

SENATE BILL No. 410

June 7, 2011, Introduced by Senator RICHARDVILLE and referred to the Committee on Economic Development.

A bill to create a governmental authority for new international trade crossings; to prescribe the powers and duties of the authority; to authorize procurement, design, finance, construction, maintenance, operation, improvement, and repair of new international bridges and approaches; to authorize certain agreements with public and private entities; to provide for the issuance of, and terms and conditions for, certain bonds; to provide for the imposition, collection, and enforcement of user fees and other charges; to provide for civil fines; to authorize the acquisition, maintenance, and disposal of interests in real and personal property; to provide for certain duties of certain state and local departments and officers; to provide for the power to enter into interlocal agreements; to exempt certain property, income, and activities from tax; to make an appropriation; and to

repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "new
2 international trade crossing act".

3 Sec. 3. As used in this act:

4 (a) "Authority" means the Michigan governmental authority for
5 a new international trade crossing created in this act.

6 (b) "Availability payment" means a periodic payment to a
7 concessionaire under a public-private agreement.

8 (c) "Bond" means a revenue bond, note, or other obligation
9 issued by the authority under this act.

10 (d) "Canadian contribution" means a gift, contribution,
11 payment, advance, grant, availability payment, or other money
12 received for or in aid of a project from a public agency of Canada
13 pursuant to a governance agreement.

14 (e) "Concessionaire" means a private entity that is a party to
15 a public-private agreement authorized by this act.

16 (f) "Crossing" means a public international bridge and bridge
17 approaches, including, but not limited to, all related structures,
18 plazas, facilities, improvements, extensions, interchanges,
19 property, and property interests, between Ontario, Canada, and this
20 state that is at least partially located in a city that, as of the
21 date of the first commencement of a project activity, has a
22 population of at least 600,000 according to the most recent
23 decennial census.

24 (g) "Debt" means borrowed money, loans, and other
25 indebtedness, including principal and interest, evidenced by a bond

1 or other security lawfully issued or assumed under this act, in
2 whole or in part, by the authority or that may be evidenced by a
3 judgment or decree against the authority.

4 (h) "Department" means the state transportation department.

5 (i) "Disaster" means an occurrence or threat of widespread or
6 severe damage, injury, or loss of life or property resulting from a
7 natural cause or human-made cause, including, but not limited to,
8 fire, flood, snowstorm, ice storm, tornado, windstorm, wave action,
9 oil spill, water contamination, utility failure, hazardous
10 peacetime radiological incident, major transportation accident,
11 hazardous materials incident, epidemic, air contamination, blight,
12 drought, infestation, explosion, hostile military action or
13 paramilitary action, or a similar occurrence resulting from
14 terrorist activity, riot, or civil disorder.

15 (j) "Disaster recovery" means action taken by a governmental
16 agency in response to a disaster.

17 (k) "Governance agreement" means an interlocal agreement under
18 the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501
19 to 124.512, that includes the authority and a public agency of
20 Canada as parties.

21 (l) "Private entity" means any natural person, corporation,
22 general partnership, limited liability company, limited
23 partnership, joint venture, business trust, public benefit
24 corporation, nonprofit entity, or other nongovernmental business
25 entity.

26 (m) "Project" means all activities associated with a crossing,
27 including project land activities and project activities.

1 (n) "Project activity" means the research, planning,
2 procurement, design, financing, construction, and improvement for,
3 and repair, maintenance, and operation of, a crossing under this
4 act.

5 (o) "Project contribution" means a gift, contribution,
6 payment, advance, grant, or other money received in aid of a
7 project from the federal government or an agency of the federal
8 government.

9 (p) "Project costs" means the costs associated with a project,
10 including, but not limited to, the cost of project activities;
11 project land activities; mitigation and enhancement measures
12 included in the green sheet or record of decision for a project
13 pursuant to the national environmental policy act of 1969, 42 USC
14 4321 to 4370h; all assets, including machinery, vehicles, and
15 equipment, including financing costs; traffic estimates; studies;
16 legal and other advisory services; engineering services; plans;
17 surveys; feasibility studies; administrative expenses; and expenses
18 that may be necessary or incidental to the procurement, design,
19 construction, repair, or improvement of the crossing and the
20 financing, operation, and maintenance of the crossing.

21 (q) "Project land activity" means the acquisition of all land,
22 rights-of-way, property, rights, easements, and interests for a
23 crossing.

24 (r) "Project revenue" means user fees or other charges
25 generated by the use of a crossing and any other revenue generated
26 from the use of or by the crossing or associated with a project,
27 including, but not limited to, any revenue arising from a public-

1 private agreement.

2 (s) "Public agency" means that term as defined under section 2
3 of the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL
4 124.502, including, but not limited to, an entity established by
5 the government of Canada under the laws of Canada and an authority
6 established under this act.

7 (t) "Public-private agreement" means any of the following
8 relating to the research, planning, procurement, design, financing,
9 construction, and improvement for, and repair, maintenance, and
10 operation of a project:

11 (i) An agreement between a private entity or private entities
12 and the authority.

13 (ii) An agreement between a private entity or private entities
14 and a public agency of Canada.

15 (iii) An agreement between a private entity or private entities
16 and a separate legal or administrative entity created under a
17 governance agreement.

18 (iv) An agreement with a private entity or private entities and
19 a public agency or public agencies as parties involving a joint
20 exercise of power by the authority and a public body of Canada
21 authorized by a governance agreement.

22 (u) "Qualified revenue" means all of the following:

23 (i) Project revenue.

24 (ii) A Canadian contribution.

25 (iii) A project contribution.

