Legislative Analysis

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ESTABLISH TRANSFORMATIONAL PROJECTS AUTHORITY AND MODIFY ECONOMIC DEVELOPMENT INCENTIVES

House Bill 5768 as introduced
Sponsor: Rep. Jason Hoskins

House Bill 5769 as introduced
Sponsor: Rep. Jason Morgan

House Bill 5770 as introduced
Sponsor: Rep. Mike McFall

Committee: Economic Development and Small Business
Complete to 6-4-24

SUMMARY:

House Bill 5769 would create a new act to establish a grant program for public transit operations, to be funded by a proposed Michigan Mobility Trust Fund and administered by a new authority created within the Department of Transportation. House Bill 5768 would amend the Income Tax Act to replace the current Strategic Outreach and Attraction Reserve (SOAR) Fund distribution with distributions to the Michigan Mobility Trust Fund, the Make it in Michigan Fund (as proposed by Senate Bills 559 and 562), and the Michigan Housing and Community Development Fund through the 2034-35 fiscal year. House Bill 5770 would amend the Michigan Trust Fund Act to establish the Michigan Mobility Trust Fund.

All three bills are tie-barred to each other and to Senate Bills 559 and 562, meaning that none of the three can take effect unless all five bills are enacted.

House Bill 5769 would create a new act, the Transformational Projects Authority Act, to provide for the creation of a state entity that would administer financial support programs for public transit operations through the Michigan Mobility Trust Fund (as would be created by HB 5770).

The bill would create the Transformational Projects Authority in the Michigan Department of Transportation (MDOT) to be managed by a five-member board. The authority could do any of the following:

- Adopt and use a corporate seal.
- Establish and maintain an office.
- Sue and be sued in its own name.
- Plea and be impleaded.
- Solicit, receive, and accept any of the following from any person or entity, including a government agency, on acceptable terms and conditions:
    - Gifts.
    - Loans.
    - Grants.
    - Labor.
    - Contributions of money, property, or other things of value.
    - Other aid or payment.

- Participate in a federal, state, local, or intergovernmental program.
- Employ personnel and hire or retain contractors, subcontractors, advisors, consultants, and agents.
- As necessary, incidental, or convenient, make and enter into contracts, agreements, or instruments (such as agreements relating to authorized grants and investments) with any person or entity, including a government agency, on acceptable terms and conditions.
- Do anything necessary or convenient to exercise its powers, duties, functions, and responsibilities under the act or other related laws.

The Transformational Projects Authority could use money in the Michigan Mobility Trust Fund only for supplemental operating grants and qualified investments (as described below), in addition to any administrative costs it incurs under the act. The grants and qualified investments could be used to match federal aid, grants, or other assistance.

The MDOT director would have to direct and supervise the Transformational Projects Authority in performing its budgeting, procurement, and related management functions. The authority would exercise its prescribed statutory powers, duties, and rule-making functions (including the prescription of rules, rates, regulations, and standards and adjudication) independently.

Transformational Projects Authority Board

Members of the Transformational Projects Authority Board would be appointed by the governor with the advice and consent of the Senate. At least two of the five members would need expertise in ***public transportation***, although an officer, employee, contractor, or agent of a ***public transportation provider*** could not serve on the board. Board members would be subject to 1968 PA 317 and 1973 PA 196, which concern conflicts of interest for public servants, and members would not be entitled to compensation for their service but could be reimbursed for actual and necessary expenses.

> ***Public transportation*** would mean, as defined by the Regional Transit Authority Act, the movement of individuals and goods by publicly owned bus, rapid transit vehicle, or other conveyance that provides general or special service to the public, including the movement of individuals and goods by privately owned bus, railroad car, street railway vehicle, rapid transit vehicle, or other conveyance that, under a contract with an authority, provides general or special service to the public. The term would exclude school buses, charter or sightseeing services, and transportation used exclusively for school purposes.

