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MICHIGAN HOUSE OF REPRESENTATIVES

PAUL E. OPSOMMER

STATE REPRESENTATIVE

April 29, 2010

Thank-you for my written testimony regarding my H-1 substitute today. It was crafted with strong input from the National Motorists Association. The NMA represents the drivers and users of transportation facilities, which was a missing stakeholder in these discussions but a necessary counterbalance to the paid consultants whose parent companies often have vested financial interests in these deals and how they are structured, sometimes consulting for both states and private operators at the same time. The drivers of our roads and users of our transportation facilities need to have a voice in this process from the beginning, not at the end.

This substitute analyzed other P3 laws and projects throughout the country and attempts to learn from their mistakes and put the lessons learned into the bill. For example, other states have been put in trouble when

1) Their contracts did not have **adequate give back provisions**. A give back provision is rock solid language on what happens when the lease ends or they go bankrupt.

2) Many contracts did not have adequate language about the **sharing of any refinancing windfalls** these projects might have, we need that language.

3) Many contracts did not have language addressing where the workers were coming from to construct these projects and lacked **'hire USA'** provisions. If P3s are about jobs, they should be about jobs for Michiganians, not Canada or Indiana.

4) Many contracts did not have provisions regarding what happens when a private operator decides to subsequently sell the operation after they purchase the lease. In these cases, suddenly the owner is not the person you brought to the dance.

5) Many contracts also contained **non-compete clauses**, meaning the state could not build future infrastructure that competed with the project. This can create a government sanctioned monopoly, and one administration can tie the future hands of other governors and legislators with 99 year contracts. The MDOT sub only

has protections for plans on the books at the time contracts are entered into and does cover 99 year plans.

6) Recent projects in other states have seen moratoriums put on these projects, such as in Texas. In California, taxpayers are on the hook for a $170 million loan given to a contractor that went bankrupt. In Arlington Virginia there is a lawsuit over HOV lanes that says the practice sideskirts too many laws. We need to learn from these and insert language in the bills.

7) It is also important that existing infrastructure that taxpayers have already paid for is not handed over to a private company who can then profit from tolling on it. It is important that if ownership is transferred to a mixed government authority that it only contains Michigan government entities, and not those of other countries or states. Other countries and states should not be setting our toll rates, exercising eminent domain, or making other decisions for our citizens.

8) I also believe that we need a constitutional component to this bill to ensure money raised by P3s can not be diverted by statute in the appropriations process like what happens with our TEDF and CTF transportation funds. This occurred even this year. Without such protections, people will be paying road tolls for the benefit of other government operating costs, like as has occurred in Chicago. I am working on a constitutional amendment.

9) Most importantly, my substitute retains upfront legislative oversight. Currently, MDOT does not have authority to toll or create HOV lanes or HOT lanes without legislative approval. We need to retain that, and also have mechanisms for counties to have a say regarding what goes on in their backyard. Upfront legislative approval would still allow MDOT to send out RFPs with contractors having assurance their time and effort is worth it. I have a flowchart that describes how this would work. This process has been endorsed by the National Motorist Association.

Rep. Opsommer's Office (District 93) - Re: NEW LOCATION Fwd: [TRAN] REVISED: House Standing Committee Meeting

From: Rep. Opsommer's Office (District 93)
To: paulopsommer@house.mi.gov
Date: 4/29/2010 8:09 AM
Subject: Re: NEW LOCATION Fwd: [TRAN] REVISED: House Standing Committee Meeting

>>> <JCWCONSULT@aol.com> 4/29/2010 7:39 AM >>>

Dear Ms. Terrien,

I am not able to attend the hearing today and would ask you to enter this into the record as an official comment card and testimony. If possible, I would like to have the very brief content read in the hearing.

The National Motorists Association voices our support for the H-1 Sub of the bill. We believe this version contains the necessary protections for the interests of the public, while allowing properly approved P3 projects to go forward -- after the public and the legislature have evaluated the projects..

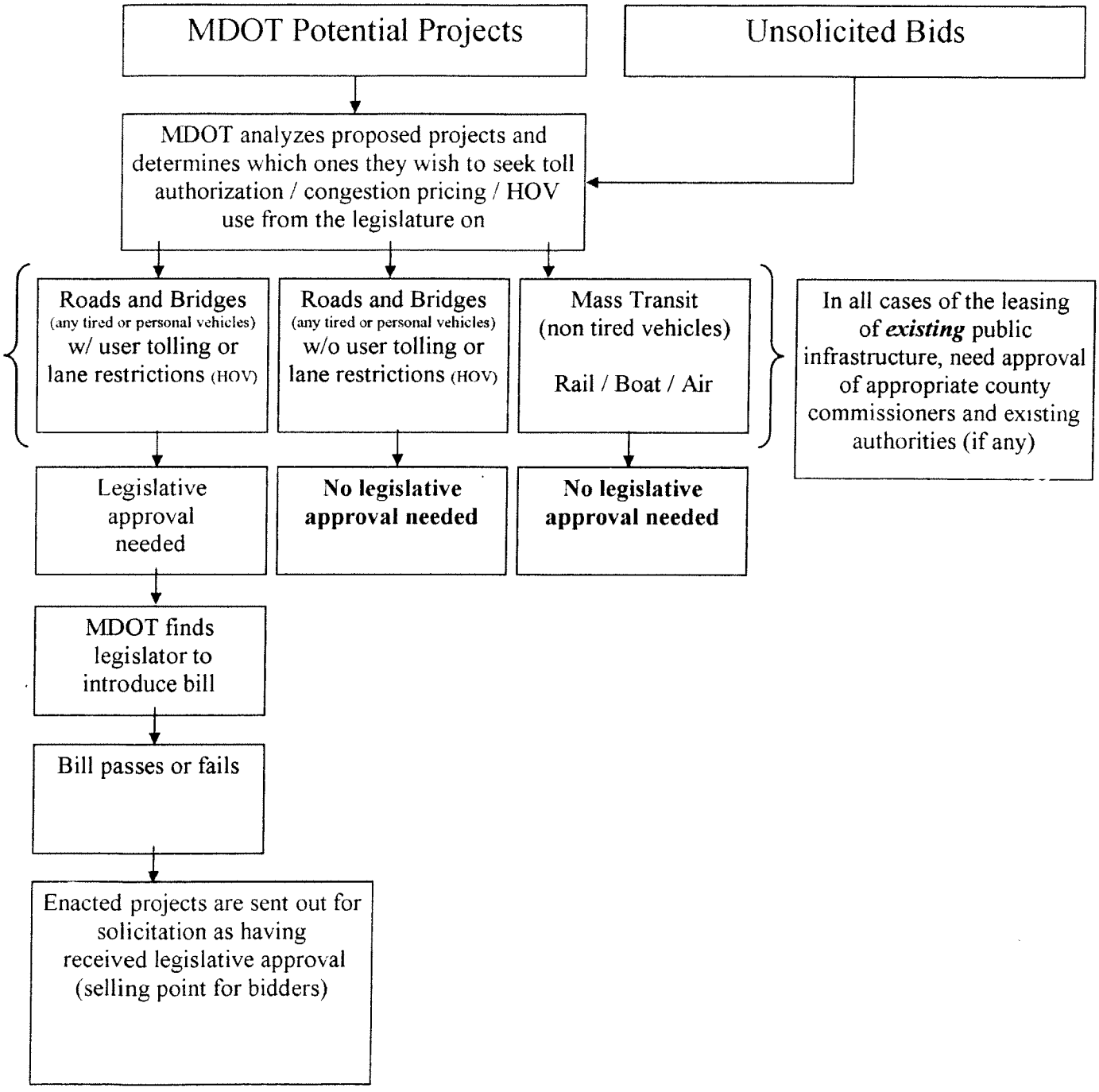
We do not support the original bill as introduced, and we do not support the H-2 Sub or H-3 Sub. Those versions do not adequately protect the public and provide too much power to the transportation authorities with inadequate legislative review and inadequate chances for the public to comment.

