



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 166*

128th General Assembly

(As Reported by H. Transportation & Infrastructure)

Reps. Carney and McGregor, Ujvagi, Murray, Hackett, Slesnick, Domenick, Hagan

BILL SUMMARY

- As a pilot project, authorizes the Director of Transportation to approve the creation of no more than two transportation innovation authorities per district of the Department of Transportation (total maximum number of 24) by specified governmental agencies for the purpose of encouraging the investment of public and private resources in the planning and implementation of innovative transportation projects to enhance the efficiency of the state's transportation system.
- Establishes the powers of a TIA, which include the authority to acquire and dispose of property but not the authority to appropriate property and the authority to issue bonds but not the authority to levy taxes.
- Creates the New Generation Infrastructure Bank Funds within the State Infrastructure Bank, consisting of assistance received by the state as may be provided by law, for the purpose of providing financial assistance to TIAs.
- Permits the Director of Transportation to enter into a contract with a TIA or any corporation organized under the laws of this state to perform certain functions relative to projects the Ohio Department of Transportation (ODOT) administers, and permits the Director to execute a lease or lease-purchase with a TIA of all or part of a transportation facility.
- Permits a TIA to request ODOT to construct and operate a toll project for the TIA.
- Makes an appropriation.

* This analysis was prepared before the report of the House Transportation and Infrastructure Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

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CONTENT AND OPERATION

Transportation innovation authority (TIA)

(R.C. Chapter 5539.)

Overview

As a pilot project, the bill authorizes the Director of Transportation to approve no more than four transportation innovation authorities (TIAs). A TIA may be created by specified governmental agencies for the purpose of encouraging the investment of public and private resources in the planning and implementation of innovative transportation projects to enhance the efficiency of the state's transportation system. A TIA is a body corporate and politic, and the exercise by it of its powers is considered to be an essential governmental function. As described in detail below, the bill establishes the powers of a TIA, including the authority to acquire and dispose of property, the authority to issue bonds, and the authority to develop toll projects under ODOT. TIAs expressly are denied the authority to appropriate property and authority to levy taxes.

TIA pilot project

(R.C. 5539.02)

The bill authorizes the Director of Transportation to establish a TIA pilot project and specifies that the Director may approve not more than two transportation innovation authorities per district of the Department of Transportation, for a maximum total of 24 TIAs.

The bill states that the purpose of a TIA is "to foster and encourage the investment of public and private resources in the planning and implementation of

innovative transportation projects to enhance the efficiency of the state's transportation system, enhance intermodal and multimodal systems to streamline the transportation of goods and persons, and encourage the improvement and development of public transit systems and intercity passenger rail service throughout the state." A TIA must assist governmental agencies in the identification of transportation needs that will foster growth and economic development in the region conducive to the transportation projects and must assist in funding priority projects through cooperative arrangements involving public and private partnerships.

The bill provides that in determining which transportation innovation authorities to approve, the Director must give greater weight and consideration to transportation projects of potential authorities where transportation, water, sewer, and other utility infrastructure already exists, and must adopt rules to reflect these weights and preferences.

Creation and organization

(R.C. 5539.01, 5539.03(A), (B), (C), and (D), 5539.031, 5539.04(A), 5539.06, and 5539.07(B))

Under the bill, any "governmental agency," by resolution, ordinance, or other formal action by the appropriate legislative authority of the governmental agency, as applicable, may enter into an agreement with one or more other governmental agencies proposing to form a TIA. Those governmental agencies that may form a TIA include a county, township, or municipal corporation, and any agency thereof; any other political subdivision; any county transit system, regional transit authority, or regional transit commission; any new community authority; one or more municipal corporations and one or more townships acting pursuant to a cooperative economic development agreement; any joint economic development zone or joint economic development district; any metropolitan planning organization; any port authority; any transportation improvement district; the Ohio Rail Development Commission; or any other public corporation, agency, or commission established pursuant to state law; and any combination of the above.

