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## Parish Transportation Fund Act

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R.S. [48:751](#) – [48:762](#)

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### Overview

The following document is a summary of the general principles and guidelines concerning [Louisiana’s Parish Transportation Fund Act \(PTA\)](#). This document is presented in a “frequently asked questions” (FAQ) format. While the FAQ is fairly detailed, remember that every situation is unique and that each situation deserves careful individual review.

To facilitate use of this document, links within the document will direct your attention to text within the document and to external websites. For example, clicking the question number in the index section will link you directly to that question and answer in the text. Within the FAQ, several links will direct you to other textual areas of the FAQ and to relevant external documents. Clicking on the individual question number in the text will return to the index to allow you to select another question to view.

## Index

- 1. How does AG Op. No. 08-0236, which was issued January 22, 2010, affect: (1) the Parish Transportation Fund Act (PTA); and (2) how a parish spends purely local road funds?**
- 2. What is the Louisiana Parish Transportation Fund Act (PTA)?**
- 3. Where is the PTA found?**
- 4. How are monies appropriated to the PTF?**
- 5. How are monies distributed from the Fund?**
- 6. How shall the monies in the fund be used?**
- 7. What are public roads?**
- 8. What are off-system roads?**
- 9. May funds be used to repair, construct, or maintain off-system roads?**
- 10. What is commingling?**
- 11. May funds be used for bonds of the Parish?**
- 12. What procedures must be followed for expenditures from the fund?**
- 13. What are selective maintenance and capital improvement projects?**
- 14. What is a 3 year plan?**
- 15. How often must the three year plan be updated?**
- 16. What is a prioritization schedule?**
- 17. Must roads funded by millages be prioritized?**
- 18. What happens to millage funds if they are commingled with monies from the PTF?**
- 19. What is a “ward system”? A “unit system”? May a ward system be used to prioritize road projects?**

- 20.** Are parish authorities required to spend funds on roads within incorporated municipalities?
- 21.** What safeguards prevent parish governing authorities from misusing the PTF or failing to comply with statutory?
- 22.** What criminal penalties may be imposed for violations of the PTA?
- 23.** What happens if a parish governing authority does not create a prioritization schedule?
- 24.** May a member of the parish's governing authority concurrently serve as the parish's road manager?
- 25.** What happens if a Parish Governing Authority does not all funds transferred to it from the PTF in a fiscal year?
- 26.** Relevant Attorney General Opinions

## Parish Transportation Fund Act

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**Q.1.** How does [AG Op. No. 08-0236](#), which was issued January 22, 2010, affect: (1) the Parish Transportation Fund Act (PTA); and (2) how a parish spends purely local road funds?

**A.1. AG Op. No. 08-0236**

- AG Op. No.08-0236 relates to funds that are purely local tax-generated funds, not Parish Transportation Fund (PTF) legislative appropriations.
- Previously, the AG opined that R.S. [48:753](#) does not limit the expenditure of purely local funds and also opined that R.S. [48:755](#) is general, statewide, substantive law with which parish governing bodies must comply regardless of the source of monies expended. This opinion represents a shift in the AG’s previous longstanding position on this issue.
- The opinion presents an analysis of the relevant PTA statutes and addresses two issues:
  - Is the expenditure of purely local tax funds limited to the uses stipulated in R.S. 48:753? and
  - Are the provisions of R.S. 48:755 general, statewide, substantive law with which the parish must comply regardless of the source of the funds expended?
  - For the purposes of this FAQ, the following points are important:
    - Making expenditures of purely local funds does not require following the prioritization outlined in R.S. 48:755.
    - Unless there is another violation, a parish will not be issued an audit finding if that parish does not put local funds into the System of Administration.
    - The PTA does not apply to purely local road funds and how they are spent, unless the Charter or other mandate so provides. The local funds include funds donated to the parish for road work.
    - The AG states that the parish governing authority must approve all expenditures, including local funds, “as a whole.” (Citing the Local Government Budget Act (LGBA), R.S. [39:1305](#) and R.S. [39:1309](#)).

- The AG also cites R.S. [33:1236\(2\)\(a\)](#) that grants to parish governing authorities the power to repair and make roads, bridges, causeways, dikes, dams, levees and highways. ...to further the best interest of the parish.
- The AG concludes in AG Op. No. 08-0236:
  - “[P]urely local funds are excluded from the requirements of R.S. 48:755, the System of Administration statute, and
  - [P]rioritization of parish road projects applies **only** to PTF monies appropriated by the legislature, and not to purely local funds.
  - As part of the budget process, the governing body must approve all expenditures as a whole, regardless of the source of the funds, to further the best interests of the parish and the parish road system.

**RECOMMENDATION:**

Parish governing authorities should continue to exercise caution when expending public dollars. The parish governing authority should follow the guidance of the PTA for purely legislatively appropriated funds (the PTF monies), and follow the guidelines of the LGBA and R.S. 33:1236(2)(a) when expending local funds, always keeping in mind the best interests of the parish as a whole.

**Q.2. What is the Louisiana Parish Transportation Fund Act (PTA)?**

**A.2.** The PTA is a special fund in the state treasury that was established as of January 1, 1990, to provide funding for the maintenance, construction, and repair of parish roads. Provisions for the Fund can be found in [Article VII, § 27](#) of the Constitution of Louisiana and at R.S. [48:751](#) - 762. Monies in the fund are disbursed to parish authorities according to the distribution formula contained in R.S. [48:756](#). Parish authorities may expend the funds only for the uses legislatively provided in R.S. [48:753](#) and R.S. [48:754](#).

