

Legislative Analysis



PUBLIC ACT 51 of 1951 – CONTRACTS FOR STATE TRUNKLINE AND LOCAL ROAD MAINTENANCE

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Senate Bill 220 (Substitute S-1)

Sponsor: Sen. Darwin L. Booher

Senate Committee: Transportation

House Committee: Transportation and Infrastructure

Complete to 11-19-14

A SUMMARY OF SENATE BILL 220 (S-1) AS PASSED BY THE SENATE 11-13-14

Senate Bill 220 (S-1) would amend two sections of Public Act 51 of 1951 ("Act 51"), the act that governs the distribution of funds for state and local road and bridge programs, to address cost sharing agreements with county road commissions, cities, and villages; construction warranties; and federal-aid construction contracts.

The bill would amend Section 11, the section that establishes and directs appropriations from the State Trunkline Fund (STF). Specifically, the bill would amend Subsection 1, subdivision (g), a subdivision dealing with the Michigan Department of Transportation's authority to enter into cost sharing agreements with county road commissions, cities, and villages for work on a "highway, road, or street," and Section 11, Subsection 2, a subsection providing for construction warranties.

The bill would also amend Section 11c, a section that currently prescribes contracting requirements for certain federal-aid construction contracts.

BACKGROUND INFORMATION AND DETAILED ANALYSIS

Section 11 – Background Information and Proposed Amendments

Section 11 of 1951 PA 51 establishes the State Trunkline Fund and directs the priority order of appropriations from the STF. As provided in Section 11, the STF is appropriated for the construction and preservation of state trunkline roads and bridges and for administration of the Michigan Department of Transportation.

Section 11 also contains provisions not directly related to STF appropriations: the section establishes a rail grade crossing program; authorizes the use of STF money and STF note or bond proceeds for loans to county road commissions, cities, and villages; and authorizes the department to enter into agreements with county road commissions, cities, and villages "to perform work on a highway, road, or street."

Senate Bill 220 (S-1) would make two substantive changes to Section 11. The bill would amend Subdivision (g) of Subsection 1 regarding the department's contracting authority. The bill would also amend Subsection 2 regarding warranties, and would establish a new

warranty reporting requirement in Subsection 14. A detailed description of the amendments to Section 11 follows below.

Subdivision 11(1)(g): (Department's contracting authority)

Subdivision (1)(g) of Section 11 currently authorizes the department to enter into agreements with county road commissions, cities, and villages "to perform work on a highway, road, or street," including engineering services and the acquisition of rights of way. The subsection also authorizes agreements to provide for joint participation in costs.

It is our understanding that this subdivision currently provides authority for the department to enter into agreements with county road commissions, cities, and villages related to local federal aid projects and transportation economic development projects. Further, it is our understanding that this subdivision provides authority for the department to enter into cost-sharing agreements with road commissions, cities, and villages related state trunkline construction contracts.

Section 1c of 1951 PA 51 currently requires participation by certain cities in the cost of state trunkline construction contracts. These cost sharing provisions are reflected in agreements between the department and the applicable cities. In addition, some state trunkline projects include contract work on local facilities – such as upgrades to municipal water, sewer, or drainage systems – as part of a state trunkline construction contract. Local agency financial obligations related to those local elements of the construction contract are defined by agreement between the department and the local agency.

Senate Bill 220 (S-1) would substitute the term "local road agency" for "county road commissions," and "cities, and villages," and would add "a private sector company." The bill would also specifically include *maintenance* in the work for which the department may enter agreements. As a result, the proposed amendments to Section 11(1)(g) would authorize the department to enter into agreements with *a local road agency* or a *private sector company* to perform work on a highway, road, or street, including *maintenance*, engineering services and the acquisition of rights of way.

The bill would also add the following additional requirement governing the department's contracting authority: "*When entering into a contract under this subdivision or under Section 11c [see below], the department shall solicit bids from a local road agency for work to be performed on a state trunkline highway within that local road agency's jurisdiction.*"

Senate Bill 220 (S-1) would define "local road agency" to mean what that term means under Section 9a of Act 51: "a county road commission or designated county road agency or city or village that is responsible for the construction or maintenance of public roads within the state under this act." [This definition is included as subdivision (a) within subsection 15, as numbered in the bill.]

Subsections 11(2) and 11(14): (construction warranties)

Section 11, Subsection 2 currently directs the department, with respect to state trunkline projects, where possible, to secure warranties "of not less than 5 year full replacement guarantee for contracted services." Senate Bill 220 (S-1) would amend this subsection to require the department, with respect to state trunkline projects, where possible, to "secure *pavement* warranties for full replacement *or appropriate repair* guarantee for contracted construction work *on pavement projects whose cost exceeds \$1 million and projects for new construction or reconstruction undertaken after the effective date* [of the enacted bill]."

The bill would require an annual warranty report. The reporting requirement would be established in new Subsection 14 as numbered in the bill. Specifically, Subsection 14 would require an annual report listing all warranties secured under Subsection 2, and indicating whether any of those warranties were redeemed. The subsection would also require a report on all pavement projects whose costs exceed \$1.0 million where a warranty was not secured. The report, which would be available upon request and posted on the department's website, would include the following information: the type of project, the cost or estimated cost of the project, the expected lifespan of the project.

