

SFA

BILL ANALYSIS

RECEIVED

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373 5383

APV-19 1987

Mich. State Law Library

House Bill 4631 (Substitute S-2 as reported)**Sponsor: Representative Alvin Hoekman****House Committee: Transportation****Senate Committee: State Affairs, Tourism, and Transportation****Date Completed: 10-8-87****RATIONALE**

The Department of Transportation currently is required to obtain approval from the State Administrative Board when it contracts for extra work or labor in excess of \$10,000 for contracts with private entities that have a value of \$500,000 or less, or in excess of 2% of the contract amount for contracts having a value over \$500,000. For contracts with boards of county road commissioners, township boards, and municipalities of the State, the Department must obtain board approval for contracts in excess of \$500,000. The Department may contract without approval of the board for an amount not exceeding \$5,000 for each contract for toilet vault cleaning, use of licensed sanitary landfills, pickup and disposal of refuse, pavement surfacing and patching, rental of equipment for emergency repairs and maintenance operations, curb replacement, maintenance of office equipment, installation of utility services, and installation of traffic control devices. Without approval of the board, the Department also may authorize boards of county road commissioners, township boards, and municipalities under contracts for the maintenance of trunk line highways to subcontract in amounts up to \$5,000.

The department has been criticized by contractors and subcontractors due to delays in payment for completed extra work and contract work in excess of the amounts the Department is permitted to approve. Some people, including industry representatives, believe that a more equitable limitation on the Department's authority to approve and pay for extra work and contract overruns should be established.

CONTENT

The bill would amend Public Act 17 of 1925 (which provides for construction, improvement and maintenance of trunk line highways) to increase the amounts for which the Michigan Department of Transportation may contract for extra work or labor, or both, without approval from the State Administrative Board.

For contracts with private agencies having a value of \$800,000 or less, the Department would be able to approve extra work or labor totaling \$48,000 (instead of the present \$10,000 limitation on contracts having a value up to \$500,000); for contracts in excess of \$800,000, it would be able to approve up to 6% of the contract price (instead of the present limit of 2% of the contract price for contracts in excess of \$500,000). Any singular undertaking of extra work in excess of \$100,000, however, would require the approval of the State Administrative Board. The present \$5,000 limit for contracts for toilet vault cleaning, use of licensed sanitary landfills, pickup and disposal of refuse,

pavement surfacing and patching, rental of equipment for emergency repairs and maintenance operations, curb replacement, maintenance of office equipment, installation of utility services, and installation of traffic control devices, would be raised to \$20,000. The \$5,000 limit for each county road commission, township and municipality board to subcontract for the maintenance of trunk line highways also would be raised to \$20,000. Further, the bill would allow the Department to enter into contracts in a reasonable amount, without board approval, when emergency action was required, if a written report of the nature of the contract and the emergency were transmitted to the board immediately after the contract was entered into.

MCL 250.62

SENATE COMMITTEE ACTION

The Senate Committee on State Affairs, Veterans, and Transportation adopted a substitute to the bill that increased from \$10,000 to \$48,000 per contract the amount of extra work or labor on contracts having a value of \$800,000 or less that would not require approval of the Administrative Board. The House-passed version of the bill would have raised the amount per contract from \$10,000 to \$50,000 on contracts valued at \$500,000 or less, which currently is the value amount in the Act. The substitute also set at 6% the amount per contract with a private agency valued at over \$800,000 not requiring Administrative Board approval. The House would have raised the percentage from the current 2% to 10% and maintained the value of the contract at over \$500,000 as in the Act. The substitute also raised to \$800,000 the amount of a contract with boards of county road commissioners, township boards, and municipalities that would not need approval of the Administrative Board. The House version would have kept the amount at \$500,000 as presently in the Act. In addition, the substitute bill would require that any singular undertaking of extra work or labor, or both, in excess of \$100,000 would have of the Administrative Board.

BACKGROUND

The Department of Transportation recently completed studies aimed at seeking methods to speed up payments to contractors and to reduce or improve paperwork for highway contract administration. One study analyzed 91 contracts that were submitted to the Administrative Board for approval, during the period 1983-1985, with recommendations for "extras" to the contracts. According to the study, these 91 contracts resulted in 381 recommendations being submitted for Board approval.

H.B. 4631 (10-8-87)

The Department also completed another study on contract "overruns" submitted to the Board for approval, and found that the time involved in processing recommendations to the Board and receiving approval of a contract "overrun" letter was approximately one month, while the period of time involved in processing recommendations and contract "extra" letters was two to three months.

FISCAL IMPACT

This bill would have no fiscal impact on State or local government, although possible administrative savings to the State Administrative Board could result due to reduction of recommendations from the Department of Transportation.

ARGUMENTS

Supporting Argument

Highway construction has changed in the last few years: the number of highway reconstruction projects has increased, while the number of new construction projects has decreased. This change, according to the Department of Transportation, has caused the normal percentage of contract changes and "overruns" to increase. In addition, the cost of projects has increased due to inflation, making the current limit of \$10,000 for "extras" an unreasonably low amount.

Supporting Argument

Studies have shown that the State Administrative Board has not rejected any Department recommendations during the last five years. The time involved in processing recommendations for "overruns" and "extras", however, is one to three months, which results in delayed payments to contractors and subcontractors for work that has been completed. This delay has a major financial impact on all contractors, both large and small, who find it difficult to maintain working capital when they have to wait months for payments.

Supporting Argument

Public Act 279 of 1984 requires state departments to provide prompt payment when contracting for goods and services. It also requires a department to pay a late fee equal to 0.75% of the amount due each month that the Department fails to make contract payments on time. House Bill 4631 would reflect the spirit of Public Act 279 by permitting the Department of Transportation to enter into certain contracts, as specified in the bill, without seeking prior approval from the State Administrative Board, thus speeding up the approval and payment process.

Supporting Argument

Last fall, flooding in the West Michigan damaged, and in some cases destroyed, bridges in that area of the State. Before the Department of Transportation could let a contract for the emergency repair and reconstruction work, the Department had to obtain approval from the State Administrative Board. The bill would allow the Department to enter into contracts in emergencies without seeking prior approval from the Administrative Board in an attempt to enable the Department to respond more expeditiously in emergency situations. The Administrative Board still would maintain some oversight power in these situations, since the Department would be required to submit a written report on the nature of the contract and emergency immediately after the contract was entered into.

Opposing Argument

The bill would have the effect of removing the State Administrative Board from the contract review process for certain construction and repair projects.

Response: The bill would not change the basic contracting process, but only increase the amount for which the Department could contract for extra work or labor to reflect increases in the cost of project "extras" and "overruns" due to inflation. Department officials also indicate that they have reached an agreement with the Administrative Board to report periodically on overruns that exceed 2% of the contract. Furthermore, Department officials note, engineers on a project will continue to have to "sign off" on each phase of the project in an effort to reduce the amount of overruns.

Legislative Analyst: L. Arasim

Fiscal Analyst: J. Makokha

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.