

# SENATE BILL No. 789

October 23, 2003, Introduced by Senators GILBERT, GOSCHKA, KUIPERS, PATTERSON, TOY, OLSHOVE and BASHAM and referred to the Committee on Transportation.

A bill to authorize certain agreements and methods in connection with the acquisition, construction, maintenance, operation, or improvement of a transportation facility; to authorize the issuance of debt obligations in connection with the transportation facility; to prescribe the powers and duties of certain state agencies and officials; to authorize interstate or international bridges, tunnels, or ferries; and to provide for remedies.

**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,  
5 village, or township in which any portion of a qualifying  
6 transportation facility is located.

1 (b) "Chief administrative officer" means 1 or more of the  
2 following:

3 (i) The manager of a village or township or, if a village or  
4 township does not employ a manager, the president or supervisor  
5 of that village or township.

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

8 (iii) The elected county executive or appointed county  
9 manager of a county or, if the county is not a charter county or  
10 has not adopted an optional unified form of county government,  
11 the controller of the county appointed under section 13b of 1851  
12 PA 156, MCL 46.13b, or, if the county has not appointed a  
13 controller, an individual designated by the county board of  
14 commissioners.

15 (iv) The director.

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

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

20 (d) "Comprehensive agreement" means the agreement between the  
21 operator and the responsible public entity under section 10.

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

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

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

27 (i) The default jeopardizes adequate service to the public

1 from a qualifying transportation facility.

2       (ii) The default remains unremedied after the responsible  
3 public entity has provided notice of the default to the operator  
4 and the reasonable cure period specified in the comprehensive  
5 agreement or service contract has elapsed.

6       (h) "Operator" means the private entity that is responsible  
7 for the acquisition, construction, improvement, maintenance, or  
8 operation of a qualifying transportation facility.

9       (i) "Public body" means 1 or more of the following units of  
10 government:

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

13       (ii) A province of Canada or a political subdivision or  
14 municipal corporation of Canada.

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

17       (j) "Qualifying transportation facility" means a  
18 transportation facility designated as a qualifying transportation  
19 facility by a responsible public entity under section 5.

20       (k) "Responsible public entity" means either of the  
21 following:

22       (i) This state.

23       (ii) A county, city, village, or other political subdivision  
24 of this state or an authority or agency of 1 or more counties,  
25 cities, villages, or political subdivisions, but only to the  
26 extent that the county, city, village, or political subdivision,  
27 authority, or agency has the power under law to acquire,

1 construct, improve, maintain, or operate the transportation  
2 facility proposed to be designated as a qualifying transportation  
3 facility.

4 (l) "Revenues" means the user fees or service payments,  
5 investment income, and other income generated by, arising from,  
6 or otherwise related to a qualifying transportation facility that  
7 are legally available for the payment of operating costs and  
8 maintenance costs of the qualifying transportation facility or  
9 for the payment of debt service on obligations incurred in  
10 connection with the financing of the facility.

11 (m) "Service contract" means a contract entered into between  
12 the responsible public entity and the operator under section 6.

13 (n) "Service payment" means a payment to an operator under a  
14 service contract.

15 (o) "Transportation facility" means a road, bridge, including  
16 an international or interstate bridge, tunnel, including an  
17 international or interstate tunnel, overpass, ferry, including a  
18 ferry providing international or interstate ferry service, mass  
19 transit facility, vehicle parking facility, port facility,  
20 intermodal facility, lock facility, or any other facility used  
21 for or in connection with transportation of people or goods.  
22 Transportation facility includes any other property that is  
23 needed or convenient to operate, or otherwise reasonably related  
24 to, the transportation facility. Transportation facility does  
25 not include airports or state trunk line highways under 1951 PA  
26 51, MCL 247.651 to 247.675.

27 (p) "User fees" means the rates, fees, or other charges

1 imposed by the operator of a qualifying transportation facility  
2 for the use of all or a portion of a qualifying transportation  
3 facility under the comprehensive agreement.

4       Sec. 3. (1) A person seeking authorization under this act  
5 to acquire, construct, improve, maintain, or operate a  
6 transportation facility shall first obtain approval of the  
7 responsible public entity under section 4.

