Hoping for more of the same

State and local governments have been making use of innovative financing tools to drive infrastructure initiatives in the US. In an uncertain political environment the hope is that these tools will remain available, writes **David Narefsky** of Mayer Brown

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THIS YEAR MARKED the fifth anniversary of the successful closing of the Chicago Skyway concession, generally regarded as the catalyst for the current infrastructure PPP market in the US. In these last five years, the PPP market has consistently looked to state and local governments for leadership in the development and financing of infrastructure. 2010 was no exception, with more jurisdictions employing PPP models with a diversity of transaction structures and methods of financing. Increasingly, state and local government sponsors of PPP projects are employing one or more of the innovative financing tools made available by the federal government, the future availability of which is uncertain.

Among the most significant PPP projects to close in 2010 was FasTracks, undertaken by Denver's Regional Transportation District to design, build, finance and operate three new commuter rail lines, including linking Denver International Airport to downtown. FasTracks saw the first-ever use of "private activity bonds" (PABs), authorised by 2005 federal surface transportation legislation, for a rail transit project.

The use of PABs, in combination with federal and state funds, could well serve as a template for private investment in one or more of the high-speed rail projects now under development, most notably Florida's proposed Orlando to Tampa project. PABs are also expected to provide financing for California's first infrastructure PPP project, Presidio Parkway, a $1 billion replacement for the Golden Gate Bridge access road. Fortunately, PABs authorisation does not sunset, and approximately $9 billion of the $15 billion of bonds initially authorised by Congress remains available for future highway and rail transit projects.

TIFIA: CRITICAL

Recent decisions by the US Department of Transportation (USDOT) demonstrate the critical role played by TIFIA (Transportation Infrastructure Innovation and Finance Act) credit assistance in financing PPP projects. In a reflection of increased acceptance of TIFIA, 39 projects submitted applications for fiscal year 2010 funding. Of the four shortlisted projects ultimately invited to apply for TIFIA assistance, three will be implemented using a PPP structure – FasTracks, Presidio Parkway and the Port Authority's Goethals Bridge Project. Moreover, the only project to receive TIFIA eligibility under USDOT's recently awarded discretionary (TIGER II) grants is LA Metro's Green Line extension to Los Angeles International Airport, for which implementation as a PPP is being actively considered.

There appears to be bi-partisan support for an expansion of the TIFIA programme, an initiative that will be well received by the infrastructure community and is consistent with the policy goals of the National Infrastructure Bank proposed by President Obama.

Build America Bonds (BABs), federal subsided taxable bonds authorised under 2009 federal stimulus legislation, provide enhanced opportunities for private investment in infrastructure through long-term debt financing. Among the most innovative uses of BABs in the past year was the sale of a subordinated tranche of non-investment grade, CPI-indexed bonds by the Central Texas Mobility Authority to an Australian pension fund to finance toll road expansion in Austin. With Build America Bonds receiving widespread acceptance domestically and with increasing interest from overseas investors, supporters are advocating both an extension of issuance authority beyond the December 2010 sunset and expanded authority for use, in lieu of PABs, for surface transportation projects that benefit from private investment.

With the nation facing enormous budget deficits and with a newly elected Congress that is clearly more skeptical of major federal spending programmes and strongly opposed to tax increases, the fate of surface transportation reauthorisation remains uncertain. While this debate plays out in 2011 and beyond, expect state and local governments increasingly to look to PPP structures, combined with the innovative federal financing tools described above, to support critical infrastructure initiatives. ■

David Narefsky is a partner at Mayer Brown LLP in Chicago

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- 2009 Asia Project Finance Deal of the Year: Paiton 3 in Indonesia
- 2009 Transport Deal of the Year: São Paulo Rodoanel in Brazil
- 2009 Project Finance Deal of the Year: Panama Canal
- 2008 Latin American Infrastructure Deal of the Year: São Paulo Metro Line IV in Brazil
- 2008 Latin America Acquisition Deal of the Year: Aerodom Airports in Dominican Republic
- 2007 Best Infrastructure Deal of the Year: IIRSA Sur Toll Road in Peru
- 2007 North American Transport Deal of the Year: Northwest Parkway in Colorado
- 2006 Infrastructure Deal of the Year: Suzhou Industrial Park China
- 2006 North American Transport Deal of the Year: Indiana Toll Road
- 2005 Latin America Refinancing Deal of the Year: Corredor Sur in Panama
- 2004 North American Transport Deal of the Year: Chicago Skyway

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Working closely with their clients' development and construction teams, they regularly advise on tenders, competition and auction proceedings for the granting of concessions, and the authorization of grants. They also advise on contract preparation, negotiation and risk analysis. ■