



**MINISTRY OF TRANSPORTATION**

**Dedicated Gas Tax Funds For  
Public Transportation Program**

**2008/2009 Guidelines and Requirements**

## TABLE OF CONTENTS

1.	DEFINITIONS	3 - 4
2.	INTRODUCTION	5
3.	GENERAL ELIGIBILITY REQUIREMENTS AND CONDITIONS	5 - 7
4.	APPROPRIATION BY THE LEGISLATIVE ASSEMBLY	7
5.	GENERAL PROGRAM ALLOCATION METHODOLOGY AND PAYMENT PROCESS	7 - 9
	5.1 General Program Allocation Methodology	
	5.2 Payment Process	
6.	DEDICATED GAS TAX FUNDS RESERVE ACCOUNT AND INTEREST	9
	6.1 Dedicated Gas Tax Funds Reserve Account	
	6.2 Interest	
7.	ACQUISITION AND DISPOSITION OF SUPPLIES, MATERIALS, EQUIPMENT, AND SERVICES	9
8.	ADJUSTMENT, WITHHOLDING AND REPAYMENT OF DEDICATED GAS TAX FUNDS AND OTHER REMEDIES	10 - 11
9.	ACCOUNTABILITY, RECORDS, AUDIT AND REPORTING REQUIREMENTS	11 - 12
	9.1 Accountability	
	9.2 Records	
	9.3 Audit	
	9.4 Reporting	
10.	COMMUNICATIONS	12
11.	CONFLICT OF INTEREST	12 - 13
12.	<i>FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT</i>	13
13.	LIABILITIES AND INDEMNITIES	13 - 14
14.	WHERE TO APPLY AND REQUEST OR PROVIDE INFORMATION	14
15.	APPENDIX A Reporting Forms	15
16.	APPENDIX B Canadian Content Policy	16

# DEDICATED GAS TAX FUNDS FOR PUBLIC TRANSPORTATION PROGRAM

## 2008/2009 GUIDELINES & REQUIREMENTS

### 1. DEFINITIONS

When used in these guidelines and requirements, the words set out below that import the singular include the plural and vice versa:

“baseline spending” means a municipality’s spending level which equals the average municipal own spending on public transportation for the years 2001 to 2003 and includes a rate of 2% per year for inflation.

“Canadian content policy” means the Canadian Content for Transit Vehicle Procurement Policy which is attached as Appendix B (Canadian Content Policy) to these guidelines and requirements.

“dedicated gas tax funds” means the money provided by the Ministry to a municipality to be used strictly towards eligible expenditures that are reasonable, in the opinion of the Ministry, and related directly to the provision of public transportation services, and “dedicated gas tax funding” has the same meaning.

“dedicated gas tax funds reserve account” means an interest bearing account set up by a municipality, under its name and in a Canadian financial institution, to keep dedicated gas tax funds separate and apart from either municipal or any other funds, or both, and which funds are to be used strictly towards public transportation-related eligible expenditures.

“eligible expenditures” means expenditures made by a municipality in direct support of public transportation operating or capital costs in accordance with Article 3 of these guidelines and requirements.

“guidelines and requirements” means these guidelines and requirements entitled “Dedicated Gas Tax Funds for Public Transportation Program – 2008/2009 Guidelines and Requirements”, including Appendices A and B to these guidelines and requirements, which the Ministry may amend from time to time.

“host municipality” means a host municipality as defined in Section 5.2.

“indemnified parties” means Her Majesty the Queen in right of Ontario, her Ministers, directors, officers, agents, appointees and employees.

“letter of agreement” means an agreement entered into between the Ministry and a municipality, including a host municipality, that sets out the terms and conditions under which the Ministry agrees to provide dedicated gas tax funds to the municipality, including those under these guidelines and requirements, and any amendments to the letter of agreement.

"major refurbishment" means: (a) for a rapid transit vehicle, streetcar or trolley, the refurbishment where the life cycle of a rapid transit vehicle is extended a minimum of six years beyond the designed life cycle set out by the manufacturer of such vehicles; and (b) for a bus thirty feet in length or over, the refurbishment where the life cycle of a bus at a minimum age of nine years is extended for a minimum of six years.

"Ministry" and "Minister", respectively, means the Ministry of Transportation who is responsible for the administration of the Dedicated Gas Tax Funds for Public Transportation Program and the Minister responsible for the Ministry.

"municipal own spending on public transportation" means the funds a municipality contributes towards public transportation expenditures, including funds it contributes for operating and capital expenditures, total operating revenue and local public donations.

"program" means the Dedicated Gas Tax Funds for Public Transportation Program set up by the Ministry to provide municipalities with dedicated gas tax funds subject to and in accordance with these guidelines and requirements.

"Presto Fare System" means the public transportation integrated fare collection system between GTA municipalities to support more seamless use by public transportation customers and the collection of public transportation fares.

"public transportation" means any service for which a fare is charged for transporting the public by vehicles operated by or on behalf of a municipality or local board as defined in the *Municipal Affairs Act*, R.S.O. 1990, c. M. 46, as amended, or under an agreement between a municipality and a person, firm or corporation and includes special transportation facilities for the physically disabled, but does not include transportation by special purpose facilities such as school buses or ambulances.

"public transportation vehicle" refers to a street car, bus or trolley bus used for public transportation.

"rapid transit vehicle" refers to subway car or light rail car used for public transportation.

"reporting forms" means the following forms attached as Appendix A (Reporting Forms) to these guidelines and requirements: 1) Dedicated Gas Tax Funds for Public Transportation 2008 Reporting Form; 2) Dedicated Gas Tax Program – Transit 2008 Conventional Transit Reporting Form; and 3) Dedicated Gas Tax Program – Transit 2008 Specialized Transit Reporting Form.

