

MEMORANDUM



DATE: February 19, 2008
TO: Interested Parties
FROM: William E. Hamilton
RE: Public Transit Systems in Southeast Michigan: DDOT, SMART, the RTCC, and DARTA

This memo discusses the public agencies which provide and coordinate public transportation services in Southeast Michigan. The memo discusses the coordination of services between the two major transit agencies in Southeast Michigan, DDOT and SMART, as well as the broader issues related to regional public transportation. The memo also reviews recent legislative history. The term "Southeast Michigan" in this memo means Wayne, Oakland, and Macomb counties, and the city of Detroit as a separate political entity. A short description of the acronyms used in the memo, DDOT, SMART, RTCC, and DARTA is found in Appendix A to this memo.

Background/History

There are two primary providers of public transportation services in Southeast Michigan, DDOT and SMART. The Detroit Department of Transportation (DDOT) is an agency of Detroit city government. DDOT provides fixed route bus service along 52 routes primarily within the city of Detroit. DDOT is the largest public transit system in the state. For 2006, DDOT reported 37.3 million passengers for its regular service. Of this ridership, 7% were identified as elderly and 15% as persons with disabilities.

SMART, an acronym for Suburban Mobility Authority for Regional Transportation, is a regional transit authority organized under the Metropolitan Transportation Authorities Act of 1967. SMART provides bus service primarily outside of the city of Detroit in suburban Wayne, Oakland, and Macomb counties. While much of SMART service is between suburban communities, SMART also provides bus transit service between the city of Detroit and suburban communities. Many people in metro Detroit depend on public transportation for travel between the city and suburban communities.

SMART is the second largest transit agency in the state. For 2006, SMART reported 11.3 million passengers for its regular service. Of this ridership, 16% were identified as elderly and 4% as persons with disabilities.¹

The combined ridership of DDOT and SMART, approximately 48.5 million passengers for 2006, is more than the combined ridership of all 77 other Michigan public transit agencies.

In the past, DDOT and SMART have contended over service coordination along city/suburb connecting routes, in particular along the major thoroughfares of Michigan, Grand River, Gratiot, Woodward, and Jefferson. Conflicts involve questions of efficiency, jurisdiction, effective service, and revenue.

In some instances DDOT and SMART have service along the same routes. SMART runs "express" routes between the city and suburbs while DDOT is primarily a "local" service. In the past, DDOT representatives objected to SMART picking up passengers within the city limits, yet at the same time bus passengers within the city complained that SMART buses drive by without picking them up. There have also been coordination issues between the two agencies regarding fares and transfers. Since 1998, DDOT and SMART have made apparent progress in the coordination of services.

¹ Both DDOT and SMART have a relatively high percentage of elderly and/or disabled riders as compared to other urban transit agencies in the state. This affects the ability of each agency to generate farebox revenue; Public Act 51 of 1951 requires that public transit agencies offer preferential fares to the elderly and persons with disabilities.

KPMG Peat Marwick Report

In 2000, the consulting firm KPMG Peat Marwick was hired to assess options for coordination of services between DDOT and SMART. The report identified a number of areas where DDOT and SMART coordinated services and discussed opportunities for future coordination. The report concluded that “It is difficult to make a case for complete merger of the two systems based on intended cost savings,” and also suggested that savings from additional coordination of routes would be “relatively small.”

The report suggested that increased regional coordination through a reform of the RTCC, (the Regional Transit Coordinating Council – see definition below) “could achieve many of the benefits of coordination without risking the disadvantages of complete merger.”

The reform of the RTCC was not pursued at that time; legislative and political efforts were directed towards the creation of a new entity, the Detroit Area Regional Transportation Authority, DARTA.

DARTA Legislative History

In June 2001, at the Detroit Regional Chamber of Commerce annual meeting on Mackinac Island, leaders of Wayne, Oakland and Macomb counties, and Detroit Mayor Dennis Archer, signed an agreement supporting a proposal for improved regional transit. On June 1, 2001, the Gongwer News Service reported that “House Minority Leader Kwame Kilpatrick said that he would sponsor a bill [to reform the RTCC]. House Speaker Rick Johnson signaled he would support the measure.”

