Act 51 of the Public Acts of 1951, as amended

"ACT 51 MADE SIMPLE"

Article IX, section 9, of the Michigan Constitution, as amended, states that "All specific taxes . . . imposed directly or indirectly on fuels sold or used to propel motor vehicles upon highways. . . or on registered motor vehicles . . . shall, after payment of necessary collection expenses, be used exclusively for transportation purposes. . ."

To ensure the legitimate use of these monies, Public Act 51 of 1951 ("Act 51") was passed. The following pages briefly summarize its major provisions and are intended to provide the reader with a surface understanding of the law distributing transportation revenue in Michigan. *Major changes resulting from the 97 gas tax package are highlighted by italics.*

The chief purpose of Act 51, as amended, is to create a fund into which these specific transportation taxes are deposited and to prescribe how these revenues are to be distributed and the purposes for which they can be spent. In addition, Act 51 establishes jurisdictional road networks, sets priorities for the use of transportation revenues, allows bonded indebtedness for transportation improvements, and mandates a periodic study of transportation needs to be carried out by a committee set forth in the Act.

Michigan Transportation Fund [Sec. 10]

Act 51 authorizes the creation of the Michigan Transportation Fund (MTF). Revenues collected through highway user taxes—the state motor fuels tax, vehicle registration and weight taxes, and other miscellaneous automobile related taxes—described in the state constitution are deposited in MTF. ~~Significant payments for services provided by several state agencies: the Departments of State, Treasury, Management and Budget, State Police, Natural Resources, and Civil Service, and the Legislative Auditor General -- are made from the collected funds in accordance with the State Transportation Department's appropriations bill. These payments amounted to almost $76 million for FY '93, about six percent of MTF appropriated revenues~~.

Several programs receive a specific statutory share of MTF. The Rail Grade Crossing Fund gets $3 million, and not less than $3 million is allocated to the Critical Bridge Fund to service debt incurred in Build Michigan I. ~~The Recreation Improvement Fund receives two percent of what is left~~. *Three cents of the recent four-cent gas tax increase is distributed to the state, counties and cities through the formula outlined later in the act, and one cent is earmarked for repair of state bridges. Another $43 million is allocated to the state trunkline fund for debt service.* The Comprehensive Transportation Fund (CTF) for transit programs is allocated 10 percent of the balance, the maximum share possible under paragraph 2 of Article IX, section 9 of the Michigan Constitution ("Not less than 90 percent. . . . shall be used exclusively for . . . roads, streets, and bridges . . .") Then the Critical Bridge Fund is allocated $5 million. Finally, the Transportation Economic Development Fund receives *$36.775 million for allocation to debt service and another $3.5 million for economic development road projects for targeted industries.*

The remaining MTF monies are divided between road systems under three levels of government. The State Trunkline Fund receives 39.1 percent, County Road Commissions receive the same portion, and Cities and Villages are allocated 21.8 percent of the funds. *The act also requires that a new distribution formula be enacted by September 30, 1998, or 20% of MTF revenues will be withheld from distribution until a formula is enacted.*

Comprehensive Transportation Fund [Sec. 10b and e]

The Comprehensive Transportation Fund (CTF) created by Act 51 receives about seven percent of the sales tax on motor-vehicle-related items and 10 percent of the net revenues in MTF. Its purpose, as described in Act 51, is to provide funds for planning, programming, operation and construction of public transportation systems pursuant to the state transportation program approved by the State Transportation Commission. The first priority for use of CTF monies is for debt service and administration.

~~Several requirements are described for the use of the remaining funds. Seventy percent is used for operational and capital grants for public transportation~~. *The next priority is payment of operating grants according to the following requirements:*

- *Urbanized areas with greater than 100,000 population receive grants of up to 50% of their operating expenses.*
- *Non-urbanized areas, and urbanized areas with less than 100,000 population, receive grants of up to 60% of their operating expense. (50% of operating expenses not reimbursed by the federal government in the case of ferries in non-urbanized areas.)*

Not less than ten percent is to be used for intercity passenger and freight service, and the remainder ~~ing twenty percent~~ is allocated to ~~the local-share and effectiveness bonus programs~~, aid for specialized services, *local bus capital*, and other ~~(unspecified)~~ public transportation purposes.

