Memorandum

March 3, 2021

To	**Representative Frank Hornstein**
From	**Matt Burress, Legislative Analyst** **Andy Lee, Fiscal Analyst**
Subject	**Transitway local funding**

You had asked for information on transitway finance in the Twin Cities metropolitan area, in the context of questions on a transitway funding provision in Governor Walz's budget proposal. This memo discusses some of the historical background, provides an overview of requirements in current law, summarizes the Governor's recommendation, and highlights some implications.

I. Historical Context

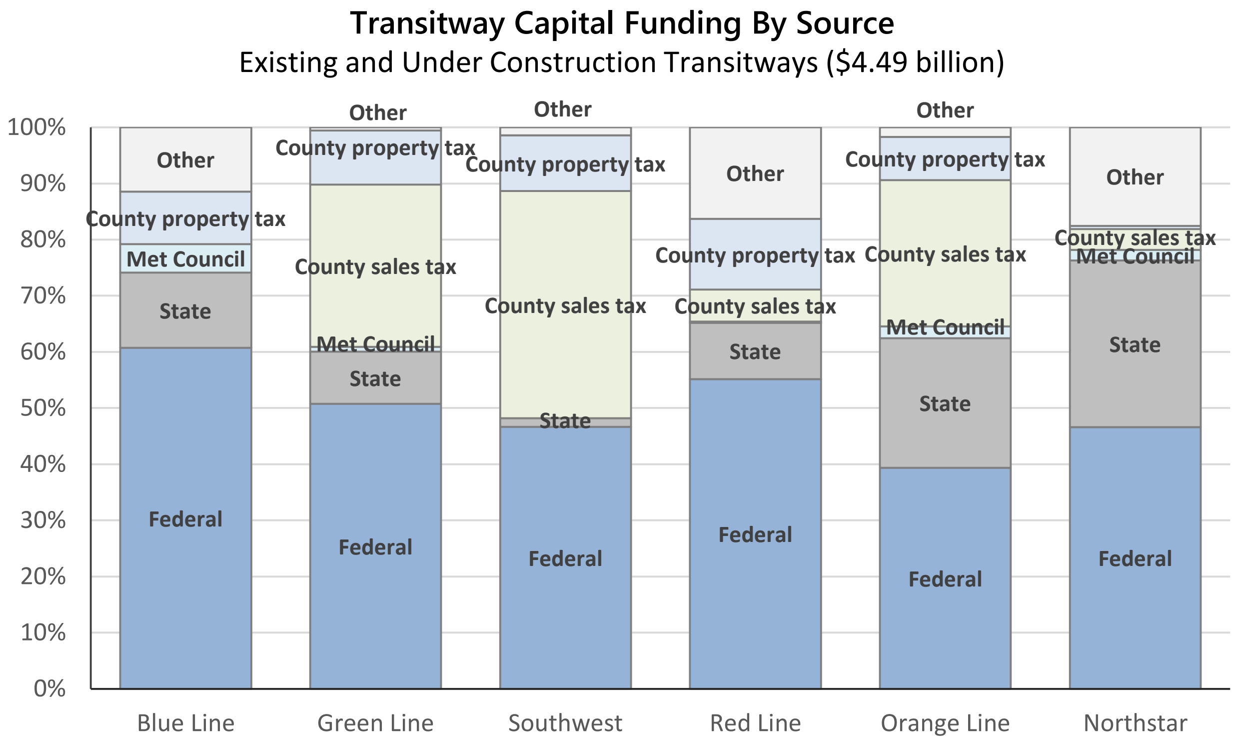
Funding Overview

There has been historical variability in the funding structures and sources across the Twin Cities metro area transitway lines (e.g., the Hiawatha/Blue Line light rail transit (LRT), Central Corridor/Green Line LRT, Orange Line bus rapid transit (BRT), Cedar Avenue/Red Line BRT, Gateway/Gold Line dedicated BRT, and Northstar Commuter Rail). Each project either has or is proposed to involve a different mix of federal, state, regional, and local sources. In broad terms, key funding sources have included:

- federal grants;
- state general obligation (G.O.) bonds;
- state General Fund appropriations;
- county sales tax revenue, including from each county and from the former Counties Transit Improvement Board (CTIB); and
- property tax revenue from counties and county regional railroad authorities.

