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BILL ANALYSIS

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Senate Bill 105 (Substitute S-1 as reported)
Sponsor: Senator Mike Green
Committee: Transportation

Date Completed: 6-30-15

RATIONALE

Public Act 51 of 1951, the Michigan Transportation Fund (MTF) law, provides for revenue in the Fund to be distributed for State and local road and bridge programs according to a formula. Reportedly, the current structure for allocating MTF revenue is 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 is considered problematic because it treats 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 can place significant budgetary strain on the local units of government in which the bridges are located. Thus, it has been 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 has been suggested that a grant program be established and funded with MTF revenue.

CONTENT

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

Regarding the Moveable Bridge Fund, the bill would do the following:

-- Allocate to the Fund $5.0 million of the revenue from three cents of the gasoline tax to the Fund.

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[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.

- **-- Allow the Michigan Department of Transportation (MDOT) to enter into a contract with a person or agency having jurisdiction of a publicly owned movable bridge for operation of that bridge.**
- **-- Require each person or agency, other than MDOT, that owned or had 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.**
- **-- Require 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.**
- **-- Require 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.**
- **-- Provide that, if MDOT offered to enter into a contract for the operation of a movable bridge, and person or agency with jurisdiction of the bridge declined, the person or agency would 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 would:

- **-- Allocate to it $5.0 million from the MTF.**
- **-- Require money in the proposed Fund to be spent for a proposed Local Agency Wetland Mitigation Bank Program.**
- **-- Limit the balance of the Fund to $10.0 million at the beginning of a fiscal year.**
- **-- Create the Local Agency Wetland Mitigation Bank Advisory Board and prescribe its membership.**
- **-- Require the County Road Association and the Michigan Municipal League to appoint the Advisory Board's seven voting members, and require MDOT and the Department of Environmental Quality to appoint two nonvoting members, by October 1, 2015.**
- **-- Require 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.**
- **-- Allow a maximum of 20% of a wetland mitigation bank to be sold to the private sector, and require revenue generated from such sales to be deposited into the proposed Fund.**
- **-- Authorize 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.**
- **-- Require 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.**
- **-- Require the Advisory Board to report to the Legislature on the use of Fund money for each year in which the Board received grant applications.**

The bill would take effect 90 days after enactment.

<u>Movable Bridge Fund</u>

<u>Fund Establishment</u>. The bill would establish the Movable Bridge Fund as a separate fund within the State Treasury. The State Treasurer would have to direct the investment of the Fund. The Treasurer could deposit money or other assets from any source into the Fund, and would have to credit to the Fund any interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund. For auditing purposes, MDOT would be the administrator of the Movable Bridge Fund.

<u>Allocation of Money</u>. 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 would require $5.0 million each year of the revenue from three cents of the gasoline tax to be allocated to the Movable Bridge Fund. The remainder of the money would continue to be allocated to the State Trunkline Fund, county road commissions, and cities and villages. Each year, the Department would have to adjust the money allocated 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 would allow 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 would have to require any contractor hired by MDOT to operate the bridge to maintain insurance in an amount specified by MDOT. The Department would not be required to assume ownership or jurisdiction of a publicly owned movable bridge as part of the contract.

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

Fund Distributions. The Department would have 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 would have to 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 would have to use the operational procedures and costs submitted by the person or agency to develop its procedures and estimates. Using the estimates, the Department would have to distribute a percentage of money from the Fund to each person or agency responsible for operating a publicly owned movable bridge. If MDOT were responsible for the operation of a publicly owned movable bridge, the money would be distributed to MDOT.

If the Department offered to enter into a contract, as described above, and the person or agency that had jurisdiction of the bridge declined, the person or agency would continue to receive the money that it 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 would establish the Local Agency Wetland Mitigation Bank Fund as a separate fund in the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund. The State Treasurer would have to direct the investment of the Fund, and credit to it any interest and earnings from investments.

