



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 166 of the 128th G.A. **Date:** December 16, 2009

Status: As Reported by House Transportation & Infrastructure **Sponsor:** Reps. Carney and McGregor

Local Impact Statement Procedure Required: No — Permissive

Contents: Authorizes the creation of transportation innovation authorities by specified governmental entities, establishes the powers and duties of such authorities, and makes an appropriation

State Fiscal Highlights

STATE FUND

FY 2010 – FUTURE YEARS

Highway Operating Fund (Fund 7002) – Department of Transportation

Revenues - 0 -

Expenditures Potential increase for planning and development grants and project support;
Potential increase in administrative responsibilities to review and approve TIA agreements

New Generation Infrastructure Bank Funds (New Funds) – Department of Transportation

Revenues Potential gain from capitalization sources, loan repayments, or other TIA revenue sources

Expenditures Potential increase for various forms of financial assistance to TIA projects

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- The Director of Transportation may provide grants for planning and project development as well as other support for projects identified by a transportation innovation authority (TIA). There would also be added administrative responsibilities to review and approve TIA agreements.
- The creation of the New Generation Infrastructure Bank funds would make available additional resources for TIA transportation project funding through various forms of financial assistance. These funds will be capitalized using a variety of sources, such as state motor fuel tax revenues for road and bridge projects and nonmotor fuel revenue sources for rail and public transit projects.

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2010 – FUTURE YEARS

Political Subdivisions

| | |
|--------------|---|
| Revenues | Potential gain or loss in tax revenues, to be used for TIA projects |
| Expenditures | Potential increase to fund share of TIA operations |

Transportation Innovation Authorities (Proposed)

| | |
|--------------|---|
| Revenues | Potential gain from participating government agency operating budget contributions, loans and grants, bond proceeds, New Generation State Infrastructure Bank funds, tolls, and other revenue sources |
| Expenditures | Potential increase for operations and project funding |

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- TIAs are required to assist governmental agencies in the identification of transportation needs and in funding priority transportation projects through cooperative arrangements involving public and private partnerships.
- TIA operations funding is limited to contributions from each government agency making up the authority. However, a TIA may also retain a portion of any tolls or fees charged for the use of a transportation facility for administrative purposes, subject to certain requirements.
- Individual government agencies comprising the TIA must use their own revenue-producing authorities, such as dedicating portions of local sales tax and local income tax receipts, to fund TIA projects, as TIAs are prohibited from levying any fee, assessment, payment, or tax as a collective entity. If tax exemptions are granted as a part of a project's funding mechanism, there may be a short-term loss in revenue to local governments. However, TIAs may receive loans and grants from various sources, issue bonds, and charge tolls in order to provide funding for transportation projects.

Detailed Fiscal Analysis

Overview

The bill establishes a transportation innovation authority (TIA) pilot project to consist of up to two TIAs per district of the Ohio Department of Transportation (DOT) approved by the Director of Transportation, meaning that there could be up to 24 TIAs authorized within DOT's 12 districts. The bill requires the Director, when determining which TIAs to approve, to give greater weight and consideration to transportation projects where transportation, water, sewer, and other utility infrastructure already are in existence.

The purpose of a TIA is to encourage the investment of public and private resources in planning and implementing innovative transportation projects that enhance the state's transportation system and intermodal and multi-modal capabilities, including public transit and intercity passenger rail. TIAs are required to assist governmental agencies in the identification of transportation needs and in funding priority transportation projects through cooperative arrangements involving public and private partnerships.

TIAs would be formed through agreements between two or more "governmental agencies," such as counties, townships, municipalities, other political subdivisions, county transit systems, regional transit authorities, regional transit commissions, joint economic development zones or districts, transportation improvement districts, the Ohio Rail Development Commission, or other public corporations. As noted above, TIAs would be subject to the approval of the Director of Transportation. The LSC bill analysis contains other details concerning these proposed entities.

