

HOUSE BILL No. 4563

March 29, 2007, Introduced by Reps. Tobocman, Sak, Hopgood, LeBlanc, Warren, Alma Smith, Espinoza, Brown, Donigan, Kathleen Law and McDowell and referred to the Committee on New Economy and Quality of Life.

A bill to create the Michigan border development and protection authority; to prescribe the powers and duties of the authority; to provide for certain regulations at ports of entry; to provide for the issuance of bonds, notes, and other obligations; to provide for certain fees; and to provide for penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan border development and protection authority act".

3 Sec. 2. As used in this act:

4 (a) "Authority" means the border development and protection
5 authority created under section 3.

6 (b) "Fund" means the Michigan border development and
7 protection authority fund created in section 18.

8 (c) "Port of entry" means any international port of entry in

1 this state at which customs services are provided by the United
2 States customs service.

3 (d) "Project" means any land or building or any other
4 improvements acquired as a part of a port of entry or associated
5 with a port of entry or to aid commerce, and all real and personal
6 property considered necessary, whether or not now in existence,
7 that is suitable for use by 1 or more of the following:

8 (i) A port of entry, a foreign trade zone, and other facilities
9 to be used by any agency or entity of the United States government
10 or by any other foreign international state or local public agency
11 or entity at the port of entry or foreign trade zone.

12 (ii) An industry for the manufacturing, processing, or
13 assembling of any agricultural, mining, or manufactured product.

14 (iii) A railroad switching yard, railroad station, bus terminal,
15 airport, or other passenger, commuter, or mass transportation
16 system or freight transportation system.

17 (iv) A commercial business or other enterprise engaged in
18 storing, warehousing, distributing, or selling products of
19 manufacturing, agriculture, mining, or related industries, not
20 including facilities designed for the distribution to the public of
21 electricity or gas.

22 (v) An enterprise in which all or part of the activities of
23 the enterprise involve supplying services to the general public or
24 to governmental agencies or to a specific industry or customer.

25 (vi) Any industrial, commercial, agricultural, professional, or
26 other business enterprise seeking to occupy office space.

27 (vii) Infrastructure development involving acquiring,

1 repairing, improving, or maintaining storm sewers and other
2 drainage improvements, sanitary sewers, sewage treatment, or water
3 utilities, including acquiring rights-of-way or water rights.

4 (viii) Infrastructure development involving reconstructing,
5 resurfacing, maintaining, repairing, or improving existing alleys,
6 streets, roads, or bridges or laying off, opening, constructing, or
7 acquiring new alleys, streets, roads, or bridges, including
8 acquiring rights-of-way.

9 (ix) Any industry that involves any water distribution or
10 irrigation system, including pumps, distribution lines,
11 transmission lines, fences, dams, and similar facilities and
12 equipment, including acquiring rights-of-way.

13 (x) Fire protection services or equipment or police protection
14 services or equipment.

15 (e) "Property" means land, improvements to the land, buildings
16 and improvements to the buildings, machinery and equipment of any
17 kind necessary to the project, operating capital, and any other
18 personal properties considered necessary in connection with the
19 project.

20 Sec. 3. (1) The Michigan border development and protection
21 authority is created within the state transportation department.

22 (2) The authority shall be made up of the following members:

23 (a) The president and CEO of the Michigan economic development
24 corporation.

25 (b) The director of the state transportation department.

26 (c) The director of the department of environmental quality.

27 (d) The director of the department of state police.

1 (e) The director of the department of labor and economic
2 growth.

3 (f) Two individuals who are residents of this state appointed
4 by the senate majority leader.

5 (g) Two individuals who are residents of this state appointed
6 by the speaker of the house of representatives.

7 (h) The following individuals appointed by the governor:

8 (i) One individual representing commerce.

9 (ii) One individual representing transportation.

10 (iii) One individual representing border operators.

11 (iv) Three individuals who live within 3 miles of a port of
12 entry but not from the same area of this state.

13 Sec. 4. (1) The authority shall have and exercise all of the
14 following powers and duties:

15 (a) Advise the governor and appropriate state agencies on
16 methods, proposals, programs, and initiatives involving the
17 Michigan-Canada border area that may further stimulate the border
18 economy and provide additional employment opportunities for this
19 state.

20 (b) Create avenues of communication between this state and
21 Ontario and the federal government of Canada concerning economic
22 development, trade and commerce, transportation, and industrial
23 affairs in border communities.

