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Fiscal Note & Local Impact Statement

Click here for H.B. 218's Bill Analysis

Version: In House State and Local Government

Primary Sponsor: Rep. Patton

Local Impact Statement Procedure Required: No

Tom Middleton, Senior Budget Analyst

Highlights

- Giving the state and specified political subdivisions the authority to use public-private agreements (PPAs) to construct or operate a public facility could have a variety of fiscal effects. Generally, these contracts can save public entities large, up-front costs in exchange for a longer stream of payments. They can also transfer some project risk to the private entity. Incentive payments for early completion are often part of these PPAs.
- It would take considerable analysis for state agencies and local governments to determine the cost-effectiveness of a given PPA project given the projected lifecycle cost and risks involved.
- Fiscal effects under specific agreements would depend on factors such as (1) the governmental service or product needed, (2) the type of project, (3) the size of the project, (4) the financing structure, and (5) construction, operations, and maintenance terms, when applicable, among other factors.
- The bill exempts facilities involved with a PPA permitted under the bill from the property tax, which could reduce property tax revenue received by local governments, depending on the project terms. Statewide, roughly two-thirds of property tax revenue collected is distributed to school districts and the remaining one-third goes to other units of local government.
- The bill also exempts building and construction materials bought for a PPA facility from the sales and use tax. Sales tax revenue losses would affect both the state treasury and local government funds.

Detailed Analysis

Overview

The bill gives broad authority allowing state agencies and local governments to engage in public-private agreements (PPAs) to finance the planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing, or operation of a facility. This authority is similar to that provided to the Ohio Department of Transportation (ODOT) under current law.

The fiscal effects to the state and political subdivisions will depend on a variety of factors unique to each project. For example, many PPAs are structured so that the public entity is relieved of large, up-front capital costs and risks for managing project construction in exchange for providing the private partner with a stream of payments over a period of time for completing the project. There can also be early completion incentive payments that the public entity agrees to pay. Ultimately, the state and local governments could end up paying significantly more to other entities over the lifespan of a PPA project. It would take considerable analysis for state agencies and local governments to determine the cost-effectiveness of a given PPA project given the projected lifecycle cost and risks involved.

Under the bill, state agencies, state institutions of higher education, counties, townships, municipal corporations, port authorities, libraries, school districts, community schools, STEM schools, and college-preparatory boarding schools, would be permitted to enter into PPAs with private parties. The facility either must be owned by the public body or owned by the private party through a lease agreement under which the facility reverts to the public body upon expiration of the agreement.

Property tax and sales and use tax exemption

The bill has revenue implications for the state and its political subdivisions since it exempts facilities involved with a PPA permitted under the bill from the property tax. Consequently, any PPA entered into under the bill could reduce property tax revenue received by local governments, depending on the project terms. Statewide, roughly two-thirds of property tax revenue collected is distributed to school districts, and the remaining one-third goes to other units of local government. The bill also exempts building and construction materials bought for a P3 facility from the sales and use tax. Sales tax revenue losses would affect both the state treasury and local government funds.

Examples of existing PPAs in Ohio

To provide some context about the potential scope of PPAs and their cost implications, this fiscal note provides some examples of public facilities in Ohio that were completed and operated under PPAs.

ODOT – Portsmouth Bypass road construction and maintenance project

In December 2014, ODOT entered into an agreement with the Portsmouth Gateway Group to design, build, operate, and maintain the Portsmouth Bypass in southern Ohio. The roadway was finished and open to traffic in December 2018. This was not only the largest single construction project that ODOT has been involved with, but also the first highway construction

PPA in ODOT's history. The bypass, named the Southern Ohio Veterans Memorial Highway, is a 16-mile, four-lane highway from U.S. Route 23 north of Lucasville to U.S. Route 52 near Sciotoville. Now that the bypass is open, private entities are in charge of maintaining the roadway while under ODOT oversight until the year 2054.

Altogether, it cost the Portsmouth Gateway Group approximately $557 million to complete this road construction project, including costs for preconstruction activities, design, preliminary engineering, financing, and construction. To pay for these expenses, the Group used a variety of funding sources, including (1) private activity bonds, (2) a Transportation Infrastructure Financing and Innovation Act (TIFIA) loan approved by the federal government, (3) other private investment, and (4) ODOT payments. ODOT's share for the design and construction phase of the project included $110 million paid for up-front costs, as well as around $44 million in milestone payments.

The total cost to the state is expected to be around $1.23 billion for construction and maintenance of the bypass. This number includes the $110 million in up-front costs already incurred by ODOT, as well as $1.12 billion in "availability" and milestone payments to the Group. These subsequent payments cover the cost to complete construction of the road, plus the expenditures needed to service and maintain the bypass for 35 years.

ODOT – road safety services

In FY 2015, a fleet of 24 freeway safety patrol trucks operated by Autobase, Inc. began providing roadside services under the Freeway Safety Patrol (FSP) Program administered by ODOT under a P3 agreement. The goal of the FSP Program is to alleviate congestion and reduce dangers caused by disabled vehicles along busy freeways. The patrol trucks provide stranded motorists around Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo with roadside services such as changing flat tires, jumpstarting dead batteries, replacing broken belts, and replenishing depleted engine fluids. ODOT will pay Autobase at least $3.9 million annually for these roadside assistance services, offered weekdays between 6 a.m. and 7 p.m. Costs can rise above the annual figure if ODOT requests additional FSP services for special purposes or events.

The cost to operate the FSP Program is partially offset by income that ODOT receives from an existing sponsorship agreement with State Farm Insurance that began in FY 2015 and is scheduled to run through FY 2024. That agreement requires State Farm Insurance to make annual payments of $850,000 to ODOT for the sponsorship rights for the FSP Program over the first four years, and $875,000 annually thereafter. In exchange, the trucks operated by Autobase bear the State Farm logo. This sponsorship revenue is deposited into the Highway Operating Fund (Fund 7002).

The Ohio State University – CampusParc parking concession

In 2012, the Ohio State University transferred control of its parking assets to a private entity, CampusParc, for an up-front payment of $483 million. The university used this money to pay for student scholarships, add tenure-track faculty, and support the university's campus-area bus service. In return, CampusParc receives consistent annual payments from parking permit fees, has the ability to increase parking permit fees, and collects citation revenue.

P3 agreements authorized in other states

According to a 2019 report by the National Conference of State Legislatures, 23 states have enabled public-private agreements for transportation projects only, including Ohio, Pennsylvania, and West Virginia. Twelve other states allow public-private agreements for both transportation and additional government sectors, including neighboring Indiana and Kentucky. Michigan allows PPAs, but only for certain nontransportation projects. Eleven states do not have laws allowing PPAs.

Synopsis of Fiscal Effect Changes

The amended substitute bill adjusts the terms of a PPA that has a construction services component, by requiring the contractor to have a contract performance bond in an amount equal to the contract price of the construction services component, rather than in an amount set by the public entity. This has no direct fiscal effect to the state or political subdivisions.

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