

MI S.B. 157 SUBSTITUTE

Newest substitute is more of the same – if not worse

The substitute makes minor changes and is still problematic – this does not fix anything

The substitute further expands the already problematic definition of “ordinance” and create even more problems

Does nothing to change the uniform opposition of engineer, water professionals, utilities and local governments

Enacts a material preference

The goal of this bill is to force public entities to include plastic pipe on every future project bid knowing that bid laws/regulations will ultimately force these entities to purchase the material with the lowest bid price (*i.e.*, initial cost)

It reaches this goal by prohibiting communities from developing community-wide specifications that specify a particular material or otherwise exclude materials in a specification for a system or a project

- As a result of this prohibition, communities will no longer have discretion over what materials are chosen because any material that can arguably meet some type of standard gets to bid, and the lowest bidder wins
 - Today, communities decide what materials they want before they go to bid so that they have control over what materials they ultimately purchase
 - This bill will remove all material selection authority from the community that is purchasing materials

Eliminates community-wide specifications/standard specifications

Today, communities do not create random isolated infrastructure projects, they plan and develop infrastructure systems

- When developing a system, communities often create community-wide specifications with their engineers so that each project fits with the rest of the system and helps the system function properly
- These specifications often specify on the front-end which materials will be used throughout the system
- This is considered to be a “best practice” because it significantly reduces risk and saves money

This bill’s language essentially prohibits all forms of material specifications

- The bill seeks to prohibit local specifications that limit materials in any way
 - This prevents communities from planning for their systems on the front end and determining which material(s) is best for their system
 - It also forces communities to plan on a project-by-project basis

This increases the chances of having to use a mixture of materials in a system, which creates a greater risk of failures

This will increase delays and increase costs

Eliminates competition on multiple factors and restricts consumer choice

Today, materials compete to get into specifications based on multiple competitive factors, including life cycle costs, service life, resiliency, durability, maintenance, risks, past experiences and the community’s specific needs

This bill will eliminate that competition because every material will be allowed to bid regardless of its merits, and the competition will be reduced to one factor – initial acquisition costs

The purchaser can no longer specify materials, so the purchaser cannot choose the material that best suits its needs, and it cannot exclude materials that do not meet its needs

In the end, the purchaser is stuck with the material with the lowest bid whether the purchaser wants that material or not

Reducing competition and choice will increase costs and delays and discourage innovation

Alters the design process fundamentally and usurps local control

Currently, the local community, with the advice of its engineers, has ultimate authority over the design of its infrastructure, including ultimate discretion over what materials are used in the construction process

- The community, through its engineers, designs a system and specifies what materials its needs so that contractors can build the type of system that best suits those needs
 - Communities select materials for their designs based each material's merits after evaluating many competitive factors
 - Contractors must comply with those specifications and provide the lowest responsive bid to win a bid
 - Contractors may suggest alternative materials but the community has the authority to determine whether alternative materials will suit its needs and may reject them
- This form of local control makes sense because the local community is purchasing the infrastructure and will ultimately be responsible for maintaining it
 - Because the community has authority over design its infrastructure it is able to make design decisions that reduce costs and risk

This bill removes all design authority from the local community

- Communities cannot specify or reject any materials regardless of their merits
- Contractors may submit any design it wants, including any materials it wants so long as those materials arguably meets certain performance requirements (*e.g.*, carries water from point A to point B)
- The community has to accept the design of the lowest bidding contractor regardless of what materials are included in that contractor's design
- This dramatic shift of authority to the contractor is significant because the contractor's only interest is to win the bid and it has no liability for the maintaining infrastructure after the project is completely
 - The community is still responsible for the maintenance of the infrastructure even though it has no authority over its design (*i.e.*, it has not ability to reduce its risk and reduce its costs).

There is Not a Problem that Needs to be Addressed

There is no need for the legislation because there is not a problem

The market for materials is already open and the process is very competitive

The proponents cannot identify any ordinances

- No need for legislation and unintended consequences from changing procurement law
- The proponents have identified 13 allegedly closed communities
- 13/13 communities allow plastic pipe
 - This proves that plastic pipe is evaluated and used in MI
 - The absence of a material in a specification does not mean it has not been evaluated
 - Specifications are not permanent and can be changed
 - Standard/community specifications are essential for the efficient design of water systems
 - Communities design systems not a series of unrelated projects

The expansive definition of “ordinance” will likely create unintended consequences in other parts of the MI Code

This amendment further expands the definition by adding “administrative enactments”
The definition is ambiguous and will create problems