

PUBLIC-PRIVATE AGREEMENTS FOR PUBLIC BRIDGE FACILITIES

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Senate Bills 1215 (S-2) and 1216 as reported from committee
Sponsor: Sen. Ken Horn

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 1217 as reported
Sponsor: Sen. Jeremy Moss

Senate Bill 1218 as reported
Sponsor: Sen. Wayne Schmidt

House Committee: Government Operations
Senate Committee: Economic and Small Business Development
Complete to 12-16-20

(Enacted as Public Acts 353, 354, 355, and 356 of 2020)

SUMMARY:

Senate Bills 1215 to 1218 would amend different acts to provide for public-private agreements (e.g., lease or concession arrangements) for certain public bridges; to allow for user fees (i.e., tolls) under certain circumstances; to accommodate construction or renovation of the bridges; and to ensure that real and personal property under an agreement is exempt from property and other taxes.

Senate Bill 1215 would amend the Home Rule City Act to allow a city to enter into a *public-private agreement* for a *public bridge facility* as described below. A public-private agreement would have to protect the public interest and ensure accountability of the *concessionaire* to the city. A city could determine or negotiate the terms and conditions of the public-private agreement to facilitate its purposes. A public bridge facility described in the bill would have to be publicly owned and dedicated to public use.

Public-private agreement would mean an agreement between a city and a *private entity* or between a city, a private entity, and one or more *governmental entities* that relates to researching, planning, studying, designing, developing, financing, acquiring, constructing, renovating, operating, or maintaining, or charging a *user fee* for, a public bridge facility.

Public bridge facility would mean a bascule bridge,¹ a roadway or ramp that supports the bridge, and any other equipment, building, structure, parking area, appurtenance, or other real or personal property necessary or desirable for and any future new construction to replace a bascule bridge, a roadway or ramp that supports the bascule bridge, and any other equipment, building, structure, parking area, appurtenance, or other real or personal property necessary or desirable for the bascule bridge that is in existence on the effective date of bill. A public bridge facility would not include a bridge or infrastructure directly associated with an international bridge crossing.

¹ See **Background Information**, below.

Concessionaire would mean a private entity that has entered into a public-private agreement.

Governmental entity would mean an entity created under a state statute and operated for a public purpose.

Private entity would mean an individual, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or any other nongovernmental business entity.

User fee would mean a toll, consumption charge, rent, license fee, or another similar or ancillary charge that is related to the use of a public bridge facility, including a fee or charge for creating, maintaining, administering, billing, and collecting an account.

Public-private agreements

A public-private agreement would have to include all of the following:

- The terms of use and operation of the public bridge facility by a concessionaire for a period of time that the city determines is reasonable and necessary for developing and financing the public bridge facility.
- A clause that vests ownership of the public bridge facility with the city or a public entity created by the city and provides that title to and ownership of the public bridge facility must not be encumbered by a lien, mortgage, or security interest.
- The terms for terminating the public-private agreement.
- If the concessionaire will operate the public bridge facility, a reversion clause stating that operation of the public bridge facility will revert to the city when the public-private agreement is terminated.
- The restrictions imposed on the concessionaire's ability to sell or transfer its interest in the public bridge facility without the city's consent.

Additionally, the public-private agreement could provide for any of the following:

- A lease, license, right of entry, or other instrument for the benefit of the concessionaire, as determined by the city to be in the public interest, that could be encumbered by a lien, mortgage, or security interest.
- An initial operating term of not more than 75 years from the date construction is completed or the date a user fee (if one) starts to be collected, whichever date is later.
- The terms for renewing the public-private agreement.
- The charging and collecting of user fees for the use of the public bridge facility, including fees for different classifications of users.
- The use, application, or sharing of all or a portion of collected user fees with the concessionaire.
- A schedule, formula, or mechanism for the adjustment of a user fee.
- An arbitration, mediation, or other alternative dispute resolution clause.

All of the following would apply during the term of a public-private agreement:

- A right-of-way acquired through condemnation or private acquisition that is used for a public bridge facility must be contributed and remain publicly owned.
- Property developed under and subject to the public-private agreement is exempt from all state and local ad valorem and other property taxes.
- The concessionaire's interest in property developed under and subject to the public-private agreement is exempt from taxation under 1953 PA 189.

User fees

A user fee could be imposed only on a public bridge facility that is constructed or renovated after the bill takes effect. A user fee could be imposed, charged, and collected by manual, digital, or electronic means, including video, transponder, tag, camera, or any other similar technology. Late fees and reasonable administrative fees could also be charged as appropriate.

A user fee, late fee, or administrative fee would not be subject to regulation by any other governmental agency. A city could enforce and collect the payment of a user fee, late fee, or administrative fee or authorize a concessionaire or another person to do so.

