

MACKINAC BRIDGE AMENDMENTS

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House Bills 5333 and 5334

Sponsor: Rep. Kevin Elsenheimer

House Bills 5339-5340

Sponsor: Rep. Tom Casperson

Committee: Transportation

Complete to 11-7-05

A SUMMARY OF HOUSE BILLS 5333 AND 5334 AS INTRODUCED 10-19-05 AND HOUSE BILLS 5339 AND 5340 AS INTRODUCED 10-20-05

Each of the bills would amend a different act concerning the Mackinac Bridge Authority.

House Bill 5333 would amend Section 14 of Public Act 214 of 1952, which defines the authority of the Mackinac Bridge Authority. The section currently grants to the Mackinac Bridge Authority discretion to employ such legal and financial services that it deems necessary. The bill would insert the word “sole” to the sentence to indicate that the Mackinac Bridge Authority would have “sole discretion.” The bill would add the following additional language concerning the authority of the Mackinac Bridge Authority: *“The authority may also, in its sole discretion, contract with any agency, including, but not limited to, the state transportation department for any business and strategic planning, finances, investments, risk management, insurance, inspections, bridge maintenance, bridge repair, bridge inspection, bridge operation, bridge management, bridge improvement, bridge control, budgeting, procurement, and related management functions that the authority deems necessary to assure continued operation of the bridge.”*

House Bill 5334 would repeal Section 9 from Public Act 13 of 1966. Public Act 13 of 1966 provides for the issuance by the state of full faith and credit bonds to refund bonds originally issued by the Mackinac Bridge Authority to finance construction of the bridge. Section 9 provided for the transfer of the operation of the Mackinac Bridge to the state highway department, and the transfer of all property held by the Mackinac Bridge Authority to the department, upon issuance of the refunding bonds. We do not believe refunding bonds were ever issued, and as a result, the statute is effectively moot.

House Bill 5339 would amend Section 2 of Public Act 21 of 1950 (Extra Session), the Mackinac Bridge Authority’s original authorizing legislation. Current law provides for a seven member Mackinac Bridge Authority with the seventh member designated as the state “highway commissioner.” The bill would amend this reference to indicate that the seventh member is the “director of the state transportation department or his or her designee.” Current law directs the State Treasurer to elect one member to serve as treasurer of the Mackinac Bridge Authority, but also provides for the State Treasurer to

handle all funds. The bill would authorize the treasurer of the Mackinac Bridge Authority, not the state Treasurer, to handle all funds, and would authorize the Mackinac Bridge Authority to “determine the manner in which funds are invested.” This bill is tied-barred to House Bill 5333,

House Bill 5340 would repeal Section 357 Public Act 380 of 1965, the Executive Reorganization Act of 1965, which transferred the Mackinac Bridge Authority by Type I transfer to the Michigan Department of Transportation. The bill would add a new section to the act, Section 359, to establish the Mackinac Bridge Authority as an “autonomous agency” within the department. The term “autonomous agency” is not defined with Public Act 380 of 1965.

BACKGROUND INFORMATION:

Background & History of the Mackinac Bridge

The Mackinac Bridge is a remarkable engineering achievement, a tourist attraction, and a symbol of the entire state of Michigan – as well as a major transportation link between Michigan’s upper and lower peninsulas. Over 4.7 million vehicles crossed the bridge in the 2001-02 fiscal year. At approximately 5 miles in length, the bridge is the third-longest suspension bridge in the world.

Interest in spanning the Straits of Mackinac with a bridge began in the late 1800s and continued throughout the first half of the 20th Century.¹ During that time, several feasibility and engineering studies were conducted. But real progress on actual construction of the bridge began in 1950 when the legislature enacted 1950 (Ex Sess) PA 21 to create the Mackinac Bridge Authority.

The Mackinac Bridge Authority was authorized to conduct all preliminary investigations deemed necessary or advisable and was charged with reporting to the legislature on both the physical and financial feasibility of the bridge project. A subsequent statute, 1952 PA 214, authorized the Mackinac Bridge Authority to “*construct... operate, maintain, improve, and repair*” a bridge linking the upper and lower peninsulas of Michigan. The Mackinac Bridge Authority continues in existence today under the authority of the two statutes noted above. See Appendix 1 for a summary of statutes affecting the Mackinac Bridge.

