

SENATE BILL No. 990

December 13, 2001, Introduced by Senator SCHUETTE and referred to the Committee on Economic Development, International Trade and Regulatory Affairs

A bill to authorize certain agreements and methods for or in connection with the acquisition, construction of, or improvement to a transportation facility; to authorize a responsible public entity to enter into certain agreements; to authorize public entities to dedicate public property; to authorize a responsible public entity to approve the issuance of debt obligations in connection with the transportation facility; to authorize the bringing of certain actions; to authorize the exercise of powers of condemnation; to provide for the dedication of assets; to provide sovereign immunity for certain entities; to establish jurisdiction for and to prescribe certain other powers and duties of a responsible public entity; to prescribe certain powers and duties of certain state agencies under certain circumstances; to authorize a specific project for an interstate or international

bridge, tunnel, or ferry; and to authorize extraterritorial agreements.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 Sec. 2. As used in this act:

4 (a) "Affected local jurisdiction" means a county, city, vil-
5 lage, or township in which any portion of a qualifying transpor-
6 tation facility is located.

7 (b) "Chief administrative officer" means any of the
8 following:

9 (i) The manager of a village or, if a village does not
10 employ a manager, the president of the village.

11 (ii) The city manager of a city or, if a city does not
12 employ a city manager, the mayor of the city.

13 (iii) The elected county executive or appointed county man-
14 ager of a county; or, if the county is not a charter county or
15 has not adopted an optional unified form of county government,
16 the controller of the county appointed under section 13b of 1851
17 PA 156, MCL 46.13b, or if the county has not appointed a control-
18 ler, an individual designated by the county board of
19 commissioners.

20 (iv) The director.

21 (v) The official granted general administrative control of
22 an agency, authority, or organization of government established
23 by law that is a responsible public entity under this act.

1 (c) "Commission" means the state transportation commission.

2 (d) "Comprehensive agreement" means the agreement between
3 the operator and the responsible public entity under section 11.

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

5 (f) "Director" means the director of the department.

6 (g) "Material default" means a default by the operator in
7 the performance of the operator's duties under section 10(9) in
8 which both of the following occur:

9 (i) The default jeopardizes adequate service to the public
10 from a qualifying transportation facility.

11 (ii) The default remains unremedied after the responsible
12 public entity has provided notice of the default to the operator
13 and the reasonable cure period specified in the comprehensive
14 agreement or service contract has elapsed.

15 (h) "Operator" means the private entity or its successor
16 that is responsible for the acquisition, construction, improve-
17 ment, maintenance, or operation of a qualifying transportation
18 facility.

19 (i) "Public entity" means 1 or more of the following units
20 of government:

21 (i) This state or a county, city, township, village, or
22 other political subdivision of this state.

23 (ii) A province of the Dominion of Canada or a political
24 subdivision or municipal corporation of the Dominion of Canada.

25 (iii) An agency or instrumentality of a unit of government
26 identified in subparagraph (i) or (ii).

1 (j) "Qualifying transportation facility" means a
2 transportation facility designated as a qualifying transportation
3 facility by a responsible public entity under section 6.

4 (k) "Responsible public entity" means either of the
5 following:

6 (i) This state.

7 (ii) A county, city, village, or other political subdivision
8 of this state or an authority or agency of a county, city, or
9 village.

10 (l) "Revenues" means the user fees or service payments,
11 investment income, and other income generated by, arising from,
12 or otherwise related to a qualifying transportation facility that
13 is legally available for the payment of operating costs and main-
14 tenance costs of the qualifying transportation facility or for
15 the payment of debt service on obligations incurred in connection
16 with the financing of the facility.

17 (m) "Transportation facility" means a road, bridge, includ-
18 ing an international or interstate bridge, tunnel, including an
19 international or interstate tunnel, overpass, ferry, including a
20 ferry providing international or interstate ferry service, air-
21 port, mass transit facility, vehicle parking facility, port
22 facility, intermodal facility, or any other facility used for or
23 in connection with transportation of people or goods, together
24 with any other property that is needed or convenient to operate,
25 or otherwise reasonably related to, the transportation facility.

