

MEMORANDUM



DATE: November 14, 2012
TO: Interested Parties
FROM: William E. Hamilton
RE: Public Transit in Southeast Michigan:
Public Transportation Providers/Regional Transportation Planning

This memo discusses the public agencies which plan, coordinate, and provide public transportation services in Southeast Michigan. The memo describes the two major transit operators in Southeast Michigan, the Detroit Department of Transportation (DDOT) and the Suburban Mobility Authority for Regional Transportation (SMART), as well as the authority created to establish and direct public transportation policy in the Detroit metropolitan area, the Regional Transit Coordinating Council (RTCC). The memo also reviews recent attempts to establish a regional transit authority for Southeast Michigan.

The term "Southeast Michigan" in this memo means Wayne, Oakland, and Macomb counties, and the city of Detroit as a separate political entity.

Background/History

There are two primary providers of public transportation services in Southeast Michigan, DDOT and SMART. DDOT is an agency of Detroit city government. DDOT provides fixed-route bus service primarily within the city of Detroit. DDOT is the largest public transit system in the state. For the twelve-month period ending September 30, 2011, DDOT carried 34.9 million passengers on its regular service.

SMART, an acronym for Suburban Mobility Authority for Regional Transportation, is a regional transit authority organized under the Metropolitan Transportation Authorities Act of 1967 (1967 PA 204). SMART provides bus service primarily outside of the city of Detroit in suburban Wayne, Oakland, and Macomb counties. While much of SMART service is between suburban communities, SMART also provides bus transit service between the city of Detroit and suburban communities. Many people in metro Detroit depend on public transportation for travel between the city and suburban communities.

SMART is the second largest transit agency in the state. For the twelve-month period ending September 30, 2011, SMART reported 11.1 million passengers for its regular service.

Combined DDOT and SMART ridership for the twelve-month period ending September 30, 2011 was approximately 46.6 million passengers, almost as much as the combined ridership of all 77 other Michigan public transit agencies.

The RTCC was established in January 1989 under the legal authority of Section 4a of 1967 PA 204. As described in its articles of incorporation, the RTCC was organized to establish and direct public transportation policy within the Detroit metropolitan area, to apply for and distribute operating and capital assistance grants to operators of public transportation within the metropolitan area, to adopt public transportation plans for the metropolitan area, and to coordinate public transportation service functions between the operators of public transportation within the metropolitan area. Section 4a of

1967 PA 204 identified the RTCC as the "designated recipient" for federal and state operating and capital grants in the area.

KPMG Peat Marwick Report

In 2000, the consulting firm KPMG Peat Marwick was hired to assess options for coordination of services between DDOT and SMART. The report identified a number of areas where DDOT and SMART coordinated services and discussed opportunities for future coordination. The report concluded that "It is difficult to make a case for complete merger of the two systems based on intended cost savings," and suggested that savings from additional coordination of routes would be "relatively small."

The report suggested that increased regional coordination through a reform of the RTCC "could achieve many of the benefits of coordination without risking the disadvantages of complete merger." The reform of the RTCC was not pursued at that time; legislative and political efforts were directed towards the creation of a new entity, the Detroit Area Regional Transportation Authority (DARTA).

DARTA Legislative History

In June 2001, at the Detroit Regional Chamber of Commerce annual meeting on Mackinac Island, leaders of Wayne, Oakland, and Macomb counties and Detroit Mayor Dennis Archer signed an agreement supporting a proposal for improved regional transit. On June 1, 2001, the Gongwer News Service reported that "House Minority Leader Kwame Kilpatrick said that he would sponsor a bill [to reform the RTCC]. House Speaker Rick Johnson signaled he would support the measure."

House Bill 5467 (Kilpatrick) was introduced on November 29, 2001 to eliminate the RTCC and establish DARTA. Although the bill had bi-partisan support in the House – the bill passed the House with 87 yes votes, it passed the Senate with only 20 yes votes, the minimum number needed for passage. On December 30, 2002, in one of his last acts in office, Governor Engler vetoed the bill. Since the Legislature had adjourned *sine die*, there was no opportunity for an attempt to override the veto.