Respectfully submitted,

James C. Walker
National Motorists Association
2050 Camelot Road
Ann Arbor, MI 48104
734-668-7842

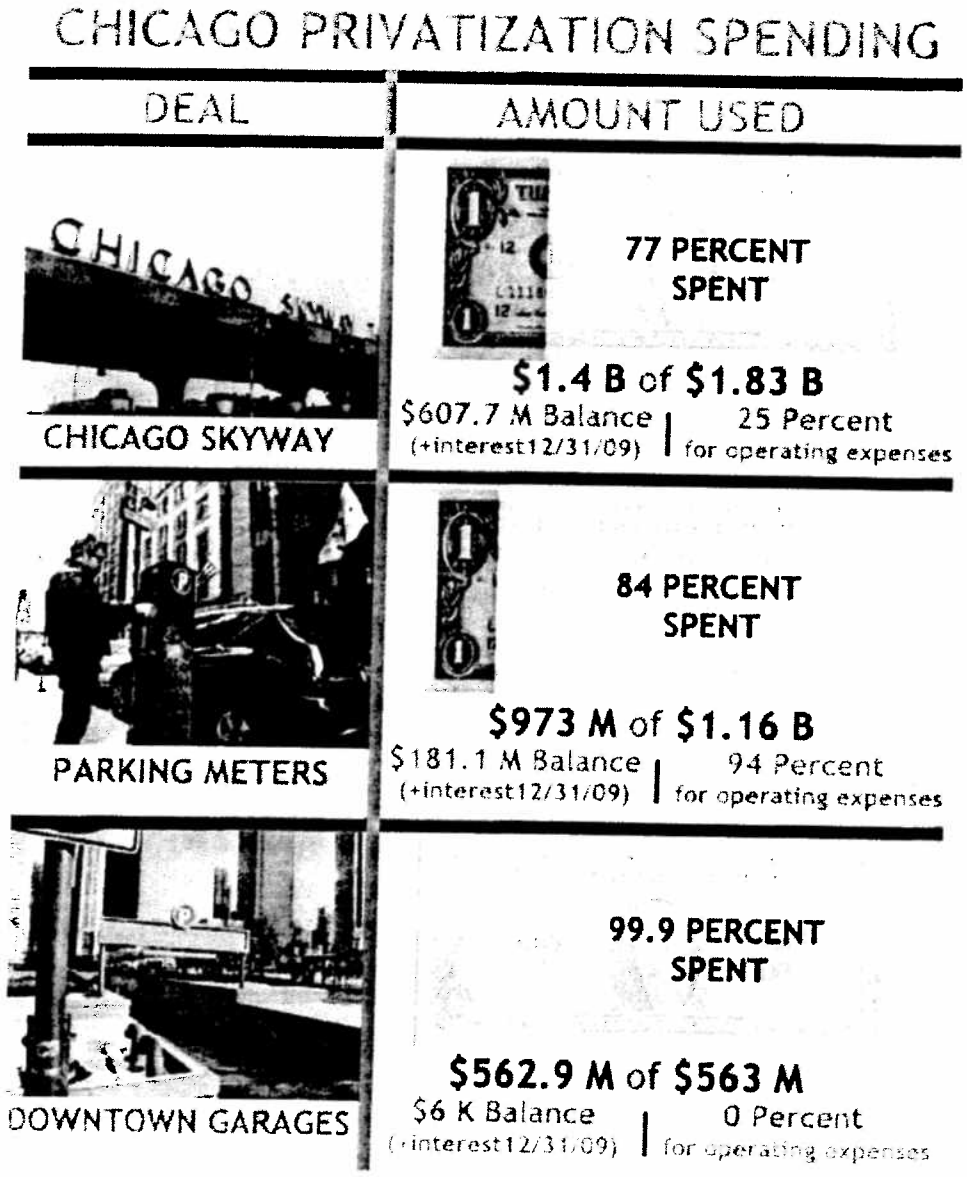
H-1 SUB

PPP approval



MEDILL REPORTS

Story URL: http://news.medill.northwestern.edu/chicago/news.aspx?id=158464
Story Retrieval Date: 4/29/2010 8:03:20 AM CST



Chicago is blowing its future on current spending, analysts say

by NATHAN HELLMAN
Feb 25, 2010

Your grandparents stash $80,000 away in a college fund you are free to access on your 18th birthday.

When that special day rolls around, do you parcel it out over four years at a state school? Or do you blow the whole thing on a year's tuition at an Ivy League school?

For Chicago, the answer has been easy: Ivy League all the way.

Since Mayor Daley struck a deal to lease the Chicago Skyway to a private group for $1.83 billion in 2005, the city has had immediate access to hundreds of millions of dollars.

Privatizing four downtown parking garages in 2006 and the city's entire parking meter system two years later has bolstered this fund of

available cash.

But experts say the city is not channeling enough of these proceeds into long-term funds or using them to pay off bonds and pension liabilities. Instead, they say, the city is using too much of the money to fill budget gaps and cover other day-to-day expenses, in turn masking significant financial problems.

"It's not a long-term solution because we will have the same challenges next year," said Peter Skosey, vice president of the Metropolitan Planning Council, an area non-profit that promotes regional growth. "This is masking the real problem of the government spending more than it brings in."

While the city used most of the proceeds from the parking garage deal to pay off old debt, almost half of the combined Chicago Skyway and parking meter money already spent or set aside for the 2010 budget has gone toward operating expenses.

This is a practice John O'Leary of Harvard warns against, because the city is spending in less than half a decade revenue intended to cover 75- or 99-years, depending on the deal's terms.

"In general, proceeds from a long-term revenue stream should be dedicated to long-term needs and expenses," said O'Leary, a research fellow at the Ash Institute, a branch of Harvard's Kennedy School of Government.

When Chicago leased its parking meters to a private company for 75 years, it got $1.16 billion. The city has already spent almost $973.6 million of that. Of this amount, more than 94 percent has been used for day-to-day needs.

A $422 million chunk of this parking meter money was woven into the city's 2010 budget — including $250 million originally set aside for long-term needs. Much of the money was used to help fill last year's hefty budget gap.

The city has tapped into the Chicago Skyway proceeds less, retaining $500 million set aside in a long-term fund after the deal was completed in 2005. Still, Mayor Daley and the City Council have poured almost a half billion dollars into daily expenses during the last five years.

Skosey said the extra money has come in handy considering the tough economic times that have the city bringing in less sales tax and tourism revenue. But he cautions the model is inherently unsustainable.

"If we keep doing this we're going to run out of revenue in the not too distant future," he said.

The city did not return requests for comment before publication.

Skosey said the city will have to slash spending and raise taxes to fix the problem. But because both are politically unpopular maneuvers, the mayor and aldermen are hesitant to pull the trigger, he said.

H. Woods Bowman agrees. Bowman, a professor of public service management at DePaul University, said the city is papering over the financial problem instead of fixing it because of a lack of discipline in City Hall.

"It is very tempting to have a pot of money lying there, whether or not it has a label that says it's supposed to be used for something else," said Bowman, a former Cook County chief financial officer and state legislator. "The longer they delay fixing the problem, the larger it gets."

Bowman said a more responsible use of the proceeds would be to cover one-time expenses, such as bonds the city has issued to finance projects or Chicago's mounting pension liabilities. Funding for Chicago's four pension funds ranged from 40 percent to 89 percent of the state-required contribution amount last year, according to a ratings-agency report.

Leonard Gilroy of the Reason Foundation supports Chicago's privatization deals, but said the city could have used the proceeds from the parking meter lease more responsibly.

"You have a one-time revenue influx — don't go blow that," said Gilroy, the free-market think tank's director of government reform.

Gilroy points to how Indiana Gov. Mitch Daniels used the $3.85 billion from leasing the Indiana Toll Road in 2006.

After paying off toll-road debt, Daniels put $2.1 billion into a 10-year transportation plan that calls for 104 new roads by 2015. This comes at a time when most states are struggling to maintain core infrastructure, such as roads and bridges.

The remaining money from the deal was placed in a trust fund, which still holds $578 million. Chris Conner at the Indiana Treasurer's office said every five years the state "scrapes off" the interest the fund accrues and diverts it to the transportation plan.

Gilroy favors a similar plan for Chicago.

"Put the money into a dedicated account that would generate money for highway rebuilding," he said. "Invest in transportation."

Whether the city funnels more of the proceeds to cover bonds, pension liabilities or transportation maintenance, Skosey at the Metropolitan Planning Council says something must change.

He said if Chicago continues to mismanage the money the city might pin itself in a position where it is playing catch up just to cover its expenses.

"You wouldn't mortgage your house to pay your electric bill."

