

The Value of Public/Private Partnerships

Response on Congressional Resistance to States Using Public/Private Partnerships in Transportation Financing

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Value of Public/Private Partnerships

In light of growing highway demand and the shrinking value of gasoline tax revenues, states are finding help in the growing trend of financing transportation infrastructure through public private partnerships (PPPs).

PPPs are contractual relationships between the public sector and a private entity. These partnerships generally allow a company to build, operate and maintain transportation infrastructure. In return, the company is sometimes authorized to collect a toll on the road for a specified length of time.

Other forms of partnerships allow the public to retain full control of the asset once the private contribution is fulfilled.

There are many benefits associated with a PPP. They include leveraging private dollars for public use, shifting risk from taxpayers to the private sector, and lower costs.

In January, Washington Policy Center published, "The Case for Public/Private Partnerships in Transportation Planning," which explains the many different forms of PPPs and their benefits.¹

In recent years, the United States Department of Transportation (USDOT) has worked with states to enter into these partnerships with the private sector as another financing option for transportation projects. Highlighting this effort is the creation of the National Strategy to Reduce Congestion, which includes a PPP element.

Former Transportation Secretary Norman Mineta remarked, "We will encourage more states to find ways to open up their transportation infrastructure to private investment opportunities.... Our goal will be to greatly expand the list of states that have flexible laws to permit greater private-sector involvement in transportation projects."²

Congressional Opposition

But in a recent letter to state transportation leaders, Congressman James Oberstar, Chairman of the House Committee on Transportation and Infrastructure and Congressman

¹http://www.washingtonpolicy.org/Transportation/LegMemo_publicprivatepartnerships.html

² <http://www.dot.gov/affairs/minetasp051606.htm>

Peter DeFazio, Chairman of the Subcommittee on Highways and Transit ostensibly want to eliminate, or at least limit this new tool for states.

They warn that partnerships may not fully protect the public interest and jeopardize the integrity of the national highway system. The letter begins,

"We write to strongly discourage you from entering into public-private partnership ("PPP") agreements that are not in the long-term public interest in a safe, integrated national transportation system that can meet the needs of the 21st Century. Although Bush administration officials have lauded PPPs at every turn, the Committee on Transportation and Infrastructure of the U.S. House of Representatives believes that many of the arrangements that have been proposed do not adequately protect the public interest. The Committee will work to undo any state PPP agreements that do not fully protect the public interest and the integrity of the national system."³

This reversal of Congressional support not only jeopardizes dozens of existing partnerships across the country but also suggests doubt on the future of PPPs.

Analysis

There is little doubt that private sector participation is an effective instrument for building transportation infrastructure. Many states are facing the critical reality that without the ability to leverage private dollars, funding becomes insurmountable. And state policymakers are in the best position to decide which projects are important and how best to pay for them.

Unfortunately, the letter by Congressman Oberstar and Congressman DeFazio suggests that state policymakers are incapable of making the *right* decisions for their own citizens and somehow require the federal government's assistance in correcting themselves.

The letter goes on to define two main standards that decide whether a PPP meets their approval, 1) Does the PPP meet the long-term public interest? and 2) Does the PPP risk the integrity of the national highway system?

The problem is these measures can be construed so broadly that virtually any partnership could fail their test.

1) Does the PPP meet the long-term public interest?

The definition of a *public interest* can mean anything to anyone. Dr. Stephen King of the Public Interest Institute writes that some political theorists challenge the concept of the "public interest" because of its "vagueness and its need to be elastic, applicable to as many individuals and groups as possible." It is this "political elasticity" that Dr. King explains, "forces [the concept] to be effectively meaningless."⁴ In other words, Congressman Oberstar's "public interest" test could be interpreted to render any public/private partnership outside the public's interest.

³ Letter from James L. Oberstar, Chairman, Committee on Transportation and Infrastructure and Peter A. DeFazio, Chairman, Subcommittee on Highways and Transit, May 10, 2007.

⁴ Stephen M. King, Ph.D., "What Is 'The Public Interest?'" Public Interest Institute: *Facts & Opinions*, Vol. 13, No. 2, May 2007.

2) Does the private sector risk the integrity of the national highway system?

There has never been a centralized landlord for the national highway system. These roadways "have always been under diverse control of the 50 state DOTs, metropolitan planning organizations, counties, cities, public toll authorities, bi-state agencies, and a few private facilities," says Robert Poole and Peter Samuel of the Reason Foundation.⁵ In every example across the country, the private partner must meet strict permitting, design, construction and maintenance requirements defined by the state and federal government. Diversifying the financing model for public transportation infrastructure does not jeopardize an already decentralized roadway system.

Furthermore, usurping the freedom of states to enter into legal and contractual arrangements to build local infrastructure perhaps violates state's rights and the spirit of the Tenth Amendment of the Constitution.

The amendment recognizes local rights by declaring, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."⁶

The American Legislative Exchange Council (ALEC) agrees and opposes the Congressional effort to limit these partnerships. "It would be almost totally unprecedented and a violation of the principle of federalism for Congress to begin micro-managing the construction and funding of state highways at a time when our state governments are facing increasing demands for new roads."⁷

Conclusion

Congressman Oberstar and DeFazio's letter is a unique window into a political debate that is taking place at the federal level on whether the private sector has a role in transportation financing and if so, whether the federal government should have a regulatory role in the process.

The current administration and the USDOT have encouraged states to make it easier to enter these agreements and they have been tremendously effective at expanding local infrastructure. The market of public/private partnerships, if allowed to naturally evolve, is a powerful financing tool that states leaders choose to use to keep pace with the rising demand on their road system.

A good manager does well when his leadership eliminates barriers-to-success within an organization. Much like this manager, the federal government's role should work with the same objective. Instead, Congressman Oberstar and Congressman DeFazio are working to build barriers, rather than remove them.

The choice of whether or not to engage the private sector in public policy should rest with local leaders, not a single, centralized bureaucracy in Washington DC.

Michael Ennis is director of the Center for Transportation at Washington Policy Center, a non-partisan public policy research organization in Seattle and Olympia. Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body. For more information contact WPC at 206-937-9691 or online at [washingtonpolicy.org](http://www.washingtonpolicy.org).

⁵ Robert W. Poole & Peter Samuel, "Federal Interference in State Highway Public-Private Partnerships is Unwarranted." Reason Foundation, May 22, 2007.

⁶ <http://usinfo.state.gov/usa/infousa/facts/funddocs/billeng.htm>

⁷ <http://www.alec.org/2/3/federal-affairs-news.html>