Governor Engler had expressed no previous opposition to the bill. His veto was seen as a political reaction to the Legislature's failure to increase the cap on charter schools. The Governor's veto message linked the two issues, "without a solution or plan of attack to the education challenges of southeast Michigan, I cannot sign this bill [House Bill 5467]."

In January 2003, at the start of the 2003-2004 legislative session, House Speaker Rick Johnson indicated that DARTA would be one of his top legislative priorities. It was also understood to be a top priority of newly elected Governor Granholm. On January 28, 2003, House Bill 4072 (Bisbee) was introduced in the House. The bill was substantially the same as Enrolled House Bill 5467 from the prior legislative session. An identical bill, Senate Bill 100 (Burton Leland), was introduced in the Senate. In February 2003, House Bill 4072 passed the House with 58 yes votes. The bill was never taken up in the Senate. In February 2003, Senate Bill 100 was taken up by the Senate Committee on Commerce and Labor but a vote was never taken and the bill died in committee.

During the 2005-2006 legislative session new DARTA bills were introduced in both chambers: House Bill 5068 (Kolb) and Senate Bill 691 (Thomas). Neither bill was taken up in committee and both bills died at the end of session. Senator Thomas reintroduced his DARTA bill in the 2007-2008 legislative session. The bill, Senate Bill 17, was not given a committee hearing.

DARTA in the Courts

Because of the apparent difficulty in creating DARTA through legislation, in May 2003 SMART, the city of Detroit, and the RTCC entered into an intergovernmental agreement to create DARTA. In creating DARTA, the agreement cited the authority of both the Urban Cooperation Act of 1967 (1967 PA 7) and the Intergovernmental Transfer Act of 1967 (1967 PA 8). Both of these acts allow two or more public agencies or political subdivisions to form agreements or contracts for joint activities or functions, including public transportation programs.

The legal authority for DARTA was challenged in court by a local chapter of the Association of State County and Municipal Employees (ASCME). In November 2003, a Wayne County Circuit Court judge ruled that the RTCC did not have the legal authority to enter into the DARTA agreement with SMART and the city of Detroit. The judge ruled that the DARTA could not apply for grants, coordinate bus service between Detroit and the suburbs, or directly plan improvements to bus service in Southeast Michigan. Those functions would continue to be the responsibility of the RTCC.

Both parties appealed the case to the Michigan Court of Appeals. The RTCC asked the appellate court to reverse the decision of the lower court and confirm that the RTCC was a valid member of the DARTA agreement. ASCME asked that the court invalidate the entire agreement.

In July 2005, the Michigan Court of Appeals ruled that the parties did not have legal authority to execute the DARTA agreement and that the trial court erred in failing to declare the entire agreement null and void. (COA docket No. 253592). In May 2006, the Michigan Supreme Court denied leave to appeal, effectively invalidating the intergovernmental agreement and ending the existence of DARTA as a legal entity.

DARTA/Regional Transit – Policy Issues

Three primary issues emerged during legislative review of proposed DARTA legislation.

Labor – Under provisions of 1967 PA 204, the RTCC did not have the authority to operate a transit system. The RTCC was created as an oversight agency with authority over regional transit planning and coordination and the distribution of state and federal grants. DARTA legislation would have replaced the RTCC with an entity empowered to operate transit systems. It was not clear that DARTA was intended to actually operate transit systems or to take over all or part of the DDOT or SMART transit services. Nonetheless, public transit employee unions wanted to ensure that labor protections would be guaranteed under DARTA. Satisfying these public employee unions was one of the biggest challenges in the crafting and passage of DARTA legislation. The lawsuit which effectively ended DARTA's existence was brought by a public employee union.

Opt-out – Because of SMART's form of organization, some communities in Wayne and Oakland counties are able to "opt-out" of participation in the SMART millage.¹ Because opt-out communities do not participate in the SMART millage, SMART does not provide regularly scheduled bus service to those communities. For example, SMART provides line-haul service along Woodward Avenue in Oakland County but does not make stops in Bloomfield Hills, an opt-out community. The ability of communities to opt-out limits the effectiveness of regional transit.

