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BILL ANALYSIS

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Senate Bill 465 (as enacted) **PUBLIC ACT 49 of 2022**
Senate Bill 466 (as enacted) **PUBLIC ACT 50 of 2022**
Sponsor: Senator Jim Runestad (S.B. 465)
Senator Michael MacDonald (S.B. 466)
Senate Committee: Transportation and Infrastructure
House Committee: Transportation

Date Completed: 12-20-22

RATIONALE

Michigan has increased its investment in roadway construction and repair in recent years with policies such as the 2015 road funding package and Governor Whitmer's bonding program. With this increased investment has come an interest in using road funding more efficiently. Some people believe that Federal funding for road projects can be used more efficiently by allowing for Federal aid swaps, a policy in which a state transportation department provides state funding to local road agencies in exchange for the Federal funding those agencies received. Accordingly, it had been suggested that the Michigan Department of Transportation (MDOT) be required to award local road agencies State road funding in exchange for Federal aid obligation authority allocated by the Federal government to those local road agencies.

CONTENT

Senate Bill 465 amended the Michigan Transportation Fund law to do the following:

- **Require MDOT to award money from the State Trunk Line Fund (STF) to local road agencies in exchange for Federal aid obligation authority allocated to local-agency projects, if allowed by Federal law and rules.**
- **Specify certain amounts of money that MDOT must make available from the STF in exchange for Federal aid obligation authority awarded to local road agencies unless the amounts must be reduced to match all available Federal aid.**
- **Require MDOT, if it reduces the amount of money available from the STF, to submit a letter to the Michigan Senate and House of Representatives explaining why it is unable to match available Federal aid or perform essential functions.**
- **Allow local road agencies to apply for State money in exchange for 100% of the Federal aid obligation authority allocated by MDOT to a local road agency project in a metropolitan planning organization transportation improvement program or in the rural transportation improvement program.**
- **Require money to be exchanged with local road agencies for Federal aid obligation authority in an amount equal to 90 cents per dollar of all Federal aid obligation authority allocated.**
- **Require money exchanged for Federal aid obligation authority to be spent within three years after the exchange.**
- **Prescribe limitations on the number and total costs of force-account projects that a local road agency that is awarded State money in exchange for Federal aid obligation authority may undertake per fiscal year.**
- **Require contracts between local road agencies and contractors for projects funded from State money exchanged for Federal aid obligation authority to contain a Federal wage and benefits schedule**.

Senate Bill 466 amended the Michigan Transportation Fund Law to require a certain percentage of the Michigan Transportation Fund (MTF), after other deductions, to be appropriated and apportioned for the purposes of awarding money to local road agencies in exchange for Federal aid obligation authority as provided by Senate Bill 465.

The bills took effect October 1, 2022.

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Under the bill, subject to provisions described below, MDOT must award money from the STF to local road agencies in exchange for Federal aid obligation authority allocated to local-agency projects, if allowed by Federal law and rules. The Department must make available money from the STF in exchange for Federal aid obligation authority awarded to local road agencies in the amounts described below unless the amount must be reduced to match all available Federal aid including reapportionments, redistributions, or other awards of Federal aid obligation authority or to provide for debt service, the minimum State-funded program, routine maintenance of State trunk lines, administration, and all other functions of MDOT. If MDOT reduces the amount of money available from the STF, it must submit a letter to the chairpersons of the Senate and House transportation committees, the chairpersons of the Senate and House transportation appropriations subcommittees, the Senate Majority Leader, and the Speaker of the House of Representatives explaining why it is unable to match available Federal aid or perform its essential functions.

"Federal aid obligation authority" means Federal aid obligation authority or an equal amount of contract authority. "Minimum State-funded program" includes preservation, preventative maintenance, maintenance, operations, safety, administration, and all other essential functions not eligible for Federal aid, as determined by MDOT.

Except if reduced as described above, the amount of money available from the STF in exchange for Federal aid obligation authority awarded to local road agencies must be at least the following:

-- In the fiscal year ending September 30, 2023, $25.0 million.
-- In the fiscal year ending September 30, 2024, $35.0 million.
-- In the fiscal year ending September 30, 2025, and in every subsequent fiscal year, $45.0 million.

The bill allows local road agencies to apply for State money in exchange for 100% of the Federal aid obligation authority allocated by MDOT to a local road agency project in a metropolitan planning organization transportation improvement program or in the rural transportation improvement program, in the manner and on the schedule determined by MDOT. The Department must publish announcements, instructions, forms, and deadlines on its website. If applications request more State money than is available to be exchanged in a fiscal year, awards must be made in the order received.

State money must be exchanged with local road agencies for Federal aid obligation authority in an amount equal to 90 cents per dollar of all Federal aid obligation authority allocated in the approved transportation improvement plan to each project for which authority is exchanged. The Department must pay State money exchanged for Federal aid obligation authority to local road agencies when sufficient Federal aid obligation authority is received from the Federal Highway Administration (FHWA) to cover the exchanges, not including any year-end redistributions.

The bill requires the first priority for the use of State money exchanged for Federal aid obligation authority to be the local road agency project for which the Federal aid obligation authority is originally proposed. If the State money exchanged for Federal aid obligation authority exceeds the cost of the original project, the surplus must be applied to Federal-aid-eligible projects by the local road agency or returned to MDOT. Completed work must be reported to the Transportation Asset Management Council investment reporting tool or any successor system.

State money exchanged for Federal aid obligation authority must be spent within three years after the exchange. If the project for which Federal aid obligation authority is exchanged cannot be completed within three years, the local road agency must notify MDOT and its metropolitan planning agency or rural task force and identify an alternate project eligible for Federal aid that can be constructed within the original three-year period, or return the money to MDOT.

