

Act No. 188
Public Acts of 2000
Approved by the Governor
June 20, 2000
Filed with the Secretary of State
June 20, 2000
EFFECTIVE DATE: June 20, 2000

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Senator Hoffman

ENROLLED SENATE BILL No. 1274

AN ACT to amend 1951 PA 51, entitled "An act to provide for the classification of all public roads, streets, and highways in this state, and for the revision of that classification and for additions to and deletions from each classification; to set up and establish the Michigan transportation fund; to provide for the deposits in the Michigan transportation fund of specific taxes on motor vehicles and motor vehicle fuels; to provide for the allocation of funds from the Michigan transportation fund and the use and administration of the fund for transportation purposes; to set up and establish the truck safety fund; to provide for the allocation of funds from the truck safety fund and administration of the fund for truck safety purposes; to set up and establish the Michigan truck safety commission; to establish certain standards for road contracts for certain businesses; to provide for the continuing review of transportation needs within the state; to authorize the state transportation commission, counties, cities, and villages to borrow money, issue bonds, and make pledges of funds for transportation purposes; to authorize counties to advance funds for the payment of deficiencies necessary for the payment of bonds issued under this act; to provide for the limitations, payment, retirement, and security of the bonds and pledges; to provide for appropriations and tax levies by counties and townships for county roads; to authorize contributions by townships for county roads; to provide for the establishment and administration of the state trunk line fund, critical bridge fund, comprehensive transportation fund, and certain other funds; to provide for the deposits in the state trunk line fund, critical bridge fund, comprehensive transportation fund, and certain other funds of money raised by specific taxes and fees; to provide for definitions of public transportation functions and criteria; to define the purposes for which Michigan transportation funds may be allocated; to provide for Michigan transportation fund grants; to provide for review and approval of transportation programs; to provide for submission of annual legislative requests and reports; to provide for the establishment and functions of certain advisory entities; to provide for conditions for grants; to provide for the issuance of bonds and notes for transportation purposes; to provide for the powers and duties of certain state and local agencies and officials; to provide for the making of loans for transportation purposes by the state transportation department and for the receipt and repayment by local units and agencies of those loans from certain specified sources; and to repeal acts and parts of acts," by amending sections 10, 10o, and 11 (MCL 247.660, 247.660o, and 247.661), sections 10 and 11 as amended and section 10o as added by 1998 PA 308.

The People of the State of Michigan enact:

Sec. 10. (1) A fund to be known as the Michigan transportation fund is established and shall be set up and maintained in the state treasury as a separate fund. Money received and collected under 1927 PA 150, MCL 207.101 to 207.202, except a license fee provided in that act, and a tax, fee, license, and other money received and collected under sections 801 to 810 of the Michigan vehicle code, 1949 PA 300, MCL 257.801 to 257.810, except a truck safety fund fee provided in section 801(1)(k) of 1949 PA 300, MCL 257.801, and money received under the motor carrier act, 1933 PA 254, MCL 475.1 to 479.43, shall be deposited in the state treasury to the credit of the Michigan transportation fund. In addition, income or profit derived from the investment of money in the Michigan transportation fund shall be deposited in the

Michigan transportation fund. Except as provided in this act, no other money, whether appropriated from the general fund of this state or any other source, shall be deposited in the Michigan transportation fund. Except as otherwise provided in this section, the legislature shall appropriate funds for the necessary expenses incurred in the administration and enforcement of 1927 PA 150, MCL 207.101 to 207.202, 1933 PA 254, MCL 475.1 to 479.43, and sections 801 to 810 of the Michigan vehicle code, 1949 PA 300, MCL 257.801 to 257.810. Funds appropriated for necessary expenses shall be based upon established cost allocation methodology that reflects actual costs. Beginning with the fiscal year ending September 30, 1998 and the next 2 succeeding fiscal years thereafter, funds appropriated for these administrative expenses for all state agencies and departments, other than the department, the commission, the department of environmental quality expedited permit processing program for road agencies, the department of state, and the attorney general shall be phased out until further funds are no longer appropriated for this purpose. All money in the Michigan transportation fund is apportioned and appropriated in the following manner:

(a) Not more than \$3,000,000.00 as may be annually appropriated each fiscal year to the state trunk line fund for subsequent deposit in the rail grade crossing account.