SUBSTITUTE FOR

HOUSE BILL NO. 4961

A bill to amend 1964 PA 286, entitled

"An act to provide for the organization, powers, and duties of the state transportation commission and the state transportation department; to provide for the appointment, powers, and duties of the state transportation director; to abolish the office of state highway commissioner and the commissioner's advisory board and to transfer their powers and duties; to provide for penalties and remedies; and to repeal certain acts and parts of acts,"

by amending the title and sections 1, 6a, 7, 7a, and 10 (MCL 247.801, 247.806a, 247.807, 247.807a, and 247.810), the title as amended by 1984 PA 398 and section 7a as amended by 1981 PA 122, and by adding sections 7b, 7c, 7d, 7e, 7f, and 7g.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to provide for the organization, powers, and duties of the state transportation commission and the state transportation department; to provide for the appointment, powers, and duties of the state transportation director; to abolish the office of state

highway commissioner and the commissioner's advisory board and to transfer their powers and duties; **TO PROVIDE FOR CERTAIN PUBLIC-PRIVATE TRANSPORTATION FACILITIES; TO AUTHORIZE PUBLIC-PRIVATE AGREEMENTS RELATING TO RESEARCHING, PLANNING, STUDYING, DESIGNING, DEVELOPING, FINANCING, CONSTRUCTING, OPERATING, OR MAINTAINING CERTAIN PUBLIC-PRIVATE TRANSPORTATION FACILITIES, OR ANY COMBINATION OF THOSE ACTIVITIES;** to provide for penalties and remedies; and to repeal ~~certain~~ acts and parts of acts.

Sec. 1. As used in this act:

(A) "BROWNFIELD TRANSPORTATION FACILITY" MEANS ANY EXISTING HIGHWAY, ROAD, LANE, BRIDGE, TUNNEL, OVERPASS, RAMP, INTERCHANGE, FERRY, AIRPORT, VEHICLE PARKING FACILITY, VEHICLE TRANSPORTATION FACILITY, PORT FACILITY, LOCKS FACILITY, RAIL FACILITY, INTERMODAL OR OTHER PUBLIC TRANSIT FACILITY, OR ANY OTHER EQUIPMENT, ROLLING STOCK, SITE, OR FACILITY USED IN THE TRANSPORTATION OF PERSONS, GOODS, OR VEHICLES. BROWNFIELD TRANSPORTATION FACILITY INCLUDES THE EXPANSION OF CAPACITY OF CURRENT TRANSPORTATION FACILITIES.

(B) ~~(1)~~ "Commission" means the state transportation commission.

~~(2) "Director" means the director of transportation.~~

(C) ~~(3)~~ "Department" means the department of transportation.

(D) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION.

(E) "GREENFIELD TRANSPORTATION FACILITY" MEANS ANY NEW HIGHWAY, ROAD, LANE, BRIDGE, TUNNEL, OVERPASS, RAMP, INTERCHANGE, FERRY, AIRPORT, VEHICLE PARKING FACILITY, VEHICLE TRANSPORTATION FACILITY, PORT FACILITY, LOCKS FACILITY, RAIL FACILITY, INTERMODAL

OR OTHER PUBLIC TRANSIT FACILITY, OR ANY OTHER EQUIPMENT, ROLLING STOCK, SITE, OR FACILITY USED IN THE TRANSPORTATION OF PERSONS, GOODS, OR VEHICLES. GREENFIELD TRANSPORTATION FACILITY DOES NOT INCLUDE AN EXISTING TRANSPORTATION FACILITY OR THE EXPANSION OF CAPACITY OF AN EXISTING TRANSPORTATION FACILITY.

(F) "INSTRUMENTALITY OF GOVERNMENT OF THIS STATE" MEANS A LEGAL PUBLIC ENTITY THAT IS NOT A PRIVATE CORPORATION OR ENTITY AND THAT IS CREATED OR EMPOWERED TO CARRY OUT FUNCTIONS COMMONLY CARRIED OUT BY UNITS OF GOVERNMENT. AN INSTRUMENTALITY OF GOVERNMENT OF THIS STATE DOES NOT INCLUDE AUTHORITIES OR ENTITIES FROM THE GOVERNMENT OF THE UNITED STATES, FOREIGN COUNTRIES, OR PUBLIC GOVERNMENT OR ITS REPRESENTATIVES FROM OUTSIDE THIS STATE.

(G) "PRIVATE ENTITY" MEANS ANY NATURAL PERSON, CORPORATION, GENERAL PARTNERSHIP, LIMITED LIABILITY COMPANY, LIMITED PARTNERSHIP, JOINT VENTURE, BUSINESS TRUST, PUBLIC BENEFIT CORPORATION, NONPROFIT ENTITY, OR OTHER NONGOVERNMENTAL BUSINESS ENTITY.

(H) "PRIVATE PARTNER" MEANS A PRIVATE ENTITY THAT HAS ENTERED INTO A PUBLIC-PRIVATE AGREEMENT UNDER SECTION 7B.

(I) "PUBLIC-PRIVATE AGREEMENT" MEANS AN AGREEMENT BETWEEN THE DEPARTMENT AND A PRIVATE ENTITY, OR BETWEEN THE DEPARTMENT IN CONJUNCTION WITH 1 OR MORE INSTRUMENTALITIES OF GOVERNMENT OF THIS STATE AND A PRIVATE ENTITY, THAT INVOLVES A LEASE, CONCESSION, OR SIMILAR AGREEMENT THAT RELATES TO RESEARCHING, PLANNING, STUDYING, DESIGNING, DEVELOPING, FINANCING, CONSTRUCTING, OPERATING, OR MAINTAINING A TRANSPORTATION FACILITY, OR ANY COMBINATION OF THOSE ACTIVITIES.

(J) "PUBLIC DEPRIVATION" MEANS A RIGHT OR ABILITY IN A PUBLIC-PRIVATE AGREEMENT THAT WOULD DEPRIVE THE PUBLIC OF THE NORMAL USE AND BENEFIT OF A TRANSPORTATION FACILITY, INCLUDING, BUT NOT LIMITED TO, SUCH PRACTICES AS USER TOLLING OR OTHER CHARGES, CONGESTION-BASED PRICING, VEHICLE OCCUPANCY RESTRICTIONS, OR PASSENGER VEHICLE CLASS RESTRICTIONS.

(K) "SHADOW TOLLING" MEANS A VARIABLE PAYMENT THE DEPARTMENT MAKES TO A PRIVATE PARTNER BASED ON FACILITY USAGE. SHADOW TOLLING DOES NOT INCLUDE TOLLING OR USER FEES PAID DIRECTLY BY FACILITY USERS.

Sec. 6a. The director may do the following:

(a) Organize the department and its work, supervise the work of the employees **AND AGENTS** of the department, create, merge, and abolish organizational divisions within the department, and transfer or merge functions among those divisions in the interest of economy and efficiency.

(b) Employ personnel necessary to carry out the duties of the director and the responsibilities of the department subject to laws governing state employment **AND CERTAIN CONTRACTS APPROVED AND AUTHORIZED UNDER LAW.**

(c) Delegate to any employee of the department, subject to the approval of the commission, any powers vested in the director or delegated to the director by the commission **EXCEPT THE POWER TO ENTER INTO CERTAIN PUBLIC-PRIVATE AGREEMENTS UNDER SECTION 7B.**

(d) Establish a program of current and long-range planning for the transportation systems **AND TRANSPORTATION FACILITIES** under the department's jurisdiction.

(e) Direct the preparation of budget requests, expenditures, programs and periodical allotments.

(f) Purchase materials, supplies, **SERVICES,** and equipment as necessary and proper to carry out the duties of the department as provided by law governing state purchasing.

(g) Dispose of obsolete equipment, surplus supplies and material that cannot be used by the department as provided by law governing the disposal.

(h) Do anything necessary and proper to comply fully with the provisions of present or future federal aid acts.

(I) ENTER INTO CERTAIN PUBLIC-PRIVATE AGREEMENTS WITH THE APPROVAL OF THE COMMISSION OR THE LEGISLATURE AS AUTHORIZED UNDER SECTION 7B.

(J) ~~(i)~~ Do anything necessary and proper to carry out the duties imposed upon the department by the constitution and other duties as may be imposed by law.

Sec. 7. (1) The commission's powers and duties shall include:

(a) The awarding of all contracts for the construction, improvement, and maintenance of the highways and transportation facilities under its jurisdiction, as provided by law.

(b) The establishment of transportation policies for the guidance and direction of the director.

(C) APPROVAL OR DISAPPROVAL OF PUBLIC-PRIVATE AGREEMENTS BEFORE THEY ARE ENTERED INTO BY THE DEPARTMENT UNDER SECTION 7B. THE POWER TO APPROVE OR DISAPPROVE OF PUBLIC-PRIVATE AGREEMENTS DOES NOT EXTEND TO A MEMBER OF THE COMMISSION WHO HAS A CONFLICT OF INTEREST.

