

Eisenhower Legacy Transportation Plan; House Sub. for SB 173

House Sub. for SB 173 authorizes and directs the Secretary of Transportation (Secretary) to initiate a program to be called the Eisenhower Legacy Transportation Program (Program). The bill specifies the types of projects authorized, addresses local funding and new and continuing grant programs, authorizes alternative procurement methods under certain circumstances, increases city connecting links payments, adds reporting requirements, requires at least \$8 million to be spent in each county through fiscal year (FY) 2030, states 16.154 percent of sales tax shall be levied for the State Highway Fund (SHF), and makes additional changes to law.

Eisenhower Legacy Transportation Program

The bill states the Program shall provide for the construction, improvement, reconstruction, and maintenance of the state highway system and provide for selection of projects that will allow for the flexibility to meet emerging and economic needs. The bill states program expenditures may include, but not be limited to, preservation, preservation plus, expansion and economic opportunity, and modernization projects, described below:

- *Preservation projects.* The bill requires the Secretary to establish targets for state highway system condition that reflect reasonable, realistic expectations and use reasonable, sound, and accepted methods to determine the annual preservation investment needed to achieve such state targets and long-term cost effectiveness. The bill states it is the intent of the Legislature that the Secretary spend from the SHF an amount equal to or exceeding ten times the determined average annual preservation investment prior to completion of the program. The bill requires the Secretary to manage cash-flow and project lettings to provide reasonable assurance that preservation will be fully funded each year. For this purpose, the bill specifies “preservation projects” refers to maintenance, repairs, or replacement of existing infrastructure. The bill authorizes federal funding from grants or stimulus to be used for preservation projects;
- *Preservation plus projects.* The bill authorizes adding safety or technology elements in a preservation plus project. The bill states such elements may include, but not be limited to, adding paved shoulders, passing lanes, traffic signals, or intelligent transportation system elements or laying broadband fiber or the conduit for broadband fiber. The bill states it is the intent of the Legislature that the Secretary has the authority to enhance preservation plus projects by adding safety or technology improvements, or both. The bill authorizes federal funding from grants or stimulus to be used for preservation plus projects;
- *Expansion and economic opportunity projects.* The bill authorizes expansion and economic opportunity projects, or projects that improve access, relieve congestion, and enhance economic development opportunities, to be selected using criteria determined by the Kansas Department of Transportation (KDOT) that include, but are not limited to, engineering and traffic data, local consultation, geographic distribution, and an economic impact analysis evaluation; and

- *Modernization projects.* The bill authorizes modernization projects to improve safety, condition, or service of the highway system (e.g., widening lanes or shoulders and building rail grade separations). Those projects are to be selected using KDOT criteria to include, but not be limited to, engineering data, local consultation, and geographic distribution.

The bill requires KDOT to develop criteria for the incorporation of practical improvements into project designs.

Previously Selected Projects

The bill requires the Program to provide for the completion of modernization and expansion projects selected for construction under the Transportation Works for Kansas Program (T-Works) [KSA 68-2314b] and that those projects be let prior to July 1, 2023. The bill requires the Secretary to let to construction contract at least one phase of each remaining T-Works project before any modernization or expansion project, or both, under the Program is let to construction. The bill allows completing a reconstruction of an interchange at I-135 and 36th Street in Harvey County to be optional. If that project is not constructed, the bill requires the estimated construction costs for that project to be used on other construction projects in KDOT's south central district.

Local Programs

The bill requires the Program to provide for assistance, including credit and credit enhancements, to cities and counties in meeting their responsibilities for transportation improvements. The bill states such programs may use criteria developed by KDOT for the incorporation of practical improvements into project designs. The bill authorizes expenditures for purposes including, but not limited to, the following:

- Apportionment of the Special City and County Highway Fund to assist with city and county responsibilities for roads and bridges not on the state highway system;
- Sharing federal aid with cities and counties to assist with their responsibilities for roads and bridges not on the state highway system;
- Programs to assist cities with city connecting links and local partnership programs to resurface or geometrically improve city connecting links or to promote economic development;
- Programs similar to KDOT's local bridge improvement program, to replace or repair bridges not on the state highway system;
- Programs to assist cities and counties with railroad crossings of roads not on the state highway system; or

- Programs that allow local governments to exchange federal aid funds for state funds.

Transportation Other than Construction of Roads and Bridges

The bill requires the Program to provide for the following types of programs in accordance with new or continuing law:

- A railroad program for the preservation and revitalization of rail service in the state;
- An aviation program to provide assistance for planning, constructing, reconstructing, or rehabilitating the facilities of public use general aviation airports;
- Public transit programs to aid elderly persons, persons with disabilities, and the general public;
- A transportation technology program to provide for multimodal transportation-related projects that support innovative technology; and
- A multimodal program to provide improvement assistance for bike facilities, pedestrian facilities, or other transportation-sensitive economic opportunities on a local or a regional basis.

