

# INFRASTRUCTURE SOLUTIONS

A large, multi-story brick school building with a central entrance featuring a white portico with columns. Above the entrance is a sign that reads "OYSTER BILINGUAL SCHOOL" and "ESCUELA BILINGUE OYSTER". The building has several windows and a bell tower on the roof. The sky is blue with some clouds.

**Best  
Practices  
from  
Results-  
Oriented  
States**

**PART 3 OF A SERIES**

**NATIONAL ASSOCIATION OF HOME BUILDERS**

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## Infrastructure Solutions

With each passing year, the nation's local governments are falling further behind in the effort to maintain and expand the infrastructure needed to keep communities vibrant and competitive. As the problems mount, they affect the ability of communities to sustain strong economies and provide amenities that contribute to a good quality of life. Fortunately, there are proven financing solutions. This publication, based on new research from the National Conference of State Legislatures (NCSL), highlights state policies that enable local governments to use the most effective infrastructure finance techniques.

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Based on research conducted by  
The National Conference of State Legislatures

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National Association of Industrial and Office Properties



Real Estate Advocacy Group for States

**ON THE COVER:** The Oyster School, an elementary school in Washington, DC, created through a public-private partnership.

Photo by August Scheele.

# INFRASTRUCTURE SOLUTIONS

**W**ITH EACH PASSING YEAR, the nation's local governments are falling further behind in the effort to maintain and expand the infrastructure needed to keep communities vibrant and competitive. The challenge is overwhelming. Government officials must deal with aging infrastructure, a growing population, and a citizenry that expects more and better public services and facilities, but all too often rejects higher taxes that would pay for them.

The result is aging infrastructure, traffic congestion, overcrowded schools, inadequate water and sewer capacity and other problems. As the problems mount, they affect the ability of communities to sustain strong economies and provide amenities that contribute to a good quality of life.

If citizens are unwilling to pay more taxes for the construction and maintenance of infrastructure, then communities must seek alternatives. Impact fees have been tried by many local governments, but such fees have serious limitations:

- ▶ They cannot be used to pay for maintaining existing infrastructure.
- ▶ They cannot be used to build facilities that serve the entire community.
- ▶ They are an unreliable source of revenue that rises and falls with the construction cycle.
- ▶ Because impact fees are an unstable source of revenue, communities cannot leverage them by borrowing against them.
- ▶ They are an added cost on new housing that drives up the cost of all housing in a community.

Fortunately, there are effective financing alternatives. Forward-thinking state and local governments have been making the most of some of these alternatives, including special districts, municipal lease finance, tax increment financing and state infrastructure banks. These and other mechanisms enable a community to leverage its limited resources most effectively—to get more



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**Maine State Capitol Building**

bang for the buck.

The National Association of Home Builders (NAHB) has been studying this issue for many years and has produced a series of reports designed to help state and local governments find infrastructure finance and management strategies that optimize their finite capital resources.

In 2003, NAHB published “Building

for Tomorrow: Innovative Infrastructure Solutions,” a 32-page report that explains more than 20 financing and management tools and presents case studies on how those tools have been applied successfully. A detailed description of the tools can be found in that original publication, which is available online at [www.nahb.org/infrastructurefinance](http://www.nahb.org/infrastructurefinance).



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### **Pennsylvania State Capitol Building**

In 2006, NAHB published the second publication in the series, “Infrastructure Finance: Does your state encourage innovation?” It features a list of all 50 states showing which states authorize the use of the 12 most commonly used infrastructure finance tools. That publication highlighted a more in-depth research report written by the National Conference of State Legislatures (NCSL) that summarized state enabling authority for these tools and included links to the relevant statutes. Those materials can be found online at [www.nahb.org/infrastructurefinance](http://www.nahb.org/infrastructurefinance).

This publication, the third in the series, features new research from NCSL regarding the best state policies for some of the most commonly used infrastructure finance alternatives. NCSL looked at statutory language from all of the states authorizing the use of these finance tools and highlighted the best-written laws—those that showed the most promise for helping local governments make effective use of those tools.

A good example comes from Iowa, one of just five states to statutorily allow

the establishment of special districts to provide for infrastructure finance and development. The Iowa Special Districts statute provides for the variety of special districts that other states address and also includes acknowledgement by the legislature that the state has a shortage of opportunities and means for developing local housing. The legislature addressed that deficiency by providing for the establishment of real estate improvement districts to help meet the state’s need for affordable housing.

Maine provides another good example with its statutory language authorizing a municipal lease-finance program under the Maine Municipal Bond Bank. This comprehensive state legislation charges a single state agency with administering the law and calls for a single point of contact to determine implementation. The statute also calls for a wide range of direct and indirect financing options and has strict accountability standards for receiving financial assistance.

Other examples include school partnerships in Florida, tax increment

financing in Utah, Pennsylvania’s state revolving funds program, community development districts in Arizona and Hawaii, California’s GARVEE bond program, and certificates of deposit in North Carolina. NCSL highlighted those state programs that were most likely to deliver strong results for the communities that apply the highlighted mechanism.

NCSL’s research indicates that good enabling authority is only half the battle—a clear commitment to a mechanism for implementation is also critical to success.

It is worth noting that few states have taken advantage of most of these innovative infrastructure alternatives, and that many of the most promising options are overlooked by all but a handful of states. Special districts and municipal lease finance are two good examples. In both cases, only five states have specific statutory language authorizing use of that particular finance tool. Think about it. That means 45 states have not yet granted the statutory authority for these programs.

That’s why NAHB created this publication: To showcase states that have passed strong legislation authorizing some of the best infrastructure tools; to demonstrate the legislative features that go into a good statute; and to bring attention to the opportunities available to states to provide additional means for their local governments to address growing infrastructure finance challenges.

Talk to your finance director, the head of your school board or the city manager. Then talk to your state legislators about those options that make sense for your state and your community. The demand for more and better infrastructure will not go away. Use the information in this series of publications to make sure you have the finance tools you need to address your community’s infrastructure needs.

