State PPP Activity Update 2008

FHWA Chart of State Legislation and PPP Status—Updated 2007

Overview of States with Significant Transportation Public Private Partnership ("PPP") Authority
USDOT Federal Highway Administration Webpage Chart
(Reflects state legislative developments through 2007)
http://www.fhwa.dot.gov/ppp/ppp_legis_table.htm

Two States Passed New PPP Legislation in 2007:

Tennessee

The Tennessee Tollway Act of 2007 gives the state government authority to enter into contracts with a private party for the purposes of developing or operating a tollway or toll facility. No express provision regarding the solicitation or acceptance of unsolicited proposals included. The initial number of tollway projects is limited to two. While existing or partially constructed highways cannot be converted into tollroads, additional lane capacity constructed on or along an existing highway or bridge may be developed and operated like a tollway. Prior legislative approval is required when an individual PPP proposal is received.

Mississippi

Mississippi passed PPP legislation in April 2007. Mississippi allows a governmental entity to accept unsolicited proposals for a new toll road or to solicit proposals. This authority is restricted to construction of new toll roads and bridges for motor vehicle traffic, and toll roads may be constructed only where an alternative untolled route exists. No-compete clauses are prohibited.

Two States Made Changes to Their Legislation in 2007:

Texas

In May 2007, the Texas Legislature enacted legislation that includes a two-year moratorium on using PPP's for some current and proposed projects with several limitations and material exclusions. The new law created a special joint legislative study commission. Other changes included: (a) the maximum term of Comprehensive Development Agreements; (b) CDA reversion/buyback provisions and provisions related to the effect of roads that may compete with CDA toll roads; (c) information disclosure (particularly involving, but not limited to, Trans Texas Corridor projects); (d) the duration of the CDA program in Texas; (e) powers and authorities of the Harris County Toll Road Authority; (f) state/regional cooperation and regional options on development and related powers; (g) ethics and compliance review procedures; and (h) maximum state transportation bond issuance capacity. The most significant of these changes is the new requirement for a market valuation for every new toll project. TxDOT and the local toll agency must agree at the outset on a starting toll rate, a toll-increase formula, and a traffic and revenue forecast used to establish the project's market valuation.

The following *editoral* (Baker Botts' Government Relations) summed up the situation in Texas:

> *The scope and structure of the changes in the Texas PPP provisions reflect several forces: first, the influence of a strong legislative system and the depth of an apparent concern over information flow and the exercise of eminent domain powers, particularly when private entities would have management rights over toll roads in Texas; second, concerns expressed by local, regional, state and federal authorities related to the fair and efficient distribution of powers, authority and approvals that affect highway construction and funding; third, an emerging clarity of different interests between areas of Texas in which highway capacity is considered to be facing crises and those parts of the state in which capacity*

seems to be adequate; and fourth, a concerted interest in having most elements of the CDA programs in Texas come under close legislative review.

http://www.bakerbotts.com/file_upload/TexasLegislativeDevelopments MoratoriumonPrivately-ManagedTollRoads.htm

Florida

Gov. Crist signed a bill into law in the spring of 2007 allowing the Florida Department of Transportation to lease most toll roads in the state to private groups. The leasing provision was included in a far-reaching transportation bill that applies to any existing toll facilities in the state's highway system, except the Florida Turnpike. It also allows private groups to build and operate new roads. Regular toll increases are allowed on all "pay-as-you-go" routes, including the turnpike, to keep pace with inflation. The revisions to Florida's PPP law require all toll roads in the state to inflation-adjust their tolls on a regular basis. Tolling authorities also could raise the fees beyond that at their discretion. Leases would be limited to 50 years, though the new law does leave room for the possibility of extending those agreements to 75 years or more.

Other States Considering PPP Legislation:

Several other States including Pennsylvania, New York, Illinois, and New Jersey, are considering PPP legislation.

Pennsylvania

Pennsylvania is considering legislation for leasing or otherwise "monetizing" the Pennsylvania Turnpike and assumes inflation-indexed tolls. SB1280 in the Pennsylvania Senate proposes to privatize the business operations of the Pennsylvania Turnpike under a 50 year lease concession agreement. The bill would require the state's Transportation Commission to negotiate "public private partnerships" for operating the Turnpike. SB1280 would also establish a Pennsylvania Transportation Development Fund to manage the fee from the concession, devoting the proceeds to investments where the yields could only be used for transportation.

New York

In New York, Gov. George Pataki (R) proposed legislation that would permit tolls and PPPs for existing and new transportation infrastructure. It would apply to both state and New York City entities, would permit the sale or lease of existing projects, and provides for RFPs and unsolicited proposals.

Illinois

The Illinois legislature is considering PPP legislation for inflation-indexed tolls.

New Jersey

New Jersey PPP legislation under consideration is also based on inflation-indexed tolls.

Recent Publications

The Role of PPPs in Addressing Congestion
By Michael Saunders
Public Roads Magazine
July/August 2007
Private sector investments in the transportation system may help reduce gridlock on U.S. roadways.
The current growth in the number of public-private partnerships (PPPs) in the United States — as evidenced by PPP projects in Florida, Georgia, Oregon, Texas, and Virginia — hints at an impending change in the delivery of transportation projects. SAFETEA-LU helped set the stage, offering new Federal guidelines and procedures to promote PPPs and harness private sector innovations. This Federal support, combined with a positive response from the financial industry, has emboldened State and local government officials to explore new project delivery methods and financing tools. A look at new Federal and State policy initiatives and current projects

nationwide in a long-term, sizable transaction pipeline helps shed light on the role that PPPs could play in helping to deliver tomorrow's highway program and relieve the strain caused by growing congestion.
http://www.tfhrc.gov/pubrds/07july/index.htm

State Transportation Funding in 2007
Ronald Snell, National Council of State Legislators
October, 2007
Transportation funding issues continued to trouble legislators in 2007. There is general agreement that the capacity and maintenance of highways and other forms of transportation falls short of meeting the nation's transportation needs.
http://www.ncsl.org/programs/fiscal/xportn07.htm

Surface Transportation Funding: Options for States
National Conference of State Legislatures
Matt Sundeen and James B. Reed
May, 2006
This recent NCSL report discusses the issues and possible funding mechanisms for addressing them. State lawmakers find themselves at a critical juncture for making decisions about investments in the nation's surface transportation system. By many standards, U.S. transportation needs are growing. On the nation's highways, more people are traveling more miles—vehicle miles traveled have grown by more than 35 percent since 1990—than at any point in the history of the country. Freight shipments through the United States are expected to double in volume by 2020, and truck travel connected to international trade should double by 2015. The demand for public transportation services has increased by 23 percent since 1995 and is at its highest point since World War II. Since 1993, urban traffic has increased 45 percent, while rural highway traffic has increased 23 percent. Traffic congestion on U.S. highways is estimated to cost Americans nearly $65 billion each year in wasted time and fuel. In addition, in the aftermath of the events of September 11, 2001, Hurricane Katrina and other natural disasters, many states are confronted with billions of dollars of new and unexpected costs for security and the replacement of damaged transportation infrastructure.
http://www.ncsl.org/programs/pubs/summaries/014233-sum.htm