STATE OF MICHIGAN

COURT OF CLAIMS

ENBRIDGE ENERGY, LIMITED PARTNERSHIP, ENBRIDGE ENERGY, INC., and ENBRIDGE ENERGY PARTNERS, L.P.

Plaintiffs,

v

STATE OF MICHIGAN, GOVERNOR OF MICHIGAN, MACKINAC STRAITS CORRIDOR AUTHORITY, MICHIGAN DEPARTMENT OF NATURAL RESOURCES, and MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

Defendants.
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OPINION AND ORDER

Case No. 19-000090-MZ

Hon. Michael J. Kelly

Pending before the Court is defendants' motion for summary disposition filed pursuant to MCR 2.116(C)(8). For the reasons that follow, the motion is DENIED. In addition, because it is apparent that plaintiffs, the non-moving parties, are entitled to judgment, summary disposition is GRANTED in favor of plaintiffs in accordance with MCR 2.116(I)(2). Given the thorough and adequate briefing submitted by the parties, this matter is being decided without oral argument. See LCR 2.119(A)(5).

I. BACKGROUND

This case involves 2018 PA 359, which concerns two liquid petroleum products pipelines (known as "Line 5" or the "Line 5 Dual Pipelines") that traverse the Straits of Mackinac. At the

point where Line 5 traverses the Straits, the pipeline consists of two, 20-inch diameter pipes that rest on or are anchored to the submerged land below the Straits. The pipeline has been in existence and has been used to transport petroleum products for over 60 years pursuant to a 1953 easement granted by the state. The preamble of the easement declares the former Michigan Conservation Commission opined that the purpose of the pipeline would "be of benefit to all of the people of the State of Michigan" and was in the furtherance of the public welfare. The easement has no fixed termination date.

In 2017 and 2018, this state entered into a series of agreements with plaintiffs regarding the continued use and operation of Line 5. As is pertinent to the instant case, the agreements contemplated what is referred to as a "tunnel" beneath the straits; the purpose of the tunnel was to house Line 5 and/or a new replacement line. In November and December of 2018, the Legislature began the process of enacting legislation to implement some of the provisions of the aforementioned agreements. On December 12, 2018, former Governor Richard Snyder signed 2018 PA 359, and the Act was given immediate effect.

The Act amended 1952 PA 214 by creating defendant Mackinac Straits Corridor Authority and by including several provisions pertaining to a new utility tunnel. In pertinent part, PA 359 authorized the Mackinac Bridge Authority to "acquire, construct, operate, maintain, improve, repair, and manage a utility tunnel." MCL 254.324a(1). In addition, the Act created the Mackinac Straits Corridor Authority and its board of directors. See MCL 254.324b(1)-(2). The board of directors was to be appointed by the governor and board members were to exercise the duties of the Mackinac Straits Corridor Authority. MCL 254.324b(2).

With respect to the powers and responsibilities of the newly created Mackinac Straits Corridor Authority, MCL 254.324d(1) provided that "[a]ll liabilities, duties, responsibilities, authorities, and powers related to a utility tunnel as provided in section 14a[1] and any money in the straits protection fund shall transfer to the" Mackinac Straits Corridor Authority Board, upon the appointment of the Board's members. Furthermore, the Corridor Authority was required, "no later than December 31, 2018," to "enter into an agreement or a series of agreements for the construction, maintenance, operation, and decommissioning of a utility tunnel" upon certain conditions being satisfied. MCL 254.324d(4). Among the conditions that had to be satisfied in the agreement were, pertinent to this case: (1) that the Governor supply a proposed tunnel agreement to the Corridor Authority on or before December 21, 2018; (2) that the tunnel agreement allow for use of the utility tunnel by multiple utilities; (3) that the tunnel agreement require the gathering of certain geotechnical information before construction; (4) that the tunnel agreement afford the Corridor Authority a mechanism to ensure that the tunnel was built to appropriate specifications and that it was maintained properly; (5) that the tunnel agreement not require the Corridor Authority "to bring or defend a legal claim for which the attorney general is not required to provide counsel." MCL 254.324d(4)(a)-(d), (*i*). Finally, MCL 254.324d(5) provided that if this state's Attorney General "declines to represent the Mackinac bridge authority or the Mackinac Straits corridor authority in a matter related to the utility tunnel, the attorney general shall provide for the costs of representation by an attorney licensed to practice

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[1] Section 14a(1) of the act refers to the authority of the Mackinac Bridge Authority to "acquire, construct, operate, maintain, improve, repair, and manage a utility tunnel." Hence, the Mackinac Bridge Authority's duties, responsibilities, power and authority in regard to the acquisition, construction, operation, and maintenance of a utility tunnel were transferred to the Corridor Authority by way of § 14d(1).

in this state chosen by the Mackinac bridge authority or the Mackinac Straits corridor authority, as applicable."

