



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

Transportation Funding Options for State Legislatures: A Focus on Public-Private Partnerships

NCSL Spring Forum Pre-Conference Meeting

April 22 – 25, 2009 • Washington, D.C.

Executive Summary

This Executive Summary is a brief description of the NCSL Foundation Partners Project on Public-Private Partnerships' pre-conference meeting at NCSL's Spring Forum in April 2009. A detailed meeting summary is also available, which provides more information about each session as well as the presenters' biographies. The detailed meeting summary is available at <http://www.ncsl.org/?tabid=17216>, or upon request from jim.reed@ncsl.org. More information about the meeting, including PowerPoints, is also available at <http://www.ncsl.org/?tabid=17216>. For more information about the NCSL Foundation Partnership for PPPs for Transportation, see <http://www.ncsl.org/default.aspx?tabid=17528>.

The NCSL Foundation Partners Project on Public-Private Partnerships (P3s/PPP) exists to link legislators, legislative staff and interested private sector 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.

One purpose of this 18-month Project is to develop and offer educational sessions. This pre-conference meeting on public-private partnerships at NCSL's Spring Forum in Washington, D.C., examined the place of PPPs in a state legislature's toolbox of transportation funding options. This meeting will inform the Partners Project Steering Committee as it embarks on a year-long analysis of PPPs with the goal of developing a toolkit for state legislatures to use as they assess the appropriateness of PPPs for addressing transportation infrastructure needs.

After opening remarks from *Senator Pamela Gorman of Arizona, Fred Lewis of the West Virginia Legislature* and *Jennifer Aument of Transurban*, the pre-conference was comprised of

six educational sessions. The first was a **Transportation Funding Overview** relating to reauthorization, the urgent problem of funding shortfalls and a summary of the fresh ideas offered by the recent report of a SAFETEA-LU mandated commission. To begin the session, the moderator, *Pete Nonis (AAA)*, gave a summary of issues and trends in federal transportation funding. *Joung Lee (AASHTO)* then spoke about trends impacting the Highway Trust Fund and AASHTO's policy, finance and funding recommendations for surface transportation reauthorization. *Rob Atkinson (National Surface Transportation Infrastructure Financing Commission)* closed the session with a review of the findings of the Commission regarding the transportation funding crisis and what to do about it, with PPPs as one financing opportunity and a federal funding system based on more direct "user pay" charges—such as a vehicle miles traveled (VMT) fee—as the long-term recommendation.

The second session, **Public-Private Partnerships 101**, moderated by *D.J. Gribbin (Macquarie Capital)*, provided information on the basics of PPPs from legal, finance, procurement and operations viewpoints. *Pamela Bailey-Campbell (Parsons Brinckerhoff)* presented on the many PPP options available, infrastructure as an asset class, the contexts for PPPs in the United States and internationally and several case studies. *Karen Hedlund (Nossaman LLP)*^{*} then reviewed key elements of authorizing legislation and authorized agreement provisions, legislative obstacles to PPPs and the PPP model legislation developed by Nossaman and introduced in Arizona this year as SB 1463. *John B. Miller (Barchan Foundation, Inc. and Patton Boggs LLP)* concluded by discussing PPPs worldwide, the ABA model procurement code and options for where the money can come from as well as—perhaps more importantly—how a project is delivered. He remarked on the typical cost savings of 40 percent for combined project delivery methods.

Session three, **International Perspectives on Transportation PPPs**, was moderated by *Len Gilroy (Reason Foundation)*, who remarked that the United States is now rediscovering—and can learn from—what is being done with PPPs globally. *David Epperson and Elizabeth Jones (Center for Finance Strategy Innovation, University of Texas at Dallas)*, authors of the Texas 2008 *Report of the Legislative Study Committee on Private Participation in Toll Projects*, reviewed international highway PPPs and PPP providers, project types, advantages and risks, best practices, lessons learned and critical and emerging issues—as well as why the United States is the last industrialized country to look seriously at PPPs. *Cameron Gordon (City University of New York—College of Staten Island and University of Canberra, Australia)* presented the case study of Melbourne, Australia, a leader in privatization of multimodal transportation systems, "for better and worse," and he discussed what principles and policy lessons can be learned from that example.

Over two dozen states have laws allowing PPPs, though only a few have made PPPs a key part of their transportation infrastructure process. In the session on **State Experiences with Transportation PPPs**, moderated by *Geoff Segal (Macquarie Capital)*, we heard about Pennsylvania and Virginia, two states that have moved aggressively on PPPs with very different results. *Michele Mariani Vaughn (Pew Center on the States)* discussed her March 2009 report, *Driven by Dollars: What States Should Know When Considering Public-Private*

^{*}*Editor update: Ms. Hedlund joined the Federal Highway Administration as its new Chief Counsel on June 15, 2009.*

Partnerships to Fund Transportation, which analyzed Pennsylvania's failed 2007 attempt to lease the Pennsylvania Turnpike. She recommended that in dealing with PPPs, state policymakers should be well-informed and adopt a long-term perspective, while making sure they have enabling legislation, transparency and accountability, realistic assumptions and a plan for spending the proceeds. *Thomas Pelnik (Virginia Department of Transportation)* presented a very different state perspective, discussing Virginia's extensive experience with PPP projects since the state passed the Public-Private Transportation Act (PPTA) in 1995. He described how PPPs have been one component of the state's integrated transportation program and advised states only to develop projects that are financially feasible with or without private funding, as "a financially healthy organization can make better decisions for the public interest."

Numerous analyses have been completed recently reviewing various aspects of the PPP approach and giving advice to states on how to protect the public interest. In the **Evidence-Based Lessons Learned on PPPs** session, moderated by *Dennis Houlihan (AFSCME)*, two new studies were presented by their authors. *Jeffrey Buxbaum (Cambridge Systematics)* discussed the report he co-authored with Iris Ortiz, *Public Sector Decision Making for Public-Private Partnerships (NCHRP Synthesis 391)*, which examined what information is needed to evaluate the benefits and risks of PPPs, the reliability of this information and how it can be used during decision-making and how the public interest can be protected during the process. Mr. Buxbaum advised the public sector to keep motivations in the right place, to stay involved with monitoring and oversight and to use revenue for appropriate purposes.

Phineas Baxandall (U.S. PIRG) then presented his 2009 report, *Private Roads, Public Costs: The Facts About Toll Road Privatization and How to Protect the Public*. He described criteria that are necessary for the privatization of public functions to make sense and the challenges that transportation PPPs have in meeting such criteria. He advised that the public is best protected by retaining public control, ensuring fair value, having legislatures approve the final deals, as well as by having shorter deals, state-of-the-art standards and complete transparency and disclosure. This session inspired lively debate.

Senator Pamela Gorman (Arizona) presided over the sixth and final session, the **Steering Committee Roundtable on Next Steps**, which featured a facilitated debriefing discussion in which *Bob Johns (Center for Transportation Studies, University of Minnesota)* acted as respondent to the two days' events. It also included a brainstorm session about topic and emphasis suggestions for the next Partnership Project meeting at NCSL's Legislative Summit in Philadelphia this July.

NCSL thanks all of the public and private sector participants in the Partnership Project for their contributions to this event and to the ongoing work of the Project.