26 Sec. 7. (1) The authority is created as a public body
27 corporate in the department. Except as otherwise provided in this

1 act, the authority shall exercise its powers, duties, and functions
2 under this act independently of the director of the department. The
3 authority may contract with the department for the purpose of
4 maintaining the rights and interests of the authority.

5 (2) The budgeting, procurement, and related management
6 functions of the authority shall be performed under the direction
7 of the director of the department. This subsection does not apply
8 to a separate legal or administrative entity that may be created by
9 a governance agreement.

10 (3) The authority shall ensure that the expenditure of any
11 Canadian contribution in this state maximizes the amount of federal
12 aid to the department. To accomplish this objective, the project
13 shall be divided into discrete portions that may independently
14 qualify for federal aid. If maximizing federal aid to the
15 department would cause the total cost of those portions in this
16 state that are to be funded by the Canadian contribution under the
17 governance agreement to exceed the Canadian contribution amount
18 specified in the governance agreement for those portions, the
19 portion or portions that would generate the least total federal aid
20 to the department shall be exempt from this requirement. No more
21 portions shall be exempt from this requirement than are necessary
22 to bring the total cost of those portions in this state that are to
23 be funded by the Canadian contribution under the governance
24 agreement below the level of the Canadian contribution amount
25 specified in the governance agreement for those portions. The
26 obligations under this subsection shall not impede the timely
27 implementation of the project. However, it is not an impediment to

1 the timely implementation of the project if the delay is necessary
2 in order to maximize the amount of federal aid to the department
3 and is for a reasonable time period as described in the governance
4 agreement. The director of the department shall ensure that the
5 authority complies with this subsection. The obligations under this
6 subsection terminate on the date the crossing is open to public
7 transportation.

8 (4) Subject to available appropriations, notwithstanding other
9 law to the contrary, if requested by the authority, the department
10 shall provide staff and other support to the authority sufficient
11 to enable the authority to carry out the powers, duties, and
12 functions of the authority under this act.

13 (5) All departments, agencies, and officers of state
14 government shall provide full cooperation to the authority in the
15 performance of powers, duties, and functions of the authority.

16 (6) This act does not diminish the power of the state
17 transportation commission under section 28 of article V of the
18 state constitution of 1963 to establish policy for department
19 programs and facilities and other public works of this state, as
20 provided by law.

21 (7) This act does not diminish the power of the civil service
22 commission under section 5 of article XI of the state constitution
23 of 1963.

24 (8) The authority may exercise all of the following powers:

25 (a) Adopt bylaws to regulate its affairs and conduct its
26 business.

27 (b) Adopt or change an official seal.

1 (c) Maintain an office or offices as needed.

2 (d) Sue and be sued in its own name.

3 (e) Determine location, design standards, and construction
4 materials of a crossing.

5 (f) Research, plan, procure, design, finance, construct,
6 operate, improve, and repair a project.

7 (g) Fix, revise as necessary, charge, enforce, and collect
8 user fees and other charges for the use of, or contract with a
9 private entity to fix, revise as necessary, charge, enforce, and
10 collect user fees and other charges for the use of a crossing.

11 (h) Establish rules and regulations for use of a crossing.

12 (i) Purchase, otherwise acquire, receive, accept, lease, hold,
13 and dispose of real and personal property in the exercise of its
14 powers and the performance of its duties under this act, including,
15 but not limited to, interests in real and personal property and
16 related rights or interests such as structures, rights-of-way,
17 franchises, easements, liens, lands under water, and riparian
18 rights. Nothing in this subdivision or act gives the authority the
19 power of eminent domain.

20 (j) Accept contributions of real property from the department
21 or other entities.

22 (k) Issue bonds and refinance the bonds, as authorized by this
23 act.

24 (l) Make and enter into contracts and agreements necessary or
25 incidental to the performance of its duties and the exercise of its
26 powers under this act.

27 (m) Employ consulting engineers, attorneys, accountants,

1 construction and financial experts, superintendents, managers, and
2 other employees and agents as may be necessary in its judgment and
3 fix their compensation, subject to any applicable rules or
4 regulations of the civil service commission.

5 (n) Receive and accept from any source gifts, property,
6 structures, rights, rights-of-way, franchises, easements, property
7 rights, contributions, grants, or funds for or in aid of a project.

8 (o) Develop and use any property owned or controlled by the
9 authority for customs brokering, currency exchange transactions, or
10 for the sale of articles for export and consumption outside the
11 United States or Canada, respectively, to the extent that this use
12 is not restricted by federal law or Canadian law. The authority may
13 also enter into contracts or leases to provide for the development
14 and use of any property owned or controlled by the authority for
15 customs brokering, currency exchange transactions, or for the sale
16 of articles for export and consumption outside the United States or
17 Canada, respectively, to the extent that this use is not restricted
18 by federal law or Canadian law. If the authority contracts for the
19 services described in this subdivision, the authority shall use a
20 competitive bidding process. A contract or lease entered into under
21 this subdivision does not exempt a person from the payment of any
22 motor fuel, sales, or other taxes required to be paid under the
23 laws of this state on articles or fuel sold or brought into this
24 state for consumption.

25 (p) Enter into a governance agreement as provided in section
26 11.

27 (q) Apply for and use grants, loans, loan guarantees, lines of

1 credit, revolving lines of credit, or other arrangements available
2 under 23 USC 601 to 610 or other applicable law in a manner
3 consistent with this act.

4 (r) Seek allocation for, issue, and provide for the issuance
5 of private activity bonds as described under 26 USC 141 or other
6 applicable law to finance a project.

7 (s) Exercise other powers of the department relating to
8 streets, highways, transportation programs, transportation
9 facilities, and transportation public works of this state not
10 otherwise vested in the authority only to the extent related to a
11 project and necessary to carry out the purposes of this act.
12 Nothing in this subdivision or act gives the authority the power of
13 eminent domain.