(b) Not less than \$3,000,000.00 each year to the critical bridge fund established in section 11b for the purpose of payment of the principal, interest, and redemption premium on any notes or bonds issued by the state transportation commission under section 11b.

(c) Revenue from 3 cents of the tax levied under section 2(1) of 1950 PA 127, MCL 207.102, to the state trunk line fund, county road commissions, and cities and villages in the percentages provided in subdivision (i).

(d) Revenue from 1 cent of the tax levied under section 2(1) of 1950 PA 127, MCL 207.102, to the state trunk line fund for repair of state bridges under section 11.

(e) \$43,000,000.00 to the state trunk line fund for debt service costs on state of Michigan projects.

(f) 10% to the comprehensive transportation fund for the purposes described in section 10e.

(g) \$36,775,000.00 to the state trunk line fund for subsequent deposit in the transportation economic development fund, and, as of September 30, 1997, with first priority for allocation to debt service on bonds issued to fund transportation economic development fund projects. In addition, beginning October 1, 1997, \$3,500,000.00 is appropriated from the Michigan transportation fund to the state trunk line fund for subsequent deposit in the transportation economic development fund to be used for economic development road projects in any of the targeted industries described in section 9(1)(a) of 1987 PA 231, MCL 247.909.

(h) Not less than \$33,000,000.00 as may be annually appropriated each fiscal year to the local program fund created in section 11e.

(i) The balance of the Michigan transportation fund as follows, after deduction of the amounts appropriated in subdivisions (a) through (h) and section 11b:

(i) 39.1% to the state trunk line fund for the purposes described in section 11.

(ii) 39.1% to the county road commissions of the state.

(iii) 21.8% to the cities and villages of the state.

(2) The money appropriated pursuant to this section shall be used for the purposes as provided in this act and any other applicable act. Subject to the requirements of section 9b, the department shall develop programs in conjunction with the Michigan state chamber of commerce and the Michigan minority business development council to assist small businesses, including those located in enterprise zones and those located in empowerment zones as determined under federal law, as defined by law in becoming qualified to bid.

(3) Thirty-one and one-half percent of the funds appropriated to this state from the federal government pursuant to 23 U.S.C. 157, commonly known as minimum guarantee funds, shall be allocated to the transportation economic development fund, if such an allocation is consistent with federal law. These funds shall be distributed 16-1/2% for development projects for rural counties as defined by law and 15% for capacity improvement or advanced traffic management systems in urban counties as defined by law. Federal funds allocated for distribution under this section shall be eligible for obligation and use by all recipients as defined by the transportation equity act for the 21st century, Public Law 105-178, 112 Stat. 107.

Sec. 10o. (1) Twenty-three to twenty-seven percent of the DOT-FHWA highway research, planning, and construction federal funds appropriated to this state from the federal government for road and bridge construction shall be allocated to programs administered by local jurisdictions after deduction of the following:

(a) Funds that are specifically allocated at the federal level to the state or local jurisdictions.

(b) Funds allocated by the department to the state and to local jurisdictions through a competitive process.

(2) Federal aid excluded from the calculation of funding allocated to programs administered by local jurisdictions in subsection (1) includes, but is not limited to, congestion mitigation and air quality funds, federal bridge funds, transportation enhancement funds, funds distributed at the discretion of the United States secretary of transportation, and congressionally designated funds.

(3) The funds shall be distributed to eligible local agencies for transportation purposes in a manner consistent with state and federal law.

(4) It is the intent of the legislature that federal aid to highways allocated to local jurisdictions in subsection (1) be distributed in a manner that produces a 25% average allocation of applicable funds to programs for local jurisdictions in each fiscal year through the fiscal year ending September 30, 2000. Beginning in the fiscal year ending September 30, 1999, the average allocation of applicable federal aid to highway funds to programs for local jurisdictions shall be the average of the amount distributed to local jurisdictions under subsection (1) and similarly calculated distributions in each succeeding fiscal year. The average allocation percentage described in this subsection shall be adjusted to reflect any voluntary agreements made by the department with local jurisdictions regarding the state buyout of local federal aid.

