

ISSUE BRIEF

SENATE POLICY DEVELOPMENT AND RESEARCH OFFICE

PREPARED IN CONJUNCTION WITH THE SENATE REPUBLICAN POLICY COMMITTEE

Funding Transportation Needs

Across the country, transportation funding needs are outpacing revenues. By almost every standard, the demands on our transportation infrastructure are accelerating too fast for states to cover them with traditional funding sources. More people and more freight are traveling more miles in this country than at any time in our nation's history. Clearly, transportation needs are growing, but funds everywhere are tight and governments have less money to invest. Much of the transportation funding problem can be traced to the decline in motor fuel tax values versus inflation. Motor fuel taxes are the primary source of transportation funding for the federal government and a significant revenue source for most states. Gas tax increases are the quickest and simplest method for raising transportation revenues, but they are also politically unpalatable. In the last 15 years, only three states – Missouri, Utah and Wyoming – have raised gas taxes sufficiently to keep pace with inflation. Economists contend that the federal gas tax has lost 30 percent of its purchasing value in the last decade while Pennsylvania has suffered a \$350 million loss in purchasing power during the same period. Therefore, state legislators have been increasingly interested in alternative financing measures such as privatization of transportation infrastructure and tolling of additional highways.

Transportation Funding and Reform Commission

In an attempt to address this issue, on February 28, 2005, Governor Ed Rendell issued an executive order directing that a Transportation Funding and Reform Commission be established to investigate and make recommendations relative to the Commonwealth's transportation needs and funding. The Commission consisted of nine members, five appointed by the Governor and one by the leader of each caucus of the General Assembly, with Transportation Secretary Allen D. Biehler, P.E., serving as chairman. On November 13, 2006, the Commission issued its [final report](#) including recommendations to the Governor and the General Assembly. In its report, the Commission determined that a transit funding crisis has been building in this Commonwealth for the last ten years, resulting in operating shortfalls of at least \$240 million per year and an investment backlog of at least \$210 million per year. Accordingly, the Commission warned that *“Unless a long-term solution is found, transit system users throughout the state will face significant service reductions and fare increases. If these occur, congestion will increase, air quality will suffer, and the condition and performance of the systems will deteriorate.”* Therefore, beyond recommended reforms and efficiencies of mass transit systems, the Commission identified an annual mass transit net funding need of \$760 million to be supplied by state and local governments. *In choosing funding sources for both mass transit and highway and bridge funding, the Commission recommended selection of dependable revenue streams most likely to keep pace with inflation.*

Similarly, the Commission found that *“The state's highway and bridge system is also in critical condition.”* Currently, 5,900 Commonwealth bridges, nearly one in four, are structurally deficient. Pennsylvania's percentage of structurally deficient bridges is more than twice the national average, and more than one third of the 21,000 miles of state-owned secondary roads are rated “poor.” The Commonwealth's state-owned bridges are on average 50 years old; therefore, the longer it takes to find a funding solution, the more costly repairs and replacements will be. Consequently, the Commission called for an annual increased investment of \$1 billion with a heavy focus on *system preservation and targeted capital investments*, rejecting a more aggressive approach that would have repaired and updated crumbling and antiquated infrastructure more quickly at a projected cost of \$1.3 billion annually. This new investment in the state's transportation system will, within five years, eliminate poor ride quality on all highways carrying over 2,000 vehicles a day and on one-half of the highways carrying less traffic, but even with an investment of this extraordinary sum, it will still take 17 years to reduce the percentage of structurally deficient bridges to the level of the national average. Although this level of funding will support less than ideal progress towards the adequate maintenance of the Commonwealth's highways and bridges, it would still require the General Assembly to provide an additional \$900 million annually devoted solely for this purpose.

In addition, the Commission recommended a \$65 million annual increase for the repair and maintenance of county and municipally-owned highways and bridges.

