

HOUSE BILL No. 4131

January 25, 2011, Introduced by Reps. Geiss, Hammel, Tlaib, Darany, Haugh, Constan, Roy Schmidt, Dillon, Byrum, Kandrevas, Hobbs, Slavens, LeBlanc, Melton, Bauer, Ananich, Olumba, Meadows and McCann 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, 7g, 7h, and 7i.

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

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**
4 **TRANSPORTATION FACILITIES; TO PROVIDE FOR THE CREATION OF CERTAIN**
5 **AUTHORITIES; TO AUTHORIZE PUBLIC-PRIVATE AGREEMENTS RELATING TO**
6 **RESEARCHING, PLANNING, STUDYING, DESIGNING, DEVELOPING, FINANCING,**
7 **ACQUIRING, CONSTRUCTING, CHARGING USER FEES, OPERATING, OR**
8 **MAINTAINING A PUBLIC TRANSPORTATION FACILITY, OR OTHER ARRANGEMENTS**
9 **FOR THE CREATION AND OPERATION OF PUBLIC TRANSPORTATION FACILITIES**
10 **THAT MAY BE FINANCED BY USER FEES, CHARGES, AND OTHER REVENUE; TO**
11 **PROVIDE FOR THE SALE OF BONDS; TO PROVIDE FOR CERTAIN POWERS OF**
12 **CERTAIN STATE DEPARTMENTS;** to provide for penalties and remedies;
13 and to repeal ~~certain~~ acts and parts of acts.

14 Sec. 1. As used in this act:

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

17 (B) "CONCESSIONAIRE" MEANS A PRIVATE ENTITY THAT HAS ENTERED
18 INTO A PUBLIC-PRIVATE AGREEMENT UNDER SECTION 7B.

19 (C) ~~(2)~~—"Director" means the director of **THE DEPARTMENT OF**
20 transportation.

21 (D) ~~(3)~~—"Department" means the department of transportation.

22 (E) "INSTRUMENTALITY OF GOVERNMENT" MEANS A PUBLIC ENTITY
23 CREATED OR EMPOWERED TO CARRY OUT FUNCTIONS COMMONLY CARRIED OUT BY
24 UNITS OF GOVERNMENT, PUBLIC AGENCIES, OR PUBLIC AUTHORITIES.

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 BETWEEN A PRIVATE ENTITY, THE
5 DEPARTMENT, AND 1 OR MORE OTHER INSTRUMENTALITIES OF GOVERNMENT
6 THAT RELATES TO RESEARCHING, PLANNING, STUDYING, DESIGNING,
7 DEVELOPING, FINANCING, ACQUIRING, CONSTRUCTING, CHARGING USER FEES,
8 OPERATING, OR MAINTAINING A PUBLIC TRANSPORTATION FACILITY, OR ANY
9 COMBINATION OF THOSE ACTIVITIES. PUBLIC-PRIVATE AGREEMENT INCLUDES
10 AN AGREEMENT BETWEEN THE DEPARTMENT AND 1 OR MORE INSTRUMENTALITIES
11 OF GOVERNMENT IF THE AGREEMENT IS RELATED TO A PROJECT THAT HAS OR
12 WILL HAVE AN AGREEMENT BETWEEN THE DEPARTMENT OR AN INSTRUMENTALITY
13 OF GOVERNMENT AND A PRIVATE ENTITY.

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

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

25 (a) Organize the department and its work, supervise the work
26 of the employees **AND AGENTS** of the department, create, merge, and
27 abolish organizational divisions within the department, and

1 transfer or merge functions among those divisions in the interest
2 of economy and efficiency.

3 (b) Employ personnel necessary to carry out the duties of the
4 director and the responsibilities of the department subject to
5 **CONTRACTUAL OBLIGATIONS AND** laws governing state employment.

6 (c) Delegate to any employee of the department ~~, subject to~~
7 ~~the approval of the commission,~~ any powers vested in the director
8 or delegated to the director by the commission **EXCEPT THE POWER TO**
9 **ENTER INTO A PUBLIC-PRIVATE AGREEMENT UNDER SECTION 7B.**

10 (d) Establish a program of current and long-range planning for
11 the transportation systems under the department's jurisdiction **AND**
12 **PUBLIC TRANSPORTATION FACILITIES OF THE DEPARTMENT.**

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

15 (f) Purchase materials, supplies, and equipment. ~~as necessary~~
16 ~~and proper to carry out the duties of the department as provided by~~
17 ~~law governing state purchasing.~~

18 **(G) PURCHASE SERVICES IN ACCORDANCE WITH APPLICABLE CIVIL**
19 **SERVICE RULES.**

20 **(H) ACQUIRE INTERESTS IN REAL AND PERSONAL PROPERTY, INCLUDING**
21 **BY CONDEMNATION.**

22 **(I)** ~~(g)~~ Dispose of obsolete equipment, surplus supplies and
23 material that cannot be used by the department as provided by law
24 governing the disposal.

25 **(J)** ~~(h)~~ Do anything necessary and proper to comply fully with
26 the provisions of present or future federal aid acts.

27 **(K) ENTER INTO PUBLIC-PRIVATE AGREEMENTS UNDER SECTION 7B**

1 **SUBJECT TO THE APPROVAL OF THE COMMISSION.**

2 (I) ~~(i)~~ Do anything necessary and proper to carry out the
3 duties imposed upon the department by the constitution and other
4 duties as may be imposed by law.

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

6 (a) The ~~awarding~~ **APPROVAL FOR AWARD BY THE DEPARTMENT** of all
7 contracts for the construction, improvement, and maintenance of the
8 highways and **PUBLIC** transportation facilities ~~under its~~
9 ~~jurisdiction~~ **OF THE DEPARTMENT**, as provided by law ~~law~~ **RESOLUTION OF**
10 **THE COMMISSION.**

11 (b) The establishment of transportation policies for the
12 guidance and direction of the director.

