
OLR Bill Analysis

SB 150

AN ACT ESTABLISHING THE CONNECTICUT INFRASTRUCTURE AUTHORITY.

SUMMARY

This bill establishes the Connecticut Infrastructure Authority (the “authority”) as a quasi-public agency to, among other things, help finance eligible infrastructure improvement projects, expedite and support their implementation, and give project finance expertise. The authority is governed by a 13-member board of directors and has many of the same powers existing law gives to other quasi-public agencies, including bonding, hiring, and contracting.

By January 1, 2022, the authority must begin discussions with the U.S. Department of Transportation (USDOT) to capitalize the bank with federal Title 23 state infrastructure bank funding. The bill also authorizes the authority to (1) receive specified state charges and fees, with certain conditions; (2) raise revenue by issuing tax-exempt and taxable bonds and charging fees to pay for its bond-funded projects; and (3) receive charitable contributions, grants, and investments and any other federal funds that may be used for its purposes.

The bill authorizes the authority to give financial assistance, including loans and credit enhancements, to infrastructure projects through a fund it creates. The bill sets requirements governing the fund’s use, including the audit requirements and the maximum amount of funding the authority can give to a project, among other requirements.

The bill also authorizes the authority to work with municipalities and transit districts (see BACKGROUND) to locate private entities (i.e., individuals, businesses, and nonprofits) and private sector resources to engage them in public-private partnerships for infrastructure

improvement projects. Municipalities and transit districts may apply to the authority, as set out by the bill, for funding assistance. Projects involving state-owned land or facilities are subject to Department of Transportation (DOT) or other agency approval.

EFFECTIVE DATE: July 1, 2021

§§ 1-2 & 12-15 — AUTHORITY PURPOSE AND POWERS

Establishment as a Quasi-Public Agency

The bill establishes the Connecticut Infrastructure Authority as a quasi-public agency. In doing so, it makes the authority a public instrumentality and political subdivision of the state, created to perform an essential public and governmental function. As a result, it is subject to statutory procedural, operating, audit, and reporting requirements for quasi-public agencies, including lobbying restrictions and an ethics code. This status also generally indemnifies the authority's directors, officers, employees, and their agents and requires the treasurer's approval before borrowing money or issuing bonds or notes that are guaranteed or contributed to by the state. The authority is not a state department, institution, or agency.

Purpose

The authority's purpose is to:

1. expedite and support the development, structuring, and execution of high quality, cost-efficient infrastructure improvement projects (as described below);
2. promote infrastructure investment through financing or other credit assistance support;
3. prioritize infrastructure improvement projects and public-private partnerships that stimulate economic growth and development;
4. provide infrastructure project management and finance expertise to DOT; and

5. reduce carbon emissions and nonrenewable resource consumption.

Authority Powers

Financial Assistance to Infrastructure Improvement Projects.

The bill authorizes the authority to give loans or “other forms of credit assistance” to any public or private entity carrying out an “infrastructure improvement project” to cover up to 100% of the project’s costs. For “rural infrastructure projects”, it may provide loans for up to 80% of the project’s cost.

The bill defines an “infrastructure improvement project” as a project in Connecticut that is:

1. undertaken or managed by a municipality, transit district, or contractor (defined as a private entity with which the authority has entered into a partnership agreement) for the acquisition, removal, construction, equipping, reconstruction, repair, rehabilitation, and improvement of, and acquisition of easements and rights-of-way to, roadways, highways, bridges, commuter and freight railways, transit and intermodal systems, airports and aeronautic facilities, ports, harbors, waterways, energy transmission and distribution resources, and transit oriented development, water treatment plants, distribution systems and pumping stations, waste water treatment plants, collections systems and pumping stations, environmental infrastructure, green technology, photovoltaic facilities, wind turbines, and electric vehicle charging stations;
2. a “rural infrastructure project,” which is a surface transportation infrastructure project outside an urban area with a population greater than 150,000; or
3. any other private project eligible under Title 23 of federal law, which governs the federal-aid highway program and Transportation Infrastructure Finance and Innovation Act (TIFIA), among other federal transportation programs.

Under the bill, “other forms of credit assistance” are:

1. credit enhancements,
2. providing a capital reserve for bond or debt financing,
3. subsidized interest rates,
4. insure or guarantee letters of credit and credit instruments against loss,
5. finance purchase and lease agreements for infrastructure improvement projects,
6. providing bond or debt financing security, and
7. providing other debt financing and fund leveraging methods that are approved by the transportation secretary and that relate to the infrastructure project.

