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BILL ANALYSIS

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Senate Bill 379 (as introduced 5-12-11)
Sponsor: Senator Coleman Young II
Committee: Transportation

Date Completed: 11-9-11

CONTENT

The bill would amend Public Act 286 of 1964 (which governs the State Transportation Commission) to do the following:

- Require a request for proposals (RFP) issued by the Michigan Department of Transportation (MDOT) for the construction of an international bridge crossing project to require the project's contractor, developer, or concessionaire to enter into a community benefits agreement.**
- Require MDOT to consult with the project's host community as represented by a nonprofit organization before initiating the RFP, and require the nonprofit organization to provide its criteria for the community benefits agreement.**
- Require the community benefits agreement to address certain factors, and to include a timeline for implementing them and penalties for failure to meet the timeline.**
- Require MDOT or another authorized entity to carry out the duties of a contractor, developer, or concessionaire that defaulted in the performance of its duties under the agreement.**
- Require MDOT to submit to the Legislature and the host community an annual report on the progress toward meeting the agreement's timelines.**
- Require MDOT to give the host community's nonprofit organization information concerning the proposals the Department received, and require the organization to provide advisory recommendations on them.**

The bill would define "community benefits agreement" as a contract between the State of Michigan and a contractor, developer, or concessionaire that was obtained with the advice of the nonprofit organization of the host community that addressed host community concerns, including certain factors prescribed in the bill (described below). A community benefits agreement could not be limited to a satisfaction of only the minimum requirements under Federal law.

"Host community" would mean the neighborhood community in which the construction in Michigan for an international bridge crossing occurred, including bridge, plaza, and direct access road; and where residences and businesses were displaced due to the project.

Under the bill, if MDOT issued an RFP for construction of an international bridge crossing project for a bridge that did not exist on the bill's effective date, the request would have to require that a community benefits agreement be required of the project's contractor, developer, or concessionaire.

Before any RFP concerning the construction of an international bridge crossing was initiated, MDOT would have to consult with the host community as represented by a nonprofit organization with members in the host community that had engaged residents and stakeholders, and whose organizational purpose was to ensure that the interests of residents, businesses, and organizations proximate to the host community were recognized and protected in a community benefits agreement. The Department would have to provide technical support, advice, and resources to the nonprofit organization concerning the agreement. After receiving that information from MDOT but before the Department and the contractor, developer, and concessionaire made any agreements concerning construction of the project, the nonprofit organization would have to provide its criteria for a community benefits agreement to MDOT within a reasonable time frame set by the Department and consistent with the timeline of the selection or construction process.

The agreement would have to include specific monitoring of noise, vibration, air quality, residential health, and truck traffic both short- and long-term in the project area. This would have to include designation of truck routes designed to minimize the impact on residents, as well as reduction of truck idle time and diesel reduction plans, including incentive plans, that protected and promoted the air of host community residents.

In addition, the agreement would have to include all of the following:

- A plan to assure job training and education for host community residents and access to employment opportunities and to promote the hiring of host community residents on the project in Michigan, including employment opportunities and hiring with the project's developer, contractor, subcontractors, and concessionaire.
- A plan to assure that any negative impact on existing businesses in the host community was minimized and mitigated and that provided incentives for start-up businesses to become established after the bridge opened to public transportation.
- Preservation and creation of parks and development of green spaces.
- Guarantees that current residents of affected host communities would receive full opportunity for new housing if they were displaced and would not be required to pay out of pocket for expenses associated with displacement and relocation or for home repair due to damage caused by the construction.
- Guarantees that host community representatives would serve in an ongoing advisory capacity on the project and in oversight of its construction and maintenance.

The agreement also would have to include a timeline for accomplishing all of the specified elements, including penalty provisions if a timeline were not met. The timeline would have to require that each of these features be accomplished before the international bridge crossing was open to public transportation.

If a contractor, developer, or concessionaire that entered into a community benefits agreement defaulted in the performance of its allocated duties, MDOT or an authorized entity, including a government agency, would have to perform them.

By March 1 of each year during the duration of the community benefits agreement, MDOT would have to submit to the Senate and House of Representatives standing committees on transportation issues and to the host community a written report quantifying the progress toward meeting the prescribed timelines.

The Department would have to give to the nonprofit organization information concerning the proposals the Department received. After receiving that information, the organization would have to provide its advisory recommendations to MDOT within a reasonable time frame set by the Department and consistent with the timeline of the selection process.

FISCAL IMPACT

The bill would have a minimal fiscal impact, if any, on State funding. A number of the potential community concerns listed in the bill, such as noise, vibration, and air quality impacts, impacts on business, and displacement and relocation costs, are already addressed in State and Federal law and are the subject of the environmental clearance process. For example, the right-of-way acquisition process is governed by the requirements of 23 CFR 710, and environmental impact and related procedures are addressed in 23 CFR 771.

To the extent that the Michigan Department of Transportation already engages in many activities required by the bill, additional State costs would be marginal. Many of these concerns are currently being addressed by MDOT and have been for the past few years in anticipation of the building of a new bridge. Funding for these activities has come primarily from appropriated Federal funds. In addition, once approval to build a new bridge was received, any costs associated with the issues mentioned above, including any costs for relocating community residents or businesses, would be paid from the \$550 million the State would receive from Canada, based on offers made by Canadian government officials. In the event that a contractor, developer, or concessionaire defaulted in the performance of its allocated duties as prescribed in the bill, MDOT could be required to perform those duties. This could potentially result in a significant cost to MDOT; however, that cost is indeterminate and would depend on the number of specified activities that were defaulted upon.

Any costs associated with the reporting requirements in the bill for MDOT would be paid from the funds already appropriated for current reporting requirements.

The bill would have no apparent fiscal impact on local units of government. However, there could be some unknown costs to the contractors. To the extent that the project's contractor, developer, or concessionaire would have to comply with activities required by a community benefits agreement, those costs could be factored into contractor, developer, or concessionaire bid development. The amount of additional contract costs cannot readily be determined.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.