13 (C) **THE APPROVAL FOR AWARD BY THE DEPARTMENT OF ALL PUBLIC-**
14 **PRIVATE AGREEMENTS.**

15 (2) The commission may do the following:

16 (a) Delegate to any member of the commission, the director, or
17 any subordinate, any powers, other than the power to establish
18 policy, vested in the commission as it considers necessary and
19 proper, ~~and permit the director to delegate any powers delegated~~
20 ~~to him or her by the commission~~ **EXCEPT FOR THE POWER TO APPROVE**
21 **PUBLIC-PRIVATE AGREEMENTS UNDER THIS SECTION.**

22 (b) ~~Acquire,~~ **AUTHORIZE THE DEPARTMENT TO ACQUIRE**, own, and
23 hold **INTERESTS IN** real and personal property in the name of ~~the~~
24 **THIS** state or the ~~commission~~ **DEPARTMENT** and **TO** sell, lease or
25 otherwise dispose of, or encumber, **ANY INTERESTS IN** the same in
26 connection with, and in furtherance of, its duties and the purposes
27 of this act, **SUBJECT TO RESOLUTIONS OF THE COMMISSION.**

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

(3) THE COMMISSION SHALL CONDUCT A PUBLIC HEARING AT LEAST ONCE EVERY 5 YEARS TO RECEIVE PUBLIC COMMENT AND INPUT WITH REGARD TO THEN EXISTING PUBLIC TRANSPORTATION FACILITIES OPERATED UNDER A PUBLIC-PRIVATE AGREEMENT.

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

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

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

~~(c) "Contractor"~~ **"CONSTRUCTION CONTRACTOR"** means ~~an individual, sole proprietorship, partnership, corporation, joint venture, or other legal~~ **A PERSON OR** entity, other than ~~the~~ **THIS** state, or an agency or department of the state, who is a party to a construction contract.

~~—— (d) "Project" means the specific section 9 of the highway construction to be performed under the construction contract.~~

(2) A construction contract may provide for partial payments to be made periodically to a **CONSTRUCTION** contractor. The department may establish specifications regarding the retention of

1 a portion of the total amount earned under the construction
2 contract.

3 (3) At the request of the **CONSTRUCTION** contractor and upon the
4 approval of the department, the portion retained pursuant to the
5 specifications established under subsection (2) shall be placed in
6 an escrow account pursuant to this section.

7 (4) An escrow agent may be selected by the **CONSTRUCTION**
8 contractor. For purposes of this section, an escrow agent shall be
9 a state or national bank, a state or federally chartered savings
10 and loan association, or a state or federally chartered credit
11 union whose principal place of business is located in this state.

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

15 (a) That the escrow agent shall promptly invest all of the
16 escrowed funds.

17 (b) That the escrow agent shall hold the escrowed funds until
18 receipt of notice from the department. Upon receipt of a notice of
19 release from the department, the escrow agent shall promptly remit
20 the designated portion of escrowed funds to the **CONSTRUCTION**
21 contractor involved in the contract. Upon receipt of a notice of
22 overpayment or default of the contract, the escrow agent shall
23 promptly remit the designated portion of escrowed funds to the
24 department.

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

1 (d) That the **CONSTRUCTION** contractor shall pay all expenses
2 regarding the deposit, investment, and administration of the
3 retained amount and all other charges made by the escrow agent.

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

7 **SEC. 7B. (1) THE DEPARTMENT MAY ENTER INTO PUBLIC-PRIVATE**
8 **AGREEMENTS AS PROVIDED IN THIS ACT. PUBLIC-PRIVATE AGREEMENTS SHALL**
9 **INCLUDE TERMS DESIGNED TO PROTECT THE PUBLIC INTEREST AND ENSURE**
10 **ACCOUNTABILITY OF A CONCESSIONAIRE TO THE DEPARTMENT OR A PUBLIC**
11 **ENTITY CREATED UNDER MICHIGAN LAW FOR A PUBLIC TRANSPORTATION**
12 **FACILITY IN THIS STATE, WHICHEVER IS APPLICABLE. A PUBLIC-PRIVATE**
13 **AGREEMENT MAY CONTAIN TERMS AND CONDITIONS THAT THE DEPARTMENT MAY**
14 **DETERMINE OR NEGOTIATE TO FACILITATE THE RESEARCHING, PLANNING,**
15 **STUDYING, DESIGNING, DEVELOPING, FINANCING, ACQUIRING,**
16 **CONSTRUCTING, CHARGING USER FEES, GOVERNING, OPERATING, OR**
17 **MAINTAINING OF A PUBLIC TRANSPORTATION FACILITY IN THE PUBLIC**
18 **INTEREST. A PUBLIC TRANSPORTATION FACILITY SHALL BE PUBLICLY OWNED**
19 **AND SHALL BE DEDICATED TO THE PUBLIC USE AS A PUBLIC TRANSPORTATION**
20 **FACILITY AS PROVIDED IN THIS ACT.**

21 **(2) A PUBLIC-PRIVATE AGREEMENT SHALL PROVIDE FOR THE TERMS OF**
22 **THE USE AND OPERATION OF A PUBLIC TRANSPORTATION FACILITY BY A**
23 **CONCESSIONAIRE FOR A PERIOD THE DEPARTMENT DETERMINES IS NECESSARY**
24 **FOR THE DEVELOPMENT AND FINANCING OF A PUBLIC TRANSPORTATION**
25 **FACILITY AND THE ECONOMIC FEASIBILITY OF THE PUBLIC-PRIVATE**
26 **AGREEMENT. THE PUBLIC-PRIVATE AGREEMENT MAY INCLUDE A LEASE,**
27 **LICENSE, RIGHT OF ENTRY, OR OTHER INSTRUMENT FOR THE PUBLIC**

1 TRANSPORTATION FACILITY AS THE DEPARTMENT DETERMINES IS IN THE BEST
2 INTEREST OF THE PUBLIC. THE AGREEMENT MAY PROVIDE FOR AN INITIAL
3 OPERATING TERM NOT EXCEEDING 50 YEARS FROM THE LATER OF COMPLETION
4 OF CONSTRUCTION OR COMMENCEMENT OF COLLECTING USER FEES IF USER
5 FEES ARE COLLECTED UNLESS A LONGER TERM IS REQUIRED FOR THE
6 ECONOMIC FEASIBILITY OF THE PUBLIC-PRIVATE AGREEMENT AS DETERMINED
7 BY THE DEPARTMENT AND APPROVED BY THE COMMISSION. THE AGREEMENT
8 SHALL PROVIDE THAT THE OWNERSHIP OF A PUBLIC TRANSPORTATION
9 FACILITY WITHIN THIS STATE SHALL BE VESTED IN THE DEPARTMENT OR A
10 PUBLIC ENTITY CREATED UNDER THE LAW OF THIS STATE, AND THAT TITLE
11 TO THE PUBLIC TRANSPORTATION FACILITY SHALL NOT BE ENCUMBERED. NO
12 PROVISION OF A PUBLIC-PRIVATE AGREEMENT SHALL ALLOW THE PUBLIC TO
13 BE DEPRIVED OF THE USE AND BENEFIT OF A PUBLIC TRANSPORTATION
14 FACILITY EXCEPT AS NECESSARY TO IMPLEMENT USER FEES OR ANCILLARY
15 CHARGES AUTHORIZED BY THIS SECTION, TO REGULATE THE LEVEL OR
16 CHARACTER OF PERMISSIBLE USES OF THE PUBLIC TRANSPORTATION
17 FACILITY, TO ADDRESS ISSUES OF PUBLIC SAFETY OR SECURITY, OR TO
18 MAINTAIN, REPAIR, OR IMPROVE THE PUBLIC TRANSPORTATION FACILITY. A
19 PUBLIC-PRIVATE AGREEMENT SHALL PROVIDE FOR THE TERMINATION OF THE
20 AGREEMENT. NOTHING IN A PUBLIC-PRIVATE AGREEMENT SHALL PROHIBIT THE
21 DEPARTMENT FROM CONSTRUCTING, OPERATING, AND MAINTAINING ANY
22 TRANSPORTATION PROJECT THAT IS IN THE DEPARTMENT'S LONG-RANGE PLAN
23 IN EFFECT ON THE DATE THAT PROPOSALS ARE SUBMITTED, OR PROHIBIT ANY
24 MUNICIPALITY, COUNTY, OR OTHER LOCAL AGENCY FROM CONSTRUCTING,
25 OPERATING, AND MAINTAINING ANY TRANSPORTATION PROJECT.

