Legislative Analysis

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

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Senate Bill 105 (H-3)
Enacted as Public Act 246 of 2016
Sponsor: Sen. Mike Green
Senate Committee: Transportation
House Committee: Appropriations
Complete to 9-8-16

SUMMARY:

Senate Bill 105 (H-3) enacted as Public Act 246 of 2016, amends 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 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). The STF provides for the construction and preservation of the state trunkline highway system and for administration of the Michigan Department of Transportation.

As noted above, the bill would establish two new MTF earmarks in Section 10. The bill designates both earmarks as coming from a specific MTF revenue source, i.e. revenue from 3 cents of the gasoline motor fuel tax. Under current law, 3 cents of the gasoline motor fuel tax, an estimated $132.0 million in the 2016-17 fiscal year (FY), is already earmarked for formula distribution to the STF and local road agencies. The bill expressly makes the $5.0 million Movable Bridge Fund earmark out this current 3 cent earmark and would thus reduce the amount available for formula distribution to the STF and local road agencies by $5.0 million.

The bill also makes the $2.0 million Local Agency Wetland Mitigation Bank earmark out of revenue from 3 cents of the motor fuel tax on gasoline. The bill does not expressly take this earmark out of the current 3 cent earmark to the STF and local road agencies.

If both the new earmarks were taken out of the existing 3 cent earmark, the formula distribution to the STF, and local road agencies would be reduced by a total of $7.0 million.

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-3) amends 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 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 unclear 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 $2.0 million earmark out of the existing 3 cent earmark to the STF and local road agencies. If the new earmark is treated in this manner, the only the formula MTF distribution to the STF and local road agencies would be reduced and there would be no impact on 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 $5.0 million.

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

- 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 more than 70,000; 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, MDOT and the DEQ provide qualified administrative staff and qualified technical assistance to the board as necessary.

The bill authorizes board members to employ a part-time or full-time manager or engineer to 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 the program, exercise general oversight over construction to insure that environmental laws and regulations, and plans and specifications are followed, and perform other duties 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. The bill directs the Advisory board to establish a review process for grant applications. The bill also establishes a reporting requirement; the Advisory Board is directed to report to report on October 1 of each year in which the Advisory Board receives grant applications on the use of funds from the Local Agency Wetland Mitigation Bank Fund. The bill specifies the report recipients as the House and Senate standing committees with jurisdiction over transportation, natural resources, and the environment, as well as the House and Senate Appropriations Committees.

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 local road agencies. Senate Bill 105 (H-3) amends 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 bill explicitly makes the new $5.0 million earmark 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 $132.0 million, is currently distributed by formula 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 distribution would be based on each agency's estimated costs of operating movable bridges. 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).

Prior to enactment of Senate Bill 105, there was no specific earmark for movable bridges in Act 51; the department costs of operating movable bridges on the state trunkline system were funded from the STF; each of the eight local road agencies with movable bridges paid for movable bridge operating costs from their respective distribution of MTF funds.

FISCAL IMPACT:

MTF revenue is generated from motor fuel taxes and vehicle registration taxes. The estimated MTF distribution to 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 STF and local road agencies would total $2.2 billion.

Senate Bill 105 (H-3) would not increase MTF revenue. It would change the distribution of MTF revenue by establishing two new earmarks of MTF revenue 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 also earmark $5.0 million in MTF revenue to a new *Movable Bridge Fund* established by the bill in new Section 11g.

The bill designates both earmarks as coming from a specific MTF revenue source, i.e. revenue from 3 cents of the gasoline motor fuel tax. If both the new earmarks were taken out of the existing 3 cent earmark, the MTF formula distribution to the STF, and local road agencies would be reduced by a total of $7.0 million and there would be no impact on the CTF.

The effective date of the bill as enacted is September 22, 2016, i.e. in the final nine days of FY 2015-16. It is not clear if the bill's provisions would govern the final distribution of MTF revenue for FY 2015-16, or if the Department and State Budget Office would make the new earmark effective starting in FY 2016-17. The FY 2016-17 state transportation budget, Article XVII of House Bill 5294, as enacted on June 29, 2016 as Public Act 268 of 2016, did not recognize the new earmarks established in Senate Bill 105.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.