(2) The commission may do the following:

(a) Delegate to any member of the commission, the director, or any subordinate, any powers, other than the power to establish policy, vested in the commission as it considers necessary and proper; and permit the director to delegate any powers delegated to him or her by the commission **EXCEPT FOR THE POWER TO ENTER INTO PUBLIC-PRIVATE AGREEMENTS UNDER SECTION 7B.**

(b) Acquire, own, and hold real and personal property in the name of ~~the~~ **THIS** state or the commission and sell, lease or otherwise dispose of, or encumber, the same in connection with, and in furtherance of, its duties and the purposes of this act.

(c) Do anything necessary and proper to carry out the duties imposed upon it by the constitution and such other duties as may be imposed by law.

Sec. 7a. (1) As used in this section:

(a) "Completion" means the date when the construction, improvement, or maintenance of a bridge, highway, or other transportation facility is accepted in accordance with the contract documents, so that the bridge, highway, or other transportation facility may be used for its intended purpose.

(b) "Construction contract" means an agreement between a contractor and the department for the construction, improvement, or maintenance of a bridge, highway, or other transportation ~~facility~~ **PROJECT.**

(c) "Contractor" means ~~an individual; sole proprietorship; partnership; corporation; joint venture; or other legal~~ **A PERSON OR** entity, other than ~~the~~ **THIS** state, or an agency or department of

the state, who is a party to a construction contract.

(d) "Project" means the specific ~~section 9 of the highway construction~~ **PORTION OF A TRANSPORTATION FACILITY** to be performed under the construction contract.

(2) A construction contract may provide for partial payments to be made periodically to a contractor. The department may establish specifications regarding the retention of a portion of the total amount earned under the construction contract.

(3) At the request of the contractor and upon the approval of the department, the portion retained pursuant to the specifications established under subsection (2) shall be placed in an escrow account pursuant to this section.

(4) An escrow agent may be selected by the contractor. For purposes of this section, an escrow agent shall be a state or national bank, a state or federally chartered savings and loan association, or a state or federally chartered credit union whose principal place of business is located in this state.

(5) An escrow agreement shall be entered into between the contracting parties and the escrow agent. The escrow agreement shall contain all of the following terms:

(a) That the escrow agent shall promptly invest all of the escrowed funds.

(b) That the escrow agent shall hold the escrowed funds until receipt of notice from the department. Upon receipt of a notice of release from the department, the escrow agent shall promptly remit the designated portion of escrowed funds to the contractor involved in the contract. Upon receipt of a notice of overpayment or default

of the contract, the escrow agent shall promptly remit the designated portion of escrowed funds to the department.

(c) That the escrow agent is responsible for all investments and money as a result of the deposit of the amount until released from responsibility pursuant to the escrow agreement.

(d) That the contractor shall pay all expenses regarding the deposit, investment, and administration of the retained amount and all other charges made by the escrow agent.

(e) Any other provision agreed to by the contracting parties and the escrow agent necessary or proper for purposes of this section.

SEC. 7B. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AND AFTER APPROVAL BY THE COMMISSION AND THE LEGISLATURE, OR THE COMMISSION OR LEGISLATURE, WHICHEVER APPLIES, THE DEPARTMENT MAY ENTER INTO A PUBLIC-PRIVATE AGREEMENT WITH A PRIVATE ENTITY OR WITH A PRIVATE ENTITY AND 1 OR MORE OTHER INSTRUMENTALITIES OF GOVERNMENT OF THIS STATE, TO PROVIDE FOR RESEARCHING, PLANNING, STUDYING, DESIGNING, DEVELOPING, FINANCING, CONSTRUCTING, GOVERNING, OPERATING, OR MAINTAINING A TRANSPORTATION FACILITY OR ANY COMBINATION OF THOSE ACTIVITIES. THE AGREEMENT SHALL INCLUDE TERMS DESIGNED TO PROTECT THE PUBLIC INTEREST AND ASSURE TRANSPARENCY AND ACCOUNTABILITY OF A PRIVATE PARTNER TO THE DEPARTMENT AND THE PEOPLE OF THIS STATE. A PUBLIC-PRIVATE AGREEMENT MAY CONTAIN TERMS AND CONDITIONS THAT THE DEPARTMENT MAY DETERMINE OR NEGOTIATE TO FACILITATE THE RESEARCHING, PLANNING, STUDYING, DESIGNING, DEVELOPING, FINANCING, CONSTRUCTING, GOVERNING, OPERATING, OR MAINTAINING OF A TRANSPORTATION FACILITY IN THE BEST

INTERESTS OF THE PEOPLE OF THIS STATE.

(2) A PUBLIC-PRIVATE AGREEMENT SHALL PROVIDE FOR THE TERMS OF THE USE AND OPERATION OF A TRANSPORTATION FACILITY BY A PRIVATE PARTNER IF THE PUBLIC-PRIVATE AGREEMENT CALLS FOR A TRANSFER OF OPERATION AND FOR A PERIOD DETERMINED NECESSARY FOR THE ECONOMIC VIABILITY OF THE ARRANGEMENT AND THE BEST INTERESTS OF THE PUBLIC OF THIS STATE, NOT TO EXCEED 50 YEARS. THE AGREEMENT MAY PROVIDE FOR AN INITIAL TERM AND 1 OR MORE OPTIONAL TERMS SO LONG AS EITHER PARTY CAN SEVER OPTIONAL TERMS. THE AGREEMENT SHALL PROVIDE THAT THE OWNERSHIP OF A TRANSPORTATION FACILITY WITHIN THIS STATE SHALL BE AND REMAIN VESTED IN AN INSTRUMENTALITY OF GOVERNMENT OF THIS STATE AND THAT TITLE TO THE TRANSPORTATION FACILITY SHALL NOT BE ENCUMBERED. NO PROVISION OF A PUBLIC-PRIVATE AGREEMENT SHALL ALLOW THE PUBLIC TO BE DEPRIVED OF THE USE AND BENEFIT OF A TRANSPORTATION FACILITY. A PUBLIC-PRIVATE AGREEMENT SHALL PROVIDE FOR THE TERMINATION OF THE AGREEMENT AND GIVE-BACK PROVISIONS THAT ALLOW FOR THE PROTECTION OF THE PUBLIC INTEREST UPON TERMINATION OF THE AGREEMENT.

(3) A PUBLIC-PRIVATE AGREEMENT MAY PROVIDE FOR THE PRIVATE PARTNER CHARGING AND COLLECTING REASONABLE CHARGES TO THIS STATE OR THE APPLICABLE INSTRUMENTALITY OF GOVERNMENT OF THIS STATE FOR THE USE OF A TRANSPORTATION FACILITY, INCLUDING THE USE OF AVAILABILITY PAYMENTS OR SHADOW TOLLING USED IN CONJUNCTION WITH PERFORMANCE CRITERIA AND INCENTIVES. A PUBLIC-PRIVATE AGREEMENT SHALL NOT INCLUDE PROVISIONS ALLOWING FOR PUBLIC DEPRIVATION OR TOLLING OR CHARGES UPON THE GENERAL PUBLIC EXCEPT IN THE CASES OF EITHER OF THE FOLLOWING:

(A) A MASS TRANSPORTATION FACILITY THAT CHARGES TOLLS OR USER FEES ONLY UPON THE USERS OF BUSES, RAIL, OR FERRIES AND DOES NOT ALLOW FOR THE TOLLING, CHARGING, OR PUBLIC DEPRIVATION OF THE USE AND BENEFIT OF ANY HIGHWAY, ROAD, BRIDGE, TUNNEL, OVERPASS, RAMP, INTERCHANGE, OR SIMILAR STRUCTURE.

(B) GREENFIELD TRANSPORTATION FACILITIES FOR WHICH THE LEGISLATURE HAS GRANTED APPROVAL BY THE PASSAGE OF A SPECIFIC LAW AUTHORIZING THE USE OF TOLLING OR CHARGES FOR A TRANSPORTATION FACILITY THAT DETAILS THE INSTRUMENTALITY OF GOVERNMENT TO BE INVOLVED AND ANY STIPULATIONS REGARDING TOLL SCHEDULES, FEE STRUCTURES, STIPEND PAYMENTS, LIMITATIONS ON RATE OF RETURN, AND GIVE-BACK PROVISIONS FOR A FACILITY THE LEGISLATURE MAY CHOOSE TO PLACE QUALIFIERS ON FOR THE BIDDING PROCESS.

