

Federal Aid Buyout Pilot Program Guidelines for Fiscal Year 2023

June 3, 2022

Public Act (PA) 49 of 2022 was approved by the Governor on March 29, 2022, and has an effective date of October 1, 2022. PA 49 amends 1951 PA 51 section 10o (MCL 247.660o), as amended by 2000 PA 188. It directs the Michigan Department of Transportation (MDOT) to develop a Federal Aid Buyout program.

PA 49 Overview

A copy of PA 49 is in Appendix 1. The requirements outlined in the legislation include:

- Buyout projects must be in the federally approved Statewide Transportation Improvement Program (STIP), either in a Metropolitan Planning Organization (MPO) transportation improvement program (TIP) or in the rural transportation improvement program based on the project location (*subsection 9*).
- MDOT is directed to create an announcement, instructions, forms, and deadlines, and make them available online (*subsection 9*).
- Buyouts must be awarded in the order received (*subsection 9*).
- The exchange rate is 90 cents per dollar of federal aid programmed to the job phase as listed in the STIP (*subsection 10*).
- MDOT must receive sufficient obligation authority to complete the buyout (*subsection 11*).
- The local agency must complete the project that was funded in the buyout:
 - Surplus funds can be used on any federal aid eligible project or returned to MDOT (*subsection 12*).
 - Completed work must be reported to the transportation asset management council investment reporting tool or any successor system (*subsection 12*).
 - If the local agency cannot complete the project within 3 years, they must notify MDOT, MPO or Rural Task Force (RTF), and identify an alternative project, that is federal aid eligible, that can be constructed within the original 3-year period or return the funds to MDOT (*subsection 13*).
 - Must follow policy that governs the number of force accounts and the total amount of money spent on force account project cost authorizations in a fiscal year (*subsection 14*).
 - Contracts between local road agencies and contractors must contain a federal wage and benefits schedule consistent with Section IV of Form Federal Highway Administration 1273, revised May 1, 2012, or any successor form (*subsection 15*).

The state trunkline funding made available for Fiscal Year (FY) of the buyout program will be not less than the following amounts: (*subsection 8*)

FY 2023 - \$25 million

FY 2024 - \$35 million

FY 2025 and in every subsequent fiscal year - \$45 million

This could be subject to change if there is a decrease in available state funding.

Federal Aid Buyout Program Overview

The Federal Aid Buyout Program is a voluntary program which allows local agencies eligible to receive federal aid transportation funds under the Surface Transportation Block Grant program (STBG) to exchange those federal funds with MDOT for state transportation dollars. The purpose of the Federal Aid Buyout Program is to allow flexibility and enable the most efficient use of federal highway aid and other transportation dollars.

State money will be exchanged at a rate of 90 cents per dollar of qualifying federal funding as programmed for the project being exchanged in the federally approved STIP at the point in time when the exchange is awarded. Please see details on qualified federal funding the Project Eligibility Section. The amounts of the buy-out will be capped at 90% of the STIP approved federal amount. If the available amount of federal aid is decreased from the estimated amount for a given fiscal year, then the amount of the exchange may be decreased to maintain fiscal constraint.

Local agencies will follow the current MPO or RTF project selection process that is appropriate for the location of the project and the STBG template being utilized. Once the exchange is complete the local agency will utilize their own letting process rather than going through the MDOT Local Agency Programs (LAP) process. If a local agency wishes to utilize the force account process with exchanged funds, the local agency shall follow the current MDOT policy regarding the number of force account projects and the total amount of money spent on each force account project in a given fiscal year.

Contracts between local road agencies and contractors for projects funded from state money exchanged for federal aid obligation authority must contain a federal wage and benefits schedule consistent with, and incorporating the requirements of, Section IV of Form FHWA 1273, revised May 1, 2012, or any successor form, and provide that covered workers are third-party beneficiaries of these contract requirements. It is the responsibility of the local agency to maintain relevant records and demonstrate that this requirement is followed.

Once the exchange is complete the project will be removed from the STIP unless the MPO designates the project as regionally significant. If a project is designated as regionally significant then the programming of the project will be modified to reflect the funding as 100% local funds and it will remain on the MPO TIP. Once it has been reported as completed by the local agency it will be marked as completed in JobNet, which will be reflected on the TIP.

