

SENATE BILL No. 66

January 25, 2011, Introduced by Senators HOPGOOD, WARREN, GREGORY, ANDERSON and HUNTER and referred to the Committee on Transportation.

A bill to authorize a multinational bridge authority; to prescribe the powers and duties of the authority; to authorize procurement, design, finance, construction, maintenance, operation, improvement, and repair of international bridges and approaches; to authorize agreements with public and private entities; to provide for the issuance of, and terms and conditions for, certain bonds; to provide for the collection and enforcement of user fees and other charges; to authorize the acquisition, maintenance, and disposal of interests in real and personal property; to provide for certain duties of certain state departments and officers; to provide for the power to enter into interlocal agreements; to exempt property, income, and activities of the authority from tax; to make an appropriation; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "multinational bridge authority act".

3 Sec. 2. As used in this act:

4 (a) "Authority" means the multinational bridge authority
5 created in this act.

6 (b) "Bonds" means revenue bonds or other securities issued by
7 the authority under this act.

8 (c) "Canadian contribution" means a gift, contribution,
9 payment, advance, grant, or other money received for or in aid of a
10 project from a public agency of Canada pursuant to a governance
11 agreement.

12 (d) "Concessionaire" means a private entity that is a party to
13 a public-private agreement authorized by this act.

14 (e) "Crossing" means a public international bridge between
15 Ontario, Canada, and this state that is at least partially located
16 in a city with a population of at least 600,000 according to the
17 most recent decennial census and bridge approaches, including, but
18 not limited to, all related structures, plazas, facilities,
19 improvements, extensions, interchanges, property, and property
20 interests.

21 (f) "Debt" means borrowed money, loans, and other
22 indebtedness, including principal and interest, evidenced by a bond
23 or other security lawfully issued or assumed under this act, in
24 whole or in part, by the authority or that may be evidenced by a
25 judgment or decree against the authority.

26 (g) "Department" means the state transportation department.

27 (h) "Disaster recovery" means action taken by a governmental

1 agency in response to an occurrence or threat of widespread or
2 severe damage, injury, or loss of life or property resulting from a
3 natural cause or human-made cause, including, but not limited to,
4 fire, flood, snowstorm, ice storm, tornado, windstorm, wave action,
5 oil spill, water contamination, utility failure, hazardous
6 peacetime radiological incident, major transportation accident,
7 hazardous materials incident, epidemic, air contamination, blight,
8 drought, infestation, explosion, or hostile military action or
9 paramilitary action, or similar occurrences resulting from
10 terrorist activities, riots, or civil disorder.

11 (i) "Excess revenue" means any qualified revenue remaining
12 after satisfaction of project cost obligations.

13 (j) "Governance agreement" means an interlocal agreement under
14 the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501
15 to 124.512, that includes the authority and a public agency of
16 Canada as parties.

17 (k) "Private entity" means any natural person, corporation,
18 general partnership, limited liability company, limited
19 partnership, joint venture, business trust, public benefit
20 corporation, nonprofit entity, or other nongovernmental business
21 entity.

22 (l) "Project" means all activities associated with a crossing,
23 project land activities, and project activities.

24 (m) "Project activity" means the research, planning,
25 procurement, design, finance, construction, maintenance, operation,
26 improvement, and repair of a crossing under this act.

27 (n) "Project contribution" means a gift, contribution,

1 payment, advance, grant, or other money received for or in aid of a
2 project from the federal government or an agency of the federal
3 government.

4 (o) "Project cost" means the costs associated with a project,
5 including, but not limited to, the cost of project activities; the
6 cost of project land activities; the cost of mitigation and
7 enhancement measures included in the green sheet or record of
8 decision for a project under the national environmental policy act
9 of 1969; the cost of all assets, including machinery, vehicles, and
10 equipment, including financing costs; traffic estimates; studies;
11 legal services; engineering services; plans; surveys; feasibility
12 studies; administrative expenses; and expenses that may be
13 necessary or incidental to the construction, repair, or improvement
14 of the project and the operation and maintenance of the project.

15 (p) "Project land activity" means the acquisition of all land,
16 rights-of-way, property, rights, easements, and interests for a
17 crossing.

18 (q) "Project revenue" means user fees or other charges
19 generated by the use of a crossing and any other revenue generated
20 from the use of or by the crossing, including, but not limited to,
21 any revenue arising from a public-private agreement.

22 (r) "Public agency" means that term as defined under section 2
23 of the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL
24 125.502, including, but not limited to, a Canadian entity
25 established by the government of Canada under the Canadian
26 international bridges and tunnels act.

27 (s) "Public-private agreement" means any of the following

1 relating to the project activities of a project:

2 (i) An agreement between a private entity or private entities
3 and the authority.

4 (ii) An agreement between a private entity or private entities
5 and a public agency of Canada.

6 (iii) An agreement between a private entity or private entities
7 and a separate legal entity created under a governance agreement.

8 (iv) An agreement with a private entity or private entities and
9 a public entity or public entities as parties involving a joint
10 exercise of power by the authority and a public body of Canada
11 authorized by a governance agreement.

12 (t) "Qualified revenue" means all of the following:

13 (i) Project revenue.

14 (ii) A Canadian contribution.

15 (iii) A project contribution.

16 (u) "Security" means any evidence of debt such as a bond,
17 note, contract, obligation, refunding obligation, certificate of
18 indebtedness, or other similar instrument issued by the authority
19 that pledges payment of debt by the authority from qualified
20 revenue.

