



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 1215 through 1218 (as introduced 11-12-20)
Sponsor: Senator Ken Horn (S.B. 1215 & 1216)
Senator Jeremy Moss (S.B. 1217)
Senator Wayne Schmidt (S.B. 1218)
Committee: Economic and Small Business Development

Date Completed: 12-2-20

CONTENT

Senate Bill 1215 would amend the Home Rule City Act to do the following:

- Allow a city to enter into a public-private agreement for a public bridge facility and require the agreement to include certain terms, including a clause that vested ownership of the public bridge facility with the city or a public entity.
- For the duration of the term of a public-private agreement, require a right-of-way for the bridge facility to be contributed and remain publicly owned and provide for certain tax exemptions.
- Allow a user fee to be imposed on the use of a public bridge facility only if it were imposed for the use of a public bridge facility that was constructed or renovated after the bill's effective date.
- Allow a city to enforce and collect or authorize a concessionaire or another person to enforce and collect the payment of a user fee, late fee, or administrative fee.
- Specify that the bill would not affect or otherwise impair an agreement that a city entered into before the bill's effective date.

Senate Bill 1216 would amend Public Act 156 of 1851, which governs county boards of commissioners, to specify that if a county board of commissioners previously approved the construction of a bridge across a navigable stream in the county, then any reconstruction, renovation, or replacement of that bridge that continued to provide for the passage of vessels or boats in compliance with the original approval would not require any further approval.

Senate Bill 1217 would amend the General Property Tax Act to exempt from the collection of taxes under the Act all real and personal property constituting a public bridge facility that was subject to a public-private agreement.

Senate Bill 1218 would amend Public Act 189 of 1953, which governs the taxation of lessees or users of tax-exempt real property, to exempt a lessee or user of real property from taxation on property that qualified as a public bridge facility that was used by a concessionaire pursuant to a public-private agreement entered into with a city as proposed by Senate Bill 1215.

Senate Bills 1215, 1217, and 1218 are tie-barred.

Senate Bill 1215

Public-Private Agreement; Public Bridge Facility

Generally, the Home Rule City Act governs the incorporation of cities and confers certain powers and duties, including the power to levy taxes and to establish city ordinances, among other things. Under the bill, a city could enter into a public-private agreement for a public bridge facility as described below. The agreement would have to protect the public interest and ensure accountability of the concessionaire to the city.

("Public-private agreement" would mean an agreement between a city and a private entity or between a city, a private entity, and one or more governmental entities that relates to researching, planning, studying, designing, developing, financing, acquiring, constructing, renovating, operating or maintaining, or charging a user fee for, a public bridge facility. "Private entity" would mean an individual, corporation, general, partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or any other nongovernmental business entity. "Governmental entity" would mean an entity created under a State statute and operated for a public purpose.

"Public bridge facility" would mean a new or existing bridge, a roadway or ramp that supports the bridge, and any other equipment, building, structure, parking area, appurtenance, or other real or personal property necessary or desirable for the bridge. A public bridge facility would not include a bridge or infrastructure directly associated with an international bridge crossing.

"Concessionaire" would mean a private entity that has entered into a public-private agreement.)

The bill would allow the city to determine or negotiate the terms and conditions of the public-private agreement to facilitate the research, planning, study, design, development, financing, acquisition, construction, renovation, operation, or maintenance of, or charging a user fee for, a public bridge facility. A public bridge facility would have to be publicly owned and dedicated to public use. ("User fee" would mean a toll, consumption charge, rent, license fee, or another similar or ancillary charge that is related to the use of a public bridge facility. The term would include a fee or charge for creating, maintaining, administering, billing, and collecting an account.)

Public-Private Agreement

Under the bill, a public-private agreement would have to include all of the following:

- The terms of use and operation of the public bridge facility by a concessionaire for a period of time that the city determined was reasonable and necessary for developing and financing the public bridge facility.
- A clause that vested ownership of the public bridge facility with the city or a public entity created by the city under State law, and provided that the title to and ownership of the facility could not be encumbered by a lien, mortgage, or security interest.
- The terms of terminating the agreement.
- If the concessionaire would operate the public bridge facility, a reversion clause that stated that operation of the facility would revert to the city when the agreement was terminated.
- The restrictions imposed on the concessionaire's ability to sell or transfer its interest in the public bridge facility without the consent of the city.

The public-private agreement could provide for any of the following:

- A lease, license, right of entry, or other instrument for the benefit of the concessionaire, as determined by the city to be in the public interest, that could be encumbered by a lien, mortgage, or security interest.
- An initial operating term not to exceed 75 years from the date of completion of construction or commencement of the collection of a user fee, if a user fee were collected, whichever was later.
- The terms for renewing the public-private agreement.
- The charging and collecting of user fees for the use of the public bridge facility, including the charging and collecting of user fees for different classifications of users.
- The use, application, or sharing of all or a portion of collected user fees with the concessionaire.
- A schedule, formula, or mechanism for the adjustment of a user fee.
- An arbitration, mediation, or other alternative dispute resolution clause.

