State Street Aid Fund Expenditures

On the Road to Understanding

by W. Ken Joines
Senior Finance Consultant

January 1994

The University of Tennessee
Municipal Technical Advisory Service
In cooperation with
The Tennesssee Municipal League

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The Municipal Technical Advisory Service (MTAS) is a statewide agency of The University of Tennessee's Institute for Public Service. MTAS operates in cooperation with the Tennessee Municipal League in providing technical assistance services to officials of Tennessee's incorporated municipalities. Assistance is offered in areas such as accounting, administration, finance, public works, communications, ordinance codification, and wastewater management.

All MTAS publications are free to Tennessee city, county, state, and federal officials. There is a charge for all private sector requests. This report is $10.

The University of Tennessee
Municipal Technical Advisory Service
600 Henley Street, Suite 120
Knoxville, Tennessee 37996-4105
Knoxville: (615) 974-0411
Nashville: (615) 532-MTAS (6827)
Jackson: (901) 423-3710
Martin: (901) 587-7055

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Caution: Slippery Road Ahead

Did you ever feel like you're driving the wrong way down a one-way street when deciding which activities can receive state street aid funds? Trying to figure out which expenditures get a green light and which are stalled on red can be perplexing, even for the best drivers.

We're going to steer you through the rulings on the subject since 1984, clearly outlining the right and wrong ways to turn with state street aid fund monies. First, let's take a look at the map that got us where we are today.

Gas Up and We're Off!

Back in 1953, the Tennessee General Assembly said the streets could be paved with gold (well, not quite) from gas and fuel taxes. The legislature authorized the state to distribute the proceeds from 1 cent of the state gasoline and motor vehicle fuel tax to incorporated cities and towns for use on municipal streets. The proceeds from these taxes are parceled to local governments on a per capita basis.

The hitch to the 1953 law and its truckload of amendments is that gasoline and motor vehicle fuel tax monies *must* be used for street-related purposes. The law provides some very specific examples of how these funds can and can't be spent.

Even so, local officials have been uncertain about the legal uses of these funds for more than three decades now. Opinions issued by the attorney general and/or the state comptroller have attempted to clear up the confusion that settled over the 1953 law.

The history of the gas tax includes hikes in 1985, 1986, and 1989, and local governments gained a share of these increases. However, the 1985 tax proceeds are only earmarked for local governments that appropriate as much local revenue for streets for the coming fiscal year as the average they spent over the past five years. (See *Tennessee Code Annotated (TCA)*, sections 54-201--205, 67-3-617, and 67-3-812, which are included at the end of this report.)

To increase the activities that can be funded by these taxes, Public Acts of 1993, Chapter 178, redefines "street" and "street improvement" under *TCA* 54-4-201. Unfortunately, in this author's opinion, the new semantics didn't affect the restrictions of *TCA* 54-4-204(3) and (5) — restrictions that the amendment may have intended to eliminate.

As you can see, it's quite a winding road. This guide is intended to give you specific directions when you get lost, so buckle up and happy travels!

Laying the Groundwork

This is an updated version of an MTAS publication originally issued in 1976 and revised in 1984. We've purged the earlier attorney general and state comptroller opinions which we believe have been made obsolete by Public Chapter 178. MTAS will furnish, upon request, a copy of any particular ruling or other source of information summarized in this report.

We've grouped together pertinent rulings in five topic areas and included attorney general opinions through January 1992. We've included a copy of the applicable sections of the *TCA*.

A review of the opinions may reveal inconsistencies in a few responses. Generally, rulings from the attorney general with the most current date should be considered the best guide. As with any disagreement, final authority is obtained through court or legislative action. **However, questionable uses for street purposes should be paid from local revenues. State street aid funds should be used for those expenditures where authority is clearly evident.**

For brevity's sake, opinions in the following pages will be abbreviated either AG (attorney general) or SC (state comptroller).

Proper uses for state street aid fund monies can be found under the "Green Light" sections, while improper appropriations are referenced in the "Red Light" entries. Cautionary advice is headlined "Yellow Light."