There have been several initiatives by the Michigan Legislature regarding the use of warranties on highway construction projects. Boilerplate language was added to the 1996-97 transportation appropriations bill (1996 PA 341, Section 603) to require the use of warranties on state trunkline construction projects "where possible." Subsequent transportation appropriations bills included similar boilerplate language, including language that would have extended warranty requirements to county, city, and village road agencies. In 1997, language regarding warranties was added to 1951 PA 51, the statute that governs the distribution of MTF revenue. Specifically, 1997 PA 79 amended Section 11 of Act 51 to read: "*Of the amounts appropriated for state trunk line projects, the department shall, where possible, secure warranties of not less than 5-year full replacement guarantee for contracted construction work.*" The warranty language did not apply to county road commissions or cities and villages.

The department uses two different kinds of construction warranties on paving projects: *materials and workmanship warranties* and *performance warranties*. Under a *materials and workmanship warranty*, the contractor is responsible for correcting defects in work elements within contractor control (materials and workmanship), during the warranty period. Since the owner, i.e., the department, is still responsible for project design, the contractor assumes no responsibility for defects due to design decisions. Under a *performance warranty*, the contractor assumes full responsibility for pavement performance during the warranty period. In effect, the contractor guarantees that the pavement will perform at a desired quality level.

For additional information on road construction warranties, see House Fiscal Agency publication: Road Construction Warrantees, March 2001.

Section 11c – Background Information and Proposed Amendments

Section 11c of 1951 PA 51 currently reads:

"All federal aid construction projects, all other projects of the department concerning highways, streets, roads, and bridges, whose cost exceeds \$100,000.00 for construction or preservation as defined in Section 10c, shall be performed by contract awarded by competitive bidding unless the department shall affirmatively find that under the circumstances relating to those projects, some other method is in the public interest. All of those findings shall be reported to the state transportation commission 90 days before work is commenced and promptly in writing to the Appropriations committees of the Senate and House of Representatives. However, in a case in which the department determines emergency action is required, the reports need not be filed before work is commenced but shall be promptly filed. Local road agencies that make a decision not to perform construction or preservation projects exceeding \$100,000.00 shall contract for this work through competitive bidding."

It is our understanding that this section effectively requires that all department contracts for construction or preservation in excess of \$100,000 be performed by contract awarded by competitive bidding, unless the department finds that under circumstances specific to a project, an alternative contracting method is in the public interest.

Senate Bill 220 (S-1) would amend Section 11c to read as follows:

*"**Subject to Section 11(1)(g)**, all federal aid construction projects, **and** all other projects of the department concerning highways, streets, roads, and bridges, whose cost exceeds \$100,000.00 for construction or preservation as defined in Section 10c, shall be performed by contract awarded by competitive bidding unless the department affirmatively finds that under the circumstances relating to those projects, some other method is in the public interest. **The department shall report its findings** to the state transportation commission 90 days before work is commenced and promptly in writing to the Appropriations committees of the Senate and House of Representatives. However, in a case in which the department determines emergency action is required, the reports need not be filed before work is commenced but shall be promptly filed. Local road agencies that make a decision not to perform construction or preservation projects exceeding \$100,000.00 shall contract for this work through competitive bidding."*

The primary impact of this proposed change would be to make the contracting provisions of this section subject to the provisions of Section 11(1)(g) described above.

FISCAL IMPACT:

Under Senate Bill 220 (S-1), amendments to Section 11(1)(g) would authorize the department to enter into agreements with a local road agency or a private sector company to perform work on a highway, road, or street, including maintenance,

engineering services and the acquisition of right of way. The fiscal impact of the proposed amendments to this subsection cannot be readily determined.

It is not clear how the inclusion of a "private sector company" among those entities with whom the department could enter into agreements, or the inclusion of "maintenance" in the work that could be performed under a contract, would affect the department's contracting authority. The department currently has broad authority to contract with both county road commissions, cities, and villages, as well as private contractors, for work on state trunkline roads and bridges under both 1964 PA 286 and 1925 PA 17.

It is also not clear how the department would implement the requirement that it "*solicit bids from a local road agency for work to be performed on a state trunkline highway with that local road agency's jurisdiction.*"

The proposed amendments to Subdivision 1(g) do not appear related to the apparent current intention of the subdivision to provide for state/local cost sharing agreements.

Senate Bill 220 (S-1) would also amend Section 11, Subsection (2), to require the department, with respect to state trunkline projects, where possible, to "*secure pavement warranties for full replacement or appropriate repair guarantee for contracted construction work on pavement projects whose cost exceeds \$1 million and projects for new construction or reconstruction undertaken after the effective date [of the enacted bill].*"

The fiscal impact of these provisions on the Michigan Department of Transportation cannot be readily determined. The impacts would depend on the number and nature of the warranties required under terms of the bill.

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