

*2008 Innovative Financing Workshop  
for Ohio Transportation  
Impediments to Implementing Innovative Financing in  
Ohio*

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# Constitutional Limitations

- Article VIII, Sections 4 and 6
- Exception – Article VIII, Section 13
- These constitutional provisions limit the manner in which a private enterprise can partner with a public entity on transportation projects.

# General Statutory Limitations

- Prevailing Wage Requirements – R.C. Chapter 4115
- Competitive Bidding Requirements – R.C. Sections 153.12(A), 723.52, 731.14 and 735.05

# Specific Statutory Authority for Transportation Projects

- Transportation Improvements Districts (“TIDs”) – R.C. Chapter 5540
  - Overview
  - Restrictions/Limitations

# Specific Statutory Authority for Transportation Projects

- Tax Increment Financing (“TIF”) – R.C. Chapters 725 and 1728, R.C. Sections 5709.40 through 5709.43, 5709.73 through 5709.75, 5709.77 through 5709.80
  - Overview
  - Restrictions/Limitations
    - School district approval
    - Income tax sharing
    - Prevailing wage/competitive bidding
    - Levy carve-outs/sharing requirements
    - Logistical issues for multi-jurisdictional projects
    - Constitutional limitations for PPP

# Specific Statutory Authority for Transportation Projects

- State Infrastructure Bank (“SIB”) Assistance
  - R.C. Section 5531.09
    - Overview
    - Restrictions/Limitations

# Special Case – PPP Transportation Projects

- Overview
  - At least 20 other states have enacted legislation to allow for PPP transportation projects.
  - Concession agreement for allocation of risks

# Special Case – PPP Transportation Projects

- Overview (continued)
  - Potential structures
    - Perpetual Franchise
    - Build-Operate-Transfer
    - Build-Transfer-Operate
    - Lease-Purchase
    - “Shadow Tolls”
    - Long-Term Lease Model

# Special Case – PPP Transportation Projects

- Restrictions/Limitations
  - Ohio does not currently have any legislation that would specifically allow for the construction, financing and operation of a PPP transportation project.
    - SIB financing?
    - Authority in Ohio to allow for the collection of tolls?
  - Prevailing wage/competitive bidding requirements would likely apply.
  - If proper legislation is passed in Ohio, how would the toll revenue be used?
  - Labor unions opposition.
  - Other policy issues.

# Special Case – PPP Transportation Projects

- Restrictions/Limitations (Continued)
  - Prevailing wage/competitive bidding requirements would likely apply.
  - If proper legislation is passed in Ohio, how would the toll revenue be used?
  - Labor unions opposition.
  - Other policy issues.

# Case Study – The Virginia Public/Private Transportation Act of 1995

- The Virginia Act allows private entities to enter into agreements to construct, improve, maintain and operate certain transportation facilities. Most importantly, the Virginia Act allows for tolls to be imposed to finance the operation of roads.

# Case Study – The Virginia Public/Private Transportation Act of 1995

- Qualified transportation facilities must be one or a combination of the following: roads, bridges, tunnels, overpasses, ferries, airports, mass transit facilities, vehicle parking facilities and port facilities, together with any buildings, structures, parking areas, appurtenances and other property needed to operate the facility.

# Case Study – The Virginia Public/Private Transportation Act of 1995

- Goal of the Virginia Act – to specify a PPP process that is consistent, transparent, stable and that encourages and supports a climate for private sector innovation and investment to address specific transportation needs of Virginia.

# Case Study – The Virginia Public/Private Transportation Act of 1995

- Structure of Deals Made Pursuant to the Virginia Act
  - Proposal submission
  - Six-part review/approval process
  - Comprehensive agreement

# Case Study – The Virginia Public/Private Transportation Act of 1995

- Limitations/Legal Requirements
  - Proposals are subject to the Virginia Freedom of Information Act, and may be subject to disclosure upon a public records request.
  - Procurement requirements
  - Policing powers

# Case Study – The Virginia Public/Private Transportation Act of 1995

- The Virginia Act has been used as a model by several other states in structuring PPP transportation projects. Enabling legislation in Ohio would need to address many of the same issues addressed in the Virginia Act.

# Questions?

- Please do not hesitate to call or email me with any questions that you have.
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