

BORDER DEVELOPMENT & PROTECTION AUTHORITY

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House Bill 4563

Sponsor: Rep. Steve Tobocman

Committee: New Economy and Quality of Life

Complete to 6-13-07

A SUMMARY OF HOUSE BILL 4563 AS INTRODUCED 3-29-07

House Bill 4563 would create a new act to be known as the Michigan Border Development and Protection Authority in the Department of Transportation. A brief description of the authority follows.

Membership of Authority. Under the bill, there would be created a Border Development and Protection Authority comprising 15 members, including the president and CEO of the Michigan Economic Development Corporation; the four directors of the state departments of Transportation, Environmental Quality, State Police, and Labor and Economic Growth; four state residents, two of whom would be appointed by the Senate Majority Leader, and two of whom would be appointed by the House Speaker; and six people appointed by the Governor to include three individuals representing commerce, transportation, and border operators, and also three individuals who live within three miles of a port of entry but are not from the same area of Michigan.

Board's Powers and Duties. The bill specifies all of the board's powers and duties, including the following:

- Advise the Governor and appropriate state agencies on proposals, programs and initiatives involving the Michigan-Canada border are that may further stimulate the border economy and provide additional employment opportunities for Michigan.
- Create avenues of communication between Michigan and the provincial and national governments of Canada
- Perform (or cause to be performed) environmental, transportation, communication, land use, traffic, and other technical studies
- Promote legislation that would further the goals of the authority and development of the border region.
- Study, promote or cause economic development projects.
- Advise regarding any new port of entry into Michigan constructed or financed by either a political subdivision or a private entity (proposals for a new port of entry would have to be submitted to the authority, and any new port of entry would have to have the authority's approval).

- Promulgate rules under the Administrative Procedures Act.
- Initiate, develop, acquire, own, construct, and maintain border development projects.
- Enforce all applicable state and federal hazardous waste transport regulations related to ports of entry, regardless if private or public, through the Michigan State Police or an appropriate agency, and ensure appropriate signage.
- Require local governments' building inspection authorities and the state fire marshal to perform annual inspections of ports of entry to ensure structural safety.
- Regulate the tolls levied at ports of entry.

The bill requires the members of the authority to consider the following factors when deciding whether to approve construction of the new port of entry: the financial resources of the developer; whether the revenue to be generated by the port of entry would be sufficient to finance the planning, design, construction, operation, and maintenance of the port of entry; the potential effects of the port of entry on the economy of the region, the environment, traffic congestion and mobility, the free flow of trade between Canada and Michigan, commitments to the appropriate jurisdictions of Canada to provide adequate approach roadways to the port of entry; and, compliance with all federal and state laws.

In making a decision about approving the construction of a port of entry, the authority would have to solicit the advice of 1) the state departments of Labor and Economic Growth, State Police, Environmental Quality, and Transportation; 2) the state historical preservation office; 3) any other state agency the authority determined to be appropriate; and 4) any local units of government affected by the proposed port of entry.

The bill specifies what the authority may do, including soliciting funds; acting as an applicant for, and operator of, port of entry facilities; as a port of entry, give or transfer real property; acquire by construction, purchase, gift, or lease, projects that are located in Michigan; sell or lease projects upon terms acceptable to the authority and in the best interest of Michigan; borrow money and issue bonds and notes; refinance a project; and make recommendations for improvements to safeguard the public safety and welfare, mitigate traffic, and lessen environmental impact.

Under the bill, all ports of entry would be required to apply for an annual permit from the authority. In order to obtain or renew a port of entry permit, the applicant would have to provide information related to its activities, finances, and performance (including any public safety incidences), all of which are specified in the bill. The authority could temporarily suspend operation of any port of entry without a permit, and also could suspend operation of any port of entry if the authority determined the port of entry could not ensure the public safety.

Civil Fines. The authority could levy civil and criminal penalties, not to exceed \$25,000 a day, if provisions of the act were violated by any public or privately owned port of entry.

