THE OTHER GREEN: Financing Green Transportation Projects

Michael Vaccari
and
Virginia Wong
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What Is A “Green” Project

• Reducing congestion?
• Getting cars off the road?
• Brownfield rehabilitation?

For our purposes today, all of these are Green Projects
American Society of Civil Engineers
Report Card for American Infrastructure

ROADS: D-

- One-third of the nation’s highways – interstates, freeways and major road – are in poor or mediocre condition.
- 36% of major urban highways are congested.
- The current spending level of $70.3 billion per year for highway capital improvements is well below the estimated $186 billion needed annually to substantially improve the nation’s highways.

BRIDGES: C

- More than 26% of bridges are either structurally deficient (12.1%) or functionally obsolete (14.8%).
- ASCE recommends that a $17 billion annual investment is need to substantially improve current bridge conditions. The current spending level of $10.5 billion annually
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• RAIL: C
  • Demand for freight transportation is projected to nearly double by 2035—
  from 19.3 billion tons in 2007 to 37.2 billion tons in 2035.
  • An estimated $148 billion in improvements will be needed to accommodate the projected rail freight demands in 2035.

• TRANSIT: D
  • Transit use increased 25% between 1995 and 2005, faster than any other mode of transportation.
  • The Federal Transit Administration estimates that $15.8 billion is needed annually to maintain conditions and $21.6 billion is needed to improve to good conditions.
  • In 2008, federal capital outlays for transit were only $9.8 billion.
Funding Tools

• Traditional Tax-Exempt Bonds
• Private Activity Tax-Exempt Bonds
• Build America Bonds
• Public Private Partnerships
• TIFIA Credit Program
Traditional Tax-Exempt Bonds

• Commonly used throughout the United States
  – New York State Thruway Authority
  – Massachusetts Turnpike Authority
  – Puerto Rico Highways Authority
• Tax-exempt rates and no federal volume limitations.
• Usually supported by tolls, certain dedicated taxes and fees.
• Requires governmental ownership.
• Can be advance refunded once. No limits on current refundings.
Traditional Tax-Exempt Bonds - Restrictions on Private Use

- No private ownership of financed projects.
- No leases to private persons.
- No loans to private persons.
- Limited ability for private management or operations under IRS guidelines.
  - Term limitations.
  - Compensation limitations.
  - Distinguish between design/build and design/build/operate.
Tax-Exempt Private Activity Bonds

- SAFETEA-LU permits transportation projects receiving Title 23 federal funding to be financed with Tax-Exempt Private Activity Bonds (PABs):
  - Any surface transportation project
  - International bridges or tunnels authorized under federal or state law
  - Truck and rail freight transfer facilities (including temporary storage facilities).
  - Total amount of $15 billion of PABs to be allocated by Secretary of US Department of Transportation.
  - No limitations on private use as long as the PABs are issued through a governmental entity and other requirements are met.
PAB Issuance – General Approval

• PABs must be issued by a governmental entity subject to a public hearing and approval process.

• PAB proceeds can be used by a private entity through a loan or lease agreement or used by a public owner to finance a project.

• PABs are typically issued on a non-recourse basis by the governmental entity serving as a conduit only – with no credit exposure to the underlying private borrower.

• The governmental entity is free to impose other requirements on the PABs issuance (e.g., issuer fees).

• Alternatively, a governmental entity may own the project, issue PABs and enter into an agreement with a private partner to design, build and operate a project and share operating risk and revenues.
PABs Requirements

- 95% of PAB net proceeds must be spent on qualified project costs. Reimbursement of pre-issuance costs permitted with a statement of “official intent” by a governmental issuer.

- Qualified project costs generally include hard and soft construction costs (including interest during construction). Additional limitations on financing of land and existing property apply.

- For privately-owned projects, assets financed with PABs must be depreciated on a straight-line basis over specified asset class lives (20 year asset class life for roads).

