Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 105 (as enacted) **PUBLIC ACT 246 of 2016**
Sponsor: Senator Mike Green
Senate Committee: Transportation
House Committee: Appropriations

Date Completed: 4-12-17

RATIONALE

Public Act 51 of 1951, the Michigan Transportation Fund (MTF) law, requires revenue in the Fund to be distributed for State and local road and bridge programs according to a particular formula. Reportedly, the allocation of MTF revenue was problematic in the case of stretches of road that include bridges with movable components that allow for the passage of waterway traffic. There are 25 such bridges around the State. With one exception, they are all publicly owned, half by local units of government and the other half by the Michigan Department of Transportation (MDOT).[1] The MTF formula was considered unsatisfactory because it treated a movable bridge the same as a standard roadway, leaving the entity with jurisdiction over the bridge to cover the added costs of operating it. Evidently, these costs could place significant budgetary strain on the local units of government in which the bridges are located. Thus, it was suggested that the distribution formula be revised to provide for the allocation of money to governmental units responsible for the operation of movable bridges.

In another matter, project permits granted to local road agencies sometimes contain a requirement that the agency restore or replace wetlands that are disturbed in the course of a road project. According to the Department of Environmental Quality (DEQ), wetlands provide a number of public benefits, including flood storage, water quality protection, fish and wildlife habitat, and groundwater recharge. To facilitate compliance with permit conditions designed to replace compromised wetlands, wetland mitigation banks have been established, with DEQ approval, by nonprofit organizations, private companies, and governmental entities. These programs provide for the preemptive creation of new wetland areas that serve as "credits" to offset future wetland damage or loss. Bank sponsors can use the credits to meet the mitigation conditions of their own permits or sell the credits to other permit applicants facing similar requirements. To help local road agencies with the costs of developing wetland mitigation banks, it was suggested that a grant program be established and funded with MTF revenue.

CONTENT

The bill amended Public Act 51 of 1951 to establish the "Movable Bridge Fund" and the "Local Agency Wetland Mitigation Bank Fund".

Regarding the Moveable Bridge Fund, the bill does the following:

-- **Allocates to the Fund $5.0 million of the revenue from three cents of the gasoline tax to the Fund each year.**

[1] Of the 12 movable bridges owned by MDOT, one is a lift bridge (which raises vertically) and 11 are drawbridges (officially called bascule bridges). The 12 locally owned movable bridges include 10 drawbridges and two swing bridges (which pivot horizontally). The privately owned movable bridge is the Grosse Ile Toll Bridge, which is a swing bridge.

-- Allows the Michigan Department of Transportation to enter into a contract with a person or agency having jurisdiction of a publicly owned movable bridge for operation of that bridge.
-- Requires each person or agency, other than MDOT, that owns or has jurisdiction of a publicly owned movable bridge to submit to MDOT the operational procedures for that bridge and the costs of operating it on an annual basis.
-- Requires MDOT to develop procedures to govern the operation of, and estimate the operational costs of, all publicly owned movable bridges in the State for each fiscal year.
-- Requires MDOT, using the estimates, to distribute a percentage of money from the Movable Bridge Fund to each person or agency responsible for operating a movable bridge, including the Department.
-- Provides that, if MDOT offers to enter into a contract for the operation of a movable bridge, and person or agency with jurisdiction of the bridge declines, the person or agency must continue to receive the money that it otherwise would have received for operation of the bridge under the Act.

Regarding the Local Agency Wetland Mitigation Bank Fund, the bill does the following:

-- Allocates to it each year $2.0 million from three cents of the gasoline tax.
-- Limits the balance of the Fund to $5.0 million at the beginning of a fiscal year.
-- Requires money in the Fund to be spent for a Local Agency Wetland Mitigation Bank Program.
-- Creates the Local Agency Wetland Mitigation Bank Advisory Board.
-- Requires the County Road Association and the Michigan Municipal League to appoint the Advisory Board's seven voting members, and requires MDOT and the Department of Environmental Quality to appoint two nonvoting members.
-- Requires the Advisory Board to hire a part- or full-time manager or engineer.
-- Requires the Program to provide grants to local road agencies for engineering and design, land purchase, construction, and monitoring and maintenance related to wetland mitigation banks, as well as funding for banks established before the bill took effect.
-- Authorizes the Advisory Board to approve the use of grant funds for other wetland mitigation bank activities upon a demonstrated need by a local road agency.
-- Requires the Advisory Board to establish a review process for considering Program grant applications and enter into a grant agreement with a recipient before releasing funds.
-- Requires the Advisory Board to report to the Legislature on the use of Fund money for each year in which the Board receives grant applications.
-- Allows a maximum of 20% of a wetland mitigation bank to be sold to the private sector, and requires revenue generated from such sales to be deposited into the Local Agency Wetland Mitigation Bank Fund.

