

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 97**

A bill to authorize certain public authorities to develop certain eligible projects and to enter into certain agreements; to impose certain conditions on those agreements; to impose certain powers and duties on certain state and local officials and employees; to authorize the financing of certain eligible projects; and to exempt certain property from certain taxes.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan alternative project delivery act".

3 Sec. 3. As used in this act:

4 (a) "Develop" or "development" means the study, planning,
5 design, acquisition, construction, reconstruction, rehabilitation,
6 improvement, repair, financing, management, operation, or
7 maintenance of an eligible project and any other service related to

1 an eligible project. Develop or development also includes the
2 imposition, charging, assessment, collection, and enforcement of
3 user fees related to an eligible project.

4 (b) "Eligible project" means 1 or more of the following:

5 (i) A transportation project.

6 (ii) A facility project.

7 (c) "Facility project" means a building, structure,
8 appurtenance, or other real property necessary or desirable for the
9 delivery of health care or laboratory facilities. Facility project
10 also includes services related to the delivery of health care or
11 laboratory facilities.

12 (d) "Local unit of government" means 1 or more of the
13 following:

14 (i) A county.

15 (ii) A city.

16 (iii) A township.

17 (iv) A village.

18 (v) A school district.

19 (vi) An intermediate school district.

20 (vii) A community college.

21 (viii) A public university.

22 (ix) An authority of an entity described in this subdivision.

23 (e) "Private party" means a person that is not the United
24 States, another nation, this state, another state, or a local unit
25 of government, or a political subdivision of the United States,
26 another nation, this state, another state, or a local unit of
27 government.

1 (f) "Public authority" means this state, a state department,
2 or a state agency.

3 (g) "Public-private agreement" means an agreement between a
4 public authority and 1 or more private parties for the development
5 of an eligible project. A public-private agreement may include 1 or
6 more local units of government.

7 (h) "Transportation project" means any roadway, railway,
8 transit system, building, structure, appurtenance, or other real
9 property used directly or indirectly in the transportation of
10 persons or the transportation or storage of goods, substances, or
11 vehicles. Transportation project also includes services related to
12 the transportation of persons or the transportation or storage of
13 goods, substances, or vehicles. A transportation project does not
14 include a bridge or other infrastructure directly associated with
15 an international border crossing.

16 (i) "User fees" means user fees, consumption charges, rents,
17 license fees, or similar or ancillary charges relating to the use
18 of eligible projects. User fees also include fees and charges for
19 creating, maintaining, and administering an account, including
20 credit card, bank, and similar fees and charges. User fees do not
21 include tolls charged on any transportation project.

22 (j) "Work product" means any technical or financial concepts
23 that are 1 or more of the following:

24 (i) Included in a bidder's response to a request for
25 qualifications or in a bidder's proposal for the development of an
26 eligible project.

27 (ii) Submitted by a bidder for review by the public authority

1 in accordance with the public authority's request for
2 qualifications or request for proposals for the development of an
3 eligible project.

4 (iii) Raised by a bidder at a meeting with the public
5 authority prior to the due date for proposals, including any
6 alternative technical or financial concepts, ideas, innovation,
7 technology, techniques, methods, processes, unique uses of
8 commercial items, design concepts, solutions, construction means
9 and methods, project execution approach, drawings, reports, plans
10 and specifications, information, and submittals that constitute
11 intellectual property of the bidder for the development of an
12 eligible project.

13 (iv) Raised in any negotiations between the public authority
14 and a bidder prior to award and execution of a public-private
15 agreement.

16 Sec. 5. (1) A public authority may do 1 or more of the
17 following:

18 (a) Consider, compare, and implement various methods for
19 procuring and developing eligible projects, including methods that
20 are alternatives to methods traditionally used by the public
21 authority.

22 (b) Enter into public-private agreements to develop eligible
23 projects.

24 (c) Enter into any agreements ancillary to public-private
25 agreements, including, but not limited to, 1 or more of the
26 following:

27 (i) Agreements with financial, legal, and other consultants

1 with specialized knowledge to do 1 or more of the following:

2 (A) Assist in the study, planning, design, structuring,
3 drafting, procurement, evaluation, and negotiation of public-
4 private agreements.

