

LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

ASSEMBLY, No. 10

STATE OF NEW JERSEY 217th LEGISLATURE

DATED: AUGUST 4, 2016

SUMMARY

- Synopsis:** Revises “New Jersey Transportation Trust Fund Authority Act”; establishes State Transportation Infrastructure Bank within NJ Environmental Infrastructure Trust; renames NJ Environmental Infrastructure Trust.
- Type of Impact:** Increased State and Transportation Trust Fund Authority Expenditures
- Agencies Affected:** New Jersey Transportation Trust Fund Authority, New Jersey Department of Transportation, New Jersey Transit Corporation, county governments, and municipal governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
State Expenditure	\$586 million	\$672 million	\$758 million
TTF Expenditure	\$2 billion average per year over eight years		
Local Revenue	\$400 million	\$400 million	\$400 million

- The bill authorizes up to \$12 billion in borrowing by the Transportation Trust Fund Authority (authority) and \$16 billion in appropriations from the authority’s revenues over eight fiscal years (FY), FY 2017 to FY 2024 inclusive. The bill specifies that the appropriation from the authority’s revenues is to contain \$400 million per year in grants for local government entities. The bill does not specify any annual minimums or maximums for either borrowing or appropriations.
- The Office of Legislative Services (OLS) notes that the authority’s sole sources of revenue with which to fund transportation capital projects and to retire its bonds are the proceeds of borrowing and State appropriations. If the authority funds \$2 billion in projects annually, and issues \$1.5 billion in bonds annually, the OLS estimates that, based on a 31-year level debt service maturity schedule, annual State appropriations of \$86 million will be required for 31 years for debt service payments on each bond issuance. After issuance of all \$12 billion in bonds, annual debt service will total \$688 million per year. Further, the State will be required to appropriate \$500 million annually to fund the portion of annual transportation capital

projects not funded by the proceeds of borrowing. Thus, annual State appropriations will increase by \$586 million in FY 2017, and then increase above that amount by about \$86 million annually thereafter (e.g., to \$672 million in FY 2018, to \$758 million in FY 2019), to a total of about \$1.19 billion in FY 2024.

- If the authority funds \$2 billion in projects per year over eight years, that will mark an increase of \$753 million per year over the FY 2016 funding level. That funding level will be enough to offset \$353 million in funding from the Port Authority of New York and New Jersey for FY 2016 which had been used to supplement the State transportation capital funding, and also to increase spending on State transportation projects by an additional \$400 million per year. Included in this spending will be \$400 million in local aid grants that are provided to local government units for transportation costs, a \$210 million increase over FY 2016.
- The actual level of annual appropriations from the authority's revenues for transportation capital projects will be determined by the Legislature and Governor, and may differ from the assumptions above. The actual timing and amount of authority bonds issuances will be determined by the authority, and may also differ from the assumptions above. The actual annual impact on State expenditures could thus be significantly different than the OLS estimates.

BILL DESCRIPTION

Assembly Bill No. 10 (3R) of 2016 amends the "New Jersey Transportation Trust Fund Authority Act of 1984" to make changes necessary to support the State's Capital Transportation Program for Fiscal Years 2017 through 2024.

This bill will provide the New Jersey Transportation Trust Fund Authority (authority) with \$12 billion in bonding authorization, contingent upon voter approval of Assembly Concurrent Resolution (ACR) No. 1 of 2015, which would constitutionally dedicate all Petroleum Products Gross Receipts Tax and Motor Fuels Tax revenue, and authorizes \$16 billion in State transportation capital program expenditures for an eight year period from FY 2017 through FY 2024. The bill allows for an average annual transportation capital program size of \$2 billion per year, an increase from the \$1.6 billion program amount in the previous capital program. The bill also anticipates the revenue necessary to finance an average of \$500 million per year of "pay-as-you-go" funding, which is funding available for projects that do not rely on debt or non-State resources. In the previous four years, the amount of "pay-as-you-go" funding was less than \$10 million per year.

The bill dedicates all revenues from the Motor Fuels Tax and the Petroleum Products Gross Receipts Tax to the Transportation Trust Fund. This language mirrors the language proposed in ACR No. 1 of 2015 that is scheduled to appear as a ballot question in the November 2016 general election, and would constitutionally dedicate these revenues in addition to the statutory dedication that is provided for in this bill.