The agreement is subject to approval by the Director of Transportation but must do all of the following:

- (1) Identify all members of the TIA;
- (2) Designate the geographical area to be included in the jurisdiction of the TIA;
- (3) Identify the transportation needs of the region covered by the TIA and define the transportation projects necessary to meet such needs;

(4) Provide for the planning, construction, operation, and maintenance of transportation projects proposed to be undertaken by the TIA;

(5) Establish the dates for the existence and operation of the TIA, which must include a date of creation, the means for determining when the TIA ceases to exist, how the authority may expand its membership, and how a member may end its membership;

(6) Allow for and establish the terms of funding arrangements for the identified projects through any combination of authorized funding sources;

(7) Subject to the proposed land use plan (see below), require all political subdivisions participating as members of the TIA to agree, in a time and manner specified in the agreement, to adopt zoning and land use policies and laws that are consistent with and that complement the TIA priorities, objectives, and identified projects;

(8) Specify the role and voting rights of the TIA's board of directors from among the governmental agencies that are not counties, townships, or municipal corporations;

(9) Designate how its members are to provide the TIA with any clerical, legal, and other staff assistance necessary to implement the agreement and pay for copying, mailing, and any other such expenses incurred by the TIA in meeting its statutory requirements;

(10) Specify the process by which the boards or legislative authorities of member governmental agencies may ratify a transportation project and its funding as recommended by the TIA. The ratification process may specify the adoption by all governmental agencies, a majority of governmental agencies, the governmental agencies of the most populous jurisdictions participating in the authority, or other acceptable process.

(11) Specify the types of funding mechanisms that the TIA members agree to use for the transportation project and the implementation procedures, including notification, as may be provided in the Revised Code or appropriate local law, for such mechanisms.

In regard to land use policies, the bill requires a TIA, as soon as practicable after approval of an agreement by the Director and before engaging in any transportation project development, to develop a proposed land use plan for the area within the authority. The plan must include recommended changes to current land use and zoning policies and other measures that promote land use consistent with the authority's proposed transportation projects. The proposed land use plan must be

submitted to each member governmental agency and ODOT. Additionally, the plan must include a document that specifically details the changes required of each such governmental agency to that agency's current land use and zoning policies. When a legislative authority of the governmental agency receives the plan, it must, in the time and manner specified in the TIA agreement, express its intent to take action to change its land use policies and regulations.

Under the bill, a "transportation project" of a TIA may include the construction, reconstruction, alteration, repair, improvement, operation, or management of any road, highway, bridge, or other transportation facility (defined by reference to existing law as "all publicly owned modes and means of transporting people and goods, including the physical facilities, garages, district offices, and other related buildings, and including highways, rights-of-way, roads and bridges, parking facilities, aviation facilities, port facilities, rail facilities, public transportation facilities, rest areas, and roadside parks"); any multimodal and intermodal systems; any public transit system; and any freight or intercity passenger rail system. The bill further defines (1) "multimodal and intermodal transportation system" as a system of roads and highways, rail lines, water ports, airports, bicycle paths, pedestrian walkways, or public transit systems, including connections between them, and related facilities, (2) "passenger rail service" as passenger railroad service that connects two or more urbanized areas, and (3) "public transportation" as publicly owned or operated transportation by bus, rail, or other conveyance, which provides to the public transit or paratransit service on a regular and continuing basis within the state, and which may include demand-responsive transportation, subscription bus service, shared-ride taxi service, car pools, van pools, or jitney service. "Public transportation" does not include school bus transportation or charter or sightseeing services.

Upon entering into an agreement, a proposed TIA must provide a copy of the agreement to the Director of Transportation. The Director must approve or disapprove the agreement or suggest modifications to ensure consistency with the general purposes of the law governing TIAs. In addition to approving TIA agreements, the bill authorizes the Director to adopt rules in accordance with the Administrative Procedure Act to assist in the creation and operation of TIAs. The rules must be consistent with the purposes of bill as described above.

