

THE HOME RULE CITY ACT (EXCERPT)
Act 279 of 1909

117.5k Public-private agreement for public bridge facility; requirements; user fee; scope of section; hearing; definitions.

Sec. 5k.

(1) A city may enter into a public-private agreement for a public bridge facility as provided in this section. A public-private agreement must protect the public interest and ensure accountability of the concessionaire to the city.

(2) A city may determine or negotiate the terms and conditions of the public-private agreement to facilitate the research, planning, study, design, development, financing, acquisition, construction, renovation, operation, or maintenance of, or charging of a user fee for, a public bridge facility. A public bridge facility described in this section must be publicly owned and dedicated to public use.

(3) A public-private agreement must include all of the following:

(a) The terms of use and operation of the public bridge facility by a concessionaire for a period of time that the city determines is reasonable and necessary for developing and financing the public bridge facility.

(b) A clause that vests ownership of the public bridge facility with the city or a public entity created by the city under the laws of this state, and provides that title to and ownership of the public bridge facility must not be encumbered by a lien, mortgage, or security interest.

(c) The terms for terminating the public-private agreement.

(d) If the concessionaire will operate the public bridge facility, a reversion clause that states that operation of the public bridge facility will revert to the city when the public-private agreement is terminated.

(e) The restrictions imposed on the concessionaire's ability to sell or transfer its interest in the public bridge facility without the consent of the city.

(4) The public-private agreement may provide for any of the following:

(a) A lease, license, right of entry, or other instrument for the benefit of the concessionaire, as determined by the city to be in the public interest, that may be encumbered by a lien, mortgage, or security interest.

(b) An initial operating term not to exceed 75 years from the date of the completion of construction or commencement of the collection of a user fee, if a user fee is collected, whichever is later.

(c) The terms for renewing the public-private agreement.

(d) The charging and collecting of user fees for the use of the public bridge facility, including the charging and collecting of user fees for different classifications of users.

(e) The use, application, or sharing of all or a portion of collected user fees with the concessionaire.

(f) A schedule, formula, or mechanism for the adjustment of a user fee.

(g) An arbitration, mediation, or other alternative dispute resolution clause.

(5) For the duration of the term of a public-private agreement, all of the following apply:

(a) A right-of-way acquired through condemnation or private acquisition that is used for a public bridge facility must be contributed and remain publicly owned.

(b) Property developed under and subject to the public-private agreement is exempt from all state and local ad valorem and other property taxes that are applicable.

(c) The concessionaire's interest in property developed under and subject to the public-private agreement is exempt from taxation under 1953 PA 189, MCL 211.181 to 211.182.

(6) A user fee may be imposed on the use of a public bridge facility only if the user fee is imposed for the use of a public bridge facility that is constructed or renovated after the effective date of the amendatory act that added this section. If a user fails to pay a user fee, a reasonable late fee may be charged to the user. If a user fails to pay a user fee and a separate billing is required for the payment, a reasonable administrative fee may be charged to the user in addition to any late fee. A user fee, late fee, or administrative fee charged under this subsection is not subject to regulation by any other governmental agency. A city may enforce and collect or authorize a concessionaire or another person to enforce and collect the payment of a user fee, late fee, or administrative fee under this subsection. A user fee may be imposed, charged, and collected by manual, digital, or electronic means, including, but not limited to, video, transponder, tag, camera, or any other similar technology.

(7) If a person fails to pay a user fee as required under subsection (6) within 180 days, the city or a person authorized by the city may bring a civil action against the person to collect the user fee. If the civil action results in a judgment against the person owing the user fee, the person owing the user fee must reimburse the city for all costs of enforcement and collection, including filing and attorney fees.

(8) This section does not affect or otherwise impair either of the following:

(a) A public-private agreement or any other agreement that a city enters into before the effective date of the amendatory act that added this section.

(b) A public-private agreement or any other agreement that the city enters into for the development of a public

bridge facility that is outside the scope of this section.

(9) Before a city enters into a public-private agreement that provides for the charging and collecting of user fees for the use of a public bridge facility, the city shall hold a public hearing on the public-private agreement. Before modifying the terms of a public-private agreement that provide for the charging and collecting of user fees for the use of a public bridge facility, a city shall hold a public hearing on the proposed modifications to the public-private agreement. A public hearing held under this subsection must be conducted in accordance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The public hearing must be conducted so as to provide a reasonable opportunity for public comment, including both oral and written comment. A city that holds a public hearing under this subsection shall make reasonable accommodations to allow for public participation through electronic formats, including the opportunity to view the public hearing through an internet broadcast and to submit comments by digital means.

(10) As used in this section:

(a) "Concessionaire" means a private entity that has entered into a public-private agreement.

(b) "Governmental entity" means an entity created under a state statute and operated for a public purpose.

(c) "Private entity" means an individual, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or any other nongovernmental business entity.

(d) "Public bridge facility" means a bascule bridge, a roadway or ramp that supports the bascule bridge, and any other equipment, building, structure, parking area, appurtenance, or other real or personal property necessary or desirable for and any future new construction to replace a bascule bridge, a roadway or ramp that supports the bascule bridge, and any other equipment, building, structure, parking area, appurtenance, or other real or personal property necessary or desirable for the bascule bridge that is in existence on the effective date of the amendatory act that added this section. A public bridge facility does not include a bridge or infrastructure directly associated with an international bridge crossing.

(e) "Public-private agreement" means an agreement between a city and a private entity or between a city, a private entity, and 1 or more governmental entities that relates to researching, planning, studying, designing, developing, financing, acquiring, constructing, renovating, operating, or maintaining, or charging a user fee for, a public bridge facility.

(f) "User fee" means a toll, consumption charge, rent, license fee, or another similar or ancillary charge that is related to the use of a public bridge facility. User fee includes, but is not limited to, a fee or charge for creating, maintaining, administering, billing, and collecting an account.

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