**Q.3. Where is the PTA found?**

**A.3.** The PTA is a set of statutes that can be found at R.S. [48:751](#) - 762 of the Louisiana Revised Statutes and within [Article VII, §27](#) of the Constitution of Louisiana. The Act establishes the Parish Transportation Fund.

**Q.4. How are monies appropriated to the PTF? R.S. [48:752](#)**

**A.4.** Revised Statute [48:752](#) requires the state treasurer to credit to the Parish Transportation Fund the following:

- All monies made available to the parishes for **road purposes** from funds annually appropriated by the legislature in accordance with the provisions of the Transportation Trust Fund as provided in [Article VII, §27](#) of the Constitution of Louisiana.
- Any other funds made available for use for **parish transportation** in accordance with legislative appropriation.

**Q.5. How are monies distributed from the Fund?**

**R.S. [48:756](#)**

**A.5.** Monies from the PTF are disbursed on a per capita basis in population categories (classes), based on the population of a parish as determined by the latest federal decennial census or by the Louisiana State University and Agricultural and Mechanical College Agriculture Center, Department of Agricultural Economics and Agribusiness, under the most recent federal-state cooperative program for local population estimates, whichever is more recent.

The classes are as follows:

Class	Parish Population	Per Capita Distribution
1	1 to 16,000	\$13.32
2	16,001 to 45,000	\$10.82
3	45,001 to 100,000	\$8.32
4	100,001 to 200,000	\$7.32
5	200,001 to 400,000	\$5.57
6	400,001 and over	\$4.65

Except for funds withheld for misuse under R.S. [48:761](#), no parish shall receive an amount of funds for a fiscal year that is less than it received in the Fiscal Year 1972-1973.

The state treasurer distributes funds to the parishes in equal monthly installments, unless the Legislative Audit Advisory Council (LAAC) notifies the state treasurer, by written resolution, to suspend distribution of funds to any parish that the LAAC has found to be in noncompliance with the Parish Transportation Fund Act.

If funds are available and if the legislature appropriates an amount to the Parish Transportation Fund in an amount greater than it appropriated in the 1994-1995 fiscal year, excess funds shall be distributed to the parishes on a per mile basis, with the total number of miles of parish roads determined by the DOTD for the year 1990.

The amount each parish receives will be based in on a ratio of total miles within the parish to total miles of parish roads in the state. (Excess amount appropriated

x Total miles of parish roads in parish ÷ Total miles of parish roads in the state = amount of excess funds distributed to a parish).

Any funds specifically appropriated for transportation purposes other than those provided in R.S. [48:756\(A\)](#), shall be credited to the PTF, only after:

- ❖ Appropriating 2.5% of the amounts allocated to the public transportation section of the Louisiana DOTD for the sole purpose of acquiring capital for transit providers operating under 49 U.S.C. §5310 and §5311, and
- ❖ Providing a base amount of \$75,000 each for mass transit purposes as defined in the Transportation Equity Act for the 21<sup>st</sup> Century (TEA 21), or its successor, as amended, to the parish or municipal governing authorities of Orleans, Jefferson, Kenner, East Baton Rouge, Monroe, Alexandria, Lafayette, Lake Charles, Shreveport, St. Bernard, St. Charles, St. Tammany, and Terrebonne.
  - If the appropriation in a fiscal year for mass transit purposes is at least \$8,000,000 but not more than \$10,000,000, the base amount shall be \$100,000. If the appropriation exceeds \$10,000,000, the base amount shall be \$125,000.

The balance remaining shall be distributed as follows:

- ❖ One dollar per capita for each urbanized area, as determined by the most current federal census for the parishes of Orleans, Jefferson, East Baton Rouge, Ouachita, Rapides, Lafayette, Calcasieu, Caddo, St. Bernard, St. Charles, St. Tammany, and Terrebonne.
- ❖ Plus an amount per passenger determined as follows:

Passengers per year	Amount
0-1,000,000	\$0.50/passenger
1,000,001-1,250,000	\$500,000
1,250,001-5,000,000	\$0.40/passenger
5,000,001-6,666,666	\$2,000,000
6,666,667-10,000,000	\$0.30/passenger
10,000,001-12,000,000	\$3,000,000
12,000,001-25,000,000	\$0.25/passenger
25,000,001-34,722,223	\$6,250,000
over 34,722,223	\$0.10/passenger

- ❖ Multiplied by the ratio of the operating income to the operating expense of the transit system.

- ❖ Amount of remaining balance to be distributed = \$1.00 per capita + amount based on passengers per year x (operating income/ operating expense)

Note:

- ❖ Funds appropriated to the governing authority of Jefferson Parish under the provisions of R.S. [48:756\(B\)](#) shall have 13% distributed to the municipal governing authority of Kenner. R.S. [48:756\(D\)\(1\)](#).
- ❖ All funds appropriated to the governing authority of Lafayette Parish under the provisions of R.S. [48:756\(B\)](#) shall be distributed to the municipal governing authority of the City of Lafayette. R.S. [48:756\(D\)\(2\)](#).
- ❖ All funds appropriated to the governing authority of Calcasieu Parish under the provisions of R.S. [48:756\(B\)](#) shall be distributed to the municipal governing authority of the city of Lake Charles. R.S. [48:756\(D\)\(3\)](#).
- ❖ All funds appropriated to the governing authority of Ouachita Parish under the provisions of R.S. [48:756\(B\)](#) shall be distributed to the municipal governing authority of the city of Monroe. R.S. [48:756\(D\)\(4\)](#).
- ❖ All funds appropriated to the governing authority of Caddo Parish under the provisions of R.S. [48:756\(B\)](#) shall be distributed to the municipal governing authority of the city of Shreveport. R.S. [48:756\(D\)\(5\)](#).
- ❖ All funds appropriated to the governing authority of Rapides Parish under the provisions of R.S. [48:756\(B\)](#) shall be distributed to the municipal governing authority of the city of Alexandria. R.S. [48:756\(D\)\(6\)](#).

