

FIVE-YEAR TRANSPORTATION PROGRAM

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House Bill 5762

Sponsor: Rep. Scott Shackleton

Committee: Transportation

Complete to 5-18-04

A REVISED SUMMARY OF HOUSE BILL 5762 AS INTRODUCED 4-1-04

Section 1a of Public Act 51 of 1951 (MCL 247.651a) currently states: "*All state trunkline highways [...] shall be constructed, maintained, and improved in accordance with [...] this act, under the direction, supervision, and control of the state highway commissioner.*" House Bill 5762, as introduced, would change the reference in this section from "state highway commissioner," to "state transportation commission." The bill would then limit the authority of the State Transportation Commission by inserting at the beginning of the section the phrase: "*Except as otherwise provided in this section*", and by inserting new Subsection 2: "*Beginning with the submittal for the years 2009 to 2013, the 5-year transportation program of the department shall be submitted to the legislature for approval.*" The bill would prohibit the Michigan Department of Transportation from implementing the 5-year transportation program until approved by a majority vote of the Senate and House of Representatives.

House Bill 5762 is tie-barred to Senate Bill 1147 which would similarly amend Section 6a of PA 286 of 1964; Section 6a identifies the powers and duties of the director of the Michigan Department of Transportation.

BACKGROUND INFORMATION:

Authority of the State Transportation Commission and Department Director

In 1978, the people of the state of Michigan passed proposal "M," to amend Article V, Section 28 of the Michigan Constitution. This amendment abolished the State Highway Commission and the office of State Highway Commissioner. In place of those offices, Proposal "M" created the State Transportation Commission "*which shall establish policy for the state transportation department transportation programs and facilities, and other such public works of the state, as provided by law.*" Proposal "M" also created the office of Director of the State Transportation Department as "*the principal executive officer of the department [...] responsible for executing the policy of the State Transportation Commission.*"

Also in 1978, PA 286 of 1964 was amended to reflect the new Constitutional language.¹ Section 2 of Act 286 was amended to read: “*The office of state highway commissioner is abolished and the powers and duties of that office are transferred to and vested in the commission. Any law referring to the state highway commissioner or office of state highway commissioner shall be considered to refer to the department.*”

Although references to the “state highway commissioner” were changed in PA 286 of 1964, some statutes (such as PA 51 of 1951) still contain anachronistic references to the former, now defunct office. As noted above, HB 5762, as introduced, would strike the reference to “state highway commissioner,” and insert “state transportation commission.”

Although the powers and duties of the State Transportation Commission and the department director are addressed in both PA 51 of 1951 and PA 286 of 1964, the powers and duties of the Commission and department director are ultimately derived from Article V, Section 28 of the Michigan Constitution.

Five-Year Program

In February 1999, the Michigan Department of Transportation issued its first Five-year Program. The document identified the department’s highway program investment strategies, as well as specific projects planned for each year between 1999 and 2003.²

The Michigan Department of Transportation has prepared a Five-year Program each year since 1999. The department has variously titled these documents the *Five Year Road and Bridge Program*, and *Five Year Transportation Program*. The document is commonly referred to as the *Five-year Plan*, or *Five-year Program*.³ The department has submitted each Five-year Program to the State Transportation Commission; Commission minutes indicate that the Programs have been variously “approved,” “accepted,” or “supported” by the Commission.⁴

The initial Five-year Program was a department initiative, not a legislatively-required report. The Legislature subsequently included boilerplate language in transportation

¹ The purpose of PA 286 of 1964, as amended, is expressed in its title as follows: “An ACT to provide for the organization, powers, and duties of the state transportation commission and the state transportation department; to provide for the appointment, powers, and duties of the state transportation director; to abolish the office of state highway commissioner and the commissioner’s advisory board and to transfer their powers and duties; to provide for penalties and remedies; and to repeal certain acts and parts of acts”. The 1978 amendments were made in PA 484 of 1978.

² The 1999-2003 Five-Year Road and Bridge Program was one of the first department publications to discuss the department’s long-term system goals. Those goals, adopted by the State Transportation Commission at its December 11, 1997 workshop, were as follows: for highways: 95% of trunkline freeways, and 85% of non-freeway trunklines in good condition by 2007; for bridges: 95% of freeway bridges, and 85% of non-freeway bridges in good condition by 2007. Subsequent Five-year Program documents have discussed the department’s progress towards those goals.

³ For style consistency this analysis will refer to the document as the *Five-year Program*, unless quoting from some other reference.

