

Act No. 359
Public Acts of 2018
Approved by the Governor
December 11, 2018
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Senator Casperson

ENROLLED SENATE BILL No. 1197

AN ACT to amend 1952 PA 214, entitled “An act authorizing the Mackinac bridge authority to acquire a bridge connecting the upper and lower peninsulas of Michigan, including causeways, tunnels, roads and all useful related equipment and facilities, including park, parking, recreation, lighting and terminal facilities; extending the corporate existence of the authority; authorizing such authority to enjoy and carry out all powers incident to its corporate objects; authorizing the appropriation and use of state funds for the preliminary purposes of the authority; providing for the payment of the cost of such bridge and in that connection authorizing the authority to issue revenue bonds payable solely from the revenues of the bridge; granting the right of condemnation to the authority; granting the use of state land and property to the authority; making provisions for the payment and security of such bonds and granting certain rights and remedies to the holders thereof; authorizing banks and trust companies to perform certain acts in connection therewith; authorizing the imposition of tolls and charges; authorizing the authority to secure the consent of the United States government to the construction of the bridge and to secure approval of plans, specifications and location of same; authorizing employment of engineers irrespective of whether such engineers have been previously employed to make preliminary inspections or reports with respect to the bridge; authorizing the state highway department to operate and maintain such bridge or to contribute thereto and enter into leases and agreements in connection therewith; exempting such bonds and the property of the authority from taxation; prohibiting competing traffic facilities; authorizing the operation of ferries by the authority; providing for the construction and use of certain buildings; and making an appropriation,” by amending the title and sections 1 and 5 (MCL 254.311 and 254.315), the title as amended by 1992 PA 120 and section 5 as amended by 1983 PA 123, and by adding sections 14, 14a, 14b, 14c, 14d, and 14e.

The People of the State of Michigan enact:

TITLE

An act authorizing the Mackinac bridge authority to acquire a bridge and a utility tunnel connecting the Upper and Lower Peninsulas of Michigan, including causeways, tunnels, roads and all useful related equipment and facilities, including park, parking, recreation, lighting, and terminal facilities; extending the corporate existence of the authority; authorizing the authority to enjoy and carry out all powers incident to its corporate objects; authorizing the appropriation and use of state funds for the preliminary purposes of the authority; providing for the payment of the cost of the bridge and authorizing the authority to issue revenue bonds payable solely from the revenues of the bridge; granting the right of condemnation to the authority; granting the use of state land and property to the authority; making provisions for the payment and security of bonds and granting certain rights and remedies to the holders of bonds; authorizing banks and trust companies to perform certain acts in connection with the payment and security of bonds; authorizing the imposition of tolls and charges; authorizing the authority to secure the consent of the United States government to the construction of the bridge and to secure approval of plans, specifications, and location of the bridge; authorizing employment of engineers regardless of whether those engineers have been previously employed to make preliminary inspections or reports with respect to the bridge; authorizing the state transportation department to operate and

maintain the bridge or to contribute to the bridge and enter into leases and agreements in connection with the bridge; exempting bonds and the property of the authority from taxation; prohibiting competing traffic facilities; authorizing the operation of ferries by the authority; authorizing the creation of the Mackinac Straits corridor authority; authorizing the operation of a utility tunnel by the authority or the Mackinac Straits corridor authority; providing for the construction and use of certain buildings; and making an appropriation.

Sec. 1. As used in this act:

(a) "Authority" means the Mackinac bridge authority created in 1950 (Ex Sess) PA 21, MCL 254.301 to 254.302. This subdivision does not apply to sections 14a, 14b, 14d, and 14e.

(b) "Board" means the members of the authority. This subdivision does not apply to section 14b.

(c) "Bridge" means the project for the acquisition of which this act is adopted and means a bridge or structure extending from the Upper Peninsula to the Lower Peninsula of Michigan, and includes all of the following forming any part of the bridge or connected with or used or useful in the operation of the bridge, causeways, bridges, tunnels, roads, fills and approaches, or any combination thereof, parking space and facilities, park and recreation facilities, lighting facilities, terminal facilities consisting of areas, structures, and buildings in which rest rooms, waiting rooms, restaurant and similar facilities, and other accommodations for the traveling public may be installed, including all fixtures, utility lines, accessories, and equipment relating to any or all of the above, and including the improvement and beautification of terminal areas at each end of the structure as may be designed to increase the use of the structure, and including all real and personal property, tangible or intangible, licenses, franchises, easements, and rights-of-way necessary thereto.

