

**SUBSTITUTE FOR  
SENATE BILL NO. 410**

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; to allow for a stakeholders' agreement between a concessionaire and a host community; 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.



1 (g) "Debt" means borrowed money, loans, and other  
2 indebtedness, including principal and interest, evidenced by a bond  
3 or other security lawfully issued or assumed under this act, in  
4 whole or in part, by the authority or that may be evidenced by a  
5 judgment or decree against the authority.

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

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

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

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

23 (l) "Host community" means the neighborhood community which is  
24 composed of members who live or work in the 6 census tracts closest  
25 to the American side of the crossing according to the most recent  
26 decennial census in which a project occurs and where residences and  
27 businesses are displaced.



1 (m) "Host community organization" means an established  
2 nonprofit organization identified by the authority which represents  
3 the stakeholders who live or work in the host community.

4 (n) "Private entity" means any natural person, corporation,  
5 general partnership, limited liability company, limited  
6 partnership, joint venture, business trust, public benefit  
7 corporation, nonprofit entity, or other nongovernmental business  
8 entity.

9 (o) "Project" means all activities associated with a crossing,  
10 including project land activities and project activities.

11 (p) "Project activity" means the research, planning,  
12 procurement, design, financing, construction, and improvement for,  
13 and repair, maintenance, and operation of, a crossing under this  
14 act.

15 (q) "Project contribution" means a gift, contribution,  
16 payment, advance, grant, or other money received in aid of a  
17 project from the federal government or an agency of the federal  
18 government.

19 (r) "Project costs" means the costs associated with a project,  
20 including, but not limited to, the cost of project activities;  
21 project land activities; mitigation and enhancement measures  
22 included in the green sheet or record of decision for a project  
23 pursuant to the national environmental policy act of 1969, 42 USC  
24 4321 to 4370h; all assets, including machinery, vehicles, and  
25 equipment, including financing costs; traffic estimates; studies;  
26 legal and other advisory services; engineering services; plans;  
27 surveys; feasibility studies; administrative expenses; and expenses



1 that may be necessary or incidental to the procurement, design,  
2 construction, repair, or improvement of the crossing and the  
3 financing, operation, and maintenance of the crossing.

4 (s) "Project land activity" means the acquisition of all land,  
5 rights-of-way, property, rights, easements, and interests for a  
6 crossing.

7 (t) "Project revenue" means user fees or other charges  
8 generated by the use of a crossing and any other revenue generated  
9 from the use of or by the crossing or associated with a project,  
10 including, but not limited to, any revenue arising from a public-  
11 private agreement.

12 (u) "Public agency" means that term as defined under section 2  
13 of the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL  
14 124.502, including, but not limited to, an entity established by  
15 the government of Canada under the laws of Canada and an authority  
16 established under this act.

17 (v) "Public-private agreement" means any of the following  
18 relating to the research, planning, procurement, design, financing,  
19 construction, and improvement for, and repair, maintenance, and  
20 operation of a project:

21 (i) An agreement between a private entity or private entities  
22 and the authority.

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

25 (iii) An agreement between a private entity or private entities  
26 and a separate legal or administrative entity created under a  
27 governance agreement.



1 (iv) An agreement with a private entity or private entities and  
2 a public agency or public agencies as parties involving a joint  
3 exercise of power by the authority and a public body of Canada  
4 authorized by a governance agreement.

5 (w) "Qualified revenue" means all of the following:

6 (i) Project revenue.

7 (ii) A Canadian contribution.

8 (iii) A project contribution.

9 (x) "Stakeholders' agreement" means a contract between the  
10 host community and a concessionaire that addresses host community  
11 concerns.

12 Sec. 7. (1) The authority is created as a public body  
13 corporate in the department. Except as otherwise provided in this  
14 act, the authority shall exercise its powers, duties, and functions  
15 under this act independently of the director of the department. The  
16 authority may contract with the department for the purpose of  
17 maintaining the rights and interests of the authority.