Project Delivery

The bill states the program shall allow the Secretary to award certain state highway system projects using delivery procurement methods other than design-bid-build. [*Note:* Alternative project delivery is further discussed below.]

Broadband

The bill states the Program shall provide for a broadband infrastructure construction program. [*Note:* Broadband construction is further discussed below.]

Uses of Certain Revenues

The bill requires SHF revenues, which include motor fuel taxes, vehicle registration fees, sales and compensating use taxes, and eligible federal aid, to be used in the following order of priority:

- To pay bond obligations;
- To pay for agency operations;

- To make city connecting link payments;
- To pay for needed preservation projects; and
- Pursuant to other purposes and authority given to the Secretary.

The bill requires new bonds issued for the purposes of the Program to be paid using all SHF revenues, including sales or compensating use tax revenues.

Project Selection

The bill requires the Secretary to determine the projects to be selected, using KDOT selection methods and criteria. The bill states consideration may be given to additional criteria that could include projects that remove transportation infrastructure from the state highway system, identify priority corridors, include local monetary participation, or reduce project size.

The bill states legislative intent for the Secretary to develop a metric-driven process that determines a reasonable and fair minimum amount of SHF moneys to be spent on new modernization and expansion projects in each KDOT district over the duration of the Program. The bill requires the process for determining the minimum amount for each district to be subject to the following limits:

- The minimum amount for each district added together must total at least 50 percent of the estimated cost of constructing all modernization and expansion projects let to contract in the Program;
- If the estimated cost of constructing all Program modernization and expansion projects increases or decreases by more than 10 percent, the minimum amount must be adjusted;
- At least 40 percent of the minimum amount or adjusted minimum amount for each district must be let to construction contract by the end of year 5 of the Program and 100 percent of the minimum amount by year 10; and
- T-Works projects are not to be considered when determining the minimum amounts.

The bill requires the Secretary to select projects for development every two years, but does not require the Secretary to construct every project selected for development. The bill requires project selection after consultation with local jurisdictions.

The bill states it is the intent of the Legislature that the Secretary take the actions necessary to have transportation improvement projects ready to let to construction as cash-flow management allows.

Long-range Planning

The bill requires the Secretary to develop a long-range transportation plan before June 30, 2030, to include recommendations for a new transportation program for the state. The bill requires the plan to examine, but not be limited to, project selection criteria and selection methods used in the Program, transportation funding sources, and Program project categories. The bill states the plan shall be developed after consultation with the Governor and state and local elected officials.

Innovative Technologies Grants

The bill authorizes the Secretary to participate in or make grants for projects to plan, assess, and field new capabilities and innovative technologies for modes of transportation including, but not limited to, aviation and highway transportation. The bill states the new capabilities should represent increased efficiency for state operations, public cost savings, increased safety, or economic development.

The bill establishes the Transportation Technology Development Fund, which the bill requires to be used to provide assistance with the planning, assessment, and fielding of new capabilities for all modes of transportation including, but not limited to, aviation and highway transportation. Expenditures from this fund are to be made in accordance with the provisions of appropriations acts. The bill states grants made by the Secretary from this fund will be upon such terms and conditions as the Secretary deems appropriate.

The bill requires the Director of Accounts and Reports to transfer \$2.0 million from the SHF to the Transportation Technology Development Fund on July 1, 2020, and each July 1 thereafter, through July 1, 2030. The Secretary is authorized to transfer additional moneys between the Transportation Technology Development Fund and the SHF.

Broadband Grants

The bill authorizes the Secretary, working jointly with the Office of Broadband Development within the Department of Commerce, to make grants for construction projects that expand and improve broadband service in Kansas. The bill requires grants made by the Secretary to reimburse grant recipients for up to 50 percent of actual construction costs in expanding and improving broadband service. Such grant reimbursements will be upon the terms and conditions the Secretary deems appropriate, in coordination with the Secretary of Commerce.

The bill establishes the Broadband Infrastructure Construction Grant Fund, to be used to provide grants for the expansion of broadband service in Kansas. Expenditures from this fund will be made in accordance with the provisions of appropriations acts. The bill requires the Director of Accounts and Reports to transfer \$5.0 million from the SHF to the Broadband Infrastructure Construction Grant Fund on July 1, 2020, 2021, and 2022. On July 1, 2023, and each July 1 thereafter, through July 1, 2030, the bill requires the transfer to be \$10.0 million. The bill authorizes the Secretary to notify the Director of Accounts and Reports to transfer all remaining and unencumbered funds from the Broadband Infrastructure Construction Grant Fund to the SHF at the end of each fiscal year.

