

**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:

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

3 Sec. 3. As used in this act:

4 (a) "Develop" or "development" means the study, planning,
5 design, acquisition, construction, reconstruction, rehabilitation,
6 improvement, repair, financing, management, operation, or

1 maintenance of an eligible project and any other service related to
2 an eligible project. Develop or development also includes the
3 imposition, charging, assessment, collection, and enforcement of
4 user fees related to an eligible project.

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

6 (i) A transportation project.

7 (ii) A facility project.

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

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

15 (i) A county.

16 (ii) A city.

17 (iii) A township.

18 (iv) A village.

19 (v) A school district.

20 (vi) An intermediate school district.

21 (vii) A community college.

22 (viii) A public university.

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

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

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1 government.

2 (f) "Public authority" means this state<<, a state department, or
3 a state agency. >>

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

8 (h) "Transportation project" means any roadway, railway,
9 transit system, building, structure, appurtenance, or other real
10 property used directly or indirectly in the transportation of
11 persons or the transportation or storage of goods, substances, or
12 vehicles. Transportation project also includes services related to
13 the transportation of persons or the transportation or storage of
14 goods, substances, or vehicles. A transportation project does not
15 include a bridge or other infrastructure directly associated with
16 an international border crossing.

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

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

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

27 (ii) Submitted by a bidder for review by the public authority

1 in accordance with the public authority's request for
2 qualifications or request for proposals for the development of an
3 eligible project.

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

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

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

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

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

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

27 (i) Agreements with financial, legal, and other consultants

1 with specialized knowledge to do 1 or more of the following:

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

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

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

9 (A) A private party.

10 (B) A private party's lenders.

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

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

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

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

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

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1 (2) Nothing in this act expands the type of asset or provision
2 of type of services that a public authority is otherwise authorized
3 to develop under existing laws applicable to that public authority.

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

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

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

<<(4) A public authority shall hold a public hearing not less than
every 5 years after the completion of an eligible project to conduct a
public review of the eligible project.>>

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

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

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

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

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

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

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

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

26 (a) To short-listed or prequalified bidders if the public
27 authority cancels the procurement prior to the due date for

1 proposals in the request for proposals.

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

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

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

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

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

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

26 (c) Require that private parties responding to solicitation
27 documents expressly waive all other rights and remedies that may be

1 available under applicable law.

2 (8) Except as expressly provided otherwise in this subsection,
3 a writing prepared, owned, used, in the possession of, or retained
4 by the public authority in the performance of an official function
5 shall be a public record and shall be made available to the public
6 in compliance with the freedom of information act, 1976 PA 442, MCL
7 15.231 to 15.246. Documents and other analysis used in the
8 decision-making process and preparation of the procurement
9 documents and proposals shall not be subject to release or
10 disclosure by the public authority until final award and execution
11 of the public-private agreement and the conclusion of any protest
12 or other challenge to the award or the lapse of the protest period
13 without challenge, absent an administrative or judicial order
14 requiring such release or disclosure. However, if the public
15 authority decides not to pursue or complete an eligible project,
16 then documents and other analysis used in the decision-making
17 process or in the preparation of the procurement documents or
18 proposals not otherwise exempt from disclosure shall be a public
19 record and shall be made available to the public in compliance with
20 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

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

26 (10) When developing a facility project under a public-private
27 agreement, the public authority shall consult with the state budget

1 director regarding the future fiscal impact on the affected state
2 department, state agency, or authority of this state.

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

6 (2) A public-private agreement may require the private party
7 to arrange for all or a portion of the financing required for the
8 eligible project. A public authority may also elect in its
9 discretion to contribute funds or financing required for the
10 eligible project in lieu of or in combination with funding or
11 financing arranged by the private party. A public authority may
12 elect in its discretion to participate with the private party in
13 any gains realized through revenue sharing, cost-saving sharing
14 agreements, or the refinancing of the eligible project, as
15 determined by the public authority in its discretion.