Sec. 11. (1) A fund to be known as the state trunk line fund is established and shall be set up and maintained in the state treasury as a separate fund. The money deposited in the state trunk line fund is appropriated to the state transportation department for the following purposes in the following order of priority:

(a) For the payment, but only from money restricted as to use by section 9 of article IX of the state constitution of 1963, of bonds, notes, or other obligations in the following order of priority:

(i) For the payment of contributions required to be made by the state highway commission or the state transportation commission under contracts entered into before July 18, 1979, under 1941 PA 205, MCL 252.51 to 252.64, which contributions have been pledged before July 18, 1979, for the payment of the principal and interest on bonds issued under 1941 PA 205, MCL 252.51 to 252.64, for the payment of which a sufficient sum is irrevocably appropriated.

(ii) For the payment of the principal and interest upon bonds designated "State of Michigan, State Highway Commissioner, Highway Construction Bonds, Series I", dated September 1, 1956, in the aggregate principal amount of \$25,000,000.00, issued pursuant to former 1955 PA 87 and the resolution of the state administrative board adopted August 6, 1956, for the payment of which a sufficient sum is irrevocably appropriated.

(iii) For the payment of the principal and interest on bonds issued under section 18b for transportation purposes other than comprehensive transportation purposes as defined by law and the payment of contributions of the state highway commission or state transportation commission to be made pursuant to contracts entered into under section 18d, which contributions are pledged to the payment of principal and interest on bonds issued under the authorization of section 18d and contracts executed pursuant to that section. A sufficient portion of the fund is irrevocably appropriated to pay, when due, the principal and interest on bonds or notes issued under section 18b for purposes other than comprehensive transportation purposes as defined by law, and to pay the annual contributions of the state highway commission and the state transportation commission as are pledged for the payment of bonds issued pursuant to contracts authorized by section 18d.

(b) For the transfer of funds appropriated pursuant to section 10(1)(g) to the transportation economic development fund, but the transfer shall be reduced each fiscal year by the amount of debt service to be paid in that year from the state trunk line fund for bonds, notes, or other obligations issued to fund projects of the transportation economic development fund, which amount shall be certified by the department.

(c) For the transfer of funds appropriated pursuant to section 10(1)(a) to the railroad grade crossing account in the state trunk line fund for expenditure to meet the cost, in whole or in part, of providing for the improvement, installation, and retirement of new or existing safety devices or other rail grade crossing improvements at rail grade crossings on public roads and streets under the jurisdiction of the state, counties, or cities and villages. Projects shall be selected for funding in accordance with the following:

(i) Not more than 50% or less than 30% of these funds and matched federal funds shall be expended for state trunk line projects.

(ii) In prioritizing projects for these funds, in whole or in part, the department shall consider train and vehicular traffic volumes, accident history, traffic control device improvement needs, and the availability of funding.

(iii) Consistent with the other requirements for these funds, the first priority for funds deposited pursuant to this subdivision for rail grade crossing improvements and retirement shall be to match federal funds from the railroad-highway grade crossing improvement program or other comparable federal programs.

(iv) If federal funds from the railroad-highway grade crossing improvement program or other comparable federal programs have been exhausted, funds deposited pursuant to this subdivision shall be used to fund 100% of grade crossing projects that receive the highest priority of unfunded projects pursuant to criteria established by the department.

(v) State railroad grade crossing funds shall not be used, either as 100% of project cost or to match federal railroad-highway grade crossing improvement funds, for a crossing that is determined by the department pursuant to the criteria established by the department to be a lower priority than other projects that have not yet been funded. However, if sufficient funds are available, these state railroad grade crossing account funds may be used for not more than 50% of a project's cost for a crossing that is determined by the department pursuant to the criteria established by

the department to be a lower priority if the balance of not less than 50% of the project's cost is provided by the road authority, railroad, or other sources.

(vi) The type of railroad grade crossing improvement, installation, relocation, or retirement of grade crossing surfaces, active and passive traffic control devices, pavement marking, or other related work shall be eligible for these railroad grade crossing account funds in the same manner as the project type eligibility provided by the federal funds from the railroad-highway grade crossing improvement program, except for the following:

(A) For new railroad crossings, these funds may be used for the crossing surface, active and passive traffic control devices, pavement marking, and other improvements necessitated by the new crossing.