26 (n) "User fees" means the rates, fees, or other charges
27 imposed by the operator of a qualifying transportation facility

1 for the use of all or a portion of a qualifying transportation
2 facility pursuant to the comprehensive agreement.

3 Sec. 3. The legislature finds that there is a public need
4 for timely acquisition or construction of and improvements to
5 transportation facilities in the state that are compatible with
6 state and local transportation plans and that serve the public
7 safety and welfare.

8 Sec. 4. (1) A person seeking authorization under this act
9 to acquire, construct, improve, maintain, or operate a transpor-
10 tation facility shall first obtain approval of the responsible
11 public entity under section 5.

12 (2) The approval process may be initiated by either of the
13 following:

14 (a) A person requesting approval under section 5(1).

15 (b) The responsible public entity requesting proposals under
16 section 5(5).

17 Sec. 5. (1) A person may request approval from a responsi-
18 ble public entity to acquire, construct, improve, maintain, or
19 operate a qualifying transportation facility.

20 (2) A request made under subsection (1) shall be accompanied
21 by all of the following material and information:

22 (a) A topographic map indicating the location of the trans-
23 portation facility.

24 (b) A description of the transportation facility, including
25 the conceptual design of the facility and all proposed intercon-
26 nections with other transportation facilities.

1 (c) The projected total life cycle of the transportation
2 facility and the proposed date for acquisition of the
3 transportation facility or the beginning of construction of, or
4 improvements to, the transportation facility.

5 (d) A statement setting forth the method by which the opera-
6 tor proposes to secure all property interests required for the
7 transportation facility, including all of the following:

8 (i) The nature of the property interests to be acquired.

9 (ii) Any property that the responsible public entity is
10 expected to be requested to condemn.

11 (e) If available and applicable, information relating to the
12 current transportation plans of each affected local
13 jurisdiction.

14 (f) A list of permits and approvals expected to be required
15 for acquisition of, construction of, or improvements to the
16 transportation facility from local, state, or federal agencies
17 and a projected schedule for obtaining these permits and
18 approvals.

19 (g) A list of public utility facilities expected to inter-
20 sect with the transportation facility and a statement of the
21 plans of the operator to accommodate that anticipated
22 intersection.

23 (h) A statement setting forth the operator's plans for
24 financing and operating the transportation facility.

25 (i) The names and addresses of the persons who may be con-
26 tacted for further information concerning the request.

1 (j) A statement of the public benefit to be derived from the
2 acquisition, construction, improvement, maintenance, or operation
3 of the transportation facility.

4 (k) Additional material and information that the responsible
5 public entity reasonably requests.

6 (3) The responsible public entity may waive the requirement
7 to provide material information listed in subsection (2).

8 (4) Upon receipt of a proposal under subsection (1), the
9 responsible public entity, acting through its chief administra-
10 tive officer, shall determine whether it is in the best interest
11 of the public to proceed to acquire, construct, improve, main-
12 tain, or operate a qualifying transportation facility under the
13 provisions of this act. If the responsible public entity, acting
14 through its chief administrative officer, determines to proceed,
15 it shall publish notice, in a manner reasonably intended to reach
16 interested parties, of the receipt of the proposal and provide
17 for the submission, within a period of time specified in the
18 notice, for the receipt of competing proposals by other proposed
19 operators. The notice shall also specify that the procedures and
20 criteria for selecting among competing proposals are available
21 from the specified office of the responsible public entity.

22 (5) A responsible public entity may request proposals for
23 the acquisition, construction, improvement, or operation of
24 transportation facilities either generally or with respect to
25 specified transportation facilities. A request for proposals
26 from a responsible public entity under this subsection shall
27 describe the procedures and criteria for selecting among

1 competing proposals. A request for proposals under this
2 subsection may be made independently of any receipt of a proposal
3 under subsection (1).

4 (6) The director shall develop and the commission shall
5 approve guidelines and procedures that may, but need not, be
6 promulgated as rules, for the solicitation, submission, evalu-
7 ation, and approval of proposals by the director and the commis-
8 sion from proposed operators. These procedures and guidelines
9 may provide that, by submitting a proposal under this act, the
10 proposed operator agrees to be conclusively bound by the decision
11 of the responsible public entity. Any other responsible public
12 entity may choose to use the guidelines and procedures as
13 approved by the commission, or may modify those guidelines and
14 procedures, or develop its own guidelines and procedures, for the
15 solicitation, submission, evaluation, and approval of proposals
16 received under this act.