Operating expenses, operating revenues, and number of passengers shall be defined as provided in R.S. [48:756\(C\)](#).

Funds allocated for maintenance, repair, and construction of railroad crossings and off-system bridges or funds allocated as a match for federal funds to be used to maintain, repair, and construct railroad crossings and off-system bridges shall be allocated to the Department of Transportation and Development for administration and expenditure based on the number and cost of crossings or bridges in need of construction, repair, or maintenance throughout the state. The funds expended under the provisions of this Subsection shall be used exclusively



in conjunction with federal match dollars and shall be used exclusively for the maintenance, repair, and construction of railroad crossings and off-system bridges. R.S. [48:756\(F\)](#)

R.S. [48:756\(G\)](#) states:

Transit systems with nine or fewer bus waivers shall be exempt from the National Transit Database reporting requirements. These transit systems shall report data on the number of passengers, operating expenses, and operating revenue or income in accordance with the requirements of the current National Transit Database Reporting Manual. The data shall be reported by these transit systems to the Department of Transportation and Development.

**Q.6. How shall monies in the fund be used?**

**R.S. [48:753](#)**

**A.6.** The monies in the PTF shall be used:

- To **regulate the proportion, direction, making, and repairing** of the roads, bridges, causeways, dikes, dams, levees, and highways, **when in the opinion of the parish governing authority**, the work will further the **best interest** of the parish and the parish road system.
  - ❖ “Despite the fact that the public roadway in question is no longer needed for the purposes of school bus transport, it seems **as long as the police jury believes that the maintenance of the road is in the best interests of the parish, nothing prevents them from continuing to maintain it.**” “Although no cases could be found where maintenance of a road has been challenged, it would appear that **actions by police juries with respect to maintaining or abandoning parish roads are discretionary in nature and . . . subject to attack [only if they are] arbitrary or capricious action[s] by the police jury.**” [AG Op. No. 05-0362](#); [AG Op. No.07-0043](#).
- To maintain private driveways in connection with a general road improvement program *within the right of way of a public road or highway owned by the parish* **when such maintenance serves a public purpose.**
  - ❖ The use of public funds, equipment, and/or labor to maintain or improve private streets and lanes (where the benefit inures primarily to the private individuals, and benefit to the public, if any, would only be incidental), would constitute a prohibited donation of public funds under [Article VII, §14](#) of the Constitution of Louisiana. [AG Op. No. 00-149](#); [AG Op. No. 08-0307](#).
- To purchase equipment for road work at the discretion of the parish governing authority:

- ❖ Public Bid Law or State Procurement Code, if applicable, may apply to these purchases.
- To assist in the cost of providing public transit:
  - ❖ Public transit under statute creating Parish Transportation Fund refers to bus, rail, or other conveyance used for public transportation in parish. [AG Op. No. 92-131](#)
  - ❖ Funds cannot be used to purchase buses to transport senior citizens if the buses not made available to transport the public in general. [AG Op. No. 92-200.](#)
  - ❖ While a parish governing authority is not prohibited from contributing public funds or hiring people to aid in the unloading and distribution of food items and other commodities to qualified senior citizens, the **parish governing authority may not use funds from the PTF, nor may it use parish road workers paid from funds from the PTF.** [AG Op. No. 08-0056.](#)
- To repair, maintain, or care for roads, streets, alleys, bridges, culverts, and other drainage facilities, situated within the jurisdiction of an incorporated municipality by the parish governing authority, **upon request of the governing authority of any incorporated municipality.**
  - ❖ Parish governing authority may choose not to spend transportation act funds for roads in incorporated municipalities, but may not do so in an arbitrary and capricious manner.

Wholesale rejection by parish governing authority of spending any PTA funds in all incorporated municipalities without providing any rational basis for the decision is an arbitrary and capricious decision and thus forbidden. *Pasqua v. St. Landry Police Jury*, 651 So.2d 430 (La. App. 3<sup>rd</sup> Cir. 1995).
- **If the project cost does not exceed the contract limit as defined by R.S. [38:2212](#), and the parish governing authority indemnifies the state for any loss or injury arising therefrom**, a parish governing authority may perform maintenance work on state highway right-of-ways as follows:
  - ❖ Install culverts in drainage ditches after acquiring and complying with any permit required by the department.

- ❖ Clean out ditches and work on shoulders of state highways. **The local governing authority shall notify the Department of Transportation and Development (DOTD) not less than five days prior to the commencement of such work.**
- ❖ Patch potholes on aprons connecting parish and state highways. **The local governing authority shall notify the DOTD not less than five days prior to the commencement of such work.**

**Eighty percent (80%) of funds expended on roads and bridges shall be used for maintenance, construction contracts, or maintenance or construction materials.** R.S. [48:753\(B\)](#)

Funds used for transit purposes may be used for transit operating expenses as defined in R.S. [48:756\(C\)](#) or for rolling stock. R.S. [48:753\(C\)](#)

- According to [AG Op. No 92-131](#), rolling stock includes buses, rail cars, or other conveyances.