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

23 (3) The authority shall ensure that the expenditure of any  
24 Canadian contribution in this state maximizes the amount of federal  
25 aid to the department. To accomplish this objective, the project  
26 shall be divided into discrete portions that may independently  
27 qualify for federal aid. If maximizing federal aid to the

1 department would cause the total cost of those portions in this  
2 state that are to be funded by the Canadian contribution under the  
3 governance agreement to exceed the Canadian contribution amount  
4 specified in the governance agreement for those portions, the  
5 portion or portions that would generate the least total federal aid  
6 to the department shall be exempt from this requirement. No more  
7 portions shall be exempt from this requirement than are necessary  
8 to bring the total cost of those portions in this state that are to  
9 be funded by the Canadian contribution under the governance  
10 agreement below the level of the Canadian contribution amount  
11 specified in the governance agreement for those portions. The  
12 obligations under this subsection shall not impede the timely  
13 implementation of the project. However, it is not an impediment to  
14 the timely implementation of the project if the delay is necessary  
15 in order to maximize the amount of federal aid to the department  
16 and is for a reasonable time period as described in the governance  
17 agreement. The director of the department shall ensure that the  
18 authority complies with this subsection. The obligations under this  
19 subsection terminate on the date the crossing is open to public  
20 transportation.

21 (4) All departments, agencies, and officers of state  
22 government shall provide full cooperation to the authority in the  
23 performance of powers, duties, and functions of the authority.

24 (5) This act does not diminish the power of the state  
25 transportation commission under section 28 of article V of the  
26 state constitution of 1963 to establish policy for department  
27 programs and facilities and other public works of this state, as



1 provided by law.

2 (6) This act does not diminish the power of the civil service  
3 commission under section 5 of article XI of the state constitution  
4 of 1963.

5 (7) The authority may exercise all of the following powers:

6 (a) Adopt bylaws to regulate its affairs and conduct its  
7 business.

8 (b) Adopt or change an official seal.

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

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

11 (e) Determine location, design standards, and construction  
12 materials of a crossing.

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

15 (g) Fix, revise as necessary, charge, enforce, and collect  
16 user fees and other charges for the use of, or contract with a  
17 private entity to fix, revise as necessary, charge, enforce, and  
18 collect user fees and other charges for the use of a crossing.

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

20 (i) Purchase, otherwise acquire, receive, accept, lease, hold,  
21 and dispose of real and personal property in the exercise of its  
22 powers and the performance of its duties under this act that relate  
23 to a crossing, including, but not limited to, interests in real and  
24 personal property and related rights or interests such as  
25 structures, rights-of-way, air rights, franchises, easements,  
26 liens, lands under water, and riparian rights. Nothing in this  
27 subdivision or act gives the authority the power of eminent domain.



1 (j) Accept contributions of real property from the department  
2 or other entities.

3 (k) Issue bonds and refinance bonds, as authorized by this  
4 act.

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

8 (m) Employ consulting engineers, attorneys, accountants,  
9 construction and financial experts, superintendents, managers, and  
10 other employees and agents as may be necessary in its judgment and  
11 fix their compensation, subject to any applicable rules or  
12 regulations of the civil service commission.

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

16 (o) Develop and use any property owned or controlled by the  
17 authority for customs brokering, currency exchange transactions, or  
18 for the sale of articles for export and consumption outside the  
19 United States or Canada, respectively, to the extent that this use  
20 is not restricted by federal law or Canadian law. The authority may  
21 also enter into contracts or leases to provide for the development  
22 and use of any property owned or controlled by the authority for  
23 customs brokering, currency exchange transactions, or for the sale  
24 of articles for export and consumption outside the United States or  
25 Canada, respectively, to the extent that this use is not restricted  
26 by federal law or Canadian law. If the authority contracts for the  
27 services described in this subdivision, the authority shall use a

1 competitive bidding process. A contract or lease entered into under  
2 this subdivision does not exempt a person from the payment of any  
3 motor fuel, sales, or other taxes required to be paid under the  
4 laws of this state on articles or fuel sold or brought into this  
5 state for consumption.

6 (p) Enter into a governance agreement as provided in section  
7 11.

8 (q) Apply for and use grants, loans, loan guarantees, lines of  
9 credit, revolving lines of credit, or other arrangements available  
10 under 23 USC 601 to 610 or other applicable law in a manner  
11 consistent with this act.

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

15 (s) Exercise other powers of the department relating to  
16 streets, highways, transportation programs, transportation  
17 facilities, and transportation public works of this state not  
18 otherwise vested in the authority only to the extent related to a  
19 project and necessary to carry out the purposes of this act.  
20 Nothing in this subdivision or act gives the authority the power of  
21 eminent domain.