Employing Staff and Consultants. The authority may employ any staff that it needs or wants, but such employees are exempt from classified service and are not state employees for collective bargaining purposes. The authority may set personnel practices and policies, including those related to hiring, promotion, compensation, and retirement. It may also engage consultants, attorneys, financial advisers, appraisers, and other professionals.

Other Authority Powers. Additionally, the bill authorizes the authority to do the following to fulfill its purposes:

1. have perpetual succession as a corporate body and adopt bylaws, policies, and procedures to conduct business and regulate its affairs;
2. adopt and alter an official seal;
3. maintain an office;
4. sue and be sued and plead and be impleaded;

5. issue bonds, notes, and obligations, as described below;
6. receive and accept aid or contributions, including from state and federal agencies;
7. borrow money;
8. make and enter into all contracts and agreements needed or incidental to conduct its business;
9. invest in, acquire, lease, purchase, own, manage, hold, sell, and dispose of real or personal property or any interest in it and lease, convey, or deal in or enter into agreements with respect to such property on any terms necessary or incidental to carrying out its purposes or powers;
10. insure itself against any loss or liability;
11. hold patents, copyrights, trademarks, marketing rights, licenses, or other intellectual property rights;
12. establish advisory committees, which may include members of the authority's board of directors;
13. invest funds that are not needed for immediate use or disbursement under investment policies the authority's board of directors adopts;
14. enter into joint ventures, invest in, and participate with any person (including government or private entities) to form, own, manage, and operate infrastructure in the northeast region or any other business entity formed to advance the authority's purposes;
15. account for and audit authority funds and any organizations that receives them;
16. assess and collect reasonable fees to cover the financing costs and expenses, as determined by the board; and

17. do anything else necessary or convenient to carry out the authority's purposes.

The bill provides that the authority's powers must be interpreted broadly to effectuate its purposes and not be construed to limit its powers.

Purchasing, Procurement, and Disposition of Assets

The bill subjects the authority to the rules, regulations, and restrictions on purchasing, procurement, and asset disposal that generally apply to state agencies. These include the laws and related regulations for competitive bidding and negotiating contracts for supplies, materials, equipment, and contractual services (e.g., CGS §§ 4a-57 & 4e-19).

§§ 1 & 2 — CAPITALIZATION

The bill requires the authority to begin the process of capitalizing the authority, which the bill defines as depositing federal state infrastructure bank funds as initial capital for purposes of funding infrastructure improvement projects. To do so, the authority's board of directors must, by January 1, 2022, start discussions with the USDOT secretary to enter into a "cooperative agreement" in accordance with the federal state infrastructure bank program. Under the bill and this federal law, a cooperative agreement is the written consent between a state and the secretary that establishes how the infrastructure bank will be administered; such an agreement allows states to capitalize their infrastructure banks using these funds (23 USC § 610).

§ 3 — BOARD OF DIRECTORS

Membership

Under the bill, the authority's powers are vested in and exercised by a 13-member board of directors comprised of 12 voting members and a nonvoting president.

The board members include four ex-officio members: the state treasurer, the Office of Policy and Management (OPM) secretary, and the economic and community development and transportation

commissioners. All of the ex-officio members may appoint a designee in their place.

Table 1 shows the appointing authority and required qualifications for the other eight voting members.

Table 1: Voting Member Appointees

<i>Appointing Authority</i>	<i>Number of Appointments</i>	<i>Qualifications</i>
Governor	Four	One appointee must be a labor organization representative; one must have experience planning and installing infrastructure improvement projects; and two must have experience financing or developing infrastructure projects
House speaker	One	Must have experience financing or developing infrastructure improvement projects
Senate president pro tempore	One	Must represent an environmental organization
House minority leader	One	Must have experience in investment fund management
Senate minority leader	One	Must represent a business development organization

Each of the appointed voting members serve a four-year term. Board vacancies must be filled for the unexpired term by the original appointing authority.

President and Other Officers

In addition to the 12 voting members, the authority's president serves as a non-voting member. The board must elect a non-member president, who serves at the board's pleasure. The board must select from among its members a chairperson, vice-chairperson, and any other needed officers.

