



NATIONAL COUNCIL FOR PUBLIC-PRIVATE PARTNERSHIPS (NCP PP)

TRANSPORTATION AUTHORIZATION PROPOSALS

March 17, 2009

The National Council for Public-Private Partnerships (NCP PP) is a 501(c)3 educational organization composed of public and private organizations dedicated to advancing the utilization of public-private partnerships (PPPs) in meeting our critical infrastructure needs, including those of the transportation sector. With the authorization of the federal transportation funding legislation under consideration it is important to outline the role that public-private partnerships can play in meeting the transportation infrastructure challenge. There have been numerous statements regarding PPPs by senior government officials and members of the media. While we are encouraged by the attention that PPPs are receiving, we must stress that public-private partnerships are not a panacea; they can not meet all the challenges facing our transportation systems. We support a strong federal funding role in transportation infrastructure, and believe that such federal funding is necessary to keeping America moving forward. However, federal funding alone will not be enough to meet the ever-growing need.

The membership of the NCP PP believes that public-private partnerships, including the entire spectrum of innovative project delivery mechanisms, offer a valuable option for consideration to provide the resources needed to meet the funding and development needs of the highway and transit systems of the future. We stand ready to assist public officials, at all levels of government, to work towards delivery of high quality public projects through the utilization of these innovative procurement practices. It is in that spirit that we submit these recommendations for incorporation into the transportation authorization legislation:

- ***Authorization should provide an environment that encourages States to develop an appropriate statutory and regulatory structure for public-private partnerships***
- ***Authorization should protect and expand alternative public sector financing mechanisms such as TIFIA and Private Activity Bonds***
- ***Authorization should provide for the formation of mechanisms to encourage innovative project delivery***
- ***Authorization should encourage innovations, at all levels of government, that will leverage private capital to meet our infrastructure needs***

Authorization should provide an environment that encourages States to develop an appropriate statutory and regulatory structure for public-private partnerships

“Because transportation project sponsorship is typically a state or local rather than federal responsibility, public-private partnerships are generally entered into by state departments of transportation or regional or local transportation agencies. The federal government nonetheless can help set appropriate safeguards to protect the public interest, provide technical assistance, and foster best-practice peer exchanges among the states.” (*Paying Our Way – A Framework for Transportation Finance*, National Surface Transportation Infrastructure Financing Commission 2009, page 181)

The federal government, through the transportation authorization, should assist State agencies focus on the careful and prudent analysis, negotiation and oversight to ensure adequate protections of the public interest when entering into public-private partnerships. For state agencies to better address the mounting critical infrastructure crisis in their jurisdictions, and thus improve the mobility of the entire nation, the federal government should provide a regulatory environment that encourages the exploration of the utilization of public-private partnerships. In the next transportation authorization, we would recommend that Congress provide these state departments of transportation with the flexibility required to complement the traditional financing and delivery methods, by pursuing innovative financing and project delivery methods with the private sector. Congress should encourage state governments to develop the appropriate regulatory structure to best engage the private sector, rather than create a new federal regulatory regime.

New federal regulations regarding public-private partnerships should be limited in scope. Congress should focus on the aspects of transportation infrastructure governed by federal regulations and funded through federal allocations, coupled with TIFIA and Private Activity Bonds. Federal regulatory oversight should provide standards for facilities that are part of the federal interstate system regarding safety, availability, national emergency situations and tolling system integration. The primary motivation of federal involvement in the PPP procurement process should be towards ensuring transparency in the process, both in financial and engineering terms. The federal government can best assist states by providing a climate of public accountability when engaging the private sector. We look forward working with federal decision makers to help facilitate regulations and policies regarding PPPs that are both feasible and beneficial to the end consumer – the American public.

Authorization should protect and expand alternative public sector financing mechanisms such as TIFIA and Private Activity Bonds

The NCPPP supports the recommendation of the National Surface Transportation Infrastructure Financing Commission to protect and expand existing innovative financing mechanisms. These federal programs have been a good start, but more needs to be done to enable state transportation agencies to fully utilize these financing mechanisms. We would recommend to Congressional leaders to include the following important provisions in the transportation authorization legislation:

- Reauthorize the TIFIA credit program with increased financing capacity. Financing should be directed to core credit assistance for projects, pre-construction feasibility grants and to revenue negative, but for critical infrastructure projects.
- Provide federal funding to re-capitalize State Infrastructure Banks. These state credit institutions are closer to the critical infrastructure projects that will benefit the public with most expediency. Fully capitalized State Infrastructure Bank ultimately lower project related costs and the need for federal funding.
- Expend the Private Activity Bond program from the current \$15 billion to an amount that will benefit more projects throughout the United States. The NCPPP would also recommend the re-tooling of this program to promote greater utilization for mass transit projects.
- Expand the U.S. Department of Transportation Urban Partnerships Congestion Pricing Initiative beyond the current pilot program to empower more urban centers to generate needed mass transit infrastructure funds through tolling, lessen urban congestion and fight greenhouse gas emissions.