Under the bill, a TIA is deemed to be created upon the adoption by each participating governmental agency, acting by resolution, ordinance, or other formal action, as applicable, of an agreement approved by the Director. A TIA is governed by a board of directors. The membership of the board of directors must be established by the governmental agencies comprising the TIA, but there must be an equal number of board members representing each governmental agency comprising the TIA. Each

member of the board serves at the pleasure of the member's appointing authority, and the appointing authority may remove an appointee the appointing authority has appointed at any time and for any reason. Members of the board receive no compensation but may be reimbursed for their necessary and actual expenses incurred in the course of duties as board members. The affirmative vote of a majority of the board is necessary to transact business.

The board and members of a TIA must invite the participation of any new community authority, county transit system, regional transit authority, regional transit commission, joint economic development zone or joint economic development district, transportation improvement district, port authority, or metropolitan planning organization whose jurisdiction is within or substantially within the geographical area as agreed to by the TIA.

The bill provides that a governmental agency that is a member of a TIA may exercise any powers the bill grants to authority members, but no other power is granted to such a governmental agency solely by virtue of its participation as a TIA member. A governmental agency that is a TIA member retains all powers granted to it by law, subject to any limitations imposed on authority members by the bill and by any agreements entered into by the governmental agency pursuant to the bill as a TIA member.

Powers and duties

(R.C. 5539.04(B), 5539.05, and 5539.08)

A TIA must adopt bylaws for the regulation of its affairs and the conduct of its business and must provide for public notice and opportunity for public comment on the identification of transportation projects and plans for funding the construction, operation, and maintenance of such projects. Under the bill, a TIA may do all of the following:

- (1) Sue and be sued in its own name, plead, and be impleaded;
- (2) Purchase, construct, maintain, repair, sell, exchange, secure, operate, or lease a project;
- (3) Make and enter into all contracts and agreements necessary or incidental to the performance of its functions in designing, planning, and implementing a project and the execution of its powers;
- (4) Employ, retain, or contract for the services of local governments, including councils of governments, regional planning commissions, community improvement

corporations, and other forms of cooperative local governments, consultants, engineers, construction and accounting experts, financial advisers, trustees, attorneys, or other employees, independent contractors, or agents as are necessary in its judgment for the exercise of its powers and performance of its duties;

(5) Acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties;

(6) Direct its agents or employees, when properly identified in writing and after reasonable notice, to enter upon lands within its jurisdiction to make surveys and examinations preliminary to the location and construction of projects for the TIA, without liability of the TIA or its agents or employees except for actual damages arising solely out of such entry;

(7) Enter into contracts, agreements, or any other partnerships with private entities, where appropriate, to streamline and enhance the planning and implementation and funding of identified projects;

(8) Do all acts necessary and proper to carry out the powers expressly granted.

The bill specifies that any actions against a TIA must be brought in the court of common pleas in the county in which the TIA is headquartered or in the court of common pleas of the county in which the cause of action arose, and all summonses and notices of any kind must be served on a TIA by leaving a copy of the document at its headquarters.

The bill establishes general requirements for funds of a TIA. A TIA is required to hold and apply such funds as it considers necessary to carry out its powers and duties as conferred by law and as set forth in the governing agreement. A TIA must adopt an operating budget to hire employees, contract for services, and conduct normal business functions. All funding for its operating budget must be paid from contributions from each governmental agency constituting the TIA. The bill specifies that no state funds may be used for a TIA operating budget. Additionally, a TIA must submit an annual audited financial report to the General Assembly and the Director of Transportation setting forth all sources and uses of funds obtained or otherwise generated by the TIA and a detailed breakdown of the different classes of expenditures made by the TIA during each calendar year of operation. The annual report must contain two-year budget projections for the TIA operating expenses and specific transportation project funding.

Acquiring and disposing of property

(R.C. 5539.09(A), (B), (C), and (D) and 5539.10)

The bill authorizes a TIA to acquire public or private property by purchase, lease, lease-purchase, lease with option to purchase, or otherwise, and in such manner and for such consideration as it considers proper, if the property is necessary, convenient, or proper for the construction, maintenance, repair, or operation of a transportation project. Title to real and personal property must be held in the name of the TIA. Except as otherwise agreed to by the owner, full compensation must be paid for public property taken.