17 (7) Notwithstanding any other provision in this section, if
18 the transportation facility is an international bridge, tunnel,
19 or ferry and a public entity in the Dominion of Canada has, in
20 consultation with a responsible public entity, selected an opera-
21 tor for a qualifying transportation facility, the legislative
22 body of the responsible public entity may accept the operator so
23 selected, without following the procedures set forth in this sec-
24 tion relating to proposals, but subject to all other requirements
25 under this act. The responsible public entity shall cooperate
26 with public entities in Canada, with affected local
27 jurisdictions, and with this state in the development,

1 acquisition, construction, improvement, maintenance, and
2 operation of a qualifying transportation facility that is an
3 international bridge, tunnel, or ferry.

4 Sec. 6. (1) The responsible public entity may designate a
5 transportation facility as a qualifying transportation facility
6 and, in accordance with the procedures described in this act,
7 grant approval for the acquisition, construction, improvement, or
8 operation of a transportation facility by a specified operator,
9 if the responsible public entity determines that these actions
10 serve the public purpose of this act. The responsible public
11 entity may determine that the acquisition, construction, improve-
12 ment, or operation of a transportation facility as a qualifying
13 transportation facility serves the public purpose of this act
14 upon making all of the following findings:

15 (a) There is a public need for the type of transportation
16 facility proposed to be operated as a qualifying transportation
17 facility.

18 (b) The transportation facility, the proposed interconnec-
19 tions with existing transportation facilities, and the operator's
20 plans for operation of the qualifying transportation facility are
21 reasonable and compatible with the responsible public entity's
22 transportation plans and any relevant local transportation plan.

23 (c) The estimated cost of the transportation facility is
24 reasonable in relation to similar facilities.

25 (d) The operator's plans will result in the timely and effi-
26 cient acquisition of, construction of, or improvements to a

1 transportation facility or more efficient maintenance or more
2 efficient operation of an existing transportation facility.

3 (2) The approval of the responsible public entity shall be
4 subject to an executed comprehensive agreement between the opera-
5 tor and the responsible public entity.

6 (3) The responsible public entity shall establish a date for
7 the acquisition of, or the beginning and completion of, construc-
8 tion of or improvements to the qualifying transportation
9 facility. The responsible public entity may extend the date
10 established under this subsection.

11 (4) The failure of a responsible public entity to incor-
12 porate the comments of an affected local jurisdiction or action
13 by a responsible public entity to designate a qualifying trans-
14 portation facility before it receives the comments of an affected
15 local jurisdiction shall not affect the validity of the actions
16 of a responsible public entity, the execution of a comprehensive
17 agreement, or any other agreement entered into in connection with
18 the comprehensive agreement.

19 Sec. 7. The responsible public entity may contract with an
20 operator for transportation services to be provided by a qualify-
21 ing transportation facility in exchange for service payments or
22 other consideration that the responsible public entity considers
23 appropriate.

24 Sec. 8. (1) A person requesting approval from, or submit-
25 ting a proposal to, a responsible public entity under section 5
26 shall notify each affected local jurisdiction by furnishing a
27 copy of the person's request or proposal to each affected local

1 jurisdiction within 5 days after submitting the application to a
2 responsible public entity.

3 (2) Within 30 days after receiving notice under this sec-
4 tion, an affected local jurisdiction may submit any comments it
5 may have, in writing, on the proposed qualifying transportation
6 facility to the responsible public entity. The comments shall
7 indicate whether the facility is compatible with the local com-
8 prehensive transportation plan.

9 Sec. 9. (1) Upon approval of its legislative body, a public
10 entity may dedicate a property interest that it has for public
11 use as a qualifying transportation facility if the public entity
12 finds that the dedication of the property interest will serve the
13 public purpose of this act.