(d) "Cost of the bridge" includes all expenditures made in connection with the acquisition and construction of the bridge, financing charges, interest to accrue on the bonds during the period occupied by the construction of the bridge and for a period after construction of the bridge as determined by the board, the aggregate of such periods, however, not to exceed 7 years, cost of engineering and legal expenses, plans, specifications and surveys, other expenses necessary or incidental to determining the feasibility of the project, the cost of all land, property, rights, easements and franchises, reimbursement of all money that may have been or will be paid or advanced by the state of Michigan or any of its agencies, departments, or subdivisions, and all other expenses properly incident to the acquisition of the bridge and the issuance of the bonds.

(e) "The state" means the state of Michigan.

(f) "The bonds" means all bonds authorized to be issued by this act.

(g) "To construct" means to acquire through construction, purchase, gift, condemnation, or any combination thereof.

Sec. 5. (1) The authority may by resolution of the board provide for the issuance of revenue bonds for the purpose of paying the cost of the bridge or for the purpose of refunding the bonds, including refunding bonds, or for any combination of these purposes. Refunding bonds may be either sold at not less than par and accrued interest or may be delivered in exchange for the bonds to be refunded or may be sold in part and exchanged in part and if sold, the proceeds of the sale or exchange when received, together with other properly available funds sufficient to pay the balance of the principal, interest, and redemption premiums that will be due on the bonds to be refunded, shall be deposited with the paying agent for the bonds to be refunded and used only for the purpose of making those payments. A sale or exchange described in this subsection is subject to the approval of the state administrative board. The board may enter into contracts for fiscal agents' services in connection with the financing of the bridge as approved by the state administrative board, or the state treasurer may be used as fiscal agent.

(2) Principal of and interest and redemption premiums on the bonds issued under this section are payable solely from the revenues of the authority, except that payments may also be made from the proceeds of refunding bonds issued under this section and capitalized interest may be paid from the proceeds of the bonds. The bonds may be either serial bonds, term bonds, or a combination of serial and term bonds. Any serial bonds shall have annual or semiannual maturities, the first maturity of which shall be payable not more than 10 years from their date. A term bond is redeemable on any interest payment date at a price and upon terms and conditions as prescribed by the authorizing resolution of the board, and recited upon the face of the bond. A bond shall mature not more than 50 years from its date, shall be a coupon bond bearing interest at not more than 6% per annum, payable semiannually except as to the first coupon which may be for any number of months not exceeding 10, shall be payable in a medium, shall be in a form and executed in a manner, shall have a privilege of registration as to principal or principal and interest, shall be payable at a place inside or outside this state, and shall otherwise have other details as fixed by resolution of the board. Serial bonds may be made redeemable prior to maturity at a price and under terms and conditions prescribed in the resolution of the board, and recited upon the face of the bonds.

(3) A bond issued under this section shall contain a statement on its face that neither the bond nor the coupon representing interest on the bond constitutes an indebtedness of this state within the meaning of any constitutional limitations or prohibitions and that neither the authority nor this state is authorized to pay the bond or interest except from the revenues pledged to the bond or interest under this act. In case any official whose signature appears on a bond or coupon ceases to be an officer before the delivery of the bond, his or her signature shall nevertheless be valid and

sufficient for all purposes as though he or she had remained in office until delivery. A bond issued under this section is fully negotiable and has all of the qualities incident to negotiable instruments under the uniform commercial code, subject only to the provisions for registration of the bond that appears in the bond. A bond issued under this section is exempt from all taxation by this state or a political subdivision of this state and shall be sold at public sale after notice at least 5 days before the sale in a publication approved by the department of treasury for the carrying of the notice, but no sale shall be made at a price that will result in an interest cost of more than 6% per annum. However, all or any part of a bond issued under this section may be sold to the United States government or an agency of the United States government, at private sale without public offering and the authority is authorized to enter into any agreements or contracts with the United States government or any of its agencies necessary to provide for the financing of the bridge in the manner contemplated by this act. A bond issued under this section may be authorized and may be issued from time to time as needed and subsequent series or issues of a bond issued under this section have equal or subordinate status with respect to the pledge of revenues from which the bond is payable as provided in the proceedings authorizing its issuance. Any public sale, or negotiated sale of a bond issued under this section with the United States government or any of its agencies, is subject to the approval of the state administrative board. Prior to the preparation of a definitive bond, the board may provide for the issuance of a temporary bond with or without a coupon, exchangeable for a definitive bond upon the issuance of the temporary bond. The proceedings authorizing a bond issued under this section may provide that the bond shall contain a recital that it is issued under this act and the recital is conclusive evidence of its validity and the regularity of its issuance.

