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Client Alert: Lake Facilities Authorities Established in House Bill 59

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CLIENT ALERT | 7.2.2013

On June 30, 2013, Governor Kasich signed Am. Sub House Bill 59 (H.B. 59), which is the operating budget bill for state fiscal year 2014. H.B. 59 includes language authorizing the establishment of a "Lake Facilities Authority" to rehabilitate, improve or promote an "impacted watershed." The most significant provisions of the Lake Facilities Authority language contained in H.B. 59 are described in detail below.

Establishment Of A Lake Facilities Authority

A Lake Facilities Authority is established by one or more boards of county commissioners of one or more counties that contain property in an "impacted watershed," which is defined as a watershed that (i) contains a man-made lake of at least one-half square mile that has experienced levels of microcystin toxins in excess of 80 parts-per-billion as measured by the Ohio EPA during the 24-month period preceding the establishment of a Lake Facilities Authority, and (ii) is partially or completely located within a state park that has averaged 400,000 visitors per year for the four years preceding the establishment of the Lake Facilities Authority.

Governance Of A Lake Facilities Authority

A Lake Facilities Authority is a body corporate and politic that is governed by a board of directors. That board consists of the county commissioners of each county with territory located within an "Impacted Lake District," which is defined as the territory of all municipal corporations and townships that have territory within an impacted watershed. In addition, an advisory council is established for the Lake Facilities Authority consisting of one representative from each political subdivision within the Impacted Lake District. The Lake Facilities Authority board is considered a public body, but it may hold closed meetings and protect the confidentiality of certain information under the same circumstances as authorized for a community improvement corporation under Ohio Revised Code Section 1724.11 (e.g., financial and proprietary information submitted by an entity in connection with the relocation, location, expansion,

improvement or preservation of that entity; any other information submitted by an entity in connection with the relocation, location, expansion, improvement or preservation of that entity until the entity commits to the project in writing).

Powers Of A Lake Facilities Authority

The general powers of a Lake Facilities Authority include, but are not limited to, the following:

- Acquire, improve or sell property
- Hire employees and contractors
- Sue and be sued
- Enter into any necessary contracts and agreements
- Accept contributions and apply for grants, loans and other assistance
- Issue general obligation bonds or notes with voter approval
- Issue Lake Facilities Authority revenue bonds

Lake Facilities Authority Revenue Sources

There are two main revenue sources of revenues that a Lake Facilities Authority may raise: (1) property taxes; and (2) lodging taxes.

Property Taxes – The Lake Facilities Authority board may propose the levy of a property tax within the Impacted Lake District, which property tax must be approved by the electors residing within the Impacted Lake District. The tax rate may not exceed one mill (0.10%), and the duration of the tax levy may not exceed five years unless it is levied for debt purposes (see below).

Lodging Taxes – The Lake Facilities Authority board may levy a voter-approved lodging tax in the Impacted Lake District, which tax would apply to all transactions by which lodging in a hotel is furnished to transient guests. The rate of the lodging tax, when combined with the aggregate of all other lodging taxes imposed within the Impacted Lake District, may not exceed an aggregate total of 5%.

Application Of Prevailing Wage and Competitive Bidding Requirements

For construction contracts exceeding \$25,000, the Lake Facilities Authority is required to use a competitive bidding process, but this requirement may be waived in the following circumstances:

- A real and present emergency exists
- A commonly-recognized industry standard or specification does not exist
- The contract is for an energy conservation measure
- Only a single supplier exists
- Only a single bid is received

In addition to the above exceptions, a Lake Facilities Authority may contract for the acquisition or construction of property and for the leasing, subleasing, sale or other disposition of property in a manner determined by the Lake Facilities Authority in its sole discretion without advertising for bids. Finally, the Lake Facilities Authority may choose to subject a construction project to prevailing wage requirements.

Issuance Of Bonds Or Notes

A Lake Facilities Authority that levies a property tax or lodging tax may issue anticipation bonds or notes, with a maximum maturity of 20 years for notes and 40 years for bonds. In addition, a Lake Facilities Authority may issue revenue bonds or notes to be paid out of pledged Lake Facilities Authority revenues. Lake Facilities Authority revenue notes have a maximum maturity of five years, and Lake Facilities Authority bonds have a maximum maturity of 45 years. Lake Facilities Authority revenue notes may be issued to pay the cost of Lake Facilities Authority facilities, which are facilities either owned, leased or financed by a Lake Facilities Authority that that remediate, rehabilitate, enhance, foster, aid, improve, provide, or promote an impacted watershed within the jurisdiction of the Lake Facilities Authority, including, without limitation, research and development efforts related thereto.

The Lake Facilities Authority provisions in H.B. 59 are expected to become effective 90 days after H.B. 59 is signed by Governor Kasich, or approximately September 28, 2013. If you have any questions about the issues discussed in this Client Alert, please contact Scott J. Ziance – (614) 464-8287, sjziance@vorys.com – or Chris L. Connelly – (614) 464-8244, cconnelly@vorys.com.