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Senate Bills 410 and 411 (as introduced 6-7-11)

Sponsor: Senator Randy Richardville Committee: Economic Development

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CONTENT

<u>Senate Bill 410</u> would create the "New International Trade Crossing Act" to do all of the following:

- Create the Michigan Governmental Authority for a New International Trade Crossing within the Michigan Department of Transportation (MDOT).
- -- Require the Authority to ensure that the expenditure of any Canadian contribution in Michigan maximized the amount of Federal aid to MDOT.
- -- Allow the Authority to enter into a governance agreement concerning an international bridge project, which would include a joint venture between the Authority and a public agency of Canada.
- -- Allow the Authority or MDOT to receive funds from a Canadian contribution.
- Prohibit a governance agreement from imposing any obligation to repay a Canadian contribution from revenue other than project revenue and project contributions.
- Allow the Authority to enter into a public-private agreement concerning an international crossing and project activity related to it.
- -- Allow the Authority to select a concessionaire for a project, using a competitive selection process.
- -- Require a public-private agreement to provide for an initial term of the use and operation of the crossing or project activity by a concessionaire for up to 50 years.
- -- Specify that, unless explicitly authorized by the Act, a governance

- agreement or a public-private agreement could not require the State to spend any State or local funds and the State could not do so.
- -- Allow MDOT to spend State and Federal funds for administrative costs of eminent domain proceedings, specified costs related to a bridge project, and certain highway maintenance and repair costs.
- -- Allow the Authority to issue bonds whose principal and interest would be payable solely from project revenue and project contributions.
- -- Provide that the bonds would not constitute a general or moral obligation of the State.
- -- Exempt from State and local taxes the activities and property of the Authority and of a separate legal or administrative entity it created.
- -- Provide for legislative oversight of the Authority and its activities.
- -- Provide for enforcement of ar international crossing's user fees.
- -- Require the Legislative Council to report to the Governor and Legislature on the implementation and status of the Act by September 30, 2011, and appropriate \$10,000 to the Legislative Council for that report.

The bill would sunset the Act on January 1, 2015, if the Authority had not entered into a governance agreement by December 31, 2014, unless the failure to do so was beyond the Authority's control.

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Senate Bill 411 would amend the Michigan Transportation Fund law to include an authority created under the proposed New International Trade Crossing Act in the definition of "eligible governmental agency". (Under the Michigan Transportation Fund law, eligible governmental agencies are authorized to receive distributions from the Fund.)

Senate Bill 411 is tie-barred to Senate Bill 410.

A more detailed description of <u>Senate Bill</u> 410 follows.

Defined Terms

The bill would define "Canadian contribution" as a gift, contribution, payment, advance, grant, availability payment, or other money received for or in aid of a project form a public agency of Canada pursuant to a governance agreement. "Project contribution" would mean a gift, contribution, payment, advance, grant, or other money received in aid of a project from the Federal government.

"Governance agreement" would mean an interlocal agreement under the Urban Cooperation Act that includes the Authority and a public agency of Canada as parties.

"Crossing" would mean a public international bridge and bridge approaches, including all related structures, plazas, facilities, improvements, extensions, interchanges, property, and property interests, between Ontario, Canada, and Michigan that is at least partially located in a city that, as of the date of the first commencement of the project activity, has a population of at least 600,000 according to the most recent decennial census. (Detroit is the only Michigan city of that size.)

"Project" would mean all activities associated with a crossing, including project land activities and project activities. "Project land activity" would mean the acquisition of all land, rights-of-way, property, rights, easements, and interests for a crossing. "Project activity" would mean the research, planning, procurement, financing, construction, design, improvement for, and repair, maintenance, and operation of, a crossing.

"Project revenue" would mean user fees or other charges generated by the use of a crossing and any other revenue generated from the use of or by the crossing or associated with a project, including any revenue arising from a public-private agreement. "Qualified revenue" would mean project revenue, a Canadian contribution, or a project contribution.

"Public-private agreement" would mean any of the following relating to the research, planning, procurement, design, financing, construction, and improvement for, and repair, maintenance, and operation of, a project:

- -- An agreement between a private entity or entities and the Authority.
- An agreement between a private entity or entities and a public agency of Canada.
- An agreement between a private entity or entities and a separate legal or administrative entity created under a governance agreement.
- -- An agreement with a private entity or entities and a public agency or agencies as parties involving a joint exercise of power by the Authority and a public body of Canada authorized by a governance agreement.