(4) This section does not apply to the acquisition, construction, operation, maintenance, improvement, repair, or management of a utility tunnel. As used in this subsection, “utility tunnel” means that term as defined in section 14.

Sec. 14. As used in this section and sections 14a to 14e:

(a) “Corridor authority board” means the board of directors of the Mackinac Straits corridor authority appointed under section 14b.

(b) “Mackinac Straits corridor authority” means the Mackinac Straits corridor authority created in section 14b.

(c) “Straits protection fund” means the fund created in section 14c.

(d) “Tunnel agreement” means an agreement or series of agreements described in section 14d.

(e) “Utility tunnel” means a tunnel joining and connecting the Upper and Lower Peninsulas of this state at the Straits of Mackinac for the purpose of accommodating utility infrastructure, including, but not limited to, pipelines, electric transmission lines, facilities for the transmission of data and telecommunications, all useful and related facilities, equipment, and structures, and all necessary tangible or intangible real and personal property, licenses, franchises, easements, and rights-of-way.

Sec. 14a. (1) The Mackinac bridge authority may acquire, construct, operate, maintain, improve, repair, and manage a utility tunnel. The Mackinac bridge authority shall determine the rates charged for the services offered by the utility tunnel. The Mackinac bridge authority may enter into contracts or agreements necessary to perform its duties and powers under this act, including, but not limited to, leasing the right to use a utility tunnel on terms and for consideration determined by the Mackinac bridge authority. This subsection does not authorize the Mackinac bridge authority to incur obligations that would constitute an indebtedness of this state contrary to the state constitution of 1963.

(2) The Mackinac bridge authority may purchase or otherwise acquire at a fair and reasonable price property and property rights in connection with the construction of a utility tunnel, including, but not limited to, roads, structures, rights-of-way, franchises, easements, and other interests in land, including land under water; the riparian rights of any person; and the right to cut off light, air, and access to real property.

(3) The Mackinac bridge authority may enter on any public land, water, or premises to make a survey, sounding, or examination in connection with the construction of a utility tunnel. The Mackinac bridge authority has the right to use and full easements and rights-of-way through, across, under, and over any lands or property owned by this state or in which this state has any right, title, or interest, without consideration, that may be necessary or convenient to the construction and efficient operation of the utility tunnel.

(4) The Mackinac bridge authority may perform all acts necessary to secure the consent of any department, agency, instrumentality, or officer of the United States government or this state to the construction and operation of a utility tunnel and the charging of fees for its use, and to secure the approval of any department, agency, instrumentality, or officer of the United States government or this state required by law to approve the plans, specifications, and location of the utility tunnel or the fees to be charged for the use of the utility tunnel.

(5) The carrying out of the Mackinac bridge authority’s purposes, including a utility tunnel, are for the benefit of the people of this state and constitute a public purpose, and the Mackinac bridge authority is performing an essential government function in the exercise of the powers conferred upon it by this act. All property owned by the Mackinac bridge authority related to a utility tunnel is exempt from all taxes levied by this state and all of its political subdivisions and taxing districts, and the Mackinac bridge authority is not required to pay taxes or assessments upon its activities or upon any of its revenues. If a tax of any nature is legally imposed on any property or obligation of the Mackinac

bridge authority in connection with a utility tunnel, and that tax is determined to be valid and effective, the tax shall be paid from the revenues of the Mackinac bridge authority as an expense of maintaining and operating the utility tunnel. Real property or personal property owned or used by an entity leasing or otherwise using the utility tunnel is not exempt from taxation.

Sec. 14b. (1) The Mackinac Straits corridor authority is created within the state transportation department. The Mackinac Straits corridor authority is a state institution within the meaning of section 9 of article II of the state constitution of 1963, and an instrumentality of this state exercising public and essential governmental functions. The creation of the Mackinac Straits corridor authority and the carrying out of the Mackinac Straits corridor authority's authorized purposes are public and essential governmental purposes for the benefit of the people of this state and for the improvement of the health, safety, welfare, comfort, and security of the people of this state, and these purposes are public purposes. The Mackinac Straits corridor authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this act.