14 (2) Subject to the requirements of this section, a public
15 entity may convey any property interest that it has to an opera-
16 tor for the consideration the public entity determines is fair
17 and reasonable and in the best interests of the public. The con-
18 sideration may consist of or include the agreement of the opera-
19 tor to operate the qualifying transportation facility if the
20 public entity determines that this consideration is fair and rea-
21 sonable and in the best interests of the public.

22 Sec. 10. (1) Following execution of a comprehensive agree-
23 ment, an operator may acquire, construct, improve, or operate a
24 qualifying transportation facility.

25 (2) Following execution of a comprehensive agreement, an
26 operator may own, lease, or acquire any right to use or operate a
27 qualifying transportation facility.

1 (3) Except as provided in subsection (4), the operator may
2 impose user fees or enter into a service contract in connection
3 with the use of the qualifying transportation facility.

4 (4) The operator shall not impose tolls or user fees on any
5 existing interstate highway or on any existing free road, bridge,
6 tunnel, or overpass unless the road, bridge, tunnel, or overpass
7 is reconstructed to provide for increased capacity.

8 (5) The operator may finance the qualifying transportation
9 facility in an amount and on terms and conditions that the opera-
10 tor determines. The operator may issue debt, equity, or other
11 securities or obligations, enter into sale and leaseback transac-
12 tions, and secure financing with a pledge of or security interest
13 in, or lien on, its property, including all of its property
14 interests in the qualifying transportation facility. A responsi-
15 ble public entity may approve the issuance of the debt obliga-
16 tions of the operator, but the approval shall not cause the obli-
17 gations of the operator to become a debt or other obligation of
18 the responsible public entity.

19 (6) Subject to applicable permit requirements, the operator
20 may acquire, construct, improve, or operate a qualifying trans-
21 portation facility that crosses any canal or navigable water-
22 course as long as the crossing does not unreasonably interfere
23 with the navigation and use of the waterway. If a qualifying
24 transportation facility crosses the boundary of this state,
25 including an international border, the operator is responsible
26 for obtaining consents, agreements, or property interests
27 required by the laws of the applicable state or province.

1 (7) The operator of a qualifying transportation facility
2 approved by a responsible public entity under this act shall be
3 considered to be acting on behalf of the approving responsible
4 public entity and as its agent with respect to the acquisition,
5 construction, improvement, or operation of the qualifying trans-
6 portation facility.

7 (8) In operating the qualifying transportation facility, the
8 operator may make classifications according to reasonable catego-
9 ries for assessment of user fees and, with the consent of the
10 responsible public entity, make and enforce reasonable rules to
11 the same extent that the responsible public entity may make and
12 enforce rules with respect to a similar transportation facility.

13 (9) During the term of the comprehensive agreement, the
14 operator of a qualifying transportation facility shall do all of
15 the following:

16 (a) Acquire, construct, improve, maintain, or operate the
17 qualifying transportation facility in a manner that meets the
18 engineering standards of the responsible public entity for trans-
19 portation facilities operated and maintained by the responsible
20 public entity.

21 (b) Upon payment of the user fees or service payments, if
22 applicable, keep the qualifying transportation facility open for
23 use by members of the public at all times after the initial
24 opening. The operator is exempt from the requirement of this
25 subdivision if 1 or more of the following apply:

26 (i) Temporary closures because of emergencies.

1 (ii) With the consent of the responsible public entity,
2 closures for protection of public safety.

3 (iii) During reasonable periods of time, closures for con-
4 struction or maintenance procedures.

5 (c) Maintenance, or provide by contract for the maintenance,
6 of the qualifying transportation facility.

7 (d) Cooperate with the responsible public entity in estab-
8 lishing an interconnection with the qualifying transportation
9 facility requested by the responsible public entity.

10 (e) Comply with the provisions of the comprehensive agree-
11 ment and any service contract.

12 Sec. 11. (1) Before acquiring, constructing, improving,
13 maintaining, or operating a qualifying transportation facility,
14 the operator shall enter into a comprehensive agreement with the
15 responsible public entity. The comprehensive agreement shall be
16 executed substantially in the form approved by resolution of the
17 responsible public entity.

18 (2) The comprehensive agreement shall provide for all of the
19 following:

20 (a) Delivery of a payment bond in connection with the con-
21 struction of or improvements to the qualifying transportation
22 facility, in a form approved by the responsible public entity.