21 Sec. 3. (1) Bonds authorized under this act shall not be
22 deemed to constitute a debt of this state or any political
23 subdivision of this state. Bonds authorized under this act are not
24 a pledge of the full faith and credit of this state or any
25 political subdivision of this state. All bonds shall contain a
26 statement that neither this state nor the authority is obligated to
27 pay the principal amount of the bonds or any interest on the bonds,

1 from any source other than qualified revenue. The bonds shall also
2 contain a statement that neither the full faith and credit of this
3 state nor the taxing power of this state or any political
4 subdivision of this state is pledged for payment of principal or
5 interest on the bonds.

6 (2) The only bonds that shall be issued by a governmental
7 entity in this state for the financing of project activities are
8 the bonds authorized under this act.

9 (3) The authority may issue bonds under this act only for a
10 purpose related to a project to take advantage of financing,
11 credit, or tax exemption opportunities authorized by federal law.
12 For purposes of this subsection only, and for no other purpose,
13 notwithstanding other law to the contrary, the department may
14 designate the project as federal-aid eligible and the authority as
15 an eligible governmental agency for purposes of applicable state
16 and federal law, including, but not limited to, 1951 PA 51, MCL
17 247.651 to 247.675.

18 (4) Nothing in this act limits or prevents a concessionaire or
19 other private entity from issuing bonds, incurring indebtedness, or
20 entering into other arrangements relating to financing a project.

21 Sec. 4. (1) The multinational bridge authority is created as a
22 public body corporate in the department. Except as otherwise
23 provided in this act, the authority shall exercise its powers,
24 duties, and functions under this act independently of the director
25 of the department. The budgeting, procurement, and related
26 management functions of the authority shall be performed under the
27 direction and supervision of the director of the department. The

1 authority may contract with the department for the purpose of
2 maintaining the rights and interests of the authority.

3 (2) Subject to available appropriations, notwithstanding other
4 law to the contrary, if requested by the authority, the department
5 shall provide staff and other support to the authority sufficient
6 to enable the authority to carry out the powers, duties, and
7 functions of the authority under this act.

8 (3) All departments, agencies, and officers of state
9 government shall provide full cooperation to the authority in the
10 performance of powers, duties, and functions of the authority.

11 (4) Nothing in this act shall diminish the power of the state
12 transportation commission under section 28 of article V of the
13 state constitution of 1963 to establish policy for department of
14 transportation programs and facilities and other public works of
15 this state.

16 (5) Nothing in this act shall diminish the power of the civil
17 service commission under section 5 of article XI of the state
18 constitution of 1963.

19 (6) The authority may exercise all of the following powers:

20 (a) Adopt bylaws to regulate its affairs and conduct its
21 business.

22 (b) Adopt or change an official seal.

23 (c) Maintain an office or offices as needed.

24 (d) Sue and be sued in its own name.

25 (e) Determine location, design standards, and construction
26 materials of a crossing.

27 (f) Research, plan, procure, design, finance, construct,

1 operate, improve, and repair a project.

2 (g) Fix, and revise as necessary, charge, enforce, and collect
3 user fees and other charges for the use of, or contract with a
4 private entity to fix, revise as necessary, charge, enforce, and
5 collect user fees and other charges for the use of a crossing.

6 (h) Establish rules and regulations for use of a crossing.

7 (i) Purchase, otherwise acquire, receive, accept, lease, hold,
8 and dispose of real and personal property in the exercise of its
9 powers and the performance of its duties under this act, including,
10 but not limited to, interests in real and personal property and
11 related rights or interests such as structures, rights-of-way,
12 franchises, easements, lands under water, and riparian rights. This
13 subdivision shall not be interpreted to give the authority the
14 power of eminent domain in order to acquire land.

15 (j) Accept contributions of real property from the department
16 or other entities.

17 (k) Issue bonds, payable from qualified revenue, and refinance
18 the bonds, as authorized by this act.

19 (l) Make and enter into contracts and agreements necessary or
20 incidental to the performance of its duties and the exercise of its
21 powers under this act, including, but not limited to, public-
22 private agreements.

23 (m) Employ consulting engineers, attorneys, accountants,
24 construction and financial experts, superintendents, managers, and
25 other employees and agents as may be necessary in its judgment and
26 fix their compensation, subject to any applicable rules or
27 regulations of the civil service commission.

1 (n) Receive and accept from any source gifts, property,
2 structures, rights, rights-of-way, franchises, easements, property
3 rights, contributions, grants, or funds for or in aid of a project,
4 including, but not limited to, a project contribution or a Canadian
5 contribution.

6 (o) Enter into contracts or leases to provide for the
7 development and use of any property owned or controlled by the
8 authority for customs brokering or for the sale of articles for
9 export and consumption outside the United States or Canada,
10 respectively, to the extent that this use is not restricted by
11 federal law or Canadian law. If the authority contracts for customs
12 brokering, the authority shall utilize a competitive bidding
13 process. A contract or lease entered into under this subdivision
14 does not exempt a person from the payment of any motor fuel, sales,
15 or other taxes required to be paid under the laws of this state on
16 articles or fuel sold or brought into this state for consumption.

17 (p) Enter into a governance agreement relating to a project as
18 authorized under this act.

19 (q) Apply for and use grants, loans, loan guarantees, lines of
20 credit, revolving lines of credit, or other arrangements available
21 under the transportation infrastructure finance and innovation act
22 of 1998, Public Law 105-178, 23 USC 601 to 610 or other applicable
23 law in a manner consistent with this act.

24 (r) Seek allocation for, issue, and provide for the issuance
25 of private activity bonds as described under 26 USC 141 to finance
26 a project.

27 (s) Exercise other powers of the department relating to

1 streets, highways, transportation programs, transportation
2 facilities, and transportation public works of this state not
3 otherwise vested in the authority only to the extent related to a
4 project and necessary to carry out the purposes of this act, except
5 that this subdivision does not authorize the authority to exercise
6 the power of eminent domain.

7 (t) Do anything necessary and proper consistent with the
8 provisions of this act to carry out the purposes of and powers
9 explicitly granted in this act.

