

# Legislative Analysis

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## INFRASTRUCTURE ASSET MANAGEMENT

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**House Bill 5335 as introduced**  
**Sponsor: Rep. Rob VerHeulen**

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

**House Bill 5406 as introduced**  
**Sponsor: Rep. Roger Victory**

**House Bill 5408 as introduced**  
**Sponsor: Rep. Triston Cole**

**Committee: Transportation and Infrastructure**  
**Complete to 2-12-18**

### BRIEF SUMMARY:

House Bill 5335 proposes a new act to create the Michigan Infrastructure Council within the Department of Treasury and to specify its membership and duties.

House Bill 5406 would amend the Natural Resources and Environmental Protection Act to create the Water Asset Management Council within the Department of Environmental Quality and specify its membership and duties.

House Bill 5408 would amend Public Act 51 of 1951 to revise provisions regarding the Transportation Asset Management Council created under Section 9a of that act.

### BACKGROUND:

Taken together, the bills propose a statewide *asset management* approach to Michigan's water, energy, transportation, and communications infrastructure and create interrelated councils to coordinate planning for those infrastructure systems at local, regional, and statewide levels. The bills are understood to reflect recommendations of the 21st Century Infrastructure Commission created by Executive Order 2016-5, which submitted its final report to the governor and the legislature on November 30, 2016.<sup>1</sup>

The bills are also seen as building upon the Regional Infrastructure Asset Management Pilot Program created by Executive Directive 2017-1.<sup>2</sup> The pilot program has involved local and regional governmental entities and stakeholders in both southeast Michigan (the Detroit Metro Prosperity Region) and west Michigan (the West Michigan Prosperity Alliance) in developing and coordinating regional asset management processes.<sup>3</sup>

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<sup>1</sup>[https://www.michigan.gov/documents/snyder/21st\\_Century\\_Infrastructure\\_Commission\\_Final\\_Report\\_1\\_544276\\_7.pdf](https://www.michigan.gov/documents/snyder/21st_Century_Infrastructure_Commission_Final_Report_1_544276_7.pdf)

<sup>2</sup> [https://www.michigan.gov/documents/snyder/Executive\\_Directive\\_2017-1\\_556475\\_7.pdf](https://www.michigan.gov/documents/snyder/Executive_Directive_2017-1_556475_7.pdf)

<sup>3</sup> See <http://www.gvmc.org/documents/Infrastructure%20Pilot-July%202017v2.pdf>

Under the bills, *asset* would mean infrastructure related to water, transportation, energy, or communications, and would include water supply systems, sewer systems, drains and stormwater systems, roads, bridges, electricity and natural gas networks, and broadband and communication systems. (HBs 5406 and 5408 specifically address water assets and transportation assets, respectively.)

*Asset management* under the bills would mean an ongoing process of maintaining, preserving, upgrading, and operating physical assets cost-effectively, based on a continuous physical inventory and condition assessment to achieve standards of system performance that reflect asset management principles for asset preservation and sustainability, operations, capacity consistent with local needs, and identified levels of service.<sup>4</sup>

## **DETAILED SUMMARY:**

**House Bill 5335** proposes a new act, the “Michigan Infrastructure Council Act,” to create the Michigan Infrastructure Council and to specify its membership and duties.

### Composition of the Michigan Infrastructure Council

The Michigan Infrastructure Council would be created within the Department of Treasury and would consist of nine voting members and eight nonvoting members.

The nine voting members would be experts in regional asset management planning across jurisdictions and infrastructure sectors; financial and procurement experts; and/or asset management experts with knowledge and expertise in the planning, design, construction, management, operation, and maintenance of transportation, energy, water, and communications infrastructure.

The voting members would be appointed within 60 days after the effective date of the new act: five by the governor, and one each by the senate majority leader, the senate minority leader, the speaker of the house, and the house minority leader. The voting members would serve three-year terms, though members first appointed would serve staggered one-, two-, or three-year terms.

The following state officials (or their designees) would serve as the council's eight nonvoting members:

- The state treasurer.
- The chairperson of the Water Asset Management Council created by House Bill 5406.
- The chairperson of the Transportation Asset Management Council created in Public Act 51 of 1951.
- The director of the Department of Technology, Management, and Budget.
- The director of the Michigan Department of Transportation.

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<sup>4</sup> For a general discussion of asset management and its early history as a public policy concept, see the 2001 HFA Fiscal Forum, “Transportation: Asset Management”: <https://www.house.mi.gov/hfa/Archives/PDF/asset.pdf>

- The director of the Department of Environmental Quality.
- The director of the Department of Natural Resources.
- The chairperson of the Michigan Public Service Commission.

