

HOUSE BILL No. 6753

November 25, 2008, Introduced by Rep. Gonzales and referred to the Committee on Transportation.

A bill to provide for transportation facilities and authorizing agreements between the department of transportation and governmental entities to create transportation authorities and authorizing public-private agreements relating to researching, planning, studying, designing, developing, financing, acquiring, constructing, tolling, operating, or maintaining a transportation facility, or any combination of those activities, or to other arrangements for the creation and operation of transportation facilities that may be financed by tolls, charges, and other revenue that may be available, including the sale of revenue bonds, or from any other available funding source, and for the department or an authority to exercise powers and immunities in furtherance of those purposes.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "public-private transportation facility act".

3 Sec. 2. (1) "Authority" means an authority created by the
4 department under this act or an intergovernmental entity created by
5 the department and at least 1 other unit, agency, or
6 instrumentality of government in Michigan, another state, or
7 Canada, to provide for or govern a transportation facility.

8 (2) "Commission" means the state transportation commission.

9 (3) "Department" means the Michigan department of
10 transportation.

11 (4) "Instrumentality of government" means a legal entity
12 created or empowered by a unit of government to carry out functions
13 that are commonly carried out by units of government.

14 (5) "Operator" means a private entity that has entered into a
15 public-private agreement under this act.

16 (6) "Private entity" means any natural person, corporation,
17 general partnership, limited liability company, limited
18 partnership, joint venture, business trust, public benefit
19 corporation, nonprofit entity, or other business entity.

20 (7) "Public agency" means the department or an authority.

21 (8) "Public-private agreement" means an agreement between a
22 private entity and a public agency that relates to researching,
23 planning, studying, designing, developing, financing, acquiring,
24 constructing, tolling, operating, or maintaining a transportation
25 facility, or any combination of those activities.

26 (9) "Transportation facility" means any new or existing

1 highway, road, bridge, tunnel, overpass, ramp, interchange, ferry,
2 airport, vehicle parking facility, port facility, locks facility,
3 rail facility, intermodal or other public transit facility,
4 international or interstate border crossing, or any other
5 equipment, rolling stock, site, or facility used in the
6 transportation of persons, goods, substances, information, or
7 matter of any kind, and any building, structure, parking area,
8 appurtenance, or other property necessary or desirable for such
9 facility.

10 (10) "Utility" means a privately, publicly, or cooperatively
11 owned line, pipeline, facility, or system for producing,
12 transmitting, or distributing communications, cable television,
13 power, electricity, light, heat, gas, oil, crude products, water,
14 steam, waste, storm water not connected with highway drainage, or
15 any other similar facility or system, including a fire or police
16 signal system or street lighting system, which directly or
17 indirectly serves the public.

18 Sec. 3. (1) A public agency may enter into an agreement with a
19 private entity, a unit, agency, or instrumentality of government in
20 Michigan, another state, or Canada, or an authority, to provide for
21 researching, planning, studying, designing, developing, financing,
22 acquiring, constructing, tolling, governing, operating, or
23 maintaining a transportation facility or any combination of those
24 activities. The agreement shall include terms designed to protect
25 the public interest and ensure accountability.

26 (2) This act does not authorize a public agency to enter into
27 an agreement to construct a new international bridge between Wayne

1 county, Michigan and Windsor, Ontario. A new international bridge
2 between Wayne county, Michigan and Windsor, Ontario is not a
3 transportation facility under this act.

4 (3) With approval of the state transportation commission, the
5 department may create an authority to exercise the powers and
6 immunities provided by this act for an authority except as limited
7 by the department in the terms of its creation. An authority
8 created by the department is a public benefit agency and
9 instrumentality of the state with all the powers of a public
10 corporation for the purposes of contracting, researching, planning,
11 studying, designing, developing, financing, acquiring,
12 constructing, tolling, governing, operating, or maintaining a
13 transportation facility or any combination of those activities. The
14 terms of creation shall be filed with the secretary of state and
15 remain subject to modification by the department with approval of
16 the state transportation commission.