The bill requires the authority to create a website to provide active monitoring of authority projects to be reported at least monthly to the public as well as a single location for public documentation related to the project. The reporting requirements for the website require real time reporting of construction projects and any potential sources of delays or increased cost.

The bill also incorporates bond premiums into the calculation of the authority's bonding cap, so that the bonding cap reflects the total amount of money generated by a bond issuance, rather than the par amount of bonds issued. This reflects the real amount of borrowing taking place in a bond issuance.

The bill also creates a "Transportation Trust Fund Account Subaccount for Capital Reserves." This subaccount will hold excess revenues which are constitutionally dedicated to the Transportation Trust Fund Account and will be deposited after making authority debt service payments payable in a given fiscal year, and after transferring to the "Special Transportation Fund" the annually appropriated amount of "pay-as-you-go" funding which is money appropriated for expenses of the State transportation capital program that does not derive from borrowing. Amounts placed into this fund are intended to ensure that the Transportation Trust Fund is sufficiently capitalized to support the funding needs of the State transportation capital program in the final years of the eight-year capital plan, and to improve the financial position of the authority by maintaining a capital reserve that can insulate the authority against any variability in the collection of revenues dedicated to the authority.

The bill increases the amount of information that is required to be reported in the annual Transportation Capital Program to better reflect the information currently provided by the Department of Transportation (DOT) and to more closely reflect the information provided in the federally required State Transportation Improvement Program document.

The bill converts the Financial Policy Review Board (board) into the Transportation Policy Review Board. The board is expanded to nine members, given expanded responsibilities to independently analyze and report on the cost effectiveness of spending in the transportation capital program, conduct and commission research on best practices and cost savings in the areas of transportation and public transportation construction, planning, finance, infrastructure, and governance and to provide policy recommendations to the Legislature on the best ways to organize the capital program and appropriate capital program funds. The board is also to meet before the Senate Budget and Appropriations Committee, Assembly Budget Committee, Assembly Transportation and Independent Authorities Committee, and Senate Transportation Committee at least one time each year, and to perform research and provide policy recommendations to the Legislature as requested.

The board is required to submit to the Governor and Legislature, no later than April 1, 2017, a report concerning the taxation of motor vehicles that are powered by a fuel source that is not subject to the Motor Fuel Tax Act or Petroleum Products Gross Receipts Tax Act, and is required to include recommendations for a new system of taxation that ensures that all vehicles operating on the highways of this State contribute in an equitable fashion to the cost of maintaining the State transportation system.

The bill establishes the Annual Transportation Capital Program Approval Committee. The committee is to ensure that Legislative input is provided in the process of selecting transportation capital projects that are funded through the Transportation Trust Fund Account. The committee is to consist of the Commissioner of Transportation, and three public members appointed by the Governor upon the joint recommendation of the Senate President and the Speaker of the General Assembly; one from certain counties of northern New Jersey, one from certain counties of central New Jersey, and one from certain counties of southern New Jersey. Each member will serve a three year term. The committee is to issue a certification each year known as the Annual Transportation Capital Program Approval Certification, which all four members are required to approve, or the Legislature is prohibited from appropriating money to support new transportation projects for that fiscal year, until the certification has been approved.

The bill requires that all construction contracts funded by State appropriations from the revenues and other funds of the authority for capital purposes are to comply with the federal

Disadvantaged Business Enterprise Program, administered by the United States Department of Transportation (USDOT), in the same manner as the program administered for federally-assisted contracts funded, in whole or in part, by federal-aid highway dollars. The bill also requires that, with respect to State moneys expended with private firms for construction and professional services, the DOT is to adopt a goal for the expenditure of State capital transportation funds equal to the goal for the expenditure of federal funds for federally-assisted transportation projects approved by the USDOT, for moneys to be expended, either directly or through subcontracting requirements, with businesses owned and controlled by socially and economically disadvantaged individuals.

The bill requires that all construction contracts funded by State appropriations from the revenues and other funds of the authority for capital purposes are to include mandatory equal employment opportunity and affirmative action contract provisions that require contractors to make a good faith effort to recruit and employ minority and women applicants and, where feasible, to interview and hire minority and women applicants that reside near the transportation project. The contract is required to provide that payment may be withheld for failure by the contractor to demonstrate to the satisfaction of the reporting agency that the required good faith effort was made.

