

# Legislative Analysis



## **REQUIRE PUBLIC-PRIVATE PARTNERSHIP CONTRACTS FOR NEW OR FULL CONSTRUCTION OF PUBLIC HIGHWAYS OR BRIDGES**

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**House Bill 5369 as introduced**  
**Sponsor: Rep. Steve Carra**  
**Committee: Transportation**  
**Complete to 12-6-21**

### **SUMMARY:**

House Bill 5369 would amend 1951 PA 51 (“Act 51”) to require, beginning 90 days after the bill’s effective date, that the Michigan Department of Transportation (MDOT), with respect to new construction or full reconstruction of state trunkline highways or bridges, obtain a contract that provides for a contractor to design, build, operate, preserve, and maintain the highway segment or bridge for not more than 10 years after the project is completed. The bill would allow, but not require, local road agencies (county road commissions and cities and villages) to obtain such contracts.

The bill would allow the road agency and contractor to negotiate standards for the designing, building, operating, preserving, and maintaining of the highway segment or bridge under the contracts defined in the bill. The bill would allow such contracts to provide for financing of the contract, but would define the term “operate” to exclude operating tolling on the highway segment or bridge.

The bill would allow the road agency to withhold payments or renegotiate the contract with the contractor if the contractor breached the contract.

In addition, under the bill, the lowest contract payment made during any one year of the contract term could not be less than 10% of the highest contract payment made during one year of the contract term. In other words, the bill would prevent backloading of contract payments over the term of the contract.

The bill also would correct citations and cross-references in other sections of the act.

MCL 247.661, 247.662, and 247.663 and proposed MCL 247.663c.

### **FISCAL IMPACT:**

Act 51 is the statute that establishes and governs major state transportation funds and programs. Among other things, Act 51 establishes the Michigan Transportation Fund (MTF); directs the distribution of MTF revenue to other state funds and programs, as well as to local road agencies (county road commissions, cities and villages); prescribes uses of MTF revenue by local road agencies; establishes the State Trunkline Fund (STF); and prescribes uses of STF revenue.

The type of contract described in the bill, in which the contract provides for the contractor to design, build, operate, preserve, maintain, and in some cases finance, a capital road or bridge construction project, is a type of public-private-partnership.

Currently, MDOT trunkline construction and capital preservation projects are performed by private construction contractors employed through a competitive bidding process. The department does not use its own forces to perform capital construction work. Most MDOT construction projects are awarded through a Design-Bid-Build process in which the department is responsible for project design, prequalified private construction contractors submit bids, and the contract is awarded to and performed by the responsive low bidder. MDOT presents “as bid” and “as built” contract information to the State Transportation Commission, including specific information on contract extras and overruns.

In addition to Design-Bid-Build, MDOT also uses several innovative contracting methods, including Design-Build and Construction Manager/General Contractor (CM/GC).

All of these procurement methods involve a competitive bid process. The department does not award capital construction contracts by noncompetitive means. Both Design-Bid-Build and Design-Build contracts are awarded to the responsive low bidder. CM/GC contracts are also competitively bid, although the contract award may be based on other qualification selection criteria and not solely on lowest bid price.

Requiring the use of Design-Build-Operate-Maintain contracts for all new or full-reconstruct trunkline projects would likely increase construction costs in that the contracts proposed in the bill would shift risk from MDOT to the contractors.

MDOT’s trunkline capital construction program for FYs 2017-18 through 2019-20 averaged \$1.3 billion based on the “as-bid” value of construction contracts. MDOT letting statistics for FY 2020-21 report the total value of trunkline construction contracts to be \$1.735 billion.

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