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Senate Bill 520 (as introduced 9-12-19)  
Sponsor: Senator Rick Outman  
Committee: Transportation and Infrastructure

Date Completed: 10-30-19

## **CONTENT**

**The bill would amend the Michigan Transportation Fund law to do the following:**

- **Require the Michigan Department of Transportation (MDOT), county road commissions, cities, and villages to secure pavement warranties for full replacement or appropriate repair for contracted construction work on pavement projects whose costs exceeded \$5.0 million, instead of \$2.0 million.**
- **Require MDOT to include in its annual report whether a construction contractor had posted a surety bond or had otherwise warrantied the construction work by voluntarily placing its prequalified status as security for replacement or repair.**
- **Require county road commissions, cities, or villages that have implemented a warranty program approved before the effective date of the bill to update and submit a new proposed program to MDOT for approval by October 1, 2020, if the previous warranty program did not satisfy the bill's provisions.**

### State Pavement Project Warranties & Reporting

The law created the State Trunk Line Fund and requires that money deposited in the Fund be appropriated to MDOT to be used for certain purposes in a particular order of priority.

The law also requires MDOT to spend 90% of State revenue appropriated annually to the State Trunk Line Fund, less amounts for other priorities, for the preservation of highways, roads, streets, and bridges, and for the payment of debt service on bonds, notes, or other obligations. Of the amounts appropriated for State trunk line projects, MDOT must, where possible, secure pavement warranties for full replacement or appropriate repair for contracted construction work on pavement projects whose cost exceeds \$2.0 million and projects for new construction or reconstruction undertaken after April 1, 2016.

Instead, under the bill, of the amounts appropriated for State trunk line projects, MDOT would have to secure pavement warranties for full replacement or appropriate repair for contracted construction work on pavement construction or reconstruction and capital preventative maintenance projects whose costs exceed \$5.0 million undertaken after April 1, 2016.

The Department must prepare an annual report listing all warranties that were secured as described above, indicate whether any of those warranties were redeemed, and list all pavement projects whose costs exceed \$2.0 million where a warranty was not secured. The bill would eliminate the latter requirement.

The Department must make the report available to the public upon request and must post it on the MDOT website. The report must include the following information:

- The type of project.
- The cost or estimated cost of the project.
- The expected lifespan of the project.
- Whether or not the project met or is currently meeting its expected lifespan.
- If the project failed to meet or is not meeting its expected lifespan, the cause of the failure and replacement or reparation costs.
- The entity responsible for paying the cost of replacing or repairing the project.

The bill would require MDOT to include in the report whether the construction contractor had posted a surety bond or had otherwise warrantied the construction work by voluntarily placing its prequalified status as security for replacement or repair.

"Warranty" would mean one of the following:

- A surety bond in the amount of full replacement or appropriate repair for the contracted construction work as determined by the Department.
- If the construction contractor has prequalified status, a contractual agreement for the construction contractor to fully replace or make appropriate repairs to the contracted construction work as determined by the Department secured by the construction contractor voluntarily agreeing to surrender its prequalified status as a bidder on subsequent contracts with the Department until all repairs are completed, as determined by the Department.

#### County, City, & Village Pavement Project Warranties & Reporting

The law extends the requirement to secure pavement warranties for replacement or repair on pavement projects to county road commissions, cities, and villages. Under the bill, of the amounts appropriated for a county primary or local road system, where possible, a county road commission, city, or village would have to secure pavement warranties for full replacement or appropriate repair for contracted construction work on pavement construction or reconstruction and capital preventative maintenance projects whose costs exceed \$5.0 million, if allowed by the Federal Highway Administration and MDOT.

The law requires a county road commission to submit a proposed warranty program to MDOT for approval no later than April 1, 2016, and a city or village to submit a proposed warranty program by February 1, 2017. Under the bill, if a county road commission, a city, or a village has implemented a warranty program approved before the bill's effective date and that program did not satisfy the bill's provisions, the county road commission, city, or village would have to update it and submit a new proposed program to MDOT for approval by October 1, 2020.

In addition, the law requires a county road commission, city, or village to include within an annual report to the Department a list of all warranties that were secured, and indicate whether any of those warranties were redeemed. The law also requires the report to list all pavement projects whose cost exceeds \$2.0 million for which a warranty was not secured. The bill instead would require a county road commission, city, or village to list all pavement construction or reconstruction and capital preventative maintenance projects whose cost exceeded \$5.0 million for which a warranty was not secured.

MCL 247.661 et al.

Legislative Analyst: Tyler VanHuyse

## **FISCAL IMPACT**

The bill likely would have a positive fiscal impact on the Department and local units of government because of slightly reduced costs for road and bridge construction and maintenance contracts.

According to the most recent warranty report, the MDOT has 235 warrantied contracts ranging in contract amounts from \$438,000 to \$223.4 million with an average warrantied contract amount of \$14.0 million and a median amount of \$4.2 million. Six warrantied contracts exceed \$100.0 million while 12 are below the \$2.0 million threshold requirement for a warranty. Of the 235 warrantied contracts, 129 would not require a warranty under the proposed language changes. The largest bond amount for warrantied contracts is 5% of the contract or \$1.0 million, whichever is lower. This means that the larger contracts do not automatically require larger bond amounts; a \$100.0 million dollar contract may have the same bond amount (\$1.0 million) as a \$20.0 million dollar contract. It also should not be assumed that a bond will not be included on a contract just because it is not required under MCL 247.661; however, if MDOT stopped requiring a warranty on every contract below \$5.0 million, the potential savings could be as high as \$17.5 million. Reaching the maximum savings amount would be unlikely. A practical estimate would be closer to \$8.0 million to \$10.0 million over a period of several years.

Local units of government also could see some savings as a result of bill, but to a lesser degree because smaller budget sizes. Local data on warrantied contracts currently are not accessible.

Fiscal Analyst: Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.