10 (7) The powers and duties of the authority are vested in a
11 board of directors. The board shall have 5 members who shall be
12 appointed by the governor with the advice and consent of the
13 senate. The governor shall designate a member of the board, who
14 does not also serve as the head of a state department, as its
15 chairperson. One member shall be appointed by the governor from a
16 list of 3 or more names nominated by the senate majority leader,
17 and 1 member shall be appointed by the governor from a list of 3 or
18 more names submitted by the speaker of the house of
19 representatives. Of the 3 members initially appointed by the
20 governor without nomination by the senate majority leader or the
21 speaker of the house of representatives, the first member shall be
22 appointed for an initial term of 2 years, and 2 members shall be
23 appointed for an initial term of 4 years each. The initial members
24 nominated by the senate majority leader and the speaker of the
25 house of representatives shall be appointed for initial terms of 2
26 years each. After the expiration of initial terms, members shall be
27 appointed for terms of 4 years. A member of the board shall

1 continue to serve until a successor is appointed and qualified. A
2 vacancy on the board occurring other than by expiration of a term
3 shall be filled by the governor in the same manner as the original
4 appointment for the balance of the unexpired term. An employee of
5 the department shall not serve as a member of the board.

6 (8) A majority of the members of the board serving constitute
7 a quorum for the transaction of the business of the authority. The
8 board shall act by a majority vote of its serving members.

9 (9) The board shall meet at the call of the chairperson and as
10 may be provided in procedures adopted by the board.

11 (10) The board may, as appropriate, make inquiries, studies,
12 and investigations, hold hearings, and receive comments from the
13 public. Subject to available funding, the board also may consult
14 with outside experts in order to perform its duties, including, but
15 not limited to, experts in the private sector, and government
16 agencies and experts at institutions of higher education. The board
17 may hire or retain such contractors, subcontractors, advisors,
18 consultants, and agents as the board may deem advisable and
19 necessary, in accordance with the relevant statutes and procedures,
20 rules, and regulations of the civil service commission and the
21 department of technology, management, and budget and may make and
22 enter into contracts necessary or incidental to the exercise of the
23 powers and performance of the duties of the board. Under this
24 provision, the board specifically may hire or retain such
25 contractors, subcontractors, advisors, consultants, and agents as
26 the board deems advisable and necessary to provide legal advice or
27 legal services, to provide for research and development activity,

1 or to provide strategic planning services.

2 (11) Members of the board shall serve without compensation.
3 Members of the board may receive reimbursement for necessary travel
4 and expenses consistent with relevant statutes and the rules and
5 procedures of the civil service commission and the department of
6 technology, management, and budget, subject to available funding.

7 (12) A member of the board shall discharge the duties of the
8 position in a nonpartisan manner, in good faith, in the best
9 interests of this state, and with the degree of diligence, care,
10 and skill that an ordinarily prudent person would exercise under
11 similar circumstances in a like position. A member of the board
12 shall not make or participate in making a decision, or in any way
13 attempt to use his or her position as a member of the board to
14 influence a decision, on a matter before the authority in which the
15 member is directly or indirectly interested. A member of the board
16 shall not be interested directly or indirectly in any contract with
17 the authority or the department that would cause a substantial
18 conflict of interest. Members of the board shall comply, and the
19 board shall adopt policies and procedures for members to comply,
20 with the requirements of this subsection and all of the following:

21 (a) 1978 PA 472, MCL 4.411 to 4.431.

22 (b) 1978 PA 566, MCL 15.181 to 15.185.

23 (c) 1968 PA 318, MCL 15.301 to 15.310.

24 (d) 1968 PA 317, MCL 15.321 to 15.330.

25 (e) 1973 PA 196, MCL 15.341 to 15.348.

26 (13) Beginning on the effective date of this act and
27 continuing until the appointment and qualification of 5 members of

1 the board as provided under this section, the powers and duties
2 vested in the board under this act may be exercised by the state
3 administrative board created under 1921 PA 2, MCL 17.1 to 17.3.

4 (14) Within 60 days after the first meeting of the authority,
5 the department shall establish a website for the authority and the
6 authority shall post updates not less than weekly on authority
7 activities and transactions and the progress of any project,
8 including, but not limited to, all proposed public-private
9 agreements.

10 (15) The authority is subject to, and shall conduct its
11 meetings in compliance with, the open meetings act, 1976 PA 267,
12 MCL 15.261 to 15.275.

13 (16) Except as otherwise provided in this act, the authority
14 shall comply with the freedom of information act, 1976 PA 442, MCL
15 15.231 to 15.246.

16 (17) The department may transfer property or interests in
17 property under the jurisdiction or control of the department to the
18 authority for purposes authorized under this act.

19 Sec. 5. (1) The authority may enter into a governance
20 agreement concerning a project under this act. The governance
21 agreement may provide for a separate legal or administrative entity
22 that shall be a public body corporate or politic and shall not be a
23 public body of the executive branch of this state. The governance
24 agreement shall not authorize the authority or any public body
25 provided for by a governance agreement to levy a tax or to take
26 property using the power of eminent domain.

27 (2) In accordance with a governance agreement established in

1 subsection (1), the department or the authority may receive funds
2 from a Canadian contribution. No agreement involving the authority
3 and a public agency of Canada relating to a Canadian contribution
4 shall impose any obligation on the department, authority, this
5 state, or political subdivision of this state to repay the Canadian
6 contribution from revenues other than project revenue and qualified
7 revenue.

8 (3) A governance agreement may provide for the repayment of
9 all or any part of any Canadian contribution only if repayment of
10 the contribution is required to be paid, repaid, or returned
11 exclusively from project revenue or qualified revenue.