23 (b) Either evidence of sufficient credit standing in a form
24 that satisfies the responsible public entity or a performance
25 bond satisfactory to the responsible public entity.

26 (c) Review and approval of plans and specifications for the
27 qualifying transportation facility by the responsible public

1 entity if the plans and specifications conform to standard
2 conditions of the responsible public entity.

3 (d) Inspection of, construction of, or improvements to the
4 qualifying transportation facility by the responsible public
5 entity to ensure conformance with engineering standards accept-
6 able to the responsible public entity.

7 (e) Monitoring of maintenance practices of the operator by
8 the responsible public entity and taking of actions the responsi-
9 ble public entity finds appropriate to ensure that the qualifying
10 transportation facility is properly maintained.

11 (f) Reimbursement paid to the responsible public entity for
12 services provided by the responsible public entity.

13 (g) Filing of appropriate financial statements by the quali-
14 fying transportation facility with the responsible public entity
15 on a periodic basis.

16 (h) A reasonable maximum rate of return on investment for
17 the operator, based on assumptions set forth in the comprehensive
18 agreement that are not affected by subsequently occurring events
19 unless specifically provided otherwise in the comprehensive
20 agreement. The determination of reasonableness by the responsi-
21 ble public entity is conclusive for all purposes.

22 (i) The date of termination of the operator's authority and
23 duties under this act and the date of dedication of a part or all
24 of the qualifying transportation facility to the appropriate
25 public entity or entities.

26 (j) The distribution of earnings in excess of the costs of
27 operating and maintenance, debt service, funding and maintaining

1 required reserves, and the maximum rate of return as negotiated
2 in the comprehensive agreement.

3 (k) Other lawful terms and conditions to which the operator
4 and the responsible public entity mutually agree, including pro-
5 visions regarding unavoidable delays, provisions providing for a
6 loan of public funds to the operator, or provisions that will
7 enable the operator to issue tax-exempt obligations to acquire,
8 construct, improve, maintain, or operate 1 or more qualifying
9 transportation facilities.

10 (l) The duties of the operator under this act and other
11 terms and conditions that the responsible public entity deter-
12 mines serve the public purpose of this act.

13 (3) The comprehensive agreement may provide for user fees to
14 be established during the period of the operator's authority.
15 User fees shall be set at a level that, taking into account any
16 service payments and other revenues, allows the operator to pay
17 operating and maintenance costs, debt service on obligations
18 issued to finance the facility, and the rate of return on invest-
19 ment specified in the comprehensive agreement. If specified in
20 the comprehensive agreement, changes in the user fees may,
21 subject to the requirements of this act and instruments under
22 which debt or other obligations to finance the facility have been
23 issued, be required to be approved by the responsible public
24 entity. User fees established under a comprehensive agreement
25 shall not be required to be approved under this act by any other
26 public entity.

1 (4) A copy of any service contract entered into by a
2 responsible public entity shall be filed with the chief
3 administrative officer of the responsible public entity.

4 (5) A schedule of the current user fees shall be made avail-
5 able by the operator to any member of the public on request.

6 (6) In negotiating user fees under this section, the parties
7 shall establish fees that are the same for persons using the
8 facility under the same or similar conditions.

9 (7) The execution of the comprehensive agreement or an
10 amendment to the comprehensive agreement shall constitute conclu-
11 sive evidence that the user fees provided for in the agreement
12 comply with this act.

13 (8) User fees established in the comprehensive agreement as
14 a source of revenues may be in addition to, or in lieu of, serv-
15 ice payments.

16 (9) In the comprehensive agreement, the responsible public
17 entity may agree to make grants or loans to the operator from
18 time to time from amounts received from any other public entity,
19 the United States, or Canada.

20 (10) The comprehensive agreement may contain provisions
21 under which the responsible public entity agrees to provide
22 notice of default and cure rights for the benefit of the operator
23 and the persons specified in the comprehensive agreement as pro-
24 viding financing for the qualifying transportation facility.

25 (11) Changes in the terms of the comprehensive agreement
26 that are agreed upon by the parties shall be added to the

1 comprehensive agreement by written amendment executed by each of
2 the parties to the comprehensive agreement.