"transit vehicle" means either a public transportation vehicle or rapid transit vehicle.

## **2. INTRODUCTION**

The Province has a vision for a stronger Ontario built around strong communities, a vibrant economy and healthier, more liveable cities with increased access to public transportation, reduced commute times and cleaner air for all Ontarians. By providing a portion of the gas tax for public transportation, the Province will assist municipalities to become more self-sustaining in that regard.

As of October 2004, the Province provided 1 cent/litre of gas tax funds to Ontario municipalities amounting to \$156 million for public transportation. Gas tax funds were increased to 1.5 cents/litre or \$232 million as of October 2005, and to 2 cents/litre as of October 2006 at \$313 million. This year the new allocation of funding for 89 public transit systems representing 111 municipalities will amount to about \$321 million. The annual amount will be subject to change based on actual gas tax revenues.

The program is an important element of the ongoing relationship between the Province and Ontario municipalities. Municipalities receiving dedicated gas tax funds must meet the requirements set out in these guidelines and requirements.

## **3. GENERAL ELIGIBILITY REQUIREMENTS AND CONDITIONS**

The purpose of the program is to provide dedicated gas tax funds to Ontario municipalities to ensure that local public transportation services continue and to increase overall ridership through the expansion of public transportation capital infrastructure and levels of service. To be eligible to receive dedicated gas tax funds a municipality must contribute financially towards their public transportation services.

For 2008/2009, only municipalities that have submitted their 2007 annual data survey to the Canadian Urban Transit Association (CUTA) will be eligible to receive dedicated gas tax funds, unless otherwise approved by the Ministry.

Subject to the provision of a municipal by-law indicating its intent to provide public transportation services, a municipality that is not currently providing public transportation services, but decides to begin providing such services, may be eligible for funding. Notification of the municipality's intent to provide public transportation services and a specific commitment from the municipality to annual funding support will be required prior to October 1, 2009, when the dedicated gas tax funds allocation for the municipality is revised. After the new system has been implemented, dedicated gas tax funding may then be available, at the discretion of the Ministry, beginning the last quarter of 2009 and into 2010.

A municipality receiving dedicated gas tax funds must ensure that all funds received are used exclusively towards the provision of public transportation services.

Public transportation services for which dedicated gas tax funds are provided must be acquired or provided in accordance with the terms and conditions set out in a letter of agreement, and in compliance with all federal and provincial laws or regulations, all municipal by-laws and any other orders, rules, or by-laws related to the public transportation services. More specifically, all public transportation services must be fully accessible in accordance with the requirements set out under the *Ontarians with Disabilities Act, 2001*, S.O. 2001, c. 32, as amended, and those under the *Vehicles for the Transportation of Physically Disabled Passengers*, R.R.O. 1990, Reg. 629, passed under the *Highway Traffic Act*, R.S.O. 1990, c. H-8, as amended. In addition to the above, the acquisition of transit vehicles must comply with the Canadian content policy requirements.

The Ministry may withhold payment of dedicated gas tax funds until such reporting requirements under Section 9.4 are met.

Unless the Ministry otherwise approves in writing, in 2008/2009, gas tax revenues can only be used to support municipal public transportation expenditures above a municipality's baseline spending and not to reduce or replace current levels of municipal public transportation funding. External audit and financial reporting costs are not eligible expenditures to which dedicated gas tax funding can be applied or the Ministry may reimburse.

**a) Eligibility Requirements for All Dedicated Gas Tax Funds Received in 2008/2009 and Beyond**

- o Dedicated gas tax funds will need to be spent on:
  - Public transportation capital expenditures that promote increased transit ridership, and are above a municipality's baseline spending;
  - Public transportation operating expenditures that are above a municipality's baseline spending;
  - Capital expenditures that provide improvements to transit security and passenger safety and are above a municipality's baseline spending; and
  - Major refurbishment on any fully accessible, or to be made fully accessible, public transportation vehicle.
- o For municipalities that provide only specialized transit, transit strategies that may not initially result in ridership growth but will provide increased accessibility can be considered as eligible expenditures if approved in writing by the Ministry prior to implementation.

**(b) For GTA Municipalities: Regions of Durham, Halton, Peel Region, York, and Cities of Hamilton and Toronto**

- o Prior to the release of any dedicated gas tax funds, these municipalities will be required to:
  - participate in the Presto Fare System project and, as participants, will be required to meet their financial obligations for the project; and

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- where municipalities are required to provide one-third of capital expansion costs for GO Transit expansion, demonstrate that they have met that requirement.

The eligibility requirements for dedicated gas tax funds will be determined in accordance with applicable government policies and guidelines, including the Canadian content policy. The eligibility of any dedicated gas tax funds is at the sole discretion of the Ministry. Where a municipality relies on receiving dedicated gas tax funds for expenditure, a municipality should consider consulting with Ministry staff when in doubt as to whether such expenditure is eligible for dedicated gas tax funds prior to making or committing to make it.

#### **4. APPROPRIATION BY THE LEGISLATIVE ASSEMBLY**

Despite anything else to the contrary, the annual provincial funding for the program and payment of any dedicated gas tax funds under the program is subject to annual appropriations of such funds by the Legislative Assembly of Ontario, and funds made available by a municipality for that purpose.