24 (c) Perform, or cause to be performed, environmental,
25 transportation, communication, land use, and other technical
26 studies necessary or advisable for projects or programs or to
27 secure port-of-entry approval by the United States and the Canadian

1 governments and other appropriate governmental agencies.

2 (d) Promote legislation that will further the goals of the
3 authority and development of the border region.

4 (e) Perform, or cause to be performed, traffic studies of
5 border communities and ensure border-related traffic is managed in
6 a way that minimizes impacts to the adjacent community.

7 (f) Study, promote, or cause to be implemented economic
8 development projects in border communities.

9 (g) Advise the governor and appropriate state agencies
10 regarding any new port of entry into this state constructed or
11 financed by a political subdivision or private entity. An entity
12 proposing a new port of entry shall submit to the authority a
13 report that details the feasibility, location, economic effect, and
14 environmental impact of the proposed port of entry and any other
15 information the authority may require. A new port of entry shall
16 not be constructed without the approval of the authority.

17 (h) Promulgate rules under the administrative procedures act
18 of 1969, 1969 PA 306, MCL 24.201 to 24.328, necessary to implement
19 and administer this act.

20 (i) Initiate, develop, acquire, own, construct, and maintain
21 border development projects.

22 (j) Perform environmental impact studies.

23 (k) Enforce all applicable state and federal hazardous waste
24 transport regulations related to ports of entry, regardless if
25 private or public, through the Michigan state police or the
26 appropriate agency.

27 (l) Ensure appropriate signage on all state highways directing

1 vehicles with hazardous waste to appropriate crossings.

2 (m) Require local governments' building inspection authorities
3 and the state fire marshal to perform as otherwise provided by law
4 annual inspections of ports of entry to ensure structural safety.

5 (n) Regulate the tolls levied at ports of entry.

6 (2) In determining whether to approve construction of the new
7 port of entry under subsection (1)(g), the authority shall consider
8 all of the following:

9 (a) The financial resources available to the political
10 subdivision or private entity for construction of the port of
11 entry.

12 (b) Whether the revenue to be generated by the port of entry
13 is sufficient to finance the planning, design, construction,
14 operation, and maintenance of the port of entry.

15 (c) Whether the construction of the port of entry is
16 consistent with the transportation plan adopted by this state and,
17 if appropriate, by the regional planning organization with
18 jurisdiction over the port of entry.

19 (d) The potential effect of the port of entry on any of the
20 following:

21 (i) The economy of the region in which the port of entry is to
22 be located.

23 (ii) The environment of the region in which the port of entry
24 is to be located.

25 (iii) Traffic congestion and mobility.

26 (iv) The free flow of trade between Canada and this state.

27 (e) Commitments from the appropriate jurisdictions of Canada

1 to provide adequate approach roadways to the port of entry.

2 (f) Compliance with all federal and state laws.

3 (3) In determining whether to approve the construction of the
4 port of entry under subsection (1)(g), the authority shall solicit
5 the advice of all of the following:

6 (a) The department of labor and economic growth.

7 (b) The state police.

8 (c) The Michigan department of environmental quality.

9 (d) The Michigan state historical preservation office.

10 (e) The Michigan department of transportation.

11 (f) Any other state agency the authority determines is
12 appropriate.

13 (g) Any local units of government affected by the proposed
14 port of entry.

15 Sec. 5. The authority may do 1 or more of the following:

16 (a) Solicit and accept federal, state, local, and private
17 grants of funds, property, or financial or other aid in any form
18 for the purpose of carrying out the provisions of this act.

19 (b) Act as an applicant for and operator of port of entry
20 facilities and, as the applicant, carry out all tasks and
21 functions, including acquisition by purchase or gift of any real
22 property necessary for port of entry facilities, acquisition by
23 purchase, gift, or construction of any facilities or other real or
24 personal property necessary for a port of entry, and filing all
25 necessary documents and follow-up of the filings with appropriate
26 agencies.

27 (c) As part of a port of entry, give or transfer real

1 property, facilities, and improvements owned by the authority to
2 the United States government.

3 (d) Acquire by construction, purchase, gift, or lease projects
4 that are located within this state.

5 (e) Sell, lease, or otherwise dispose of a project upon terms
6 and conditions acceptable to the authority and in the best
7 interests of this state.

8 (f) Borrow money and issue bonds and notes to defray the cost
9 of acquiring a project by purchase or construction and secure those
10 bonds and notes by mortgage, assignment, or pledge of any of its
11 revenues and assets.

