SELECTED OPTIONS
FOR
INNOVATIVE TRANSIT FINANCING

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TECHNICAL ASSISTANCE REPORT

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(The opinions, findings, and conclusions expressed in this report are those of the author and not necessarily those of the sponsoring agencies.)

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ABSTRACT

Traditional funding sources for transportation improvements can no longer provide sufficient funds to meet transportation needs. As a result, state and local transportation agencies are turning to other financing tools to ensure that scarce transportation resources are used more effectively. This new approach, called "innovative financing," is described in this report.

The report summarizes selected innovative financing options that are available to transit agencies as they face declining federal funds. The first section discusses the innovative tools for transit. The second section summarizes innovative financing tools for transportation in general. The report appendices contain more detail on the innovative financing instruments.
INTRODUCTION

State transportation departments and other transportation agencies have discovered that traditional funding sources that relied to a large degree on federal-aid grant reimbursement programs can no longer provide sufficient funds to meet current and future transportation needs. Innovative, nontraditional funding approaches are necessary to ensure that scarce transportation resources are used more effectively. Innovative financing is defined by the Federal Transit Administration (FTA) as “the application of financing tools not widely used or the use of conventional tools in new ways.” Transportation agencies at all levels of government are exploring such financing options.

PURPOSE AND SCOPE

The purpose of this study was to investigate innovative transit financing, as requested by the Greater Roanoke Transit Company in Virginia. The various transit funding initiatives in use in Virginia, across the United States, and from another country are presented. The study also investigated general transit funding initiatives in the hope that some of them might be applicable to transit.

METHODS

The study involved a literature review regarding transportation financing in general and transit financing in particular. The literature review involved a search of the TRANSPORT database and interviews with personnel from FTA and the Federal Highway Administration (FHWA). In addition, interviews were conducted with personnel familiar with some of Virginia’s financing initiatives.
RESULTS

State Innovative Financing for Transit

Several statutes in the Code of Virginia can be used by localities to generate additional revenues for transit. (Excerpts from each act are provided in Appendix A.) The Public-Private Transportation Act of 1995 (§ 56-556) includes a provision for transit. Private companies may acquire, build, improve, maintain, and operate transportation facilities, including transit facilities. Some transportation districts may levy a 2 percent fuel tax on fuels sold within the county or city (§ 58.1-1720). Finally, the Multicounty Transportation Improvement Act (§ 15.1-1372) allows for the creation of districts that have the power to construct, reconstruct, alter, improve, and expand any public mass transit system in the district. The district may acquire any public mass transit system and may accept funds from any person, corporation, or state or federal agency for part or all of the costs associated with the transportation improvements in the district.

Several partnerships between local transit companies and universities exist in Virginia. The following people were contacted regarding such partnerships: Reggie Smith, Harrisonburg Transit; Rollo Axton, Greater Richmond Transit Company; Claudia Bolitho, Pentran; and Mike Connelly, Blacksburg Transit. Harrisonburg Transit has a partnership with James Madison University. Under the partnership, the university pays a fee to the transit company to cover the cost of student riders. The Greater Richmond Transit Company (GRTC) began a similar program on January 7, 1997. The system consists of a pass program and a fee contributed by Virginia Commonwealth University. Based on a hold harmless ridership stipulation, GRTC contributes $50,000 and the university contributes $110,000. Blacksburg Transit and Virginia Polytechnic Institute and State University have a cooperative agreement dating back to 1983. The university collects fees from students, fees from university parking, and a separate amount to cover fares for faculty and staff. These revenues are used to pay for fares and provide the local match for federal capital projects.

Other local initiatives have also been successful in Virginia. GRTC worked with the Richmond business sector to implement an “Adopt-A-Trolley” program. In the program, businesses assume the operating costs of trolleys in the downtown area. Virginia Power has participated in the purchase of electric buses in the Richmond area.

Pentran has an Adopt-A-Bus program. Pentran sells advertising rights on buses for a monthly fee. The client can design graphics for the advertisement. This program has been in place for more than 10 years. The revenue (several hundred thousand dollars a year) is used as the local match for federal and state capital purchases.

The Ohio Department of Transportation (DOT) investigated states to determine the transit financing mechanisms in use across the nation. They relied on the 1993 and 1994 Surveys of Public Transportation Officials conducted by the American Association of State Highway
Transportation Officials (AASHTO) and a follow-up survey conducted by a consultant. Table 2.1 in Appendix B summarizes the findings. Detailed information on the funding techniques is also provided in Appendix B.

Transit funding options described in Appendix B but not shown in Table 2.1 include the following:

- **Alabama.** Localities can impose a 1.65 cents per 4 ounce beer tax. In addition, revenue from horse racing provides about 2 percent of localities’ total net revenue.

- **Arizona.** Transit systems receive 10 percent of the state’s lottery proceeds through the Local Transportation Assistance Fund.

- **Arkansas.** Funding is provided by a 0.02 percent franchise fee authorized by the state.

- **California.** The California Transportation Act allows each county to set up a Local Transportation Fund with a 0.25-cent retail sales tax.

- **Iowa.** Petroleum overcharge funds are designated for public transportation use but have not been allocated for several years.

- **Maine.** Rural transit systems can undertake can and bottle collections and bingo games to raise funds.

- **Nevada.** A 0.25-cent sales tax is collected in Las Vegas and Reno. The tax revenue is distributed in the city in which it is collected.

- **New Jersey.** The New Jersey Transit Authority receives casino revenue for transit projects for the elderly and handicapped. The casino revenue has been a dedicated funding source (passed by the New Jersey Legislature) since the casinos opened in the 1970s.

The FTA has published a guide to innovative financing entitled the *Innovative Financing Handbook.* This publication gives examples of new financing techniques that can be used by transit authorities to increase the cost-effectiveness and efficiency of their investment in infrastructure. The techniques are categorized into the following types, and examples are listed for several. An excerpt from this document that more fully describes the categories is provided in Appendix C.

1. **Bonds and Certificates of Participation (COPs).** COPs are tax exempt bonds that are issued by states and usually secured with a specific revenue source such as federal funds or an equipment or facilities lease.
For example, the California Transit Finance Corporation, a state agency, issued COPs to fund the purchase of new methanol buses that were leased to local transit agencies, including the Los Angeles County Metropolitan Transportation Authority. The COPs were secured by the proceeds from the anticipated lease.

In 1993, the New York City Transit Authority (NYCTA) needed 384 new buses. The statutory bonding cap for the New York Metropolitan Transportation Authority (MTA) capital program (including NYCTA) had been exhausted, and the attempts to reinstate that authority were stalled in the state legislature. A lease financing structure was proposed with the Triborough Bridge and Tunnel Authority (TBTA), an affiliate of MTA and NYCTA, that called for purchasing the vehicles and leasing them to NYCTA. Since the legislative cap applied only to the bonds and notes of TBTA, the carefully structured lease deal was acceptable. TBTA issued $88 million worth of Beneficial Investment Certificates (BICs), which are similar to COPs in that both involve an investor purchasing interest in the cash flow represented by the rent payments.

The Oregon DOT issued $97 million of bonds in 1994 to finance a light rail expansion. The bonds are backed by the state lottery proceeds.

2. State Revolving Loan Fund. States can use FTA grants to start and operate such a fund from which public and private nonprofit transit operators can borrow funds for capital investment. For example, the Arkansas DOT has requested FTA funding to establish such a fund that will include Federal Highway Vanpool funds and local matching funds. It will be used for a state vehicle purchase and leasing program that will support the purchase of an estimated 125 vans for rural health and human services transportation over a 10-year period.

3. Lease Payment. If leasing is more economical than direct purchase, the equipment or facility can be purchased by a leasing company and leased to the grantee (the state or state entity). The grantee is allowed to make lease payments from a pool of federal funds and local matching funds.

4. Joint Development of Transit Assets. Grantees can lease air rights above a transit station or transfer the FTA interest in one property to another to allow a private developer to use the property. The Santa Clara Transit Authority used this mechanism to lease excess land (a park-and-ride lot) adjacent to a light rail station to a private developer for a housing project. FTA capital funds will be used to make improvements to the lot and provide a bus transfer facility.

5. Cross Border Lease. The transit authority purchases rolling stock and then sells it simultaneously to a non-U.S. investor, who then leases it back to the transit system. By doing this, the transit authority forgoes the large up-front capital expenditure in favor of an installment plan. The foreign leasee receives tax benefits in its country through investment tax credits and depreciation. For example, the New Jersey Transit (NJT) entered into a cross border lease with a
Dutch company, Asea Brown Boveri (ABB). NJT refurbished and then immediately sold 233 commuter cars to ABB, who then leased them back to NJT.

6. **Super Turnkey and Private Financing.** A project management consortium (private firm) builds, operates for a while, and then transfers a facility to the purchaser (transit authority). The entire activity from start to finish is directed by a “turnkey manager.” Sometimes, the turnkey manager assists with arranging financing, which is helpful to grantees who may not have a sufficient credit history.

7. **Delayed Local Match.** A transit system may delay expending its local matching share to a federal grant if the funds are invested in a long-term security. This may be beneficial if the transit system is attempting to optimize the use of the locally available funds. The state may be attempting to arrange financing, which may be facilitated by an uneven expenditure of federal and matching funds. If the federal dollars are expended first on design, engineering, or environmental reviews, then the construction period can be financed with some private money. That is, local funds can be placed in the bank or pledged as additional security for construction period financing.

8. **Toll Revenue Credits.** The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) allows toll revenues from public roads and bridges allocated for capital investment to be counted as a local match for federal grant funds in a particular year.

**Japanese Innovations**

In contrast with the United States, Japan does not contribute any portion of gas tax revenue to transit; rather the Ministry of Transport and private companies rely on the following finance mechanisms:

- **Subsidies.** The government provides subsidies for new line construction and large-scale improvements. These include the subway construction subsidy, new town railroad construction subsidy, interest payment subsidy for private railroads, and interest payment subsidy for large city railroads.

- **Investments.** The Japan Development Bank occasionally invests in railroad companies, and local public bodies commonly invest funds from their general accounts for new municipal subway lines.

- **Beneficiary charges.** The users of the system and landowners and businesses in the surrounding area are assessed a beneficiary charge. For example, the Ministry of Transportation and the Ministry of Construction created a system whereby new developers pay a construction fee and a site fee that go toward funding railroad construction.
• **Transit user fees.** These fees (fares) cover some operating expenses and contribute to a fund created to help pay for future rail construction and improvements called the City Railroad Improvement Special Reserve Fund. The fund is used to pay for large-scale metropolitan railway improvements.

• **Railroad Improvement Fund.** This fund is created from corporate taxes, enterprise establishment taxes, developer charges, the General Account, and other sources. It is used to fund improvements to city railroads, maintain trunk lines, and improve railroad safety.

• **Internal cross subsidies.** When a company or public agency is both a developer and an owner of a railway facility, the company can transfer development and other business profits to fund railway construction.

### Innovative Financing Initiatives

FHWA initiated the Innovative Financing: Test and Evaluation Project (TE-045) in response to President Clinton’s executive order “Principle for Federal Infrastructure Investment.” The order established infrastructure investment as a priority for each federal executive department and agency. The FHWA project is intended to move the current methods of financing beyond a single strategy to a diversified approach involving the public and private sectors. The FHWA publishes a newsletter entitled *Innovative Financing* that reports on and updates such funding initiatives. The newsletter provides metropolitan planning organizations (MPOs) and state DOTs with case-oriented information on innovative financing. (A copy of the most recent newsletter is included in Appendix D.)

ISTEA and the National Highway System Designation Act of 1995 (Highway Act) provided transportation agencies with a variety of new financing options. ISTEA encouraged multiple finance strategies and partnerships among federal, state, local, and private funding sources. The Highway Act established the State Infrastructure Bank. Several states have developed specific initiatives, and some of them may be applicable to transit-specific financing.

**Public-Private Transportation Act in Virginia**

The previously mentioned Public-Private Transportation Act of 1995 allows for flexible partnerships between public and private entities. The act is not limited to highways and allows both solicited and unsolicited proposals. Tolls and fees for the facilities born from the act are negotiated by the parties involved.
Texas

The Texas George Bush Turnpike is a $463 million joint project of the Texas DOT (TxDOT) and the Texas Turnpike Authority (TTA). Declining federal funds and insufficient motor fuel tax receipts led to the construction of the road as a turnpike. The partnership was supported by a change in Texas legislation that allowed more flexibility in the financing of turnpikes and the lending of highway funds for such projects. The project partners were able to use both federal-aid funds available to TxDOT and private funds from TTA-issued bonds. Several counties and cities in the North Dallas suburbs donated locally owned rights of way to the turnpike. Estimates indicate that this financing plan will accelerate project completion by 6 to 10 years and save money. A similar plan could enable local transit authorities to assemble necessary funds for projects.

Pennsylvania

Several innovative road improvement financing plans in Pennsylvania were cited in a summary of an investment symposium held in 1995.6

- To cover the cost for a new interchange, a Pittsburgh township formed a transportation development district, which allowed the township to assess property owners for the building of transportation facilities.

- To complete the interstate system, the state borrowed funds for the short term in anticipation of future federal funding and then issued Federal Reimbursement Anticipation Notes. These notes were tied to a contract with FHWA that specified that FHWA would reimburse costs as appropriations came through the state and pay a portion of the interest. The state was able to open interstate segments 3 to 4 years earlier than expected.

- To fund needed turnpike improvements, the state increased tolls by 30 percent and increased the gas tax.

- To finance the bridge program, the state requested a dedicated tax to support bonds and leverage federal funds.

Options for the future include tolling of existing interstates, issuing bonds with a dedicated funding source, and initiating congestion pricing.
California

Under California Assembly Bill 680, private enterprises are permitted to build tollways on state right of ways. The improvements immediately become the property of the state when completed, and the state then allows the private corporation to operate the toll road at a profit, which is limited to 17 percent, for the next 35 years. After that, Caltrans assumes operating rights.

In light of this legislation, a private corporation, the California Public Transportation Corporation (CPTC) constructed toll lanes in the median of Riverside Freeway (SR 91), a highly congested eight-lane facility. The lanes opened in December 1996. The 16-km tollway runs through the most congested part of the freeway, where no alternative routes exist. There is a unidirectional, work-related rush hour that is westbound in the morning and eastbound in the late afternoon. This particular traffic pattern led CPTC to construct a table of variable toll fees. The tolls are varied according to the degree of congestion and time of day. For example, in the westbound lanes, the toll reaches a maximum of $2.50 at 5 a.m. from Monday to Friday and a minimum of $0.25 after 10 p.m. This congestion pricing arrangement is designed to maintain free flow on the express lanes.

The tollway cost $126 million to build privately, but there is a public/private bond. The bulk of violator fines accrue to the state and county. CPTC contracted with the California Highway Patrol to patrol the toll lanes. The fines collected go to the state and localities. Caltrans avoids the cost of building high-occupancy vehicle (HOV) lanes on this portion of the freeway because the 91 Expressway is used for this purpose.7

The concept of variable fees and public/private partnerships may be useful for financing transit facilities.

State Infrastructure Bank

The State Infrastructure Bank (SIB) was established by the Highway Act of 1995. The SIB is a pilot program to help finance transportation projects that would otherwise be delayed or infeasible.8 The member states can take 10 percent of federal funds, match them with 25 percent of state funds, and then use them to leverage and attract private sector investment. As of August 1996, 10 states belonged: Texas, Arizona, Ohio, Oklahoma, Oregon, Florida, South Carolina, Virginia, California, and Missouri. The SIB was created with federal seed money (capitalization grants) and will offer different types of loans and credit enhancement assistance. The SIB’s funds will be replenished as loans are repaid.

If transit projects were included in this program, localities could borrow funds for improvement projects.
New Jersey

There was a delay in extending the authorization for transportation trust fund bonds in the New Jersey legislature. Accordingly, the New Jersey Transportation Trust Fund (TTF) obtained a tax-exempt line of credit from Chemical Bank on which it could draw advances for construction funding. The bank (the custodian) sold the cash flows from the transaction through the use of custodial receipts. The fund had to borrow only the amount it needed and could stop borrowing once the legislature renewed the fund's authorization. Local transit agencies could consider obtaining a similar credit line from commercial banks. 9

At present, New Jersey dedicates 7 cents of the 10.5-cent-per-gallon gas tax to a Transportation Trust Fund (TTF); 4.5 cents of this is earmarked by state statute and the state constitution. In 1994 and 1995, approximately half of the 4.5 cents was diverted to the state's general fund. Governor Whitman has proposed a constitutional amendment to increase the amount dedicated to the TTF from 2.5 to 5.5 cents. Taxes would not increase, but more revenues would go specifically to transportation. The credit rating agency Standard and Poor's said that only a constitutional dedication would lead to a rating upgrade.

North Carolina

The legislature in North Carolina is considering a bill to authorize $800 million in bonds for highway projects. The bonds would be backed by revenue from the highway trust fund and general obligations. The dollars used to fund projects can be leveraged (securitized), which provides a larger amount of the money in advance. This gives the DOT the ability to accomplish larger projects sooner. Transit agencies may use bonds backed by various revenue sources to raise funds for investment. 9

Port Authority of New York and New Jersey

The Port Authority of New York and New Jersey has used derivatives in a number of transactions. 9 Derivatives are a type of financial instrument whose price or return is determined by the price or return of another financial instrument. Options and swaps are two types of derivatives. The Port Authority uses swaps to fund projects. A swap is an arrangement where two parties agree to exchange periodic payments. There are four types of swaps: an interest rate swap, an interest rate-equity swap, an equity swap, and a currency swap. For example, if a party with a fixed rate of interest swaps with a party dealing with a variable rate of interest and the actual interest rate falls, then the first party has to pay less money than it would otherwise. The Port Authority has a formal policy governing the use of derivatives: any counterpart must be have a credit rating of at least "A," the term of the swap must be under 10 years, and the swaps must be entered based on competitive bidding. Derivatives could be an option for local transit agencies.
CONCLUSIONS

With declining federal funds becoming the norm, state and local transportation authorities are examining potential new funding sources for transit and attempting to use more traditional sources in innovative ways. A number of options have become available as a result of innovation in various states and the encouragement of executive agencies, the FHWA, the FTA, and acts such as ISTEA. The benefits of employing new financial strategies are manifold. Innovative financing allows agencies to reduce the cost of some capital projects and smooth out the cash flow over time. Innovative financing enables projects to get underway faster and be completed earlier.

REFERENCES


APPENDIX A

Sections of the Code of Virginia
inspection man-days devoted to each pipeline operator to determine the operator's compliance with any provision of, or order or agreement issued under, the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. § 2001 et seq.), and shall not exceed the costs of inspection and investigation under this section. The costs shall not include expenses reimbursed by the federal government. The number of planned inspections conducted on each interstate pipeline operator shall be reasonable under the circumstances and prioritized by risk to the public or to the environment.

D. The authority granted to the Commission under this section to conduct inspections of interstate pipeline operators and facilities in the Commonwealth shall not extend to any official, employee, or agent of any political subdivision in the Commonwealth. No political subdivision shall have the authority to seek reimbursement for the cost of monitoring the inspections conducted by the Commission under this section. Nothing in this subsection, however, shall be deemed to impair or limit the police powers of such political subdivisions otherwise provided by law.

E. The authority of the Commission to act as an agent for the United States Secretary of Transportation with respect to interstate hazardous liquid pipelines shall become effective the first day of July next after the date the Commission receives a formal delegation of authority from the Secretary. (1994, c. 512.)

CHAPTER 22.
PUBLIC-PRIVATE TRANSPORTATION ACT OF 1995.

§ 56-556. Title. — This chapter may be cited as the “Public-Private Transportation Act of 1995.” (1994, c. 855; 1995, c. 647.)

The numbers of §§ 56-556 through 56-575 were assigned by the Virginia Code Commission, the numbers in the 1994 act having been §§ 56-553 through 56-572.

Effective date. — This section is effective July 1, 1995.

§ 56-557. Definitions. — As used in this chapter, unless the context requires a different meaning:

“Affected local jurisdiction” means any county, city or town in which all or a portion of a qualifying transportation facility is located.

“Commission” means the State Corporation Commission.
"Comprehensive agreement" means the comprehensive agreement between the operator and the responsible public entity required by § 56-566 of this chapter.

"Material default" means any default by the operator in the performance of its duties under subsection F of § 56-565 of this chapter that jeopardizes adequate service to the public from a qualifying transportation facility and remains unremedied after the responsible public entity has provided notice to the operator and a reasonable cure period has elapsed.

"Operator" means the private entity that is responsible for the acquisition, construction, improvement, maintenance and/or operation of a qualifying transportation facility.

"Private entity" means any natural person, corporation, limited liability company, partnership, joint venture or other private business entity.

"Public entity" means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of any of the foregoing, but shall not include any public service company.

"Qualifying transportation facility" means one or more transportation facilities acquired, constructed, improved, maintained and/or operated by a private entity pursuant to this chapter.

"Responsible public entity" means a public entity that has the power to acquire, construct, improve, maintain and/or operate the applicable transportation facility.

"Revenues" means the user fees and/or service payments generated by a qualifying transportation facility.

"Service contract" means a contract entered into between a public entity and the operator pursuant to § 56-561 of this chapter.

"Service payments" means payments to the operator of a qualifying transportation facility pursuant to a service contract.

"State" means the Commonwealth of Virginia.

"Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods, together with any other property that is needed to operate the transportation facility, but shall exclude rail mass transit facilities owned by an interstate compact agency.

"User fees" mean the rates, fees or other charges imposed by the operator of a qualifying transportation facility for use of all or a portion of such qualifying transportation facility pursuant to the comprehensive agreement. (1994, c. 855; 1995, c. 647.)

Effective date. — This section is effective July 1, 1995.

The 1995 amendment deleted the paragraph defining "Certificate" which read, "... means the certificate of public convenience and necessity issued to an operator under this chapter that permits operation of a qualifying transportation facility", added the paragraphs defining "Commission" and "Material default"; inserted "the acquisition, construction, improvement, maintenance and/or" in the paragraph defining "Operator"; inserted "but shall not include any public service company" at the end of the paragraph defining "Public entity"; inserted "acquired, constructed, improved, maintained and/or" in the paragraph defining "Qualifying transportation facility"; deleted the paragraph defining "Regulatory authority" which read, "... means the State Corporation Commission"; inserted "maintain and/or operate" in the paragraph defining "Responsible public entity"; inserted "between a public entity and the operator" in the paragraph defining "Service contract"; in the definition of "Transportation facility", deleted "seaport" following "airport", inserted "vehicle parking facility, port facility", substituted "operate the transportation facility" for "operate the same", and deleted "railroads, railroad related facilities and pipelines owned by a public service corporation and" following "but shall exclude"; and inserted "pursuant to the comprehensive agreement" at the end of the paragraph defining "User fees."
§ 56-558. Policy. — A. The General Assembly finds that:
1. There is a public need for timely acquisition or construction of and improvements to transportation facilities within the Commonwealth that are compatible with state and local transportation plans;
2. Such public need may not be wholly satisfied by existing ways in which transportation facilities are acquired, constructed or improved; and
3. Authorizing private entities to acquire, construct, improve, maintain, and/or operate one or more transportation facilities may result in the availability of such transportation facilities to the public in a more timely or less costly fashion, thereby serving the public safety and welfare.