General and Administrative

Green Light

State street aid funds can pay:

1. Valid administration expenses connected with issuing street improvement bonds. (AG Opinion 8/25/58)
2. Principal and interest on street improvement bonds issued after Feb. 19, 1953. (AG Opinion 8/25/58)
3. Street work supervision fees. (AG Opinion 5/28/56)
4. Certain insurance premiums:
   A. Workers' compensation insurance for employees engaged in street improvement activities;
   B. General and automotive liability insurance coverage of street improvement activities;
   C. Property insurance coverage for portions of buildings used to store and maintain street improvement equipment. (AG Opinion 187, 5/9/83)
   The attorney general both explained and qualified his opinion this way:

"It is the opinion of this office that workers' compensation insurance coverage for employees engaged in street improvement activities, general and automotive liability insurance of street improvement activities, as well as property insurance coverage for portions of buildings used to store and maintain street improvement equipment are all 'administrative and other required expenses connected with street improvements,' within the coverage of *Tennessee Code Annotated*, sec. 54-4-201(3). Therefore, state street aid fund monies may lawfully be used for such expenses.

"Several caveats are in order in connection with these proposed expenditures. First, this office has previously opined (see attorney general opinion letter, dated April 23, 1974) that street aid fund monies may not be used to augment the wage of constitutional county and city employees. It would follow that workers' compensation insurance costs for such employees would similarly be a prohibited use. Furthermore, with respect to all three items in question, the municipality must take care to ensure that only costs attributable to street improvement activities are paid from street aid fund monies. Should fund monies be expended for purposes other than street improvement, any municipal official or employee who authorizes, directs or permits such an expenditure will be guilty of a misdemeanor and face personal liability for the unauthorized expenditure." *Tennessee Code Annotated*, section 54-4-205.[1]

5. Properly allocated costs incurred by the street superintendent in supervising street improvement work. (SC Letter 9/11/63)

Red Light

State street aid funds can't pay:

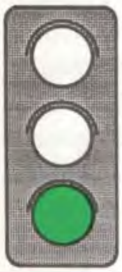
1. Auto expenses for the city recorder, unless the automobile is used by the recorder for street construction or maintenance duties. Even then, only that part of the expense may be paid which may be properly allocated to street duties. (AG Opinion 8/3/56)
2. Salary supplements to the street superintendent. (AG Opinion 2/7/61)
3. Loans temporarily borrowed from the municipal state street aid fund. (AG Opinion 9/5/56)
4. Audit fees. (AG Opinion 8/11/55)
5. Recorder's commission. (AG Opinion 8/10/54)
6. Personal damages. (SC Letter 9/29/55)
7. Property damages. (SC Letter 9/29/55)
8. Office assistance. (SC Letter 9/29/55)
9. Administrative expenses. (SC Letter 9/11/63)

[1]The penalty provided in this section was changed to a Class C misdemeanor effective Nov. 1, 1989, by Public Acts 1989, Ch. 591, § 113. A Class C misdemeanor is punishable by a jail term not to exceed 30 days, or a fine not to exceed $50, or both. [*TCA*, section 40-35-110-111]

Yellow Light — Be Careful

1. If a city makes curb and gutter improvements, pays the total cost from state street aid funds but has assessed the abutting property owners for two-thirds of the cost, the funds derived from the assessments must remain available for other qualified street projects. (AG Opinion 8/23/56)
2. Interest received by a municipality from the investment of state street aid funds is subject to the same restrictions as the state street aid fund monies themselves. (AG Opinion 4/22/83)

Construction



Green Light

State street aid funds can pay for:

1. Engineering fees incurred through street improvements. (AG Opinion 12/21/60)
2. Constructing sidewalks along city streets. (AG Opinion 8/3/56)
3. Acquiring rights of way for city streets. (AG Opinion 8/3/56) (See also items two in the "Red Light" section and five in this category for specific limits.)
4. Widening and/or draining a creek to prevent city street flooding. This opinion was based on the premise that the primary purpose of creek draining is to stop street flooding, and that protecting other property will be an incidental benefit. It would be otherwise if the primary purpose were protecting private property and street drainage was incidental. (AG Opinion 10/17/58)
5. Up to one-third of the city's rights of way acquisition costs for a state highway through the city. (AG Opinion 1/21/57)

Red Light

State street aid funds can't pay for:

1. Extending municipal sewer lines even if tunneling under city streets is necessary. (AG Opinion 10/25/54)
2. Widening a city street over which a federal highway passes. *TCA*, section 54-409(b) (now 54-4-204(b)) provides that no part of such funds shall be spent on state and federal highways except as otherwise provided in that section. (AG Opinion 12/5/56)

Yellow Light — Be Careful

It appears that Public Acts 1993, Chapter 178, intended to remove the one-third limit under item five above, and to authorize this money for widening a city street over which a federal highway passes, under item two in the "Red Light" section. The courts may or may not rule these items legal; therefore, we recommend you follow the attorney general opinions related to items two in the "Red Light" section and five in the "Green Light" section.

