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BILL ANALYSIS



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House Bills 5335, 5406, and 5408 (as enacted)  
Sponsor: Representative Rob VerHeulen (H.B. 5335)  
Representative Roger Victory (H.B. 5406)  
Representative Triston Cole (H.B. 5408)  
House Committee: Transportation and Infrastructure  
Senate Committee: Transportation

**PUBLIC ACTS 323-325 of 2018**

Date Completed: 8-20-18

**CONTENT**

**House Bill 5335** enacted the "Michigan Infrastructure Council Act" to do the following:

- Create the Michigan Infrastructure Council within the Department of Treasury.
- Prescribe the duties of the Council, including the development of a multiyear program, work plan, budget, and funding recommendation for asset management; and the preparation of an annual report on the current statewide asset management assessment that tracks progress on established performance goals.
- Specify that funding necessary to support the activities described in the Act must be provided through funds as provided by law.

**House Bill 5406** added Part 50 (Water Asset Management Council) to the Natural Resources and Environmental Protection Act to do the following:

- Create the Water Asset Management Council within the Michigan Infrastructure Council.
- Prescribe the duties of the Council, such as advising the Michigan Infrastructure Council on a statewide water asset management strategy, promoting and overseeing the implementation of the recommendations from the Regional Infrastructure Asset Management Pilot Program, and developing a template for an asset management plan by October 1, 2019.
- Allow State funding to be provided to asset owners to implement Part 50 as determined by the Water Asset Management Council.
- Require the Council to establish a schedule for submission of asset management plans by October 1, 2019.
- Require each asset owner to report annually to the Council how its capital improvement program for assets included in any asset management plans is meeting its investment goals.
- Require the Council to identify training needs to develop proficiency in using a multi-asset management system for asset owners, and training to identify asset system conditions.
- Require the Council, by May 2 of each year, to submit to the Infrastructure Council a report on the activities conducted during the preceding year and the expenditure of funds.

- **Require the Department of Environmental Quality (DEQ) to provide qualified administrative staff and technical assistance to the Water Asset Management Council.**
- **Require the DEQ and asset owners to keep records on work performed and funds spent for purposes of Part 50.**

**House Bill 5408 amends the Michigan Transportation Fund law to do the following:**

- **Require the Transportation Asset Management Council (TAMC) to be placed within the Michigan Infrastructure Council.**
- **Require the TAMC to advise the Infrastructure Council on a statewide transportation asset management strategy and the processes and tools needed to implement that strategy.**
- **Require the TAMC to promote and oversee the implementation of recommendations from the Regional Infrastructure Asset Management Pilot Program on a statewide level, and, by October 1, 2019, develop a template for an asset management plan for use by local road agencies; and otherwise revise the duties of the Council.**
- **Require a local road agency to give the Council a three-year asset management plan beginning October 1, 2020, and otherwise revise reporting requirements for local road agencies.**
- **Allow the Department of Transportation to withhold funds distributed to a local road agency under the law if that agency is required to submit an asset management plan and has not done so 120 days after receiving a notice from the Department, until it submits a satisfactory plan.**
- **Prohibit a local road agency from shifting funds distributed to it under the law 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, if the Council determines that the agency has not demonstrated progress toward achieving the condition goals described in its asset plan and is not compliant within six months after receiving notice of noncompliance, until the agency demonstrates progress.**
- **Allow a local road agency to seek and use Federal grants or loans to achieve the goals and manage the asset inventory described in its asset management plan.**
- **Require the Council, by May 2 of each year, to submit a report on the activities conducted during the preceding year and the expenditure of funds, to the State Transportation Commission, the Legislature, and the transportation committees of the House and Senate.**

House Bill 5335 defines "asset" as infrastructure related to drinking water, wastewater, stormwater, transportation, energy, or communications, including drinking water supply systems, wastewater and stormwater systems, drains, roads, bridges, broadband and communication systems, and electricity and natural gas networks. "Asset management" means an ongoing process of maintaining, upgrading, and operating physical assets cost effectively, based on a continuous physical inventory and condition assessment and investment to achieve performance goals.

House Bills 5335 and 5406 took effect on July 2, 2018. House Bill 5408 will take effect on September 30, 2018.