Within 90 days after the effective date of the new act, the governor would call the council's first meeting, at which the council would elect a chairperson and other officers it considers appropriate. Thereafter, the council would meet at least quarterly, though it could meet more frequently at the call of the chair or upon a request by three or more members.

A majority of voting members and a majority of nonvoting members would constitute a quorum to transact council business, and an affirmative majority vote would be required for official council action. Council business would be performed at a public meeting held in compliance with the Open Meetings Act, and the council's writings and records would be subject to the Freedom of Information Act.

Members of the council would serve without compensation but could be reimbursed for expenses incurred in performing their duties. The chair of the council could recommend that a member be removed for incompetence, dereliction of duty, malfeasance, or any other reason the chair considers appropriate. Council vacancies would be filled for the unexpired term in the same manner as the original appointment.

Qualified administrative and technical staff for the council would be provided by the Departments of Technology, Management, and Budget; Environmental Quality; Transportation; Natural Resources; and Treasury.

The Department of Technology, Management, and Budget would serve as the central data storage agency for the statewide database created by the council.

#### Duties of the Michigan Infrastructure Council

The Michigan Infrastructure Council would do all of the following:

- Develop a multiyear program, work plan, budget, and funding recommendation for asset management, with an emphasis on coordination and integration across asset classes and regions. (An *asset class* would mean a single type of asset, including its network and all associated appurtenances critical to its performance.) This recommendation would have to be updated and provided to the governor and the legislature by September 30 of each year.
- Prepare an annual report on the current statewide asset management assessment that tracks progress on established performance goals. (*Performance goals* would mean standards of system performance that reflect asset management principles for asset preservation and sustainability, operations, capacity consistent with local needs, and identified levels of service.)
- Undertake research and advise on matters related to asset management, including financing models, best practices, impediments to delivery, emerging technology, information technology advancements, opportunities for greater coordination and collaboration, right-sizing and cost-efficiencies, and aligning state incentives to asset performance improvement goals.

Within six months after its first meeting, the council would have to evaluate the Regional Infrastructure Asset Management Pilot Program and the findings of the 21st Century Infrastructure Commission (see **Background**, above) and develop and publish a three-year strategy for establishing a statewide integrated asset management system. The strategy would include at least all of the following:

- A determination of the appropriate assets within the asset classes.
- Consistent data standards and definitions for each asset class.
- A process to coordinate asset management across assets and asset owners at the regional level.
- Procedures for data storage, collecting, updating, and reporting.
- Recommendations on the appropriate level of financial support for various local and regional asset management activities and participation in an integrated statewide asset management system.
- A process to coordinate the planning efforts of state-level planning entities.
- Coordination to ensure that training and education programs on asset management principles and plan development, use of the statewide database, ongoing user support, and executive branch asset management requirements are consistent across various assets and the various entities providing that training.
- Statewide performance goals for appropriate assets and identification of regional and statewide progress toward meeting performance goals.
- Protocols for data security and accuracy at local, regional, and state levels.
- Consistent and coordinated requirements for asset management plans among the state-level agencies imposing those requirements. (An *asset management plan* would mean a set of procedures to manage assets through their life cycles, based on principles of life-cycle costing.)

Three years after the effective date of the new act, the council would start the second phase of the statewide system for asset management implementation, which would include at least:

- Predictive analytics to forecast asset condition.
- A public dashboard of state, regional, and local system performance across asset classes.
- A 30-year integrated strategy developed and published by the council. This strategy would be updated every five years and would have to include:
  - Current statewide condition assessment and infrastructure priorities across asset classes, tracked progress on established performance goals, and net changes in asset value.
  - Investment needs to reach targeted overall system ratings and performance goals.
  - Network intelligence in asset management planning and monitoring.

**House Bill 5406** would amend the Natural Resources and Environmental Protection Act by adding Part 50 (“Water Asset Management Council”), to create the Water Asset Management Council within the Department of Environmental Quality (DEQ) and to specify its membership and duties.

### Composition of the Water Asset Management Council

The Water Asset Management Council would consist of nine voting members who are appointed by, and who serve at the pleasure of, the Michigan Infrastructure Council created by HB 5335. Members would represent academia and the public, nonprofit, and private sectors and would include individuals representing the state, regional and local governments, water, sewer, and stormwater agencies, and environmental organizations. The Water Asset Management Council could appoint its central data storage agency as a nonvoting member.

The council's voting members would serve three-year terms, though members first appointed would serve staggered one-, two-, or three-year terms. The council would select a chairperson from among its members at its first meeting. Qualified administrative staff and technical assistance for the council would be provided by the DEQ. The council could also appoint subcommittees whose members serve as needed to provide research on issues and projects as determined by the council.