3 Sec. 12. (1) For the purpose of enabling the operator to
4 issue tax-exempt obligations for the acquisition, construction,
5 or improvement of a qualifying transportation facility, the
6 responsible public entity may do 1 or more of the following:

7 (a) Incorporate or provide for the incorporation of a non-
8 profit corporation under the nonprofit corporation act, 1982 PA
9 162, MCL 450.2101 to 450.3192, or contract with an existing non-
10 profit corporation.

11 (b) Be a member of or control, directly or indirectly, a
12 nonprofit corporation.

13 (c) Under appropriate standards established by the legisla-
14 tive body of the responsible public entity, act through the non-
15 profit corporation in accomplishing the purposes of this act.

16 (2) In accordance with the comprehensive agreement, all or a
17 portion of the operator's rights, duties, or obligations may be
18 granted to or imposed upon the nonprofit corporation, in which
19 case the nonprofit corporation is considered to be the successor
20 of the operator to the extent of the grant or imposition.

21 (3) The comprehensive agreement may provide for excess earn-
22 ings to be distributed to 1 or more of the following:

23 (a) The responsible public entity.

24 (b) The operator for early debt reduction.

25 (c) The affected local jurisdictions.

26 (d) Any other public entity.

1 (4) Notwithstanding any provision of this act to the
2 contrary, the comprehensive agreement may provide that the
3 operator, upon or after completion of the acquisition, construc-
4 tion, or improvement of the qualifying transportation facility,
5 may transfer all or any part of the qualifying transportation
6 facility to an appropriate public entity for operation. A trans-
7 fer of all or any part of the qualifying transportation facility
8 is subject to the rights of a person or entity that has provided
9 financing for the facility, including the provider of any related
10 credit, liquidity, swap, interest rate cap, or similar instru-
11 ment, that are set forth in an indenture or other legal instru-
12 ment entered into in connection with that financing, including,
13 but not limited to, the right to payment of principal, premium,
14 and interest on any debt financing from the revenues of the
15 facility.

16 Sec. 13. (1) The responsible public entity may take action
17 to obtain federal, state, provincial, or local assistance for a
18 qualifying transportation facility that serves the public purpose
19 of this act.

20 (2) The responsible public entity may enter into contracts
21 required to receive federal assistance.

22 (3) The responsible public entity or another public entity
23 may determine that it serves the public purpose of this act for
24 all or a portion of the costs of a qualifying transportation
25 facility to be paid, directly or indirectly, from the proceeds of
26 a grant or loan made by a public entity, the federal government
27 of the United States, or the federal government of the Dominion

1 of Canada and, upon that determination, may pay or cause to be
2 paid the costs or portion of costs from the grant or loan.

3 Sec. 14. (1) After providing notice to the operator and to
4 the secured parties that appear in the operator's records, the
5 responsible public entity may bring an action for a judgment by
6 default in a court of competent jurisdiction if the operator has
7 materially defaulted on the comprehensive agreement.

8 (2) Except upon agreement of the operator and other parties
9 identified in the comprehensive agreement, the responsible public
10 entity may not exercise the remedies provided in this section or
11 in section 15(2) and (3) unless a judgment by default has been
12 entered by a court of competent jurisdiction.

13 (3) On entry by the court of a judgment by default under
14 subsection (1), the responsible public entity may take 1 or more
15 of the following actions:

16 (a) Subject to subsections (4) and (5), take over the trans-
17 portation facility and succeed to all of the right, title, and
18 interest in the transportation facility and any liens on revenues
19 previously granted by the operator to any person providing
20 financing.

21 (b) If the responsible public entity has the power of con-
22 demnation, exercise the power of condemnation to acquire the
23 qualifying transportation facility, except that a person that has
24 provided financing for the qualifying transportation facility,
25 and the operator, to the extent of its capital investment, may
26 participate in the condemnation proceedings with the standing of
27 a property owner.

1 (c) Subject to the rights of the holders of any obligations
2 of the operator incurred in connection with the financing of the
3 acquisition, construction, improvement, maintenance, or operation
4 of the qualifying transportation facility, terminate the compre-
5 hensive agreement and exercise other rights and remedies avail-
6 able at law or in equity.