Fiscal effects

From a fiscal perspective, the bill most notably:

- Sets parameters for TIA budgets and TIA board member compensation;
- Permits TIAs to collect certain sources of revenue, such as tolls, bond proceeds, loans, and grants, but prohibits TIAs from exercising any taxing authority;
- Allows DOT to provide funding and support for TIA projects, including from the proposed creation of the New Generation Infrastructure Bank funds; and
- Enables greater private participation in transportation projects.

These provisions are discussed in greater detail below.

TIA budget and compensation requirements

The bill requires a TIA to adopt an operating budget, the funding for which is limited to contributions from each governmental agency making up the authority. The bill specifically prohibits state funds from being used to fund TIA operations. A TIA

may retain a portion of any tolls or fees charged for the use of a transportation project for administrative purposes, but such fee must be reviewed and approved annually by the Director of Transportation.

Though members of a TIA board of directors cannot receive compensation, they may be reimbursed for the expenses they incur in the course of their duties on the board. TIAs must submit an annual audited financial report to the General Assembly and the Director of Transportation that sets forth all sources and uses of funds and estimates operating expenses and specific transportation project funding for the next two-year period.

TIA revenue collection/project funding capabilities

TIAs are prohibited from levying any fee, assessment, payment, or tax as a collective entity in order to fund transportation projects. Rather, the individual government agencies making up the TIA must use their own revenue-producing authorities to fund those projects. Projects identified by a TIA may be funded by a combination of local revenue sources, such as special fees and assessments levied by a government agency, fair share payments, payments in lieu of property tax on improvements, and dedicated portions of local sales tax and local income tax receipts. This allows political subdivisions to leverage their individual financing authorities for various regional transportation projects.

A TIA can obtain loans or grants from local, state, or federal sources and issue bonds to pay for project expenses, including planning costs. A TIA may also charge tolls or fees for the use of its transportation projects or facilities, though toll or fee-based projects must be reviewed and approved by the Transportation Review Advisory Council (TRAC). All but the portion of toll or fee revenue used for administrative purposes must support construction, improvement, repair, maintenance, administration, and operation costs for transportation projects within the geographical area as agreed to by the TIA, provided that any revenue from tolls or fees charged on a transportation project or facility must be expended only on that project or facility. Similarly, if multiple modes are involved in a project or facility, any revenue from tolls or fees charged on a particular mode must be expended on that particular mode within the project or facility.

The bill requires the agreement forming the TIA to, among other things, specify the types of funding mechanisms that the members of the TIA agree to use for the transportation project and the implementation procedures for those mechanisms. The bill also requires counties, townships, and municipalities to provide 45 days notice to certain political subdivisions before taking formal action to enter into an instrument granting a tax exemption that provides for payments in lieu of property taxes. A township would have to notify the county in which the proposed tax-exempt property is located, a county would have to notify each township, and municipalities would have to notify the appropriate county and township. The parties notified have the

opportunity to comment on the proposed action within 30 days after the notice is delivered.

Department of Transportation support

In addition to the local and project-based sources of revenue noted above, the bill permits the Director of Transportation to provide grants for planning and project development, funding from the State Infrastructure Bank (SIB), and support for the priority transportation projects identified by a TIA.

New Generation Infrastructure Bank funds

To boost the funding available to TIAs through the SIB, the bill creates the New Generation Infrastructure Bank funds as a subset of the state infrastructure bank. Like the existing SIB funds, these funds are to be used to provide financial assistance in the form of loans, loan guarantees, letters of credit, leases, lease-purchase agreements, interest rate subsidies, debt service reserves, and other forms the Director of Transportation determines are appropriate (such as bonds), for qualified road, bridge, transit, and rail projects.