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

25 Sec. 9. (1) The powers and duties of the authority are vested  
26 in a board of directors. The board shall have 5 members who shall  
27 be appointed by the governor with the advice and consent of the



1 senate. The governor shall designate a member of the board, who  
2 does not also serve as the head of a state department, as its  
3 chairperson. One member shall be appointed by the governor from a  
4 list of 3 or more names nominated by the senate majority leader,  
5 and 1 member shall be appointed by the governor from a list of 3 or  
6 more names submitted by the speaker of the house of  
7 representatives. Of the 3 members initially appointed by the  
8 governor without nomination by the senate majority leader or the  
9 speaker of the house of representatives, the first member shall be  
10 appointed for an initial term of 2 years, and 2 members shall be  
11 appointed for an initial term of 4 years each. The initial members  
12 nominated by the senate majority leader and the speaker of the  
13 house of representatives shall be appointed for initial terms of 2  
14 years each. After the expiration of initial terms, members shall be  
15 appointed for terms of 4 years. A member of the board shall  
16 continue to serve until a successor is appointed and qualified. A  
17 vacancy on the board occurring other than by expiration of a term  
18 shall be filled by the governor in the same manner as the original  
19 appointment for the balance of the unexpired term. An employee of  
20 the department shall not serve as a member of the board.

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

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

26 (4) The board may, as appropriate, make inquiries, studies,  
27 and investigations, hold hearings, and receive comments from the



1 public. Subject to available funding, the board also may consult  
2 with outside experts to perform its duties, including, but not  
3 limited to, experts in the private sector, organized labor, and  
4 government agencies and experts at institutions of higher  
5 education.

6 (5) The board may hire or retain contractors, subcontractors,  
7 advisors, consultants, and agents as the board considers advisable  
8 and necessary, in accordance with the relevant statutes and  
9 procedures, rules, and regulations of the civil service commission  
10 and the department of technology, management, and budget and may  
11 make and enter into contracts necessary or incidental to the  
12 exercise of the powers and performance of the duties of the board.  
13 Under this subsection, the board may hire or retain contractors,  
14 subcontractors, advisors, consultants, and agents as the board  
15 considers advisable and necessary to provide legal advice or legal  
16 services, to provide for research and development activity, or to  
17 provide strategic planning services.

18 (6) Members of the board shall serve without compensation.  
19 Members of the board may receive reimbursement for necessary travel  
20 and expenses consistent with relevant statutes and the rules and  
21 procedures of the civil service commission and the department of  
22 technology, management, and budget, subject to available funding.

23 (7) A member of the board shall discharge the duties of the  
24 position in a nonpartisan manner, in good faith, in the best  
25 interests of this state, and with the degree of diligence, care,  
26 and skill that an ordinarily prudent person would exercise under  
27 similar circumstances in a like position. A member of the board



1 shall not make or participate in making a decision, or in any way  
2 attempt to use his or her position as a member of the board to  
3 influence a decision, on a matter before the authority in which the  
4 member is directly or indirectly interested. A member of the board  
5 shall not be interested directly or indirectly in any contract with  
6 the authority or the department that would cause a substantial  
7 conflict of interest. A member of the board shall comply, and the  
8 board shall adopt policies and procedures that require members to  
9 comply, with the requirements of this subsection and all of the  
10 following:

11 (a) 1978 PA 472, MCL 4.411 to 4.431, as if the board member  
12 were subject to that act and that board member's receipt of a gift  
13 or compensation would be in violation of that act if given by a  
14 lobbyist, a lobbyist agent, or a representative of a lobbyist under  
15 that act.

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

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

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

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

23 (8) A contract entered into by the authority or a bond, note,  
24 or other obligation issued by the authority is not void or voidable  
25 by reason of a member's failure to comply with subsection (7)(a)  
26 through (e), except as provided in 1968 PA 318, MCL 15.301 to  
27 15.310, or 1968 PA 317, MCL 15.321 to 15.330.



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

6 (10) Within 60 days after the first meeting of the authority,  
7 the department shall establish a website for the authority and the  
8 authority shall post on the website updates not less than weekly on  
9 authority activities and transactions and the progress of any  
10 project, including, but not limited to, all proposed public-private  
11 agreements.

12 (11) The authority is subject to, and shall conduct its  
13 meetings in compliance with, the open meetings act, 1976 PA 267,  
14 MCL 15.261 to 15.275.

15 (12) Except as otherwise provided in this act, the authority  
16 shall comply with the freedom of information act, 1976 PA 442, MCL  
17 15.231 to 15.246.

18 (13) The department may transfer property or interests in  
19 property under the jurisdiction or control of the department to the  
20 authority for purposes authorized under this act.