All exchanged funds must be expended within three years from the time that the local agency receives the state funds. The federally approved project that is exchanged must be completed, as it was described in the STIP or with additions to the description in the STIP. If the project for which federal aid obligation authority was exchanged cannot be completed within three years from the time that the local agency receives the state funds, the local road agency must notify MDOT and the MPO or RTF and identify an alternate project eligible for federal aid that can be constructed within the three year

period from the time that the local agency receives the state funds or return the money to MDOT. This should only be done in cases where a project cannot be completed because of circumstances beyond the control of the local agency. Once the exchanged project or alternate project is completed any exchanged funds not utilized may be used for the local agencies federal aid eligible activities and improvements (excluding routine maintenance) as outlined in Section 10c(l) of Michigan Public Act 51 of 1951 {MCL247.660c, Section 10c(l)}, OR, as matching funds on any federal aid project undertaken by the local agency. (See Appendix 2).

Demonstration of compliance to the federal aid buyout program is the responsibility of the local agency. The local agency will report completed work to the Transportation Asset Management Council investment reporting tool or any successor system. The local agency will also report to MDOT once the project is completed. The information reported will include confirmation that the federal wage and benefits were adhered to, confirmation that the force account policy was adhered to, the amount spend on the project, and what federal aid eligible activity any surplus funds were spend on.

To ensure that the opportunity to participate in the program is spread across more participants rather than a few large projects. The maximum amount of an exchange is \$2,500,000 per project. Exchanges will be honored in the order they are received, as described in the Buyout Program Timeline Section, until the minimum program amount is reached. The program will be closed each FY once the addition of a project to the list of exchanges meets or exceeds the program minimum as listed in the PA 49 Overview Section.

Project Eligibility

The federal aid buyout program is limited to the construction phase of a project. In order to be eligible projects must be in the federally approved STIP. The STIP is comprised of 14 separate documents: 13 individual MPO TIPs and one statewide non-MPO Rural TIP document. The geographic location of the project will determine which document the project will be included in. This requirement ensures that the federal planning process is followed for project selection.

The program is limited to projects programmed with STBG and/or STBG flex funding as the only federal funding in the project. Projects with other federal funding sources programmed in addition to STBG funding are not eligible. Projects with state funding sources, such as Transportation Economic Development Fund Category D, programmed as match or in addition to the STBG federal sources are eligible but **only the amount programmed to the STBG federal funding will be included in the exchange. The state funding will go back to the allocation of origin** and can be reprogrammed per the regulations of that program.

The table below is a list of the eligible templates and financial system codes as programmed in JobNet.

Eligible Templates and Financial System codes

Template	Financial System code (FinSys)
STP-TMA	STU
STP Flex - TMA	ST
STP- Small MPO	STUL
STP Flex - Small MPO	ST
STP - Small Urban	STUL
STP Flex - Small Urban	ST
STP- Rural/Flexible	STL
STP- Rural- Urban Counties	STL
STP- Flexible- Urban Counties	ST

The amounts of the exchanges will be capped at 90% of the STIP approved federal amount.

Example:

Federal Estimated Amount	State Estimated Amount	Local Estimated Amount	Total Estimated Amount	Federal Exchange Amount (90% of Fed)
\$80,000	\$0	\$20,000	\$100,000	\$72,000

If the available amount of federal aid is decreased from the estimated amount for a given fiscal year, then the amount of the exchange may be decreased.

Projects that are utilizing advance construction are not eligible for an exchange as there is no guarantee of the obligation authority in future years.

Only the Construction (CON) phase is eligible. Early Preliminary Engineering (EPE), Preliminary Engineering (PE), and Right of Way (ROW) phases are not eligible for an exchange. Utilizing federal funds for the PE phase for a project in which a local agency intends to exchange the CON Phase is not recommended. If federal funds are used for PE, the local agency would need to meet all the federal procurement requirements for such services, and those services would need to be completed before project construction could begin. Also, the project's design would have to meet the federal requirements. In addition, if federal funds were to be used for right of way or property acquisition, such acquisition(s) would also need to meet current federal property acquisition requirements. Due to the length of time required for approvals of these

services, using federal funds for preliminary phases for a construction phase that is exchanged is not recommended.

Federal allocation that has been purchased in the Local Federal Fund Exchange (LFFE) program is not eligible for the federal aid buyout program.