26 (3) A PUBLIC-PRIVATE AGREEMENT MAY PROVIDE FOR THE CHARGING
27 AND COLLECTION OF USER FEES AND ANCILLARY CHARGES FOR THE USE OF A

1 PUBLIC TRANSPORTATION FACILITY. EXCEPT AS OTHERWISE PROVIDED IN
2 THIS SUBSECTION, ONCE USER FEES ARE INITIALLY ESTABLISHED, USER
3 FEES AND ANCILLARY CHARGES SHALL NOT BE INCREASED BY MORE THAN THE
4 CUMULATIVE ANNUAL INCREASES IN THE CONSUMER PRICE INDEX, AS
5 PUBLISHED BY THE UNITED STATES BUREAU OF LABOR STATISTICS IN THE
6 UNITED STATES DEPARTMENT OF LABOR, AND DESIGNATED IN THE PUBLIC-
7 PRIVATE AGREEMENT WITHOUT WRITTEN APPROVAL OF THE DEPARTMENT. USER
8 FEES AND ANCILLARY CHARGES THAT ARE INTENDED BY THE DEPARTMENT TO
9 APPLY TO LANES MANAGED BY THE LEVEL OF USER FEES TO CONTROL OR
10 MANAGE TRAFFIC VOLUME OR FLOW MAY BE INCREASED BY MORE THAN THE
11 CONSUMER PRICE INDEX, AS PUBLISHED BY THE UNITED STATES BUREAU OF
12 LABOR STATISTICS, AND SPECIFIED IN THE PUBLIC-PRIVATE AGREEMENT. IF
13 A USER FAILS TO PAY THE USER FEE BY PRIOR ARRANGEMENT, AND SEPARATE
14 BILLING IS REQUIRED FOR PAYMENT, A REASONABLE ADMINISTRATIVE FEE
15 MAY BE CHARGED. A USER FEE MAY BE IMPOSED ON A HIGHWAY ONLY IF
16 IMPOSED FOR THE USE OF HIGHWAYS CONSTRUCTED AFTER THE EFFECTIVE
17 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, OR THE USE OF
18 HIGHWAYS WITH EXPANDED CAPACITY BEYOND THE HIGHWAY CAPACITY IN
19 PLACE ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
20 SECTION. USER FEES AND ANCILLARY CHARGES IMPOSED FOR THE USE OF A
21 PUBLIC TRANSPORTATION FACILITY IN THIS STATE ARE NOT SUBJECT TO
22 REGULATION BY ANY OTHER GOVERNMENTAL AGENCY. NOTHING IN THIS
23 SECTION SHALL BE CONSTRUED TO ALLOW THE CONVERSION OF ANY LANES
24 EXISTING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
25 THIS SECTION INTO TOLLED OR USER-FEE LANES EXCEPT THAT THE
26 DEPARTMENT MAY DETERMINE WHICH LANE OF AN EXISTING HIGHWAY IS
27 DESIGNATED FOR IMPOSITION OF USER FEES IF CAPACITY OF THAT HIGHWAY

1 IS EXPANDED.

2 (4) COMPENSATION PAID TO THE DEPARTMENT IN CONNECTION WITH A
3 PUBLIC-PRIVATE AGREEMENT INCLUDING THE DEPARTMENT'S PORTION OF USER
4 FEES AND ANCILLARY CHARGES IMPOSED FOR USE OF A PUBLIC
5 TRANSPORTATION FACILITY SHALL BE USED FOR TRANSPORTATION PURPOSES.

6 (5) IN ACCORDANCE WITH THE TERMS OF A PUBLIC-PRIVATE
7 AGREEMENT, THE DEPARTMENT OR AN INSTRUMENTALITY OF GOVERNMENT SHALL
8 OVERSEE THE ACTIVITIES OF A CONCESSIONAIRE CARRYING OUT THE TERMS
9 OF A PUBLIC-PRIVATE AGREEMENT. A PUBLIC-PRIVATE AGREEMENT MAY
10 PROVIDE FOR THE USE OF ARBITRATION, MEDIATION, OR OTHER ALTERNATIVE
11 DISPUTE RESOLUTION MECHANISM FOR THE RESOLUTION OF DISPUTES BETWEEN
12 THE DEPARTMENT AND A CONCESSIONAIRE.

13 (6) THIS STATE, INCLUDING, BUT NOT LIMITED TO, THE DEPARTMENT,
14 DOES NOT HAVE ANY LIABILITY FOR THE ACTS OR OMISSIONS OF THE
15 CONCESSIONAIRE OR OTHER PARTY TO A PUBLIC-PRIVATE AGREEMENT.

16 (7) A PUBLIC-PRIVATE AGREEMENT MAY PERMIT THE CONDUCT OF
17 COMMERCIAL ACTIVITIES AT A PUBLIC TRANSPORTATION FACILITY IF THE
18 ACTIVITIES ARE RELATED TO THE TRANSPORTATION PURPOSES OF THE
19 FACILITY AND TO THE EXTENT NOT RESTRICTED BY APPLICABLE LAW.

