



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

January 1, 2019

The Honorable Dana Nessel
Attorney General
Department of Attorney General
G. Mennen Williams Building
Lansing, Michigan 48933

Dear General Nessel:

Today I subscribed to the constitutional oath of office as governor and assumed the duty to take care that the laws be faithfully executed. As you know, Michigan's appellate courts have indicated that governors have no less a solemn obligation than the judiciary to consider the constitutionality their every action.

As I assume these new obligations, I write pursuant to MCL 14.32 seeking your opinion as Michigan's new attorney general on six questions of law relating to Public Act 359 of 2018 ("Act 359"), the Mackinac Bridge Authority (the "Bridge Authority"), and the new Mackinac Straits Corridor Authority (the "Corridor Authority") provided for by the new law.

The Bridge Authority was originally created by Public Act 21 of the Extra Session of 1950 ("Act 21"), in part to determine the physical and financial feasibility of a bridge connecting the Upper and Lower Peninsulas. Two years later, a separate new law—Public Act 214 of 1952 ("Act 214")—was enacted to authorize and empower the Bridge Authority to construct, operate, maintain, improve, and repair the bridge. Section 7 of Act 214 permitted the Bridge Authority to construct as a part of the bridge telephone, telegraph, or other utility lines and mechanical equipment not inconsistent with the appropriate use of the bridge and to lease the right to use them. All such equipment had to be part of the bridge and could not be inconsistent with the appropriate use of the bridge. Section 18 of Act 214 restricted the Bridge Authority from constructing or operating any tunnel, bridge or ferry service competitive with the bridge and required the Bridge Authority to prohibit the construction or operation of any other tunnel, bridge, or ferry service affording facilities for vehicular traffic to cross the straits of Mackinac. The Bridge Authority operated under this statutory structure for more than 65 years.

On November 8, 2018, Senate Bill 1197 ("SB 1197") was introduced in the Michigan Senate seeking to amend Act 214 and expand the powers of the Bridge Authority to authorize it, separate and apart from the bridge, to acquire, construct, operate, maintain, improve, repair, and manage a utility tunnel for the purpose of accommodating utility

infrastructure, including pipelines, electric transmission lines, facilities for the transmission of data and telecommunications, all useful and related facilities, equipment, and structures, and all necessary tangible or intangible real and personal property, licenses, franchises, easements, and rights-of-way. After introduction, SB 1197 was amended on its passage through the Michigan Senate on December 3, 2018 to add additional purposes, including the creation of the Corridor Authority as a separate new state authority and authorizing the operating of the tunnel by the Bridge Authority or the Corridor Authority. The bill was further amended on its passage through the Michigan House of Representatives.

As amended, SB 1197 was approved by the legislature, signed by the governor, and became Act 359 on December 12, 2018. Under Act 359, the Bridge Authority, separate and apart from its authorized activities relating to the bridge, is authorized, among other things, to acquire, construct, operate, maintain, improve, repair, and manage a utility tunnel, determine the rates charged for services offered by the utility tunnel, and enter into contracts or agreements necessary to perform its duties under Act 214. Act 359 provides for a single tunnel joining and connecting the Upper and Lower Peninsulas at the straits of Mackinac.

Act 359 also creates the Corridor Authority as a state institution within the Department of Transportation, provides for the Corridor Authority to exercise its duties through a new corridor board composed of appointed members serving for terms of six years or until a successor is appointed. The Corridor Authority is to exercise its duties independently of the Department of Transportation and the Bridge Authority. Act 359 provides for the transfer of all duties, responsibilities, authorities, and powers of the Bridge Authority related to the utility tunnel to the Corridor Authority upon the appointment of the members of the board. The initial members of the board were appointed on December 12, 2018. Before amendment by Act 359, Act 214 did not embrace the creation or membership of the Mackinac Bridge Authority or any other governmental authority. The Bridge Authority was established by a separate state law, Act 21, which has not been amended since 2009.

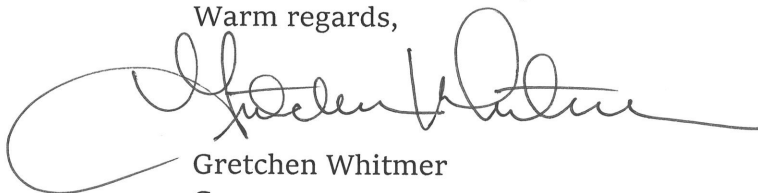
In addition, Act 359 requires the Corridor Authority (but not the Bridge Authority) to enter into an agreement or series of agreements for the construction, maintenance, operation, and decommissioning of a utility tunnel by December 31, 2018, if a proposed tunnel agreement is supplied by the governor to the Corridor Authority before December 21, 2018, or if the governor does not supply a proposed tunnel agreement by that date, the Corridor Authority is required to act on a proposed agreement within 45 days after presentation. Act 359 also creates a new fund within the state treasury, imposes duties upon the state treasurer, provides that if the attorney general declines to represent the Corridor Authority in a matter related to the utility tunnel, the attorney general would be required to provide for the costs of representation by an attorney chosen by the Corridor Authority.

Based upon the foregoing, I seek your legal opinion on the following questions:

1. Does Act 359 violate the Title-Object Clause (Const 1963, art 4, § 24) because it embraces more than one object, the object embraced is not stated in the law's title, or because SB 1197 was altered or amended on its passage through the legislature so as to change its original purpose?
2. Does the requirement that members of the board of the Corridor Authority serve for six years or more violate the constitutional mandate under section 3 of article 5 of the Michigan Constitution of 1963 that the terms of office of any board or commission created or enlarged after January 1, 1964 must not exceed four years?
3. Does Act 359 revise, alter, or amend other sections of law, including any restrictions on the construction or operation of a tunnel included in section 18 of Public Act 214 of 1952, in a manner that violates section 25 or article 4 of the Michigan Constitution of 1963?
4. In contrast to general acts providing for the creation of authorities (see, for example, the Regional Transit Authority Act of 2012, the Regional Convention Facility Authority Act, and Chapter 6A of the Aeronautics Code of the State of Michigan), is Act 359 a special or local act prohibited by the Michigan Constitution of 1963 because a general act could have been made applicable instead?
5. Does the Corridor Authority possess any power not constitutionally and explicitly granted to it by Act 359?
6. If the Corridor Authority was not created in a manner that conforms with the Michigan Constitution of 1963, is the Authority, its board, and action taken by the board void?

I would appreciate your attention to these questions of law. An oil spill in the Great Lakes would be absolutely devastating to our environment and our economy. Resolving any legal uncertainty regarding Act 359, the Corridor Authority, and activities of the Corridor Authority is necessary to assure that we can take all action necessary to protect the Great Lakes, protect our drinking water and protect Michigan jobs. Thank you in advance for your attention to this request.

Warm regards,

A handwritten signature in black ink, appearing to read "Gretchen Whitmer", with a large, sweeping flourish extending from the bottom left.

Gretchen Whitmer
Governor