After the enactment of PA 359, Governor Snyder appointed members of the newly formed Mackinac Straits Corridor Authority Board. On December 19, 2018, the board held its first meeting and approved a tunnel agreement that had been proposed by Governor Snyder. The Authority signed the agreement as well as an assignment of Michigan Department of Natural Resources easement rights to plaintiffs. In addition, the state signed what is referred to as the "Third Agreement" with plaintiffs. The Third Agreement stated that plaintiffs had the right to continue using Line 5 in its current state until the tunnel was completed and until a new segment of pipeline was placed within the tunnel.

From its inception, PA 359 was met with opposition with respect to its content and the manner in which it progressed through the Legislature. However, despite the wide political opposition to the Act, the legal challenge before this court is far narrower. Indeed, the defendants challenge one-and only one-aspect of the Act: its constitutionality under the title-object clause of Const 1963, art 4, section 24. The issues raised in the instant case have their roots in a formal Attorney General Opinion, OAG 2019, No. 7309 (March 28, 2019), concluding that PA 359 ran afoul of the title-object clause. Citing the Michigan Supreme Court's decision in *Rohan v Detroit Racing Ass'n*, 314 Mich 326; 22 NW2d 433 (1946), the OAG opinion concluded that PA 359 failed a "title-body" challenge under art 4, § 24. OAG 2019, No. 7309, pp. 9-12. In particular, the OAG opinion concluded that the title of PA 359 did not adequately reflect the content of the law with respect to §§ 14d(1), (4), and (5) of the act—these sections will be discussed in detail *infra*. *Id*. at 12-18. The opinion further concluded that two of the offending sections, §§ 14d(1) and (4) could not be severed from the act, such that the entire act

should be invalidated. *Id*. at 19-21. Finally, the opinion concluded that any action taken under an invalid statute, such as entering into the tunnel agreement, was void. *Id*. at 21-24.

After issuance of the OAG opinion, Governor Gretchen Whitmer issued an Executive Directive, 2019-13, prohibiting state departments from taking any action in furtherance of, or dependent upon, PA 359. In light of Executive Directive 2019-13 and the OAG opinion, plaintiffs have filed suit in this Court against the state, the Governor, and varies departments and agencies. Plaintiffs ask the Court to declare that PA 359 is valid, and to declare that the tunnel agreement and the third agreement were valid actions taken by the Mackinac Straits Corridor Authority. Count II of plaintiffs' complaint asks the Court to declare that the easement issued and assigned to plaintiffs is valid and enforceable.

II. SUMMARY DISPOSITION

This matter is before the Court on defendants' motion for summary disposition filed pursuant to MCR 2.116(C)(8). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint, and summary disposition is appropriate "if the opposing party has failed to state a claim on which relief can be granted." *Dalley v Dykema Gossett PLLC*, 287 Mich App 296, 304; 788 NW2d 679 (2010) (citations, quotation marks, and alteration omitted).

III. TITLE-OBJECT REVIEW

As evidenced by the voluminous amounts of amicus briefing courteously submitted by a variety of entities, the instant litigation has generated strong views on whether the policy goals of PA 359 are sound. Those concerns are not the focus of the instant action and are best left to the Legislature. Indeed, a statute "is not unconstitutional merely because it appears undesirable,

unfair, unjust, or inhumane nor because it appears that the statute is unwise or results in bad policy." *People v Bosca*, 310 Mich App 1, 71; 871 NW2d 307 (2015) (citation and quotation marks omitted). As such, the Court's focus with respect to PA 359 is simply this: whether the statute passes constitutional muster. In analyzing this issue, the Court's view is shaped by the principle that statutes are presumed to be constitutional, as well as by the notion that the Court has a "duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent." *Oakland Co v State*, 325 Mich App 247, 260; 926 NW2d 11 (2018) (citation and quotation marks omitted). In that regard, the Court is to "exercise the power to declare a law unconstitutional with extreme caution," and it cannot exercise the power "where serious doubt exists with regard" to the conflict between the Constitution and the statute at issue. *Id*. (citation and quotation marks omitted). Instead, "[e]very reasonable presumption or intendment must be indulged in favor of the validity of an act, and it is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution that a court will refuse to sustain its validity." *Id*. (citation and quotation marks omitted).

A. CONST 1963, ART 4, § 24, GENERALLY

This case requires the Court to examine PA 359 in light of the title-object clause of this state's Constitution. Art 4, § 24 of the Constitution provides that:

> No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title.