(B) These funds may be used for the modification, relocation, or modernization of railroad grade crossing facilities necessitated by roadway improvement projects.

(C) If the department and the road authority with jurisdiction over a public road or street crossing formally agree that the grade crossing should be eliminated by permanent closing of the public road or street, the road authority making the closing shall receive \$5,000.00 from the railroad grade crossing account. In addition, any connecting road improvements necessitated by the grade crossing closure are reimbursable on an actual cost basis not to exceed \$10,000.00 per crossing closed. The physical removal of the crossing, roadway within railroad rights of way and street termination treatment will be negotiated between the road authority and railroad company. The funds provided to the road authority as a result of the crossing closure will be credited to its account representing the same road or street system on which the crossing is located.

(d) For the total operating expenses of the state trunk line fund for each fiscal year as appropriated by the legislature.

(e) For the maintenance of state trunk line highways and bridges.

(f) For the opening, widening, improving, construction, and reconstruction of state trunk line highways and bridges, including the acquisition of necessary rights of way and the work incidental to that opening, widening, improving, construction, or reconstruction. Those sums in the state trunk line fund not otherwise appropriated, distributed, determined, or set aside by law shall be used for the construction or reconstruction of the national system of interstate and defense highways, referred to in this act as "the interstate highway system" to the extent necessary to match federal aid funds as the federal aid funds become available for that purpose; and, for the construction and reconstruction of the state trunk line system.

(g) The state transportation department may enter into agreements with county road commissions and with cities and villages to perform work on a highway, road, or street. The agreements may provide for the performance by any of the contracting parties of any of the work contemplated by the contract including engineering services and the acquisition of rights of way in connection with the work, by purchase or condemnation by any of the contracting parties in its own name, and for joint participation in the costs, but only to the extent that the contracting parties are otherwise authorized by law to expend money on the highways, roads, or streets. The state transportation department also may contract with a county road commission, city, and village to advance money to a county road commission, city, and village to pay their costs of improving railroad grade crossings on the terms and conditions agreed to in the contract. A contract may be executed before or after the state transportation commission borrows money for the purpose of advancing money to a county road commission, city, or village, but the contract shall be executed before the advancement of any money to a county road commission, city, or village by the state transportation commission, and shall provide for the full reimbursement of any advancement by a county road commission, city, or village to the state transportation department, with interest, within 15 years after advancement, from any available revenue sources of the county road commission, city, or village or, if provided in the contract, by deduction from the periodic disbursements of any money returned by the state to the county road commission, city, or village.

(h) For providing inventories of supplies and materials required for the activities of the state transportation department. The state transportation department may purchase supplies and materials for these purposes, with payment to be made out of the state trunk line fund to be charged on the basis of issues from inventory in accordance with the accounting and purchasing laws of the state.

(2) Notwithstanding any other provision of this act, at least 90% of state revenue appropriated annually to the state trunk line fund less the amounts described in subdivisions (a) to (i) shall be expended annually by the state transportation department for the maintenance of highways, roads, streets, and bridges and for the payment of debt service on bonds, notes, or other obligations described in subsection (1)(a) issued after July 1, 1983, for the purpose of providing funds for the maintenance of highways, roads, streets, and bridges. Of the amounts appropriated for state trunk line projects, the department shall, where possible, secure warranties of not less than 5-year full replacement guarantee for contracted construction work. If an appropriate certificate is filed under section 18e but only to the extent necessary, this subsection shall not prohibit the use of any amount of money restricted as to use by section 9 of article IX of the state constitution of 1963 and deposited in the state trunk line fund for the payment of debt service on bonds, notes, or other obligations pledging for the payment thereof money restricted as to use by section 9 of article IX of the state constitution of 1963 and deposited in the state trunk line fund, whenever issued, as specified under subsection

(1)(a). The amounts which are deducted from the state trunk line fund for the purpose of the calculation required by this subsection are as follows:

(a) Amounts expended for the purposes described in subsection (1)(a) for the payment of debt service on bonds, notes, or other obligations issued before July 2, 1983.

(b) Amounts expended to provide the state matching requirement for projects on the national highway system and for the payment of debt service on bonds, notes, or other obligations issued after July 1, 1983, for the purpose of providing funds for the state matching requirements for projects on the national highway system.

