SUBSTITUTE FOR

SENATE BILL NO. 627

A bill to authorize certain public authorities to develop certain eligible projects and to enter into certain agreements; to impose certain conditions on those agreements; to impose certain powers and duties on certain state and local officials and employees; to authorize the financing of certain eligible projects; and to exempt certain property from certain taxes.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "Michigan alternative project delivery act".

Sec. 3. As used in this act:

(a) "Develop" or "development" means the study, planning, design, acquisition, construction, reconstruction, rehabilitation, improvement, repair, financing, management, operation, or maintenance of an eligible project and any other service related to an eligible project. Develop or development also includes the imposition, charging, assessment, collection, and enforcement of user fees related to an eligible project.

(b) "Eligible project" means 1 or more of the following:

(*i*) A transportation project.

(*ii*) A facility project.

(c) "Facility project" means a building, structure, appurtenance, or other real property necessary or desirable for the delivery of health care or laboratory facilities. Facility project also includes services related to the delivery of health care or laboratory facilities.

(d) "Local unit of government" means 1 or more of the following:

(*i*) A county.

(*ii*) A city.

(*iii*) A township.

(*iv*) A village.

(*v*) A school district.

(*vi*) An intermediate school district.

(*vii*) A community college.

(*viii*) A public university.

(*ix*) An authority of an entity described in this subdivision.

(e) "Private party" means a person that is not the United States, another nation, this state, another state, or a local unit of government, or a political subdivision of the United States, another nation, this state, another state, or a local unit of government.

(f) "Public authority" means this state or a state department, a state agency, or an authority of this state.

(g) "Public-private agreement" means an agreement between a public authority and 1 or more private parties for the development of an eligible project. A public-private agreement may include 1 or more local units of government.

(h) "Transportation project" means any roadway, railway, transit system, building, structure, appurtenance, or other real property used directly or indirectly in the transportation of persons or the transportation or storage of goods, substances, or vehicles. Transportation project also includes services related to the transportation of persons or the transportation or storage of goods, substances, or vehicles.

(i) "User fees" means user fees, consumption charges, rents, license fees, or similar or ancillary charges relating to the use of eligible projects. User fees also include fees and charges for creating, maintaining, and administering an account, including credit card, bank, and similar fees and charges.

(j) "Work product" means any technical or financial concepts that are 1 or more of the following:

(*i*) Included in a bidder's response to a request for qualifications or in a bidder's proposal for the development of an eligible project.

(*ii*) Submitted by a bidder for review by the public authority in accordance with the public authority's request for qualifications or request for proposals for the development of an eligible project.

(*iii*) Raised by a bidder at a meeting with the public authority prior to the due date for proposals, including any alternative technical or financial concepts, ideas, innovation, technology, techniques, methods, processes, unique uses of commercial items, design concepts, solutions, construction means and methods, project execution approach, drawings, reports, plans and specifications, information, and submittals that constitute intellectual property of the bidder for the development of an eligible project.

(*iv*) Raised in any negotiations between the public authority and a bidder prior to award and execution of a public-private agreement.

Sec. 5. (1) A public authority may do 1 or more of the following:

(a) Consider, compare, and implement various methods for procuring and developing eligible projects, including methods that are alternatives to methods traditionally used by the public authority.

(b) Enter into public-private agreements to develop eligible projects.

(c) Enter into any agreements ancillary to public-private agreements, including, but not limited to, 1 or more of the following:

(*i*) Agreements with financial, legal, and other consultants with specialized knowledge to do 1 or more of the following:

(A) Assist in the study, planning, design, structuring, drafting, procurement, evaluation, and negotiation of public-private agreements.

(B) Assist in the administration of public-private agreements and the operation or maintenance of eligible projects.

(*ii*) Agreements between the public authority and 1 or more of the following:

(A) A private party.

(B) A private party's lenders.

(C) Federal, state, and local units of government.

(d) Work together with other public authorities to develop eligible projects through public-private agreements.

