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**SFA****BILL ANALYSIS**

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House Bill 5383 (Substitute S-2 as reported by the Committee of the Whole)

House Bill 5396 (Substitute S-1 as reported)

Sponsor: Representative Thomas George (H.B. 5383)

Representative Larry Julian (H.B. 5396)

House Committee: Transportation

Senate Committee: Transportation and Tourism

Date Completed: 6-13-02

### **RATIONALE**

Public Act 51 of 1951, or the Michigan Transportation Fund law, established the Michigan Transportation Fund (MTF) as the chief collection and distribution fund for State-restricted transportation revenue. The primary recipients of the MTF funds are the State Trunk Line Fund, for the construction and maintenance of State trunkline roads and bridges; local road agencies, for 83 county road commissions and 535 cities and villages; and the Comprehensive Transportation Fund, for the State's 72 public transit agencies.

Because transportation and, therefore, its funding have changed since 1951, a study committee was created under Public Act 308 of 1998. The committee was required to review transportation funding options, transportation investment priorities, and potential strategies for maximizing returns on transportation investment. As a House Fiscal Agency publication ("Fiscal Forum", February 2001) reported, the notion of the public transportation infrastructure as an "investment" was a new, but increasingly popular, idea. Previously, governmental balance sheets reflected roads, bridges, and public buildings as expenditures, not as long-term assets. Several factors in recent years, however, shifted the thinking about infrastructure from expenditures to assets. According to the House Fiscal Agency, these factors include the completion of the Interstate Highway System; the poor condition of the aging national highway system; limited state resources for transportation; increased demand for efficiency and accountability in the delivery of government services; and the availability of information technology and advanced management systems. These shifts in the

country's physical, social, and fiscal landscapes steered the Federal Highway Administration (FHWA) to asset management, a model that had been used by utility companies and private manufacturers for years. The FHWA defines "asset management" as "a systematic process of maintaining, upgrading, and operating physical assets cost-effectively. It combines engineering principles with sound business practices and economic theory, and it provides tools to facilitate a more organized, logical approach to decision-making."

Across the country, asset management in state transportation departments is becoming the rule, due in part to Federal legislation and recommendations by the U.S. Department of Transportation. In addition, the Governmental Accounting Standards Board (GASB), a private, nonprofit organization that develops financial and reporting standards for state and local governments, issued Statement 34 in 1999, requiring governments to report infrastructure assets on their financial statements. The Michigan Department of Transportation (MDOT) has integrated asset management into its approach to the State's infrastructure. At MDOT, asset management consists of five major elements: developing policy goals and objectives; data collection; planning and programming; program delivery; and monitoring and reporting results. According to MDOT, data collection has been hindered by the multiple definitions of the word "maintenance" in various sections of Public Act 51. Reportedly, the assorted definitions make it difficult to establish categories for data collection.

This problem and others were discovered by

the Transportation Funding Study Committee, the committee formed under Public Act 308. The Committee was appointed in February 1999 by the Governor, and included four members of the Michigan Legislature and five nonlegislative members. After holding public hearings, reviewing current methods of transportation funding, and investigating alternatives, in May 2000 the Committee issued its final report, "Transportation Funding for the 21<sup>st</sup> Century". In the report, the Committee's key recommendation was to use a long-term, planned asset management approach on a Statewide basis for transportation facilities. Further, the Committee recommended the creation of a technical advisory panel, which would be responsible for oversight of the asset management process. Among other duties, the panel should, according to the Committee, develop a uniform definition of "maintenance", and the Legislature should revise current transportation laws to incorporate the definition.

As a result of the Committee's report and the GASB Statement 34, some believe that an asset management system and council should be created by statute.

## **CONTENT**

**House Bill 5383 (S-2) would amend the Michigan Transportation Fund law to provide for a single definition of "maintenance". The bill also would permit the State Transportation Commission to authorize the execution and delivery of agreements providing for interest rate exchanges or swaps, hedges, or similar agreements. House Bill 5386 (S-1) would amend the Michigan Transportation Fund law to create an asset management system, establish an asset management council and prescribe its duties, and require county road commissions, cities, and villages annually to prepare and publish multiyear programs developed through the use of the asset management system.**

### **House Bill 5383 (S-2)**

The Michigan Transportation Fund law requires that the Michigan Department of Transportation (MDOT) bear the entire cost of maintaining all State trunk line highways, and

that the money for these maintenance projects be appropriated from the State Trunk Line Fund. Currently, the law contains three separate definitions of "maintenance". The bill would eliminate the current definitions of the terms "maintenance" and "maintaining" and provide for one definition of the term with two categories called "routine maintenance" and "preventive maintenance". "Maintenance" would not include "capital preventive treatments". The bill also would define "preservation" to include, among other things, both maintenance and capital preventive treatments.