5 (B) Assist in the administration of public-private agreements
6 and the operation or maintenance of eligible projects.

7 (ii) Agreements between the public authority and 1 or more of
8 the following:

9 (A) A private party.

10 (B) A private party's lenders.

11 (C) Federal, state, and local units of government.

12 (d) Work together with other public authorities to develop
13 eligible projects through public-private agreements.

14 (e) Bundle 2 or more eligible projects under 1 public-private
15 agreement.

16 (f) Procure services, award contracts, administer revenues,
17 appropriate funds of that public authority, and take any other
18 action as may be required in connection with the development of
19 eligible projects through public-private agreements.

20 (g) Subject to applicable law, exercise the power of eminent
21 domain to acquire property, permanent or temporary easements,
22 rights-of-way, or other rights in property that are necessary to
23 develop an eligible project.

24 (2) Nothing in this act expands the type of asset or provision
25 of type of services that a public authority is otherwise authorized
26 to develop under existing laws applicable to that public authority.
27 Nothing in this act authorizes a public authority to charge or

1 collect tolls on a transportation project.

2 (3) A public-private agreement is subject to all of the
3 following, as applicable:

4 (a) The fair and open competition in governmental construction
5 act, 2011 PA 98, MCL 408.871 to 408.883.

6 (b) The local government labor regulatory limitation act, 2015
7 PA 105, MCL 123.1381 to 123.1396.

8 (4) A public authority shall hold a public hearing not less
9 than every 5 years after the completion of an eligible project to
10 conduct a public review of the eligible project.

11 (5) A public authority shall not initiate a procurement to
12 enter into a public-private agreement unless the public-private
13 agreement, according to the analysis in subsection (6), is in the
14 best interest of this state as determined by the public authority.

15 (6) Except for any procurement of a public-private agreement
16 that has already been commenced as of the effective date of this
17 act, prior to issuing a request for proposals for a public-private
18 agreement for an eligible project, the public authority shall
19 submit to the P3 advisory board a report setting forth the
20 analysis, justifications, and rationale for proceeding with a
21 public-private agreement. The report may include financial, price,
22 life cycle cost, risk transfer, technical, schedule, quality, or
23 innovation considerations or any combination of these.

24 (7) A P3 advisory board shall be established within the state
25 transportation department and shall be composed of 3 individuals.
26 The 3 individuals shall be appointed by the governor, 1 from a list
27 of 3 or more individuals selected by the speaker of the house of

1 representatives and 1 from a list of 3 or more individuals selected
2 by the senate majority leader.

3 (8) Within 30 days after receipt by the P3 advisory board of
4 the report described in subsection (6), the P3 advisory board may
5 provide comment on the report to the public authority. The P3
6 advisory board shall also notify each member of the house and
7 senate appropriations committees, the house and senate fiscal
8 agencies, and the house and senate caucus policy offices of the
9 proposed public-private agreement. If the eligible project is a
10 transportation project, the P3 advisory board shall also notify the
11 house and senate standing committees that have jurisdiction over
12 transportation issues.

13 (9) After the procurement for the public-private partnership
14 is completed and a public-private agreement has been entered into
15 between the public authority and the private party, the public
16 authority shall submit to the P3 advisory board a biannual report
17 setting forth all the following:

18 (a) The status of the implementation of the eligible project.

19 (b) Any major issues, challenges, or successes arising out of
20 the public-private partnership in the immediately preceding 2
21 fiscal years.

22 (10) The P3 advisory board shall forward a copy of the
23 biannual report to the same recipients described in subsection (8).

24 Sec. 7. (1) Prior to developing an eligible project, a public
25 authority shall consider and compare various methods for the
26 development of an eligible project and identify the proposed
27 delivery method.