(4) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ALLOW FOR PUBLIC DEPRIVATION OR THE CONVERSION OF ANY NONTOLLED OR NON-USER-FEE ROAD, HIGHWAY, LANE, BRIDGE, TUNNEL, OVERPASS, RAMP, OR INTERCHANGE EXISTING OR EXPANDED UPON AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION INTO A TOLLED STATUS.

(5) COMPENSATION PAID BY THE PRIVATE PARTNER IN CONNECTION WITH A PUBLIC-PRIVATE AGREEMENT SHALL NOT GO TO THE GENERAL FUND AND SHALL BE USED EXCLUSIVELY BY THE DEPARTMENT FOR CONSTRUCTION AND MAINTENANCE OF TRANSPORTATION INFRASTRUCTURE, OR FOR THE REPAYMENT OF BONDS AS APPLICABLE, AND SHALL NOT BE USED FOR THE OVERHEAD COSTS OF THE DEPARTMENT. TOLLS OR USER FEES PAID BY THE PUBLIC THAT THE DEPARTMENT MAY SHARE IN VIA A PUBLIC-PRIVATE AGREEMENT SHALL ONLY BE USED IN THE SAME MANNER. COMPENSATION OR REVENUE ATTRIBUTABLE TO A TRANSPORTATION FACILITY AUTHORIZED BY A

PUBLIC-PRIVATE AGREEMENT SHALL BE DEPOSITED INTO THE STATE TRUNK LINE FUND IN THE CASE OF ALL PROJECTS WHERE THE MAJORITY OF THE PROJECT INVOLVES FACILITIES DESIGNED PRIMARILY FOR THE USE OF VEHICLES USING TIRES.

(6) IN ACCORDANCE WITH THE TERMS OF A PUBLIC-PRIVATE AGREEMENT, THE DEPARTMENT SHALL OVERSEE THE ACTIVITIES OF A PRIVATE PARTNER CARRYING OUT THE TERMS OF A PUBLIC-PRIVATE AGREEMENT. A PUBLIC-PRIVATE AGREEMENT MAY PROVIDE FOR THE USE OF ARBITRATION, MEDIATION, OR OTHER ALTERNATIVE DISPUTE RESOLUTION MECHANISM FOR THE RESOLUTION OF DISPUTES BETWEEN THE DEPARTMENT AND A PRIVATE PARTNER, BUT THE REMEDIES LISTED IN THIS SUBSECTION SHALL NOT BE EXCLUSIVE AND THE DEPARTMENT MAY STILL BRING SUIT FOR VIOLATIONS OF THE AGREEMENT.

(7) THE PUBLIC-PRIVATE AGREEMENT MAY PROVIDE THAT WHEN A PRIVATE PARTNER IS PERFORMING CERTAIN FUNCTIONS ON BEHALF OF THE DEPARTMENT OR OTHER INSTRUMENTALITY OF GOVERNMENT UNDER THE AGREEMENT THAT THE PRIVATE PARTNER IS CLOAKED WITH SIMILAR IMMUNITY FROM TORT LIABILITY AS THE DEPARTMENT OR INSTRUMENTALITY OF GOVERNMENT OF THIS STATE. NO PRIVATE PARTNER SHALL BE GIVEN THE POWER OF EMINENT DOMAIN OR THE AUTHORITY TO PERFORM OR FUNCTION RELATED TO EMINENT DOMAIN, THROUGH CONTRACT OR THROUGH THE USE OF A PUBLIC-PRIVATE AGREEMENT. THE PUBLIC-PRIVATE AGREEMENT MAY PROVIDE FOR THE DEPARTMENT OR OTHER INSTRUMENTALITY OF GOVERNMENT TO BE RELIEVED OF ANY LIABILITY FOR THE ACTS OR OMISSIONS OF THE PRIVATE PARTNER OR OTHER PARTY TO THE AGREEMENT. A PERSON MAY BRING SUIT AGAINST THE DEPARTMENT OR THE PRIVATE PARTNER BECAUSE OF DAMAGE INCURRED FROM GROSS NEGLIGENCE, DENIAL OF USE OF THE FACILITY, OR A

VIOLATION OF THE AGREEMENT.

(8) A PUBLIC-PRIVATE AGREEMENT MAY PERMIT THE CONDUCT OF CERTAIN COMMERCIAL ACTIVITIES RELATING TO TOLLING OR USER FEES IF AUTHORIZED UNDER THIS SECTION AT A TRANSPORTATION FACILITY IF THE ACTIVITIES ARE RELATED TO THE TRANSPORTATION PURPOSES OF THE FACILITY OUTLINED IN THE CONTRACT AND TO THE EXTENT NOT RESTRICTED BY APPLICABLE LAW. IN EXERCISING ITS DUTIES OF EMINENT DOMAIN, THE DEPARTMENT SHALL NOT AUTHORIZE THE TAKING OF PROPERTY FOR THE COMMERCIAL PURPOSES OF ANOTHER ENTITY OUTSIDE THE SCOPE OF WHAT IS NECESSARY FOR A TRANSPORTATION FACILITY TO BE USED FOR THE PUBLIC GOOD OF THE PEOPLE OF THIS STATE AND AFTER PROVIDING ADEQUATE MARKET REMUNERATION. NOTHING IN THIS ACT SHALL BE CONSTRUED TO GIVE THIS STATE, THE DEPARTMENT, OR ANY OTHER ENTITY ADDITIONAL POWERS IN REGARD TO EMINENT DOMAIN OTHER THAN WHAT EXISTED 1 DAY BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION. THE PUBLIC-PRIVATE AGREEMENT SHALL BE COMPETITIVELY BID AND PROVIDE FOR DEPARTMENT OVERSIGHT.

(9) A PUBLIC-PRIVATE AGREEMENT SHALL MANDATE THE USE AND RELIANCE ON STATE OR LOCAL LAW ENFORCEMENT FOR TRAFFIC ENFORCEMENT, AND SHALL EXPRESSLY NOT ALLOW FOR THE PRIVATE PARTNER OR ITS AGENTS TO ISSUE TICKETS OR FINES, OR TO COLLECT OR RECEIVE MONEY FROM THE PUBLIC FROM FINES OR TICKETS ISSUED IN A TRANSPORTATION FACILITY, EXCEPT IN THE CASE OF THE FAILURE TO PAY TOLLS IN APPROVED GREENFIELD PROJECTS. A PUBLIC-PRIVATE AGREEMENT SHALL INCLUDE A PRIVACY POLICY THAT FULLY DESCRIBES WHETHER THE PARTIES WILL COLLECT DATA AND INFORMATION ON THE PUBLIC, HOW COLLECTED DATA WILL BE USED, AND WHAT PROTECTIONS WILL BE IN PLACE; PROHIBITS THE SALE

OF COLLECTED DATA; PROHIBITS THE TRANSFER OF COLLECTED DATA EXCEPT TO THE STATE; AND PROVIDES FOR PENALTIES FOR VIOLATION OF THE STATED POLICIES. THE CONTRACT SHALL NOT ALLOW FOR THE ERECTION OR USE OF SPEED CAMERAS OR OTHER AUTOMATED EQUIPMENT DESIGNED TO TICKET OR FINE THE PUBLIC FOR MOVING VIOLATIONS OR OTHER AUTOMOBILE LAW ENFORCEMENT. THE PRIVATE PARTNER SHALL NOT BE GRANTED ACCESS TO THIS STATE'S DEPARTMENT OF MOTOR VEHICLES OR SIMILAR FILES, AND THE ABILITY OF RESIDENTS OF THIS STATE TO RENEW LICENSES, REGISTRATION, OR AUTOMOBILE INSURANCE SHALL NOT BE BLOCKED OR ENCUMBERED BY THE FAILURE TO PAY TOLLS OR CHARGES. IF ELECTRONIC TOLLING IS EMPLOYED, THE PRIVATE PARTNER SHALL ENSURE THAT ADEQUATE PROVISIONS ARE MADE FOR THOSE USERS WHO CHOOSE TO PAY BY CASH OR DO NOT CHOOSE TO PARTICIPATE IN AN ELECTRONIC TOLLING SYSTEM. ELECTRONIC PAYMENT ONLY SLIP RAMPS SHALL NOT BE EMPLOYED WHERE NO NEARBY CASH PAYMENT BOOTHS ARE AVAILABLE FOR USE.

