SUMMARY
ACT 51 OF THE PUBLIC ACTS OF 1951, AS AMENDED
"ACT 51 MADE SIMPLE"
August 2000

Article IX, Section 9, of the Michigan Constitution of 1963, 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. . ."

Public Act 51 of 1951, as amended ("Act 51") governs the distribution of this revenue. The following pages summarize this distribution.

Act 51 creates a fund into which specific transportation taxes are deposited, and prescribes how these revenues are to be distributed and the purposes for which they can be spent. Act 51 establishes jurisdictional road networks, sets priorities for the use of transportation revenues, and allows bonded indebtedness for transportation improvements and guarantees repayment of debt.

The Act also imposes administrative requirements on road agencies, and creates several institutions not having to do with finance.

<u>Michigan Transportation Fund</u> [Sec. 10]

Act 51 creates the Michigan Transportation Fund (MTF). Revenues collected through highway user taxes–state motor fuels taxes, vehicle registration fees, and other miscellaneous automobile-related taxes–are deposited in MTF.

Interdepartmental Transfers — In accordance with the state Transportation Department's appropriations bill, significant payments are made from the collected funds to several state agencies (the Departments of State, Treasury, State Police, Natural Resources, Civil Service, and the Legislative Auditor General) for services they provide. These payments amounted to $108 million in Fiscal Year 1996, but have been reduced to $64 million in recent appropriations bills. The largest interdepartmental transfer is to the Secretary of State for administration of the license-plate system.

Several other programs receive statutory shares of the MTF. Through Public Act 221 of 1987, two per cent of the gasoline tax goes to the DNR's Recreation Improvement Fund, almost $18 million in Fiscal 1998. This amount represents taxes paid on fuel used by recreational vehicles.

Amendments to Formula — Before the three-way division is made of funds between state highways, county roads and municipal streets, several appropriations are made directly to programs or particular jurisdictions:

The Rail Grade Crossing Account receives $3 million.

The Critical Bridge Fund receives $3 million for debt service on past bond issues, and $5 million for current projects.

An amount equal to 3 cents’ tax on gasoline (but not other fuels) is divided between the STF, counties and cities and villages according to the 39.1 / 39.1 / 21.8 per cent formula.

An amount equal to 1 cent of the tax on gasoline is apportioned directly to the STF. (These two amendments have the effect of making the 1997 four-cent gas-tax increase unavailable for transit.)

The STF receives $43 million for debt service on state of Michigan projects.

The Local Program Fund receives $33 million for division 64.2 per cent to county road commissions and 35.8 per cent to cities and villages.

The Transportation Economic Development Fund receives $40,275,000 for debt service and division among its five programs. The TEDF law is not part of Act 51, and distributes money to counties and municipalities through three formulas and two grant programs.

After these apportionments, the Comprehensive Transportation Fund (CTF) for transit programs is allocated 10 per cent of the balance, or approximately 8.5 per cent of the MTF. The maximum share permissible under paragraph 2 of Article IX, Section 9 of the Constitution is 10 per cent ("Not less than 90 per cent. . . . shall be used exclusively for . . . roads, streets, and bridges . . .").

Main Formula — After these distributions, the remainder of the MTF us divided between road systems under three levels of government. The State Trunkline Fund receives 39.1 per cent, county road commissions divide 39.1 per cent, and cities and villages divide 21.8 per cent.

Federal-aid Allocation — This section also prescribes the distribution of a fraction of federal aid: 31.5 per cent of Michigan’s Minimum Guarantee apportionment. Nearly a third of this aid, which would otherwise be combined with the rest of Michigan’s federal aid, is distributed to the

TEDF, with 16.5 per cent earmarked for projects in 78 rural counties and 15 per cent for capacity improvements in the five most urban counties.

Comprehensive Transportation Fund [Sec. 10b and e]

Act 51 creates the Comprehensive Transportation Fund (CTF). Its purpose is to provide funds for planning, programming, operation and construction of public transportation systems, in accordance with the policies of the State Transportation Commission. The CTF receives 6.975 per cent of the sales tax on motor-vehicle-related items and approximately 8.5 per cent of net revenues in MTF. The first priority for use of CTF monies is debt service. Administrative expenses are restricted to not more than was used for administration in 1987 (after correcting for inflation).

Most of the remaining CTF money is distributed to local transit agencies for operating and capital grants for public transportation. Not less than 10 per cent is to be used for intercity passenger and freight service. The remainder is allocated for specialized services and other public transportation purposes.

Jurisdictional Road Networks

Act 51 authorizes designation of jurisdictional road networks: county roads and city and village streets. These "legal systems" fix which road is under which agency's jurisdiction, and determine funding. The Act sets criteria for those designations and allows for the transfer of mileage between systems. Act 51 assigns responsibility for maintenance, construction, and improvement of those roads to the various governmental bodies. Maintenance includes snow removal, cleaning, patching, signing, and marking, in addition to preservation, reconstruction, resurfacing, restoration and rehabilitation.

State Trunklines [Sec. 1]:

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 are required to make a financial contribution, according to population, for improvements to state trunkline highways within their jurisdiction, and for connections between city streets and the state trunkline system. [Section 1c(a)]

This section also requires that the state develop a pavement management system, use life-cycle-cost analysis for projects costing over $1 million in state funds, and employ various strategies to help 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, and may be located within 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 open to public travel only six months a year. [Section 5a]

City Major and Local Streets [Sec. 6,7, 8, and 9]:

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

Transfer of mileage between jurisdictions

Road mileage may be transferred between jurisdictional entities. 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. Jurisdictions receiving mileage get a distribution of funds for each mile transferred since 1973.