Parenthetically, Pennsylvania has 54 bridges with a design similar to the one that collapsed in early August 2007 in Minnesota, with 17 of the 54 having been declared structurally deficient, although an expedited inspection of these bridges did not find any that had deteriorated as badly as the Minnesota bridge. However, as previously mentioned, the Commonwealth has about 6,000 structurally deficient bridges requiring restrictions on weight or speed because of some deteriorated elements. Pennsylvania highways have been rated among the worst in the nation for years by trucking industry publications; and a survey by the policy firm, the Reason Foundation, ranks the Commonwealth 49th in the percentage of bridges that need to be repaired or replaced and 49th in the percentage of rural roads narrower than the national standard of 12 feet.

The Legislative Response

With respect to highway and bridge funding, in particular, the Commission recommended raising the Oil Company Franchise Tax and pursuing public-private partnerships such as leasing the Pennsylvania Turnpike and tolling additional interstate highways. In response, Governor Rendell advocated raising the Oil Franchise Tax and selling or leasing the Pennsylvania Turnpike to a private company, proposals which met with less than lukewarm acceptance by the General Assembly. Finally, after months of negotiation between the Governor's office and the four caucuses of the legislature, the General Assembly enacted [Act 44](#) (House Bill 1590 - Markosek) to provide additional funding for mass transportation and repair of the Commonwealth's roads and bridges.

Act 44 requires the Pennsylvania Turnpike Commission to enter into a 50 year lease with PennDOT for the leasing of Interstate 80, which would be subsequently converted to a toll road. Under the terms of the agreement, the Commission is required to make payments to PennDOT of \$750 million during the 2007-08 fiscal year (\$300 million for mass transit and \$450 million for road and bridge repairs) gradually escalating to total payments of \$900 million in the 2009-10 fiscal year (\$400 million for mass transit and \$500 million for road and bridge repairs). In each fiscal year thereafter, payments would increase by 2.5 percent in each of the three categories (total required Commission payments, the mass transit funding allocation, and the allocation for road and bridge funding).

The Act permits the Commission to raise additional revenue necessary to make the required annual payments to PennDOT. First, the Commission is authorized to issue additional monetized bonds of approximately \$5.8 billion to be pledged against toll revenues. Further, the Commission is authorized to issue \$5 billion in special revenue bonds to be pledged against specified revenue in the Motor License Fund, but to be paid by the Commission from tolls collected. (Excluding an estimated \$1.1 billion in capital improvements necessary to convert Interstate 80 to a toll road, this would net approximately \$9.7 billion for the Commonwealth's transportation needs.) The Commission would raise revenues sufficient to repay the cost of these bonds through increased turnpike tolls (a 25 percent increase in 2009 with an annual three percent increase thereafter) and additional tolls to be collected along Interstate 80.

Highway and Bridge Repairs Annually, \$30 million of highway and bridge repair funds would be earmarked for municipalities, with an additional \$5 million for county bridges. Overall, it is estimated that the Commonwealth will save \$116 million annually on costs related to repairing and maintaining Interstate 80, with that amount to become available for the repair and maintenance of other bridges and roadways.

Public Transportation Act 44 provided a continuing source of additional revenue for mass transit operations, commencing with \$300 million during the 2007-08 fiscal year. The money will be distributed to transit agencies based on performance statistics in order to ensure an equitable distribution. The measure includes a hold harmless provision at 2007-08 year levels and contains a 50 percent annual growth cap to ensure that no agency's budget grows too rapidly. For operating funds, a 15 percent local match is required (or a five percent increase of each system's prior year local match until it reaches the 15 percent threshold), which is just slightly over the 2007-08 average. Allegheny County was permitted to levy two additional taxes to meet its transit deficit: a liquor-by-the-

drink tax of up to 10 percent [recently reduced by the county from ten percent to seven percent] and a \$2 per day excise tax on vehicle rentals.