12 (4) A governance agreement shall provide for both of the
13 following:

14 (a) A provision that details an equitable reimbursement
15 schedule if a public agency of Canada advances project costs for a
16 project that may be reimbursed from project revenue. Excess project
17 revenue shall be first used exclusively to reimburse any Canadian
18 advances.

19 (b) A provision enabling the authorizations granted under this
20 act.

21 (5) A governance agreement shall contain a provision that
22 distributes excess project revenue under any public-private
23 agreement in the following manner:

24 (a) For a public-private agreement where only the authority
25 and no other public agency is a party, 100% of excess project
26 revenue shall be distributed to the authority. The authority shall
27 deposit any funds received under this subdivision in the state

1 trunk line fund established under section 11 of 1951 PA 51, MCL
2 247.661.

3 (b) For a public-private agreement where the authority,
4 Canada, and 1 or more other public agencies are parties or
5 beneficiaries, excess project revenue shall be distributed equally
6 among each public agency that is a beneficiary or party under the
7 public-private agreement. If the authority and a public agency of
8 Canada are the only public agencies that are party to a public-
9 private agreement, 50% of excess project revenue shall be
10 distributed to the authority and 50% of excess project revenue
11 shall be distributed to the public agency of Canada. Any funds
12 distributed to the authority under this subdivision shall be
13 deposited in the state trunk line fund established under section 11
14 of 1951 PA 51, MCL 247.661.

15 (6) Upon executing a governance agreement, the authority shall
16 transmit copies of the governance agreement to clerk of the house
17 of representatives and the secretary of the senate.

18 (7) A governance agreement shall require that any project
19 proceed in a manner that complies with the national environmental
20 policy act of 1969 or other requirements of the federal highway
21 administration, including, but not limited to, any mitigation or
22 enhancement measures included in a green sheet or record of
23 decision for the project under the national environmental policy
24 act of 1969.

25 Sec. 6. (1) The authority may enter into a public-private
26 agreement concerning a crossing and project activity as provided in
27 this act. A public-private agreement shall include terms designed

1 to protect the public interest and assure accountability of a
2 concessionaire to the authority. A public-private agreement may
3 contain terms and conditions consistent with any limitations under
4 this act that the authority may determine or negotiate to
5 facilitate a crossing and project activity. The agreement may
6 contain a provision allowing binding arbitration or other
7 alternative forms of dispute resolution.

8 (2) A public-private agreement shall provide for all of the
9 following:

10 (a) An initial term for the use and operation of a crossing or
11 project activity by a concessionaire for a period that the
12 authority determines is necessary for the development and financing
13 of the project and the economic feasibility of the public-private
14 agreement that does not exceed 50 years in length from the date on
15 which a crossing is open to the public and collecting user fees or
16 other charges. After the initial term, the authority may renew a
17 public-private agreement or execute a new public-private agreement
18 for a period that the authority determines is necessary for the
19 development and financing of the project and the economic
20 feasibility of the public-private agreement that does not exceed 50
21 years in length. A term may be extended if the operation or
22 maintenance of the crossing is impaired due to force majeure or
23 disaster recovery not attributable to actions of the concessionaire
24 for an extended period equal to the period of impairment.

25 (b) The termination of the public-private agreement.

26 (c) A requirement that the control of a crossing revert from
27 the concessionaire to the authority and a public agency of Canada

1 at the end of the public-private agreement in a manner and
2 condition required under the public-private agreement and
3 governance agreement.

4 (d) Ownership of a crossing within this state shall be vested
5 in the authority, and title to the project shall not be encumbered.
6 Property rights relating to a crossing may be acquired by a public
7 entity or private entity other than the authority if the rights of
8 utilities and other existing public uses are not affected. A
9 public-private agreement may provide for the use and occupancy of a
10 crossing if the use and occupancy do not interfere with the
11 transportation and related public uses of a crossing.

12 (e) A lease, license, right of entry, or other instrument for
13 a crossing provided that such an instrument is in the public
14 interest and is consistent with this act.

15 (f) The right of the authority to share in any refinancing
16 gains benefiting the concessionaire under a public-private
17 agreement.

18 (g) A requirement that the concessionaire cooperate with the
19 authority and any other appropriate public agencies on all matters
20 concerning the security of the crossing or disaster recovery for
21 the crossing.

22 (h) A requirement that the concessionaire submit to all
23 appropriate public agencies written plans for the security of the
24 crossing and disaster recovery for the crossing.

25 (i) A requirement that during a period a project is operated
26 by a concessionaire the concessionaire shall have control for
27 operational purposes over designated portions of a crossing.

1 (j) A requirement that a concessionaire appear and testify
2 without a subpoena at a legislative hearing convened and conducted
3 in accordance with applicable law and relating to the public-
4 private agreement or a project that is the subject of the public-
5 private agreement.

6 (k) The specification of the scope of the project and the
7 scope of control for operational purposes to be vested in the
8 authority upon the completion of construction of a crossing.

9 (3) A public-private agreement shall not provide for any of
10 the following:

11 (a) The public being deprived of the use and benefit of a
12 crossing except as necessary to implement user fees or other
13 charges authorized by this act, to regulate the level or character
14 of permissible uses of a crossing, to address issues of public
15 safety or security, or to maintain, repair, or improve a crossing.

16 (b) The department, a public agency, or a private entity,
17 being prohibited from researching, planning, procuring, designing,
18 financing, constructing, maintaining, operating, improving, or
19 repairing a transportation project or facility in this state that
20 is included in the department's long-range plan in effect on the
21 date that proposals for the public-private agreement are submitted.

22 (c) The department, a public agency in this state, or a
23 private entity in this state being prohibited from researching,
24 planning, procuring, designing, financing, constructing,
25 maintaining, operating, improving, or repairing a transportation
26 project or facility in this state that is otherwise authorized
27 under the laws of this state.