The bill requires the DOT to submit annually, to the Governor and to the Legislature, a report which contains: the data provided to the USDOT pursuant to the provisions of 49 C.F.R. s.26.11; information concerning the progress of the DOT, the New Jersey Transit Corporation, counties, and municipalities towards the achievement of the goals for contracting with businesses owned and controlled by socially and economically disadvantaged individuals; and the recruitment, interview, and employment data concerning minority applicants, women applicants, minority applicants that reside near a transportation project, and women applicants that reside near a transportation project.

The bill requires an annual capital program appropriation of \$25 million per year to support freight rail projects. The current capital program includes an \$8 million appropriation for the State rail freight assistance program. This requirement represents a \$17 million increase in freight rail projects over FY 2016.

The bill also increases the size of the local aid program to \$400 million per year and adjusts the allocation of funds in the program so that the Local Aid Infrastructure Fund is funded at seven percent of the total or \$28 million per year, up from a proposed \$7.5 million for FY 2017; the county aid program is funded at 37.5 percent of the total or \$150 million per year, up from a proposed \$78.75 million for FY 2017; the municipal aid program is funded at 37.5 percent of the total or \$150 million with \$10 million being sub-allocated to the municipal aid urban aid program, compared with \$78.5 million program proposed for FY 2017 with \$5 million being sub-allocated to the municipal aid urban aid program. The bill creates a "Local Bridges Fund" which mirrors the capital program line item for "Local Bridges, Future Needs" and provides 11 percent of total funding or \$44 million per year, up from \$25 million proposed for FY 2017. The bill also creates a "Local Freight Impact Fund" which is newly created and intended to assist counties and municipalities with the impacts on local transportation infrastructure associated with the State's freight industry which will be funded at seven percent of the total or \$28 million per year.

The bill allocates any amount above \$7.5 million appropriated to the Local Aid Infrastructure Fund in FY 2017 to be deposited into the State Transportation Infrastructure Bank Fund.

The bill renames the New Jersey Environmental Infrastructure Trust as the New Jersey Infrastructure Bank ("trust") and establishes a special non-lapsing, revolving fund in the trust to be known as the State Transportation Infrastructure Bank Fund, which is to replace the State Transportation Infrastructure Bank that previously resided as a subaccount of the Special

Transportation Fund. The bill repeals the statutory language which created the existing State Transportation Infrastructure Bank.

The bill makes various changes to existing statutes related to the trust in order to expand its mission from water and environmental infrastructure projects, to include transportation projects. This bill provides that the aggregate principal amount of bonds, notes or other obligations of the trust is not to exceed \$3.8 billion for all purposes of the trust except the Disaster Relief Emergency Financing Program. The bill requires that funds and accounts of the trust be segregated in such a way as to prevent the mixing of transportation monies and water or environmental infrastructure monies.

The bill creates an interim financing program for transportation projects similar to the existing interim financing program for environmental projects and establishes a Department of Transportation Loan Origination Fee Fund within the trust.

Establishment of the State Transportation Infrastructure Bank Program is required by federal law as a depository for federal transportation infrastructure bank monies. The federal program currently allows states to enter into agreements whereby monies in the State Transportation Infrastructure Bank are loaned or used to provide other financial assistance to public or private entities for the planning, acquisition, engineering, construction, reconstruction, repair, and rehabilitation of a transportation project or for any other purpose permitted under the federal program.

The bill also establishes an account to be established within the fund that only receives State funds so that grants can be issued without violating the terms of the federal program.

The program is to be administered by the trust with assistance from the DOT. The Commissioner of the DOT is to become an ex-officio member of the board of directors for the trust, and the DOT is to be responsible for establishing the list of projects that the trust is to finance and the priority in which they are to be funded. The trust is also directed to collaborate with the DOT on the evaluation of potential transportation projects, fulfilling federal regulations regarding capital projects, coordinating with metropolitan planning organizations, ensuring that any projects obtaining assistance are consistent with the Statewide capital investment strategy, and advancing local, regional, and Statewide transportation objectives.

The Legislature is to consider the full DOT project list through the Senate Budget and Appropriations Committee and Assembly Budget Committee before its inclusion in the annual appropriations act. The Legislature is to receive a copy of the transportation financial plan developed by the trust for the implementation of the financing of the DOT project list. The Legislature will have until June 30th to reject the transportation financial plan through a concurrent resolution. If the Legislature rejects the financial plan, the project list is removed from the budget and the trust is prohibited from financing any transportation projects in that fiscal year. If the transportation financial plan is not rejected by June 30th, it is considered approved by the Legislature.