#### **5. GENERAL PROGRAM ALLOCATION METHODOLOGY AND PAYMENT PROCESS**

##### **5.1 General Program Allocation Methodology**

Based on consultation with municipalities, public transportation operators and stakeholders, the Province recognizes the varying needs of public transportation in Ontario municipalities, including those related to large established public transportation systems and communities with different growth rates and levels of public transportation service. Consistent with the above, the Province has established an allocation formula based on a combination of ridership and population. This formula balances the needs of large established public transportation systems, the growth needs of rapidly growing municipalities, and the needs of smaller municipalities that provide public transportation services.

The Province is implementing an allocation based on 70% transit ridership and 30% municipal population. Fully implemented, 70% of \$321 million (\$225 million) will be distributed to municipalities on the basis of their public transportation ridership levels. Thirty percent (30%) of \$321 million (\$96 million) will be distributed on the basis of population levels. Public transportation ridership will include the totals of both conventional and specialized public transportation services.

Both ridership and population figures are updated and revised annually for use in the calculation of dedicated gas tax funds.

CUTA annually collects and reproduces, on behalf of the Ministry, transit ridership data in its Ontario Urban Transit Fact Book (the "CUTA fact book"). The Ministry used the 2007 ridership data from the 2007 "CUTA fact book" for the above calculation. Where a municipality's

ridership data have not been collected nor reproduced in the 2007 CUTA fact book, the Ministry used the 2007 transit ridership data received from the municipality.

The 2007 estimated population data based on 2006 population census figures were not available from Statistics Canada for this year's gas tax allocation process. As a result, the Ministry used the 2007 population data estimates based on the 2001 population census figures received from the Ministry of Finance to calculate the 2008/2009 gas tax allocations. The 2009/2010 gas tax allocations will be calculated using 2008 population estimates based on the 2006 census. This revision in the population component of the gas tax formula may cause some adjustments to the 2009/2010 allocations based on use of 2006 census data as the new baseline for population projections.

Dedicated gas tax funds provided to each municipality in 2008/2009 are not to exceed, based on 2007 municipal public transportation spending data set out in the CUTA fact book, 75% of municipal own spending on public transportation. The Ministry may re-allocate, in support of increasing public transportation ridership, any amounts of moneys dedicated for, but that remains undistributed through the program.

The Ministry may undertake an annual review of the dedicated gas tax allocation methodology and eligibility requirements to ensure these funds support the desired outcome of increased public transportation ridership. Municipal public transportation spending will be reviewed on an annual basis to determine if the limits of the dedicated gas tax funds need to be applied where the gas tax allocation may exceed 75% of municipal own spending on public transportation.

## **5.2 Payment Process**

The Minister will advise each municipality, on an annual basis, of the amount of dedicated gas tax funds it is eligible to receive. The Minister, will send a letter of agreement to each municipality that provides public transportation services. The letter of agreement will set out the terms and conditions upon which the dedicated gas tax funds will be released to the municipality, and by which the municipality will have to agree to be bound.

The Ministry may, on a quarterly basis (or other basis, as the Ministry may decide from time to time), make payments of dedicated gas tax funds only after receipt of the following documents: 1) the letter of agreement, provided by the Ministry to the municipality, signed by the head of the municipal council and chief financial officer; and 2) a copy of a municipal by-law permitting the municipality to enter into the letter of agreement.

Any amount provided to the municipality under the program will be subject to the remedies set out under Article 8. In addition, any dedicated gas tax funds the Ministry provides to a municipality, including those kept by the municipality in a dedicated gas tax funds reserve account, will have to be used by the municipality exclusively towards public transportation services and in accordance with the requirements set out in these guidelines and requirements, including those related to eligibility and related conditions, acquisition and disposition, accountability, records, audit and reporting, and liability and indemnity requirements. The above will apply to funds received during the term of a letter of agreement, and will survive such term.



If some municipalities agree for one of them to receive dedicated gas tax funds on their behalf (a "host municipality"), dedicated gas tax funds will be flowed directly to the "host municipality". The Ministry, at its sole discretion, may provide such funds to the host municipality. Prior to the Ministry making any payment of dedicated gas tax funds to the host municipality, all of the municipalities that have agreed in the Ministry doing so will be required to provide the Ministry with copies of their respective by-laws designating the municipality or, as applicable, accepting to act as the host municipality. The host municipality will be required to enter into a dedicated gas tax funds letter of agreement with the Ministry and be in compliance with the terms and conditions set out in these guidelines and requirements.

## **6. DEDICATED GAS TAX FUNDS RESERVE ACCOUNT AND INTEREST**

### **6.1 Dedicated Gas Tax Funds Reserve Account**

Dedicated gas tax funds must be used only towards public transportation service eligible expenditures. A municipality receiving dedicated gas tax funds provided, prior to the municipality having paid for any eligible expenditure, in accordance with these guidelines and requirements, must keep such dedicated gas tax funds, including all interest earned, in a dedicated gas tax funds reserve account.

### **6.2 Interest**

Interest on funds deposited in a dedicated gas tax funds reserve account must accrue on any carryover funds at the appropriate Chums One Rate for an equivalent term. A municipality must calculate interest on its average annual balance of funds. The interest must also be reported annually, using the reporting forms and can only be applied towards public transportation services eligible expenditures.

## **7. ACQUISITION AND DISPOSITION OF SUPPLIES, MATERIALS, EQUIPMENT, AND SERVICES**

If a municipality acquires supplies, materials, equipment, or services with dedicated gas tax funds, it should do so through a process that promotes the best value (with due regard for economy, efficiency, and effectiveness) for the dedicated gas tax funds it spends.

The municipality must report to the Ministry in writing any funds accrued from the sale, lease, or disposal of assets purchased with dedicated gas tax funds and return such funds to a dedicated gas tax funds reserve account (see Article 6).