20 (8) EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, A PUBLIC-PRIVATE
21 AGREEMENT FOR A PUBLIC TRANSPORTATION FACILITY SHALL IMPOSE ON THE
22 CONCESSIONAIRE THE SAME REQUIREMENTS OF LAW THAT ARE IMPOSED IN
23 CONTRACTS OF THE DEPARTMENT WHEN IT CONTRACTS DIRECTLY FOR THE
24 CONSTRUCTION OR OPERATION OF A PUBLIC TRANSPORTATION FACILITY. A
25 PUBLIC-PRIVATE AGREEMENT SHALL ESTABLISH THE AMOUNTS FOR WHICH THE
26 CONCESSIONAIRE SHALL POST PAYMENT AND PERFORMANCE BONDS OR OTHER
27 SECURITY AS PROVIDED IN THIS SUBSECTION. A PUBLIC-PRIVATE AGREEMENT

1 MAY AUTHORIZE A CONCESSIONAIRE FOR A PUBLIC TRANSPORTATION FACILITY
2 TO PROVIDE A LETTER OF CREDIT IN LIEU OF A PAYMENT OR PERFORMANCE
3 BOND. IF THE DEPARTMENT DETERMINES THAT BONDS OR LETTERS OF CREDIT
4 ARE NOT REASONABLY AVAILABLE IN SUFFICIENT AMOUNTS, THE DEPARTMENT
5 MAY ACCEPT ANOTHER COMMERCIALY REASONABLE FORM OF SECURITY,
6 INCLUDING PARENT CORPORATION GUARANTEES, TO SUPPLEMENT AVAILABLE
7 PAYMENT BONDS, PERFORMANCE BONDS, OR LETTERS OF CREDIT. THE
8 DEPARTMENT SHALL REQUIRE THE POSTING OF SUFFICIENT SECURITY TO
9 FULFILL THE PURPOSES OF A PAYMENT AND PERFORMANCE BOND. IN LIEU OF
10 POSTING BY THE CONCESSIONAIRE, OR IN SUPPLEMENTATION OF THAT
11 POSTING, THE DEPARTMENT MAY ACCEPT BONDS, LETTERS OF CREDIT, AND
12 OTHER SECURITY FROM ENTITIES OTHER THAN THE CONCESSIONAIRE SO LONG
13 AS THE PURPOSES OF A PAYMENT AND PERFORMANCE BOND ARE FULFILLED.

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

18 (10) FOR PUBLIC-PRIVATE AGREEMENTS THAT INCLUDE AN OPERATIONS
19 PHASE, THE PUBLIC-PRIVATE AGREEMENT SHALL REQUIRE THAT THE PUBLIC
20 TRANSPORTATION FACILITY REVERT FROM THE CONCESSIONAIRE TO THE
21 DEPARTMENT AT THE END OF THE TERM OF THE PUBLIC-PRIVATE AGREEMENT
22 IN A CONDITION SPECIFIED BY THE DEPARTMENT.

23 (11) THE PUBLIC-PRIVATE AGREEMENT SHALL INCLUDE PROVISIONS
24 THAT ADDRESS THE DEPARTMENT'S RIGHTS TO SHARE IN REFINANCING GAINS
25 RECEIVED BY THE CONCESSIONAIRE UNDER THE PUBLIC-PRIVATE AGREEMENT.

26 (12) THE PUBLIC-PRIVATE AGREEMENT SHALL INCLUDE PROVISIONS
27 THAT SPECIFY THE RESTRICTIONS IMPOSED ON THE ABILITY OF THE

1 CONCESSIONAIRE TO SELL OR TRANSFER ITS INTEREST IN THE PUBLIC-
2 PRIVATE AGREEMENT WITHOUT THE CONSENT OF THE DEPARTMENT.

3 (13) A PUBLIC-PRIVATE AGREEMENT SHALL NOT DELEGATE THE POWER
4 TO CONDEMN PROPERTY TO THE CONCESSIONAIRE. ALL RIGHT OF WAY
5 ACQUIRED THROUGH CONDEMNATION THAT IS USED FOR A PUBLIC
6 TRANSPORTATION FACILITY SHALL BE AND REMAIN PUBLICLY OWNED DURING
7 THE TERM OF A PUBLIC-PRIVATE AGREEMENT.

8 SEC. 7C. UPON APPROVAL BY THE COMMISSION OF A RESOLUTION, THE
9 DEPARTMENT MAY CREATE PUBLIC TRANSPORTATION AUTHORITIES AS SEPARATE
10 LEGAL ENTITIES WITHIN THE DEPARTMENT THAT MAY EXERCISE THE POWERS
11 OF THE DEPARTMENT IN REGARD TO PUBLIC-PRIVATE AGREEMENTS UNDER THIS
12 ACT, TO THE EXTENT AUTHORIZED BY AN AGREEMENT BETWEEN THE
13 DEPARTMENT AND THE PUBLIC TRANSPORTATION AUTHORITY. A PUBLIC
14 TRANSPORTATION AUTHORITY IS AN INSTRUMENTALITY OF GOVERNMENT THAT
15 MAY SUE AND BE SUED AND ENTER INTO CONTRACTS, INCLUDING PUBLIC-
16 PRIVATE AGREEMENTS, TO THE EXTENT AUTHORIZED BY AN AGREEMENT WITH
17 THE DEPARTMENT. THE DEPARTMENT IS NOT LIABLE FOR THE ACTS OR
18 OMISSIONS OF A PUBLIC TRANSPORTATION AUTHORITY, EXCEPT TO THE
19 EXTENT EXPRESSLY AUTHORIZED IN AN AGREEMENT BETWEEN A PUBLIC
20 TRANSPORTATION AUTHORITY AND THE DEPARTMENT. EMPLOYEES OF A PUBLIC
21 TRANSPORTATION AUTHORITY ARE EMPLOYEES OF THIS STATE, AND THE
22 AUTHORITY SHALL COMPLY WITH THE RULES AND REGULATIONS OF THE CIVIL
23 SERVICE COMMISSION. A PUBLIC TRANSPORTATION AUTHORITY IS AN AGENCY
24 OF THE STATE ENTITLED TO GOVERNMENTAL IMMUNITY UNDER 1964 PA 170,
25 MCL 691.1401 TO 691.1419. THE DEPARTMENT AND A PUBLIC
26 TRANSPORTATION AUTHORITY SHALL COMPLY WITH ALL APPLICABLE STATE AND
27 FEDERAL LAWS AND REGULATIONS, INCLUDING, BUT NOT LIMITED TO,