> ***Public transportation provider*** would mean, as defined by the Regional Transit Authority Act, a public or private entity that provides public transportation services or a contractor that provides services to a public transportation provider, other than a street railway organized under the Nonprofit Stret Railway Act. It would include authorities formed under 1963 PA 55, the Urban Cooperation Act, 1967 (Ex Sess) PA 8, 1951 PA 35, the Public Transportation Authority Act, and the Revenue Bond Act (see **Background**, below, for a brief description of these acts). For the purposes of the

Transformational Projects Authority Act, the term would also include a regional transit authority created under the Regional Transit Authority Act.[1]

One initial board member would be appointed for a one-year term, one member would be appointed for a two-year term, one member would be appointed for a three-year term, and the remaining two members would be appointed for a four-year term. Subsequent appointees would serve four-year terms. Vacancies would be filled for the balance of the unexpired term in the same manner as the original appointment.

The MDOT director would call the first meeting of the Transformational Projects Authority Board, at which the board would elect a chairperson and any other officers considered necessary or appropriate. The board would then have to meet at least twice per year, and the MDOT director (or a designee from within the department) would have to attend all meetings. Upon the board's request, MDOT would have to assist in making any required decisions.

A majority of the members would constitute a quorum, and a majority of the members present and serving would generally be necessary for official action of the board. (If one or more members recuse themselves, two-thirds of the members present and serving would be required for official board action.) Meetings of the board would have to be held in compliance with the Open Meetings Act, and any writing prepared, owned, used, or possessed or retained by the authority or the board in performing an official function would be subject to the Freedom of Information Act (FOIA).

The Transformational Projects Authority Board could do any of the following:

- Adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business.
- Make inquiries, studies, and investigations.
- Hold hearings and receive public comment.
- Consult with experts.
- Establish advisory workgroups that include individuals who are not board members, such as experts in matters of interest to the authority, to assist in performing board duties.
- Adopt, reject, or modify workgroup recommendations.
- Promulgate rules to implement the act under the Administrative Procedures Act.

Supplemental operating grants
The Transformational Projects Authority could use 20% of the money deposited into the Michigan Mobility Trust Fund each year for supplemental operating grants to eligible governmental entities[2] and ***eligible authorities***.

Eligible authority would mean, as defined by 1951 PA 51, an authority organized under the Metropolitan Transportation Authorities Act.[3] For the purposes of the

[1] The Regional Transit Authority Act authorized the creation of a regional transit authority in southeast Michigan, serving Wayne, Oakland, Macomb, and Washtenaw counties.
[2] This term is currently undefined.
[3] The Metropolitan Transportation Authorities Act authorizes two or more counties in a metropolitan area to form a regional transportation authority. The Suburban Mobility Authority of Regional Transit (SMART) is organized under this statute.

Transformational Projects Authority Act, the term would also include a regional transit authority created under the Regional Transit Authority Act.

Eligible governmental agency[4] would mean, as defined by 1951 PA 51, a county, city, or village, or an authority created under 1963 PA 55, the Urban Cooperation Act, 1967 (Ex Sess) PA 8, 1951 PA 35, the Public Transportation Authority Act, or the Revenue Bond Act.[5]

Supplemental operating grants would generally have to be allocated in a manner that conforms to, supplements, and is proportional to the formula under 1951 PA 51, which directs the priority of appropriations from the Comprehensive Transportation Fund (CTF) and provides for the payment of operating grants to eligible authorities and eligible governmental agencies. However, supplemental grants would have to be calculated in a manner that considers a regional transit authority created under the Regional Transit Authority Act as eligible to receive grants, and the Regional Transit Authority Act's exclusion of expenses incurred by an authority in the planning and operation of a ***rolling rapid transit system*** from eligibility for state operating grants would not apply to the calculation or payment of supplemental operating grants.

Rolling rapid transit system would mean, as defined by the Regional Transit Authority Act, bus services that may combine the technology of intelligent transportation systems, traffic signal priority, cleaner and quieter vehicles, rapid and convenient fare collection, and integration with land use policy; rolling rapid transit includes exclusive rights of way, rapid boarding and alighting, and integration with other modes of transportation.

Money granted to a public transportation provider in accordance with these provisions would be supplemental and in addition to other money the provider could receive from the CTF.

The Transformational Projects Authority could not spend money in a fiscal year where the amount appropriated from the CTF for operating grants is less than the amount expended for operating grants in the 2024-2025 fiscal year.

