



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



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bills 829 and 830 (as enrolled)
House Bills 5333 and 5339 (as enrolled)
Sponsor: Senator Allen (S.B. 829 & 830)
Representative Kevin Elsenheimer (H.B. 5333)
Representative Tom Casperson (H.B. 5339)
Senate Committee: Transportation
House Committee: Transportation

PUBLIC ACTS 329 & 330 of 2005
PUBLIC ACTS 331 & 332 of 2005

Date Completed: 2-15-06

RATIONALE

The Mackinac Bridge Authority (MBA) was established by statute in 1950 to study the feasibility of building a bridge across the Straits of Mackinac. Based on the findings and recommendations of the MBA, in 1952 the Legislature authorized the MBA to construct, maintain, operate, manage, and control the bridge. The MBA oversaw the construction of the bridge and issued bonds to fund the construction. Since the bridge's completion, the MBA has managed the operation and maintenance of the bridge. Its responsibilities include determining appropriate toll rates, collecting tolls, and managing those funds to pay for operation and maintenance. The 1950 statute creating the MBA did not house it in a particular department, and the Authority historically has had a separate budget and autonomy in its management of the bridge.

In 1965, the MBA was transferred to the Michigan Department of Transportation (MDOT) by a type I transfer under the Executive Organization Act (Public Act 380 of 1965, which established the principal State departments and transferred various entities to them). A type I transfer transfers an existing board, commission, department, or agency intact to a principal department. The transferred entity is to exercise its prescribed powers and duties independently of the head of the department, but all budgeting, procurement, and related management decisions of the transferred entity are to be performed under the direction of the department head. Thus, the

transfer allowed the MBA to maintain control over the operation of the Mackinac Bridge as an independent entity within MDOT. Nevertheless, there recently was some confusion over the extent of the MBA's autonomy and the degree of control the MDOT Director has over the bridge.

In August 2005, the MDOT Director, as part of a broader effort to reduce expenses, indicated that MDOT would assume responsibility for bridge inspections, security, and insurance, functions that traditionally had been handled by the MBA. The Department estimated that its proposed changes could save about \$200,000 a year, and reportedly had looked at other ways that MDOT could cut costs in the MBA's operations. Members of the MBA and others resisted these changes. In September, the Governor, the MDOT Director, and the chairperson of the MBA reached an agreement that allows the MBA to retain its traditional responsibilities for the operation of the bridge, and specifies that the MDOT Director will defer to the judgment of the MBA on all matters related to the traditional functions of the Authority.

Some believed that this agreement should be codified in order to avoid any future confusion over the respective roles and responsibilities of the MBA and MDOT regarding the Mackinac Bridge.

CONTENT

The bills amended various statutes concerning the Mackinac Bridge Authority to do the following:

- Repeal a section transferring the operation of the Mackinac Bridge to the State Highway Department upon the repayment of refunding bonds issued by the MBA.**
- Remove a reference to the transfer of the MBA to MDOT as a type I transfer.**
- Authorize the MBA to perform its prescribed statutory functions independently of the MDOT Director.**
- Specify that individuals employed to provide services to the MBA are employees of MDOT but must report to the executive secretary of the MBA.**
- Require the MDOT Director to serve as the appointing authority for the MBA's executive secretary.**
- Eliminate a provision allowing the Governor to remove an MBA board member.**
- Prohibit MBA funds from being commingled with any other money, and require the requisition of the MBA chairperson or another authorized officer or agent for expenditures.**
- Require MDOT to provide the MBA with personnel to perform its powers, duties, and functions.**
- Authorize the board to use the services of MDOT or other State departments, or contract for various services.**
- Repeal provisions related to preliminary investigations into the feasibility of constructing the bridge, and authorizing the MBA to employ engineering services in connection with the bridge's acquisition and construction.**

The four bills took effect on December 28, 2005, and were tie-barred together.

Senate Bill 829

The bill repealed Section 9 of Public Act 13 of 1966. That Act authorizes the State to borrow money and issue bonds for the purpose of refunding the outstanding bonds issued by the MBA.

Section 9 required the operation of the Mackinac Bridge to be transferred to the State Highway Department (now MDOT) when the proceeds from the sale of the refunding bonds had been received, and all amounts required to retire the outstanding bonds had been paid to the paying agent out of the proceeds from the sale of the bonds and out of any Mackinac Bridge Authority money on hand. Upon transfer, all property held by the MBA would have become the property of the Department.

Senate Bill 830

The Executive Organization Act transferred the MBA by a type I transfer to MDOT. The bill removed the reference to a type I transfer.

The bill requires the Authority to exercise its prescribed statutory powers, duties, and functions independently of the MDOT Director. The Authority must perform its budgeting, procurement, and related management functions consistently with the requirements of generally applicable State law in consultation with the MDOT Director.

Under the bill, individuals employed by MDOT to provide services to the MBA are MDOT employees and members of State classified service, but must report to the executive secretary of the Authority.

House Bill 5333

The bill repealed Sections 3 and 14 of Public Act 214 of 1952 (which authorized the MBA to acquire a bridge connecting the Upper and Lower Peninsulas of Michigan). Section 3 empowered the MBA to make all preliminary investigations deemed necessary or advisable. It also appropriated to the MBA \$1 to pay the cost of the Authority's organization and other incident preliminary costs, as well as the planning of the bridge and the issuance of bonds.