According to DOT, the New Generation Infrastructure Bank funds would be capitalized by state motor fuel tax revenues for road and bridge projects. Public transit and rail projects will be funded through nonmotor fuel revenue sources. The bonding component of the program derives its authority from the authorization provided for the state infrastructure bank in section 5531.10 of the Revised Code. Local funding for the bond program will be derived from the TIAs, based on the type of revenue they generate. Capitalization will likely occur in phases. The New Generation Infrastructure Bank funds will not be leveraged using existing SIB resources in any way, as the new funds will operate separately.

Loans and bonds from the New Generation Infrastructure Bank funds would have similar terms, amounts, and requirements as those from the existing SIB Program, though TIAs would be the entities targeted for the new assistance. As a result, financing terms and conditions will be developed in consideration of a TIA's funding sources and the time required for it to begin generating revenue. The existing SIB Program is available to public entities, such as political subdivisions, regional transit authorities, and metropolitan planning organizations, for projects that may not be considered for traditional grant programs or are not on the State Transportation Improvement Program (STIP). Depending on whether the assistance comes in the form of a loan or a bond, existing SIB assistance can range from \$100,000 to \$20 million with repayment terms of between five and 20 years and financing of up to 100% at low interest rates.

The bill appropriates \$340 million in New Generation Infrastructure Bank funds in FY 2010, with \$100 million being allocated to highway and bridge purposes and \$240 million allocated to multi-modal purposes, such as public transit and rail. If there are unspent funds at the end of FY 2010, a provision in H.B. 2, the transportation budget

act for FY 2010 and FY 2011 and the bill to which the above appropriations would apply, reappropriates any unspent and unencumbered FY 2010 funds for use in FY 2011. The loan and bond components are appropriated in equal amounts because the time it will take to form a TIA and the types of financial assistance best suited to those entities are currently uncertain.

Private participation

The bill gives a TIA the authority to enter into contracts, agreements, or any other partnerships with private entities, where appropriate, to streamline and enhance the planning, implementation, and funding of identified projects. Elsewhere, the bill allows a TIA to enter into agreements with private entities to assist with the construction, improvement, operation, or management of transportation projects. The discussion below provides a general overview of the potential fiscal effects resulting from public-private partnerships.

Potential fiscal effects

Public-private partnerships can take many forms that involve varying degrees of private sector involvement. In general, public-private partnerships exist where private participation exceeds the norm in traditional procurement methods. The benefits of such partnerships will vary from project to project, but, generally, the overall goals include cost savings, accelerated project delivery, and transfer of risk. There are also common costs, trade-offs, and risks to consider, some of which are discussed below.

Cost savings. In terms of project costs, public-private partnerships can provide tools, such as performance-based contracting and fixed price contracts, to public authorities to manage, reduce, or eliminate project costs. In addition, making one entity responsible for multiple phases of a project, such as design, construction, and operation, can result in efficiencies that are not possible with traditional design-bid-build methods.¹ Public-private partnerships also encourage cost and time savings because a private entity may have a financial incentive to complete a project as quickly as possible in order to begin receiving the revenue stream from the project, whether it be availability payments or some other form of compensation. In addition, by relying on private sector sponsorship and investment, rather than financing construction themselves, states can conserve funding from their capital improvement programs for other projects.²

¹ U.S. Department of Transportation, "Report to Congress on Public-Private Partnerships," December 2004, U.S. Department of Transportation web site, June 1, 2009 <<http://www.fhwa.dot.gov/reports/pppdec2004/pppdec2004.pdf>>, 2.

² U.S. Government Accountability Office, "Highway Public-Private Partnerships: More Rigorous Up-front Analysis Could Better Secure Potential Benefits and Protect the Public Interest (GAO-08-44)," February 2008, U.S. Government Accountability Office web site <<http://www.gao.gov/new.items/d0844.pdf>>, 20.