Qualified investments

If there is money remaining in the Michigan Mobility Trust Fund after the disbursement of the required supplemental operating grants, then the Transformational Projects Authority could make ***qualified investments*** in ***transformational mobility projects*** for public transportation providers and political subdivisions. The authority would have to consider the following criteria to the extent reasonably applicable before entering into a written agreement with a recipient for an investment:

a) Whether the qualified investment is for the development, expansion, or enhancement of high-capacity public transportation, such as a rapid rolling transit system, commuter rail, or intercity rail transportation.

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[4] House Bill 5769 defines "eligible governmental agencies" as that term is defined in 1951 PA 51, although the bill otherwise refers to "eligible governmental *entities*."

[5] This list represents the public transit agencies recognized in state law as eligible for state grant assistance.

b) Whether the qualified investment is for the development, expansion, or enhancement of regional or multijurisdictional public transportation that connects major population, employment, educational, healthcare, or other activity centers.
c) Whether the investment is for the development, expansion, or enhancement of innovative and flexible public transportation intended to meet mobility needs in lower density areas, for first- and last-mile transportation solutions, or for other specialized public transportation purposes.
d) The extent of support for the investment within the impacted region, including from local government, public transportation providers, and other regional anchor institutions.
e) The degree of financial participation from regional entities impacted by or supporting the investment (such as from local government, public transportation providers, and other regional entities), considering the financial capacity of those entities.
f) The readiness and the financial feasibility and sustainability of the qualified investment, with the investment facilitating a complete capital and operating financial model for the project supported by the investment, with the highest priority for financial assistance provided when the qualified investment is necessary to meet a capital or operating matching requirement for federal funding through section 5309 of the Federal Transit Act (see **Background**, below).
g) Whether the proposed investment will provide locally or regionally significant benefits for the movement of people or goods, regional economic growth, and the attractiveness of the region for population growth, job growth, or tourism, with priority given to a qualified investment that includes a transit, multimodal, or nonmotorized component.

Qualified investment would mean a grant, loan, or other economic assistance provided by the Transformational Projects Authority to a public transportation provider or a political subdivision for a project eligible for assistance under the Federal Transit Act or under Title 23 ("Highways") of the Code of Federal Regulation, including operating support for public transportation.

Transformational mobility project would mean any of the following:

- For a qualified investment located within an MDOT region[6] with a population of 1.0 million or more, a qualified investment in public transportation that satisfies criteria (a) through (f).
- For a qualified investment located within an MDOT region with a population of 1.0 million or more that includes a public transportation provider that has, before the bill's effective date, implemented a robust level of regional public transportation services that includes a rolling rapid transit system, either of the following:
    - A qualified investment that satisfies criterion (d) and would sustain the operation of the regional public transportation services.
    - A qualified investment that satisfies criteria (d) through (g).
- For a qualified investment located within an MDOT region with a population of less than 1.0 million, a qualified investment that satisfies criteria (d) through (g).

[6] See https://www.michigan.gov/mdot/-/media/Project/Websites/MDOT/Travel/Map/MDOT-Region-Map.pdf

House Bill 5768 would add a new section to the Income Tax Act to provide for the distribution of corporate income tax revenue to various funds through the 2034-2035 fiscal year, including a new Make it in Michigan Fund and a new Michigan Mobility Trust Fund.

Currently, section 695 of the Income Tax Act provides for the annual distribution of revenue collected under Part 2 of the act, which addresses the corporate income tax, as follows:

- Through the 2024-25 fiscal year, up to $1.2 billion to the general fund.
- Up to $50.0 million to the Michigan Housing and Community Development Fund.
- Through the 2024-25 fiscal year, up to $50.0 million to the Revitalization and Placemaking Fund.
- Through the 2024-25 fiscal year, up to $500.0 million to the SOAR Fund.
- Any remaining balance to the general fund.