All transitway projects rely heavily on federal grants, which for most projects have accounted for close to 50% of the capital costs. However, there has been wide variation in non-federal funding across projects. For example, about 40.5% of the capital funding for the Southwest (Green Line extension) LRT project comes from county sales tax sources, whereas the Hiawatha (Blue Line) LRT project predated this county funding stream and relied more heavily on state bonds and other funding partners like the Metropolitan Airports Commission.

The chart below provides a summary of capital funding sources for completed transitways and ones under construction.



There is also a distinction in the uses of funds. It can be divided in various ways but we think that uses of funds for transitways are reasonably categorized into:

- project feasibility and preliminary analysis (evaluating the general scope and viability of a transitway);
- project development and construction (i.e., the capital costs including planning, design, engineering, and right-of-way acquisition);
- ongoing operations;
- capital maintenance (such as rolling stock and other capital upkeep and improvements); and
- capital improvements (upgrades and expansion).

County Sales Taxes

Sales tax revenue became a key transitway funding stream as a result of transportation finance legislation enacted in 2008.

As part of a broader transportation funding package, the 2008 Legislature authorized counties in the Twin Cities metropolitan area to form a joint powers board and impose a sales and use tax for transportation purposes. Laws 2008, Ch. 152, art. 4, § 2. Under this authority, several of the counties formed the Counties Transit Improvement Board (CTIB), which was led by county commissioners.

Among its provisions, CTIB's authorizing statute (1) allows participating counties to impose a sales tax at a rate of up to 0.25% (along with a $20 excise tax for motor vehicle sales); (2)

authorizes bonding against the tax revenue; and (3) specifies that grants from the revenue are available for planning, capital projects, and operating assistance of transitways, as well as for park-and-ride facilities. Minn. Stat. § 297A.992.

A second, "general" county transportation sales tax provision was also authorized in the 2008 legislation. The general provision authorizes a county that has *not* joined the joint powers board (i.e., CTIB) to independently impose a sales and use tax for transportation. Minn. Stat. § 297A.993. As originally enacted, the statute required a public referendum on the tax before it could be imposed by the county, and it limited the funds to the "payment of the cost of a specific transportation project or improvement." In 2013, the legislature removed the referendum prerequisite and clarified and broadened the allowable uses. Laws 2013, Ch. 117, art. 3, §§ 25-26.

There are a couple of particularly notable distinctions between the CTIB and general county transportation sales tax provisions:

- the tax rate for the general county transportation sales tax can be up to 0.5%, or twice that allowed for counties operating under the CTIB provision; and
- the more general provision provides counties greater flexibility to use the revenue, as it is not limited to only some forms of transit (for instance, it could be directed to road projects).

CTIB dissolved in 2017. Following its dissolution, all of the counties shifted to impose a sales tax under the general county transportation sales tax authority. Hennepin and Ramsey imposed the tax at a 0.5% rate, while Anoka, Dakota, and Washington imposed it at a 0.25% rate. As part of the dissolution of CTIB, the participating counties received shares of unspent sales tax revenue.

Funding Arrangements

During its years in operation, CTIB functioned as a funding partner for transitway planning, development, and operations, utilizing a grantmaking process. It established various investment priorities and policies for funding, with a primary goal of developing new transitways operated in dedicated right-of-way.[1] For the most part, CTIB did not fund arterial bus rapid transit projects and regular route bus service.[2]

Among its policies, the joint powers board committed to fund 50% of the net operating costs of various transitways, after accounting for farebox, advertising, and other revenue, including light rail transit lines and the Cedar Avenue/Red Line bus rapid transit (along with about 42% of net costs for the Northstar Commuter line).[3] The commitments were made on a case-by-case basis.

[1] See Counties Transit Improvement Board, "Annual Report to the Legislature: 2016 Results," Feb. 1, 2017, p. 46 <https://www.lrl.mn.gov/mndocs/mandates_detail?orderid=1682>.

[2] Exceptions include Robert Street bus rapid transit and funds allocated to counties with comparatively small tax base, following a requirement in the authorizing statute.

[3] See Counties Transit Improvement Board, "Program of Projects Investment Strategy," July 15, 2015, pp. 7-8.

While it is possible that commitments were considered or put in place regarding future capital maintenance costs, in our review with the available time we did not find discussion of CTIB responsibility for these expenditures.

CTIB dissolution was addressed through a series of resolutions by CTIB as well as the involved counties. Each county assumed aspects of CTIB's funding obligations and funding agreements. This included respective county shares of transitway capital and operating costs, as well as some identification of cost allocation for transitway projects under development, like the Gateway/Gold Line dedicated bus rapid transit line and the Riverview Corridor project.