Accelerated project delivery. With stagnant or declining motor fuel tax receipts, public authorities may turn toward private sources of capital to "accelerate the construction of projects that might otherwise be delayed for years or not be built at all."³ In other words, the additional capital that a private partner can bring enables states to build needed transportation projects, but are prevented from doing so due to fiscal constraints. The U.S. Department of Transportation has found that innovative contracting methods can result in as much as a 50% time reduction in project duration when compared to the traditional design-bid-build approach.⁴

Risk diversion. Projects that are traditionally financed and constructed require the public authority to be responsible for all of the risk involved in a project. For instance, risk may appear in the form of project cost overruns due to unforeseen circumstances, such as a delay in the completion schedule due to environmental or geological factors or an escalation in the cost of construction materials. Whenever a toll road is constructed, there is a risk that toll revenues will be less than forecasted, making it difficult for the public authority to adequately maintain and operate the road as well as repay any obligations that were issued to finance the road's construction or improvements. Risk is also assumed in the form of future, excessive maintenance and repair expenses. When private entities bear these risks, taxpayers are spared responsibility when delays increase project costs, toll revenues do not meet estimates, or excessive repairs are needed to maintain a roadway.

Increased quality. As a condition for concessions or other types of public-private partnerships, states have included certain requirements on private entities for the maintenance and safety of the roadway in the lease or agreement. Sometimes, these requirements have required the private operator to keep leased roads in a better condition than the public authority customarily did.⁵

Increased quality not only results from improved maintenance standards on the part of the private operator, but also from the private operator incorporating life-cycle costs and market driven innovation in the design and construction of a facility, which the U.S. DOT notes as often leading to a higher quality transportation project, reducing project costs in the long term.⁶ According to the U.S. GAO, "public-private partnerships

³ U.S. Department of Transportation, "Innovation Wave: An Update on the Burgeoning Private Sector Role in U.S. Highway and Transit Infrastructure," July 18, 2008, U.S. Department of Transportation web site <http://www.fhwa.dot.gov/reports/pppwave/ppp_innovation_wave.pdf>, 9.

⁴ 2004 U.S. Department of Transportation 48-49.

⁵ The Pew Center on the States, "Driven by Dollars: What States Should Know When Considering Public-Private Partnerships to Fund Transportation," March 2009, The Pew Charitable Trusts, May 14, 2009 <http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/State_policy/PA_Turnpike_FINAL_WEB.pdf>, 6.

⁶ 2008 U.S. Department of Transportation 9-10.

have more flexibility to maximize the use of innovative technologies [that] . . . lead to increases in quality and the development of faster and less expensive ways to design and build highway facilities." The private operator is also able to extend innovations, such as electronic tolling and improved maintenance operations, to the efficient management and operation of the highway, which governments may not be able to do because of budget and funding constraints.⁷

Lost tax revenue. In order for concession agreements to occur between a public authority and a private entity, the public authority may have to include certain tax incentives as part of the deal. These incentives often take the form of deducting depreciation on assets that are "effectively owned" by the private operator, the cost for which in foregone revenue can be in the millions of dollars.⁸

Fiscal and administrative costs. Due to the complexity of public-private partnership agreements, states may require the services of financial and legal advisors, costs that may not be incurred under traditional procurement methods. Additionally, public authorities are able to issue tax-exempt debt, lowering public procurement costs. Private developers generally do not have access to this type of financing, leading to higher costs for a privately financed project.⁹

Loss of control. When a public authority cedes the effective control of a highway facility to a private operator, the public authority "may lose some control over its ability to modify existing assets or implement plans to accommodate changes over time." For example, a public-private partnership agreement may impose noncompete provisions that require the public authority to, in some way, compensate the private operator if the public authority constructs a toll-free road within a certain distance of the privately operated road, the effect being diverted traffic from the tolled road and thus, a loss of revenue to the private operator.¹⁰

⁷ U.S. Government Accountability Office 24.

⁸ U.S. Government Accountability Office 35.

⁹ U.S. Government Accountability Office 34-35.

¹⁰ U.S. Government Accountability office 35-36.