

MACKINAC BRIDGE AUTHORITY (EXCERPT)
Act 214 of 1952

254.324d Transfer of funds, duties, and powers related to utility tunnel to corridor authority board; report; tunnel agreement; findings required; representation by attorney general.

Sec. 14d.

(1) All liabilities, duties, responsibilities, authorities, and powers related to a utility tunnel as provided in section 14a and any money in the straits protection fund shall transfer to the corridor authority board upon the appointment of the members of the corridor authority board under section 14b(2). The transfer of duties, responsibilities, authorities, powers, and money described in this subsection does not require any action by the Mackinac bridge authority or any other entity. The corridor authority board shall exercise its duties independently of the state transportation department and the Mackinac bridge authority.

(2) The corridor authority board shall provide a report to the Mackinac bridge authority and the director of the state transportation department at least 1 time per year regarding aspects of the utility tunnel that could affect the Mackinac bridge authority, including, but not limited to, the progress of construction and utility leasing.

(3) The operation of a utility tunnel, including, but not limited to, the leasing of space in the utility tunnel to a utility, is not competition with the bridge.

(4) Except as provided in subdivision (a), no later than December 31, 2018, the Mackinac Straits corridor authority shall enter into an agreement or a series of agreements for the construction, maintenance, operation, and decommissioning of a utility tunnel, if the Mackinac Straits corridor authority finds all of the following:

(a) That the governor has supplied a proposed tunnel agreement to the Mackinac Straits corridor authority on or before December 21, 2018. If the governor has not supplied a proposed tunnel agreement to the Mackinac Straits corridor authority on or before December 21, 2018, the Mackinac Straits corridor authority shall act on the proposed tunnel agreement no later than 45 days after the date the proposed agreement is presented.

(b) That the proposed tunnel agreement allows for the use of the utility tunnel by multiple utilities, provides an option to better connect the Upper and Lower Peninsulas of this state, and provides a route to allow utilities to be laid without future disturbance to the bottomlands of the Straits of Mackinac.

(c) That the proposed tunnel agreement requires gathering of geotechnical information before construction to ensure that construction of a utility tunnel is feasible.

(d) That the proposed tunnel agreement provides the Mackinac Straits corridor authority with a mechanism to ensure that a utility tunnel is built to sufficient technical specifications and maintained properly to ensure a long asset life and secondary containment for any leak or pollution from utilities using the tunnel.

(e) That the proposed tunnel agreement does not require any obligation of funds that is inconsistent with this act, and that the proposed tunnel agreement provides a mechanism under which all costs of construction, maintenance, operation, and decommissioning of the utility tunnel are borne by a private party and not by the Mackinac Straits corridor authority, its predecessor, or a successor. This subdivision does not prevent the expenditure of money from the straits protection fund for the cost of independent oversight of the utility tunnel or the leasing of space in the utility tunnel to publicly-owned entities.

(f) That the proposed tunnel agreement does not require the use of the power of eminent domain.

(g) That the proposed tunnel agreement does not exempt any entity that constructs or uses the utility tunnel from the obligation to obtain any required governmental permits or approvals for the construction or use of the utility tunnel.

(h) That the proposed tunnel agreement does not exempt an entity using the utility tunnel from the payment of a tax or similar obligation.

(i) That the proposed tunnel agreement does not require the Mackinac Straits corridor authority to bring or defend a legal claim for which the attorney general is not required to provide counsel.

(j) That the proposed tunnel agreement requires that for any leasing of space for facilities for the transmission of data and telecommunications that the Mackinac bridge authority shall be reimbursed for any and all loss of net profit from the leasing of space for facilities for the transmission of data and telecommunications.

(k) That the proposed tunnel agreement requires the development of a plan on how to engage this state's labor pool in the project, including the means and methods for recruitment, training, and utilization.

(5) If the attorney general declines to represent the Mackinac bridge authority or the Mackinac Straits corridor authority in a matter related to the utility tunnel, the attorney general shall provide for the costs of representation by an attorney licensed to practice in this state chosen by the Mackinac bridge authority or the Mackinac Straits corridor authority, as applicable. As used in this subsection, "matter related to the utility tunnel" includes, but is not limited to, 1 or more of the following:

(a) A claim seeking a judicial determination that the tunnel agreement is legally invalid.

(b) A claim seeking to enjoin performance under the tunnel agreement.

- (c) A claim challenging the validity of any governmental approval or permit granted based upon an application submitted singly or jointly by the Mackinac Straits corridor authority.
- (d) A claim challenging a governmental entity's denial of a governmental approval or permit submitted singly or jointly by the Mackinac Straits utility tunnel authority.
- (e) A claim challenging the right to use any land of this state for which the Mackinac bridge authority or the Mackinac Straits corridor authority was granted the right to use.
- (f) A claim alleging a failure to perform under the tunnel agreement that limits 1 of the following:
 - (i) The use of the utility tunnel.
 - (ii) The ability to operate the utility infrastructure within the utility tunnel, if the utility is in full compliance with the terms of a lease granted by the Mackinac Straits corridor authority.
- (g) A claim challenging the validity of or seeking to enjoin the issuance of any approval regarding the utility tunnel.
- (6) Any administrative functions of the Mackinac Straits corridor authority shall be performed under the direction and supervision of the state transportation department.

History: Add. 2018, Act 359, Imd. Eff. Dec. 12, 2018