## 8. ADJUSTMENT, WITHHOLDING AND REPAYMENT OF DEDICATED GAS TAX FUNDS AND OTHER REMEDIES

If, once the Ministry and a municipality have entered into a letter of agreement and in the opinion of the Ministry, the municipality: i) fails to comply with any of the requirements set out in the letter of agreement, including these guidelines and requirements; ii) uses any of the dedicated gas tax funds, including any related interest, for a purpose not authorized without the prior written consent of the Ministry; iii) provides erroneous or misleading information; iv) fails to provide information, including requested audit information, to the Ministry for any reason whatsoever; or v) is unable to provide or acquire or has discontinued the provision or acquisition of public transportation services for which dedicated gas tax funds have been provided, or it is not reasonable for the municipality to continue to provide or acquire public transportation services for which such funds have been provided ("event of default"), the Ministry may, unless the Ministry provides the municipality with written notice of an opportunity to correct the event of default: i) immediately terminate the letter of agreement; ii) suspend dedicated gas tax funding for such period as the Ministry determines appropriate; iii) reduce the amount of any dedicated gas tax funds; and/or iv) initiate any action the Ministry considers necessary to ensure the successful provision or acquisition by the municipality of any public transportation services, including capital assets, in accordance with the terms of the letter of agreement.

Where the Ministry gives the municipality an opportunity to correct an event of default by giving it notice of the particulars of the event of default and the date by which the municipality is required to remedy it, and: i) the municipality does not remedy the event of default by the date specified in the notice; ii) it becomes apparent to the Ministry that the municipality cannot completely remedy the event of default by the date specified in the notice; or iii) the municipality is not proceeding to remedy the event of default in a way that is satisfactory to the Ministry, the Ministry may initiate any of the remedies for event of default available to it under this Article.

Upon termination of the letter of agreement pursuant to this section the Ministry may: i) cancel all further dedicated gas tax fund payments; ii) demand the repayment of any dedicated gas tax funds, including any related interest, remaining in the possession or under the control of the municipality; and/or iii) demand the repayment of an amount, including any related interest, equal to any dedicated gas tax funds the municipality used for purposes not agreed upon by the Ministry.

Any money due by a municipality in relation to the dedicated gas tax funds is a debt due to the Crown of the province of Ontario under the *Financial Administration Act*, R.S.O. 1990, c. F.12, as amended, ("FAA") and, in addition to any remedy the Crown may have under the FAA, the Ministry may decide to withhold or adjust the amount of any current or future dedicated gas tax funding, or any other funding program, that may be provided to the municipality in an amount equal to such debt or have the amount of such debt deducted from financial assistance payable on any other project(s) of the municipality under any other initiative in which the Ministry is involved (either current or future).

A municipality must inform the Ministry of any contribution received from any source whatsoever towards costs related to the program. Unless the Minister directs otherwise, the amount of such contribution will be deducted from any amount of dedicated gas tax funding the Minister may provide to the municipality.

Any decision made by the Minister regarding funding under the Dedicated Gas Tax Funds for Public Transportation Program is final.

## **9. ACCOUNTABILITY, RECORDS, AUDIT AND REPORTING REQUIREMENTS**

### **9.1 Accountability**

A municipality receiving dedicated gas tax funds must use such funds, and any interest earned on such funds, exclusively towards public transportation service eligible expenditures and in accordance with these guidelines and requirements. The municipality will not be allowed to use dedicated gas tax funds and related interest to offset other municipal expenditures.

### **9.2 Records**

A municipality receiving dedicated gas tax funds must keep and maintain for a period of seven years from the date of the termination of a letter of agreement separate records and documentation related to any dedicated gas tax funds, including invoices and any other financially-related documents relating to the provision or acquisition of public transportation services for which dedicated gas tax funds have been used. The records and documentation must be kept and maintained in accordance with generally accepted accounting principles. Records containing confidential information must be kept in accordance with all applicable legislation.

### **9.3 Audit**

A municipality receiving dedicated gas tax funds may be subject to audit. The Ministry may, at its sole discretion, audit or have audited by any third party, any records and documentation of the municipality related to any public transportation services provided or acquired with dedicated gas tax funds, and such funds. Such audit may require the Ministry, at the municipality's expense (except as provided in the Canadian content policy), to retain external auditors. In addition, the Auditor General may, pursuant to the *Auditor General Act*, R.S.O. 1990, c. A.35, as amended, audit the accounts and records of the municipality relating to any expenditure of dedicated gas tax funds.

In addition to any adjustments the Ministry may make to dedicated gas tax funding under these guidelines and requirements, the Ministry may, upon recommendation in an audit report, adjust future dedicated gas tax fund payments or other payments the province may make to the municipality under any other program.

## **9.4 Reporting**

Accuracy in the calculation and reporting of municipal transit ridership and dedicated gas tax funds is paramount. When calculating ridership municipalities have to use one of the acceptable best practices identified in the 2007 Ontario Ridership Data Collection Review Report published jointly by CUTA and iTrans Consultants retained by CUTA.

A municipality will be accountable to use dedicated gas tax funds towards public transportation expenditures that meet the dedicated gas tax program eligibility requirements. Each municipality will be required to report on how dedicated gas tax funds are spent on an annual basis, including the provision of Canadian content declaration form, in accordance with the Canadian content policy, for any buses funded with gas tax funds.

For the purpose of the above reporting, municipalities will be required to use the reporting forms (attached as Appendix A), which have been developed in consultation with municipal public transportation stakeholders, and submit these reporting forms to the Ministry prior to April 30, 2009.