Authorization should provide for the formation of mechanisms to encourage innovative project delivery

A primary reason for a public agency to enter into a public-private partnership is to expedite project completion, reduce costs and improve project quality by packaging and procuring services in new ways. Since 1990, the federal government has allowed state departments of transportation to evaluate non-traditional contracting techniques. Originally, the contracting practices approved for evaluation were: cost-plus-time bidding; lane rental; design-build contracting; and warranty clauses. After review, FHWA decided that all four practices were suitable for operational use. The NCPPP recommends modifications to the Special Experimental Projects (SEP-14 and SEP-15), and the Design-Build Final Rule, to help expedite the federal approval processes; adequately recognize risk allocation and risk sharing among the public and private sectors; and reward public and private sector performance for those States and local governments that seek to use innovative contracting and project delivery methods. Congress should enable the USDOT, through the Federal Highways and Federal Transit Administrations, to host a professional level of PPP public sector expertise through new hiring or contractual authority.

Additionally, the NCPPP supports the recommendation of the National Surface Transportation Infrastructure Financing Commission in that, “Congress should generally support the states’ primary role in overseeing private-sector arrangements and, to this end, should encourage the development of appropriate technical assistance and dissemination of best practices information” (page 217 of the Commission Report). A few states, including Texas and Virginia, have already created dedicated public-private partnership teams focused solely on engaging and negotiating with the private sector to develop transportation infrastructure projects. PPP agreements are more complex than traditional procurement methods and lessons-learned from successfully negotiated agreements need to be effectively communicated.

Authorization should encourage innovations, at all levels of government that will leverage private capital to meet our infrastructure needs

The American Society of Civil Engineers has estimated the five-year investment need of America's infrastructure to be \$2.2 trillion. Public financing can only go part of the way in meeting this overwhelming shortfall; more has to be done to assist transportation agencies in leveraging private capital to meet the need. In the current economic climate, infrastructure investment has become increasingly attractive to investors looking for a long-term and stable return. NCPPP members have reported that \$450 billion of private funds have been accumulated in investment vehicles focused on infrastructure. While some of these funds are from overseas, an increasing number of American pension funds, many investing for public sector employees, have begun to explore infrastructure investment. Providing capital for innovative project financing may not result in the high internal rate of return that the securities market once did, but in these troubling economic times, a regular return resulting from an equity investment in a toll facility is a welcomed change.

The NCPPP recommends Congress to take advantage of the opportunities that the transportation authorization process provides to review the policies governing federal involvement in supporting the future of our nation's infrastructure. Expanding existing federal programs, including TIFIA, Private Activity Bonds and Urban Congestion Partnerships are actions that Congress could take today to assist States in meeting the current transportation infrastructure need. Providing immediate project credit assistance, through State Infrastructure Banks, would not only work to address the infrastructure maintenance challenge, but also help put more Americas to work. With this expanded interest in partnerships the federal government should also encourage states to establish dedicated PPP teams to provide guidance as public authorities engage the private sector. The federal government must create an environment of innovation in which state and local authorities can develop public-private partnerships that are transparent and that protect the public interest. Equally important, these actions provide an environment in which risks can be clearly defined and therefore would promote private sector investment.

Thank you for your consideration - The National Council for Public-Private Partnerships stands ready to assist in building the framework that will lead to greater private sector involvement in addressing our nation's transportation infrastructure crisis. Congress has the opportunity to make positive policy changes to create an environment of partnership to address the challenges facing the infrastructure systems of the United States. In this time of both economic difficulty and pressing infrastructure funding demands, it is essential to the future of the nation, in all aspects, that all available resource be employed to secure America's mobility. Neither the public nor the private sectors alone can provide the infrastructure improvements required for our 21st century economy – partnership is necessary.