(10) THE CONSTRUCTION AND OPERATION OF A TRANSPORTATION FACILITY AUTHORIZED BY THIS SECTION SHALL BE IN CONFORMITY WITH ALL LAWS APPLICABLE TO A TRANSPORTATION FACILITY CONSTRUCTED OR OPERATED BY THIS STATE UNDER DIRECT CONTRACT WITH THE DEPARTMENT USING STATE OR FEDERAL FUNDS. A PRIVATE PARTNER SHALL NOT ALLOW THE TRANSPORTATION OF HAZARDOUS MATERIALS THAT VIOLATES ANY APPLICABLE LAWS. A PUBLIC-PRIVATE AGREEMENT MAY AUTHORIZE AN OPERATOR OR A CONTRACTOR FOR A TRANSPORTATION FACILITY AUTHORIZED BY A PUBLIC-PRIVATE AGREEMENT TO PROVIDE A LETTER OF CREDIT IN LIEU OF A PAYMENT OR PERFORMANCE BOND.

(11) A PUBLIC-PRIVATE AGREEMENT THAT PLANS FOR ANY OF THE FOLLOWING SHALL NOT BE ENTERED INTO OR SENT OUT FOR SOLICITATION

UNTIL SPECIFICALLY AUTHORIZED THROUGH INTRODUCTION AND PASSAGE OF THE APPROPRIATE LEGISLATION:

(A) TOLLED OR USER FEE HIGHWAYS, ROADS, LANES, BRIDGES, TUNNELS, OVERPASSES, RAMPS, OR INTERCHANGES.

(B) HIGH-OCCUPANCY VEHICLE LANES OR OTHER SIMILAR FACILITY RESTRICTIONS.

(C) TOLL LANES OR OTHER FACILITY RESTRICTIONS THAT UTILIZE CONGESTION PRICING.

(12) A PUBLIC-PRIVATE AGREEMENT THAT UTILIZES EXISTING PUBLIC INFRASTRUCTURE SHALL NOT BE ENTERED INTO IF THE PUBLIC-PRIVATE AGREEMENT CONCERNS THE LEASE OF AN EXISTING PUBLIC ASSET AND THE COUNTY OR COUNTIES WHERE THE PUBLIC ASSET IS LOCATED HAVE NOT AUTHORIZED THE PROJECT THROUGH A VOTE OF THE COUNTY BOARD OF COMMISSIONERS.

(13) AFTER APPROPRIATE APPROVAL INCLUDING REQUIRED APPROVAL UNDER THIS SECTION AND EXCEPT AS OTHERWISE PROVIDED UNDER LAW, THE DEPARTMENT MAY MAKE AND ENTER INTO ALL CONTRACTS AND AGREEMENTS AND TAKE ANY OTHER ACTION NECESSARY TO THE PERFORMANCE OF ITS DUTIES AND THE EXECUTION OF ITS POWERS UNDER THIS ACT AND A PUBLIC-PRIVATE AGREEMENT.

(14) ANY PUBLIC-PRIVATE AGREEMENT SHALL NOT INCLUDE LANGUAGE DESIGNED TO CIRCUMVENT ANY APPLICABLE STATE OR FEDERAL "BUY AMERICAN" OR SIMILAR LAWS.

(15) ANY PUBLIC-PRIVATE AGREEMENT SHALL CONTAIN PROVISIONS THAT ALLOW A CONTRACT AWARD TO BE CANCELED IF IT CAN BE PROVEN THAT THE AWARD WAS CORRUPTLY MADE. THIS STATE AND THE DEPARTMENT SHALL STRIVE TO USE CONSULTANTS WHO ALSO DO NOT REPRESENT PRIVATE

PARTNERS OR THEIR FINANCIERS. THE USE OF CONSULTANTS, AND THEIR CONNECTIONS, SHALL BE CLEARLY DISPLAYED ON THE DEPARTMENT'S WEBSITE UNDER THE PUBLIC-PRIVATE AGREEMENT SECTION, AND NOTICE SHALL BE SENT TO THE EXECUTIVE BRANCH AND ALL LEGISLATORS.

(16) A PUBLIC-PRIVATE AGREEMENT SHALL INCLUDE LANGUAGE ON THE SHARING OF FUTURE REFINANCING GAINS REALIZED BY THE PRIVATE PARTNER. THE PRIVATE PARTNER IS NOT AUTHORIZED TO RESELL THE LEASED FACILITY CONTRACT OR TRANSFER OPERATIONS TO ANOTHER PRIVATE PARTNER UNLESS SPECIFICALLY AUTHORIZED BY THE DEPARTMENT.

SEC. 7C. (1) THE DEPARTMENT MAY SOLICIT PROPOSALS OR RECEIVE UNSOLICITED PROPOSALS FOR A PUBLIC-PRIVATE AGREEMENT AND MAY CHARGE AND USE FEES TO OFFSET THE ADMINISTRATIVE COSTS OF RECEIVING AND EVALUATING PROPOSALS. PRIOR TO RECEIVING A SUBMISSION, THE DEPARTMENT MAY AGREE TO REIMBURSE A PRIVATE ENTITY FOR FIXED AND DESIGNATED COSTS INCURRED IN THE PREPARATION AND PRESENTATION OF A PROPOSAL IN RETURN FOR THE RIGHT TO USE ANY WORK PRODUCT CONTAINED IN THE PROPOSAL, INCLUDING, BUT NOT LIMITED TO, THE TECHNOLOGIES, METHODS, PROCESSES, AND INFORMATION CONTAINED IN THE MATERIAL SUBMITTED IN CONNECTION WITH THE PROPOSAL. THE DEPARTMENT HAS THE SOLE DISCRETION WHETHER, AND TO WHAT EXTENT, TO CONSIDER AN UNSOLICITED PROPOSAL. BEFORE ENTERING INTO A PUBLIC-PRIVATE AGREEMENT FOR A TRANSPORTATION FACILITY PROPOSED BY AN UNSOLICITED PROPOSAL, THE DEPARTMENT SHALL SOLICIT COMPETING PROPOSALS AND ENTER INTO ANY PUBLIC-PRIVATE AGREEMENT USING THE CRITERIA IN SUBSECTION (4).

(2) IN SOLICITING OR SELECTING A PRIVATE ENTITY WITH WHICH TO ENTER INTO A PUBLIC-PRIVATE AGREEMENT, THE DEPARTMENT MAY UTILIZE 1

OR MORE OF THE FOLLOWING PROCUREMENT APPROACHES:

(A) SEALED BIDDING WITH THE ABILITY TO REJECT ALL OFFERS WITH NO PENALTY FOR REJECTION.

(B) SELECTION OF PROPOSALS, WITH OR WITHOUT NEGOTIATIONS, BASED ON QUALIFICATIONS, DEVELOPMENT PROPOSALS, TECHNICAL PROPOSALS, FINANCIAL PROPOSALS, BEST VALUE, OR ANY COMBINATION OF THEM IF THE SELECTION APPLIES A COST-BENEFIT ANALYSIS AVAILABLE TO THE PUBLIC THAT DEMONSTRATES THAT THE PROPOSAL SAVES PUBLIC MONEY AND SERVES THE PUBLIC INTEREST.

(3) THE DEPARTMENT SHALL PRESENT A PROPOSAL TO THE COMMISSION AND THE LEGISLATURE OR THE COMMISSION OR THE LEGISLATURE, WHICHEVER IS APPLICABLE, AND SHALL SELECT A PRIVATE ENTITY OR ENTITIES FOR PARTICIPATION IN A PUBLIC-PRIVATE AGREEMENT APPROVED UNDER THIS ACT USING A COMPETITIVE SELECTION PROCESS.

(4) THE DEPARTMENT SHALL CONSIDER ALL OF THE FOLLOWING FACTORS IN EVALUATING AND SELECTING A BID OR PROPOSAL TO ENTER INTO A PUBLIC-PRIVATE AGREEMENT WITH A PRIVATE ENTITY:

(A) A PUBLICLY AVAILABLE COST-BENEFIT ANALYSIS THAT MUST DEMONSTRATE THE ABILITY OF THE PROJECT TO SAVE THE PUBLIC MONEY AND SERVE THE PUBLIC'S BEST INTERESTS. THE COST-BENEFIT ANALYSIS SHALL BE COMPLETED BEFORE ANY PUBLIC-PRIVATE AGREEMENT IS APPROVED OR FINALIZED.

(B) THE ABILITY OF THE TRANSPORTATION FACILITY TO IMPROVE SAFETY OR OPERATIONS, REDUCE CONGESTION, REDUCE TRAVEL TIMES, INCREASE CAPACITY, ENHANCE ENVIRONMENTAL QUALITY, PROMOTE ECONOMIC DEVELOPMENT, OR ANY COMBINATION OF THOSE OR SIMILAR FACTORS.