Repair and Maintenance

Green Light

State street aid funds can pay for:

1. Purchasing machinery to repair and maintain municipal streets. (AG Opinion 2/14/57)
2. Purchasing and maintaining equipment for mowing areas within street's right of way. (Opinion 119, 5/22/75)
3. Removing dead trees, tree limbs, leaves, and similar objects. (SC Letter 1/15/64)
4. Purchasing boiler for asphalt plant if used to heat asphalt for street improvements. (SC Letter 9/11/63)

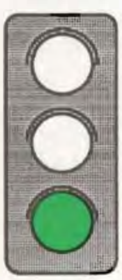
Red Light

State street aid funds can't pay for:

1. Maintaining county roads. (AG Opinion 4/8/70)
2. Purchasing street cleaning or refuse pickup equipment. (AG Opinion 8/8/55)

AUTHOR'S NOTE: Purchasing street cleaning equipment now appears legal, but purchasing garbage pickup equipment would still be improper.

Street Signs and Street Lights



Green Light

State street aid funds can pay for:

1. Erecting stop signs and traffic lights as street improvements. (See item one below.) (AG Opinion 10/24/58)
2. Installing and maintaining traffic lights for city streets. (AG Opinion 10/5/61) (See item one below.)
3. Street light electric bills. (AG Opinion 119, 5/22/75)
4. Street light installation by a municipality. (AG Opinion 10/23/67 and 5/22/75)

Red Light

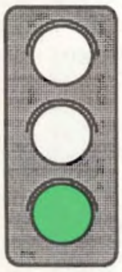
1. *TCA*, section 54-4-204, doesn't allow municipalities to use state street aid funds for improving signs, traffic signals, and markings at the intersection of a state highway and a municipal street. (AG Opinion 10/27/88)

AUTHOR'S NOTE: It appears Public Acts 1993, Chapter 178, intended to make these items a proper use of these funds, but it's doubtful the changes affected this attorney general opinion.

Other Facilities

Under Public Acts 1993, Chapter 178, it appears proper for cities to use these funds to purchase, construct, repair, or lease a facility to store street equipment, street lighting, signs, and other traffic control devices. Furthermore, the 1993 amendment defined "streets" to include public-owned rights of way and public parking areas. Therefore, it now seems acceptable for a city to use these funds on public-owned parking areas.

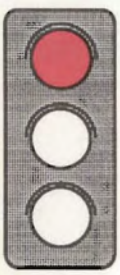
Related Rulings



Green Light

Municipalities receive:

1. Allocations on a per capita basis as the city's population is amended by State Planning Commission certification letters. (AG Opinion 7/25/55)



Red Light

Municipalities can't:

1. Participate in gasoline and motor fuel tax apportionments until July 1 following the proper population certification of a newly incorporated municipality. (AG Opinion 9/29/55)
2. Combine the state street aid fund with streets and transportation funds appropriated for distribution to municipalities on a per capita basis. (AG Opinion 6/12/73)
3. Use public equipment to build roads, bridges, or conduct other work on private property without statutory authorization. A county superintendent would be violating the law if engaged in such activity. (AG Opinion 5/17/84) The attorney general's basis for this ruling is that:

   > "Public funds provided by taxation may be used only for public, not private, purposes. Azbill v. Lexington Mfg. Co., 188 Tenn. The Legislature's power to authorize counties and incorporated cities to tax is only for 'County and Corporate purposes respectively.' Tenn. Const. Art. II, Sec. 29. This constitutional provision has been interpreted as prohibiting either a city or county from appropriating funds to a purpose not properly within its sphere of action. So, county legislative bodies are powerless to appropriate public funds for other than public or county purposes. And, likewise, cities cannot donate or apply public taxes to anything but a public use or corporate purpose." McConnell v. City of Lebanon, 203 Tenn., and Smith v. City of Pigeon Forge.

Consistent with the foregoing principles, public equipment and employees paid by public funds can't be shifted by a county or city officer to a private use. The end result would be a misapplication of public funds, which we believe would be official misconduct. The officer might be removed from office if it were a knowing or willful act on his part.