(2) The Mackinac Straits corridor authority shall exercise its duties through the corridor authority board. The corridor authority board shall consist of 3 members appointed by the governor with the advice and consent of the senate. No more than 2 of the corridor authority board members shall be members of the same political party. Members of the corridor authority board shall serve for terms of 6 years or until a successor is appointed and qualified, whichever is later.

(3) If a vacancy occurs on the corridor authority board, the governor, with the advice and consent of the senate, shall make an appointment for the unexpired term in the same manner as the original appointment.

(4) At the first meeting of the corridor authority board, the corridor authority board shall elect from among its members a chairperson. After the first meeting, the corridor authority board shall meet at the call of the chairperson or if requested by a majority of the members.

(5) A majority of the members of the corridor authority board constitute a quorum for the transaction of business at a meeting of the board. A majority of the members present and serving are required for official action of the corridor authority board.

(6) Members of the corridor authority board shall serve without compensation. However, members of the corridor authority board shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the corridor authority board, unless they decline to accept reimbursement.

(7) The members of the corridor authority board and any agent of the Mackinac Straits corridor authority are subject to 1968 PA 317, MCL 15.321 to 15.330, and 1968 PA 318, MCL 15.301 to 15.310.

(8) An individual who is a member of the Mackinac bridge authority board shall not serve as a member of the corridor authority board during his or her term as a member of the Mackinac bridge authority board.

(9) The business that the corridor authority board may perform shall be conducted at a public meeting of the corridor authority board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(10) A writing prepared, owned, used, in the possession of, or retained by the corridor authority board in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(11) The Mackinac Straits corridor authority does not possess any powers not explicitly granted to it under this act, including, but not limited to, the power of eminent domain.

Sec. 14c. (1) The straits protection fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the straits protection fund. The state treasurer shall direct the investment of the straits protection fund. The state treasurer shall credit to the straits protection fund interest and earnings from fund investments.

(3) Money in the straits protection fund at the close of the fiscal year shall remain in the straits protection fund and shall not lapse to the general fund.

(4) The state transportation department shall be the administrator of the fund for auditing purposes.

Sec. 14d. (1) All liabilities, duties, responsibilities, authorities, and powers related to a utility tunnel as provided in section 14a and any money in the straits protection fund shall transfer to the corridor authority board upon the appointment of the members of the corridor authority board under section 14b(2). The transfer of duties, responsibilities, authorities, powers, and money described in this subsection does not require any action by the Mackinac bridge authority or any other entity. The corridor authority board shall exercise its duties independently of the state transportation department and the Mackinac bridge authority.

(2) The corridor authority board shall provide a report to the Mackinac bridge authority and the director of the state transportation department at least 1 time per year regarding aspects of the utility tunnel that could affect the Mackinac bridge authority, including, but not limited to, the progress of construction and utility leasing.

(3) The operation of a utility tunnel, including, but not limited to, the leasing of space in the utility tunnel to a utility, is not competition with the bridge.

(4) Except as provided in subdivision (a), no later than December 31, 2018, the Mackinac Straits corridor authority shall enter into an agreement or a series of agreements for the construction, maintenance, operation, and decommissioning of a utility tunnel, if the Mackinac Straits corridor authority finds all of the following:

(a) That the governor has supplied a proposed tunnel agreement to the Mackinac Straits corridor authority on or before December 21, 2018. If the governor has not supplied a proposed tunnel agreement to the Mackinac Straits corridor authority on or before December 21, 2018, the Mackinac Straits corridor authority shall act on the proposed tunnel agreement no later than 45 days after the date the proposed agreement is presented.

(b) That the proposed tunnel agreement allows for the use of the utility tunnel by multiple utilities, provides an option to better connect the Upper and Lower Peninsulas of this state, and provides a route to allow utilities to be laid without future disturbance to the bottomlands of the Straits of Mackinac.

(c) That the proposed tunnel agreement requires gathering of geotechnical information before construction to ensure that construction of a utility tunnel is feasible.

(d) That the proposed tunnel agreement provides the Mackinac Straits corridor authority with a mechanism to ensure that a utility tunnel is built to sufficient technical specifications and maintained properly to ensure a long asset life and secondary containment for any leak or pollution from utilities using the tunnel.