See **Appendix B**, below, for additional information on "opt-out" communities.

¹ Because Macomb County participates in SMART as a county there are no "opt-out" communities in Macomb County.

As a result of community opt-outs, there are holes in the current Southeast Michigan regional transit system. Whether communities would be allowed to opt-out of any proposed regional transportation plan was one of the major sticking points in legislative discussion of the DARTA bills in the 2001-2002 and 2003-2004 legislative sessions.

Funding – Although proposed DARTA legislation, e.g. House Bill 5467 (2001-2002) and House Bill 4072 (2003-2004), did not obligate the state or any local political entity to provide additional funding for DARTA, one of the unresolved issues in the legislation was how a new regional transit system would be funded. There was concern among some legislators that DARTA would eventually ask for state capital or operating assistance. At the same time there was concern that if DARTA were able to generate additional funds locally, it might capture a larger share of state local bus operating assistance than had previously been distributed through the RTCC.

Revisiting the RTCC

Although the RTCC was empowered by Section 4a of 1967 PA 204 to adopt public transportation plans for the Detroit metropolitan area and to coordinate service overlap, rates, routing, and scheduling from the time of its incorporation in January 1989 through June 2006 the RTCC did not exercise this legal authority. The RTCC was, in effect, a shell organization. There was no director, no employees, no office, no telephone number. Correspondence was handled by a law firm acting as the RTCC board secretary.

Section 4a of 1967 PA 204 required the RTCC to meet "regularly but not less than quarterly." However, for a number of years the four RTCC board members – the chief executive officer of the city of Detroit, the chief executive officers of Wayne and Oakland counties, and the chairman of the Macomb County Board of Commissioners – met only once a year for the sole purpose of approving the state and federal operating and capital grant applications of DDOT and SMART, certain small subrecipients, and, beginning with the grant applications for FY 2004-05, the Detroit Transportation Corporation (People Mover). From May 2004 to May 2006 the RTCC did not meet at all.²

However, in light of the May 2006 Michigan Supreme Court ruling which effectively ended the existence of DARTA, RTCC members met in June 2006 and approved resolutions to assume certain duties and functions from the DARTA organization which had been created under the interlocal agreement. The RTCC also authorized the appointment of a General Secretary and Chief Executive Officer, and identified a new principal office, at 100 River Place, Suite 450, Detroit Michigan. The RTCC subsequently approved a contract with former State Senator John Hertel as RTCC General Secretary and CEO. The RTCC also adopted a 2007 budget.

The RTCC's *Vision Document*, approved by the RTCC board on August 28, 2007, indicated that "*the RTCC, through its project 'The Detroit Regional Mass Transit Initiative' seeks to provide seamless, reliable, convenient, and cost effective public transportation.*" At its December 2007 meeting the RTCC approved a contract with a planning consultant to complete a *Comprehensive Regional Transit Service Plan*. The RTCC used funding from a Federal Transit Administration grant – funds originally earmarked for DARTA – and state matching funds to support RTCC administrative costs and cost of the planning consultant contract.³

² RTCC meetings were generally very brief. The October 2001 meeting lasted 7 minutes; the October 2002 meeting lasted 9 minutes; the July 2003 meeting lasted 5 minutes; the May 2004 meeting lasted 3 minutes.

³ The FY 2002-03 federal transportation appropriations act, PL108.7 (H.J. Res. 2) included a total of \$850,000 earmarked for the Detroit Area Regional Transportation Authority. State funds were used to match these federal funds at 20% of eligible planning project cost.

The *Comprehensive Regional Transit Service Plan* was completed November 21, 2008 and approved by the RTCC at a December 8, 2008 meeting. The RTCC has not met since that date. In March 2010, John Hertel, who had been the RTCC General Secretary and CEO, accepted an appointment as General Manager of SMART. No new RTCC General Secretary or CEO was appointed to replace Mr. Hertel.

