



CRC MEMORANDUM



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STATEWIDE BALLOT ISSUES: PROPOSAL 2012-06 VOTE REQUIREMENT FOR INTERNATIONAL CROSSINGS

CRC's Analysis of State Ballot Issues

This paper is one in a series of papers that analyze the six questions Michigan electors will be voting on at the November 6, 2012, general election. The papers, information about webinars, links to the actual proposed amendments, and ballot language can be accessed at <http://election.crcmich.org>. The Citizens Research Council of Michigan does not endorse candidates for office or take positions on ballot issues. In analyzing these ballot issues, CRC hopes to provide more information so that voters can make better informed decisions in formulating their vote.

On November 6, 2012, Michigan voters will be asked to amend Article III (General Government) of the 1963 Constitution by adding a Section 6a that would require a statewide vote before the State of Michigan constructs or finances new international bridges or tunnels for motor vehicles.¹ An additional local vote may also be required before construction of a bridge or tunnel.

Proposal 2012-06, commonly referred to as The People Should Decide, was placed on the statewide ballot by citizen initiative. This constitutional amendment is introduced in direct response to the proposed construction of the New International Trade Crossing (NITC) between Detroit, Michigan and Windsor, Ontario. The main proponent backing the proposal is the owner of the Ambassador Bridge connecting Detroit and Windsor, which will compete directly with the proposed NITC for business.

¹ Historically, amendments to the Michigan Constitution that contemplate adding a new section have been numbered, by the author(s), so that they would appear at the end of an article. Proposal 2012-06 breaks with this tradition by wedging a new Section 6a between existing Sections 6 and 7 of Article III. Section 6, entitled "Internal improvements" currently restricts the State of Michigan from being a party to, or from financing, internal improvements unless those improvements are provided by law.

Proposal 2012-06 does not ask whether a new bridge should be built across the Detroit River. Instead, it asks whether a procedure should be put in place for this and future international bridges and tunnels that would require voter approval before such projects could commence.

Constitutional Statewide Vote Requirements

If Proposal 2012-06 is adopted, a statewide vote would be required before the State of Michigan could construct or finance a new international bridge or tunnel for motor vehicles ("new" being defined as a bridge or tunnel opened after January 1, 2012). In addition to obtaining statewide voter approval at a general election, a new international bridge or tunnel would have to obtain the prior approval from the voters in each municipality where the proposed bridge or tunnel is to be situated. It is possible that the local vote result of the statewide vote could serve this purpose; however, it is also possible that local approval could be obtained at a separate local election other than a statewide general election.²

² Under the Michigan Election Law, elections are held four times a year (February, May, August and November). Also, under state law a "general election" is the November election held in an even numbered year.



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Proposal 2012-06

The proposal would add a new section (Section 6a) to Article III of the Michigan Constitution to provide:

- (1) *The people should decide whether state government may construct or finance new international bridges or tunnels for motor vehicles. Consistent with this policy, and to shield the people from unnecessary burdens, the state shall not undertake ownership and development of or use state funds or resources for new international bridges or tunnels for motor vehicles unless first determined to be necessary and appropriate by majority vote of the people.*
- (2) *The provisions in this subsection (2) shall apply in the interpretation of this section.*
- (a) *“Ownership and development” shall include all activities involving and relating to all or part of commencing, constructing, or financing new international bridges or tunnels for motor vehicles, or related facilities, including but not limited to any one or more of the following: optioning or acquiring interests in property; promoting, designing, bidding, contracting for, or constructing; or in any manner directly or indirectly financing or assisting in financing property acquisition, design, or construction of such improvements.*
- (b) *“State” shall include the state of Michigan, and any one or more, or a combination of state agencies, authorities, commissions, districts, or other subdivisions or instrumentalities of state government.*
- (c) *The procedure for seeking a determination by majority vote of the people under this section shall be that procedure provided by law for the submission and approval of petitions to propose, enact, and reject laws by initiative under article 2, section 9 of this constitution, with the exceptions that: 1) a proposal under this section may not be approved by the legislature in lieu of a vote of the people; and 2) an approval shall require an affirmative vote of a majority of electors in both (a) the state and (b) each municipality in which improvements are situated, considering the impact on local services and facilities and that public ownership and operation would impact local property taxation.*
- (d) *“New international bridges or tunnels for motor vehicles” shall mean any bridge or tunnel which is not open to the public and serving traffic as of January 1, 2012. No vested rights are attributed to any state international bridge or tunnel initiative that is not serving traffic as of that date.*
- (e) *Any ambiguity in the interpretation of this section shall be resolved in favor of shielding the people from practical or financial burdens associated with state government ownership and development of international bridges and tunnels for motor vehicles.*

