

MACKINAC STRAITS UTILITY TUNNEL

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Senate Bill 1197 (H-2) as reported from House committee

Sponsor: Sen. Tom Casperson

House Committee: Government Operations

Senate Committee: Government Operations

Complete to 12-11-18

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 1197 would amend Public Act 214 of 1952, the act that authorized the Mackinac Bridge Authority to build the Mackinac Bridge, to do all of the following:

- Allow the Mackinac Bridge Authority to acquire and manage a utility tunnel through the Straits of Mackinac and to acquire property and property rights in connection with the construction of such a tunnel.
- Create the Mackinac Straits Corridor Authority within the Michigan Department of Transportation and create the Corridor Authority Board as its board of directors.
- Provide for the transfer, from the Mackinac Bridge Authority to the Corridor Authority Board, of all duties, powers, and responsibilities related to a Straits of Mackinac utility tunnel.
- Require the Mackinac Straits Corridor Authority to enter into an agreement for the construction, maintenance, operation, and decommissioning of a utility tunnel by December 31, 2018.
- Require that the tunnel agreement provide that a private party pay to construct, maintain, operate, and decommission the tunnel.
- Require the attorney general to provide for the costs of representation a lawyer chosen by the Mackinac Bridge Authority or the Mackinac Straits Corridor Authority if the attorney general declined to represent either body in a matter related to the utility tunnel.

Mackinac Bridge Authority

In more specific detail, the bill would allow the Mackinac Bridge Authority (MBA) to acquire, construct, operate, maintain, improve, repair, and manage a *utility tunnel*; determine the rates charged for the tunnel's services; and enter into necessary contracts or agreements, including leasing the right to use the tunnel. However, the MBA could not incur obligations that would constitute an indebtedness of the state.

Utility tunnel would mean a tunnel between the Upper Peninsula and Lower Peninsula at the Straits of Mackinac for such utility infrastructure as pipelines, electric transmission lines, and data or telecommunications facilities. It would include related facilities, equipment, and structures and all necessary property, licenses, franchises, easements, and rights-of-way.

The MBA could purchase or otherwise acquire at a fair and reasonable price property and property rights in connection with the construction of a utility tunnel, including roads,

structures, rights-of-way, franchises, easements, and other interests in land, including land under water; riparian rights; and the right to cut off light, air, and access to real property.

The bill would allow the MBA to enter onto public land or water to make a survey or other examination in connection with the tunnel's construction and would give the MBA the right to use, and full easements and rights-of-way across and under, any state-owned lands or property if necessary or useful for building or operating the tunnel. The MBA could secure any consent or approval it needed from state or federal agencies to build or operate, or charge for the use of, the tunnel.

The MBA would be exempt from any state or local tax or assessment on any of its activities or any of its revenues, as would property owned by the MBA in connection with the tunnel.

[Note: The powers, duties, and responsibilities described above would transfer to the Corridor Authority Board upon appointment of the members of that Board.]

Mackinac Straits Corridor Authority

The bill would create the Mackinac Straits Corridor Authority (MSCA) in the Michigan Department of Transportation (MDOT). Any administrative functions of the MSCA would be performed under the direction and supervision of MDOT.

The Corridor Authority Board ("Board") would constitute the MSCA's board of directors. The Board would consist of three members appointed by the governor with the advice and consent of the Senate. No more than two Board members could be members of the same political party.

Members of the Board would serve for six-year terms, or longer if needed to appoint and qualify a successor. They would serve without compensation, but could be reimbursed for actual and necessary expenses incurred in performing their duties on the Board. They would elect a chairperson at their first meeting, and subsequently would meet at the call of the chair or if requested by at least two members.

The Board would conduct business at a meeting held in compliance with the Open Meetings Act, and any writings it prepared, possessed, or used in an official function would be subject to the Freedom of Information Act. Board members, and agents of the MSCA, would be subject to Public Acts 317 and 318 of 1968, which concern the solicitation or negotiation of contracts with public entities and other conflicts of interest. The Board would exercise its duties independently of MDOT and the MBA.

Upon the appointment of the members of the Board, all duties, responsibilities, authorities, and powers of the MBA related to the utility tunnel (as described above) would automatically transfer to the Board.

The Board would provide a report to the MBA at least annually regarding aspects of the utility tunnel that could affect the MBA, such as the progress of construction and utility leasing.