Purely local funds are excluded from the requirements of R.S. [48:755](#). The parish governing authority must approve all expenditures as a whole regardless of source as part of an overall budget process. AG Op. No. 08-0236, issued 1/22/2010.

R.S. 48:753(G) provides that in addition to the permitted uses of PTF above, the governing authority of Calcasieu parish is authorized to use a portion of its PTF for:

- ❖ Funding or performing landscaping and maintenance improvements along interstate highway right-of-ways in Calcasieu Parish;
- ❖ Funding or constructing capacity improvements to state highways within Calcasieu Parish in accordance with Louisiana Department of Transportation and Development Standards.

Any work done under this authority shall not exceed the contract limit under R.S. 38:2212, which provides for public bidding of public works projects, and Calcasieu Parish's governing authority shall indemnify the State for any loss or injury arising from the work.

**Q.7. What are public roads? R.S. [48:753\(F\)](#)**

**A.7. "Public road"** means any road, or portion thereof:

- dedicated as a public road **and/or** accepted for maintenance by a parish or municipal governing authority; or

- ❖ A tacit dedication of a road as public makes a road public for purpose of determining whether PTF monies may be used to maintain the road. [AG Op. No. 92-343](#).
- constructed or maintained for an uninterrupted period of three years, by a parish or municipal governing authority;

provided the road, or a portion of it, serves a public purpose that is in the best interest of the parish or municipality and its respective road systems.

Subject to the provisions of [Article VII, §14](#) of the Constitution of Louisiana, each parish and municipal governing authority shall determine whether a road, or portion thereof, within its respective road systems, meets the definition of a public road for the purpose of the parish transportation system.

The provisions of R.S. [48:753](#)(F) shall not invalidate any public road that has been **constructed or maintained by a parish or municipal governing authority prior to August 15, 1993**.

**Q.8. What are off-system roads?**

**R.S. [48:757](#)**

**A.8.** Off-system roads are roads that are not in the state highway system, such as parish roads and municipal streets.

Under R.S. [48:757](#), the DOTD is prohibited from performing any construction or maintenance work on the parish road system or any other roads or streets that are not in the state highway system (off-system), , whether the work is done at the expense of the state or the governing authority of the parishes, **except in the following circumstances:**

- ❖ DOTD shall construct, maintain, and improve roads, whether hard surfaced or otherwise, within state parks and state historic sites as defined in R.S. [56:1684](#), and connect such sites with existing highways.
- ❖ DOTD is authorized to perform work on any off-system bridge that is included as a TIMED project within the provisions of R.S. [47:820.2](#)(B)(1)(b).
- ❖ DOTD is authorized to perform work on intersectional improvements on parish roads or municipal streets and to perform work on parish roads or municipal streets for purposes of operational or safety reasons when the parish road or municipal street intersects with a state highway that is programmed for improvement or construction; however, the distance of the off-system work must conform to AASHTO design standards, as adopted pursuant to R.S. [48:35](#).

- ❖ [R.S. 48:757\(A\)\(1\)\(d\)](#) added a provision for roads within wildlife management areas. The department may construct, maintain, and improve roads, whether hard-surfaced or otherwise, within wildlife management areas owned by the Department of Wildlife and Fisheries and proclaimed as a wildlife management area by the governor, refuges, and other lands owned by the Department of Wildlife and Fisheries. The work must be at the direction of, and in cooperation with, the Department of Wildlife and Fisheries or the Wildlife and Fisheries Commission and shall be funded from monies specifically designated for that purpose.

**Q.9. May funds be used to repair, construct, or maintain off-system roads?**

- A.9.** Constitutional [Article VII, §27](#) prohibits the monies in the Transportation Trust Fund from being used for building or maintaining roads or bridges that are not within the state or federal highway system. [AG Op. No. 94-267A](#).

The AG opines in [95-300](#) that Transportation Trust Fund monies can be used to provide the state matching funds and salaries of DOTD employees who administer the Railroad Crossing Program.

A parish governing authority **may use** funds from the Parish Transportation Fund or from other sources to repair, construct, or maintain its parish road system. The substantive provisions of the Parish Transportation Fund Act (i.e. System of Administration) must be followed regarding PTF funds.

**Q.10. What is commingling?**

- A.10.** Commingling, in in context of the Parish Transportation Fund (PTF), involves combining PTF funds with other local funds into a single account (**single physical account without any separate accounting**). The Attorney General has stated that the commingling of local funds with PTF funds subjects the local funds to the provisions of the PTF in order to preserve the accounting of and protect against misuse of PTF funds. Essentially, commingling converts local funds into PTF funds. [AG Op. No. 96-189](#).

**Q.11. May funds be used for bonds of the Parish?**

**R.S. [48:754](#)**

- A.11.** The governing authority of any parish, with the approval of a majority of the electors of the parish voting in an election called for that purpose, and with approval of the State Bond Commission, is authorized to fund into that parish's bonds a portion of its allocation from the PTF that is credited or distributed to it.

The portion that shall be funded into bonds shall not exceed 75% of the amount the parish would receive if only \$24,000,000 was appropriated to the PTF for that year.

The bonds may be issued for any purpose that R.S. [48:753](#) authorizes for use of the fund, may be general or limited obligations of the parish issuing them, and shall run for a period not to exceed ten years from the date of bond issuance.