### **Proposed Definitions**

**"Maintenance"** would mean routine maintenance, or preventive maintenance, or both routine and preventive maintenance. Maintenance would not include capital preventive treatments, resurfacing, reconstruction, restoration, rehabilitation, safety projects, widening of less than one lane width, adding auxiliary turn lanes of one-half mile or less, adding auxiliary weaving, climbing, or speed-change lanes, modernizing intersections, or upgrading aggregate surface roads to hard surface roads. Maintenance of State trunk line highways would not include streetlighting, except for freeway lighting for traffic safety purposes.

-- "Routine maintenance" would mean actions performed on a regular or controllable basis in response to uncontrollable events upon a highway, road, street, or bridge. Routine maintenance would include, but would not be limited to, one or more of the following: snow and ice removal; pothole patching; unplugging drain facilities; replacing damaged sign and pavement markings; replacing damaged guardrails; repairing storm damage; repair, replacement, or operation of traffic signal systems; emergency environmental cleanup; emergency repairs; emergency management of road closures that result from uncontrollable events; cleaning streets and associated drainage; installing traffic signs and signal devices; mowing roadside; control of roadside brush and vegetation; cleaning roadside; repairing lighting; grading shoulders; and upgrading traffic signals.

-- "Preventive maintenance" would mean a planned strategy of cost-effective treatments to an existing roadway system and its appurtenances that would preserve assets, by retarding deterioration and maintaining functional condition without significantly increasing structural capacity. Preventive maintenance would include, but not be limited to, one or more of the following: pavement crack sealing; micro surfacing; chip sealing; concrete joint resealing; concrete joint repair; filling shallow pavement cracks; patching concrete; shoulder resurfacing; concrete diamond grinding; dowel bar retrofit; bituminous overlays less than 1.5 inches thick; restoration of drainage; bridge crack sealing; bridge joint repair; bridge seismic retrofit; bridge scour countermeasures; bridge painting; pollution prevention; and new treatments as they may be developed.

"Preservation" would mean an activity undertaken to preserve the integrity of the existing roadway system. Preservation would not include new construction of highways, roads, streets, or bridges, a project that increased the capacity of a highway facility to accommodate that part of traffic having neither an origin nor a destination within the local area, widening of a lane width or more, or adding turn lanes of more than one-half mile in length. Preservation would include, but not be limited to, one or more of the following: maintenance, capital preventive treatments, safety projects, reconstruction, resurfacing, restoration, rehabilitation, widening less than the width of one lane, adding auxiliary weaving, climbing, or speed change lanes, modernizing intersections, and adding auxiliary turning lanes of one-half mile or less.

"Capital preventive treatments" would mean any preventive maintenance category project on State trunk line highways that qualified under MDOT's capital preventive maintenance program.

#### Proposed Deletions

Currently, for purposes of the law except Sections 11 and 12, the maintenance of State trunk line highways includes, but is not limited to, snow removal, street cleaning and drainage, seal coating, patching and ordinary repairs, erection and maintenance of traffic

signs and markings, freeway lighting for traffic safety in cities and villages having a population of less than 30,000 people, the trunk line share of the erection and maintenance of traffic signals, and freeway lighting for traffic safety. It does not include street lighting, resurfacing, or new curb and gutter structures for widening. The bill would eliminate this provision.

The following definition, found in Section 11 (which establishes the State Trunk Line Fund and governs how the money deposited in the Fund is appropriate to MDOT, and for what purposes) would be deleted under the bill: "(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... [M]aintenance 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 ½ 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 and 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...expended for the purposes described in subdivisions (a) and (b)."

The bill also would delete the following definition, found in Section 12 (which governs how the money distributed to county road commissions must be returned to county treasurers): "(a): 'Maintenance' and 'maintaining' mean snow removal, erection of traffic control devices and traffic signals and payment of monthly electrical costs for those signals, street cleaning and drainage, seal coating, patching and ordinary repairs, erection and maintenance of traffic signs and

markings, safety projects which do not increase through traffic capacity, and the preservation, reconstruction, resurfacing, restoration, and rehabilitation of highways, roads, streets, and bridges. 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 ½ mile or less, adding auxiliary weaving, climbing, or speed change lanes, and correcting substandard intersections."