17 (4) An agreement under subsection (1) may provide for the
18 creation of an authority. Under such terms as may be specified, the
19 agreement may limit or confer powers on the authority as could have
20 been exercised by the authority under this act, or by the
21 department under this act or any other law in regard to a
22 transportation facility. An authority is a governmental entity
23 cloaked with the same immunity from tort liability as the
24 department.

25 (5) The department or other unit, agency, or instrumentality
26 of government may be relieved of any liability for the acts or
27 omissions of an authority, operator, or other party to an agreement

1 under this act, by so providing in the terms of creation or the
2 terms of the agreement.

3 (6) Insofar as permitted by an agreement under subsection (1),
4 an authority may enter into a public-private agreement or an
5 agreement with a unit, agency, or instrumentality of government in
6 Michigan or Canada to provide for researching, planning, studying,
7 designing, developing, financing, acquiring, constructing, tolling,
8 governing, operating, or maintaining a transportation facility or
9 any combination of those activities.

10 (7) Except as limited by the terms of its creation or an
11 agreement under subsection (1), a public agency may do 1 or more of
12 the following:

13 (a) Adopt bylaws for the regulation of its affairs and the
14 conduct of its business.

15 (b) Sue and be sued in its own name.

16 (c) Fix and revise from time to time and charge and collect
17 tolls and other charges for the use of a transportation facility.

18 (d) Research, plan, study, develop, acquire, design,
19 construct, operate, maintain, regulate, and control use of a
20 transportation facility.

21 (e) Acquire, including by the exercise of eminent domain,
22 hold, lease, secure, and grant possessory rights and interests, and
23 dispose of real and personal property in the exercise of its powers
24 and the performance of its duties under this act.

25 (f) Make and enter into all contracts and agreements necessary
26 or incidental to the performance of its duties and the execution of
27 its powers under this act.

1 (g) Employ personnel and contract for services necessary or
2 incidental to the performance of its duties and the execution of
3 its powers under this act.

4 (h) In accordance with the terms of a public-private
5 agreement, oversee the activities of a private entity that is
6 carrying out the terms of a public-private agreement.

7 (i) Reimburse members of the authority for actual expenses
8 necessarily incurred in the performance of official duties.

9 (j) Do all acts and things necessary or convenient to carry
10 out the powers expressly granted in this act.

11 (8) An operator may be authorized to control the use of a
12 transportation facility and to set reasonable tolls and charges for
13 its use under terms and conditions designed to protect the public
14 interest. Use and operation of a transportation facility may be
15 provided by agreement with an operator for a period determined
16 necessary for the economic viability of the arrangement, not to
17 exceed 50 years, provided that ownership of the transportation
18 facility within Michigan shall rest in a public agency, or a local
19 unit, agency, or instrumentality of government, and that title
20 shall not be encumbered. No provision of a public-private agreement
21 shall allow the public to be deprived of the use and benefit of the
22 transportation facility except as necessary to implement tolls or
23 other charges, and to regulate the level or character of
24 permissible uses. Subject to those restrictions and the terms of
25 this act, a public-private agreement may contain terms and
26 conditions that the public agency may determine or negotiate to
27 facilitate the researching, planning, studying, designing,

1 developing, financing, acquiring, constructing, tolling, governing,
2 operating, or maintaining of a transportation facility in the
3 public interest.

4 (9) The construction and operation of a transportation
5 facility authorized by this act shall be in conformity with the
6 state laws that would apply to a state owned transportation
7 facility constructed or operated under direct contract with the
8 department.

