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House Bill 5167 (Substitute H-2 as passed by the House)  
Sponsor: Representative Wayne Schmidt  
House Committee: Transportation and Infrastructure  
Senate Committee: Infrastructure Modernization

Date Completed: 5-27-14

### **CONTENT**

**The bill would amend Public Act 51 of 1951, the Michigan Transportation Fund (MTF) law, to do the following:**

- **Permit the Michigan Department of Transportation (MDOT) to contract with private sector companies, as well as local road agencies, to perform road work, and include maintenance in the work that may be the subject of a contract.**
- **Make local road agencies subject to the same competitive bidding requirements that apply to MDOT.**
- **Require MDOT, and a local road agency that received at least \$20.0 million from the MTF in 2013, to develop and implement a performance based-maintenance system and a performance rating system for maintenance services.**
- **Require at least 20.0% of all new or renewed maintenance contracts entered into by MDOT, or by a local road agency that received at least \$20.0 million from the MTF in 2013, to provide for payment based on performance outputs or outcomes.**
- **Require MDOT and local road agencies to report to the Legislature annually regarding maintenance services, the contracting process, and contract performance.**

#### **MDOT Contracts for Road Work**

The Act authorizes MDOT to enter into agreements with county road commissions and with cities and villages ("local road agencies", under the bill) to perform work on a highway, road, or street. An agreement may provide for any of the contracting parties to perform any of the work contemplated by the contract, including engineering services, and the acquisition of rights-of-way, and for joint participation in the costs.

Under the bill, MDOT could enter into these agreements with a local road agency or a private sector company, and the work contemplated by a contract could include maintenance.

#### **Competitive Bidding**

Section 11c of the Act requires all Federal aid construction projects, and all other projects of MDOT concerning highways, streets, roads, and bridges, whose cost exceeds \$100,000 for construction or preservation to be performed by contract awarded by competitive bidding. Local road agencies that decide not to perform construction or preservation projects exceeding \$100,000 also must contract for the work through competitive bidding.

The bill would require all construction projects of MDOT or a local road agency concerning highways, streets, roads, and bridges, costing more than \$100,000, to be performed by contract awarded by competitive bidding.

Currently, the competitive bidding requirement does not apply if MDOT affirmatively finds that some other method is in the public interest. The bill would extend this exception to a local road agency.

The Act requires MDOT's findings to be reported to the State Transportation Commission 90 days before the work is begun, and promptly to the Senate and House of Representatives Appropriations Committees. The bill would require a county road commission to report its findings to the county board of commissioners, and would require a city or village to report to its governing elected body, before the work was begun.

#### Performance-Based Maintenance & Rating Systems

The bill would include in Section 11c requirements for performance-based maintenance systems. Specifically, MDOT would have to develop and implement a performance-based maintenance system to improve efficiencies and outcomes in the performance of maintenance services on State trunkline highways. A local road agency that received at least \$20.0 million in funding from the Michigan Transportation Fund in calendar year 2013 also would have to develop and implement such a system concerning the highways, streets, and roads under its jurisdiction.

The Department, and a local road agency that received at least \$20.0 million from the MTF in 2013, also would have to develop and implement a performance rating system for the maintenance services performed on all highways, streets, and roads under its jurisdiction. The deadline for compliance would be September 30, 2015, for MDOT, and March 31, 2016, for a local road agency. In either case, the performance rating system would have to provide for the collection of data on all maintenance activities, including the quantities and locations of activities performed, and the costs associated with those activities.

By September 30, 2015, a minimum of 20.0% of all new or renewed contracts entered into by MDOT, or by a local road agency that received at least \$20.0 million from the MTF in 2013, for maintenance services would have to provide for payment based on performance outputs or outcomes associated with the performance rating system.

The bill would define "maintenance services" as routine and reactive maintenance activities undertaken to ensure the normal and safe operation of a highway, street, or road, including activities performed on an appurtenance or roadside feature associated with a highway, street, or road that are necessary for the safe operation of the appurtenance or roadside feature. Maintenance activities would not include a construction activity intended to significantly repair, resurface, rehabilitate, or reconstruct a highway, street, or road, or an appurtenance or roadside feature associated with a highway, street, or road.

#### Reporting Requirement

The bill would require the MDOT Director, by December 1, 2016, and on December 1 of each subsequent year, to report results and findings on the outcomes of State trunkline highway maintenance services, the contracting process, and contract performance for all contracts entered into under Section 11c, to the Senate and House Appropriations Committees.

The chief executive of each local road agency required to competitively bid also would have to report the same information, by the same deadlines, to the MDOT Director and the Appropriations Committees.

**FISCAL IMPACT**

The bill's provisions authorizing MDOT to enter into agreements with private sector companies, in addition to local road agencies, would have an indeterminate fiscal impact at the State and local levels.

In expanding mandated competitive bidding requirements to local construction and preservation projects, the bill could have a negative, but indeterminate, fiscal impact at the State and local levels. Currently, a local road authority is exempt from this requirement if the authority itself performs the work. Additionally, since maintenance would be included within the definition of preservation, competitive bidding requirements would apply to a significantly larger number of projects.

It should be noted that competitive bidding would be required unless MDOT or the local road agency found that another method was in the public interest, while current program guidelines allow avoidance if a local road agency can show that an alternative method would generate 6% in savings. Therefore, depending on the interpretation of what was in the public interest, the bill could either expand or narrow the circumstances in which an alternative to competitive bidding would be permissible.

The bill's requirements for MDOT and local road agencies that received more than \$20.0 million in Michigan Transportation Fund revenue to add efficiencies and improve outcomes would have an indeterminate impact at the State and local levels. There are not enough available data to determine what the effects of such a statutory mandate would be. (Based on 2013 distributions, road authorities for the following municipalities would be subject to these requirements: Detroit, Kent County, Macomb County, Oakland County, and Wayne County.)

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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.