If a person failed to pay a user fee within 180 days, the city or a person authorized by the city could bring a civil action to collect the user fee. In the case of a judgment against the person owing the user fee, the person would have to reimburse the city for all costs of enforcement and collection, including filing and attorney fees.

Public hearing

Before entering into a public-private agreement that provides for user fees for a public bridge facility, and before modifying the terms of such an agreement, the city would have to hold a public hearing on the agreement or proposed modifications. The hearing would have to be held in accordance with the Open Meetings Act and be conducted so as to provide a reasonable opportunity for both written and oral public comment and with reasonable accommodations to allow for public participation through electronic formats, including viewing the public hearing through an internet broadcast and submitting comments by digital means.

Scope of bill

Finally, the bill states that it would not affect or otherwise impair either of the following:

- A public-private agreement or any other agreement that a city enters into before the bill's effective date.
- A public-private agreement or any other agreement that the city enters into for the development of a public bridge facility that is outside the scope of the bill.

Proposed MCL 117.5k

Senate Bill 1216 would amend 1851 PA 156, which governs certain powers of county boards of commissioners. The bill would provide that, if a county board of commissioners previously approved the construction of a bridge across a navigable stream under the act, further approval by the county board of commissioners is not required for any reconstruction, renovation, or replacement of that bridge that continues to provide for the passage of vessels or boats in compliance with the original approval.

Proposed MCL 46.23a

Senate Bill 1217 would amend the General Property Tax Act to provide that all real and personal property constituting a *public bridge facility* that is subject to a *public-private agreement* (as those terms are defined in SB 1215) is exempt from the collection of taxes under the act.

Proposed MCL 211.7xx

Senate Bill 1218 would amend 1953 PA 189, which provides for the taxation of lessees and users of tax-exempt property. The act generally provides that if real property that is exempt from ad valorem property taxes is leased to and used by a private entity for profit, then the lessee or user of the property is subject to taxation as though it were the property owner. The act also provides a list of exceptions from this general provision.

To this list of exceptions from taxation the bill would add property that qualifies as a public bridge facility that is used by a concessionaire under a public-private agreement entered into with a city under the provisions of SB 1215.

MCL 211.181

Senate Bills 1215, 1217, and 1218 are all tie-barred to one another, which means that none of them could take effect unless all of them were enacted.

BACKGROUND INFORMATION:

As described above, the bills generally concern *public-private agreements* between a city and a private entity, or between a city, a private entity, and one or more governmental entities, that relate to researching, planning, studying, designing, developing, financing, acquiring, constructing, renovating, operating, or maintaining, or charging a user fee for a *public bridge facility*. Senate Bill 1215 effectively limits the definition “public bridge facility” to mean a *bascule bridge* and approaches and appurtenances to a bascule bridge.

A Federal Highway Administration (FHWA) bridge maintenance reference manual² describes a movable bridge as “a bridge across a navigable waterway, or other travel way, that has at least one span which can be temporarily moved to increase the vertical clearance for objects passing underneath.” The manual further notes: “Bridges with a movable span

² <https://www.fdot.gov/maintenance/bmrm.shtm>

are a design option when it is not feasible to obtain the necessary vertical clearance for objects passing beneath the structure.”³

Bascule bridges are a specific type of movable bridge.⁴ The FHWA reference manual indicates that bascule bridges are the most common type of movable bridges used today. Modern bascule bridges have counterweights to offset the weight of the leaf when the leaf is raised or lowered. Use of counterweights allows for the increased size and utility of bascule bridges.

The FHWA reference manual also notes: “Movable bridges are unique structures as they integrate conventional structural components with mechanical systems and electrical power and control systems.” These mechanical and electrical systems make movable bridges more expensive to maintain than conventional structures. Capital construction and reconstruction costs for movable bridges are also greater than for conventional structures.

While Senate Bill 1215 concerns cities incorporated under the Home Rule City Act—there are 275 such cities in Michigan—only six cities meet the more specific scope of the bill in that they own one or more bascule bridges: Alpena, Bay City (2), Manistee, Menominee, Port Huron (2), and South Haven.

(There are 24 publicly owned movable bridges in Michigan. Twelve are on the state trunkline system under the jurisdiction of the Michigan Department of Transportation, and twelve are under local road agency jurisdiction. In addition to the eight city-owned bascule bridges listed above, local road agency movable bridges include three bascule bridges owned by Wayne County and one swing bridge owned by the village of Alanson.)

