



## **“The Promise and Risks of Public-Private Partnerships” One-Day Government-to-Government Summit**

Co-Sponsored by the NCSL Partnership on PPPs for Transportation and UK Trade & Investment  
Friday, March 26, 2010, Washington Court Hotel, Washington, D.C.

### *Meeting Summary*

#### Meeting Purpose and Background

Key government officials and private sector entities from both sides of the Atlantic were invited to share positive and negative experiences with PPP implementation; to raise awareness about PPP benefits, costs and concerns; and to develop actionable recommendations for state and federal activities pertaining to PPP policies and programs. The focus of the meeting was PPPs for transportation, as the current issue in the U.S.; other social infrastructure was also discussed.

The meeting was an outgrowth of work conducted by NCSL’s Partners Project on PPPs for Transportation (see <http://www.ncsl.org/?tabid=17528>). For over 18 months, the Partners Project has worked to analyze legislators’ needs, assemble reliable information about PPPs, and develop nonpartisan, balanced, absorbable materials to aid legislative decision making. Participants at this meeting reviewed a draft report produced by this group.

#### Format

After a keynote address and formal presentations, moderated breakout groups developed recommendations for state and federal actions related to PPPs; each group presented its findings to the plenary. The meeting closed with a challenge to participants to continue the dialogue.

#### Attendees

Rep. Terri Austin (Ind.) and Rep. Linda Harper-Brown (Texas), co-chairs of the NCSL PPP Partners Project, moderated the event. Approximately 75 people attended, including state legislators and legislative staff. Also represented were state and federal executive agencies, Congressional staff, UK governmental entities, public interest groups, academic institutions, transportation-related associations, research organizations and the private sector.

#### Keynote Address

**Dominick Chilcott** (Deputy Head of Mission, British Embassy, Washington, D.C.) expressed that the UK experience with PPPs has been overwhelmingly, though not universally, positive. PPPs have provided better value for money, higher project quality and better investment in infrastructure than would have been possible otherwise. PPPs help stretch public budgets, and—through the “twin disciplines” of long-term contracts and fixed prices for services—can also help deliver good quality, sustainable, affordable investments. Value for money is achieved by allowing each party to do what it does best: the public sector defines and purchases public service outputs, and the private sector finds the method by which to deliver those outputs at least cost to the public purse. PPPs, however, are not

appropriate for every project, and PPP projects are not uniform. Also, PPP benefits rely at least partly on coordinating public sector know-how, which in turn requires high-level commitment and a clear communications strategy.

### Formal Presentations

**Administrator Jane Garvey** (Former Administrator, Federal Aviation Administration; Chair, Meridiam; Board Chair, Bipartisan Policy Center) outlined the U.S. political and economic context for PPPs. Recent Congressional reports suggest that multiple strategies are needed to address the transportation funding crisis, with PPPs as one option. However, skepticism about the private sector and germane questions about protecting the public interest persist in Congress. Some policy questions may need to be addressed in reauthorization legislation, including Oberstar's recommendation for a central PPP unit, which some fear will have a "chilling effect" on PPPs in the U.S. States will be able to weigh in about reauthorization, and to share their innovations.

**Secretary Mary Peters** (Former Secretary, USDOT; Senior Advisor, ZHA) addressed public benefit and PPP policy and implementation. She emphasized PPPs as a project delivery strategy, not just a financing method, and that traditional project delivery also does not necessarily protect public benefit. Several factors help protect the public interest in PPPs, including true partnerships, with both public and private entities having more "skin in the game;" a transparent process; public and political commitment; public sector expertise and capacity; and states learning from other states' experiences. Term lengths and non-compete clauses are also relevant to the public interest.

**Regina McElroy** (Director, Office of Innovative Program Delivery, Federal Highway Administration) presented a federal governmental perspective. She stressed the insufficiency of traditional sources of transportation funding, and the need for long-term solutions; PPPs can be a piece of this puzzle. The federal perspective, however, is in flux, with no consensus on PPPs or on linked issues of tolling and pricing. The current federal emphasis is on outcomes for projects and programs; PPPs are seen as a means to an end. Next steps for USDOT include interacting with state partners, building a community of PPP stakeholders, and a five-year research agenda that will address PPP analytical tools and effective public-private sector communication.

**Terry Hill** (Chair—Global Transport Market, ARUP Group Ltd.) provided a UK perspective. He asserted that PPPs are a proven model for delivering a wide range of essential infrastructure. PPPs bring private enterprise while retaining public control; combine public sector needs with private sector expertise and finance; allocate risk to the party best able to manage it; and encourage efficiency and innovation. Best practices to ensure PPP success include creation of a public PPP unit, clear PPP policies and robust legislation, balance between standardized models and innovation, and a proactive approach to opposing viewpoints and potential problems. A U.S.-specific PPP model could draw on these international best practices and lessons learned.