The bill also allocates not more than, rather than not less than, $3.0 million from the Michigan Transportation Fund to the Local Bridge Fund each year for the payment of principal, interest, and redemption premium on notes or bonds issued by the State Transportation Commission to supplement funding provided to the Local Bridge Program.

The bill took effect on September 22, 2016.

Movable Bridge Fund

Fund Establishment. The bill established the Movable Bridge Fund as a separate fund within the State Treasury. The State Treasurer must direct the investment of the Fund, may deposit money or other assets from any source into the Fund, and must credit to the Fund any interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year is to remain in the Fund and not lapse to the General Fund. For auditing purposes, MDOT is the administrator of the Movable Bridge Fund.

Allocation of Money. The Act governs the distribution of revenue collected from various transportation-related taxes and fees. The revenue is directed to several State transportation funds, including the State Trunkline Fund; transportation programs; and local units of governments. Revenue from three cents of the gasoline tax is allocated to the State Trunkline Fund, county road commissions, and cities and villages, in specified percentages.

The bill allocates to the Movable Bridge Fund $5.0 million each year of the revenue from three cents of the gasoline tax. The remainder of the money must continue to be allocated to the State Trunkline Fund, county road commissions, and cities and villages. The bill requires the Department each year to adjust the money allocated to the Movable Bridge Fund by an amount equal to the annual increase in the Detroit Consumer Price Index for the preceding year.

Contracts for Operation of Movable Bridges. The bill allows MDOT to enter into a contract with a person or agency having jurisdiction of a publicly owned movable bridge for the operation of that bridge. The contract must require any contractor hired by the Department to operate the bridge to maintain insurance in an amount specified by MDOT. The Department is not required to assume ownership or jurisdiction of a publicly owned movable bridge as part of the contract.

The bill requires each person or agency, other than MDOT, that owns or has jurisdiction of a publicly owned movable bridge to submit to MDOT the operational procedures for that bridge and the operational costs incurred by the person or agency in operating it on an annual basis. (The bill specifies that "operational costs" include all reasonable and customary costs associated with the operation of a publicly owned movable bridge. The term does not include routine maintenance costs, capital improvement costs, or emergency structural, mechanical, electrical, or hydraulic repairs.)

Fund Distributions. The bill requires MDOT to develop procedures to govern the operation of, and to determine the operational costs of, each publicly owned movable bridge in the State. The Department must develop an estimate for the operational costs of each publicly owned movable bridge for each fiscal year. For each bridge owned or under the jurisdiction of a person or agency other than MDOT, the Department must use the operational procedures and costs submitted by the person or agency to develop its procedures and estimates. Using the estimates, MDOT must distribute a percentage of money from the Movable Bridge Fund to each person or agency responsible for operating a publicly owned movable bridge. If MDOT is responsible for the operation of a publicly owned movable bridge, the money must distributed to the Department.

If MDOT offers to enter into a contract, as described above, and the person or agency that has jurisdiction of the bridge declines, the person or agency must continue to receive the money that it otherwise would have received for the operation of the bridge under the Act.

Local Agency Wetland Mitigation Bank Fund

Establishment of Fund & Allocation of Money. The bill established the Local Agency Wetland Mitigation Bank Fund as a separate fund in the State Treasury. The State Treasurer may receive money or other assets from any source for deposit into the Fund. The State Treasurer must direct the investment of the Fund, and credit to it any interest and earnings from investments.

The bill allocates to the Fund each year $2.0 million of the MTF revenue from three cents of the gasoline tax. The money appropriated to the Fund, as well as the interest accruing to it, must be spent for the Local Agency Wetland Mitigation Bank Program. The balance of the Fund may not exceed $5.0 million at the beginning of a fiscal year, less the amount of funds that have been obligated but not yet spent.