(e) Bundle 2 or more eligible projects under 1 public-private agreement.

(f) Procure services, award contracts, administer revenues, appropriate funds of that public authority, and take any other action as may be required in connection with the development of eligible projects through public-private agreements.

(g) Subject to applicable law, exercise the power of eminent domain to acquire property, permanent or temporary easements, rights-of-way, or other rights in property that are necessary to develop an eligible project, regardless of whether the property will be owned in fee simple by the public authority or whether that property will be leased to, licensed to, or operated by a private party in connection with the development of the eligible project through a public-private agreement.

(2) Nothing in this act expands the type of asset or provision of type of services that a public authority is otherwise authorized

to develop under existing laws applicable to that public authority.

(3) A public-private agreement is subject to all of the following, as applicable:

(a) The fair and open competition in governmental construction act, 2011 PA 98, MCL 408.871 to 408.883.

(b) The local government labor regulatory limitation act, 2015 PA 105, MCL 123.1381 to 123.1396.

Sec. 7. (1) Prior to developing an eligible project, a public authority shall consider and compare various methods for the development of an eligible project and identify the proposed delivery method.

(2) Notwithstanding any other provision of state law, the public authority may use any procurement method and process that the public authority determines is appropriate to solicit private parties and award public-private agreements under this act, including, but not limited to, any of the following or combination of the following, at the public authority's discretion:

(a) Calls for project proposals that private parties are invited through a competitive process to submit to develop an eligible project.

(b) Competitive solicitations using 1 or more of requests for qualifications, prequalification or short-listing of qualified proposers, requests for proposals, preproposal meetings with individual short-listed proposers, revised proposals, and final and best offers.

(c) Unsolicited proposals, provided that if the public authority determines that there is sufficient merit to pursue any unsolicited proposal, reasonable opportunity for other persons to submit competing proposals for consideration and possible contract award is provided.

(d) Negotiations with 1 or more bidders prior to award.

(3) For any procurement in which the public authority issues a request for qualifications, request for proposals, or similar solicitation document, the request shall generally set forth the factors that the public authority will evaluate when reviewing the submittals. The public authority may, in its discretion, determine which factors it will consider and the relative weight of those factors in the evaluation process to obtain the best value for the public authority. Evaluation methodologies for selection may include best value, low bid or proposal, lowest responsible or adjusted bid or proposal, qualifications-based selection, lowest public contribution, most expansive project, or any combination of the foregoing or any other evaluation methodology for selection that the public authority determines appropriate for the eligible project.

(4) The public authority may pay stipends or payments for work product on terms and conditions and in the amounts as determined in the public authority's discretion in the following circumstances, or in other circumstances that the public authority determines to be appropriate in its discretion:

(a) To short-listed or prequalified bidders if the public authority cancels the procurement prior to the due date for proposals in the request for proposals.

(b) To bidders that submit a proposal provided that the public authority determines that the proposal is responsive to the public authority's request for proposals or similar solicitation document and meets all requirements established by the public authority for the eligible project.

(5) In exchange for a stipend or payment for work product, the public authority may require the bidder to grant to the public authority the right to use some or all of the work product contained in the proposal.

(6) The public authority may identify in a request for qualifications, request for proposals, or similar solicitation document a process whereby bidders may request and receive authorization to deviate from technical and financial specifications, subject to demonstrating to the public authority that the deviations provide the same or greater quality, utility, function, and value.

(7) Notwithstanding any other provision of law, the public authority may do 1 or more of the following:

(a) Provide exclusive protest remedies in its requests for qualifications, requests for proposals, or similar solicitation documents.

(b) Limit the rights of private parties responding to solicitation documents to protest matters arising in connection with the procurement.

(c) Require that private parties responding to solicitation documents expressly waive all other rights and remedies that may be available under applicable law.