7 (d) Make or cause to be made appropriate claims under the
8 performance or payment bonds required by section 11(2)(a).

9 (4) If the responsible public entity elects to take over a
10 qualifying transportation facility under subsection (3)(a), the
11 responsible public entity shall take all of the following
12 actions:

13 (a) Acquire, construct, improve, operate, and maintain the
14 transportation facility.

15 (b) Impose user fees for the use of the transportation
16 facility.

17 (c) Comply with service contracts as if it were the
18 operator.

19 (5) Revenues subject to a lien shall be collected for the
20 benefit of, and paid to, secured parties, as their interests may
21 appear, to the extent necessary to satisfy the operator's obliga-
22 tions to secured parties, including the maintenance of reserves,
23 and the liens shall be correspondingly reduced and, when paid
24 off, released.

25 (6) Before payments to, or for the benefit of, secured par-
26 ties, the responsible public entity may use revenues to pay
27 current operation and maintenance of the transportation facility,

1 including compensation to the responsible public entity for its
2 services in operating and maintaining the qualifying transporta-
3 tion facility.

4 (7) Remaining revenues after all payments for operation and
5 maintenance of the transportation facility and payments to or for
6 the benefit of secured parties, including payments to maintain
7 required reserves, have been made shall be paid to the operator,
8 subject to the negotiated maximum rate of return. The right to
9 receive payment under this subsection shall be considered just
10 compensation for the qualifying transportation facility.

11 (8) A takeover of the qualifying facility under this section
12 by the responsible public entity shall not be considered to oper-
13 ate as a pledge of the full faith and credit of the responsible
14 public entity to secure outstanding debt of the operator.

15 (9) Assumption of the operation of the qualifying transpor-
16 tation facility does not obligate the responsible public entity
17 to pay an obligation of the operator from a source other than
18 revenues.

19 Sec. 15. (1) At the request of the operator, the responsi-
20 ble public entity may exercise the power of condemnation as pro-
21 vided by law for the purpose of acquiring real property or
22 estates or interest in real property to the extent that the
23 responsible public entity finds that the action serves the public
24 purpose of this act. An amount to be paid in a condemnation pro-
25 ceeding under this section shall be paid by the operator or from
26 grants or loans as provided in section 13(3), or from other
27 available funds.

1 (2) Except as provided in subsection (1), until the court
2 has entered a final order of default under section 14(2), the
3 power of condemnation may not be exercised against a qualifying
4 transportation facility.

5 (3) After the entry of a final order of default, the respon-
6 sible public entity may exercise the power of condemnation in
7 accordance with section 14(3)(b) in lieu of, or after taking over
8 the transportation facility under, section 14(3)(a).

9 Sec. 16. (1) This state, each affected local jurisdiction,
10 and each public service company, public utility, railroad, or
11 cable television provider that has or uses facilities that are to
12 be affected by the location of a qualifying transportation facil-
13 ity shall cooperate fully with the operator of the qualifying
14 transportation facility in planning and arranging all activities
15 related to the location of the qualifying transportation
16 facility.

17 (2) An entity specified in subsection (1) that possesses the
18 power of condemnation may exercise that power in connection with
19 the moving or relocation of facilities to be crossed by the qual-
20 ifying transportation facility or that must be relocated to the
21 extent that the moving or relocation is made necessary or desir-
22 able by construction of or improvements to the qualifying trans-
23 portation facility. For purposes of this subsection, construc-
24 tion or improvements include construction of or improvements to
25 temporary facilities for the purpose of providing service during
26 the period of construction or improvement.

1 (3) An amount to be paid for the crossing, construction,
2 moving, or relocating of facilities shall be paid for by the
3 operator from grants or loans as provided in section 13(3) or
4 from other available sources of funds.

5 (4) If the operator and a public service company, public
6 utility, railroad, or cable television provider are not able to
7 agree with the qualifying transportation facility on a plan for
8 the crossing or relocation, the responsible public entity may
9 determine the manner in which the crossing or relocation is to be
10 accomplished and any damages due arising out of the crossing or
11 relocation. The responsible public entity may employ expert
12 engineers who shall examine the location and plans for the cross-
13 ing or relocation, hear any objections, consider modifications,
14 and make a recommendation to the responsible public entity. If
15 an expert engineer is employed under this subsection, the cost is
16 to be paid by the operator.