### Duties of the Water Asset Management Council

The Water Asset Management Council would do the following:

- Advise the Michigan Infrastructure Council on a statewide water asset management strategy and the tools needed to implement a strategy for all water, sewer, and stormwater agencies and asset owners.
- Promote and oversee the implementation of recommendations from the Regional Infrastructure Asset Management Pilot Program at a state level for water, sewer, and stormwater infrastructure.

By October 1, 2019, the council would have to develop a template for an asset management plan for use by water, sewer, and stormwater agencies submitting asset management plans to the council for approval. The template must ensure that local asset management plans include the following components:

- An **asset inventory** including the location, material, size, and condition of the assets in a format that allows for digital mapping.
- A **level of service analysis** including performance goals that address such things as reliability, safety, capacity, affordability, environmental impacts, and legal and regulatory requirements.
- A **risk of failure analysis** identifying the probability and criticality of failure of the most critical assets and includes contingency plans.
- **Anticipated revenues and expenses**, including expenditures for repair, improvement, or replacement of assets.
- A **performance outcomes analysis** that looks at how the investment strategy achieves the performance goals and desired level of service and accounts for any gaps between what is possible and what is desired.
- A description of **plans to coordinate** with other asset owners to reduce duplication of effort regarding infrastructure maintenance.
- **Proof of acceptance**, certification, or adoption of the local asset management plans by the jurisdiction's governing body.

By October 1, 2019, the council would also have to establish a schedule for submission of asset management plans for water, sewer, and stormwater agencies and asset owners. The schedule would include:

- Each water, sewer, and stormwater agency and asset owner must submit an asset management plan to the council beginning October 1, 2020. The plans must cover and be valid for at least three years and must be consistent with the asset management template provided by the council.
- The council must review each asset management plan within six months of its submission. As part of its review, the council would compare submitted plans to the minimal requirements provided by the bill and by the council's template.
- If the council determines that a submitted plan does not meet the minimal standards and the DEQ agrees, the submitting entity would have six months to submit an acceptable asset management plan.
- Approved asset management plans must be implemented by October 1, 2024.

Each water, sewer, and stormwater agency and asset owner would have to report to the council annually on how its capital improvement plans are meeting its investment goals. State funding could be provided to water, sewer, and stormwater agencies and asset owners to implement the provisions of the bill at a cost-share determined by the council. The DEQ and each drinking water, sewer, and stormwater agency and asset owner would have to keep records of all work performed and funds expended.

The council would submit to the Michigan Infrastructure Council an annual report on asset condition and investment that includes a summary analysis of the asset management plans received from drinking water, sewer, and stormwater entities. The report would include recommendations on drinking water, sewer, and stormwater condition goals and analysis of how the utilities are meeting those goals. The report would have to be consistent with analytic categories and reporting processes established by the Michigan Infrastructure Council.

The Water Asset Management Council would also prepare an annual report on the activities conducted during the preceding year and the expenditures of funds related to the activities identified by the council. The report would have to be submitted to the Michigan Infrastructure Council and the legislature by May 2 of each year.

Finally, the council would identify training needs to develop proficiency in using a multi-asset management system and training needs to identify asset system conditions based on a statewide measure. The council would cooperate and collaborate with the Transportation Asset Management Council on planning, reporting, and training.

Proposed MCL 324.5001 et seq.

**House Bill 5408** would amend Public Act 51 of 1951 (“Act 51”) to revise provisions regarding the Transportation Asset Management Council.

Public Act 499 of 2002 amended Section 9a of Act 51 to establish the Transportation Asset Management Council within the State Transportation Commission. Under Public Act 499, the council was charged with “advising the [State Transportation] Commission on a statewide asset management strategy and the processes and necessary tools needed to implement such a strategy beginning with the federal-aid eligible highway system.”

#### Revisions to Transportation Asset Management Council Membership

House Bill 5408 would move the Transportation Asset Management Council from the State Transportation Commission to the Michigan Infrastructure Council, and would require the funding currently appropriated annually to the State Transportation Commission to support the Transportation Asset Management Council to be appropriated instead to the Michigan Infrastructure Council for that purpose.

The bill would increase the voting membership of the Transportation Asset Management Council from 10 to 12 and specify that members serve at the pleasure of the Michigan Infrastructure Council. Currently, members of the council are appointed from specifically named organizations, such as the Michigan Municipal League or the Michigan Association of Counties. The bill would instead describe this group of council members more generally as “members from associations representing local units of government.” The two additional council members added by the bill would be appointed from this group.

