

# PARTNERSHIPS IN TRANSPORTATION: Funding Large Transportation Projects

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## SAFETEA-LU: New Tools in the Transportation Toolbox *Can the States Use Them?*

September 29, 2005

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# **\$15 Billion Private Activity Bonds – What Projects Qualify?**

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**“Qualified highway and surface transportation facilities”**

- **Any Title 23 surface transportation facility**
- **International bridges and tunnels**
- **Rail/truck transfer facilities**

***Project must “receive federal assistance” under Title 23 or Title 49 (for intermodals)***

# **\$15 Billion Private Activity Bonds**

## **How will bonds be allocated?**

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- **Allocated by the Secretary of Transportation**
- **No criteria specified in SAFETEA-LU**
- **Responsible office in USDOT not yet identified**
- **Key issues:**
  - **Timing of allocation vs. close of financing**
  - **Amount / percentage of equity**
  - **Bond amount limitation**
  - **Equity among State applicants**

# Tolling Interstates

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**Value Pricing Pilot Program – 15 States**

**Express Lanes Demo Program – 15 Projects**

**Interstate Construction Pilot Program – 3 Facilities**

**Interstate Reconstruction Pilot Program – 3 States**

**HOV/HOT Lanes Conversions**



# Other Tools

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- **FHWA Design-Build Rule Reform**
  - **Can issue RFP, award contract pre-ROD**
  - **Eliminate \$50 million floor**
- **Environmental Streamlining**
  - **Statute of Limitations for Federal Approvals**
- **TIFIA**
- **SIBS**
- **Highways for Life**



# Can the States Respond?



- **Only 19 States have PPP legislation**
  - **Missouri – Yes?**
  - **Illinois – No**
- **Laws must create revenue stream –**
  - **Doesn't have to be limited to tolling**
- **Laws must provide a financing vehicle**
- **Laws should permit mixing of public and private funds – “leveraging”**

# Key Issues – Procurement Process

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- Can you solicit proposals?
- Can you accept unsolicited proposals?
  - Unsolicited provide new ideas
  - Should post for competitive proposals
  - Are deadlines for competitive proposals sufficient?
  - 2– step procurement permitted?

# What limitations apply?

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- **Are PPP project limited to a few “pilot” projects?**
- **Geographic restrictions?**
- **Mode of transportation?**
- **Is authority limited to State DOT?**
  - **Can existing turnpike authorities do PPPs?**
  - **May local or regional entities form PPPs?**
- **Can existing highways be tolled?**
- **Restrictions on “non-compete” agreements?**

# Toll Revenues

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- **Who has rate setting authority?**
- **When/how can rates be changed?**
- **Must return on investment be limited?**
  - **How is ROI determined?**
- **Can tolls be imposed on existing facility?**
  - **HOV/HOT lane conversions allowed?**
- **Requirement to remove tolls after debt / equity repaid?**

# Financing

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- **Can federal, State and local funds be combined?**
- **Authority to access TIFIA?**
- **Can agency issue revenue bonds?**
- **Must repayments, franchise payments go into general fund?**
- **Can you create a revolving fund?**
- **Can you create a non-profit to sponsor?**

# Are all Types of Procurements Permitted?

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- **Are PPP projects exempt from standard low-bid procurement laws?**
- **Procurement based on “best value”**
- **Call for Projects**
- **Competitive RFQs and RFPs**
- **Procurements based on financial terms such as ROI rather than price**
- **Long-term asset leases**

# Approval Process

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- **Statutory review committee?**
- **Prescribed evaluation criteria?**
- **Legislative approval of project?**
- **Legislative approval of terms of deal?**
- **Approval or veto by local governments?**

## Other Refinements

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- **Stipends to unsuccessful proposers**
- **Exemption from 100% surety bond requirements**
- **Authority to charge application fees**
- **Authority to hire consultants, lawyers**
- **Protect confidentiality of proposals, evaluations and negotiations prior to award**

# Contact

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