Resolution of the issues raised directs the Court's attention to the amended title of PA 359. This amended title "should be construed reasonably, not narrowly and with unnecessary technicality." *Gillette Commercial Operations North America & Subsidiaries v Dep't of*

Treasury, 312 Mich App 394, 439; 878 NW2d 891 (2015). Consistent with this manner of construction, it has long been observed by this state's appellate courts that the "purpose of the [Title-Object] clause is to prevent the Legislature from passing laws not fully understood, to ensure that both the legislators and the public have proper notice of legislative content, and to prevent deceit and subterfuge." *Roe v Hayman Co*, 323 Mich App 649, 656-657; 918 NW2d 211 (2018) (citation and quotation marks omitted). The "goal of the clause" it has often been said, is to provide notice of legislation, rather than to act as a restraint on the Legislature. *Pohutski v City of Allen Park*, 465 Mich 691; 641 NW2d 219 (2002). In this respect, the clause does not demand an exacting level of review, but instead requires a reasonable approach from the Court. *Id*.

The title-object clause lends itself to three types of constitutional challenges, only two of which are at issue in this case: (1) a title-body challenge; and (2) a multiple-object challenge. See *Roe*, 323 Mich App at 657 (describing title-object challenges, generally).[2] The first type of challenge was at issue in OAG, 2019, No. 7309 and is asserted in defendants' motion for summary disposition. Defendants' briefing also raises a multiple-object challenge. The Court will first address the title-body challenge.

B. TITLE-BODY CHALLENGE

The title-body component of art 4, § 24 demands that "the title of an act must express the general purpose or object of the act." *Wayne Co Bd of Comm'rs v Wayne Co Airport Auth*, 253 Mich App 144, 185; 658 NW2d 804 (2002). "The 'object' of a law is defined as its general

[2] The third type of a challenge, a "change of purpose challenge," is not at issue in this case and will not be discussed in this Court's opinion.

purpose or aim." *General Motors Corp v Dep't of Treasury*, 290 Mich App 355, 388; 803 NW2d 698 (2010) (citation and quotation marks omitted). In order to show a statute's invalidity under this type of challenge, "a party must demonstrate that the title of the act does not adequately express its contents . . . such that the body exceeds the scope of the title." *Roe*, 323 Mich App at 657 (citation and quotation marks omitted). Courts construe an act and its title reasonably under this type of challenge. See *Gillette*, 312 Mich App at 439 (citation and quotation marks omitted). Consistent with the manner in which courts must construe an act, it must be noted that, "[t]he title of an act is not required to serve as an index to all of the provisions of the act." *Bosca*, 310 Mich App at 83. Instead, "the test is whether the title gives the Legislature and the public fair notice of the challenged provision." *Id*. (citation and quotation marks omitted). "The fair-notice requirement is violated only where the subjects [of the title and body] are so diverse in nature that they have no necessary connection. . . ." *Id*. (citation and quotation marks omitted). Stated otherwise, an act will pass muster under title-body review if it "centers to one main general object or purpose which the title comprehensively declares, though in general terms, and if provisions in the body of the act not directly mentioned in the title are germane, auxiliary, or incidental to that general purpose. . . ." *Livonia v Dep't of Social Servs*, 423 Mich 466, 501; 378 NW2d 402 (1985) (citation and quotation marks omitted).

Returning to the case at bar, the title of PA 359 states as follows:

> *An act authorizing the Mackinac bridge authority to acquire a bridge and a utility tunnel connecting the Upper and Lower Peninsulas of Michigan*, including causeways, tunnels, roads and all useful related equipment and facilities, including park, parking, recreation, lighting, and terminal facilities; extending the corporate existence of the authority; *authorizing the authority to enjoy and carry out all powers incident to its corporate objects*; authorizing the appropriation and use of state funds for the preliminary purposes of the authority; providing for the payment of the cost of the bridge and authorizing the authority to issue revenue bonds payable solely from the revenues of the bridge; granting the right of

> condemnation to the authority; granting the use of state land and property to the authority; making provisions for the payment and security of bonds and granting certain rights and remedies to the holders of bonds; authorizing banks and trust companies to perform certain acts in connection with the payment and security of bonds; authorizing the imposition of tolls and charges; authorizing the authority to secure the consent of the United States government to the construction of the bridge and to secure approval of plans, specifications, and location of the bridge; authorizing employment of engineers regardless of whether those engineers have been previously employed to make preliminary inspections or reports with respect to the bridge; authorizing the state transportation department to operate and maintain the bridge or to contribute to the bridge and enter into leases and agreements in connection with the bridge; exempting bonds and the property of the authority from taxation; prohibiting competing traffic facilities; authorizing the operation of ferries by the authority; *authorizing the creation of the Mackinac Straits corridor authority; authorizing the operation of a utility tunnel by the authority or the Mackinac Straits corridor authority*; providing for the construction and use of certain buildings; and making an appropriation. [Emphasis added.]