RTCC as Designated Recipient

As noted above, the RTCC's activities related to adopting regional public transportation plans were short-lived, beginning with the adoption of a *Vision Document* in August 2007, and effectively ending with the adoption of the *Comprehensive Regional Transit Service Plan* at the December 8, 2008 meeting. The RTCC has also ceased functioning as the designated recipient for federal and state operating and capital grants.

Section 4a of 1967 PA 204 established the RTCC as a "designated recipient" for the purposes of applying for federal and state capital and operating assistance. The RTCC had functioned as the designated recipient from the time of its establishment in 1989.

As the designated recipient for the region, the RTCC applied for and governed the distribution of state and federal capital and operating grants on behalf of DDOT and SMART. DDOT and SMART prepared grant applications for their respective systems; those applications were submitted to the RTCC for approval and submission to the Michigan Department of Transportation. For purposes of state and federal formula grants, the RTCC was treated as single stand-alone authority. Formula funds were granted to the RTCC based on combined DDOT and SMART formula criteria; grant formula funds were distributed to DDOT and SMART as subrecipients in accordance with RTCC articles of incorporation.

The May 26, 2004 meeting was the last meeting at which the RTCC formally approved DDOT and SMART grant applications (for FY 2004-05). It is not clear why the RTCC quit approving grant applications. Subsequent meeting minutes are cryptic; the June 2, 2006 meeting minutes state "at the request of [Oakland County Executive] Mr. Patterson, the Chair asked counsel to review the process by which grant distributions for FY 2005 were implemented by MDOT in light of the Council's resolution approving FY 2005 grants." And the December 19, 2006 meeting minutes indicate "Mr. Patterson raised the issue of approval of DDOT and SMART grant contracts. Mr. Hertel responded."

Starting with the grant applications for FY 2005-06, the Michigan Department of Transportation simply informed RTCC members of the proposed DDOT and SMART distributions and implemented the distributions without formal RTCC approval. This practice appears to be contrary to the provisions of Section 4a of 1967 PA 204.⁴ Starting with FY 2011-12 grants, the department quit treating the RTCC as the designated recipient for the region and began to distribute state operating assistance as if DDOT and SMART were separate eligible agencies under Section 10e of 1951 PA 51 and not subrecipients of the RTCC.

⁴ A June 3, 1991 letter opinion from the Chief Assistant Attorney General to State Representative Curtis Hertel stated that the RTCC "must consider and act on each specific grant application at a meeting held in compliance with the Open Meetings Act," and that "the RTCC may not give prospective approval to grant applications."

Regional Transit Authority Initiatives – 2009 through 2012

Bills to establish a southeast Michigan regional transit authority were again introduced in the 2009-2010 legislative session. Senate Bill 1031 (Thomas) was not taken up in committee. House Bill 5731 (Bert Johnson) was reported from committee but was not passed by the House.

In his October 26, 2011 Special Message on Michigan's Infrastructure Governor Rick Snyder indicated support for the creation of a new regional transit authority for southeast Michigan. The Governor specifically proposed "a new Regional Transit Authority for southeast Michigan, one with the teeth and the commitment to coordinate existing bus services and permanent, dedicated regional funding to invest in rapid transit." The Governor further indicated that the new authority would be "free of legacy costs" and would "establish rolling rapid transit along four critical routes including Gratiot, Woodward, Michigan Avenue and the M-59 corridor." He also indicated that "a truly regional transit system will efficiently integrate services under one authority and help to revitalize regional identity and culture."

Bills to establish a southeast Michigan regional transit authority were again introduced in the 2011-2012 legislative session. Identical bills were introduced in each Legislative chamber on January 26, 2012: Senate Bill 909 (Casperson) and House Bill 5309 (Townsend).

Appendix A

Metro Detroit Public Transportation Agencies

DDOT is the Detroit Department of Transportation – a division of the city of Detroit. DDOT provides public transportation services primarily within the city limits of Detroit.