II. Current Law

Both Minnesota Statutes and enacted budgets are generally silent on the allocation of transitway costs, although there are some limitations and guidance in place.

Metropolitan Council appropriations. The Metropolitan Council receives General Fund appropriations for transit service operations as part of the biennial transportation budget. Since the 2012-13 budget biennium, appropriations have been provided for transit operations generally; the appropriations have not further specified how the funds are to be used.[4] (Prior to that, budget legislation made separate appropriations for bus and rail operations.) Within its agency budget, the council allocates the appropriated funds across transit modes and activities.

A portion of revenue from the motor vehicle sales tax (MVST) is also allocated to transit and statutorily appropriated to the council "for the funding of transit systems within the metropolitan area." Minn. Stat. § 16A.88, subd. 2. (A statutory appropriation means that spending authority from a particular source is created in state statute, so the authority is ongoing and independent of budgets enacted by the legislature.)

State statutes. There are a couple statutes that are relevant to transitway finance, as outlined below.

- *Light rail transit cost allocation*. One provision in state law establishes a split for funding light rail transit operations, stating: "(a) After operating revenue and federal money have been used to pay for light rail transit operations, 50 percent of the remaining operating costs must be paid by the state." Minn. Stat. § 473.4051, subd. 2 (a). However, the language is arguably ambiguous, as it does not specify the source or mechanism of state payment (and does not establish whether the requirement is imposed on the council as part of its allocation of state funds or is an expectation for future legislatures when enacting each transportation budget). The Metropolitan Council has expressed the interpretation that the necessary state share must come from General Fund appropriations, as opposed to MVST revenue. The legislature is not bound to follow this interpretation.

[4] A Metro Mobility appropriation was split out to be separate starting with the FY 2020-21 budget. Laws 2019, 1st. spec. sess., ch. 3, art. 1, sec. 3.

- *Southwest LRT funding limitation*. There is an exception to the LRT operating split summarized above. For the Southwest LRT/Green Line extension project, "all operating and ongoing capital maintenance costs must be paid from nonstate sources." Minn. Stat. § 473.4051, subd. 2 (b).

- *LRT capital costs limitation*. Under another LRT funding limitation, state funds can be used for no more than 10% of the capital costs of a LRT project.

- *County regional railroad authority*. There are also funding contribution limits for county regional railroad authorities that has been part of CTIB. With some exceptions, funding from a county regional railroad authority is capped at no more than 10% of a light rail transit or commuter rail project, and funds cannot go to operating and maintenance of light rail transit or commuter rail. Minn. Stat. § 398A.10.

Of note, the state statute under which CTIB had operated did not specify county or CTIB obligations for funded projects.

III. Governor's Budget Recommendation

Governor Walz's budget proposal includes requirements for counties to fund guideways. See HF 1027 (Hornstein), art. 3, sec. 2. It directs counties to provide funds for:

1) guideway project planning, project development, and construction;
2) guideway service operating costs (as determined by the transit operator, which will typically be the Metropolitan Council); and
3) capital maintenance and modernization for the guideway to meet reasonable standards for safety, reliability, and upkeep (as determined by the transit operator, which is the Metropolitan Council for existing transitways[5]).

Under the provision, county funding is mandated for costs that are in excess of funding that is "dedicated to the guideway" from federal, state, or other local sources (including fare revenue in the case of operations). Put another way, planning, capital, operating, and capital maintenance costs that are not covered by other sources must be funded by the counties. The specific county or counties involved is based on where the guideway is located.[6]

Application of the statute. The funding provision would apply to a few different forms of transportation. It relies on an existing definition of "guideway" in state statute that includes the following:

[5] A possible exception is the campus connector route operated by the University of Minnesota, which includes a dedicated busway over part of the route.

[6] When a guideway extends through multiple counties, like Central Corridor LRT, the counties involved must determine a proportional distribution of funds.

- regular and ongoing transit that "primarily or substantially operates within separated rights-of-way," which can potentially include bus rapid transit and express bus service[7];
- transportation service that operates on rails, including light rail transit, streetcars, commuter rail, as well as intercity passenger rail; and
- intermodal facilities that serve the previously identified lines (e.g., the Union Depot). Minn. Stat. § 473.4485, subd. 1.

Based on the "guideway" definition, our reading is that counties would not be required to contribute funds for a highway bus rapid transit line that operates mainly on the shoulder, in a high-occupancy vehicle lane, or in mixed traffic.

