Legislative Analysis

PA 51 OF 1951: CREATE LOCAL AGENCY WETLAND MITIGATION BANK FUND & MOVABLE BRIDGE FUND

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Senate Bill 105 (H-1, as reported from Subcommittee)
Sponsor: Sen. Mike Green
Senate Committee: Transportation
House Committee: Appropriations
Complete to 5-5-16

SUMMARY:

Senate Bill 105 (H-1) would amend Section 10 of 1951 PA 51 ("Act 51) to establish two new earmarks of Michigan Transportation Fund (MTF) revenue: a new $2.0 million earmark for a new Local Agency Wetland Mitigation Bank Fund established by the bill in new Section 11h, and a new $5.0 million earmark for a new Movable Bridge Fund established by the bill in new Section 11g.

Section 10 of Act 51 governs that governs the distribution of MTF revenue. The section currently directs MTF revenue to the State Trunkline Fund (STF), to other state transportation funds and programs, and to local road agencies (county road commissions, cities and villages).

As noted above, the bill would establish two new MTF earmarks in Section 10. Both of these earmarks would come "off the top" of the current Act 51-directed MTF distribution; that is to say, prior to the final distribution of MTF revenue to the STF and local road agencies. However, both of the new earmarks would be made from the current earmark of 3 cents of the gasoline motor fuel tax. In effect, both the new earmarks would come out of an existing earmark of funds distributed to the STF, to county road commissions, and cities/villages.

The bill directs the Michigan Department of Transportation to annually adjust the amount allocated to the Movable Bridge Fund by "an amount equal to the annual increase in the Detroit consumer price index for the preceding year."

DETAILED ANALYSIS

Local Agency Wetland Mitigation Bank Fund – Sections 10 and 11h

Section 10 of Act 51 governs the distribution of MTF revenue to the STF, to other state transportation funds and programs, and to county road commissions, cities, and villages. Senate Bill 105 (H-1) would amend Section 10 to establish a new annual earmark of $2.0 million from the MTF for credit to a new *Local Agency Wetland Mitigation Bank Fund* established in new Section 11h. The Senate-passed version had earmarked $5.0 million for this new fund.

The specific language of the bill earmarking money to the new Local Agency Wetland Mitigation Fund is as follows: "*Except as otherwise provided in this subdivision, and subject to Section 11h, $2.0 million each year of the revenue from 3-cents* [of the motor fuel tax on gasoline]…" This language is confusing in that there are no other provisions governing the motor fuel tax on gasoline within the new subdivision, and the subsequent subdivision also makes an earmark from the 3 cent gasoline tax earmark.

We assume the intent is to make the new earmark out of the existing distribution to the STF and local road agencies and to not affect the MTF distribution to the Comprehensive Transportation Fund (CTF).

New Section 11h would establish the *Local Agency Wetland Mitigation Bank Fund* within the state Treasury. The fund would be a restricted fund; fund revenue would not lapse to the state General Fund.

The bill directs that money appropriated to the Local Agency Wetland Mitigation Bank Fund, and interest accruing to the fund, be expended for the Local Agency Wetland Mitigation Bank Program. The bill would limit the unobligated fund balance to $10.0 million.

The bill would create a nine-member Local Agency Wetland Mitigation Bank Advisory Board comprising:

- Three voting members from the County Road Association of Michigan (CRAM), with one from a county with a population greater than 400,000; one from a county with a population greater than 65,000 but less than 400,000; and one from a county with a population less than 65,000.
- Three voting members from the Michigan Municipal League (MML), with one from a city with a population of 70,000 or less; and one from a village.
- One voting member/engineer appointed jointly by CRAM and MML.
- Two non-voting members appointed by the Department of Transportation (MDOT) and the Department of Environmental Quality (DEQ).

The bill includes other provisions governing the qualifications of board members and the conduct of board meetings.

The bill directs that the two non-voting members of the board appointed by MDOT and the DEQ provide qualified administrative staff and qualified technical assistance to the board as necessary.

The H-1 substitute authorizes board members to employ a part-time or full-time manager or engineer who shall maintain and report the activities of the fund to the board, work with local road agencies, engineers and environmental consultants to implement this section of the act and promote efficiency and economy in the operations of this program, exercise general oversight over construction to insure that environmental laws and regulations, plans and specifications are followed, and perform duties to this purpose as directed by the board.