8       (2) The approval process may be initiated by either of the  
9 following:

10       (a) A person requesting approval under section 4(1).

11       (b) The responsible public entity requesting proposals under  
12 section 4(5).

13       Sec. 4. (1) A person may request approval from a  
14 responsible public entity to acquire, construct, improve,  
15 maintain, or operate a qualifying transportation facility.

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

18       (a) A topographic map indicating the location of the  
19 transportation facility.

20       (b) A description of the transportation facility, including  
21 the conceptual design of the facility and all proposed  
22 interconnections with other transportation facilities.

23       (c) The projected total life cycle of the transportation  
24 facility and the proposed date for acquisition of the  
25 transportation facility or the beginning of construction of, or  
26 improvements to, the transportation facility.

27       (d) A statement setting forth the method by which the

1 operator proposes to secure all property interests required for  
2 the transportation facility, including both of the following:

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

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

6 (e) If available and applicable, information relating to the  
7 current transportation plans of each affected local  
8 jurisdiction.

9 (f) A list of permits and approvals expected to be required  
10 for the acquisition, construction, or improvement of the  
11 transportation facility from local, state, or federal agencies  
12 and a projected schedule for obtaining these permits and  
13 approvals.

14 (g) A list of public utility facilities expected to intersect  
15 with, be crossed over by, or be crossed under by, the  
16 transportation facility and a statement of the plans of the  
17 operator to accommodate that anticipated intersection or  
18 crossing.

19 (h) A general statement describing the operator's plans for  
20 financing and operating the transportation facility.

21 (i) The names and addresses of the persons who may be  
22 contacted for further information concerning the request.

23 (j) A statement of the public benefit to be derived from the  
24 acquisition, construction, improvement, maintenance, or operation  
25 of the transportation facility as a qualifying transportation  
26 facility.

27 (k) Additional material and information that the responsible

1 public entity reasonably requests.

2 (3) The responsible public entity may waive the requirement  
3 to provide all or part of the material information listed in  
4 subsection (2).

5 (4) Upon receipt of a proposal under subsection (1), the  
6 responsible public entity, acting through its chief  
7 administrative officer, shall determine whether it is in the best  
8 interest of the public to proceed to consider the acquisition,  
9 construction, improvement, maintenance, or operation of a  
10 qualifying transportation facility under this act. If the  
11 responsible public entity, acting through its chief  
12 administrative officer, determines to proceed, it shall publish  
13 notice, in a manner reasonably intended to reach all interested  
14 parties, of the receipt of the proposal and provide for the  
15 submission, within a period of time specified in the notice, of  
16 competing proposals by other proposed operators. The notice  
17 shall specify that procedures and criteria for selecting among  
18 competing proposals are available from the specified office of  
19 the responsible public entity.

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

1 under subsection (1).

2 (6) The director shall develop and the commission shall  
3 approve guidelines and procedures for the solicitation,  
4 submission, evaluation, and approval of proposals by the director  
5 and the commission from proposed operators. These procedures and  
6 guidelines shall provide that, by submitting a proposal under  
7 this act, the proposed operator agrees to be conclusively bound  
8 by the decision of the responsible public entity. Any  
9 responsible public entity may choose to use the guidelines and  
10 procedures approved by the commission, may modify the guidelines  
11 and procedures approved by the commission, or may develop  
12 different guidelines and procedures, for the solicitation,  
13 submission, evaluation, and approval of proposals received under  
14 this act.

15 (7) Notwithstanding any other provision in this section, if  
16 the qualifying transportation facility is an international  
17 bridge, tunnel, or ferry and a public body in Canada has, in  
18 consultation with a responsible public entity, selected an  
19 operator for a qualifying transportation facility, the  
20 responsible public entity may accept the selected operator,  
21 without following the procedures of this section relating to  
22 proposals.