16 (3) A public authority may accept from the United States, any
17 state, or a local unit of government or any political subdivision
18 of the United States, any state, or a local unit of government
19 funds or credit assistance as is available to it for carrying out
20 the purposes of this act, whether the funds are made available by
21 grant, loan, guaranty, line of credit, or other financing
22 arrangement. A public authority may enter into these arrangements
23 and other agreements with the United States, any state, or a local
24 unit of government or any political subdivision of the United
25 States, any state, or a local unit of government, as may be
26 necessary, proper, and convenient for carrying out the purposes of
27 this act. A public authority may seek allocation for, issue, and

1 provide for the issuance of private activity bonds under applicable
2 federal, state, or local programs, including as described in 26 USC
3 141. A public authority may apply for or facilitate the application
4 for or secure financing from any source and make funds available to
5 1 or more private parties either directly or through other public
6 authorities.

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

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

23 (6) Bonds, notes, and other obligations may be issued under
24 applicable law for the purposes of providing funding for an
25 eligible project. Revenues, including user fees, generated or
26 received pursuant to a public-private agreement may be directed to
27 a segregated account and pledged for the repayment of bonds, notes,

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1 or other obligations without appropriation. Bonds, notes, or other
2 obligations supported by revenue received from or payments made
3 pursuant to a public-private agreement shall not be considered a
4 debt of this state. Any financing may be structured on a senior,
5 parity, or subordinate basis with any other financing or funding.

<<(7) Notwithstanding any other provision of this act, if any
property of a public authority is leased, at the conclusion of the lease
the property remains property of the public authority.>>

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

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

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

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

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

1 private agreement.

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

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

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

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

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

25 (j) Provisions addressing responsibility for maintenance and
26 rehabilitation in order for an eligible project to meet the
27 standards determined by the public authority, in its discretion, at

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1 the end of the term of the public-private agreement.

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

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

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

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

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

<<(3) A public-private agreement may not prohibit a public
authority from constructing, repairing, reconstructing, or expanding a
facility that competes for user fees with the eligible facility developed
under the public-private agreement.>>

16 Sec. 13. (1) The authority granted under this act supplements
17 and is independent of any existing authority and does not limit,
18 replace, or detract from existing authority.

19 (2) This act does not affect or impair a public-private
20 agreement or other agreement entered into before the effective date
21 of this act.

22 (3) Nothing in this act shall be construed to prevent a public
23 authority or a local unit of government from using other legal
24 authority to enter into public-private agreements or other
25 agreements for either of the following:

26 (a) For the development of eligible projects described under
27 this act.

1 (b) For the development of projects outside the scope of this
2 act.

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

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

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

11 (3) In addition to other rights and remedies available to a
12 public authority or a private entity under a public-private
13 agreement, a person who fails to pay a user fee imposed for use of
14 a transportation project authorized by a public-private agreement
15 is liable for, and shall pay, 3 times the amount of the user fee.
16 In addition to other rights and remedies available to a public
17 authority or a private entity under a public-private agreement, if
18 the required sum remains unpaid for 180 days, the public authority
19 or another person authorized to do so by the public authority may
20 bring a civil action against the person to collect the unpaid sum
21 in a court having jurisdiction. If the civil action results in a
22 judgment against the defendant, the defendant shall also be
23 required to reimburse the plaintiff for all costs of enforcement
24 and collection, including filing and legal fees.

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

1 barred from using the transportation project.

2 (5) Except as provided in section 675b of the Michigan vehicle
3 code, 1949 PA 300, MCL 257.675b, involving leased vehicles, proof
4 that a particular vehicle used a transportation project without
5 payment of an applicable user fee, together with proof from the
6 department of state of the name of the vehicle's registered owner,
7 creates a presumption that the vehicle's registered owner was the
8 person who used the transportation project, who failed to pay the
9 user fee, and who is prima facie responsible for the unpaid user
10 fees. If the conditions of section 675b of the Michigan vehicle
11 code, 1949 PA 300, MCL 257.675b, are satisfied, the lessee or
12 renter of a motor vehicle and not the leased vehicle owner is the
13 person liable under this section, for which purposes the person
14 that gives notice of unpaid user fees to the vehicle's registered
15 owner shall be given the notice that would otherwise be given to
16 the clerk of the court or parking violations bureau under section
17 675b of the Michigan vehicle code, 1949 PA 300, MCL 257.675b.

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