Examination of this title reveals that the construction, maintenance, and operation of a utility tunnel are plainly contemplated within the scope of the Act's title and that the same are included within the Act's general purpose. As a result, and as explained in more detail *infra*, the Court agrees that the challenged provisions of the Act are all germane, auxiliary, or incidental to this general purpose and that they are adequately expressed in the Act's title. See *Livonia*, 423 Mich at 501. In arguing for a different result, defendants highlight § 14d(4) of the act, which requires the Mackinac Straits Corridor Authority to enter into an agreement with a private entity pertaining to a utility tunnel. Defendants argue that the specific tunnel agreement, with all of its precise parameters, should have been reflected in the amended title of PA 359. Defendants stress too narrow of an interpretation of art 4, § 24 and they purport to impose an exacting requirement on legislation that is not supported by caselaw. In the case at bar, the title of PA 359 stresses that the Corridor Authority is to acquire and operate a utility tunnel across the Straits of Mackinac. The precise parameters for how the same is to be accomplished need not be spelled out in painstaking detail in the Act's title. See *Bosca*, 310 Mich App at 83. Rather, it is sufficient in

this case that the provisions of PA 359 that are not directly mentioned in the Act's title—such as entering into a specific tunnel agreement—are "germane, auxiliary, or incidental" to the general purpose of the Act as expressed in the Act's title. See *Livonia*, 423 Mich at 501. Here, entering into an agreement called for by § 14d(4) is germane, auxiliary or incidental to the general purpose of acquiring and maintaining a tunnel or other means of infrastructure traversing the Straits of Mackinac. The agreement was the means by which the Corridor Authority carried out and implemented the principal object plainly expressed in PA 359's title. Furthermore, that the Corridor Authority utilized a private party in furtherance of this statutory goal does not amount to a constitutional violation, as defendants contend, because the act's title was not required to serve as an index for each and every way that the title's object would be implemented. See *Bosca*, 310 Mich App at 83. In short, § 14d(4) is not so diverse in nature from PA 359's title as to amount to a constitutional violation. See *id*. Defendants' arguments run contrary to art 4, § 24's goal of notice, and stray into the hindrance of litigation against which caselaw cautions. See, e.g., *Pohutski*, 465 Mich at 691.

Defendants' argument regarding § 14d(1) of PA 359 fare no better. In this respect, defendants note that the title of PA 359 declares that the Bridge Authority will take certain actions regarding the utility tunnel, and that § 14d(1) of the act transfers that same authority to the Mackinac Straits Corridor Authority. Defendants contend that this shifting of responsibilities is a title-body violation, because the entity mentioned in the title as having certain authority is not the same entity that is ultimately granted such authority in the body of the Act. The Court disagrees. As noted above, a title need not serve as an index of the act's provisions; instead, the court's concern under a title-body challenge is whether the provisions of the act are germane, auxiliary, or incidental to the act's general purpose. *Livonia*, 423 Mich at 501. In *Midland Twp*

v State Boundary Comm, 401 Mich 641, 654; 259 NW2d 326 (1977), the Supreme Court held that "[w]hether a provision is germane depends on its relationship to the object of the act, not who is charged with implementing the provision." In *Midland Twp*, the issue before the Court was whether an amendment to the Home Rule Cities Act concerning the annexation authority of cities could encompass annexation procedures to be performed by a different entity. *Id*. at 651-652. The Court held that where the act in question had a general purpose of providing for the functioning of city government, "it is not consequential for purposes of the Title-Object Clause whether a city, county or state official or agency is charged by the act with participation in implementation of a provision of the act as long as the provision to be implemented is germane to the functioning of city government." *Id*. at 654. Hence, it mattered not *who* performed the function described by the Act, as long as the function being performed was contemplated within the Act's title. *Id*. In reaching this conclusion, the Court explained that it remained "committed to a liberal interpretation of the constitutional provision concerning titles of legislative enactments," and that there was "no constitutional requirement that the Legislature do a tidy job in legislating." *Id*. at 652, 655 (citation and quotation marks omitted). Furthermore, the Court remarked that adopting a contrary interpretation of art 4, § 24 would run the risk of rendering a number of provisions of the act in question at issue, which was contrary to the intent of the Framers in adopting art 4, § 24. *Id*. at 655.

In light of *Midland Twp*, the Court disagrees that defendants' arguments regarding § 14d(1) demonstrate a title-body violation. As *Midland Twp*, 401 Mich at 654, informs, it is not consequential for purposes of title-object review who implements a provision of an act as long as that which is to be accomplished is germane to the object of the act as expressed in the title. In other words, the "who" is not as important as the "what." And here, the "what"—maintenance,

operation, and acquisition of a utility tunnel—is clearly expressed within PA 359's amended title.