DDOT operating costs not covered by farebox revenue are primarily funded by state operating assistance and by city General Fund contributions. From the FY 2000-01 through FY 2011-12 the city transferred an average of \$75 million from the city General Fund to the city Transportation Fund to support DDOT transit operations. The FY 2011-12 transfer was \$74.2 million.⁵ However, the city budget for FY 2012-13 includes only \$43.0 million in General Fund support for DDOT.

DDOT also receives state and federal capital assistance.

SMART is an acronym for the Suburban Mobility Authority for Regional Transportation, a regional transportation authority organized under the Metropolitan Transportation Authorities Act of 1967 (PA 204 of 1967, MCL 124.401). SMART provides public transportation services in Wayne, Oakland, Macomb, and Monroe counties. Although SMART has no scheduled routes which both begin and end within the city of Detroit, SMART buses do provide express bus service between suburban communities and downtown Detroit.

SMART operating costs not covered by farebox revenue are primarily funded by state operating assistance and by a .59 mill property tax levied in Macomb county, most of Oakland county, and most of Wayne county excluding the city of Detroit.

Public Act 204 does not authorize SMART to levy taxes in its own name. The SMART millage is actually levied by the Oakland County Public Transportation Authority, the Wayne County Transit Authority – authorities organized under the Public Transportation Authority Act of 1986 (1986 PA 196) – and Macomb County. In 1995, and again in 1998, voters within those jurisdictions approved a three-year 1/3 mill property tax for SMART. In August 2002, the tax was approved for an additional four years at a rate .60 mills. In August 2006, the tax was approved for an additional four years at a rate of .59 mills.

In August 2010, Macomb County and participating communities in Wayne County and Oakland Counties voted to renew the .59 mill levy – Macomb and Wayne County for a four-year period, Oakland County for a two-year period. Participating Oakland County communities renewed the millage for an additional two-year period in August 2012. The millage will be up for renewal in Macomb, Wayne, and Oakland counties again in 2014.

The SMART millage generated \$50.4 million per year for SMART operations in the fiscal year ending June 30, 2010. Revenue generated by the tax declined to \$44.2 million in the fiscal year ending June 30, 2011. Based on preliminary (unaudited) financial data, the SMART millage generated \$39.9 million for the fiscal year ending June 30, 2012.

SMART also receives state and federal capital assistance.

⁵ Our computed average over this period excludes the fiscal year ending June 30, 2008 when city General Fund support to the Transportation Fund totaled \$97.8 million. The General Fund amount was higher than average that year because the city wrote off a \$24.4 million inter-fund receivable due from the Transportation Fund to the General Fund. City General Fund contribution amounts through FY 2010-11 were taken from the city's Comprehensive Annual Financial Reports. Preliminary unaudited FY 2011-12 figures were provided by the city.

RTCC – In 1988, the legislature enacted 1988 PA 481, which added new Sections 4a and 4b to 1967 PA 204. These new sections worked to establish the Regional Transit Coordinating Council (RTCC).

Specifically, Section 4a directed that the chief executive officer of a city having a population of 750,000 within a metropolitan area, the chief executive of the county in which such as city is located, and counties immediately contiguous to that county form a corporation "for the purpose of establishing and directing public transportation policy" within the Detroit metropolitan area. Sections 4a and 4b further defined the rights, duties, and powers of the RTCC. (MCL 124.404a and 124.404b).

Articles of Incorporation were signed on January 12, 1989 by the four voting members of the RTCC: the mayor of the city of Detroit, the chief executive officers of Wayne and Oakland counties, and the chairman of the Macomb County Board of Commissioners. Both Subsection 6 of Section 4a of 1967 PA 204 and Article IV, Section 4 of the RTCC Articles of Incorporation require the RTCC to act by unanimous vote of its members.