### **House Bill 5335**

#### Michigan Infrastructure Council

Under the bill, the Michigan Infrastructure Council is created within the Department of

Treasury, and consists of nine appointed voting members and nine nonvoting members. The voting members must represent the following:

- Asset management experts from the public and private sectors with knowledge of and expertise in the areas of planning, design, construction, management, operations and maintenance for drinking water, wastewater, and stormwater, transportation, energy, and communications.
- Financial and procurement experts from the public or private sector.
- Experts in regional asset management planning across jurisdictions and infrastructure sectors.

The nonvoting members are the following, or their designees:

- The chairperson of the Water Asset Management Council.
- The chairperson of the TAMC.
- The Director of the Department of Agriculture and Rural Development.
- The Director of the DEQ.
- The Director of the Department of Natural Resources.
- The Director of the Department of Technology, Management, and Budget.
- The Director of the Department of Transportation.
- The State Treasurer.
- The chairperson of the Michigan Public Service Commission.

Voting members of the Michigan Infrastructure Council must be appointed as follows:

- Five by the Governor.
- One by the Senate Majority Leader.
- One by the Speaker of the House of Representatives.
- One by the Senate Minority Leader.
- One by the House Minority Leader.

The voting members first appointed to the Council must be appointed within 60 days after the Act's effective date.

The voting members must serve for terms of three years or until a successor is appointed, whichever is later, except as follows:

- Of the members first appointed by the Governor, one must serve for one year, one must serve for two years, and three must serve for three years.
- Of the remaining first appointed members, two must serve for one year and two must serve for two years.

A vacancy on the Council must be filled for the unexpired term in the same manner as the original appointment.

A member of the Council may be removed for incompetence, dereliction of duty, malfeasance during his or her tenure in office, or any other cause considered appropriate by the office for whom the appointment is made.

The Governor must call the first Council meeting within 90 days after the effective date of the Act. At the first meeting, the Council must elect from its members a chairperson and other officers as it considers appropriate. After the first meeting, the Council must meet at least quarterly, or more frequently at the call of the chairperson or if requested by three or more members.

The Council is subject to the Open Meetings Act and the Freedom of Information Act.

Members of the Council must serve without compensation. However, members may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members.

The departments with a member on the Council must provide qualified administrative and technical staff to the Council. The Department of Technology, Management, and Budget (DTMB) must serve as the central data storage agency for the statewide database described by the Act.

#### Michigan Infrastructure Council Duties

The Michigan Infrastructure Council must do all of the following:

- Develop a multiyear program, work plan, budget, and funding recommendation for asset management; update these every year; and provide these to the Governor and the Legislature by September 30 each year.
- Ensure that the work plan includes an emphasis assessment that tracks progress on established performance goals.
- Prepare an annual report on the current statewide asset management assessment that tracks progress on established performance goals.
- Undertake research and advise on matters relating to asset management, including funding and financing models; best practices; information technology advancements; emerging technology to advance smart systems; right-sizing and cost-efficiencies; impediments to delivery; opportunities for greater coordination and collaboration across asset classes and owners; and aligning and linking State incentives to asset performance improvement goals, including cost control, asset management, operational efficiency, and cost-effective regional solutions.
- Within 180 days after its first meeting, evaluate the Regional Infrastructure Asset Management Pilot program created under Executive Directive 2017-1, and the findings of the 21st Century Infrastructure Commission created under Executive Order 2016-5, and develop and publish a three-year strategy for establishing a statewide integrated asset management system.

(Executive Directive 2017-1 required the Directors of the Michigan Departments of Environmental Quality; Natural Resources; Transportation; Technology, Management, and Budget; Talent and Economic Development; and Agriculture and Rural Development, the Director of the Michigan Agency on Energy, and the Director of the Michigan Public Service Commission to establish a Regional Asset Management Pilot. The Directive required these Directors to partner with selected pilot regions "to identify and agree upon existing data, assets, attributes, and data needs within the chosen region(s) that are representative of the assets statewide, and a regional structure for future implementation of data collection and evaluation efforts", and required the regional infrastructure pilot to "put forward recommendations on how the state can operationalize a statewide comprehensive asset management database and system".