Funding for transit agencies encompasses not only the new infusion of cash from the Pennsylvania Turnpike Commission (\$300 million), but also revenue from the Lottery Fund (\$80 million), the Public Transportation Assistance Fund (\$180 million) and a permanently dedicated revenue neutral portion (4.4 percent) of the sales tax (\$393 million) for total revenues of \$953 million during the 2007-08 fiscal year. All of these monies will be deposited into a newly created consolidated fund to be known as the "Public Transportation Trust Fund." Finally, Act 44 requires transit agencies that receive greater than \$5 million in state funding to conduct an evaluation of private investment opportunities and to report their findings to the chairs of the House and Senate transportation committees.

Tolling of Interstate 80 Significant provisions of the Act relating to the tolling of Interstate 80 included: authorizing the Commission to erect up to 10 toll barriers along the 313 mile interstate; prohibiting the Commission from establishing service plazas along Interstate 80, thereby protecting local businesses; requiring the Commission and PennDOT to conduct traffic counts on the roadways associated with Interstate 80 in order to determine diversion from the interstate; requiring the Commission to provide quarterly updates on the conversion process to legislative transportation committee chairs; and requiring the General Assembly to approve any extension of the lease of Interstate 80 beyond its current 50 years."

Post Budget Maneuvering

Act 44 was a lynchpin in the comprehensive budget agreement that resolved a protracted stalemate between the Governor's office and the four legislative caucuses over the state budget for the 2007-2008 fiscal year. However, in the months following passage of the budget package, including Act 44, the compromise began to unravel as grassroots rebellion percolated across northern Pennsylvania. Senators John Eichelberger and Mary Jo White pledged to support legislation repealing Act 44. Because Interstate 80 was built with federal dollars, tolling the highway is subject to federal approval; Congressmen Phil English and John Peterson launched a campaign to prevent tolling. Republican United States Senator Kay Bailey Hutchison of Texas introduced federal legislation that would prohibit any further tolling of interstate highways.

The Pennsylvania Turnpike Commission maintained that fares from Interstate 80 tolls would be devoted to construction, repair, and maintenance of the highway itself and then strictly to help fund bridge and road repair in the region along the interstate. Tolls would not be siphoned off Interstate 80 to pay for mass transit programs in more heavily populated areas of the state, with the Commission having inserted language implementing this policy in its proposed lease with PennDOT. The Commission asserted that transit funding would come from bonds issued by the Commission to be paid from tolls on existing roadways, but critics argued that tolls from the turnpike should be strictly utilized to maintain the aging thoroughfare rather than to pay for other transportation needs. Still others believed that Act 44 offered too little in that it did not provide for a single mile of *new* highway construction.

Defenders of Act 44 contended money for bridge and highway repair as well as for mass transit must come from somewhere and criticized opponents of the Act for failure to develop an alternate funding plan. They believed that Act 44 is an equitable and fair plan and tolling Interstate 80 is politically more palatable than raising the state gasoline tax by 12 to 16 cents per gallon to garner additional equivalent revenues. Governor Rendell stated that he would help kill the plan to put tolls on Interstate 80 as soon as someone delivers a plan to produce an equal amount of money to fund both mass transit and bridge and highway repairs. Meanwhile, the Rendell administration planned for its own substitute if for some reason the Interstate 80 toll idea was blocked – the Governor solicited submission of qualifications by October 1, 2007, of any firm interested in bidding to take over the Pennsylvania Turnpike and reportedly 34 companies submitted letters of interest to PennDOT. In the interim, PennDOT and the Turnpike Commission proceeded quickly to implement the provisions of Act 44, including signing the required lease between the two agencies and petitioning the federal government for permission to convert Interstate 80 to a toll highway.

2008

More than a year has passed since the enactment of Act 44, and the Commonwealth's highways and bridges continue to deteriorate. However, Act 44 has provided a brief period of respite in meeting transportation infrastructure funding needs. PennDOT and the Turnpike Commission entered into a lease as mandated by the Act, and the Commission has issued bonds to supplement its cash reserves. From those two sources, all required payments to PennDOT have been met on a timely basis. Effective January 4, 2009, the Commission increased turnpike tolls by 25 percent, with plans for an additional three percent increase annually. It is expected that the 25 percent toll hike, which will go into effect a year earlier than anticipated before the enactment of Act 44, will add approximately \$119.2 million in annual gross toll revenues.

