



### ***Ohio P3 Legislation is on a Fast Track to Enactment***

SFAA, the Ohio Insurance Institute, Westfield, Cincinnati Insurance Group and CNA recently met with the Ohio Department of Transportation (ODOT) to discuss P3 legislation recently introduced in Ohio that is on a fast track to pass. HB 533/SB 335 would revise the existing P3 law that authorizes ODOT to enter into a P3 for transportation facilities. The bill would amend the law's requirements for the public-private agreement so that it would include provisions requiring a performance bond and a payment bond in an amount that ODOT would determine. The existing P3 law is silent on bonding, but the Ohio transportation code requires a 100% payment and performance bond on transportation projects.

The legislation also provides that the performance bond would be conditioned on the private entity performing the work according to the agreed upon terms, within the time prescribed, and in conformance with any other terms and conditions that the ODOT requires. The payment bond would be conditioned on the payment for all labor, work performed, and materials furnished in connection with the agreement and any such terms and conditions that ODOT requires.

The legislation was introduced on May 6 and 7, respectively, and both bills were heard in committee one week later.

HB 533/SB 335 are an improvement in that the existing P3 law was silent on the issue of bonding the design and construction phases of a P3. The bills require bonding and allow no alternatives. In the meeting with ODOT, the sureties expressed concern about ODOT having the authority to set the bond amount. Also of concern to SFAA is the bonding obligation in the legislation. ODOT not only sets the bond amount, but the payment and performance bond also would include any such terms and conditions that ODOT requires. It also is not clear that "work" is limited to the design build phase. All the amendments to the existing P3 law in this

legislation address issues related to the Brent Spence Bridge project. This bridge connects Cincinnati to Kentucky over the Ohio River.

ODOT understood our concerns but did not want to do anything that would delay passage of the P3 legislation. They noted that their existing P3 project has 100% bonding. After the meeting, SFAA gave ODOT an abbreviated version of our model bonding language for P3s that could easily be included in the pending Ohio legislation. At this point, we do not believe that ODOT will seek these amendments on the House floor so that changes would have to be made in the next budget bill, which would be in 2015.