The bill directs the Local Agency Wetland Mitigation Bank Program to provide grants to local road agencies for one or more of the following:

- Complete engineering and design for a wetland mitigation bank.
- Purchase of land for a wetland mitigation bank.
- Construction of a wetland mitigation bank.
- Monitoring and maintenance necessary to ensure that the performance standards are or will be met.
- Funding for a previously established wetland mitigation bank.

The bill provides that not more than 20% of a wetland mitigation bank may be sold to the private sector. The bill directs that any revenues generated from such a sale be deposited in the Local Agency Wetland Mitigation Bank Fund.

The bill also authorizes the Advisory Board to approve the use of grant funds for other activities needed to establish a wetland mitigation bank upon demonstrated need by a local road agency.

Movable Bridge Fund – Sections 10 and 11g
As noted above, Section 10 of Act 51 governs the distribution of MTF revenue to the STF, to other state transportation funds and programs, and to county road commissions, cities, and villages. Senate Bill 105 (H-1) would amend Section 10 to establish a new annual earmark of $5.0 million from the MTF for credit to a new *Movable Bridge Fund* established in new Section 11g. The new $5.0 million earmark would come out of an existing MTF earmark in Section 10, an earmark of 3 cents of the motor fuel tax on gasoline. This existing earmark, equal to approximately $130.0 million, is currently distributed to the STF, to county road commissions, and to cities and villages.

The bill would require the Michigan Department of Transportation to "*annually adjust the amount allocated under this subdivision by an amount equal to the annual increase in the Detroit Consumer Price Index for the preceding year*." Although we assume this provision is intended to apply to the $5.0 million Movable Bridge Fund earmark only, we believe that this provision could be read to apply to the entire 3-cent gas tax earmark as well.

New Section 11g would establish the *Movable Bridge Fund* within the state Treasury. The fund would be a restricted fund; fund revenue would not lapse to the state General Fund. The Michigan Department of Transportation would be the fund administrator for auditing purposes.

The bill would authorize the Michigan Department of Transportation to enter into a contract with a person or agency that had jurisdiction over a publicly owned movable bridge for the operation of that bridge. Under provisions of the bill, contracts would have to require that contractors hired by the department to operate a movable bridge maintain insurance in an amount specified by the department. The bill would not require the department to assume ownership a publicly owned movable bridge as part of any contract.

Using a process described in the bill, the bill directs the department to develop procedures to govern the operation of publicly owned movable bridges, and cost estimates for operating publicly owned movable bridges on an annual basis. The bill directs the department to annually distribute money from the Movable Bridge Fund to each person or agency responsible for operation of a publicly owned movable bridge. The department would be eligible for a distribution from the Movable Bridge Fund for movable bridges under its jurisdiction.

The Michigan Department of Transportation indicates that there are 12 movable bridges on the state trunkline system, and 12 movable bridges under the jurisdiction of 8 separate local road agencies (county road commissions or cities).

There is currently no specific earmark for movable bridges in Act 51; the department pays for the costs of operating movable bridges on the state trunkline system from its STF funding; each of the eight local road agencies with movable bridges pay for bridge operating costs from its Act 51 distribution of MTF funds.

FISCAL IMPACT:

MTF revenue is generated from motor fuel taxes and vehicle registration taxes. The estimated MTF distribution to the state (i.e. the STF) and local road agencies would total $1.7 billion in FY 2015-16. Because of increases in estimated baseline MTF revenue, and because of additional revenue provided through the Road Funding Plan passed in November of 2015 and effective January 2017, the estimated FY 2016-17 MTF distribution to the state and local road agencies would total $2.2 billion.

Senate Bill 105 (H-1) would not increase MTF revenue. It would change the distribution of MTF revenue by establishing two new earmarks in Section 10 of Act 51. The bill would earmark $2.0 million in MTF revenue to a new *Local Agency Wetland Mitigation Bank Fund* established by the bill in a new section, Section 11h. The bill would earmark $5.0 million in MTF revenue to a new *Movable Bridge Fund* stablished by the bill in new Section 11g.

The proposed new $2.0 million earmark of MTF for credit to a new Local Agency Wetland Mitigation Bank Fund would appear to come out of the current earmark of 3 cents of the gasoline motor fuel tax. In effect, this earmark would appear to come out of funds currently distributed to the STF, to county road commissions, and cities/villages.

The proposed new earmark of $5.0 million for the new Movable Bridge Fund would also come out of the current earmark of 3 cents of the gasoline motor fuel tax. This earmark would provide additional funding for those agencies that own and operate movable pubic bridges. How the $5.0 million earmark would be distributed between state and the particular local road agencies that own movable bridges cannot be readily determined at this time.

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