# MUNICIPAL LEASE FINANCE

**TAX-EXEMPT MUNICIPAL LEASE FINANCE** is basically a “rent-to-own” program in which a municipality pays one-year renewable obligations to a third-party lessor as rent payments on a given project. These leases are not considered outstanding debt for bond ratings. The financed infrastructure often becomes the property of the lessee once the debt is retired.

Five states statutorily allow the use of tax-exempt municipal leasing to help meet infrastructure needs. The Municipal Lease Finance Program, part of Maine’s Municipal Bond Bank, is worth consideration because of the comprehensive state legislation involved in its establishment; the fact that a single state agency is charged with administering the law, providing a single point of contact to determine implementation; the provision of a diverse number of direct and indirect financing options; and the presence of strong accountability standards for receipt of financial assistance.

## Maine Municipal Bond Bank—Municipal Lease Finance Program

30-A ME. REV. STAT. § 6006-C

The Maine Municipal Lease Finance Program was established under the jurisdiction of the Maine Municipal Bond Bank to assist municipalities and governmental entities in the financing of leases under which the entity may acquire or obtain the right to use personal or real property. The program makes available a variety of direct or indirect financing, insurance, borrowing, credit enhancement and other financial tools for the lease, lease-purchase, rental or right of use of any real or personal property or other authorized activity of a municipality. Lease purchase financing is viewed as a cost-effective and tax-exempt alternative for financing capital equipment and technology purchases.

The Maine Municipal Bond Bank is authorized to:

- ▶ Make loans to municipalities or borrow money on behalf of municipalities;
- ▶ Purchase, refinance or enter into leases with or on behalf of municipalities;
- ▶ Purchase or refinance any municipal lease that may be held or issued by any 3rd party; and
- ▶ Issue its bonds or notes for the purchase of municipal leases on behalf of a municipality or group of municipalities or for the establishment of a pool of

funds to be used for the purchase, financing or other means of acquisition of leases used by a municipality or group of municipalities.

The bank is required to establish prudent standards for the terms and conditions of any lease financing made available to a municipality or group of municipalities. To be eligible to participate in the program, a municipality must satisfactorily demonstrate that it can and will pay the principal, interest, fees and related charges on the bond, debt or other instrument issued by the bank on behalf of the municipalities or purchased by the bank from the municipality, as well as the costs for operation and maintenance of any real or personal property acquired or made available for use by the municipality by virtue of the lease finance assistance. Satisfactory assurance can be demonstrated if a municipality has:

- ▶ Established a method of payment by assessment, rate, charges or other mechanism that is satisfactory to the bank; or
- ▶ Provided collateral sufficient to assure payment.

The Municipal Bond Bank does not lend money directly for the Lease Purchase Program. Rather, it conducts the competitive bid process on behalf of the governmental entities seeking to use the



program. Bonds, notes, leases or other forms of debt or liability entered into or issued by the bank under this program section are not in any way a debt or liability of the state.

Eligible projects for the Lease Purchase Program include:

- ▶ Public safety and works vehicles;
- ▶ Portable classrooms;
- ▶ Computer equipment;
- ▶ School buses;
- ▶ Telecommunications equipment; and
- ▶ Energy conservation equipment and renovation projects.

Although the lease finance program was authorized in 1991, it took several years to make the program operational. Since the first lease was approved in 1998, 63 equipment lease purchases have been approved totaling \$14.2 million for such things as modular classrooms and office facilities, school buses, fire trucks and ambulances. Also since 1998, 18 mortgage lease purchases totaling \$9.5 million have been approved primarily for building additions, bus garages and maintenance garages.

# SPECIAL DISTRICTS

**SPECIAL DISTRICTS** are a form of local government that delivers public services such as water, fire protection, police protection and flood control within defined geographical boundaries. They are usually empowered to enter into contracts, employ workers, acquire property, levy assessments and charge fees for services. Special districts are an efficient and equitable method of supplementing local public services. One of their many benefits is that they increase accountability in public spending.

Five states statutorily allow the establishment of Special Districts to provide for infrastructure finance and development. The Iowa Special Districts statute provides for the variety of special districts that other states allow and also includes legislative acknowledgement that the state has a shortage of opportunities and means for developing local housing. The legislature addressed that situation by providing for the establishment of real estate improvement districts to help meet its need for affordable housing development.

## Iowa Special Districts

IOWA CODE ANN. TITLE IX, SUBTITLE 2 (2005)

Iowa's Special Districts statute provides for a variety of special districts including water, street lighting, law enforcement, recreational, emergency medical, library, and sanitary improvement facilities. Additionally, the legislature, recognizing that it is in the best interest of the state and its citizens to provide for infrastructure development to lower the costs of developing housing, included a real estate improvement district provision in the Special Districts statute. This section provides for development of water, sewer, roads and other infrastructure. It also specifically recognizes the inter-relationship between the economic health and development of Iowa communities and the state's need to assist developers and communities in increasing the availability of housing in Iowa communities.

In order to form a real estate improvement district, the owners of the property to be designated as such must file a petition with the Board of Supervisors of the area where the property is located requesting that the issue be put before the area's voters.

A district may acquire, construct, reconstruct, install, maintain, and repair public improvements, defined as the principal structures, works, component parts and accessories of the following:

- ▶ Underground utilities —gas, water, heating, sewer, telecommunications, and electrical connections located in streets for private property;
- ▶ Sanitary, storm, and combined sewers;
- ▶ Waterworks, water mains, and extensions;
- ▶ Emergency warning systems;
- ▶ Pedestrian underpasses or overpasses;
- ▶ Drainage conduits, dikes, and levees for flood protection;
- ▶ Public waterways, docks, and wharfs;
- ▶ Public parks, playgrounds, and recreational facilities;
- ▶ Clearing, stripping, grubbing, earthwork, erosion control, lot grading, street grading, paving, graveling, macadamizing, curbing, guttering, and surfacing with oil and gravel;
- ▶ Street lighting fixtures, connections, and facilities;
- ▶ Sewage pumping stations;
- ▶ Traffic control devices, fixtures, connections, and facilities; and
- ▶ Public roads, streets, and alleys.



