POLICY BRIEF

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Transportation Funding Plan Has Major Defects

Act 44, the transportation funding plan of 2007, has given Pennsylvanians reasons to be very concerned and upset with its provisions to: (1) toll Interstate 80 in order to raise funds for road and bridge maintenance, construction and repair and to boost subsidies to mass transit, (2) raise tolls on the existing Turnpike, and (3) permit two new taxes in Allegheny County. But one aspect of Act 44 that hasn't received much attention is what will happen if the plan to toll I-80 falls through. Specifically, how will the debt service on the bonds that are being issued in expectation of revenues from the I-80 tolls be paid in the event the interstate is not tolled and there is inadequate revenue?

Obviously, if the revenues from tolling I-80 are not sufficient to pay off the bonds issued, or the federal government denies the petition to toll I-80, other revenues will have to be found. To prepare for this contingency, Act 44 gives the Turnpike Commission, the issuer of the bonds, permission to raid the Motor License Fund.

The Motor License Fund is comprised of revenues from various sources such as license fees and vehicle registrations, but the source being targeted by Act 44 is the liquid fuels tax as specified in Act 3 of 1997. Act 3 (section 9004A) gives the Commonwealth the authorization to impose a tax of 12 cents per gallon upon all liquid fuels. This money goes toward the construction, reconstruction, and repaving of roads and bridges across Pennsylvania. A share of this tax goes directly to counties while the remainder goes to the Department of Transportation (PennDOT).

Further, if the liquid fuels tax is not sufficient to cover the shortfall, or defaults, Act 44 gives authority to raid another tax as outlined in Act 3—the oil company franchise tax. The oil company franchise tax, 60 mills, is also intended for highway maintenance and construction.

Under normal circumstances, backup revenue streams might not receive much attention. However, this situation is unusual because of the precarious nature of the primary funding stream—namely, the tolling of I-80. Since Act 44 was passed, opposition to tolling I-80 has grown stronger, particularly among elected federal officials. Even if federal politicians were not opposed, the Federal Highway Administration (FHWA) still must give its consent—and in that regard, comments from the agency and its history suggest consent might not be forthcoming.

Indeed, several states have sought permission to toll roads and are still waiting after several years. Maine and South Carolina have petitions under consideration. In these cases the tolls are to be used for widening and rebuilding the roads themselves and not to provide money for other road projects or mass transit as is the case with Pennsylvania. The FHWA has not granted permission to those states and does not seem to be in a hurry to grant permission. Such permission would be truly groundbreaking with enormous unforeseen consequences for the Interstate system.

Meanwhile, the Turnpike Commission has already begun the process of taking control of I-80 by entering into a lease agreement with PennDOT and has begun issuing the newly authorized bonds, with the first installment at $532 million. Of this, $458.3 million will be sent to PennDOT, $11.6 million will be sent to bond underwriters and lawyers with the Turnpike Commission keeping the rest. The law allows the bond proceeds to be used to meet the required $250 million contribution to the newly established Public Transportation Fund.

Consider the absurdity in this situation. The Turnpike Commission is borrowing money that at some point will likely have to tap into funds that are already dedicated to highways and bridges, a big chunk of which will go to lawyers, bond underwriters and unnecessary interest charges.

Moreover, under Pennsylvania's Constitution, Article VIII, Section 11, paragraph (a), the use of liquid fuels tax revenues for mass transit is strictly forbidden. Therefore, it is unconstitutional for the Legislature to empower the Turnpike Commission to pledge the liquid fuels revenues as a backup source of funds to make bond payments on bonds that are expressly issued to assist mass transit.

In short, this hastily concocted plan to generate money for road projects and public transportation is based on an ill-advised and unvetted scheme to toll an interstate highway and contains a bond funding plan that appears to violate the Constitution. A major overhaul of the legislation or better yet, a complete rescission seems to be the best option for Pennsylvania. Proceeding under this increasingly creaky mechanism will almost certainly lead to serious problems.

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