

MICHIGAN ALTERNATIVE PROJECT DELIVERY ACT: PUBLIC-PRIVATE PARTNERSHIPS

Phone: (517) 373-8080
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Senate Bill 627 (passed by the Senate as S-2)
Sponsor: Sen. Mike Kowall
Senate Committee: Commerce
House Committee: Commerce and Trade
Complete to 12-8-16

Analysis available at
<http://www.legislature.mi.gov>

REVISED SUMMARY:

The bill would create a new act, the "Michigan Alternative Project Delivery Act." In brief, it would do the following:

- Allow a public authority to enter into public-private agreements to develop eligible projects, enter into ancillary agreements to public-private agreements, and exercise eminent domain to acquire property necessary for an eligible project.
- Allow any lawful source of public and private funding and financing to be used for the development of an eligible project under the proposed act.
- Allow a public authority to impose, increase, collect, and enforce user fees, or authorize another person to impose, increase, collect, and enforce user fees.
- Prescribe a penalty for a person who failed to pay a user fee for use of a transportation project.
- Allow a public authority to issue bonds, notes, or other obligations, under applicable law, for the purposes of providing funding for an eligible project. The bill authorizes the pledge of revenue generated through a public-private agreement, including user fees, for repayment of bonds, notes, or other obligations. The bill states that such bonds shall not be considered a debt of the state.
- Specify that nothing in the proposed act would expand the type of asset or provision of type of services that a public authority would otherwise be authorized to develop under applicable existing law.
- Specify that a public-private agreement would be subject to the Fair and Open Competition in Governmental Construction Act and the Local Government Labor Regulatory Limitation Act, as applicable.
- Require a public authority to hold a public hearing not less than every five years after the completion of an eligible project to conduct a public review of the eligible project.

- Require a public authority to consider and compare various methods for developing a project and identify the proposed delivery method.
- Provide that notwithstanding any other provision of state law, the public authority may use any procurement method and process that the public authority determines is appropriate to solicit private parties and award public-private agreements under this act
- Require a public authority to consult with the state Budget Director regarding the fiscal impact on affected state agencies when developing a project.
- Authorize a public authority to include provisions addressing the allocation of project risk, payment terms, utilities, and other matters in a public-private agreement.
- Specify that authority granted under the act would supplement any existing authority.
- Specify that the proposed act would not affect a public-private agreement entered into before the bill's effective date, or prohibit a public authority from using other legal authority to enter into a public-private agreement.
- Provide that property developed or held by a private party under a public-private agreement would be exempt from all state and local ad valorem and other property taxes that otherwise would be applicable.

The bill uses a number of defined terms that affect the scope and authority of the bill. Specifically, the bill includes the following definitions:

- "Public authority" means the State of Michigan, a state department, or state agency.
- "Public-private agreement" means an agreement between a public authority and one or more private parties for the development of an eligible project. A public-private agreement may include one or more local units of government, defined as a county, city, township, village, school district, intermediate school district, community college, and public university.
- "Eligible project" means either a "facility project" (buildings related to health care delivery or laboratories) or a "transportation project."
- "Transportation project" means any roadway, railway, transit system, building, structure, appurtenance, or other real property used directly or indirectly in the transportation of persons or the transportation or storage of goods, substances, or vehicles. Transportation project also includes services related to the transportation of persons or the transportation or storage of goods, substances, or vehicles. The

bills excludes from the definition a bridge or other infrastructure directly associated with an international border crossing.

- "Develop" or "development" means the study, planning, design, acquisition, construction, reconstruction, rehabilitation, improvement, repair, financing, management, operation, or maintenance of an eligible project and one any other service related to an eligible project. The bill indicates that "develop" or "development" includes the imposition, charging, assessment, collection, and enforcement of user fees related to an eligible project.
- "User fees" means user fees, consumption charges, rents, license fees, or similar or ancillary charges relating to the use of eligible projects. User fees also include fees and charges for creating, maintaining, and administering an account, including credit card, bank, and similar fees and charges.

FISCAL IMPACT:

The bill would provide additional authority to state departments to enter into public-private partnerships under conditions established under the bill. The bill is permissive and does not impose new requirements or direct costs on state agencies. The bill has no direct impact on local units of government.

To the extent that the bill includes transportation projects within the definition of eligible projects, authorizes the use of user fees for eligible projects, and authorizes the use of user fee revenue as a pledge to issue bonds for eligible projects, the bill would appear to authorize toll roads.

The bill appears to provide new public-private procurement authority to all state departments and is not specific to any particular state department. House Bill 4925 of the 2013-2014 Legislative Session, which authorized certain public private agreements, was specific to the Michigan Department of Transportation.

The House Fiscal Agency analysis of House Bill 4925 from the 2013-2014 Legislative Session provides additional background information on public private partnerships, as well a list of the statutes that currently authorize and govern the Michigan Department of Transportation's highway construction contracting process. It is not clear how Senate Bill 627 would related to the other statutes that currently govern the department's construction contracting process.

<http://legislature.mi.gov/doc.aspx?2013-HB-4925>

Legislative Analyst: Chris Couch
Fiscal Analyst: William E. Hamilton

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