B. An action, other than the approval of the responsible public entity under § 56-560 of this chapter, shall serve the public purpose of this chapter if such action facilitates the timely acquisition or construction of or improvement to a qualifying transportation facility or the continued operation of a qualifying transportation facility.

C. It is the intent of this chapter, among other things, to facilitate to the greatest extent possible, the pooling and funding mechanisms of the Intermodal Surface Transportation Efficiency Act of 1991, and any successor legislation, to the end that transportation financing be expanded and accelerated to improve and add to the convenience of the public, and such that public and private entities may have the greatest possible flexibility in contracting with each other for the provision of the public services which are the subject of this chapter.

D. This chapter shall be liberally construed in conformity with the purposes hereof. (1994, c. 855; 1995, c. 647.)

Cross references. — As to the Toll Facilities Revolving Account, and the 1995 amendment relative to the Public-Private Transportation Act, see 33.1-23.03:4.

The 1995 amendment inserted "that are compatible with state and local transportation plans" at the end of subdivision A 1; in subdivision A 3, substituted "maintain, and/or operate" for "and/or operate", substituted "availability of such" for "acquisition or construction of or improvements to", and inserted "to the public"; in subsection B, substituted "§ 56-560" for "§ 56-557" and deleted "or issuance of a certificate under § 56-559 of this chapter" following "of this chapter"; and inserted "and any successor legislation" near the middle of subsection C.

§ 56-559. Prerequisite for operation. — Any private entity seeking authorization under this chapter to acquire, construct, improve, maintain and/or operate a transportation facility shall first obtain approval of the responsible public entity under § 56-560. Such private entity may initiate the approval process by requesting approval pursuant to subsection A of § 56-560 or the responsible public entity may request proposals pursuant to subsection B of § 56-560. (1994, c. 855; 1995, c. 647.)

Effective date. — This section is effective July 1, 1995.

The 1995 amendment rewrote this section which formerly read: "No private entity may operate a transportation facility under this chapter without first obtaining approval of the responsible public entity, obtaining a certificate from the regulatory authority and entering into a comprehensive agreement with the responsible public entity."

§ 56-560. Approval by the responsible public entity. — A. The private entity may request approval by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity with respect to the transportation facility or facilities that the private entity proposes to operate as a qualifying transportation facility:
1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation facility or facilities;
2. A description of the transportation facility or facilities, including the conceptual design of such facility or facilities and all proposed interconnections with other transportation facilities;

3. The projected total life-cycle cost of the transportation facility or facilities and the proposed date for acquisition of or the beginning of construction of, or improvements to the transportation facility or facilities;

4. A statement setting forth the method by which the operator proposes to secure all property interests required for the transportation facility or facilities. The statement shall include: (i) the names and addresses, if known, of the current owners of the property needed for the transportation facility or facilities, (ii) the nature of the property interests to be acquired, and (iii) any property that the responsible public entity is expected to be requested to condemn;

5. Information relating to the current transportation plans, if any, of each affected local jurisdiction;

6. A list of all permits and approvals required for acquisition or construction of or improvements to the transportation facility or facilities from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;

7. A list of public utility facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the operator to accommodate such crossings;

8. A statement setting forth the operator's general plans for financing and operating the transportation facility or facilities;

9. The names and addresses of the persons who may be contacted for further information concerning the request; and

10. Such additional material and information as the responsible public entity may reasonably request.

B. The responsible public entity may request proposals from private entities for the acquisition, construction, improvement and/or operation of transportation facilities.

C. The responsible public entity may grant approval of the acquisition, construction, improvement and/or operation of the transportation facility or facilities as a qualifying transportation facility if the responsible public entity determines that it serves the public purpose of this chapter. The responsible public entity may determine that the acquisition, construction, improvement and/or operation of the transportation facility or facilities as a qualifying transportation facility serves such public purpose if:

1. There is a public need for the transportation facility or facilities of the type the private entity proposes to operate as a qualifying transportation facility;

2. The transportation facility or facilities and the proposed interconnections with existing transportation facilities, and the operator's plans for operation of the qualifying transportation facility or facilities, are reasonable and compatible with the state transportation plan and with the local comprehensive plan or plans;

3. The estimated cost of the transportation facility or facilities is reasonable in relation to similar facilities; and

4. The private entity's plans will result in the timely acquisition or construction of or improvements to the transportation facility or facilities or their more efficient operation.

In evaluating any request, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.

D. The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing and evaluating the request, including without
limitation, reasonable attorney's fees and fees for financial and other necessary advisors or consultants.

E. The approval of the responsible public entity shall be subject to the private entity's entering into a comprehensive agreement with the responsible public entity.

F. In connection with its approval of the operation of the transportation facility or facilities as a qualifying transportation facility, the responsible public entity shall establish a date for the acquisition of or the beginning of construction of or improvements to the qualifying transportation facility. The responsible public entity may extend such date from time to time. (1994, c. 855; 1995, c. 647.)

Effective date. — This section is effective July 1, 1995.

The 1995 amendment divided the former single sentence into the present first and second sentences; deleted “Prior to the approval of the responsible public entity, the private entity shall provide" at the beginning of subsection A; inserted “total life-cycle" near the beginning of subdivision A 3; in subdivision A 4, deleted "including" following “facilities" in the first sentence, in the second sentence, inserted “The statement shall include", inserted “the names and addresses, if known of” in clause (i); in clause (ii), deleted “interest in the" following “nature of the" and inserted “interests" following “property"; in subdivision A 8, substituted “financing and operating" for “operation of", deleted "and" following “facilities"; added present subdivision A 9; redesignated former subdivision A 9 as present subdivision A 10; added present subsection B; redesignated former subsections B through E as present subsections C through F, and in present subsection C, in the first sentence substituted “may grant” for “shall grant", substituted “approval of” for “approval if", inserted “acquisition, construction, improvement and/or” preceding “operation", and inserted “if the responsible public entity determines that it”; and inserted “acquisition, construction, improvement and/or” near the middle of the second sentence; deleted former subdivision B 1 which read: "The application is complete”; redesignated former subdivisions B 2 through B 5 as present subdivisions C 1 through C 4; deleted former subdivision B 6 which read: "The operator's plan for operation of the transportation facility or facilities is reasonable and consistent with Commonwealth and local transportation plans", and added the second paragraph; in present subsection D, deleted “and” following “costs of processing”, inserted “and evaluating”, and substituted “including without limitation, reasonable attorney's fees and fees for financial and other necessary advisors or consultants” for “for approval.”

§ 56-561. Service contracts. — In addition to any authority otherwise conferred by law, any public entity may contract with an operator for transportation services to be provided by a qualifying transportation facility in exchange for such service payments and other consideration as such public entity may deem appropriate. (1994, c. 855; 1995, c. 647.)

Effective date. — This section is effective July 1, 1995.

The 1995 amendment reenacted this section without change.


Editor's note. — This section, which was enacted by Acts 1994, c. 855, effective July 1, 1995, was repealed by Acts 1995, c. 647, effective July 1, 1995.

§ 56-563. Affected local jurisdictions. — A. Any private entity requesting approval from, or submitting a proposal to, a responsible public entity under § 56-560 shall notify each affected local jurisdiction by furnishing a copy of its request or proposal to each affected local jurisdiction.

B. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying transportation facility shall, within sixty days after receiving such notice, submit any comments it may have in writing on the proposed qualifying transportation facility to the responsible public entity and
§ 56-564. Dedication of public property. — Any public entity may dedicate any property interest that it has for public use as a qualified transportation facility if it finds that so doing will serve the public purpose of this chapter. In connection with such dedication, a public entity may convey any property interest that it has, subject to the conditions imposed by general law, to the operator, subject to the provisions of this chapter, for such consideration as such public entity may determine. The aforementioned consideration may include, without limitation, the agreement of the operator to operate the qualifying transportation facility. (1994, c. 855; 1995, c. 647.)

Effective date. — This section is effective July 1, 1995.

The 1995 amendment, in the first sentence, deleted "in which it has an" following "any property", inserted "that it has" following "interest", and substituted "so doing will" for "so doing would"; in the second sentence, substituted "a public entity" for "such public entity", inserted "property" following "may convey any", and deleted "in such property" following "interest that it has."

§ 56-565. Powers and duties of the operator. — A. The operator shall have all power allowed by law generally to a private entity having the same form of organization as the operator and shall have the power to acquire, construct, improve or operate the qualifying transportation facility and impose user fees and/or enter into service contracts in connection with the use thereof. No tolls or user fees may be imposed by the operator on any existing interstate highway. Furthermore, no tolls or user fees may be imposed by the operator on any free road, bridge, tunnel or overpass unless such road, bridge, tunnel or overpass is reconstructed to provide for increased capacity.

B. The operator may own, lease or acquire any other right to use or operate the qualifying transportation facility.

C. Any financing of the qualifying transportation facility may be in such amounts and upon such terms and conditions as may be determined by the operator. Without limiting the generality of the foregoing, the operator may issue debt, equity or other securities or obligations, enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying transportation facility.

D. Subject to applicable permit requirements, the operator shall have the authority to cross any canal or navigable watercourse so long as the crossing does not unreasonably interfere with then current navigation and use of the waterway.

E. In operating the qualifying transportation facility, the operator may:
   1. Make classifications according to reasonable categories for assessment of user fees; and
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2. With the consent of the responsible public entity, make and enforce reasonable rules to the same extent that the responsible public entity may make and enforce rules with respect to a similar transportation facility.

F. The operator shall:
1. Acquire, construct, improve, maintain and/or operate the qualifying transportation facility in a manner that meets the engineering standards of the responsible public entity for transportation facilities operated and maintained by such responsible public entity, all in accordance with the provisions of the comprehensive agreement;
2. Keep the qualifying transportation facility open for use by the members of the public at all times after its initial opening upon payment of the applicable user fees, except when exempted by § 33.1-252, and/or service payments; provided that the qualifying transportation facility may be temporarily closed because of emergencies or, with the consent of the responsible public entity, to protect the safety of the public or for reasonable construction or maintenance procedures;
3. Maintain, or provide by contract for the maintenance of, the qualifying transportation facility;
4. Cooperate with the responsible public entity in establishing any interconnection with the qualifying transportation facility requested by the responsible public entity; and
5. Comply with the provisions of the comprehensive agreement and any service contract. (1994, c. 855; 1995, c. 647.)

Cross references. — As to the Toll Facilities Revolving Account, and the 1995 amendment relative to the Public-Private Transportation Act, see 33.1-23.03:4.

Effective date. — This section is effective July 1, 1995.

The 1995 amendment, in subsection A, inserted "acquire, construct, improve or" near the middle of the first sentence; divided the former second sentence into the present second and third sentences; in the present second sentence, inserted "existing" following "on any" and deleted "and" following "interstate highway"; in the present third sentence, inserted "Furthermore", substituted "free road" for "existing road", and substituted "unless such road, bridge, tunnel or overpass is reconstructed to provide for increased capacity" for "without the consent of the affected local jurisdiction"; substituted "all of its property interests in the qualifying transportation facility" for "the certificate of authority, subject to the provisions of this chapter regarding transfer of the certificate of authority" at the end of subsection C; substituted "may make and enforce" for "could have made" near the end of subdivision E 2; deleted former subsection F which read: "The powers granted to the operator in this section shall be subject to the power of the regulatory authority to approve user fees pursuant to subsection C of § 56-562 of this chapter"; redesignated former subsection G as present subsection F, in present subdivision F 1, deleted "or" following "construct" and inserted "maintain and/or operate" following "improve"; inserted "except when exempted by § 33.1-252" near the middle of present subdivision F 2; redesignated former subdivision G 4 as present subdivision F 4, and deleted former subdivision G 4 which pertained to items to be filed with the regulatory authority; inserted "and" at the end of present subdivision F 4, and added subdivision F 5.

§ 56-566. Comprehensive agreement. — A. Prior to acquiring, constructing, improving, maintaining, and/or operating the qualifying transportation facility, the operator shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide for:
1. Delivery of performance and payment bonds in connection with the construction of or improvements to the qualifying transportation facility, in the forms and amounts satisfactory to the responsible public entity;
2. Review of plans and specifications for the qualifying transportation facility by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to standard conditions of the responsible public entity;
3. Inspection of construction of or improvements to the qualifying transportation facility by the responsible public entity to ensure that they conform to the engineering standards acceptable to the responsible public entity;

4. Maintenance of a policy or policies of public liability insurance (copies of which shall be filed with the responsible public entity accompanied by proofs of coverage), self-insurance, in form and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying transportation facility;

5. Monitoring of the maintenance practices of the operator by the responsible public entity and the taking of such actions as the responsible public entity finds appropriate to ensure that the qualifying transportation facility is properly maintained;

6. Reimbursement to be paid to the responsible public entity for services provided by the responsible public entity;

7. Filing of appropriate financial statements on a periodic basis;

8. A reasonable maximum rate of return on investment for the operator; and

9. The date of termination of the operator's authority and duties under this chapter and dedication to the appropriate public entity.

B. The comprehensive agreement shall provide for such user fees as may be established from time to time by agreement of the parties. Any user fees shall be set at a level that, taking into account any service payments, allows the operator the rate of return on investment specified in the comprehensive agreement. A copy of any service contract shall be filed with the responsible public entity. A schedule of the current user fees shall be made available by the operator to any member of the public on request. In negotiating user fees under this section, the parties shall establish fees that are the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying transportation facility. The execution of the comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user fees provided for therein comply with this chapter. User fees established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans to the operator from time to time from amounts received from the federal government or any agency or instrumentality thereof.

D. The comprehensive agreement shall incorporate the duties of the operator under this chapter and may contain such other terms and conditions that the responsible public entity determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the responsible public entity agrees to provide notice of default and cure rights for the benefit of the operator and the persons specified therein as providing financing for the qualifying transportation facility. The comprehensive agreement may contain such other lawful terms and conditions to which the operator and the responsible public entity mutually agree, including, without limitation, provisions regarding unavoidable delays or provisions providing for a loan of public funds to the operator to acquire, construct, improve, maintain and/or operate one or more qualifying transportation facilities.

E. The comprehensive agreement shall provide for the distribution of any earnings in excess of the maximum rate of return as negotiated in the comprehensive agreement. Without limitation, excess earnings may be distributed to the Commonwealth's transportation trust fund, to the responsible public entity, or to the operator for debt reduction or they may be shared with affected local jurisdictions.
F. Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment. (1994, c. 855; 1995, c. 647.)

Cross references. — As to the Toll Facilities Revolving Account, and the 1995 amendment relative to the Public-Private Transportation Act, see 33.1-23.03:4.

Effective date. — This section is effective July 1, 1995.

The 1995 amendment substituted “constructing, improving, maintaining, and/or operating” for “or commencing construction of or improvements” in subsection A; deleted “by the operator” following “Maintenance” in subdivision A 4; deleted “and” at the end of subdivision A 5; in subdivision A 6, deleted “its cost to provide the following entity for”, substituted “provided by” for “performed by”; and added subdivisions A 7 through A 9; added present subsection B; redesignated former subsections B and C as present subsections C and D; substituted “agency or instrumentality” for “division” in present subsection C; in present subsection D, in the second sentence, inserted “operator and the following for the benefit of” and inserted “specified therein as” following “persons”; in the third sentence, inserted “lawful following “such other” and inserted “including, without limitation, provisions regarding unavoidable delays or provisions providing for a loan of public funds to the operator to acquire, construct, improve, maintain and/or operate one or more qualifying transportation facilities”; and added subsections E and F.

§ 56-567. Federal, state and local assistance. — The responsible public entity may take any action to obtain federal, state or local assistance for a qualifying transportation facility that serves the public purpose of this chapter and may enter into any contracts required to receive such federal assistance. If the responsible public entity is a state agency, any funds received from the state or federal government or any agency or instrumentality thereof shall be subject to appropriation by the General Assembly. The responsible public entity may determine that it serves the public purpose of this chapter for all or any portion of the costs of a qualifying transportation facility to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local, state or federal government or any agency or instrumentality thereof. (1994, c. 855; 1995, c. 647.)

Cross references. — As to the Toll Facilities Revolving Account, and the 1995 amendment relative to the Public-Private Transportation Act, see 33.1-23.03:4.

Effective date. — This section is effective July 1, 1995.

The 1995 amendment inserted “If the responsible public entity is a state agency, any funds received from the state or federal government or any agency or instrumentality thereof shall be” at the beginning of the second sentence; and in the third sentence, inserted “local, state or” following “loan made by” and substituted “agency or instrumentality” for “division.”

§ 56-568. Material default; remedies. — A. Except upon agreement of the operator and any other parties identified in the comprehensive agreement, no responsible public entity shall exercise any of the remedies provided in this section or in subsection B or C of § 56-569 unless the Commission, after notice to the operator and the secured parties (as may appear in the operator’s records) and an opportunity for hearing, shall first issue a declaratory judgment that a material default, as defined in § 56-557, has occurred and is continuing.

B. Upon entry by the Commission of a declaratory judgment order pursuant to subsection A above, unless such order is stayed pending appeal to the Virginia Supreme Court, the responsible public entity may exercise any or all of the following remedies:

1. The responsible public entity may elect to take over the transportation facility or facilities and in such case it shall succeed to all of the right, title and interest in such transportation facility or facilities, subject to any liens on
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revenues previously granted by the operator to any person providing financing therefor and the provisions of subsection C below.

2. Any responsible public entity having the power of condemnation under state law may exercise such power of condemnation to acquire the qualifying transportation facility or facilities. Nothing in this chapter shall be construed to limit the exercise of the power of condemnation by any responsible public entity against a qualifying transportation facility after the entry by the Commission of a final declaratory judgment order pursuant to subsection A above. Any person that has provided financing for the qualifying transportation facility, and the operator, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.

3. The responsible public entity may terminate the comprehensive agreement and exercise any other rights and remedies which may be available to it at law or in equity.

4. The responsible public entity may make or cause to be made any appropriate claims under the performance and/or payment bonds required by subsection A 1 of § 56-566.

C. In the event the responsible public entity elects to take over a qualifying transportation facility pursuant to subsection B 1 of this section, the responsible public entity shall acquire, construct, improve, operate and maintain the transportation facility, impose user fees for the use thereof and comply with any service contracts as if it were the operator. Any revenues that are subject to a lien shall be collected for the benefit of, and paid to, secured parties, as their interests may appear, to the extent necessary to satisfy the operator's obligations to secured parties, including the maintenance of reserves and such liens shall be correspondingly reduced and, when paid off, released. Before any payments to, or for the benefit of, secured parties, the responsible public entity may use revenues to pay current operation and maintenance costs of the transportation facility or facilities, including compensation to the responsible public entity for its services in operating and maintaining the qualifying transportation facility. Remaining revenues, if any, after all payments for operation and maintenance of the transportation facility or facilities, and to, or for the benefit of, secured parties, have been made, shall be paid to the operator, subject to the negotiated maximum rate of return. The right to receive such payment, if any, shall be considered just compensation for the transportation facility or facilities. The full faith and credit of the responsible public entity shall not be pledged to secure any financing of the operator by the election to take over the qualifying transportation facility. Assumption of operation of the qualifying transportation facility shall not obligate the responsible public entity to pay any obligation of the operator from sources other than revenues. (1994, c. 855; 1995, c. 647.)

Effective date. — This section is effective July 1, 1995.

The 1995 amendment rewrote this section.

§ 56-569. Condemnation. — A. At the request of the operator, the responsible public entity may exercise any power of condemnation that it has under law for the purpose of acquiring any lands or estates or interests therein to the extent that the responsible public entity finds that such action serves the public purpose of this chapter. Any amounts to be paid in any such condemnation proceeding shall be paid by the operator.

B. Except as provided in subsection A of this section, until the Commission has entered a final declaratory judgment order under subsection A of § 56-568, the power of condemnation may not be exercised against a qualifying transportation facility.
§ 56-570. Utility crossings. — The operator and each public service company, public utility, railroad, and cable television provider, whose facilities are to be crossed or affected shall cooperate fully with the other in planning and arranging the manner of the crossing or relocation of the facilities. Any such entity possessing the power of condemnation is hereby expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the qualifying transportation facility or that must be relocated to the extent that such moving or relocation is made necessary or desirable by construction of or improvements to the qualifying transportation facility, which shall be construed to include construction of or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Any amount to be paid for such crossing, construction, moving or relocating of facilities shall be paid for by the operator. Should the operator and any such public service company, public utility, railroad, and cable television provider not be able to agree upon a plan for the crossing or relocation, the Commission may determine the manner in which the crossing or relocation is to be accomplished and any damages due arising out of the crossing or relocation. The Commission may employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the Commission. In such a case, the cost of the experts is to be borne by the operator. (1994, c. 855; 1995, c. 647.)

Effective date. — This section is effective July 1, 1995.
The 1995 amendment substituted “Commission” for “regulatory authority” in three places.

§ 56-571. Police powers; violations of law. — A. All police officers of the Commonwealth and of each affected local jurisdiction, shall have the same powers and jurisdiction within the limits of such qualifying transportation facility as they have in their respective areas of jurisdiction and such police officers shall have access to the qualifying transportation facility at any time for the purpose of exercising such powers and jurisdiction. This authority does not extend to the private offices, buildings, garages and other improvements of the operator to any greater degree than the police power extends to any other private buildings and improvements.

B. To the extent the transportation facility is a road, bridge, tunnel, overpass or similar transportation facility for motor vehicles, the traffic and motor vehicle laws of the Commonwealth or, if applicable, any local jurisdiction shall be the same as those applying to conduct on similar transportation facilities in the Commonwealth or such local jurisdiction. Punishment for offenses shall be as prescribed by law for conduct occurring on similar transportation facilities in the Commonwealth or such local jurisdiction. (1994, c. 855; 1995, c. 647.)
§ 56-572. Dedication of assets. — The responsible public entity shall terminate the operator's authority and duties under this chapter on the date set forth in the comprehensive agreement. Upon termination, the authority and duties of the operator under this chapter shall cease, and the qualifying transportation facility shall be dedicated to the responsible public entity or, if the qualifying transportation facility was initially dedicated by an affected local jurisdiction, to such affected local jurisdiction for public use. (1994, c. 855; 1995, c. 647.)