House Bill 5768 would repeal section 695, effective October 1, 2025, and replace it with a new section, section 695a. Beginning with the 2025-26 fiscal year and through the 2034-35 fiscal year, the revenue collected under Part 2 of the Income Tax Act would be distributed and deposited as follows, as available and in the following order of priority:

- Up to $1.2 billion to the general fund.
- Up to $100.0 million to the Michigan Housing and Community Development Fund.[7]
- Up to $50.0 million to the Revitalization and Placemaking Fund.[8]
- Up to $200.0 million to the Michigan Mobility Trust Fund, which would be created by HB 5770.
- Up to $250.0 million to the Make it in Michigan Fund, which would take the place of the SOAR Fund as provided by Senate Bill 562.
- Any remaining balance to the general fund.

Beginning with the 2035-36 state fiscal year, all corporate income tax revenue would be deposited in the general fund.

(Effectively, the bill would replace the current $500.0 million annual distribution to the SOAR Fund with a $250.0 million annual distribution to the Make it in Michigan Fund and a $200.0 million annual distribution to the Michigan Mobility Trust Fund, increase the annual distribution to the Michigan Housing and Community Development Fund from $50.0 million to $100.0 million, and continue the $50.0 million annual distribution to the Revitalization and Placemaking Fund, all of which would expire at the end of FY 2034-35.)

MCL 206.695a (proposed) and MCL 206.695 (repealed)

House Bill 5770 would add a new section to the Michigan Trust Fund Act to create the Michigan Mobility Trust Fund in the Department of Treasury. The state treasurer would be responsible for directing the fund's investments.

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[7] For more information on the Michigan Housing and Community Development Fund, see https://www.michigan.gov/mshda/-/media/Project/Websites/mshda/developers/lihtc/Folder2/HCDF-Overview.pdf.
[8] For more information on the Revitalization and Placemaking Fund and the associated grant program, see https://www.michiganbusiness.org/49c837/globalassets/documents/arpa/rap-3-guidelines.pdf.

The Michigan Mobility Trust Fund would receive money or other assets from any source, including income tax revenue deposited in accordance with House Bill 5768 and interest and earnings from the fund's investments. Money in the fund at the close of a fiscal year would remain in the fund and would not lapse to the general fund. The Transformational Projects Authority, which would be created by HB 5769, could expend money from the fund on appropriation only for authorized purposes under the Transformational Projects Authority Act and would be considered the administrator of the fund for auditing purposes.

Proposed MCL 12.254a

BACKGROUND:

Below is a list of public acts governing Michigan's public transit agencies:

- Public Act 7 of 1967, Urban Cooperation Act: Authorizes authorities organized under interlocal agreements.
- Public Act 8 of the 1967 Extra Session: Authorizes intergovernmental transfers of functions and responsibilities.
- Public Act 35 of 1951: Authorizes municipal corporations, including public transit corporations, to enter into intergovernmental contracts.
- Public Act 55 of 1963, Mass Transportation Authorities Act: Authorizes mass transit authorities in cities of less than 300,000.
- Public Act 94 of 1933, Revenue Bond Act: Authorizes public corporations to make public improvements, including transportation systems. Many county transportation systems are organized under this act.
- Public Act 196 of 1986, Public Transportation Authority Act: Authorizes two or more political subdivisions (counties, cities, villages, townships) to form a public authority to provide public transportation services.
- Public Act 204 of 1967, Metropolitan Transportation Authorities Act: Authorizes regional transportation authorities formed by two or more counties in a metropolitan area.
- Public Act 387 of 2012, Regional Transit Authority Act: Authorizes a regional transit authority formed by four or more counties in southeast Michigan.

There are reportedly 82 public transit agencies in the state of Michigan.[9]

Section 5309 of the Federal Transit Act (49 USC) is a federal transit capital grant program administered by the Federal Transit Administration.[10] Section 5309 requires that grant applicants have the legal, financial, and technical capacity to carry out the proposed project and that applicants demonstrate a local financial commitment to provide necessary matching funds and to operate the facility. Under section 5309 grants, federal funds generally provide 80% of the project cost, with the 20% balance coming from non-federal (typically state and local) sources.

House Bills 5768, 5769, and 5770 are each tie-barred to Senate Bills 559 and 562, which would replace the Strategic Outreach and Attraction Reserve (SOAR) Fund with the Make it in

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[9] See https://www.michiganpublictransit.com/.
[10] See https://www.transit.dot.gov/capital-investment-grants-5309.

