

# Legislative Analysis



## ROAD AGENCY BIDDING REQUIREMENTS

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4476 as enrolled**

**Sponsor: Rep. Gary R. Eisen**

**1st House Committee: Transportation**

**2nd House Committee: Ways and Means**

**Senate Committee: Transportation and Infrastructure**

**Complete to 10-29-20**

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

*(Vetoed by the Governor 10-28-20)*

### SUMMARY:

House Bill 4476 would amend 1951 PA 51 (“Act 51”), the act that governs the distribution of funding for state and local road and bridge programs. Specifically, the bill would amend section 11c of the act, which prescribes construction contract bidding requirements for Michigan Department of Transportation (MDOT) and local road agency projects.

Generally speaking, and with certain exceptions described in **Background**, below, section 11c currently requires MDOT and local road agency construction or preservation projects whose cost exceeds \$100,000 to be performed by contract awarded by competitive bidding.

House Bill 4476 would retain the \$100,000 threshold with respect to MDOT projects and increase the threshold for local road agency projects to \$300,000. The bill would exempt from the competitive bidding requirements projects for the installation or upgrading of advanced traffic operations centers and traffic signal systems. This exemption would newly apply to MDOT construction contracts. With regard to local road agency contracts, the bill simply rewords a current exemption from “advanced traffic management and signals” to “advanced traffic operations centers and traffic signal systems.” An exemption for maintenance would be reworded to refer to “routine maintenance.”

The bill would also prohibit a local road agency from performing construction projects if the cost of the projects, if awarded by competitive bidding, would exceed a total of \$800,000.

MCL 247.661c

### BACKGROUND:

Section 11c of Act 51 currently requires that all MDOT construction projects concerning highways, streets, roads, and bridges whose cost exceeds \$100,000 for construction or preservation as defined in section 10c “be performed by contract awarded by competitive bidding unless the department affirmatively finds that under the circumstances relating to those projects, some other method is in the public interest.”

Section 11c also directs the director of the department to “report his or her findings to the state transportation commission 90 days before work is commenced and promptly in writing to the appropriations committees of the senate and house of representatives.” If the department determines that emergency action is required, reports need not be filed before a contract is awarded; however, the section requires that the reports “be promptly filed.”

MDOT construction and capital preservation projects are performed by private construction contractors employed through a competitive bidding process. The department does not use its own forces to perform capital construction work. Most MDOT construction projects are awarded through a Design-Bid-Build process in which the department is responsible for project design, private construction contractors submit bids, and the contract is awarded to and performed by the responsive low bidder. MDOT also uses contracting methods other than Design-Bid-Build, including Design-Build and Construction Manager/General Contractor (CM/GC).

All of these procurement methods involve a competitive bid process. The department does not award capital construction contracts by noncompetitive means. Both Design-Bid-Build and Design-Build contracts are awarded to the responsive low bidder. CM/GC contracts are also competitively bid, although the contract award may be based on other qualification selection criteria and not solely on lowest bid price.

Section 11c includes a similar requirement with respect to local road agency construction contracts. Specifically, the section currently requires that “all construction projects of a local road agency whose cost exceeds \$100,000 for construction or preservation... shall be performed by contract awarded by competitive bidding unless the local road agency affirmatively finds that under the circumstances relating to those projects, some other method is in the public interest.” Local road agency maintenance projects and certain advanced traffic management and signals projects are excluded from the scope of the requirement.

The bill would increase the threshold for competitive bidding for local road agency projects from \$100,000 to \$300,000. The bill would also prohibit a local road agency from performing construction projects if the cost of the projects, if awarded by competitive bidding, would exceed a total of \$800,000.

Current language directs that “a county road commission shall report its findings before work is commenced in writing to the county board of commissioners of that county. A city or village shall report its findings before work is commenced in writing to the governing elected body of that city or village.”

Current law defines “local road agency” to mean what that term means under section 9a of Act 51, i.e., “a county road commission or designated county road agency or city or village that is responsible for the construction or maintenance of public roads within the state under this act.”

This Act 51 requirement for local road agency construction projects parallels federal-aid program requirements that generally require federal-aid highway projects to be performed by contracts awarded by competitive bidding. However, Federal Highway Administration (FHWA) policy allows noncompetitive contract work under specific circumstances. Specifically, FHWA policy allows local agency force account work when the state department of transportation demonstrates that force account work is more cost-effective than competitive bidding (and for emergency work).<sup>1</sup>

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<sup>1</sup> <https://www.fhwa.dot.gov/legregs/directives/orders/50601.cfm>

Construction work performed by local road agency forces, as opposed to private contractors through competitive bidding, is termed “force account” work.<sup>2</sup>

The department’s Local Agency Program Unit publishes an annual report of noncompetitive local agency projects. That report is available on the department’s website.

**FISCAL IMPACT:**

It is not clear how the bill would affect state or local contracting requirements.

MDOT construction and capital preservation projects are currently performed by private construction contractors employed through a competitive bidding process. The department does not award contracts by noncompetitive means.

In addition, it is not clear how the bill would affect the use of local agency force account work on federal-aid projects. Those projects are currently governed by federal aid program requirements and related MDOT guidelines.

**Vetoed 10-28-20:**

In her veto message,<sup>3</sup> Governor Whitmer said that, while she appreciates the goal of ensuring competitive bidding for major road projects, she believes the bill as enrolled to be too broad. She added:

By requiring local communities to contract out any federal and/or state-funded road improvement projects over \$800,000 in value, this legislation would all but eliminate the ability of cities to self-perform capital improvement projects on local neighborhood streets. It would also immediately result in layoffs of dozens of hard-working employees in the City of Detroit, who annually resurface up to 50 miles of residential streets each year.

Fiscal Analyst: William E. Hamilton

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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.

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<sup>2</sup> MDOT guidance document, Construction of Federally Funded Local Agency Projects by Non-Competitive Bid Contract (Force Account), dated June 2018, is available from the department’s website.

[https://www.michigan.gov/documents/mdot/FORCE\\_ACCOUNT\\_GUIDANCE\\_INCL\\_FHWA\\_ORDER\\_050417\\_560873\\_7.pdf](https://www.michigan.gov/documents/mdot/FORCE_ACCOUNT_GUIDANCE_INCL_FHWA_ORDER_050417_560873_7.pdf)

<sup>3</sup> [https://content.govdelivery.com/attachments/MIEOG/2020/10/28/file\\_attachments/1582439/HB%204476%20Veto%20Letter.pdf](https://content.govdelivery.com/attachments/MIEOG/2020/10/28/file_attachments/1582439/HB%204476%20Veto%20Letter.pdf)