Effective date. — This section is effective July 1, 1995.

The 1995 amendment substituted the present first sentence for the former first and second sentences which pertained to the determination by the regulatory authority of the date of termination of the original permanent financing and the operator's certificate; and, in the present second sentence, deleted "the" following "Upon" and deleted "of the certificate" following "termination."

§ 56-573. Sovereign immunity. — Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the Commonwealth, any responsible public entity or any affected local jurisdiction or any officer or employee thereof with respect to the participation in, or approval of all or any part of the qualifying transportation facility or its operation, including but not limited to interconnection of the qualifying transportation facility with any other transportation facility. Counties, cities and towns in which a qualifying transportation facility is located shall possess sovereign immunity with respect to its construction and operation. (1994, c. 855; 1995, c. 647.)

Effective date. — This section is effective July 1, 1995.

The 1995 amendment inserted "or any officer or employee thereof" near the middle of the first sentence.

§ 56-573.1 Procurement. — The Virginia Public Procurement Act (§ 11-35 et seq.) shall not apply to this chapter; however, a responsible public entity may enter into a comprehensive agreement only in accordance with procedures adopted by it which are consistent with those of § 11-37 to the extent such section applies to the procurement of "other than professional services" through competitive negotiation as defined in §§ 11-37 and 11-48. Such responsible public entities shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received. (1995, c. 647.)

§ 56-573.2 Jurisdiction. — The Commission shall have exclusive jurisdiction to adjudicate all matters specifically committed to its jurisdiction by this chapter. (1995, c. 647.)

Effective date. — This section is effective July 1, 1995. The 1995 amendment inserted "(§ 56-535 et seq.)" at the end of the first sentence and added the second sentence.

§ 56-575: Not set out.

Editor's note. — Section 56-575 is a severability clause. See Acts 1994, c. 855.
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shall not apply to a transportation district subject to the provisions of the Virginia Tort Claims Act (§ 8.01-195.1 et seq.). (1964, c. 631; 1986, c. 584; 1991, c. 23.)

Editor's note. — Acts 1986, c. 584, cl. 2, as amended by Acts 1988, c. 801, cl. 2, provides that the provisions of the 1986 act shall have no force and effect after July 1, 1990, unless reenacted by the General Assembly prior to such date. Since the General Assembly did not reenact the amendatory provisions of the 1986 act prior to July 1, 1990, the amendatory provisions have expired.

The 1991 amendment, effective Feb. 21, 1991, added the second sentence.

CHAPTER 32.1.
MULTICOUNTY TRANSPORTATION IMPROVEMENT DISTRICT.


§ 15.1-1372.1. Short title. — This chapter shall be known as the “Multicounty Transportation Improvement Districts Act.” (1987, c. 646; 1990, c. 855; 1992, c. 758.)

The 1990 amendment deleted “Primary Highway” preceding “Transportation Improvement District.”

The 1992 amendment substituted “Multicounty Transportation Improvement Districts Act” for “Transportation Improvement District in Multi-County Areas Act.”


§ 15.1-1372.2. Definitions. — As used in this chapter, the following words and terms shall have the following meanings unless context indicates another meaning or intent:

“Commission” shall mean the governing body of the local district.

“Cost” shall mean all or any part of the cost of acquisition, construction, reconstruction, alteration, landscaping, or enlargement of a public mass transit system or highway which is located in counties which are authorized by this chapter to create a transportation improvement district, including the cost of the acquisition of land, rights-of-way, property rights, easements and interests acquired for such construction, alteration or expansion, the cost of demolishing or removing any structure on land so acquired, including the cost
of acquiring any lands to which such structures may be removed, the cost of all labor, materials, machinery and equipment, financing charges, insurance, interest on all bonds prior to and during construction and, if deemed advisable by the commission, for a reasonable period after completion of such construction, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, provisions for working capital, the cost of surveys, engineering and architectural expenses, borings, plans and specifications and other engineering and architectural services, legal expenses, studies, estimates of costs and revenues, administrative expenses and such other expenses as may be necessary, or incident to the construction of the project or, solely as to districts created pursuant to this chapter after July 1, 1990, the creation of the district (the costs of which creation shall not exceed $150,000), and of such subsequent additions thereto or expansion thereof, and to determining the feasibility or practicability of such construction, the cost of financing such construction, additions or expansion and placing the project and such additions or expansion in operation.

“County” shall mean any county having a population of more than 500,000 and any adjoining county.

“District” or “local district” shall mean any transportation improvement district created under the provisions of § 15.1-1372.3.

“District advisory board” or “advisory board” shall mean the board appointed by the commission in accordance with § 15.1-1372.5.

“Federal agency” shall mean and include the United States of America or any department, bureau, agency or instrumentality thereof.

“Owner” or “landowner” shall mean the person or entity which has the usufruct, control or occupation of the taxable real property as determined by the commissioner of revenue of the jurisdiction in which the subject real property is located pursuant to § 58.1-3281.

“Revenues” shall mean any or all fees, tolls, taxes, rents, notes, receipts, assessments, moneys and income derived by the local district and shall include any cash contributions or payments made to the local district by the Commonwealth or any agency, department or political subdivision thereof or by any other source.

“Town” shall mean any town having a population of more than 1,000.

“Transportation improvements” shall mean any and all real or personal property utilized in constructing and improving (i) any mass transportation project and (ii) any primary highway or portion thereof, located within any district created pursuant to § 15.1-1372.3. Such improvements shall include, without limitation, public mass transit systems, public highways, all buildings, structures, approaches, and other facilities and appurtenances thereto, rights-of-way, bridges, tunnels, transportation stations, terminals, areas for parking, and all related equipment and fixtures. (1987, c. 646; 1990, c. 855; 1992, c. 758.)

The 1990 amendment deleted the paragraph defining “Commonwealth”; in the paragraph defining “Cost” inserted “public mass transit system or,” deleted “within the primary system of state highways” following “highway,” substituted “transportation” for “primary highway,” and inserted the language beginning “or, solely as to districts created,” and ending “the costs of which creation shall not exceed $150,000;” added “as determined by the 1980 United States census” in the paragraph defining “County”; deleted the paragraph defining “Commonwealth Transportation Board”; added the paragraph defining “Town”; and in the paragraph defining “Transportation improvements,” in the first sentence, inserted the designation for clause (i), and inserted “mass transportation project and (ii) any,” and inserted “public mass transit systems” in the second sentence.

The 1992 amendment deleted “with a population of less than 75,000 as determined by the 1980 United States census” at the end of the paragraph defining “County,” and deleted “as determined by the 1980 census” at the end of the paragraph defining “Town.”
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§ 15.1-1372.2:1 Not set out.

Editor's note. — This section, relating to the purpose of this chapter, was enacted by Acts 1992, c. 758. In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by reference.

§ 15.1-1372.3. Creation of district. — A. A transportation improvement district shall be created under this chapter only by the resolutions of the boards of supervisors of the adjoining counties, as defined in § 15.1-1372.2, upon the joint petition to each board of supervisors in which the proposed district is located of the owners of at least fifty-one percent of either the land area or the assessed value of land in each county which is within the boundaries of the proposed district and which has been zoned for commercial or industrial use or is used for such purposes. Any proposed district shall include land in each county and may include any land within a town located within such county. Such petitions should:
1. Set forth the name and describe the boundaries of the proposed district;
2. Describe the transportation facilities proposed within the district;
3. Describe a proposed plan for providing such transportation facilities as proposed within the district and describe specific terms and conditions with respect to all commercial and industrial zoning classifications and uses, densities, and criteria related thereto which the petitioners request for the proposed district;
4. Describe the benefits which can be expected from the provision of such transportation facilities within the district; and
5. Request each board to establish the proposed district for the purposes set forth in the petition.

B. Upon the filing of such a petition, each local board of supervisors shall fix a day for a hearing on the question of whether the proposed district shall be created. The hearing shall consider whether or not the residents and owners of real property within the proposed district would benefit from the establishment of the proposed district. All interested persons who either reside in or who own taxable real property within the boundaries of the proposed district shall have the right to appear and show cause why any property or properties should not be included in the proposed district. If real property situated within a town is included in the proposed district, the board of supervisors shall deliver a copy of the petition and notice of the public hearing thereon to the town council at least thirty days prior to the public hearing, and the town council may, by resolution duly passed, determine if it wishes such property located within the town to be included within the proposed district, and shall deliver a copy of any such resolution to the board of supervisors at the public hearing required hereunder, which resolution shall be binding upon the board of supervisors with respect to the inclusion or exclusion of such properties within the proposed district. The petition shall comply with the provisions of this section with respect to minimum acreage or assessed valuation. Notice of the hearing shall be given by publication once a week for three consecutive weeks in a newspaper of general circulation within the county. At least ten days shall intervene between the third publication and the date set for the hearing.

C. If each board of supervisors finds the creation of the proposed district would be in furtherance of the applicable county comprehensive plan for the development of the area, in the best interests of the residents and owners of real property within the proposed district, and in furtherance of the public health, safety and general welfare, each board of supervisors shall pass a
resolution, which shall be reasonably consistent with the petition, creating the
district and providing for the appointment of an advisory board in accordance
with § 15.1-1372.5. Each resolution shall provide a description with specific
terms and conditions of all commercial and industrial zoning classifications
which shall be in force in the district upon its creation, together with any
related criteria, and a term of years, not to exceed twenty years, as to which
each such zoning classification and each related criterion set forth therein
shall not be eliminated, reduced, or restricted if a special tax is imposed as
provided in § 15.1-1372.7. However, this commitment shall not limit the
legislative prerogative of the board of supervisors in any county in which a
district is wholly or partly located with respect to land-use approvals of any
kind or nature arising from requests initiated by an owner of property therein,
or as specifically required to comply with the provisions of the Chesapeake Bay
Preservation Act (§ 10.1-2100 et seq.) or the regulations adopted pursuant
thereto, or other state law, or the requirements of the federal Clean Water Act
(33 U.S.C. § 1342 (p)) and regulations promulgated thereunder by the federal
Environmental Protection Agency or applicable state regulations. In the case
of any district created under this section prior to July 1, 1992, all commercial
and industrial zoning classifications, and all zoning ordinance text and
regulations relating thereto regarding allowable uses, densities, setbacks,
building heights, required parking, and open space in force in the district on
the date of the district's creation shall be deemed to have been a part of the
ordinance creating the district, and shall remain at least as permissive without
limitation, reduction, or restriction, except as provided hereinabove with
respect to land-use approvals of any kind or nature arising from requests
initiated by landowners or as required to comply with the Chesapeake Bay
Preservation Act or regulations adopted pursuant thereto, other state law or
the requirements of the federal Clean Water Act (33 U.S.C. § 1342 (p)) and
regulations promulgated thereunder by the federal Environmental Protection
Agency or applicable state regulations, for a period of fifteen years from the
date the district was created. Any rezonings, with respect to individual parcels
of land in a district which have been duly approved by a board of supervisors
prior to July 1, 1992, shall remain in effect, regardless of whether such
rezonings were initiated by the owner of such parcels or not. Each resolution
shall also provide that the district shall expire either thirty-five years from the
date upon which the resolution is passed or when the district is abolished in
accordance with § 15.1-1372.15. After the public hearing each board of
supervisors shall deliver a true copy of its proposed resolution creating the
district to the petitioning landowners or their attorney-in-fact. Any petitioning
landowner may then withdraw his signature on the petition in writing at any
time prior to the vote of the board of supervisors. In the case where any
signatures on the petition are withdrawn as provided herein, the board of
supervisors may pass the proposed resolution in conformance herewith only
upon certification that the petition continues to meet the provisions of
subdivision A of this section with respect to minimum acreage or assessed value
as the case may be. After both boards of supervisors have adopted resolutions
creating the district, the district shall be established and the name of the
district shall be “The Transportation Improvement District.”

D. No district shall be created under this chapter after June 30, 1993. (1987,
c. 646; 1990, c. 855; 1992, c. 758; 1993, c. 395.)
§ 15.1-1372.4 TRANSPORTATION IMPROVEMENT DISTRICT § 15.1-1372.5

15.1-1372.4 Commission to exercise powers of the district. — The powers of the local district created in accordance with this chapter shall be exercised by a commission composed of four of the elected members of each of the boards of supervisors of the counties in which it is located, appointed by their respective boards of supervisors. The Chairman of the Commonwealth Transportation Board, or his designee, shall be a member of the commission, ex officio.

The members of the commission shall elect one of their number chairman of the commission of the district. The chairman of the commission may or may not be the chairman or presiding officer of a board of supervisors. In addition, the members of the commission of the district, with the advice of the district advisory board, shall elect a secretary and treasurer, who may or may not be a member or employee of the board of supervisors or other governmental bodies represented on the commission. The offices of secretary and treasurer may be combined. A majority of the members of the commission shall constitute a quorum, and the vote of a majority of the members of the commission shall be necessary for any action taken by the commission. No vacancy in the membership of the commission shall impair the right of a majority of the members to form a quorum or to exercise all of its rights, powers and duties. The 1990 amendments to the provisions of this paragraph shall not be effective for the Route 28 Primary Highway Transportation Improvement District until such time as the special tax revenues from the District exceed the total debt service on the bonds issued pursuant to Chapter 676 of the 1988 Acts of Assembly for three consecutive years. (1987, c. 646; 1990, c. 855; 1992, c. 758.)

The 1990 amendment, in the second sentence of subsection B, inserted “with the advice of the district advisory board,” and substituted “a member or employee of the board of supervisors or other governmental bodies represented on the commission” for “members of the commission,” and added the last sentence of subsection B.

The 1992 amendment deleted subsection designations A and B.

§ 15.1-1372.5 Creation of district advisory boards. — Within thirty days after the establishment of a district in accordance with the procedures provided in § 15.1-1372.3, the commission shall appoint a district advisory board of twelve members, consisting of: three members appointed by the board of supervisors of each participating county, each of whom either resides on or owns land within that portion of the district which is located in the county from which the member is appointed or is a designee of a landowner as described below; three members who own land zoned for commercial or industrial use Board of Supervisors to obtain the consent of all affected private landowners in the Route 28 highway transportation improvement district before it could enact zoning reductions or restrictions which were not part of an overall revision to a comprehensive plan, and also required the county to obtain the unanimous consent of the members of the District Advisory Board before it could enact any changes to a comprehensive plan which would affect commercial or industrial properties in that District. Therefore, these provisions constituted an unlawful delegation of legislative power which rendered the 1990 amendment invalid. County of Fairfax v. Fleet Indus. Park Ltd. Partnership, 242 Va. 426, 410 S.E.2d 669 (1991).

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within that portion of the district from each participating county or who are designees of landowners as described below who are elected by the landowners of the district, voting on a basis weighted by acreage owned or assessed value, as the case may be. Such elections may be conducted by the commission by mail ballot of owners of land within that portion of the district in each participating county. A corporation owning land within the district may designate one of its officers or employees, and a partnership owning land within the district may designate an individual who is one of its general partners, and such designees are eligible to be appointed members of the district advisory board. Each member shall be appointed for a definite term of four years, except the initial appointment of advisory board members shall provide that the terms of half of the members shall be for two years. Thereafter, elections shall be conducted biennially on the anniversary of the creation of the district in the same manner as described in the preceding provisions of this section. Members may be reelected or reappointed provided that they, or the corporation or partnership they represent, own land zoned for commercial or industrial use within the district at the time of their reelection or reappointment. If a vacancy occurs with respect to an advisory member initially elected by a board of supervisors, or any successor of such a member, that board of supervisors shall appoint a new member who is a resident or landowner within the local district. If a vacancy occurs with respect to an advisory member initially appointed by landowners, or any successor of such a member, then the board of supervisors shall appoint a new board member who is a landowner within the district elected in the manner provided herein.

The members shall serve without pay, but the commission shall provide the advisory board with facilities for the holding of meetings and shall appropriate funds needed to defray the reasonable expenses and fees of the board, which shall not exceed $20,000 annually, including, without limitation, expenses and fees arising out of the preparation of the annual report. Such appropriations shall be based on an annual budget submitted by the advisory board, approved by the commission, sufficient to carry out its responsibilities under this chapter. The advisory board shall elect a chairman and a secretary and such other officers as it deems necessary. The board shall fix the time for holding regular meetings, but it shall meet at least once every year. Special meetings of the board shall be called by the chairman or by two members of the board upon written request to the secretary of the board. A majority of the members shall constitute a quorum. The 1990 amendments to the provisions of this paragraph shall not be effective for the Route 28 Primary Highway Transportation Improvement District until such time as the special tax revenues from the District exceed the total debt service on the bonds issued pursuant to Chapter 676 of the 1988 Acts of Assembly for three consecutive years.

The advisory board shall present an annual report to the commission on the transportation needs of the district and on the activities of the board, and the advisory board shall present special reports on transportation matters as requested by the commission or the board of supervisors of either county concerning taxes to be levied pursuant to § 15.1-1372.7. (1987, c. 646; 1988, c. 772; 1990, c. 855; 1992, c. 758.)

The 1990 amendment, in the first sentence of the first paragraph, inserted "zoned for commercial or industrial use," and inserted "or assessed value, as the case may be"; substituted "conducted by the commission" for "conducted informally by the landowners of the district" in the second sentence of the first paragraph; added the fifth and sixth sentences of the first paragraph; in the first sentence of the second paragraph substituted "shall appropriate" for "may appropriate," inserted "and fees," and added the language beginning "which shall not exceed $20,000" at the end thereof, and added the second and final sentences.

The 1992 amendment added "elected in the manner provided herein" at the end of the last sentence in the first paragraph.
§ 15.1-1372.6. Powers and duties of commission. — The commission shall have the following powers and duties:

1. To construct, reconstruct, alter, improve, and expand (i) any public mass transit system in the district or (ii) any primary highway located within the district having no more than two through travel lanes as of January 1, 1987, which is located in both counties which comprise the district, and which was not financed under the authority provided by the Commonwealth of Virginia Transportation Facilities Bond Act of 1979.

2. To acquire by gift, purchase, lease, in-kind contribution to construction costs, or otherwise any public mass transit system or primary highway transportation improvements in the district and to sell, lease as lessor, transfer or dispose of any part of any transportation improvements in such manner and upon such terms as the commission may determine to be in the best interests of the district. However, prior to disposing of any such property or interest therein, the commission shall conduct a public hearing with respect to such disposition. At the hearing, the residents and owners of property within the district shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the district, as prescribed by the commission. Such public hearing may be adjourned from time to time.

3. To negotiate and contract with any person, firm, corporation, or authority or state or federal agency or instrumentality with regard to any matter necessary and proper to provide any public mass transit system or primary highway transportation facility, including, but not limited to, the financing, acquisition, construction, reconstruction, alteration, improvement, expansion or maintenance of any transportation improvements in the district. No such contract shall extend for a period that exceeds thirty years.

4. To enter into a continuing service contract for a purpose authorized by this chapter and to make payments of the proceeds received from the special taxes levied pursuant to § 15.1-1372.7, together with any other revenues, for the payment of installments due under that service contract. The district may apply such payments annually during the term of that service contract in an amount sufficient to make the installment payments due under that contract, subject to the limitation imposed by § 15.1-1372.7. However, payments for any such service contract shall be conditioned upon the receipt of services pursuant to the contract. Such a contract may not obligate a county to make payments for services of the district.

5. To accept the allocations, contributions or funds of, or to reimburse from, any available source, including, but not limited to, any person, corporation, authority, state or federal agency or instrumentality for either the whole or any part of the costs, expenses and charges incident to the acquisition, construction, reconstruction, maintenance, alteration, improvement, and expansion of any transportation improvements in the district.

6. To contract for the extension and use of any public mass transit system or primary highway into territory outside of the local district on such terms and conditions as the commission determines.

7. To employ and fix the compensation of personnel which may be deemed necessary for the construction, operation or maintenance of any public mass transit system or primary highway in the district.

8. To have prepared an annual audit of the district's financial obligations and revenues, and upon review of such audit, to request a tax rate adequate to provide tax revenues which, together with all other revenues, are required by the district to fulfill its annual obligations.

9. To invest any funds, received pursuant to § 15.1-1372.7:1 C, which are not otherwise obligated to make payments to the Commonwealth Transportation Board or to any other purpose, in accordance with Chapter 18 (§ 2.1-327
§ 15.1-1372.7:1  COUNTIES, CITIES AND TOWNS  § 15.1-1372.7:1

et seq.) of Title 2.1. (1987, c. 646; 1988, c. 772; 1990, c. 855; 1992, c. 758; 1993, cc. 851, 870.)

The 1990 amendment, in subdivision 1, inserted "(i)" and "public mass transit system in the district or (ii) any"; in subdivision 2, in the first sentence, deleted "condemnation" preceding "purchase" and inserted "public mass transit system or"; in subdivision 3, inserted "or instrumentality" and inserted "public mass transit system or"; in subdivision 5 inserted "or instrumentality" and substituted "transportation improvements" for "primary highway"; and inserted "public mass transit system or" in subdivisions 6 and 7.

The 1992 amendment substituted "or authority or state" for "authority, state" in the first sentence of subdivision 3, and divided the second sentence in subdivision 4 into two sentences by substituting "imposed by § 15.1-1372.7. However, payments" for "imposed by § 15.1-1372, but payments."

The 1993 amendments. — The 1993 amendments by cc. 851 and 870 are identical, and added subdivision 9.

§ 15.1-1372.7:1. Agreements with Commonwealth Transportation Board; payment of special improvements tax to transportation trust fund. — A. The district may contract with the Commonwealth Transportation Board for the Board to perform any of the purposes of the district.

The district may agree by contract to pay over all or a portion of the special improvements tax and all or a portion of the sums received pursuant to subsection C of this section to the Commonwealth Transportation Board.

Prior to executing any such contract, the district shall seek the agreement of each board of supervisors creating the district that the county administrator or other officer charged with the responsibility for preparing the county's annual budget shall submit in the budget for each fiscal year in which any Commonwealth of Virginia Transportation Contract Revenue Bonds issued for such district are outstanding, all amounts to be paid to the Commonwealth Transportation Board under such contract during such fiscal year.

If the amount required to be paid to the Commonwealth Transportation Board under the contract is not so paid for a period of sixty days after such amount is due, the Commonwealth Transportation Board is hereby directed, until such amount has been paid, to withhold sufficient funds from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects covered by such contract are located or to such county or counties in which such project or projects are located and to use such funds to satisfy the contractual requirements.