1 (d) This state or any of its political subdivisions from being
2 required to make availability payments. However, a public agency of
3 Canada or a governmental entity created under a governance
4 agreement may make availability payments repayable from qualified
5 revenues if authorized under a public-private agreement and the
6 governance agreement.

7 (e) A concessionaire to sell or transfer its interest in the
8 public-private agreement without the consent of the authority.

9 (4) This state, the department, the authority, and any
10 political subdivision of this state do not have any liability for
11 the acts or omissions of a concessionaire or other nonstate party
12 to a public-private agreement.

13 (5) Except as otherwise provided in this act, a public-private
14 agreement shall impose on the concessionaire the same requirements
15 of law that are imposed in contracts of the department when it
16 contracts directly for the construction, maintenance, repair,
17 improvement, or operation of a similar project financed with state
18 funds.

19 (6) A public-private agreement shall establish the amounts for
20 which a concessionaire shall post payment and performance bonds or
21 other security as provided in this subsection. A public-private
22 agreement may authorize a concessionaire to provide a letter of
23 credit in lieu of a payment or performance bond. If the authority
24 determines that bonds or letters of credit are not reasonably
25 available in sufficient amounts, the authority may accept parent
26 corporation guarantees to supplement available payment bonds,
27 performance bonds, or letters of credit. The authority shall

1 require the posting of sufficient security to fulfill the purposes
2 of a payment and performance bond. In lieu of posting by a
3 concessionaire, or in supplementation of that posting, the
4 authority may accept bonds, letters of credit, and other security
5 from private entities other than the concessionaire that is subject
6 to posting so long as the purposes of a payment and performance
7 bond are fulfilled.

8 (7) A public-private agreement under this act shall contain
9 provisions requiring confidential, in camera inspection by the
10 legislative council provided for by section 15 of article IV of the
11 state constitution of 1963 and the legislative council act, 1986 PA
12 268, MCL 4.1101 to 4.1901, of documents containing propriety or
13 confidential information that are exempt from public disclosure. A
14 person who receives information under this subsection shall not
15 disclose that information for any purpose other than the proper
16 administration of his or her legislative duties or disclose that
17 information to anyone other than an employee of the legislature,
18 who is also bound by the same restrictions.

19 Sec. 7. (1) The authority may solicit proposals or receive
20 unsolicited proposals for the selection of a concessionaire for a
21 project using a competitive selection process. The authority may
22 charge and use fees to offset the administrative costs of receiving
23 and evaluating proposals. Before receiving a proposal, the
24 authority may agree to reimburse a private entity for costs not
25 greater than 5% of total costs incurred in the preparation and
26 presentation of a proposal in return for the right to use any work
27 product contained in the proposal, including, but not limited to,

1 the technologies, methods, processes, and information contained in
2 the material submitted in connection with the proposal. This
3 subsection shall not limit any reimbursement payments if made from
4 a Canadian contribution or a project contribution.

5 (2) Funds used to pay for costs associated with selection of a
6 concessionaire for a project shall only come qualified revenue.

7 (3) The authority has the sole discretion whether, and to what
8 extent, to consider an unsolicited proposal.

9 (4) Before a request for proposal is issued by the authority,
10 the authority shall conduct at least 1 public hearing on the
11 request for proposal and selection process. The authority shall
12 utilize 1 or more of the following procurement approaches:

13 (a) Sealed bidding.

14 (b) Selection of proposals, with or without negotiations,
15 based on qualifications, development proposals, technical
16 proposals, financial proposals, best value, or any combination of
17 them.

18 (5) The authority shall consider all of the following factors
19 in evaluating and selecting a bid or proposal to enter into a
20 public-private agreement for a project:

21 (a) The proposed cost of and financial plan for the project.

22 (b) The general reputation, qualifications, industry
23 experience, safety record, and financial capacity of the private
24 entity.

25 (c) The proposed research, planning, procurement, design,
26 finance, construction, maintenance, operation, improvement, and
27 repair of the project.

1 (d) To the extent permitted by federal law, the proposed plan
2 of the private entity to hire legal United States residents and
3 citizens for work relating to the project in this state.

4 (e) Evidence that a private entity has the capacity to obtain
5 all required payment and performance bonding, liability insurance,
6 and errors and omission insurance.

7 (f) Any other factors that are proper and consistent with the
8 provisions of this act and with factors used by other governmental
9 entities for selecting a concessionaire for a public-private
10 venture of a similar size, scope, and complexity.

11 (6) The authority may select multiple concessionaires for a
12 project if it is determined by the authority to be in the public
13 interest to do so.

14 (7) At the request of a private entity, the authority may
15 acknowledge as confidential and exempt from disclosure trade
16 secrets or proprietary commercial or financial information provided
17 by the private entity as part of a proposal under this section.
18 Information acknowledged by the authority as confidential is exempt
19 from disclosure, including, but not limited to, disclosure under
20 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
21 Unless considered proprietary information by the private entity,
22 the authority shall not acknowledge routine financial information
23 as confidential. If the authority acknowledges information as
24 confidential, the authority shall provide a description of the
25 information to which exemption from disclosure will extend. The
26 authority may agree to keep confidential and exempt from
27 disclosure, proprietary, commercial, or other confidential

1 information that a concessionaire is required by the public-private
2 agreement to provide to the authority. A bid or proposal from a
3 private entity for a project may be exempted from disclosure by the
4 authority until the authority completes all negotiations and
5 selects the concessionaire with which it intends to enter into a
6 public-private agreement. After the execution of a public-private
7 agreement, a bid or proposal is a public record subject to public
8 disclosure, excluding any confidential information exempted from
9 disclosure by the authority under this subsection.