23 (8) The requirements of this section may, at the option of  
24 the responsible public entity, be modified to comply with the  
25 requirements of federal laws or regulations or to enable the  
26 qualifying transportation facility to become eligible for  
27 financial assistance from the federal government of the United

1 States.

2       Sec. 5. (1) Notwithstanding any charter ordinance, rule, or  
3 regulation that requires competitive bidding, the responsible  
4 public entity may designate a transportation facility as a  
5 qualifying transportation facility and, in accordance with this  
6 act, grant approval for the acquisition, construction,  
7 maintenance, improvement, or operation of a qualifying  
8 transportation facility by a specified operator, if the  
9 responsible public entity determines that these actions serve the  
10 public purpose of this act. The designation of a transportation  
11 facility as a qualifying transportation facility shall occur  
12 through the decision-making body of the responsible public  
13 entity. If the responsible public entity is this state, the  
14 designation shall be made by the commission. The responsible  
15 public entity may determine that the acquisition, construction,  
16 maintenance, improvement, or operation of a transportation  
17 facility as a qualifying transportation facility serves the  
18 public purpose of this act upon making all of the following  
19 findings:

20       (a) There is a public need for the proposed transportation  
21 facility.

22       (b) The proposed transportation facility is reasonable and  
23 compatible with the responsible public entity's transportation  
24 plans.

25       (c) The estimated cost of the transportation facility is  
26 reasonable.

27       (d) The operator's plans will result in the timely and

1 efficient acquisition, construction, or improvement of a  
2 transportation facility or more efficient maintenance or  
3 operation of an existing transportation facility.

4 (2) The approval of the responsible public entity shall be  
5 subject to an executed comprehensive agreement between the  
6 operator and the responsible public entity.

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

12 (4) The responsible public entity shall not designate a  
13 transportation facility as a qualifying transportation facility  
14 until the earlier of the date it receives comments from all  
15 affected local jurisdictions or 30 days after notice is received  
16 by all affected local jurisdictions under section 7(1). The  
17 failure of a responsible public entity to incorporate the  
18 comments of an affected local jurisdiction or action by a  
19 responsible public entity to designate a qualifying  
20 transportation facility after the time specified in this  
21 subsection but before it receives the comments of an affected  
22 local jurisdiction shall not affect the validity of the actions  
23 of a responsible public entity, the execution of a comprehensive  
24 agreement, or any other agreement entered into in connection with  
25 the comprehensive agreement.

26 Sec. 6. The responsible public entity may contract with an  
27 operator for transportation services to be provided by a

1 qualifying transportation facility in exchange for service  
2 payments or other consideration that the responsible public  
3 entity considers appropriate.

4       Sec. 7. (1) A person requesting approval from, or  
5 submitting a proposal to, a responsible public entity under  
6 section 4 shall notify each affected local jurisdiction by  
7 furnishing a copy of the person's request or proposal to each  
8 affected local jurisdiction within 5 days after submitting the  
9 application to a responsible public entity.

10       (2) Within 30 days after receiving notice under this section,  
11 an affected local jurisdiction may submit any comments it may  
12 have, in writing, on the proposed qualifying transportation  
13 facility to the responsible public entity. The comments shall  
14 indicate whether the facility is compatible with the local  
15 comprehensive transportation plan.

16       Sec. 8. (1) A public body or responsible public entity may  
17 dedicate a property interest that it has for public use as a  
18 qualifying transportation facility if the public body or  
19 responsible public entity finds that the dedication of the  
20 property interest will serve the public purpose of this act.

21       (2) A public body or responsible public entity may convey any  
22 property interest that it has to an operator for the  
23 consideration the public body or responsible public entity  
24 determines is fair and reasonable and in the best interests of  
25 the public. The consideration may consist of or include the  
26 agreement of the operator to operate the qualifying  
27 transportation facility if the public entity determines that this

1 consideration is fair and reasonable and in the best interests of  
2 the public.

3       Sec. 9. (1) Following execution of a comprehensive  
4 agreement, an operator may acquire, construct, improve, maintain,  
5 or operate a qualifying transportation facility.

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

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

12       (4) The operator shall not impose tolls or user fees on any  
13 existing free road, bridge, tunnel, or overpass unless 1 or more  
14 of the following exist:

15       (a) The road, bridge, tunnel, or overpass is reconstructed to  
16 provide for materially increased capacity.