<u>Jurisdictional Road Networks</u>

Act 51 authorizes designation of jurisdictional road networks. It sets criteria for those designations and allows for the transfer of mileage between systems. In addition, Act 51 assigns responsibility for maintenance, construction, and improvement of those roads to the various governmental bodies. Maintenance includes such diverse activities as snow removal, cleaning, patching, signing, and marking, in addition to preservation, reconstruction, resurfacing, restoration and rehabilitation [Secs. 11(4), 12(18)].

State Trunklines [Sec. 1a, b, and c]:

The State Trunkline System is one of the jurisdictional road systems authorized by Act 51. Designated by the State Transportation Commission, the state trunkline system consists of roads, streets, and highways found both inside and outside the limits of incorporated cities and villages. It assigns to the Michigan Department of Transportation the direction, supervision, control, and cost of maintenance, construction, and improvements to state trunkline highways. Incorporated cities of over 25,000 people also make a financial contribution, based on population, for improvements to state trunkline highways within their jurisdiction, and for connections between city streets and the state trunkline system.

This section of the act also requires that the state develop a pavement management system for the National Highway System, use life-cycle cost analysis for projects using more than $1 million in state funds, and employ various strategies to assist minority business enterprises compete for contracts.

County Primary and Local Roads [Sec. 2, 3, 4 and 5]:

The County Primary and County Local Road systems, designated by board members of the County Road Commissions and subject to approval by the State Transportation Commission, are also established by Act 51. County Primary roads are selected according to their importance to the county, whether or not they are located within incorporated cities and villages.

All other county roads are part of the County Local road system. In addition, the act authorizes designation of a Seasonal County Road System which is not open to public travel for some portion of each year.

City Major and Local Streets [Sec. 7, 8, 9]:

City Major Street and Local Street systems established by Act 51 are designated by the city's governing body, subject to the approval of the State Transportation Commission. City Major Streets are chosen according to their importance to the incorporated jurisdiction. All other city streets are City Local Streets. These street systems include no county roads or state trunkline highways.

<u>Transfer of mileage between jurisdictions</u>

Road mileage may be transferred between jurisdictional entities. That is, a county or city may transfer a road to the state, or the state may transfer a road to a city or county, as long as certain conditions are met; see Act 296 of 1969 (MCL 247.851-247.861). Also, a city or village may request that a county primary road within its boundaries be placed under its jurisdiction; if the county road commission refuses, the decision can be appealed to the Transportation Commission. [Sec. 12c]

MDOT keeps track of the mileage transferred from each jurisdiction to every other jurisdiction. We also calculate a per-mile average worth annually, and jurisdictions receiving mileage then get a corresponding transfer in their MTF payments. [Sec 10a]

Priorities of Funding

Act 51 sets forth priorities for the use of funds distributed to the State, County Road Commissions, and Cities and Villages. The first priority for each of these systems is debt service. A minimum of one percent (based on a ten year average) of the funds distributed to each system must be used for widening and other construction intended to accommodate non-motorized vehicles. [Sec 10k]

State Trunklines [Sec. 11]:

After debt service, operating costs are the next priority use of state trunkline funds; these include tort liability settlements by the Department of Transportation, according to a ruling by the state attorney general. The next priority is maintenance of roads and bridges. Remaining funds are then used for the rest of the capital program. According to Section 11(2), 90 percent of state funds must be used for "maintenance" as defined in the act -- including snow-plowing, marking, patching, as well as reconstruction, resurfacing, restoration and rehabilitation -- of state trunkline highways. Projects on the National Highway System are exempted from this calculation.

In addition, Section 11(3) requires 90 percent of federal revenues be used for maintenance, however, federal funds cannot be used for non-capital "maintenance" activities. This requirement is waived for federal revenues if compliance causes the state to be ineligible for federal funds, but only to the extent necessary to achieve eligibility.

The act also requires, where possible, warrantees of not less than 5-year full replacement for contracted construction work, and notification of the legislature of overruns large enough to require state administrative board or commission approval. The act also limits administrative expenditures (other than project costs) to 10% of annual program expenses. An amendment to the act raises the cost of projects which must be competitively bid to $100,000 for construction or maintenance, and requires competitive bidding by local agencies contracting work at that cost as well.