Defendants next argue that § 14d(5) fails title-body review. This section of the law provides that if the Attorney General declines to represent the Mackinac Straits Corridor Authority in a matter related to the utility tunnel, the Attorney General is required to provide for the costs of legal representation chosen by the State, Bridge Authority, or Corridor Authority's choosing. Although the Court shares defendants' concern that this arrangement is unusual, this provision nevertheless passes constitutional muster under title-body review. To that end, litigation involving a utility tunnel is germane or incidental to the general object expressed in the title of PA 359, which is to authorize the acquisition, construction, and maintenance of such a tunnel. Indeed, in any large-scale construction project, let alone one as publicized and controversial as the utility tunnel at issue in this case, it is hardly unusual for litigation concerning the project to arise. In this sense, litigation, and representation during that litigation, is pertinent to the underlying construction project. Section 14d(5)'s provision is not so diverse in nature as to have no necessary connection to PA 359's title. See *Bosca*, 310 Mich App at 83.

Defendants' last title-body challenges concern §§ 14a(1) and 14a(4) of PA 359. These provisions pertain to the Mackinac Bridge Authority. According to defendant, these sections of the act grant the Bridge Authority certain authority with respect to securing approval for the location of a utility tunnel and with respect to entering into agreements with respect to the utility tunnel. The problem, according to defendants, is that the title of PA 359 announces that the Bridge Authority may undertake these efforts with respect to a *bridge*, but not a *tunnel*. The Court agrees that the title contains a level of imprecision; however, this is not to say that the general object of the Act as expressed in the title is so diverse as to have no necessary connection

to §§ 14a(1) and 14a(4). Once again, the general purpose of PA 359 contemplates the acquisition, operation, and maintenance of infrastructure, including a utility tunnel. In order to accomplish this general goal, Act 359 must necessarily authorize the doing of certain actions, and not every one of those actions must be expressly delineated in the act's title. In order for a utility tunnel to be acquired, operated, and maintained, it can be reasonably inferred that the same governmental authority will need to obtain certain permission(s), and that certain agreements and contracts must be entered into in furtherance of that general goal. The general object of the statute cannot simply come into existence on its own; rather, the implementation of this general goal, like the implementation of any general goal, will inherently involve the undertaking of a number of impliedly necessary, and germane, tasks. Each of these tasks need not be delineated in the act's title in order to satisfy art 4, § 24. See *Livonia*, 423 Mich at 501. Defendants' technical review is contrary to the reasonable approach this Court must take on title-object review. See *Gillette*, 312 Mich App at 439.

Before concluding on this issue, the Court notes that the cases cited by defendants in support of their position are distinguishable from the scenario presented in the case at bar. For instance, defendants place considerable reliance on the Supreme Court's decision in *Rohan v Detroit Racing Ass'n*, 314 Mich 326; 22 NW2d 433 (1946).[3] In that case, the statute at issue authorized the leasing of state-owned land for the conduct of horse racing. *Id*. at 356. Meanwhile, while the title of the act pertained to the regulation and licensing of racing meets; in addition, the title provided for the creation of a racing commissioner. *Id*. at 354. The Supreme

[3] Although *Rohan* was decided under the Constitution of 1908, the title-object clause was present in, and substantively similar to, the current version of the title-object clause. See Const 1963, art 4, § 24, Convention Comment.

Court held that the title of the act at issue did not give the Legislature fair notice that the act would contain a provision delegating to the department of agriculture the authority to lease state-owned land for horse racing meets. *Id*. at 356-357. The Court concluded that the provision of the act in question which authorized "the department of agriculture to lease State-owned land under its control is not germane, auxiliary or incidental to the general object and purpose of the act as expressed in its title, which was to regulate horse-racing meets and betting on horse races." *Id*. at 357.

The case at bar involves an act that is distinguishable from the statute at issue *Rohan*. As explained by the Supreme Court in *Rohan*, an act with a title pertaining to the regulation of horse racing and betting on horse races simply bore no relation to leasing state-owned land. Here, by contrast, the title of PA 359 is broad enough to encompass the challenged sections of PA 359, even if the same were not expressly listed in the Act's title. That is, the challenged sections of PA 359 pertaining to the utility tunnel and various methods of carrying out the act's objectives are all, at a minimum, germane, auxiliary, or incidental to the Act's general purpose of providing for the acquisition, maintenance, and operation of a utility tunnel and other infrastructure, as stated in the Act's title. The case is not one, such as *Rohan*, where the subject-matter contained in the body of the Act was completely divorced from, and bore no relation to, the object expressed in the Act's title. Nor can it be said that the acquisition of a utility tunnel—and various provisions implementing the tunnel—were hidden from the Legislature or the public. Defendants' arguments sound more in the nature of complaints that the exact details of the Act were not expressed in its title. Title-object review caselaw does not support the type of precision from an Act's title as demanded by defendants. See, e.g., *Bosca*, 310 Mich App at 83.