A unique procedure for placing a bridge question before voters is outlined in Proposal 2012-06. This procedure differs from the procedures employed to place other questions on the statewide ballot, with the key difference being participation by the state legislature. Under other procedures involving a statewide vote of the people, with the exception of certain direct democracy powers (i.e., the people's right to initiate laws, hold a referendum on laws

enacted by the legislature, and amend the state constitution), the legislature plays a key role. For example, Article IX, Section 15 of the Michigan Constitution requires a statewide vote at a general election before the State of Michigan can issue long-term debt backed by the full faith and credit of the state. In this case, the Michigan legislature must initiate the process by approving a proposed borrowing question by a two-thirds vote in each

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chamber before sending the question to the voters at a general election.

Similarly, the Michigan legislature can initiate constitutional amendments. Under Article XII, Section 1, either chamber of the legislature may propose an amendment. Each chamber must approve the proposed amendment by a two-thirds vote. Following legislative approval, a statewide vote at a general election or a special election is required to approve an amendment.

Also, proposed laws that are initiated by citizens can be approved by the legislature within 40 days in lieu of a statewide vote (Article II, Section 9). Only after the legislature fails to approve the proposed initiated law (without amendment) is the question presented to the voters at the next general election. The legislature can reject the proposed initiated law and propose a different law dealing with the same subject matter; however, the alternative law is required to be placed before the voters for approval or rejection at the next general election.

Under Proposal 2012-06, the procedure for placing a bridge question before voters will occur external to state government. It parallels the procedure for citizens to initiate legislation, with the exception that it removes any possible legislative involvement in terms of approving or rejecting the question. Specifically, for a bridge question to appear on the statewide ballot, proponents (not the governor or legislature) would have to gather signatures of registered voters equal to eight percent of the total vote cast for all candidates for governor at the previous general election. However, the legislature would **not** have an opportunity to approve or reject the question of constructing or financing a new international bridge or tunnel within 40 days. Instead, after gathering sufficient signatures, the question regarding construction of a new international bridge or tunnel would automatically appear on the statewide ballot at the next general election.

Importance of International Crossings

Canadian trade is very important to Michigan's economic health, contributing directly and indirectly to Michigan jobs and income. Canada is the single largest trading partner with Michigan. Trade between

Michigan and Canada is particularly important to the domestic auto industry, which is concentrated in Michigan. Production facilities based on both sides of the border rely heavily on various just-in-time processes, including raw material sourcing, production, and delivery. Border crossing delays can have deleterious effects on the time-sensitive nature of the auto manufacturing industry in Michigan and Canada.

Additionally, much of the trade between the continental United States and Mexico is routed through Michigan into Canada. Many other states' economies rely on the Michigan-Canadian crossings. Two-way trade currently occurs at 10 different land-based crossings.³ Currently there are three international bridge crossings responsible for the vast majority of Michigan-Canadian trade:

- 1) Ambassador Bridge over the Detroit River (Detroit, Michigan – Windsor, Ontario);
- 2) Blue Water Bridge over the St. Clair River (Port Huron, Michigan – Point Edward, Ontario); and
- 3) International Bridge over the St. Mary's River (Sault Ste. Marie, Michigan – Sault Ste. Marie, Ontario).

In 2008, the total value of international shipments that passed through the Detroit and Port Huron crossings alone eclipsed \$200 billion.⁴ The Ambassador Bridge alone accounts for the greatest amount of trade with Canada, both in Michigan and the United States. In addition to the value of goods passing, this crossing also is the busiest in the country with 7.3 million vehicle crossings (4.6 million cars and

³ According to the Michigan Department of Transportation's *State Long-Range Transportation Plan*, there are three motor vehicle bridges, three ferries, two railroad tunnels, one motor vehicle tunnel, and one railroad bridge. www.michigan.gov/documents/mdot/MDOT_Corridors_Borders_Intl_chpt5_190293_7.pdf

⁴ U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, "Transborder Freight Data," April 2009. www.bts.gov/publications/americas_freight_transportation_gateways/2009/introduction_and_overview/html/table_02.html

2.6 trucks) in 2011.⁵ Annual truck traffic using the Ambassador Bridge has declined in recent years from 3.4 million crossings in 1999 to 2.6 million crossings in 2011, a total reduction of 24 percent (a decline of 2.2 percent per year on average).⁶ Truck traffic on the bridge bottomed in 2009 (2.3 million crossings) with the Great Recession, but since that time it is up 14 percent to 2.6 million crossings.