54-4-201. **Definitions.** - The following terms whenever used or referred to in this part shall have the following meanings, unless a different meaning appears from the context:

(1) "Municipality" means any incorporated city or incorporated town charged with the duty of constructing and maintaining streets within its corporate boundaries;

(2) "Municipal street aid fund" means the funds provided for municipalities by §§ 67-3-617 and 67-3-812;

(3) "Street" includes streets, highways, avenues, boulevards, public owned rights of way, bridges, tunnels, public parking areas or other public ways dedicated to public use and maintained for general public travel lying within a municipality's corporate boundaries; and

(4) "Street improvement" means construction, reconstruction, improvement, and maintenance of streets, including paving, repaving, grading and drainage, repairs, cleaning, acquisition and maintenance of rights of way, extension and widening of existing streets, elimination of railroad grade crossings, acquisition or lease or lease/purchase of trucks or other equipment necessary in the construction and maintenance of streets, including the purchase, construction or leasing of facilities to store such equipment, street lighting, signage and other traffic control devices and administrative and other necessary expenses including labor and employee benefits in connection with such street improvements. [Acts 1953, ch. 1, § 1 (Williams, § 3407.20); *T.C.A.* (orig. ed.), § 54-406; Acts 1981, ch. 366, § 9; 1981, ch. 418, § 6.1.]

54-4-202. **[Repealed.]**

54-4-203. **Distribution of funds - Basis - Special census.** (a) Funds in the municipal street aid fund shall be distributed to eligible municipalities within the state monthly by the commissioner of finance and administration, or such other official as now or may be hereafter charged with the duty of allocating or distributing state funds, in proportion as the population of each municipality bears to the aggregate population of all municipalities according to the 1950 federal census or any subsequent federal census; provided, however, that in the case of any area annexed to a municipality subsequent to the latest federal decennial census the municipality may have a special census within the annexed area taken by the federal bureau of the census or in a manner directed by and satisfactory to the state planning office, in which case the population of the municipality shall be revised and increased in accordance with the special census for purposes of distributing such funds, effective on the next July 1, following the certification of the census results to the commissioner of finance and administration; and provided, further, that the aggregate population of all municipalities used as a base for calculating such distribution shall be adjusted in accordance with any such special census, effective the same date as aforementioned. Any eligible municipality incorporated after the last federal decennial census may likewise have a special census taken, and shall share in the distribution of the municipal street aid fund beginning on the next July 1, following certification of the census results to the commissioner; the aggregate population shall likewise be adjusted in accordance with any such special census, effective the same date as aforementioned.

(b) Any municipality shall have the right to take not more than two (2) special censuses at its own expense at any time during the interim between the regular decennial federal census. Such right shall include the current decennium. Any such census shall be taken by the federal bureau of the census, or in a manner directed by and satisfactory to the state planning office. The population of the municipality shall be revised in accordance with the special census for purposes of distribution of such funds, effective on the next July 1, following the certification of the census results by the federal bureau of the census or the state planning office to the commissioner of finance and administration; the aggregate population shall likewise be adjusted in accordance with any such special census, effective the same date as aforementioned; provided, that any other such special census of the entire municipality taken in the same manner provided herein, under any other law, shall be used for the distribution of such funds, and in that case, no additional special census shall be taken under the provisions of this section.

(c) Notwithstanding the foregoing, a "premiere tourist resort city," defined as a municipality having a population of one thousand one hundred (1,100) or more persons, according to the federal census of 1980 or any subsequent federal census, and in which at least forty percent (40%) of the assessed valuation (as shown by the tax assessment rolls or books of the municipality) of the real estate in the municipality consists of hotels, motels, tourist court accommodations or tourist shops and restaurants, shall be considered a city with a population of ten thousand nine hundred forty-five (10,945) for purposes of distribution of funds under this section. [Acts 1953, ch. 1, § 3 (Williams, § 3407.22); 1957, ch. 362, § 1; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; impl. am. Acts 1972, ch. 542, § 15; Acts 1974, ch. 514, § 1; *T.C.A.* (orig. ed.), § 54-408; Acts 1981, ch. 366, § 6; 1984, ch. 708, § 1.]