Act 214 authorized the Mackinac Bridge Authority to issue revenue bonds for the purpose of paying the cost of the bridge project. In 1953, \$99.8 million in Mackinac Bridge Authority bonds were issued and construction of the bridge initiated. The bridge was open to traffic on November 1, 1957.

The bonds issued were revenue bonds – secured by the toll revenue to be collected after the completion of the bridge. The bonds were not general obligations of the State of

¹ A more detailed description of the history of the bridge as well as bridge specifications and traffic crossing data can be found on the Mackinac Bridge Authority’s web site <http://www.mackinacbridge.org>

Michigan. No federal funds were used in the construction of the bridge and although the bridge connects I-75 in Mackinaw City with I-75 in St Ignace, the bridge is not part of the Interstate Highway System.

Authority for Tolls and Toll History

As noted above, the Mackinac Bridge Authority was created in law by 1950 (Ex Sess) PA 21 (MCL 254.301 et. seq.) and was given authority to build the bridge through 1952 PA 214 (MCL 254.311 et. seq.). Section 7 of Act 214 authorizes the Authority to set the rates of tolls for the bridge. At the time the bridge was open to traffic, the toll for an automobile crossing was set at \$3.25 with higher tolls for cars pulling trailers and for trucks. These tolls were increased twice in 1961 – first to \$3.50, and then to \$3.75. The \$3.75 rate was in effect from May 1, 1961 through December 31, 1968. The toll was decreased to \$1.50 per car effective January 1, 1969. That rate continued in effect through May 1, 2003. On December 19, 2002, the Mackinac Bridge Authority voted to increase the tolls effective May 1, 2003. Effective May 1, 2003, the toll for cars became \$2.50 per crossing.²

Toll revenue generated over \$10.5 million in FY 2001-02. Toll revenue has been fairly consistent – approximately \$10.0 million per year since 1996. The Mackinac Bridge Authority estimates that the May 1, 2003 toll structure will increase toll revenue by \$6.0 million per year – to approximately \$16.5 million per year. Toll revenue is credited to the operating fund of the Mackinac Bridge Authority.

Use of the bridge tolls is restricted by statute. Section 7 of Act 214 indicates that the toll rates are to be set to provide sufficient funds to *"pay all expenses of operating, repairing, and maintaining the bridge"* and to *"make possible the prompt payment of principal and interest on all bonds herein authorized..."* However, this section only authorizes the collection of bridge tolls *"until such time as principal and interest on the bonds herein authorized are paid in full"*. Once the bonds – and *"all advances made therefore"* - have been paid, this section requires that *"the bridge shall be maintained and operated by the state as a free bridge."*

Section 2 of Act 214 also provides that *"the corporate existence of the authority shall continue until all of its liabilities have been met and the bonds, including refunding bonds, have been paid in full or otherwise discharged..."* The section goes on to state that *"when all such liabilities and bonds have been discharged in full, all rights and properties of the authority shall pass to and be vested in the state."*

Although Mackinac Bridge bonds were retired on July 1, 1986, advances provided to the Mackinac Bridge Authority under the authority of both Act 214 and 1967 (Ex Sess) PA 5

² In all cases cited above, the toll structure included higher fares for cars with trailers and for various configurations of trucks. A breakdown of these various rates has not been included in this publication.. A history of bridge tolls is included in the Mackinac Bridge Authority's information Bulletin dated November 2002 available at http://www.michigan.gov/documents/Informational_bulletin_50313_7.pdf

are still outstanding. As a result, the Mackinac Bridge Authority has continued in existence and has continued to charge tolls since 1986.

Bridge Repair Needs

For at least the next 20 years the Mackinac Bridge will have major capital repair needs. The bridge is, after all, almost 50 years old. The Mackinac Bridge Authority is currently in the early years of a multi-year painting program estimated to cost \$73.0 million. Other planned preservation and improvement projects are anticipated to cost over \$30.0 million during the next ten years. The Authority anticipates that sometime between 2015 and 2018 it will have to begin the replacement and retrofit of the bridge deck. That project is estimated to cost approximately \$189.6 million - almost twice the bridge's original construction cost of \$99.8 million.