Alternative Procurement

The bill authorizes the Secretary to use procurement methods other than a design-bid-build contract to the lowest bidder if certain requirements are met:

- Projects selected for alternative delivery shall not include preservation projects;
- Three projects utilizing toll revenues for construction and maintenance, one every three years, are authorized;
- Not more than 3 percent of moneys spent in the Program can be used on alternative delivery;
- An additional 2 percent is to be available for alternative delivery starting in FY 2023;
- The dollar values of the three projects utilizing toll revenues and projects obtained through federal grants or stimulus are to be excluded when determining these limits;
- The project must cost at least \$100 million; and
- A contract or contracts for alternative delivery projects can include, but will not be limited to, services for preconstruction, design, construction, construction management, maintenance, operation, financing, or a combination thereof.

The bill requires KDOT to develop and utilize criteria for selecting whether alternative delivery or design-bid-build procurement is in the best interest of the state. The bill requires the selection criteria to include, but not be limited to, the need for an accelerated schedule, safety needs, project complexity, opportunity for innovation, and economic development. The bill prohibits any project to be selected for alternative delivery without having been evaluated under the KDOT selection criteria.

The bill requires KDOT to develop and utilize procedures for advertising, receiving, and evaluating proposals; awarding contracts; and administering contracts in its alternative delivery procurement program. The bill specifies procurement procedures in continuing law (on topics including notification, letting to the lowest responsible bidder, negotiations with the contracting firm, and project descriptions) will not apply to alternative delivery projects.

The bill requires the alternative delivery procedures to include the following:

- A two-phase best value competitive selection or contracting process, including a first-phase short list of no more than four proposers identified using a request for qualifications and a second phase of submission of price, technical proposals, or both in response to a request for proposals;

- Advertisement of requests for qualifications in the *Kansas Register* for at least three consecutive weeks;
- Prequalification of contractors by the Secretary in accordance with statutes, regulations, and KDOT procedures governing prequalification and licensing;
- A bond for performance and payment or alternative security guaranteeing contract performance and payment obligations for supplies, materials, and labor; and
- A requirement that firms and key personnel identified in the qualifications phase and scored to determine the short list may not be replaced during the project without KDOT's written approval.

The bill states a contracting entity selected for an alternative delivery project will not be in violation of laws governing technical professions and the contract shall not be void if such contractor obtains professional services by subcontracting with an entity or entities licensed or holding a certificate of authorization to perform professional services in accordance with laws governing technical professions.

The bill states a contracting entity selected for an alternative delivery project that is responsible for preparing or furnishing design plans and specifications, through its own organization or by subcontracting, will be liable for damages arising from design defects in the plans and specifications that result in injury to persons or damage to property occurring after completion of the contract and KDOT acceptance of the project. The bill states that would be the case if and to the extent such injury or damage arises from a failure to exercise the degree of learning and skill ordinarily possessed by a reputable contractor or by a technical professional practicing in Kansas in the same or similar locality and under similar circumstances.

Short Line Rail Improvement Fund

The bill establishes the Short Line Rail Improvement Fund (SLRI Fund) to be administered by the Secretary. The SLRI Fund will be subject to appropriations acts and expenditures will require the written approval of the Secretary. The bill requires expenditures from the SLRI Fund to be made for a qualified railroad track maintenance expenditure constructed by an eligible entity and to be matched on a basis of 70 percent state moneys to 30 percent eligible entity moneys.

The bill requires transfer of \$5.0 million from the SHF to the SLRI Fund on July 1, 2020, 2021, and 2022.

The bill defines an "eligible entity" as a class II or class III railroad as defined in federal regulations in effect as of January 1, 2020, or any owner or lessee industry track located on or adjacent to a class II or class III railroad in Kansas. The bill defines "qualified railroad track maintenance expenditure" as gross expenditures for maintenance, reconstruction, or replacement of railroad track and related structures in Kansas, if the track was owned or leased by an eligible entity as of January 1, 2020.

Driver's Education Scholarship Grant Program

The bill directs the Secretary to develop a driver's education scholarship grant program to assist qualified individuals in becoming safe drivers. The bill allows any entity that desires to provide a driver's education program to submit an application for a competitive grant for an amount to be determined by the Secretary for the purpose of paying the costs of scholarships to attend driver's education. Amounts available will be subject to appropriations. The bill limits a scholarship for a qualified individual to not more than \$200, to be awarded upon completion of the driver's education program. The bill authorizes the Secretary to adopt rules and regulations to establish criteria and for other matters necessary for this program.

The bill defines a qualified individual for this purpose as a resident of Kansas younger than age 30 whose household income is positive and not more than 200 percent of the most recent federal poverty level published by the U.S. Department of Health and Human Services for the tax year prior to the year in which the application is submitted.