14 (t) Do anything necessary and proper consistent with the
15 provisions of this act to carry out the purposes of and powers
16 explicitly granted in this act.

17 Sec. 9. (1) The powers and duties of the authority are vested
18 in a board of directors. The board shall have 5 members who shall
19 be appointed by the governor with the advice and consent of the
20 senate. The governor shall designate a member of the board, who
21 does not also serve as the head of a state department, as its
22 chairperson. One member shall be appointed by the governor from a
23 list of 3 or more names nominated by the senate majority leader,
24 and 1 member shall be appointed by the governor from a list of 3 or
25 more names submitted by the speaker of the house of
26 representatives. Of the 3 members initially appointed by the
27 governor without nomination by the senate majority leader or the

1 speaker of the house of representatives, the first member shall be
2 appointed for an initial term of 2 years, and 2 members shall be
3 appointed for an initial term of 4 years each. The initial members
4 nominated by the senate majority leader and the speaker of the
5 house of representatives shall be appointed for initial terms of 2
6 years each. After the expiration of initial terms, members shall be
7 appointed for terms of 4 years. A member of the board shall
8 continue to serve until a successor is appointed and qualified. A
9 vacancy on the board occurring other than by expiration of a term
10 shall be filled by the governor in the same manner as the original
11 appointment for the balance of the unexpired term. An employee of
12 the department shall not serve as a member of the board.

13 (2) A majority of the members of the board serving constitute
14 a quorum for the transaction of the business of the authority. The
15 board shall act by a majority vote of its serving members.

16 (3) The board shall meet at the call of the chairperson and as
17 may be provided in procedures adopted by the board.

18 (4) The board may, as appropriate, make inquiries, studies,
19 and investigations, hold hearings, and receive comments from the
20 public. Subject to available funding, the board also may consult
21 with outside experts to perform its duties, including, but not
22 limited to, experts in the private sector, organized labor, and
23 government agencies and experts at institutions of higher
24 education.

25 (5) The board may hire or retain contractors, subcontractors,
26 advisors, consultants, and agents as the board considers advisable
27 and necessary, in accordance with the relevant statutes and

1 procedures, rules, and regulations of the civil service commission
2 and the department of technology, management, and budget and may
3 make and enter into contracts necessary or incidental to the
4 exercise of the powers and performance of the duties of the board.
5 Under this subsection, the board may hire or retain contractors,
6 subcontractors, advisors, consultants, and agents as the board
7 considers advisable and necessary to provide legal advice or legal
8 services, to provide for research and development activity, or to
9 provide strategic planning services.

10 (6) Members of the board shall serve without compensation.
11 Members of the board may receive reimbursement for necessary travel
12 and expenses consistent with relevant statutes and the rules and
13 procedures of the civil service commission and the department of
14 technology, management, and budget, subject to available funding.

15 (7) A member of the board shall discharge the duties of the
16 position in a nonpartisan manner, in good faith, in the best
17 interests of this state, and with the degree of diligence, care,
18 and skill that an ordinarily prudent person would exercise under
19 similar circumstances in a like position. A member of the board
20 shall not make or participate in making a decision, or in any way
21 attempt to use his or her position as a member of the board to
22 influence a decision, on a matter before the authority in which the
23 member is directly or indirectly interested. A member of the board
24 shall not be interested directly or indirectly in any contract with
25 the authority or the department that would cause a substantial
26 conflict of interest. A member of the board shall comply, and the
27 board shall adopt policies and procedures that require members to

1 comply, with the requirements of this subsection and all of the
2 following:

3 (a) 1978 PA 472, MCL 4.411 to 4.431.

4 (b) 1978 PA 566, MCL 15.181 to 15.185.

5 (c) 1968 PA 318, MCL 15.301 to 15.310, as if he or she were a
6 state officer.

7 (d) 1968 PA 317, MCL 15.321 to 15.330, as if he or she were a
8 public servant.

9 (e) 1973 PA 196, MCL 15.341 to 15.348, as if he or she were a
10 public officer.

11 (8) Beginning on the effective date of this act and continuing
12 until the appointment and qualification of 5 members of the board
13 as provided under this section, the powers and duties vested in the
14 board under this act may be exercised by the state administrative
15 board created under 1921 PA 2, MCL 17.1 to 17.3.

16 (9) Within 60 days after the first meeting of the authority,
17 the department shall establish a website for the authority and the
18 authority shall post on the website updates not less than weekly on
19 authority activities and transactions and the progress of any
20 project, including, but not limited to, all proposed public-private
21 agreements.

22 (10) The authority is subject to, and shall conduct its
23 meetings in compliance with, the open meetings act, 1976 PA 267,
24 MCL 15.261 to 15.275.

25 (11) Except as otherwise provided in this act, the authority
26 shall comply with the freedom of information act, 1976 PA 442, MCL
27 15.231 to 15.246.

1 (12) The department may transfer property or interests in
2 property under the jurisdiction or control of the department to the
3 authority for purposes authorized under this act.

4 Sec. 11. (1) The authority may enter into a governance
5 agreement concerning a project under this act. The governance
6 agreement may create a separate legal or administrative entity
7 under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL
8 124.501 to 124.512, including a joint venture between the authority
9 and a public agency of Canada, that shall be a public body
10 corporate or politic and shall not be a public body of the
11 executive branch of this state. Pursuant to this subsection,
12 activities of the authority under this act may be exercised jointly
13 with a public agency of Canada pursuant to a governance agreement,
14 including through a separate legal or administrative agency. The
15 governance agreement may establish terms and conditions for the
16 separate legal or administrative entity to exercise any power that
17 the authority and a public agency of Canada share in common as
18 provided in section 4 of the urban cooperation act of 1967, 1967
19 (Ex Sess) PA 7, MCL 124.504. The governance agreement shall not
20 authorize the authority or any entity created by the governance
21 agreement to levy a tax or to take property using the power of
22 eminent domain.