1 APPLICABLE ENVIRONMENTAL LAWS AND REGULATIONS.

2 SEC. 7D. (1) THE DEPARTMENT MAY SOLICIT PROPOSALS OR RECEIVE
3 UNSOLICITED PROPOSALS FOR A PUBLIC-PRIVATE AGREEMENT AND MAY CHARGE
4 AND USE FEES TO OFFSET THE ADMINISTRATIVE COSTS OF RECEIVING AND
5 EVALUATING PROPOSALS. BEFORE RECEIVING A PROPOSAL, THE DEPARTMENT
6 MAY AGREE TO REIMBURSE A PRIVATE ENTITY FOR DESIGNATED COSTS
7 INCURRED IN THE PREPARATION AND PRESENTATION OF A PROPOSAL IN
8 RETURN FOR THE RIGHT TO USE ANY WORK PRODUCT CONTAINED IN THE
9 PROPOSAL, INCLUDING, BUT NOT LIMITED TO, THE TECHNOLOGIES, METHODS,
10 PROCESSES, AND INFORMATION CONTAINED IN THE MATERIAL SUBMITTED IN
11 CONNECTION WITH THE PROPOSAL. THE DEPARTMENT HAS THE SOLE
12 DISCRETION WHETHER, AND TO WHAT EXTENT, TO CONSIDER AN UNSOLICITED
13 PROPOSAL. BEFORE ENTERING INTO ANY PUBLIC-PRIVATE AGREEMENT FOR A
14 PUBLIC TRANSPORTATION FACILITY PROPOSED BY AN UNSOLICITED PROPOSAL,
15 THE DEPARTMENT MAY AMEND THE PROPOSAL AND SHALL SOLICIT COMPETING
16 PROPOSALS AND ENTER INTO ANY PUBLIC-PRIVATE AGREEMENT USING THE
17 CRITERIA IN SUBSECTION (5).

18 (2) IN SOLICITING OR SELECTING A PRIVATE ENTITY WITH WHICH TO
19 ENTER INTO A PUBLIC-PRIVATE AGREEMENT, THE DEPARTMENT SHALL UTILIZE
20 1 OR MORE OF THE FOLLOWING PROCUREMENT APPROACHES:

21 (A) SEALED BIDDING.

22 (B) SELECTION OF PROPOSALS, WITH OR WITHOUT NEGOTIATIONS,
23 BASED ON QUALIFICATIONS, DEVELOPMENT PROPOSALS, TECHNICAL
24 PROPOSALS, FINANCIAL PROPOSALS, BEST VALUE, OR ANY COMBINATION OF
25 THEM.

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

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

4 (4) BEFORE SELECTING A PROJECT, THE DEPARTMENT SHALL CONSIDER
5 ALL OF THE FOLLOWING FACTORS:

6 (A) THE ABILITY OF THE PUBLIC TRANSPORTATION FACILITY TO
7 IMPROVE SAFETY OR OPERATIONS, REDUCE CONGESTION, REDUCE TRAVEL
8 TIMES, INCREASE CAPACITY, ENHANCE ENVIRONMENTAL QUALITY, PROMOTE
9 ECONOMIC DEVELOPMENT, OR ANY COMBINATION OF THESE OR SIMILAR
10 FACTORS.

11 (B) BENEFITS TO THE PUBLIC.

12 (C) ABILITY TO INCREASE FEDERAL OR OTHER NONSTATE REVENUE TO
13 THIS STATE.

14 (5) THE DEPARTMENT SHALL CONSIDER ALL OF THE FOLLOWING FACTORS
15 IN EVALUATING AND SELECTING A BID OR PROPOSAL TO ENTER INTO A
16 PUBLIC-PRIVATE AGREEMENT:

17 (A) THE PROPOSED COST OF AND FINANCIAL PLAN FOR THE PUBLIC
18 TRANSPORTATION FACILITY.

19 (B) THE GENERAL REPUTATION, QUALIFICATIONS, INDUSTRY
20 EXPERIENCE, SAFETY RECORD, LABOR RECORD, AND FINANCIAL CAPACITY OF
21 THE PRIVATE ENTITY.

22 (C) THE PROPOSED DESIGN, OPERATION, AND FEASIBILITY OF THE
23 PUBLIC TRANSPORTATION FACILITY.

24 (D) TO THE EXTENT PERMITTED BY FEDERAL LAW, THE PROPOSED PLAN
25 OF THE PRIVATE ENTITY TO HIRE LEGAL UNITED STATES RESIDENTS AND
26 CITIZENS FOR WORK RELATING TO THE PUBLIC TRANSPORTATION FACILITY IN
27 THIS STATE.

1 (E) ANY OTHER CRITERIA, INCLUDING PREQUALIFICATION UNDER RULES
2 PROMULGATED BY THE DEPARTMENT OR THROUGH COMPLIANCE WITH 1933 PA
3 170, MCL 123.501 TO 123.508, THAT THE DEPARTMENT CONSIDERS
4 NECESSARY OR APPROPRIATE IN THE BEST INTERESTS OF THIS STATE OR THE
5 PEOPLE OF THIS STATE.

6 (6) THE DEPARTMENT MAY SELECT MULTIPLE PRIVATE ENTITIES WITH
7 WHICH TO ENTER INTO PUBLIC-PRIVATE AGREEMENTS FOR A PUBLIC
8 TRANSPORTATION FACILITY IF IT IS DETERMINED BY THE DEPARTMENT TO BE
9 IN THE PUBLIC INTEREST TO DO SO.

10 (7) THE DEPARTMENT MAY PROMISE TO KEEP TRADE SECRETS OR
11 PROPRIETARY COMMERCIAL OR FINANCIAL INFORMATION PROVIDED BY A
12 PRIVATE ENTITY CONFIDENTIAL ONLY FOR PURPOSES OF SEEKING OR
13 ENTERING INTO A PUBLIC PRIVATE AGREEMENT. UPON RECEIPT OF A
14 SUFFICIENTLY DETAILED REQUEST BY A PRIVATE ENTITY, THE DEPARTMENT
15 SHALL PROVIDE A DESCRIPTION OF THE INFORMATION TO WHICH ITS PROMISE
16 OF CONFIDENTIALITY WILL EXTEND. SUBMISSION OF A SOLICITED OR
17 UNSOLICITED PROPOSAL CONSTITUTES CONSENT FOR THE DEPARTMENT TO USE
18 THE INFORMATION AND IDEAS PROVIDED BY A PRIVATE ENTITY FOR A
19 TRANSPORTATION FACILITY OR FOR PURPOSES OF SEEKING OR ENTERING INTO
20 A PUBLIC-PRIVATE AGREEMENT, INCLUDING TO SOLICIT COMPETING
21 PROPOSALS UNLESS THE DEPARTMENT AGREES OTHERWISE IN A WRITING
22 EXECUTED BY THE DEPARTMENT BEFORE THE SUBMISSION.