Executive Order 2016-5 established the 21st Century Infrastructure Commission and required it to bring together infrastructure components for "all-inclusive strategic asset management, including short-term capital planning needs, long-term strategy, sharing of templates and best practices and recommended funding mechanisms in the areas of transportation (including mobility), water and sewer, wastewater treatment and drainage, energy, communications and any other necessary components identified by the Commission", among other things.)

The initial multiyear program, work plan, budget, and funding recommendation described above must include development of the strategy for establishing a statewide integrated asset management system. The strategy also must include all of the following:

- A determination of appropriate assets within the asset classes.
- Consistent data standards and definitions for each asset class.
- Identification and designation of a process to plan, analyze, and coordinate asset management across assets and asset owners at the regional level, which process may be implemented through regional planning agencies, the regional prosperity initiative regions, or another approach that ensures all areas of the State are included and efforts are consistent with State and Federal requirements.
- Procedures for data storage, collecting, updating, and reporting.
- Recommendations related to the appropriate level of financial support for local asset data collection, local development of asset management plans, regional review and collaboration, and participation in an integrated statewide asset management system.
- A process to coordinate the planning efforts of the Transportation Asset Management Council, the Water Asset Management Council, the Michigan Public Service Commission, and the Michigan Economic Development Corporation, with other State-required asset management planning requirements.
- Coordination with the TAMC and the Water Asset Management Council to ensure that training and education programs that address asset management principles and plan development, the use of the statewide database, ongoing user support, and State Department asset management requirements are coordinated across assets.
- Development of statewide performance goals for appropriate assets within each asset class and identification of regional and statewide progress toward meeting performance goals.
- Protocols that ensure data security and accuracy at the local, regional, and State levels.
- Development of consistent and coordinated State Department, TAMC, and Water Asset Management Council asset management plan components and requirements including asset inventory, condition assessment, and uniform data; performance goals; revenue structure, investment strategy, and capital improvement plan; asset criticality and risk analysis; public engagement and transparency; self-assessment of asset management maturity; reports at an asset owner, regional, and statewide level; a resolution by the appropriate governing body approving the plan; and certification that asset management is being coordinated to the asset owners' best ability across asset classes and regionally.

Beginning three years after the proposed Act's effective date, the Council must start the second phase of the statewide system for asset management implementation and include predictive analytics to forecast asset condition; a public dashboard of State, regional, and local system performance across asset classes, including the appropriate and secure level of geospatial data and aggregated reporting; and the development and publication of a 30-year integrated infrastructure strategy that is updated every five years and includes the following:

- 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, with a goal of leveling annual investments to long-term predictable amounts.
- Network intelligence in asset management planning and monitoring.

The multiyear programs, work plans, budgets, funding recommendations, annual reports, three-year strategy for establishing a statewide integrated asset management system, and second phase of the statewide system for asset management implementation must comply with both of the following:

- Not propose, recommend, or fund any government-owned broadband or telecommunications network to provide service to residential or commercial premises, except that this prohibition does not apply to State spending for a transportation purpose, connected vehicle communication technologies, or other transportation-related activities.
- To the extent government funding is proposed or recommended to subsidize nongovernment-owned broadband networks to expand service to residential or commercial premises, require that proposals and recommendations be limited to areas unserved by broadband, be technology neutral, and include a competitive bid process that results in the award of the subsidy based on objective and efficient procedures.

The Act does not authorize the Michigan Infrastructure Council to place any obligations or requirements on providers of telecommunications services, broadband services, or wireless services.

Any network or financial information provided to the Council by a provider of those services is exempt from disclosure under the Freedom of Information Act, if it is marked as confidential or commercial information. The Council must preserve the confidentiality of this information.

### **House Bill 5406**

#### Water Asset Management Council

The bill specifies that the Water Asset Management Council is created within the Michigan Infrastructure Council.

The Water Asset Management Council consists of nine voting members appointed by the Michigan Infrastructure Council as follows:

- One member from the DEQ.
- One member from the Michigan Municipal League.
- One member from the Michigan Townships Association.
- One member from the Michigan Association of Counties.
- One member from the Michigan Association of Drain Commissioners.
- One member representing a regional drinking water, wastewater, or stormwater authority.
- One member representing a water infrastructure association.
- One member with drinking water, wastewater, or stormwater asset management experience.
- One member representing a region.