23 (2) In accordance with a governance agreement established
24 under subsection (1), the department or the authority may receive
25 funds from a Canadian contribution. An agreement involving the
26 authority and a public agency of Canada relating to a Canadian
27 contribution shall not impose any obligation on the department, the

1 authority, this state, or a political subdivision of this state to
2 repay the Canadian contribution from revenues other than project
3 revenue and project contributions.

4 (3) A governance agreement may provide for the following:

5 (a) Repayment of all or any part of any Canadian contribution
6 but only if repayment of the contribution is required to be paid,
7 repaid, or returned exclusively from project revenue or project
8 contributions.

9 (b) A provision allowing binding arbitration or other
10 alternative forms of dispute resolution.

11 (4) A governance agreement shall provide for all of the
12 following:

13 (a) If repayment under subsection (3)(a) is required, an
14 equitable schedule for reimbursement of Canadian contributions from
15 project revenue and project contributions.

16 (b) Provisions necessary to satisfy section 7(3).

17 (c) That any project comply with the national environmental
18 policy act of 1969, 42 USC 4321 to 4370h, or other requirements of
19 the federal highway administration, including, but not limited to,
20 any mitigation or enhancement measures included in a green sheet or
21 record of decision for the project pursuant to the national
22 environmental policy act of 1969, 42 USC 4321 to 4370h.

23 (d) An equitable schedule for reimbursement to the authority,
24 from project revenue and Canadian contributions, for any liability
25 incurred by the authority, a separate legal or administrative
26 entity, or joint venture, caused by the acts or omissions of a
27 Canadian public agency whether in connection with a joint venture,

1 a separate legal or administrative entity, or otherwise.

2 (5) A governance agreement shall not allow this state, the
3 department, or a political subdivision of this state to assume
4 liability for the acts or omissions of the authority or a Canadian
5 public agency whether in connection with a joint venture, a
6 separate legal or administrative entity, or otherwise.

7 (6) After setting aside sufficient funds to pay for its
8 expenses authorized by this act, the authority shall deposit any
9 remaining funds distributed to the authority from project revenue
10 into the state trunk line fund established under section 11 of 1951
11 PA 51, MCL 247.661.

12 (7) Upon executing a governance agreement, the authority shall
13 transmit copies of the governance agreement to the clerk of the
14 house of representatives and the secretary of the senate.

15 Sec. 13. (1) The authority may enter into a public-private
16 agreement concerning a crossing and project activity as provided in
17 this act. A public-private agreement shall include terms designed
18 to protect the public interest and assure accountability of a
19 concessionaire to the authority and a public agency of Canada. A
20 public-private agreement may contain terms and conditions
21 consistent with any limitations under this act that the authority
22 may determine or negotiate to facilitate the crossing and project
23 activity. The agreement may contain a provision allowing binding
24 arbitration or other alternative forms of dispute resolution.

25 (2) A public-private agreement shall provide for all of the
26 following:

27 (a) An initial term for the use and operation of the crossing

1 or project activity by a concessionaire for a period that the
2 authority determines is necessary for the development and financing
3 of the project and the economic feasibility of the public-private
4 agreement. The initial term shall not exceed 50 years in length
5 from the date on which the crossing is open to the public and
6 collecting user fees or other charges. After the initial term, the
7 authority may renew a public-private agreement or execute a new
8 public-private agreement for a period that the authority determines
9 is necessary for the development and financing of the project and
10 the economic feasibility of the public-private agreement so long as
11 that term does not exceed 50 years in length. If the operation or
12 maintenance of the crossing is impaired because of disaster or
13 disaster recovery not attributable to actions of the
14 concessionaire, a term may be extended for an extended period equal
15 to the period of impairment.

16 (b) The termination of the public-private agreement.

17 (c) A requirement that the control of the crossing revert from
18 the concessionaire to the authority and a public agency of Canada
19 at the end of the public-private agreement in a manner and
20 condition required under the public-private agreement and
21 governance agreement.

22 (d) That ownership of a crossing within this state is vested
23 in the authority. A public-private agreement may provide for the
24 use and occupancy of the crossing if the use and occupancy do not
25 interfere with the transportation and related public uses of the
26 crossing.

27 (e) A lease, license, right of entry, or other instrument for

1 the crossing as the authority determines is in the public interest
2 and is consistent with this act.

3 (f) The right of the authority to share in any refinancing
4 gains benefiting the concessionaire under the public-private
5 agreement.

6 (g) A requirement that the concessionaire cooperate with the
7 authority and any other appropriate public agencies on all matters
8 concerning the security of the crossing or disaster recovery for
9 the crossing.

10 (h) A requirement that the concessionaire submit to all
11 appropriate public agencies written plans for the security of the
12 crossing and disaster recovery for the crossing.

13 (i) A requirement that during a period the project is operated
14 by the concessionaire the concessionaire shall have control for
15 operational purposes over designated portions of the crossing.

16 (j) A requirement that the concessionaire appear and testify
17 without a subpoena at a legislative hearing convened and conducted
18 in accordance with applicable law and relating to the public-
19 private agreement or a project that is the subject of the public-
20 private agreement.

21 (k) The specification of the scope of the project and the
22 scope of control for operational purposes to be vested in the
23 department or the authority upon the completion of construction of
24 the crossing.

25 (3) This state, the department, the authority, a separate
26 legal or administrative entity created under a governance
27 agreement, and any political subdivision of this state are not

1 liable for the acts or omissions of a concessionaire.

