

Legislative Analysis



LOCAL ROAD AGENCY ALTERNATIVE CONTRACT DELIVERY METHODS

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House Bill 4970 (H-1) as adopted by committee
Sponsor: Rep. Joseph N. Bellino, Jr.
Committee: Transportation
Complete to 3-4-20

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

SUMMARY:

1951 PA 51 (“Act 51”) is the state statute that largely governs state and local road and bridge programs. Among other things, Act 51 establishes the Michigan Transportation Fund (MTF) as the primary collection and distribution fund for state restricted transportation revenue. Act 51 also establishes requirements related to the use of state restricted transportation funds, including guidance related to contracting by recipients of state restricted transportation funds, including the Michigan Department of Transportation (MDOT) and local road agencies (county road commissions, cities, and villages).

House Bill 4970 would amend Act 51 by adding new section 12d to authorize a county road commission or a county road department to enter into *alternative contract delivery method agreements* with a *private entity* for the design, design, development, financing, maintenance, or operation of a highway, street, road, right-of-way, or bridge.

Alternative contract delivery method agreement would mean a written agreement between the county road commission or county road department and a private entity that relates to the design, development, financing, maintenance, or operation of a highway, street, road, right-of-way, or bridge under the jurisdiction of that county road commission or county road department.

Private entity would mean an individual, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, nonprofit entity, or other business entity.

The bill would limit the use of alternative contract delivery method agreements. Specifically, the bill would prohibit a county road commission or county road department from entering an alternative contract delivery method agreement if the county road commission’s or county road department’s total alternative contract delivery method agreements exceeded 50% of that county road commission’s or county road department’s annual MTF distribution under Section 12 of Act 51. [The bill appears to intend to limit *payments* under alternative contract delivery method agreements to 50% of a county road commission’s or county road department’s MTF distribution.]

The bill would require that alternative contract delivery method agreements provide that the private entity assume all *control and responsibility* for that portion of the highway, street, road, right-of-way, or bridge subject to the alternative contract delivery method

agreement. However, the bill would allow this requirement to be excluded from an alternative contract delivery method agreement. In effect, the bill would make the private entity assumption of control and responsibility the default for alternative contract delivery method agreements.

[Note: The H-1 substitute differs from the bill as introduced in that it would apply only to county road commissions or county road departments; the bill as introduced also applied to cities and villages. The H-1 substitute also differs from the bill as introduced in that it would make the new provisions effective October 1, 2020, rather than on October 1, 2019.]

Proposed MCL 247.662d

FISCAL IMPACT:

The bill deals exclusively with contracting authority of county road commissions and county road departments and would have no direct impact on state government in general or MDOT in particular.

The bill is authorizing only and does not impose any new requirements or mandates on local road agencies.

It is not clear how the bill would affect county road commissions and county road departments. Local road agencies already have authority to contract with private companies to do design, development, financing, maintenance, and operating functions for the roads, streets, and bridges under local road agency jurisdiction. It is not clear what additional authority the bill would grant.

In referencing *alternative contract delivery method agreements*, the bill appears to be referencing certain innovative contracting methods described in a department publication, “Innovative Construction Contracting Guide.” A link to the March 5, 2015, update is found below.¹

MDOT currently limits the use of certain innovative contracting methods on local road agency federal aid projects administered by MDOT. This is a function of MDOT’s role in administering all federal-aid highway funds allocated to Michigan, even those used in road under local road agency jurisdiction. Federal-aid participating projects are currently governed by federal aid program requirements.

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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.

¹ https://www.michigan.gov/documents/mdot/Innovative_Construction_Contracting_340000_7.pdf