## **10. COMMUNICATIONS**

A municipality will be required to give a minimum of thirty (30) days written notice to the Ministry regarding any planned local dedicated gas tax funding communication and/or recognition event. The municipality will also be required to provide the Ministry with detailed information regarding such communication and/or event.

The Ministry and a municipality receiving dedicated gas tax funds will, at all times, remain independent of each other and will not represent themselves to be the agent, joint venturer, partner or employee of the other. Neither the municipality nor the Ministry will be allowed to make representations or take actions which could establish or imply any apparent relationship of agency, joint venture, partnership or employment. In addition, neither the municipality or the Ministry will be bound in any manner whatsoever by any agreements, warranties or representations made by any of them to any other person or entity, with respect to any other action of the other.

If the municipality publishes any material of any kind, written or oral, relating to public transportation services provided or acquired with dedicated gas tax funds, the municipality will indicate in the material that the views expressed in the material are the views of the municipality and do not necessarily reflect those of the Ministry.

## **11. CONFLICT OF INTEREST**

A municipality receiving dedicated gas tax funds and its contractors and any of their respective advisors, partners, directors, officers, employees, agents and volunteers must carry out the acquisition of transit buses and use the dedicated gas tax funds without a conflict of interest (actually or potentially in the sole opinion of the Ministry) with the terms and conditions set out

in these guidelines and requirements.

A conflict of interest includes any circumstances where the municipality or its contractors or any of their respective advisors, partners, directors, officers, employees, agents and volunteers has outside commitments, relationships or financial interests that could, or could be seen to, interfere with its/her/his objective, unbiased and impartial judgment relating to the provision or acquisition of public transportation services and the use of dedicated gas tax funds.

A municipality will disclose to the Ministry without delay any situation that a reasonable person would interpret as either an actual, potential or perceived conflict of interest, and comply with any terms and conditions that the Ministry may subsequently impose as a result of the disclosure.

## **12. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT**

All applications submitted to the Ministry are subject to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31, as amended, (the "Act"). The Act provides every person with a right of access to information in the custody or under the control of the Ministry, subject to a limited set of exemptions.

Municipalities are advised that the names of municipalities receiving dedicated gas tax funds, the amount of funds provided, and the purpose for which dedicated gas tax funds are provided is information the Ministry makes available to the public.

## **13. LIABILITIES AND INDEMNITIES**

A municipality receiving dedicated gas tax funds under the program is responsible, in whole and in part, for anything that may arise, directly or indirectly, in relation to the provision or acquisition of public transportation services, including any capital assets, with dedicated gas tax funds. The Ministry's involvement under the program is for the sole purpose of, and is limited to, the provision of dedicated gas tax funds. As such, as a condition of receiving dedicated gas tax funds, a municipality must warrant and agree that under no circumstance will the municipality enter into any contract or commitment in the name or on behalf of the Ministry, and the municipality must acknowledge that it is not, through the program or otherwise, granted any right or authority to assume or create any obligation or responsibility, expressed or implied, in the name or on behalf of the Ministry or to bind the Ministry in any manner whatsoever.

Furthermore, a municipality receiving dedicated gas tax funds must agree to indemnify and hold harmless the indemnified parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, "Claims") by whomever made, sustained, incurred, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, in any way arising out of or in

connection with anything done or omitted to be done by the municipality, its contractors or any other municipality on behalf of which the municipality receives dedicated gas tax funds or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors arising out of or in connection with the provision or acquisition of public transportation services, including capital assets, with dedicated gas tax funds or the letter of agreement. The municipality must further agree to indemnify and hold harmless the indemnified parties for any incidental, indirect, special or consequential damages, or loss of use, revenue or profit by any person, entity or organization, including, without limitation, the Ministry, claimed or resulting from such Claims.

A municipality receiving dedicated gas tax funds must acquire, provide and maintain, at its own expense, and require the same from its contractors and any other municipality on behalf of which it receives dedicated gas tax funds, appropriate insurance in order to protect itself and the Ministry and support the indemnification, as set out above, provided to the Ministry.

#### **14. WHERE TO APPLY AND REQUEST OR PROVIDE INFORMATION**

Any questions regarding the program are to be directed to the Ministry Division Services and Program Management Office either by phone at (416) 585-7129 or facsimile at (416) 585-7152.

All forms, agreements and supporting documentation must be forwarded at the following address:

**Ministry of Transportation  
Division Services and Program Management Office  
27<sup>th</sup> Floor, Suite #2702  
777 Bay Street  
Toronto, ON  
M7A 2J8**

Facsimile: (416) 585-7132

**APPENDIX A**  
**REPORTING FORMS**

## Dedicated Gas Tax Funds for Public Transportation 2008 Reporting Form

The Corporation of the \_\_\_\_\_ of \_\_\_\_\_

### A. Dedicated Gas Tax Funds Available Summary

1. Dedicated gas tax funds reserve account balance carry forward from 2007	\$
2. Dedicated gas tax funds received in calendar year 2008	
3. Interest earned in 2008	
<b>4. Total Dedicated Gas Tax Funds Available</b>	<b>\$</b>

### B. Dedicated Gas Tax Funds Disbursements in 2008

5. Conventional public transportation capital costs	\$
6. Conventional public transportation operating costs	
7. Specialized public transportation capital costs	
8. Specialized public transportation operating costs	
<b>9. Total dedicated gas tax funds disbursed in 2008</b> (If \$0 then forms MT-0-17 + MT-0-18 not required)	<b>\$</b>
<b>10. Remaining amount of dedicated gas tax funds in gas tax funds reserve account (as of Dec. 31, 2008)</b>	<b>\$</b>