21 Sec. 11. (1) The authority may enter into a governance  
22 agreement concerning a project under this act. The governance  
23 agreement may create a separate legal or administrative entity  
24 under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL  
25 124.501 to 124.512, including a joint venture between the authority  
26 and a public agency of Canada, that shall be a public body  
27 corporate or politic and shall not be a public body of the



1 executive branch of this state. Pursuant to this subsection,  
2 activities of the authority under this act may be exercised jointly  
3 with a public agency of Canada pursuant to a governance agreement,  
4 including through a separate legal or administrative agency. The  
5 governance agreement may establish terms and conditions for the  
6 separate legal or administrative entity to exercise any power that  
7 the authority and a public agency of Canada share in common as  
8 provided in section 4 of the urban cooperation act of 1967, 1967  
9 (Ex Sess) PA 7, MCL 124.504. The governance agreement shall not  
10 authorize the authority or any entity created by the governance  
11 agreement to levy a tax or to take property using the power of  
12 eminent domain.

13 (2) In accordance with a governance agreement established  
14 under subsection (1), the department or the authority may receive  
15 funds from a Canadian contribution. An agreement involving the  
16 authority and a public agency of Canada relating to a Canadian  
17 contribution shall not impose any obligation on the department, the  
18 authority, this state, or a political subdivision of this state to  
19 repay the Canadian contribution from revenues other than project  
20 revenue and project contributions.

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

22 (a) Repayment of all or any part of any Canadian contribution  
23 but only if repayment of the contribution is required to be paid,  
24 repaid, or returned exclusively from project revenue or project  
25 contributions.

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



1 (4) A governance agreement shall provide for all of the  
2 following:

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

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

7 (c) That any project comply with the national environmental  
8 policy act of 1969, 42 USC 4321 to 4370h, if applicable, or other  
9 requirements of the federal highway administration, including, but  
10 not limited to, any mitigation or enhancement measures included in  
11 a green sheet or record of decision for the project pursuant to the  
12 national environmental policy act of 1969, 42 USC 4321 to 4370h, if  
13 applicable.

14 (d) An equitable schedule for reimbursement to the authority,  
15 from project revenue and Canadian contributions, for any liability  
16 incurred by the authority, a separate legal or administrative  
17 entity, or joint venture, caused by the acts or omissions of a  
18 Canadian public agency whether in connection with a joint venture,  
19 a separate legal or administrative entity, or otherwise.

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

25 (6) After setting aside sufficient funds to pay for its  
26 expenses authorized by this act, the authority shall deposit any  
27 remaining funds distributed to the authority from project revenue

1 into the state trunk line fund established under section 11 of 1951  
2 PA 51, MCL 247.661.

3 (7) Upon executing a governance agreement, the authority shall  
4 transmit copies of the governance agreement to the clerk of the  
5 house of representatives and the secretary of the senate.

6 Sec. 13. (1) The authority may enter into a public-private  
7 agreement concerning a crossing and project activity as provided in  
8 this act. A public-private agreement shall include terms designed  
9 to protect the public interest and assure accountability of a  
10 concessionaire to the authority and a public agency of Canada. A  
11 public-private agreement may contain terms and conditions  
12 consistent with any limitations under this act that the authority  
13 may determine or negotiate to facilitate the crossing and project  
14 activity. The agreement may contain a provision allowing binding  
15 arbitration or other alternative forms of dispute resolution.

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

18 (a) An initial term for the use and operation of the crossing  
19 or project activity by a concessionaire for a period that the  
20 authority determines is necessary for the development and financing  
21 of the project and the economic feasibility of the public-private  
22 agreement. The initial term shall not exceed 50 years in length  
23 from the date on which the crossing is open to the public and  
24 collecting user fees or other charges. After the initial term, the  
25 authority may renew a public-private agreement or execute a new  
26 public-private agreement for a period that the authority determines  
27 is necessary for the development and financing of the project and



1 the economic feasibility of the public-private agreement so long as  
2 that term does not exceed 50 years in length. If the operation or  
3 maintenance of the crossing is impaired because of disaster or  
4 disaster recovery not attributable to actions of the  
5 concessionaire, a term may be extended for an extended period equal  
6 to the period of impairment.

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

8 (c) A requirement that the control of the crossing revert from  
9 the concessionaire to the authority and a public agency of Canada  
10 at the end of the public-private agreement in a manner and  
11 condition required under the public-private agreement and  
12 governance agreement.

13 (d) That ownership of a crossing within this state is vested  
14 in the authority. A public-private agreement may provide for the  
15 use and occupancy of the crossing if the use and occupancy do not  
16 interfere with the transportation and related public uses of the  
17 crossing.

18 (e) A lease, license, right of entry, or other instrument for  
19 the crossing as the authority determines is in the public interest  
20 and is consistent with this act.

21 (f) The right of the authority to share in any refinancing  
22 gains benefiting the concessionaire under the public-private  
23 agreement.