B. While nothing in this article shall limit the authority of any county to change the classification of any parcel or parcels of land zoned for commercial or industrial use or used for such purpose upon the written request or approval of the owner of the property affected by such change after the effective date of any such contract, except for changes in zoning classification from commercial or industrial use to residential use approved in accordance with subsection C of this section, should a change in zoning classification so requested result in a shortfall in the total annual revenues from the imposition of the special improvements tax and the payments required to be made to the Commonwealth Transportation Board pursuant to the contract, the district shall request the board of supervisors to increase the rate of such tax by such amount up to the maximum authorized rate as may be necessary to prevent such shortfall. If, however, a deficit remains after any rezoning and adjustment of the tax rate or the rate is at the maximum authorized rate and cannot be increased, then the amount of funds otherwise appropriated and allocated pursuant to the highway allocation formula as provided by Article 1.1 (§ 33.1-23.01 et seq.) of Chapter 1 of Title 33.1 to the highway construction district in which the project or projects covered by such contract are located or to such
county or counties in which such project or projects are located, shall be reduced by the amount of such deficit and used to satisfy the deficit.

C. For any property within the district for which a county changes its zoning classification from commercial or industrial use to residential use upon the written request or approval of the owner, the county shall require the simultaneous payment from the property owner of a sum representing the present value of the future special improvements taxes estimated by the county to be lost as a result of such change in classification. On a case-by-case basis, however, the board of supervisors may, in its sole discretion, defer, for no more than sixty days, the effective date of such change in zoning classification. In the event of such a deferral, the lump sum provided for in this subsection shall be paid to the county, in immediately available funds acceptable to the county before the deferred effective date. If the landowner fails to make this lump sum payment, as and when required, the change in zoning classification shall not become effective and the ordinance shall be void. Special improvements taxes previously paid in the year of the zoning change may be credited toward any such payment on a prorated basis. The portion of the payment that may be credited shall be that portion of the year following the change in zoning classification. The district and the Commonwealth Transportation Board shall agree to a method of calculating the present value of the loss of future special improvements taxes resulting from such a change in zoning classification and the procedure for payment of such funds to the Commonwealth Transportation Board. Sums paid pursuant to this subsection which represent the estimated special improvements taxes which otherwise would have been imposed upon the rezoned property in any given year shall be included in calculations which may be made pursuant to §§ 15.1-1372.4 and 15.1-1372.5 in order to determine whether special tax revenues from the district have exceeded total debt service on the bonds issued pursuant to Chapter 676 of the 1988 Acts of Assembly for three consecutive years. Whenever any county acts in accordance with such an agreement between the district and the Commonwealth Transportation Board, the change in zoning classification shall not be considered to have resulted in a shortfall in the total annual revenues from the imposition of the special improvements tax and the payments required to be made to the Commonwealth Transportation Board. (1988, cc. 69, 369; 1990, c. 855; 1992, c. 758; 1993, cc. 851, 870.)

The 1990 amendment rewrote the first sentence in subsection E.

The 1992 amendment deleted subsection designations A through E, and in the last paragraph, in the first sentence substituted "any parcel or parcels of land" for "property," and "owner of the property" for "owner of any property," and substituted "Article 1.1 (§ 33.1-2301 et seq.) of Chapter 1 of Title 33.1" for "law" in the second sentence.

The 1993 amendments. — The 1993 amendments by cc. 851 and 870 are identical, and added the subsection A designation, and inserted "and all or a portion of the sums received pursuant to subsection C of this section" in the second paragraph of subsection A; added the subsection B designation, and added the language beginning "except for changes" and ending "of this section" in the first sentence in subsection B; and added subsection C.

§ 15.1-1372.8. Jurisdiction of counties and officers, etc., not affected. — Neither the creation of a district nor any other provision in this chapter shall affect the power, jurisdiction, or duties of the respective local governing bodies; sheriffs; treasurers; commissioners of the revenue; circuit, district, or other courts; clerks of any court; magistrates or any other county or state officer in regard to the area embraced in any district, nor restrict or prevent any county or town or its governing body from imposing and collecting taxes or assessments for public improvements as permitted by law. Any county which creates a district pursuant to this section may obligate itself with respect to the zoning ordinances, zoning ordinance text, and regulations relating thereto for
§ 15.1-1372.10  COUNTIES, CITIES AND TOWNS  § 15.1-1372.13

all commercial and industrial classifications within the district as provided in subsection C of § 15.1-1372.3 for a term not to exceed twenty years from the date on which such district is created. (1987, c. 646; 1990, c. 855; 1992, c. 758.)

The 1990 amendment, in the first sentence, substituted "local governing bodies" for "county governing bodies," inserted "of any court," substituted "magistrates" for "justices of the peace," inserted "or town," substituted "its governing body" for "the governing body," and deleted "of any county" following "governing body," and added the second sentence.

The 1992 amendment, in the second sentence, deleted "Notwithstanding any contrary provisions of law" at the beginning of the sentence, and substituted "§ 15.1-1372.3" for "§ 15.1-791.3."

§ 15.1-1372.10. Reimbursement for advances to local transportation district. — The commission shall direct the district treasurer to reimburse the county or town from any funds of the district, not otherwise specifically allocated or obligated, to the extent that a county or town has made advances. (1987, c. 646; 1990, c. 855; 1992, c. 758.)

The 1990 amendment inserted "or town" in two places.

The 1992 amendment deleted "Notwithstanding the provisions of any other law" at the beginning of the section.

§ 15.1-1372.12. Tort liability. — No pecuniary liability of any kind shall be imposed on the Commonwealth or on any county, town, or landowner therein because of any act, agreement, contract, tort, malfeasance, misfeasance, or nonfeasance, by or on the part of a district created under this chapter, its agents, servants, or employees. (1987, c. 646; 1990, c. 855; 1992, c. 758.)

The 1990 amendment inserted "town."

The 1992 amendment substituted "imposed on the Commonwealth or on any county" for "imposed upon the Commonwealth or upon any county," and inserted "created under this chapter."

§ 15.1-1372.13. Approval by Commonwealth Transportation Board. — The district may not construct or improve a mass transit system or public highway without the approval of the Commonwealth Transportation Board and without the approval of each county in which the transportation improvement will be located. At the request of the commission, the Commonwealth Transportation Commissioner may exercise his powers of condemnation pursuant to §§ 33.1-89 through 33.1-132, or § 33.1-229, or the same as is prescribed in §§ 25-46.1 through 25-46.36 for the purpose of acquiring property for transportation improvements within the district. Upon completion of such construction or improvement, the Commonwealth Transportation Board shall take such public highway into the primary system of state highways for purposes of maintenance and subsequent improvement as necessary. Upon acceptance by the Commonwealth of the highway into the primary system of highways all rights, title and interest in the right-of-way held by the commission and improvements of such highway shall vest in the Commonwealth. Upon completion of such construction or improvement of a mass transit system, all rights, title, and interest in the right-of-way and improvements of such mass transit system shall vest in the Northern Virginia Transportation Commission or other agency or instrumentality of the Commonwealth. (1987, c. 646; 1990, c. 855; 1992, c. 758.)

The 1990 amendment inserted “mass transit system or” in the first sentence, substituted “for transportation improvements” for “for primary highway transportation facilities” in the second sentence, and added the last sentence.

The 1992 amendment, in the first sentence,
§ 15.1-1372.17  HIGHWAY TRANSP. IMPROVEMENT DIST.  § 15.1-1372.21

substituted "each county" for "the county," and "transportation improvement" for "public highway."

ARTICLE 3.

Construction of Chapter.

§ 15.1-1372.17. Validation of districts. — All proceedings held in the creation of a district pursuant to § 15.1-1372.3 prior to March 1, 1988, are hereby ratified, validated and confirmed, and all such districts so created or attempted to be created pursuant to the provisions of Article 1 (§ 15.1-1372.1 et seq.) of this chapter are declared hereby to have been validly created, notwithstanding any defects or irregularities in the creation of such a district or in the selection or appointment of the commission or the advisory board of such a district. (1988, c. 772; 1992, c. 758.)

The 1992 amendment substituted "March 1, 1988" for "January 1, 1988."


CHAPTER 32.2.
TRANSPORTATION IMPROVEMENT DISTRICT IN INDIVIDUAL LOCALITIES.

Article 1.  
General Provisions.

Sec.  
15.1-1372.22. Definitions.  
15.1-1372.23. Creation of district.  
15.1-1372.25. Creation of district advisory boards.  
15.1-1372.27. Annual special improvements tax; use of revenues.  
15.1-1372.28. Jurisdiction of localities and officers, etc., not affected.  
15.1-1372.29. Allocation of funds to local transportation districts.

Sec.  
15.1-1372.30. Reimbursement for advances to local transportation district.  
15.1-1372.32. Tort liability.  
15.1-1372.33. Approval by Commonwealth Transportation Board.

Article 2.  
Boundary Changes for Local Districts.

15.1-1372.34. Enlargement of local districts.  
15.1-1372.35. Abolition of local transportation districts.

Article 3.  
Construction of Chapter.

15.1-1372.37. Validation of districts.

ARTICLE 1.  
General Provisions.

§ 15.1-1372.21. Short title. — This chapter shall be known as the "Transportation Improvement District in Individual Localities Act." (1987, c. 662; .990, cc. 855, 879.)
The 1990 amendments. — The 1990 amendment by c. 879 substituted "Localities" for "Counties." The 1990 amendment by c. 855 deleted "Primary Highway" preceding "Transportation."

§ 15.1-1372.22. Definitions. — As used in this chapter, the following words and terms shall have the following meanings unless context indicates another meaning or intent:

"Commission" shall mean the governing body of the local district.

"Cost" shall mean all or any part of the cost of acquisition, construction, reconstruction, alteration, landscaping, utilities, parking, or enlargement of a public mass transit system or highway which is located in localities which are authorized by this chapter to create a transportation improvement district, including the cost of the acquisition of land, rights-of-way, property rights, easements and interests acquired for such construction, alteration or expansion, the cost of demolishing or removing any structure on land so acquired, including the cost of acquiring any lands to which such structures may be removed, the cost of all labor, materials, machinery and equipment, financing charges, insurance, interest on all bonds prior to and during construction and, if deemed advisable by the commission, for a reasonable period after completion of such construction, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, provisions for working capital, the cost of surveys, engineering and architectural services, legal expenses, studies, estimates of costs and revenues, administrative expenses and such other expenses as may be necessary or incident to the construction of the project, or creation of the district (which shall not exceed $150,000), and of such subsequent additions thereto or expansion thereof, and to determining the feasibility or practicability of such construction, the cost of financing such construction, additions or expansion and placing the project and such additions or expansion in operation.

"District" or "local district" shall mean any transportation improvement district created under the provisions of § 15.1-1372.23.

"District advisory board" or "advisory board" shall mean the board appointed by the commission in accordance with § 15.1-1372.25.

"Federal agency" shall mean and include the United States of America or any department, bureau, agency, or instrumentality thereof.

"Locality" shall mean (i) any county that has the county executive form of government and is located adjacent to a county with a population of more than 500,000, (ii) any county that has been granted a county charter and has a population of more than 100,000, and (iii) any city that is located adjacent to a county that has been granted a county charter and has a population of more than 100,000.

"Owner" or "landowner" shall mean the person or entity which has the usufruct, control or occupation of the taxable real property as determined by the commissioner of revenue of the jurisdiction in which the subject real property is located pursuant to § 58.1-3281.

"Revenues" shall mean any or all fees, tolls, taxes, rents, notes, receipts, assessments, moneys and income derived by the local district and shall include any cash contributions or payments made to the local district by the Commonwealth or any agency, department or political subdivision thereof or by any other source.

"Town" shall mean any town having a population of more than 1,000 as determined by the 1980 census.

"Transportation improvements" shall mean any and all real or personal property utilized in constructing and improving any public mass transit system or any highway or portion or interchange thereof including utilities and

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parking facilities within the secondary, primary, or interstate highway system of the Commonwealth or any highway included in the county's land use and transportation plan located within the district created pursuant to § 15.1-1372.23. Such improvements shall include, without limitation, public mass transit systems or public highways, all buildings, structures, approaches, and other facilities and appurtenances thereto, rights-of-way, bridges, tunnels, transportation stations, terminals, areas for parking and all related equipment and fixtures. (1987, c. 662; 1989, c. 661; 1990, cc. 855, 879.)

The 1990 amendments. — The 1990 amendment by c. 855 deleted the definition for "Commonwealth"; in the definition for "Cost," inserted "public mass transit system or," deleted "within the primary system of state highways" preceding "which is located in counties," substituted "transportation improvement district" for "primary highway improvement district," and inserted "or creation of the district (which shall not exceed $150,000)"; deleted the paragraph defining "Commonwealth Transportation Board"; in the paragraph defining "District" deleted "primary highway" preceding "transportation"; added the definition for "Town"; and rewrote the definition for "Transportation improvements."

The 1990 amendment by c. 879 near the beginning of the paragraph defining "Cost" inserted "utilities, parking" and substituted "localities" for "counties"; deleted the definitions for both "County" and "Commonwealth Transportation Board"; added the definition for "Locality"; and inserted "including utilities and parking facilities" in the second sentence of the paragraph defining "Transportation improvements."

§ 15.1-1372.23. Creation of district. — A. A transportation improvement district shall be created under this chapter only by the resolution of the local governing body, upon the petition to the local governing body in which the proposed district is located, of the owners of at least fifty-one percent of either the land area or assessed value of land in each locality which is within the boundaries of the proposed district and which has been zoned for commercial or industrial use or is used for such purposes or which, in a county with a population of more than 100,000 which has been granted a county charter, fifty-one percent of the owners of land which is designated for such purposes in the county's land use and transportation plan and is not zoned for residential use at the time the district is created.

The roads, intersections, and rights-of-way thereof which form boundaries of these districts shall be considered as part of each respective district. Any proposed district may include any land within a town in such county. Such petitions should:

1. Set forth the name and describe the boundaries of the proposed district;

2. Describe the transportation facilities proposed within the district;

3. Describe a proposed plan for providing such transportation facilities as proposed within the district and describe specific terms and conditions with respect to all commercial and industrial zoning classifications and uses, densities, and criteria related thereto which the petitioners request for the proposed district;

4. Describe the benefits which can be expected from the provision of such transportation facilities within the district; and

5. Request the local governing body to establish the proposed district for the purposes set forth in the petition.

B. Upon the filing of such a petition, the board of supervisors shall fix a day for a hearing on the question of whether the proposed district shall be created. The hearing shall consider whether or not the residents and owners of real property within the proposed district would benefit from the establishment of the proposed district. All interested persons who either reside in or who own taxable real property within the boundaries of the proposed district shall have the right to appear and show cause why any property or properties should not be included in the proposed district. If real property situate within a town is
included in the proposed district, the board of supervisors shall deliver a copy of the petition and notice of the public hearing thereon to the town council at least thirty days prior to the public hearing, and the town council may, by resolution duly passed, determine if it wishes such property located within the town to be included within the proposed district, and shall deliver a copy of any such resolution to the board of supervisors at the public hearing required hereunder, which resolution shall be binding upon the board of supervisors with respect to the inclusion or exclusion of such properties within the proposed district. The petition shall comply with the provisions of § 15.1-1372.3 with respect to minimum acreage or assessed valuation. Notice of the hearing shall be given by publication once a week for three consecutive weeks in a newspaper of general circulation within the locality. At least ten days shall intervene between the third publication and the date set for the hearing.

C. If the local governing body finds the creation of the proposed district would be in furtherance of the applicable comprehensive plan for the development of the area, in the best interests of the residents and owners of real property within the proposed district, and in furtherance of the public health, safety, and general welfare, the governing body of the qualifying county may, and the governing body of the qualifying city may, at its option, pass a resolution, which shall be reasonably consistent with the petition, creating the district and providing for the appointment of an advisory board in accordance with § 15.1-1372.25. The resolution shall provide: (i) a description with specific terms and conditions of all commercial and industrial zoning classifications which shall be in force in the district upon its creation, together with any related criteria, and a term of years, not to exceed twenty years, as to which each such zoning classification and each related criteria set forth therein shall remain in force within the district without elimination, reduction, or restriction, except upon the written request or approval of the owner of any property affected by a change, or as specifically required to comply with the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) or other state law; and (ii) that the district shall expire either thirty-five years from the date upon which the resolution is passed or until the district is abolished in accordance with § 15.1-1372.35. After the public hearing, the local governing body shall deliver a true copy of its proposed resolution creating the district to the petitioning landowners or their attorney-in-fact. Any petitioning landowner may then withdraw its signature on the petition in writing at any time prior to the vote of the local governing body. In the case where any signatures on the petition are withdrawn as provided herein, the local governing body may pass the proposed resolution in conformance herewith only upon certification that the petition continues to meet the provisions of subsection A of this section with respect to minimum acreage or assessed value as the case may be. After the local governing body has adopted resolutions creating the district, the district shall be established and the name of the district shall be “The Transportation Improvement District.”

D. No district shall be created under this chapter after June 30, 1993. (1987, c. 662; 1989, c. 661; 1990, cc. 855, 879; 1993, c. 395.)

The 1990 amendments. — The 1990 amendment by c. 855, in subsection A, in the first sentence, deleted “primary highway” preceding “transportation improvement,” inserted “either” preceding “the land area” and inserted “or assessed value of land in each county” thereafter, deleted the former second sentence, which read: “Any proposed district created in a county having the county executive form of government and located adjacent to a county having a population of more than 500,000 shall include only one highway in the state primary highway system,” added the next to last sentence of the present fourth paragraph, and added the language beginning “and describe specific terms” at the end of subdivision 3; added the fourth and fifth sentences of subsection B; and rewrote subsection C.

The 1990 amendment by c. 879, in subsection A, divided the introductory language into para-
§ 15.1-1372.24. Commission to exercise powers of the district. —
A. The powers of the local district created in accordance with this chapter shall be exercised by a commission composed of three of the elected members of the local governing body of the locality in which it is located, appointed by the local governing body. The Chairman of the Commonwealth Transportation Board, or his designee, shall be a member of the commission, ex officio.

B. The members of the commission shall elect one of their number chairman of the commission of the district; the chairman of the commission may or may not be the chairman or presiding officer of a local governing body. In addition, the members of the commission of the district with the advice of the district advisory board, shall elect a secretary and treasurer, who may or may not be members or employees of the board of supervisors or other governmental body represented on the commission. The offices of secretary and treasurer may be combined. A majority of the members of the commission shall constitute a quorum, and the vote of a majority of the members of the commission shall be necessary for any action taken by the commission. No vacancy in the membership of the commission shall impair the right of a majority of the members to form a quorum or to exercise all of its rights, powers and duties. (1987, c. 662; 1990, cc. 855, 879.)

The 1990 amendments. — The 1990 amendment by c. 855, in the second sentence of subsection B, substituted “with the advice of the district advisory board,” and substituted “or employees of the board of supervisors or other governmental body represented on the commission” for “of the board.”

§ 15.1-1372.25. Creation of district advisory boards. — Within thirty days after the establishment of a district in accordance with the procedures provided in § 15.1-1372.23, the local governing body shall appoint a district advisory board of seven members. All members shall reside on or own or represent commercially or industrially zoned land within the district. Should there not be enough residents or landowners within a district to appoint a seven-member advisory board, then such board shall consist of the lesser number of existing residents or landowners. Each member shall be appointed for a definite term of four years, except the initial appointment of advisory board members shall provide that the terms of three of the members shall be for two years. If a vacancy occurs with respect to an advisory member initially appointed by a local governing body, or any successor of such a member, the
§ 15.1-1372.26 COUNTIES, CITIES AND TOWNS

local governing body shall appoint a new member who is a representative or owner of commercially or industrially zoned property within the local district.

The members shall serve without pay, but the local governing body shall provide the advisory board with facilities for the holding of meetings, and the commission shall appropriate funds needed to defray the reasonable expenses and fees of the advisory board which shall not exceed $20,000 annually, including without limitation expenses and fees arising out of the preparation of the annual report. Such appropriations shall be based on an annual budget submitted by the board, and approved by the commission, sufficient to carry out its responsibilities under this chapter. The advisory board shall elect a chairman and a secretary and such other officers as it deems necessary. The board shall fix the time for holding regular meetings, but it shall meet at least once every year. Special meetings of the board shall be called by the chairman or by two members of the board upon written request to the secretary of the board. A majority of the members shall constitute a quorum.

The advisory board shall present an annual report to the commission on the transportation needs of the district and on the activities of the board, and the advisory board shall present special reports on transportation matters as requested by the commission or the local governing body of the locality concerning taxes to be levied pursuant to § 15.1-1372.27. (1987, c. 662; 1990, cc. 855, 879.)

The 1990 amendments. — The 1990 amendment by c. 855, in the first paragraph, inserted “or represent commercially or industrially zoned” in the second sentence, and substituted “representative or owner of commercially or industrially zoned property” for “resident or landowner” in the last sentence; in the first sentence of the second paragraph, substituted “the commission shall appropriate funds” for “may appropriate funds,” inserted “and fees,” substituted “advisory board” for “board,” and added the language beginning “which shall not exceed $20,000 annually”; and added the second sentence of the second paragraph.

The 1990 amendment by c. 879 inserted the third sentence of the first paragraph; substituted “local governing body” for “board of supervisors” in two places in the last sentence of the first paragraph and in the last paragraph, and substituted “locality” for “county” near the end of the last paragraph.

§ 15.1-1372.26. Powers and duties of commission. — The commission shall have the following powers and duties:

1. To construct, reconstruct, alter, improve, and expand any public mass transit system or highway located within the district which is located in the county which comprises the district, and which was not financed under the authority provided by the Commonwealth of Virginia Transportation Facilities Bond Act of 1979.

2. To acquire by gift, purchase, lease, in-kind contribution to construction costs, or otherwise any public mass transit system or highway transportation improvements in the district and to sell, lease as lessor, transfer or dispose of any part of any transportation improvements in such manner and upon such terms as the commission may determine to be in the best interests of the district. However, prior to disposing of any such property or interest therein, the commission shall conduct a public hearing with respect to such disposition. At the hearing, the residents and owners of property within the district shall have an opportunity to be heard. At least ten days’ notice of the time and place of such hearing shall be published in a newspaper of general circulation in the district, as prescribed by the commission. Such public hearing may be adjourned from time to time.