In 2002, the Mackinac Bridge Authority concluded that the bridge toll structure then in effect would not be sufficient to fund these capital projects.³ As mentioned earlier, on December 19, 2002 the Mackinac Bridge Authority voted to increase the tolls effective May 1, 2003. For cars and light (four-tire) trucks the toll would increase from \$1.50 per crossing to \$2.50 – a 67% increase.

Mackinac Bridge Task Force

In 1986, the year Mackinac Bridge bonds were retired, Governor Blanchard issued Executive Order 1986-14 which provided for the creation of a task force to, among other things, make recommendations regarding the bridge fare structure and allocation of toll revenues. The task force report recommended that the revenue from bridge tolls continue to be utilized for the operation and maintenance of the bridge. The task force also recommended that the Mackinac Bridge Authority remain in existence “*and continue to operate and maintain the bridge in the future.*”

Governance of the Mackinac Bridge

As noted in the above discussion of House Bill 5340, Section 357 of the Executive Reorganization Act of 1965, Public Act 380 of 1965 (MCL 16.457), transferred the Mackinac Bridge Authority by a Type I transfer to the Michigan Department of Transportation. The act defined a type I transfer as follows:

“A type I transfer means the transferring intact of an existing department, board, commission or agency to a principal department established by this act. When any board, commission, or other agency is transferred to a principal department under a type I transfer, that board, commission or agency shall be administered under the supervision of that principal department. Any board, commission or other agency granted a type I

³ The Authority estimated average operating costs of \$6.5 million per year through 2013, and capital infrastructure costs of \$9.0 million per year through the same period. The total estimated annual costs of \$15.5 million would exceed projected annual toll revenue of \$10.5 million (under existing toll rates) by \$5.0 million per year.

transfer shall exercise its prescribed statutory powers, duties and functions of rule-making, licensing and registration including the prescription of rules, rates, regulations and standards, and adjudication independently of the head of the department. Under a type I transfer all budgeting, procurement and related management functions of any transferred board, agency or commission shall be performed under the direction and supervision of the head of the principal department."

Attorney General Opinion Nos. 4468 (May 24, 1966) and 4653 (July 10, 1969) discussed the respective powers and duties of the Mackinac Bridge Authority and the department after the Executive Reorganization Act transfer. The Attorney General concluded that the Mackinac Bridge Authority had lost its plenary, (i.e. independent and absolute) status as a result of the transfer, but stated that the operation of the bridge was still to a great degree within the independent authority of the Mackinac Bridge Authority. The Attorney General indicated that while the Authority was responsible for the operation of the bridge, the department was responsible for maintenance of the bridge.

In her July 29, 2004 report to the State Transportation Commission, the Director of the Michigan Department of Transportation indicated that the department had "direct oversight [responsibility] over the bridge in partnership with the Mackinac Bridge Authority." She indicated that the authority of the Mackinac Bridge Authority was limited to three activities: setting tolls; approving uses of the bridge (such as the bridge walk); and establishing rules and regulations governing use of the bridge.

On September 19, 2005, the Director of the Michigan Department of Transportation signed an "Internal Organization Agreement for Allocation and Reallocation of Duties and Functions of the Michigan Department of Transportation and Mackinac Bridge Authority." The document was signed on September 20, 2005 by the Governor and the Chairman of the Mackinac Bridge Authority.

Statutes Affecting the Mackinac Bridge

1950 (Ex Sess) PA 21 (MCL 254.301 et. seq) created the Mackinac Bridge Authority.

1952 PA 214 (MCL 254.311 et. seq.) authorized the Mackinac Bridge Authority to construct the bridge. It was later amended by 1953 PA 141 to provide up to \$417,000 per year from STF until bridge bonds are retired.

1965 PA 380, The Executive Reorganization Act of 1965 (MCL 16.457 transferred a number of boards and authorities into the departmental organization established under the Constitution of 1963. Section 357 transferred the Mackinac Bridge Authority by Type I transfer to the Michigan Department of Transportation.

1967 (Ex Sess) PA 5 amended the Motor Fuel Tax Act (1927 PA 150) to provide annually \$3.5 million (effectively from MTF) until the bridge bonds are retired. These provisions were subsequently recodified in the Motor Fuel Tax Act, 2000 PA 403 (MCL 207.1161 – 207-1164)

FISCAL IMPACT:

The bills would have no apparent fiscal impact.

Fiscal Analyst: William E. Hamilton

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.