The RTCC is empowered to adopt public transportation plans for the Detroit metropolitan area, and to coordinate service overlap, rates, routing, and scheduling. Section 4a also established the RTCC as a "designated recipient" for the purposes of applying for federal and state capital and operating assistance. In applying for state operating assistance, and federal Section 5307 Urbanized Area Formula grants, the RTCC was treated as a single eligible authority. State and federal formula grants were then apportioned 65% to DDOT and 35% to SMART in accordance with the RTCC's original 1989 Articles of Incorporation.⁶

Beginning with the FY 2011-12 distribution, the Michigan Department of Transportation began treating both DDOT and SMART as a separate eligible transit agencies and not as subrecipients of independent of the RTCC.

DARTA is the abbreviation for the Detroit Area Regional Transportation Authority. DARTA was originally proposed in House Bill 5467 of the 91st Legislature (2001-2002). The bill passed both houses of the state legislature but was subsequently vetoed by Governor Engler. A similar bill, House Bill 4072, was introduced in the subsequent legislative session. The bill passed the House but was not taken up in the Senate.

The proposed DARTA agency would have superseded the previous RTCC. In addition, DARTA would have the authority to hire an administrator and to operate transit systems.

In May 2003, SMART, the city of Detroit, and the RTCC entered into an intergovernmental agreement to create DARTA. The legal authority for DARTA was challenged in court by a local chapter of the Association of State County and Municipal Employees (ASCME). In July 2005, the Michigan Court of Appeals ruled that parties did not have legal authority to execute the DARTA agreement and that the trial court erred in failing to declare the entire agreement null and void. (COA docket No. 253592). In May 2006, the Michigan Supreme Court denied leave to appeal, effectively invalidating the intergovernmental agreement and ending the existence of DARTA as a legal entity.

⁶ In addition to the distribution to DDOT and SMART, the RTCC also distributes state operating assistance to several relatively small paratransit providers in the Detroit metro area. And, since FY 2004-05, the RTCC has distributed state operating assistance to the Detroit Transportation Corporation for a share of eligible operating expenses of the Detroit People Mover.

Appendix B

Note on SMART Organization and Opt-Out

SMART is a regional transportation authority organized under the Metropolitan Transportation Authorities Act of 1967 (PA 204 of 1967, MCL 124.401). Under PA 204 SMART does not have the authority to levy taxes. SMART relies on the taxing authority of its three constituent members, the Oakland County Public Transportation Authority, the Wayne County Transit Authority, and Macomb County.

Macomb County participates in SMART under the authority of the Revenue Bond Act of 1933 (1933 PA 94), an act which allows public corporations to make public improvements, including transportation systems. Many county public transportation systems are organized under provisions of this act. Because Macomb County is a member of SMART as a county, the county votes on SMART millage requests as a county and all property in the county is assessed the millage. There are no opt-out communities in Macomb County.

The Oakland County Public Transportation Authority and the Wayne County Transit Authority are organized under the Public Transportation Authority Act of 1986 (1986 PA 196). Public Act 196 authorizes one or more political subdivisions (counties, cities, villages, townships) to form a public transportation authority. PA 196 allows authorities to levy a tax, with voter approval, of up to 5 mills on taxable property within the limits of the transportation authority.

Neither the Oakland County Transportation Authority nor the Wayne County Transit Authority exists as an operating entity. They are effectively shell organizations which levy and collect taxes on behalf of SMART.

The Oakland County Transportation Authority was initially incorporated on March 30, 1995. The county of Oakland was the only incorporating unit. The Wayne County Transit Authority was initially incorporated on March 20, 1995, with the Wayne County being the only incorporating unit. Because each of these PA 196 authorities had only one incorporator, it is not clear on what basis municipalities within these incorporating jurisdictions were subsequently allowed to "opt-out" of the authority. As of December 2007, 16 political jurisdictions (cities, villages, or townships) within Wayne County, other than the city of Detroit, had opted out of the PA 196 jurisdiction, the Wayne County Transit Authority. Thirty-six political jurisdictions within Oakland County have opted out of the Oakland County Public Transportation Authority and the related SMART millage.

These opt-out communities did not pay the SMART millage and do not receive regular SMART service.

In April 2007, the Oakland County Public Transportation Authority amended its articles of incorporation to specifically include the 23 participating "opt-in" communities as incorporating units as well as the County of Oakland.