The Water Asset Management Council also consists of one ex officio, nonvoting member who has responsibilities related to the DTMB's role as the central data storage agency, appointed by the Director of the DTMB.

The Michigan Municipal League, Michigan Townships Association, Michigan Association of Counties, and Michigan Association of Drain Commissioners each must submit a list of two nominees to the Michigan Infrastructure Council from which the respective appointments described above must be made. Names must be submitted within 60 days after the bill's effective date. The Council must make the appointments within 30 days after receiving the lists.

Voting members of the Water Asset Management Council serve for terms of three years. However, of the initial appointments to the Council, three must serve for one year, three for two years, and three for three years. A vacancy must be filled in the same manner as the original appointment.

A member of the Council may be removed for incompetence, dereliction of duty, malfeasance during his or her tenure in office, or any other cause considered appropriate by the Michigan Infrastructure Council.

At the first meeting of the Water Asset Management Council, the Council must select a chairperson from among its members. The Council may appoint advisory committees whose members must serve as needed to provide research on issues and projects as determined by the Council. An advisory committee member who is not a member of the Council does not have voting rights on the advisory committee. A recommendation from the advisory committee is advisory only and not binding.

The DEQ must provide qualified administrative staff and technical assistance to the Council.

#### Water Asset Management Council Duties

The Water Asset Management Council must do both of the following:

- Advise the Michigan Infrastructure Council on a statewide water asset management strategy and the processes and tools needed to implement a strategy for all asset owners.
- Promote and oversee the implementation of the recommendations from the Regional Infrastructure Asset Management Pilot created under Executive Directive 2017-1 at a State level related to drinking water, wastewater, and stormwater infrastructure.

The Water Asset Management Council also must develop a template or templates, by October 1, 2019, that contain requirements for information to be included in a submitted asset management plan. The template or templates must allow for local asset management plan components, including all of the following, but must not require components beyond those required in an asset management plan associated with a permit:

- An asset inventory that includes the location, material, size, and condition of the assets in a format that allows for digital mapping, subject to a requirement that all quality control standards and protocols be consistent with existing Federal requirements and regulations and existing government accounting standards.
- A level of service analysis that includes desired levels of service, which may vary among assets under the local agency's jurisdiction, and performance goals of the assets to help the system achieve reliability, responsiveness, safety, capacity, environmental impacts, cost and affordability, and compliance with law.
- A risk of failure analysis that identifies the probability and criticality of failure of the most critical assets and any contingency plans.
- Anticipated revenue and expenses, including a description of all revenue sources and anticipated receipts for the period of the asset management plan, and expected infrastructure repair and replacement expenses, including planned improvements or capital reconstruction.
- A description of any plans of the asset owner to coordinate with other entities, such as neighboring jurisdictions and utilities, to minimize duplication of effort with regard to infrastructure preservation and maintenance.
- Proof of acceptance, certification, or adoption by the jurisdiction's governing body.
- A performance outcomes analysis that determines how the investment strategy achieves the desired levels of service and performance goals.

The asset management plan may include steps necessary to ensure that asset conditions meet or achieve stated goals, including a description and explanation for any gap between achievable condition and performance through the investment strategy and desired goals.

### Submission & Review of Plans

By October 1, 2019, the Water Asset Management Council must establish a schedule for submission of asset management plans that ensures that one-third of asset owners submit an asset management plan each year.

The asset management plans must cover and be valid for a minimum of three years and must be consistent with the template provided by the Council. The Council must review the submitted asset management plans within six months of receipt. The Council must compare the plans to the minimum components required by the bill and the template provided by the Council, and determine if the plans are in compliance with those standards. If the Council determines that a plan does not meet the established standards, it must seek concurrence from the DEQ. If the Department concurs, the Council must notify the entity that submitted the asset management plan of the deficiency in meeting the standards and require the entity to revise the plan to meet the standards and resubmit it within six months of receiving the notice.