The combination of high traffic volume and border security can lead to congestion at the Ambassador Bridge. Also, the lack of customs capacity at the bridge can delay trade and passenger traffic between Michigan and Canada. The average wait time in 2009 for commercial traffic between the United States and Canada (all crossings) was 2.3 minutes; however, the wait times at the Ambassador Bridge and the Blue Water Bridge were much longer, 4.1 minutes and 4.8 minutes, respectively.⁷ Congestion and commercial traffic delays at international crossings can cost business firms significant dollars in lost earnings and cost the state economy in terms of jobs and resident incomes. One solution to address the congestion at the Ambassador Bridge is to construct a new crossing between Michigan and Canada.

Detroit River International Crossing/New International Trade Crossing

In 2000, the Border Transportation Partnership was formed among the United States Federal Highway Administration, Transport Canada, Michigan Department of Transportation, and Ontario Ministry of Transportation.⁸ The purpose of the Partnership is to im-

prove the movement of people, goods and services across the United States and Canadian border within the region of Southeast Michigan and Southwest Ontario. In 2004, after extensive study, the Partnership produced a report that identified a long-term strategy to meet the needs of the transportation network serving the border between Michigan and Ontario.⁹ The Partnership proposed a new project, the Detroit River International Crossing (DRIC); a new freeway-to-freeway bridge to connect Detroit, Michigan with Windsor, Ontario. The new bridge would be situated approximately two miles south of the Ambassador Bridge to lessen the flow of commercial traffic through the surface streets of Windsor and connect directly to the Canadian highway. The entire DRIC project would include new custom and toll plazas (Canadian and United States) and new interchanges to existing roadways. The total cost of the project has been estimated at \$2.2 billion, of which \$949 million is associated with the construction of the bridge itself (2009 estimate).¹⁰ This figure excludes nearly \$1.4 billion in improvements to Canadian roadways, which are necessary for linking up with existing highways, but not considered part of the project.

Since 2004, the DRIC project has received many of the Canadian and United States approvals (e.g., governmental and environmental) that are required of a large-scale infrastructure project of this magnitude. In early 2009, the DRIC project received its final environmental clearance from the United States Federal Highway Administration. Later in 2009, final Canadian environmental approval was received for the project.

In early 2010 and again one year later in early 2011, the Canadian government offered to provide \$550 million up front to cover Michigan's costs of the DRIC project. These costs include right-of-way acquisition, utility relocation, surface street alignment, and

⁵ Public Border Operators Association, "Ontario Border Crossings with Michigan & New York, 2012." www.publicborderoperators.org/index.php?option=com_content&view=article&id=58&Itemid=18

⁶ Ibid.

⁷ U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, "2010 Transportation Statistics Annual Report." www.bts.gov/publications/transportation_statistics_annual_report/2005/html/chapter_02/surface_border_wait_times.html

⁸ Much of this historical information has been taken from the official website of the Border Transportation Partnership. www.partnershipborderstudy.com/index.asp

⁹ www.partnershipborderstudy.com/stage1frame.html

¹⁰ Michigan Department of Transportation, "Report to the Legislature of the State of Michigan esponding to Public Act 116 of 2009, Section 384," May 1, 2010. www.partnershipborderstudy.com/index.asp

connections with the I-75 freeway.¹¹ The Canadian funding is intended to bring the State of Michigan's financial exposure for the project to zero. Also, around this same time, Governor Snyder changed the name from DRIC to the New International Trade Crossing or NITC.