A real estate improvement district, through its governing boards of trustees, is authorized to:

- ▶ Acquire real or personal property, rights-of-way and easements by purchase, gift, condemnation, and eminent domain;
- ▶ Levy certain types of taxes;
- ▶ Establish equitable rates, charges, or rentals for the utilities and services furnished by the district to be paid to the district by every person, firm, or corporation whose premises are directly or indirectly served by a connection to the utilities and services;
- ▶ Borrow money for its corporate purposes so long as its debt does not exceed its constitutionally established debt limit;
- ▶ Issue bonds, including both general obligation and revenue bonds, and enter into short-term loans and issue warrants, again as long as the entity does not exceed the constitutionally established debt limit; and
- ▶ Levy special assessments on property located within the district.

# SCHOOL PARTNERSHIP

**PARTNERSHIP SCHOOLS** enable public school systems to contract with private developers to construct or make available public school facilities to the standards of state and local laws.

Statutorily enacted school partnership programs are something of a rarity—only three states have enacted such statutes, and all are relatively new. While it is new and there is no evaluative data available on it, Florida’s “A Business-Community (ABC) School Program” is included here for two primary reasons: it appears to be the first of its kind at a state level that has been established legislatively, and significant state legislative analysis and activity went into establishing the program.

## Florida A Business-Community (ABC) School Program

*Formerly the Business and Education in School Together (Florida BEST) Program—  
Contracting for Educational Facilities*

**FLA. STAT. §1013.721**

The Florida A Business-Community (ABC) School Program [formerly the Florida Business and Education in School Together (BEST) Program] encourages the formation of partnerships between business and education to provide a unique public school experience for the children of the business’s employees or others involved with the establishing entity. Originally enacted in 2003 as the Florida BEST Program, the Florida ABC School Program was launched as a result of amending legislation enacted in 2006 (Chapter 2006-301). The amending legislation, in addition to renaming the program, provides for other changes in reporting and administration. The new legislation defines “A Business-Community (ABC) School” as a “public school that offers instruction to students from kindergarten through third grade.” Such instruction may consist of a single grade or multiple grades, and state constitutional class size requirements apply to ABC schools. The 2006 legislation requires each school district to identify a person to serve as a point of contact and information about the program. Evaluative data about the program should be available within a few years.

The goals of the program include:

- ▶ Increasing business partnerships in education;
- ▶ Reducing school and classroom over-

crowding throughout the state; and

- ▶ Offsetting the high costs of constructing educational facilities.

Each school district is required to establish an ABC school evaluation committee appointed by the school board. The committee must include one school district administrator, at least one member of the business community, and at least one member of a local chamber of commerce.

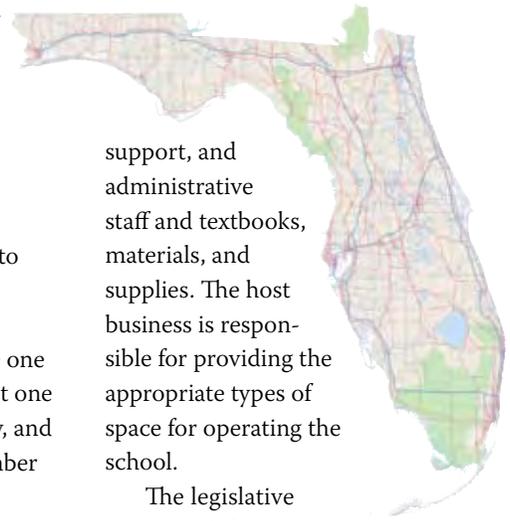
The committee is charged with evaluating the feasibility of each proposal based on various factors including operating costs, the number of students served, the proposed student-teacher ratio, and the proposed number of years the school would operate. Based on its evaluations, the committee then recommends to the school board those schools it has deemed viable.

Children of owners and employees of the host business have first priority for attending an ABC school. If there is excess capacity after these children are offered space, then the host business may designate other neighboring businesses whose owners or employees may participate to generate a viable student population. Parents are responsible for providing student transportation to and from the school.

The school board is responsible for providing the appropriate instructional,

support, and administrative staff and textbooks, materials, and supplies. The host business is responsible for providing the appropriate types of space for operating the school.

The legislative sponsor of the ABC School Program, Sen. Lee Constantine, believes that the program provides a unique opportunity for everyone involved in education to win. According to Sen. Constantine, the hardest classroom size requirement for schools to meet is in the K-3 group, the ages involved in the ABC School Program. Building additional classrooms to meet class size requirements may not be the best expenditure of school district funds, especially if the surge in young students is temporary. School systems benefit because they can focus on classroom space for smaller numbers of K-3 students as well as older children in the school. Transportation is provided by the parents of the students attending the ABC Schools so the demand for district-provided transportation is decreased. This means lower costs for the district.



# TAX INCREMENT FINANCING

**TAX INCREMENT FINANCING (TIF)** determines the difference between a site’s pre-development tax revenues and the projected taxes resulting from proposed development and uses that difference (or increment) to finance the proposed development.

At least 48 states have enacted statutes permitting the use of Tax Increment Financing to help local governments finance redevelopment. Utah’s Limited Purpose Local Government Entities—Community Development and Renewal Agencies Act and its predecessor, the Utah Redevelopment Agencies Act, both include a provision to use tax increment financing to develop, construct or retain affordable housing in the state. This provision, the only one addressing housing found in the statutory research on TIFs done for this project, is the reason that the Utah statute is included in this study.

## Limited Purpose Local Government Entities—Community Development and Renewal Agencies

UTAH CODE ANN. §17C-1-101 ET SEQ.