1 (2) Notwithstanding any other provision of state law, the
2 public authority may use any procurement method and process that
3 the public authority determines is appropriate to solicit private
4 parties and award public-private agreements under this act,
5 including, but not limited to, any of the following or combination
6 of the following, at the public authority's discretion:

7 (a) Calls for project proposals that private parties are
8 invited through a competitive process to submit to develop an
9 eligible project.

10 (b) Competitive solicitations using 1 or more of requests for
11 qualifications, prequalification or short-listing of qualified
12 proposers, requests for proposals, preproposal meetings with
13 individual short-listed proposers, revised proposals, and final and
14 best offers.

15 (c) Unsolicited proposals, provided that if the public
16 authority determines that there is sufficient merit to pursue any
17 unsolicited proposal, reasonable opportunity for other persons to
18 submit competing proposals for consideration and possible contract
19 award is provided.

20 (d) Negotiations with 1 or more bidders prior to award.

21 (3) For any procurement in which the public authority issues a
22 request for qualifications, request for proposals, or similar
23 solicitation document, the request must generally set forth the
24 factors that the public authority will evaluate when reviewing the
25 submittals. The public authority may, in its discretion, determine
26 which factors it will consider and the relative weight of those
27 factors in the evaluation process to obtain the best value for the

1 public authority. Evaluation methodologies for selection may
2 include best value, low bid or proposal, lowest responsible or
3 adjusted bid or proposal, qualifications-based selection, lowest
4 public contribution, most expansive project, or any combination of
5 the foregoing or any other evaluation methodology for selection
6 that the public authority determines appropriate for the eligible
7 project.

8 (4) The public authority may pay stipends or payments for work
9 product on terms and conditions and in the amounts as determined in
10 the public authority's discretion in the following circumstances,
11 or in other circumstances that the public authority determines to
12 be appropriate in its discretion:

13 (a) To short-listed or prequalified bidders if the public
14 authority cancels the procurement prior to the due date for
15 proposals in the request for proposals.

16 (b) To bidders that submit a proposal provided that the public
17 authority determines that the proposal is responsive to the public
18 authority's request for proposals or similar solicitation document
19 and meets all requirements established by the public authority for
20 the eligible project.

21 (5) In exchange for a stipend or payment for work product, the
22 public authority may require the bidder to grant to the public
23 authority the right to use some or all of the work product
24 contained in the proposal.

25 (6) The public authority may identify in a request for
26 qualifications, request for proposals, or similar solicitation
27 document a process whereby bidders may request and receive

1 authorization to deviate from technical and financial
2 specifications, subject to demonstrating to the public authority
3 that the deviations provide the same or greater quality, utility,
4 function, and value.

5 (7) Notwithstanding any other provision of law, the public
6 authority may do 1 or more of the following:

7 (a) Provide exclusive protest remedies in its requests for
8 qualifications, requests for proposals, or similar solicitation
9 documents.

10 (b) Limit the rights of private parties responding to
11 solicitation documents to protest matters arising in connection
12 with the procurement.

13 (c) Require that private parties responding to solicitation
14 documents expressly waive all other rights and remedies that may be
15 available under applicable law.

16 (8) Except as expressly provided otherwise in this subsection,
17 a writing prepared, owned, used, in the possession of, or retained
18 by the public authority in the performance of an official function
19 is a public record and must be made available to the public in
20 compliance with the freedom of information act, 1976 PA 442, MCL
21 15.231 to 15.246. Documents and other analysis used in the
22 decision-making process and preparation of the procurement
23 documents and proposals are not subject to release or disclosure by
24 the public authority until final award and execution of the public-
25 private agreement and the conclusion of any protest or other
26 challenge to the award or the lapse of the protest period without
27 challenge, absent an administrative or judicial order requiring

1 such release or disclosure. However, if the public authority
2 decides not to pursue or complete an eligible project, then
3 documents and other analysis used in the decision-making process or
4 in the preparation of the procurement documents or proposals not
5 otherwise exempt from disclosure are a public record and must be
6 made available to the public in compliance with the freedom of
7 information act, 1976 PA 442, MCL 15.231 to 15.246.

