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BILL ANALYSIS

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Senate Bill 266 (as introduced 2-14-95)
Sponsor: Senator Dave Honigman
Committee: Local, Urban and State Affairs

Date Completed: 2-20-96

CONTENT

The bill would create the "Regional Impact Coordination Act" to establish procedures for a developer to submit, and a local unit (a city, village, township, or county) to consider, an impact analysis of capital improvements related to a "regional impact development". Governmental entities could file objections to a regional impact development on the ground that it would result in an "unreasonable impact" (necessitating capital improvements that would not otherwise be constructed). The local unit that would issue a permit for the development would have to hold a hearing on an objection, and determine whether an unreasonable impact would result. If so, the developer, local unit, and governmental entities would have to make reasonable good faith efforts to eliminate the unreasonable improvement. A developer or an objecting governmental entity could appeal the local unit's determination to the circuit court.

"Regional Impact Development"

"Regional impact development" would mean a development that, taking into consideration all properties owned by the developer, all phases completed in the development, and all developments under consideration proposed by the same person within a one-mile radius, was one or more of the following:

-- A nonresidential project with at least 150,000 square feet of floor space.
-- A development located on at least 80 acres whose drainage would not be totally retained on the site.
-- A residential development with the number of dwelling units described below.
-- An airport.
-- A sports, entertainment, amusement, or recreational facility, whose construction or expansion provided either (a) more than 10,000 permanent seats or parking spaces for more than 2,500 motor vehicles, if a single performance facility; or (b) more than 4,000 permanent seats or parking spaces for more than 1,000 vehicles, if a serial performance facility.
-- A hospital with a design capacity of more than 300 beds, or whose application for a certificate of need showed that it was designed to serve the citizens of more than one local unit.
-- An industrial plant or park that provided parking for more than 750 motor vehicles, or occupied a site of more than 100 acres.
-- An office building or park on a site of at least 20 acres.
-- A retail, service, and wholesale development that was located on a site of at least 20 acres or that provided parking spaces for more than 750 vehicles.
-- A hotel or motel or hotel and motel development planned to include more than 200 units.
-- A solid mineral mining operation that would involve the removal or disturbance of solid materials or overburden from more than 1,000 acres, whether or not contiguous, or whose daily water consumption would exceed 3 million gallons.
-- A facility or combination of facilities located within 1,000 feet of an inland lake, stream, or other navigable body of water and any facility or combination of facilities for the storage of any petroleum product with a storage capacity of 1 million gallons or more.

-- A recreational vehicle development plan to create or accommodate 400 or more spaces.
-- A development on more than 160 acres.

A residential development would be included if it had one or more of the following:

-- At least 250 dwelling units, if the development were located in a city or village (or a township if the development were not in a city or village) having a population of 25,000 or less.
-- At least 500 dwelling units, if the development were located in a city or village (or township) with a population of 25,001 to 50,000.
-- At least 750 dwelling units, if the development were located in a city or village (or township) with a population of 50,001 to 100,000.
-- At least 1,000 dwelling units.

Impact Analysis

Before final approval of a regional impact development by the approving local unit of government, a developer would have to submit an impact analysis to the clerk of that local unit and to the regional planning body, if any. The developer also would have to submit to the clerk and planning body a written estimate of the date of completion of a regional impact development, assuming the local unit approved the project without delay. ("Approving local unit of government" would mean the city, village, township, or county authorized to issue a building permit for a regional impact development. "Developer" would mean the person proposing a regional impact development. "Regional planning body" would mean a regional planning commission created under the General Municipal Planning Act, or a regional council of government if the activities and functions of the regional planning commission were transferred to a regional council of government under that Act.)

("Impact analysis" would mean an analysis, prepared by an appropriate expert, that identified, and provided qualitative and quantitative estimates of, off-site capital improvements that were customarily provided or regulated, or both, by the State or local government, that were reasonably anticipated to be needed by a proposed development, and that were substantially related to the development. An impact analysis would identify capital improvements substantially related to the development, capital improvements that would be needed but were not currently provided, and the capital improvement deficiencies that existed without regard to proposed development. "Capital improvement" would mean a transportation, sanitary sewer, solid waste, drainage, water, or public health system or facility; police or fire service; or any other service, system, or facility that required capital expenditures customarily made by a local unit and that was likely to have a public health or safety impact.)

The clerk of the approving local unit would have to deliver a copy of the developer's impact analysis to the clerk of each local unit within which all or part of the regional impact development was proposed to be located or whose nearest boundary was not more than 10 miles from the site of the development; the clerk of the county road agency of each county within which all or part of the development was proposed to be located; and the Governor, who would have to transmit the impact analysis to appropriate State agencies. The clerk of the approving local unit also would have to deliver a copy to the clerk of any other local unit or county road agency that submitted a request for a copy and included an explanation of the relationship between the development and anticipated impact upon the requesting local unit or road agency.

In addition, the clerk of the approving local unit would have to deliver with the impact analysis, notice of the date by which the development could be approved if an objection to the impact analysis were not submitted to the clerk before that date. The date could not be less than 30 days after the date on which the notice was sent.