12 (g) Refinance a project.

13 (h) Make recommendations for improvements to safeguard the
14 public safety and welfare, mitigate traffic, and lessen
15 environmental impact.

16 Sec. 6. (1) All ports of entry will be required to apply for
17 an annual permit from the authority.

18 (2) In order to obtain or renew a port of entry permit, a port
19 of entry will have to provide the following information related to
20 its activities, finances, and performance, including any public
21 safety incidences at the port of entry, which would include all of
22 the following:

23 (a) Audited financial statements or substantially similar
24 financial documents.

25 (b) Inspection reports.

26 (c) Evaluation of homeland security, hazardous waste, and
27 other safety factors at the port of entry.

1 (d) Local traffic impacts of the port of entry.

2 (e) General information on the number of vehicles crossing and
3 the value of trade moved across the border.

4 (f) Procedures and policies initiated and applied at the port
5 of entry that ensure the public safety and welfare.

6 (3) Any failure to obtain a permit or to renew an existing
7 permit will allow the authority to temporarily suspend operation of
8 the port of entry until such time as the permit can be renewed or
9 it can be determined that public safety can be ensured at the port
10 of entry.

11 (4) The authority may suspend operation of any port of entry
12 if the authority determines that the operator of the port of entry
13 cannot ensure the public safety.

14 Sec. 7. (1) The authority may levy civil and criminal
15 penalties, not to exceed \$25,000.00 per day, if provisions of the
16 act are violated by any public or privately owned port of entry.

17 (2) In case of a determination by the authority that public
18 safety is in jeopardy, the authority has the power to close the
19 port of entry in question until the threat to public safety is
20 removed.

21 Sec. 8. (1) The authority may authorize and issue its bonds or
22 notes payable solely from revenues or funds available to the
23 authority. Bonds and notes of the authority are not a debt or
24 liability of this state and do not create or constitute any
25 indebtedness, liability, or obligations of this state or constitute
26 a pledge of the full faith or credit of this state. All authority
27 bonds and notes shall be payable solely from revenues or funds

pledged or available for their payment as authorized in this act. Each bond and note shall contain on its face a statement to the effect that the authority is obligated to pay the principal of and the interest on the bond or note only from revenue or funds of the authority pledged for the payment of principal and interest and that this state is not obligated to pay that principal and interest and that neither the full faith and credit nor the taxing power of this state is pledged to the payment of the principal of or the interest on the bond or note.

(2) All expenses incurred in carrying out this section shall be payable solely from revenues or funds provided or to be provided under this act. This act does not authorize the authority to incur any indebtedness or liability on behalf of or payable by this state.

(3) Bonds and notes issued under this act are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(4) The issuance of bonds and notes under this section is subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

Sec. 9. (1) The authority may issue from time to time bonds or notes in principal amounts the authority considers necessary to provide funds for any purpose, including, but not limited to, all of the following:

(a) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on bonds or notes issued by the authority whether the bonds or notes or interest to be funded or

1 refunded has or has not become due.

2 (b) The establishment or increase of reserves to secure or to
3 pay authority bonds or notes or interest on those bonds or notes.

4 (c) The payment of interest on the bonds or notes for a period
5 as the authority determines.

6 (d) The payment of all other costs or expenses of the
7 authority incident to and necessary or convenient to carry out its
8 authorized purposes and powers.

9 (2) The bonds or notes of the authority shall not be a general
10 obligation of the authority but shall be payable solely from the
11 revenues or funds, or both, pledged to the payment of the principal
12 of and interest on the bonds or notes as provided in the resolution
13 authorizing the bonds or notes.

14 (3) The bonds or notes of the authority:

15 (a) Shall be authorized by resolution of the authority.

16 (b) Shall bear the date or dates of issuance.

17 (c) May be issued as either tax-exempt bonds or notes or
18 taxable bonds or notes for federal income tax purposes.

19 (d) Shall be serial bonds, term bonds, or term and serial
20 bonds.

21 (e) Shall mature at a time or times not exceeding 40 years
22 from the date of issuance.

23 (f) May provide for sinking fund payments.

24 (g) May provide for redemption at the option of the authority
25 at any time for any reason or reasons.

26 (h) May provide for redemption at the option of the bondholder
27 at any time for any reason.

1 (i) Shall bear interest at a fixed or variable rate or rates
2 of interest per year or at no interest.

3 (j) Shall be registered bonds, coupon bonds, or both.