- PABs proceeds must be spent no later than 5 years after issuance; any unspent PAB proceeds must be used to redeem outstanding bonds within 90 days after the end of the 5 year period (unless the Secretary of the Treasury grants an extension).

- The weighted average maturity of the PABs cannot exceed 120% of the reasonably expected weighted average economic life of the project.

- PABs can be refunded with new refunding PABs not subject to the $15 billion cap under SAFETEA-LU. The amount of refunding PABs cannot exceed the amount of the outstanding refunded PABs.
Build America Bonds

- Build America Bonds are new subsidized taxable bonds.
- Through December 31, 2010, state and local governments may elect to issue Build America Bonds in lieu of traditional tax-exempt bonds.
Two Options for Issuers

- Tax credit bonds that pays investors both taxable interest and a federal tax credit equal to 35% of that taxable interest.

- Alternatively, issuers of Build America Bonds may elect to receive a refund from the IRS equal to 35% of the interest paid on the bonds in lieu of investors receiving the tax credit.
  - Issuers must file refund claims with the IRS in connection with interest payment dates.
  - Once the election has been made, it cannot be changed.
Build America Bonds-
Permitted Uses

• Generally, Build America Bonds may be issued for any purpose for which tax-exempt governmental bonds may be issued (no private activity bonds).

• Working capital financings are not permitted and refundings are generally not permitted.

• The Act provides that high-speed rail facilities eligible for tax-exempt financing include facilities reasonable expected to obtain a top speed of 150 miles per hour (rather than an average speed of 150 miles per hour).
Build America Bond Issuance By State
2Q ’09

TOTAL ISSUANCE: $15.3 billion

> $1 billion
$501 million - $1 billion
$101 million - $500 million
Under $100 million

NIXON PEABODY
PUBLIC PRIVATE PARTNERSHIPS

• A Public-Private Partnership ("PPP") is a contractual agreement between a public agency (federal, state or local) and a private sector entity, where the private sector entity contracts to deliver an infrastructure service on behalf of the public agency, with the agency retaining ultimate responsibility to the public for the service.

• Risks and rewards from delivery of the service are allocated through a contractual partnership.

• Generally involves a long-term lease of a public asset by a private operator.
PPP Models For New Projects

- Design- Build (DB)
- Design-Build-Maintain (DBM)
- Design-Build Operate (DBO)
- Design-Build-Operate-Maintain (DBOM)
- Build-Own-Operate-Transfer (BOOT)
- Build-Own-Operate (BOO)
- Design-Build-Finance-Operate/Maintain
PPP Models for Existing Projects

- Service Contract
- Management Contract
- Lease
- Concession
- Divesture
Concession Agreement Structure

Concessionaire will typically pay an upfront fee in exchange for future revenues

Public Entity Retains

- Up-front payment from Private Party
- Oversight of Operation
- Rights to mandate operating performance under the agreement
- Rights to expand/enhance asset beyond those specified in the agreement.
- Right to terminate if Private Party fails to perform

Private Party Accepts

- Construction duties and related construction risk
- All operating responsibilities and costs
- Requirements to expand/enhance the asset and related costs.
- Reporting responsibilities to public body.
- Revenues generated by asset throughout the life of the agreement.
Availability Payments Structure

Concessionaire will build and/or operate an asset in exchange for a regular payment stream from the public entity

- Transfer risk of construction, financing and operating and maintenance.
- Introduction of service and/or performance standards.
- Increases the certainty of execution.
- May accelerate funding and project completion.
TIFIA Credit Program

• Transportation Infrastructure Finance and Innovation Act was passed in 1998.

• Provides credit assistance (direct loans and loan guarantees) for eligible surface transportation projects.

• Generally, minimum project size $50 million.

• Repayment – any dedicated, non-Federal source.