8 (9) The characterization by the private party of information
9 as being confidential trade secrets or commercial or financial
10 information exempt from disclosure is not binding upon the public
11 authority if the information is not afforded that protection under
12 this act or state law.

13 (10) When developing a facility project under a public-private
14 agreement, the public authority shall consult with the state budget
15 director regarding the future fiscal impact on the affected state
16 department, state agency, or authority of this state.

17 Sec. 9. (1) Any lawful source of public or private funding and
18 financing, or combination of these, may be utilized for the
19 development of an eligible project under this act.

20 (2) A public-private agreement may require the private party
21 to arrange for all or a portion of the financing required for the
22 eligible project. A public authority may also elect in its
23 discretion to contribute funds or financing required for the
24 eligible project in lieu of or in combination with funding or
25 financing arranged by the private party. A public authority may
26 elect in its discretion to participate with the private party in
27 any gains realized through revenue sharing, cost-saving sharing

1 agreements, or the refinancing of the eligible project, as
2 determined by the public authority in its discretion.

3 (3) A public authority may accept from the United States, any
4 state, or a local unit of government or any political subdivision
5 of the United States, any state, or a local unit of government
6 funds or credit assistance as is available to it for carrying out
7 the purposes of this act, whether the funds are made available by
8 grant, loan, guaranty, line of credit, or other financing
9 arrangement. A public authority may enter into these arrangements
10 and other agreements with the United States, any state, or a local
11 unit of government or any political subdivision of the United
12 States, any state, or a local unit of government, as may be
13 necessary, proper, and convenient for carrying out the purposes of
14 this act. A public authority may seek allocation for, issue, and
15 provide for the issuance of private activity bonds under applicable
16 federal, state, or local programs, including as described in 26 USC
17 141. A public authority may apply for or facilitate the application
18 for or secure financing from any source and make funds available to
19 1 or more private parties either directly or through other public
20 authorities.

21 (4) A public authority may accept from any source any grant,
22 donation, gift, or other form of conveyance of land, money, other
23 real or personal property, or other valuable thing made to the
24 public authority for carrying out the purposes of this act.

25 (5) A public authority may impose and collect user fees,
26 increase the user fees, and use lawful measures to enforce the user
27 fees or authorize another person to impose, collect, increase, and

1 enforce the user fees to the same extent as available to the public
2 authority. Subject to the public-private agreement, the public
3 authority shall determine the use, application, and sharing of
4 collected user fees. User fees may be imposed, charged, and
5 collected by manual, digital, or electronic means. A public-private
6 agreement may also include a schedule, formula, or mechanism for
7 the adjustment of user fees during the term of the public-private
8 agreement.

9 (6) Bonds, notes, and other obligations may be issued under
10 applicable law for the purposes of providing funding for an
11 eligible project. Revenues, including user fees, generated or
12 received pursuant to a public-private agreement may be directed to
13 a segregated account and pledged for the repayment of bonds, notes,
14 or other obligations without appropriation. Bonds, notes, or other
15 obligations supported by revenue received from or payments made
16 pursuant to a public-private agreement are not a debt of this
17 state. Any financing may be structured on a senior, parity, or
18 subordinate basis with any other financing or funding.

19 (7) Notwithstanding any other provision of this act, if any
20 property of a public authority is leased, at the conclusion of the
21 lease the property remains property of the public authority.

22 Sec. 11. (1) A public-private agreement may include 1 or more
23 of the following:

24 (a) Provisions addressing the allocation and management of
25 project risks, including, but not limited to, design, construction,
26 geotechnical, delay, permitting, governmental approvals, change of
27 law, utility adjustments, change in utility costs, operations and

1 maintenance, force majeure, insurance availability and costs,
2 inflation, and financing risks.

3 (b) Provisions addressing payments on terms determined by the
4 public authority, including, but not limited to, milestone
5 payments, progress payments, availability or service fee payments,
6 and other compensation.

7 (c) Provisions requiring that the private party or 1 or more
8 of its contractors provide proposal, performance, or payment
9 security. Performance or payment security if required may be in the
10 amounts determined by the public authority and in the form of
11 bonds, guarantees, letters of credit, committed equity, or any
12 other type of financial instrument, or any combination of these,
13 each as determined by the public authority.

