Virginia's Public-Private Partnership Approach

Barbara W. Reese, Summer/Fall 2006

The Context

- Commonwealth responsible for maintaining the third largest highway system in country – more than 70,000 miles

- Last sustainable state revenue increase for transportation in 1986 – transportation user fee based
  - Gas tax is 17.5 cents per gallon
  - Increasing reliance on bonds and federal funding for any new capacity in mid-1990s
  - Federal highway funds now largest source

The Context, continued

- In 2004, a multimodal examination of capacity needs found a $108 billion gap between funding and needs in the next 20 years
- Since 2004, there has been incremental support of additional one-time funding for transportation along with changes to project delivery
  - Transportation Partnership Opportunity Fund
  - Incentives for takeover of local roads by localities
  - General Funds to offset impact of debt service

History of PPPs

- Late 1980's, private franchise legislation governed like a utility – Dulles Greenway
- 1995 – Public Private Transportation Act (PPTA)
  - Unsolicited and solicited procurements with finding of more timely or less costly
  - Proposals focused on using traditional financing to deliver new construction – limited private sector financial risk
  - 2005 revisions to address lessons learned

Current PPTA Law

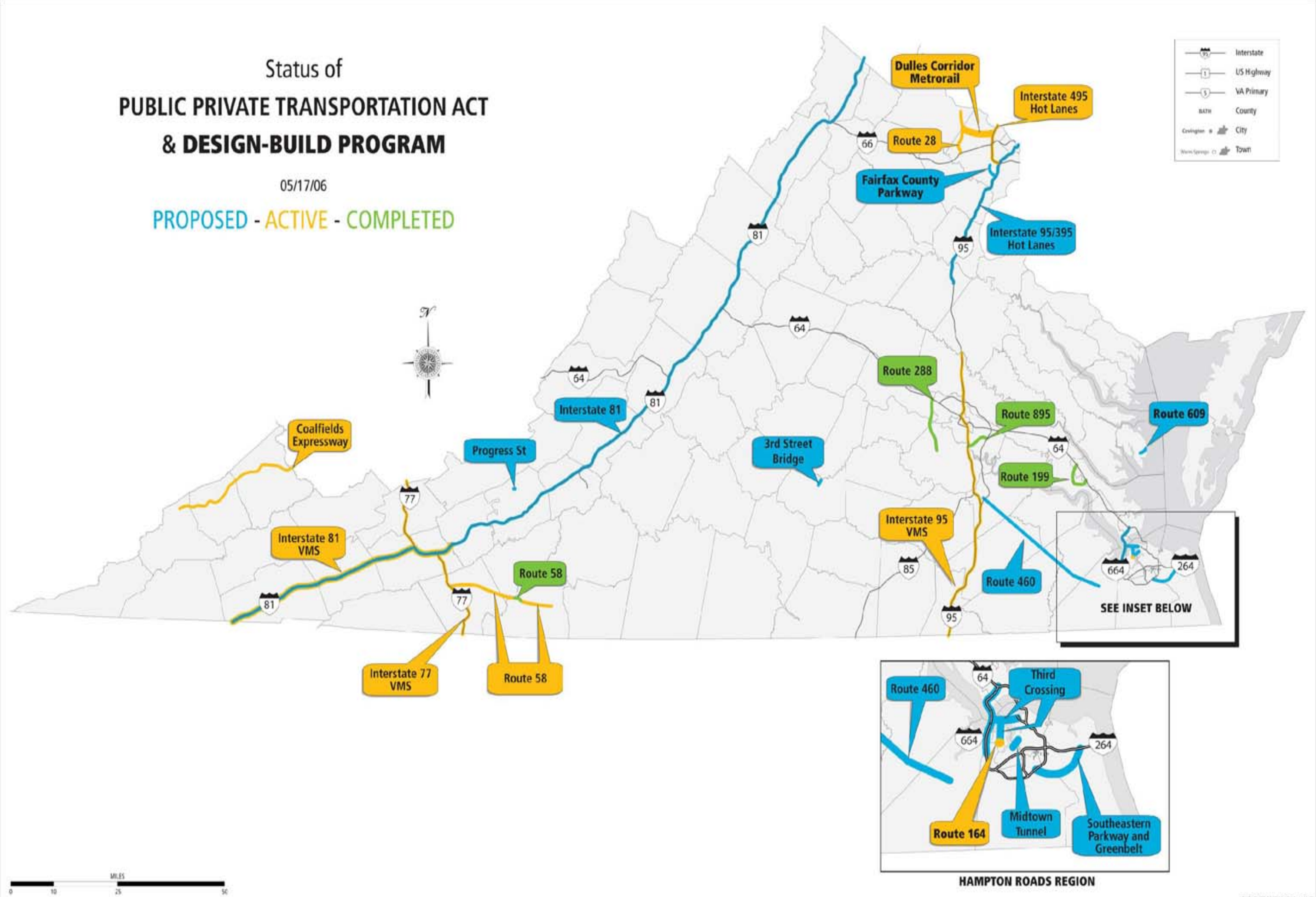
- Identify timelines and activities within each phase of procurement
- Require greater commitments or guarantees by proposers – mandatory risk sharing
- Increase flexibility in the development of interim agreements to accelerate required activities
- Promote transparency and public involvement