County Primary and Local Roads [Sec. 12]:

Act 51 sets aside a percentage of funds from the county allocation to be used for snow removal in counties with greater than 80 inches of snow annually. $10,000 from the county portion is also allowed annually for the services of a licensed professional engineer. After that, the act requires that ten percent of funds distributed form MTF to counties be earmarked for urban primary and urban local roads and four percent be used for rural local roads. The remaining funds (roughly 85 percent) are then distributed 75 percent to county primary roads and another 25 percent to county local roads. These distributions are prorated based on population and road mileage. In addition, a share of the primary road funds is distributed equally to all counties.

The transfer of funds from primary to local systems, or vice versa, is allowed in Act 51. The first 15 percent of fund transfers can be made through a county resolution, and an additional 15 percent can be transferred with the approval of the State Transportation Department.

The act requires the state and county road association to jointly develop incentives for counties to establish statewide purchasing pools to use their funds more efficiently. The act also limits administrative expenditures (other than project costs) to 10% of annual program expenses and requires the department of treasury to conduct performance audits of county road commission use of state transportation funds.

Several restrictions are placed on the use of MTF monies by County Road Commissions. Not more than five percent can be used for roadside parks. MTF monies allocated to local roads which are used for capital construction cannot comprise more than 50 percent of the funds for road construction, nor more than 75 percent of funds for bridge construction, and must be matched by money from other sources. In addition, at least 90 percent of the funds remaining after payments are made for debt service, administration, and capital outlay projects for equipment and buildings, must be used for maintenance. 90 percent of federal revenues must also be used for maintenance, but this calculation may be based on a three year average, rather than a single year's expenditure. Also, federal aid used for non-maintenance activities on county primary roads within urban-area boundaries and for hard-surfacing of gravel roads on the county primary system are exempt from the 90-percent requirement.[Sec. 12(17)]

City Major and Local Streets [Sec. 13]:

Act 51 mandates that a portion of the city share of MTF funds be reserved for snow removal in cities with snowfall greater than 80 inches in a given year. 75 percent of the remaining funds are allocated, based on road mileage and population, for major streets and 25 percent for local streets. A maximum of five percent of the funds may be used for roadside parks and not more than ten percent can be used for administration.

Up to 40 percent of the funds allocated to the major street system can be transferred to the local street system, 25 percent by resolution and an additional 15 percent with approval of the State Transportation Department, based on the amount of revenues raised locally for use on the major street system. Any portion of the funds may be transferred from the local streets to major streets. No requirement is specified for the percentage of funds expended for maintenance.

<u>Bonded Indebtedness and Taxation</u> [Sec. 18a, b, c]

Act 51 enables the State Transportation Department to sell bonds or notes for several purposes with the approval of the State Transportation Commission. [Editorial note: this is a great advantage. Many state DOTs have to get legislative permission to incur debt.] These include bonding to construct highways or transit systems, to make loans and grants, and to refund old notes. Within 30 days subsequent to the bond issue, a project can still be amended by the State Transportation Commission.

County Road Commissions are authorized by the act to sell bonds for construction, by resolution of the board of the County Road Commission. The annual amount of the county's debt service cannot exceed 50 percent of the county's previous-year MTF receipts.

In addition, townships are authorized to transfer unexpended township general fund revenues to the county road fund, for maintenance and improvement of roads within the township. The township may also levy property taxes for maintenance or improvement of county roads within its jurisdiction (3 mills without a vote, and an additional 3 mills with a vote of the people).

<u>Needs Study</u> [Sec. 9a]

Act 51 requires that a long-range transportation needs study be conducted every four years, by a 5-member committee representing manufacturing, commerce, agriculture, tourism, and labor, with the assistance of staff from the State Department of Transportation. A 23-member citizens advisory committee representing a wide variety of transportation-related interests is also created to review and comment on all reports studies, and recommendations. The committee reports its findings to the Governor, the State Transportation Commission, and the Legislature.

<u>Corridor Planning</u> [Sec 15 a and b]

The act also requires county road commissions, cities and villages to establish corridor planning committees and corridor plans to provide a stable economic environment for business and avoid duplication of effort.