The last presenter, **Jim Reed** (Transportation Program Director, NCSL) reviewed the work of the NCSL Partners Project and the draft publication, *Public-Private Partnerships for Transportation: A State Legislators' Toolkit*. The draft report (excerpts available from [jim.reed@ncsl.org](mailto:jim.reed@ncsl.org)) provides a context for understanding PPPs, clarifies legislative and executive roles, and outlines nine principles for good governance as applied to PPP issues. It will be finalized in July 2010.

### Breakout Groups

Three moderated breakout groups, organized by topic, were tasked with producing actionable recommendations related to their topic area. A written overview of issues to be covered was

provided to all participants, and formed the basis for discussion. Each group had a moderator, designated respondents, and a spokesperson to report on the group's findings.

The three groups, with their recommendations, were:

1) **State policy and public interest.** (This group also addressed communications and outreach, which had originally been a topic for a separate breakout group.)

- A process of engagement and deliberation about PPPs—including public interest, policy options, and/or state-specific issues—should precede creating a statutory framework. One model is a state-level commission; a state PPP office might serve a similar function.
- Stakeholders should be engaged and involved across branches and levels of government, in ways that extend past term limits—e.g., through outreach to gubernatorial candidates.

2) **Federal policy and public interest.**

- Clarity is needed concerning the federal role and interest in PPPs.
- A federally supported center of excellence should research and distribute information about international models and best practices; it could also provide technical assistance. The overall focus should be educational, rather than prescriptive.
- PPP policy decisions should remain at the state level; the federal role should be to provide overarching guidance, and to proceed with a “light touch” regarding any PPP regulation.

3) **Implementation and execution.**

- Legislative and executive branches should define their roles together. In general, legislation should not be too prescriptive, so as to allow executive agencies the flexibility to handle contracts effectively.
- NCSL should draft specific PPP statutory language.
- There is no need for a PPP office separate from a department of transportation.

### Key Themes and Takeaways

Key themes and takeaways drawn from participant comments include the following:

- In the U.S., consensus about PPPs—including the context for understanding them, potential benefits and costs, and whether and how they should be pursued—is lacking. Many stakeholders aim to increase investment opportunities in the U.S. PPP market; others remain skeptical about private investment and concerned about public interest.
- Most stakeholders, however, agree that states should have the option to pursue PPPs, whether or not they choose to do so.
- There is also lack of consensus about whether to frame PPPs as an innovative project delivery strategy or as a much-needed financing tool, though most stakeholders at this meeting tended toward the former.

- The public sector needs the capacity and knowledge to provide strong leadership in developing PPP policy, programs and projects, and to be an “intelligent client” during execution. The private sector can provide valuable expertise, but should not lead. Intergovernmental dialogue can help build capacity without reliance on the private sector, as can careful deliberation prior to crafting policy or a review process by an independent entity. Public PPP units can help, but if so, they should not also advocate for PPPs.
- PPPs can provide public benefit—especially related to innovation and long-term efficiencies—when well-structured and carefully implemented, but they are not appropriate in all situations. Also, the nature of risk is that some projects will fail.
- The UK experience provides a useful perspective on PPP development and implementation, and how PPPs may provide public benefit under certain circumstances. However, the UK model may have limited applicability to the U.S. context. The U.S.—and each individual state—needs its own situationally-appropriate PPP model.
- Similarly, the commonly used developmental metaphor—in which the U.S. (or a specific state) is at an “earlier” stage of PPP development than other, more “mature” markets—assumes a linear progression and foregone conclusion about whether and how PPPs ought to be implemented. A frame that focuses on the diversity of state contexts, policies, needs and concerns may be more appropriate.
- State governments are now—and should continue to be—primarily responsible for PPP policy and implementation decisions. An appropriate federal role is to provide overarching guidance and goals, information, technical assistance and financing tools.
- There is a need for more clarity and consensus about legislative and executive roles in PPP policy, programs and implementation. The roles might vary, however, from state to state.
- The focus of any transportation project should be primarily on outcomes and public benefit, not on project delivery strategies or financing tools.
- Large-scale, brownfield concessions have dominated the public dialogue about PPPs in the U.S. Knowledge about the range of PPP options is needed for a meaningful conversation.
- There is a great need for better transparency, outreach, education and communication about PPPs—including among federal, state and local public sector stakeholders.
- Transportation funding and financing policy decisions should be as depoliticized as possible, to keep the discussion reasonable and focused on the public interest.

### Next Steps

Priority next steps are to provide the meeting proceedings and presenter PowerPoints online, and to continue this dialogue of public-sector decision-makers.

### Contact Information

For more information about this event, the NCSL Partners Project, or the draft report *Public-Private Partnerships for Transportation: A State Legislators’ Toolkit*, please contact Jim Reed (303-856-1510 or [jim.reed@ncsl.org](mailto:jim.reed@ncsl.org)) or Jaime Rall (303-856-1417 or [jaime.rall@ncsl.org](mailto:jaime.rall@ncsl.org)) at NCSL.