C. MULTIPLE-OBJECT CHALLENGE

The next issue presented in the parties' briefing is whether PA 359 fails multiple-object review under art 4, § 24. Courts entertaining a multiple-object challenge examine the body of the law, as well as its title, in determining whether the act embraces more than one object. *Gillette*, 312 Mich App at 440. The Court's review of this issue must be guided by the notion that the "object" of a law, for purposes of this type of challenge, is its general aim or purpose. *HJ Tucker & Assocs, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550, 557; 595 NW2d 176 (1999). In addition, "[t]he 'one object' provision must be construed reasonably, not in so narrow or technical a manner that the legislative intent is frustrated." *Pohutski*, 465 Mich at 691. Nor should a court:

> invalidate legislation simply because it contains more than one means of attaining its primary object. . . . An act may include all matters germane to its object, as well as all provisions that directly relate to, carry out, and implement the principal object, and it may authorize the doing of all things which are in furtherance of the general purpose of the Act without violating the Title–Object Clause. [*Roe*, 323 Mich App at 658 (citations and quotation marks omitted).]

Furthermore, in cases—such as the case at bar—where the Legislature amends an act to include a new item, courts must remain mindful that "the Legislature is free either to enact an entirely new act or to amend any act to which the subject of the new legislation is germane, auxiliary, or incidental." *Livonia*, 423 Mich at 500. The Legislature's choice of amending an act to include a new, but germane subject "will not be invalidated merely because an alternative location for the new legislation might appear to some to be more appropriate." *Id.*

Defendants argue that PA 359 fails title-body review because it refers to two different subjects: (1) a bridge spanning the Straits of Mackinac; and (2) an underground utility tunnel spanning the Straits of Mackinac. Defendants' position takes too narrow of an approach to title-

object review. Once again, the object of a law is its "general purpose or aim." *HJ Tucker & Assocs*, 234 Mich App at 557 (citation and quotation marks omitted). Here, defendants' argument largely avoids identifying a general purpose or aim of PA 359 and concludes that, because a bridge is different from a utility tunnel, PA 359 necessarily embraces multiple objects. Defendants also place significant focus on the notion that, for a period of over 60 years, PA 214 only pertained to a bridge. However, caselaw cautions art 4, § 24's single-object provision should not be read "in so narrow and technical a sense as unnecessarily to embarrass legislation." *In re Requests for Advisory Opinion re Constitutionality of 1972 PA 294*, 389 Mich 441, 466; 208 NW2d 469 (1973). The focus is not on how long PA 214 only pertained to a bridge. See *Gillette*, 312 Mich App at 440 (focusing on the version of the statute at issue in the present case). See also *Livonia*, 423 Mich at 497-498. Indeed, the Legislature was free to amend the Act, with the only pertinent limitation being—for present purposes—that the subject of the amendment be germane, auxiliary, or incidental to the act's general purpose. *Id*. at 500. Here, if the Court were to adopt the position advanced by defendants in this case, it would run the risk of propagating an approach under which few laws could withstand scrutiny. As cautioned against in Justice Cavanagh's opinion in *People v Kevorkian*, 447 Mich 436, 455; 527 NW2d 714 (1994) (Opinion by CAVANAGH, J.), "[w]ith all but the simplest of statutes, it would be possible to select one section, describe the "object" of that section, and be able to reason . . . that the remaining sections have different objects." The Court should not, as defendants invite it to do, pick out individual components of PA 359. Rather, the focus is whether the current version of PA 359 embraces a single object. For the reasons expressed below, the Act passes that test.

Expanding on this last point, the Court agrees with plaintiffs that a utility tunnel spanning the Straits of Mackinac is germane, auxiliary, or incidental to PA 359's general purpose, such

that defendants' multiple-object arguments fail. Upon review of PA 359's title and body, the Court agrees with plaintiffs that the general purpose or aim of PA 359 relates to the provision of infrastructure connecting the state's Upper and Lower Peninsulas. See *HJ Tucker & Assocs*, 234 Mich App at 557 (explaining how a court is to ascertain the general purpose or object of an act). That PA 359 does not expressly refer to "infrastructure" does not, contrary to defendants' position, negate the notion that a fair reading of the act's provisions demonstrates a purpose of referring to infrastructure connecting the Straits of Mackinac. See *Builders Square v Dep't of Agriculture*, 176 Mich App 494, 499; 440 NW2d 639 (1989) (explaining that the act at issue, item pricing and deceptive advertising act, had as its overall purpose consumer protection, and that "it is inconsequential that the act fails to mention consumer protection" when a "fair reading of the title demonstrates its purpose."). Here, the title of PA 359 refers to connecting this state's peninsulas through a bridge, utility tunnel, and all necessary accompanying facilities. The body of the act repeatedly stresses infrastructure connecting this state's peninsulas as well, and makes repeated references to utility lines spanning the Straits. See, e.g., MCL 254.311(c); MCL 254.317; MCL 254.324(e). The construction of a utility tunnel, and all that is necessary to accompany the same, is within the scope of this general purpose. Two types of infrastructure spanning the same waterway cannot be said to be so diverse that they have no necessary connection to each other. See *Wayne Co Bd of Commr's*, 253 Mich App at 190 (citation and quotation marks omitted) (explaining that the "reason for limiting the objective of an act to a single purpose is to avoid bills addressing diverse subjects that have no necessary connection."). In addition, the transfer of responsibilities from one entity to another—such as from the Bridge Authority to the Corridor Authority—in furtherance of the general purpose of the act, does not amount to a multiple-object violation. PA 359 can, and does, authorize a variety of activities in