### C. Public Transit Expenditures

	Conventional Transit	Specialized Transit	= Total
11. Total operating expenses	\$	\$	\$
12. Total capital expenses	\$	\$	\$
<b>13. Total transit expenditures (11+12)</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

### D. Municipal Contributions (where more than one, provide municipal names and individual amounts)

	\$	\$	\$
14. Operating	\$	\$	\$
15. Capital	\$	\$	\$
16. Capital reserves	\$	\$	\$
17. Fare revenue / donations / other (other includes funding from third parties, advertising, etc.)	\$	\$	\$
<b>18. Total (14+15+16+17)</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
19. Provincial Contributions (other than gas tax funding)	\$	\$	\$
20. Federal Contributions	\$	\$	\$

### Declaration

I/We solemnly declare that the above amounts have been paid out of funds belonging and accruing to the Corporation towards the provision of public transit and that the municipality is in compliance with the Dedicated Gas Tax Funds for Public Transportation Program – 2008/2009 Guidelines and Requirements as

of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Municipal Treasurer





Ontario

Ministry of Transportation

Dedicated Gas Tax Program – Transit 2008  
Conventional Transit Reporting Form

The Corporation of the \_\_\_\_\_ of \_\_\_\_\_

A. System Profile

Description	2008	2007	% Change
Regular scheduled service ridership			
Regular scheduled service ridership/capita (of service area)			
Number of routes			
Regular vehicle kilometres			
Revenue vehicle hours of service (regular schedule)			
Average age of bus fleet			
Spare fleet %			
% Bus fleet accessible			

Municipal official responsible for public transportation

Date (yyyy-mm-dd)

B. Summary of 2008 Dedicated Gas Tax Program Initiatives

Describe all 2008 initiatives supported	Effective Date (yyyy-mm-dd)	Objective / Target	\$ 2008 Capital Gas Tax Funds Only	\$ 2008 Operating Gas Tax Funds Only	Status
1.					
2.					
3.					
4.					
5.					

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Ministry of  
Transportation

### Dedicated Gas Tax Program – Transit 2008 Specialized Transit Reporting Form

The Corporation of the \_\_\_\_\_ of \_\_\_\_\_

#### A. System Profile

Description	2008	2007	% Change		
Total passenger trips					
Total passenger trips/capita (of service area)					
Unaccommodated trip requests					
Total no. show/trips cancelled at door					
Revenue vehicle hours – dedicated service					
Number of registrants				Municipal official responsible for public transportation	Date (yyyy-mm-dd)
Advance booking notice – in days/hours					

#### B. Summary of 2008 Dedicated Gas Tax Program Initiatives

Describe all 2008 initiatives supported	Effective Date (yyyy-mm-dd)	Objective / Target	\$ 2008 Capital Gas Tax Funds Only	\$ 2008 Operating Gas Tax Funds Only	Status
1.					
2.					
3.					
4.					
5.					

Apr 14 2008 10:19am P026/036

**APPENDIX B**  
**CANADIAN CONTENT POLICY**



**MINISTRY OF TRANSPORTATION**

**Canadian Content for Transit Vehicle Procurement  
Policy**

Issued September 2008

## TABLE OF CONTENTS

### **CANADIAN CONTENT FOR TRANSIT VEHICLE PROCUREMENT POLICY**

1. DEFINITIONS	3
2. INTRODUCTION	5
3. CALCULATING CANADIAN CONTENT	5
4. CANADIAN CONTENT DECLARATION & CONSENT FORM	6
5. EXEMPTIONS	7
6. WAIVERS	8
7. PROVINCIAL ENFORCEMENT	8
8. MUNICIPAL ENFORCEMENT	8
9. DISCLOSURE, VERIFICATION AND AUDIT	9
10. WHERE TO REQUEST OR PROVIDE INFORMATION	9

#### **Effective Date**

The Canadian Content for Transit Vehicle Procurement Policy is effective as of September 1, 2008.

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## CANADIAN CONTENT FOR TRANSIT VEHICLE PROCUREMENT POLICY

### 1. DEFINITIONS

When used in this document, the words set out below that import the singular include the plural and vice versa:

"Canadian content policy" means this Canadian Content for Transit Vehicle Procurement Policy", as amended from time to time, issued by the Ministry of Transportation.

"component" means any article, subcomponent, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the transit vehicle.

"dealer" means an agent who distributes transit vehicles on behalf of a manufacturer.

"eligible cost" means the compensation paid by a manufacturer for:

- (a) labour performed in Canada that is directly related to the manufacturing process of transit vehicles;
- (b) work performed in Canada in relation to freight, manuals, special tools, test equipment, or warranties; or
- (c) components, subcomponents and raw materials produced in Canada in respect of transit vehicles or any of the items listed in (b) above.

"engineering" means the application of scientific and technical knowledge to the design, analysis, and/or construction of a subcomponent, component or transit vehicle.

"entity" means a person, firm, corporation, municipality, local board of a municipality, or transit or transportation commission, or authority, acquiring transit vehicles on behalf of a transit operator.

"freight" means the cost for transportation within Canada, and/or paid to a Canadian carrier for a) delivering a subcomponent or component to a manufacturer and b) delivering a transit vehicle to a transit operator or an entity.

"GO Transit" means the Greater Toronto Transit Authority established by the *GO Transit Act, 2001*, S.O. 2001, c.16, Sched. A.

"irreversible manufacturing process" means a manufacturing process which transforms subcomponents into a component which cannot be separated back into the subcomponents without destroying the subcomponents' integrity.