Bylaws and Procedures

The board may establish committees and subcommittees and must adopt any bylaws and procedures necessary for the authority's functions including for the following:

1. adopting an annual budget and operations plan, including a requirement that the board approve it before the budget or plan takes effect;
2. hiring, dismissing, promoting, and compensating authority employees, including an affirmative action policy and a requirement for board approval before a position is created or filled;
3. acquiring real and personal property and personal services, including a requirement that the board approve any nonbudgeted expenditure over \$5,000;
4. contracting for financial, legal, bond underwriting, and other professional services, including a requirement that the authority solicit proposals at least once every three years for each service it uses;
5. issuing and retiring the authority's bonds, notes, and other obligations;
6. awarding loans, grants, and other financial assistance, including the application process, eligibility criteria, and the authority's staff and directors' role; and
7. using surplus funds as the bill and law allows.

All of these procedures must be adopted in accordance with the law governing quasi-public agencies' adoption of procedures.

Conflicts of Interest

The bill prohibits board members from being a trustee, director, partner, or officer of any business (person, firm, or corporation), or having a financial interest in a business if the business participates in or receives support from programs that the authority developed,

administers, or otherwise supports. However, the bill specifies that it is not a conflict of interest for board members to serve as a director, member, or officer of a joint venture entered into by the authority.

Liability

Under the bill, directors, officers, employees, and agents of the authority acting within the scope of their authority are immune from personal liability resulting from exercising or carrying out any of the authority's purposes or powers.

Annual Reporting

Beginning by September 30, 2022, the bill requires the board to annually submit a report on the authority's status to the Transportation Secretary in accordance with federal law, and provide a copy to the Banking; Commerce; Energy and Technology; Environment; Finance, Revenue and Bonding; and Transportation committees.

§§ 4, 8 & 9 — MUNICIPAL AND TRANSIT DISTRICT APPLICATIONS FOR INFRASTRUCTURE FUNDING

Beginning in FY 22, municipalities and transit districts may apply to the authority for infrastructure project financing if the OPM secretary and DOT, or other appropriate agency, have granted them permission to undertake the project. (The bill does not specify a process for submitting these applications.)

The bill also requires municipalities proposing infrastructure improvement projects on state-owned land or facilities to submit an application to DOT or other appropriate agency, as described below. (Under the bill, a "facility" is any public works or transportation project used as public infrastructure that generates revenue as a function of its operation.)

State Approval Process for Municipal Applications

Beginning July 1, 2021, a municipality may apply to DOT or another appropriate state agency for permission to undertake an infrastructure project on any state-owned land or facility. The agency receiving the

application has 30 days from receipt to review and respond with written approval or denial.

The bill prohibits the title to any land or facility for which this permission is granted from passing to the municipality during the project or upon its completion.

Authority Review and Approval

The authority must review each application and may either approve or reject it. The bill requires the authority to consider applications that it estimates will:

1. generate enough potential revenue from the infrastructure project, in combination with other identified or appropriated funding sources, to sufficiently develop, operate, and maintain the project;
2. optimize the infrastructure project through a public-private partnership; or
3. potentially economically benefit the municipality, transit district, region, or state.

Engaging Private Entities and Private Sector Resources

The bill allows the authority to work with municipalities and transit districts to locate and engage private entities (i.e., individuals, businesses, and nonprofits) and private sector resources to engage in public-private partnerships for infrastructure improvement projects. Under the bill, these “public-private partnerships” are relationships established by partnership agreements between the authority and the private entity to perform any combination of specified functions or responsibilities to design, develop, finance, contract, operate, or maintain facilities as part of an infrastructure improvement project.

§ 4 — COMPETITIVE BIDDING

The authority may approve and finance an infrastructure improvement project under a competitive bidding process. The authority may determine the process’ conditions, schedule, and

stipulations, as well as the format, contents, and scope of the infrastructure improvement project itself. In awarding the contract, the authority may select the contractor that it deems to have submitted the most favorable bid, based on price and other factors, when in the authority's judgment, the award is in the state's best interests.

However, the authority may not award the contract to any contractor who is not in good standing or who has been:

1. disqualified for violating state competitive bidding form and subcontractor substitution, prevailing wage, or occupational safety and health laws;
2. barred in any state in the past five years; or
3. barred from federal government contracts under the federal Davis-Bacon Act for nonpayment or underpayment of wages.

The authority must require contractors submitting bids to disclose settlement agreements in the last five years related to state prevailing wage laws or nonpayment or underpayment of wages.

§§ 5-7 — FUNDING SOURCES AND ACCOUNTS

Infrastructure Improvement Fund

The bill establishes the Infrastructure Improvement Fund within the authority and requires it to include at least three accounts: the highway, rural projects, and municipal accounts.

