

Value Capture FAQs – Transportation Corporations

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GENERAL INFORMATION

What is a transportation corporation?

A transportation corporation is a not-for-profit corporation formed under State law with the objective of promoting and developing transportation facilities and systems. A transportation corporation promotes a transportation project and economic development within its designated geographic area on behalf of the State (often through a State's transportation commission) and will not act as the agent of any private interests. A transportation corporation is formed to facilitate the funding, financing, and in some cases, the promotion, planning, design, construction, maintenance, and operation of a transportation project. The transportation corporation is a non-member, non-stock corporation that is usually subject to State Open Meetings and Public Information laws. A transportation corporation is appropriate for projects with little or no traffic demand risk and affords a State department of transportation (State DOT) a cost-effective, alternative financing mechanism for projects that would otherwise be implemented as a public-private-partnership (P3).

Who has the authority to create a transportation corporation?

The creation of transportation corporations requires enabling legislation at the State level. Although in Missouri and Texas, for example, private individuals and local governments are allowed to apply for the creation of a transportation corporation, the authority to create it still rests with the governing body of the State's DOT (i.e. its transportation commission or equivalent). In Florida, on the other hand, the Florida Department Transportation Financing Corporation was created by the State's legislature.

Disclaimer: The contents of these Frequently Asked Questions (FAQs) do not have the force and effect of law and are not meant to bind the public in any way. These FAQs are intended only to provide information and clarity to the public regarding existing requirements under the law or agency policies.

Are transportation corporations the same as local transportation development districts such as road utility districts (Texas) or transportation development districts (Missouri)?

There are many differences between transportation corporations and local transportation development districts. A transportation corporation is typically a not-for-profit, non-stockholder entity, whereas a local transportation development district is often a political subdivision. Both a corporation and a local transportation development district can generally issue bonds, but usually only the development district can levy taxes to repay the bonds. Finally, a transportation corporation is often formed through a vote by the State DOT's governing body following a public hearing. In contrast, a local transportation development district may be formed through a vote of the local government body (or bodies, in the case of a district spanning more than one jurisdiction), or through an election.

How does a transportation corporation help fund a project?

A transportation corporation is generally able to use a wide variety of funding methods for a project, ranging from receiving right-of-way or cash donations from landowners and imposing fees for services provided, to charging and collecting tolls and issuing tax-exempt bonds and notes. Furthermore, bonds or notes issued by a transportation corporation are not considered a general obligation of the State. In other words,

a transportation corporation allows a State to finance a project using tax-exempt debt that is not guaranteed by its full faith and credit or taxing authority, but rather by the corporation's income or project revenue only. However, transportation corporations are not authorized to collect taxes. A transportation corporation may work directly with property owners, local and State governmental agencies, and elected officials to support an activity to promote and develop a transportation facility or system. Such activities could include: conducting public outreach, facilitating interagency agreements between and among local and state government agencies, acquiring right of way, and coordinating engineering and environmental studies, among others.

What are the potential benefits of forming a transportation corporation?

Depending on the specific state statutes, some of the potential benefits of forming a transportation corporation include:¹

- They may be able to finance and, in some cases, plan and construct transportation projects across multiple local jurisdictions in a State.
- They may be able to receive property and cash donations from private citizens for the development of roadways, including contributions for feasibility and new alignment studies, as well as right-of-way acquisition.
- They may be able to finance a project using off-balance sheet, tax-exempt debt with future toll receipts and/or State appropriations as collateral.
- The Board of Directors of a transportation corporation is generally appointed by the State DOT's governing body and can have

any number of directors (e.g., Texas requires a minimum of three), allowing to incorporate representation from other project stakeholders involved, such as local governments.

- As a non-profit, they generally have fewer restrictions relating to purchase, hold, lease, and sale of real property than a State DOT.

What is the role of the State DOT in a transportation corporation?

Through its governing body, the State DOT is fundamental to the transportation corporation. Typically, the State DOT:

- Approves the creation and dissolution of the corporation.
- Approves its articles of incorporation and bylaws, as well as any changes to either one.
- Designates the area of the State where the corporation may act, and may alter it as needed.
- Appoints directors to the Board and may remove them without cause.
- May appoint project-specific advisory directors.
- Has an unrestricted right to receive income earned by the corporation.

In terms of project development and execution, the role of the State DOT is also critical.

Depending on State law, the State DOT's role may include the following:

- The corporation submits for approval all project preliminary plans and specifications to the State DOT prior to entering into an agreement for the project.
- The corporation enters into an agreement with the State DOT and receives the State DOT's approval of the project's final plans

¹ For state-specific transportation corporation statutes please visit the following links:

[Texas Transportation Code, Chapter 431. Texas Transportation Corporation Act.](#)

[Missouri Transportation Corporation Act, sections 238.300 to 238.367, RSMo.](#)

[Florida Transportation Finance Corporation, Florida Statutes Section 339.0809.](#)

and specifications and the final financial plan before construction of any project can occur.