Authority

Michigan The bill would create the Governmental Authority for New International Trade Crossing as a public corporate body within MDOT. Except as otherwise provided, the Authority would exercise its functions independently of the MDOT Director. Budgeting, procurement, and related management functions would be performed under the Director, but this would apply to a separate legal administrative entity created bν а governance agreement. Subject to available appropriations, if requested Authority, MDOT would have to provide staff and other support sufficient to enable the Authority to carry out its functions.

The Authority would have to ensure that the expenditure of any Canadian contribution in Michigan maximized the amount of Federal aid to MDOT. If maximizing Federal aid to MDOT would cause the total cost of those portions in Michigan that were to be funded by the Canadian contribution under a

governance agreement to exceed the Canadian contribution amount specified in that agreement for those portions, the portion or portions that would generate the least total Federal aid to MDOT would be exempt from this requirement.

The bill specifies the powers that the Authority could exercise, including the power to do the following:

- -- Determine location, design standards, and construction materials of a crossing.
- -- Research, plan, procure, design, finance, construct, operate, improve, and repair a project.
- -- Fix, revise as necessary, charge, enforce, and collect user fees and other charges for the use of a crossing (or contract with a private entity to do so).
- Purchase, otherwise acquire, receive, accept, lease, hold, and dispose of real and personal property, but not through eminent domain.
- -- Issue and refinance bonds, as authorized under the proposed Act.
- -- Employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and other employees and agents and fix their compensation, subject to Civil Service Commission rules and regulations.
- Develop and use any property owned or controlled by the Authority for certain purposes related to the international crossing.
- -- Enter into a governance agreement, as provided in the Act.
- Do anything necessary and proper, consistent with the Act, to carry out the purposes of and the powers explicitly granted by the Act.

After setting aside sufficient funds for its authorized expenses, the Authority would have to deposit into the State Trunkline Fund any remaining funds distributed to the Authority from project revenue.

The Authority's powers and duties would be vested in a board of directors made up of five members appointed by the Governor with the advice and consent of the Senate to staggered four-year terms. One member would have to be appointed from a list of at least three names nominated by the Senate Majority Leader, and another from a list of at least three names nominated by the Speaker of the House. Board members

would serve without compensation but could be reimbursed for necessary travel and expenses, subject to available funding. The board would be subject to the Open Meetings Act and, except as otherwise provided, would have to comply with the Freedom of Information Act.

Until the appointment and qualification of the initial board, the powers and duties vested in the board could be exercised by the State Administrative Board.

Governance Agreement

The Authority could enter into a governance agreement concerning an international bridge project. The governance agreement create а separate legal administrative entity under the Urban Cooperation Act, including a joint venture between the Authority and a public agency of Canada that would be a public body corporate or public body politic and would not be a public body of Michigan's executive Authority activities could be branch. exercised jointly with a public agency of Canada pursuant to a governance agreement, including through a separate legal or administrative agency. governance agreement could not authorize the Authority or any entity created by the agreement to levy a tax or to take property using the power of eminent domain.

accordance with а governance agreement, the Authority or MDOT could receive funds from a Canadian contribution. An agreement relating to a Canadian contribution could not impose any obligation on MDOT, the Authority, the State, or a political subdivision of the State to repay the Canadian contribution from revenue other than project revenue and project contributions.

A governance agreement could provide for repayment of all or any part of any Canadian contribution, but only if repayment were required to be paid, repaid, or returned exclusively from project revenue or project contributions.

The bill describes provisions that a governance agreement would have to contain, including the following:

- -- An equitable schedule for reimbursement of Canadian contributions, if repayment were required as described above.
- Provisions necessary to satisfy the requirement for the Authority to ensure that the expenditure of Canadian contributions maximized Federal aid to MDOT.
- -- A requirement that any project comply with the National Environmental Policy Act or other requirements of the Federal Highway Administration.

Public-Private Agreement; Concessionaire

The Authority could enter into a public-private agreement concerning a crossing and project activity. A public-private agreement would have to include terms designed to protect the public interest and assure accountability of a concessionaire to the Authority and a public agency of Canada. (A concessionaire would be a private entity that was a party to a public-private agreement.)