24 (g) A requirement that the concessionaire cooperate with the  
25 authority and any other appropriate public agencies on all matters  
26 concerning the security of the crossing or disaster recovery for  
27 the crossing.

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

4 (i) A requirement that during a period the crossing is  
5 operated by the concessionaire the concessionaire shall have  
6 control for operational purposes over designated portions of the  
7 crossing.

8 (j) The specification of the scope of the project and the  
9 scope of control over the crossing for operational purposes to be  
10 vested in the department or the authority upon the completion of  
11 construction of the crossing.

12 (k) A requirement that the concessionaire maintain the  
13 crossing in a manner required under the public-private agreement.

14 (l) A requirement that the concessionaire report to the  
15 legislature on March 31 of each year all of the following  
16 information from the immediately preceding calendar year:

17 (i) Financial status of the crossing.

18 (ii) Maintenance expenses of the crossing.

19 (iii) Operation costs of the crossing.

20 (iv) Traffic counts on the crossing.

21 (v) Major incidents on the crossing.

22 (vi) Total tolls charged to users of the crossing.

23 (m) A requirement that the concessionaire appear and testify  
24 without a subpoena at a legislative hearing convened and conducted  
25 in accordance with applicable law and relating to a public-private  
26 agreement, a project that is the subject of the public-private  
27 agreement, or the report described in subdivision (l).



1 (3) This state, the department, the authority, a separate  
2 legal or administrative entity created under a governance  
3 agreement, and any political subdivision of this state are not  
4 liable for the acts or omissions of a concessionaire.

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

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



1 authority may accept bonds, letters of credit, and other security  
2 from private entities other than the concessionaire that is subject  
3 to posting so long as the purposes of a payment and performance  
4 bond are fulfilled.

5 Sec. 14. (1) A governance agreement or a public-private  
6 agreement shall not authorize any of the following:

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

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

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

25 (d) This state, any of its political subdivisions, the  
26 department, or an authority, using state funds to make an  
27 availability payment. This subdivision does not restrict a public



1 agency of Canada or a separate legal or administrative entity  
2 created under a governance agreement from making availability  
3 payments repayable from qualified revenues if authorized under the  
4 public-private agreement and the governance agreement.

5 (2) A concessionaire may not sell or transfer its interest in  
6 a public-private agreement except as provided in the public-private  
7 agreement.

8 Sec. 15. (1) The authority may solicit proposals for the  
9 selection of a concessionaire for a project. If the authority  
10 solicits proposals, the authority shall use a competitive selection  
11 process. The authority may charge and use fees to offset the  
12 administrative costs of receiving and evaluating proposals. Before  
13 receiving a proposal, the authority may agree to reimburse a  
14 private entity for costs incurred in the preparation and  
15 presentation of the proposal in return for the right to use any  
16 work product contained in the proposal, including, but not limited  
17 to, the technologies, methods, processes, and information contained  
18 in the material submitted in connection with the proposal. If the  
19 authority issues a request for proposals under this section, the  
20 request shall require that a provision for a stakeholders'  
21 agreement is a part of each proposal submitted under this section.  
22 The provision in the request for proposal for a stakeholders'  
23 agreement shall include air and health impacts, jobs and job  
24 training, sustaining housing and home repair, and green  
25 developments.

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



1 (3) Before a request for proposal is issued by the authority,  
2 the authority shall conduct at least 1 public hearing on the  
3 request for proposal and selection process. Before any request for  
4 proposals is initiated, the authority shall consult with the host  
5 community organization. After consulting with the authority, but  
6 before a request for proposals is initiated, the host community  
7 organization may recommend to the authority criteria for evaluating  
8 the prospective bidders' proposals for a stakeholders' agreement  
9 within a reasonable time frame as set by the authority. The  
10 authority shall use 1 or more of the following procurement  
11 approaches:

12 (a) Sealed bidding.

13 (b) Selection of proposals, with or without negotiations,  
14 based on qualifications, development proposals, technical  
15 proposals, financial proposals, best value, or any combination of  
16 these.

17 (4) The authority shall consider all of the following factors  
18 in evaluating and selecting a bid or proposal to enter into a  
19 public-private agreement:

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

21 (b) The general reputation, qualifications, industry  
22 experience, safety record, and financial capacity of the private  
23 entity.

24 (c) The proposed research, planning, procurement, design,  
25 financing, construction, and improvement for, and repair,  
26 maintenance, and operation of, the crossing.

27 (d) To the extent permitted by federal law, the proposed plan



1 of the private entity to hire legal United States residents and  
2 citizens for work relating to the project in this state.