54-4-204. **State street aid fund - Funding mass transit.** (a) Except as provided in subsection (g), each municipality shall keep all funds received from the municipal street aid fund in a separate fund designated as "state street aid fund," and may expend such funds only for one (1) or more of the following purposes:

(1) Street improvements;

(2) Principal and interest on bonds or other indebtedness incurred to pay for street improvements issued after February 19, 1953. Such funds may be specifically pledged as security for such bonds or other indebtedness;

(3) The municipality's part of the cost of acquiring rights of way for approaches to bridges and tunnels;

(4) To pay the city's part of the cost of grade eliminations on streets and highways, including state and federal highways; and

(5) Not to exceed one third (1/3) of the total costs of rights of way for state or federal highways within the municipality's corporate boundaries.

(b) No part of such funds shall be expended on state or federal highways within a municipality's corporate boundaries, except as otherwise provided in this section.

(c) A municipality in its discretion may use such funds to pay for street improvement work by the department of transportation or by a county highway or road department or by another municipality, performed under an agreement with the state, county or municipality.

(d) Each municipality shall keep records of receipts into and expenditures from its state street aid fund, in accordance with sound municipal accounting practices, and shall have made at the end of each fiscal year an audit of the accounts of the fund by a certified public accountant, or a public accountant unless otherwise provided by law, and shall submit one (1) certified copy of such audit to the comptroller of the treasury to be reviewed for compliance with the provisions of this part and minimum standards for municipal audits prescribed by the comptroller of the treasury.

(e)(1) Except as provided in subdivision (e)(4), all purchases made with state street aid funds by a municipality shall be by public advertisement and competitive bid, except as follows:

(A) Purchases costing less than two thousand five hundred dollars ($2,500); provided, however, this exemption shall not apply to purchases of items which individually cost less than two thousand five hundred dollars ($2,500), but which are customarily purchased in lots of two (2) or more, if the lot purchase price would exceed two thousand five hundred dollars ($2,500);

(B) Repair of heavy road building machinery or other heavy machinery for which limited repair facilities are available; and

(C) Purchases of any supplies, materials, or equipment for immediate delivery in actual emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work; but such emergencies shall not include conditions arising from neglect or indifference in anticipating normal needs. A report of such emergency purchases shall be kept, specifying each purchase, the amount paid, the items purchased, from whom the items were purchased, and the nature of the emergency.

(2) Except as provided in subdivision (e)(4), all leases or lease-purchase arrangements requiring payments of two thousand five hundred dollars ($2,500) or more, or which are made or are automatically extendable for periods of more than ninety (90) days shall be entered into only after public advertisement and competitive bidding.

(3) Nothing in this subsection shall be interpreted as requiring any municipality to employ a licensed engineer to prepare bid specifications and estimates.

(4) This subsection shall not have the effect of repealing existing statutes, including private acts, which establish purchasing provisions for a municipality.

(f) Notwithstanding any other provision of law to the contrary, funds in the municipal street aid fund may be expended by municipalities receiving such funds for the purpose of funding mass transit systems. Provided, however, that no more than twenty-two and twenty-two one hundredths percent (22.22%) of such funds may be used for the purpose of funding of mass transit.

(g) Upon written request of a municipality, the comptroller of the treasury may authorize that funds received from the municipal street aid fund may be kept and accounted for in the general fund of the municipality; provided, that revenues and expenditures related to funds received from the municipal street aid fund be accounted for separately in the general fund in such a manner as to allow identification of the source of revenue and the expenditures related thereto. [Acts 1953, ch. 1, § 4 (Williams, § 3407.23); impl. am. Acts 1959, ch. 9, § 3; Acts 1965, ch. 212, § 1; impl. am. Acts 1972, ch. 829, § 7; *T.C.A.* (orig. ed.), § 54-409; Acts 1980, ch. 881, § 2; impl. am. Acts 1981, ch. 264, § 12; Acts 1981, ch. 366, § 6; 1985, ch. 173, §§ 1, 2.]

54-4-205. **Unlawful expenditures a misdemeanor - Liability.** - It shall be unlawful and a misdemeanor for any municipal officials or employees to authorize, direct or permit the expenditure of such funds for any purpose, except those authorized by this part. Any municipal official or employee who violates this provision shall be personally liable for any unauthorized expenditure of such funds. [Acts 1953, ch. 1, § 5 (Williams, § 3407.24); *T.C.A.* (orig. ed.), § 54-410.][2] **Sentence Reform Notes**. The penalty provided in this section was changed to a Class C misdemeanor on November 1, 1989. See Acts 1989, Ch. 591, § 113, and §§ 40-35-110, 40-35-111.