Interstate 80 Tolling Prohibited

A foundational premise of Act 44 was that the Turnpike Commission would recoup sufficient funds to meet its obligations to PennDOT and retire all bonds necessary to make those payments through increased tolls and the tolling of Interstate 80. While planned toll increases are on schedule, the Federal Highway Administration (FHWA) dealt the Commonwealth's infrastructure funding plan a major blow by twice rejecting Pennsylvania's request to toll Interstate 80. Pennsylvania submitted its most recent request to toll the Interstate on July 22, 2008, but the FHWA rejected the plan on September 11, 2008, declaring that federal law permits three national pilot plans for tolling currently free interstate highways but it does not permit the revenue to be used for other highways. It is believed by some that the state is waiting until early 2009 to resubmit its application to toll Interstate 80, hopeful that a newly inaugurated president with a newly formed cabinet including a new Secretary of Transportation might interpret the law differently. The Turnpike Commission is obligated to an initial three year commitment irrespective of whether Interstate 80 is tolled, but after that timeframe the Commission's required payments to PennDOT are halved to \$450 million (\$250 million for mass transit and \$200 million for highways and bridges), with highway and bridge repair funding taking a disproportionate hit in funding in the event Interstate 80 is not converted to a tolled highway. Thus, Act 44's intended funding scheme remains in limbo, leaving a \$450 million spending gap and raising the possibility that hundreds of road, bridge and transit projects will need to be postponed or cancelled unless further legislative action is taken.

Lease of the Turnpike

In May, Governor Rendell announced that a group led by Citigroup and Spanish toll road operator Abertis Infraestructuras SA won the right to lease the Pennsylvania Turnpike for 75 years with a bid of approximately \$12.8 billion. The governor, a long-time advocate of leasing the turnpike as a means of funding mass transit and bridge and road repairs, touted the lease as an alternative to Act 44. Rendell claimed that the lease would give the state 13 percent more funding than Act 44 while costing Pennsylvanians 30 percent less because it would not include tolling Interstate 80. The other final bidder was a group led by Goldman Sachs Group and Australian toll road operator Transurban Group, which bid \$12.1 billion. A study previously completed by Morgan Stanley had estimated that such a lease agreement could bring between \$12 billion and \$18 billion dollars to Pennsylvania but market conditions and the requirement that tolls are not permitted to rise more than three percent annually kept bids at the low end. Although Abertis and Citigroup extended its bid twice beyond the June 20, 2008 deadline, it was announced on October 1, 2008, that the group had withdrawn its offer due to a lack of legislative interest. Approval by the General Assembly would have been necessary to consummate the deal. It is possible that Governor Rendell might try to revive the concept of leasing the turnpike in 2009.

Use of Public Private Partnerships

A public-private partnership (PPP or P3) usually involves a government agency contracting with a private company to renovate, construct, operate, maintain, and/or manage a facility or system. While the public sector usually retains ownership in the facility or system, the private party is given additional decision rights in determining how the project or task will be completed. Regardless of the specific functions involved, these types of partnership arrangements are intended to provide greater flexibility to achieve the stated objectives. Between the extremes of public and private provision of roads are partnerships between government and private firms for

building transportation projects. The partners often form a new entity – either a special-purpose government agency or a private, non-profit corporation – to finance and oversee the project. Another nontraditional arrangement is that of a government contracting with a private firm to operate and maintain a roadway that the government has built.