9 Sec. 4. (1) A public agency may solicit proposals or receive
10 unsolicited proposals for a public-private agreement and may charge
11 and use fees to offset the administrative cost of receiving and
12 evaluating proposals. Prior to receiving a submission, a public
13 agency may agree to reimburse a private entity for designated costs
14 incurred in the preparation and presentation of a proposal in
15 return for the right to use any work product contained in the
16 proposal, including the technologies, methods, processes, and
17 information contained in the material submitted in connection with
18 the proposal. The department has the sole discretion whether, and
19 to what extent, to consider an unsolicited proposal. Before
20 entering into an agreement for a transportation facility proposed
21 by an unsolicited proposal, the department shall solicit competing
22 proposals and award any contract using the criteria in subsection
23 (4).

24 (2) In soliciting or selecting a private entity with which to
25 enter into a public-private agreement, a public agency may utilize
26 1 or more of the following procurement approaches:

27 (a) Sealed bidding.

1 (b) Selection of proposals, with or without negotiations,
2 based on qualifications, development proposals, technical
3 proposals, financial proposals, best value, or any combination of
4 them.

5 (c) Any competitive selection process that the public agency
6 determines to be appropriate or reasonable.

7 (3) The public agency shall select a private entity or
8 entities for a public-private agreement on a competitive basis to
9 the maximum extent practicable.

10 (4) A public agency may consider 1 or more of the following
11 factors in evaluating and selecting a bid or proposal to enter into
12 a public-private agreement:

13 (a) The ability of the transportation facility to improve
14 safety or operations, reduce congestion, increase capacity, promote
15 economic growth, or any combination of those factors.

16 (b) The proposed cost of and financial plan for the
17 transportation facility.

18 (c) The general reputation, qualifications, industry
19 experience, and financial capacity of the private entity.

20 (d) The proposed design, operation, and feasibility of the
21 transportation facility.

22 (e) Comments from affected citizens and jurisdictions.

23 (f) Benefits to the public.

24 (g) The safety record of the private entity.

25 (h) Any other criteria that the public agency considers
26 appropriate.

27 (5) A public agency may select multiple private entities with

1 which to enter into public-private agreements for a transportation
2 facility if it is determined to be in the public interest to do so.

3 (6) A public agency may promise to keep trade secrets or
4 commercial or financial information provided by a private entity
5 confidential for purposes of seeking or entering into a public-
6 private agreement. Upon receipt of a sufficiently detailed request
7 by a private entity, the public agency shall provide a description
8 of the information to which its promise of confidentiality will
9 extend. Information submitted under such a promise of

10 confidentiality shall not be subject to disclosure under the
11 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

12 Submission of a solicited or unsolicited proposal constitutes
13 consent for a public agency to use the information and ideas
14 provided by a private entity for a transportation facility or for
15 purposes of seeking or entering into a public-private agreement,
16 including to solicit competing proposals unless the public agency
17 agrees otherwise in a writing executed by the public agency before
18 the submission.

19 (7) No action shall lie against a public agency for its use of
20 ideas and information provided by a private entity for purposes of
21 seeking or entering into a public-private agreement.

22 Sec. 5. (1) Whether it is used by a public agency or a private
23 entity under a public-private agreement, a transportation facility,
24 including tangible personal property used exclusively with a
25 transportation facility, that is owned by a public agency, is
26 exempt from all ad valorem property taxes and all assessments
27 levied against property by the state or any political subdivision

1 of the state. To the extent that the revenue generated from a
2 transportation facility may permit, if the public agency determines
3 that a transportation facility will impose on the neighboring
4 community extraordinary burdens, disproportionate to the burdens
5 generally imposed by such transportation facilities, it may agree
6 to make payments to 1 or more local units of government in
7 recognition of those burdens. In calculating any such payments, the
8 public agency shall offset the benefits that the transportation
9 facility may provide for the community.