2 (4) Except as otherwise provided in this act, a public-private
3 agreement shall impose on the concessionaire, while performing
4 activities in this state, the same requirements of law applicable
5 specifically to contracts requiring or involving the employment of
6 construction mechanics that are imposed upon a state officer,
7 board, commission, or institution entering into a contract
8 requiring or involving the employment of construction mechanics
9 with which it contracts directly for the new construction,
10 alteration, repair, installation, painting, improvement, or
11 completion of a bridge supported in whole or in part by state
12 funds.

13 (5) A public-private agreement shall establish the amounts for
14 which the concessionaire shall post payment and performance bonds
15 or other security as provided in this subsection. A public-private
16 agreement may authorize a concessionaire to provide a letter of
17 credit in lieu of a payment or performance bond. If the authority
18 determines that bonds or letters of credit are not reasonably
19 available in sufficient amounts, the authority may accept parent
20 corporation guarantees to supplement available payment bonds,
21 performance bonds, or letters of credit. The authority shall
22 require the posting of sufficient security to fulfill the purposes
23 of a payment and performance bond. In lieu of posting by a
24 concessionaire, or in supplementation of that posting, the
25 authority may accept bonds, letters of credit, and other security
26 from private entities other than the concessionaire that is subject
27 to posting so long as the purposes of a payment and performance

1 bond are fulfilled.

2 Sec. 14. A governance agreement or a public-private agreement
3 shall not authorize any of the following:

4 (a) The public being deprived of the use and benefit of the
5 crossing except as necessary to implement user fees or other
6 charges authorized by this act, to regulate the level or character
7 of permissible uses of the crossing, to address issues of public
8 safety or security, or to maintain, repair, or improve the
9 crossing.

10 (b) The department, a public agency in this state, or a
11 private entity in this state, being prohibited from researching,
12 planning, procuring, designing, financing, constructing,
13 maintaining, operating, improving, or repairing a transportation
14 project or facility in this state that is included in the
15 department's long-range plan in effect on the date that proposals
16 for the public-private agreement are submitted under section 15.

17 (c) A private entity in this state being prohibited from
18 researching, planning, procuring, designing, financing,
19 constructing, maintaining, operating, improving, or repairing a
20 transportation project or facility in this state that is otherwise
21 authorized under the laws of this state.

22 (d) This state, any of its political subdivisions, the
23 department, or an authority, using state funds to make an
24 availability payment. This subdivision does not restrict a public
25 agency of Canada or a separate legal or administrative entity
26 created under a governance agreement from making availability
27 payments repayable from qualified revenues if authorized under the

1 public-private agreement and the governance agreement.

2 (e) A concessionaire to sell or transfer its interest in a
3 public-private agreement except as provided in the public-private
4 agreement.

5 Sec. 15. (1) The authority may solicit proposals for the
6 selection of a concessionaire for a project using a competitive
7 selection process. The authority may charge and use fees to offset
8 the administrative costs of receiving and evaluating proposals.
9 Before receiving a proposal, the authority may agree to reimburse a
10 private entity for costs incurred in the preparation and
11 presentation of the proposal in return for the right to use any
12 work product contained in the proposal, including, but not limited
13 to, the technologies, methods, processes, and information contained
14 in the material submitted in connection with the proposal.

15 (2) Costs associated with selection of a concessionaire for a
16 project shall only be paid from qualified revenue.

17 (3) Before a request for proposal is issued by the authority,
18 the authority shall conduct at least 1 public hearing on the
19 request for proposal and selection process. The authority shall use
20 1 or more of the following procurement approaches:

21 (a) Sealed bidding.

22 (b) Selection of proposals, with or without negotiations,
23 based on qualifications, development proposals, technical
24 proposals, financial proposals, best value, or any combination of
25 these.

26 (4) The authority shall consider all of the following factors
27 in evaluating and selecting a bid or proposal to enter into a

1 public-private agreement:

2 (a) The proposed cost of and financial plan for the project.

3 (b) The general reputation, qualifications, industry
4 experience, safety record, and financial capacity of the private
5 entity.

6 (c) The proposed research, planning, procurement, design,
7 financing, construction, and improvement for, and repair,
8 maintenance, and operation of, the crossing.

9 (d) To the extent permitted by federal law, the proposed plan
10 of the private entity to hire legal United States residents and
11 citizens for work relating to the project in this state.

12 (e) Evidence that a private entity has the capacity to obtain
13 all required payment and performance bonding, liability insurance,
14 and errors and omission insurance.

15 (f) Any other factors that are proper and consistent with the
16 provisions of this act.

17 (5) The authority may select multiple concessionaires for a
18 project if it is determined by the authority to be in the public
19 interest to do so.

20 (6) At the request of a private entity, the authority may
21 acknowledge as confidential and exempt from disclosure trade
22 secrets or proprietary commercial or financial information provided
23 by the private entity as part of a proposal under this section.
24 Information acknowledged by the authority as confidential is exempt
25 from disclosure, including, but not limited to, disclosure under
26 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
27 Unless considered proprietary information by the private entity,

1 the authority shall not acknowledge routine financial information
2 as confidential. If the authority acknowledges information as
3 confidential, the authority shall provide a description of the
4 information to which exemption from disclosure will extend. The
5 authority may agree to keep confidential and exempt from
6 disclosure, proprietary, commercial, or other confidential
7 information that a concessionaire is required by the public-
8 private agreement to provide to the authority. A bid or proposal
9 from a private entity for a project may be exempted from disclosure
10 by the authority until the authority completes all negotiations and
11 selects the concessionaire with which it intends to enter into a
12 public-private agreement and the final public-private agreement
13 with the concessionaire is effective.