Under the Tax Increment Financing (TIF) portion of the Utah Redevelopment Agencies Act, enacted in 2001, local governments are authorized to use tax increment financing for redevelopment activities, including affordable housing. With a few exceptions, each TIF project adopted on or after May 1, 2000, which provides for greater than \$100,000 of annual tax increment to be paid to the agency, was required to allocate a minimum of 20 percent of the TIF for affordable housing development, construction or retention. Approximately \$127 million has become available to fund affordable housing under this act so far, with about \$5 million allocated to date. The first large expenditures of this funding are expected between 2008 and 2015.

An “agency” for purposes of this statute means a separate entity that is a political subdivision of the state, created to promote redevelopment, economic development or education housing development (i.e., high density housing within a project area that is adjacent to a public or private institution of higher education). The boundaries of the agency must be consistent with the creating political entity (e.g., for a county-created agency, the boundaries are the unincor-

porated areas of the county; for a city- or town-created agency, the boundaries are those of the city or town). There are 48 redevelopment agencies in Utah.

The statute also provides that an agency may use tax increment financing to pay for all or part of:

- The value of the land and the cost of installation, construction and rehabilitation of any building, facility, structure, or other housing improvement, including infrastructure improvements related to housing, located in any project area within the agency’s boundaries; and
- Use up to 20 percent of tax increments outside of project areas to replace housing units lost by urban renewal, economic development or community development, or increasing, improving and preserving the affordable housing supply of the community that created the agency.

Two major affordable housing efforts have been conducted since the beginning of the TIF provision. Bluffdale, a community near Salt Lake City, has seen the construction of about 85 affordable housing units dispersed across three complexes. Sandy City, also near Salt Lake City, is using the TIF money it receives for infrastructure support for housing development.



# COMMUNITY DEVELOPMENT DISTRICTS

**COMMUNITY DEVELOPMENT AUTHORITIES (CDA)** and **COMMUNITY DEVELOPMENT DISTRICTS (CDD)** are quasi-governmental entities with distinct boundaries that provide a limited number of public services. The debt is retired by charging the district's home owners an annual tax surcharge.

At least 11 states have legislatively authorized the use of Community Development Districts to help fund infrastructure projects. This page and the next look at the Greater Arizona Development Authority and the Hawaii Community Development Authority. NCSL included the Greater Arizona Development Authority in this study because of the comprehensive legislation that charges a single state agency with administering the law and because of the diversity of the types of assistance available.

## Greater Arizona Development Authority

ARIZ. REV. STAT. ANN. § 41-1554 ET SEQ.

The Greater Arizona Development Authority (GADA) is a public body established in 1998 to administer a revolving fund to assist Arizona's fast-growing communities in meeting the need for new infrastructure in a cost-effective manner. The fund consists of revenue appropriated by the legislature, federal grants and loan repayments from political subdivisions, special districts or Indian tribes.

The authority is empowered to issue tax-exempt bonds to provide financial assistance to political subdivisions, special districts and Indian tribes to construct or improve infrastructure projects.

The bonds are issued in the name of the authority and are not considered to be debt obligations of the state.

Financial assistance may include loans or credit enhancement agreements; revenue in the fund may also be used to secure bonds issued by the authority. The loan repayment period may not exceed 30 years, and receipt of a loan is conditioned on identification of pledged revenue sources to ensure repayment. Voter approval is required for any municipality with a population of more than 50,000, and for any county with a population between 250,000 and 1 million, as a condition for loan approval.

The bond pool that is available to communities through GADA enables

the communities to obtain better loan rates due to credit enhancement. Eligible applicants must be public and include cities, counties and Indian tribes. Eligible projects include, but are not limited to, street improvements, fire districts and municipal buildings. Through the Authority, the Department of Commerce has leveraged a \$1.1 million investment into low interest loans totaling \$238.1 million for 43 projects to date.

Examples of recent projects, the funding amounts and estimated savings include:

- \$9.4 million to the City of Buckeye for multiple public works projects with an estimated savings of \$171,000;
- \$13.1 million to the Northwest Fire District for public safety projects with an estimated savings of \$203,000; and
- \$58 million to Lake Havasu City for wastewater system improvements for an estimated savings of \$507,000.

The Authority also is authorized to fund and provide communities with technical assistance during the pre-construction phases of infrastructure projects. This is especially vital to smaller communities due to the high costs of pre-construction work. Due to low interest rates in the past few years, no such funding was available in 2005 and 2006. The State Treasurer's office has worked with GADA to reinvest funds in higher earning long-term accounts.



# COMMUNITY DEVELOPMENT DISTRICTS

NCSL included the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY (HCDA)** in this study because of the comprehensive state enabling legislation that encourages implementation of the program by designating community development districts (CDDs). The legislation includes a requirement that the HCDA prepare a comprehensive community development plan for the designated CDDs and an affordable housing provision.

## Hawaii Community Development Authority

HAWAII REV. STAT. § 206E-1 ET SEQ.

The Hawaii Community Development Authority (HCDA), established within the Department of Business, Economic Development and Tourism in 1976, celebrated its 30th anniversary in 2006. HCDA was established by the Hawaii legislature to focus on redeveloping underused areas through the use of traditional community development mechanisms and public-private initiatives. About 80 percent of the funds issued under the program go to public entities for various projects including utilities, roads and sidewalks.

The HCDA has a \$1.56 million budget and employs about 20 staff. The authority is empowered to:

- ▶ Prepare community development plans for all designated community development districts;
- ▶ Acquire and transfer real property, including through the use of eminent domain;
- ▶ Acquire, construct or rehabilitate projects and public facilities; and
- ▶ Meet affordable housing requirements in any community development district through the construction of reserved housing (defined as low- or moderate-income housing).

The legislature may designate community development districts where it determines an area is in need of replanning, renewal or redevelopment. Once a district has been designated by the

legislature, the HCDA must prepare and approve a community development plan. The governor must then submit requests for appropriations or authorization to issue bonds to implement the plan to the legislature.