The bill allows a governmental agency to exercise the power of eminent domain to acquire property necessary for or in connection with a transportation project but specifies that eminent domain may be used only to the extent such power is granted to the governmental agency individually. Proceedings for appropriation must be in accordance with the general law governing appropriations (R.C. 163.01 to 163.22, not in the bill) or as otherwise provided by law for the governmental agency's exercise of the power of eminent domain. The bill expressly provides that nothing in the governing law may be construed as permitting a TIA to exercise the power of eminent domain as a collective entity to acquire property for a transportation project.

The bill additionally specifies that it does not authorize a TIA to take or disturb property or facilities belonging to any public utility or to a common carrier engaged in interstate commerce or to a cable operator if the property or facilities are required for the proper and convenient operation of the public utility or common carrier or cable operator unless provision is made for the restoration, relocation, replication, or duplication of the property or facilities elsewhere at the sole cost of the TIA.

As a general matter, disposition of real property by a TIA must be by sale, lease-purchase agreement, lease with option to purchase, or otherwise in such manner and for such consideration as the TIA determines if to a governmental agency or to a private entity involved in the transportation project funding, and otherwise in the manner provided for the disposition of property by the Director of Transportation. Disposition of personal property must be in such manner and for such consideration as the TIA determines.

The bill authorizes a TIA board of directors to acquire excess real property in fee simple by any method other than appropriation and hold the property for such period of time as the board determines. All right, title, and interest of the TIA in the property may be sold at public auction or otherwise, as the board considers in the best interests of the TIA; however, the property may not be sold for less than two-thirds of its

appraised value. Sale at public auction may be undertaken only after the board advertises the sale in a newspaper of general circulation in the area of the jurisdiction of the TIA for at least two weeks prior to the date set for the sale.

Project funding

(R.C. 5539.07(A) and (C) and 5539.11(A) and (B))

The bill allows a governmental agency to fund or assist in funding a transportation project using the authority granted to any governmental agency participating as a member of a TIA, but only to the extent such power is granted to the governmental agency individually. Additionally, nothing in the bill is to be construed as permitting or granting authority to a TIA to levy any fee, assessment, payment, or tax as a collective entity.

Projects identified by a TIA may be funded through any combination of revenue generated under the authority granted to the TIA under the bill or under the authority granted to any governmental agency participating as a member of a TIA. TIA funding sources may include special fees and assessments levied by a governmental agency, fair share payments, payments in lieu of property tax on improvements, cash payments by private participants, dedicated portions of local sales tax and local income tax receipts, loans or grants from local, state, or federal sources, implementation of tolling arrangements or other charges as authorized by ODOT authority, or any other revenue raising or tax incentive authority available to a TIA or any governmental agency acting as a member of a TIA. The bill establishes the following conditions for TIA funding sources:

(1) A TIA may participate in the levy of special assessments by a governmental agency to assist in the payment of costs for the construction, reconstruction, alteration, repair, improvement, operation, or management of an identified transportation project if the TIA determines that the project will benefit the geographical area as agreed to by the authority.

(2) When it is determined that a project will benefit both a single political subdivision and the geographical area as agreed to by the TIA, any governmental agency participating as a member of a TIA may exercise its taxing authority on income, sales, or property, or provide for payments in lieu of property tax on improvements, to benefit the geographical area as agreed to by the TIA.

(3) A TIA may obtain loans or grants from local, state, or federal sources. Loans or grants from federal or state sources may be used for funding transportation projects and may not be applied to TIA operating expenses. However, a TIA may use such

loans or grants to pay the expenses it incurs in planning a transportation project even if such planning costs normally are categorized as operating expenses by the TIA.

(4) A TIA may issue bonds to pay for all or part of the cost of an identified project.