14 (7) After a final public-private agreement is effective, a bid
15 or proposal is a public record subject to public disclosure,
16 excluding any confidential information exempted from disclosure by
17 the authority under this act. After a final public-private
18 agreement is effective, the authority shall transmit a copy of it
19 to members of the legislature by transmitting copies to the clerk
20 of the house of representatives and the secretary of the senate,
21 excluding any confidential information exempted from disclosure by
22 the authority under this act.

23 (8) A proposal or bid submitted by a private entity under this
24 section shall include an executive summary in a form determined by
25 the authority summarizing the major elements of the proposal
26 excluding the price, financing plan, or other trade secrets or
27 confidential proprietary commercial or financial information that

1 the private entity seeks to exempt from disclosure. Upon
2 submission, the executive summary is a public record subject to
3 public disclosure and shall be posted on the website maintained for
4 the authority by the department.

5 (9) Submission of a solicited or unsolicited proposal
6 constitutes consent for the authority to use the information and
7 ideas provided by a private entity for a project or to seek or
8 enter into a public-private agreement, including to solicit
9 competing proposals, unless the authority agrees otherwise in
10 writing executed by the authority before the submission.

11 (10) The authority or another person acting in accordance with
12 a public-private agreement is not liable for the use of ideas and
13 information provided by a private entity for purposes of seeking or
14 entering into a public-private agreement.

15 Sec. 17. (1) The authority may provide for the issuance of
16 bonds. The principal of and interest on the bonds are payable
17 solely from project revenue and project contributions and do not
18 constitute a general or moral obligation of this state. The bonds
19 are not a debt, moral obligation, or liability of this state or any
20 political subdivision of this state and do not constitute or create
21 any indebtedness, liability, or obligation of this state or any
22 political subdivision of this state. Bonds authorized under this
23 act are not a pledge of the full faith and credit of this state or
24 any political subdivision of this state. Each bond shall contain on
25 its face a statement to the effect that neither this state nor the
26 authority is obligated to pay the principal amount of the bonds or
27 any interest on the bonds from any source other than project

1 revenue and project contributions and that neither the full faith
2 and credit nor the taxing power of this state or any political
3 subdivision of this state is pledged to the payment of the
4 principal or interest.

5 (2) The only bonds that shall be issued by a governmental
6 entity in this state for project financing are the bonds authorized
7 under this act. Consistent with the requirements of subsection (1),
8 a bond may be issued by the authority only for a project to take
9 advantage of financing, credit, or tax exemption opportunities
10 authorized by state or federal law and for providing funds for
11 project costs or the refunding of any bonds issued under this act,
12 together with any costs associated with the transaction. For
13 purposes of this subsection, notwithstanding other law to the
14 contrary, the department may designate the authority as an eligible
15 governmental agency for purposes of applicable state and federal
16 law, including, but not limited to, 1951 PA 51, MCL 247.651 to
17 247.675. At the request of the authority, the department may enter
18 into agreements under which the department will seek and serve as a
19 conduit for any financing, credit, or tax exemption opportunities
20 authorized by state or federal law.

21 (3) Bonds issued under this section are payable solely from
22 the authority's share under the governance agreement or the public-
23 private agreement of any of the following source of funds:

24 (a) Project revenue and project contributions.

25 (b) The proceeds of the bond instruments or of bonds sold to
26 finance the refunding of the bonds.

27 (c) The proceeds of any financial instrument providing credit,

1 liquidity, or security for the bonds described in subsection (6).

2 (d) Investment earnings on any of the sources of funds
3 described in subdivisions (a) to (c).

4 (4) To the extent required by applicable law, all proceeds
5 from the authority's share under the governance agreement or the
6 public-private agreement of the sources of payments specified in
7 subsection (3) are appropriated to the authority for the payment of
8 the obligations, for payment of project costs, or for payment of
9 principal, interest, or premium on bonds issued by the authority.

10 The action of the authority in issuing the bonds creates a
11 statutory lien upon project revenue and project contributions and
12 other revenue described in subsection (3) as provided by the
13 authority, pledged for the payment of the principal, interest, or
14 premium on the bonds, to and in favor of the holders of the bonds.
15 The statutory lien shall be a first priority lien, paramount and
16 superior to all other liens and interests of any kind that arise or
17 are created after the issuance of the bonds, unless otherwise
18 specified by the authority. Project revenue and project
19 contributions shall remain subject to the statutory lien until all
20 principal, interest, and premium on the bonds are paid or provided
21 for, as specified by the authority at the time of the issuance of
22 the bonds. The statutory lien may be enforced by or on behalf of
23 the holders of the bonds as to the use of project revenue and
24 project contributions, to pay principal, interest, and premium on
25 the bonds or other financial obligations, but the lien shall not be
26 construed to give the holders authorization to compel the sale of a
27 project or a crossing.

1 (5) In determining whether to issue bonds under this act, the
2 authority may, by duly adopted action, do 1 or more of the
3 following:

4 (a) Authorize or enter into trust indentures or agreements,
5 insurance contracts, letters of credit, lines of credit,
6 commitments to purchase obligations, remarketing agreements,
7 reimbursement agreements, and any other transaction, agreement, or
8 instrument providing for credit, liquidity, or security for the
9 timely payment of principal, interest, and premium on the bonds or
10 the purchase price of the bonds. Consistent with this act, an
11 instrument may contain covenants by the authority with respect to
12 the bonds and the security for the payment of the bonds and
13 remedies for defaults, including, but not limited to, the
14 appointment of a receiver for a project. A bond may further provide
15 that money and funds subject to a statutory lien authorized by
16 subsection (4) be segregated and held in a separate fund or
17 account, which shall not be levied upon, taken, sequestered, or
18 applied for any purpose other than a purpose for which the
19 statutory lien was created.