Exchange Award Timeline

In FY 2023 we have a compressed schedule due to the date that the Act was approved. The timeline for award selection for future FYs was developed in consideration of LAP timeline for project submittals. This will allow a local agency that is not successful in obtaining a federal aid buyout exchange time to take their project through the LAP process or to participate in the LFFE. Key milestones considered were that a local agency should get National Environmental Policy Act documents to LAP by March for the following FY obligations and July is when grade inspection packages should be submitted to LAP for the following FY obligations.

Exchange Selection Action	FY 2023 Call	Future Calls
Call for Exchanges for FY	June 2022	November 1 st of prior FY
Exchange Requests Due	June 30, 2022	January 3 rd of prior FY
Awarded Exchanges Announcement	August 1, 2022	Mid-February of prior FY

Exchange requests will be e-mailed to MDOT-FederalAidBuyout@michigan.gov. The call for exchange requests will be sent out 2 weeks before the call opens. An application form will be provided with the call for exchanges. The form must be completed, signed, and attached to the exchange request e-mail. A separate form and e-mail must be submitted for each project that a local agency wishes to exchange. The call will start at a specific time on the first day of the call for exchange applications and close at a specific date and time as specified in the call letter. The **received** timestamp on the email will identify the order received. There will be an auto generated “received” e-mail send to the submitter to confirm receipt of the exchange request. MDOT will publish a received list on the MDOT website for review to allow an agency to dispute the list. Local agencies will have seven calendar days to submit proof that they sent an email which was not received by MDOT. MDOT will require seven calendar days to review the discrepancy. Once any disputes are settled a final list will be published.

Process Outline

1. A call for federal aid exchange requests is announced within 14 days in advance of the actual call date with detailed instructions in the call letter.

2. Acceptance of submission of requests for exchanges will open at a specific date and time (ex: June 15, 2022, at 8:00 am eastern time) and close at a specific date and time as specified in the call letter or once the minimum amount for the program has been reached.
3. Once the list of exchange requests has been developed and arranged in the order received, MDOT will publish the list of exchanges including the agency name, the date/time received, and the amount of the exchange on LAPs website for 2-weeks. This posting will be announced through the LAP, MPO, RTF and Small Urban program GovDelivery listservs. This will allow local agencies to contact MDOT if there is any discrepancy because of technology or other error. Any discrepancies will be reviewed on a case-by-case basis.
4. The final list of awarded exchanges will be posted to the LAP website, announced through the LAP, MPO, RTF and Small Urban program GovDelivery listservs, and sent directly to the agencies with awarded exchanges.
5. Once the federal aid allocations are available in SIGMA, usually mid-October of the FY of the exchange, the appropriate allocation amount will be transferred from the allocation and template in which the exchanged project was programmed to a template that was created to hold transfers until they move to trunkline.
6. Projects will be abandoned in JobNet unless the MPO deems the project regionally significant. If designated as regionally significant the project programming will be changed to reflect 100% local funds and a note will be added to the comment section on the STIP page in JobNet stating that the project has been awarded an exchange through the Federal Aid Buyout Program.
7. A contract request and required information will be sent to MDOT contract service division (CSD). CSD will develop the contract and send it to the local agency for signature.
8. The contract is entered into by MDOT and the Local Agency.
9. Once sufficient obligation authority is received by MDOT the appropriate obligation authority will be transferred from the local non-RTF and local RTF Obligation Authority to the Trunkline Obligation Authority.
10. Once sufficient state funding is received by MDOT, and the obligation authority has been transferred the local agency will receive a lump sum payment in the amount of the exchange through the same process as Michigan Transportation Fund (MTF) monthly payments are received. The anticipated time frame for this would be January/February of the FY of the exchange.
11. The local agency will complete the project as agreed to and utilize any surplus funding within the -year timeframe as described in these program guidelines.
12. The local agency reports the completed project in the transportation asset management council investment reporting tool or any successor system.
13. The Local agency emails the MDOT Federal Aid Buyout Program Manager, utilizing the MDOT-FederalAidBuyout@michigan.gov e-mail to inform them that the project is completed and to give additional information. The information reported will include confirmation that the federal wage and benefits were

adhered to, confirmation that the force account policy was adhered to (if applicable), the amount spent on the project, and what federal aid eligible activity any surplus funds were spent on.