The infrastructure fund may receive federal state infrastructure bank funds and may use money in the fund to promote infrastructure improvement or rural infrastructure projects. The bill requires any investment income from the fund's accounts to be (1) credited back to the account, (2) available to provide loans or other forms of credit assistance, and (3) invested in U.S. Treasury securities, bank deposits, or other finance instruments the Transportation Secretary approves.

State Charges and Fees

The bill authorizes the OPM secretary, in any fiscal year, to give the

authority a portion of funds from any charges or fees authorized by law on or after July 1, 2021, if she, in consultation with the DOT commissioner, determines that the portion is not required to meet the state's transportation needs for that fiscal year. The bill does not specify how this provision interacts with existing laws on appropriated and surplus funds. Additionally, it is unclear whether this provision has implications for the Special Transportation Fund (STF) "lockbox" (see BACKGROUND).

Funding Sources

The authority may receive funds from the following:

1. any federal funds that can be used for the authority's purpose;
2. state funds from transportation-related fees that are not required to meet the state's transportation needs and are directed to the authority by OPM as described above, including fees for bus, rail, ferry service, and parking and electric vehicle charging, if such funds are not required by law to be deposited into the STF or into the Connecticut Port Authority or Connecticut Airport Authority accounts;
3. proceeds from state general obligation bond sales;
4. charitable gifts, grants, investments, contributions, and loans from individuals, corporations, banks, institutional or other investors, and university and philanthropic foundations;
5. earnings and interest derived from financing the authority's infrastructure improvement projects; and
6. any municipal fees or revenue designated by a municipality or transit district as infrastructure improvement project funding.

Audits

The bill requires the fund to be audited annually by independent certified public accountants, who can be the authority's own accountants, in accordance with generally accepted auditing

standards.

Any entity receiving an authority loan or financial assistance must give the authority's board an annual statement, in a form and manner it prescribes, with the sources and uses of the financing. The authority must keep all reports for at least five years.

Administrative Costs (§ 7)

The bill prohibits the authority from spending more than 2% of any funds it receives under the federal state infrastructure bank program to pay for the authority's reasonable administrative costs.

§ 7 — LOANS AND CREDIT ASSISTANCE

Administration Standards

Prior to making any loans or offering any other form of credit assistance, the bill requires the authority to develop standards governing the authority's administration. This includes rules, policies, and procedures that specify borrower eligibility, terms and conditions of financial support, and other relevant criteria.

Loan Terms

Under the bill, authority loans must require that repayment begins within five years after the project's completion or, for highway projects, the later of five years after completion or when the highway opens to traffic. Additionally, loans must be (1) paid in full within 30 years of the first payment and (2) below market-interest rates, as determined by the DOT commissioner. Loans funded by the rural projects account must charge interest at or below the rate the authority is charged for federal transportation infrastructure finance and innovation program loans (see BACKGROUND).

The authority's loans may be subordinated to any other debt at the authority's discretion.

Rate Information Disclosure

The authority must make publicly available its rates, terms, and conditions for all of its financing support transactions, including

formal annual reviews by a private auditor and the state comptroller.

The authority must publish this information on the Internet, except for patentable ideas, trade secrets, proprietary or confidential commercial or financial information, and any other information exempt from disclosure under the state Freedom of Information Act.

§ 10 —PLEDGE NOT TO ALTER THE AUTHORITY’S RIGHTS

Under the bill, the state pledges any parties who contract or partner with the authority that it will not limit or alter the authority’s rights until the contract or partnership, and related obligations, is fully met and performed on the part of the authority. However, the bill does not preclude the state from limiting or altering these rights if adequate provision is made by law to protect the contracting or partnering parties. This pledge must be interpreted broadly to effectuate and maintain the authority’s financial capacity to perform its essential public and governmental function.

§ 11 — BONDING AUTHORITY

Scope of Bond Issuing Authority

The bill allows the authority, by resolution of its board of directors, to issue bonds secured by its financial resources for terms of up to 30 years. The authority may use the bond proceeds for any of its corporate purposes. The bill allows the authority to issue (1) bonds backed by its own revenue, subject to any agreements with bondholders and any other public or private entities, and (2) federally taxable bonds, if the authority finds it to be in the public interest and will further its purposes and powers.

The bill allows the authority to determine how it will issue and repay the bonds and specifies the kinds of terms and conditions it may include in its agreements with the bondholders. It allows the authority’s board to delegate decisions regarding bond sales to its chairperson, vice-chairperson, a board subcommittee, or other authority officers. The authority may sell the bonds at a private or public sale at a price it chooses. The bill makes the bonds securities in which governments and private entities may invest.