#### Interest Rate Exchange Agreements

The bill provides that, in connection with outstanding bonds, notes, or other obligations issued under the law, or in connection with the issuance or proposed issuance of bonds, notes, or other indebtedness, the State Transportation Commission could authorize by resolution the execution and delivery of agreements providing for interest rate exchanges or swaps, hedges, or similar agreements. The bill specifies that the obligations of the State under the agreements, including termination payments, could be made payable from and secured by a pledge of the same sources of funds as the bonds, notes, or other obligations in connection with which the agreements were entered into, or from any other sources of funds available as a payment source of bonds, notes, or other obligations issued under the law. In calculating debt service on bonds, notes, and other obligations, the payments and receipts under the agreements authorized under the bill, without regard to termination payments, and the payment obligations under the bonds, notes, or other obligations in connection with which the agreements would be entered into, would be aggregated and treated as a single obligation. In addition, the Commission would have to certify to the State Treasury on or before the issuance of any bonds, notes, or other obligations issued after December 31, 2001, that its average annual debt service requirements for all such obligations would not exceed 10% of the Federal revenue distributed to the credit of the State Trunk Line Fund during the last completed State fiscal year. The bill also states that bonds and notes issued under the law would not be subject to the Revised Municipal Finance Act,

but would be subject to the Agency Financing Reporting Act (proposed by Senate Bill 1201).

#### **House Bill 5396 (S-1)**

Under the bill, "asset management" would be defined as an ongoing process of maintaining, upgrading, and operating physical assets cost-effectively, based on a continuous physical inventory and condition assessment.

#### Council

The bill would create the Transportation Asset Management Council within the State Transportation Commission. (The Commission was created by the State Constitution and consists of six members, not more than three of whom represent the same political party, appointed by the Governor. The Commission is required to establish policies for MDOT transportation programs and facilities, and such other public works of the State.)

The bill states that the Council would be created in order to provide a coordinated, unified effort by the various roadway agencies within the State. The Council would be charged with advising the Commission on a Statewide asset management strategy, and the processes and tools needed to implement such a strategy. The strategy would have to begin with the Federal-aid eligible highway system and, once completed, continue on with the county road and municipal systems, in a cost-effective, efficient manner. The bill specifies that nothing in it would prohibit a local road agency from using an asset management process on its non-Federal-aid eligible system.

(The bill would define "Federal-aid eligible" as any public road or bridge eligible for Federal aid to be spent for the construction, repair, or maintenance of that road or bridge. "Bridge" would mean a structure, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, for the purposes of carrying traffic or other moving loads, and having an opening measuring along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of openings for multiple boxes where the clear distance between openings was less than one-half of the smaller contiguous opening.)

The Council would consist of 10 voting members appointed by the Commission, and would include two members from the County Road Association of Michigan, two from the Michigan Municipal League, two from the State planning and development regions, one member from the Michigan Townships Association, one from the Michigan Association of Counties, and two from MDOT. Nonvoting members would include one person from the agency or office selected as the location for central data storage. (The bill would define "state planning and development regions" as those agencies required by Section 134(b) of Title 23 of the United States Code (23 U.S.C. 134), which provides for metropolitan planning organizations in cities with populations of more than 50,000, and those agencies established by former Governor Milliken's Executive Directive 1968-1, which provided for 14 planning regions in the State. The bill would define "central storage data agency" as that agency or office chosen by the Council where the data collected were stored and maintained.) Each agency with voting rights would have to submit to the Commission a list of two nominees from which the appointments would be made. The Michigan Townships Association and the Michigan Association of Counties would submit one name each. Names would have to be submitted within 30 days after the bill's effective date, and the Commission would have to make the appointments within 30 days after receiving the lists.

The bill provides that the MDOT positions would be permanent. The position of the central data storage agency would be nonvoting and for as long as the agency continued to serve as the data storage repository. The member from the Michigan Association of Counties would be initially appointed for two years; the member from the Michigan Townships Association would be appointed for three. Of the members first appointed from the County Road Association of Michigan, the Michigan Municipal League, and the State planning and development regions, one member of each group would be appointed for two years and one member appointed for three. At the end of the initial appointment, all terms would be for three years. The chairperson would be selected from among the voting members of the Council.

#### Administration

The bill specifies that the Council would have to provide qualified administrative staff, and the State planning and development regions would have to provide qualified technical assistance to the Council.