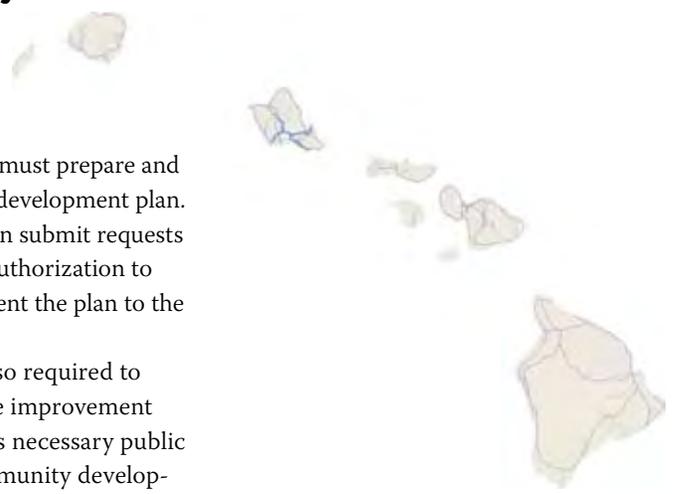
The authority is also required to develop a district-wide improvement program that identifies necessary public facilities within a community development district. The costs of funding public facilities as part of a district wide improvement program shall be assessed against real property within the community development district that benefit from the facilities. The authority is empowered to issue general obligation bonds authorized by the Legislature to finance the public facilities. The bonds are to be secured by the property assessments and are exempt from all state and local taxation except transfer and estate taxes.

In addition to general obligation bonds, the authority may issue revenue bonds in amounts that do not exceed the Legislature's authorization and which are approved by the Governor. Revenue bonds are exempt from all state and local taxation except transfer and estate taxes. They are issued in the name of the authority and are not an obligation of the state. The bonds are payable from and

secured by revenues generated by the public facilities for which they are issued. The authority must establish separate special funds for each public facility financed by revenue bonds.

The Kaka'ako area of Honolulu, a mixed-use and mixed-income community, was the first CDD designated under the statute (See case study on page 9).

Another good example is the Kalaeloa District, which was designated a redevelopment district and transferred to HCDA authority in 2002. The Kalaeloa District's five-year redevelopment plan was adopted by HCDA in 2005 and a draft master plan was finalized in March 2006. Kalaeloa, a former Naval Air Station that was closed in 1999, will become a mixed-income, mixed-use district through the multi-stage development plan extended through 2025.



# CASE STUDY: HAWAII'S KAKA'AKO COMMUNITY DEVELOPMENT DISTRICT

Innovative infrastructure financing by the State of Hawaii has brought vitality and opportunity to a long-underused part of Honolulu. State-of-the-art infrastructure and public facilities are the centerpiece of a major redevelopment project in the city's Kaka'ako community. The 600-acre site includes mixed-income housing, commercial properties and new parks.

The entire area is part of a community development district (CDD) made possible by the Hawaii Community Development Authority (HCDA). The original HCDA enabling legislation designated the Kaka'ako area of Honolulu as the first community development district under the statute. At the time of its designation the area was determined to be significantly underdeveloped and underutilized relative to its central location in urban Honolulu. Every dollar invested by the state in the Kaka'ako CDD has brought ten dollars in private sector investment.

Hawaii designed the community development district legislation to encourage a detailed planning process that involves the public sector, private sector and the community's residents. The CDD process opens avenues for bonds and other types of low-cost infrastructure financing that is effective in leveraging private sector investment. The HCDA works with public- and private-sector organizations to assess the community's infrastructure needs, plan and schedule a construction program, and determine the most cost-effective financing strategies.

In designating Kaka'ako as the HCDA's first CDD, the Legislature recognized the community's potential for increased growth and development and its inherent economic importance to Honolulu as well as to the state. The Legislature foresaw that the redevelopment of Kaka'ako would offer tremendous opportunities to address the need for more housing, parks, and open areas, as well as new commercial and industrial space near downtown Honolulu.

According to the HCDA, at the time of designation the population of the area was 2,798 living in 1,100 residential units. All of these units were market rentals. Today, the area is home to more than 6,000 people, residing in over 3,240 market units and another 1,388 affordable units produced through HCDA. Parks in the mixed-use, mixed-income Kaka'ako community area were expanded from 1.65 acres to more than 45 acres, and the University of Hawaii's new medical school chose to locate in the revitalized neighborhood.

A central aspect of the redevelopment initiative was an upgrade of the area's infrastructure—both roads and utilities. Before the redevelopment project could move forward, that infrastructure had to be expanded and modernized to meet the needs of the increased population and the associated commercial activities. The state invested \$217 million in the infrastructure redevelopment within the Kaka'ako CDD. That public investment has helped to leverage more than \$2 billion in private sector investment.

The combined investment of public and private funds is making it possible for Kaka'ako's residents to live in a safe and attractive environment that offers excellent facilities for shopping, entertainment, education, culture, and social activities.

The Kaka'ako District includes the waterfront area from Kewalo Basin to Forrest Avenue and the downtown HECO power plant site.

HCDA determines the location of improvement districts within the district based on infrastructure requirements in the area. In Kaka'ako, many improvement



Photos courtesy HCDA

## Road and park improvements financed by the Kaka'ako CDD.

districts have been concentrated in the areas with the worst drainage problems. Other factors such as improving traffic flow and helping to provide necessary electrical, telecommunications, water, and sewer systems to encourage adjacent development, also contribute to the decision.

The redevelopment effort has included a dozen major roadway improvement projects, including a \$17 million project to improve the infrastructure of Ilalo Street, from Ahui Street to Forrest Avenue. The improved roadway was opened to the public on April 1, 2003. Now that construction is completed, Ilalo Street is a beautifully landscaped boulevard that serves as the principal collector street for Kaka'ako Makai and also provides an attractive and comfortable pedestrian environment.