23 (8) NO ACTION SHALL LIE AGAINST THE DEPARTMENT OR ANOTHER
24 PERSON ACTING IN ACCORDANCE WITH A PUBLIC-PRIVATE AGREEMENT FOR THE
25 USE OF IDEAS AND INFORMATION PROVIDED BY A PRIVATE ENTITY FOR
26 PURPOSES OF SEEKING OR ENTERING INTO A PUBLIC-PRIVATE AGREEMENT.

27 (9) THE DEPARTMENT SHALL PERFORM A COST-BENEFIT ANALYSIS

1 INCLUDING A RISK TRANSFER OR ALLOCATION ASSESSMENT TO DETERMINE
2 WHETHER A PROPOSED PUBLIC-PRIVATE AGREEMENT IS THE MOST
3 ECONOMICALLY BENEFICIAL WAY FOR THE STATE TO PERFORM THE PROPOSED
4 PROJECT. THE DEPARTMENT SHALL CHOOSE AN APPROPRIATE METHODOLOGY TO
5 UTILIZE IN THE COST-BENEFIT ANALYSIS AND SHALL STATE THE
6 ASSUMPTIONS USED IN THE COST-BENEFIT ANALYSIS. THE COST-BENEFIT
7 ANALYSIS SHALL INCLUDE ALL NECESSARY MONITORING AND OVERSIGHT OF
8 ANY PRIVATE ENTITY BY A PUBLIC ENTITY. THE DEPARTMENT SHALL PUBLISH
9 THE RESULTS OF THE ANALYSIS ON ITS WEBSITE. THE COMMISSION SHALL
10 NOT APPROVE A PUBLIC-PRIVATE AGREEMENT UNDER SECTION 7(1)(C) UNLESS
11 IT DETERMINES THAT THE PUBLIC-PRIVATE AGREEMENT IS THE MOST
12 ECONOMICALLY BENEFICIAL WAY FOR THE STATE TO PERFORM THE PROJECT,
13 INCLUDING CONSIDERATION OF WHETHER THE AGREEMENT REDUCES RISK TO
14 THE STATE, INCLUDING FINANCIAL RISKS, COMPARED TO OTHER OPTIONS AND
15 FINANCING ARRANGEMENTS.

16 SEC. 7E. (1) WHETHER USED BY THE DEPARTMENT, ANOTHER
17 INSTRUMENTALITY OF GOVERNMENT, OR A PRIVATE ENTITY UNDER A PUBLIC-
18 PRIVATE AGREEMENT, A PUBLIC TRANSPORTATION FACILITY, INCLUDING, BUT
19 NOT LIMITED TO, REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY USED
20 EXCLUSIVELY WITH A PUBLIC TRANSPORTATION FACILITY, THAT IS OWNED BY
21 THE DEPARTMENT OR ANOTHER INSTRUMENTALITY OF GOVERNMENT IS EXEMPT
22 FROM ALL AD VALOREM PROPERTY TAXES AND ALL ASSESSMENTS LEVIED
23 AGAINST PROPERTY BY THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS
24 STATE TO THE SAME EXTENT THAT THE PROPERTY OWNED BY THE DEPARTMENT
25 OR INSTRUMENTALITY OF GOVERNMENT WOULD OTHERWISE BE EXEMPT FROM AD
26 VALOREM PROPERTY TAXES AND ASSESSMENTS.

27 (2) NO PERSON SHALL BY REASON OF THE USE OF MOTOR FUEL WITHIN

1 THE LIMITS OF A PUBLIC TRANSPORTATION FACILITY AUTHORIZED BY A
2 PUBLIC-PRIVATE AGREEMENT BE EXEMPT FROM OR ELIGIBLE FOR A REFUND OF
3 A MOTOR FUEL TAX IMPOSED BY THIS STATE OR A POLITICAL SUBDIVISION
4 OF THIS STATE.

5 (3) SUBJECT TO APPROVAL FROM THE COMMISSION AND COMPLIANCE
6 WITH APPLICABLE FEDERAL LAWS, THE DEPARTMENT HAS EXCLUSIVE
7 AUTHORITY TO DETERMINE WHERE AND WHETHER TO ESTABLISH A PUBLIC
8 TRANSPORTATION FACILITY AUTHORIZED BY A PUBLIC-PRIVATE AGREEMENT
9 AND THE SCOPE AND NATURE OF THE FACILITY.

10 (4) REVENUE ATTRIBUTABLE TO A PUBLIC TRANSPORTATION FACILITY
11 AUTHORIZED BY A PUBLIC-PRIVATE AGREEMENT THAT IS PAYABLE TO THE
12 DEPARTMENT SHALL BE DEPOSITED IN THE STATE TRUNK LINE FUND,
13 COMPREHENSIVE TRANSPORTATION FUND, OR AERONAUTICS FUND, AS
14 INDICATED BY THE NATURE OF THE PUBLIC TRANSPORTATION FACILITY AND
15 PROVIDED IN THE PUBLIC-PRIVATE AGREEMENT.

16 SEC. 7F. (1) THE DEPARTMENT MAY ISSUE AND SELL BONDS OR NOTES
17 FOR THE PURPOSE OF PROVIDING FUNDS TO CARRY OUT THE PROVISIONS OF
18 THIS ACT WITH RESPECT TO THE DEVELOPMENT, ACQUISITION,
19 CONSTRUCTION, FINANCING, MAINTENANCE, OR OPERATION OF A PUBLIC
20 TRANSPORTATION FACILITY PROVIDED FOR BY A PUBLIC-PRIVATE AGREEMENT
21 OR THE REFUNDING OF ANY BONDS OR NOTES, TOGETHER WITH ANY COSTS
22 ASSOCIATED WITH THE TRANSACTION.

23 (2) ANY BOND OR NOTE ISSUED UNDER SUBSECTION (1) DOES NOT
24 CONSTITUTE A PLEDGE OF THE FAITH AND CREDIT OR INDEBTEDNESS OF THIS
25 STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE WITHIN THE MEANING
26 OR APPLICATION OF ANY CONSTITUTIONAL PROVISION OR LIMITATION. A
27 BOND OR NOTE ISSUED UNDER SUBSECTION (1) IS PAYABLE SOLELY AS TO

1 BOTH PRINCIPAL AND INTEREST FROM REVENUES GENERATED FROM USE OF THE
2 PUBLIC TRANSPORTATION FACILITY AUTHORIZED BY THE PUBLIC-PRIVATE
3 AGREEMENT, THE PROCEEDS OF BONDS OR NOTES SOLD TO FINANCE THE
4 REFUNDING OF THE OUTSTANDING BONDS OR NOTES, IF ANY, OR INVESTMENT
5 EARNINGS ON THE PROCEEDS OF THE BONDS OR NOTES.