Said bonds shall be issued pursuant to a resolution adopted by the parish governing authority and shall have such maturities and bear such interest as may be determined and fixed by the parish governing authority. They shall be payable in principal and interest at such place or places and at such time or times as the governing authority prescribes. The bonds shall be callable on such terms and in such manner as the governing authority fixes and shall be issued in the denomination of one thousand dollars or an integral multiple thereof, as determined by the governing authority. They may be registered or payable to bearer, in the discretion of the governing authority.

**The bonds shall be sold to the highest bidder at public sale** after advertisement by the governing authority **one time at least seven days prior to the date fixed for the reception of bids** in a newspaper published in the parish and in a newspaper of general circulation or other periodical containing a section devoted to municipal bond matters published in New Orleans, Chicago, or New York, **reserving to the governing authority the right to reject any and all bids.**  
R.S. [48:754](#)(A).

All bonds issued under authority of this Part shall be signed by the president and by the secretary of the parish governing authority issuing them, one of whose signature may be a facsimile, under the seal of the parish, and any interest coupons attached to said bonds shall be signed by the facsimile signatures of these officers. Any such bonds may be issued and delivered, notwithstanding that one or more of the officers signing such bonds or the officer or officers whose facsimile signature or signatures may be on the coupons shall have ceased to be such officer or officers at the time such bonds shall actually have been delivered.  
R.S. [48:754](#)(B).

The parish governing authority may authorize the issuance of refunding bonds of the parish for the purpose of refunding outstanding bonds issued pursuant to this Part. Such refunding bonds may either be sold and the proceeds applied to or deposited in escrow for the retirement of the outstanding bonds or may be delivered in exchange for the outstanding bonds. The refunding bonds shall be authorized in all respects as original bonds are herein required to be authorized, and the parish governing authority, in authorizing the refunding bonds, shall provide for the security of the bonds, the sources from which the bonds are to be paid, and for the rights of the holders thereof in all respects as herein provided for other bonds issued under authority of this Part. R.S. [48:754](#)(C)

Any resolution authorizing the issuance of bonds under this Part shall be published one time in the official journal of the parish, as required by Subsection A of this Section, with the resultant effect of incontestability as

provided in Paragraph (B) of Section 35 of Article VI of the Constitution of Louisiana ([Article VI, §35](#)). All bonds issued by virtue hereof shall be and are hereby declared to have the qualities of negotiable paper under the laws of the state of Louisiana and shall not be invalid for any irregularity or defect in the proceedings for the issue and sale thereof, and shall be incontestable in the hands of bona fide purchasers or holders thereof. Said bonds and the income thereof shall be exempt from all taxation in the state of Louisiana. No proceedings in respect to the issuance of any such bonds shall be necessary, except such as are contemplated by this Part. R.S. [48:754\(D\)](#).

The provisions of this Section and authority given to governing authorities by this Section shall not apply to the parishes of Calcasieu, Cameron, Jefferson, and Jefferson Davis. R.S. [48:754\(E\)](#).

**Q.12. What procedures must be followed for expenditures from the fund?**

**A.12. Statutory Guidelines:**

**R.S. [48:755](#)**

Unless otherwise provided by law, parishes (including Orleans Parish) shall adopt a system of road administration [that] shall require approval of the governing authority for any expenditures made out of this fund, and **no member of the governing authority shall expend any funds in his [or her] ward or district without the approval of the parish governing authority.** Each parish shall adopt a parish-wide system of administration inclusive of parish roads within municipalities [that] shall include the development of a capital improvement program on a **selective basis**, centralized purchasing of equipment and supplies, centralized accounting, and selective maintenance and construction. All construction shall be based upon engineering plans and inspection.

The parish-wide capital improvement program **shall list all projects to be constructed during the fiscal year.** Each parish shall undertake a continuing study of the needs of the various parish roads for the purpose of bringing existing roads up to current standards or for replacement of existing roads where required and shall keep the information so developed up to date through a continuing annual needs study.

Each parish shall develop a parish-wide program of construction inclusive of parish roads within municipalities to be commenced the ensuing fiscal year which shall be based upon the anticipated revenues to be appropriated by the legislature and listed in a prioritized ranking based on parish-wide needs inclusive of parish roads within municipalities and shall include overlay projects. The program shall also list the projects which may reasonably be anticipated to be constructed in the following two years. **All projects listed for the total three-year program shall be approved by the parish governing authority.** The capital improvement program shall be **adopted by the parish governing authority prior to the beginning of the first year of the three-year plan.** The program shall be adopted



annually regardless of whether the parish governing authority anticipates capital improvements in the first year of the plan. R.S. [48:755](#)(B)(1).

The funds appropriated to each parish shall be used for the **benefit of the parish as a whole and within the priority ranking for the parish**. The most critical needs existing parish-wide according to the priority ranking shall be met first. Funds shall not be expended in the parish until the parish has complied with the provisions of this Part. R.S. [48:755](#)(B)(2).