67-3-617. **Distribution of receipts-Expenses of administration.** (a) The commissioner shall apportion for distribution all of the taxes collected pursuant to this part, and shall inform the department of finance and administration as to the proper amounts of all distributions to be made therefrom.

(b) Revenues from the tax imposed by this part shall be apportioned for distribution in the following order:

(1) Amounts required to be paid to the state sinking fund pursuant to title 9, chapter 9;

(2) Of the amounts designated hereafter for distribution to the counties, cities and highway fund, one percent (1%) shall be subtracted from the amount designated for cities, one percent (1%) shall be subtracted from the amount designated for counties, and two percent

[2]The penalty provided in this section was changed to a Class C misdemeanor effective Nov. 1, 1989, by Public Acts 1989, Ch. 591, § 113. A Class C misdemeanor is punishable by a jail term not to exceed 30 days, or a fine not to exceed $50, or both. [*TCA*, section 40-35-110-111]

(2%) shall be subtracted from the amount designated for the highway fund for distribution to the general fund for expenses of administration prior to the distribution of the funds to the cities, counties or highway fund;

(3) Twenty-eight and six-tenths percent (28.6%) of total taxes collected to the various counties of the state on the basis set out in § 54-4-103;

(4) Fourteen and three-tenths percent (14.3%) of total taxes collected to the various municipalities, as defined by § 54-4-201, on the basis set out at § 54-4-203; and

(5) Any funds remaining after the distributions set out above to the highway fund. Provided, that there shall be accumulated and set apart within the fund such amounts as required, not to exceed one million five hundred thousand dollars ($1,500,000) during each of four (4) succeeding fiscal years, which shall be available for carrying out the utility relocation loan program, established in subsection (j).

(c) Revenues from the increases in taxes imposed by §§ 67-3-603 and 67-3-604, effective 1985, shall be distributed in accordance with the following formula:

(1) Two cents (2¢) of such revenues shall be apportioned pursuant to subsection (b); and

(2) One cent (1¢) of such revenues shall be apportioned as follows:

(A) Of such amount designated hereafter for distribution to the counties and cities, one percent (1%) shall be subtracted from the amount designated for cities and one percent (1%) shall be subtracted from the amount designated for counties for distribution to the general fund for expenses of administration prior to the distribution of the funds to the cities or counties;

(B) Sixty-six and two-thirds percent (66 2/3%) of such revenues collected to the various counties of the state on the basis set out in § 54-4-103; and

(C) Thirty-three and one-third percent (33 1/3%) of such revenues collected to the various municipalities, as defined by § 54-4-201, on the basis set out in § 54-4-203.

(d) Notwithstanding any provision of the law to the contrary, a county or city shall be eligible to receive those revenues to be distributed directly to them from the tax increases imposed by §§ 67-3-603 and 67-3-604, effective 1985, only if it appropriates and allocates funds for road purposes from local revenue sources in an amount not less than the average of the five (5) preceding fiscal years, except bond issues and federal revenue sharing proceeds shall be excluded from the five (5) year average computation. If a county or city fails after July 1, 1985, to so appropriate and allocate at least such average amount for road purposes, then the amount of revenues which would otherwise be allocable to such county or city from the revenues derived by §§ 67-3-603 and 67-3-604, effective 1985, shall be reduced by the amount of the decrease below such average. The amount of such funds not allocated to such county or city because of such decrease shall be allocated to the state highway fund, to be used by the department of transportation for the improvement of state highways in such county or city, and such state funds shall be in addition to the funds otherwise allocated for improvements in such county or city in that fiscal year.

(e) Funds apportioned to counties under the provisions of Acts 1985, ch. 419 shall be used for resurfacing and upgrading county roads, including the paving of gravel roads. Any expenditure for equipment shall be approved by a two-thirds (2/3) vote of the county legislative body, prior to purchase.