4 (k) May contain a conversion feature.

5 (l) May be transferable.

6 (m) Shall be in the form, denomination or denominations, and
7 with such other provisions and terms as are determined necessary or
8 beneficial by the authority.

9 Sec. 10. (1) The authority may authorize and approve an
10 insurance contract, an agreement for a line of credit, a letter of
11 credit, a commitment to purchase notes or bonds, an agreement to
12 remarket bonds or notes, or any other transaction to provide
13 security to assure timely payment of a bond or note.

14 (2) The authority may authorize payment from the proceeds of
15 the notes or bonds, or other funds available, of the costs of
16 issuance, including, but not limited to, fees for placement,
17 charges for insurance, letters of credit, lines of credit,
18 remarketing agreements, reimbursement agreements, or purchase or
19 sales agreements or commitments, or agreements to provide security
20 to assure timely payment of notes or bonds.

21 Sec. 11. Within limitations contained in the issuance or
22 authorization resolution of the authority, the authority may
23 authorize a member of the authority to do 1 or more of the
24 following:

25 (a) Sell and deliver and receive payment for notes or bonds.

26 (b) Refund notes or bonds by the delivery of new notes or
27 bonds whether or not the notes or bonds to be refunded have matured

1 or are subject to redemption.

2 (c) Deliver notes or bonds, partly to refund notes or bonds
3 and partly for any other authorized purpose.

4 (d) Buy notes or bonds that are issued and resell those notes
5 or bonds.

6 (e) Approve interest rates or methods for fixing interest
7 rates, prices, discounts, maturities, principal amounts,
8 denominations, dates of issuance, interest payment dates,
9 redemption rights, at the option of the authority or the holder,
10 the place of delivery and payment, and other matters and procedures
11 necessary to complete the transactions authorized.

12 (f) Direct the investment of any and all funds of the
13 authority.

14 (g) Approve the terms of a contract and execute and deliver
15 the contract subject to the restrictions of this part.

16 (h) Approve the terms of any insurance contract, agreement for
17 a line of credit, a letter of credit, a commitment to purchase
18 notes or bonds, an agreement to remarket bonds or notes, an
19 agreement to manage payment, revenue, or interest rate exposure, or
20 any other transaction to provide security to assure timely payment
21 of a bond or note.

22 (i) Perform any power, duty, function, or responsibility of
23 the authority.

24 Sec. 12. A resolution authorizing bonds or notes may provide
25 for all of the following that shall be part of the contract with
26 the holders of the bonds or notes:

27 (a) A pledge to any payment or purpose all or any part of

1 authority revenues or assets to which its right then exists or may
2 later come to exist, of money derived from the revenues or assets,
3 and of the proceeds of bonds or notes or of an issue of bonds or
4 notes, subject to any existing agreements with bondholders or
5 noteholders.

6 (b) A pledge of a loan, grant, or contribution from the
7 federal, state, or local government.

8 (c) The establishment and setting aside of reserves or sinking
9 funds and the regulation and disposition of reserves or sinking
10 funds subject to this act.

11 (d) Authorization for and limitations on the issuance of
12 additional bonds or notes for the purposes provided for in the
13 resolution and the terms upon which additional notes or bonds may
14 be issued and secured.

15 (e) The procedure, if any, by which the terms of a contract
16 with noteholders or bondholders may be amended or abrogated, the
17 number of noteholders or bondholders who are required to consent to
18 the amendment or abrogation, and the manner in which consent may be
19 given.

20 (f) A contract with the bondholders as to the custody,
21 collection, securing, investment, and payment of any money of the
22 authority. Money of the authority and deposits of money may be
23 secured in the manner determined by the authority. Banks and trust
24 companies may give security for the deposits.

25 (g) Vest in a trustee, or a secured party, the property,
26 income, revenue, receipts, rights, remedies, powers, and duties in
27 trust or otherwise as the authority determines necessary or

1 appropriate to adequately secure and protect noteholders and
2 bondholders or to limit or abrogate the right of the holders of
3 bonds or notes of the authority to appoint a trustee under this act
4 or to limit the rights, powers, and duties of the trustee.

5 (h) Provide the trustee, the noteholders, or the bondholders
6 remedies that may be exercised if the authority fails or refuses to
7 comply with this act or defaults in an agreement made with the
8 holders of an issue of bonds or notes, which may include, but are
9 not limited to, the following:

10 (i) By mandamus or other action or proceeding at law or in
11 equity, to enforce the rights of the bondholders or noteholders and
12 require the authority to carry out any other agreement with the
13 holders of those notes or bonds and to perform the duties of the
14 authority under this act.