Please submit any comments, concerns, or questions regarding the Federal Aid Buyout Program to MDOT-FederalAidBuyout@michigan.gov.

Appendix 1

Act No. 49
Public Acts of 2022
Approved by the Governor
March 29, 2022
Filed with the Secretary of State
March 29, 2022
EFFECTIVE DATE: October 1, 2022

STATE OF MICHIGAN 101ST LEGISLATURE REGULAR SESSION OF 2022

Introduced by Senators Runestad and Barrett

ENROLLED SENATE BILL No. 465

AN ACT to amend 1951 PA 51, entitled “An act to provide for the classification of all public roads, streets, and highways in this state, and for the revision of that classification and for additions to and deletions from each classification; to set up and establish the Michigan transportation fund; to provide for the deposits in the Michigan transportation fund of specific taxes on motor vehicles and motor vehicle fuels; to provide for the allocation of funds from the Michigan transportation fund and the use and administration of the fund for transportation purposes; to promote safe and efficient travel for motor vehicle drivers, bicyclists, pedestrians, and other legal users of roads, streets, and highways; to set up and establish the truck safety fund; to provide for the allocation of funds from the truck safety fund and administration of the fund for truck safety purposes; to set up and establish the Michigan truck safety commission; to establish certain standards for road contracts for certain businesses; to provide for the continuing review of transportation needs within the state; to authorize the state transportation commission, counties, cities, and villages to borrow money, issue bonds, and make pledges of funds for transportation purposes; to authorize counties to advance funds for the payment of deficiencies necessary for the payment of bonds issued under this act; to provide for the limitations, payment, retirement, and security of the bonds and pledges; to provide for appropriations and tax levies by counties and townships for county roads; to authorize contributions by townships for county roads; to provide for the establishment and administration of the state trunk line fund, local bridge fund, comprehensive transportation fund, and certain other funds; to provide for the deposits in the state trunk line fund, critical bridge fund, comprehensive transportation fund, and certain other funds of money raised by specific taxes and fees; to provide for definitions of public transportation functions and criteria; to define the purposes for which Michigan transportation funds may be allocated; to provide for Michigan transportation fund grants; to provide for review and approval of transportation programs; to provide for submission of annual legislative requests and reports; to provide for the establishment and functions of certain advisory entities; to provide for conditions for grants; to provide for the issuance of bonds and notes for transportation purposes; to provide for the powers and duties of certain state and local agencies and officials; to provide for the making of loans for transportation purposes by the state transportation department and for the receipt and repayment by local units and agencies of those loans from certain specified sources; to investigate and study the tolling of roads, streets, highways, or bridges; and to repeal acts and parts of acts,” by amending section 10o (MCL 247.660o), as amended by 2000 PA 188.

The People of the State of Michigan enact:

Sec. 10o. (1) Twenty-three to twenty-seven percent of the DOT-FHWA highway research, planning, and construction federal funds appropriated to this state from the federal government for road and bridge construction must be allocated to programs administered by local jurisdictions after deduction of the following:

(a) Funds that are specifically allocated at the federal level to this state or local jurisdictions.

(b) Funds allocated by the department to this state and to local jurisdictions through a competitive process.

(2) Federal aid excluded from the calculation of funding allocated to programs administered by local jurisdictions in subsection (1) includes, but is not limited to, congestion mitigation and air quality funds, federal bridge funds, transportation enhancement funds, funds distributed at the discretion of the United States Secretary of Transportation, and congressionally designated funds.

(3) The funds must be distributed to eligible local agencies for transportation purposes in a manner consistent with state and federal law.

(4) It is the intent of the legislature that federal aid to highways allocated to local jurisdictions in subsection (1) be distributed in a manner that produces a 25% average allocation of applicable funds to programs for local jurisdictions in each fiscal year through the fiscal year ending September 30, 2000. Beginning in the fiscal year ending September 30, 1999, the average allocation of applicable federal aid to highway funds to programs for local jurisdictions must be the average of the amount distributed to local jurisdictions under subsection (1) and similarly calculated distributions in each succeeding fiscal year. The average allocation percentage described in this subsection must be adjusted to reflect any agreements made by the department with local jurisdictions regarding the state buyout of local federal aid.