Section 14 authorized the MBA to employ engineering services it deemed necessary and advisable in connection with the acquisition and construction of the bridge. It also authorized the MBA to employ legal and financial services it deemed necessary to consummate the financing of the bridge and the issuance and sale of the bonds, as well as other personnel and employees

necessary to operate and maintain the bridge and carry on the powers and duties under the Act. (House Bill 5339 enacted a similar provision, described below.)

House Bill 5339

The Mackinac Bridge Authority law provides for the creation of the MBA as a nonsalaried entity, a public benefit corporation, and an agency and instrumentality of the State. The bill refers to the Authority as created within MDOT.

Under the law, the MBA consists of seven members, six of whom are to be appointed by the Governor for terms of six years each, with the advice and consent of the Senate. Previously, the seventh member was the State Highway Commissioner. The bill instead designates the MDOT Director or his or her designee from within MDOT as the seventh member of the Authority, and requires him or her to provide the MBA board with input and expertise relating to the State's transportation system.

The bill eliminated a provision that allowed the Governor to remove any MBA board member for misfeasance, malfeasance, or nonfeasance in office, but only for cause and pursuant to public hearing held after 10 days' notice published in a newspaper with general circulation in the State.

The law requires the board to make all necessary and appropriate rules and regulations for the orderly carrying on of its affairs. Previously, those actions were subject to the approval of the State Administrative Board. The bill deleted that provision.

The law authorized the board to employ and to determine the compensation of such engineers and construction experts, inspectors, and other personnel as it considered advisable. The bill deleted this language. The bill requires MDOT to provide the MBA with sufficient personnel to perform its powers, duties, and functions under law. Subject to the Management and Budget Act and Public Act 2 of 1921 (which governs the State Administrative Board), the bill authorizes the board to use the services of MDOT or other State departments, or to contract for risk management, insurance, engineering, inspection, and other services related to the operation, maintenance,

repair, and improvement of the Mackinac Bridge. The bill authorizes the Authority, in its sole discretion, to employ legal and financial services that it deems necessary to consummate the financing of the bridge and the issuance and sale of bonds.

The bill deleted a requirement that the board select a secretary.

Under the bill, the MDOT Director must serve as the appointing authority for the executive secretary of the MBA, who must become an MDOT employee and a member of the State classified service. The bill specifies that a candidate for the position of executive secretary need not be an employee of MDOT or the State classified service before selection. The executive secretary may be selected by the MDOT Director only after consultation with and the approval of the MBA in accordance with rules applicable to employees in the State classified service. On all matters relating to the powers, duties, and functions of the MBA under the law, the executive secretary must report to the board. Personnel reviews of the executive secretary must be conducted jointly by MDOT and the board or its designee.

The bill prohibits Authority funds from being commingled with any other money. The funds must be deposited in a separate bank account, and interest or other earnings accrued must be deposited in the same account. Money in the account or accounts may be paid out by the State Treasurer only on requisition of the MBA chairperson or by another officer or agent of the Authority that is authorized by the board.

The bill deleted a provision stating that the Authority's corporate existence will continue until all of its duties under the law have been completed.

The bill repealed Sections 3 and 4 of the MBA law (Public Act 21 of 1950). Under Section 3, no board member could receive compensation for his or her services, but members were entitled to reimbursement for all expenses necessarily incurred in the performance of their duties. The bill reenacted this provision in another section.

Section 3 also authorized the MBA to make all preliminary investigations deemed necessary or advisable, and directed the

State Administrative Board to release to the MBA out of the State Highway Fund up to \$100,000 for the accomplishment of the purposes set forth in the law.

Section 4 required the MBA to employ three consulting engineers who had to determine whether a bridge safely and feasibly could be constructed across the Straits of Mackinac and the probable cost of the bridge. Section 4 also required the MBA to furnish geologists and other necessary technicians.

MCL 254.369 (S.B. 829)
16.457 (S.B. 830)
254.313 & 254.324 (H.B. 5333)
254.302 (H.B. 5339)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The MBA historically has been the steward of the Mackinac Bridge, as an independent entity charged with making the best decisions for the bridge. The Authority board is bipartisan, with no more than three of the six appointed members from one political party, and traditionally has acted as a shield from political and budgetary pressures. For 50 years the bridge has been operated under this system, and the MBA has performed its functions well during that time. The bills reinforce the MBA's status as a separate entity within MDOT and clarify the relationship between MDOT and the MBA to avoid any future confusion.

Supporting Argument

Although the original bonds financing the bridge were repaid in 1986, the Mackinac Bridge Task Force commissioned by then-Governor Blanchard recommended that the MBA retain control over the operation of the bridge. Among its responsibilities, the MBA is charged with maintaining the bridge. The deck of the bridge will likely need to be replaced in 2017, at an estimated cost of \$180 million. The MBA needs to preserve the funds in its budget set aside for projects such as this, and prevent that money from being diverted into other programs. For this reason alone, it is important that the MBA remain autonomous. The bills ensure that autonomy within the Department.

Opposing Argument

The formal agreement between the Governor, the MDOT Director, and the MBA chairperson had already resolved the issue and clarified the role of the MBA. It was not necessary to put the agreement into law.

Response: Codifying the agreement provides assurance to Michigan's citizens that the bridge will remain under the MBA's control. Without a statute to back up the agreement, similar disputes could have arisen in future administrations over the role of the MBA. Enacting these provisions gives the agreement the full force of law, making it more permanent and preventing future misunderstandings.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bills will have no fiscal impact on State or local government. As a historical note, Mackinac Bridge bonds issued by the State were repaid in 1986.

Fiscal Analyst: Craig Thiel

A0506\s829ea

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.