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BILL ANALYSIS

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Senate Bill 363 (as passed by the Senate)
Sponsor: Senator Rick Jones
Committee: Commerce

Date Completed: 9-21-17

RATIONALE

The Management and Budget Act makes the Department of Technology, Management, and Budget (DTMB) responsible for purchasing supplies and contracting for services needed by State agencies. To make these purchases, the Department is required, under certain circumstances, to give preferences to Michigan-based manufacturers and service providers, or Michigan-sourced products. One product that the State purchases is road salt, and one of the suppliers provides the salt from a mine located in Detroit. There are concerns that companies with mines in Canada are undercutting the ability of the company mining in Detroit to supply road salt based on pricing. According to some, this activity could result in the mine's eventual closure. To address this, it has been suggested that products mined in Michigan receive preferential treatment for the purposes of State procurement.

CONTENT

The bill would amend the Management and Budget Act to require the Department of Technology, Management, and Budget to give a preference of 8% of the amount of a contract to Michigan-based firms for products mined in the State.

Currently, if consistent with Federal law, in all purchases made by the Department, all other things being equal, preference must be given to products manufactured or services offered by Michigan-based firms or by facilities whose operator is designated as a clean corporate citizen, or to biobased products whose content is sourced in Michigan. Under the bill, if consistent with Federal law, a preference of 8% of the amount of the contract would have to be granted to Michigan-based firms for products mined in the State against a bidder that was not a Michigan-based firm and was located outside of the United States.

MCL 18.1261

BACKGROUND

During 2014, prices for entities purchasing road salt through the State's procurement program (MiDEAL) for the 2014-2015 winter season rose by more than 46% from the previous year, and prices varied widely between neighboring municipalities, according to a January 2015 report of the Michigan Department of Attorney General (*Road Salt 2014-2015 Winter Season Pricing Report*). As a result of the price increase, local and State agencies submitted complaints to the Department asking for an investigation into possible price-fixing in violation of the Michigan Antitrust Reform Act. The Department's report detailed the nature of salt mining, the process of road salt procurement, and its finding with respect to the price-fixing complaints. The report attributed the season's high cost of road salt to "legitimate market conditions caused by [the previous] winter's harsh weather". These included reduced supplies, increased demand from agencies to restock, and fewer bids for supply contracts through the MiDEAL program.

In its report, the Department also issued several recommendations to aid the DTMB and local agencies in procuring more favorably priced road salt bids in the future. These include the following:

-- Updates to the bidding process, e.g., allow earlier bid dates or the ability to negotiate multiyear supply contracts.
-- Alternatives to road salt (e.g., liquor distillation byproducts) and improvements to road salt distribution (slower distribution speeds and pavement prewetting).

The Department also recommended evaluating ways to better use the Detroit Salt Mine (owned by the Detroit Salt Company), such as improving Detroit Salt's current delivery methods or production capabilities. These improvements, the report suggested, could allow the Detroit Salt Company to bid on more locations and reduce shipment costs, resulting in improved pricing for State and local governments.

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

The Detroit Salt Company is an approximately 100-year-old mining company that operates the Detroit Salt Mine, one of the approximately 15 salt mines in the United States (and the only such mine in Michigan). In 2010, the Detroit Salt Company was acquired by the Kissner Group, an Ontario-based salt and packed ice melt manufacturer. Detroit Salt employs around 60 people, and produces approximately 1.0 million tons of salt per year. The downstream economic effects of this business (revenue from taxes, supplier and other ancillary jobs, etc.) have a positive impact on the local and State economies.

The Detroit Salt Company contends that it is under pressure from Canadian-based mines with much higher production capabilities. According to the Company, these mines are able to generate much more salt than the Detroit mine, which drives the price of salt down to the point where it is difficult to compete. The price point could eventually cause the mine not to be economically viable, which would result in its closure. The closure of the Detroit Salt Company and the loss of its road salt production could have an adverse impact on its employees and the local economy, as well as reduce the number of companies from which the State can procure road salt. The bill would demonstrate that Michigan supports this resource, the Company, and the jobs it provides, and would be consistent with the Attorney General's recommendations regarding better use of the Detroit Salt Mine.

Response: Since the Detroit Salt Company is owned by a Canadian business, it is unclear whether the Company is a Michigan-based firm for the purposes of receiving the preference described by the bill. For example, under Section 268 of the Management and Budget Act, a business is a Michigan business for the purpose of receiving a preference if it has filed a Michigan Single Business Tax Return, a Michigan Business Tax Return, or a Michigan income tax return, or withheld Michigan income tax from compensation paid to the bidder's owners during the 12 months immediately preceding the bid deadline. The filing or withholding must indicate a significant business presence in the State, considering the size of the business and nature of its activities.

Section 268, however, pertains to application of a reciprocal preference against a business that submits a bid from a state that applies a preference law against out-of-State bidders. It is not known whether the same or other criteria would be used for purposes of the proposed mining preference.

Opposing Argument

According to the Attorney General's report, the State has contracts with four road salt suppliers: Cargill, Compass Minerals, Detroit Salt Company, and Morton. The proposed preference would benefit only the Detroit Salt Company, which currently bids on and wins a number of contracts with the local governments, the State of Michigan, and other states that need road salt. These include two contracts through the MiDEAL program (for early fill and seasonal back-up) through August 2018, currently worth approximately $20.1 million, according to information on the DTMB website (MiDEAL Contracts-Road Salt).

The bill would be inconsistent with the DTMB's current bidding practices, and would be unfair to other suppliers that contract with the State, now or in the future. Some states, including Ohio, have similar procurement preferences for mined products; however, Ohio uses a lower preference amount (5% instead of 8%) and allows for the preference to be extended bidders from border states (but not Canada). Procurement for government operations should be conducted in a manner that delivers the most value for taxpayer dollars. The bill could do the opposite by artificially increasing the amount of money that the State and local governments spend on road salt.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill could create a cost to the State depending on the contract involved. According to the Department of Technology, Management, and Budget, the proposed language would impose a floor on bids by adding 8% to the bid of a non-Michigan-based firm that would then be used to evaluate the bids of Michigan- and non-Michigan-based firms. According to the DTMB, there is currently only one Michigan-based firm producing mined products (road salt) that would be affected by the bill. Thus, any non-Michigan-based firms submitting bids for a contract to provide road salt would have to have 8% added to their bid to compare against the Michigan-based firm's bid. Following is an example:

Michigan-Based firm bid:	$10.5 million
Non-Michigan firm #1 bid:	$10.0 million + 8% ($800,000) = $10.8 million
Non-Michigan firm #2 bid:	$11.0 million + 8% ($880,000) = $11.88 million

In the above scenario, the bid from non-Michigan firm #2 would automatically be rejected as it would be the highest bid regardless of the addition of 8%. In this example based on the proposed language, the Michigan-based firm would be awarded the contract as the bid from non-Michigan firm #1 would be higher than the Michigan-based firm's bid after the addition of the 8% as required by the bill. However, under the bill and in this scenario, the cost of the contract would be $500,000 more than it otherwise would have been. Without the proposed language, the State would award the contract to non-Michigan-based firm #1 as its original bid before the addition of the 8% would be the lowest at $10.0 million.

The total potential cost to the State is indeterminate and dependent on the value of the bids submitted as opposed to the Michigan-based firm's bid. Without actual bid amounts, it is impossible to estimate whether the bill would have a negative impact on State costs.

The bill would have no fiscal impact on local government.

Fiscal Analyst: Joe Carrasco

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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.