO IS PRIMA FACIE RESPONSIBLE FOR THE UNPAID CHARGES. IF

1 THE CONDITIONS OF SECTION 675B OF THE MICHIGAN VEHICLE CODE, 1949
2 PA 300, MCL 257.675B, ARE SATISFIED, THE LESSEE OR RENTER OF A
3 MOTOR VEHICLE AND NOT THE LEASED VEHICLE OWNER IS THE PERSON LIABLE
4 UNDER THIS SECTION, FOR WHICH PURPOSES THE ENTITY THAT GIVES NOTICE
5 OF UNPAID CHARGES TO THE VEHICLE'S REGISTERED OWNER SHALL BE GIVEN
6 THE NOTICE THAT WOULD OTHERWISE BE GIVEN TO THE CLERK OF THE COURT
7 OR PARKING VIOLATIONS BUREAU UNDER SECTION 675B OF THE MICHIGAN
8 VEHICLE CODE, 1949 PA 300, MCL 257.675B.

9 (7) THE OWNER OF A VEHICLE ALLEGED TO HAVE USED A
10 TRANSPORTATION FACILITY WITHOUT PAYING AN APPLICABLE TOLL MAY
11 ASSERT AS AN AFFIRMATIVE DEFENSE THAT THE VEHICLE IN QUESTION, AT
12 THE TIME OF THE USE OF THE TRANSPORTATION FACILITY, WAS IN THE
13 POSSESSION OF A PERSON WHOM THE OWNER HAD NOT KNOWINGLY PERMITTED
14 TO OPERATE THE VEHICLE.

15 Sec. 10. Documents and instruments of any kind authorized to
16 be issued or executed by the commission shall be issued or executed
17 in the name of the "Michigan state ~~highway~~ **TRANSPORTATION**
18 commission" by the ~~chairman~~ **CHAIRPERSON** of the commission, or to
19 the extent expressly authorized by bylaw or resolution, by the vice
20 ~~chairman~~ **CHAIRPERSON**, other member, **THE** director, or other
21 subordinate. Documents or instruments ~~which~~ **THAT** convey interests
22 or rights in land shall be executed by the ~~chairman~~ **CHAIRPERSON** or
23 vice ~~chairman~~ **CHAIRPERSON** and the director or a deputy director
24 designated by the commission.