• Any state, local government or private equity can be a project sponsor.
Revenue Options Used by TIFIA Borrowers

- Tolls
- Availability Payments from State (subject to appropriation)
- Special tax districts/tax increments
- Rental Car Customer Facility Charges
- Lease Revenue
- Developer contributions
- Local option sales taxes
- Tobacco Settlement Revenue
TIFIA Projects ($$ in Millions)

Total TIFIA Assistance: $5.4 Billion
Total Project Investment: $20.6 Billion
TWO CASE STUDIES

• **Capital Beltway** – high occupancy toll lanes funded with equity, PABs and TIFIA

• **DC to Dulles Metrorail Link** - toll-financed extension of Washington Metrorail system, funded from certain dedicated taxes, traditional tax-exempt bonds and BABs.
Capital Beltway: A Key Washington Metro Area Facility
The Capital Beltway High Occupancy Toll Lanes (“HOT Lanes”) Project is a P3 between Transurban (USA) Development Inc. and Fluor Enterprises, Inc (the “Sponsors”), and Virginia Department of Transportation (“VDOT”).

The Project is being constructed on an approximate 14-mile length of the Capital Beltway in northern VA under a design-build contract between the Capital Beltway Express LLC (the “Concessionaire”) and Fluor-Lane LLC (the “Contractor”).

The Project targets alleviating regional congestion in the Northern VA corridor by (1) allowing for traffic to move more freely on the Capital Beltway and (2) reducing cut-through traffic in various neighborhoods.
The Project will be one of the first toll facilities in the US to use dynamic congestion pricing.

The HOT Lanes will also serve as High Occupancy Vehicle ("HOV") lanes with free passage for vehicles with 3 or more occupants and transit and emergency vehicles; trucks will not be permitted on the HOT Lanes.

The borrower is the Capital Beltway Express LLC, which entered into an agreement with VDOT (the "ARCA") to design, build, finance, operate and maintain the Project under an 80-year concession agreement, which includes the 5-year, non-operational construction period.
Capital Beltway: Project Need

- I-495 is the primary access to many of metropolitan Washington, D.C.’s employment and housing markets. Traffic demand over the past 10 years has resulted in travel time increasing by 12 to 15 minutes during the traditional 7-9 a.m. peak and the broadening of the peak to a 6-9 a.m. period with heavily congested traffic.

- The Beltway currently experiences 6 to 8 hours of congestion per day.*

- There are no other alternative primary routes that can carry this traffic. There are no HOV lanes on I-495 and there is hardly any transit activity, despite the relative density of development. Commuters lose an average of 69 hours a year sitting in traffic.*

- Congestion costs the local economy nearly $5.5 billion a year.*

- There is minimal ability to build out corridor due to physical constraints and social impacts.

*Data from the Texas Transportation Institute
DC To Dulles Metrorail Project
DC To Dulles Metrorail Link: Project Overview

- The DC to Dulles Metrorail Link is being constructed in two phases by the Metropolitan Washington Airports Authority (“MWAA”).
- Project will be comprised of 23.1 miles of new rail and 11 new stations.
- Project will be constructed by MWAA and then operated by WMATA.
- Phase One of the Project is being funded from multiple sources:
  - Tax-Exempt Bonds
  - Build America Bonds
  - Federal Transit Administration Grant
  - Contributions from the Commonwealth of Virginia and Fairfax County, Virginia
DC To Dulles Metrorail Link: Project Overview

- In November 2008, MWAA began operating the Dulles Toll Road pursuant to a Permit and Operating Agreement with the Virginia Department of Transportation.

- Total Metrorail Project cost is estimated at $5.25 billion of which $2.77 billion is expected to be funded from bond proceeds.

- Tolls collected from users of the Dulles Toll Road are pledged to the repayment of the Tax-Exempt Bonds and the Build America Bonds.
DC To Dulles Metrorail Link: Project Need

• Dulles Toll Road has been in operation for almost 25 years. Inner median had always been reserved for rail.

• Improves mobility options in the Dulles Corridor by increasing person travel capacity by as much as 50%.

• Ridership expectations:
  – 63,000 daily person trips – Phase 1
  – 95,000 daily person trips – Phases 1 and 2
  – 10,000 parking spaces – Phases 1 and 2