An asset owner that is required to have an approved asset management plan must implement the approved plan by October 1, 2024. An asset owner may seek and use Federal grants or loans to achieve the goals and manage the asset inventory described in its asset management plan.

### Annual Report

Each year, the Water Asset Management Council must submit to the Michigan Infrastructure Council a report on asset condition and investment that includes a summary analysis of the asset management plans received from drinking water, wastewater, and stormwater entities. The report also must include recommendations on drinking water, wastewater, and stormwater condition goals and analysis of how the utilities are meeting those goals. The analyses contained in the report must be consistent with the Council's asset management process and be reported consistent with categories established by the Council.

### Training Needs

The Water Asset Management Council must identify training needs to develop proficiency in using a multi-asset management system for asset owners, and training to identify asset system conditions based on a statewide asset condition measure. The Council must coordinate and collaborate with the Transportation Asset Management Council on planning, reporting, and training. The Council must collaborate with the TAMC on potential coordination in the submission of asset management plans.

### Additional Provisions

State funding may be provided to asset owners to implement Part 50 as determined by the Water Asset Management Council. Funding necessary for the DEQ to support the activities described in these provisions must be provided by an annual appropriation.

Each asset owner must report annually to the Council, consistent with current accounting procedures, how its capital improvement program for assets included in any asset management plans is meeting its investment goals in a form established by the Council.

The DEQ and each asset owner must keep accurate and uniform records on all work performed and funds spent for the purposes of these provisions, according to the procedures developed by the Michigan Infrastructure Council.

Each year, the Water Asset Management Council must prepare a report on the activities conducted during the preceding year and the expenditure of money related to the processes and activities identified by the Council. The report also must include an overview of the activities identified for the succeeding year. The Council must submit this report to the Michigan Infrastructure Council and the Legislature by May 2 of each year.

The DTMB must serve as the central data storage agency for purposes of collecting, storing, and maintaining data under Part 50.

### **House Bill 5408**

#### **Transportation Asset Management Council**

In order to provide a coordinated, unified effort by various road agencies within Michigan, the Michigan Transportation Fund law created the Transportation Asset Management Council within the State Transportation Commission. Under the bill, upon creation of the Michigan Infrastructure Council, the TAMC must be placed within the Michigan Infrastructure Council.

Currently, the law requires the TAMC to advise the Commission on a statewide asset management strategy and the processes and tools needed to implement that strategy, beginning with Federal-aid eligible highway systems, and, once completed, continuing with county road and municipal systems, in a cost-effective, efficient manner.

The bill instead requires the Council to advise the Michigan Infrastructure Council on a statewide transportation asset management strategy and the processes and tools needed to implement that strategy, beginning with the Federal-aid eligible highway system and infrastructure assets that have an impact on system performance, safety, or risk management, including signals and culverts.

#### **Member Removal**

The bill retains the current membership of the Council, which consists of 10 voting members appointed by the State Transportation Commission.

Under the bill, a member of the Transportation Asset Management Council may be removed for incompetence, dereliction of duty, or malfeasance during his or her tenure in office, or any other cause considered appropriate by the Michigan Infrastructure Council. The Council must consult with the TAMC before removing a member of the TAMC.

#### **Transportation Asset Management Council Committees**

Currently, the Council may appoint a technical advisory panel whose members must be representatives from the transportation construction associations and related transportation road interests. The Council must select members to the technical advisory panel from names submitted by the transportation construction associations and related transportation road interests. The technical advisory panel members must be appointed for three years. The Council must determine the research issues and assign projects to the panel to assist in the development of statewide policies. The panel's recommendations must be advisory only and are not binding on the Council.

The bill deletes these provisions.

Under the bill, the Council may appoint an advisory committee whose members must serve as needed to provide research on issues and projects as directed by the Transportation Asset Management Council. An advisory committee member who is not a member of the TAMC does

not have voting rights on the advisory committee. A recommendation from the advisory committee is advisory only and not binding on the Michigan Infrastructure Council.

#### Transportation Asset Management Council Duties

The TAMC must promote and oversee the implementation of recommendations from the Regional Infrastructure Asset Management Pilot Program on a statewide level as the program relates to roads, bridges, and related transportation infrastructure.