The bill allows the authority to issue bonds to refund its outstanding bonds and specifies conditions for doing so.

It exempts board directors and those executing bonds or notes from personal liability for the obligations. And it gives bondholders and their trustees the right, subject to the provisions of the bond resolution, to take legal action to force the board to perform its duties. The bill makes the bond proceeds and other revenue connected with the bonds trust funds, which must be used as the bond resolution specifies.

Tax Treatment

The bill exempts principal and interest payments on the authority's bonds from all state and local taxes except estate and succession taxes, but requires bondholders to include these payments when computing excise and franchise taxes.

Bondholder Protections

The bill authorizes or requires several actions to assure payments to the authority's bondholders.

Under the bill, the state pledges not to alter the authority's rights until (1) the bonds are paid off or (2) it makes adequate provisions to protect the bondholders. The authority may include this pledge in its bonds, notes, obligations, or contracts. The bill also allows the authority to secure the bonds by entering into a trust agreement with a trust company or other authorized entity that includes a pledge or assignment of the authority's revenue. The bill requires the authority to secure principal and interest payments by pledging its revenue, which is also immediately subject to lien without any action on the bondholders' part.

The authority, and not the state, is liable for bonds it issues. Under the bill, authority bonds do not constitute a debt or liability of the state or its political subdivisions or a pledge of their full faith and credit and must say so on their face. The bonds do not directly, indirectly, or contingently obligate the state or its political subdivisions to levy or pledge any tax or appropriate any funds for the bond payments.

Appropriations

The authority may appropriate an amount of money necessary, combined with other funds, that must be sufficient to pay its contracts, agreements, obligations, or contractual covenants or warranties.

Project Fees and Other Revenue

The bill authorizes the authority to fix, revise, charge, and collect rates, rents, fees, and charges for (1) the use of each project and (2) services furnished by each project. The authority may also contract with another party to set and collect these fees. The fees must be set so that, when combined with other available revenue, they are enough to:

1. pay for the project's maintenance, repair, and operating costs, to the extent the cost has not otherwise been adequately paid;
2. pay the principal and interest on any bond the authority issued for the project, as the payments become due; and
3. create and maintain any required reserves.

Under the bill, any charges imposed by the authority are not subject to any supervision or regulation, other than by the authority itself.

Bond Repayment

A sufficient amount of revenue derived from each project must be regularly set aside in a sinking or similar fund (i.e., a fund to gradually accrue debt repayment funds). The authority may establish such funds for each project or one aggregate fund for all projects. Under the bill, the sinking fund is pledged and charged with repaying the bonds as they become due. Any rates and fees pledged by the authority are immediately subject to lien, which is valid and binding against all valid claims regardless of any notice or recording requirements in existing law.

BACKGROUND

Special Transportation Fund (STF) and the "Lockbox"

The STF is a dedicated fund used to finance the state's transportation infrastructure program and operate DOT and the

Department of Motor Vehicles (DMV) (CGS § 13b-68). The law requires specified tax revenue (e.g., fuel taxes and a portion of sales and use tax revenue) and various transportation-related fees, fines, and charges to be credited to the STF.

Both the state constitution and the general statutes contain a “lockbox” provision, which preserves the STF as a perpetual fund, requires that the fund be used exclusively for transportation purposes, including paying transportation-related debt, and requires that any funding sources directed to the STF by law continue to be directed there, as long as the law authorizes the state to collect or receive them (Conn. Const., art. III, § 19; CGS § 13b-68(b)).

Transportation Infrastructure Finance and Innovation Act (TIFIA)

Under federal law, the TIFIA program provides credit assistance, including direct loans, loan guarantees, and standby lines of credit, for qualified transportation projects of regional and national significance. In general, states may receive federal credit assistance in amounts of up to 33% of total reasonably anticipated eligible project costs (23 U.S.C. § 601 et seq.)

Transit Districts

Transit districts are regional transportation organizations formed by one or more municipalities and authorized by law to acquire, operate, and finance land transportation, such as bus lines and transit terminals. A transit district assumes the same regulatory and supervisory functions over transit systems in its district that DOT would exercise, as long as the transit system would otherwise be subject to DOT supervision.

COMMITTEE ACTION

Banking Committee

Joint Favorable
Yea 13 Nay 5 (03/09/2021)