



Ohio Legislative Service Commission

Bill Analysis

Jennifer A. Parker

S.B. 134

130th General Assembly
(As Introduced)

Sens. LaRose and Sawyer, Uecker, Gardner

BILL SUMMARY

- Prohibits another state or a political subdivision or governmental entity of another state from providing financing for certain capital improvement projects in Ohio, through bonded indebtedness or otherwise, unless it first obtains approval of the financing in accordance with the bill.
- Prohibits a governmental agency of this state from utilizing another state or a political subdivision or governmental entity of another state to provide financing for such a capital improvement project, through the issuance of bonded indebtedness or otherwise, unless the financing is approved in accordance with the bill.

CONTENT AND OPERATION

The bill prohibits a foreign entity from directly or indirectly providing financing for an eligible project, through bonded indebtedness or otherwise, unless it first obtains approval of the financing in accordance with the bill.¹ For purposes of the bill, "**foreign entity**" means a state other than Ohio, or a political subdivision or governmental entity created by, or pursuant to the laws of, a state other than Ohio. "**Eligible project**" is defined as any capital improvement project located in Ohio that is designed to enhance, aid, provide, or promote transportation, economic development, housing, health care, recreation, education, government operations, culture, research, or purposes or activities authorized by Article VIII, Section 13 or 16 of the Ohio Constitution.²

¹ R.C. 9.58(B).

² R.C. 9.58(A)(1) and (2).

Additionally, the bill prohibits a governmental agency from directly or indirectly utilizing a foreign entity to provide financing for an eligible project, through the issuance of bonded indebtedness or otherwise, unless such financing of the project is approved in accordance with the bill. Any financing agreement entered into in violation of this prohibition is void.³ The bill defines "**governmental agency**" as a department, division, or other unit of Ohio state government or a municipal corporation, county, township, port authority, transportation improvement district, water or sewer district, solid waste management district, school district or other public school, health district, park district, soil and water conservation district, water conservancy district, regional transit authority, airport authority, or other political subdivision or public corporation, district, agency, authority, or commission created pursuant to Ohio law or pursuant to an interstate compact or agreement authorized under Ohio law.⁴

Application for approval of financing

A foreign entity that intends to provide financing for an eligible project must apply for approval of the proposed financing by submitting an application to one of the following entities, as appropriate:

(1) If the project will be located within the territory of a port authority, the port authority;

(2) If the project will not be located within the territory of a port authority, but will be located within a municipal corporation, the municipal corporation;

(3) If the project will not be located within the territory of a port authority or a municipal corporation, the county within which the project will be located.⁵

The application submitted by a foreign entity must provide the location of the project, a general description of the purpose and use of the project, and the name, address, and contact information of the project owner and the foreign entity. A letter of commitment executed by the foreign entity that describes the proposed financing terms for the project must accompany the application.⁶

³ R.C. 9.585.

⁴ R.C. 9.58(A)(3).

⁵ R.C. 9.581(A).

⁶ R.C. 9.581(B).

Decision on application

Within 45 days after receiving an application, the port authority, municipal corporation, or county must provide notice to the foreign entity of its decision to approve or deny the application. If notice is not provided within that 45-day period, the application is to be considered approved.⁷

The bill mandates that an application be approved if (1) the proposed project is an eligible project *and* (2) the port authority, municipal corporation, or county determines that it cannot or will not provide financing for the project on terms similar to or better than those described in the foreign entity's letter of commitment.⁸ If an application is denied, the foreign entity may submit its application to the Director of Development Services, who may approve the financing notwithstanding a prior denial by the port authority, municipal corporation, or county.⁹

The approval of an application is not to be considered an endorsement of the validity, sufficiency, or legality of the proposed financing. The bill provides that the port authority, municipal corporation, or county that approves an application or, in the case of an approval by the Director, the state, will not incur any liability or continuing obligation for the proposed financing, and the financing will not constitute a general obligation or debt, or a pledge of the general credit, of the port authority, municipal corporation, county, or state.¹⁰

Other public approval requirements

The approval of an application under the bill is in addition to, and a condition of, any other public approval requirement related to the financing of an eligible project, including any approval required for the interest income on obligations to be exempt from federal income tax.¹¹ If an application for the financing of an eligible project has not been approved under the bill, such public approval for tax-exempt financing of the project cannot be given. Any public approval given in violation of this prohibition is void.¹²

⁷ R.C. 9.582(B).

⁸ R.C. 9.582(A).

⁹ R.C. 9.582(C).

¹⁰ R.C. 9.583.

¹¹R.C. 9.97, not in the bill.

¹² R.C. 9.584.



Failure to comply with the bill

If a foreign entity provides financing for an eligible project without applying to the appropriate port authority, municipal corporation, or county for approval as required by the bill, *or* if a foreign entity provides financing for an eligible project despite its application being denied:

--The foreign entity must pay to the port authority, municipal corporation, or county an amount equal to 75% of all fees charged by the foreign entity to provide the financing, as and when those fees accrue, or, if greater in the aggregate, an amount equal to all fees the port authority, municipal corporation, or county would have charged to provide the financing based on a predetermined fee schedule, as and when those fees would become due under that schedule. Any governmental agency or other person benefited by or participating in the financing provided by the foreign entity shall be jointly and severally liable with the foreign entity to the port authority, municipal corporation, or county for the fees.¹³

--The Director of Development Services or the appropriate port authority, municipal corporation, or county may bring an action for injunctive relief pursuant to R.C. Chapter 2727. against the foreign entity. Upon proof by clear and convincing evidence of a violation of the bill, the port authority, municipal corporation, or county is entitled to such injunctive relief. Any injunction so granted shall have statewide effect.¹⁴

HISTORY

ACTION	DATE
Introduced	05-15-13

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¹³ R.C. 9.586.

¹⁴ R.C. 9.587.