By October 1, 2019, the Council must develop a template for an asset management plan for use by local road agencies responsible for 100 or more certified miles of road and require its submission to the Council. By the same date, the Council also must establish a schedule for the submission of asset management plans by local road agencies that ensures that one-third of those agencies submit an asset management plan each year. The template required by the bill must include all of the following:

- Asset inventory, including the location, material, size, and condition of the assets, in a format that allows for and encourages digital mapping.
- Performance goals, including the desired condition and performance of the assets, which must be set by the local road agency.
- Risk of failure analysis, including the identification of the probability and criticality of a failure of the most critical assets and any contingency plans.
- Anticipated revenue and expenses, including a description of all revenue sources and anticipated receipts for the period covered by the asset management plan and expected infrastructure repair and replacement expenses, including planned improvements and capital reconstructions.
- Performance outcomes, including a determination of how the local road agency's investment strategy will achieve the desired levels of service and performance goals and the steps necessary to ensure that asset conditions meet or achieve stated goals and a description and explanation of any gap between achievable conditions and performance through the investment strategy and desired goals.
- A description of any plans of the asset owner to coordinate with other entities, including neighboring jurisdictions and utilities.
- Proof of acceptance, certification, or adoption by the local road agency's governing body.

Performance goals may vary among asset classes under the local road agency's jurisdiction. If a local road agency has jurisdiction over roads or bridges that are designated as part of the Federal National Highway System, the performance goals for that portion of the system must be consistent with established Federal performance targets.

#### Reporting Requirements; Multiyear Program

Currently, the law requires the Michigan Department of Transportation (MDOT), each county road commission, and each city and village in Michigan to submit annually a report to the TAMC. The bill requires those entities to submit to the Council annually a report on infrastructure conditions and investment, instead. No later than October 1, 2019, the Council must establish a schedule for the submission by MDOT of the report required by these provisions.

The law requires the report to include a multiyear program developed through the asset management process described in the law. Among other things, both of the following apply to a multiyear program:

- Projects contained in MDOT's annual multiyear program must be consistent with the Department's asset management process.

- Projects contained in the annual multiyear program of each local road agency must be consistent with the asset management process of that local road agency.

Under the bill, all of the following apply to a multiyear program:

- Projects contained in MDOT's annual multiyear program must be consistent with the Department's asset management process and asset management plan.
- Projects contained in the annual multiyear program of each local road agency responsible for 100 or more certified miles of road be consistent with the asset management process and asset management plan of that local road agency.
- Projects contained in the annual multiyear program of each local road agency responsible for less than 100 certified miles of road must be consistent with the asset management process of that local road agency and reported consistent with categories established by the Council.

#### Asset Management Plan Submission & Review

Beginning October 1, 2020, each local road agency responsible for more than 100 certified miles of road must begin submitting an asset management plan to the Council according to the three-year schedule. The plan must cover a period of at least three years, and must be consistent with a template provided by the Council. A local road agency that is required to submit a plan and has not submitted it by October 1, 2024, is out of compliance with the bill. A local road agency that is not in compliance must be notified by the TAMC that the local road agency must comply with the bill within 120 days of the notice. If the local road agency fails to comply after 120 days, the Council must notify MDOT of the noncompliance and MDOT may withhold funds distributed to the local road agency under the law. The Department must release any funds withheld for noncompliance to the local road agency in the following month's allocation after compliance is verified.

The Council must review a submitted asset management plan within six months after receiving it. The Council must compare the plan to the minimum requirements of the bill and the template created by the Council, and determine whether the plan is in compliance with those standards. If the plan does not meet those standards, the Council must seek concurrence from MDOT that the plan does not meet the Council's standards. If the Department concurs, the Council must require the local road agency to revise its plan to conform to the standards within six months after notifying the local road agency that the plan does not meet the standards. The Council must provide an opportunity for a noncompliant local road agency to appear before the Council to discuss the reasons the local road agency's plan is not in compliance and ways for the agency to become compliant.

