



# Border Finance Conference

## **SAFETEA-LU INNOVATIVE FINANCE**

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# Provisions of Interest



- Private Activity Bonds
- Enhanced toll provisions
- State Infrastructure Banks
- TIFIA changes
- NEPA risk

# Private Activity Bonds



- Interest on bonds issued by state and local governments to finance activities of private persons is taxable unless exemption applies
- Amendment to Section 142 expands definition of exempt facilities to “qualified highway or surface freight transfer facilities”

# Private Activity Bonds



- “Qualified” facilities
  - Any surface transportation project receiving Title 23 funds
  - International bridges/tunnels receiving Title 23 funds
  - Freight transfer facilities (truck to rail or rail to truck) receiving Title 23 or Title 49 funds
- Federal requirements (incl. Davis Bacon prevailing wage rates) apply

# Private Activity Bonds



- Bonds must be issued by government entity
- \$15b allotment, allocated by Secretary
  - No annual limit
  - No state limits
- Cap not applicable to current refundings meeting specified requirements

# Private Activity Bonds



- Likely will stimulate more private sector investments
- Should lower the cost of financing of freight intermodal projects

# Tolling of Interstates



- General prohibition on tolling federal-aid highways
- Section 129 allows tolling under specified circumstances, generally excludes interstates

# Tolling of Interstates



- Express Lanes Demonstration Program
  - Existing HOV lanes (variable pricing required)
  - Additional tolled lane capacity
  - New lane added to non-tolled facility
  - Only non-cash tolling is allowed
  - Contemplates private investment and allows reasonable return on investment

# Tolling of Interstates



- Value Pricing Program Continued
  - Where tolling has potential to reduce congestion, improve system performance, promote mobility
  - 15 states already selected
  - Ability to use for new facility?

# Tolling of Interstates



- Reconstruction Pilot Program Continued
  - Three pilot projects permitted
  - Tolling must be the only way to finance the project

# Tolling of Interstates



- New Construction Toll Pilot Program
  - Three pilot projects permitted
  - May be multistate cooperative effort
  - “most efficient and economical way to advance the project”
  - Contemplates private investment
    - ✓ Does not prohibit non-compete clauses
    - ✓ Certain clarifications advisable

# Tolling



- States may allow single occupant vehicles to use HOV lanes subject to toll (separate from Express Lanes program)
  - Automatic toll collection required
- States may allow hybrids to use HOV lanes
  - Can be free or subject to toll
- Use must stop if operations degrade

# State Infrastructure Banks



- Authorizes all States to participate in creating Banks; States that had pilot banks (MO, RI, CA, FL) may retain them
- Separate accounts for highways and transit
- Allows up to 10% of apportionment to be deposited
- Authorizes creation of a rail account
- Projects eligible under Title 23 and Title 49 are eligible for funding

# TIFIA Changes



- Threshold for project size reduced to \$50 million
- Public-private partnerships may apply directly for TIFIA assistance
- Public freight facilities as well as private facilities with public benefits are eligible for TIFIA assistance
- Deletion of 183(c) means TIFIA may be used for refinancing that provides additional funding capacity for completion, enhancement or expansion of a project

# NEPA Risk



- New 180-day statute of limitations for NEPA approvals
- If no action filed, risk becomes nil
- If action is filed, project proponent will need to address risk in financing plan; may decide to defer project development

# Contact



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