

PUBLIC-PRIVATE TRANSPORTATION ACT

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Statement of the Issue

Virginia's Public-Private Transportation Act of 1995 (PPTA) has become the primary means for constructing large transportation projects, expanding beyond its original purpose and shifting power to the governor and the private sector. The PPTA allows private entities to enter into agreements with the state to construct, improve, maintain, and operate transportation facilities. Yet experience with PPTA projects and proposals indicates that the statute is flawed and raises significant doubts about how well it serves the public interest.

Background

The PPTA is designed to facilitate private investment in public transportation facilities. It allows both solicited and unsolicited proposals, and is viewed by its supporters as a way to make needed improvements and additions to the transportation system sooner, more cheaply, and more efficiently than with public funds alone. Projects undertaken under the PPTA or its predecessor include the Dulles Greenway and Route 28 interchanges in Northern Virginia and the Pocahontas Parkway (Route 895) and Route 288 in Richmond.

The number of PPTA projects is expanding rapidly. There are 10 additional PPTA projects currently underway, under contract, or under consideration, including the Downtown/Midtown Tunnel, a new 460, the Coalfields Expressway, 495 HOT lanes, 95 HOT lanes, Dulles Rail, and privatization of the Port of Virginia. The McDonnell Administration has created an Office of Transportation Public-Private Partnerships (OTPP), directed some multimodal funds to this office, made it clear that it views the PPTA as a key element of its strategy for delivering new transportation projects, and made billions of dollars worth of PPTA deals.

The track record of PPTA projects raises serious questions and highlights the fact that the primary concern of PPTA developers is maximizing profit, not the public interest. Among other things, potential costs and liabilities to taxpayers have often been underestimated or not provided to the public. The current proposal to build a new 460 would pour \$1.1 billion of state funds into this project, for example, which was originally projected to cost tax-

payers little or nothing. Bonds for the Pocahontas Parkway previously were downgraded and placed on a watch list by credit agencies since traffic and toll revenues have been lower than expected. In addition, tolls imposed and private sector profits can be staggering. Under the Midtown/Downtown Tunnel deal, tolls will escalate by 3.5% or more each year through 2070, state taxpayers must compensate the builder for lost revenue if a competing project is built, and the developer can earn a hefty 13.5% profit margin.



Although the PPTA could be an innovative tool for getting transportation projects funded and built, there are many problems with the Act and its implementation, including concerns that:

It undermines sound transportation planning by advancing projects that are not high priorities for the public and making a claim on state revenues at the expense of other projects.

There has been a lack of information about potential costs to taxpayers and potential risk to the state's bond rating, despite amendments to the state code aimed at addressing this.

Opportunities for public input into the PPTA process are limited, and localities have not been given timely notice of key terms or an opportunity for meaningful input.

Environmental review of proposals is circumvented or undermined, among other things due to

PUBLIC-PRIVATE TRANSPORTATION ACT RECOMMENDATIONS

Support PPTA reform. Legislation to improve the PPTA is needed. Potential measures include:

- * Limiting proposals under the PPTA to projects contained in state transportation plans and to projects with complete, independent environmental studies.
- * Requiring greater public and local government input into each proposal (such as public disclosure of a cost-benefit (value for money) analysis prior to moving to procurement and holding public hearings at an early stage of review and at least 30 days before a comprehensive agreement is signed).
- * Requiring approval by the CTB and/or the General Assembly prior to signing a comprehensive agreement.
- * Regulating the allowable rate of return.
- * Redefining the process to ensure that bidding is competitive.
- * Requiring significant private sector equity contributions and giving priority to proposals that retain public control of any public asset involved.
- * Requiring evaluation of the impacts of proposed projects on land development patterns.
- * Requiring projects to incorporate context sensitive design, pedestrian and bicycle facilities, low impact development, and other measures to avoid and minimize adverse environmental impacts.

Oppose additional taxpayer funding until the PPTA is reformed. The General Assembly should not provide any additional funds for specific projects or for the Transportation Partnership Opportunity Fund it created to support PPTA projects until the PPTA is reformed. Moreover, project developers should not be allowed to receive anticipated future general fund revenues under any circumstance.

the prioritization and advancement of a proposal before alternatives have been evaluated.

Requirements for competitive bidding are inadequate, and have allowed a project proponent or bidder in the first phase of a proposal to establish a sole-source arrangement for later phases.

It creates incentives for sprawl, driving, and environmental damage. Most PPTA projects built or proposed thus far have been highway construction that will subsidize sprawl and increase motor vehicle dependence, destroying open space and increasing air and water pollution.

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