Beginning October 1, 2025, if the Council determines, and MDOT concurs, that a local road agency responsible for 100 or more certified miles of road has not demonstrated progress toward achieving the condition goals described in its asset management plan for its Federal-aid eligible county primary road system or city major street system, as applicable, the Council must provide notice to the local road agency of the reasons that it has determined progress is not being made and recommendations on how to make progress toward the local road agency's condition goals. The local road agency must become compliant within six months after receiving the notification. The Council must provide an opportunity for the noncompliant local road agency to appear before the Council to discuss the reasons it is not compliant and ways for it to become compliant. If the local road agency is not compliant within six months after receiving the notification, it may not shift funds distributed to it under the law 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. Upon demonstration of progress towards achieving its condition goals, a local road agency may shift funds distributed to it under the law as

described above. A local road agency may submit a revised asset management plan to the Council.

### Annual Report by Council

The law requires an annual report to be prepared by the staff assigned to the TAMC regarding the results of activities conducted during the preceding year and the expenditure of money related to the processes and activities identified by the Council. The report also must include an overview of the activities identified for the succeeding year. The Council must submit the report to the State Transportation Commission, the Legislature, and the transportation committees of the House and Senate by May 2 of each year.

In addition, under the bill, the report must include a summary analysis of the asset management plans and annual reports received from local road agencies, a determination of how investments are achieving desired levels of service and performance goals, an identification of any additional steps that may be needed to achieve desired levels of service and performance goals, and an overview of the activities identified for the succeeding year. The Council must submit this report to the Michigan Infrastructure Council as well as the State Transportation Commission, the Legislature, and the transportation committees of the House and Senate by May 2 of each year.

### Additional Provisions

The bill specifies that, except as otherwise provided, costs incurred for data collection, analysis, or submittal, other than costs covered by the Council for the Federal-aid eligible highway system, are the responsibility of the owner of the data. A local road agency may request planning region assistance or reimbursement for data collected on non-Federal-aid eligible roads or streets within that region. The region must determine where to collect local road or street data to spend its remaining data collection money based on requests received from local road agencies.

Under the law, funding necessary to support the described activities must be provided by an annual appropriation from the Michigan Transportation Fund to the State Transportation Commission. The bill specifies that, beginning on its effective date, the annual appropriation must be allocated to the Michigan Infrastructure Council and used to support the activities described in the bill.

MCL 324.5001-324.5007 (H.B. 5406)  
247.659a (H.B. 5408)

Legislative Analyst: Drew Krogulecki

## **FISCAL IMPACT**

### **House Bill 5335**

The bill will add costs primarily to the Department of Treasury, and potentially to the Departments of Agriculture and Rural Development; Environmental Quality; Natural Resources; Technology, Management, and Budget; and Transportation. The costs depend on the amount of administrative and technical support needed for the Michigan Infrastructure Council to carry out its duties. Since the Council is created in the Department of Treasury, that Department likely will carry the most significant portion of those costs. The other departments may experience varying costs depending on the amount of additional support needed by their staff. These costs may directly be appropriated to the Department of Treasury or appropriated to other departments and paid to Treasury through an interdepartmental grant or memorandum of understanding. The Council may have additional costs from contracting out services to provide additional support.

Public Act 107 of 2017, the fiscal year (FY) 2017-18 initial appropriations act, appropriated \$35.0 million to the Michigan Infrastructure Fund, which can be used to fund various infrastructure projects or may be used for the administration of the Michigan Infrastructure Council.

Public Act 201 of 2017, an FY 2017-18 supplemental appropriations act, appropriated \$3.5 million from the Michigan Infrastructure Fund to various Infrastructure Council functions. In anticipation of the creation of the Michigan Infrastructure Council, the Act appropriated \$1.5 million directly to it in the Department of Treasury budget to begin working on work plans and reports. The Act also appropriated \$2.0 million to the Asset Management Council in the Department of Transportation to carry out asset management analyses in coordination with the Infrastructure Council. The Michigan Infrastructure Fund also has paid for various infrastructure projects throughout the State. Table 1 lists the allocations from the Michigan Infrastructure Fund.