10 (8) A proposal or bid submitted by a private entity under this
11 section shall include an executive summary in a form determined by
12 the authority detailing the major elements of the proposal
13 excluding the price, financing plan, or other trade secrets or
14 confidential proprietary or financial information that the private
15 entity seeks to exempt from disclosure. Upon submission, the
16 executive summary is a public record subject to public disclosure
17 and shall be posted on the website maintained for the authority by
18 the department.

19 (9) Submission of a solicited or unsolicited proposal
20 constitutes consent for the authority to use the information and
21 ideas provided by a private entity for a project or for purposes of
22 seeking or entering into a public-private agreement, including to
23 solicit competing proposals unless the authority agrees otherwise
24 in a writing executed by the authority before the submission.

25 (10) No action shall lie against the authority or another
26 person acting in accordance with a public-private agreement for the
27 use of ideas and information provided by a private entity for

1 purposes of seeking or entering into a public-private agreement.

2 (11) Before a request for a proposal is issued for the
3 project, the authority shall first determine that the proposed
4 project is economically beneficial for this state. In determining
5 whether a proposed project is economically beneficial for this
6 state, the authority shall contract with a qualified third party to
7 perform a cost-benefit analysis. The qualified third party shall
8 select an appropriate methodology to utilize in the cost-benefit
9 analysis, including, but not limited to, a risk transfer or
10 allocation assessment to determine whether a proposed public-
11 private agreement is economically beneficial for this state, and
12 shall state any assumptions used in the cost-benefit analysis in
13 writing. The cost-benefit analysis shall include all necessary
14 monitoring and oversight of any private entity by a public entity.
15 Upon receipt of the analysis, the authority shall publish the
16 results of the analysis on the website maintained for the authority
17 by the department and submit a written copy of the analysis to the
18 clerk of the house of representatives and the secretary of the
19 senate. The contract to perform a cost-benefit analysis shall be
20 obtained through a competitive and qualifications-based process.

21 Sec. 8. Nothing in this act or in a governance agreement
22 authorized by this act shall preclude a separate legal or
23 administrative entity created under a governance agreement from
24 appraising the fair market value of assets, from exploring
25 opportunities to create efficiencies, or from studying proposals
26 that may maximize the fair market value of assets associated with
27 the project and that may be in the public interest of this state.

1 Sec. 9. (1) The authority may provide for the issuance of
2 bonds. The principal of and interest on the bonds is payable solely
3 from qualified revenues and do not constitute a general obligation
4 of this state. The bonds are not a debt or liability of this state
5 and do not constitute or create any indebtedness, liability, or
6 obligation of this state or constitute a pledge of the full faith
7 and credit of this state. Each bond shall contain on its face a
8 statement to the effect that the authority is obligated to pay the
9 principal and the interest only from qualified revenue and that
10 neither the full faith and credit nor the taxing power of this
11 state or any political subdivision of this state is pledged to the
12 payment of the principal or interest.

13 (2) Consistent with the requirements of subsection (1), a bond
14 may be issued by the authority for the purpose of providing funds
15 for project costs or the refunding of any bonds issued under this
16 act, together with any costs associated with the transaction, and
17 shall be payable solely from any of the following:

18 (a) Qualified revenue.

19 (b) The proceeds of the bond instruments or of bonds sold to
20 finance the refunding of the bonds.

21 (c) The proceeds of any financial instrument providing credit,
22 liquidity, or security for the bonds described in subsection (5).

23 (d) Investment earnings on any of the sources of funds
24 described in subdivisions (a) to (c).

25 (3) To the extent required by applicable law, all proceeds of
26 the sources of payments specified in subsection (2) are
27 appropriated to the authority for the payment of the obligations,

1 for payment of project costs, or for payment of principal,
2 interest, or premium on bonds issued by the authority. The action
3 of the authority in issuing the bonds may be designated by the
4 authority as the creation of a statutory lien upon qualified
5 revenue pledged for the payment of the principal, interest, or
6 premium on the bonds, to and in favor of the holders of the bonds.
7 The statutory lien shall be a first priority lien, paramount and
8 superior to all other liens and interests of any kind that arise or
9 are created after the issuance of the bonds, unless otherwise
10 specified by the authority. Qualified revenue shall remain subject
11 to the statutory lien until all principal, interest, and premium on
12 the bonds are paid or provided for, as specified by the authority
13 at the time of the issuance of the bonds. The statutory lien may be
14 enforced by or on behalf of the holders of the bonds as to the use
15 of qualified revenue, to pay principal, interest, and premium on
16 the bonds or other financial obligations, but the lien shall not be
17 construed to give the holders authorization to compel the sale of a
18 project or a crossing.

19 (4) In determining whether to issue bonds under this act, the
20 authority may, by duly adopted action, do 1 or more of the
21 following:

22 (a) Authorize or enter into trust indentures or agreements,
23 insurance contracts, letters of credit, lines of credit,
24 commitments to purchase obligations, remarketing agreements,
25 reimbursement agreements, and any other transaction, agreement, or
26 instrument providing, for credit, liquidity, or security for the
27 timely payment of principal, interest, and premium on the bonds or

1 the purchase price of the bonds. Consistent with this act, an
2 instrument may contain covenants on the part of the authority with
3 respect to the bonds and the security for the payment of the bonds
4 and remedies for defaults, including, but not limited to, the
5 appointment of a receiver for a project. A bond may further provide
6 that money and funds subject to a statutory lien authorized by
7 subsection (3) be segregated and held in a separate fund or
8 account, which shall not be subject to being levied upon, taken,
9 sequestered, or applied toward any purpose other than a purpose for
10 which the statutory lien was created.

11 (b) Authorize the payment from the proceeds of the bonds or
12 from the sources of payment detailed in subsection (2) of the costs
13 of acquiring and maintaining any of the transactions, agreements,
14 or instruments described in subdivision (a), and of reimbursing any
15 draws or advances, with interest, on any credit or liquidity
16 facility.