Currently, the council may create a technical advisory panel whose members are appointed for three-year terms from transportation construction associations and related transportation road interests. Under the bill, the council could appoint subcommittees or technical advisory committees whose members would serve as needed to provide research on issues and projects as directed by the council. These subcommittees and technical committees would be advisory only, and not binding on the council.

#### Transportation Asset Management Council Duties

Under the bill, the Transportation Asset Management Council would advise the State Transportation Commission and the Michigan Infrastructure Council on a statewide asset management strategy and its implementation, beginning with the federal-aid eligible highway system and any federal performance management requirements that might be imposed as a condition of federal aid. The council would also advise those entities regarding the pavement and bridge condition of the federal-aid eligible highway system and infrastructure assets that impact performance, safety, or risk management.

The Michigan Infrastructure Council could direct the council to collect data for the remaining non-federal-aid eligible highway system once the federal-aid asset management work is done. Costs of data collection, analysis, or submittal that is not related to the federal-aid eligible highway system would be borne by the owner of the data. Local road agencies could request a regional authority to collect data on local roads or streets within

the region if money is left over after the region's federal-aid eligible highway data collection efforts are completed.

By October 1, 2019, the council would have to develop an asset management plan template for use by local road agencies responsible for 100 or more certified miles of road. The template must ensure that local asset management plans include the following components:

- An **asset inventory** including the location, material, size, and condition of the assets in a format that allows for digital mapping.
- **Performance goals**, including the desired condition and performance of the assets. The performance goals must be consistent with federal requirements regarding federal-aid eligible roads and bridges.
- A **risk of failure analysis** identifying the probability and criticality of failure of the most critical assets and includes contingency plans.
- **Anticipated revenues and expenses**, including expenditures for repair, improvement, or replacement of assets.
- A **performance outcomes analysis** that looks at how the investment strategy achieves the performance goals and desired level of service and accounts for any gaps between what is possible and what is desired.
- A description of **plans to coordinate** with other asset owners to reduce duplication of effort regarding infrastructure maintenance.
- **Proof of acceptance**, certification, or adoption of the local asset management plans by the jurisdiction's governing body.

The bill would require, as a condition to receiving funds under Act 51, that MDOT, each county road commission, and each city and village in the state annually submit to the council a report on infrastructure conditions and investment that includes a multiyear program developed through the asset management process. Projects in the multiyear program of a reporting entity would be required to be consistent with that entity's own asset management plan and be reported consistent with categories established by the council, as follows:

- For a local road agency responsible for less than 100 certified miles of road, this requirement would apply beginning the effective date of the bill.
- For MDOT, this requirement would apply beginning January 1, 2020.
- For a local road agency responsible for 100 or more certified miles of road, this requirement would apply beginning January 1, 2022.

The bill would also require MDOT to submit its transportation asset management plan to the Federal Highway Administration for approval as provided in 23 USC 119(e).

By October 1, 2019, the council would have to establish a schedule for submission of asset management plans by local road agencies responsible for 100 or more certified miles of road. The schedule would ensure that 1/3 of those local road agencies submit an asset management plan each year. Beginning October 1, 2020, these local road agencies would begin submitting their asset management plans to the council according to the schedule. The plans would have to cover at least three years, and they would have to be consistent with the template developed by the council. If a local road agency required to submit a plan

has not done so by October 1, 2024, that agency would not receive funding under Act 51 until it submits a satisfactory plan.

The council would review each asset management plan within six months of its submission. As part of its review, the council would compare submitted plans to the minimal requirements provided by the bill and the council's template. If the council determines that a submitted plan does not meet the minimal standards and MDOT agrees, the submitting agency would have six months to submit an acceptable asset management plan.

Beginning October 1, 2025, a local road agency responsible for 100 or more certified miles of road that cannot demonstrate annual progress toward achieving the performance goals described in its asset management plan would be prohibited from shifting funds it receives under Act 51 from a county primary road system to a county local road system or from a city major street system to a city local street system, as applicable.

Finally, under current law, MDOT staff assigned to the council must submit an annual report to the governor and legislature that includes the results of the prior year's council activities, the expenditure of funds related to council activities, and an overview of the council's activities for the following year. The bill would add the Michigan Infrastructure Council to the designated recipients of the report and would require that the report also include a summary analysis of asset management plans and annual reports received from local road agencies, a determination of how investments are achieving performance goals and desired levels of service, and an identification of additional steps necessary to achieve performance goals and desired levels of service.

HB 5408 would take effect 90 days after its enactment.

MCL 247.659a

#### **Tie-bars**

House Bill 5335 is tie-barred to both HBs 5406 and 5408, which means that it could not take effect unless all three bills were enacted into law. House Bill 5406 is tie-barred to HB 5335, meaning that it could not take effect unless HB 5335 were enacted into law.

