

Legislative Analysis



LOCAL FEDERAL AID BUYOUT PROGRAM

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<http://www.house.mi.gov/hfa>

Senate Bill 518 (S-2) as passed by the Senate
Sponsor: Sen. Jim Runestad

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 519 (S-1) as passed by the Senate
Sponsor: Sen. Michael D. MacDonald

House Committee: Transportation
Senate Committee: Transportation and Infrastructure
Revised 6-1-20

SUMMARY:

Senate Bills 518 and 519 would amend 1951 PA 51 (“Act 51”) to create a local federal aid buyout program, under which the Michigan Department of Transportation (MDOT) would purchase local federal funds from local road agencies, essentially replacing federal dollars for local road projects with state dollars.

Senate Bill 518 would establish the local federal aid buyout program. Under the bill, MDOT would have to pay local agencies the amounts identified in their three- or five-year local transportation improvement plan for each year they planned to participate in the buyout program. MDOT would have to make available up to 80% of the eligible local federal funds allocated to local agencies for the Surface Transportation Block Grant funding. MDOT would have to pay local agencies the amount of federal funds identified in the approved state transportation improvement plan, as determined by the local agency, but not more than 100% of the total local agency eligible funds.

Before the start of a fiscal year, the local agency would have to notify MDOT, its local planning group or regional planning organization, and its metropolitan planning organization which projects the agency has determined will be included in the buyout program for the next fiscal year. The local agency would have to complete the identified projects with the buyout funds. The local agency would have to spend any remaining buyout funds on federal aid eligible roads for activities and improvements (not including routine maintenance) or use them as additional funds for any federal aid project on roads under its jurisdiction. A completed road project accomplished with buyout funds would have to be documented with the Transportation Asset Management Council investment reporting tool and reported in the fiscal year the project was completed.

Local agencies would have to complete an eligible activity or improvement with the federal buyout funds within three years as required by Act 51. If an identified project could not be completed within the three-year time frame, the local agency would have to notify MDOT and the appropriate metropolitan planning organization, regional planning organization, or rural task force and identify an alternate federal aid eligible road project where a similar improvement could be accomplished within the original three-year time frame.

If MDOT were unable to fulfill its federal aid matching obligation to obtain all available federal funds for a fiscal year, it could reduce the local federal aid buyout program for that fiscal year. However, MDOT could only reduce the amount of the buyout funds if that reduction was necessary to ensure MDOT's ability to perform routine maintenance, operate safety programs, and carry out other administrative functions. MDOT would have to make this determination before the beginning of the fiscal year and notify all local road agencies that have submitted applications for the buyout program for that fiscal year before the beginning of the fiscal year. If MDOT were to reduce the buyout program as described above, it would have to submit a detailed letter of explanation to the Speaker of the House, the Senate Majority Leader, and the chairs of the House and Senate transportation committees and transportation appropriations subcommittees explaining why it was unable to fully fund its federal aid matching obligation.

Finally, the bill would require funds used by the state to purchase local federal funds under the buyout program to be deducted from the federal funds allocated to local agencies under the act.

MCL 247.660o

Senate Bill 519 would require annual payment to local road agencies of the amount owed by MDOT to purchase local federal funds under the local federal aid buyout program before distribution of Michigan Transportation Fund (MTF) funds to the State Trunkline Fund (STF) for other purposes.

MCL 247.660

The bills are tie-barred to one another, which means that neither could take effect unless both were enacted.

FISCAL IMPACT:

These bills concern the distribution of federal-aid highway funds in Michigan—between MDOT for state trunkline capital improvement programs, and local road agencies for eligible local capital construction programs.¹

Senate Bill 518 would establish the local federal aid buyout program. Under circumstances defined in the bill, MDOT would be required to purchase from local agencies federal-aid highway funds suballocated to those agencies. The purchase of these local federal-aid highway funds would be made from state restricted funds as provided in Senate Bill 519.

Senate Bill 519 requires that an amount equal to the amount owed by the department to local road agencies for the purchase of local federal funds under the local federal aid buyout program be paid to local road agencies prior to the MTF distribution to the STF. This

¹ The distribution of federal-aid highway funds in Michigan is described in detail in the House Fiscal Agency "Fiscal Brief: Allocation of Federal Aid to Local Road Agencies," published February 7, 2019. https://www.house.mi.gov/hfa/PDF/Alpha/Fiscal_Brief_Allocation_of_FederalAid_to_LRA_Feb19.pdf

annual payment, which would appear to come “off the top” of the MTF, would effectively reimburse local road agencies from state restricted funds for local federal-aid highway funds “purchased” by MDOT.

This practice has been sanctioned by boilerplate language that has been included in transportation budget acts for approximately 20 years. The language in the FY 2019-20 transportation budget act, 2019 PA 66, is as follows:

Sec. 402. A portion of the federal DOT-FHWA highway research, planning, and construction funds made available to this state shall be allocated to transportation programs administered by local jurisdictions in accordance with section 10o of 1951 PA 51, MCL 247.660o. A local road agency, with respect to a project approved for federal aid funding in a state transportation improvement program, may enter into a voluntary buyout agreement with the department or with another local road agency to exchange the federal aid with state restricted transportation funds as agreed to by the respective parties. The state restricted transportation funds received in exchange for federal aid funds shall be used for the same purpose as the federal aid funds were originally intended.

For some local road agencies, in specific circumstances, the use of 100% local or state restricted funds, rather than federal funds, could result in lower project costs and accelerated project delivery. Projects funded with 100% local or state restricted funds would not be subject to certain regulations attached to federal aid, including Davis-Bacon prevailing wage requirements. The amount of potential savings to local road agencies cannot be readily estimated.

Between 1999 and 2007, MDOT worked with interested local road agencies to establish a voluntary state-local federal aid buyout program. Under this program, MDOT entered into voluntary agreements with requesting local road agencies to “purchase” federal-aid highway funds in exchange for state restricted STF revenue at a rate of 75 cents of STF revenue for each \$1.00 of local federal aid.

This state/local federal aid buyout program ended in 2008 as MDOT needed to conserve STF revenue in order match federal aid for its own state trunkline construction program. The department is concerned that the program as defined in Senate Bill 518 could affect its ability to ensure that statewide federal transportation performance measures and targets are met, including safety, pavement condition, and bridge condition targets.

The department is also concerned that Senate Bill 519 could affect its ability to match federal aid for the state trunkline road and bridge construction program.

Although MDOT no longer exchanges federal aid with local road agencies, it does facilitate voluntary transfer agreements between local road agencies. This program is described as the Local Federal Fund Exchange (LFFE).²

² LFFE program guidelines are found at this link:

https://www.michigan.gov/documents/mdot/Federal_Exchange_Guidelines_2019_638688_7.pdf

During FY 2019-20 there have been 17 exchange agreements: six county road commissions were buyers of federal aid and 17 road commissions were sellers of federal aid. The purchasing local road agencies were primarily road commissions in urbanized areas, and the selling agencies were generally in non-urbanized areas. These agreements typically provide for the payment of 80 cents of state restricted funds in exchange for \$1.00 of federal aid.

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