(e) That the proposed tunnel agreement does not require any obligation of funds that is inconsistent with this act, and that the proposed tunnel agreement provides a mechanism under which all costs of construction, maintenance, operation, and decommissioning of the utility tunnel are borne by a private party and not by the Mackinac Straits corridor authority, its predecessor, or a successor. This subdivision does not prevent the expenditure of money from the straits protection fund for the cost of independent oversight of the utility tunnel or the leasing of space in the utility tunnel to publicly-owned entities.

(f) That the proposed tunnel agreement does not require the use of the power of eminent domain.

(g) That the proposed tunnel agreement does not exempt any entity that constructs or uses the utility tunnel from the obligation to obtain any required governmental permits or approvals for the construction or use of the utility tunnel.

(h) That the proposed tunnel agreement does not exempt an entity using the utility tunnel from the payment of a tax or similar obligation.

(i) That the proposed tunnel agreement does not require the Mackinac Straits corridor authority to bring or defend a legal claim for which the attorney general is not required to provide counsel.

(j) That the proposed tunnel agreement requires that for any leasing of space for facilities for the transmission of data and telecommunications that the Mackinac bridge authority shall be reimbursed for any and all loss of net profit from the leasing of space for facilities for the transmission of data and telecommunications.

(k) That the proposed tunnel agreement requires the development of a plan on how to engage this state's labor pool in the project, including the means and methods for recruitment, training, and utilization.

(5) If the attorney general declines to represent the Mackinac bridge authority or the Mackinac Straits corridor authority in a matter related to the utility tunnel, the attorney general shall provide for the costs of representation by an attorney licensed to practice in this state chosen by the Mackinac bridge authority or the Mackinac Straits corridor authority, as applicable. As used in this subsection, "matter related to the utility tunnel" includes, but is not limited to, 1 or more of the following:

(a) A claim seeking a judicial determination that the tunnel agreement is legally invalid.

(b) A claim seeking to enjoin performance under the tunnel agreement.

(c) A claim challenging the validity of any governmental approval or permit granted based upon an application submitted singly or jointly by the Mackinac Straits corridor authority.

(d) A claim challenging a governmental entity's denial of a governmental approval or permit submitted singly or jointly by the Mackinac Straits utility tunnel authority.

(e) A claim challenging the right to use any land of this state for which the Mackinac bridge authority or the Mackinac Straits corridor authority was granted the right to use.

(f) A claim alleging a failure to perform under the tunnel agreement that limits 1 of the following:

(i) The use of the utility tunnel.

(ii) The ability to operate the utility infrastructure within the utility tunnel, if the utility is in full compliance with the terms of a lease granted by the Mackinac Straits corridor authority.

(g) A claim challenging the validity of or seeking to enjoin the issuance of any approval regarding the utility tunnel.

(6) Any administrative functions of the Mackinac Straits corridor authority shall be performed under the direction and supervision of the state transportation department.

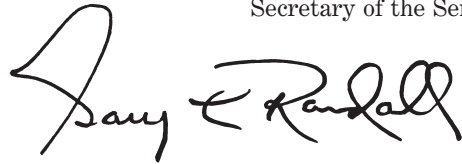
Sec. 14e. (1) Neither the Mackinac bridge authority nor the Mackinac Straits corridor authority may pay or obligate any money or assets related to the utility tunnel except money that is deposited into the straits protection fund or any escrow or reserve fund created under the tunnel agreement. This state, a state official, a state-related entity, the Mackinac bridge authority or an agent of the Mackinac bridge authority, the Mackinac Straits corridor authority or an agent of the Mackinac Straits corridor authority, or any other legal, financial, or other expert providing advice to the Mackinac bridge authority or the Mackinac Straits corridor authority shall not enter into an agreement for the payment of money from any source other than the straits protection fund or any escrow or reserve fund created under the tunnel agreement. This subsection does not restrict the right of the Mackinac bridge authority or the Mackinac Straits corridor authority to utilize any property rights granted to the Mackinac bridge authority or the Mackinac Straits corridor authority by this state or a private property owner.

(2) This state, a state official, a state-related entity, the Mackinac bridge authority or an agent of the Mackinac bridge authority, the Mackinac Straits corridor authority or an agent of the Mackinac Straits corridor authority, or any other legal, financial, or other expert providing advice to the Mackinac bridge authority or the Mackinac Straits corridor authority shall not enter into an agreement to accept any liability for or resulting from the installation, maintenance, operation, or decommissioning of any utility equipment owned by the user of a utility tunnel, including, but not limited to, a pipeline, electrical transmission line, or broadband cable within the utility tunnel.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor