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BILL ANALYSIS



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Senate Bill 373 (as introduced 5-10-17)
Sponsor: Senator Rick Jones
Committee: Michigan Competitiveness

Date Completed: 1-30-18

CONTENT

The bill would amend Public Act 306 of 1937, which regulates the construction of school buildings, to do the following:

- **Allow the preparation of plans and specifications by a design-builder that employed an architect or professional engineer.**
- **Allow a design-builder performing construction services to self-perform part of the construction work, with the agreement of the school district.**
- **Require a design-builder performing construction services to select subcontractors based on qualifications alone or a combination of qualifications and price.**
- **Require a design-builder to ensure that design documents provided for a structure with sufficient structural strength and fire resistance and that the building would meet all applicable codes, standards, and regulations.**

The bill would define "design-builder" as an entity that provides design-build construction services (in which the school district contracts with a single individual or entity for both design services and construction services) or construction-manager-at-risk services (in which a school district contracts with one individual or entity for design services and with a different individual or entity for construction services). (Those terms that are defined in more detail below.) Design-builders would have to have employees certified in design-build by the Design Build Institute of America or any other national design-build accreditation program.

Under the Act, except as provided for modular classrooms, a public or private school building, or any additions to a school building, may not be erected, remodeled, or reconstructed in the State unless all plans and specifications are prepared by an architect or professional engineer who is licensed in Michigan. Under the bill, plans and specifications also could be prepared by a design-builder that employed an architect or professional engineer licensed in the State.

Currently, an architect or professional engineer licensed in the State, or another person qualified to supervise construction, must supervise the construction of a school building. The person supervising the construction is responsible for the construction of the school building in conformance with the approved plans and specifications prepared by the licensed architect or engineer. The bill also would refer to a design-builder in these provisions.

The Act specifies that the licensed architect or engineer preparing the plans and specifications of a school building is responsible for assuring that the design documents provide for a structure with sufficient structural strength and fire resistance and that the building will meet

all applicable codes, standards, and regulations. Under the bill, this also would apply to a design-builder preparing the plans and specifications of a school building.

A design-builder performing the construction services would be permitted to self-perform part of the construction work if and to the extent agreed to in writing by the school district and the design-builder. The school district could use methods other than competitive bidding to assure itself that the price the district paid to the contractor for self-performed work was fair and reasonable.

The design-builder selected to perform the construction services would have to select subcontractors based on qualifications alone or on a combination of qualifications and price, and could not select subcontractors based on price alone. A qualifications and price selection could be a single-step selection based on a combination of qualifications and price or a two-step selection. In a two-step selection, the first step would have to be based on qualifications alone and the second step could be based on a combination of qualifications and price or price alone.

The bill would define "design-build construction services" as a project delivery method that meets all of the following:

- The school district contracts with a single individual or entity for both design services and construction services.
- Finance services, maintenance services, operations services, design services, preconstruction services, and other related services may be included.
- Selection is either single-phase using qualifications-based selection or two-phase using qualifications-based selection in the first phase and best-value selection in the second.

"Construction-manager-at-risk services" would mean a project delivery method that meets all of the following:

- The school district contracts with one individual or entity for design services and contracts with a different individual or entity for construction services.
- The school district may contract for construction services at the same time as it contracts for design services or at a later time.
- Finance services, maintenance services, operations services, preconstruction services, and other related services may be included.
- Selection is a single-phase selection process using qualifications-based selection.

Under both definitions, design and construction of the project may be either 1) sequential with the entire design complete before construction begins, or 2) concurrent with the design produced in two or more phases and with construction of some phases beginning before the entire design is complete.

MCL 388.851 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on the State.

To the extent the bill would allow additional options for school districts to undertake construction and design, the bill could result in savings due to more competition or availability of providers. In addition, the bill would allow a school district to enter into a contract where a design-builder self-performed part of the construction work; in that case, the district could use a method other than competitive bidding to assure itself that the price was fair and

reasonable. It is possible that these components of the legislation also could result in savings to the local school district.

On the other hand, the requirement that a design-builder perform the construction services using subcontractors based on qualifications alone, or on a combination of qualifications and price, rather than price alone, could result in higher costs, which would be passed along to the school district. The overall potential fiscal impact of the bill on local units of government is, therefore, indeterminate.

Fiscal Analyst: Kathryn Summers

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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.