15 (ii) Bring action upon the notes or bonds.

16 (iii) By action, require the authority to account as if it were
17 the trustee of an express trust for the holders of the notes or
18 bonds.

19 (iv) By action in equity, enjoin any acts or things that may be
20 unlawful or in violation of the rights of the holders of the notes
21 or bonds.

22 (v) Declare the notes or bonds due and payable and, if all
23 defaults shall be made good, then, as permitted by the resolution,
24 annul that declaration and its consequences.

25 (i) Any other matters of like or different character that in
26 any way affect the security or protection of the bonds or notes.

27 Sec. 13. (1) A pledge made by the authority shall be valid and

1 binding from the time the pledge is made.

2 (2) The money or property pledged and then received by the
3 authority immediately is subject to the lien of the pledge without
4 physical delivery or further act. The lien of a pledge is valid and
5 binding as against parties having claims of any kind in tort,
6 contract, or otherwise against the authority and is valid and
7 binding as against the transfers of money or property pledged,
8 irrespective of whether parties have notice.

9 (3) The resolution, the trust agreement, or any other
10 instrument by which a pledge is created is not required to be
11 recorded in order to establish and perfect a lien or security
12 interest in the property pledged.

13 Sec. 14. The members of the authority and any person executing
14 bonds or notes issued as provided in this act and any person
15 executing any agreement on behalf of the authority is not
16 personally liable on the bonds or notes by reason of their
17 issuance.

18 Sec. 15. The authority may hold, cancel, or resell authority
19 bonds or notes subject to or in accordance with an agreement with
20 holders of authority bonds or notes.

21 Sec. 16. This state pledges to and agrees with the holders of
22 bonds or notes issued in accordance with this act that this state
23 shall not limit or restrict the rights vested in the authority by
24 this act to fulfill the terms of an agreement made with the holders
25 of authority bonds or notes or in any way impair the rights or
26 remedies of the holders of the bonds or notes of the authority
27 until the bonds and notes, together with interest on the bonds or

1 notes and interest on any unpaid installments of interest, and all
2 costs and expenses in connection with an action or proceedings by
3 or on behalf of those holders are fully met, paid, and discharged.
4 The authority is authorized to include this pledge and agreement of
5 this state in any agreement with the holders of bonds or notes
6 under this act.

7 Sec. 17. Notwithstanding any restriction in any other law,
8 this state and a public officer, local unit of government, agency
9 of this state or a local unit of government, an intergovernmental
10 entity created under the laws of this state; a bank, trust company,
11 savings bank and institution, savings and loan association,
12 investment company, or other person carrying on a banking business;
13 an insurance company, insurance association, or other person
14 carrying on an insurance business; or an executor, administrator,
15 guardian, trustee, or other fiduciary may legally invest funds
16 belonging to them or within their control in bonds or notes issued
17 under this act, and authority bonds or notes shall be authorized
18 security for public deposits.

19 Sec. 18. (1) The Michigan border development and protection
20 authority fund is created under the jurisdiction and control of the
21 authority and may be administered for the general operations of the
22 authority and to secure any notes and bonds of the authority.

23 (2) The authority may receive money or other assets from any
24 source for deposit into the fund. The authority shall credit to the
25 fund interest and earnings from fund investments.

26 (3) Money in the fund may be used to repay the bonds, notes,
27 and obligations of the authority as provided in this act.

1 (4) Money in the fund at the close of the fiscal year shall
2 remain in the fund and shall not lapse to the general fund.

3 (5) The authority shall expend money from the fund only for
4 the authorized purposes provided in this act.

5 Sec. 19. The authority created under this act shall be exempt
6 from and shall not be required to pay taxes on property, both real
7 and personal, belonging to the authority, which is used for a
8 public or governmental purpose. Property of the authority is public
9 property devoted to an essential public or governmental function
10 and purpose. The authority's income and operation, including bonds
11 or notes issued by the authority or the interest and income derived
12 from the bonds or notes, are exempt from all taxes and special
13 assessments of this state or a political subdivision of this state.

14 Sec. 20. The authority can levy an additional fee per vehicle
15 crossing either a privately or publicly owned port of entry in
16 addition to the tolls levied by private or public ports of entry in
17 order to fund the oversight required by this act.