⁴ See State Transportation Commission meeting minutes: January 28, 1999; December 20, 1999; January 17, 2001; March 28, 2002; June 26, 2003; and January 29, 2004.

appropriations bills requiring the department to submit its “rolling 5-year plan” to the Legislature.⁵ The specific language of the original boilerplate section from the FY 1999-2000 transportation appropriations act (PA 136 of 1999) is as follows:

Sec. 307. Before February 1 of each year, the department will provide to the legislature and to the house and senate fiscal agencies its rolling 5-year plan listing by county or by county road commission all highway construction projects for the fiscal year and all expected projects for the ensuing fiscal years.

With minor modifications, this section has been included in each subsequent transportation appropriations act.

The department has issued six Five-year Program documents. The most recent edition was issued in January 2004, and included public transit, rail, aviation, and non-motorized elements, as well as road and bridge programs. This document, which the department identified as the Five Year Transportation Program, covered the five-year period 2004 through 2008. A copy of this document can be found on the department’s website at: http://www.michigan.gov/mdot/0,1607,7-151-9622_11045_12719---,00.html

House Bill 5762 would amend Section 1a of Public Act 51 of 1951 (Act 51) to require that, beginning with the submittal for the years 2009 to 2013, the department’s 5-year program be submitted to the Legislature for approval.

Five-year Program and Federal Planning Requirements

Federal requirements for the federal-aid highway program are codified in Title 23 of the Code of Federal Regulations (23 CFR). Section 450 of 23 CFR requires states to carry-out a “*continuing, comprehensive, and intermodal statewide transportation planning process, including the development of a statewide transportation plan and transportation improvement program.*” In the urbanized areas of the state this planning process is administered by the designated metropolitan planning organization (MPO).

Federal funds participate in state projects only if the state is in compliance with the planning requirements of 23 CFR 450.

Page 6 of the first (1999-2003) Five-year Program indicates that the program is “*based on feedback from our customers – the motoring public, business, local governments, and legislators.*” The document goes on to state: “*The Five Year Program is consistent with federally-approved state and local urban area long range plans. The early years of the plan are also consistent with the MDOT State Transportation Improvement Program*

⁵ A listing of highway construction projects, in a substantially different format from the Five-year Program, had previously been required by appropriations boilerplate. PA 133 of 1995 (the FY 1995-96 transportation appropriations act) included Section 310 which required the department to provide to the legislature by January 1, 1996, a listing by county or county road commission all highway construction projects for the fiscal year and a list of expected projects for the ensuing year. A similar reporting requirement was included in the subsequent three appropriations acts. After publication of the first Five-year Program, this requirement was dropped, and replaced with the new language specifically referencing the “rolling 5-year plan.”

(1998-2000 STIP), and as the STIP is revised to include later years, it will reflect the projects listed here. In keeping with that, the Five Year Program also adheres to the requirements of the department's federally-approved public involvement plan."

In March 1999, Department Director James DeSana wrote "...be assured that all of the projects included in the [Five-year Program] document are consistent with both the State Transportation Improvement Program (STIP), and the Metropolitan Planning Organization Transportation Improvement Program (MPO-TIP)." ⁶

Act 51 and Legislative Program Approval

A 1976 amendment to Act 51 (PA 297 of 1976) added Section 10h which required the State Highway Commission to report to the Legislature, the Governor, and the Auditor General the projects, eligible authorities, and eligible governmental agencies certified as eligible for funding from the General Transportation Fund (predecessor to the Comprehensive Transportation Fund). The amendment also provided for the Legislature to approve or reject the list of projects and estimated allocations by concurrent resolution adopted by record roll call vote. Subsequently amendment of Section 10h (PA 444 of 1978) expanded the legislative approval process. Public Act 58 of 1979 further amended this legislative approval language to make specific reference to distributions from the Comprehensive Transportation Fund and the State Trunkline Fund.

Public Act 438 of 1982 again amended the section, retaining a fairly involved reporting requirement, but deleting the legislative approval requirements. The department has indicated that reporting requirements of Section 10h are satisfied by the STIP. ⁷

FISCAL IMPACT:

As noted above, House Bill 5762 would amend Section 1a of PA 51 of 1951 to require that, beginning with the submittal for the years 2009 to 2013, the department's "5-year transportation program" be submitted to the Legislature for approval. The bill would prohibit the Michigan Department of Transportation from implementing the 5-year transportation program until approved by a majority vote of the Senate and House of Representatives.

It is not clear from the bill what would happen if the Legislature did not approve, or delayed approving, the department's Five-year Program. As a result, the fiscal impact of this legislation can not be readily determined at this time.

Fiscal Analyst: William E. Hamilton

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

⁶ March/April 1999 *MDOT Today*

⁷ See page 19, Office of Auditor General Report on the Bureau of Urban and Public Transportation, November 1998 (OAG 59-180-97).