



**Senate Fiscal Agency**  
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House Bill 5167 (Substitute S-2 as passed by the Senate)  
Sponsor: Representative Wayne Schmidt  
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 (MTF) law, to do the following:**

- Make local road agencies subject to similar competitive bidding requirements similar to those that apply to the Michigan Department of Transportation (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.**

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.)

### **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 costing more than \$100,000, to be performed by contract awarded by competitive bidding. The bill would extend this requirement to all construction projects of a local road agency whose costs exceeded \$100,000 for construction or preservation, excluding maintenance. The bill would exempt the installation or upgrade of advanced traffic management and signals from this requirement.

("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.)

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 reported 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, in writing, 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 would have to develop, in conjunction with the Transportation Asset Management Council and MDOT, and implement, a performance-based preventative maintenance 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 (or preventative maintenance, for a local road agency) performed on all highways, streets, and roads under its jurisdiction. The deadline for compliance would be September 30, 2015, for MDOT, and September 30, 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.

Beginning October 1, 2015, a minimum of 20.0% of all money spent by MDOT for maintenance services would have to be for contracts providing for payment based on performance outputs or outcomes associated with the performance rating system. Beginning October 1, 2016, this requirement would apply to a local road agency that received at least \$20.0 million from the MTF in 2013.

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 Requirements

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 similar information, by December 1, 2017, and on December 1 of each subsequent year, to the MDOT Director and the Appropriations Committees.

MCL 247.661c

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bill's requirements for MDOT and certain local road agencies (those that received \$20.0 million or more in Michigan Transportation Fund revenue in 2013) to develop a performance-based maintenance system to improve efficiencies and outcomes would have an indeterminate impact at the State and local levels. There are no available data on the effects of such a statutory mandate. (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. It is unclear whether Genesee County would be affected.)

Currently, all local road agencies must competitively bid out contracts for all construction or preservation projects that cost more than \$100,000. The bill would apply this requirement to all projects that cost more than \$100,000 except those for maintenance.

The bill's requirements for MDOT and certain road agencies to award at least 20% of all funds through contracts for payment based on performance outputs or outcomes would have an indeterminate impact at the State and local levels.

The performance measurement and contract reporting requirements would result in a negative but indeterminate impact at the State and local levels by increasing administrative burdens.

Fiscal Analyst: Glenn Steffens

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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.