- The State DOT approves all projects as a necessary and desirable extension of the State highway system, and the State DOT and the corporation enter into a mutually satisfactory agreement regarding development and future maintenance of the project.
- The State DOT's governing body appoints an advisory director to the corporation to approve modifications to plans, specifications, and project descriptions.
- Bonds issued on behalf of the corporation to finance a project are approved by the State DOT's governing body.
- The State DOT's governing body approves right-of-way access, acquisition, and condemnation, as well as any agreement to transfer project ownership to the State DOT.

What is the role of a local government in a transportation corporation?

At the project level, the role of a local government (i.e., a county or a municipality) in a transportation corporation includes facilitating the needed engineering coordination of any local government streets and utility improvements, as well as any land swapping needed for the project.

Additionally, in some cases, a corporation and a local government or road utility district may enter into a contract to pay jointly for the cost of a transportation project designated by the State DOT's governing body. The contract may obligate the corporation to design, construct, or improve the transportation project.

What types of projects might be undertaken by a transportation corporation?

Generally, State law provides that a transportation corporation may finance, plan, design, acquire, construct, improve, extend, or maintain a transportation project only if the project is already part of the Federal-aid Highway Program or the State highway system, or is intended by the

governing body of the State DOT to become part of the Federal-aid Highway Program or the State highway system.

In what types of settings are transportation corporations used (urban vs. suburban vs. rural, large vs. small)?

Transportation corporations have been successfully used in a variety of settings, as illustrated by the examples listed below. The first two are located in large suburban settings in Missouri and Texas, while the third one in Missouri offers an example of their use in a rural setting:

1. The [Grand Parkway Transportation Corporation](#) financed and developed the Grand Parkway (Texas State Highway 99), the 184-mile, third (outer) loop in the Greater Houston metropolitan area;
2. The Florida DOT Financing Corporation financed the [I-95 Express Lanes – Phase 3C](#) in Broward County, Florida; and
3. The [Highway 63 Transportation Corporation](#) in Missouri financed and implemented the expansion from two to four lanes of a 22-mile in a rural stretch of U.S. Highway 63 between Macon and Kirksville.

Are transportation corporations dependent on the real estate market?

It depends on the funding structure. A transportation corporation may rely on a variety of funding sources, including private donations, State appropriations, project toll receipts, and in some cases, contributions from local government tax revenue, which may vary based on the transportation corporation's enabling legislation and State and local laws. A corporation may depend more or less on real estate market dynamics only to the extent that the local government contributions rely on property tax revenue.

How many States have enacted laws to enable the use of transportation corporations?

States that have enacted laws to enable the use of transportation corporations include Florida, Missouri, and Texas.²

STRUCTURE AND APPLICATION OF TRANSPORTATION CORPORATIONS

How does a transportation corporation form (i.e. legal requirements?)³

The structure and application process will be based on the relevant State's laws. In the examples to date, creating a transportation corporation requires the filing of an application by at least three qualified voters on the State DOT's governing body. The application requirements generally include the articles of incorporation (which cover the project/purpose of its creation and designated area), and, in some cases, the proposed financial plan, preliminary plans, and specifications for the project. The articles of incorporation include information such as the name of the corporation, its duration, the specific purpose (i.e., the project), the initial number and names of each director. The articles of incorporation also specify that the State's DOT governing body has authorized the corporation to act on its behalf and has approved the articles of incorporation. In some cases, the application process may also require a public hearing on the formation of the corporation.

Additionally, when the application process involves project preliminary plans, the formation process may involve these steps prior to the approval of the articles of incorporation and appointment of the board of directors:

- Submitting a conceptual study or plan, which includes an explanation of the

project purpose and need that will be addressed with the project.

- Following the receipt of the application, a public hearing is scheduled and a notice is issued to each municipality and county in which the project is located.
- After holding the hearing, applicants submit the results to the State DOT's governing body, which may then approve the project upon finding that the project will improve the State highway and transportation system and the financing plan is feasible.
- The corporation submits the preliminary plans and specifications to the State DOT for approval prior to entering into an agreement for the project.
- The governing body subsequently approves the corporation's articles of incorporation, appoints the board of directors, appoints one or more non-voting advisors or advisory directors to the board, and approves the corporation's bylaws.

How are the board members of a transportation corporation appointed?

