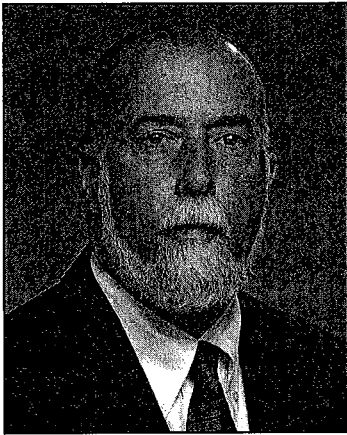
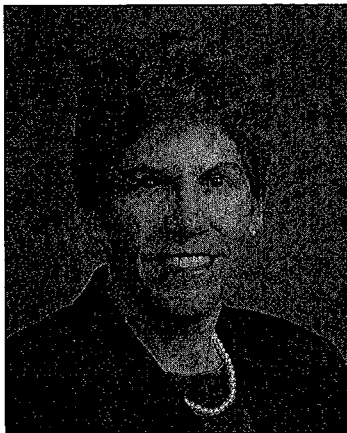


Major Moves: A Major Opportunity for Counties

By Buddy Downs and Karen Arland, Ice Miller LLP



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With the recent Supreme Court decision in *Bonney, et al v. Indiana Finance Authority, et al.*, ___N.E.2d ____, 2006 WL 1680052 (Ind.) (Bonney), counties throughout Indiana can now take a deep breath before launching into an unprecedented flurry of road construction throughout the State with revenues received under the “Major Moves” legislation. Major Moves was the comprehensive road construction funding legislation enacted by the 2006 General Assembly. Major Moves: (i) established a procedure by which the Indiana Finance Authority (IFA) was permitted to enter into a long term lease of the Indiana Toll Road with a private entity; (ii) established procedures for the distribution of the proceeds received by the IFA under such a lease, including distributions to counties; and (iii) established a procedure by which the Indiana Department of Transportation could seek public-private partnerships for the construction of other state highways, including I-69 to Evansville.

On April 12, 2006, less than one month after the passage of Major Moves, opponents filed lawsuits in St. Joseph, Brown and LaPorte counties, challenging various provisions of the legislation as unconstitutional on several grounds, including special legislation, in part because the legislation treated the seven counties through the Toll Road differently than it treated the other 85 counties. The lawsuit in St. Joseph County became the primary litigation. The St. Joseph Superior Court conducted a two day trial and issued a decision on May 26, 2006, upholding the legislation constitutional on all counts, including the finding that it was general, not special, legislation; finding that the Indiana Finance Authority (IFA) was a “municipal corporation” for purposes of the Public Lawsuit statute, found that the portions of the lawsuit which affected the validity of the proposed lease of the Indiana Toll Road constituted a “public lawsuit and required the opponents of the legislation to post a \$1.9 billion (with a B) bond to continue the litigation. The opponents appealed that decision, and at the

request of the IFA, the Indiana Supreme Court, on June 5, 2006, agreed to consider the decision on an extremely expedited basis. The Supreme Court heard oral arguments on June 13, 2006 and issued its decision upholding the trial court’s decision on June 20, 2006. One week later, the IFA completed the transaction for the lease of the Toll Road and the IFA received \$3.8 billion, the bulk of which will be dedicated to road construction at every level of state government.

One of the most significant provisions of Major Moves for counties is the requirement that \$75 million from the lease proceeds be distributed in 2006, and again in 2007, to every county in the State, for allocation among the county and the cities and towns in each county, to be used for the same purposes for which Motor Vehicle Highway Account (MVHA) funds are currently used. Those purposes include the construction, reconstruction and maintenance of county highways, the purchase, rental and repair of highway equipment, right-of way acquisition, bridge painting, and the purchase of fuel oil and other supplies necessary for the construction, reconstruction and maintenance of county highways. The county road bonding statute also permits counties to pledge MVHA funds to pay principal of and interest on bonds issued to construct county highway, road and bridge projects.

For the seven counties through which the Indiana Toll Road traverses, Major Moves provides additional lump sum distributions ranging from \$15 million (Lake County), \$25 million (Porter County), and \$40 million each to Steuben, LaGrange, Elkhart, St. Joseph and LaPorte counties (although if LaPorte chooses to participate in the Northwest Indiana Regional Development Authority (NRDA), it will receive only \$25 million). Each county’s distribution is allocated to the county and to the cities and towns in each county in the same proportion among the county, cities, and towns as funds are distributed from the MVHA. All seven counties and the

municipalities in those counties may use their distributions for: (i) construction of highways, roads, and bridges; (ii) funding for economic development projects (as defined in the EDIT statute; (iii) funding for interlocal agreements and (iv) to match federal grants. Lake and Porter counties, and the communities in those counties, may also use their respective distributions for any purpose for which the NRDA may make an expenditure.

Recipients of Major Moves dollars have tremendous discretion in determining how to use those dollars and how to maximize the additional influx of money for important local projects. Many counties may choose to use the money on a pay-as-you-go basis; for other counties, it may be possible to leverage smaller amounts of revenues into a larger pool of capital for a major project. County officials will want to maximize these dollars, because there is no guarantee that additional revenues will be available for distribution in the future. The Association of Counties will conduct a workshop at its annual conference in September identifying the various ways in which Major Moves dollars can be leveraged and applied to important county projects.

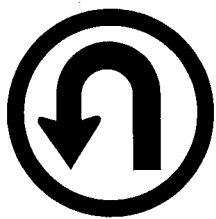
*Major Moves
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lump sum
distributions...*

Note: In "Recent Developments in Property Tax Legislation" published in June, 2006, the parenthetical indicating that county councils could select which types of residential property were eligible for the 2% Circuit Breaker in 2008 and 2009 was in error. While that option was in the legislation at one time, it changed in the final version. Beginning in 2008, all residential property will qualify for the 2% Circuit Breaker.

Ice Miller LLP serves as General Counsel to the Association of Indiana Counties and represented the Indiana Finance Authority in the Major Moves litigation and the Toll Road lease transaction. For further information on Major Moves, please call Buddy Downs at (317) 236-2339. ☎

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- NACo First Vice President Don Stapley
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