A public-private agreement would have to provide for an initial term of the use and operation of the crossing or project activity by a concessionaire for a period the Authority determined was necessary for the development and financing of the project and the economic feasibility of the public-private agreement. The initial term could not exceed 50 years from the date the crossing opened and began collecting user fees and other charges. After the initial term, the Authority could renew a public-private agreement or execute a new agreement for a period of up to 50 years.

The bill describes other provisions that a public-provide agreement would have to contain, including the following:

- -- That ownership of a crossing within Michigan would be vested in the Authority.
- -- The right of the Authority to share in any refinancing gains benefiting the concessionaire under the public-private agreement.
- A requirement that the concessionaire cooperate with the Authority and any other appropriate public agencies on matters concerning the crossing's security or disaster recovery.

-- A requirement that a concessionaire appear and testify at a legislative hearing without a subpoena.

The State, MDOT, the Authority, a separate legal or administrative entity created under a governance agreement, and any political subdivision of the State would not be liable for a concessionaire's acts or omissions.

The Authority could solicit proposals for the selection of a concessionaire for a project, using a competitive selection process. Costs associated with the selection could only be paid from qualified revenue.

The bill specifies factors that the Authority would have to consider in evaluating and selecting a bid or proposal to enter into a public-private agreement including, to the extent permitted by Federal law, the proposed plan of the private entity to hire legal U.S. residents and citizens for work relating to the project in Michigan.

The Authority could select multiple concessionaires for a project if the Authority determined that doing so was in the public interest.

At the request of a private entity, the Authority could acknowledge as confidential and exempt from disclosure trade secrets or proprietary commercial or financial information the private entity provided as part of a proposal.

<u>Issuance of Bonds</u>

The Authority could provide for the issuance of bonds. The principal of and interest on the bonds would be payable solely from project revenue and project contributions and would not constitute a general or moral obligation of the State. The bonds would not be a pledge of the full faith and credit of the State or any of its political subdivisions.

The only bonds that a governmental entity in the State could issue for project financing would be the bonds authorized by the proposed Act. The Authority could issue a bond only for a project to take advantage of financing, credit, or tax exemption opportunities and to provide funds for project costs or the refunding of bonds issued under the Act.

Bonds issued under the Act would be payable solely from the Authority's share, under the governance agreement or the public-private agreement, of any of the following sources of funds:

- -- Project revenue and project contributions.
- -- The proceeds of the bond instruments or of bonds sold to finance the refunding of the bonds.
- The proceeds of any financial instrument providing credit, liquidity, or security for the bonds.
- -- Investment earnings on any of the sources of funds listed above.

All proceeds from the Authority's share would be appropriated to the Authority for the payment of the obligations, for payment of project costs, or for payment of principal, interest, or premium on bonds issued by the Authority.

User Fees

User fees and other charges collected under the proposed Act would have to be determined and adjusted with due consideration for the amount required to pay project costs, to pay bond and other authorized obligations, to maintain reserves for those purposes, and to repay any Canadian contributions, as provided in a governance agreement and a public-private agreement.

Legislative Oversight

A duly constituted and authorized legislative committee, including the Senate or House Appropriations Committee, or the Senate or House Transportation Committee, could conduct legislative oversight hearings on the Authority's activities, including activities relating to a public-private agreement or a governance agreement. The Authority, MDOT, political subdivisions of the State, and all private parties to a public-private agreement would have to cooperate and attend the hearings and provide live testimony without a subpoena.

Traffic & User Fee Enforcement

All law enforcement officers of the State and its local units in which all or part of an international crossing was located would have the same powers and jurisdiction

within the limits of a crossing as they have in their respective areas of jurisdiction to enforce traffic and motor vehicle laws. Authorized emergency vehicles and their occupants would have to be given access to a crossing while in the performance of an official duty without the payment of a user fee or other charge.

A person who failed to pay a user fee imposed for use of a crossing would be responsible for a civil infraction and subject to a civil fine of \$50. The person also would have to pay the crossing operator twice the amount of the user fee. If that amount remained unpaid for 180 days, MDOT, the Authority, or a concessionaire could bring a civil action to collect the unpaid charges. If the action resulted in a judgment for unpaid charges, the defendant also would have to reimburse the plaintiff for all filing fees plus \$500 in compensation for the costs of bringing the civil action.

During the time a person owed charges, fees, and costs, the person and a motor vehicle used by the person could be barred from using the crossing.