**Table 1**

<b>Michigan Infrastructure Fund (Dollars in Thousands)</b>			
<b>Authorization</b>	<b>Fiscal Year</b>	<b>Appropriation</b>	<b>Description</b>
PA 107 of 2017 Allocations from fund:	2017-18	\$35,000.0	Art. XX, Sec. 107(10) - Line Item appropriation of \$35.0 million GF/GP to the Michigan Infrastructure Fund
PA 201 of 2017	2017-18	\$(14,000.0)	DEQ - Brownfield remediation/redevelopment
PA 201 of 2017	2017-18	(10,700.0)	DEQ - Water infrastructure initiative
PA 201 of 2017	2017-18	(2,000.0)	MDOT - Asset management council
PA 201 of 2017	2017-18	(1,500.0)	Treasury - Michigan infrastructure council
PA 207 of 2018	2017-18	(420.0)	DTMB - Michigan civilian cyber corps
SBO Req. 2018-3	2017-18	(6,380.0)	DTMB - Statewide broadband
<b>Balance Remaining</b>		\$0.0	

The Infrastructure Council may receive additional funding from the Michigan Infrastructure Fund when it is available or directly from the General Fund. The bill does not mandate appropriations to be made based on the results of the various work plans and annual reports from the Council.

**House Bill 5406**

The bill will have a negative fiscal impact on the State as a whole as well as the Department of Environmental Quality, and an indeterminate fiscal impact on local government. The DEQ will experience some increased costs associated with providing administrative and professional support to the Water Asset Management Council. Absent additional appropriations, existing DEQ staff resources will bear these costs and duties.

The bill also requires drinking water, wastewater, and stormwater agencies to submit an asset management plan to the Council. This will result in additional costs for those agencies (local units, generally) to create those plans. However, the bill establishes a cost-sharing mechanism for the State to cover those costs, assuming the necessary level of funding is appropriated. It is possible that a reasonably large portion of these costs may be avoided as, over the last few years, about \$365.0 million has been made available for Stormwater, Asset Management, and Wastewater (SAW) grants, and the asset management plans that resulted from that funding likely could be used to comply with the requirement. However, for those

agencies that did not receive a SAW grant and do not have an adequate asset management plan, the bill will result in increased costs.

### **House Bill 5408**

The bill will have a minimal, negative impact upon the Department of Transportation and an indeterminate, negative impact upon local road agencies. The bill moves the operations and responsibilities of the Transportation Asset Management Council (TAMC) from the Department of Transportation to the Department of Treasury. It is expected that this will result in a loss of transportation funding for the TAMC, but also a reduction of the expenditures associated with the work and FTEs related to the TAMC. In theory, this could result in a net zero impact on the Department of Transportation, except that the bill requires the Department to provide qualified administrative staff to the TAMC. It also is expected that the Department still will coordinate to some degree with the TAMC for the exchange of asset management planning data between the TAMC and local road agencies.

The bill adds increased reporting requirements to the TAMC beginning in October 2020 for local road agencies responsible for 100 or more certified miles of road. One-third of those agencies must submit a three-year asset management plan to the TAMC, another third the following year, etc. The associated costs likely will vary from agency to agency, as some probably are more developed in asset management implementation than others.

Any agency with 100 or more certified miles that fails to submit an asset management plan to the TAMC by October 2024 is denied State funding under Public Act 51 of 1951, the Michigan Transportation Fund law, until a satisfactory plan is submitted. Beginning October 2025, and after a six-month notice period, any agency with 100 or more certified miles that fails to demonstrate progress in achieving the goals indicated in its asset management plan submitted to the TAMC is restricted in the use of its State funding under Public Act 51. All 83 county agencies potentially will be subject to these penalties. An initial review of city/village road miles indicates that the following cities also may be subject to these penalties: Ann Arbor, Battle Creek, Bay City, Burton, Dearborn, Dearborn Heights, Detroit, Farmington Hills, Flint, Garden City, Grand Rapids, Holland, Jackson, Kalamazoo, Lansing, Lincoln Park, Livonia, Midland, Muskegon, Norton Shores, Novi, Pontiac, Portage, Port Huron, Rochester Hills, Romulus, Roseville, Royal Oak, Saginaw, Southfield, St. Clair Shores, Sterling Heights, Taylor, Troy, Walker, Warren, Westland, and Wyoming.

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