Interlocal Agreement with Canadian Government

After failing to get state legislation enacted to facilitate Michigan's participation in the development of the NITC project, Governor Snyder invoked the authority granted by Article III, Section 5 of the Michigan Constitution to enter into an interlocal agreement with Canada.¹² Section 5 states that "Subject to provisions of general law, this state or any ... governmental authority ... may enter into agreements for the performance, financing or execution of their respective functions, with ... the United States, the Dominion of Canada, or any political subdivision thereof ..." According to the Snyder Administration, this authority, combined with applicable federal law, provide the State of Michigan with the requisite legal authority to pursue the NITC project in the absence of specific state law on the matter.¹³ In June 2012, Governor Snyder signed an interlocal agreement (called a "Crossing Agreement") with the Canadian Minister of Transport, which provides "a framework for a Crossing Authority established by Canada to design, construct, finance, operate and maintain a new International Crossing between Canada and Michigan."¹⁴

¹¹ House Fiscal Agency, Fiscal Forum, "Federal-Aid Highway Funds in the State Transportation Budget," February 2012. www.house.mi.gov/hfa/PDFs/FINAL%20Transportation%20Federal%20Aid%20Analysis%20Feb%202012.pdf

¹² Senate Bill 410 of the 2011-2012 legislative session. [www.legislature.mi.gov/\(S\(td01xxzc01pcfm55wlyaezf0\)\)/mileg.aspx?page=getObject&objectName=2011-SB-0410](http://www.legislature.mi.gov/(S(td01xxzc01pcfm55wlyaezf0))/mileg.aspx?page=getObject&objectName=2011-SB-0410)

¹³ International Bridge Act, Pub. L. 92-434, Sept. 26, 1972, 86 Stat. 731 (33 U.S.C. 535 et seq.)

¹⁴ Governor Rick Snyder, Crossing Agreement, June 15, 2012. www.michigan.gov/documents/snyder/Agreement_389442_7.pdf

Pursuant to the Crossing Agreement, the Canadian government will create a Crossing Authority which will be administratively and financially responsible for the NITC bridge, including design, construction, financing, operation, and maintenance. Under the Crossing Agreement, Canada will own the NITC bridge and the Crossing Authority will pay for all connections to highways and interchanges on the Michigan side of the bridge. Costs Michigan might otherwise be expected to pay will be covered by the \$550 million Canadian contribution. According to the Agreement, Michigan state government is not responsible for any costs of the new bridge or related projects.

Proposal 2012-06 and the Interlocal Agreement

Proposal 2012-06 is intended to deter or delay the construction of the proposed NITC project. This delay will result from embedding in the Michigan Constitution a new requirement to solicit a statewide vote before the state government constructs or finances a new international bridge or tunnel. However, the statewide vote requirement may not apply to the NITC project as it is envisioned under the June 2012 Crossing Agreement. Under the bi-national Crossing Agreement negotiated between Governor Snyder and the Canadian government, Michigan state government has no direct responsibility for the construction or financing of the proposed bridge or related projects.

It is unclear what (or how many) legal issues will be raised if Proposal 2012-06 is adopted by the voters at the November 6, 2012, election and Michigan state government subsequently follows through with its obligations under the Crossing Agreement without first obtaining approval through a statewide vote. Certainly, a number of state, federal, and international legal issues will be raised by supporters of the ballot question and others opposed to the construction of the NITC without a statewide vote. It is likely that such issues, although debated in the arena of public opinion, ultimately will be resolved in the courts.

Ambiguous Language

In addition to the legal questions arising from the potential interaction of the proposed language and the interlocal agreement, Proposal 2012-06 contains some ambiguous language that likely will require the courts to settle. As pointed out by the proposal's sponsors, the clear intent of the proposed constitutional language is to require voter approval for international bridges and tunnels. However, the proposal's language specifically defines "new international bridges or tunnels for motor vehicles" as "*any* (emphasis added) bridge or tunnel which is not open to the public and serving traffic as of January 1, 2012." Note that this definition does not mention the need that such a bridge or tunnel serve as an international crossing. Defining the term in such a manner could mean that *all* bridge and tunnel projects for which the State of Michigan (and its political subdivisions) is involved, that are not open

to serve traffic as of January 1, 2012, will require statewide and municipal votes. In other words, all current, as well as all future, bridge and tunnel projects in the state could require approval of state electors and voters in the municipalities where the projects are located at general elections (November of even numbered years). Obtaining these approvals would be nearly impossible and doing so in a timely manner would be out of the question.

Constitutional Issues

Michigan has not encountered any known constitutional issues with regard to bridge construction and finance. As is documented above, efforts to construct an additional crossing of the Detroit River have gone on for some time. This proposal is an effort by a particular party with a vested interest in the outcome of those efforts to prevent or delay the state's efforts.