NCSL Foundation Partnership
Public-Private Partnerships (P3s or PPPs) for Transportation

PPP Partners Project Session and Business Meeting

Hosted at the NCSL Spring Forum
April 14, 2011
Washington, D.C.

Meeting Summary

Compiled and Updated by NCSL
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Overview

The NCSL Foundation Partners Project on Public-Private Partnerships (P3s/PPPs) has existed since December 2008 to link legislators, legislative staff and interested private entities to analyze legislators’ needs and to develop nonpartisan, balanced, useful materials to aid legislators’ decision-making regarding PPPs in transportation, both in their respective states and as they consider state-federal relationships.¹ This meeting of the group—at NCSL’s Spring Forum in Washington, D.C.—was the second meeting in the project’s Phase II (2010-2011).

The meeting agenda comprised:

- Welcome and introductions by Jennifer Jones, Assistant Director, Texas Sunset Advisory Commission and legislative staff member of the Partners Project Steering Committee

- A business meeting that comprised:
  - A review of the Phase II activities and calendar
  - Update on technical assistance activities
  - NGA Center and NCSL Workshop on PPPs for Transportation
  - Next steps on PPP statute analysis

- An educational session, including presentations by:
  - Jennifer Ahlin, Federal Highway Administration Office of Innovative Program Delivery
  - Fawn Johnson, National Journal Group
  - Jessica Digiamambattista, California Legislative Analyst’s Office

- Meeting wrap-up and announcements

Attendees included legislators and legislative staff as well as representatives from Phase II sponsoring organizations. Sponsors in attendance were the American Federation of State, County and Municipal Employees (AFSCME); American Road and Transportation Builders Association (ARTBA); Cintra US; and Design-Build Institute of America (DBIA). In addition, American Trucking Associations (ATA); Dorsey and Whitney, LLP; and Transurban participated by phone. NCSL thanks all public and private sector participants for their contributions to this event and to the ongoing work of the project.

Business Meeting

Jim Reed and Jaime Rall of NCSL facilitated a group discussion of our progress and next steps on Phase II activities. (The handouts referred to in the business meeting are available to PPP Partners Project members upon request.)

- Technical assistance activities. Mr. Reed reviewed the handout pertaining to technical assistance, including the shortlist of 14 states to which NCSL will send outreach letters by the end of April. He clarified that there could be another round of letters and technical assistance activities, depending on the response to these first letters. He also said that what is included in “technical assistance” is flexible, depending on the state and their interests. For example, he recently gave a presentation to the Indiana House Roads and Transportation Committee on PPPs and legislative

¹ More information about the NCSL Foundation Partnership for PPPs for Transportation, including links to previous meeting summaries and other materials, is at http://www.ncsl.org/?tabid=17528.
approval; the next step in complexity might entail a workshop that could draw on a variety of experts and resources.

- **Joint NGA Center and NCSL workshop.** Mr. Reed reviewed the handout describing the proposed National Governors Association Center for Best Practices (NGA Center) and NCSL joint workshop on public-private partnerships in transportation. The workshop—planned for fall 2011 in Washington, D.C.—will bring together teams of state policy makers from up to 16 states to learn about and discuss PPPs. State teams will consist of representatives from each state’s legislature, governor’s office and department of transportation, to facilitate meaningful involvement of the key players necessary for achieving effective PPP policies and programs.

- **PPP statute analysis.** Ms. Rall reviewed the handout about the Phase II activity to analyze and categorize PPP enabling statutes for transportation in a brief NCSL report to be produced in late spring 2011, after the majority of state legislative sessions adjourn for the year. Meeting participants were asked to identify statutory PPP provisions of interest—and for which more in-depth analysis is desired—and to send those ideas to jaime.rall@ncsl.org by the end of April.² Meeting participants also suggested including in the report some items that are not necessarily in state legislation, but have arisen in the PPP policy debate more generally. This could include tools used by other countries (e.g., qualitative analysis); approaches recommended elsewhere (e.g., the 2008 GAO report entitled *Highway Public-Private Partnerships: More Rigorous Up-front Analysis Could Better Secure Potential Benefits and Protect the Public Interest*); or items in regulatory or guidance documents that might be useful to legislators. It was further suggested that state tolling statutes also be cited, since they may be legislated separately and often interact with PPP laws.

**Educational Session**

Three guest speakers shared their perspectives on public-private partnerships.

- **Jennifer Ahlin, P3 Program Manager, Federal Highway Administration Office of Innovative Program Delivery** spoke to the group about her office’s current activities. She said that informational resources will be posted online in the fourth quarter of 2011 pertaining to international delivery methods and decision processes; value-for-money (VfM) analyses; and international risk allocation. Other activities include a video from a workshop to be held in June 2011 with Spain to be posted online; the Innovative Program Delivery Academy webinar presentations for Federal Highway Administration regional offices; and an upcoming series of technical workshops. Ms. Ahlin also said that the office is currently working on analytical tools related to managed lanes and public-private partnerships.

Ms. Ahlin then gave an update about the TIFIA (Transportation Infrastructure Finance and Innovation Act) federal credit assistance program. In March, 34 letters of interest worth $14 billion in credit assistance were received for consideration in this funding cycle.³ FHWA is now working on six projects with proposers: the Crenshaw/LAX Transit Corridor Project (Los Angeles, Calif.); the Eagle P3 Project (Denver, Colo.); the Goethals Bridge (Staten Island, N.Y. and City of Elizabeth, N.J.); the Presidio Parkway (San Francisco, Calif.); the Southeast Waterfront

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² This deadline has since been extended to June 15, 2011.
³ This GAO report is available [online](http://www.gao.gov).
⁴ A full list of TIFIA letters of interest submitted in 2011 is available [online](http://www.fhwa.dot.gov).
Transportation Improvements (San Francisco, Calif.); and the U.S. 36 Managed Lane/Bus Rapid Transit Project (Denver/Boulder, Colo.).