(c) Amounts expended for the construction of a highway, street, road, or bridge to 1 or more of the following or for the payment of debt service on bonds, notes, or other obligations issued after July 1, 1983, for the purpose of providing funds for the construction of a highway, street, road, or bridge to 1 or more of the following:

(i) A location for which a building permit has been obtained for the construction of a manufacturing or industrial facility.

(ii) A location for which a building permit has been obtained for the renovation of, or addition to, a manufacturing or industrial facility.

(d) Amounts expended for capital outlay other than for highways, roads, streets, and bridges or to pay debt service on bonds, notes, or other obligations issued after July 1, 1983, for the purpose of providing funds for capital outlay other than for highways, roads, streets, and bridges.

(e) Amounts expended for the operating expenses of the state transportation department other than the units of the department performing the functions assigned on January 1, 1983 to the bureau of highways.

(f) Amounts expended pursuant to contracts entered into before January 1, 1983.

(g) Amounts expended for the purposes described in subsection (5).

(h) Amounts appropriated for deposit in the transportation economic development fund and the rail grade crossing account pursuant to section 10(1)(g) and 10(1)(a).

(i) Upon the affirmative recommendation of the director of the state transportation department and the approval by resolution of the state transportation commission, those amounts expended for projects vital to the economy of the state, a region, or local area or the safety of the public. The resolution shall state the cost of the project exempted from this subsection.

(3) Notwithstanding any other provision of this act, the state transportation department shall expend annually at least 90% of the federal revenue distributed to the credit of the state trunk line fund in that year, except for federal revenue expended for the purposes described in subsection (2)(b), (c), (f), and (i) on the maintenance of highways, roads, streets, and bridges. The requirement of this subsection shall be waived if compliance would cause the state to be ineligible according to federal law for federal revenue, but only to the extent necessary to make the state eligible according to federal law for that revenue.

(4) As used in this section:

(a) "Maintenance" and "maintaining" mean snow removal; street cleaning and drainage; seal coating; patching and ordinary repairs; erection and maintenance of traffic signs and markings; safety projects; and the preservation, reconstruction, resurfacing, restoration, and rehabilitation of highways, roads, streets, and bridges. For the purposes of this section, maintenance and maintaining shall not be limited to the repair and replacement of a road but shall include maintaining the original intent of a construction project. If traffic patterns indicate that this intent is no longer being met, the department may expend funds to take corrective action and continue to fulfill its obligation of maintaining the department's original objective for the construction project. However, maintenance and maintaining do not include projects which increase the capacity of a highway facility to accommodate that part of the traffic having neither origin nor destination within the local area.

(b) "Maintenance" and "maintaining" include widening less than lane width; adding auxiliary turning lanes of 1/2 mile or less; adding auxiliary weaving, climbing, or speed change lanes; and correcting substandard intersections.

(c) "Maintenance" and "maintaining" do not include the upgrading of aggregate surface roads to hard surface roads.

(d) "Maintenance" and "maintaining" include the portion of the costs of the units of the department performing the functions assigned on January 1, 1983, to the bureau of highways expended for the purposes described in subdivisions (a) and (b).

(5) Notwithstanding any other provision of this section, the state transportation department may loan money to county road commissions, cities, and villages for paying capital costs of transportation purposes described in the second paragraph of section 9 of article IX of the state constitution of 1963 from the proceeds of bonds or notes issued pursuant to section 18b or from the state trunk line fund. Loans made directly from the state trunk line fund shall be made only after provision of funds for the purposes specified in subsection (1)(a) to (f).

(6) County road commissions, cities, and villages may borrow money from the proceeds of bonds or notes issued under section 18b or the state trunk line fund for the purposes set forth in subsection (5) that shall be repayable, with interest, from 1 or more of the following:

(a) The money to be received by the county road commission, city, or village from the Michigan transportation fund, except to the extent the money has been or may in the future be pledged by contract in accordance with 1941 PA 205, MCL 252.51 to 252.64, or has been or may in the future be pledged for the payment of the principal and interest upon notes issued pursuant to 1943 PA 143, MCL 141.251 to 141.254, or has been or may in the future be pledged for the payment of principal and interest upon bonds issued under section 18c or 18d, or has been or may in the future be pledged for the payment of the principal and interest upon bonds issued pursuant to 1952 PA 175, MCL 247.701 to 247.707.