10 (2) Subject to approval from the commission and compliance
11 with all federal laws, the department has exclusive authority to
12 determine where and whether to establish a transportation facility
13 and the scope and nature of the facility. The department,
14 authority, or a private entity acting under a public-private
15 agreement may establish tolls and other charges for the use of a
16 transportation facility, and those tolls and charges are not
17 subject to regulation by any local unit of government or other
18 state agency. Compensation paid to the public agency in connection
19 with a public-private agreement and tolls and charges imposed for
20 use of a transportation facility shall be dedicated exclusively to
21 the costs of researching, planning, studying, designing,
22 developing, financing, acquiring, constructing, tolling, governing,
23 operating, or maintaining the facility, or other transportation
24 facilities, including the repayment of bonds sold for those
25 purposes. As provided by the terms of a public-private agreement, a
26 portion of that revenue may be allotted to the private entity.

27 (3) A public agency may permit the conduct of commercial

1 activities at a transportation facility if the activities are
2 related to the transportation purposes of the facility and to the
3 extent not restricted by federal or Canadian law, if applicable.

4 (4) A public agency or a private entity under a public-private
5 agreement may enter into contracts and leases to provide for the
6 development and use of a portion of a transportation facility at an
7 international border crossing in the United States or Canada for
8 customs brokering or for the sale of articles for export and
9 consumption outside the United States or Canada, respectively, to
10 the extent that this use is not restricted by federal or Canadian
11 law, if applicable.

12 (5) The expenses of an authority may be funded by revenue
13 attributable to a transportation facility for which it has
14 responsibility, with all remaining revenue paid to the units,
15 agencies, or instrumentalities of government from which the
16 authority originated. Revenue attributable to a transportation
17 facility that is payable to the department shall be deposited in
18 the state trunk line fund, comprehensive transportation fund, or
19 aeronautics fund, as indicated by the nature of the transportation
20 facility. Funding of an authority may also be provided from other
21 available sources.

22 Sec. 6. (1) A public agency may issue and sell bonds or notes
23 for the purpose of providing funds to carry out the provisions of
24 this act with respect to the development, acquisition,
25 construction, financing, maintenance, or operation of a
26 transportation facility or the refunding of any bonds or notes,
27 together with any costs associated with the transaction.

1 (2) Any bond or note issued under subsection (1) does not
2 constitute a pledge of the faith and credit or indebtedness of the
3 state or any political subdivision of the state within the meaning
4 or application of any constitutional provision or limitation. A
5 bond or note issued under subsection (1) is payable solely as to
6 both principal and interest from revenues generated from use of the
7 transportation facility, the proceeds of bonds or notes sold to
8 finance the refunding of such outstanding bonds, if any, or
9 investment earnings on the proceeds of such bonds or notes.

10 (3) For the purpose of financing a transportation facility, a
11 public agency and operator may apply for, obtain, issue, and use
12 private activity bonds or other financial instruments available
13 under any state or federal law or program. The bonds or instruments
14 shall not pledge the faith and credit of the state or any political
15 subdivision of the state and shall not be a debt of the state or
16 any political subdivision of the state.

17 (4) This section does not limit a local government's or public
18 agency's authority to issue bonds or other financial instruments
19 for transportation projects under other laws or from financing a
20 transportation facility with funds provided or raised under other
21 laws, including by the sale of bonds.

22 (5) The public agency may retain such services and enter into
23 such contracts as may be necessary or useful for the issuance and
24 sale of bonds, notes, or other financial instruments under this
25 section.

26 Sec. 7. (1) A public agency may accept from the United States
27 or any of its agencies funds that are available to the public

1 agency for carrying out this act, whether the funds are made
2 available by grant, loan, line of credit, loan guarantee, or other
3 financial assistance.

4 (2) The public agency may assent to any federal requirements,
5 conditions, or terms of any federal funding accepted under this
6 section other than a pledge of the faith and credit of the state or
7 any political subdivision of the state.

8 (3) The public agency may enter into agreements or other
9 arrangements with the United States or any of its agencies as may
10 be necessary for carrying out the purposes of this act.

11 (4) A public agency may accept from any source, and use for
12 the purposes of this act, any grant, donation, gift, or other form
13 of conveyance of land, money, other real or personal property, or
14 other item of value.