HB 5467 (Kilpatrick) was introduced on November 29, 2001 to eliminate the RTCC and establish a new Detroit Area Regional Transportation Authority, DARTA. Although the bill had bi-partisan support in the House – the bill passed the House with 87 yes votes, it gathered only the minimum 20 yes votes in the Senate. In one of his last acts in office, Governor Engler vetoed the bill on December 30, 2002. Since the Legislature had adjourned *sine die*, there was no opportunity for an attempt to override the veto.

Governor Engler had expressed no previous opposition to the bill. His veto was seen as a political reaction to the Legislature's failure to increase the cap on charter schools.

In January 2003, at the start of the 2003-2004 legislative session, House Speaker Rick Johnson indicated that DARTA would be one of his top legislative priorities. It was also understood to be a top priority of newly-elected Governor Granholm. On January 28, 2003, HB 4072 (Bisbee) was introduced in the House. The bill was substantially the same as Enrolled House Bill 5467 from the prior legislative session. An identical bill, SB 100 (Burton Leland), was introduced in the Senate. In February 2003, HB 4072 passed the House with 58 yes votes. The bill was never taken up in the Senate. In February 2003, SB 100 was taken up by the Senate Committee on Commerce and Labor but a vote was never taken and the bill died in committee.

During the 2005-06 legislative session new DARTA bills were introduced in both chambers, HB 5068 (Kolb) and SB 691 (Thomas). Neither bill was taken up in committee, and both bills died at the end of session.

Senator Thomas has reintroduced his DARTA bill in the current legislative session. The bill, SB 17, has not been taken up in committee.

DARTA in the Courts

Because of the apparent difficulty in creating DARTA through legislation, in May 2003 SMART, the city of Detroit, and the RTCC entered into an intergovernmental agreement to create DARTA. In creating DARTA, the agreement cited the authority of both the Urban Cooperation Act of 1967 (PA 7 of 1967) and the Intergovernmental Transfer Act of 1967 (PA 8 of 1967). Both of these acts allow two or more public agencies or political subdivisions to form agreements or contracts for joint activities or functions, including public transportation programs.

The legal authority for DARTA was challenged in court by a local chapter of the Association of State County and Municipal Employees (ASCME). In November 2003, a Wayne County Circuit Court judge ruled that the RTCC did not have the legal authority to enter into the DARTA agreement with SMART and the city of Detroit. The judge ruled that the DARTA could not apply for grants, coordinate bus service between Detroit and the suburbs, or directly plan improvements to bus service in southeast Michigan. Those functions would continue to be the responsibility of the RTCC.

Both parties appealed the case to the Michigan Court of Appeals. The RTCC asked the appellate court to reverse the decision of the lower court and confirm that the RTCC was a valid member of the DARTA agreement. ASCME asked that the court invalidate the entire agreement.

In July 2005, the Michigan Court of Appeals ruled that parties did not have legal authority to execute the DARTA agreement and that the trial court erred in failing to declare the entire agreement null and void. (COA docket No. 253592). In May 2006, the Michigan Supreme Court denied leave to appeal, effectively invalidating the intergovernmental agreement and ending the existence of DARTA as a legal entity.

DARTA/Regional Transit – Policy Issues

Three primary issues emerged during legislative review of the DARTA legislation. These issues will undoubtedly surround any future regional transit plan for Southeast Michigan.

Labor – Under provisions of 204 PA 1967, the RTCC does not have the authority to operate a transit agency. It was created as an oversight agency with authority over regional coordination and the distribution of state and federal grants. Until recently the RTCC had no employees, offices, or even a telephone number. DARTA legislation would have replaced the RTCC with an entity, DARTA, which was empowered to operate transit systems. It was not clear that DARTA was intended to actually operate transit systems, or to take over all or part of the DDOT or SMART transit systems. Nonetheless, the public transit employee unions wanted to ensure that labor protections would be guaranteed under DARTA. Satisfying these public employee unions was one of the biggest obstacles in the crafting and passage of DARTA legislation. The lawsuit which effectively ended DARTA's existence was brought by a public employee union.

