Report to the Appropriation Subcommittees on Transportation of the Senate and House of Representatives

Sec. 721 of Public Act 116 of 2009
October 18, 2010

The Michigan Department of Transportation's FY2010 appropriations bill includes the following boilerplate requirement

Section 721: For federal transit administration bus acquisition capital grants matched with CTF funds appropriated in part 1, transit agencies shall have 4 years from the federal approval date to carry out their projects. Contract line items unobligated 4 years after the federal approval date may be matched with CTF funds only up to 15% in the fifth and subsequent years. "Unobligated" means any line item in the contract that is not committed to a third party or purchase order. A waiver shall be granted by the department for an additional year with documented justification from the transit agency accompanied by a resolution from the board or authority seeking a waiver. If a transit agency does not carry out a line item activity in a specific authorization and the transit agency requests funds in a new authorization for that same activity, the line item shall be matched at up to 15%. This section applies only to bus acquisition capital grants. Lapsed funds under this section shall remain in the CTF. This section does not take effect if failure to comply with the provisions of this section by a transit agency occurs due to the inability of the state to provide sufficient matching funds for available federal funding earmarked to that transit agency for the purpose of bus capital acquisition. The department shall report to the appropriation subcommittees on transportation of the senate and house of representatives if the state is unable to provide sufficient matching funds for this section to take effect.

To date, lack of sufficient matching funds has not prevented this section from taking effect. Lack of sufficient matching funds would not have an immediate effect on this section, since in the situation where MDOT lacked sufficient funds to match a federal transit administration bus acquisition capital grant, MDOT would not enter into a contract with a transit agency for the match and there would be no contract activities/line items for a transit agency to obligate within four years. A lack of sufficient match would instead prevent MDOT from entering into a match contract, such that the transit agency would be unable to enter into a grant agreement with the Federal Transit Administration (FTA), and would risk losing the federal funds. Federal funds that are not obligated between the FTA and the recipient within three years of the date of the federal appropriation can be withdrawn by the FTA.

The annual CTF appropriation for capital match has been insufficient to meet MDOT's annual match obligations since FY2005. Starting in FY2005, MDOT began filling the void with the use of federal toll credit revenues. Federal law, specifically 23 U.S.C. 120(j), allows the states to apply toll revenues used for capital expenditures to build or improve public highways or bridges as a credit toward the non-federal share of certain transportation projects. Toll revenue credits are a Federal Highway Administration approved techniques described below (from FHWA's webpage on innovative financing):

> *"Toll credits are earned when a state, a toll authority, or a private entity funds a capital highway investment with toll revenues from existing facilities. The amount of toll revenues spent on non-Federal highway capital improvement projects earns the state an equivalent dollar amount of credits to apply to the non-Federal share of a Federal-aid project. To utilize this tool, the state must certify that its toll facilities are properly maintained and must pass an annual maintenance of effort test to earn credits. By using toll credits to substitute for the required non-Federal share on a Federal-aid project, Federal funding can effectively be increased to 100 percent."*

MDOT has used $53,500,270 of toll credits to match a portion of the FY2005 through FY2009 FTA grants to MDOT and Michigan transit agencies. This is an average of $10,700,054 a year. Toll credits have been used to match equipment and preventative maintenance line items so that the annual CTF appropriation and remaining CTF bond revenues could be used to match bus and facility line items. As such, MDOT has been able to provide the match for all bus acquisition grants.

While the use of toll revenue credits has allowed MDOT to provide match for all federal funds, they do represent a loss of investment in the transit infrastructure. Through FY2009, the transit infrastructure has lost $62.8 million in investment as a result of the use of this matching technique. Toll revenue credits will continue to be used to match the remaining FY2010 federal transit grants.

Toll revenue credits accumulated from the Mackinaw, International and Blue Water bridges. To be able to earn a toll credit, federal law requires MDOT to satisfy maintenance of effort (MOE) determination. The MOE determination is an assessment of a state's non-Federal transportation capital expenditures over a four-year period. The expenditures in the last year of the four-year period must exceed the annual average of the expenditures in the preceding three years of the four-year period. In FY2005 through FY2008 MDOT did not qualify for toll credits. In FY2009, MDOT did qualify for toll credits based on FY2008 expenditures. MDOT received these toll revenue credits in FY2010. Toll credits will not be used to match FY2011 federal transit grants.