furtherance of the Act's general purpose without running afoul of the prohibition against multiple objects. See *id*. at 190-191.

The remainder of defendants' argument consists of picking individual aspects of PA 359 and contending that those bits and pieces of the statute do not fit the within the narrowly defined object which defendants advance as the principal object of PA 359. However, as noted above, defendants' view of the principal object of PA 359 is unnecessarily narrow. As explained in *Gillette*, 312 Mich App at 411, there is:

> no constitutional requirement that the legislature do a tidy job in legislating. It is perfectly free to enact bits and pieces of legislation in separate acts *or to tack them on to existing statutes even though some persons might think that the bits and pieces belong in a particular general statute covering the matter*. *The constitutional requirement is satisfied if the bits and pieces so enacted are embraced in the object expressed in the title of the amendatory act and the act being amended*. [Citation and quotation marks omitted; emphasis added.]

Here, regardless of whether the Court agrees with defendants about the lack of tidy draftsmanship, the argument advanced by defendants misses the mark. The Court's concern under a multiple-object challenge is not whether PA 359 could have been drafted in a different manner. As explained by Justice Cavanagh's opinion in *Kevorkian*, 447 Mich at 459 (Opinion by CAVANAGH, J.): "[t]here is virtually no statute that could not be subdivided and enacted as several bills. It is precisely that kind of 'multiplying' of legislation that we seek to avoid with the liberal construction given to art 4, § 24." As a result, defendants' attempt to elevate the definition of "bridge" in MCL 254.311(c) over the remaining provisions of PA 359, as well as over the Act's title, does not establish a multiple-object violation.

Finally, as it concerns both the title-body challenge and the multiple-object challenge, the Court finds the following discussion from *In re Requests for Advisory Opinion re*

Constitutionality of 1972 PA 294, 389 Mich at 464-465, to be pertinent in the instant matter. That is, although the above discussion is sufficient to resolve this issue, the Court finds additional support for its conclusion in the Supreme Court's advisory opinion. In *In re Requests for Advisory Opinion*, the Court examined changes to the Insurance Code. The Court focused on the idea that art 4, § 24 was intended to provide notice and to prevent the passage of statutes not fully understood. *Id*. at 464. And in that case, it was apparent, given the amount of public attention paid to the act in question, that notice was not an issue:

> The so-called 'log-rolling' argument may be valid in some instances, but does not apply in this case. The code was in being and had been since 1956. The amendment in question cannot be said to have allowed the passage of a law not fully understood (although the subject matter may be complex and difficult for a layman to understand), or that the amendment brought into the code subjects having no connection with the Insurance Code. *The legislature and the public were well aware of the intention and context of this legislation. One is safe in assuming that probably no piece of legislation since statehood has received more attention or been more noted than the present change in the automobile injury reparation provisions*. [*Id*. at 464-465 (emphasis added).]

While the Court is not bound by this discussion in the Supreme Court's advisory opinion, see *id*. at 460 n 1, the discussion can nevertheless be persuasive. And here, the Supreme Court's discussion is persuasive, given that there have been no serious assertions that anyone was misled as to the contents and object of PA 359. Rather, the contents of Act 359 were well known, as evidenced by the strong policy-based reactions the Act has drawn. But those policy questions are best left to the Legislature. The Court's concern is only with art 4, § 24, regardless of the merits or wisdom—or lack thereof—of PA 359. And on the issue of the Act's constitutionality, it is apparent that art 4, § 24 was intended to cure a particular type of ill; PA 359 does not, however, contain the required symptoms to be struck as unconstitutional under that provision. While there are reasons to debate the appropriateness of the utility tunnel called for in PA 359, issues surrounding notice and art 4, § 24 are not among them.