As a rule, money distributed from the MTF may be spent for construction purposes on county local roads only to the extent matched by money from other sources, and Michigan transportation funds may be spent for the construction of bridges on the county local roads in an amount not to exceed

75% of the construction cost of local road bridges. The bill provides that money in the Local Agency Wetland Mitigation Bank Fund is not subject to these restrictions.

Advisory Board. The bill created the nine-member Local Agency Wetland Mitigation Bank Advisory Board. The membership must include one voting member, appointed by the County Road Association (CRA) of Michigan, from each of the following:

-- A county with a population of more than 400,000.
-- A county with a population of more than 65,000 but not more than 400,000.
-- A county with a population of less than 65,000.

Additionally, the membership must include one voting member, appointed by the Michigan Municipal League (MML), from each of the following:

-- A city with a population of more than 70,000.
-- A city with a population of 70,000 or fewer.
-- A village.

The MML and the CRA jointly must appoint a voting member who is an engineer.

In addition, MDOT and the Department of Environmental Quality must appoint two nonvoting members.

Board members must serve for terms of two years or until a successor is appointed, whichever is later. Of the members first appointed, however, two appointed by the CRA and two appointed by the MML must serve for one year.

A Board member may be removed for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

A Board member must serve without compensation, but may receive reimbursement for necessary travel and expenses consistent with applicable law and rules and procedures of the Civil Service Commission and the Department of Technology, Management, and Budget or local road agency policies, subject to available funding.

The Board must meet at least quarterly. It is subject to the Open Meetings Act and the Freedom of Information Act.

The two nonvoting members, MDOT, and the DEQ must to provide qualified administrative staff and technical assistance to the Board as necessary.

Board Manager or Engineer. The bill requires the Advisory Board to employ a part-time or full-time manager or engineer who must maintain and report the activities of the Local Agency Wetland Mitigation Bank Fund to the Board; work with local road agencies, engineers, and environmental consultants to implement bill's wetland mitigation bank provisions and promote efficiency and economy in the operations of the Local Agency Wetland Mitigation Bank Program; exercise general oversight of construction to ensure that environmental laws and regulations, plans, and specifications are followed; and perform other duties as directed by the Board.

Local Agency Wetland Mitigation Bank Program. The bill requires the Program to provide grants to local road agencies for one or more of the following related to a wetland mitigation bank:

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

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

An application for a loan from the Program must be made on a form approved by the Advisory Board and contain the information the Board requires. A grant application may be made at any time.

The Board must establish a review process for considering Program grant applications. Within 90 days after receiving an application, the Board must notify the applicant in writing whether the grant is approved or rejected. If the Board fails to notify an applicant within this time frame, the grant will be considered approved. Before releasing grant funds, the Board must enter into a grant agreement with the recipient.

For each year in which the Board receives grant applications, it must report by October 1 to the standing committees of the Senate and the House of Representatives with primary jurisdiction over issues pertaining to transportation and natural resources and to the Senate and House Appropriations Committees on the use of funds from the Local Agency Wetland Mitigation Bank Fund. At a minimum, the report must include the following:

-- The number of grant applications received.
-- The name of each local road agency applying for a grant and whether each application was approved or denied.
-- The amount of local match for each grant awarded.
-- The individual and annual cumulative amount of grant funds awarded, including an identification of the purpose of each grant awarded.

Up to 20% of a wetland mitigation bank may be sold to the private sector, and any revenue generated from the sale must be deposited into the Local Agency Wetland Mitigation Bank Fund.

MCL 247.660 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument
Movable bridges are necessary to the flow of commercial and other traffic on the State's waterways. The former MTF distribution formula, however, did not take into account the operational costs associated with movable bridges beyond the expense of simply maintaining a regular road. According to MDOT, it costs approximately $225,000 per year to operate one draw bridge. Thus, local units of government with jurisdiction over these bridges can be substantially burdened. Because movable bridges have routine costs in addition to the basic costs of a roadway, it is appropriate to direct some of the MTF revenue to cover their operation. The bill's allocation must be used for operational costs exclusively; maintenance will not be covered with the designated $5.0 million.