(8) Except as expressly provided otherwise in this subsection,

a writing prepared, owned, used, in the possession of, or retained by the public authority in the performance of an official function shall be a public record and shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Documents and other analysis used in the decision-making process and preparation of the procurement documents and proposals shall not be subject to release or disclosure by the public authority until final award and execution of the public-private agreement and the conclusion of any protest or other challenge to the award or the lapse of the protest period without challenge, absent an administrative or judicial order requiring such release or disclosure. However, if the public authority decides not to pursue or complete an eligible project, then documents and other analysis used in the decision-making process or in the preparation of the procurement documents or proposals not otherwise exempt from disclosure shall be a public record and shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(9) The characterization by the private party of information as being confidential trade secrets or commercial or financial information exempt from disclosure is not binding upon the public authority if the information is not afforded that protection under this act or state law.

Sec. 9. (1) Any lawful source of public or private funding and financing, or combination of these, may be utilized for the development of an eligible project under this act.

(2) A public-private agreement may require the private party

to arrange for all or a portion of the financing required for the eligible project. A public authority may also elect in its discretion to contribute funds or financing required for the eligible project in lieu of or in combination with funding or financing arranged by the private party. A public authority may elect in its discretion to participate with the private party in any gains realized through revenue sharing, cost-saving sharing agreements, or the refinancing of the eligible project, as determined by the public authority in its discretion.

(3) A public authority may accept from the United States, any state, or a local unit of government or any political subdivision of the United States, any state, or a local unit of government funds or credit assistance as is available to it for carrying out the purposes of this act, whether the funds are made available by grant, loan, guaranty, line of credit, or other financing arrangement. A public authority may enter into these arrangements and other agreements with the United States, any state, or a local unit of government or any political subdivision of the United States, any state, or a local unit of government, as may be necessary, proper, and convenient for carrying out the purposes of this act. A public authority may seek allocation for, issue, and provide for the issuance of private activity bonds under applicable federal, state, or local programs, including as described in 26 USC 141. A public authority may apply for or facilitate the application for or secure financing from any source and make funds available to 1 or more private parties either directly or through other public authorities.

(4) A public authority may accept from any source any grant, donation, gift, or other form of conveyance of land, money, other real or personal property, or other valuable thing made to the public authority for carrying out the purposes of this act.

(5) A public authority may impose and collect user fees, increase the user fees, and use lawful measures to enforce the user fees or authorize another person to impose, collect, increase, and enforce the user fees to the same extent as available to the public authority. Subject to the public-private agreement, the use, application, and sharing of collected user fees shall be determined by the public authority. User fees may be imposed, charged, and collected by manual, digital, or electronic means, including by video, transponder, tag, camera, and any other suitable technology or means. A public-private agreement may also include a schedule, formula, or mechanism for the adjustment of user fees during the term of the public-private agreement.

(6) Bonds, notes, and other obligations may be issued under applicable law for the purposes of providing funding for an eligible project. Revenues, including user fees, generated or received pursuant to a public-private agreement may be directed to a segregated account and pledged for the repayment of bonds, notes, or other obligations without appropriation. Bonds, notes, or other obligations supported by revenue received from or payments made pursuant to a public-private agreement shall not be considered a debt of this state. Any financing may be structured on a senior, parity, or subordinate basis with any other financing or funding.

Sec. 11. (1) A public-private agreement may include 1 or more of the following provisions:

(a) Provisions addressing the allocation and management of project risks, including, but not limited to, design, construction, geotechnical, delay, permitting, governmental approvals, change of law, utility adjustments, change in utility costs, operations and maintenance, force majeure, insurance availability and costs, inflation, and financing risks.

(b) Provisions addressing payments on terms determined by the public authority, including, but not limited to, milestone payments, progress payments, availability or service fee payments, and other compensation.

(c) Provisions requiring that the private party or 1 or more of its contractors provide proposal, performance, or payment security. Performance or payment security if required may be in the amounts determined by the public authority and in the form of bonds, guarantees, letters of credit, committed equity, or any other type of financial instrument, or any combination of these, each as determined by the public authority.