3. To negotiate and contract with any person, firm, corporation, authority, transportation district, state or federal agency or instrumentality with regard to any matter necessary and proper to provide any public mass transit system or highway transportation facility, including, but not limited to, the financing,
acquisition, construction, reconstruction, alteration, improvement, expansion or maintenance of any transportation improvements in the district. No such contract shall extend for a period that exceeds thirty years.

4. To enter into a continuing service contract for a purpose authorized by this chapter and to make payments of the proceeds received from the special taxes levied pursuant to § 15.1-1372.27, together with any other revenues, for the payment of installments due under that service contract. The district may apply such payments annually during the term of that service contract in an amount sufficient to make the installment payments due under that contract, subject to the limitation imposed by § 15.1-1372.27, but payments for any such service contract shall be conditioned upon the receipt of services pursuant to the contract. Such a contract may not obligate a county to make payments for services of the district.

5. To accept the allocations, contributions or funds of, or to reimburse from, any available source, including, but not limited to, any person, corporation, authority, transportation district, state or federal agency or instrumentality for either the whole or any part of the costs, expenses and charges incident to the acquisition, construction, reconstruction, maintenance, alteration, improvement, and expansion of any transportation improvements in the district.

6. To contract for the extension and use of any transportation improvements into territory outside of the local district on such terms and conditions as the commission determines.

7. To employ and fix the compensation of personnel which may be deemed necessary for the construction, operation or maintenance of any transportation improvements in the district.

8. To have prepared an annual audit of the district's financial obligations and revenues, and upon review of such audit, to request a tax rate adequate to provide tax revenues which, together with all other revenues, are required by the district to fulfill its annual obligations. (1987, c. 662; 1988, c. 244; 1990, c. 855.)

The 1990 amendment substituted “public mass transit system or highway” for “primary highway” in subdivision 1; in the first sentence of subdivision 2, deleted “condemnation” preceding “purchase,” and substituted “public mass transit system or highway transportation improvements” for “primary highway transportation improvements”; in subdivision 3, inserted “or instrumentality” and substituted “public mass transit system or highway” for “primary highway”; inserted “or instrumentality” in subdivision 6; and substituted “transportation improvements” for “primary highway” in subdivisions 5 through 7.

§ 15.1-1372.27. Annual special improvements tax; use of revenues. — Upon the written request of the district commission made to the local governing body pursuant to subdivision 8 of § 15.1-1372.26, the local governing body shall have the power to levy and collect an annual special improvements tax on taxable real property zoned for commercial or industrial use or used for such purposes and leasehold interests in that portion of the improvement district within its jurisdiction. Notwithstanding the provisions of Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1, the tax shall be levied upon the assessed fair market value of the taxable real property. The rate of the special improvements tax shall not be more than $0.20 per $100 of the assessed fair market value of any taxable real estate or the assessable value of taxable leasehold property as specified by § 58.1-3203; however, if all the owners in any district so request, this limitation on rate shall not apply. Such special improvements taxes shall be collected at the same time and in the same manner as the locality's taxes are collected, and the proceeds shall be kept in a separate account. All revenues received by the locality pursuant to such taxes shall be paid over to the district commission for its use pursuant to § 15.1-1372.26. (1987, c. 662; 1990, c. 879.)
§ 15.1-1372.28. Jurisdiction of localities and officers, etc., not affected. — Neither the creation of a district nor any other provision in this chapter shall affect the power, jurisdiction, or duties of the local governing body; sheriff; treasurer; commissioner of the revenue; circuit, district, or other courts; clerks of any court, magistrates, or any other local or state officer in regard to the area embraced in any district, nor restrict or prevent the locality or town, or the governing body of the locality or town, from imposing and collecting taxes or assessments for public improvements as permitted by law. Notwithstanding any contrary provisions of law, any locality which creates a district pursuant to this section may obligate itself with respect to the zoning ordinances, zoning ordinance text, and regulations relating thereto for all commercial and industrial classifications within the district as provided in subsection C of § 15.1-791.3 for a term not to exceed twenty years from the date on which such a district is created. (1987, c. 662; 1990, c. 855, 879.)

The 1990 amendment substituted "local governing body" for "board of supervisors" in two places in the first sentence; inserted "however if all the owners in any district so request, this limitation on rate shall not apply" at the end of the third sentence; and substituted "the locality's" for "county" in the next-to-last sentence and "locality" for "county" in the last sentence.

§ 15.1-1372.29. Allocation of funds to local transportation districts. — The local governing body of the locality which has created a local district pursuant to § 15.1-1372.23, may advance funds, or provide matching funds, from money not otherwise specifically allocated or obligated, from whatever source received or generated, including without limitation, general revenues, special fees and assessments, state allocations, and contributions from private sources to a local district to assist the local district to undertake the project for which it was created. The Commonwealth Transportation Board may allocate funds to a district only from the construction district or districts in which such transportation district is located pursuant to the highway allocation formula to assist the district with an approved project as provided by law. (1987, c. 662; 1990, c. 879.)

The 1990 amendment substituted "local governing body of the locality" for "board of supervisors of the county" in the first sentence.

§ 15.1-1372.30. Reimbursement for advances to local transportation district. — Notwithstanding the provisions of any other law, the commission shall direct the district treasurer to reimburse the locality or town from any funds of the district, not otherwise specifically allocated or obligated, to the extent that a locality or town has made advances. (1987, c. 662; 1990, c. 855.)

The 1990 amendment inserted "or town" in two places.

§ 15.1-1372.32. Tort liability. — No pecuniary liability of any kind shall be imposed upon the Commonwealth or the locality, town, or landowner therein because of any act, agreement, contract, tort, malfeasance, misfeasance, or
§ 15.1-1372.33 HIGHWAY TRANSP. IMPROVEMENT DIST. § 15.1-1372.34

nonfeasance, by or on the part of a district, its agents, servants, or employees. (1987, c. 662; 1990, cc. 855, 879.)

The 1990 amendments. — The 1990 amendment by c. 879 substituted amendment by c. 855 inserted “town.” “locality” for “county.”

§ 15.1-1372.33. Approval by Commonwealth Transportation Board.
— The district may not construct or improve a transportation improvement without the approval of the Commonwealth Transportation Board and without the approval of the locality in which the transportation improvement will be located. At the request of the commission, the Commonwealth Transportation Commissioner may exercise his powers of condemnation pursuant to §§ 33.1-89 through 33.1-132, or § 33.1-229, or the same as is prescribed in §§ 25-46.1 through 25-46.36 for the purpose of acquiring property for transportation improvements within the district. Upon completion of such construction or improvement, the Commonwealth Transportation Board shall take such public highway into the secondary, primary, or interstate system of state highways for purposes of maintenance and subsequent improvement as necessary. Upon acceptance by the Commonwealth of the highway into the primary system of highways all rights, title and interest in the right-of-way and improvements of such public mass transit system or highway shall vest in the Commonwealth. Upon completion of such construction or improvement of a mass transit system, all rights, title, and interest in the right-of-way and improvements of such mass transit system shall vest in the Northern Virginia Transportation Commission or other agency or instrumentality of the Commonwealth. (1987, c. 662; 1989, c. 661; 1990, cc. 855, 879.)

The 1990 amendments. — The 1990 amendment by c. 855 substituted “transportation improvement” for “public highway” in two places in the first sentence; substituted “transportation improvements” for “primary highway transportation facilities” in the second sentence, inserted “public mass transit system or” in the next to the last sentence, and added the last sentence.

The 1990 amendment by c. 879 substituted “locality” for “county” in the first sentence.

ARTICLE 2.

Boundary Changes for Local Districts.

§ 15.1-1372.34. Enlargement of local districts. — A. The district shall be enlarged by resolutions of the local governing body of the locality upon the petitions of the commission of the district and the owners of at least fifty-one percent of either the land area or assessed value of land of the district within each locality, and of at least fifty-one percent of either the land area or assessed value of land located within the territory sought to be added to the district; however, any such territory shall be contiguous to the existing district. The petition shall present the information required by § 15.1-1372.23 A. Upon receipt of such a petition the locality shall use the standards and procedures provided in subsections B and C in § 15.1-1372.23, except that the residents and owners of both the existing district and the area proposed for the enlargement shall have the right to appear and show cause why any property or properties should not be included in the proposed district.

B. If the local governing body finds the enlargement of a local district would be in accordance with the applicable comprehensive plan for the development of the area, in the best interests of the residents and owners of the property within the proposed district, and in furtherance of the public health, safety and general welfare, and if the local governing body finds that enlargement of the district does not limit or adversely affect the rights and interests of any party
which has contracted with the district, the governing body of the qualifying county shall, and the governing body of the qualifying city may, at its option, pass a resolution providing for the enlargement of the district. (1987, c. 662; 1990, cc. 855, 879.)

The 1990 amendments. — The 1990 amendment by c. 855, in the first sentence of subsection A, inserted “either” and “or assessed value of land” in two places; and substituted “the board” for “each board” in subsection B.

The 1990 amendment by c. 879, in subsection A, substituted “local governing body of the locality” for “board of supervisors of the county” in the first sentence and substituted “locality” for “count” in the first and third sentences; and in subsection B substituted “local governing body” for “county board of supervisors,” deleted “county” following “applicable,” substituted “local governing body” for “board” and substituted “the governing body of the qualifying county shall, and the governing body of the qualifying city may, at its option” for “each board shall.”

§ 15.1-1372.35. Abolition of local transportation districts. — A. Any district created under this chapter may be abolished by a resolution passed by the local governing body upon the petition of the commission and the owners of at least fifty-one percent of either the land area or assessed value of land located within the district in the locality. The petitions:

1. May state whether the purposes for which the district was formed substantially have been achieved;
2. May state that all obligations theretofore incurred by the district have been fully paid;
3. May describe the benefits which can be expected from the abolition of the district; and
4. Shall request the local governing body to abolish the district.

B. Upon receipt of such a petition the board shall use the standards and procedures described in subsections B and C of § 15.1-1372.23, mutatis mutandis, except that all interested persons who either reside on or who own real property within the boundaries of the district shall have the right to appear and show cause why the district should not be abolished.

C. If the local governing body finds the abolition of the district would be (i) in accordance with the applicable comprehensive plan for the development of the area, (ii) in the best interests of the residents and owners of the property within the district, (iii) in furtherance of the public health, safety and general welfare, and (iv) that all debts of the district have been paid and the purposes of the district either have been fulfilled or should not be fulfilled by the district or the local governing body, with the approval of the voters of the locality, has agreed to assume the debts of the district, then the local governing body shall pass a resolution abolishing the district and the district advisory board. Upon abolition of the district, the title to all funds and properties owned by the district at the time of such dissolution shall vest in the locality. (1987, c. 662; 1988, c. 244; 1990, cc. 855, 879.)

The 1990 amendments. — The 1990 amendment by c. 855 substituted “of either the land area or assessed value of land located” for “of the land area located” in the first sentence of subsection A.

The 1990 amendment by c. 879 deleted “the provisions of” preceding “this chapter” in the first sentence of subsection A; substituted “local governing body” for “board of supervisors” throughout the section; substituted “locality” for “county” throughout the section; and deleted “county” following “applicable” near the beginning of subsection C.
§ 15.1-1372.37. Validation of districts. — All proceedings held in the creation of any district or districts pursuant to § 15.1-1372.23 prior to January 1, 1992, are hereby ratified, validated, and confirmed, and any and all such districts so created pursuant to Article 1 (§ 15.1-1372.21 et seq.) of this chapter are declared hereby to have been validly created, notwithstanding any defects or irregularities in the creation of any such district or in the selection or appointment of the commission or the advisory board of any such district. (1992, c. 758.)

CHAPTER 33.
INDUSTRIAL DEVELOPMENT AND REVENUE BOND ACT.

§ 15.1-1374. Definitions. — Wherever used in this chapter, unless a different meaning clearly appears in the context, the following terms, whether used in the singular or plural, shall be given the following respective interpretations:

(a) "Authority" means any political subdivision, a body politic and corporate, created, organized and operated pursuant to the provisions of this chapter, or if said authority shall be abolished, the board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers given by this chapter shall be given by law.

(b) "Municipality" means any county or incorporated city or town in the Commonwealth with respect to which an authority may be organized and in which it is contemplated the authority will function.

(c) "Governing body" means the board or body in which the general legislative powers of the municipality are vested.

(d) "Authority facilities" or "facilities" means any or all (i) medical (including, but not limited to, office and treatment facilities), pollution control or industrial facilities; (ii) facilities for the residence or care of the aged; (iii) multi-state regional or national headquarters offices or operations centers; (iv) facilities for private, accredited and nonprofit institutions of collegiate, elementary, or secondary education in the Commonwealth whose primary purpose is to provide collegiate, elementary, secondary, or graduate education and not to provide religious training or theological education, such facilities being for use as academic or administration buildings or any other structure or application usual and customary to a college, elementary or secondary school campus other than chapels and their like; (v) parking facilities, including parking structures; (vi) facilities for use as office space by nonprofit, nonreligious or nonsectarian organizations; (vii) facilities for museums and historical education, demonstration and interpretation, together with any and all buildings, structures or other facilities necessary or desirable in connection with the foregoing, for use by nonprofit organizations; (viii) facilities for use by an organization (other than an organization organized and operated exclusively
§ 58.1-1705  TAXATION  § 58.1-1720

Article 4.

Motor Vehicle Fuel Sales Tax in Certain Transportation Districts.

Sec. 58.1-1720. Sales tax on fuel in certain transportation districts.

Article 1.

Soft Drink Excise Tax.

§ 58.1-1705. Disposition of proceeds. — All moneys collected pursuant to this article, minus the necessary expenses of the Department of Taxation for the administration of this tax, as certified by the Commissioner, shall be deposited into the Litter Control and Recycling Fund established pursuant to § 10.1-1422.01. (1995, c. 417.)

Effective date. — This section is effective July 1, 1996.

Article 2.

Litter Tax.

§ 58.1-1710. Disposition of proceeds. — All moneys collected pursuant to this article, minus the necessary expenses of the Department of Taxation for the administration of this tax, as certified by the Commissioner, shall be deposited into the Litter Control and Recycling Fund established pursuant to § 10.1-1422.01. (1985, c. 221; 1995, c. 417.)

The 1995 amendment, effective July 1, 1996, inserted "minus the necessary expenses of the Department of Taxation for the administration of this tax, as certified by the Commissioner" and substituted "Litter Control and Recycling Fund established pursuant to § 10.1-1422.01" for "general fund of the state treasury."

Article 4.

Motor Vehicle Fuel Sales Tax in Certain Transportation Districts.

§ 58.1-1720. Sales tax on fuel in certain transportation districts. — A. There is hereby levied, in addition to all other taxes imposed on fuels subject to tax under Chapter 21 (§ 58.1-2100 et seq.) of this title, in every county or city which is a member of any transportation district in which a rapid heavy rail commuter mass transportation system operating on an exclusive right-of-way and a bus commuter mass transportation system are owned, operated or controlled, by an agency or a commission as defined in § 15.1-1344, or in any transportation district which is subject to § 15.1-1357 (b) (6) and which is contiguous to the Northern Virginia Transportation District, a sales tax of two percent of the retail price of such fuels sold within such county or city. As used in this section "retail sale" means a sale to a consumer or to any person for any purpose other than resale.

B. The tax imposed under this section shall be subject to the provisions of the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.), except that the exemption provided for motor vehicle fuels under § 58.1-609.13, and the bracket system provided in such act, shall not be applicable. (Code 1950, § 58-730.5; 1980, c. 225; 1982, c. 358; 1984, c. 675; 1986, c. 435; 1993, c. 310.)
§ 58.1-1724. Disposition of tax revenues. — All taxes paid to the Commissioner pursuant to this article, after subtraction of the direct costs of administration by the Department, shall be deposited in a special fund entitled the “Special Fund Account of the Transportation District of......” The amounts deposited in the special fund shall be distributed monthly to the applicable transportation district commission of which the county or city is a member to be applied to the operating deficit, capital and debt service of the mass transit system of such district or, in the case of a transportation district subject to the provisions of § 15.1-1357 (b) (6), to be applied to and expended for any transportation purpose of such district. In the case of a jurisdiction which, after July 1, 1989, joins a transportation district which was established on or before January 1, 1986, and is also subject to § 15.1-1357 (b) (6), the funds collected from that jurisdiction shall be applied to and expended for any transportation purpose of such jurisdiction. The direct costs of administration shall be credited to the funds appropriated to the Department. (Code 1950, § 58-730.5; 1980, c. 225; 1982, c. 358; 1984, c. 675; 1986, c. 435; 1986, Sp. Sess., c. 6, 15; 1989, c. 417; 1992, c. 579.)

The 1992 amendment inserted “capital” in the second sentence.

CHAPTER 18.
ENFORCEMENT, COLLECTION, REFUND, REMEDIES AND REVIEW OF STATE TAXES.

Article 1.
Collection of State Taxes.

Sec.
58.1-1803. Department of Taxation may appoint collectors of delinquent state taxes; Contract Collector Fund established.
58.1-1805. (Effective until July 1, 1997) Memorandum of lien for collection of taxes.
58.1-1805. (Effective July 1, 1997) Memorandum of lien for collection of taxes; release of lien.
58.1-1813. Liability of corporate officer or employee, or member or employee of partnership, for failure to pay tax, etc.
58.1-1816. Conversion of trust taxes; penalty; limitation of prosecutions.
58.1-1817. (Effective July 1, 1997) Installment agreements for the payment of taxes.
58.1-1818. (Effective July 1, 1997) Taxpayer problem resolution program; taxpayer assistance orders.
58.1-1819. [Reserved.]

Article 2.
Corrections of Erroneous Assessments; Refunds.

58.1-1823. Reassessment and refund upon the filing of amended return or the payment of an assessment.
58.1-1834. (Effective July 1, 1997) Taxpayer meetings; representation; recording meetings.
58.1-1835. (Effective July 1, 1997) Abatement of any tax, interest, and penalty attributable to erroneous written advice by the Department.

Article 4.
Virginia Taxpayer Bill of Rights.

58.1-1845. (Effective July 1, 1997) Virginia Taxpayer Bill of Rights.
APPENDIX B

Finance Information from Ohio DOT Survey
Table 2.1
ACCESS OHIO: Funding Public Transportation
STATES WITH TRANSIT FUNDING IN ADDITION TO GENERAL FUND (5-27-94)

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<tr>
<th>STATE</th>
<th>General Fund</th>
<th>Transp. Fund</th>
<th>Sales Tax</th>
<th>Fuel Tax</th>
<th>Lottery</th>
<th>Turnpike Revenue</th>
<th>Bond</th>
<th>Other</th>
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<td>Alabama</td>
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<td>Energy surcharge for intercity rail</td>
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<td>Auto reg + air qual. surchg. + oil overch.</td>
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<td>$1 added to annual license plate fee</td>
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<td>In Lieu Payroll Tax &amp; Cigarette Tax</td>
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<td>Texas</td>
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<td>· Highway Maintenance &amp; Operations Fund</td>
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<td>TRIP Ticket Revenue (from HHS and Aging)</td>
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<td>Wyoming</td>
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<td>Mineral Royalty Funds to Highway Fund</td>
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<tr>
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<td>10</td>
<td>4</td>
<td>6</td>
<td>2</td>
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The following narratives are in alphabetical order and a recommended selection for further analysis is included at the end of the Section. Appendix A contains recommended analysis and ranking criteria which are applied in the subsequent detailed analysis of the top selected options as approved for further consideration by ODOT.

**ALABAMA**

Alabama resists any statewide funding of public transportation. The state feels that financing local transit is the responsibility of each local system. Each local authority has the enabling legislation to permit them to do so with the approval of local voters. Local transit authorities are able to impose a 1.65 cents per 4 ounce beer tax. They are also able to receive 2% of their total net revenue from horse racing tracks in their service area. Funds are, however, allocated to the state from an energy/oil overcharge fund collected by the Department of Energy to assist inter-city rail service (AMTRAK). There was $1,231,000 generated in 1992 for this purpose.

**ARIZONA**

Transit systems in Arizona receive 10% of the state's lottery proceeds through what is designated as the Local Transportation Assistance Fund. These funds have been collected and administered by the Arizona Lottery Commission since 1981. The lottery was selected by the Legislature as the transit funding source because the state constitution specifically prohibits the use of gas tax revenues for anything other than highway construction and maintenance. In 1992 this program generated $11,734,448 in revenues. The funds are distributed based on the total lottery receipts collected within each county. Additionally, each county can vote a 1/2 cent sales tax to be used for both highways and transit.

Cities with over 200,000 population must use their allotment of lottery-generated funds for public transportation. For cities with 200,000 or less population the use of these funds is optional; however, most cities have used these funds in part for public transportation. State staff expressed that given the constitutional prohibition relative to the gas tax that the existing program is a good start. Since the program is administered by the Arizona Lottery Commission the state does not involve any staff in its administration.

**ARKANSAS**

In Arkansas state funding for public transportation is limited to a franchise fee of .02% authorized by Act 33 of the Arkansas State Legislature in 1986. It has a sunset provision and must be re-authorized every two years. Being a rural state, passing legislation which benefits the urban areas is very difficult.
In 1992, $320,000 was collected and allocated by the Arkansas Highway and Transportation Department on a discretionary basis to each of the urbanized areas. However, DOT staff indicated that the amount is not sufficient to meet the needs of the state. The state devotes 3 full-time employees to the program's administration.

CALIFORNIA

In 1971 and 1979 legislation was enacted allowing the state to provide capital and operating assistance from sales tax revenue and additional capital assistance from fuel taxes. The California Transportation Development Act allows each county to establish a Local Transportation Fund from a 1/4 cent retail sales tax collected statewide. These funds are returned to counties by the State Board of Equalization based on the amount of sales tax collected in each county. The funds are used for transit planning and administration and, in the case of a county with a population under 500,000, can be used for streets and roads if there are no unmet transit needs that can be reasonably met.

A 1/4% (.0025) sales tax on gasoline is also levied and provides a source of funds for rail capital expenditures. General obligation bonds are used primarily to fund the large rail transit expenditures in construction. California voters approved $8.85 million in bonds for rail programs in 1992. In addition to state programs local transit districts are able to impose, with the consent of voters, additional sales tax, fuel tax and general obligation bonds.

The DOT expressed that in a constrained fiscal climate, (they are) doing about as well as can be expected. There were no figures available regarding the staff required for the program's administration. However, staff indicated that most collections are piggyback on existing state tax mechanisms.

In 1992 the State Board of Equalization and Caltrans (State Highway) collected $1.095 billion which included $8.85 million in bonds.