In this regard, new partnerships have begun to be formed where public owners have transferred to the private sector responsibility for activities for which the public owner has traditionally been responsible. Privatization of road development and management programs is not a new phenomenon as many of the early roads, bridges and tunnels were developed as private toll-ways. Over time, however, private involvement in highway infrastructure investment and operation declined as the states and the federal government increased their involvement. By the mid-19th century, private sector involvement was almost at an end. However, in the decades following World War II, the transition to modern public-private partnerships escalated in countries throughout the world as there was a recognition that the public sector could not afford on its own to adequately support the needs for highway-related infrastructure. In the United States, this is a more recent occurrence, but similar financial constraints are now causing many government entities to look at the utilization of public-private partnerships.

State budgets, faced with the increasing financial demands of other programs, are limited in their ability to provide the needed transportation funding. As a result, with the need for efficient surface transportation systems continuing to grow, states are being forced to look for viable funding alternatives, including private sector transportation partnerships. According to the U.S. Department of Transportation, 25 states have statutory authority to enter into highway or transit P3's. The extent and type of legislation enacted varies widely from state to state based on the types and amounts of projects that are authorized and in the breadth of the authorization delegated by the legislature to state or local transportation agencies.

Gasoline Tax Increase

In perhaps the most precarious economic environment since the Great Depression, Governor Rendell suggested raising the Commonwealth's state gasoline tax, currently 31.2 cents per gallon, in response to the General Assembly's refusal to lease the Pennsylvania Turnpike. The state's gasoline excise tax has been ranked fourth highest in the nation, but some states also charge state and local sales tax on the sale of gasoline. When all types of taxes are factored into the retail price of gasoline, Pennsylvania's ranking falls to twelfth highest in the nation. A one cent increase in the gasoline excise tax would generate approximately \$63 million although that figure is variable and can be affected by motorists driving fewer miles and turning to more fuel efficient vehicles. The Transportation Funding and Reform Commission originally proposed raising liquid fuels taxes by 11.5 cents per gallon at the pump, with an additional one cent per gallon dedicated to local highway and bridge repair and maintenance, plus \$150 million in increased PennDOT fees in addition to entering into public-private partnerships. Currently, Pennsylvania's gasoline tax revenue is lagging behind projections for the first four months of the fiscal year. Income in the Motor License Fund was 8.2 percent below projections for the first quarter. Projected annually that rate would mean a loss of nearly \$239 million in revenue in the Fund, which is dedicated to bridge and highway projects. Both state and federal gas tax revenue is likely to decline as a result of government energy policies emphasizing greater fuel efficiency and alternative fuels, causing some to call for a tax on miles driven.

Conclusion

Pennsylvania's transportation infrastructure has been neglected for decades and is in desperate need of increased funding. Thus, the General Assembly is left with four basic choices:

1. Do nothing or continue to inadequately fund infrastructure needs, delaying the inevitable, postponing action, and passing the problem to the next administration or generation of taxpayers. This option compounds the problem since repairs made earlier are often less comprehensive and expensive than repairs made later. Further, to delay is to allow the gap between inflationary costs and revenues to widen.
2. Continue implementation of Act 44. Reapply for the tolling of Interstate 80 to a new administration at the federal level and hope for a different result. In the event that permission is denied again, rewrite Act 44

so that tolls may solely provide for the repair and maintenance of the interstate or interstates being tolled, thereby freeing PennDOT funds currently dedicated to those highways to be utilized for other purposes.

3. Enter into public private partnerships (P3's) such as leasing the Pennsylvania Turnpike or other state owned capital assets.
4. Increase fuel taxes or other PennDOT fees or both, a move that could be made simply and quickly, but not without possible political repercussions.

As one of his last official legislative actions, Senator Roger Madigan hosted a Transportation Funding Summit in Harrisburg on November 17, 2008, to explore fiscally responsible alternatives for funding the state's transportation needs. State legislators, local government officials, educators, business owners and representatives of the transportation industry were invited to offer their perspectives on finding the most equitable solutions to finance future transportation improvements, but reaching a broad consensus remains a primary task of the 2009-10 legislative session of Pennsylvania's General Assembly.