(b) Any other legally available funds of the city, village, or county road commission, other than the general funds of the county.

(7) Loans made pursuant to subsection (5) if required by the state transportation department may be payable by deduction by the state treasurer, upon direction of the state transportation department, from the periodic disbursements of any money returned by the state under this act to the county road commission, city, or village, but only after sufficient money has been returned to the county road commission, city, or village to provide for the payment of contractual obligations incurred or to be incurred and principal and interest on notes and bonds issued or to be issued under 1941 PA 205, MCL 252.51 to 252.64, 1943 PA 143, MCL 141.251 to 141.254, 1952 PA 175, MCL 247.701 to 247.707, or section 18c or 18d. The interest rates and payment schedules of any loans made from the proceeds of bonds or notes issued pursuant to section 18b shall be established by the state transportation department to conform as closely as practicable to the interest rate and repayment schedules on the bonds or notes issued to make the loans. However, the state transportation department may allow for the deferral of the first payment of interest or principal on the loans for a period of not to exceed 1 year after the respective first payment of interest or principal on the bonds or notes issued to make the loans.

(8) The amount borrowed by a county road commission, city, or village pursuant to subsection (6) shall not be included in, or charged against, any constitutional, statutory, or charter debt limitation of the county, city, or village and shall not be included in the determination of the maximum annual principal and interest requirements of, or the limitations upon, the maximum annual principal and interest incurred under 1941 PA 205, MCL 252.51 to 252.64, 1943 PA 143, MCL 141.251 to 141.254, 1952 PA 175, MCL 247.701 to 247.707, or section 18c or 18d.

(9) The county road commission, city, or village is not required to seek or obtain the approval of the electors, the municipal finance commission or its successor agency, or, except as provided in this subsection, the department of treasury to borrow money pursuant to subsection (6). The borrowing is not subject to the municipal finance act, 1943 PA 202, MCL 131.1 to 139.3, or to section 5(g) of the home rule city act, 1909 PA 279, MCL 117.5. The state transportation department shall give at least 10 days' notice to the state treasurer of its intention to make a loan under subsection (5). If the state treasurer gives notice to the director of the state transportation department within 10 days of receiving the notice from the state transportation department, that, based upon the then existing financial or credit situation of the county road commission, city, or village, it would not be in the best interests of the state to make a loan under subsection (5) to the county road commission, city, or village, the loan shall not be made unless the state treasurer, after a hearing, if requested by the affected county road commission, city, or village, subsequently gives notice to the director of the state transportation department that the loan may be made on the conditions that the state treasurer specifies.

(10) The state transportation commission may borrow money and issue bonds and notes under, and pursuant to the requirements of, section 18b to make loans to county road commissions, cities, and villages for the purposes described in the second paragraph of section 9 of article IX of the state constitution of 1963, as provided in subsection (5). A single issue of bonds or notes may be issued for the purposes specified in subsection (5) and for the other purposes specified in section 18b. The house and senate transportation appropriations subcommittees shall be notified by the department if there are extras and overruns sufficient to require approval of either the state administrative board or the commission, or both, on any contract between the department and a local road agency or a private business.

(11) The director of the state transportation department, after consultation with representatives of the interests of county road commissions, cities, and villages, shall establish, by intergovernmental communication, procedures for the implementation and administration of the loan program established under subsections (5) to (10).

(12) Not more than 10% per year of all of the funds received by and returned to the state transportation department from any source for the purposes of this section may be expended for administrative expenses. The department shall be subject to section 14(5) if more than 10% per year is expended for administrative expenses. As used in this subsection, "administrative expenses" means those expenses that are not assigned including, but not limited to, specific road construction or maintenance projects and are often referred to as general or supportive services. Administrative expenses shall not include net equipment expense, net capital outlay, debt service principal and interest, and payments to other state or local offices which are assigned, but not limited to, specific road construction projects or maintenance activities.

(13) Any performance audits of the department shall be conducted according to government auditing standards issued by the United States general accounting office.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E. Randall

Clerk of the House of Representatives.

Approved

.....
Governor.