For this project, new water, sewer, drainage and underground utility systems were installed along with the construction of a new roadway, driveways, a pedestrian-way, curbs and gutters. Construction on the Ilalo Street project took about 30 months.

# DESIGN-BUILD and ELECTRONIC ROAD PRICING

**DESIGN/BUILD** is a privatization strategy in which the design and construction of infrastructure is done by a private party. Other variations include design/build/operate and design/build/operate/finance. **ELECTRONIC ROAD PRICING** is a user-fee system that charges drivers for roadway use through an electronic toll or fee collection system rather than the use of toll booths.

At least 37 states statutorily authorize the use of the design-build construction process, primarily for transportation related projects, and at least 18 states have legislatively approved electronic road pricing and tolls to help meet transportation needs. The Delaware Public-Private Initiatives Program in Transportation provides for a variety of mechanisms that can be used to address transportation needs including public/private partnerships, design/build and electronic road tolls.

Delaware's statute is included in this report because it is comprehensive, it recognizes that public/private partnerships can be an effective means of meeting infrastructure needs, and it offers built-in program flexibility that allows but does not require the use of any specific mechanism. The program also establishes a "Public-Private Initiatives Program Revolving Loan Fund" in the statute.

## Delaware Public-Private Initiatives Program in Transportation

DE. CODE ANN. TIT. 2 §2001, ET SEQ.

In Delaware, the legislature enacted a broad initiative entitled "Public-Private Initiatives Program in Transportation" in 1995 with the acknowledgment that an efficient transportation system is imperative to the economic, social and environmental health of the state. In enacting this measure, the legislature also acknowledged that the program would enable the state to take advantage of private sector efficiencies in the design and construction of projects as well as in their financing. In the enabling statute, the legislature also directed the state's Department of Transportation to "take full advantage of every financing opportunity and mechanism provided by federal legislation, including transportation legislation facilitating federal financing or grants for construction, improvement, leasing, operation or related functions" for such things as roads, bridges, tunnels, highways, ports and marine-related facilities, park and ride lots, rail and other transit systems, airports, transportation management systems and rest areas.

Under the statute, a project proposal can be initiated by the state or by the po-

tential constructing party. The Secretary of Transportation is allowed to entertain and solicit proposals from private entities or consortia but is only able to enter into project agreements that have been authorized by the general assembly.

Local metropolitan planning organizations and the state's Council on Transportation (established under the state's procurement statute) must approve any projects selected by the project committee within 45 days. The failure of either entity to take action within the 45-day-period means the project is approved. If approved, the project becomes an amendment to the state's capital improvements program for the fiscal year in which the project approval is granted.

Project agreements may provide for either private or state ownership of the overall project during the construction period; however, the state generally must retain ownership or control of the underlying real property. After the project is completed, the project agreement must provide for state ownership and a lease back to the contracting party. The leases on such projects can be for as long as 50 years.



The contracting party is authorized to impose tolls or other user fees for use of the transportation system project that allow for a reasonable rate of return on the investment. These tolls or user fees can be collected through the use of automatic vehicle identification systems, electronic toll collection systems, and video-based toll collection enforcement. The tolls or fees that are collected may differ based on the vehicle class and weight as well as time of day or year.

# STATE INFRASTRUCTURE BANKS

**STATE INFRASTRUCTURE BANKS (SIBS)** operate the same way as state revolving funds. SIBs are intended to complement traditional federal aid highway and transit programs by supporting certain projects via loans and credit enhancements.

Twenty-four states have statutorily established state infrastructure banks, which are typically available for only a few types of projects. Although state budget constraints have prevented its funding, the Indiana Local Infrastructure Revolving Fund is included in this report for several reasons:

- A wide variety of projects are eligible.
- There is a statutory directive that the state Department of Transportation and the Department of Environmental Management must consult with the budget agency to identify infrastructure financing mechanisms available to local communities.
- The fund must provide an annual report on project funding to the state's budget agency.

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## Indiana Local Infrastructure Revolving Fund

IND. CODE § 4-10-19

**T**he Local Infrastructure Revolving Fund is established under the state's budget agency to provide funds to local governments for infrastructure projects. The budget agency monitors infrastructure finance needs and the availability and cost of capital; manages investment pools and financial services associated with loans; and explores and evaluates capital financing techniques.

The application for a loan or grant from the fund from a political subdivision must include information that describes the infrastructure for which the funding is sought; estimates the cost of constructing or improving the infrastructure, including design costs; and any other information the budget agency deems necessary.

Money in the fund can be loaned to political subdivisions for a variety of purposes, including:

- Debt financing;
- Grants;
- Loan guarantees;
- Refinancing and purchasing political subdivision debt;
- Guaranteeing political subdivision loans;
- Making bond and debt service reserve insurance payments; and

- Guaranteeing debt service reserve funds for political subdivisions.

Eligible uses for funding include:

- Wastewater treatment projects, sewer systems, and drinking water systems;
- Infrastructure or local public improvements needed for the rehabilitation, redevelopment, economic development, and reuse of military base property acquired from the federal government by a state-established reuse or redevelopment authority; and
- Highways, roads, streets, and public mass transportation systems for communities.

A grant from the fund is limited to the lesser of 10 percent of the total project cost or \$5 million.

Loan interest rates are limited to current market rates for the type of loan. Loan terms must be for 20 years or less and, generally, the amount is limited to the lesser of 10 percent of the total project cost or \$5 million. In either case, the grant or loan must be made in conjunction with the adoption of a resolution that sets forth the political subdivision's commitment of revenues to the infrastructure project for which the loan is made. The fund also requires that amortization must begin within one year after project construction ends.



# STATE REVOLVING FUNDS

**STATE REVOLVING LOAN FUNDS (SRFS)** make low-cost loans available to jurisdictions for infrastructure, and loan repayments are put back into the program to fund additional projects.