The State DOT's governing body appoints a number of the directors on a transportation corporation's board. In Texas, a corporation must have a minimum of three directors; in Missouri, a minimum of six is required.^{4 5} There is no limit on the number of directors a transportation corporation may have. Each director is appointed for a term that may not exceed six years. Individuals who own land adjacent to the project are generally prevented from serving on the board. Additionally, the State DOT's governing body may appoint any number of advisors to the board or advisory directors, who have no vote but have authority to

² For more details on state-specific legislation please visit the following link

https://www.fhwa.dot.gov/ipd/value_capture/legislation/

³ Please note that the case of the Florida DOT's Transportation Financing Corporation is different in that it was created by the State's legislature, with a Board of Directors consisting of the director of the Office of Policy and Budget within the Executive Office of the Governor, the director of the Division of Bond

Finance, and the Secretary of Transportation. This document is primarily based on legislation from Missouri and Texas.

⁴ [Texas Transportation Code, Chapter 431. Texas Transportation Corporation Act.](#)

⁵ [Missouri Transportation Corporation Act, sections 238.300 to 238.367, RSMo.](#)

participate in all board meetings and discussions and have access to all records of the corporation. In practice, individuals appointed as directors of the board and advisors include senior State DOT leadership and other full-time State DOT employees.

Do transportation corporations sunset or expire?

A transportation corporation does not sunset or expire. Their duration is rather flexible and agreed upon by the governing body of the State DOT based on the specific purpose. For example, they may be created for an agreed-upon duration, likely to encompass the financing, development, and operation of a project for a certain period of time, at the end of which the asset is transferred to the State DOT. Alternatively, they may also be created as a perpetual corporation that may be dissolved when the governing body of the State DOT decides it has fulfilled its objective.

What factors are important to consider in deciding whether a transportation corporation is an effective way to finance and execute a project?

A decision to form a transportation corporation depends on the specific circumstances of the State DOT's finances and the characteristics of a project. It is primarily driven by factors such as:

- Does the State DOT have the borrowing capacity or authority to use State debt to finance the project? If it does not, a transportation corporation provides the flexibility to borrow on an off-balance sheet basis.
- Does the State have authority to pursue a P3?
 - If it does not, a transportation corporation may provide some of the benefits sought from a P3 (such as off-balance sheet debt).
 - If it does, but the project has little or no revenue risk that would more effectively be carried by a private partner, it may be more cost-effective to use a transportation corporation.
- Are there other public or private parties who may be able to offer significant cash

and property donations to execute the project?

Many of these considerations can be quantified to understand whether a transportation corporation would be a cost-effective way to deliver the project.

USE OF TRANSPORTATION CORPORATIONS

What size of investments do transportation corporations typically handle?

Transportation corporations have been used for large and small projects. For example, the Texas Grand Parkway project in the Houston metropolitan area is expected to cost \$1.28 billion when it is completed, whereas the Highway 63 project in Missouri cost only \$37 million.

How does a transportation corporation generate funds or revenue to pay for a project?

A transportation corporation is not a revenue-generation technique per se. Rather, it is a financing and project development tool that may rely on a variety of funding methods and revenue-generation techniques. These may include (but are not limited to): 1) right-of-way and cash donations from landowners; 2) right-of-way and financial contributions from local governments (e.g. revenue from sales tax districts); and 3) charging and collecting tolls. These funding sources are used by the corporation to amortize the cost of the project, or as a repayment source to issue tax-exempt bonds and notes.

Does a transportation corporation ever pay for 100 percent of a project's cost?

Yes, provided that the revenue sources that it expects to receive are sufficient to secure the capital needed for the project.

Does a transportation corporation have to be created for each project or could a transportation corporation fund multiple projects?

The legal requirements in this regard vary by State and offer flexibility. A transportation corporation may fund multiple projects within its designated area, or more than one corporation can be created within a designated area.

Why use a transportation corporation instead of direct State-issued debt?

A transportation corporation offers the benefits of using tax-exempt debt without tapping into the State's debt capacity or authority, because the only collateral is the corporation's future expected revenue.

Does forming a transportation corporation require voter approval or public involvement?

Forming a transportation corporation generally does not require voter approval, as it is considered a not-for-profit. However, public involvement requirements vary by State. For example, a public hearing is required in Missouri, but not in Texas.^{6 7}

RESOURCES

FHWA EDC-5 Value Capture: Capitalizing on the Value Created by Transportation

https://www.fhwa.dot.gov/innovation/everydaycounts/edc_5/value_capture.cfm

FHWA Center for Innovative Finance Support (CIFS) – Value Capture

https://www.fhwa.dot.gov/ipd/value_capture

FHWA CIFS – Transportation Corporations

https://www.fhwa.dot.gov/ipd/value_capture/defined/transportation_corporations.aspx

⁶ [Texas Transportation Code, Chapter 431. Texas Transportation Corporation Act.](#)

⁷ [Missouri Transportation Corporation Act, sections 238.300 to 238.367, RSMo.](#)