Michigan Fund and would modify the current SOAR programs (the Critical Industry program and the Strategic Site Readiness program). The bills were passed by the Senate in March 2024 with an S-5 and S-2 substitute, respectively; the Senate-passed versions of the bills would additionally require 50% of the money in the Make it in Michigan Fund to be used for community development activities under a proposed new program, Michigan 360.

FISCAL IMPACT:

<u>House Bill 5768</u> would directly reduce general fund revenues by *up to* \$550.0 million annually beginning in FY 2025-26 and ending in FY 2034-35.

Under 2023 PA 4, earmarks of corporate income tax (CIT) revenue were expected to reduce general fund revenue by *up to* \$600.0 million in FY 2022-23 through FY 2024-25, and *up to* \$50.0 million per year thereafter beginning with FY 2025-26. Based on May 2024 Consensus Revenue Estimating Conference (CREC) estimates, CIT revenue is estimated to reach at least \$1.8 billion through FY 2025-26 (the end of the forecast window), thereby allowing the maximum distributions to the SOAR Fund (\$500.0 million), the Revitalization and Placemaking (RAP) Fund (\$50.0 million), and the Michigan Housing and Community Development Fund (\$50.0 million). Beginning in FY 2025-26, current law only continues the \$50.0 million earmark for the Michigan Housing and Community Development Fund.

House Bill 5768 would extend \$550.0 million in CIT earmarks set to expire at the end of FY 2024-25 for another 10 years (through FY 2034-35) but change the distribution of funds. The following distributions would be made, in the following order, under the bill beginning in FY 2025-26 (after CIT revenues reached \$1.2 billion) through FY 2034-35:

- Up to \$100.0 million (an increase of \$50.0 million from current law) for the Michigan Housing and Community Development Fund.
- Up to \$50.0 million for the RAP Fund.
- Up to \$200.0 million for the Michigan Mobility Trust Fund.
- Up to \$250.0 million for the Make it in Michigan Fund (formerly known as SOAR Fund).

Beginning in FY 2035-36, all CIT revenue would be deposited in the general fund, which was the case prior to FY 2022-23.

To realize the maximum distributions under the bill, CIT revenues would need to reach \$1.8 billion in the fiscal year. The following represent May 2024 CREC estimates over the three-year forecast horizon and indicate collections exceeding \$1.8 billion:

- FY 2023-24: \$2,225.0 million
- FY 2024-25: \$2,198.0 million
- FY 2025-26: \$2,156.0 million

<u>House Bill 5769</u> would require the Transformational Projects Authority to expend 20% of the money deposited to the Michigan Mobility Trust Fund (described further below) each year for payment of supplemental operating grants to eligible authorities and eligible governmental entities. Pursuant to HB 5768, the Michigan Mobility Trust Fund would receive *up to* \$200.0 million annually between FY 2025-26 and FY 2034-35, which would equal *up to* \$40.0 million for this purpose. Eligible authorities and eligible governmental entities represent "transit agencies" and certain public ferry services, authorized under 9 section 10e(4)(a) of 1951 PA 51 to receive state operating assistance (Local bus operating).

After expenditures for supplemental operating grants, the bill would authorize the authority to expend money from the trust fund for "qualified investments in transformational mobility projects" and make determinations pursuant to certain criteria.

The activities authorized and required of the authority under the bill would be funded primarily through a Michigan Mobility Trust Fund created through amendment to Michigan Trust Fund Act made in **House Bill 5770**. As noted above, the provisions of HB 5768 would earmark up to $200.0 million annually between FY 2025-26 and FY 2034-35 from CIT revenues to the Michigan Mobility Trust Fund.

Eligible authorities and eligible governmental entities, i.e. public transit agencies and eligible ferry services, are local units of government and additional funds allocated to those entities would represent an increase in state aid to local units of government.[11]

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[11] For additional information on current funding for local transit agency operating and capital expenses, see House Fiscal Agency publication Fiscal_Brief_CTF_and_State_Support_for_Public_Transit_Aug2023.pdf (mi.gov)