Roughly half of the states (26) have statutorily enacted State Revolving Fund programs. The Pennsylvania Infrastructure Investment Authority (PENNVEST) was selected for inclusion in this study due to the comprehensive state legislation involved in establishing it; the fact that a single state agency is charged with administering the law and serves as a point of contact to determine implementation; the diversity of fund uses beyond traditional drinking water and wastewater facilities; the diversity of the types of financial assistance available; and its strong accountability standards for receiving financial assistance.

## Pennsylvania Infrastructure Investment Authority

35 PA. CONS. STAT. ANN. § 751.1 ET SEQ.

The Pennsylvania Infrastructure Investment Authority Act established the Pennsylvania Infrastructure Investment Authority (PENNVEST) as an instrument of the state. PENNVEST is authorized to provide financial assistance to local governments, municipal authorities and, in some circumstances, private entities for waste water, drinking water and storm water projects. Sources of revenue include state appropriations, federal grants, proceeds from issuing bonds, repayment of loan principal and payment of loan interest. Financial assistance may take the form of loans, loan guarantees, bond guarantees, bond insurance and grants.

PENNVEST bonds are general obligations of the authority and do not constitute a debt obligation of the state. The bond proceeds are exempt from state or local taxation.

When providing financial assistance, the authority must consider the following criteria:

- ▶ Whether the project will improve the health, safety, welfare and economic well being of the community.
- ▶ Whether it will solve water management and control supply, sewage treat-

ment or storm water system problems.

- ▶ The project's cost effectiveness.
- ▶ Whether the project is consistent with other state plans.
- ▶ Whether the applicant has demonstrated an ability to effectively operate and maintain the project.
- ▶ Whether the project will encourage consolidation of water or sewer systems to achieve greater efficiency in operation.
- ▶ The availability of other financial aid.

The maximum amount of financial assistance for a municipal project is \$11 million, with \$20 million available for regional projects.

Since its inception in 1988, PENNVEST has provided over \$4 billion for infrastructure investment, averaging

\$250 to \$300 million per year. About 90 percent of the funding provided for projects is in the form of loans, and 10 percent is in the form of grants.

PENNVEST has recently funded projects related to brownfields remediation and development. It has also provided \$4.3 million in loans to fund an acid mine drainage project in the southwestern part of the state to help prevent wastewater in an abandoned mine from overflowing and contaminating the Monongahela River. Such contamination would have caused serious environmental damage, threatened drinking water supplies and curtailed recreational activities (see case study on page 13).



# CASE STUDY: PENNVEST FUNDS KEY TO CLEANUP OF ABANDONED MINE POOL

**N**ot all infrastructure projects are about new roads and schools. Sometimes an effective infrastructure finance program can help fund facilities needed to safeguard natural resources such as surface water supplies.

A good example is the Pennsylvania Infrastructure Investment Authority (PENNVEST) and a key investment it made in a mine cleanup project in the Southwestern part of the state. PENNVEST funds were used to turn an environmental challenge into an economic opportunity by building a plant to pump and treat a polluted mine pool at the abandoned Shannopin Mine near Dunkard Township in Greene County.

Pumping and treating the polluted mine pool water is preventing an uncontrolled breakout of the water that would pollute Dunkard Creek and the Monongahela River. The plant will also allow the Dana Mining Company to reopen the Dooley Run Mine, which it shut down because of flooding from the Shannopin Mine, and expand other mining operations in the area.

The Shannopin Coal Company mined the Pittsburgh coal seam in the Shannopin Mine from 1926 until the early 1990s. The rising Shannopin Mine pool flooded the reserves in Dana Mining Company's Dooley Run Mine, causing the company to shut that mine down. The Dooley Run Mine was operating in the Sewickley coal seam about 100 feet above the Pittsburgh seam. The pool then began to flood the reserves in the company's Titus Mine, forcing the company to cut the number of employees in that mine from 30 to 15.

The combined cleanup effort was done by PENNVEST and the Department of Environmental Protection (DEP), Department of Community and Economic Development (DCED), AMD Reclamation Inc. and Dana Mining Company.

PENNVEST made the project feasible

by providing a low-interest, \$4.3 million loan, said Larry Gasparato, PENNVEST's project specialist in Southwestern Pennsylvania. That loan was part of an overall funding package of \$7.1 million from various state agencies. The PENNVEST funds have been used to cover the cost of constructing the acid mine drainage treatment facility as well as two miles of outfall sewer lines.

DEP contributed a \$1.8 million grant to the project from the Commonwealth's "Ten Percent Set Aside" Fund, authorized under a provision of Title IV of the federal Surface Mine Control and Reclamation Act of 1977. In addition, DCED provided a \$900,000 Industrial

Sites Reuse Program loan (ISRP) and a \$100,000 Opportunities Grant to assist in this project. The DCED funds will be administered through AMD Reclamation Inc., a non-profit organization.

"PENNVEST is very pleased to help make this critically important project a reality," said PENNVEST Executive Director Paul Marchetti. "This is just one of many steps that this Administration will be taking, along with local government and the private sector, to protect our water resources and revitalize communities all across the Commonwealth."

The treatment plant went online in June 2004, pumping and treating at a rate of 3,300 gallons per minute. As anticipated, construction and operation of the plant averted the potential discharge of polluted water into Dunkard Creek and the Monongahela River.



Photo courtesy of PENNVEST

**A \$4.3 million low-interest loan from PENNVEST was key to building a plant to pump and treat a polluted mine pool in Southwestern Pennsylvania.**

# CERTIFICATES OF PARTICIPATION

**CERTIFICATES OF PARTICIPATION (COPS)** are portions of incoming rent payments that are sold as issues to raise revenue for financing a project. COPS can be used for larger and more expensive projects and they do not count toward a jurisdiction’s debt limitations.

