



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5460 (Substitute S-3 as passed by the Senate)
Sponsor: Representative Dan Lauwers
House Committee: Transportation and Infrastructure
Senate Committee: Infrastructure Modernization

Date Completed: 11-20-14

CONTENT

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

- **Require the Michigan Department of Transportation (MDOT), a county road commission, or city or village, to secure warranties for full replacement or appropriate repair guarantee for projects exceeding \$1.0 million and construction projects undertaken after the bill took effect.**
- **Require a county road commission, or a city or village to submit a proposed warranty program to the Department for approval by September 30, 2015.**
- **Require MDOT, a county road commission, or city or village, to generate, and make available to the public, an annual report listing all warranties secured and projects for which warranties were not secured, as applicable.**
- **Permit 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.**

The bill is tie-barred to House Bill 5477. (As passed by the Senate, House Bill 5477 (S-13) would amend the Motor Fuel Tax Act to provide for excise taxes on gasoline fuel and diesel fuel that would be adjusted annually based on 1) a percentage of the respective fuel's average wholesale market price, and 2) criteria establishing limits on rates and rate changes.)

State Pavement Project Warranties & Reporting

Public Act 51 governs the distribution of revenue collected from various transportation-related taxes and fees. The revenue is directed to several State transportation funds, including the State Trunk Line Fund; transportation programs; and local units of governments. Money deposited in the State Trunk Line Fund must be appropriated to MDOT to be used for certain purposes in a particular order of priority.

The Act also requires MDOT to spend at least 90% of State revenue appropriated annually to the State Trunk Line Fund, less the amounts for the specified priorities, for the preservation of highways, roads, streets, and bridges and for debt service payments on bonds, notes, and other obligations. Of the amount appropriated for State Trunk Line projects, the Act requires MDOT, where possible, to secure warranties of not less than five-year full replacement guarantee for contracted construction work. The bill, instead, would require MDOT, where possible, to secure pavement warranties for full replacement or appropriate repair guarantee for contracted pavement projects that would exceed \$1.0

million in cost and projects for new construction or reconstruction that would begin after the bill's effective date.

The bill would require MDOT to compile and make available to the public an annual report listing all warranties secured and all pavement projects costing more than \$1.0 million where a warranty was not secured, and indicating whether any of the warranties were redeemed. The Department would have to make the report available to the public upon request and publish the report on its website. The report would have to include at least all of the following information:

- The type of project.
- The cost or estimated cost of the project.
- The expected lifespan of the project.

County, City & Village Warranties & Reporting

The bill would extend the proposed warranty requirement to county road commissions, and cities and villages for amounts appropriated for a county primary or local road system, or a city or village major or local street system, if allowed by the Federal Highway Administration and MDOT.

A county road commission, or a city or village would have to submit a proposed warranty program to the Department for approval by September 30, 2015. If the proposed warranty program were approved, the county road commission, or city or village would have to implement the program within one year after the approval.

The Act requires county road commissions and cities and villages to submit to MDOT an annual report on the receipt and distribution of road and street funds. The bill would require the report to include the same information about warranties as MDOT would have to report. Also, if the county road commission, city, or village had a website, the report would have to be posted on the website.

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. (As used in these provisions, "local road agency" would be defined as that term is defined in Section 9a: a county road commission, designated county road agency, city, or village that is responsible for the construction or maintenance of public roads within the State under the Act.)

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.

MCL 247.661 et al.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have a negative but indeterminate fiscal impact at the State and local levels in the short term, and an indeterminate fiscal impact in the long term.

Mandatory warranties would result in an indeterminate increase in costs in the short term. It is impossible to determine whether mandated warranties would result in overall savings in

the long term that would offset the initial cost. Project warranty reporting requirements would result in increased administrative costs at the State and local levels.

The bill would mandate warranties for full replacement guarantee or appropriate repair, where possible, on all State and local road projects that: 1) exceeded \$1.0 million in costs; or 2) were for new construction or reconstruction undertaken after the effective date of the bill.

The State and local governments likely would face increased costs due to this requirement. Since obtaining a full replacement guarantee or appropriate repair warranty product typically requires a contractor to obtain a warranty bond, and the immediate cost of such a product usually is passed on to the consumer, it is likely that associated costs would be included in a contractor's bid or price.

In the long term, it is unclear whether a warranty mandate would generate savings. Future maintenance and reconstruction costs could decrease, since these tasks would be covered under a secured warranty. However, the up-front cost of obtaining a warranty could exceed any potential long-term savings and cost more than future repairs. Whether a warranty served to save costs in the long term likely would vary from project to project.

Fiscal Analyst: Glenn Steffens