- **Fawn Johnson, Correspondent, National Journal Group** shared her perspective on federal developments concerning surface transportation authorization legislation and PPPs. Ms. Johnson said that this was excellent timing for state legislators to be visiting the Hill and sharing their perspectives with Congressional members. She also said that, given the federal funding crisis, anything that can be demonstrated to save money will be of interest.

House Transportation and Infrastructure Committee Chairman Mica has said he plans to pass an authorization bill this year. Ms. Johnson noted, however, that Mr. Mica has fewer tools at his disposal than others previously in his position, due to new House rules and restrictions concerning appropriations and earmarks for transportation. Mr. Mica intends to use PPPs, unused funds from previous authorizations, and streamlining to support the bill, which he has estimated at about $150 billion. The administration has put forward a $556 billion proposal, but has not suggested how to pay for it and has taken a gas tax increase off the table. This is a deliberate choice, as the administration wants those ideas to come from Congress.

Ms. Johnson believes that Mr. Mica is in 90 percent agreement with the administration, in that both are interested in expanding the use of PPPs and both want a bill by August (although this may not be possible). Also, both have said that they are looking for expertise to support the public sector in engaging in PPPs—something that may be especially important when, for example, small municipalities are negotiating with large multinational corporations.

The U.S. DOT differs from the House Republicans ideologically, however, in that the administration wants more federal control and discretion over PPPs through the National Infrastructure Bank and “race to the top”-type applications for federal credit assistance. House Republicans generally favor less control but want federal money to be used on federal projects.

- **Jessica Digiambattista, Senior Fiscal and Policy Analyst, California Legislative Analyst’s Office** spoke about California’s experience with transportation PPPs, particularly about how the intended process has not always been enacted in practice and other lessons learned.

She commented that one early project—SR 125—has resulted in a lawsuit against the state and the partner defaulting on its bonds.

The state’s current PPP statute (SB 2X 4, enacted in 2009) was meant to attract support as part of the budget bill. Under the current statute, the California Transportation Commission (CTC) has a large role in approving projects, because the state is too large to allow for legislative appropriations to individual projects. After the PPP deal is done, the legislature and the newly created Public Infrastructure Advisory Committee (PIAC) have a 60-day review period.

How the program is meant to operate, however, is not how it works in practice. For example:

1) The CTC is required to adopt program-wide evaluation criteria to create an even playing field, a consistent approach and oversight, but instead it has said that it intends to allow project sponsors to develop their own criteria and to adopt those criteria on a project-by-project basis. If sponsors can choose the criteria by which the CTC will assess their projects, some of the oversight rigor is lost.

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5 The PowerPoint for Ms. Digiambattista’s presentation is available online.
2) The PIAC was set up as a “best practices” commission, but no process is in place to implement best practices.

3) A 60-day legislative contract review period is provided, but committee staff lack the skill set to review complicated legal contracts and the legislature has no authority to require changes. Also, no process exists for handling legislative questions or concerns. For example, legislators still have unanswered concerns about the Doyle Drive project.

California has several lessons learned from the Doyle Drive (aka Presidio Parkway) project:

1) The early stages of project selection and development are critical, and a strong program framework is needed for evaluation processes and criteria. California statute does not provide this framework, and in the absence of any executive branch guidance, projects are being done piecemeal.

2) Rushing a PPP project can lead to poor project selection. It is difficult to transfer appropriate amount of risk for projects that are too far along in development. Because the Doyle Drive project was already under construction when it became a PPP, for example, bidders could not look at the site and so were unwilling to assume some big risks. This timing may have meant that the state did not get the best deal.

3) Knowing the cost is important, but can be difficult to determine. In California, analysts are still in discussions about what is an appropriate discount rate for a Net Present Value (NPV) analysis. Also, the cost analysis was very thorough in detailing costs for the design-bid-build option, but did not fully account for expenses to the state for the PPP option such as all oversight expenses. Also, some costs such as federal tax adjustments were included, but are likely inappropriate to include in a state analysis.

4) In-house PPP expertise is needed. In California, the PPP program is really only one person. State and legislative staff need more familiarity with PPPs, and consultants need more familiarity with state processes. In addition, because consultant contracts are legally required to be rebid every few years, their expertise can be lost; this may be an opportunity to reconsider the contracting law, and to focus more on the costs of these major projects rather than the comparatively small amount paid to consultants.

Ms. Digiambattista closed by outlining California’s PPP project pipeline. She also remarked that, although there is interest in crafting amendments to the program’s legislation to include stronger guidelines, the state might struggle with having sufficient expertise to draft such a bill.

Meeting Wrap-Up and Announcements

Jennifer Jones closed by remarking that a common theme expressed today was the need for greater public sector expertise. She then thanked all of session participants for coming. It was announced that the next meeting of the Partners Project will be held concurrent with NCSL’s Legislative Summit, August 8 – 11, 2011, in San Antonio, Texas. For more information about this meeting or other project activities, please contact Jim Reed at NCSL at jim.reed@ncl.org or 303-856-1510.

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6 A California Legislative Analyst’s Office review of this project is available online.

7 Mr. Kome Ajise, who gave a presentation at NCSL’s 2010 Fall Forum; his presentation also is available online.