The bills are understood to address specific circumstances of Bay City. That city entered into an “Acquisition and Development Agreement” with a private contractor, United Bridge Partners (UBP Bay City LLC), effective January 2, 2020, regarding two city-owned bascule bridges. Under terms of the agreement, UBP is responsible for the removal of the existing Independence Bridge, the construction of the New Independence Bridge, and the rehabilitation of the Liberty Bridge in the city. In addition, UBP agreed to finance, design, construct, operate, and maintain the two bridges at no cost to the city. In return, UBP would be authorized to collect tolls under terms specified in the agreement.

As a point of reference, in 2015, the Michigan Department of Transportation completed the reconstruction of a bascule bridge on Fort Street over the Rouge River in Detroit for a cost of \$48.0 million. The replacement cost for the Independence Bridge in Bay City would likely be higher in that the Saginaw River crossing would be longer. In addition, the stronger current of the Saginaw River would require more robust foundations.

³ <https://www.fdot.gov/docs/default-source/maintenance/STR/BI/Reference-Manual/BMRM-Chapter-17.pdf>

⁴ For an image of a bascule bridge (specifically, the Liberty Bridge in Bay City), see: <https://www.baycitymi.org/ImageRepository/Path?filePath=%2fdocuments%5cIntranet%5c31%5c33%2fBridge+Opening.jpg>

FISCAL IMPACT:

As noted in **Background Information**, above, Senate Bill 1215 concerns cities organized under the Home Rule Act, but is more limited in scope to those cities that own bascule bridges. Only six cities currently meet those criteria. The bills are intended to facilitate the use of public-private agreements for the finance, design, construction, operation, and maintenance of city-owned bascule bridges. Specifically, the bill would allow the use of tolling as a means of financing the design, construction, operation, and maintenance of a bascule bridge through a public-private agreement. Currently, the Home Rule City Act does not directly grant to cities the authority to toll roads or bridges under city jurisdiction.

Senate Bill 1215 is permissive only; it provides additional authority to certain cities but does not require any action and does not have a direct fiscal impact on any city or state government. However, the use of public-private agreements as authorized under the bill could provide certain cities a means of financing the construction, maintenance, and operation of city-owned bascule bridges, thus freeing up city street funds for other local street programs.

Senate Bill 1216 clarifies the authority of county boards of commission with respect to the construction of bridges over navigable waters. Again, the bill does not have a direct fiscal impact on any city or on the state of Michigan.

Senate Bills 1217 and 1218 ensure that real and personal property under a public-private agreement is exempt from property and other taxes. This tax exemption is necessary to facilitate a public-private agreement authorized under Senate Bill 1215. The tax exemption would not have a direct impact on city or state tax revenue, in that publicly owned bridges are not currently subject to ad valorem property taxes.

The impact of the bill package on Bay City would depend on the specific terms of the city's Acquisition and Development Agreement with UBP, how that agreement is implemented, and how that agreement is affected by Senate Bill 1215.

Bay City currently receives an annual distribution of \$480,000 from the Movable Bridge Fund established in section 10 of 1951 PA 51. This distribution is intended to reimburse road agencies for the costs of operating movable bridges. Those operating costs are primarily the costs of bridge tenders. The Movable Bridge Fund does not reimburse for the cost of bridge maintenance, or capital construction or reconstruction.⁵

Depending on the terms of the agreement, Bay City might not be eligible for the reimbursement from the Movable Bridge Fund after UBP takes over operation of the two city bascule bridges.

Also, if Bay City actually transferred ownership of the bridges to UBP, the city's street mileage would be reduced accordingly; a reduction in the city's certified street mileage could marginally affect the city's distribution from the Michigan Transportation Fund.

⁵ <http://legislature.mi.gov/doc.aspx?2015-SB-0105>

However, it is our understanding that Bay City and UBP intend to execute a long term lease-concession agreement after Settlement, as defined in the Acquisition and Development Agreement, in accordance with the agreement and the proposed legislation.

POSITIONS:

Representatives of the following entities testified in support of the bills (12-15-20):

- Michigan Department of Transportation
- City of Bay City
- UBP (United Bridge Partners)
- Bay Area Chamber
- LiUNA (Laborers' International Union of North America)

The following entities indicated support for the bills (12-15-20):

- Great Lakes Bay Regional Alliance
- Saginaw County Chamber of Commerce
- Michigan Building Trades Council
- McLaren Bay Region Hospital
- Saginaw Valley State University
- Michigan Infrastructure and Transportation Association
- Operating Engineers Local 324
- Michigan Association of Counties
- Michigan Municipal League
- American Council of Engineering Companies
- UA Local 85
- Michigan Sugar Company
- Bay Futures, Inc.
- IBEW (International Brotherhood of Electrical Workers) Locals 692 and 948
- Tri-County Building and Trades Council
- Consumers Energy

The Department of Treasury indicated a neutral position on Senate Bills 1217 and 1218. (12-15-10)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.