CONNECTICUT

Connecticut has a State Transportation Fund that receives pledged revenues from the state gasoline tax, all motor vehicle related taxes and fees (with the exception of the emissions program), all judicial fines, truck stop concessions, sale of excess transportation property, collection of damages, and interest earnings. The funds are used to fund the DOT administrative costs, highways, rail, general aviation (not Bradley Field), transit costs, operating expenses for the DMV, and debt service (currently this uses 42% of revenues). Capital programs are supported through general obligation bonds.

The State Transportation Fund was created by the legislature in 1985 and is administered by the DOT. The biggest obstacle in its passage was the impact on highway funds. There were $104,415,000 generated in 1992. Transit systems are allocated 2/3 of their operating expenses or the operating
deficit, whichever is less. A biennial budget is prepared by the state to include capital and operating expenditures. Recently, due to statewide budgetary constraints, there has been a focus on maintaining the existing levels of service rather than service improvements. There are 16 staff members devoted to the program’s programming, planning and budgeting functions.

DELAWARE

The Delaware Turnpike Authority turns over the excess of toll funds collected to the State Transportation Fund for Public Transportation. These funds are then distributed by the State Transportation Authority by a combination of formula and discretionary allocation. The funds essentially support the DART urban transit system in Wilmington; the State-wide paratransit system known as DAST; and a few locally operated services. DART and DAST are both divisions of the Delaware Transportation Authority. The Delaware Turnpike Authority generated $12,182,700 in revenue for transit during 1992. State staff indicated that the program is doing reasonably well. However they are worried about a reduction in Federal operating assistance. There are no DOT staff devoted to the programs administration.

FLORIDA

Florida’s Transportation Trust Fund was enacted by the legislature and is funded by a 4 cent per gallon gas tax. The bundling of transit and highway needs was crucial to its successful enactment. The funds are used for capital projects. 14.3% of the tax collections must be directed at public transportation projects. Public transportation is defined as aviation, transit and rail. The remaining funds may be used for either highway or transit projects. In 1999 the percentage will increase to 15% (these new funds will be used for capital programs). Funds are appropriated annually from the Trust Fund based on an approved five year program. Each area must have an approved Local Government Comprehensive Plan to be eligible to receive these funds. Annual apportionments are adjusted based on revised revenue estimates.

Florida also has a dedicated fund for assisting elderly and disabled transportation operations within each county. License tag fees for automobiles and trucks provide funds for the Transportation Disadvantaged Commission Trust Fund to provide funds for elderly and disabled transport through this totally separate funding program. The fund was at one time administered by FDOT but the legislature decided to elevate the program to its own independent status during the mid-80s.

All revenues remain in the county in which they were collected. Local gas taxes can be imposed by county ordinance without a referendum. The first 2 cents of the tax can be levied by a majority vote of the County Commission, and the third and fourth cents by a vote of the majority plus one.

Florida DOT personnel do not get involved in revenue collection, but are heavily involved in program administration. $62,517,251 in revenue was collected in 1992. Distribution of the funds within each
county is accomplished by a formula based on: 1/3 pro-rata share based on population, 1/3 ridership based on Section 15 data, and 1/3 revenue miles based on Section 15 data.

ILLINOIS

Illinois funds transit through appropriations of the general funds for operating expenses and general obligation bonds for capital expenses. Funds are appropriated annually. A formula allocation has been made of the state appropriation that allocates 25% of the revenue to the Northeast Illinois RTA. In addition, a 50% farebox recovery ratio is required. In the Bi-State East area the same 25% contribution is approximated by an allocation of 2/32 of the state sales tax revenues collected in Madison and St. Clair counties. Downstate transit agencies are allocated operating assistance from the general fund to match 45% of eligible operating expenses.

The state appropriated $258,719,700 in 1992. While the DOT suggests that the program does not meet all needs, local cities in many cases have home rule powers and are able to provide additional taxes if they desire to meet any unmet need.

INDIANA

In the State of Indiana, the transit finance mechanism consists of solely of a sales tax which is appropriated on a biennial basis. There is a base allocation to transit systems premised on legislation drafted in 1989. Base allocations to systems are determined by census data. Four different types of public transit systems are eligible for the funds. These systems are: fixed route urbanized systems; small urban systems (less than 50,000 population); a blend of fixed route and demand response; and, demand response systems which tend to be county oriented.

Funding to these systems is allocated based upon three performance measures:

1. Locally derived income (government income + revenues generated by system).
2. Ridership per capita.
3. Ridership per total vehicle miles.

$17.7 million was generated last year through this program. $18.6-7 million is projected for 1995. DOT staff believed that this funding mechanism based upon population and performance measures is much better in meeting transit needs than the mechanism used in the past. This system rewards positive performance and creates an enthusiasm by the system to generate local revenue.

A problem with the system is that local governments can reward poor performance. If the city is willing to invest more dollars in public transit, more state dollars will be drawn based upon the locally derived
income ratio. The State is undertaking a study in 1995 to address this issue. There are 1.5 FTE devoted to program’s administration.

The general sales tax legislation was introduced to the legislature in 1980 and became law in 1981. Transit is competing for dollars from the sales tax along with other state interests such as property tax relief.

IOWA

State transit assistance comes from a program enacted by the legislature in 1986 dedicating a portion of the State Road Tax Use Fund for transit (1/20 of the first 4 cents of every 5¢ collected). Funds are used for operations, however, systems can request that the funds be used for capital and most often this is permitted. $150,000 is set aside from the tax for use by the state in support of innovative projects. Petroleum overcharge funds are also designated for public transportation use, but none have been allocated for several years. Additionally, there are two basic pieces of legislation for local jurisdictions to use: (1) municipalities can levy up to 95 cents/$1000 of property valuation for transit services; and (2) a local option sales tax that can be used for transit up to one cent.

There was $5.9 million generated in 1992 which was distributed on a formula basis to operating systems. DOT staff suggest that more funds are required because of the reduction of Federal funds, however, the priority of funding transit over other state programs is difficult. Currently, there are 4 staff members devoted to the program's administration.

KANSAS

Kansas designates 10% of the state motor fuels tax, collected as part of the State Highway Fund, for transit. Its use is limited to planning and administrative costs. Their are no DOT staff involved in the collection or distribution of funds. Additionally, the state has provided enabling powers for local transit authorities to impose a local sales tax and an intangible earnings tax. For the last year, $393,000 was collected and distributed on a discretionary basis. DOT staff are now investigating further program development; however, the rural character of the state makes it difficult to dedicate any funds.

LOUISIANA

The State of Louisiana assists public transit with funds from a gasoline tax fund also called the "Parish Transportation Fund". The Parish Transportation Fund was established through 1990 legislation. It was very difficult to pass and each year’s appropriation becomes a battle. Backing by the New Orleans RTA keeps funding at current levels. Dollars from the Parish Fund are distributed to public transit at a flat
rate of $6 million a year. A multi-faceted formula is used to disburse dollars to local transit systems. Funds are distributed to public transit systems directly from the Department of the Treasury on a monthly basis.

There is 1 full-time staff person at the DOT who administers the program. The administrator feels that the funds are not enough to meet the needs of public transit. The funds are only a "drop in the bucket" but they do provide a source of matching funds for transit systems.

MAINE

Public transit systems in Maine are funded through the general fund. The Department of Transportation presents a biennial budget to the legislature for their approval and disbursement of funds. Maine’s general fund consists mainly of property tax, sales tax and income tax. Another state program to fund the coastal ferry system consists of state authorized bond issues. For the last three years, the Department of Transportation received $392,000 in general funds to finance public transit systems.

Public transit receives dollars from the fare box, local community funds, and state and federal funds. Rural systems implement more innovative funding techniques such as can and bottle collection and/or bingo. There are 5 full-time staff implementing the program which includes Sections 9, 18, 16, and 3, and the state funds that correlate to those programs. The DOT staff feel that this approach to funding local public transit is inadequate. Currently, FTA funding combined with state funds, cover 10% or less of public transit operating budgets.

MASSACHUSETTS

The State of Massachusetts has 16 separate regional transit authorities (RTA’s) composed of cities and towns. The largest RTA is the Massachusetts Bay Transportation Authority (MBTA). Public transit formula-based funding is available through the State general fund and highway fund, and is allocated directly to each authority. The funding formula is based upon an assessment of each RTA’s "net cost of service". Dollar distribution is based upon revenue miles.

Currently, the MBTA is funded 18 months in arrears and the other 15 RTA's are funded one month in arrears. The balance of available funding to the MBTA usually consists of cash advances from the State treasuries office and a small amount of revenue is from notes. The other RTA's float revenue anticipation notes for the full balance of the budget. During the last fiscal year, the MBTA received $500 million and the other RTA's divided $35 million.

The DOT staff feel this funding mechanism is getting harder and harder to implement. Staff interviewed felt the formula is "bizarre, complex and arcane" and does not address the needs of public transit. They are currently looking at every possible way to squeeze a nickel. Public transit used to be the
biggest growth item in the budget. However, since 1992, caps have been placed on all operating
expenditures.

There are 35 full-time personnel who administer the programmatic, fiscal and legal elements of the
public transit program.

The MBTA was established in 1986. The RTA's were created through the legislative process in 1973,
but were first organized in 1974. Legislation creating the RTA's was very difficult to pass because of
the objections raised by the MBTA. RTA bus service is currently contracted out through the bid process
and controlled by the local cities and towns. There is a strong anti-privatization movement now and
the State is undertaking a cost benefit analysis to determine the benefits of public vs. private operation.

MICHIGAN

The Michigan transportation fund receives revenues from three separate sources: gas tax; sales tax; and
miscellaneous revenue. Gas taxes contributed to the transportation fund also include a tax on LPG and
diesel. Sales tax from auto related items are also added to the transportation fund and include taxes
on gas related products, vehicle parts, and new and used cars. Miscellaneous revenues to the
transportation fund totalled $2 million last year and included interest, specified fees and minor revenue
related elements. This year's total transportation fund is $175 million. The State Department of the
Treasury collects all the revenue.

Distribution of the funds are guided in-part by the State constitution which requires first priority of
disbursal be for debt service and cost of administration. The remaining of funds are disbursed according
to the following schedule: 70% for operating assistance; 20% for public transportation development
through bus purchasing; and 10% for intercity passenger and freight transportation.

There are 100 full-time employees within the Michigan Transit Division. The DOT staff felt that a
substantial amount of revenue is generated utilizing this mechanism. The problem is that there is no
growth in the tax and vehicle registration fees. The sales taxes are cyclical and dependent upon the
economy.

The Michigan comprehensive transportation fund was established in 1978 through legislation and the
State constitutional process. The legislation and constitutional amendment was difficult to pass because
of the amount of negotiating necessary to bring public transit and highway interest groups to
consensus. Because of the conflict generated by the highway interest groups, only 10% of the general
transportation fund is dedicated to public interest.
MINNESOTA

The State of Minnesota contributes to public transit through the state general fund. Dollars are administered through the Department of Transportation and allocated to public transit systems based upon fixed local funding and size of the community. State dollars account for 35-40% of local operating costs. This fiscal year, the Department of Transportation received $8.4 million for public transit. A supplemental budget request of $1.6 million was presented to the legislature by the Department and the request was approved. The DOT has been very successful with the legislature in receiving the amount of funding they need through the general fund process.

Legislation pertaining to the fund was adopted in 1974. In 1984, the state adopted legislation which addressed the fixed-local share requirements. DOT staff were unable to ascertain how many employees are devoted to implement and administer the program.

MONTANA

The State of Montana collects gas tax revenue to help fund public transit systems. The dollars are apportioned to certain cities on a formula basis. There are five cities in the state that receive dollars from gas tax revenues based on population as designated in state statutes. The statute has been in effect for 14 years. The amount of revenue generated through this mechanism totals $70-71,000 a year.

Some staff indicated that public transit systems in Montana are always looking for further sources of revenue to meet growing needs. The three largest systems do not find the amount apportioned to their budget to be significant. The two smaller public transit systems have grown to depend on dollars generated through the gas tax. Administration of the program involves 4 full-time equivalent positions.

NEBRASKA

In Nebraska part of the state transit funding is provided through the general fund and part through the fuel tax. Funds are appropriated by the Legislature. There is no specific funding source earmarked for public transit. Funds are distributed on a first come - first served basis. Rural systems receive higher priority funding, and the bulk of state funding.

For the last year, $1 million was funded through the fuel tax and $475,000 was funded through the general fund. Since there is no dedicated funding source, transit is at the mercy of the Legislature. Funding has been reduced from a recent level of $1.9 million general fund allocation.
NEVADA

In addition to general fund funding, a 1/4 cent sales tax is collected in two (2) major urban areas for public transit. The 1/4 cent sales tax is collected locally and administered locally. The funds are utilized in the two areas in which they are collected - Las Vegas and Reno areas.

$23.8 million was collected in the Las Vegas area in 1993 and $8.5 million in the Reno area. The program has been successful in meeting the needs of the two areas.

No state level staff are utilized, as the programs are administered locally. The sales tax program was recently implemented by an act of the Legislature in Las Vegas, and in the mid-1980's in Reno. The act was preceded by a very positive local ballot and solid public relations program, and was passed by the Legislature with no problems.

NEW JERSEY

The New Jersey Transit Authority (NJT) has responsibility for public transit statewide. The Authority receives general funds for operating expenses, casino revenue for elderly and handicapped projects, and a portion of the transportation trust fund derived from the fuel tax for capital projects. The casino revenue is a dedicated revenue source, while funding from the transportation trust fund is dedicated to highways and public transportation. Although the trust fund is a dedicated source, the funding level is discretionary from year to year between highways and public transportation.

For the current fiscal year, the Transit Authority received $248.5 million in general funds, approximately $100 million from the transportation trust fund, and approximately $15 million from casino revenue. The funding programs have been successful in meeting the state's needs. Over 50 percent of the funding for the Authority comes from the fare-box and other revenue generating means. NJT operates the third largest heavy rail system and second largest bus system in the U.S. Outside of its State-wide system covering most of the State's urbanized areas, legislation requires NJT to provide casino revenue funds and Trust Fund grants directly to counties to assist in the cost of County-sponsored transit and/or paratransit services.

Public transit was included in the transportation trust fund in the late 1980's, while the casino revenue has been a dedicated source of funding since the casinos opened in the 1970's. Both sources were passed as acts of Legislature.

NEW YORK

General funds are used for funding capital expenses, however beginning in April, 1995 a portion of highway user fees will be dedicated to public transit capital funding. Operating assistance is derived...
from dedicated tax sources. Throughout the state a petroleum business tax is levied on companies, which averages one cent per gallon. In the Metro-New York area several additional taxes are also levied, which include a 1/4 cent sales tax, a surcharge on the petroleum business tax, and several other smaller scale taxes. The gas taxes are collected by the Tax and Finance Department. The large transit authorities' operating expenses are funded as line items in the State budget, while all other operators are paid at a set rate per passenger or per vehicle mile, which is approved in advance by the Executive Branch.

Approximately $200 million in operating funding is provided through general funds, while approximately $900 million is provided through the dedicated tax sources. The funding sources for operating expenses have been very successful in meeting current needs and planning for the future.

The first taxes were passed in 1982 to fund transit, several have been passed or revised at various times since. The passage was somewhat difficult, but successful due to the dedication of the Governor and Legislature to public transit.

In the mid-80s the RIPTCAP program was enacted by the legislature as a means of giving rural areas of the State some degree of financial assistance for planning and implementing rural public transportation service. This legislation earmarked a line item in the DOT's budget just for rural county-based transport system development. The program provides funds for Counties to first complete a plan for developing a coordinated public service. Subsequent funds on a matching basis support the start-up costs for both capital and operating expenses. This program has been responsible for the development of numerous new rural services since its inception. DOT staff indicates that the legislature considers public transit to be a vital resource for the State.

NORTH CAROLINA

The 1993 legislature added substantial funding for public transportation as part of the State's Highway Fund. Funding increases were targeted at urban transit operating assistance, some increase for Section 18 grantees and Section 16 grantees. The DOT's funding for public transportation is from a combination of general funds and the public transportation line item within the Highway Fund. Each year since its inception in 1980, the DOT has been given a fixed $3 million fund by the State Board of Transportation. This original funding for public transportation is generated from a 50¢ charge per vehicle for all annual vehicle registrations which cost $20.00 per plate. These funds have historically been used to match FTA funds for local grantees as well as state-wide projects.

The 1993 legislation specified an additional $5.1 million in the Highway Fund which is increased to $10.9 million for FY 94/95. These funds are allocated to grantees on a formula basis with fixed limits for subcategories of: (1) urban operating assistance; (2) Section 18 capital match; (3) Section 16 match; (4) small urban fixed route systems; (5) elderly and disabled operating assistance to county governments; and (6) a ridership growth incentive per trip cost subsidy for Section 18 grantees. The additional $5.8 million for 1994/95 is specified for the same categories.
Staff report that the original 1980 license fee funding has been stable since its inception and that with the more recent line item additions to the Highway Fund, they expect the local needs to be met. The Public Transportation Division of the DOT has 3 full-time staff plus 1 full-time intern/apprentice comprising the Fiscal Division which handles all funding distribution. Another group of 6 staff comprise the Planning Division which works with grantees on grant preparation, review, and management.

NORTH DAKOTA

Public transit is funded by a $1.00 annual license plate fee. The funds are collected when citizens purchase their vehicle license plates on an annual basis. Each county receives $6,100 plus $.50 per capita.

The program generates $750,000 on an annual basis. The DOT feels that the program has been very successful. There are no strings or match requirements, and the money is treated like local funds.

There are no staff specifically dedicated to administering the program. Several staff have a portion of the responsibilities. The “State Aid for Public Transit” program was implemented four years ago. It was passed by an act of Legislature and billed as assistance for the handicapped and elderly. The program passed easily with an aggressive public relations campaign.

OKLAHOMA

In the past, Oklahoma used oil overcharge funds to help fund transit. These funds no longer exist. Now, a percentage of the gasoline tax is shifted to public transit. It has not been determined how or when the funds will be distributed. The state is deciding whether or not to distribute the funds as collected or as a lump sum.

This will be the first year of the program, but the projected annual funding is $850,000 to $1.7 million. The oil overcharge program was considered to be successful, and the gasoline tax program is also anticipated to be successful in meeting transit needs.

No additional staff were allocated for the new program, the DOT is going to administer it with existing staff. The program was passed this year by an act of Legislature. The legislation was extremely difficult to get passed, and took a major promotional effort.
OREGON

Oregon uses a 2 cents cigarette tax to help fund public transit, as transit no longer receives general funding. The tax is promoted as being used to provide special transportation for senior citizens and disabled citizens. Transit also receives state lottery money for light rail in Portland and for a high speed rail project. The State Department of Revenue collects the cigarette tax money. All of the money goes to the DOT, then 75 percent is distributed on a per capita basis to the 36 counties, while the remaining 25 percent is discretionary.

The cigarette tax is generating $5 million per year. Of the lottery money, Portland received $10 million for light rail for debt service, and $10.5 million was devoted to the high speed rail project for the biennium. The funding programs are successful in meeting current needs, but do not provide enough funding for future expansion. The cigarette funding has been declining.

There are ten staff in Public Transit with responsibility for funding programs and a number of staff in other departments. The cigarette tax was passed by acts of Legislature - the first cent was passed in 1985, and the second cent was passed in 1989. The first tax was widely accepted, while the second cent tax was first defeated in 1987, then passed with little problems in 1989 due to senior citizen outcry.

PENNSYLVANIA

Pennsylvania has one of the longest-standing legacies of support for public transit in rural as well as urban areas plus special support for senior citizen riders via earmarked revenues from its State Lottery. Act 8 of 1968 dedicated capital and operating assistance for public transit. The Lottery Preservation Act 37 of 1971 dedicated certain state lottery revenues for a user-ride subsidy of free fares for senior citizens riding fixed route transit. Act 10 of 1976 created a separate dedicated budget for rural systems which stands at about $4.2 million today. Act 101 of 1980 amended the lottery program to also support the cost of shared-ride paratransit service for seniors. Most recently in 1991, Act 26 Public Transportation Law created the Pennsylvania Transit Assistance Fund (PTAF) which substantially increased the DOT's state transit funding by about $160 million annually. In 1984, an added general appropriation brings the total fund to about $244 million presently.

Whereas, the earlier Acts were either from annual general fund DOT line items for transit plus the lottery, Act 26 of 1991 is based upon four dedicated sources including: (1) $1.00 fee per tire sold retail; (2) 3% tax on all motor vehicle lease payments; (3) $2.00 per day fee on all motor vehicle rentals; and (4) 12 mills per $1.00 of taxable value of any utility real property.

It is also interesting to note that during the passage of Act 26 a proposed 6% tax on selected periodicals retail sales was eliminated due to lobbying interests. The law established four classes of transit systems and certain limits and provisions for those classes. They are: Class 1 = Philadelphia; Class 2 = Pittsburgh; Class 3 = all other urbanized systems; and Class 4 = the 21 rural public systems operative
at the time of passage of the Act. Essentially Act 26 stipulates that funds may be used for "capital purchases or asset maintenance" costs needed to maintain the asset including all labor and non-labor maintenance expenses directly attributable to the capital asset. For classes 1 (Philadelphia) only up to 30% of Act 26 funds can be used for "maintenance". For classes 2, 3, and 4 up to 50% of this allocation may be so used. The Act also requires that separate "new start" monies be used for new starts and not any of the funds allocated directly to the 4 classes.

PaDOT administrative funds plus the Class 4 rural allocation are stipulated to be funded "off the top" so that any Class 1 or 2 financial distortions in any one year will not harm the 21 rural systems. In addition to the $4.6 million for Class 4, $3.4 million is allocated separately for new starts, intercity bus and rail, special studies/programs and DOT Bureau of Public Transit administrative expense. The Class 4 $4.6 million is specifically stipulated by the Act as a "hold harmless" amount whenever a threshold is reached in operating costs and legislative appropriations. After this set-aside, the balance of fund allocation as of FY 91/92 for example, was 70.3% Class 1, 25.4% Class 2 and 4.3% Class 3.

The Act also established local share matching requirements (which Acts 8, 10, and 101 also do) for each class as follows: Capital = 3.5% for all Classes; and Asset Maintenance = 3.5% for Classes 1 and 2, and 0-3.5% for Classes 3 and 4.

The Bureau is allowed to waive the local match requirement for Classes 3 and 4 only if the local government certifies that providing the full match would create a financial hardship. Grantees may carry-over funds to the following year. Once grantees have budgets and grant applications approved by the Bureau, monthly payments are automatic, not cost-reimbursable.

Currently, the Lottery programs for senior citizen rider subsidies is about $136 million annually over and above Act 26. For FY 1991/92, the Bureau's total capital funding was about $446.9 million of which Act 26 accounted for $148.9 million. Federal funds were about $200 million of the total capital. Act 10 continues to provide about $2.3 million per year for rural operating assistance plus about $1.9 million for intercity rail and bus operations.