IV. PUBLIC TRUST DOCTRINE AND CONCERNS RAISED IN AMICUS BRIEFING

The final issue raised in the parties' briefing invokes the public trust doctrine. While the amicus briefing filed in this matter raises issues extending beyond the public-trust arguments articulated in the parties' briefing, the Court will confine its analysis to the arguments and issues asserted in defendants' motion for summary disposition.[4] See *Kinder Morgan Mich, LLC v City of Jackson*, 277 Mich App 159, 173; 744 NW2d 184 (2007) ("Absent exceptional circumstances, amicus curiae cannot raise an issue that has not been raised by the parties") (citation and quotation marks omitted). See also 2 Am Jur Amicus, § 7 (explaining that courts should decline to grant relief on issues raised by amicus briefing but not by the litigants); *United Parcel Serv, Inc v Mitchell*, 451 US 56, 60 n 2; 101 S Ct 1559; 67 L Ed 2d 732 (1981).

The public trust doctrine has its origins in the common-law notion "that the sovereign must preserve and protect navigable waters for its people." *Glass v Goeckel*, 473 Mich 667, 677; 703 NW2d 58 (2005). "This rule—that the sovereign must sedulously guard the public's interest in the seas for navigation and fishing—passed from English courts to the American colonies, to the Northwest Territory, and, ultimately, to Michigan." *Id*. at 678. In *Glass*, the Supreme Court explained that, under this doctrine, the state "has an obligation to protect and preserve the waters of the Great Lakes and the lands beneath them for the public." *Id*. The state cannot relinquish

[4] The Court notes that it is uncertain to what extent defendants are even continuing to advance their arguments premised on the public trust doctrine. Indeed, the arguments asserted in their summary disposition briefing are relatively vague with respect to the public trust. Moreover, their reply brief declined to advance the matter, stating on p 13 n 9 that because—in their estimation—the constitutional issues were dispositive, the "Court need not address this additional argument or [plaintiffs'] attempted response." Thus, it is not apparent defendants are still advancing an argument premised on the public trust doctrine. Nevertheless, the Court will evaluate the issue as it has been framed by defendants' brief filed in support of their motion for summary disposition.

this duty. *Id*. at 679. "Therefore, although the state retains the authority to convey lakefront property to private parties, it necessarily conveys such property *subject to the public trust.*" *Id*. See also *id*. at 694 ("As trustee, the state must preserve and protect specific public rights . . . and may permit only those private uses that do not interfere with these traditional notions of the public trust.").

With respect to the public trust doctrine, defendants note that ¶ 4.2 of the Third Agreement—which affirmed plaintiffs' right to continue using the existing pipeline until a replacement is built—declares that "the State has acted in accordance with and in furtherance of the public's interest in the protection of waters, waterways, or bottomlands held in public trust by the State of Michigan." This paragraph of the Third Agreement echoes the 1953 easement which, as noted above, gave plaintiffs the right to operate a pipeline underneath the Straits of Mackinac.

Defendants have not expressly argued that the Third Agreement—or any other agreement, for that matter—offends the public trust doctrine. In this sense, they have not advanced the argument that a conveyance to plaintiffs failed to preserve and protect public rights, nor have they advanced the notion that any conveyance interfered with the traditional notions protected by the public trust doctrine. See *Glass*, 473 Mich at 694. Instead, they argue at page 48 of their briefing that the Third Agreement's conclusion regarding the public trust "in no way precludes the State, through its present officials, from making a contrary determination." They do not, however, contend that a "contrary determination" could be or should be made. Because they have not articulated any arguments about a contrary determination—at least not in this case—it is not apparent a live controversy is before the Court on this matter. See *Oakland Co*, 325 Mich App at 265 n 2 (declining to address hypothetical claims). Defendants also argue

that the state cannot surrender its duties under the public trust doctrine. On the materials submitted and highlighted by defendants' briefing, however, the state has not surrendered any duties or obligations to plaintiffs.[5] Rather, the 1953 easement concluded that the granting of the easement was in accordance with the public trust, and the Third Agreement echoes this sentiment. Again, defendants' briefing in this case has not made any contention that those agreements were *not* actually in accordance with the public trust, and the Court declines to decide an issue that is not properly put before it.

V. CONCLUSION

IT IS HEREBY ORDERED that defendants' motion for summary disposition is DENIED.

IT IS HEREBY FURTHER ORDERED that summary disposition is GRANTED in favor of plaintiffs, as non-moving parties, pursuant to MCR 2.116(I)(2).

This order resolves the last pending claim and closes the case.

Dated: October 31, 2019

Michael J. Kelly, Judge
Court of Claims

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[5] In fact, on pages 47-48 of their brief in support of summary disposition, defendants assert that "[t]he State of Michigan *did not* and could not surrender its trust authority—or the affirmative responsibilities that underpin it—when the Snyder administration signed the Third Agreement" (emphasis added).