Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 465 (Substitute S-3)
Senate Bill 466 (Substitute S-1)
Sponsor: Senator Jim Runestad (S.B. 465)
Senator Michael D. MacDonald (S.B. 466)
Committee: Transportation and Infrastructure

Date Completed: 10-13-21

CONTENT

Senate Bill 465 (S-3) would amend the Michigan Transportation Fund law to do the following:

- **Require the Michigan Department of Transportation (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 would have to make available from the STF in exchange for Federal aid obligation authority awarded to local road agencies unless the amounts would have to be reduced to match all available Federal aid.**
- **Require MDOT, if it reduced the amount of money available from the STF, to submit a letter to the Michigan Senate and House of Representatives explaining why it was 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 was awarded State money in exchange for Federal aid obligation authority could 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 (S-1) would amend 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 (S-3).

The bills are tie-barred, and each bill would take effect October 1, 2022.

Senate Bill 465 (S-3)

Under the bill, subject to provisions described below, MDOT would have to 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 would have to 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 would have to 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 reduced the amount of money available from the STF, it would have to 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 was unable to match available Federal aid or perform its essential functions.

"Federal aid obligation authority" would mean Federal aid obligation authority or an equal amount of contract authority. "Minimum State-funded program" would include 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 would be as follows:

-- In the fiscal year ending September 30, 2023, the maximum amount available for exchange would be $25.0 million.
-- In the fiscal year ending September 30, 2024, the maximum amount available for exchange would be $35.0 million.
-- In the fiscal year ending September 30, 2025, and in every subsequent fiscal year, the maximum amount available for exchange would be $45.0 million.

The bill would 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 , in the manner and on the schedule determined by MDOT. The Department would have to publish announcements, instructions, forms, and deadlines on its website. If applications requested more State money than was available to be exchanged in a fiscal year, awards would have to be made in the order received.

State money would have 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 in the approved transportation improvement plan to each project for which authority was exchanged. The Department would have to pay State money exchanged for Federal aid obligation authority to local road agencies when sufficient Federal aid obligation authority was received from the FHWA to cover the exchanges, not including any year-end redistributions.

The bill would require 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 was originally proposed. If the State money exchanged for Federal aid obligation authority exceeded the cost of the original project, the surplus would have to be applied to Federal-aid-eligible projects by the local road agency or returned to MDOT. Completed work would have to be reported to the Transportation Asset Management Council investment reporting tool or any successor system.

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

A local road agency that was awarded State money in exchange for Federal aid obligation authority would be limited to up to five force-account projects and a total force-account project cost authorization of not more than $400,000 per fiscal year, regardless of work type or funding source, not including a project funded with FHWA Emergency Relief Program money or that was minor utility work as described in 23 CFR 635.205(b). Each local road agency would have to verify that the limits set as described above were not exceeded. (Under 23 CFR 635.205(b), minor utility work includes minor work on a utility's existing facilities that were routinely performed by the utility with its own forces and minor installations of new facilities to provide certain utility services to a rest area, weigh-station, movable bridge, or other highway appurtenance, provided that the installation cannot be done feasibly during a major installation project. Generally, force-account projects are projects in which a state's transportation department, a county, a railroad, or a public utility company directly perform the highway construction work.)

Contracts between local road agencies and contractors for projects funded from State money exchanged for Federal aid obligation authority would have to 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 would have to 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.)

Senate Bill 466 (S-1)

Generally, the law establishes the Michigan Transportation Fund (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 would have to 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 (S-3) would amend).

MCL 247.660o (S.B. 465) Legislative Analyst: Tyler VanHuyse

247.660 (S.B. 466)

FISCAL IMPACT

The bills could 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 would not have a direct fiscal impact on the State or local units of government, as they would not create new revenue or expenditures; however, the bills could 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 would 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 would 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 would be unlikely; Senate Bill (SB) 465 would require 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 would result in any savings from labor costs.

The chief concern for MDOT is whether there will 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, would be addressed in subsections (6), (7), and (8) within SB 465, which would allow MDOT to reduce buyout funding through the program if there were 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 would exchange 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 if the bills were enacted, which it would be allowed to do under subsection (6) of SB 465.

Fiscal Analyst: Michael Siracuse

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