(C) THE PROPOSED COST OF AND FINANCIAL PLAN FOR THE

TRANSPORTATION FACILITY.

(D) THE GENERAL REPUTATION, QUALIFICATIONS, INDUSTRY EXPERIENCE, PREVIOUS PROJECT EXPERIENCE, AND FINANCIAL CAPACITY OF THE PRIVATE ENTITY.

(E) THE PROPOSED DESIGN, OPERATION, AND FEASIBILITY OF THE TRANSPORTATION FACILITY.

(F) COMMENTS FROM AFFECTED RESIDENTS AND LOCAL GOVERNMENTS.

(G) BENEFITS TO THE PUBLIC.

(H) THE SAFETY RECORD OF THE PRIVATE ENTITY.

(I) WHETHER THE PRIVATE ENTITY IS A FOREIGN OR DOMESTIC INTEREST, AND TO WHAT EXTENT ITS PROFITS ARE EXPECTED TO STAY IN THE UNITED STATES.

(J) TO WHAT EXTENT THE PRIVATE PARTNER WILL EMPLOY UNITED STATES WORKERS IN THE COMPLETION OF THE PROJECT.

(5) THE DEPARTMENT MAY SELECT MULTIPLE PRIVATE ENTITIES WITH WHICH TO ENTER INTO PUBLIC-PRIVATE AGREEMENTS FOR A TRANSPORTATION FACILITY IF IT IS DETERMINED BY THE DEPARTMENT TO BE IN THE PUBLIC INTEREST TO DO SO.

(6) THE DEPARTMENT MAY PROMISE TO KEEP CERTAIN TRADE SECRETS OR PROPRIETARY COMMERCIAL OR FINANCIAL INFORMATION PROVIDED BY A PRIVATE ENTITY CONFIDENTIAL ONLY FOR PURPOSES OF SEEKING OR ENTERING INTO A PUBLIC PRIVATE AGREEMENT. UPON RECEIPT OF A SUFFICIENTLY DETAILED REQUEST BY A PRIVATE ENTITY, THE DEPARTMENT SHALL PROVIDE A DESCRIPTION OF THE INFORMATION TO WHICH ITS PROMISE OF CONFIDENTIALITY WILL EXTEND. INFORMATION SUBMITTED UNDER SUCH A PROMISE OF CONFIDENTIALITY SHALL NOT BE SUBJECT TO DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

NO COST-BENEFIT ANALYSIS OR PRIVACY POLICY CONCERNING THE PROJECT SHALL BE CONSIDERED TO BE CONFIDENTIAL. SUBMISSION OF A SOLICITED OR UNSOLICITED PROPOSAL CONSTITUTES CONSENT FOR THE DEPARTMENT TO USE THE INFORMATION AND IDEAS PROVIDED BY A PRIVATE ENTITY FOR A TRANSPORTATION FACILITY OR FOR PURPOSES OF SEEKING OR ENTERING INTO A PUBLIC-PRIVATE AGREEMENT, INCLUDING TO SOLICIT COMPETING PROPOSALS UNLESS THE DEPARTMENT AGREES OTHERWISE IN A WRITING EXECUTED BY THE DEPARTMENT BEFORE THE SUBMISSION. THE NAME OF A PRIVATE ENTITY OR INSTRUMENTALITY OF GOVERNMENT, THE DATE ON WHICH A PRIVATE ENTITY OR INSTRUMENTALITY OF GOVERNMENT PROVIDED INFORMATION TO THE DEPARTMENT OR MADE AN INQUIRY TO THE GOVERNMENT, THE GENERAL NATURE OF A PROPOSED PROJECT, AND THE LOCATION OF A PROPOSED PROJECT ARE NOT TRADE SECRETS OR PROPRIETARY COMMERCIAL OR FINANCIAL INFORMATION. THE DEPARTMENT SHALL MAKE THIS INFORMATION AVAILABLE IN ITS WEBSITE ON THE WEBPAGE DEDICATED TO PUBLIC-PRIVATE AGREEMENTS WITHIN 7 BUSINESS DAYS.

(7) NO ACTION SHALL LIE AGAINST THE DEPARTMENT FOR ITS USE OF IDEAS AND INFORMATION PROVIDED BY A PRIVATE ENTITY FOR PURPOSES OF SEEKING OR ENTERING INTO A PUBLIC-PRIVATE AGREEMENT.

SEC. 7D. (1) WHETHER USED BY THE DEPARTMENT, ANOTHER INSTRUMENTALITY OF GOVERNMENT, OR A PRIVATE ENTITY UNDER A PUBLIC-PRIVATE AGREEMENT, A TRANSPORTATION FACILITY, INCLUDING, BUT NOT LIMITED TO, TANGIBLE PERSONAL PROPERTY USED EXCLUSIVELY WITH A TRANSPORTATION FACILITY, THAT IS OWNED BY THE DEPARTMENT OR ANOTHER INSTRUMENTALITY OF GOVERNMENT IS EXEMPT FROM ALL AD VALOREM PROPERTY TAXES AND ALL ASSESSMENTS LEVIED AGAINST PROPERTY BY THIS STATE OR ANY POLITICAL SUBDIVISION OF THE STATE. THIS EXEMPTION

DOES NOT APPLY TO COMMERCIAL ACTIVITIES AUTHORIZED UNDER SECTION 7B(7).

(2) NO PERSON SHALL BY REASON OF THE USE OF MOTOR FUEL WITHIN THE LIMITS OF A TRANSPORTATION FACILITY AUTHORIZED BY A PUBLIC-PRIVATE AGREEMENT BE EXEMPT FROM OR ELIGIBLE FOR A REFUND OF A MOTOR FUEL TAX IMPOSED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

SEC. 7E. (1) THE DEPARTMENT MAY ISSUE AND SELL BONDS OR NOTES FOR THE PURPOSE OF PROVIDING FUNDS TO CARRY OUT THE PROVISIONS OF THIS ACT WITH RESPECT TO THE DEVELOPMENT, CONSTRUCTION, FINANCING, MAINTENANCE, OR OPERATION OF A TRANSPORTATION FACILITY PROVIDED FOR BY A PUBLIC-PRIVATE AGREEMENT OR THE REFUNDING OF ANY BONDS OR NOTES, TOGETHER WITH ANY COSTS ASSOCIATED WITH THE TRANSACTION.

(2) ANY BOND OR NOTE ISSUED UNDER SUBSECTION (1) DOES NOT CONSTITUTE A PLEDGE OF THE FAITH AND CREDIT OR INDEBTEDNESS OF THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE WITHIN THE MEANING OR APPLICATION OF ANY CONSTITUTIONAL PROVISION OR LIMITATION. A BOND OR NOTE ISSUED UNDER SUBSECTION (1) IS PAYABLE SOLELY AS TO BOTH PRINCIPAL AND INTEREST FROM REVENUES GENERATED FROM USE OF THE TRANSPORTATION FACILITY AUTHORIZED BY THE PUBLIC-PRIVATE AGREEMENT, THE PROCEEDS OF BONDS OR NOTES SOLD TO FINANCE THE REFUNDING OF THE OUTSTANDING BONDS OR NOTES, IF ANY, OR INVESTMENT EARNINGS ON THE PROCEEDS OF THE BONDS OR NOTES.

(3) THE DEPARTMENT MAY RETAIN SUCH SERVICES AND ENTER INTO SUCH CONTRACTS AS MAY BE NECESSARY OR USEFUL FOR THE ISSUANCE AND SALE OF BONDS, NOTES, OR OTHER FINANCIAL INSTRUMENTS UNDER THIS SECTION.

(4) FOR THE PURPOSE OF FINANCING A TRANSPORTATION FACILITY, THE DEPARTMENT, ANOTHER INSTRUMENTALITY OF GOVERNMENT, OR THE OPERATOR MAY APPLY FOR, OBTAIN, ISSUE, AND USE PRIVATE ACTIVITY BONDS OR OTHER FINANCIAL INSTRUMENTS AVAILABLE UNDER ANY STATE OR FEDERAL LAW OR PROGRAM AS LONG AS IT DOES NOT OBLIGATE THIS STATE OR THE DEPARTMENT TO PERFORM ACTIONS CONTRARY TO THE LAW OF THIS STATE. APPLICATIONS SHALL NOT OBLIGATE THIS STATE TO EMPLOY TOLLING, USER FEES, OR CONGESTION-BASED PRICING UNLESS PROPER LEGISLATIVE APPROVAL HAS BEEN GRANTED IN SECTION 7B, AND NO GOVERNMENT OR ENTITY SHALL TAKE ACTION THAT WOULD SUBSEQUENTLY CREATE SUCH OBLIGATIONS BY THE COMMINGLING OF FUNDS OR OTHER ACTIONS. AN INSTRUMENTALITY OF GOVERNMENT MAY ACT AS A CONDUIT ISSUER AND TRANSFER THE PROCEEDS OF PRIVATE ACTIVITY BONDS OR SIMILAR FINANCIAL INSTRUMENTS TO AN OPERATOR IF AUTHORIZED BY A PUBLIC-PRIVATE AGREEMENT. THE BONDS OR INSTRUMENTS SHALL NOT PLEDGE THE FULL FAITH AND CREDIT OF THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE AND SHALL NOT BE A DEBT OF THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE.