Use of State Funds

Unless explicitly authorized in the proposed Act, a governance agreement or a public-private agreement could not require the State, MDOT, the Authority, a separate legal or administrative entity created under a governance agreement, or any political subdivision to spend any State or local funds, including availability payments for project costs.

Except as otherwise provided in the Act, the State, MDOT, the Authority, a separate legal or administrative entity created under the Act, or a political subdivision of the State could not spend any State funds for project costs incurred after the bill's effective date.

The Department could spend State and Federal funds for the administrative costs of eminent domain proceedings and for professional fees, administrative costs, planning costs, and procurement costs of the Authority or MDOT related to a project. The Department could spend State and Federal funds for the cost of maintaining and repairing a highway interchange or other highway facility, other than the bridge or border inspection plaza, that was included

within a crossing, if the interchange or other facility were part of a State trunk line and the maintenance and repair were performed after the date the crossing was open for public transportation.

For purposes of these provisions, "state funds" would not include project revenue, a Canadian contribution, or a project contribution.

Legislative Council Report; Appropriation

By September 30, 2011, the Legislative Council would have to report to the Governor and the Senate and House standing committees on transportation issues on the implementation status of the proposed Act. The bill would appropriate \$10,000 to the Legislative Council to perform and prepare the report.

Severability

The proposed Act would be severable. If any portion of it or the application of the Act to any person or circumstances were found to be invalid by a court, the invalidity of that portion would not affect the remaining portions or applications that could be given effect without the invalid portion or application, provided the remaining portions were not determined by the court to be inoperable.

Legislative Intent

The bill states, "The legislature intends all of the following:

- (a) That this act is authorized under section 5 of article III of the state constitution of 1963 and advances a legitimate public purpose.
- (b) That this act authorizes this state, the department, the authority, and a separate legal or administrative entity created by a governance agreement to participate in a project under this act relating to a bridge and approaches that will connect this state with Canada and authorizes the collection of tolls for its use pursuant to 33 USC 535."

(Article III, Section 5 of the State Constitution authorizes the State or any political subdivision or governmental authority to enter into agreements for the performance, financing, or execution of their respective functions, with any one or more of the other states, the United States, Canada, or any political subdivision of Canada. Section 535 of Chapter 33 of the U.S. Code grants the consent of Congress to the construction, maintenance and operation of bridges and approaches that will connect the United States with a foreign country and to the collection of tolls for their use.)

Conditional Sunset

The proposed Act would be repealed effective January 1, 2015, if the Authority had not entered into a governance agreement by December 31, 2014, unless the MDOT Director, by December 30, 2014, filed with the Secretary of State a letter stating that the failure to enter into a governance agreement was due in whole or in part to legal challenges, litigation, or other factors beyond the Authority's control.

MCL 247.660c (S.B. 411)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 410

The bill would have a minimal fiscal impact the Michigan Department Transportation. Any costs associated with the administration of eminent domain proceedings, professional fees, administrative costs, planning costs, or procurement costs related to a bridge project, or certain highway maintenance and repair costs, would be paid from the Department's existing State or Federal revenue. The Department has stated that the anticipated costs would be minimal and could be absorbed from current appropriations.

The bill also would require the Legislative Council to report to the Governor and Legislature on the implementation status of the Act by September 30, 2011. All costs for the production of this report would be paid from the \$10,000 appropriated to the Legislative Council in the bill.

The bill states that the Authority or MDOT could receive funds from a Canadian contribution; however, any agreement relating to a Canadian contribution could not

impose any obligation on MDOT, the Authority, or the State to repay the Canadian contribution from revenue other than project revenue or project contributions.

There would be no additional costs to the State or any local units of government associated with the creation of an authority for a New International Trade Crossing. The bill states that all costs associated with any public-private partnerships, governance agreements with Canada, or any bonds issued by the Authority would be paid from project revenue or project contributions.

The bill would allow the Authority to issue bonds whose principal and interest would be payable solely from project revenue and project contributions. The bill further states that the bonds would not constitute a general or moral obligation of the State. The bill also would prohibit the State or any of its political subdivisions, the Department of Transportation, or the Authority, from using State funds to make any availability payments related to the bridge project.

In addition, the bill states that all proceeds from the Authority's share under a governance agreement or the public-private agreement would be appropriated to the Authority for the payment of the obligations, for payment of project costs, or for payment of principal, interest, or premiums on bonds issued by the Authority.

Senate Bill 411

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco

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.