Under the bill, for the duration of the term of an agreement, all the following would apply:

- A right-of-way acquired through condemnation of private acquisition that was used for a public bridge facility would have to be contributed and remain publicly owned.
- Property developed under and subject to the public-private agreement was exempt from all State and local ad valorem and other property taxes that were applicable.
- The concessionaire's interest in property developed under and subject to the public-private agreement would be exempt from taxation under Public Act 189 of 1953 (which provides for the taxation of lessees and users of tax-exempt property).

Fees

The bill would allow a user fee to be imposed on the use of a public bridge facility only if the user fee were imposed for the use of a public bridge facility that was constructed or renovated after the bill's effective date. If a user failed to pay a user fee, a reasonable late fee could be charged to the user. If a user failed to pay a user fee and a separate billing was required for the payment, a reasonable administrative fee could be charged to the user in addition to any late fee.

The bill specifies that a user fee, late fee, or administrative fee charged would not be subject to regulation by any governmental agency. A city could enforce and collect or authorize a concessionaire or another person to enforce and collect the payment of a user fee, late fee, or administrative fee. A user fee could be imposed, charged, and collected by manual, digital, or electronic means, including video, transponder, tag, camera, or any other similar technology.

If a person failed to pay a user fee within 180 days, the city or a person authorized by the city could bring a civil action against the person to collect the user fee. If the civil action resulted in a judgement against the person owing the user fee, the person owing the user fee would have to reimburse the city for all costs of enforcement and collection, including filing and attorney fees.

Previous Agreements

The bill specifies that it would not affect or otherwise impair either a public-private agreement or any other agreement that a city entered into before the bill's effective date or a public-private agreement or any other agreement that the city entered into for the development of a public bridge facility that was outside the scope of the bill.

Senate Bill 1216

Under the bill, notwithstanding Sections 21 and 23 of Public Act 156 of 1851, if a county board of commissioners previously approved the construction of a bridge across a navigable stream in the county in compliance with Section 23, then any reconstruction, renovation, or replacement of that bridge that continued to provide for the passage of vessels or boats in compliance with the original approval would not require any further approval by the county board of commissioners of that county.

(Section 21 of the Act allows a county board of commissioners to permit or prohibit within that county the construction of any bridge over or across any navigable stream. Section 23 requires any person that wishes to construct any bridge across any stream at a point where the stream is navigable for boats or vessels of 15 tons burden or more to apply to the county board of supervisors by petition and to include in the petition the description of the bridge and whether any provision is to be made for the passage of vessels or boats.)

Senate Bill 1217

The bill would amend the General Property Tax Act to specify that all real and personal property constituting a public bridge facility that was subject to a public-private agreement would be exempt from the collection of taxes under the Act. The bill specifies that "public bridge facility" and "public-private agreement" would mean those terms as defined in Section 5k of the Home Rule City Act, which Senate Bill 1215 would add.

Senate Bill 1218

Public Act 189 of 1953 provides that if real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property. The Act exempts certain property from this provision, including property used as a concession at a public airport, park, market, or similar property that is available for use by the general public, among other things.

The bill would exempt from the provision above property that qualified as a public bridge facility that was used by a concessionaire pursuant to a public-private agreement entered into with a city under Section 5k of the Home Rule City Act, which Senate Bill 1215 would add. The bill specifies that "concessionaire", "public bridge facility", and "public-private agreement" would mean those terms as defined in Section 5k of the Home Rule City Act.

Proposed MCL 117.5k (S.B. 1215)
Proposed MCL 46.23a (S.B. 1216)
Proposed MCL 211.7xx (S.B. 1217)
MCL 211.181 (S.B. 1218)

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on the State and local units of government. There would be no loss of property tax revenue for any public bridge facility that is currently owned by a city or a future facility that would be owned by a city, as any property owned by a city and being used for a public purpose already is exempt from property taxes.

Under statute, tax-exempt real property that is leased, loaned, or otherwise made available to and used by a private entity in connection with a business conducted for profit is subject

to taxation as though it were privately owned. Senate Bill 1218 would maintain the exemption for property that was part of a public bridge facility under one of these public-private agreements; however, this would not represent a change in taxation compared to the property being publicly owned and not leased in an agreement.

If the alternative to the public-private agreement were for the bridge facility to be privately owned and operated, local governments would receive less property tax revenue and the State would lose revenue to the School Aid Fund and have higher expenses if it maintained current per-pupil funding.

The bills could have a positive fiscal impact on cities by reducing maintenance and repair costs of bridges, instead allowing those cities to enter into agreements by which the cities could lease operations of bridges to private companies, which then could invest in them and recoup expenses with a long-term agreement that allowed them to charge user fees (e.g., tolls) over several decades. Senate Bill 1215 would not allow for tolls to be imposed on drivers until a bridge under one of the public-private agreements either was renovated or constructed, requiring up-front investment by the private entity before a toll could be imposed. It is not clear from the language of Senate Bill 1215 whether toll revenue, and the responsibility to collect it, would go to the city or the concessionaire.

It is indeterminate for every situation whether a city would see a more positive fiscal impact from maintaining and repairing a given bridge itself and then charging user fees to recoup the cost. This scenario could require a city to issue bonds to pay for the upfront maintenance or repair costs, and that may not be politically or economically feasible in any given case.

Fiscal Analyst: Ryan Bergan
Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.