The State Transportation Infrastructure Bank Fund may be credited with State and federal funds appropriated to the fund, monetary donations made available to the State to support the State Transportation Infrastructure Bank Program, any monies received as repayment of the monies loaned or otherwise provided pursuant to the program, interest earnings received on the monies in the fund, and other moneys the Legislature appropriates to the trust for deposit into the State Transportation Infrastructure Bank Fund to finance or refinance transportation loans issued from the fund.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The bill authorizes up to \$12 billion in borrowing by the Transportation Trust Fund Authority and \$16 billion in appropriations from the authority's revenues over eight fiscal years, FY 2017 to FY 2024 inclusive. The bill specifies that the appropriation from the authority's revenues is to contain \$400 million per year in grants for local government entities. The bill does not specify any annual minimums or maximums for either borrowing or appropriations.

The OLS notes that the authority's sole sources of revenue with which to fund transportation capital projects and to retire its bonds are the proceeds of borrowing and State appropriations. If the authority funds \$2 billion in projects annually, and issues \$1.5 billion in bonds annually, the OLS estimates that, based on a 31-year level debt service maturity schedule, annual State appropriations of \$86 million will be required for 31 years for debt service payments on each bond issuance. After issuance of all \$12 billion in bonds, annual debt service will total \$688 million per year. Further, the State will be required to appropriate \$500 million annually to fund the portion of annual transportation capital projects not funded by the proceeds of borrowing. Thus, annual State appropriations would increase by \$586 million in FY 2017, and then increase above that amount by about \$86 million annually thereafter (e.g., to \$672 million in FY 2018, to \$758 million in FY 2019), to a total of about \$1.19 billion in FY 2024.

While this scenario represents a possible outcome under the legislation, there are many other possible outcomes. If Assembly Concurrent Resolution No. 1 is not approved by the voters, the bill will provide no increase in bonding capacity and, as a result, the State will only be able to support transportation capital projects through the direct appropriation of revenues that would otherwise be available to the General Fund for any State purpose.

The bill provides a limit on borrowing and appropriations so it is also possible that in future years any combination of borrowing and transportation capital project funding could take place that comprise amounts less than \$12 billion and \$16 billion respectively.

The average debt service cost of borrowing in this projection is subject to significant interest rate risk. It cannot be known what prevailing interest rates will be in future years, and as a result the amount of debt service required to support borrowing for transportation capital projects may be significantly higher than projected.

If the authority funds \$2 billion in projects per year over eight years, that will mark an increase of \$753 million per year over the FY 2016 funding level. That funding level will be enough to offset \$353 million in funding from the Port Authority of New York and New Jersey for FY 2016 which had been used to supplement the State transportation capital funding, and also to increase spending on State transportation projects by an additional \$400 million per year. Included in this spending will be \$400 million in local aid grants that are provided to local government units for transportation costs, a \$210 million increase over FY 2016. This increase in local aid grants will represent a shift of authority appropriations for transportation capital projects to local governments that will become available to them as revenue to support their own transportation projects, thus this local revenue comes out of the \$2 billion in average State expenditures. Similarly, the \$500 million of State appropriations to the authority for transportation capital projects is, in turn, appropriated by the authority for the actual transportation projects.

The requirement that State projects adhere to the federal disadvantaged business enterprise (DBE) program for contracting, will likely entail additional State costs for monitoring and DBE business development. The current federal capital program includes \$350,000 in federal grants to support the federal DBE program. The State could similarly appropriate \$100,000 to \$200,000 in State capital program funds to increase the capacity of the DBE program to handle State projects. This increase in State transportation capital program funding would come from the \$400 million increase provided for in the bill, and not result in a requirement for direct State appropriations.

The total amount of spending on transportation projects under the bill is a maximum of \$16 billion over eight years or an average of \$2 billion per year. All of the State appropriations required as a result of this bill are in support of that spending authorization, either to directly fund that spending, or to provide a source of debt service to repay borrowing that will be used to fund that spending.

The actual level of annual appropriations from the authority's revenues for transportation capital projects will be determined by the Legislature and Governor, and may differ from the assumptions above. The actual timing and amount of authority bonds issuances will be determined by the authority, and may also differ from the assumptions above. The actual annual impact on State expenditures could thus be significantly different than the OLS estimates.

Section: Authorities, Utilities, Transportation and Communications

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).