



Policy Recommendations for the Transportation Authorization Submitted to the House of Representatives Transportation & Infrastructure Committee

May 6, 2009

The National Council for Public-Private Partnerships (NCPPT) recommends policy positions that will increase the ability of state and local governmental authorities to engage the private sector in achieving efficient project delivery as well as asset maintenance. Our recommendations focus on what Congress can do during the upcoming Transportation Authorization to empower the United States Department of Transportation to promote an environment at the state and local governmental level that will provide appropriate levels of risk management while protecting the public interests. The following are policy recommendations The National Council for Public-Private Partnerships would encourage the United States Congress to adopt within the Authorization.

Expand the Transportation Infrastructure Finance & Innovation Act (TIFIA) Program

NCPPT recommends that Congress reauthorize the federal credit program for surface transportation (referred to as TIFIA) with a larger volume of credit capacity and greater flexibility. The budget authority should be increased to \$500 million per year to enable funding of all projects in the pipeline and increased volume of projects expected in the future. TIFIA credit support should be allowed to fund up to 50 percent of eligible project costs and the “springing lien”, which activates in the event of default leading to bankruptcy, elevating the TIFIA loan to a parity status with senior project debt hindering the ability of senior project debt to obtain investment grade ratings, should be eliminated.

Increase or Remove the Cap on Private Activity Bonds (PABs)

NCPPT recommends that Congress expand the highway/intermodal Private Activity Bond (PAB) program. The national limit of \$15 billion of PABs funding should be increased or eliminated, while the current exemption from the Alternative Minimum Tax (removed under the American Recovery and Reinvestment Act of 2009 through September 2011), should be made permanent. Eliminating the prohibition on the accretion of interest on PABs, (which is deemed to be working capital), will increase their attractiveness for start-up projects.

Adjustments to the Tax Code

Public-private partnership (PPP) transportation franchises should not be singled-out for tax treatment that differentiates such franchises from franchises for other asset classes. The Treasury has observed that foreign investors might be subject to the Foreign Investment in Real Property Tax Act ("FIRPTA") if tolling rights are a type of real property interest as apposed to an intangible interest. Also of concern is recently circulated draft legislation calling for the amortization period for tolling rights to coextensive with the term of underlying leases, as if the intangible asset (tolling rights) is a real property interest. The net affect of these actions would be to extend amortization periods beyond the typical 15 years depreciation period for intangible assets and subject concessionaires to withholding taxes, significantly affecting the after tax return for private investors. It is more appropriate to guide PPP policy through helping states and local governments establish best practices versus singling out and establishing discriminatory tax treatment of tolling concessions.

Promote additional Congestion-Relief Programs

Expand the Urban Partnerships program (USDOT), aimed at mitigating traffic congestion through dynamic tolling within identified urbanized centers, beyond the current five-city pilot program. Funding dedicated towards these unique public-private partnerships should be increased from the current \$1 billion to \$10 billion. Focusing on the "4Ts" of Tolling, Transit, Telecommuting and Technology, this program helps to find innovative ways to address the congestion challenges facing nearly every city in the United States today.

Develop the National Center of Excellence for Public-Private Partnerships

NCPPP supports Congressional adoption of the National Surface Transportation Infrastructure Financing Commission's recommendations for the development of a centralized repository for PPP best practices, guidelines to address transparency and strategies for accountability. The federal government, in conjunction with organizations representing transportation professionals, industry leaders, project administrators and academic directors should work to achieve this goal within a jointly managed "Center of Excellence". This Center would assist state level public authorities with statutory language that defines a clear procurement process, develop standardized contract terms and the creation of dedicated units within their states to develop and monitor agreement performance. Through the efforts of the Center, bid practices would become more standardized, as would contracts and other project specific documentation, promoting sound market concepts that will reduce costs while addressing national infrastructure needs. NCPNP recommends that this Center promote the formation of similar state-level PPP support programs as illustrated in Texas, California, Michigan and Virginia.

Provide Federal Guidance for Insurance Coverage for P3 Projects

P3 managed/controlled insurance programs for infrastructure construction projects can reduce insurance costs by 1% to 2% of total contract value. Such managed/controlled insurance programs can help project developers obtain broader coverage, lower debt costs, increase transparency, enhance safety and promote minority/woman-owned/disadvantaged business participation. Similar benefits are obtainable in managing post construction operational risks. NCPPP encourages Congress to promote state-level guidance, through the state-level dedicated PPP teams, for managed/controlled insurance programs to minimize costs, increase coverage breadth, require greater transparency and instate monitoring of insurance programs.

If you have any questions, or would like additional information please contact:

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