The bill requires the Secretary to provide a report on this program to the House Committees on Appropriations and Transportation and the Senate Committees on Ways and Means and Transportation on or before January 9, 2023.

The provisions related to the driver's education scholarship grant program will expire June 30, 2023.

City Connecting Links

The bill increases from \$3,000 to \$5,000 per year per lane per mile the amount the Secretary is required to annually distribute to cities for the maintenance of streets and highways in cities the Secretary has designated as city connecting links. Continuing law authorizes the Secretary to maintain such streets and pay for that maintenance from the SHF with the consent of the city governing body.

The bill authorizes the remainder of the SHF to be spent for any purpose specified in the new section defining the Program.

KDOT Annual Report

The bill adds requirements for the written report required under continuing law to be provided to the Governor and each member of the Legislature by the tenth day of the Legislative Session, to require the report:

- Be posted on the KDOT official website and require KDOT to notify all persons or entities who have requested notification of the posting;
- Include annual expenditures from and more detailed information about:
 - Anticipated annual payouts of construction projects already under contract and any proposed construction projects for the next three fiscal

- years, listing preservation projects separately from modernization and expansion projects;
- Proposed construction projects to be let to contract in the current fiscal year and anticipated annual payouts for the next three fiscal years for those projects;
- Anticipated expenditures for the next three fiscal years on remaining agency debt service, programs, and operations; and
- Include a comparison of annual revenue expected into the SHF, including ending balance carryovers, for the next three fiscal years;
- For any Program construction project that is more than \$5 million, an explanation of all initial bids submitted and the actual final cost of construction for that project;
- Include all revenue available for the SHF, including, but not limited to, the SHF balance from the previous year, motor fuel taxes, registration fees, sales and compensating use taxes, and bond proceeds;
- Include all committed expenditures identified by program (e.g., debt service payments, agency operations, aviation, project development costs) and construction payouts by program category (i.e., preservation, modernization, and expansion);
- Include a report of projects that have been let but not paid out and how those projects have been identified to achieve state highway system condition targets; and
- Include a detailed explanation of the methods or criteria used in selecting projects under Program highway or local programs, including an explanation of the amounts expended and projects selected for construction or development and when and where the next local consults are to take place.

For the report due in 2021, the bill requires the report to include a detailed explanation of the methods or criteria used in selecting projects under T-Works and in the awarding of assistance to cities, counties, or other transportation providers and specific recommendations for any statutory changes necessary to successfully complete T-Works or for efficient and effective operation of KDOT.

The bill adds the Transportation Technology Development Fund and the Broadband Infrastructure Construction Grant Fund created by the bill to the funds about which allocation and expenditure information is required in the annual report. The bill requires information about grants under those new funds and on funding shifts between the SHF and the Coordinated Public Transportation Assistance Fund, the Rail Service Improvement Fund, the Public Use General Aviation Airport Development Fund, the Transportation Technology Development Fund, and the Broadband Infrastructure Construction Grant Fund.

The bill requires the annual report to include information concerning the condition and performance of the state highway system.

“\$8 Million Promise”

The bill requires the Secretary to expend or commit to expend at least \$8 million in each county from the revenue provided under the provisions of the Program from July 1, 2020, through June 30, 2030.

Changes to Fund Transfers and Balances

The bill authorizes the Secretary to transfer moneys in addition to the \$11.0 million required each year from the SHF to the Coordinated Public Transportation Assistance Fund. The bill also authorizes the Secretary to transfer moneys from the Coordinated Public Transportation Assistance Fund to the SHF. The bill requires the amount remaining in the fund and the amount spent or dedicated for grants or projects for public transportation in each fiscal year to be not less than \$11 million.

The bill requires the amount remaining in the Rail Service Improvement Fund and the amount spent or dedicated for loans or grants in each fiscal year to be not less than \$5 million. Under continuing law, \$5.0 million is to be transferred each July 1 from the SHF to the Rail Service Improvement Fund.

The bill authorizes the Secretary to transfer moneys in addition to the \$5.0 million required each year from the SHF to the Public Use General Aviation Airport Development Fund. The bill also authorizes the Secretary to transfer moneys from the Public Use General Aviation Airport Development Fund to the SHF. The bill requires the amount remaining in the fund and the amount spent or dedicated for grants in each fiscal year to be not less than \$5 million.

Retailer’s Sales and Compensating Use Taxes

The bill amends law to state, starting July 1, 2021, 16.154 percent of the 6.5 percent retailer’s sales tax and the same percentage of the compensating use tax shall be levied for the SHF and such tax moneys are to be deposited into the SHF for SHF purposes and for city connecting links.