Utility Tunnel Agreement

The bill would require the MSCA to enter into an agreement or series of agreements for the construction, maintenance, operation, and decommissioning of a utility tunnel if the MSCA made certain findings regarding the tunnel. The MSCA would have to enter into the agreement(s) by December 31, 2018, if a proposed tunnel agreement were supplied by the governor to the MSCA before December 21. If the governor did not supply a proposed tunnel agreement by that date, the MSCA would have to act on a proposed agreement within 45 days after one is presented. The findings the MSCA would have to make regarding a proposed tunnel agreement would include, among other things, the following:

- That the proposed agreement allows for use of the tunnel by multiple utilities.
- That it requires geotechnical feasibility studies and provides the MSCA with a way to be sure that it is built and maintained to ensure the longevity of its usefulness and that it provides secondary containment for any leak or pollution from utilities using the tunnel.
- That it provides for the costs of construction, maintenance, operation, and decommissioning of the tunnel to be paid by a private entity and not by the MSCA. (However, the MSCA could spend money for independent tunnel oversight, and space in the tunnel could be leased to publicly owned entities.)
- That it requires that the MBA be reimbursed for any loss of net profit from the leasing of space for facilities for the transmission of data and telecommunications.
- That it does not require use of the power of eminent domain.

Attorney General

The MSCA would also have to find that a proposed agreement does not require the MSCA to bring or defend a legal claim for which the attorney general is not required to provide counsel. Further, the bill would provide that if the attorney general declined to represent the Board or the MSCA in a matter related to the utility tunnel, as described in detail by the bill, the attorney general would have to pay the costs of representation by an attorney chosen by the Board or MSCA.

Straits Protection Fund

The bill would create the Straits Protection Fund and allow the state treasurer to accept money or other assets from any source for deposit into the Fund. Money in the Fund at the end of the fiscal year would remain in the Fund and not lapse to the general fund. Money in the Fund would transfer to the Board upon appointment of the Board's members. The bill would allow the Board to expend money from the Fund for independent oversight of the utility tunnel.

The bill would prohibit the state, the MBA, and the MSCA, including financial or other advisors to the MBA or MSCA, from entering into an agreement for the payment of money from any source other than the Straits Protection Fund or any escrow or reserve fund created under the tunnel agreement or entering into an agreement to accept any liability for the installation, maintenance, operation, or decommissioning of any utility equipment owned by the user of a utility tunnel.

MCL 254.311 and 254.315; proposed MCL 254.324 et seq.

HOUSE COMMITTEE ACTION:

The House Committee on Government Operations reported an H-2 substitute for the bill. The substitute added a provision requiring a prospective tunnel agreement to include language requiring the MBA to be reimbursed for any loss of net profit from the leasing of space for facilities for the transmission of data and telecommunications.

FISCAL IMPACT:

The bill would authorize, but not require, the Mackinac Bridge Authority to acquire and manage a utility tunnel through the Straits of Mackinac, and to acquire property and property rights in connection with the construction of such a tunnel, under specific conditions and criteria established in the bill. The Mackinac Bridge Authority is not included in state transportation appropriations. The Authority is self-funded from bridge tolls.

The bill would also create the Mackinac Straits Corridor Authority within the Michigan Department of Transportation and establish new specific duties, powers, and responsibilities related to a Straits of Mackinac utility tunnel. The new authority would incur some costs, in particular if it engaged in feasibility studies or preliminary engineering related to the construction of a utility tunnel.

The bill would create a Straits Protection Fund. The bill would allow expenditure of money from the Fund for independent oversight of the utility tunnel. The bill would prohibit the state, the Mackinac Bridge Authority, and the Mackinac Straits Corridor Authority from entering into an agreement for the payment of money from any source other than the Straits Protection Fund.

The bill is permissive in that it allows the state treasurer to accept money or other assets from any source for deposit into the Fund. However, the bill does not specify a specific source of revenue for the Fund.

POSITIONS:

The following entities indicated support for the bill (12-11-18):

- Enbridge Energy
- Michigan Propane Gas Association
- Operating Engineers Local #324
- Michigan Laborers Union
- Michigan Petroleum Association
- Michigan Oil and Gas Association
- Michigan Chamber of Commerce
- Michigan Infrastructure and Transportation Association (MITA)

The following entities indicated opposition to the bill (12-11-18)

- Clean Water Action
- Straits of Mackinac Alliance
- Great Lakes Business Network
- National Wildlife Federation
- Friends of Mackinac Bridge
- FLOW (For the Love of Water)
- Sault Ste. Marie Tribe of Chippewa Indians
- Sierra Club
- League of Women Voters
- Michigan League of Conservation Voters

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.