17 (c) Authorize or provide for 1 or more specified officers,
18 employees, or agents of the authority, but only within limitations
19 contained in the authorizing action, to do 1 or more of the
20 following for and on behalf of the authority:

21 (i) Sell and deliver, and receive payment for the bonds.

22 (ii) Refund bonds by the delivery of new bonds whether or not
23 the bonds to be refunded have matured or are subject to redemption
24 or purchase prior to maturity on the date of delivery of the
25 refunding bonds.

26 (iii) Buy, hold, and sell bonds. The buying, holding, or selling
27 shall not cause the cancellation or merger of the bonds unless

1 specified otherwise by the authority.

2 (iv) Approve interest rates or methods for fixing interest
3 rates, prices, discounts, maturities, principal amounts,
4 denominations, dates of issuance, interest payment dates,
5 redemption or tender rights and obligations to be exercised by the
6 issuer or the holder of the bonds, places of delivery and payment,
7 and other ministerial matters and procedures necessary to complete
8 the transactions authorized by the authority.

9 (5) Bonds may be issued with the terms specified by the
10 authority consistent with the requirements of this act. Among other
11 terms that may be specified are any of the following:

12 (a) Maturity dates of the bonds, which shall not exceed 50
13 years from the later of the date the bonds are issued or the date
14 the project financed with the proceeds of the bonds is opened to
15 the public and collection user fees first occurs.

16 (b) Tender rights.

17 (c) Procedures for the holders of the bonds.

18 (d) Provisions for remarketing any bonds tendered.

19 (e) The nature of interest to be paid on the bonds, which may
20 be fixed or variable rates of interest or no stated interest, but
21 with payments of principal at amounts higher than the amounts paid
22 by the original purchaser for the bonds.

23 (6) The yield on any bonds issued under this act, taking into
24 account the price at which the bonds are sold, the stated interest
25 rates, and the amounts at which the bonds are to be paid at the
26 scheduled maturity date, shall not exceed the maximum rate
27 permitted by the revised municipal finance act, 2001 PA 34, MCL

1 141.2101 to 141.2821.

2 (7) The obligations of the authority under the agreements,
3 including termination payments, shall not constitute a pledge of
4 the faith and credit or indebtedness of this state or any political
5 subdivision of this state but shall be made payable from and
6 secured by a pledge of and lien on the same sources of funds as the
7 bonds in relation to which the agreements are entered into, or from
8 any other sources of funds available for the payment of bonds under
9 this act.

10 (8) All expenses incurred by the authority in carrying out
11 this section shall be payable solely from revenues provided or to
12 be provided under this act. This act does not authorize the
13 authority to incur any indebtedness or liability on behalf of or
14 payable by this state. This act does not authorize the authority to
15 levy a tax.

16 (9) Except as otherwise provided in this section, bonds issued
17 under this act are not subject to the revised municipal finance
18 act, 2001 PA 34, MCL 141.2101 to 141.2821.

19 (10) The issuance of bonds under this section is subject to
20 the agency financing reporting act, 2002 PA 470, MCL 129.171 to
21 129.177, and the revenue bond act of 1933, 1933 PA 94, MCL 141.101
22 to 141.140. If any provision of this act conflicts with the revenue
23 bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140, the
24 provisions of this act shall control. The issuance of bonds under
25 this act is not subject to a referendum or approval by voters.

26 (11) The authority shall not have bonds issued by the
27 authority and outstanding at any 1 time for purposes authorized by

1 this act of a principal amount totaling more than 20% of the
2 project costs approved to date by the authority on the date on
3 which a crossing is open to the public and collecting user fees or
4 other charges.

5 (12) Bonds and other financial instruments issued under this
6 act, and any interest on the bonds or financial instruments, shall
7 be exempt from any taxation by this state or any other taxing
8 authority within this state.

9 Sec. 10. Unless explicitly authorized in this act, a
10 governance agreement or a public-private agreement entered into
11 under this act for a project shall not require this state to expend
12 any state funds for project costs, including, but not limited to,
13 availability payments paid by this state or any of its political
14 subdivisions.

15 Sec. 11. (1) User fees and other charges collected under this
16 act shall be determined and adjusted to pay project costs, to pay
17 bond obligations, to maintain reserves for those purposes, and to
18 establish and maintain reserves for debt service.

19 (2) The public-private agreement, user fees, and other charges
20 imposed by the authority are not subject to approval, regulation,
21 or taxation by any other state or local governmental entity in this
22 state.

23 (3) The activities and property of an authority under this act
24 are exempt from taxation by this state or a political subdivision
25 of this state.

26 (4) The activities and property of a governmental entity
27 created under a governance agreement authorized by this act are

1 exempt from taxation by this state or a political subdivision of
2 this state.

3 (5) Nothing in this act exempts the activities or property of
4 a concessionaire from taxation under other applicable laws.

5 Sec. 12. (1) Before a request for proposal is issued for a
6 project, the authority shall conduct at least 1 public hearing as
7 provided in section 7.

8 (2) Not later than 60 days before a public-private agreement
9 is executed and after issuing a request for proposal, the authority
10 shall conduct at least 1 public hearing on a proposed public-
11 private agreement.

12 (3) Not later than 60 days before a public-private agreement
13 is executed, the authority shall make the public-private agreement
14 and an executed governance agreement available to members of the
15 legislature by transmitting copies to the clerk of the house of
16 representatives and the secretary of the senate, excluding any
17 confidential information exempted from disclosure by the authority
18 under section 7.