17       (b) A reasonably available free alternative route exists.

18       (5) The determination by the commission or by the  
19 decision-making body of the responsible public entity that  
20 materially increased capacity is provided or that a free  
21 alternative route is reasonably available under subsection (4)  
22 shall be conclusive.

23       (6) The operator may finance the qualifying transportation  
24 facility in an amount and on terms and conditions that the  
25 operator determines. The operator may issue debt, equity, or  
26 other securities or obligations, enter into sale and leaseback  
27 transactions, and secure financing with a pledge of, security

1 interest in, or lien on, its property, including any of its  
2 property interests in the qualifying transportation facility. A  
3 responsible public entity may approve the issuance of the debt  
4 obligations of the operator or its successor, but the debt or  
5 other obligations of the operator or its successor shall not be  
6 or become a debt or other obligation of the responsible public  
7 entity. Approval of the issuance of debt obligations of the  
8 operator or its successor by the responsible public entity shall  
9 occur through the decision-making body of the responsible public  
10 entity. A responsible public entity shall not pledge its credit  
11 or taxing power or the credit or taxing power of any other public  
12 body as part of the approval of debt under this subsection. If  
13 the responsible public entity is this state, the approval shall  
14 be made by the commission.

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

25 (8) The operator of a qualifying transportation facility  
26 approved by a responsible public entity under this act shall be  
27 considered to be acting on behalf of the responsible public

1 entity and as its agent with respect to the acquisition,  
2 construction, improvement, maintenance, or operation of the  
3 qualifying transportation facility.

4 (9) In operating the qualifying transportation facility, the  
5 operator may make classifications according to reasonable  
6 categories for assessment of user fees and establish other  
7 conditions or requirements for the use of the facility that are  
8 consistent with this act.

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

12 (a) Acquire, construct, improve, maintain, or operate the  
13 qualifying transportation facility in a manner that meets the  
14 engineering standards of the responsible public entity.

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

20 (i) Temporary closures because of emergencies.

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

23 (iii) During reasonable periods of time, closures for  
24 construction or maintenance procedures.

25 (c) Maintain, or provide by contract for the maintenance of,  
26 the qualifying transportation facility.

27 (d) Cooperate with the responsible public entity in

1 establishing an interconnection with the qualifying  
2 transportation facility requested by the responsible public  
3 entity.

4 (11) If, as a result of the designation of an existing  
5 transportation facility as a qualifying transportation facility  
6 under this act, the qualifying transportation facility is to be  
7 operated or maintained by a private operator, then the operator  
8 shall assume and be bound by any existing labor agreement  
9 applicable to the operation or maintenance of the transportation  
10 facility for the remainder of the term of the agreement. A  
11 bargaining representative of the employees involved in the  
12 operation or maintenance of the transportation facility before  
13 its designation as a qualified transportation facility, who is  
14 entitled to represent the employees, shall continue to be the  
15 representative of the employees if the employees become employees  
16 of the operator or its successor. This subsection does not limit  
17 the rights of the employees to assert that a bargaining  
18 representative protected by this subsection is no longer the  
19 representative of the employees.

20 Sec. 10. (1) Before acquiring, constructing, improving,  
21 maintaining, or operating a qualifying transportation facility,  
22 the operator shall enter into a comprehensive agreement with the  
23 responsible public entity. The comprehensive agreement shall be  
24 executed substantially in the form approved by the responsible  
25 public entity. The approval of the comprehensive agreement shall  
26 occur through the decision-making body of the responsible public  
27 entity. If the responsible public entity is this state, the

1 approval shall be made by the commission.

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

4 (a) Delivery of a payment bond in connection with the  
5 construction of or improvements to the qualifying transportation  
6 facility, in a form approved by the responsible public entity.

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

10 (c) Review and approval of plans and specifications for the  
11 qualifying transportation facility by the responsible public  
12 entity.

13 (d) Inspection, construction, or improvements of the  
14 qualifying transportation facility by the responsible public  
15 entity to ensure conformance with engineering standards  
16 acceptable to the responsible public entity.

