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The Padden Amendment

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The focus of this analysis is the so-called "Padden amendment," which was included in 1982 Public Act (PA) 438 amendments to 1951 PA 51, and set certain limitations on how the state Department of Transportation and county road commissions could spend state-restricted transportation revenue and federal highway aid. The amendments established a 90% minimum for preservation and, by default, a 10% maximum for construction. However, the statutory language provided for a number of exclusions from the 90/10 requirements (see tables on last page).

This analysis reviews recent legislative initiatives to limit how much the Michigan Department of Transportation and county road commissions can spend on construction or expansion of roads and bridges, as opposed to preservation or maintenance.

The intent of the 90/10 language is to ensure that state-restricted transportation revenue and federal aid highway funds be used for preservation of the existing highway system, rather than on system expansion. It is not clear if this goal is accomplished by the statutory 90/10 language.

There are a number of exclusions from the 90/10 limitation which limit its application. Because most expansion projects also have preservation elements, it is difficult to document compliance with the 90/10 requirements. And it is not clear if the 90/10 requirements are consistent with other state transportation goals such as safety, mobility, and economic development. To some extent, the original intent of the Padden amendment may be best satisfied under current law through implementation of a state-wide asset management process.

Padden Amendment - Background

In 1982, the Legislature enacted a six-bill package of transportation-related bills. Included in the package was 1982 PA 437 (House Bill [HB] 4937) which amended the Motor Fuel Tax Act and effectively increased the gasoline excise tax. Public Act 439 of 1982 (HB 4940), which amended the Michigan Vehicle Code, effectively increased vehicle title and registration fees. Public Act 438 of 1982 (HB 4938) amended various sections of Act 51.

In an effort to ensure that new revenue raised by the fuel tax and registration fee increases would be used for maintenance of the existing road system and not for construction of new roads, State Representatives Jeffery Padden and James Dressel sponsored a committee amendment to HB 4938. The amendment, which came to be known as the Padden amendment, was included in the committee substitute, and, subsequently, in the enacted bill (1982 PA 438).

The Padden amendment added language to Act 51 to require that the state Transportation Department spend at least 90% of State Trunkline Fund (STF) revenue and at least 90% of the federal revenue credited to the STF for road and bridge maintenance. This language is currently contained in Sections 11(2) and 11(3) of Act 51. A similar section was included to require that at least 90% of county road commission Michigan Transportation Fund (MTF) revenue be spent for road and bridge maintenance. This language is currently found in Section 12(16) of Act 51.[1]

By setting a *minimum* level of maintenance spending of 90%, the Padden amendment would seem to set a *maximum* spending level of 10% for new construction. Former Representative Padden refers to the amendment as the "90/10 amendment." However, there are a number of exclusions from the 90/10 calculation. These exclusions are shown on tables A and B (last page of this document).

Compliance with 90/10 Preservation/Construction Requirements

The Michigan Department of Transportation does not do a formal analysis of its compliance with Act 51's "90/10" requirements in developing its annual State Trunkline Road and Bridge Program. The Department does perform a year-end computation to document compliance with Act 51's "90/10" requirements. Among other things, this computation is used to support the debt service certification required by Section 18e.[2]

With regard to county road commissions, Section 14(3) of Act 51 requires that county road commissions file an annual report with the state Department of Transportation regarding receipt and disbursement of road funds. The section requires that road commissions report on compliance with Section 12(16). Section 14(5) indicates that funds may be withheld to—among others—the state Department of Transportation and county road commissions for failure to comply with provisions of Act 51.

[1] Public Act 498 of 2002 (HB 5383) amended Act 51 to change the references from "*maintenance*" to "*preservation*" and to add a definition for the word "*preservation*." See footnote 3 for the text of the PA 498 definition of "preservation."

[2] Section 18e effectively requires the State Transportation Commission to certify that no more than 10% of average annual debt service for STF bonds, or federal revenue anticipation bonds, be for purposes other than preservation of highways, streets, roads, and bridges. The Section provides for the same exclusions as in Section 11(2). This certification has been included with the bond resolutions authorizing recent state Department of Transportation bond sales.