(5) When it is determined that a project will benefit both a single political subdivision and the geographical area as agreed to by the TIA, each governmental agency participating as a TIA member may issue bonds for a portion of the cost of any project if the Uniform Bond Law would authorize the issuance of those bonds as if the governmental agency alone were undertaking the project, subject to the same conditions and restrictions.

(6) Any governmental agency participating as a TIA member may appropriate money available to the agency to pay TIA costs incurred in the exercise of its powers and duties.

(7) A TIA may enter into agreements with private entities to assist with the construction, improvement, operation, or management of transportation projects. Such agreements may include fair share payments to be made by the private entities to fund the projects.

(8) A TIA may charge tolls or fees for the use of its transportation projects or facilities pursuant to ODOT's tolling authority, but revenues generally must be utilized to support construction, improvement, repair, maintenance, administration, and operation for transportation projects within the geographical area as agreed to by the TIA. The TIA may retain a portion as its administrative fee, subject to annual review and approval by the Director. All projects for which a toll or fee is proposed to be charged are subject to the review and approval of the Transportation Review Advisory Council.

If a TIA charges tolls or fees for the use of a transportation project or facility, it is required to expend those tolls or fees only on that project or facility and on no other project or facility. If a transportation project or facility is composed of more than one transportation mode and the TIA charges tolls or fees for any of the different transportation modes that comprise the project or facility, the TIA must expend those tolls or fees that are collected for the use of a particular transportation mode only on that project or facility, only on that particular transportation mode of that project or facility, and on no other project or facility.

The bill authorizes the Director of Transportation to provide grants for planning and project development, funding from the State Infrastructure Bank, and support for

the transportation priority projects identified by a TIA. The Director must issue an annual report to the General Assembly summarizing the effectiveness of TIAs in identifying and funding the transportation needs of the state.

Statement of purpose and tax status of a TIA

(R.C. 5539.11(C))

The bill provides that the exercise of the powers granted by the bill is in all respects for the benefit of the people of Ohio, for the improvement of their safety, convenience, and welfare, and for the enhancement of their residential, agricultural, recreational, economic, commercial, and industrial opportunities and is a public purpose. As the operation and maintenance of transportation projects constitute the performance of essential governmental functions, a TIA is not required to pay any taxes or assessments upon any transportation project, any property acquired or used by the TIA under the bill, or upon the income from such a project or property. The transfer to or from the TIA of title or possession of any transportation project, part thereof, or item included or to be included in any such project is not subject to the state sales or use tax, and any bonds and notes, their transfer, and the income from such bonds and notes, including any gain made on their sale, are at all times free from taxation within this state.

45-day notice of use of tax increment financing for a transportation project under a TIA

(R.C. 5539.12)

The bill contains three notice provisions relating to the use of tax increment financing, which is a tax exemption that provides for payments in lieu of property tax, for a transportation project under a TIA. The provisions govern the notice that a township, county, or municipal corporation that will so use tax increment financing (the "acting governmental unit") must give to the political subdivision that will be affected by the tax increment financing (the "affected governmental unit"). If a township will use tax increment financing for a TIA transportation project, its board of township trustees must give notice to the board of county commissioners of the county in which the proposed tax-exempted property is located. If a county will use tax increment financing for a TIA transportation project, its board of county commissioners must give notice to each board of township trustees of each township within that county in which the proposed tax-exempted property is located. If a municipal corporation will use tax increment financing for a TIA transportation project, its legislative authority must give notice to the board of county commissioners of the county in which the proposed tax-exempted property is located and the board of township trustees of any township of

which the municipal corporation is a part in which the proposed tax-exempted property is located.

The bill provides that prior to taking formal action to adopt or enter into any instrument granting the use of tax increment financing on improvements located within the acting governmental unit to fund a transportation project, the acting governmental unit is required to notify the specified affected governmental unit. The notice must include a copy of the instrument or application and be delivered not later than 45 days prior to the day the acting governmental unit takes formal action to adopt or enter into the instrument. If the affected governmental unit comments on the instrument or application to the acting governmental unit not later than 30 days from the date of delivery of the notice, the acting governmental unit is required to consider the comments.