Opt-out – Under the current public transportation legal structure in Southeast Michigan, some communities in Wayne and Oakland counties are able to "opt-out" of participation in the SMART millage.² Opt-out communities may have some local transit service, but because they do not participate in the SMART millage, SMART does not provide regularly scheduled bus service. The ability of communities to opt-out limits the effectiveness of regional transit. For example, SMART line haul buses regularly travel along Woodward Avenue in Oakland County but do not make stops in Bloomfield Hills, an opt-out community.

See Appendix B, below, for additional information on "opt out" communities.

² Because Macomb County participates in SMART as a county there are no "opt-out" communities in Macomb County.

As a result of community opt-outs, there are holes in the current Southeast Michigan regional transit system. Whether communities would be allowed to opt-out of any proposed regional transportation plan was one of the major sticking points in legislative discussion of the DARTA bills in the 2001-02 and 2003-04 legislative sessions.

Funding – Although the proposed DARTA legislation, e.g. HB 5467 (2001-2002) and HB 4072 (2003-2004), did not obligate the state or any local political entity to pay for the costs of DARTA, one of the main unresolved issues in the legislation was how a new regional transit system would be funded. There was concern among many legislators that DARTA would eventually come to the state for capital or operating assistance. At the same time there was concern that if DARTA were able to generate additional funds locally, it might be able to obtain a greater share of state operating assistance which is distributed based on transit agency eligible operating expense. Under the current Act 51 distribution formula, an agency that can increase local funds, and thus increase operating expenses, can then leverage additional state funds at the expense of all other Michigan transit agencies.

Revisiting the RTCC

Although the RTCC was empowered by law to adopt public transportation plans for the Detroit metropolitan area, and to coordinate service overlap, rates, routing, and scheduling, from the time of its creation in 1998 through 2006 the RTCC did not exercise this legal authority. The RTCC only acted to authorize the distribution of state and federal operating and capital grants to DDOT, SMART, and certain small subrecipients. The RTCC was, in effect, a shell organization. There was no director, no employees, no office. Correspondence was handled by a law firm acting as the RTCC board secretary.

For a number of years board members of the RTCC, the chief executive officer of the city of Detroit, the chief executive officers of Wayne and Oakland counties, and the chairman of the Macomb County Board of Commissioners, met only once a year and for the sole purpose of approving the distribution of grants.³ From May 2004 to May 2006 the RTCC did not meet at all.

However, in light of the May 2006 Michigan Supreme Court ruling which effectively ended the existence of DARTA, RTCC members met in June 2006 and approved resolutions to assume certain duties and functions from the DARTA organization which had been created under the interlocal agreement. The RTCC also authorized the appointment of a General Secretary and Chief Executive Officer, and a new principal office, at 100 River Place, Suite 450, Detroit Michigan. The RTCC subsequently approved a contract with former State Senator John Hertel as RTCC General Secretary and CEO. The RTCC also adopted a 2007 budget.

The RTCC's Vision Document, approved by the RTCC board on August 28, 2007, indicated that "*the RTCC, through its project 'The Detroit Regional Mass Transit Initiative' seeks to provide seamless, reliable, convenient, and cost effective public transportation.*" At its December 2007 meeting the RTCC approved a contract with a planning consultant to complete a "Comprehensive Regional Transit Service Plan." The targeted completion date is October 31, 2008.

The RTCC is using Federal Transit Act grants (from funds originally earmarked for DARTA) and state matching grants to fund on-going operations, and for costs of the planning consultant.⁴

³ The meetings were generally very brief. The October 2001 meeting lasted 7 minutes; the October 2002 meeting lasted 9 minutes; the July 2003 meeting lasted 5 minutes.

⁴ The FY 2002-03 federal transportation appropriations act, PL108.7 (H.J. Res. 2) included a total of \$850,000 earmarked for the Detroit Area Regional Transportation Authority. State funds are used to match these federal funds at 20% of cost.

Appendix A **Metro Detroit Public Transportation Agencies**

DDOT is the Detroit Department of Transportation – a division of the city of Detroit. DDOT provides public transportation services primarily within the city limits of Detroit.