(f) Revenues from the increases in taxes imposed by §§ 67-3-603 and 67-3-604, effective 1986, shall be distributed and allocated as follows:

(1) Revenue from the first three cents (3¢) per gallon of such increases in taxes shall be apportioned as follows:

(A) Amounts required to be paid to the state sinking fund pursuant to title 9, chapter 9;

(B) Three million dollars ($3,000,000) per annum, beginning on July 1, 1986, to the highway fund for the use and benefit of certain mass transit projects; and

(C) All other amounts to the highway fund to be used for accelerating the resurfacing of the state system of highways in order to establish a twelve year cycle of resurfacing with implementation beginning in 1986 and being completed by 1998; and for new construction in the primary system of highways over the period from 1986 to 1999; and

(2) Revenue from one cent (1¢) of such increases in taxes shall be apportioned as follows:

(A) Of such amount designated hereafter for distribution to counties and cities, one percent (1%) shall be subtracted from the amount designated for counties, and one percent (1%) shall be subtracted from the amount designated for cities for distribution to the general fund for expenses of administration prior to the distribution of the funds to the counties or cities;

(B) Sixty-six and two-thirds percent (66 2/3%) of such revenues collected to the various counties of the state on the basis set out in § 54-4-103; and

(C) Thirty-three and one-third percent (33 1/3%) of such revenues collected to the various municipalities, as defined by § 54-4-201, on the basis set out in § 54-4-203.

(g) Prior to the apportionment set out in subsections (b), (c), (d) and (f) above, there shall be apportioned for distribution to the wildlife resources fund, for use exclusively in the administration of the Boating Safety Act of 1965, compiled in title 69, chapter 10, part 2, an amount equal to one thousand seventy-four ten thousandths of one percent (.1074%) of the taxes collected under this part, exclusive of tax revenues resulting from the three cents (3¢) per gallon gasoline tax increase imposed by Acts 1989, ch. 46.

(h) All revenues and investment income derived from the increase in the gasoline tax rate imposed by Acts 1989, ch. 46 shall be placed in the state highway fund, and shall not be subject to the apportionment and distribution provisions of subsection (b).

(i) Revenues from the one cent (1¢) increase in taxes (from nineteen cents (19¢) to twenty cents (20¢)) imposed by §§ 67-3-603 and 67-3-604, as amended by Acts 1989, ch. 241, effective 1989, shall be apportioned as provided in subdivision (f)(2).

(j)(1) From the amounts accumulated and set apart pursuant to the provisions of subdivision (b)(5), there is hereby established a "utility relocation loan program" for loan financing of all costs incurred by local governments and not-for-profit business organizations providing utility services to customers related to relocating, moving, or reinstalling their utility facilities, without any additions thereto, when located within rights of way of highways on the system of state highways and required because of highway construction projects administered by the department of transportation.

(2) A loan may be authorized only under the following conditions:

(A) The applicant has provided the utility management review board with sufficient information to enable the board to determine whether the applicant is obligated to relocate, move, or reinstall its utility facilities, the estimated cost thereof and inability to otherwise obtain a loan therefor;

(B) The utility management review board has recommended to the state funding board that the loan be made and advises the board of the estimated amount thereof, and

(C) The state funding board has concurred in the recommendation of the utility management review board.

(3) When the foregoing conditions in this subsection have been met, the state funding board is empowered to make and administer loans from funds available, subject to the following limitations:

(A) No loan shall have a duration in excess of ten (10) years;

(B) No loan having a duration of five (5) years or less shall bear interest. Loans having a duration in excess of five (5) years shall not bear interest during the first five (5) years, but shall bear interest at a rate equivalent to rate of return received by the treasurer on the state cash pool; and

(C) The principal of loans shall be repayable in equal monthly installments, together with interest when applicable.

(4)(A) The utility management review board shall require, if necessary, that user rates be established which are sufficient to repay principal and any interest on the loan.

(B) The state funding board may establish such other terms, not inconsistent with the foregoing, as it determines to be appropriate. [Acts 1978, ch. 761, § 32; 1981, ch. 366, § 3; 1981, ch. 418, § 1; *T.C.A.*, § 67-3317; Acts 1985, ch. 419, §§ 2, 4, 5; 1985, ch. 454, § 3; 1986, ch. 931, § 13; 1989, ch. 46, § 3; 1989, ch. 241, § 2; 1989, ch. 582, §§ 1, 2.]

67-3-618. **Gasohol Tax credit or refund.** - In enforcing the provisions of this part, the commissioner shall audit the proof of purchase or refund applications and apply the credit or refund to all ethyl alcohol used for gasohol by holders of unrevoked Class A or Class B permits. The commissioner, further, shall endeavor to administer this part in the most cost-efficient manner. [Acts 1982, ch. 911, §§ 9, 10; 1983, ch. 144, § 4; *T.C.A.*, § 67-3318; Acts 1986, ch. 598, § 3; 1988, ch. 958, § 5.]

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