#### **FISCAL IMPACT:**

House Bill 5335 would create a new Michigan Infrastructure Council in the Department of Treasury. Members on the council would serve without pay; however, the bill would require the Departments of Technology, Management, and Budget; Transportation; Environmental Quality; Natural Resources; and Treasury to provide qualified and technical staff to the council. Additionally, the Department of Technology, Management, and Budget would be required to serve as the central data storage agency. Personnel and services provided by the requisite departments would increase costs for those departments by an unknown amount. Any cost increase would be directly related to the time and amount of resources that were necessary from each department. Presumably, funds appropriated to

the Michigan Infrastructure Council (described below) could be used to offset costs to any of the departments.

The council would also incur costs associated with establishing and organizing the council; undertaking research and advising on matters related to asset management; evaluating existing asset management programs; developing a multiyear program, work plan, and budgeting and funding recommendations for asset management; and development and publishing an annual report on the current statewide asset management assessment.

Public Act 201 of 2017, a FY 2017-18 supplemental appropriations act, appropriated \$1.5 million in one-time appropriations from the Michigan Infrastructure Fund to the Department of Treasury to fund the activities, costs, and expenses of the Michigan Infrastructure Council. Any costs exceeding this appropriation would need to be funded through further appropriations.

**House Bill 5406** would increase costs for the Department of Environmental Quality by requiring the department to provide administrative and technical support to a new Water Asset Management Council; the extent of this cost increase is unclear. The department would also be charged with reviewing asset management plans that the council deems to be below established standards. The bill provides for water, sewer, and stormwater agencies and asset owners to share plan implementation costs with the state and specifies that the DEQ shall receive “an annual appropriation” to cover program costs but does not provide additional details on fund source or appropriation amount. Consequently, it is unclear if the bill would provide additional revenue to the department to address the aforementioned costs.

Local units of government that also function as drinking water, sewer, and stormwater agencies and asset owners may also realize increased costs as a result of being subject to the asset management plan requirements included in the bill. The bill also provides for cost-sharing with the state, however, so it is unclear what the net fiscal impact on local units of government would be.

**House Bill 5408** would amend Section 9a of Public Act 51 of 1951 (“Act 51”), which established and defined the powers and duties of the Transportation Asset Management Council. In order to understand the potential impacts of House Bill 5408, it may be useful to describe the history of statutory provisions related to the council and related council activities.

Public Act 499 of 2002 amended Section 9a of Act 51 to establish the Transportation Asset Management Council within the State Transportation Commission. Under Public Act 499, the council was charged with “advising the [State Transportation] Commission on a statewide asset management strategy and the processes and necessary tools needed to implement such a strategy beginning with the federal-aid eligible highway system.”

Public Act 499 defined “asset management” as “an ongoing process of maintaining, upgrading, and operating physical assets cost effectively, based on a continuous physical

inventory and condition assessment.” The act also identified the intent of the council as the provision of “a coordinated, unified effort by the various roadway agencies within the state.”

Among other things, Public Act 499 required the council to report to the State Transportation Commission, the Legislature, and the House and Senate Committees on Transportation by May 2 of each year. The council issued its first report in 2003. (Annual reports are available on the council website: <https://www.michigan.gov/tamc/0,7308,7-356-82495---,00.html> )

The council continues to meet on a regular basis. Among other things, the council oversees data collection and analysis, reports annually on changes in statewide pavement condition, and provides training to local road agencies.

From the council’s inception, its activities have been funded from a specific Asset Management Council appropriation in the state transportation budget. The FY 2017-18 baseline appropriation of \$1.9 million, from the Michigan Transportation Fund, was used primarily for data collection and analysis as well as for training activities. MDOT provides staff support and technical assistance to the council from funds appropriated in other line items within the department’s budget.

Public Act 499 also required that, starting on October 1, 2003, all state road agencies prepare and publish an annual multi-year program, based on long-range plans and developed through the use of the asset management process described by the act.

As described in the body of this analysis, House Bill 5408 would make a number of changes to Section 9a with respect to the Transportation Asset Management Council. Some of the changes appear to be primarily administrative and would not have a substantive impact on council activities. However, the bill also appears to establish additional planning and reporting requirements for the council and for local road agencies. The costs of those additional requirements cannot be readily estimated at this time.

The bill would, “as a condition for receiving funds under this act [i.e., Act 51],” require the department and each local road agency to submit a report “on infrastructure condition and investment.” A required report element would be “a multiyear program developed through the asset management process described [in Section 9a].”

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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.