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BILL



ANALYSIS

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Senate Bill 490 (as enacted)
Sponsor: Senator Jud Gilbert, II
Senate Committee: Transportation
House Committee: Transportation

PUBLIC ACT 71 of 2009

Date Completed: 7-22-09

RATIONALE

The Mackinac Bridge Authority (MBA) historically has maintained insurance on the Mackinac Bridge, although the extent of the coverage has changed over the years. The terms of the bonds issued to fund the construction of the bridge required that it be insured, but since those bonds were repaid in 1986, the MBA is no longer legally required to carry this insurance. After the terrorist attacks on September 11, 2001, insurance premiums increased sharply and, to help control expenses, the MBA eliminated some of its liability coverage. In 2005, the Department of Management and Budget conducted a study showing that the MBA could save a significant amount by eliminating its insurance coverage and adopting a form of self-insurance, and historical data show that annual claims have been minimal compared with the cost of the premiums. Based in part on that study, members of the MBA and others recommended that the Authority be permitted to establish a self-insurance program.

CONTENT

The bill amended the Mackinac Bridge Authority law to permit the MBA to enter into an agreement with the Michigan Department of Transportation (MDOT) to provide for the self-insurance of bridge assets and activities.

The agreement between the MBA and MDOT must establish the terms and conditions of the self-insurance consistent with the provisions described below.

The agreement may provide that claims that otherwise would have been paid under an insurance policy carried by the MBA must be paid from a self-insurance reserve account to be established and maintained by the MBA. If there are insufficient funds in the account to pay a claim, MDOT must pay the balance of the claim from funds restricted to transportation purposes under the State Constitution.

The self-insurance reserve account must be funded by annual payments by the MBA of at least \$200,000 until the total of the account equals at least \$1.0 million, as the MBA and MDOT agree. Once the account is fully funded, the MBA may cease payments to it except to the extent that payments are necessary to restore a balance of \$1.0 million after the payment of claims from the account.

In any lawsuit against the MBA for damages that are covered by the self-insurance agreement, MDOT must defend the MBA and control the course and disposition of the litigation as if the claim were against MDOT. The Department must advise the MBA of pending litigation and consult with the MBA regarding the potential disposition of the matter. The Department's cost of the litigation must be paid as a claim from the self-insurance reserve account or MDOT funds as provided in the bill and the agreement.

The bill took effect on July 14, 2009.

MCL 254.301a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Over the past 10 years, insurance premiums on the Mackinac Bridge have averaged about \$291,000 per year, while the average annual claim over the same period has been only \$2,603. The highest claim in any one year was a payment of \$7,529 for property damage in 2005. Even though the MBA dropped some of its property coverage in 2002, it continued to pay over \$200,000 a year for reduced coverage. Rather than paying that money out to an insurance company, the bill allows the MBA to enter into an agreement with MDOT under which it will set aside a specific amount each year until it has accumulated sufficient reserves to cover expected claims. After that point, the MBA will no longer have annual insurance costs except to replenish the reserve fund. Self-insuring the bridge may result in significant savings over the long term, if claims continue in a manner consistent with historical trends. Maintaining low costs will enable the MBA to keep tolls at a minimum, benefiting all those traveling between the two peninsulas.

Opposing Argument

Self-insurance may expose the MBA to significant risk. A large-scale disaster could result in claims of several million dollars or more, overwhelming the self-insurance fund provided for in the bill. The historical record of consistently low claims does not ensure that there will be no large claims in the future. Insurance is designed to protect against the unexpected, and that value should not be discounted.

Response: The likelihood of a disaster is very small, but if claims do exceed the amount of money available in the self-insurance fund, MDOT will provide financial backing. The Department has at its disposal all funds constitutionally dedicated for transportation purposes, ensuring that claims will be paid in the event of a catastrophe while also enabling the MBA to save money on insurance premiums over a period of time. Other State agencies use similar forms of self-insurance, and the bill permits the MBA to do likewise.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The fiscal impact of the bill cannot be determined at this time, as it will depend upon the number of suits filed and the amount of those lawsuits.

Fiscal Analyst: Debra Hollon

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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.