Bureau staff feel that with Act 26 the status of transit is on sound footing. A number of systems have reportedly been able to bank some of their State Act 26 PTAF funds. The State Revenue Department projects PTAF revenues each year by March 1 for the following fiscal year and the Bureau uses those estimates to advise grantees of probable funds available. The Governor proposes a budget in February and the Bureau usually knows the adopted budget prior to August 31. Grantees submit formal applications thereafter. The Bureau does contract directly with a limited number of private carriers but generally requires them to subcontract with a local public grantee.

The Bureau now has a total staff of 30 of which 4 were added due to Act 26. Two (2) of the 4 PTAF added staff are the only Bureau staff dedicated full-time to financial management.
TENNESSEE

In 1987, the State Transportation Commission placed a line item in the DOT’s annual budget for public transportation of $3 million which has remained constant but is annually supplemented by the Commission with separate discretionary funds. The DOT’s total funding is from a combination of a 20¢ tax per gallon of retail gas, vehicle registration and license fees. The Public Transit Division gives the DOT Commission an annual budget request which is then recommended to the Governor for the executive budget, then submitted to the legislature for final approval. It is noteworthy that each year during legislative budget hearings, the Tennessee Public Transit Association (urban systems) and the Tennessee Specialized Transportation Association (rural and paratransit) jointly host a legislative reception plus personally visit each legislator during the session. The Public Transportation Director notes that this annual activity has been effective in maintaining legislative support which now yields about $12.4 million in state transit funds annually.

In the mid 80’s, the Public Transit Association and the Highway Construction Lobby coalesced to seek a 2.5¢ gas tax add-on of which ½¢ was for transit. The Governor and the Commission counter-proposed a $3 million annual earmark for transit within the DOT annual budget. This commitment was accepted by transit and has remained as the only “guaranteed” budget item for transit since that time.

Tennessee law passed in the late 1970’s permits local governments to add a 1¢ tax onto local gas sales to fund public transit. The law requires a local referendum and only Chattanooga and Nashville have attempted to use this provision but both referendums failed in the mid-1980’s. Also, state law allows local governments to earmark for transit up to 22% of the .1% of State gas tax which is returned to localities but none have used this provision, opting instead for local general fund allocations for local support.

Tennessee’s State transit funds are allowed to be used for any form of public transit capital or operating expenses. Matching is not required by law nor administrative rule, however, the DOT customarily uses the capital funds for half of the non-federal match requirements. The $12.4 million of State funds as allocated for 1994/95 exclude the state’s own administrative costs and include: 50% of Section 9 match and small miscellaneous projects, $2 million for Section 18 match, $6.3 million for 12 urban systems operating assistance, $3.4 million for the 50% matching share of other local grants, and $500,000 for ridesharing.

When the transit funding line item was created in 1987, the DOT requested two staff to handle the program but under a continued 8-year hiring freeze have remained constant. The Public Transit Division has a total of 10 staff. Rail and aeronautics programs are separate form the Public Transit Division but under the same Assistant Director. Staff report that funding is not adequate to meet all transit needs.
TEXAS

Transit is funded out of the Public Transit Fund established by the Legislature each year. The money is allocated from the oil and gasoline tax, but the level of funding is determined each year by the Legislature as a set dollar amount, no dedicated percentage is established.

Public Transit Fund funding has varied from a low of $3 million to a high of $15 million. $5 million was placed in the fund for the past year; along with $9 million from oil overcharge funds and $6 million in general funding. The funding is placed directly into the budget of the DOT by the Comptroller. State funds are distributed on the same basis as federal funding. The funding has not been successful in meeting the State's needs, as transit only received $20 million during the last year, while the DOT estimates that a solid program would cost $140 million.

VERMONT

Vermont's State Transportation Fund was created by legislation in 1976 based on state revenues primarily from gas tax and secondarily from vehicle license fees, aviation fuel tax and other minor licensing fees. The fund was created in concert with a major state government reorganization which involved a mission expansion of the state highway department into the multi-modal Agency of Transportation (AOT).

From its inception, the Fund legislation specified that in addition to highways that transit operating expense and capital be included to annually assist local operations. Today, the fund is about $3.4 million in state monies for public transportation operations and capital (excludes direct FTA Section 9 grant to Burlington UZA). The tax revenues are collected by the State Treasury and the Legislature sets the annual appropriation amount for the AOT. As in most states, the AOT submits an annual budget to the Governor and the Governor to the legislature for ratification.

All state funds can be used to match FTA funds. Since the inception of CMAQ the AOT has required that only CMAQ funds can be used for any new starts or new services. State funds have thus been held for leveraging as much as possible against FTA funds.

In 1994, the Vermont legislature enacted S.50 State Public Transportation General Law Amendments which added certain hold harmless provisions to assist operators during a transition period to conform with funding performance criteria enacted in 1993. One provision requires that if funds are available that all providers will receive at least their prior year's funding level for three years through 1995. Secondly, and also depending on fund availability, no provider will be reduced by more than 10% of their prior years budget if cutbacks occur through 1995.

The 1993 legislature enacted performance criteria included measures of riders per population served and riders per local revenues. The AOT uses these measures to allocate all federal and state transit funds with 50% of the allocation being decided by each of the two criteria. The criteria requires each
grantee to certify via a CPA audit, what their ratios were in the just-completed fiscal year compared to the immediate prior year. Those who equal or exceed their prior year’s ratios will receive maximum funding available. The Vermont operators have one more year of a 3-year hold-harmless period before the performance criteria must be met.

Approximately 2 staff of the AOT’s Rail Air and Public Transit Division work full-time on administration of the State’s funding program. AOT staff feel the fund has been successful since its inception.

VIRGINIA

In 1986, state legislation created a transportation trust fund which specifies percentage amounts of annual appropriations to be split 84% for highways, 8.4% for mass transit, and the 7.6% balance for air and ports. For 1993/94, the transit allocation yielded $39.4 million. The trust fund is made up of a variety of tax sources including a ½¢ retail sales tax add-on (total tax is now 4.5¢), car registration fees, some wholesale taxes and some gas tax. In addition, Virginia has the Highway Maintenance and Operating Fund (HMO) which is primarily from gas tax plus portions of the same source as the Trust Fund. Since 1986, public transit has received an allocation of about $35 million from the HMO Fund. This was the original source of transit funding which started in the late 1970’s. The HMO funds are actually a transfer from the Highway Department to the Department of Rail and Public Transportation. A gubernatorial appointed Transportation Secretary and State Transportation Board govern both the Highway Department and the Department of Rail and Public Transportation.

The 8.4% Trust Fund allocation for transit may be used for any transit purpose but it is administratively merged with the HMO transfer to grant and administer in a more simplified fashion. Administrative rules provide that the total funding must be allocated 73.5% for operating related assistance, 25% for capital, and 1.5% for special programs including ridesharing, demonstration projects and special technical projects. The Department wants the legislature to create a separate rail fund to increase funding for rail. Today, the total transit funding administered by the Department is about $90 million annually of which about $75 million is state funds including some ISTEA transfers.

The Department of Motor Vehicles collects the funds used to support transit via both the Trust Fund and HMO Fund each year. The VDOT Budget Office prepares revenue and costs forecasts for the funds for the Department to be able to prepare an annual budget for the Governor and legislature. The Department has a total of 29 full-time staff which includes a financial management section of five.

Staff reports that the funds are not adequate and that even with ISTEA STP transfers that local systems growth has surpassed the revenues generated by the funds. Staff also feel their funding legislation is unnecessarily complicated. In the consultant’s view, Virginia has one of the most complicated administrative organizational frameworks for transportation with four separate mode agencies which also complicates the annual funding allocation/transfer process.
WASHINGTON

In the State of Washington, state and local funds for public transit are distributed through public transportation benefit areas (TBA's) that consist of cities, towns and counties, depending on the geographic and political characteristics of the region. The TBA's have the responsibility of developing a comprehensive transit plan that identifies the funding requirements for the area, including the local, state and federal funds necessary to provide various levels of transportation services. The state Transportation Commission then, after a satisfactory plan review, certifies to the state treasurer that the TBA be eligible to receive state motor vehicle excise tax proceeds.

A public transportation benefit area may also fix rate tolls, fares and charges for the use of transportation facilities. The county treasurer in the TBA is also the ex-officio treasurer of the authority. The treasurer maintains a transportation fund where dollars are directed through county resolution. Also, the legislative body of any city or county which has created a transportation benefit area may submit a voter proposition of imposing a sales or use tax for the operation, maintenance or capital needs public transportation systems.

State staff feel that the mechanism is successful plus encourages project planning and prioritization from a local, regional and State perspective which helps in building consensus about the system's future direction. The locally-oriented funding mechanism seems to help finance decision making to be primarily responsive to local needs and concerns and does not create dissention between State and local officials.

WEST VIRGINIA

The State Department of Health and Human Services initiated the TRIP program (Transportation Renovation Incentive Program) in 1974 as a response to the transit needs of the elderly. In the beginning, the program consisted of both small buses and vans purchased by State HHS funds and user side subsidy TRIP tickets for seniors to use on any form of public transportation including airfares. The FHWA Section 147 Demonstration Program was used in the 70's as a source of capital for vehicles purchased by the state and given to the Regional Planning Commissions that operated TRIP busses.

Today, TRIP is an annual general fund appropriation line item in the State HHS budget and consists only of the user subsidy portion and for ground transport only. Seniors and eligible low income residents pay $3.00 for an $8.00 book of TRIP tickets obtained via mail from the State HHS. Two staff in Charleston administer the program.

Funding is from a general fund annual appropriation but has become institutionalized over time and is considered a normal budget item for the HHS. State Public Transportation staff feel that the program is beneficial overall. In particular, there is a feeling that it has helped local transit operators. There has been some feeling that the cost of administrating the program was too high when it approached 50% of the fund in prior years. For fiscal year 1993/94 the HHS spent approximately $350,000 on TRIP.
WISCONSIN

The State of Wisconsin finances transit assistance through a dedicated transportation fund consisting of a motor fuel tax, vehicle license fee, and vehicle registration fee. The funds are collected via the taxing process and distributed to transit properties through the Department of Transportation. During the 1991-1993 biennium, the transportation fund consisted of $1.8 billion which included a motor fuel tax, license fees, registration fees, and incidental sources such as investment earnings and motor carrier fees. During 1994, dollars allocated to transit through the dedicated transportation fund totalled $90 million. Seventy million of the $90 million was allocated to transit properties to fund 42% of public transit operating expenses.

DOT officials generally agree that a dedicated local revenue source is needed to support public transit systems throughout the state. However, state statutes require a uniform state-wide taxing mechanism. An exception to this is a recent enabling legislation which allows counties to apply a .5% sales tax levy dedicated to local needs.

The DOT recently participated with the Regional Transportation Authority of Southeastern Wisconsin (Milwaukee and Racine) in investigating alternative funding mechanisms for transit related projects. Based on this and the DOT's earlier position as noted above, there appears to be growing sentiment to pursue legislation for adding a locally-controlled and generated dedicated transit revenue source.

WYOMING

In the AASHTO report Mineral Royalty Funds transferred to the Highway Fund was listed as the alternative funding mechanism. However, it was discovered that these funds are used for road construction, and not public transit. The state does not provide any funding for public transit. Public transit is not seen as a major need due to the rural nature of the state and extremely low population density. Approximately 450,000 residents are dispersed throughout this geographically large state.
APPENDIX C

Excerpt from Innovative Financing Handbook
METROPOLITAN AREA TRANSIT AUTHORITY
TRANSIT BOND
(GUARANTEED BY THE UNITED STATES OF AMERICA)
SERIES D

8.15%

PRINCIPAL DUE
July 1, 2014

INTEREST PAYABLE
JANUARY 1 AND JULY 1

PRINCIPAL AND INTEREST PAYABLE
AT THE PRINCIPAL OFFICE OF THE FEDERAL RESERVE BANK OF NEW YORK,
NEW YORK, N. Y., OR ANY SUCCESSOR FISCAL AGENT
REPAYING BONDS AND CERTIFICATES OF PARTICIPATION

COP's are tax-exempt bonds, issued by State entities, that are usually secured with a specified revenue source such as an equipment or facilities lease. A purpose-formed State entity issues tax exempt bonds with maturities that match the lease term of assets that are purchased by the State entity with the proceeds from the bond issue. The State entity then leases the equipment to one or more transit systems. The resulting lease payments, most often made with a combination of formula grant funds and local matching share, are then “passed through” to the bondholders by the State entity. The combination of larger vehicle order size, COP's with varying maturities, and lease arrangements, reduce and stabilize current capital costs significantly.

Several examples are provided by the California Transit Finance Corporation (CTFC), which provided funding for the bus purchases of several California grantees, including the Los Angeles County Metropolitan Transportation Authority which replaced 333 diesel fuel buses with buses that operate on methanol. The CFTC issued COP's, secured by a lease on the buses that were purchased. Because the transaction involved 40 buses, the local gas utility provided a high-speed fueling facility with a favorable capital lease arrangement. The following diagram illustrates the transaction.

NOTE: FTA funds may not be used directly to generate interest income from arbitrage (i.e. making money from the difference between the Federal and local costs of borrowing). In the following structure, Federal funds are being used to make lease payments. The COP's are secured by the leases, not by the pledge or encumbrance of Federal funds.
States have the ability to use FTA grant funds to establish and operate Revolving Loan Funds in support of public and private non-profit transit operators. This mechanism allows the State, as recipient or by agreement with its sub-recipients, to aggregate Section 16, 18, or 9 funds, pool purchases of vehicles, and either lease or sell these to the transit operators, or make loans to transit operators for vehicle and facilities acquisitions. The revolving loan fund allows pooled vehicle purchases that may help reduce acquisition costs. It provides a mechanism for the State to make loans (with interest) or leases to transit operators who might not be able to arrange such transactions on their own. It also provides an ongoing source of local capital in support of the State’s transit operators. The interest payments and lease payments returned to the State’s revolving loan fund are considered to be “program income” in the context of the FTA grant program. These income streams are therefore not required to be returned to the U.S. Treasury, and may be used to make additional loans, leases, and grants to eligible transit grantees. The local grantees are able to use subsequent years’ rural or urban grant funds to make loan or lease payments, including reasonable interest.

The Arkansas State DOT has requested authority and FTA funding to establish a State revolving loan fund, including Federal Highway Vanpool funds and local matching funds, to facilitate a State vehicle purchase and leasing program. Over $2.4 million in vehicle purchase activity may be supported with this fund over a 10-year period. This represents at least 125 vans for rural health and human services transportation service. The fund will reduce vehicle purchase costs by allowing more vehicles to be purchased at one time, and it will reduce transportation providers’ capital costs by allowing them to lease these vehicles rather than purchasing them.
LEASE PAYMENT

Most FTA capital funding can be used to repay the principal and imputed interest costs of a facilities or rolling stock lease. This capability also applies to the capital and interest costs of contracting for service, referred to as "Capital Cost of Contracting. [See FTA's circular C.7010.1 of December 5, 1986] While FTA currently must pre-approve the use of discretionary funds for lease payments, no such pre-approval is required for the use of formula funds. A modification is being considered to allow the use of discretionary funds on the same basis as formula funds.

Under a lease structure (provided the grantee demonstrated that a lease was more cost-effective than direct purchase) the equipment or facility could be purchased by a leasing company, and leased to the grantee. The grantee would make lease payments from a combination of Federal funds and local matching funds. The primary benefit of such a structure is that it allows the grantee to arrange its cash flow needs on a more level basis, even when an unusually large acquisition must be made. Secondary benefits include the ability to bank the local share, allowing it to earn interest pending its use for making lease payments, as well as the ability to reprogram some of the current formula grant funds to other projects.

The only restriction on the use of formula funds for lease payments is that imposed by the operating assistance cap, which applies to operating leases as much as to direct operating costs. This limitation would arise if the grantee acquired the use of vehicles through a lease that included the provision of maintenance and fuel. Such a lease would be defined as an operating lease, so at least part of the lease payments would be regarded as operating expense.

"FTA funds may be used to lease, rather than purchase, transit equipment and facilities... so long as leasing is more cost-effective than direct purchase."

Example Lease Structure

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In transit, vehicles have often been acquired through a lease.
JOINT DEVELOPMENT OF TRANSIT ASSETS

There is a great deal of flexibility in FTA's treatment of Joint Development, particularly as this relates to transit supportive development in FTA's "Livable Communities Initiative." Grantees can lease air rights above a transit station, or transfer the FTA interest in one property to another, to allow the private development or other use of the property. FTA funds cannot generally be used to support development of property that is not directly adjacent to the transit facility. However, if property can be subdivided, the FTA interest can be vested wholly in one part while the other would be considered 100 percent local share, for purposes such as leasing or mortgaging, which allows the transit system to actively support land use changes that increase transit use and program income. Joint development proposals will be reviewed and approved by FTA on a case-by-case basis.

Santa Clara County Transit Authority requested regulatory flexibility to use excess land (a 17-acre park-and-ride lot) adjacent to a light rail station for a transit/housing joint development project. FTA capital funds would be used to make improvements to the park-and-ride lot and provide a bus transfer facility. This investment would attract a private developer to build the housing development, and would generate between $200,000 and $300,000 annually in lease revenues for the transit district. At current interest rates (about 7%), such a revenue stream has a net present value of between $2.2 million and $3.3 million in the first 25 years of the project's life. This does not include fare revenues from increased transit system use.

"Capital Program funds can be used for a variety of joint development activities, so long as they are physically or functionally related to a transit project and they enhance the effectiveness of the transit project."

Examples of Eligible Joint Development Property
CROSS BORDER LEASE

On April 26, 1990, FTA issued Circular 7020.1 "Cross-Border Leasing Guidelines." This circular announced that U.S. transit operations would be able to participate in equipment leases by means of a sale-leaseback mechanism with a foreign lessee. This mechanism is similar to the Safe-Harbor Lease that was eliminated in the 1986 Tax Act. However, since the net benefit to the participants results from non-U.S. tax laws, it is allowable under U.S. laws. The basic form of this transaction is for the transit operator to purchase rollingstock, such as railcars, then simultaneously sell these to a non-U.S. investor who in turn leases them back to the transit system. The foreign lessee generates tax benefits in its country of origin through investment tax credits and depreciation. These benefits are shared with the U.S transit operator through reduced lease costs. Since 1990, cross-border lease transactions have generated net benefits for transit systems of between 1.5 percent and 4.5 percent of total transaction size. The most cost-effective cross-border leases have exceeded $50 million in transaction value, primarily because substantial transaction costs usually require a higher transaction value. However, a few transactions have been successfully concluded with equipment of somewhat lower value.

New Jersey Transit (NJT) reduced the cost of refurbishing its Arrow III commuter rail cars. In a cross-border transaction facilitated by Asea Brown Boveri (ABB) and its Netherlands banking subsidiary, NJT sold 233 refurbished Arrow III commuter cars to ABB, then leased them back for twelve years or more. A combination of debt provided by ABB and equity provided by NJT secured the transaction. NJT realized a net benefit from this transaction of $18.4 million.

"A cross border lease is a mechanism which permits investors in a foreign country to own assets in the United States, lease them to an American entity, and receive tax benefits under the laws of their own country.

Example Cross-Border Lease Structure

Cross border leases often involve acquisition of rail rolling stock.
The "Super Turnkey" process (authorized in Section 3019 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) is one where the project engineers or project management consortium undertake to build, operate for a time, and transfer a facility to the purchaser. In such a situation, purchasing, deliveries, scheduling, and other critical aspects of the project are directed by the same entity - a Turnkey Manager. As a result, construction delays, start-up difficulties, disagreements about change orders and project timing are minimized, resulting in lower project costs and reduced litigation.

One modification to this "Build/Operate/Transfer" (BOT) process is where the consortium also arranges financing. This technique may be attractive for smaller grantees who may not have the credit history to minimize their borrowing costs. The Turnkey Manager may assist with project financing by accepting delayed compensation (e.g., postponement of progress payments), credit enhancements such as an insured line of credit, or even total project financing through the issuance of their (the consortium’s) own bonds. While these financing methods have costs associated with them, they may allow a new transit project to proceed in a timely manner, thus generating time and project savings well in excess of the financing cost.

One example of a BOT is the 42nd Street Light Rail project, in New York City. The 42nd Street Development Corporation, as project manager, has requested FTA funding to help with a franchise procurement process to select a "Super Turnkey" contractor, who will combine all of the Design/Build/Operate and Finance functions. The project itself will be a privately built and financed trolley line across Manhattan to create a "grand boulevard" from the United Nations to the Jacob Javits Convention Center. The trolley will also foster development in the far West End of Manhattan, thus raising the tax base and supporting new jobs.

"Grantees can also consider use of vendor financing in procurements, such as super turnkey."

Example Super Turnkey Structure

A turnkey procurement may be used to acquire an entire system, or just a component such as this bus maintenance facility.
Delayed Local Match

Transit systems may wish to delay the application of their local matching funding, particularly if they are trying to maximize the use of their locally available funds. This could occur because the funds are invested in a short-term security, for example, or otherwise encumbered. However, there may also be a situation where the grantee is seeking to arrange construction period financing or some other innovative financing mechanism which could be facilitated through an uneven expenditure of Federal and matching funds. In the example chart, the delayed local match would allow the grantee to earn $2.45 million on its local share, at current interest rates. Additional benefits could be generated through innovative project financing, or other means.

The FTA grants process generally is based on a level outflow for a specific project. For every 20 percent expended by the locality, 80 percent in Federal funds are expended. Little value can be added to such a cash stream through the assistance of private capital markets. However, if the Federal dollars are expended first, e.g., for 100 percent of the design, engineering, or environmental reviews, then the construction period can be financed with some private participation. In this instance local funds can be “banked”, or pledged as additional security for construction period financing. This is all possible because there are no arbitrage concerns with the local funds as there might be with the Federal funds. The benefit of delayed local match is that it may help assure the smooth progress of a major transit infrastructure project without any increase in Federal outlays.

"FTA permits grantees to defer the payment of the local share of transit projects."

Delayed Local Match

[Graph showing semi-annual payments]
TOLL REVENUE CREDITS

ISTEA provides that toll revenues on public roads and bridges expended for capital investment may count as local match (soft match) for Federal grant funds in a specific year. This capability allows the local matching share that would otherwise be required to match a transit grant, to be used for other projects.