19 (4) A duly constituted and authorized legislative committee,
20 including, but not limited to, the appropriations committees of the
21 house of representatives or the senate or the transportation
22 committees of the house of representatives or the senate, or any
23 successor committees, may conduct legislative oversight hearings on
24 activities of the authority at any time, including, but not limited
25 to, activities relating to a proposed public-private agreement, a
26 public-private agreement, or a governance agreement. The authority,
27 the department, political subdivisions of the state, and all

1 private parties to the proposed or subsequently executed public-
2 private agreement shall actively cooperate and shall attend the
3 hearing and provide live testimony at the hearing without a
4 subpoena.

5 Sec. 13. (1) The authority shall submit any public-private
6 agreement proposed to be entered into under this act to the
7 legislature. If the legislature does not disapprove by concurrent
8 resolution the public-private agreement within 60 session days of
9 submittal, the public-private agreement may be finalized.

10 (2) The legislature may approve by concurrent resolution a
11 public-private agreement before the expiration of the 60-session-
12 day period established in subsection (1). If the legislature
13 approves the public-private agreement, the remaining portion of the
14 60-session-day period is waived and the public-private agreement
15 may be finalized.

16 Sec. 15. (1) All law enforcement officers of this state and
17 local units of government in which all or part of a crossing is
18 located shall have the same powers and jurisdiction within the
19 limits of a crossing as they have in their respective areas of
20 jurisdiction to enforce traffic and motor vehicle laws. Authorized
21 emergency vehicles and occupants of authorized emergency vehicles
22 shall be afforded access to a crossing while in the performance of
23 an official duty without the payment of a user fee or other charge.
24 As used in this subsection, "authorized emergency vehicle" means
25 that term as defined in section 2 of the Michigan vehicle code,
26 1949 PA 300, MCL 257.2.

27 (2) Punishment for violations of traffic and motor vehicle

1 laws within the limits of a crossing shall be as generally
2 prescribed by law.

3 (3) A person who fails to pay a user fee imposed for use of a
4 crossing is responsible for a civil infraction and shall pay \$50.00
5 as a civil fine. In addition, the person shall pay the project
6 operator 2 times the amount of the user fee. If that sum remains
7 unpaid for 180 days after the person's use of the crossing, the
8 department, the authority, or a concessionaire may bring a civil
9 action against the person to collect the unpaid charges in a court
10 having jurisdiction. If the civil action results in a judgment for
11 unpaid charges, the defendant shall also be required to reimburse
12 the plaintiff for all filing fees incurred by the plaintiff plus
13 \$500.00 in compensation for the costs of bringing the civil action.

14 (4) During the period that a person owes and has failed to pay
15 charges, fees, and costs under subsection (3), the person and a
16 motor vehicle used by the person may be barred from using the
17 crossing.

18 (5) Except as provided in section 675b of the Michigan vehicle
19 code, 1949 PA 300, MCL 257.675b, involving leased vehicles, proof
20 that a particular vehicle used a crossing without payment of the
21 applicable user fee, together with proof from the department of
22 state of the name of the vehicle's registered owner, creates a
23 presumption that the vehicle's registered owner was the person who
24 used the crossing, who failed to pay the user fee, and who is prima
25 facie responsible for the unpaid charges. If the conditions of
26 section 675b of the Michigan vehicle code, 1949 PA 300, MCL
27 257.675b, are satisfied, establishing that the vehicle described in

1 the violation was in the possession of, custody of, or was being
2 operated or used by the lessee or renter of the leased vehicle at
3 the time of violation, the lessee or renter of the leased vehicle
4 and not the leased vehicle owner is the person liable under this
5 section.

6 (6) The owner of a vehicle alleged to have used a crossing
7 without paying an applicable user fee may assert as an affirmative
8 defense that the vehicle in question, at the time of the use of the
9 crossing, was in the possession of a person whom the owner had not
10 knowingly permitted to operate the vehicle.

11 Sec. 16. (1) Except as otherwise provided in this act, this
12 state shall not expend any state funds for project costs incurred
13 after the effective date of this act.

14 (2) The department may expend state and federal funds for the
15 purpose of eminent domain proceedings, professional fees,
16 administrative costs, planning costs related to a project, and
17 interchange maintenance costs for an interchange that is included
18 within a crossing if the interchange is part of a state trunk line
19 and the maintenance is performed after the date the crossing is
20 open to the public and generating user fees.

21 (3) A governance agreement or public-private agreement shall
22 not require a pledge of the full faith and credit of this state or
23 apolitical subdivision of this state.

24 (4) For the fiscal year ending September 30, 2011, \$10,000.00
25 is appropriated to the legislative council for the purpose of
26 performing legislative oversight activities under this act.

27 (5) As used in this section, "state funds" does not include

1 any of the following:

2 (a) Project revenues.

3 (b) Any contributions, payments, or advances made by a public
4 agency of Canada pursuant to a governance agreement.

5 (c) Any gifts, contributions, grants, or other funds received
6 for or in aid of a project from the federal government or any
7 agency of the federal government.

8 Enacting section 1. This act is repealed effective January 1,
9 2015 if the authority has not entered into a governance agreement
10 under this act on or before December 31, 2014.

11 Enacting section 2. The legislature intends that this act is
12 authorized and advances a legitimate public purpose under section 5
13 of article III of the state constitution of 1963. The legislature
14 further intends this act to authorize the state to participate in a
15 project under this act relating to a bridge and approaches that
16 will connect this state with Canada and authorize the collection of
17 tolls for its use pursuant to section 535 of the international
18 bridge act of 1972, 33 USC 535.

19 Enacting section 3. This act is declared to be severable. If
20 any portion of this act or the application of this act to any
21 person or circumstances is found to be invalid by a court, the
22 invalidity of that portion shall not affect the remaining portions
23 or applications that can be given effect without the invalid
24 portion or application, provided the remaining portions are not
25 determined by the court to be inoperable.

26 Enacting section 4. This act takes effect January 2, 2012.