ODOT and TIAs

(R.C. 5501.03(D) and 5501.311(A))

Current law permits the Director of Transportation to enter into contracts with public agencies, including political subdivisions and state agencies, boards, and commissions, to administer the design, qualification of bidders, competitive bid letting, construction inspection, and acceptance of any projects administered by ODOT, so long as such administration is performed in accordance with all applicable state and federal laws and regulations with ODOT oversight. The bill adds to this list of entities TIAs and any corporation organized under the laws of this state.

Current law also permits the Director to lease or lease-purchase all or any part of a transportation facility to or from one or more persons, one or more governmental agencies, a transportation improvement district, or any combination of these entities, and to grant leases, easements, or licenses for lands under ODOT control. The bill adds TIAs to this list of entities.

New Generation Infrastructure Bank Funds of the State Infrastructure Bank

(R.C. 5531.09)

The State Infrastructure Bank consists of the Highway and Transit Infrastructure Bank Fund, the Aviation Infrastructure Bank Fund, the Rail Infrastructure Bank Fund, and the Infrastructure Bank Obligations Fund. These four funds, which are funds of the state treasury, are administered by the Director of Transportation for specific statutory purposes. The Highway and Transit Infrastructure Bank Fund, the Aviation Infrastructure Bank Fund, and the Rail Infrastructure Bank Fund consist of federal grants and awards and other assistance received by the state that are eligible for deposit

into those funds under applicable federal law, payments ODOT receives in connection with providing financial assistance for qualifying projects, and such other amounts as may be provided by law. The Infrastructure Bank Obligations Fund consists of the proceeds of certain bonds as the Director of Transportation determines with the advice of the Director of Budget and Management and such other amounts as may be provided by law.

The Director of Transportation is required to use the State Infrastructure Bank to encourage public and private investment in transportation facilities that contribute to the multi-modal and intermodal transportation capabilities of the state, develop a variety of financing techniques designed to expand the availability of funding resources and to reduce direct state costs, maximize private and local participation in financing projects, and improve the efficiency of the state transportation system by using and developing the particular advantages of each transportation mode to the fullest extent. The Director must use the State Infrastructure Bank to provide financial assistance to public or private entities for qualified projects.

The bill creates the New Generation Infrastructure Bank Funds as a fund within the State Infrastructure Bank, consisting of such other assistance received by the state as may be provided by law. The purpose of the New Generation Infrastructure Bank Funds is limited by the bill: unlike the four existing funds of the State Infrastructure Bank, the New Generation Infrastructure Bank Funds cannot be used for existing purposes. Rather, the bill requires the Director of Transportation to use the New Generation Infrastructure Bank Funds to encourage TIAs to invest in transportation facilities that contribute to the multi-modal and intermodal transportation capabilities of the state, develop a variety of financing techniques designed to expand the availability of funding resources and to reduce direct state costs, maximize TIA participation in financing projects, and improve the efficiency of the state transportation system by using and developing the particular advantages of each transportation mode to the fullest extent. In furtherance of these purposes, the Director is required to use the New Generation Infrastructure Bank Funds to provide financial assistance to TIAs for qualified projects. This assistance must be in the form of loans, loan guarantees, letters of credit, leases, lease-purchase agreements, interest rate subsidies, debt service reserves, and any other forms of assistance as the Director determines to be appropriate. The Director must determine all fees, charges, rates of interest, payment schedules, security for, and other terms and conditions relating to such assistance.

Toll projects and TIAs

(R.C. 5531.18)

Current law requires the Director of Transportation to establish a procedure whereby a political subdivision or other governmental agency or agencies may submit a written application to the Director requesting ODOT to construct and operate a toll project within the boundaries of the subdivision, agency, or agencies making the request. The bill provides that all such written applications for a toll project must be submitted in accordance with the TIA provisions of the bill.

HISTORY

ACTION	DATE
Introduced	04-30-09
Reported, H. Transportation & Infrastructure	---

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