6 (3) THE DEPARTMENT MAY RETAIN SERVICES AND ENTER INTO ANY
7 CONTRACTS THAT ARE NECESSARY OR USEFUL FOR THE ISSUANCE AND SALE OF
8 BONDS, NOTES, OR OTHER FINANCIAL INSTRUMENTS UNDER THIS SECTION.

9 (4) FOR THE PURPOSE OF FINANCING A PUBLIC TRANSPORTATION
10 FACILITY, THIS STATE, THE DEPARTMENT, THE CONCESSIONAIRE, OR, TO
11 THE EXTENT PERMITTED BY LAW, AN INSTRUMENTALITY OF GOVERNMENT MAY
12 APPLY FOR, OBTAIN, ISSUE, AND USE PRIVATE ACTIVITY BONDS OR OTHER
13 FINANCIAL INSTRUMENTS AVAILABLE UNDER ANY STATE OR FEDERAL LAW OR
14 PROGRAM. AN INSTRUMENTALITY OF GOVERNMENT MAY ACT AS A CONDUIT
15 ISSUER AND TRANSFER THE PROCEEDS OF PRIVATE ACTIVITY BONDS OR
16 SIMILAR FINANCIAL INSTRUMENTS TO A CONCESSIONAIRE IF AUTHORIZED BY
17 A PUBLIC-PRIVATE AGREEMENT. THE BONDS OR INSTRUMENTS SHALL NOT
18 PLEDGE THE FULL FAITH AND CREDIT OF THIS STATE OR ANY POLITICAL
19 SUBDIVISION OF THIS STATE AND SHALL NOT BE A DEBT OF THIS STATE OR
20 ANY POLITICAL SUBDIVISION OF THIS STATE.

21 (5) THIS SECTION DOES NOT LIMIT AN INSTRUMENTALITY OF
22 GOVERNMENT'S AUTHORITY TO ISSUE BONDS OR OTHER FINANCIAL
23 INSTRUMENTS FOR TRANSPORTATION PROJECTS UNDER OTHER LAWS. A PUBLIC
24 TRANSPORTATION FACILITY MAY BE FINANCED WITH FUNDS PROVIDED OR
25 RAISED UNDER OTHER LAWS, INCLUDING, BUT NOT LIMITED TO, LAWS
26 AUTHORIZING THE SALE OF BONDS.

27 SEC. 7G. (1) THE DEPARTMENT MAY APPLY FOR AND ACCEPT FROM THE

1 UNITED STATES OR ANY OF ITS AGENCIES, INCLUDING, BUT NOT LIMITED
2 TO, A FEDERAL INFRASTRUCTURE BANK, FUNDS THAT ARE AVAILABLE TO THE
3 DEPARTMENT FOR CARRYING OUT A PUBLIC-PRIVATE AGREEMENT, WHETHER THE
4 FUNDS ARE MADE AVAILABLE BY GRANT, LOAN, LINE OF CREDIT, LOAN
5 GUARANTEE, OR OTHER FINANCIAL ASSISTANCE.

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

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

14 (4) THE DEPARTMENT MAY ACCEPT FROM ANY SOURCE, AND USE FOR
15 SUPPORTING A PUBLIC TRANSPORTATION FACILITY AUTHORIZED BY A PUBLIC-
16 PRIVATE AGREEMENT, ANY GRANT, DONATION, GIFT, OR OTHER FORM OF
17 CONVEYANCE OF LAND, MONEY, OTHER REAL OR PERSONAL PROPERTY, OR
18 OTHER ITEM OF VALUE. A PUBLIC TRANSPORTATION FACILITY AUTHORIZED BY
19 A PUBLIC-PRIVATE AGREEMENT MAY BE FINANCED IN WHOLE OR IN PART BY
20 CONTRIBUTION OF ANY FUNDS OR PROPERTY MADE BY ANY PERSON OR ENTITY.

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

24 (6) FOR ANY INTERNATIONAL BRIDGE CROSSING THAT DOES NOT EXIST
25 AS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
26 SECTION, A PUBLIC-PRIVATE AGREEMENT SHALL NOT REQUIRE A PLEDGE OF
27 THE FULL FAITH AND CREDIT OF THIS STATE OR OF ANY POLITICAL

1 SUBDIVISION OF THIS STATE WITHIN THE MEANING OR APPLICATION OF ANY
2 CONSTITUTIONAL PROVISION OR LIMITATION.

3 SEC. 7H. (1) ALL LAW ENFORCEMENT OFFICERS OF THIS STATE AND
4 LOCAL UNITS OF GOVERNMENT IN WHICH ALL OR PART OF A PUBLIC
5 TRANSPORTATION FACILITY AUTHORIZED BY A PUBLIC-PRIVATE AGREEMENT IS
6 LOCATED SHALL HAVE THE SAME POWERS AND JURISDICTION WITHIN THE
7 LIMITS OF THE PUBLIC TRANSPORTATION FACILITY AS THEY HAVE IN THEIR
8 RESPECTIVE AREAS OF JURISDICTION TO ENFORCE TRAFFIC AND MOTOR
9 VEHICLE LAWS. AUTHORIZED EMERGENCY VEHICLES AND OCCUPANTS OF
10 AUTHORIZED EMERGENCY VEHICLES SHALL BE AFFORDED ACCESS TO A PUBLIC
11 TRANSPORTATION FACILITY WHILE IN THE PERFORMANCE OF AN OFFICIAL
12 DUTY WITHOUT THE PAYMENT OF A USER FEE OR OTHER CHARGE. AS USED IN
13 THIS SUBSECTION, "AUTHORIZED EMERGENCY VEHICLE" MEANS THAT TERM AS
14 DEFINED IN SECTION 2 OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL
15 257.2.