20 (b) Authorize payment from the proceeds of the bonds or from
21 the sources of payment detailed in subsection (3) of the costs of
22 acquiring and maintaining any of the transactions, agreements, or
23 instruments described in subdivision (a), and of reimbursing any
24 draws or advances, with interest, on any credit or liquidity
25 facility.

26 (c) Authorize or provide for 1 or more specified officers,
27 employees, or agents of the authority, but only within limitations

1 contained in the authorizing action, to do 1 or more of the
2 following for and on behalf of the authority:

3 (i) Sell, deliver, and receive payment for the bonds.

4 (ii) Refund bonds by the delivery of new bonds whether or not
5 the bonds to be refunded have matured or are subject to redemption
6 or purchase before maturity on the date of delivery of the
7 refunding bonds.

8 (iii) Buy, hold, and sell bonds. The buying, holding, or selling
9 shall not cause the cancellation or merger of the bonds unless
10 specified otherwise by the authority.

11 (iv) Approve interest rates or methods for fixing interest
12 rates, prices, discounts, maturities, principal amounts,
13 denominations, dates of issuance, interest payment dates,
14 redemption or tender rights and obligations to be exercised by the
15 issuer or the holder of the bonds, places of delivery and payment,
16 and other ministerial matters and procedures necessary to complete
17 the transactions authorized by the authority.

18 (6) Bonds may be issued with the terms specified by the
19 authority consistent with the requirements of this act. Among other
20 terms that may be specified are any of the following:

21 (a) Maturity dates of the bonds, which shall not exceed 50
22 years from the later of the date the bonds are issued or the date
23 the project financed with the proceeds of the bonds is opened to
24 the public and the collection of user fees first occurs.

25 (b) Tender rights.

26 (c) Procedures for the holders of the bonds.

27 (d) Provisions for remarketing any bonds tendered.

1 (e) The nature of interest to be paid on the bonds, which may
2 be fixed or variable rates of interest or no stated interest, but
3 with payments of principal at amounts higher than the amounts paid
4 by the original purchaser for the bonds.

5 (7) The yield on any bonds issued under this act, taking into
6 account the price at which the bonds are sold, the stated interest
7 rates, and the amounts at which the bonds are to be paid at the
8 scheduled maturity date, shall not exceed the maximum rate
9 permitted by the revised municipal finance act, 2001 PA 34, MCL
10 141.2101 to 141.2821.

11 (8) In connection with outstanding bonds, or in connection
12 with the issuance or proposed future issuance of bonds, in each
13 case issued or to be issued under this act, the authority may
14 authorize the execution and delivery of agreements providing for
15 interest rate exchanges or swaps, hedges, caps, collars, and
16 floors, or similar arrangements. The obligations of the authority
17 under the agreements, including termination payments, shall not
18 constitute a pledge of the faith and credit or indebtedness of this
19 state or any political subdivision of this state but shall be made
20 payable from and secured by a pledge of and lien on the same
21 sources of funds as the bonds in relation to which the agreements
22 are entered into, or from any other sources of funds available for
23 the payment of bonds under this act.

24 (9) All expenses incurred by the authority in carrying out
25 this section are payable only from revenues provided or to be
26 provided under this act. This act does not authorize the authority
27 to incur any indebtedness or liability on behalf of or payable by

1 this state. This act does not authorize the authority to levy a
2 tax.

3 (10) Except as otherwise provided in this section, bonds
4 issued under this act are not subject to the revised municipal
5 finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

6 (11) The issuance of bonds under this section is subject to
7 the agency financing reporting act, 2002 PA 470, MCL 129.171 to
8 129.177. The issuance of bonds under this act is not subject to a
9 referendum or approval by voters.

10 (12) Bonds and other financial instruments issued under this
11 act, and any interest on the bonds or financial instruments, are
12 exempt from taxation by this state or any other taxing authority
13 within this state.

14 (13) This act does not limit or prevent a concessionaire or
15 other private entity from issuing debt securities, issuing
16 obligations, incurring indebtedness, or entering into other
17 arrangements relating to financing a project.

18 Sec. 19. Unless explicitly authorized in this act, a
19 governance agreement or a public-private agreement under this act
20 shall not require this state, the department, the authority, a
21 separate legal or administrative entity created under a governance
22 agreement, or any political subdivision to expend any state or
23 local funds, including, but not limited to, availability payments
24 for project costs.

25 Sec. 21. (1) User fees and other charges collected under this
26 act shall be determined and adjusted with due consideration for the
27 amount required to pay project costs, including reserves, to pay

1 bond and other authorized obligations, to maintain reserves for
2 those purposes, and to repay any Canadian contributions, as
3 provided in the governance agreement and public-private agreement.

4 (2) The proceedings and decisions of a separate legal or
5 administrative entity created by a governance agreement, and the
6 public-private agreement, user fees, and other charges imposed by
7 the authority, are not subject to approval, regulation, or taxation
8 by any other state or local governmental entity in this state.

9 (3) The activities and property of an authority under this act
10 are exempt from taxation by this state or a political subdivision
11 of this state. The activities and property of a separate legal or
12 administrative entity created under a governance agreement are
13 exempt from taxation by this state or a political subdivision of
14 this state. This act does not exempt the activities or property of
15 a concessionaire from taxation under other applicable laws.