"labour" means the compensation paid for work performed by a manufacturer or, a

manufacturer's supplier of subcomponents and components, that is directly related to the manufacturing process of transit vehicles, including project management and engineering, plus any benefits paid or general administration and similar expenses recognized and allowed by Canadian accounting rules.

"manual" means a handbook or guidebook, specific to a transit vehicle, that a manufacturer may provide to a transit operator, or an entity.

"manufacturer" means the manufacturer of a subcomponent, component or transit vehicle acquired, or that may be acquired, by a transit operator or an entity and, as applicable, includes a dealer for such manufacturer.

"manufacturing process" means the application of processes to alter the form or function of components or subcomponents to create a component or a transit vehicle.

"Metrolinx" means the Greater Toronto Transportation Authority established by the *Greater Toronto Transportation Authority Act, 2006*, S.O. 2006, c.16.

"Ministry" means the Ministry of Transportation.

"project management" means the application of knowledge, skills, tools, and techniques to the manufacturing process, distribution and acquisition of transit vehicles.

"public transportation" means any service for which a fare is charged for transporting the public by transit vehicles operated by or on behalf of a transit operator, or under an agreement between a transit operator and an entity, and includes special transportation facilities for the physically disabled, but does not include transportation by special purpose facilities such as school buses or ambulance.

"special tools" means an engineered tool that a manufacturer may provide to a transit operator or an entity to service a transit vehicle after delivery.

"subcomponent" means a part of a component which cannot be further separated into its constituent parts without destroying its integrity.

"submission" means a response from a manufacturer to a fair, open and transparent procurement process.

"test equipment" means the diagnostic equipment a manufacturer provides to a transit operator or an entity.

"transit operator" means a municipality, GO Transit or Metrolinx.

"transit vehicle" refers to a street car, bus, trolley bus, subway car, light rail car, or passenger locomotive used for public transportation, made up of subcomponents and components, and acquired by a transit operator, or an entity under a contract with a manufacturer and for which

the Province of Ontario may provide, in whole or in part, funding.

“warranty” refers to the promise under a contract between a transit operator, or an entity, and a manufacturer that the material and workmanship of the transit vehicle is defect-free and will perform a specified level of performance over a specified period of time.

## **2. INTRODUCTION**

On March 20, 2008, the Government of Ontario announced that all transit vehicles procured with provincial funding must have at least 25 per cent Canadian content. The Canadian content policy is a mandatory requirement for provincial funding of transit vehicles. The policy is expected to promote job retention and creation, foster economic development, protect skilled manufacturing jobs and continue to promote a fair, open and transparent procurement process that ensures value for taxpayers’ dollars.

The Ministry of Transportation has conducted extensive stakeholder consultations with municipalities, transit industry manufacturers, suppliers, dealers, as well as its own transit agencies. As a result of the stakeholder consultations, the 25% Canadian content policy will include exemptions and waivers as laid out in this document.

The Canadian content policy is effective as of September 1, 2008. Procurements issued publicly, prior to September 1, 2008, to solicit submissions from manufacturers are exempt from complying with the terms and conditions of the Canadian content policy. The Province will be taking the lead on implementing this policy, through its own coordinated procurement in 2009, the Greater Toronto Transportation Authority (“Metrolinx”) Request For Proposals for Urban Transit Buses under the Joint Transit Procurement Initiative.

As outlined above, the Ontario government is committed to a transparent, fair and open process for transit vehicle procurement that ensures value for taxpayers’ dollars. The Canadian content policy will apply to the procurement of transit vehicles acquired with funds received under provincial programs such as the Dedicated Gas Tax Funds for Public Transportation Program (Gas Tax), the Ontario Bus Replacement Program (OBRP), and potentially other programs, as well as separate transit expansion funding commitments.

Although a minimum of 25% must be achieved and attested to in order to receive provincial funding, a municipality may require a higher percentage of Canadian content for its transit vehicle procurements.

## **3. CALCULATING CANADIAN CONTENT**

Under the Canadian content policy, the overall Canadian content of a transit vehicle is calculated as a percentage of the total final costs to the manufacturer, less any applicable taxes.



The Ministry will only consider, as Canadian content, expenditures for eligible costs in respect of transit vehicles for the items listed below and which are directly related to transit vehicles manufacturing process, distribution and acquisition:

- \* labour;
- subcomponents and components;
- project management;
- engineering;
- manuals;
- special tools;
- test equipment;
- freight; and
- warranty.

In addition, the percentage of Canadian content for expenditures (see above list of items for which expenditures may be considered eligible) related to transit vehicles, components or subcomponents will be calculated as follows:

1. 100% Canadian for a component that has undergone an irreversible manufacturing process in Canada.
2. 100% Canadian for a component that contains 60% or more Canadian content through any combination of expenditures that may be considered eligible, as described above, if such expenditures are made in Canada.
3. The exact Canadian percentage for a component that contains between 0% and 59% Canadian content through any combination of expenditures that may be considered eligible, as described above, if such expenditures are made in Canada.
4. Where a component or subcomponent is procured from a Canadian supplier, a minimum Canadian content of 15% will be assumed, without the requirement of certifying the percentage of Canadian content of the component or subcomponent in a manufacturer's declaration of compliance with the Canadian content policy. Simply handling the component or subcomponent is not sufficient to qualify. The Canadian supplier must provide added value through the procuring, manufacturing or after sales support of the component or subcomponent.