(d) Provisions requiring that the private party lease or lease back or otherwise be granted licenses, rights of entry, or rights to operate the eligible project through the term of the public-private agreement.

(e) Provisions requiring that either the public authority or the private party provide the utilities required during the development of the eligible project, including the right and authority to adjust, relocate, or protect-in-place existing utilities.

(f) Provisions allowing or requiring the use of arbitration or other alternative dispute resolution procedures to resolve disputes between the parties to a public-private agreement. The alternative dispute resolution procedures may include, but are not limited to, binding or nonbinding process, arbitration or mediation, the establishment of a board to hear disputes, or resort to the courts.

(g) Provisions establishing criteria for determining substantial completion, final acceptance, occupancy, or service readiness of the eligible project and any applicable commissioning of the eligible project.

(h) Provisions addressing the public authority's requirements for programming, operations, use, and change in use of the eligible project and flexibility to expand, rehabilitate, or reconstruct the eligible project.

(i) Provisions addressing, as applicable, the operations, maintenance, and facilities management services, including maintenance and renewal, to be provided by the private party, the public authority, or third parties.

(j) Provisions addressing responsibility for maintenance and rehabilitation in order for an eligible project to meet the standards determined by the public authority, in its discretion, at the end of the term of the public-private agreement.

(k) Provisions specifying events of default and remedies available to the private party, the public authority, and third parties.

(*l*) Provisions setting forth the technical standards and specifications with which the private party must comply.

(m) Provisions that provide requirements for insurance with the coverages and deductibles as determined by the public authority to be appropriate in its discretion.

(n) Provisions regarding the maintenance and auditing of the private party's books and records.

(2) A public-private agreement shall not be entered into for an initial period exceeding 50 years from final acceptance or occupancy or service readiness of the eligible project, as applicable.

Sec. 13. The authority granted under this act supplements and is independent of any existing authority and does not limit, replace, or detract from existing authority.

Sec. 15. Property developed under and subject to a public-private agreement shall be exempt from any and all state and local ad valorem and other property taxes that otherwise might be applicable.

Sec. 16. (1) A public authority may impose user fees as provided in section 9(5).

(2) User fees shall be administered, collected, and enforced as provided by law.

(3) In addition to other rights and remedies available to a public authority or a private entity under a public-private agreement, a person who fails to pay a user fee imposed for use of a transportation project authorized by a public-private agreement is liable for, and shall pay, 3 times the amount of the user fee. In addition to other rights and remedies available to a public authority or a private entity under a public-private agreement, if

the required sum remains unpaid for 180 days, the public authority or another person authorized to do so by the public authority may bring a civil action against the person to collect the unpaid sum in a court having jurisdiction. If the civil action results in a judgment against the defendant, the defendant shall also be required to reimburse the plaintiff for all costs of enforcement and collection, including filing and legal fees.

(4) During the period that a person owes and has failed to pay user fees for a transportation project under subsection (3), the person and a motor vehicle owned or leased by the person may be barred from using the transportation project.

(5) Except as provided in section 675b of the Michigan vehicle code, 1949 PA 300, MCL 257.675b, involving leased vehicles, proof that a particular vehicle used a transportation project without payment of an applicable user fee, together with proof from the department of state of the name of the vehicle's registered owner, creates a presumption that the vehicle's registered owner was the person who used the transportation project, who failed to pay the user fee, and who is prima facie responsible for the unpaid user fees. If the conditions of section 675b of the Michigan vehicle code, 1949 PA 300, MCL 257.675b, are satisfied, the lessee or renter of a motor vehicle and not the leased vehicle owner is the person liable under this section, for which purposes the person that gives notice of unpaid user fees to the vehicle's registered owner shall be given the notice that would otherwise be given to the clerk of the court or parking violations bureau under section 675b of the Michigan vehicle code, 1949 PA 300, MCL 257.675b.

Sec. 17. Nothing contained in this act shall limit or modify the rights and powers of law enforcement officers to enforce traffic violations and other laws upon any eligible project developed under this act or the subject of a public-private agreement.