DDOT operating costs not covered by farebox revenue are primarily funded by state local bus operating assistance (through the RTCC) and by contributions from the city's general fund. The city contributes between \$75 million and \$80 million each year from the city general fund to support DDOT transit operations. DDOT also receives state and federal capital assistance.

SMART is an acronym for the Suburban Mobility Authority for Regional Transportation, a regional transportation authority organized under the Metropolitan Transportation Authorities Act of 1967 (PA 204 of 1967, MCL 124.401). SMART provides public transportation services in Wayne, Oakland, Macomb and Monroe counties. Although SMART has no scheduled routes which both begin and end within the city of Detroit, SMART buses do provide express bus service between suburban communities and downtown Detroit.

SMART operating costs not covered by farebox revenue are primarily funded by state local bus operating assistance (through the RTCC) and by a .59 mill property tax levied in Macomb county, most of Oakland county, and most of Wayne county excluding the city of Detroit.

PA 204 does not authorize SMART to levy taxes in its own name. The SMART millage is actually levied by the Oakland County Public Transportation Authority, the Wayne County Transit Authority, and Macomb County. In 1995 and 1998 voters within those jurisdictions approved a three-year 1/3 mill property tax for SMART. In August 2002 the tax was approved for an additional four years at a rate .60 mills. In 2006, the tax was approved for an additional four years at a rate of .59 mills. The SMART millage generates approximately \$53.3 million per year for SMART operations.

SMART also receives state and federal capital assistance.

RTCC – In 1988, the legislature amended PA 204 of 1967 to establish the Regional Transit Coordinating Council (RTCC) “for the purpose of establishing and directing public transportation policy” within the Detroit metropolitan area. The rights, duties, and powers of the RTCC are defined in section 4a of the act, (MCL 124.404a).

There are four voting members of the RTCC: the chief executive officer of the city of Detroit, and the chief executive officers of Wayne and Oakland counties, and the chairman of the Macomb County Board of Commissioners. Subsection 6 of the act requires the RTCC to act by unanimous vote of its members.

The RTCC is empowered to adopt public transportation plans for the Detroit metropolitan area, and to coordinate service overlap, rates, routing, and scheduling. RTCC is authorized to receive transportation operating and capital assistance grants and is the designated recipient for federal transit administration grants. The city of Detroit and SMART are subrecipients of federal transit act grants.

As the designated recipient, the RTCC receives state operating assistance and federal capital assistance. The RTCC then apportions the funding 65% to DDOT and 35% to SMART. This percentage allocation is part of the RTCC's original 1989 Articles of Incorporation and can only be amended by unanimous vote of the four RTCC members.⁵

In June 2006, the RTCC met and approved resolutions to assume certain duties and functions from the DARTA organization which had been created under the interlocal agreement. The RTCC also authorized the appointment of a General Secretary and Chief Executive Officer, and a new principal office, at 100 River Place, Suite 450, Detroit Michigan. The RTCC subsequently approved a contract with former State Senator John Hertel as RTCC General Secretary and CEO.

DARTA – is the abbreviation for the Detroit Area Regional Transportation Authority. DARTA was originally proposed in HB 5467 of the 91st Legislature (2001-2002). The bill passed both houses of the state legislature but was subsequently vetoed by Governor Engler. A similar bill, HB 4072, was introduced in the subsequent legislative session. The bill passed the House but was not taken up in the Senate.

The proposed DARTA agency would have superseded the previous RTCC. In addition, DARTA would have the authority to hire an administrator and to operate transit systems.

In May 2003, SMART, the city of Detroit, and the RTCC entered into an intergovernmental agreement to create DARTA. The legal authority for DARTA was challenged in court by a local chapter of the Association of State County and Municipal Employees (ASCME). In July 2005, the Michigan Court of Appeals ruled that parties did not have legal authority to execute the DARTA agreement and that the trial court erred in failing to declare the entire agreement null and void. (COA docket No. 253592). In May 2006, the Michigan Supreme Court denied leave to appeal, effectively invalidating the intergovernmental agreement and ending the existence of DARTA as a legal entity.