17 (e) Monitoring of maintenance practices of the operator by  
18 the responsible public entity and taking of actions that the  
19 responsible public entity finds appropriate to ensure that the  
20 qualifying transportation facility is properly maintained.

21 (f) Reimbursement paid to the responsible public entity for  
22 services provided by the responsible public entity.

23 (g) Filing of appropriate financial statements by the  
24 qualifying transportation facility with the responsible public  
25 entity on a periodic basis.

26 (h) A reasonable maximum rate of return on investment for the  
27 operator, based on assumptions set forth in the comprehensive

1 agreement. The allowed amount of the return on investment for  
2 the operator shall not be affected by subsequently occurring  
3 events unless specifically provided otherwise in the  
4 comprehensive agreement. The determination of reasonableness by  
5 the responsible public entity is conclusive.

6 (i) The date of termination of the operator's authority and  
7 duties under this act and the date of dedication of a part or all  
8 of the qualifying transportation facility to the appropriate  
9 public entity.

10 (j) The distribution of earnings in excess of the costs of  
11 operating and maintenance, debt service, funding and maintaining  
12 required reserves, and the maximum rate of return as negotiated  
13 in the comprehensive agreement.

14 (k) Other terms and conditions to which the operator and the  
15 responsible public entity mutually agree.

16 (l) The duties of the operator under this act and other terms  
17 and conditions that the responsible public entity determines  
18 serve the public purpose of this act.

19 (3) The comprehensive agreement may provide for user fees to  
20 be established during the period of the operator's authority.  
21 User fees shall be set at a level that, taking into account any  
22 service payments and other revenues, allows the operator to pay  
23 operating and maintenance costs, debt service on obligations  
24 issued to finance the facility, and the rate of return on  
25 investment specified in the comprehensive agreement. If  
26 specified in the comprehensive agreement, changes in the user  
27 fees may, subject to the requirements of this act and instruments

1 under which debt or other obligations to finance the facility  
2 have been issued, be required to be approved by the responsible  
3 public entity. User fees established under a comprehensive  
4 agreement shall not be required to be approved by any other  
5 public body in this state.

6 (4) A schedule of the current user fees shall be made  
7 available by the operator to any member of the public on  
8 request.

9 (5) In negotiating user fees under this section, the parties  
10 shall establish fees that are the same for persons using the  
11 facility under the same or similar conditions, except that fees  
12 may rise with traffic congestion to encourage off-peak use of the  
13 facility.

14 (6) The execution of the comprehensive agreement or an  
15 amendment to the comprehensive agreement shall constitute  
16 conclusive evidence that the user fees provided for in the  
17 agreement comply with this act.

18 (7) User fees established in the comprehensive agreement as a  
19 source of revenues may be in addition to, or in lieu of, service  
20 payments.

21 (8) In the comprehensive agreement, the responsible public  
22 entity may agree to make grants or loans to the operator from  
23 time to time from amounts received from any other public entity,  
24 the United States, or Canada.

25 (9) The comprehensive agreement may contain provisions under  
26 which the responsible public entity agrees to provide notice of  
27 default and cure rights for the benefit of the operator and the

1 persons specified in the comprehensive agreement as providing  
2 financing for the qualifying transportation facility.

3       Sec. 11. (1) For the purpose of enabling the issuance of  
4 tax-exempt obligations for the acquisition, construction, or  
5 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  
8 nonprofit corporation under the nonprofit corporation act, 1982  
9 PA 162, MCL 450.2101 to 450.3192, or contract with an existing  
10 nonprofit corporation.

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

13       (c) Under appropriate standards established by the  
14 legislative body of the responsible public entity, act through  
15 the nonprofit corporation in accomplishing the purposes of this  
16 act.

17       (d) Approve the issuance of the debt obligations of the  
18 nonprofit corporation, but the debt or other obligations of the  
19 nonprofit corporation shall not be or become, as a result of the  
20 approval or for any other reason, the debt or other obligation  
21 of, or a pledge of the credit or taxing power of, the responsible  
22 public entity or any other public body. Approval of the issuance  
23 of debt obligations of the nonprofit corporation by the  
24 responsible public entity shall occur through the decision-making  
25 body of the responsible public entity. If the responsible public  
26 entity is this state, the approval shall be made by the  
27 commission.