The parish-wide selective maintenance program inclusive of parish roads within municipalities shall provide for a schedule of the work to be **performed by category, on a weekly basis**. The program shall be prepared and administered by the **parish road manager**. The parish road manager may authorize maintenance work not contained in the weekly schedule upon receipt of constructive notice of a defect in the parish road system and when, in the opinion of the parish road manager, the defect constitutes a hazard to public safety. **The parish road manager shall maintain a record of the work so authorized and shall report the total amount of such expenditures on a monthly basis to the parish governing authority**. R.S. [48:755](#)(C)

**Best Practices Procedures:**

The following best practices guides can be found at the Legislative Auditor's website:

- [Summary of Procedures - Parish](#)
- [Summary of Procedures - Municipality](#)
- [Road Service Complaint Form](#)
- [Work Order Form](#)
- [Work Order Log](#)
- [Weekly Work Schedule](#)
- [Weekly Checklist](#)

**Q.13. What are selective maintenance and capital improvement projects?**

**A.13.** R.S. [48:755](#) requires that parish governing authorities adopt a parish-wide **capital improvement program** that shall include the following:

- ❖ A list of all projects to be constructed during a given fiscal year;
- ❖ A continuing annual study of the needs of various parish roads for the purpose of bringing existing roads up to current standards or for replacement of existing roads where required; and,



- ❖ A prioritized parish-wide program of construction, including parish roads within incorporated municipalities, for ensuing fiscal year and following two years based upon anticipated revenues to be appropriated by the legislature.
  - All projects listed for the total three-year program shall be approved by the parish governing authority. The capital improvement program shall be adopted by the parish governing authority prior to the beginning of the first year of the three-year plan. The program shall be adopted annually regardless of whether the parish governing authority anticipates capital improvements in the first year of the plan.

A parish is also required to adopt a **selective maintenance program** that shall provide for the following:

- ❖ A weekly schedule of the work to be performed by category, on a weekly basis, and
- ❖ Prepared and administered by the parish road manager.
  - The parish road manager may authorize maintenance work not contained in the weekly schedule upon receipt of constructive notice of a defect in the parish road system, i.e. through receipt of a [road service complaint form](#), and when in the opinion of the parish road manager, the defect constitutes a hazard to public safety.
  - The road manager shall maintain a record of the work so authorized and shall report the total amount of such expenditures on a monthly basis to the parish governing authority.
    - See [best practices](#) section for sample forms.

**Q.14. What is a 3 year plan?**

**R.S. 48:755**

**A.14.** A 3 year plan is the required prioritized project list required of all parish governing authorities under an adopted capital improvement program as required under R.S. [48:755](#)(B)(1). The list should include the following:

- ❖ A prioritized parish-wide program of construction, including parish roads within incorporated municipalities, for the ensuing fiscal year based upon anticipated revenues to be appropriated by the legislature.
- ❖ A prioritized list of anticipated construction for the following two fiscal years (two years beyond the ensuing fiscal year).

- This program shall be approved annually by the parish governing authority regardless of lack of any capital improvements for the pending fiscal year and prior to the beginning of the first year of the three-year plan.

*Note: The three-year plan does not include the prioritized list of construction projects for the current fiscal year, which should have been included in the prior year's three-year plan.*

**Q.15. How often must the three year plan be updated?**

**A.15.** The three-year plan should be updated and approved annually by the parish governing authority, extending the plan by an additional year.

**Q.16. What is a prioritization schedule?**

**A.16.** The prioritization schedule is the list of construction projects for the current fiscal year and those projected under the parish's three-year plan. The projects must be prioritized to ensure that critical needs are addressed first. Once the prioritization schedule is determined, the projects must be commenced and funded according to the schedule, with critical needs (highest priority) addressed first.

**Q.17. Must roads funded by millages be prioritized?**

**A.17.** All road construction and maintenance projects using PTA funds must adhere to the system of administration requirements of R.S. [48:755](#). However, purely local funds are excluded from the requirements of R.S. [48:755](#). AG Op. No. 08-0236. Funds acquired from parochial tax revenues that have not been commingled with state PTF monies may be used for any lawful purpose **specified in the tax proposition**; however, if the tax funds are commingled with state PTF monies, the local funds become subject to the same use restrictions applicable to PTF funds. [AG Op. No. 96-189](#).

**Q.18. What happens to millage funds if they are commingled with monies from the PTF?**

**A.18.** If millage funds are commingled with state Parish Transportation Funds (PTF), then all funds, including the millage funds, become subject to the use restrictions of R.S. [48:753](#). AG Op. No. 96-189.

**Q.19. What is a "ward system"? A "unit system"? May a ward system be used to prioritize road projects?**

**A.19.** No definition of the ward system or of the unit system exists in the law. However, the Attorney General described the ward system and the unit system in opinion [No. 05-0396](#). The following section quotes that opinion:

Under the old ward system, wards resembled petty baronages. Individual police jurors had a myopic view, thinking only of their respective districts. Ward Bosses hired, fired, supervised separate ward work crews and determined the projects to be undertaken in their own wards. They budgeted and spent money for their projects and purchased equipment and supplies for use in their ward only, but the systemic framework created a disincentive for them to think beyond their own ward boundaries. Under the ward system, roads may have been built or repaired if neighboring landowners gave economic concessions to the Ward Boss. Road construction or repair may have resulted from other non-economic considerations as well. In any case, regardless of what motivated road construction and repair in the ward system, it proved to be inequitable, inefficient and decentralized.

The PTF ushered in major reform. The statutory provisions of the PTF require the parish road system to be administered efficiently and centrally by a police jury as a whole. This method of administration is commonly referred to as the “unit system.” The unit system recognizes that each police juror represents a certain constituency within his or her voting district. It replaces the ward system under which individual jurors functioned autonomously for the exclusive benefit of his or her own ward. The unit system calls for the implementation of centralized accounting and parish wide capital improvement and selective maintenance programs based upon the prioritization of projects developed by the police jury collectively. Expenditures are made only upon the approval of the Police Jury, and pursuant to a duly adopted budget. A centralized purchasing system must be implemented and work assignments are scheduled and supervised, centrally, by the parish road manager.