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

6 (f) Any other factors that the authority determines are proper  
7 and consistent with the provisions of this act.

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

11 (6) At the request of a private entity, the authority may  
12 acknowledge as confidential and exempt from disclosure trade  
13 secrets or proprietary commercial or financial information provided  
14 by the private entity as part of a proposal under this section.  
15 Information acknowledged by the authority as confidential is exempt  
16 from disclosure, including, but not limited to, disclosure under  
17 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.  
18 Unless considered proprietary information by the private entity,  
19 the authority shall not acknowledge routine financial information  
20 as confidential. If the authority acknowledges information as  
21 confidential, the authority shall provide a description of the  
22 information to which exemption from disclosure will extend. The  
23 authority may agree to keep confidential and exempt from  
24 disclosure, proprietary, commercial, or other confidential  
25 information that a concessionaire is required by the public-  
26 private agreement to provide to the authority.

27 (7) A bid or proposal from a private entity for a project may



1 be exempted from disclosure by the authority until the authority  
2 completes all negotiations and selects the concessionaire with  
3 which it intends to enter into a public-private agreement and the  
4 final public-private agreement with the concessionaire is  
5 effective. After a final public-private agreement is effective, a  
6 bid or proposal is a public record subject to public disclosure,  
7 excluding any confidential information exempted from disclosure by  
8 the authority under this act.

9 (8) After a final public-private agreement is effective, the  
10 authority shall transmit a copy of it to members of the legislature  
11 by transmitting copies to the clerk of the house of representatives  
12 and the secretary of the senate, excluding any confidential  
13 information exempted from disclosure by the authority under this  
14 act.

15 (9) A proposal or bid submitted by a private entity under this  
16 section shall include an executive summary in a form determined by  
17 the authority summarizing the major elements of the proposal  
18 excluding the price, financing plan, or other trade secrets or  
19 confidential proprietary commercial or financial information that  
20 the private entity seeks to exempt from disclosure. Upon  
21 submission, the executive summary is a public record subject to  
22 public disclosure and shall be posted on the website maintained for  
23 the authority by the department.

24 (10) Submission of a solicited or unsolicited proposal  
25 constitutes consent for the authority to use the information and  
26 ideas provided by a private entity for a project or to seek or  
27 enter into a public-private agreement, including to solicit



1 competing proposals, unless the authority agrees otherwise in  
2 writing executed by the authority before the submission.

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

7 Sec. 16. (1) A concessionaire and a host community  
8 organization shall enter into a stakeholders' agreement. A  
9 stakeholders' agreement may only be funded by a concessionaire or  
10 by using only qualified revenue.

11 (2) By March 1 of each year during the duration of the  
12 stakeholders' agreement, the authority shall submit a written  
13 report quantifying the progress toward meeting the timelines of the  
14 stakeholders' agreement to the senate, the house of  
15 representatives, and the host community.

16 Sec. 17. (1) The authority may provide for the issuance of  
17 bonds. The principal of and interest on the bonds are payable  
18 solely from project revenue, project contributions, or other  
19 sources described in subsection (3) and do not constitute a general  
20 or moral obligation of this state. The bonds are not a debt, moral  
21 obligation, or liability of this state or any political subdivision  
22 of this state and do not constitute or create any indebtedness,  
23 liability, or obligation of this state or any political subdivision  
24 of this state. Bonds authorized under this act are not a pledge of  
25 the full faith and credit of this state or any political  
26 subdivision of this state. Each bond shall contain on its face a  
27 statement to the effect that neither this state nor the authority



1 is obligated to pay the principal amount of the bonds or any  
2 interest on the bonds from any source other than project revenue,  
3 project contributions, or other sources described in subsection (3)  
4 and that neither the full faith and credit nor the taxing power of  
5 this state or any political subdivision of this state is pledged to  
6 the payment of the principal or interest.

7 (2) The only bonds that shall be issued by a governmental  
8 entity in this state for project financing are the bonds authorized  
9 under this act. Consistent with the requirements of subsection (1),  
10 a bond may be issued by the authority only for a project to take  
11 advantage of financing, credit, or tax exemption opportunities  
12 authorized by state or federal law and for providing funds for  
13 project costs or the refunding of any bonds issued under this act,  
14 together with any costs associated with the transaction. At the  
15 request of the authority, the department may enter into agreements  
16 under which the department will seek and serve as a conduit for any  
17 financing, credit, or tax exemption opportunities authorized by  
18 state or federal law.

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

22 (a) Project revenue and project contributions.

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

25 (c) The proceeds of any financial instrument providing credit,  
26 liquidity, or security for the bonds described in subsection (6).

