

## Public-Private Partnerships In Transportation Projects

If you have questions about anything discussed in this alert, please contact your Vorys economic development incentives attorney or:

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On March 30, 2011, Governor Kasich signed Am. Sub. House Bill 114 (“H.B. 114”), the transportation budget bill. H.B. 114 includes provisions allowing the Ohio Department of Transportation (“ODOT”) to enter into certain public-private partnerships for the development, construction or operation of certain transportation facilities. Those arrangements are discussed in detail below.

### ***Transportation Facilities Defined***

H.B. 114 defines “transportation facilities” to include all publicly-owned modes and means of transporting people and goods, including highways, rights of way, roads and bridges, parking facilities, aviation facilities, port facilities on navigable waters used for commerce, rail facilities, public transportation facilities, rest areas, roadside parks, tunnels, ferries, intermodal facilities and other appurtenances necessary to operate a transportation facility.

### ***Solicited Proposals***

H.B. 114 allows ODOT to enter into public-private partnerships based on solicited and unsolicited proposals received from private entities relating to the development, construction or operation of

transportation facilities. For solicited proposals, ODOT must select a proposal using sealed bidding or a selection based on qualifications, best value, or both. In doing so, ODOT must consider certain factors, including factors related to the transportation facility (e.g., safety improvements, proposed cost, feasibility of facility), factors related to the private entity that would partner with ODOT (e.g., general reputation, qualifications, safety record) and comments received from the public.

### ***Unsolicited Proposals***

Private entities also may submit proposals to ODOT for the development, construction or operation of transportation facilities. Within 90 days after receiving an unsolicited proposal, H.B. 114 requires ODOT to make a preliminary determination concerning the proposal to determine if (1) it addresses the needs identified in an appropriate transportation plan (e.g., safety, reducing congestion, increasing capacity); (2) it is independently originated and developed; (3) it benefits the public; (4) it is prepared without ODOT supervision; and (5) it includes sufficient detail and information for an objective and timely evaluation. If those five factors are met, ODOT must advertise to receive competitive proposals for

the transportation facility. ODOT must then evaluate the unsolicited proposal based on several factors, including the novel aspects of the proposal, the technical merits of the proposal, the qualities of the private entity and how the proposal benefits the public.

### ***Agreements***

Once a proposal is selected, ODOT must enter into an agreement for the transportation facility with the private entity. H.B. 114 includes several specific elements that must be included in the agreement, including the construction and maintenance plan for the facility, whether the private entity will have a property interest in the facility, and whether user fees (i.e., tolls) or other fees will be collected. In addition, H.B. 114 includes several permissive provisions that may be included in the agreement, including financing obligations, maintenance provisions, filing of traffic reports and indemnification provisions. When the agreement terminates, the transportation facility reverts back to ODOT, and must be dedicated for public use.

### ***Financing***

H.B. 114 provides that financing for these projects can be obtained through some combination of State Infrastructure Bank obligations, federal, State and local grants or loans, gifts and private funding.

### ***Tax Exemption***

A transportation facility and any tangible personal property used exclusively with a transportation facility that is owned by ODOT and leased, licensed, financed or otherwise conveyed to an operator, or that is acquired, constructed or otherwise provided by an operator on behalf of ODOT, is exempt from all property taxes and special assessments.

Vorys will closely monitor the implementation of the public-private partnership provisions in H.B. 114 to determine how these important legislative changes might affect your business or your community.

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