(5) Subject to subsections (6) to (15), the department shall award money from the state trunk line fund to local road agencies in exchange for federal aid obligation authority allocated to local-agency projects as provided in this section, if allowed by federal law and rules.

(6) The department must make available money from the state trunk line fund in exchange for federal aid obligation authority awarded to local road agencies in the amounts described in subsection (8) unless the amount must be reduced to do either or both of the following:

(a) Match all available federal aid including reapportionments, redistributions, or other awards of federal aid obligation authority.

(b) Provide for debt service, the minimum state-funded program, routine maintenance of state trunk lines, administration, and all other functions of the department.

(7) If the department reduces the amount of money available from the state trunk line fund under subsection (6), the department must submit a letter to the chairpersons of the senate and house of representatives transportation committees, the chairpersons of the senate and house of representatives transportation appropriations subcommittees, the senate majority leader, and the speaker of the house of representatives explaining why the department is unable to match available federal aid or perform its essential functions.

(8) Except if reduced under subsection (6), the amount of money available from the state trunk line fund in exchange for federal aid obligation authority awarded to local road agencies must be not less than the following amounts:

(a) In the fiscal year ending September 30, 2023, \$25,000,000.00.

(b) In the fiscal year ending September 30, 2024, \$35,000,000.00.

(c) In the fiscal year ending September 30, 2025, and in every subsequent fiscal year, \$45,000,000.00.

(9) Local road agencies may apply for state money in exchange for 100% of the federal aid obligation authority allocated by the department to a local road agency project in a metropolitan planning organization transportation improvement program or in the rural transportation improvement program, in the manner and on the schedule determined by the department. The department must publish announcements, instructions, forms, and deadlines on its website. If applications are received that request more state money than is available to be exchanged in a fiscal year, awards must be made in the order received.

(10) State money must be exchanged with local road agencies for federal aid obligation authority in an amount equal to 90 cents per dollar of all federal aid obligation authority allocated in the approved transportation improvement plan to each project for which authority is exchanged.

(11) The department must pay state money exchanged for federal aid obligation authority to local road agencies when sufficient federal aid obligation authority is received from the Federal Highway Administration to cover the exchanges, not including any year-end redistributions.

(12) The first priority for the use of state money exchanged for federal aid obligation authority must be the local road agency project for which the federal aid obligation authority was originally proposed. If the state money exchanged for federal aid obligation authority exceeds the cost of the original project, any surplus must be applied to

federal-aid-eligible projects by the local road agency or returned to the department. Completed work must be reported to the transportation asset management council investment reporting tool or any successor system.

(13) State money exchanged for federal aid obligation authority must be expended not later than 3 years after the exchange. If the project for which federal aid obligation authority was exchanged cannot be completed within 3 years, the local road agency must notify the department and its metropolitan planning agency or rural task force and identify an alternate project eligible for federal aid that can be constructed within the original 3-year period, or return the money to the department.

(14) In accordance with 23 USC 112, 23 CFR 635.104(b), and Federal Highway Administration Directive 5060.1, a local road agency that is awarded state money in exchange for federal aid obligation authority shall follow the policies adopted by the department that govern the number of force accounts and the total amount of money spent on force account project cost authorizations in a fiscal year. For each fiscal year in which a local road agency is awarded state money in exchange for federal aid obligation authority, the local road agency must certify to the department that the limits in this subsection are not exceeded. This subsection applies only to state money awarded in exchange for federal aid obligation authority as described in this section and not to any money garnered through any other means.

(0) Contracts between local road agencies and contractors for projects funded from state money exchanged for federal aid obligation authority must contain a federal wage and benefits schedule consistent with, and incorporating the requirements of, Section IV of Form FHWA 1273, revised May 1, 2012, or any successor form, and provide that covered workers are third-party beneficiaries of these contract requirements.

(1) As used in this section:

(a) “Federal aid obligation authority” means federal aid obligation authority and an equal amount of contract authority.

(b) “Minimum state-funded program” includes, but is not limited to, preservation, preventive maintenance, maintenance, operations, safety, administration, and all other essential functions not eligible for federal aid, as determined by the department.

Appendix 2

Michigan Public Act 51 of 1951 {MCL247.660c, Section 10c(l)}

(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 1/2 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 1/2 mile or less.
- (xii) Installing traffic signs in new locations, installing signal devices in new locations, and replacing existing signal devices.