27 (d) Investment earnings on any of the sources of funds



1 described in subdivisions (a) to (c).

2 (4) To the extent required by applicable law, all proceeds  
3 from the authority's share under the governance agreement or the  
4 public-private agreement of the sources of payments specified in  
5 subsection (3) are appropriated to the authority for the payment of  
6 the obligations, for payment of project costs, or for payment of  
7 principal, interest, or premium on bonds issued by the authority.  
8 The action of the authority in issuing the bonds creates a  
9 statutory lien upon project revenue and project contributions and  
10 other revenue described in subsection (3) as provided by the  
11 authority, pledged for the payment of the principal, interest, or  
12 premium on the bonds, to and in favor of the holders of the bonds.  
13 The statutory lien shall be a first priority lien, paramount and  
14 superior to all other liens and interests of any kind that arise or  
15 are created after the issuance of the bonds, unless otherwise  
16 specified by the authority at the time the bonds are issued.  
17 Project revenue and project contributions shall remain subject to  
18 the statutory lien until all principal, interest, and premium on  
19 the bonds are paid or provided for, as specified by the authority  
20 at the time of the issuance of the bonds. The statutory lien may be  
21 enforced by or on behalf of the holders of the bonds as to the use  
22 of project revenue and project contributions, to pay principal,  
23 interest, and premium on the bonds or other financial obligations,  
24 but the lien shall not be construed to give the holders  
25 authorization to compel the sale of a project or a crossing.

26 (5) In issuing bonds under this act, the authority may, by  
27 duly adopted action, do 1 or more of the following:



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

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

23 (c) Authorize or provide for 1 or more specified officers,  
24 employees, or agents of the authority, but only within limitations  
25 contained in the authorizing action, to do 1 or more of the  
26 following for and on behalf of the authority:

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



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

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

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

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

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

22           (b) Tender rights and procedures for the holders of the bonds.

23           (c) Provisions for remarketing any bonds tendered.

24           (d) The nature of interest to be paid on the bonds, which may  
25 be fixed or variable rates of interest or no stated interest, but  
26 with payments of principal at amounts higher than the amounts paid  
27 by the original purchaser for the bonds.



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

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

20           (9) All expenses incurred by the authority in carrying out  
21 this section are payable only from revenues provided or to be  
22 provided under this act. This act does not authorize the authority  
23 to incur any indebtedness or liability on behalf of or payable by  
24 this state. This act does not authorize the authority to levy a  
25 tax.

26           (10) Except as otherwise provided in this section, bonds  
27 issued under this act are not subject to the revised municipal



1 finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

2 (11) The issuance of bonds under this section is subject to  
3 the agency financing reporting act, 2002 PA 470, MCL 129.171 to  
4 129.177. The issuance of bonds under this act is not subject to a  
5 referendum or approval by voters.

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

10 (13) Nothing in this act shall be construed to permit long-  
11 term borrowing by this state in violation of section 15 of article  
12 IX of the state constitution of 1963 or a grant of the credit of  
13 this state in violation of section 18 of article IX of the state  
14 constitution of 1963.

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

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

26 Sec. 21. (1) User fees and other charges collected under this  
27 act shall be determined and adjusted with due consideration for the



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

5 (2) The proceedings and decisions of an authority or a  
6 separate legal or administrative entity created by a governance  
7 agreement are not subject to approval or regulation by any state  
8 entity or local governmental entity in this state.

9 (3) A public-private agreement, user fees, or other charges  
10 imposed by the authority or a separate legal or administrative  
11 entity created by a governance agreement are not subject to  
12 approval, regulation, or taxation by any state entity or local  
13 governmental entity in this state.

14 (4) The activities and property of an authority under this act  
15 are exempt from taxation by this state or a political subdivision  
16 of this state. The activities and property of a separate legal or  
17 administrative entity created under a governance agreement are  
18 exempt from taxation by this state or a political subdivision of  
19 this state. This act does not exempt the activities or property of  
20 a concessionaire from taxation under other applicable laws.

21 Sec. 23. A duly constituted and authorized legislative  
22 committee, including, but not limited to, the appropriations  
23 committees of the house of representatives or the senate, or the  
24 transportation committees of the house of representatives or the  
25 senate, or any successor committees, may conduct legislative  
26 oversight hearings on activities of the authority at any time,  
27 including, but not limited to, activities relating to a public-



1 private agreement or a governance agreement. The authority, the  
2 department, political subdivisions of the state, and all private  
3 parties to a public-private agreement shall actively cooperate and  
4 shall attend the hearing and provide live testimony at the hearing  
5 without a subpoena.