#### **4. CANADIAN CONTENT DECLARATION & CONSENT FORM**

Transit operators, and entities, must ensure that each manufacturer demonstrates how it will comply with the Canadian content policy requirements, and obtain a written declaration from the manufacturer:

- certifying the percentage of Canadian content of the transit vehicles described in the manufacturer's submission, calculated in accordance with this policy; and

- providing the manufacturer's consent to the disclosure, verification and audit of the information forming the basis of the declaration, both before the contract award and, for the successful manufacturer, during and after the term of the contract. (See Part 9 below for additional details regarding disclosure, verification and audit.)

In addition, transit operators, and entities, must ensure that manufacturers provide such progress reports, during the term of the contract, as they or the Ministry or the Auditor General, or any of their designates, may require, and written declarations of ongoing compliance with the 25% Canadian content requirement.

Should it appear at any time that a manufacturer might not meet the 25% Canadian content level, a transit operator or entity may require the manufacturer to submit a revised plan indicating how it will achieve compliance.

Transit operators, and entities, must ensure that the successful manufacturer demonstrates, upon final delivery of the transit vehicle(s), how it complied with the Canadian content policy requirement, and obtain a written declaration from the manufacturer, certifying the percentage of Canadian content of the transit vehicles, calculated in accordance with this policy.

## 5. EXEMPTIONS

Through the consultation process, concerns were raised regarding the continued availability of certain types of transit vehicles and the ability to procure transit vehicles in an open and fair and fair procurement process in compliance with the 25% Canadian content requirement.

In consideration of the transit operator's efforts to comply with the *Accessibility for Ontarians with Disabilities Act, 2005*, and to procure specific transit vehicles to meet their individual strategic requirements to improve transit services, the following four vehicle types will be exempted from the 25% Canadian content requirement:

- specialized transit buses;
- conventional transit buses under 40 feet in length;
- double decker buses; and
- passenger locomotives.

Despite the above and to encourage Canadian content for the exempted transit vehicles listed above, transit operators and entities will apply a 5% price preference to the price for the submission with the highest percentage of Canadian content. In practice, this will result in the submission with the highest percentage of Canadian content being evaluated as if the price submitted in the manufacturer's offer were 5% lower than that which was actually submitted. The 5% price preference will be applied for evaluation purposes only, and will not represent an effective reduction in the price submitted by the manufacturer.

## **6. WAIVERS**

In the event that no Canadian content compliant submissions are received as part of a fair, open and transparent procurement process for non-exempted vehicles, a transit operator may formally request a waiver to comply with the Canadian policy from the Ministry by providing:

- a letter from the Chief Administrative Officer or Chief Executive Office to the Deputy Minister of Transportation supporting the request for a waiver;
- a resolution from the transit operator (e.g., municipal Council, GO Transit Board or Metrolinx Board resolution) requesting a waiver; and
- a detailed report outlining the procurement process that was used.

Upon receipt of the waiver request, the Ministry will have the above-noted documents reviewed by a Ministry-appointed fairness monitor to determine whether a fair, open and transparent procurement process was used. If the procurement process was determined to be fair, open and transparent, the Ministry may waive the requirement for compliance with the Canadian content policy for that specific procurement. The Ministry intends to communicate its decision in writing and within 20 business days upon receipt of the fairness monitor's determination on whether it will provide a waiver. If the Ministry decides that the procurement process is not fair, open and transparent, the transit operator will have to decide to either initiate, or have the entity initiate, a new procurement process or proceed without provincial funding.

Where the Ministry issues a waiver, transit operators and entities will apply a 5% price preference to the price for the submission with the highest percentage of Canadian content. In practice, this will result in the submission with the highest percentage of Canadian content being evaluated as if the price submitted in the manufacturer's submission was 5% lower than actually submitted. The 5% price preference will be applied for evaluation purposes only, and will not represent an effective reduction in the price submitted by the manufacturer.

## **7. PROVINCIAL ENFORCEMENT**

If, in the opinion of the Ministry, a transit operator, or an entity, fails either to comply with or to ensure manufacturers' compliance with any of the Canadian content policy requirements, the Ministry may avail itself of any remedies it may have under the terms of the program or arrangement under which the transit vehicle may be funded, or any other remedies it may have at law or in equity.

## **8. MUNICIPAL ENFORCEMENT**

Transit operators, and entities procuring transit vehicles on their behalf, are responsible for ensuring the manufacturers' compliance with the Canadian content policy. As such, transit operators and entities are expected to include, in their contract documents, provisions that set out the manufacturers' obligations to comply with the Canadian content policy and remedies should a selected manufacturer default in meeting these obligations. Such

remedies may include termination for breach of such requirement. In addition, transit operators and entities may require an indemnity from the selected manufacturer for any liability the transit operator and/or entity might incur in the event of such breach. Transit operators and entities should obtain independent legal advice in order to adequately address related issues.

The Province shall not incur any liability whatsoever, expressed or implied, resulting from a transit operator's or entity's implementation of this Canadian content policy.

## **9. DISCLOSURE, VERIFICATION AND AUDIT**

Transit operators and entities are required to ensure manufacturers from whom they acquire transit vehicles are in compliance with this Canadian content policy. Despite the above, and unless provided otherwise under the terms of a program or arrangement under which provincial funds are provided for a transit vehicle, the Province and/or the Auditor General, or any of their designates, may also perform a verification or compliance audit to ensure manufacturers from whom transit operators and entities procure transit vehicles comply with this Canadian content policy, the costs of which the Province will assume.

## **10. WHERE TO REQUEST OR PROVIDE INFORMATION**

Any questions from transit operators regarding the Canadian content policy are to be directed to the Ministry's Transit Policy Branch at telephone (416) 585-7360 or fax (416) 585-7343.

Any questions from manufacturers regarding the Canadian content policy for a specific transit operators' procurement should be directed to the transit operator, or entity, responsible for the procurement.