⁵ In addition to the distribution to DDOT and SMART, the RTCC also distributes state operating assistance to several relatively small paratransit providers in the Detroit metro area. And, since FY 2004-05, the RTCC has distributed state operating assistance to the Detroit Transportation Corporation for a share of eligible operating expenses of the Detroit People Mover.

Appendix B**Note on SMART Organization and Opt-Out**

SMART is a regional transportation authority organized under the Metropolitan Transportation Authorities Act of 1967 (PA 204 of 1967, MCL 124.401). Under PA 204 SMART does not have the authority to levy taxes. SMART relies on the taxing authority of its three constituent members, the Oakland County Public Transportation Authority, the Wayne County Transit Authority, and Macomb County.

Macomb County participates in SMART under the authority of the Revenue Bond Act of 1933 (1933 PA 94), an act which allows public corporations to make public improvements, including transportation systems. Many county public transportation systems are organized under provisions of this act. Because Macomb County is a member of SMART as a county, the county votes on SMART millage requests as a county and all property in the county is assessed the millage. There are no opt-out communities in Macomb County.

The Oakland County Public Transportation Authority and the Wayne County Transit Authority are organized under the Public Transportation Authority Act of 1986 (1986 PA 196). Public Act 196 authorizes one or more political subdivisions (counties, cities, villages, townships) to form a public transportation authority. Public Act 196 allows authorities to levy a tax, with voter approval, of up to 5 mills on taxable property within the limits of the transportation authority.

Neither the Oakland County Transportation Authority nor the Wayne County Transit Authority exists as an operating entity. They are effectively shell organizations which levy and collect taxes on behalf of SMART.

The Oakland County Transportation Authority was initially incorporated on March 30, 1995. The county of Oakland was the only incorporating unit. The Wayne County Transit Authority was initially incorporated on March 20, 1995, with the Wayne County being the only incorporating unit. Because each of these Public Act 196 authorities had only one incorporator, it is not clear on what basis municipalities within these incorporating jurisdictions were subsequently allowed to "opt-out" of the authority. As of December 2007, 16 political jurisdictions (cities, villages, or townships) within Wayne County, other than the city of Detroit, had opted-out of the PA 196 jurisdiction, the Wayne County Transit Authority. Thirty-six political jurisdictions within Oakland County have opted-out of the Oakland County Public Transportation Authority and the related SMART millage.

These opt out communities did not pay the SMART millage, and do not receive regular SMART service.

In April 2007, the Oakland County Public Transportation Authority amended its articles of incorporation to specifically include the 23 participating "opt-in" communities as incorporating units as well as the County of Oakland.

Appendix C**Note on SEMCOG**

The Southeast Michigan Metropolitan Council of Governments (SEMCOG) is a voluntary association of local governments (counties, cities, townships, villages, and school districts) within the seven-county area of Southeast Michigan. SEMCOG was organized in 1968, under the authority of 1945 PA 281.

SEMCOG is a Metropolitan Planning Organization (MPO) – there are 12 MPO's in the state of Michigan. One of the most important functions of MPOs is transportation planning. Federal highway and transit statutes require, as a condition for spending federal highway or transit funds in urbanized areas, the designation of MPOs with responsibility for planning, programming and coordination of federal highway and transit investments.

All federal highway and transit grants in urbanized areas must be authorized through the federally-mandated planning process administered by the local MPO. The end product of this planning process is a Transportation Improvement Program (TIP). The TIP developed through SEMCOG is the list of all transportation projects authorized to receive federal funds in Southeast Michigan.

<http://www.semcog.org/TranPlan/TIP/index.htm>

SEMCOG has been active in working to develop a public transit plan for Southeast Michigan. In October 2001, SEMCOG published a regional transit plan, *Improving Transit in Southeast Michigan: A Framework for Action*. That publication is available on the SEMCOG website at:

<http://www.semcog.org/Products/pdfs/transitplan10-01.pdf>

SEMCOG is also working to develop one element of that transit plan, "a commuter rail service in the Detroit-Ann Arbor corridor with stops in Ann Arbor, Ypsilanti, Detroit Metropolitan Airport, Dearborn and Detroit."

Additional information on that project is available from the SEMCOG website at:

<http://www.semcog.org/TranPlan/Transit/AADD.htm>