(5) THIS SECTION DOES NOT LIMIT A GOVERNMENTAL ENTITY'S AUTHORITY TO ISSUE BONDS OR OTHER FINANCIAL INSTRUMENTS FOR TRANSPORTATION PROJECTS UNDER OTHER LAWS OR FROM FINANCING A TRANSPORTATION FACILITY WITH FUNDS PROVIDED OR RAISED UNDER OTHER LAWS, INCLUDING, BUT NOT LIMITED TO, LAWS AUTHORIZING THE SALE OF BONDS.

SEC. 7F. (1) THE DEPARTMENT MAY ACCEPT FROM THE UNITED STATES OR ANY OF ITS AGENCIES, INCLUDING, BUT NOT LIMITED TO, A FEDERAL INFRASTRUCTURE BANK, FUNDS THAT ARE AVAILABLE TO THE DEPARTMENT FOR

CARRYING OUT A PUBLIC-PRIVATE AGREEMENT, WHETHER THE FUNDS ARE MADE AVAILABLE BY GRANT, LOAN, LINE OF CREDIT, LOAN GUARANTEE, OR OTHER FINANCIAL ASSISTANCE AS LONG AS IT DOES NOT OBLIGATE THE STATE OR DEPARTMENT TO ACTIONS CONTRARY TO THIS ACT OR OTHER MICHIGAN LAW. SUCH APPLICATIONS SHALL NOT OBLIGATE THE STATE TO EMPLOY TOLLING, USER FEES, OR CONGESTION-BASED PRICING UNLESS PROPER LEGISLATIVE APPROVAL HAS BEEN GRANTED IN SECTION 7B, AND NO GOVERNMENT OR ENTITY SHALL TAKE ACTION THAT WOULD SUBSEQUENTLY CREATE SUCH OBLIGATIONS BY THE COMMINGLING OF FUNDS OR OTHER ACTIONS.

(2) THE DEPARTMENT MAY ACCEPT FROM ANY SOURCE, AND USE FOR SUPPORTING A TRANSPORTATION FACILITY AUTHORIZED BY A PUBLIC-PRIVATE PARTNERSHIP, ANY GRANT, DONATION, GIFT, OR OTHER FORM OF CONVEYANCE OF LAND, MONEY, OTHER REAL OR PERSONAL PROPERTY, OR OTHER ITEM OF VALUE THAT DOES NOT PRESENT A CONFLICT OF INTEREST FOR THE DEPARTMENT, THE LEGISLATURE, THE TREASURY, THE OFFICE OF PUBLIC-PRIVATE PARTNERSHIPS, OR ITS EMPLOYEES IN SERVING THE PUBLIC. A TRANSPORTATION FACILITY AUTHORIZED BY A PUBLIC-PRIVATE AGREEMENT MAY BE FINANCED IN WHOLE OR IN PART BY CONTRIBUTION OF ANY FUNDS OR PROPERTY MADE BY ANY PERSON OR ENTITY.

(3) SUBJECT TO SUBSECTION (1), THE DEPARTMENT MAY COMBINE FEDERAL, STATE, LOCAL, AND PRIVATE FUNDS TO FINANCE A TRANSPORTATION FACILITY AUTHORIZED BY A PUBLIC-PRIVATE AGREEMENT.

SEC. 7G. (1) ALL LAW ENFORCEMENT OFFICERS OF THIS STATE AND LOCAL UNITS OF GOVERNMENT IN WHICH ALL OR PART OF A TRANSPORTATION FACILITY AUTHORIZED BY A PUBLIC-PRIVATE AGREEMENT IS LOCATED SHALL HAVE THE SAME POWERS AND JURISDICTION WITHIN THE LIMITS OF THE TRANSPORTATION FACILITY AS THEY HAVE IN THEIR RESPECTIVE AREAS OF

JURISDICTION TO ENFORCE TRAFFIC AND MOTOR VEHICLE LAWS. PUBLIC SAFETY, FIRE, AND EMERGENCY RESPONSE PERSONNEL SHALL BE AFFORDED ACCESS TO A TRANSPORTATION FACILITY WHILE IN THE PERFORMANCE OF AN OFFICIAL DUTY WITHOUT THE PAYMENT OF A TOLL OR OTHER CHARGE.

(2) PUNISHMENT FOR VIOLATIONS OF TRAFFIC AND MOTOR VEHICLE LAWS WITHIN THE LIMITS OF A TRANSPORTATION FACILITY AUTHORIZED BY A PUBLIC-PRIVATE AGREEMENT SHALL BE AS GENERALLY PRESCRIBED BY LAW.

(3) A PERSON WHO FAILS TO PAY A TOLL IMPOSED FOR USE OF A TRANSPORTATION FACILITY AUTHORIZED BY A PUBLIC-PRIVATE AGREEMENT IS LIABLE FOR PAYMENT UNDER THE PUBLIC-PRIVATE AGREEMENT AS RESTRICTED UNDER SECTION 7B(8) AND APPLICABLE LAW THAT AUTHORIZED THE USE OF TOLLING ON THE FACILITY.

(4) EXCEPT AS PROVIDED IN SECTION 675B OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.675B, INVOLVING LEASED VEHICLES, PROOF THAT A PARTICULAR VEHICLE USED A TRANSPORTATION FACILITY WITHOUT PAYMENT OF THE APPLICABLE TOLL, TOGETHER WITH PROOF FROM THE DEPARTMENT OF STATE OF THE NAME OF THE VEHICLE'S REGISTERED OWNER, CREATES A PRESUMPTION THAT THE VEHICLE'S REGISTERED OWNER WAS THE PERSON WHO USED THE TRANSPORTATION FACILITY, WHO FAILED TO PAY THE TOLL, AND WHO IS PRIMA FACIE RESPONSIBLE FOR THE UNPAID CHARGES. IF THE CONDITIONS OF SECTION 675B OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.675B, ARE SATISFIED, THE LESSEE OR RENTER OF A MOTOR VEHICLE AND NOT THE LEASED VEHICLE OWNER IS THE PERSON LIABLE UNDER THIS SECTION, FOR WHICH PURPOSES THE ENTITY THAT GIVES NOTICE OF UNPAID CHARGES TO THE VEHICLE'S REGISTERED OWNER SHALL BE GIVEN THE NOTICE THAT WOULD OTHERWISE BE GIVEN TO THE CLERK OF THE COURT OR PARKING VIOLATIONS BUREAU UNDER SECTION 675B OF THE MICHIGAN

VEHICLE CODE, 1949 PA 300, MCL 257.675B.

(5) THE OWNER OF A VEHICLE ALLEGED TO HAVE USED A TRANSPORTATION FACILITY WITHOUT PAYING AN APPLICABLE TOLL MAY ASSERT AS AN AFFIRMATIVE DEFENSE THAT THE VEHICLE IN QUESTION, AT THE TIME OF THE USE OF THE TRANSPORTATION FACILITY, WAS IN THE POSSESSION OF A PERSON WHOM THE OWNER HAD NOT KNOWINGLY PERMITTED TO OPERATE THE VEHICLE.

Sec. 10. Documents and instruments of any kind authorized to be issued or executed by the commission shall be issued or executed in the name of the "Michigan state ~~highway~~ **TRANSPORTATION** commission" by the ~~chairman~~ **CHAIRPERSON** of the commission, or to the extent expressly authorized by bylaw or resolution, by the vice ~~chairman~~ **CHAIRPERSON**, other member, **THE** director, or other subordinate. Documents or instruments ~~which~~ **THAT** convey interests or rights in land shall be executed by the ~~chairman~~ **CHAIRPERSON** or vice ~~chairman~~ **CHAIRPERSON** and the director or a deputy director designated by the commission.