16 Sec. 23. A duly constituted and authorized legislative
17 committee, including, but not limited to, the appropriations
18 committees of the house of representatives or the senate, or the
19 transportation committees of the house of representatives or the
20 senate, or any successor committees, may conduct legislative
21 oversight hearings on activities of the authority at any time,
22 including, but not limited to, activities relating to a public-
23 private agreement or a governance agreement. The authority, the
24 department, political subdivisions of the state, and all private
25 parties to a public-private agreement shall actively cooperate and
26 shall attend the hearing and provide live testimony at the hearing
27 without a subpoena.

1 Sec. 25. (1) All law enforcement officers of this state and
2 local units of government in which all or part of a crossing is
3 located have the same powers and jurisdiction within the limits of
4 a crossing as they have in their respective areas of jurisdiction
5 to enforce traffic and motor vehicle laws. An authorized emergency
6 vehicle and the occupants of the authorized emergency vehicle shall
7 be afforded access to a crossing while in the performance of an
8 official duty without the payment of a user fee or other charge. As
9 used in this subsection, "authorized emergency vehicle" means that
10 term as defined in section 2 of the Michigan vehicle code, 1949 PA
11 300, MCL 257.2.

12 (2) Punishment for violations of traffic and motor vehicle
13 laws within the limits of a crossing shall be as generally
14 prescribed by law.

15 (3) A person who fails to pay a user fee imposed for use of a
16 crossing is responsible for a civil infraction and is subject to a
17 civil fine of \$50.00. In addition, the person shall pay the
18 crossing operator 2 times the amount of the user fee. If that
19 amount remains unpaid for 180 days after the person's use of the
20 crossing, the department, the authority, or a concessionaire may
21 bring a civil action against the person to collect the unpaid
22 charges in a court having jurisdiction. If the civil action results
23 in a judgment for unpaid charges, the defendant shall also be
24 required to reimburse the plaintiff for all filing fees incurred by
25 the plaintiff plus \$500.00 in compensation for the costs of
26 bringing the civil action.

27 (4) During the period that a person owes and has failed to pay

1 charges, fees, and costs under subsection (3), the person and a
2 motor vehicle used by the person may be barred from using the
3 crossing.

4 (5) Except as provided in section 675b of the Michigan vehicle
5 code, 1949 PA 300, MCL 257.675b, involving leased vehicles, proof
6 that a particular vehicle used a crossing without payment of the
7 applicable user fee, together with proof from the department of
8 state of the name of the vehicle's registered owner, creates a
9 presumption that the vehicle's registered owner was the person who
10 used the crossing, who failed to pay the user fee, and who is prima
11 facie responsible for the unpaid charges. If the conditions of
12 section 675b of the Michigan vehicle code, 1949 PA 300, MCL
13 257.675b, are satisfied, establishing that the vehicle described in
14 the violation was in the possession of, custody of, or was being
15 operated or used by the lessee or renter of the leased vehicle at
16 the time of violation, the lessee or renter of the leased vehicle
17 and not the leased vehicle owner is the person responsible under
18 this section.

19 (6) The owner of a vehicle alleged to have used a crossing
20 without paying an applicable user fee may assert as an affirmative
21 defense that the vehicle in question, at the time of the use of the
22 crossing, was in the possession of a person whom the owner had not
23 knowingly permitted to operate the vehicle.

24 Sec. 27. (1) Except as otherwise provided in this act, this
25 state, the department, the authority, a separate legal or
26 administrative entity created under this act, or a political
27 subdivision shall not expend any state funds for project costs

1 incurred after the effective date of this act.

2 (2) The department may expend state and federal funds for the
3 administrative costs of eminent domain proceedings and for
4 professional fees, administrative costs, planning costs, and
5 procurement costs of the authority or the department related to a
6 project. The department may expend state and federal funds for the
7 cost of maintaining and repairing a highway interchange or other
8 highway facility, other than the bridge or border inspection plaza,
9 that are included within a crossing if the interchange or other
10 facility is part of a state trunk line and the maintenance and
11 repair of the interchange is performed after the date the crossing
12 is open for public transportation.

13 (3) A governance agreement or public-private agreement shall
14 not require a pledge of the full faith and credit of this state or
15 a political subdivision of this state.

16 (4) The legislative council shall report to the governor and
17 the senate and house of representatives standing committees on
18 transportation issues by September 30, 2011 on the implementation
19 status of this act. For the fiscal year ending September 30, 2011,
20 \$10,000.00 is appropriated to the legislative council to perform
21 and prepare this report.

22 (5) As used in this section and section 19, "state funds" does
23 not include any of the following:

24 (a) Project revenues.

25 (b) Canadian contribution.

26 (c) Project contribution.

27 Enacting section 1. This act is repealed effective January 1,

1 2015 if the authority has not entered into a governance agreement
2 under this act on or before December 31, 2014, unless by December
3 30, 2014, the director of the department files with the secretary
4 of state a letter stating that the failure to enter into a
5 governance agreement is due in whole or in part to legal
6 challenges, litigation, or other factors beyond the control of the
7 authority.

8 Enacting section 2. The legislature intends all of the
9 following:

10 (a) That this act is authorized under section 5 of article III
11 of the state constitution of 1963 and advances a legitimate public
12 purpose.

13 (b) That this act authorizes this state, the department, the
14 authority, and a separate legal or administrative entity created by
15 a governance agreement to participate in a project under this act
16 relating to a bridge and approaches that will connect this state
17 with Canada and authorizes the collection of tolls for its use
18 pursuant to 33 USC 535.

19 Enacting section 3. As provided in 1846 RS 1, MCL 8.5, this
20 act is severable. If any portion of this act or the application of
21 this act to any person or circumstances is found to be invalid by a
22 court, the invalidity of that portion shall not affect the
23 remaining portions or applications that can be given effect without
24 the invalid portion or application, provided the remaining portions
25 are not determined by the court to be inoperable.

26 Enacting section 4. This act takes effect June 1, 2011.