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

20 (3) THE PUBLIC-PRIVATE AGREEMENT SHALL INCLUDE PROVISIONS
21 RELATING TO THE PERMITTED RETENTION AND USE BY THE CONCESSIONAIRE
22 OF COLLECTED DATA AND CUSTOMER INFORMATION AND SHALL PROHIBIT THE
23 SALE OR USE OF SUCH DATA AND INFORMATION FOR COMMERCIAL PURPOSES
24 UNRELATED TO THE USE OF THE PUBLIC TRANSPORTATION FACILITY.
25 MEASURES AND DEVICES TO RECORD USERS OF PUBLIC TRANSPORTATION
26 FACILITIES MAY BE UTILIZED TO FACILITATE THE COLLECTION OF USER
27 FEES. A RECORDING OF THE USE OF A PUBLIC TRANSPORTATION FACILITY

1 SHALL NOT BE USED OR DISCLOSED EXCEPT UNDER 1 OR MORE OF THE
2 FOLLOWING CIRCUMSTANCES:

3 (A) IN ENFORCEMENT AND COLLECTION PROCEEDINGS UNDER THIS ACT
4 TO ESTABLISH THE USE AND FAILURE TO PAY THE USER FEE IMPOSED FOR
5 USE OF THAT PUBLIC TRANSPORTATION FACILITY.

6 (B) USE BY A POLICE OFFICER WHILE LAWFULLY ENFORCING HIS OR
7 HER DUTIES AS A POLICE OFFICER.

8 (C) USE TO CREATE STATISTICAL REPORTS ON USE OF A PUBLIC
9 TRANSPORTATION FACILITY THAT DO NOT DISCLOSE THE IDENTITY OF
10 SPECIFIC USERS OF THE FACILITY.

11 (4) A PERSON WHO FAILS TO PAY A USER FEE IMPOSED FOR USE OF A
12 PUBLIC TRANSPORTATION FACILITY IS RESPONSIBLE FOR A CIVIL
13 INFRACTION AND SHALL PAY \$50.00 AS A CIVIL FINE. IN ADDITION, THE
14 PERSON SHALL PAY THE OPERATOR OF THE PUBLIC TRANSPORTATION FACILITY
15 2 TIMES THE AMOUNT OF THE USER FEE. IF THAT SUM REMAINS UNPAID TO
16 THE OPERATOR OF THE PUBLIC TRANSPORTATION FACILITY FOR 180 DAYS
17 AFTER THE PERSON'S USE OF THE PUBLIC TRANSPORTATION FACILITY, THE
18 DEPARTMENT, AN AUTHORITY, AN INSTRUMENTALITY OF GOVERNMENT, OR A
19 PRIVATE ENTITY AUTHORIZED TO DO SO BY THE DEPARTMENT, MAY BRING A
20 CIVIL ACTION AGAINST THE PERSON TO COLLECT THE UNPAID CHARGES IN A
21 COURT HAVING JURISDICTION. IF THE CIVIL ACTION RESULTS IN A
22 JUDGMENT FOR UNPAID CHARGES, THE DEFENDANT SHALL ALSO BE REQUIRED
23 TO REIMBURSE THE PLAINTIFF FOR ALL FILING FEES INCURRED BY THE
24 PLAINTIFF PLUS \$500.00 IN COMPENSATION FOR THE COSTS OF BRINGING
25 THE CIVIL ACTION.

26 (5) DURING THE PERIOD THAT A PERSON OWES AND HAS FAILED TO PAY
27 CHARGES, FEES, AND COSTS UNDER SUBSECTION (3) OR (4), THE PERSON

1 AND A MOTOR VEHICLE USED BY THE PERSON MAY BE BARRED FROM USING THE
2 PUBLIC TRANSPORTATION FACILITY.

3 (6) EXCEPT AS PROVIDED IN SECTION 675B OF THE MICHIGAN VEHICLE
4 CODE, 1949 PA 300, MCL 257.675B, INVOLVING LEASED VEHICLES, PROOF
5 THAT A PARTICULAR VEHICLE USED A PUBLIC TRANSPORTATION FACILITY
6 WITHOUT PAYMENT OF THE APPLICABLE USER FEE, TOGETHER WITH PROOF
7 FROM THE DEPARTMENT OF STATE OF THE NAME OF THE VEHICLE'S
8 REGISTERED OWNER, CREATES A PRESUMPTION THAT THE VEHICLE'S
9 REGISTERED OWNER WAS THE PERSON WHO USED THE PUBLIC TRANSPORTATION
10 FACILITY, WHO FAILED TO PAY THE USER FEE, AND WHO IS PRIMA FACIE
11 RESPONSIBLE FOR THE UNPAID CHARGES. IF THE CONDITIONS OF SECTION
12 675B OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.675B, ARE
13 SATISFIED, THE LESSEE OR RENTER OF A MOTOR VEHICLE AND NOT THE
14 LEASED VEHICLE OWNER IS THE PERSON LIABLE UNDER THIS SECTION, FOR
15 WHICH PURPOSES THE ENTITY THAT GIVES NOTICE OF UNPAID CHARGES TO
16 THE VEHICLE'S REGISTERED OWNER SHALL BE GIVEN THE NOTICE THAT WOULD
17 OTHERWISE BE GIVEN TO THE CLERK OF THE COURT OR PARKING VIOLATIONS
18 BUREAU UNDER SECTION 675B OF THE MICHIGAN VEHICLE CODE, 1949 PA
19 300, MCL 257.675B.

20 (7) THE OWNER OF A VEHICLE ALLEGED TO HAVE USED A PUBLIC
21 TRANSPORTATION FACILITY WITHOUT PAYING AN APPLICABLE USER FEE MAY
22 ASSERT AS AN AFFIRMATIVE DEFENSE THAT THE VEHICLE IN QUESTION, AT
23 THE TIME OF THE USE OF THE PUBLIC TRANSPORTATION FACILITY, WAS IN
24 THE POSSESSION OF A PERSON WHOM THE OWNER HAD NOT KNOWINGLY
25 PERMITTED TO OPERATE THE VEHICLE.

26 SEC. 7I. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, IF
27 FEDERAL FUNDS ARE USED FOR A PUBLIC TRANSPORTATION FACILITY, THE

1 **APPLICABLE FEDERAL LAW OR RULES ARE CONTROLLING IN THE EVENT OF A**
2 **CONFLICT WITH THIS ACT.**

3 Sec. 10. Documents and instruments of any kind authorized to
4 be issued or executed by the commission shall be issued or executed
5 in the name of the "Michigan state ~~highway~~ **TRANSPORTATION**
6 commission" by the ~~chairman~~ **CHAIRPERSON** of the commission, or to
7 the extent expressly authorized by bylaw or resolution, by the vice
8 ~~chairman~~ **CHAIRPERSON**, other member, **THE** director, or other
9 subordinate. Documents or instruments ~~which~~ **THAT** convey interests
10 or rights in land shall be executed by the ~~chairman or vice~~
11 ~~chairman and the director or a deputy director~~ **AN EMPLOYEE OF THE**
12 **DEPARTMENT** designated by the ~~commission~~ **DIRECTOR**.