A ward system in which individual jurors specify and prioritize road projects based on individual wards (districts) **is not permissible**, as [R.S. 48:755](#) requires parish governing authorities to adhere to the unit system in administering their road programs using PTA funds. However, the AG has determined that purely local funds are excluded from the requirements of La. R.S. 48:755 in AG Op. No. 08-0236; thus, prioritization of parish road projects is a condition for the receipt and use of only Parish Transportation Fund monies appropriated by the legislature and distributed by the state-- not for purely local funds. AG Op. No. 08-0236.

Even though local funds are not subject to [R.S. 48:755](#), the use of a ward system **is still not permitted** for purely local funds. AG Op. No. 08-0236. Parish governing authorities must approve all expenditures as a whole, regardless of the

funding source, as a part of the overall budgetary process. Additionally, in considering proposed expenditures for road projects funded by purely local funds, parish governing authorities are guided by [LA R.S. 33:1236\(2\)\(a\)](#), in which they are granted the power **“to regulate the proportion and direction, the making and repairing of the roads, bridges, causeways, dykes, dams, levees and highways when, in the opinion of the police jury, such work will further the best interests of the parish and the parish road system.”** AG Op. No. 08-0236.

The statutory provisions of the PTA, the LGBA, and [R.S. 33:1236](#) work in concert as part of a public policy to require the parish road system to be **administered efficiently and centrally by a police jury as a whole, whether PTA funds or purely local funds are used.** As explained above, this method of administration is commonly referred to as the “unit system.” The unit system replaces the ward system, under which individual jurors functioned autonomously for the exclusive benefit of his or her own ward.

The unit system, with regard to PTA funds, calls for the implementation of centralized accounting and parish-wide capital improvement and selective maintenance programs based upon the prioritization of projects **developed by the police jury collectively.** Expenditures are made only upon the approval of the Police Jury and pursuant to a duly adopted budget. A centralized purchasing system must be implemented and work assignments are scheduled and supervised, centrally, by the parish road manager.

**Q.20. Are parish authorities required to spend funds on roads within incorporated municipalities?**

**A.20.** No. Parish governing authorities are not required to spend funds on roads within incorporated municipalities. The language of R.S. [48:753](#) is **permissive** -- not mandatory; a parish governing authority **may, therefore,** choose to spend PTF funds to repair, construct, or maintain roads within incorporated municipalities, but are not otherwise obligated to do so. [AG Op. No. 92-72.](#)

While a parish governing authority may choose not to pay PTA funds for roads in incorporated municipalities, it may not do so in an arbitrary and capricious manner.

❖ Wholesale rejection by the parish governing authority from expending any parish transportation act funds in all incorporated municipalities without providing any rational basis for the decision is an arbitrary and capricious decision and thus forbidden. *Pasqua v. St. Landry Police Jury*, 651 So.2d 430 (La. App. 3<sup>rd</sup> Cir. 1995).

**Q.21. What safeguards prevent parish governing authorities from misusing the PTF or failing to comply with statutory provisions?**

**R.S. [48:758](#), [48:759](#), & [48:761](#)**

**A.21.** Misuse of funds or non-compliance with statutory requirements of the PTA can lead to withholding of disbursement of funds, possible forfeiture of withheld funds, and possible criminal prosecution.

Revised Statute [48:758](#)(A) requires the Legislative Auditor at least biennially to audit all monies distributed from the PTF. In lieu of an audit, the Legislative Auditor has discretion to accept an audit prepared by a certified public accountant under the authority and terms set forth in R.S. [24:513](#). The scope of the audit shall include certification of legal compliance with the statutory requirements set forth under the PTA (including R.S. [48:755](#)), and shall document any failures to observe the parish road standards established by the department.

Parish governing authorities are further required to certify annually to the Legislative Auditor (or, where applicable, the certified public accountant), that the funds made available under the PTF have been expended in accordance with the standards established by law. Further, if a parish governing authority does not spend the funds that have been distributed to it from the PTF during a given year, the parish governing authority shall still certify annually to the Legislative Auditor (or, where applicable, the certified public accountant), that it is in compliance with the statutory provisions of the PTA. R.S. [48:758](#)(C)

If an audit cites improper expenditures or non-compliance with the statutory requirements of the PTA, the Legislative Auditor shall promptly report the improper expenditures or noncompliance to the LAAC or its successor. R.S. [48:759](#). The LAAC shall then further investigate the matter as it deems necessary.

If, on the basis of the report by the Legislative Auditor, the LAAC determines that there has been a misuse of PTF funds by a parish governing authority or that the parish governing authority has failed to comply with the statutory provisions of the PTA, the LAAC shall then determine whether wholly or partially withhold the parish's appropriation for any remaining months in the current fiscal year. R.S. [48:761](#)(A). If the LAAC decides to withhold all or part of the parish's appropriation, the LAAC must notify each member of the Legislature who represents any portion of the affected parish.

Unless, within thirty (30) days after the members of the Legislature are notified, the LAAC determines that the misuse of funds or noncompliance with statutory requirements has ceased, the LAAC shall instruct the State Treasurer **to suspend monthly distributions of PTF funds to the parish**. Suspension shall remain in effect until the LAAC verifies, in writing, to the State Treasurer that the offending parish is in compliance with Act No. 336 of 1974 Regular Session, as amended. This verification shall be given when the Legislative Auditor's best knowledge

allows certification to the LAAC that the parish is in compliance with the relevant acts, or in the absence of LLA certification, when the LAAC determines that the parish is in compliance with the acts.