The amount is governed by the average "revenue worth" per mile of county Primary and Local Roads in the previous year. [Sec 10a]

Formulas and Priorities of Funding

Act 51 sets priorities for the use of funds distributed to state trunklines, county road commissions, and cities and villages. The first priority for each of these systems is debt service.

Restrictions on Funds for State Trunklines [Sec. 11] — After debt service, grants to the railroad grade crossing account are the next priority, with restrictions on the use of those funds including that not more than 50 per cent be used for crossings on state trunklines. Trunkline 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 Attorney General. Remaining funds are used for maintenance of roads and bridges and for capital improvements. According to Section 11(2), 90 per cent 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. In addition, Section 11(3) requires 90 per cent of federal revenues be used for maintenance; however, federal funds cannot be used for non-capital "maintenance" activities. This requirement is waived for projects on the federally-designated National Highway System or 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 years for contracted construction work, and notification of the legislature of large cost overruns. The act also limits administrative expenditures to ten per cent of annual program expenses. Projects costing over $100,000 must be competitively bid, for both state and local projects.

County Formula [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. An annual $10,000 from each county's portion is also allowed for the services of a licensed professional engineer. After that, the Act requires that ten per cent of MTF funds be distributed to counties having Urban mileage, calculated according to a specific formula, and four per cent be distributed to all counties according to population and Local Road mileage for use on county Local Roads.

Seventy-five per cent of the remainder is then distributed for use on County Primary roads, according to each county's share of vehicle registrations, County Primary mileage, and with 15 per cent distributed equally to all counties. The other 25 per cent of the remainder is distributed for use on County Local roads, based on population and road mileage.

Restrictions on County Use of Funds — Transfer of funds from Primary to Local systems, or vice versa, is allowed by Act 51. Up to 30 per cent can be transferred from Primary to Local roads, with or without match. Fifteen per cent can be transferred from Local to Primary roads, and another 15 per cent in an emergency or with the approval of the State Transportation Department.

Several restrictions are placed on the use of MTF monies by County Road Commissions. Not more than five per cent can be used for roadside parks. County local funds used for bridge construction on county local roads cannot exceed 75 per cent of the cost of bridge construction, and must be matched by money from other sources. At least 90 per cent 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. Ninety per cent 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. 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 per cent requirement.[Sec. 12(17)]

In addition, the act authorizes county road commissions to contract with other county road commissions for the purchase and use of necessary equipment. The act requires the state and county road associations to jointly develop incentives for counties to establish statewide purchasing pools. It limits county administrative expenditures not attributable to projects to 10 per cent of annual program expenses, and requires the Department of Treasury to conduct performance audits of county road commission use of MTF funds.

City Formula [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. Seventy-five per cent of the remaining funds are allocated, based on population and a road-mileage formula, for debt service and use on City Major streets. A maximum of five per cent of the funds may be used for roadside parks. The remaining 25 per cent, again distributed according to population and mileage, is for use on the Local street system or for payment of bonds to that purpose. This amount must be matched by an equal amount of locally-raised funds. Not more than ten per cent of the total for City Major and Local streets can be used for administration.

Restrictions on City and Village Use of Funds — Cities and Villages may use their funds on major or local streets, provided the first priority shall be the major street system. Money returned for expenditure on the major system may be spent on the local system in an amount equal to the amount of local revenues spent on major streets or trunkline highways in any given year and, if not, a comparable amount of major street funds may be transferred for up to two years after that. If a city or village transfers more than 25 percent of its major street funds to the local system, they shall adopt a resolution with a copy to the department listing the municipality's major streets, a statement that they are being adequately maintained, the dollar amount of the transfer and the local streets that received the funds.

Cities may enter into agreements with other cities or villages to consolidate services and provide for joint participation in costs. No requirement is specified for the percentage of funds expended for maintenance.

Townships — Townships are authorized to transfer unexpended township General Fund revenues to the county road fund for maintenance and improvement of county roads within the township, or for widening of state trunkline highways beyond the required width in unincorporated areas of the township. A township may also issue bonds or 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).

Forfeiture of Funds — MTF funds allocated to a county road commission, city or village which remain unused for a period of one year can be forfeited and redistributed among the other counties and cities as described in Section 10.

Non-Motorized Routes — A minimum of one per cent (based on a ten-year average) of MTF funds distributed to the state, counties and cities must be used for non-motorized transportation facilities. Such facilities can be in conjunction with or separate from a road. [Sec. 10k]

Advance Right-of-Way Acquisition — Act 51 authorizes the state, county road commissions, and cities and villages to acquire right-of-way in advance of construction programming and to use MTF distributions for that purpose. [Sec. 13a]

Bonded Indebtedness and Taxation — Act 51 enables the State Transportation Department to sell bonds or notes for several purposes with the approval of the State Transportation Commission. These include bond sales to construct highways or transit systems, to make loans and grants, and to refund old notes. Within 30 days subsequent to a bond issue, the description of a project on the bond list can be amended by the State Transportation Commission.

County Road Commissions are authorized to sell bonds for construction, by resolution of the board of the County Road Commission. The annual amount of a county's debt service cannot exceed 50 per cent of the county's previous-year MTF receipts. [Sec. 18a, b, c]

Corridor Planning — The act requires county road commissions and cities and villages to establish corridor planning committees and corridor plans.