The Michigan Department of Transportation does review road commission Act 51 annual reports for compliance with Act 51 requirements—including the 90/10 limitations. The Department notifies county road commissions of apparent violations of Section 12(16). The Department does not follow up on these notifications, and does not withhold funds for non-compliance with Section 12(16).

Effectiveness of the Padden Amendment

The intent of the Padden amendment to Act 51 was to ensure that state-restricted transportation revenue and federal aid highway funds be used for the maintenance—or to use the current term, preservation—of the existing highway system, rather than on system expansion.[3] It is not clear if the amendment is effective in achieving that goal.

The statutory exclusions from the 90/10 limitations—most of which were part of the 1982 public act which added the 90/10 language, some of which were added later—are so broad as to make the 90/10 limitation somewhat meaningless. For example, Section 11(2)(l) exempts projects "*vital to the economy of the state, a region, or local area or the safety of the public*." A reasonable argument could be made for the economic or safety necessity of most highway expansion projects.[4]

[3] PA 498 of 2002 (HB 5383) amended Section 10c of Act 51 to add a new term, "*preservation*" and definition as follows: (l) "Preservation" means an activity undertaken to preserve the integrity of the existing roadway system. Preservation does not include new construction of highways, roads, streets, or bridges, a project that increases the capacity of a highway facility to accommodate that part of traffic having neither an origin nor destination within the local area, widening of a lane width or more, or adding turn lanes of more than ½ mile in length. Preservation includes, but is not limited to, 1 or more of the following: (I) Maintenance. (ii) Capital preventive treatments. (iii) Safety projects. (iv) Reconstruction. (v) Resurfacing. (vi) Restoration. (vii) Rehabilitation. (viii) Widening of less than the width of 1 lane. (ix) Adding auxiliary weaving, climbing, or speed change lanes. (x) Modernizing intersections. (xi) Adding auxiliary turning lanes of ½ mile or less. Public Act 498 also amended sections 11(2), 11(3), and 12(16) to change references from "*maintenance*" to "*preservation.*"

[4] In the Build Michigan III bond resolution adopted March 22, 2001, the State Transportation Commission declared all of the projects on the bond list, including the M-6 project in Kent County, as "vital to the safety of the public and the economy of the State of Michigan or the region or local area where each project is located." The resolution further declared $900 million in Build Michigan III project cost to be exempt from the 90/10 calculation of the Section 11(2) of Act 51.

In addition, most "expansion" or congestion relief projects include treatments to preserve the existing roadway. For example, a proposed project to add lanes to M—59 in Livingston County included reconstruction of the two existing lanes. Because of the difficulty in breaking out the preservation costs from the expansion costs of such projects, the Department does not attempt to do so in developing its annual State Trunkline Road and Bridge program.[5, 6]

The percentages set by the Padden amendment are the 90% minimum for preservation and, by default, a 10% maximum for construction. It is not clear if the percentages set in the Padden amendment have an objective basis. While preservation is clearly an important goal, the use of fixed percentages in statute may slight other elements of an effective state transportation system such as safety, mobility, and economic development.[7]

Preservation and Asset Management

The goal of system preservation is perhaps better addressed through implementation of an asset management process which would identify and record road and bridge system condition in relation to pre-determined performance criteria. Using an asset management process would help state decision-makers determine if sufficient resources were being allocated to preserve the road and bridge system. An effective asset management process could alert Department leaders and state legislators if the state were dis-investing in its state highway system.[8]

Public Act 499 of 2002 (HB 5396) established a Transportation Asset Management Council within the State Transportation Commission. Under the Act, the Asset Management Council is charged with "*advising the commission on a statewide asset management strategy and the processes and necessary tools needed to implement such a strategy beginning with the federal-aid eligible highway system*." The focus of the Council's activity is the federal-aid eligible highway system. This represents almost all of the state trunkline system (9,716 miles) as well as over 23,000 miles of roads under the jurisdiction of local road agencies.

Public Act 499 requires that starting on October 1, 2003, all state road agencies prepare and publish an annual multi-year program based on long-range plans and developed through the use of the asset management process described by the Act. The Act also requires that the Council report to the State Transportation Commission, the Legislature, and the House and Senate committees on transportation by May 2 of each year.