If a county clerk received a regional impact analysis under these provisions, the clerk would have to distribute a copy of it to each county office involved with planning and development.

Objection to Regional Impact Development

By the date specified by an approving local unit, a governmental entity could file a written objection to a regional impact development on the ground that it would result in an unreasonable impact. ("Unreasonable impact" would mean the need, arising from a regional impact development, for a capital improvement customarily provided or regulated, or both, by the State or local government, if there were no likely economic or

other feasibility that the capital improvement would be constructed before the projected completion date of the development.)

An objection would have to include: (a) a statement of concurrence with the impact analysis submitted by the developer, accompanied by an explanation of why the impact constituted an unreasonable impact; and/or (b) a statement, supported by written analysis prepared by an appropriate expert, that identified one or more unreasonable impacts of the development that were not identified in the impact analysis submitted by the developer. An objecting governmental entity that submitted such a statement would have an additional 30 days for submission of a supporting written analysis.

If an objection were filed, the approving local unit would have to conduct a hearing. Notice of the time, place, and date of the hearing and a copy of each objection would have to be sent to the developer, to each objecting governmental entity, and to the regional planning body, at least 14 days before the hearing date. On its own initiative or upon the request of a local unit, the regional planning body could submit for consideration a written or oral statement at the hearing or a written statement after the hearing.

Within 30 days after the hearing, the approving local unit would have to determine whether an unreasonable impact would result from the regional impact development. The determination would have to include findings supported by the record of the hearing.

Elimination of an Unreasonable Impact

If an approving local unit determined that an unreasonable impact would result from a regional impact development, the local unit could not approve the development until the unreasonable impact was eliminated. The developer, the approving local unit, the objecting governmental entity, and the governmental entity having jurisdiction of the needed capital improvement, would have to make reasonable good faith efforts to meet and determine when and how the unreasonable impact could be eliminated. The regional planning body would have to be invited to participate in the effort. The bill provides that, by way of example and not limitation, a good faith effort would require the governmental entities having jurisdiction to consider establishing a special assessment district, to attempt to negotiate a development agreement, and to consider negotiating an agreement instead of annexation.

Within 180 days of a final determination of an unreasonable impact, the governmental entity having jurisdiction of the needed capital improvement would have to issue a statement specifying a projected schedule for the provision of adequate services or facilities, or both, that represented long-term and short-term means to eliminate the unreasonable impact. The schedule would have to consider other existing or reasonably anticipated developments in the area, the revenue available to the governmental entity, its plan for services and facilities, other priorities for the provision of capital improvements, and other relevant factors.

Circuit Court Appeals

Within 21 days after the approval of the minutes of the hearing at which an approving local unit determined whether an unreasonable impact would result, a developer or an objecting governmental entity aggrieved by the determination could appeal to the circuit court for a county in which all or part of the regional impact development would be located. An appeal would be governed by principles of law applicable to a circuit court review, in the nature of superintending control, of administrative proceedings conducted by a local unit of government.

Within 28 days after the record was filed with the court, the appellant would have to file its brief with the court and serve a copy upon each respondent. The respondents would be the developer, unless the developer were the appellant; the approving local unit; and all objecting governmental entities, other than the appellant if the appellant were an objecting governmental entity. Within 28 days after the appellant's brief was served, each respondent appearing in the case would have to file a brief with the court and serve a copy upon the appellant and all other respondents who had filed an appearance. The approving local unit could, but would not have to participate actively in the appeal as a respondent. The appellant could file and serve a reply brief within 14 days after service of a brief by a respondent. A party could obtain a 28-day extension for filing a brief on written stipulation of the parties, or by order of the court. A party could obtain a further extension by order of the court upon that party's motion.

If a party did not serve a brief within the time prescribed, the court, after notice and an opportunity to respond, could enter an appropriate order including dismissal of the appeal, or affirmance or reversal of the administrative action.

A party would be entitled to oral argument if it filed a brief with "oral argument requested" in boldfaced type on the title page of the brief, within the time specified. Following the submission of all briefs, the court, on its own motion, or on motion of one of the parties, would have to fix a date for oral argument by all parties entitled to oral argument. If no party had requested oral argument, or if the parties stipulated to waive oral argument, the court would have to determine the appeal without oral argument.

For good cause shown and upon its own motion, the motion of a party, or stipulation of all parties, the court could shorten the time for filing and serving briefs or for oral argument.

Upon completing review, the court would have to render a decision on the appeal. The court could affirm, reverse, remand, or modify the decision of the approving local unit. If the court sustained a determination of the existence of an unreasonable impact, the court could retain jurisdiction for the purpose of ensuring that the parties were acting in good faith to eliminate the unreasonable impact.

If the court determined that a party to an appeal had acted on the basis of a frivolous position, the court could award reasonable costs and attorney's fees to an adversarial party who had acted in good faith. If a party's position were based upon calculations prepared by a person with special training or expertise, or both, in the discipline relating to the capital improvement at issue, it would be presumed that the party's position was not frivolous.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: R. Ross

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