Supporting Argument
From time to time, road maintenance and improvement projects may affect adjacent wetlands, necessitating mitigation of any negative impacts. Previously, however, the MTF distribution formula did not adequately cover local agency expenses for mitigation required by a project permit. A number of years ago, MDOT, the DEQ, the MML, and the CRA formed a Joint Agency Transportation Committee to develop ideas on methods to improve environmental permit services for certain types of projects funded through the MTF. Local agencies evidently requested that the Committee address wetland mitigation banking, but the lack of available funding was an obstacle to the creation of a program. The bill earmarks $2.0 million per year in MTF revenue for the new program (subject to a Fund balance limit of $5.0 million at the start of a fiscal year) to be distributed by the

Advisory Board. This program will help local road agencies to meet the mitigation permit conditions associated with the performance of vital work on transportation infrastructure.

Opposing Argument
There are many elements of the State's transportation infrastructure that could benefit from a dedicated stream of MTF revenue. It is imprudent to carve out funding for specific needs while efforts to implement a comprehensive transportation funding strategy are ongoing.

Furthermore, the bill's segregation of money for local agency wetland mitigation banks is inconsistent with the funding mechanism established in Public Act 51. The money remaining in the MTF after specific statutory deductions is meant to fund State and local road and bridge projects. The formula directs roughly 40% of total road and bridge money to MDOT, 40% to counties, and 20% to cities and villages. The bill, however, skims $2.0 million off of the predistribution amount each year and allocates the money to local agencies for mitigation banks, effectively reducing the amount available for road and bridge work.

Opposing Argument
The earmarking of MTF revenue for wetland mitigation banks is unnecessary. Legislation enacted several years ago expanded the allowed uses of money in the Strategic Water Quality Initiatives Fund (SWQIF), which is administered by the DEQ, to include loans to municipalities for the establishment of wetland mitigation banks as well as grants for assistance in completing the loan application process. Local agencies seeking to establish mitigation banks may make use of the SWQIF program.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill redirects the amount of funds received by the State, counties, and cities and villages for road and bridge programs across the State by an estimated $7.0 million on an annual basis, to be adjusted according to inflation (based on the Detroit Consumer Price Index).

Public Act 51 of 1951 (Act 51) distributes all available Michigan Transportation Fund revenue to a variety of funds. After statutory deductions are made under Act 51, including funding to the Comprehensive Transportation Fund, the net remaining MTF funds are distributed as follows: 39.1% to the State's 83 counties (county road commissions in general); 21.8% to 533 cities and villages; and 39.1% to the State Trunkline Fund (STF). All of these funds are used for road and bridge programs at the State and local levels.

Movable Bridge Fund

The bill initially requires that $5.0 million derived from three cents of the gasoline tax be deposited in the new Movable Bridge Fund.[2] According to estimates for FY 2013-14, approximately $129.0 million is the amount of revenue from three cents of the gas tax. The $5.0 million deposited into the Movable Bridge Fund then will be appropriated by the Legislature. As a result, there will be approximately $2.0 million less for distribution to counties, approximately $1.0 million less for distribution to cities and villages, and approximately $2.0 million less for distribution to the STF. These figures likely will increase over time, since the $5.0 million distribution will be adjusted for inflation. The CTF will not be affected.

According to MDOT, there are currently 24 publicly owned movable bridges across the State that will be affected by the bill. Twelve are owned and operated by the State while the other 12 are owned and operated by local units of government. The annual cost to operate these 24 bridges totals an estimated $5.0 million. These costs are paid by counties, cities, and villages from the

[2] The distribution of this three cents is limited to road agencies and does not include distributions to the Comprehensive Transportation Fund.

funds received via their Act 51 distributions, while the State uses STF funds for its operational costs.

The bill requires the Department to develop procedures governing the operation of all publicly owned movable bridges across the State. The cost of this provision is indeterminate and will depend on the procedures that ultimately are developed; however, it is anticipated that these costs will be minimal.

Local Agency Wetland Mitigation Bank Fund

The bill allocates $2.0 million annually to this Fund, which will correspondingly reduce funding to the Comprehensive Transportation Fund, State Trunkline Fund, county road commissions, and cities and villages pursuant to the distribution formula contained in Act 51. As a result, there will be approximately $200,000 less for the CTF, $703,800 less for counties, $392,400 less for cities and villages, and $703,800 less for the STF. The annual amount allocated to the Local Agency Wetland Mitigation Bank Fund will be limited, as the balance of the Fund may not exceed $5.0 million at the start of a fiscal year, minus unspent committed funds.

Fiscal Analyst: Michael Siracuse