6       Sec. 25. (1) All law enforcement officers of this state and  
7 local units of government in which all or part of a crossing is  
8 located have the same powers and jurisdiction within the limits of  
9 a crossing as they have in their respective areas of jurisdiction  
10 to enforce traffic and motor vehicle laws. An authorized emergency  
11 vehicle and the occupants of the authorized emergency vehicle shall  
12 be afforded access to a crossing while in the performance of an  
13 official duty without the payment of a user fee or other charge. As  
14 used in this subsection, "authorized emergency vehicle" means that  
15 term as defined in section 2 of the Michigan vehicle code, 1949 PA  
16 300, MCL 257.2.

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

20       (3) A person who fails to pay a user fee imposed for use of a  
21 crossing is responsible for a civil infraction and is subject to a  
22 civil fine of \$50.00. In addition, the person shall pay the  
23 crossing operator 2 times the amount of the user fee. If that  
24 amount remains unpaid for 180 days after the person's use of the  
25 crossing, the department, the authority, or a concessionaire may  
26 bring a civil action against the person to collect the unpaid  
27 charges in a court having jurisdiction. If the civil action results



1 in a judgment for unpaid charges, the defendant shall also be  
2 required to reimburse the plaintiff for all filing fees incurred by  
3 the plaintiff plus \$500.00 in compensation for the costs of  
4 bringing the civil action.

5 (4) During the period that a person owes and has failed to pay  
6 charges, fees, and costs under subsection (3), the person and a  
7 motor vehicle used by the person may be barred from using the  
8 crossing.

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

24 (6) The owner of a vehicle alleged to have used a crossing  
25 without paying an applicable user fee may assert as an affirmative  
26 defense that the vehicle in question, at the time of the use of the  
27 crossing, was in the possession of a person whom the owner had not



1 knowingly permitted to operate the vehicle.

2       Sec. 27. (1) Except as otherwise provided in this act, this  
3 state, the department, the authority, a separate legal or  
4 administrative entity created under this act, or a political  
5 subdivision shall not expend any state funds for project costs  
6 incurred after the effective date of this act.

7       (2) Subject to available appropriations and upon request of  
8 the authority, the department may expend state and federal funds  
9 for the administrative costs of eminent domain proceedings and for  
10 professional fees, administrative costs, planning costs, and  
11 procurement costs of the authority or the department and the  
12 department may provide staff and other administrative support to  
13 the authority related to a project. The department may expend state  
14 and federal funds for the cost of maintaining and repairing a  
15 highway interchange or other highway facility, other than the  
16 bridge or border inspection plaza, that are included within a  
17 crossing if the interchange or other facility is part of a state  
18 trunk line and the maintenance and repair of the interchange is  
19 performed after the date the crossing is open for public  
20 transportation. However, a concessionaire shall reimburse this  
21 state for any state funds expended by the department under this  
22 subsection.

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

26       (4) The legislative council shall report to the governor and  
27 the senate and house of representatives standing committees on



1 transportation issues by September 30, 2012 on the implementation  
2 status of this act. For the fiscal year ending September 30, 2012,  
3 \$10,000.00 is appropriated to the legislative council to perform  
4 and prepare this report.

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

7 (a) Project revenues.

8 (b) Canadian contribution.

9 (c) Project contribution.

10 Enacting section 1. This act is repealed effective January 1,  
11 2015 if the authority has not entered into a governance agreement  
12 under this act on or before December 31, 2014, unless by December  
13 30, 2014, the director of the department files with the secretary  
14 of state a letter stating that the failure to enter into a  
15 governance agreement is due in whole or in part to legal  
16 challenges, litigation, or other factors beyond the control of the  
17 authority.

18 Enacting section 2. The legislature intends all of the  
19 following:

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

23 (b) That this act authorizes this state, the department, the  
24 authority, and a separate legal or administrative entity created by  
25 a governance agreement to participate in a project under this act  
26 relating to a bridge and approaches that will connect this state  
27 with Canada and authorizes the collection of tolls for its use



1 pursuant to 33 USC 535.

2 Enacting section 3. As provided in 1846 RS 1, MCL 8.5, this  
3 act is severable. If any portion of this act or the application of  
4 this act to any person or circumstances is found to be invalid by a  
5 court, the invalidity of that portion shall not affect the  
6 remaining portions or applications that can be given effect without  
7 the invalid portion or application, provided the remaining portions  
8 are not determined by the court to be inoperable.

9 Enacting section 4. This act takes effect January 1, 2012.

