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Senate Bill 520 (Substitute S-1)
Sponsor: Senator Rick Outman
Committee: Transportation and Infrastructure

Date Completed: 11-6-19

CONTENT

The bill would amend the Michigan Transportation Fund law to do the following:

- Require the Michigan Department of Transportation (MDOT) to secure pavement warranties for full replacement or appropriate repair for contracted construction work on pavement projects whose costs exceeded \$5.0 million, instead of \$2.0 million.**
- Require MDOT to include in its annual report whether a construction contractor had posted a surety bond or had otherwise warrantied the construction work by voluntarily placing its prequalified status as security for replacement or repair.**
- Require MDOT to consider a warranty claim and loss of prequalified status when reviewing subsequent applications for prequalified status from a construction contractor or any associated individual or business entity if a construction contractor warrantied construction work by voluntarily placing its prequalified status as security for replacement or repairs.**
- Modify a requirement that a county road commission, city, or village secure pavement warranties for full replacement or appropriate repair for contracted construction work on pavement projects whose cost exceeds \$2.0 million.**

State Pavement Project Warranties & Reporting

The law created the State Trunk Line Fund and requires that money deposited in the Fund be appropriated to MDOT to be used for certain purposes in a particular order of priority.

The law also requires MDOT to spend 90% of State revenue appropriated annually to the State Trunk Line Fund, less amounts for other priorities, for the preservation of highways, roads, streets, and bridges, and for the payment of debt service on bonds, notes, or other obligations. Of the amounts appropriated for State trunk line projects, MDOT must, where possible, secure pavement warranties for full replacement or appropriate repair for contracted construction work on pavement projects whose cost exceeds \$2.0 million and projects for new construction or reconstruction undertaken after April 1, 2016.

Instead, under the bill, of the amounts appropriated for State trunk line projects, MDOT would have to secure pavement warranties for full replacement or appropriate repair for contracted construction work on pavement construction or reconstruction and capital preventative maintenance projects whose costs exceed \$5.0 million undertaken after April 1, 2016

The Department must prepare an annual report listing all warranties that were secured as described above, indicate whether any of those warranties were redeemed, and list all

pavement projects whose costs exceed \$2.0 million where a warranty was not secured. The bill would eliminate the latter requirement.

The Department must make the report available to the public upon request and must post it on the MDOT website. The report must include the following information:

- The type of project.
- The cost or estimated cost of the project.
- The expected lifespan of the project.
- Whether or not the project met or is currently meeting its expected lifespan.
- If the project failed to meet or is not meeting its expected lifespan, the cause of the failure and replacement or reparation costs.
- The entity responsible for paying the cost of replacing or repairing the project.

The bill would require MDOT to include in the report whether the construction contractor had posted a surety bond or had otherwise warrantied the construction work by voluntarily placing its prequalified status as security for replacement or repair.

In addition, the bill provides that if a construction contractor warranties construction work by voluntarily placing its prequalified status as security for replacement or repairs, and the construction contractor lost its prequalified status because of a warranty claim, MDOT would have to consider the warranty claim and loss of prequalified status when reviewing subsequent applications for prequalified status from the contractor or any associated individual or business entity. The Department could deny applications for prequalified status based on a previous warranty claim that resulted in the loss of prequalified status by the applicant and any individual or business entity associated with the applicant.

"Warranty" would mean one of the following:

- A surety bond in the amount of full replacement or appropriate repair for the contracted construction work as determined by MDOT.
- If the construction contractor has prequalified status, and MDOT consents, a contractual agreement for the construction contractor to fully replace or make appropriate repairs to the contracted construction work as determined by MDOT secured by the construction contractor voluntarily agreeing to surrender its prequalified status as a bidder on subsequent contracts with MDOT until all repairs are completed, as determined by MDOT.

County, City, & Village Pavement Project Warranties & Reporting

The law extends the requirement to secure pavement warranties for replacement or repair on pavement projects to county road commissions, cities, and villages. Of the amounts appropriated for a county primary or local road system or a city or village major or local street system, where possible, a county road commission, city, or village must secure pavement warranties for full replacement or appropriate repair for contracted construction work on pavement projects whose cost exceeds \$2.0 million and projects for new construction or reconstruction undertaken after April 1, 2016, if allowed by the Federal Highway Administration and MDOT.

Under the bill, of the amounts appropriated for those road systems, where possible, a county road commission, city, or village would have to secure pavement warranties for full replacement or appropriate repair for contracted construction work on projects where the cost of pavement-related items as defined by the warranty program exceeded \$2.0 million undertaken after April 1, 2016, if allowed by the Federal Highway Administration and MDOT.

The law requires a county road commission, city, or village to include within an annual report to MDOT a list of all warranties that were secured, and indicate whether any of those

warranties were redeemed. The law also requires the report to list all pavement projects whose cost exceeds \$2.0 million for which a warranty was not secured. Under the bill, the list would have to include all projects where the cost of pavement-related items as defined by the warranty program exceeded \$2.0 million for which a warranty was not secured.

MCL 247.661 et al.

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bill likely would have a positive fiscal impact on the Department because of slightly reduced costs for road and bridge construction and maintenance contracts. The bill would have no fiscal impact on local government.

According to the most recent warranty report, the MDOT has 235 warrantied contracts ranging in contract amounts from \$438,000 to \$223.4 million with an average warrantied contract amount of \$14.0 million and a median amount of \$4.2 million. Six warrantied contracts exceed \$100.0 million while 12 are below the \$2.0 million threshold requirement for a warranty. Of the 235 warrantied contracts, 129 would not require a warranty under the proposed language changes. The largest bond amount for warrantied contracts is 5% of the contract or \$1.0 million, whichever is lower. This means that the larger contracts do not automatically require larger bond amounts; a \$100.0 million dollar contract may have the same bond amount (\$1.0 million) as a \$20.0 million dollar contract. It also should not be assumed that a bond will not be included on a contract just because it is not required under MCL 247.661; however, if MDOT stopped requiring a warranty on every contract below \$5.0 million, the potential savings could be as high as \$17.5 million. Reaching the maximum savings amount would be unlikely. A practical estimate would be closer to \$8.0 million to \$10.0 million over a period of several years.

Fiscal Analyst: Michael Siracuse

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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.