In accordance with 23 USC 112, 23 CFR 635.104(b), and Federal Highway Administration Directive 5060.1, a local road agency that is awarded State money in exchange for Federal aid obligation authority must follow the policies adopted by MDOT that govern the number of force accounts and the total amount of money spent on force account project cost authorizations in a fiscal year. For each fiscal year in which a local road agency is awarded State money in exchange for Federal aid obligation authority, the local road agency must certify to MDOT that the limits on force accounts are not exceeded. The bill specifies that these provisions apply only to State money awarded in exchange for Federal aid obligation authority and not to any money garnered through any other means.

(Generally, 23 USC 112 and 23 CFR 635.104(b) require state transportation departments or other recipients of Federal funding for road construction projects to competitively bid out the work for the project, unless the department or other recipient demonstrates that another method for the completion of the work, such as the use of force accounts, is more cost effective. Force account is the use of a department's or other recipient's own labor force to perform work on a project. Federal Highway Administration Directive 5060.1 provides the FHWA's policy considerations for determining if a force account is more cost effective than competitive bidding of a road construction project that receives Federal funding.)

Contracts between local road agencies and contractors for projects funded from State money exchanged for Federal aid obligation authority must contain a Federal wage and benefits schedule consistent with, and incorporating the requirements of, Section IV of Form FHWA 1273, revised May 1, 2012, or any successor form, and must provide that covered workers were third-party beneficiaries of these contract requirements. (Section IV of Form 1273 applies to all Federal-aid construction projects and prescribes minimum wages consistent with wage determinations of the Secretary of Labor and other requirements concerning wage withholding and payroll processes.)

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Generally, the law establishes the MTF and provides the manner in which apportioned and appropriated money within the MTF must be distributed. After the deduction of certain amounts specified by the Act, the Act requires the balance of the MTF to be appropriated and apportioned as follows:

-- 39.1% to the county road commissions of the State.
-- 21.8% to the cities and villages of the State.
-- 39.1% to the STF for the purposes described in Section 11 of the law.

(Section 11 of the law establishes the STF and requires money deposited into the Fund to be used for certain purposes, including: 1) the payment of bonds, notes, or other obligations, 2) the transfer of money as appropriated to the Transportation Economic Development Fund, 3) the transfer of money as appropriated to the rail grade crossing account, 4) the transfer of money as appropriated to the grade crossing surface account, 5) the total operating expenses of the STF, 6) and for the preservation, reconstruction, and improvement of State trunk line highways and bridges.)

Under the bill, the percentage of the balance of the MTF required to be appropriated and apportioned to the STF for the purposes in Section 11 of the law also must be appropriated and apportioned for the purposes of awarding money to local road agencies in exchange for

Federal aid obligation authority as provided in Section 10o(5) (which Senate Bill 465 amended).

MCL 247.660o (S.B. 465)
247.660 (S.B 466)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to testimony before the Senate Committee on Transportation and Infrastructure, MDOT can use Federal road funding more efficiently than local road agencies. Federal funding comes with certain standards and requirements that a recipient must comply with, such as specific requirements that a state or local road agency must meet to use force accounts. Reports indicate that a local road agency's costs can increase by 20 to 30% when using Federal funding for road projects because of these compliance requirements. Comparatively, reports indicate that MDOT's costs only increase by 10 to 15% when using Federal funding for road projects. These reports demonstrate that Federal aid swaps between MDOT and local road agencies will improve the efficiency of road funding. The Department previously participated in a voluntary Federal aid swap program but ended the practice when it was no longer financially feasible. Requiring MDOT to resume Federal aid swaps as prescribed by the bill will increase road funding efficiency across the State.

Legislative Analyst: Tyler P. VanHuyse

FISCAL IMPACT

The bills may increase the Department's allotment of Federal aid at a near-equivalent cost to the Department's appropriated share of the MTF under Act 51 of 1951. The bills will not have a direct fiscal impact on the State or local units of government, as they do not create new revenue or expenditures; however, the bills may create a savings in the cost of construction projects on roads under local jurisdiction at an estimated rate of between 20% and 30%.

The bills create a buyback program within MDOT to give local agencies the opportunity to exchange their portion of Federal aid for MDOT's STF dollars at a rate of 90%. It is believed that this exchange will mean significant savings in administrative costs to local road agencies, whose financial and administrative offices are much smaller than MDOT's. A savings due to reduced labor costs is unlikely; Senate Bill (SB) 465 requires that local project contracts paid for through the buyback program be compliant with Federal wage requirements under the Davis-Bacon Act of 1931. Additionally, road construction labor is at a premium, and even without this compliance requirement, it is unlikely that projects funded through the buyback program will result in any savings from labor costs.

The chief concern for MDOT was whether there would be enough STF funding, after the proposed statutory commitment of STF dollars to the buyback program, to fund MDOT's other STF obligations, including bond payments, highway maintenance, and MDOT's own Federal matching obligations. This concern, however, is addressed in subsections (6), (7), and (8) within SB 465, which allow MDOT to reduce buyout funding through the program if there is a shortage of STF dollars for its other obligations.

The Department has offered local units of government options for Federal buyback in the past. Throughout most of the 2000s, MDOT made available a voluntary buyback program for local units that exchanged Federal funds for STF at a rate of 75%. The program ceased when MDOT's annual allotment of the MTF became too small to continue the program. The 2015 road funding package increased revenue from gas and registration taxes in more recent years, allowing for the return of a Federal buyback program. In the decades to come, however, MDOT's current bonding initiative for $3.5 billion in new debt over four years inevitably will result in larger bond payments, which could cause MDOT, again, to cease offering Federal buyback, which it may do under subsection (6) of SB 465.

Fiscal Analyst: Michael Siracuse

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