1           (2) In accordance with the comprehensive agreement, all or a  
2 portion of the operator's rights, duties, or obligations may be  
3 granted to or imposed upon the nonprofit corporation, in which  
4 case the nonprofit corporation is the successor of the operator  
5 to the extent of the grant or imposition.

6           (3) The comprehensive agreement may provide for excess  
7 earnings to be distributed to 1 or more of the following:

8           (a) The responsible public entity.

9           (b) The operator for early debt reduction.

10          (c) The affected local jurisdictions.

11          (d) Any other public entity.

12          (4) Notwithstanding any other provision of this act, the  
13 comprehensive agreement may provide that the operator, after  
14 completion of the acquisition, construction, or improvement of  
15 the qualifying transportation facility, may transfer all or any  
16 part of the qualifying transportation facility to an appropriate  
17 public entity for operation. A transfer of all or any part of  
18 the qualifying transportation facility is subject to the rights  
19 of a person or entity that has provided financing for the  
20 facility including, but not limited to, the provider of any  
21 credit, liquidity, interest rate swap, cap, floor, collar, or  
22 similar instrument related to the financing.

23          Sec. 12. (1) The responsible public entity may take action  
24 to obtain federal, state, provincial, or local assistance for a  
25 qualifying transportation facility that serves the public purpose  
26 of this act.

27          (2) The responsible public entity may enter into contracts

1 required to receive federal assistance.

2 (3) The responsible public entity or another public entity  
3 may determine that it serves the public purpose of this act for  
4 all or a portion of the costs of a qualifying transportation  
5 facility to be paid, directly or indirectly, from the proceeds of  
6 a grant or loan made by a public entity, the federal government  
7 of the United States, or the federal government of Canada.

8 Sec. 13. (1) After providing notice to the operator and to  
9 the secured parties that appear in the operator's records, the  
10 responsible public entity may bring an action for a judgment in a  
11 court of competent jurisdiction if the operator has materially  
12 defaulted on the comprehensive agreement.

13 (2) Except upon agreement of the operator and other parties  
14 identified in the comprehensive agreement, the responsible public  
15 entity may not exercise the remedies provided in this section or  
16 in section 14 unless a judgment has been entered by a court of  
17 competent jurisdiction.

18 (3) On entry by the court of a judgment under subsection (1),  
19 the responsible public entity may take 1 or more of the following  
20 actions:

21 (a) Subject to subsections (4) and (5) and to any liens on  
22 revenues previously granted by the operator to any person  
23 providing financing, take over the qualifying transportation  
24 facility.

25 (b) If the responsible public entity has the power of  
26 condemnation, exercise the power of condemnation to acquire the  
27 qualifying transportation facility, except that a person that has

1 provided financing for the qualifying transportation facility,  
2 and the operator, to the extent of its capital investment, may  
3 participate in the condemnation proceedings with the standing of  
4 a property owner.

5 (c) Subject to the rights of the holders of any obligations  
6 of the operator incurred in connection with the financing of the  
7 acquisition, construction, improvement, maintenance, or operation  
8 of the qualifying transportation facility, terminate the  
9 comprehensive agreement and exercise other rights and remedies  
10 available at law.

11 (d) Make or cause to be made appropriate claims under the  
12 performance or payment bonds required under section 10(2)(a) or  
13 (b).

14 (4) If the responsible public entity elects to take over a  
15 qualifying transportation facility under subsection (3)(a), the  
16 responsible public entity shall take all of the following  
17 actions:

18 (a) Acquire, construct, improve, operate, and maintain the  
19 qualifying transportation facility.

20 (b) Impose user fees for the use of the qualifying  
21 transportation facility.

22 (c) Comply with any service contracts.

23 (5) Subject to subsection (6), revenues subject to a lien  
24 shall be collected and paid to secured parties, as their  
25 interests may appear, to the extent necessary to satisfy the  
26 operator's obligations to secured parties.