Within 90 days after its first meeting, the Council would have to develop and present to the Commission for approval the procedures and requirements that would be necessary for the administration of the asset management process. This would have to include, at a minimum, the areas of training, data storage and collection, reporting, development of a multiyear program, budgeting and funding, and other issues related to asset management that could arise. All quality control standards and protocols, at a minimum, would have to be consistent with any existing Federal requirements and regulations and existing government accounting standards.

#### Technical Advisory Panel

The Council could appoint a technical advisory panel consisting of representatives from transportation construction associations and related transportation road interests. The Council would have to select members from names submitted by the associations and road interests, and the appointments would last three years. The Council would have to determine the research issues and assign projects to the panel to assist in the development of Statewide policies. The panel's recommendations would be advisory only, and not binding on the Asset Management Council.

#### Multiyear Publication

Beginning October 1, 2003, MDOT, each county road commission, and each city and village in the State annually would have to prepare and publish a multiyear program, based on long-range plans and developed through the use of the asset management process described in the bill.

Projects contained in each agency's annual multiyear program would have to be consistent with the goals and objectives of the agency's long-range plan. A project funded in whole or in part with State or Federal funds would have to be included in any local road

agency's multiyear plan. ("Multiyear program" would mean a compilation of road and bridge projects anticipated to be contracted for by MDOT or a local road agency during a three-year period. "Local road agency" would mean a county road commission or designated county road agency or city or village that was responsible for the construction or maintenance of public roads in the State under the MTF law.)

### Funding

Funding necessary to support the activities described in the bill would have to be provided by an annual appropriation from the Michigan Transportation Fund to the State Transportation Commission.

### Record-Keeping

The bill would require MDOT and each local road agency to keep accurate and uniform records on all road and bridge work performed and funds spent for the purposes of the bill, according to the procedures developed by the Council. Each local road agency and MDOT would be required to report to the Council the mileage and condition of the road and bridge system under their jurisdiction and the receipts and disbursements of road and street funds in the manner prescribed by the Council, which would have to be consistent with any current accounting procedures. The staff assigned to the Council would have to prepare an annual report regarding the results of activities conducted during the preceding year, and the expenditure of funds related to the processes and activities identified by the Council. Also, the report would have to include an overview of the activities identified for the succeeding year. The Council would have to submit the report to the Commission, the Legislature, and the Transportation Committees of the House and Senate by May 2 of each year.

MCL 247.651b et al (H.B. 5383)  
MCL 247.659a (H.B. 5396)

### 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

Both bills would provide for unified, effective, and efficient management of the State's roads and highways. Currently, a confusing combination of city, county, and State agencies oversees and maintains all of the roadways in Michigan. Reportedly, these agencies often conflict with each other over the allocation of Federal funds and their respective responsibilities. Under House Bill 5383 (S-3), the uniform definition of "maintenance" would clarify the State's responsibilities for maintenance on State trunk line highways. More significantly, however, House Bill 5396 (S-1) would establish a single, guiding framework for all road agencies. In bringing together representatives from townships, counties, and the State into a Council with decision-making power, the bill would establish a framework that encouraged a spirit of cooperation, rather than competition. In addition, House Bill 5396 (S-1) would extend the asset management model, currently in use at the State level, to all county, city, and village road agencies by requiring them to prepare and publish a multiyear program developed through the use of the asset management system. According to the Transportation Funding Study Committee's report, the practice of asset management makes more objective information available to the decision-making process, and enables agencies to obtain the maximum benefit from whatever level of funding the budget process provides. Because asset management's foundation consists of continual assessment and cost-effectiveness, it would make sense for this best-practice model to be used throughout the State.

Legislative Analyst: Claire Layman

### FISCAL IMPACT

#### House Bill 5383 (S-2)

The bill would have no fiscal impact on State or local government.

#### House Bill 5396 (S-1)

The bill would result in increased administrative costs associated with the Asset Management Council. The Council would receive administrative support from the Michigan Department of Transportation and would be funded from the Michigan

Transportation Fund (MTF). Funding from the MTF to the Council would reduce resources provided for public transit programs, the State Trunkline Fund, and local road agencies according to the provisions of the law. It is unknown, at this time, how much funding from the MTF would be necessary to support the Council.

The bill also would result in additional administrative costs to the Michigan Department of Transportation and each local road agency associated with the preparation and publication of an annual multiyear program. These costs would be supported by an annual appropriation from the MTF. Again, any funds removed from the MTF to cover administrative costs would reduce the amount of funds available for public transit programs, the State Trunkline Fund, and local road agencies according to the statute.

Fiscal Analyst: Craig Thiel

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.