In the event the authority determined the public safety was in jeopardy, the authority could close the port of entry until the threat was removed.

State Not Obligated to Pay for Authority's Indebtedness. The authority could authorize and issue bonds or notes payable solely from its available revenues or funds. The bill specifies that the State of Michigan would not be obligated to pay for the authority's indebtedness, and that neither the full faith and credit nor the taxing power of the state could be pledged to the payment of its debts. The bill states that the act would not authorize the authority to incur any indebtedness or liability on behalf of, or payable by, the State of Michigan. Bonds and notes issued would not be subject to the Revised Municipal Finance Act. The issuance of bonds and notes would be subject to the Agency Financing Reporting Act (MCL 129.171 to 129.177).

Bonding Authority. The authority could issue bonds or notes in amounts the authority considered necessary to provide funds for any purpose, several of which are listed in the bill. The bonds and notes would not be a general obligation of the authority, but would be payable solely from revenues or funds, or both. The bonds or notes would have to be authorized by resolution, and the bill specifies *how* the bonds could be issued, and also *what* they should contain, both in considerable detail. The bill also specifies that the authority could authorize and approve an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, or any other transaction to provide security to assure timely payment of a bond or note.

The bill specifies that a pledge made by the authority would be valid and binding from the time it was made. Further, the money or property pledged and then received would be immediately subject to the lien of the pledge. The lien of a pledge would be valid and binding as against parties having claims of any kind in tort, contract, or otherwise against the authority, and would be valid and binding as against the transfers of money to property pledged. The resolution, the trust agreement, or any other instrument by which a pledge was created would not be required to be recorded in order to establish and perfect a lien or security interest in the property.

No Personal Liability. The members of the authority and any person executing bonds or notes issued (as provided in the legislation), and any person executing any agreement on behalf of the authority would not be personally liable on the bonds or notes.

State Pledge Not to Limit or Restrict. Under the bill, the state would pledge to the holders of bonds or notes that the State of Michigan would not limit or restrict the rights vested in the authority to fulfill the terms of any agreements made with the holders of authority bonds or notes. Further, the state would not in any way impair the rights or remedies of the holders of the bonds or notes until the holders were fully paid and discharged. The bill authorizes the authority to include this pledge and agreement with

the state in any agreement the authority would make with the holders of its bonds or notes.

Investors. The bill specifies that many financial institutions and investors may legally invest funds in the authority's bonds or notes, including the state and a public officer, local unit of government, agency of the state or a local unit of government, an intergovernmental entity created under the laws of the state; a bank, a trust company, savings bank and institution, savings and loan association, investment company, or other person carrying on a banking business; an insurance company, insurance association, or other person carrying on an insurance business; or an executor, administrator, guardian, trustee, or other fiduciary.

The Authority Fund. The Michigan Border Development and Protection Authority Fund would be created under the jurisdiction and control of the authority, and would be administered for the general operations of the authority, and to secure any notes and bonds of the authority. The authority could receive money or other assets from any source for deposit into the fund, and would be required to credit to the fund interest and earnings from fund investments. Money in the fund could be used to repay the bonds, notes, and obligations of the authority, and money in the fund at the close of the fiscal year would remain in the fund and not lapse to the general fund. The authority could expend money from the fund, only for the purposes authorized under the bill.

Authority Tax Exemption. The bill specifies that the authority would be exempt from and not required to pay taxes on property (both real and personal) belonging to the authority used for a public or governmental purpose. Property of the authority would be public property devoted to an essential public or governmental function and purpose. The authority's income and operation (including bonds or notes issued by the authority or the interest and income derived from the bonds or notes) are exempt from all taxes and special assessments of this state or a political subdivision of the state.

Vehicle Fee. Finally, the bill specifies that the authority could levy an additional fee per vehicle crossing either a privately or publicly owned port of entry in addition to the tolls levied by private or public ports of entry, in order to fund the oversight required by the bill.

FISCAL IMPACT:

A fiscal analysis is in process.

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