The bill would appropriate $5.0 million from the MTF to the Fund. The money appropriated to the Fund, as well as the interest accruing to it, would have to be spent for the Local Agency Wetland Mitigation Bank Program. The balance of the Fund could not exceed $10.0 million at the beginning of a fiscal year, less the amount of funds that were 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 would not be subjects to these restrictions.

Advisory Board. The bill would create the Local Agency Wetland Mitigation Bank Advisory Board, which would have to consist of nine members. The membership would have to 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 would have to include one voting member each, 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 would have to appoint a voting member who was an engineer.

In addition, MDOT and the Department of Environmental Quality would have to appoint two nonvoting members.

The members first appointed would have to be appointed by October 1, 2015.

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

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

The MDOT appointee would have to call the first Board meeting, at which members would have to elect a chairperson and other officers as they considered necessary or appropriate. After the first meeting, the Board would have to meet at least quarterly.

A Board member would have to serve without compensation, but could receive reimbursement for necessary 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 would be subject to the Open Meetings Act and the Freedom of Information Act.

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

Local Agency Wetland Mitigation Bank Program. The Program would have 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 were or would be met.
-- Funding for a bank established before the bill took effect.

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

The Board could 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 would have to be made on a form approved by the Board and contain the information the Board required. A grant application could be made at any time.

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

For each year in which the Board received grant applications, the Board would have to 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 would have to 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.

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 current MTF distribution formula, however, does 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 would be appropriate to direct some of the MTF revenue to cover their operation. The proposed allocation would be used for operational costs exclusively; maintenance would 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. The current MTF distribution formula, however, does 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 have requested that the Committee address wetland mitigation banking, but the lack of available funding has been an obstacle to the creation of a program. The bill would earmark up to $5.0 million per year in MTF revenue for such a program, subject to distribution by the proposed Advisory Board. This program would 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 would be imprudent, however, to carve out funding for specific needs while efforts to identify and implement a comprehensive transportation funding strategy are ongoing.

For example, the bill's segregation of money for local agency wetland mitigation banks would be 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 existing formula directs roughly 40% of total road and bridge money to MDOT, 40% to counties, and 20% to cities and villages. The bill, however, would skim up to $5.0 million off of the predistribution amount and allocate the money to local agencies for mitigation banks, effectively reducing the amount available for road and bridge work. While programs to support local agencies' transportation-related needs are a worthwhile use of MTF money, setting the funds aside for this particular purpose at this time would not move the State any closer to resolving its general transportation funding problems.

Rather than siphoning money from the MTF for specific purposes, any changes to the distribution of MTF revenue should be made in the larger context of a broad, long-term funding solution, taking into consideration all of the components of Michigan's transportation system.

Opposing Argument

The earmarking of MTF revenue for wetland mitigation banks would be 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 could make use of the SWQIF program.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would redirect the amount of funds received by the State, counties, and cities and villages for road and bridge programs across the State by an estimated $10.0 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 would require that $5.0 million derived from three cents of the gasoline tax be deposited in the proposed Movable Bridge Fund.[2] Current estimates for FY 2013-14 indicate that 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 would be appropriated by the Legislature. As a result, there would 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 would increase over time since the $5.0 million distribution would be adjusted for inflation. The CTF would not be affected.

According to MDOT, there are currently 24 publicly owned movable bridges across the State that would 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 funds received via their Act 51 distributions, while the State uses STF funds for its operational costs.

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

The bill would require 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 would depend on the procedures that ultimately would be developed; however, it is anticipated that these costs would be minimal.

Local Agency Wetland Mitigation Bank Fund

The bill would allocate $5.0 million annually to this Fund, which would 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 would be approximately $500,000 less for the CTF, $1,759,500 less for counties, $981,000 less for cities and villages, and $1,759,500 less for the STF. The annual amount allocated to the Local Agency Wetland Mitigation Bank Fund would be limited, as the balance of the Fund could not exceed $10.0 million at the start of a fiscal year, minus unspent committed funds.

Fiscal Analyst: Glenn Steffens

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