

Recommendations for Spurring Investment in Infrastructure in Puerto Rico

Transportation and infrastructure investment is directly tied to economic growth. This letter identifies potential opportunities and recommendations for spurring public and private sector investment in such projects in Puerto Rico. While legislation is required to implement some of the recommendations, federal department and agency heads have authority to implement others on their own. I have been an engineer and general contractor for over four decades, having served in the Board of Directors of the General Contractors Association of Puerto Rico for six years. I share concrete proposals in the hope of providing a pathway for much needed investment in infrastructure for the Territory of Puerto Rico.

I. Ease the Burden of Funding Transportation Projects

U.S. Department of Transportation (USDOT) Secretary Anthony Foxx entered into a Memorandum of Understanding with Governor Alejandro García Padilla on February 25, 2016 to make it easier for Puerto Rico to access federal funds for highway projects. The Federal Highway Administration (FHWA) agreed to assist Puerto Rico transportation officials with accessing about \$400 million in previously obligated federal funds for transportation projects, using \$756 million in toll credits retroactively for the required funding match for transportation projects and streamlining the federal environmental review process.¹ This will allow for full federal funding of certain (already pending) transportation projects.

The following reforms could spur additional transportation investment:

- Authorize Puerto Rico to sell a portion of its toll credits to other states, and utilize the proceeds for transportation (and potentially other infrastructure) projects. Congressman Dan Lipinski (D-IL) introduced H.R. 2172, which would have established a pilot program for states to sell toll credits. Commissioner Pedro Pierluisi (D-PR) cosponsored the bill, but it has not advanced.
- Eliminate the state and/or local match requirement for transportation (and other federally funded) projects in Puerto Rico. Waiving the match for projects will allow project sponsors to advance projects where the state or local government does not have matching funds.

II. Incentivize Private Investment

Puerto Rico has been a leader in entering into public private partnerships to finance, design, build, operate and maintain transportation assets. In light of the current state of the economy and the fact that the government has defaulted on general obligation bonds, opportunities for

¹ Under current law, toll credits are earned when a state, a toll authority, or a private entity funds a transportation project with toll revenues earned on existing toll facilities. To apply earned toll credits toward the non-Federal matching share of an eligible project, the state must make a request to FHWA at the time the project is put under agreement (project agreement for obligation of Federal funds) or before the funds are transferred to another agency (e.g. Federal Transit Administration) responsible for administering the project. The amount of credit (up to the total non-Federal share) is then debited from a special account set up for tracking approved toll credits.

monetizing transportation assets may generate greater interest in Puerto Rico. Potential opportunities related to easing financing to spur investment in Puerto Rico transportation assets, which could be made available exclusively (or with a preference) in Puerto Rico to further incentivize investment, could include:

- Increasing the cap on private activity bonds and allowing Puerto Rico governmental entities to sell tax credits to raise capital or allocate credits to a project sponsor. A project sponsor could claim the credits or sell them to raise capital. This proposal is reflected in S.1186, the Move America Act of 2015, introduced by Senators Ron Wyden (D-OR) and John Hoeven (R-ND) in May 2015. The President's Fiscal Year 2017 Budget proposes similar concepts – Qualified Public Infrastructure Bonds, which would be exempt from the private activity bond volume caps and the Alternative Minimum Tax, and American Fast Forward Bonds, which would be taxable with Treasury making subsidy payments to issuers up to 28 percent of the interest costs.
- Taking advantage of recent changes to the Transportation Infrastructure Finance and Innovation Act (TIFIA), a law authorizing USDOT to make low interest loans to public and private sponsors of transportation projects. The loans are desirable because of their low interest rates, long maturity (up to 35 years) and flexible repayment terms (up to 5 years after substantial completion of a project). Before the enactment the FAST Act (federal transportation law), the minimum project size was \$50 million and the program had high application and loan servicing fees, making TIFIA loans only feasible for large-scale projects. The FAST Act expands TIFIA (thus creating additional opportunities for investments in Puerto Rico) by (1) making Transit Oriented Development and local infrastructure projects (such as parking garages, property acquisition and infrastructure for people walking or bicycling) eligible for loans; (2) lowering the TIFIA project cost threshold from \$50 million to \$10 million for such loans; (2) reducing the application costs for low-cost, low-risk projects; and (3) providing \$2 million in annual grants to help defray application costs for smaller projects.
- Securing USDOT direct loans and loan guarantees to finance commercial and residential development near passenger rail stations, which are now authorized as a result of the FAST Act expanding the Railroad Rehabilitation Improvement and Financing (RRIF) program.

In addition to these financing options, the FAST Act continues to provide Transit Oriented Development planning grants to local governments.

- DOT could provide focused technical assistance to local governments and investors interested in development around transportation projects in Puerto Rico and can prioritize Puerto Rico governmental entities and partners for grants and loans.
- Other federal departments and agencies can provide credits for local governments and private partners investing in transportation as part of their application for Economic Development Administration (EDA) or Brownfields Redevelopment grants.

III. Expedite Project Delivery

Cost escalations, delays, and litigation associated with federal environmental review and permitting requirements (e.g., the National Environmental Policy Act (NEPA), Clean Water Act, Endangered Species Act) hinder Puerto Rico's ability to maintain and develop infrastructure that is critical to attracting and retaining commercial opportunities and operations on the island.

Congress, in recent years, has made accelerated project delivery and environmental streamlining a priority in connection with roadway projects. To facilitate and stimulate infrastructure development in Puerto Rico, Congress could institute similar measures focused on a broader range of infrastructure projects. Such measures would not only strengthen Puerto Rico's economy by facilitating commercial growth, but would also create jobs for residents and provide indirect benefits to local businesses.

Potential accelerated project delivery and environmental streamlining provisions, some of which are already in place for transportation projects but not for other broader infrastructure development, could include:

- Require that all federal agencies responsible for project funding, permitting or approvals collaborate on, use and adopt a single environmental study.
- Require each federal agency to carry out obligations under all other applicable laws concurrently and in conjunction with the NEPA review.
- Set enforceable deadlines for completion of environmental study documents, submission of public and resource agency comments, and agency decisions on project permits and approvals.
- Bar parties from filing an environmental lawsuit unless they have submitted comments during the administrative process on the issue being challenged, and such comments were sufficiently detailed to alert the agency to the potential project or environmental flaw.
- Reduce the period by which a project opponent can file a litigation challenge to a NEPA or permitting decision from six years to 150 days.

The recommendations presented above represent proven strategies to launch critically needed public and private sector investment in Puerto Rico. Transportation and infrastructure investment is critical to economic growth our nation's most populous territory. I encourage the Task Force to seriously consider these ideas and move forward quickly to bring about a period of growth and economic development.

**Francisco Mendez, P.E.
San Juan, Puerto Rico**