17 Sec. 17. (1) Except as provided in subsection (3), law
18 enforcement officers of the state and each affected local juris-
19 diction shall have the same powers and jurisdiction within the
20 limits of a qualifying transportation facility as they have in
21 their respective areas of jurisdiction.

22 (2) Law enforcement officers shall have access to the quali-
23 fying transportation facility at any time for the purpose of
24 exercising powers and jurisdiction under this subsection.

25 (3) The authority granted to a law enforcement officer under
26 this subsection does not extend to the private offices,
27 buildings, garages, and other improvements of the operator to any

1 greater degree than the police power extends to any other private
2 buildings and improvements.

3 (4) To the extent the transportation facility is a road,
4 bridge, tunnel, overpass, or similar transportation facility for
5 motor vehicles, the traffic and motor vehicle laws of this state
6 or the affected local jurisdiction shall apply in the same manner
7 that they apply to conduct on similar transportation facilities
8 in the state or affected local jurisdiction.

9 Sec. 18. (1) The responsible public entity shall terminate
10 the operator's authority and duties under this act on the date
11 set forth in the comprehensive agreement.

12 (2) On termination, the authority and duties of the operator
13 under this act shall cease and the qualifying transportation
14 facility shall be dedicated to the responsible public entity or,
15 if the qualifying transportation facility was initially dedicated
16 by an affected local jurisdiction, to the affected local juris-
17 diction, for public use. An international bridge or tunnel that
18 is a qualifying transportation facility may be partially dedi-
19 cated to a province or political subdivision of the Dominion of
20 Canada as provided in any agreement between the responsible
21 public entity and the province or municipality.

22 Sec. 19. (1) Nothing in this act shall be construed to be a
23 waiver of the sovereign immunity of the state, a province of the
24 Dominion of Canada, any responsible public entity, or an affected
25 local jurisdiction, or any officer or employee thereof, with
26 respect to the participation in, or approval of, a part of the
27 qualifying transportation facility or its operation, including

1 interconnection of the qualifying transportation facility with
2 another transportation facility.

3 (2) The responsible public entity shall possess sovereign
4 immunity with respect to the construction and operation of the
5 qualifying transportation facility.

6 Sec. 20. The responsible public entity shall have exclusive
7 jurisdiction to determine all matters specifically committed to
8 its jurisdiction by this act. Any decision or determination
9 under this act not specifically required to be made by the legis-
10 lative body of the responsible public entity may be made by the
11 chief administrative officer of the responsible public entity or
12 by the person designated in writing by the chief administrative
13 officer to act in place of the chief administrative officer. Any
14 request for proposals or notice of receipt of an unsolicited pro-
15 posal may provide that an entity that submits a proposal in
16 response to the request or notice must agree to be bound by all
17 decisions of the responsible public entity made in connection
18 with that request or notice and that the entity shall not seek
19 judicial review of those decisions.

20 Sec. 21. The commission, as a responsible public entity,
21 may delegate administrative functions under this act to the
22 director of the department or the person designated in writing by
23 the director to act in place of the director and may rely on the
24 expertise, advice, and judgment of employees of the department in
25 making any decision under this act. The state, acting through
26 the commission and the department, is specifically authorized to
27 undertake a project for an interstate or international bridge,

1 tunnel, or ferry transportation facility pursuant to this act and
2 to acquire, own and operate, and dispose of all property and
3 property interests inside or outside of the borders of the state
4 as may be necessary to accomplish the purposes of this act.

5 Sec. 22. Obligations issued or incurred by an operator or
6 responsible public entity under this act are excluded from the
7 requirements under the municipal finance act, 1943 PA 202, MCL
8 131.1 to 139.3, and the revised municipal finance act, 2001 PA
9 34, MCL 141.2101 to 141.2821, whichever may otherwise be
10 applicable.

11 Sec. 23. This act shall be liberally construed to promote
12 its underlying purposes and policies.