27 (6) Before payments to secured parties, the responsible

1 public entity may use revenues to pay costs of current operation  
2 and maintenance of the qualifying transportation facility,  
3 including compensation to the responsible public entity for its  
4 services in operating and maintaining the qualifying  
5 transportation facility.

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

13 (8) A takeover of the qualifying facility under this section  
14 by the responsible public entity shall not be considered to  
15 operate as a pledge of the full faith and credit of the  
16 responsible public entity to secure outstanding debt of the  
17 operator and does not obligate the responsible public entity to  
18 pay an obligation of the operator from a source other than  
19 revenues.

20 Sec. 14. At the request of the operator, the responsible  
21 public entity may exercise the power of condemnation as provided  
22 by law for the purpose of acquiring real property or estates or  
23 interest in real property to the extent that the responsible  
24 public entity finds that the action serves the public purpose of  
25 this act. An amount to be paid in a condemnation proceeding  
26 under this section shall be paid by the operator or from grants  
27 or loans as provided in section 12(3) or from other available

1 funds.

2       Sec. 15. (1) The state, any affected local jurisdiction,  
3 and any utility supplier, communication provider, or cable  
4 television provider that uses facilities that are to be affected  
5 by the location of a qualifying transportation facility shall  
6 cooperate fully with the operator of the qualifying  
7 transportation facility in planning and arranging all activities  
8 related to the location of the qualifying transportation  
9 facility.

10       (2) An entity specified in subsection (1) that possesses the  
11 power of condemnation may exercise that power in connection with  
12 the moving or relocation of facilities to be crossed by the  
13 qualifying transportation facility or that must be relocated to  
14 the extent that the moving or relocation is made necessary or  
15 desirable by construction of or improvements to the qualifying  
16 transportation facility. For purposes of this subsection,  
17 construction or improvements include construction of or  
18 improvements to temporary facilities for the purpose of providing  
19 service during the period of construction or improvement.

20       (3) An amount to be paid for the crossing, construction,  
21 moving, or relocating of facilities shall be paid for by the  
22 operator from grants or loans as provided in section 12(3) or  
23 from other available sources of funds.

24       Sec. 16. On termination of the comprehensive agreement  
25 described in section 10, and following payment of all amounts due  
26 to the provider of any financing for the qualifying  
27 transportation facility, including the provider of any credit,

1 liquidity, interest rate swap, cap, floor, collar, or similar  
2 instrument related to the financing, the authority and duties of  
3 the operator under this act shall cease and the qualifying  
4 transportation facility shall be dedicated to the responsible  
5 public entity or, if the qualifying transportation facility was  
6 initially dedicated by an affected local jurisdiction, to the  
7 affected local jurisdiction, for public use. An international  
8 river crossing that is a qualifying transportation facility may  
9 be partially dedicated to a province or political subdivision of  
10 Canada as provided in any agreement between the responsible  
11 public entity and the province or political subdivision.

12       Sec. 17. The responsible public entity shall have the  
13 exclusive power to determine all matters specifically committed  
14 to it under this act. Any decision or determination under this  
15 act that is not specifically required to be made by the  
16 commission or the decision-making body of the responsible public  
17 entity may be made by the chief administrative officer of the  
18 responsible public entity or by the person designated in writing  
19 by the chief administrative officer to act in place of the chief  
20 administrative officer. Any request for proposals or notice of  
21 receipt of an unsolicited proposal may provide that an entity  
22 that submits a proposal in response to the request or notice  
23 shall agree to be bound by all decisions of the responsible  
24 public entity made in connection with that request or notice and  
25 that the entity shall not seek judicial review of those  
26 decisions.

27       Sec. 18. This state, acting through the commission and the

1 department, is specifically authorized to undertake projects for  
2 interstate or international bridges, tunnels, or ferry  
3 transportation facilities and to acquire, own and operate, and  
4 dispose of all property and property interests inside or outside  
5 of the borders of the state as may be necessary to accomplish the  
6 purposes of this act.

7       Sec. 19. Obligations issued or incurred by an operator or  
8 nonprofit corporation under this act are excluded from the  
9 requirements under the revised municipal finance act, 2001 PA 34,  
10 MCL 141.2101 to 141.2821.