14 (d) Provisions requiring that the private party lease or lease
15 back or otherwise be granted licenses, rights of entry, or rights
16 to operate the eligible project through the term of the public-
17 private agreement.

18 (e) Provisions requiring that either the public authority or
19 the private party provide the utilities required during the
20 development of the eligible project, including the right and
21 authority to adjust, relocate, or protect-in-place existing
22 utilities.

23 (f) Provisions allowing or requiring the use of arbitration or
24 other alternative dispute resolution procedures to resolve disputes
25 between the parties to a public-private agreement. The alternative
26 dispute resolution procedures may include, but are not limited to,
27 binding or nonbinding process, arbitration or mediation, the

1 establishment of a board to hear disputes, or resort to the courts.

2 (g) Provisions establishing criteria for determining
3 substantial completion, final acceptance, occupancy, or service
4 readiness of the eligible project and any applicable commissioning
5 of the eligible project.

6 (h) Provisions addressing the public authority's requirements
7 for programming, operations, use, and change in use of the eligible
8 project and flexibility to expand, rehabilitate, or reconstruct the
9 eligible project.

10 (i) Provisions addressing, as applicable, the operations,
11 maintenance, and facilities management services, including
12 maintenance and renewal, to be provided by the private party, the
13 public authority, or third parties.

14 (j) Provisions addressing responsibility for maintenance and
15 rehabilitation in order for an eligible project to meet the
16 standards determined by the public authority, in its discretion, at
17 the end of the term of the public-private agreement.

18 (k) Provisions specifying events of default and remedies
19 available to the private party, the public authority, and third
20 parties.

21 (l) Provisions setting forth the technical standards and
22 specifications with which the private party must comply.

23 (m) Provisions that provide requirements for insurance with
24 the coverages and deductibles as determined by the public authority
25 to be appropriate in its discretion.

26 (n) Provisions regarding the maintenance and auditing of the
27 private party's books and records.

1 (2) A public-private agreement shall not be entered into for
2 an initial period exceeding 50 years from final acceptance or
3 occupancy or service readiness of the eligible project, as
4 applicable.

5 (3) A public-private agreement may not prohibit a public
6 authority from constructing, repairing, reconstructing, or
7 expanding a facility that competes for user fees with the eligible
8 facility developed under the public-private agreement.

9 Sec. 13. (1) The authority granted under this act supplements
10 and is independent of any existing authority and does not limit,
11 replace, or detract from existing authority.

12 (2) This act does not affect or impair a public-private
13 agreement or other agreement entered into before the effective date
14 of this act.

15 (3) Nothing in this act prevents a public authority or a local
16 unit of government from using other legal authority to enter into
17 public-private agreements or other agreements for either of the
18 following:

19 (a) For the development of eligible projects described under
20 this act.

21 (b) For the development of projects outside the scope of this
22 act.

23 Sec. 15. Property developed under and subject to a public-
24 private agreement is exempt from any and all state and local ad
25 valorem and other property taxes that otherwise might be
26 applicable.

27 Sec. 16. (1) A public authority may impose user fees as

1 provided in section 9(5).

2 (2) User fees shall be administered, collected, and enforced
3 as provided by law.

4 (3) In addition to other rights and remedies available to a
5 public authority or a private entity under a public-private
6 agreement, the public authority or another person authorized to do
7 so by the public authority may bring a civil action against a
8 person who fails to pay a user fee if the required sum remains
9 unpaid for 180 days in order to collect the unpaid sum in a court
10 having jurisdiction. If the civil action results in a judgment
11 against the defendant, the defendant is required to reimburse the
12 plaintiff for all costs of enforcement and collection, including
13 filing and legal fees.

14 Sec. 17. Nothing contained in this act shall limit or modify
15 the rights and powers of law enforcement officers to enforce
16 traffic violations and other laws upon any eligible project
17 developed under this act or the subject of a public-private
18 agreement.