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Transportation Policy Review

MAP-21 Transportation Bill Boosts P3s

By Robert W. Poole, Jr., Director of Transportation Studies, Reason Foundation

Private development of infrastructure fared well in the two-year surface transportation authorization bill, MAP-21 (Moving Ahead for Progress in the 21st Century Act), which was passed on June 29. Most importantly, the US Dept. of Transportation's TIFIA loan program went from $122 million now to $750 million in fy 2013, and $1 billion in 2014. The bill also increases the maximum project cost share that TIFIA can cover from 33% to 49%.

The increased TIFIA funding will be available in three months. Expectations are high. There is an urgent demand for loans from key projects like the Tappan Zee Bridge replacement in New York ($5.4 billion), the East End Bridge in Indiana ($1.45 billion), I-95 in Virginia ($927 million), and the North Tarrant Express in Texas ($1.5 billion). In all, according to Chris Bertram, USDOT's CFO, 16 public and private projects are currently awaiting TIFIA loans.

The title of the TIFIA section, "AMERICA FAST FORWARD FINANCING," causes some concern among P3 industry participants, however, because of the long lead times for complex P3 project financings. The TIFIA credit committee at US DOT has approved only a total of $9.2 billion in TIFIA loans to 28 projects worth $36 billion since final regulations were written in 2000.

Sean Connaughton, Virginia Transportation Secretary, who oversees the largest state P3 program in the country, says, "We got what we want [in the bill]. Now we have to deliver."

VDOT is working with European concession developers on a number of projects, he says, "and they're all looking over their shoulders at the situation back home. There is so much uncertainty in the financial markets overseas that you worry whether they'll be able to come up with the private financing."

The big picture: The House of Representatives passed the conference bill, H.R. 4348, by a vote of 373 to 52 and the Senate, by 74 to 19. The bill provides no new money and still requires a transfer of $20 billion from general funds to meet programmed spending through September 2014. Increasing the gas tax and other user fees to deal with declining gas useage and tax revenues was not addressed in MAP-21.

Against that backdrop, the six-fold increase in TIFIA spending authority is a big vote of confidence. "Certainly the increase in TIFIA will help deal with the pent-up demand," says Jane Garvey, former FHWA admininistrator, who chairs Meridiam Infrastructure, the largest investor in U.S. P3 transportation projects. The bill is "good news generally, and good news for P3s," she says.

Disappointments

There were also some disappointments for P3s in the bill:

- It did not increase USDOT's private activity bonds (PAB) authority, a key component of P3 project financings;
- Incentives for sponsors to submit TIFIA applications prematurely are still strong;
- Provisions to revamp the Federal Railroad Administration's RRIF loan program were ignored;
- USDOT was given new authority to assemble standardized P3 contract documents and best practices, which could lead to federal regulation of individual deals.

More broadly, the conference dropped Senate provisions that would have eliminated the PAB volume cap for water and sewer bonds, and would have authorized state infrastructure banks to issue tax-credit bonds (TRIPs) for transportation projects.

There may be a chance for another look. Bryan Grote, a principal at Mercator Advisors, believes a technical corrections bill may be needed, given the speed with which the conference bill was conceived. "To the extent that there are any truly glaring inconsistencies or technically problematic provisions (especially in the finance-P3-tolling space) we should help folks identify / catalogue them," he says. n

ARTBA On Environmental Streamlining

ARTBA, which has been campaigning for years for environmental streamlining, is pleased with the bill. Nick Goldstein, Vice President of Environmental & Regulatory Affairs and Assistant General Counsel, of ARTBA explains:

"The conference report includes two of ARTBA's long-held priorities in reforming the review and approval process: greater "lead agency authority" for the USDOT, and the integration of the planning and NEPA processes. USDOT (or a modal agency of its choice), as lead agency, now has the option to call a meeting of participating agencies and set a schedule for the review process.

Additionally, there is a dispute resolution process which can now be used to resolve differences between cooperating agencies. Also, the conference report allows for the utilization of planning process documents in the NEPA process, though it does not mandate such use. Still, this is an improvement over the current process as it provides an opportunity to avoid duplication of work.

MAP-21 also will allow for the expanded use of the categorical exclusion (CE) process in a number of additional areas. The CE process, which is the least rigorous form of review, is used where projects will only have minimal, if any, environmental impacts. CEs may now be used for: projects within an existing right-of-way; certain components of multi-modal projects; repair and reconstruction of existing roads, highways and bridges; projects damaged by natural disaster; and projects receiving minimal federal funds.

The conference report allows projects developing a final environmental impact statement (FEIS) to simply attach a document showing changes to the original environmental impact statements (EIS) when additional information is so minor that it does not warrant preparation of a completely new document. Additionally, projects in the EIS phase for more than two years have the option of requesting the USDOT to set a schedule to ensure the project will be completed within four years.

The conference report also continues SAFETEA-LU's efforts to delegate responsibilities to states, allowing all states to assume control of either CEs or the entire environmental review process. Additionally, states are allowed to use Surface Transportation Program funds to cover legal costs associated with delegation.

The conference report narrows the 180-day time limit to file lawsuits on a project decision started in SAFETEA-LU to 150 days.

Further, the bill would establish time limits on permitting decisions. Agencies must issue decisions on permits for transportation projects within 180 days of the application or the final NEPA decision on the project, whichever is later."