This results from the recognition that different modes of transportation are interconnected. Capital expenditures to reduce congestion in a particular corridor benefit all modes in that corridor, be they automobiles, transit buses, or a rail system. Thus, if a community constructs a toll bridge, ISTEA allows the revenues from that toll bridge to be used as local match under the following specific circumstances:
• The toll revenues must be used for transportation capital investment, not operating expenses;
• The soft match in one year is counted as the amount of toll revenue used for transportation capital investment in that year. That is, there is no carryover.

Depending upon local conditions and requirements, a project’s local (non-toll) match could be banked, or used as matching funds for a discretionary grant, or used to facilitate the early completion of other capital projects, etc.

While toll revenue credits are not directly facilitated in Federal Transit laws, the credits can readily be applied to transit capital investments.
SUPPLEMENTAL INFORMATION

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) encourages more efficient management and enhancement of our Nation’s public transit infrastructure through the creation of public/private investment partnerships. In addition, Executive Order 12893, “Principles for Federal Infrastructure Investments,” signed by the President on January 26, 1994, directs each executive department “to ensure efficient management of infrastructure...” and “to encourage private sector investment, which is a key objective of our efforts to promote innovative financing.” Underlying this guidance is the notion that market-oriented financing and management techniques can be effective tools for meeting our Nation’s needs for infrastructure investment. To further these directives, on September 12, 1994, FTA published a Notice regarding its Innovative Financing Initiative in the Federal Register (59 FR 46878) in which FTA requested information from its grantees about their use of innovative financing techniques in local transit projects.

This Notice combines in a single document current innovative financing methods and asset management tools that indicates, where appropriate, changes in administrative practice or policy guidance that may facilitate their use. Grantees and others in the transit community may find it useful to have in one publication a summary of the permissible financing and management techniques under FTA’s grant programs. Grantees should, however, refer to the appropriate FTA regulations, circulars, reports, and publications that explain these techniques in greater detail, or contact their FTA Regional Office for further guidance and assistance.

The discussion below is divided into two broad categories, Innovative Finance Techniques and Asset Management Tools.

INNOVATIVE FINANCE TECHNIQUES

This section describes innovative financing techniques which may be used in connection with Federal transit assistance. In general, the techniques can be used with new projects financed with the FTA Urbanized Area Formula Program (49 U.S.C. 5307, formerly Section 9 of the Federal Transit Act, as amended) funds, as well as with Title 23, United States Code (e.g., Surface Transportation Program (STP) and Congestion Mitigation and Air Quality program (CMAQ)) funds transferred to be used for transit projects. In most cases, the techniques can also be used with funds from the Capital Program (49 U.S.C. 5309, formerly Section 3), as well as Nonurbanized Area Formula Program (49 U.S.C. 5311, formerly Section 18), and Elderly and Persons with Disabilities Program (49 U.S.C. 5310, formerly Section 16) funds. Many of the procedures can also be used with respect to assets previously acquired with Federal transit assistance. For clarity, each technique is described separately. Grantees should take note that two or more techniques may be combined in the same project to generate additional savings or to further enhance private financing.

FTA generally supports use of innovative financing concepts that enhance the effectiveness of public transit investment by either generating increased investment or by reducing overall project costs. The following techniques and provisions of Federal transit laws are illustrative of the types of innovation that FTA will support. The list is not exclusive; grantees interested in pursuing techniques not listed here should contact their FTA Regional Office. FTA will evaluate proposals on a case-by-case basis, and where appropriate make further changes in administrative procedures, or if necessary, revise its rules and regulations to make such changes.
Leasing. FTA funds may be used to lease, rather than purchase, transit equipment and facilities. Urbanized Area Formula Program (49 U.S.C. 5307, formerly Section 9) funds may be used to cover the costs of new and pre-existing leases, so long as leasing is more cost effective than a direct purchase. FTA regulations at 49 C.F.R. Part 639 prescribe how leasing of transit equipment may be eligible. Moreover, FTA permits on a case-by-case basis, using slightly different criteria, such leasing under the Capital Program (49 U.S.C. 5309, formerly Section 3), Nonurbanized Area Formula Program (49 U.S.C. 5311, formerly Section 18), and Elderly and Persons with Disabilities Program (49 U.S.C. 5310, formerly Section 16).

Certificates of Participation (COPs). Certificates of Participation (COPs) are a type of leasing arrangement in which bonds are issued to finance the purchase of transit assets. Typically, the public transit agency (lessee) enters into a lease with a trustee or non-profit entity (lessor) for the assets it wishes to acquire. The lessor then transfers its rights to receive the lease payments made by the transit agency to the bond holders. The cash paid by the bond holders is used to purchase the assets that will be leased by the transit agency. The transit agency makes lease payments from local revenue sources and FTA grants. Title to the assets is held by the trustee for the security interest of the bond holders during the life of the transaction (usually 7 to 12 years). Use of this technique may allow transit agencies to use future reserves of local and federal revenues to accelerate equipment purchases. Although historically FTA recipients have engaged in COPs transactions solely for the purchase of vehicles, this technique may also be used to acquire facilities. Approximately six of these have taken place with federally funded equipment. Further guidance on the use of COPs can be found in FTA Report No. FTA-MA-90-7005-93-1 ("How to Evaluate Opportunities for Cross Border Leasing and COPs," November 1993).

Joint Development. Under 49 U.S.C. 5309(a)(5) and (f) and 49 U.S.C. 5309(a)(7) (formerly Sections 3(a)(1)(D) and 3(a)(1)(F)), Capital Program funds can be used for a variety of joint development activities, so long as they are physically or functionally related to a transit project and they enhance the effectiveness of the transit project. Further, consistent with the additional flexibility in funding and decisionmaking afforded by ISTEA, FTA has recently interpreted the Capital Program (49 U.S.C. 5309) and the Federal Transit laws (49 U.S.C. 5301 et seq.) to allow such joint development projects under the Urbanized Area Formula Program (49 U.S.C. 5307, formerly Section 9), as well as the STP (23 U.S.C. 133) and the CMAQ Program (23 U.S.C. 149) when these funds are transferred to FTA for a transit project. Similarly, by this Notice, FTA is also alerting its grantees to the fact that assets previously acquired with FTA funds may be used for such joint development purposes. For example, land now used for station parking and no longer needed for transit purposes may be converted to use in a transit-related development project.

Certain cross-cutting Federal requirements will apply to the activities supported by Federal transit funds; however, such requirements would not apply to the commercial project itself, since Federal funds cannot be used for the construction of commercial revenue-producing facilities. FTA program funds may be used for the overall planning of a transit project, including the commercial revenue-producing facilities, so long as such commercial facilities are part of an overall transit-related project.

Use of Proceeds from Sale of Assets in Joint Development Projects. To facilitate joint development activities, FTA permits the sale of real property and property rights acquired with FTA assistance, in the following instances.

i. Real property that is no longer needed for transit purposes may be sold and the proceeds may then be used to purchase other real property for a transit-supportive development. If the real property is leased, the proceeds are considered program income and may be used for any transit purpose.

ii. Air rights over transit facilities constructed with Federal funds may be sold or leased to developers and the proceeds retained as program
income for future use in mass transit, rather than returned to the Treasury.

Cross Border Leases. A cross border lease is a mechanism which permits investors in a foreign country to own assets in the United States, lease them to an American entity, and receive tax benefits under the laws of their own country. FTA will permit the encumbrance of federally funded assets under a cross border lease so long as the grantee maintains continuing control and use of the asset in mass transit, and the benefits of the transaction outweigh the risks to the grantee. Grantees should provide FTA with the details of the transaction for review on a case-by-case basis. FTA's policy on Cross Border Leases is contained in FTA Circular 7020.1 (“Cross Border Leasing Guidelines”). Further guidance on cross border leases is available in FTA Report No. FTA-MA-90-7005-93-1, cited previously.

Capital Cost of Contracting. FTA permits grantees to count a portion of the costs of a contract with a private operator for transit service operations as a capital cost eligible for FTA capital program funding. This policy is described in more detail in FTA Circular 7010.1 (“Capital Cost of Contracting”). This policy generally applies to contracting for providing transit services where the use of facilities and equipment is provided as a part of a transit service contract.

Innovative Procurement Approaches. FTA encourages grantees to use a wide variety of innovative procurement techniques. These can include multi-year rolling stock procurements, forming consortia to facilitate efficiencies of scale in rolling stock procurements, or using design-build (“turnkey”) as a method of infrastructure project delivery. Grantees can also consider use of vendor-financing in procurements, such as “super-turnkey,” in which the contract calls for borrowing by the design-build contractor, with the costs, including interest, paid off over time using Federal grant funds. Further information on this form of procurement is available in FTA Report No. FTA-MA-08-7001-92-1, “Turnkey Procurement: Opportunities and Issues.”

State Transit Finance Support. FTA encourages States and local governments to develop the capability to provide support for transit finance initiatives. Where State law permits, FTA capital funds can be used to support transit-related State finance entities, such as transportation banks. Such finance entities could provide a range of financing options, including cross border leases, certificates of participation, joint procurements, and the like, that may not otherwise be available to the smaller transit agencies. While FTA capital program funds can be used to cover the initial capitalization, they cannot be used to cover the ongoing operating costs of such a program.

Revolving Loan Funds. By this Notice, FTA announces that Federal grant funds may be used to support State or local revolving loan funds established in accordance with appropriate State laws. These funds would be available to provide direct loans for transit projects, or to acquire equipment and facilities and lease them to providers of public transportation in their States. Payments to retire the loans or service the leases, including accrued interest, would be used to fund other transit projects. Such a revolving loan fund could be used in combination with pooled procurements, State or locally issued bonds, joint development, and other techniques to generate income for transit investment or to reduce the overall cost of transit capital investment. As with the State Transit Finance entities, FTA funds can be used to cover the initial capitalization, but they cannot be used to cover the ongoing operating costs of such a program.

Deferred Local Match. FTA permits grantees to defer the payment of the local share of transit projects. Under this policy, grantees may, with prior approval from FTA, draw down 100 percent of the first 80 percent of project cost of former Section 3 (49 U.S.C. 5309), 8 (49 U.S.C. 5303), 9 (49 U.S.C. 5307), 16 (49 U.S.C. 5310), 18 (49 U.S.C. 5311) and 26 (49 U.S.C. 5320) projects, covering the local share of the costs at the end of the project. See, “Policy Statement on Local Share Issues,” 57 FR 30880, July 10, 1992.
The FHWA welcomes readers to its first issue of the Innovative Finance newsletter. This newsletter, published bi-monthly, will provide state Departments of Transportation (DOTs) and metropolitan planning organizations (MPOs) with practical, case-oriented information on innovative financing for transportation.

What Is Innovative Finance?

Traditional methods of transportation finance have relied to a significant degree on Federal-aid grant reimbursement programs. Innovative finance, in contrast, is a broadly defined term that refers to non-traditional methods for transportation financing as well as to the use of conventional methods in new ways. A prime objective of innovative finance is to maximize the ability of states to leverage Federal capital for needed investment in our nation's transportation system. A related objective is the more effective use of existing funds.

Innovative financing techniques used by the FHWA and states include leveraging tools, designed to increase the funds available for transportation infrastructure investment, and cash flow tools, which are designed to more quickly advance project construction. Future issues of the Innovative Finance newsletter will focus on these tools and other new ideas in detail.

Why Is Innovative Finance Important?

Recent legislation has stressed the importance of financial management and identifying new sources of transportation funding. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the National Highway System Designation Act of 1995 (NHS Act) provided transportation planners and engineers with an array of new tools to improve the financial management of transportation investment resources, including the use of innovative finance. Although financial innovation pre-dates the passage of ISTEA, this landmark legislation created new opportunities to innovate by encouraging multiple financing strategies in addition to new partnerships among Federal, state, local, and private funding sources. The NHS Act contained several innovative finance provisions that built upon the experience of ISTEA and the FHWA's Innovative Finance Test and Evaluation (TE-045) program. The TE-045 program was prepared in response to President Clinton's Executive Order 12983, Principles for Federal Infrastructure Investment, that established infrastructure investment as a priority for each executive department and agency.

But legislative changes are not the only reason that innovative finance for transportation is important. The simple fact is that traditional funding sources cannot provide sufficient funds to meet current transportation infrastructure needs. As a result, new funding partnership approaches and financing mechanisms are needed to ensure that scarce transportation dollars are used more effectively. Innovative financing can help close the current investment gap.

What Will the Newsletter Cover?

The FHWA has created the Innovative Finance newsletter to increase awareness and understanding of innovative finance opportunities through articles that describe the results of U.S. DOT-sponsored research, case studies, announcements of upcoming conferences, meetings, and training programs, and resources, such as reports, guidelines, and contacts. The newsletter will serve as a resource for its readers in developing innovative strategies in their own transportation systems. It will also provide a forum for notifying state DOTs and MPOs of best practices nationwide. Individual newsletter issues will highlight topics of current interest in more detail, such as innovative contracting/procurement, public/private partnerships, institutional issues, and value capture mechanisms.

Also in this Issue...

Innovation Is Key To Texas' George Bush Turnpike
State Infrastructure Bank Status Report
Internet Guide To Innovative Finance
FHWA Offers Innovative Finance Course
ISTEA Reauthorization
Public Works Financing
Innovation Is Key To Texas’ George Bush Turnpike

Use of financial and institutional innovation has helped overcome significant obstacles to implementation of the State Highway 190 (George Bush) Turnpike, a $463 million joint project of the Texas Department of Transportation (TXDOT) and Texas Turnpike Authority (TTA). Innovative methods are expected to accelerate project completion by six to ten years, save millions of dollars in escalation and interest costs, and encourage similar innovation on other transportation projects in the state.

The George Bush Turnpike will connect the Dallas metropolitan area to its rapidly growing northern communities. This new highway is needed to relieve congestion and to support future economic growth in the area. Originally conceived as a freeway when TXDOT began planning the roadway in the 1970s, the project was converted to a tollway in the 1990s after traditional “pay-as-you-go” financing from motor fuel tax receipts and Federal-aid funds proved insufficient.

Under more traditional financing methods, the project’s size would have created delays resulting in significant exposure to the costs of inflation. Its size would also jeopardize TXDOT’s ability to adequately address the state’s other transportation needs. Institutional barriers to the project’s implementation included the fact that TXDOT lacks the authority to issue bonds.

To address these obstacles, TXDOT and TTA collaborated in a unique partnership to finance and construct the project as a turnpike. This partnership was supported by a change in Texas legislation in 1991 that allowed greater flexibility in turnpike project financing and the lending of highway funds for turnpike projects. The new legislation allowed the project to take advantage of Federal-aid funds available to TXDOT as well as TTA’s bonding authority. Additional collaboration with three counties and seven cities in the North Dallas suburbs resulted in the donation of several locally owned rights-of-way to the project.

Leveraging this partnership was a proposal to use innovative financing tools available under ISTEA and the FHWA’s TE-045 program. Innovative tools used by the project are as follows:

- **Partial Conversion of Advance Construction (PCAC):** PCAC allows TXDOT to use TTA funds immediately and preserve eligibility for reimbursement of the federal share of the project in the future. This tool provides critical Federal-aid cash inflows timed to meet the project’s construction schedule.

- **Section 129 Loan:** TXDOT will pass through a $135 million loan of Surface Transportation Program (STP) Federal-aid funds to TTA as part of the project’s financing plan. This money gave TTA the bonding capacity needed to cover project costs, and greatly enhanced the creditworthiness of TTA’s $450 million in revenue bonds issued for the project. Furthermore, the loan allowed TTA to contribute $20 million to the project from funds that might otherwise have been required as reserves for the debt. TTA’s repayment obligation on the Section 129 loan will be subordinate to the repayment of its toll revenue debt service, for which interest is deferred until 2000; repayment of the loan is spread over 25 years and does not begin until 2004. Similarly, interest accrues on the bonds from the date of issuance but is not paid until 2005. Both payment schedules help to protect investors from the risk associated with the project’s construction and start-up period. After repayment, Section 129 loan funds may be used to capitalize the Texas State Infrastructure Bank (SIB), which was recently designated under the FHWA’s SIB pilot program.

- **Flexible Matching:** The counties of Dallas, Collin, and Denton contributed $39.9 million in local rights-of-way to the project. Under the TE-045 program, the value of this contribution will count toward the state’s 20 percent non-Federal match requirement. This provision will allow state funds to be used on other transportation projects.

The project financing plan is summarized in the table below:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 129 Loan</td>
<td>$135,000,000</td>
</tr>
<tr>
<td>TTA Revenue Bonds</td>
<td>308,402,058</td>
</tr>
<tr>
<td>TTA Capital Improvement Fund</td>
<td>20,000,000</td>
</tr>
<tr>
<td>Total Cash Sources</td>
<td>$463,402,058</td>
</tr>
<tr>
<td>Local Right-of-Way Donations</td>
<td>$39,900,000</td>
</tr>
</tbody>
</table>

Texas’ creative use of the opportunities provided by ISTEA and the TE-045 program shows how innovative finance can help states meet their transportation investment infrastructure needs in a timely and affordable way.

**Contacts:**
Esther Strawder, FHWA, 202/366-6949.
State Infrastructure Bank Status Report

On November 28, 1995, President Clinton signed into law the NHS Act of 1995. Section 350 of P.L. 104-59 authorizes the State Infrastructure Pilot Program under which the U.S. Secretary of Transportation can enter into cooperative agreements with up to ten states to establish state or multi-state infrastructure banks (SIBs). A SIB is capitalized with Federal funds from state apportionments and matched with state funds, and is designed to complement traditional funding programs.

A SIB, like a private bank, needs equity capital to get started and offers a range of loans and credit options to help finance eligible surface transportation projects, including both highway and transit. A total of 15 states submitted applications to the U.S. DOT by the initial March 8, 1996 deadline. Many other states indicated their interest in the pilot through letters and telephone calls. The Secretary designated eight states as part of the pilot program on April 4, 1996. After reviewing the five state applications that were resubmitted, the Secretary selected the final two states on June 21, 1996.

The designated pilot SIBs will be able to provide loans, enhance credit, serve as capital reserves, subsidize interest rates, insure letters of credit, finance purchase and lease agreements for transit projects, provide bond or other debt financing, and provide other forms of assistance that leverage funds. Through the SIB Pilot Program, the following ten states will test the use of SIBs as a means of increasing and improving both public and private investment in transportation:

Eight States Designated on April 4, 1996:
Arizona, Florida, Ohio, Oklahoma, Oregon, South Carolina, Texas, and Virginia

Two States Designated on June 21, 1996:
California and Missouri

A draft cooperative agreement has been sent to each of the ten designated states, to be signed 90 days after the state received the initial draft from the U.S. DOT.

Contacts:
Lucinda Eagle, FHWA, 202/366-5057.

Internet Guide to Innovative Finance Publications and Guidance

The FHWA will soon offer access to innovative finance information through the FHWA home page. The target date is early August to coincide with the release of this first issue of Innovative Finance. To obtain immediate access to materials such as the NHS Guidance on Innovative Finance Provisions, the SIB Primer, SIB fact sheets, Questions and Answers, the Innovative Finance newsletter, training course updates and information, evaluation reports on innovative finance research projects, and much more, follow the procedures described below:

For Netscape Users

Enter the URL "www.dot.gov" to access the U.S. DOT web site. Each U.S. DOT modal agency has its own individual listing. Click on Federal Highway Administration to the FHWA home page. A graphic depicting an interchange will be displayed over a menu of options. Select 'About the FHWA,' and click on Organization Chart. From here, select 'Associate Administrator for Policy - Office of Policy Development.' Click on Legislation and Strategic Planning Division to find various publications related to innovative finance.

For Firefox Users

Go to Mosaic to access the U.S. DOT web site and enter "http://cti1.volpe.dot.gov/ohim" as the URL. A graphic depicting an interchange will be displayed over a menu of options. Follow the same procedure as described above for Netscape users.

FHWA Offers Innovative Finance and Statewide Financial Planning Course

FHWA's Innovative Finance and Statewide Financial Planning Course continues to be offered to states and MPOs. Upcoming sessions through September 1996 include the following:

- August 5-6, Washington, DC
- August 7-8, Phoenix
- August 26-27, Pierre, SD
- August 28-30, Austin, TX
- September 5-6, Austin, TX
- September 10-11, Little Rock, AR
- September 12-13, Juneau, AK
- September 19-20, Columbus, OH
- September 24-25, Austin, TX
- September 26-27, Springfield, Illinois

Contacts:
For more information on this course or session dates and locations, contact Larry Dwyer, FHWA, 202/366-8560.
FHWA Plans For ISTEA Reauthorization

ISTEA reauthorization provides an opportunity to incorporate additional innovative financing techniques into law. In the area of innovative finance, the successor to ISTEA should build upon efforts, such as the Partnership for Transportation Investment and transportation infrastructure banks, that have begun to create new ways of paying for the transportation systems that America needs.

The U.S. DOT has been holding outreach forums on ISTEA reauthorization topics, including innovative finance, to obtain information, views, and recommendations from many different sources. This outreach will help inform decisionmaking about the contents and focus of the reauthorization proposal. Development of the reauthorization proposal will follow three key phases:

1. Analysis and Outreach. Through September 1996, the FHWA and other agencies in the U.S. DOT will be gathering information, conducting outreach, and taking stock of how well ISTEA has worked.

2. Decisionmaking. Based on the outcome of Phase I, the FHWA will begin to develop a proposal and coordinate it with other parts of the Executive Branch that also have an important stake in ISTEA reauthorization.

3. Transmittal to Congress. A legislative proposal is expected to be transmitted to Congress early in 1997. At that time, the U.S. DOT will work closely with Congress, the states, local governments, and other stakeholders to ensure that a worthy successor to ISTEA is passed by October 1997.

Contacts:
For more information on ISTEA reauthorization and outreach forum dates and locations, contact Esther Strawder, FHWA, 202/366-6949.

Public Works Financing Offers Private Sector Perspective

Public Works Financing is a newsletter devoted to bringing the private sector into the development, ownership, and operation of the nation's infrastructure. In 15 annual issues, this newsletter offers a behind-the-scenes look at case studies, emerging projects, and key industry players. In every issue, detailed information is provided on market, credit, and investor trends across a broad spectrum of infrastructure projects around the globe. For the public sector, the newsletter provides an important glimpse into the challenges and issues facing potential private industry partners. Over the year, some issues are focused entirely on a topic of current interest, such as public/private partnerships or privatization. Every issue contains a directory of service providers who are experts on the issues of infrastructure finance. Included in the subscription fee is an annual index of PWF issues. Using that index, case studies and focus articles may be ordered from the archive. PWF is a key resource that helps to bridge the gap between public infrastructure practice and the international world of stand-alone project finance.

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