PPPs Status

- 53 unsolicited proposals – 11 agreements worth $8.7 billion

- Solicited proposals for two projects:
  - Reconstruction of I-81 (in negotiation and tiered NEPA process)
  - Route 460 from Hampton Roads to I-295 in Richmond region (proposals due in September 2006)

- 8 proposals currently active – construction value of more than $11 billion
  - All new toll facilities



Status of
PUBLIC PRIVATE TRANSPORTATION ACT
& DESIGN-BUILD PROGRAM
05/17/06
PROPOSED - ACTIVE - COMPLETED
Dulles Corridor Metrorail
Interstate 495 Hot Lanes
Route 28
Fairfax County Parkway
Interstate 95/395 Hot Lanes
Route 288
Route 895
Route 609
Route 199
Interstate 81
Progress St
3rd Street Bridge
Coalfields Expressway
Interstate 81 VMS
Route 58
Interstate 95 VMS
Route 460
SEE INSET BELOW
Interstate 77 VMS
Route 58
Route 460
Third Crossing
Route 164
Midtown Tunnel
Southeastern Parkway and Greenbelt
HAMPTON ROADS REGION
Interstate
US Highway
VA Primary
County
City
Town
MILES

Program Has Changed Dramatically

- Generally, between 1995 and 2002, signed agreements were fundamentally sole source contracts using traditional public funds/debt – no financial risk or investment by private sector
- Federal funding was not used to finance them
- By virtue of the agreement, these projects became the funding priority for the Commonwealth

2002 to Today

- Return/not accept unsolicited proposals which didn't include private risk
- Put controls around "lobbying"
- Require ability to use federal funding
- Require project proposals to be a clear transportation priority of the Commonwealth
- Once decision made to develop project using PPP, became partners

Initial Concession Steps

- Worked with legislators and industry to:
  - provide policy direction for use of any lease payment (stay in corridor; transportation purpose)
  - defined transportation facility under long-term lease with concession operator as property indirectly owned by the Commonwealth which provided tax benefits
  - significant toll violation and enforcement legislation with “teeth”

Pocahontas Parkway

- First construction PPTA in Virginia
  - Originally financed using tax-exempt bonds (IRS Rule 63-20) - $346 million
  - Traffic and revenue projections did not materialize
  - Bonds downgraded; VDOT had loaned $
- Amended and re-assigned PPTA agreement to Transurban (T895) as a 99-year concession in June 2006 – paid off all outstanding debt/loans
- Approach to risk was “who is in best position to manage?”

Pocahontas Risk Sharing

Risk	assumed by VDOT	assumed by T895
Financing	None	Yes
Traffic and Revenue	None	Yes
O&M and Major Maintenance	Oversight	Yes
Change in Law (discriminatory)	Yes	
Operating Standards	Oversight	Yes
Toll Rate Setting		Based on a toll escalation formula
Environmental	Shared	Shared
Construction of the Richmond Airport Connector	Oversight & Excess of cap	Yes – if TIFIA loan
Force Majeure	Shared for uninsurable events (bridge)	Shared
Revenue over an agreed return on total investment	Shared	Shared

Pocahontas Revenue Sharing & Termination

- Revenue Sharing – based on a series of calculations tied to real net cash flow and internal rate of return

- Termination - VDOT has the right to terminate for convenience after 40 years – at a cost
  - Forty years was the estimated time it would have taken the prior operator to pay off all liabilities

PPP Lessons Learned

- PPP is not appropriate for every project – Commonwealth estimates that 20% of need can be addressed thru P3s
- Engineering is easy part – financing and operations critical pieces
- Need private partner who has some risk for "after its built"; need healthy public partner
- Make solid decisions each time – they do come back

PPP Lessons Learned, cont'd

- Development of expertise takes time – have good lawyers and financial advisors – excellent traffic modeling
- Conflicts of interest and political interference
- Significant time commitments by both public and private partners – senior staff
- Set and manage realistic expectations among all parties

If We Were at Beginning?

- Learn from others
- It is a business decision not a political decision
- Solicit proposals – be in control
- Embrace prospect and allow failure
- Set clear policy goals and remember big picture
- Recognize that the agreements in each one will become precedent for next

Virginia's PPP Future

- With concessions, we are returning to where we started – private operators of transportation infrastructure used by public
- Focusing on expanded capacity rather than greenfield development – systems operations critical
- Traditional methods and funding cannot meet our transportation needs
  - PPPs can't save us but they can help us

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