15 (5) A transportation facility may be financed in whole or in
16 part by contribution of any funds or property made by any private
17 entity or unit of government including the department.

18 (6) A public agency may combine federal, state, local, and
19 private funds to finance a transportation facility under this act.

20 Sec. 8. (1) All law enforcement officers of the state and
21 local units of government in which all or part of a transportation
22 facility is located shall have the same powers and jurisdiction
23 within the limits of the transportation facility as they have in
24 their respective areas of jurisdiction to enforce traffic and motor
25 vehicle laws.

26 (2) Punishment for violations of traffic and motor vehicle
27 laws shall be as generally prescribed by law.

1 Sec. 9. (1) A person who fails to pay a toll imposed for use
2 of a transportation facility is liable for, and shall pay, 3 times
3 the amount of the toll, to account for the costs of administration
4 and collection. In addition, if that sum remains unpaid for 180
5 days after the person's use of the transportation facility, the
6 public agency or a private entity authorized to do so by a public
7 agency may bring a civil action against the person to collect the
8 unpaid charges in a court having jurisdiction. If the civil action
9 results in a judgment for unpaid charges, the defendant shall also
10 be required to reimburse the plaintiff for all filing fees incurred
11 by the plaintiff plus \$500.00 in compensation for the costs of
12 bringing the civil action.

13 (2) A person who fails to pay a toll imposed for use of a
14 transportation facility more than 3 times in a 12-month period
15 shall be liable to the plaintiff for 2 times the charges, fees, and
16 costs imposed under subsection (1) for each such additional failure
17 to pay the toll within a 12-month period.

18 (3) During the period that a person owes and has failed to pay
19 charges, fees, and costs under subsection (1) or (2), the person
20 and a motor vehicle used by the person may be barred from using the
21 transportation facility.

22 (4) Except as provided in section 675b of the Michigan vehicle
23 code, 1949 PA 300, MCL 257.675b, involving leased vehicles, proof
24 that a particular vehicle used a transportation facility without
25 payment of the applicable toll, together with proof from the
26 secretary of state of the name of the vehicle's registered owner,
27 creates a presumption that the vehicle's registered owner was the

1 person who used the transportation facility, who failed to pay the
2 toll, and who is prima facie responsible for the unpaid charges. If
3 the conditions of section 675b of the Michigan vehicle code, 1949
4 PA 300, MCL 257.675b, are satisfied, the lessee or renter of a
5 motor vehicle and not the leased vehicle owner is the person liable
6 under this section, for which purposes the entity that gives notice
7 of unpaid charges to the vehicle's registered owner shall be given
8 the notice that would otherwise be given to the clerk of the court
9 or parking violations bureau under section 675b of the Michigan
10 vehicle code, 1949 PA 300, MCL 257.675b.

11 (5) The owner of a vehicle alleged to have used a
12 transportation facility without paying the applicable toll may
13 assert as an affirmative defense that the vehicle in question, at
14 the time of the use of the transportation facility, was in the
15 possession of a person whom the owner had not knowingly permitted
16 to operate the vehicle.

17 Sec. 10. A public agency or operator under this act and any
18 utility whose facility is to be crossed or relocated shall
19 cooperate fully in planning and arranging the manner of the
20 crossing or relocation of the utilities. If utilities are
21 relocated, the utility shall relocate them without undue delay, so
22 as not to interfere with the schedule for a transportation
23 facility. The utility is liable to a public agency for costs
24 incurred because of undue delay by the utility in relocating its
25 utilities. The costs to relocate utilities from public property
26 shall be borne by the utility. The costs to relocate utilities from
27 private property shall be borne by the public agency or operator.

1 Sec. 11. The powers conferred by this act are in addition to
2 the powers that the department or a unit or instrumentality of
3 government may otherwise exercise. The powers and immunities
4 provided in this act shall control in the event of a conflict with
5 any other law.