Thus it appears to us that the county funding requirements:

- would apply for LRT;
- would apply to streetcar lines, like the proposed Nicollet-Central line in Minneapolis and the Riverview Corridor line in St. Paul;
- would apply to the Gateway/Gold Line BRT route (serving St. Paul, Maplewood, Oakdale, and Woodbury);
- would also include the Northstar Commuter Rail line;
- might potentially include the campus connector line at the University of Minnesota;
- would **not** include the Orange Line or Red Line BRT; and
- are **not** expected to include arterial BRT routes such as the A Line on Snelling Avenue in St. Paul.

IV. Analysis

Below, a few policy implications are highlighted about the county funding approach in the Governor's budget recommendations.

1) Counties would become obligated to pay planning, project development, and construction costs for future transitways.

The proposal seems to set new requirements for future transitway development funding.

An argument could be made that for light rail transit, the Governor's recommendation would in effect codify existing practice. One might point to the state statute on 50% light rail transit operating cost allocation (outlined previously in section II). That provision does seem to align with the former CTIB operations funding commitment, so that under the Governor's recommendation half of the net operating cost would come from state sources and the other half would come from the relevant counties. As noted, though, the LRT operating provision

[7] The statute further clarifies that separated rights-of-way "includes exclusive, dedicated, or primary use of a right-of-way by the public transportation service. Separated rights-of-way does not include a shoulder, dynamic shoulder lane, or priced lane under section 160.93." Minn. Stat. § 473.4485, subd. 1 (f).

contains ambiguities that could yield different county funding implications if the Metropolitan Council were to change its interpretation of the statutory requirements.

We are not aware of existing cost allocation provisions that govern streetcars, dedicated busways, or intermodal facilities.

2) Counties would become obligated to pay capital maintenance and replacement costs for existing and future transitways.

As transitway infrastructure ages, infrastructure such as vehicles, tracks, signal systems and support facilities will need to be maintained or replaced. Arguably, under current law and practice the Metropolitan Council is responsible for these costs. The Council can use federal funds and regional transit capital borrowing (funded through a property tax levy) authorized by the legislature. (These funding streams also are used to replace the bus fleet for Metro Transit and other transit providers.)

The proposed language would require counties to pay for a potentially substantial portion of the capital maintenance and replacement costs of the transitways.

3) The Metropolitan Council is likely provided wide discretion in expending its available funds for applicable transitways.

The proposed directive is essentially that counties must cover guideway costs that are not otherwise funded. However, it does not establish a floor or expectation for the council to include transitway funding in its capital and operating budgets.

4) The requirements could imply that, at least in theory, a public entity could potentially initiate a transitway project, with the bulk of the financial obligation passed to the counties.

It appears to us that a state agency, the council, or a local unit of government could undertake early stages of analysis of a corridor, evaluate transit feasibility, and identify a potential guideway project, all without county involvement. But under the provision, costs starting with project planning costs are a county funding responsibility. A couple of aspects of this consideration are as follows.

- The provision does not establish a project readiness threshold when counties would start being required to provide project funding. In our view, it is potentially unclear as to when a county obligation for project development funding would begin.
- There is no requirement that a project is included in regional transit planning.

5) The proposal appears likely to reduce county funding flexibility.

As outlined in section I, the counties (either individually or through CTIB) have generally paid for half of the transitway operating costs after passenger fares and other funds[8], and have contributed a varying amount for transitway capital costs. In some cases counties have used bonding as a financing mechanism to make cash available for the necessary upfront construction costs.

Eventually, the county sales tax dollars will be completely committed to either paying back debt service on bonds, or covering transitway operating costs. The county sales tax dollars will then be committed until bonds are paid off. However, if the counties do not use debt to finance either transit or roadway projects, or do not build transitway projects that obligate them to future operating costs, then the county will retain more flexibility.

If the language in the Governor's recommendations is enacted, the counties could potentially face less discretion to spend sales tax revenue, or could reach the maximum buildout of the number of transitways supported by the sales tax sooner than without this language.

6) There are no mechanisms specified for determining and reviewing applicable costs or for resolving disagreements among counties and other entities.

There is not a process formally created to handle potential funding disputes.

MB/AL/rk

[8] An exception is found in FY 2012-13, when CTIB paid a higher share of transitway operating subsidy in order to partly backfill a onetime state General Fund reduction and avoid service reductions.