The Asset Management Council was appointed by the State Transportation Commission in September of 2002. The Council is comprised of 10 voting members: two each from the County Road Association, the Michigan Municipal League, state planning and development regions, and the Department. The Michigan Townships Association and the Michigan Association of Counties have one member each. The Asset Management Council met for the first time on October 8, 2002, and approved a work program in January 2003. The work program was approved by the State Transportation Commission in February 2003. The Council's first annual report was approved on April 2, 2003.

The House Fiscal Agency wishes to thank Paul G. Conners of the Legislative Service Bureau's Legislative Research Division for his assistance in proofing this document. For additional information on the legislative history of motor fuel taxation, see Legislative Research Division Research Report Volume 22, No. 5, as revised December 2002, "Motor Fuel Taxation and the Road Funding Debate in Michigan."

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5 The M-59 project noted above was part of the Build Michigan III program. In April 2003, the Department announced the deferral of 34 expansion projects, including the M-59 widening project from I-96 to US-23 in Livingston County, as part of its *Preserve First* initiative. The Department indicated that it would proceed with the preservation components related to three of the 34 deferred projects, but not the expansion compenents. The M-59 project was not one of the three projects identified.

6 In developing its year-end documentation of compliance with the Act 51's 90/10 requirements, the Department classifies 50% of the cost of expansion projects (other than new road construction) as "construction" and 50% as "rehabilitation."

7 These elements were included as goals for the state transportation program in the Department's *State Long Range Plan 2000-2025*. For the complete plan, see the Department's web site at http://www.michigan.gov/mdot/0,1607,7-151-9621_14807-34650--,00.html

8 For additional information on transportation asset management, see the House Fiscal Agency publication "Transportation Asset Management," available from the agency's web site: http://www.house.mi.gov/hfa/PDFs/asset.pdf

TABLE A
Exclusions from the 90/10 Calculation
Michigan Department of Transportation—State Trunkline Fund

Section	
11(2)(a)	Debt service on bonds issued prior to 7/2/1983
11(2)(b) *	State matching funds for projects on the National Highway System; and related debt service for obligations issued after 7/1/1983
11(2)(c) *	Construction of highway, road, street or bridge for construction of, renovation of, or additions to manufacturing or industrial facilities; and related debt service for obligations issued after 7/1/1983
11(2)(d)	Capital outlay for other than highways, roads, streets, and bridges (i.e., buildings and equipment) and related debt service for obligations issued after 7/1/1983
11(2)(e)	Department operating expenses for other than the Bureau of Highways
11(2)(f) *	Amounts expended pursuant to contracts entered into prior to 1/1/1983
11(2)(g)	Loans to county road commissions pursuant to subsection 5
11(2)(h)	Amounts appropriated to the Transportation Economic Development Fund and Rail Grade Crossing Account
11(2)(I) *	Projects "vital to the economy of the state, a region, or local area or the safety of the public" may be excluded from the 90/10 calculation upon the affirmative recommendation of the Department director and the approval by resolution of the State Transportation Commission.

**These exclusions also apply to federal revenue credited to the State Trunkline Fund per Sec. 11(3), which also allows for the 90/10 requirement to be waived with regard to federal revenue if it conflicts with federal eligibility requirements.*
***NOTE** that subsections 11(2)(a) through 11(2)(f) were part of the original 1982 Act; subsection 11(2)(g) was added by 1983 PA 82; subsection 11(2)(h) was added by 1987 PA 234; subsection 11(2)(i) was added by 1992 PA 224.*

TABLE B
Exclusions from the 90/10 Calculation
County Road Commissions—Michigan Transportation Fund

Section	
12(16)(a)	Debt service on bonds issued prior to 7/2/1983
12(16)(b)	County road commission administrative costs
12(16)(c)	Capital outlay for buildings and equipment and related debt service for obligations issued after 7/1/83
12(16)(d)	Projects "vital to the economy of the local area or safety of the public in the local area" as determined by the applicable county road commission
12(16)(e)	Amounts expended in urban areas as determined pursuant to Sec. 12b

***NOTE** that subsections 12(16)(a) through 12(16)(c) were part of the original 1982 Act; subsection 12(16)(d) was added by 1987 PA 234; subsection 12(16)(e) was added by 1992 PA 224.*