

PUBLIC ACT 51 of 1951 – CONTRACTS FOR STATE TRUNKLINE AND LOCAL ROAD MAINTENANCE

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House Bill 4611 as Passed the Senate

Sponsor: Rep. Edward J. Canfield

House Committee: Roads and Economic Development

Senate Committee: Government Operations

Complete to 7-8-15

(Enacted as Public Act 182 of 2015)

SUMMARY:

House Bill 4611 would amend Act 51 of 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, a section that prescribes contracting requirements for certain local road agency construction and preservation contracts.

The Senate-passed version of this bill, Substitute S-1, is identical to the House-passed version with one exception: The Senate-passed version includes a tie-bar to House Bill 4610, a bill to amend Public Act 283 of 1909.

BACKGROUND INFORMATION AND DETAILED ANALYSIS:

Section 11c – Background Information and Proposed Amendment to Current Language

Section 11c of 1951 PA 51 currently reads:

"All federal aid construction projects, all other projects of the department concerning highways, streets, roads, and bridges, whose cost exceeds \$100,000.00 for construction or preservation as defined in Section 10c, shall be performed by contract awarded by competitive bidding unless the department shall affirmatively find that under the circumstances relating to those projects, some other method is in the public interest. All of those findings shall be reported 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. However, in a case in which the department determines emergency action is required, the reports need not be filed before work is commenced but shall be promptly filed. Local road agencies that make a decision not to perform construction or preservation projects exceeding \$100,000.00 shall contract for this work through competitive bidding."

The language of this section is somewhat confusing. It is not clear if the phrase "whose cost exceeds \$100,000.00 for construction or preservation as defined in Section 10c" applies only to "all other projects of the department concerning highways, streets, roads, and bridges," or if it also applies to the phrase "all federal aid construction projects."

It is our understanding that this section effectively requires that all department contracts for construction or preservation in excess of \$100,000 be performed by contract awarded by competitive bidding, unless the department finds that under circumstances specific to a project, an alternative contracting method is in the public interest.

The section also requires the department, when it finds that a method other than competitive bidding is in the public interest, to notify the State Transportation Commission 90 days before work is commenced, and the House and Senate Appropriations committees "promptly." The department has used certain contracting methods other than competitive bidding, such as Design-Build and Construction Manager/General Contractor. It is not clear how, in relation to these non-competitive contracts, the department currently demonstrates compliance with the notification requirements of Section 11c.

The language of Section 11c also appears to require that all local agency federal-aid construction projects whose costs exceed \$100,000 be performed by contract awarded by competitive bidding. For projects with estimated construction costs of \$100,000 or less, the local agency may perform the work with its own forces. Construction work performed by local road agency forces, as opposed to private contractors through competitive bidding, is termed "force account" work.

The department has established guidelines for the use of non-competitive bidding by local road agencies on federal-aid projects. The department guidelines parallel Federal Highway Administration policy on the use of agency force account on federal aid projects (FHWA Order 5060.1, dated March 12, 2012). Among the department guidelines is the requirement that the local agency demonstrate that the use of force account would result in a savings of at least 6% as compared to competitive bidding.

The current guidance document, Construction of Federally Funded Local Agency Projects by Non-Competitive Bid Contract (Force Account), dated May, 2011, is available from the department's website. In addition, the department's Local Agency Program Unit publishes an annual report of non-competitive local agency projects. That report is also available on the department's website.

Most local road agency force account work is associated with local federal aid projects. However, in some instances the department may employ a local road agency to perform force account work related to a state trunkline construction project – typically for incidental work such as maintaining a detour or upgrading or timing traffic signals. It is not clear if Section 11c also applies to these kinds of force account projects.

House Bill 4611 would amend Section 11c to read as follows:

"All construction projects of the department concerning highways, streets, roads, and bridges, whose cost exceeds \$100,000.00 for construction or preservation as defined in Section 10c, shall 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. The director of the department shall 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. However, in a case in which the department or a local road agency determines emergency action is required, the reports need not be filed before a contract is awarded but shall be promptly filed."

These provisions of the bill would require the department director to report findings to the State Transportation Commission 90 days before work is commenced, and "promptly in writing" to the House and Senate Appropriations Committees. The "findings" of these reports are presumably findings that some other contracting method, other than competitive bidding, was in the public interest.

The notification requirement would appear to be applicable to both local force account contracts and to contracts awarded to private contractors using non-competitive bidding methods such as Design-Build and Construction Manager/General Contractor.

Section 11c – Proposed New Subsection 2

House Bill 4611 would add a new subsection to Section 11c to established specific new contracting requirements for local road agencies. The new subsection would read:

"All construction projects of a local road agency whose cost exceeds \$100,000.00 for construction or preservation excluding maintenance, 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. Installation or upgrading of advanced traffic management and signals is exempt from this subsection. 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."

The bill would define "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."*

FISCAL IMPACT:

As described above, House Bill 4611 would amend Section 11c of Act 51. It is not clear how the proposed amendments would affect state or local contracting requirements. Specifically, it is not clear how the bill would affect the use of local agency force account work on federal-aid projects – if at all. Under current program guidelines, the use of local road agency force account is authorized only when the local road agency can demonstrate that the use of force account would result in a savings of at least 6% as compared to competitive bidding.

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