“Upon receipt of the [LAAC’s] written resolution, the State Treasurer shall reinstate the monthly distribution of PTF funds as well as all funds previously withheld to the affected parish governing authority.” R.S. [48:761\(B\)\(3\)](#).

The LAAC shall report any action it has taken with regard to the suspension of funds to the next regular session of the Legislature, **along with any recommendations it may have for forfeiture of suspended funds for those parishes that are still in noncompliance with the acts.** Forfeiture of funds may be authorized only by the Legislature. R.S. [48:761\(B\)\(4\)](#), (5).

Whenever the LAAC has determined that a parish governing authority has misused PTF funds, or that the governing authority is in noncompliance with the statutory provisions of the PTA, the council shall furnish to the District Attorney of the parish where the misuse or noncompliance occurred a copy of the written resolution directing the State Treasurer to withhold funds. R.S. [48:761\(C\)\(1\)](#).

The District Attorney shall, within thirty (30) days, advise the chairman of the LAAC as to action taken or proposed in connection with the misuse of funds or noncompliance with statutory requirements cited in the resolution. If action is proposed by the district attorney, the council shall set a date for receipt of further advice in the matter. If such advice is not forthcoming, or if it is evident that suitable action has not taken place, the LAAC shall report the matter to the Legislature at its next regular session. The Legislature shall take whatever action it deems advisable under the circumstances.

**Q.22. What criminal penalties may be imposed for violations of the PTA?**

R.S. [48:762](#)

- A.22.** Any person who knowingly uses or causes the use of parish transportation funds for purposes not authorized by the Parish Transportation Fund Act shall be subject to prosecution under the provisions of R.S. [14:134](#) – 134.3 (malfeasance in office). In addition to this criminal penalty, **the parish governing authority shall have a right of action against the individual person, who shall be personally liable, to recover in a civil action the amount of the funds that were misused.**

Further, [R.S. 14:134\(C\)\(2\)](#) states:

**In addition to the penalty provided for in Paragraph (1) of this Subsection, a person convicted of the provisions of this Section may be ordered to pay restitution to the state if the state suffered a loss as a result of the offense. Restitution shall include the payment of legal interest at the rate provided in [R.S. 13:4202](#).**

**Q.23. What happens if a parish governing authority does not create a prioritization schedule? R.S. [48:755](#)**

**A.23.** A parish governing authority may not spend any monies allocated from the PTF for the construction or maintenance of parish roadways, without adherence to the requirements of R.S. [48:755](#), under a system of administration. A parish governing authority must create a prioritization schedule as required under R.S. [48:755](#) and spend funds according to the priority schedule. However, purely local funds are excluded from the requirements of La. R.S. 48:755. Parish officials that fail to comply with the requirements of the Parish Transportation Fund Act may be deemed non-compliant and face [suspension of disbursement](#) and possible [forfeiture](#) of PTF funds, [criminal sanctions](#) for malfeasance, and potential [personal liability](#) for civil damages to restore the improperly spend funds.

**Q.24. May a member of the parish’s governing authority concurrently serve as the parish’s road manager? R.S. [42:63\(D\)](#), [42:64\(A\)](#), & [44:66\(D\)](#)**

**A.24.** Generally, R.S. [42:63\(D\)](#) prohibits a parochial employee or officer from holding concurrent full-time appointive office or employment in the same parish. Further, R.S. [42:64\(A\)](#) prohibits a parochial officer or employee from serving concurrently in another appointed or elected position over which they, or the board or commission on which they serve, have general control of, supervision over, appointive power of, or ability to dismiss the secondary appointed or elected position. An exception applies, however, to parish or municipal governments operating under a **legislative or home rule charter**. R.S. [42:66\(D\)](#) provides that if a political subdivision’s legislative or home rule charter allows dual employment/office holding, then the dual office holding/employment is permissible regardless of the provisions in R.S. [42:61](#) – 66.

Note that R.S. [42:65](#) provides civil remedies and penalties for dual office holding.

**Q.25. What happens if a Parish Governing Authority does not spend all funds transferred to it from the PTF in a fiscal year? R.S. [48:758\(C\)](#)**

**A.25.** If a parish governing authority does not spend the funds that have been distributed to it from the PTF during a given year, the parish governing authority shall still certify annually to the Legislative Auditor (or, where applicable, the certified public accountant), that it is in compliance with the statutory provisions of the PTA. R.S. [48:758\(C\)](#)

Even if funds are not spent in the current fiscal year, they may be encumbered for future fiscal year projects as part of the three-year plan established under R.S. [48:755\(B\)](#).



**Q.26** Relevant Attorney General Opinions

**AG Op. No. 12-0128**

Once a Parish maintains a road for more than three years with the knowledge of the private owner, that road is considered a public road and becomes a part of the parish road system. The Parish may not abandon its maintenance of the road, except as provided by law, and after a declaration that the road is no longer needed for public purposes.

**AG Op. No. 08-0236**

Revised Statute 48:755 requires parishes to adopt a “system of administration” that includes a “capital improvement program.” However, purely local funds are excluded from the requirements of R.S. 48:755.

**AG Op. No. 97-267**

Parishes are required to adopt a “system of road administration” for all road projects or risk suspension and/or forfeiture of state funding.