At least 12 states have legislatively enabled the use of certificates of participation. The North Carolina State Capital Facilities Finance Act, enacted in 2003, recognized the need for a variety of alternative financing mechanisms in addition to the traditional direct appropriations and general obligation bonds in order to adequately address the state’s capital facilities needs. Additionally, this legislation charges a single state agency with administering the law and providing a point of contact to determine implementation and the diverse types of assistance available.

## North Carolina State Capital Facilities Finance Act

N.C. GEN. STAT. § 142-80

The North Carolina State Capital Facilities Finance Act authorizes a variety of alternative finance mechanisms to facilitate providing capital facilities. Certificates of participation may be issued if the state treasurer determines that such issuance would result in debt service savings.

Items eligible for financing under the act include:

- ▶ Capital facilities, including buildings, utilities, structures or other facilities;
- ▶ Property development, including streets and landscaping;
- ▶ Extensions and enlargements to existing facilities; and
- ▶ Acquisition of equipment, machinery, and furnishings in connection with these items.



The Department of Administration oversees the finance mechanisms authorized by the legislation. Certificates of participation include certificates or other instruments delivered by a special corporation, and each certificate represents a fractionalized or proportional interest in the rental payments that will be made by the jurisdiction.

To date, approximately \$1.4 billion in certificates of participation has been approved for issue with about 47 percent of that authorization issued for various projects. The remaining 53 percent of the approved amounts has not yet been issued.

Category	Approved	Issued
Repairs and Renovations	\$ 300,000,000	\$ 175,000,000
Hospitals	110,000,000	48,961,672
Prisons	509,000,000	52,443,292
Universities	388,000,000	337,126,036
Youth Facilities	35,000,000	22,000,000
Parks	45,000,000	20,759,000
Wildlife	17,500,000	—
<b>Total COPS</b>	<b>\$1,404,500,000</b>	<b>\$ 656,290,000</b>

# GARVEES

**GARVEE BONDS** are debts secured with anticipated federal funds.

At least 13 states have statutes authorizing the use of Grant Anticipation Revenue (GARVEE) bonds for transportation needs. The two statutes below, which allow GARVEEs in California, are included in this report because they were used to provide for the first GARVEE issue in the country by a local government.

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## Federal Highway Grant Anticipation Notes

CAL. GOV. CODE § 14550

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## Funds for Highway and Public Mass Transit Guideway Purposes

CAL. STS. & HY. CODE § 188.51

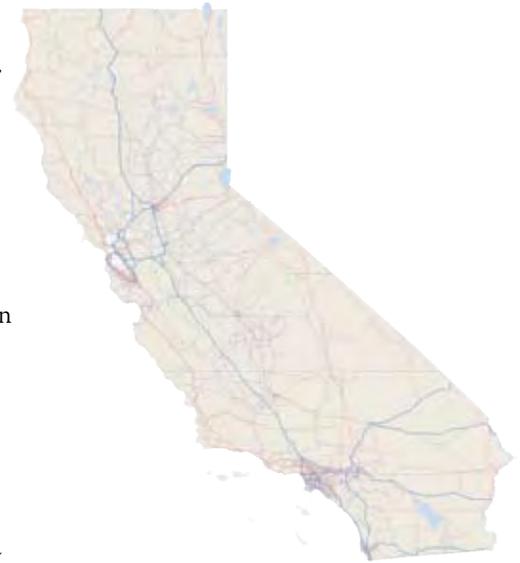
California statute authorizes the use of Grant Anticipation Revenue (GARVEE) bonds to fund the state's transportation needs. The statute specifically cites the rapid growth in population and traffic levels as well as the failure of revenues to keep pace with the need for transportation system improvement. GARVEE bonds, authorized by the federal National Highway System Designation Act of 1995 and the federal Transportation Equity Act for the 21st Century, are tax-exempt anticipation notes backed by annual federal appropriations for federal-aid transportation projects. By using these bonds, a state can accelerate projects and achieve significant cost savings by completing projects necessary for the future at present-day costs.

By law, the federally funded portion of any highway or other transportation project that has been designated for accelerated construction by the California Transportation Commission, and that increases capacity, reduces travel time, or provides long-life rehabilitation of key bridges and roadways of a corridor

or gateway for interregional travel and movement of goods, is eligible for funding by GARVEEs.

An interesting feature of California's GARVEE authorization, and the primary reason that it is included in this study, is that other sections of California law require that a percentage of all federal surface transportation funds allocated to the state must be made available to California counties. Under these provisions, the state recently had the first GARVEE bond issue in the nation that is guaranteed by a local entity for a local project.

A total of eight projects, including freeways and high occupancy vehicle (HOV) lanes, have been funded to date, with \$650 million allocated and \$250 million spent. Projects are determined by need, so all projects have been in Southern California, where most of the state's traffic congestion can be found. The Transportation Commission, in conjunction with the state treasurer, is required to prepare an annual analysis of the bonding capacity of available federal transportation funds.



# ADDITIONAL RESOURCES

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## National Association of Home Builders

[www.nahb.org](http://www.nahb.org)

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## National Association of Realtors

[www.realtor.org](http://www.realtor.org)

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## American Legislative Exchange Council

[www.alec.org](http://www.alec.org)

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## American Public Works Association

[www.apwa.net](http://www.apwa.net)

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## The Aspen Institute: Charter Schools

[www.aspeninstitute.org/Programt3.asp?bid=795](http://www.aspeninstitute.org/Programt3.asp?bid=795)

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## Association for Governmental Leasing and Finance

[www.aglf.org](http://www.aglf.org)

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## The Bond Market Association

[www.bondmarkets.com](http://www.bondmarkets.com)

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## Council of Development Finance Agencies

[www.cdfa.net](http://www.cdfa.net)

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## Council of Infrastructure Financing Authorities

[www.cifanet.org](http://www.cifanet.org)

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## Design Build Institute of America

[www.dbia.org](http://www.dbia.org)

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## FHWA's Innovative Finance (main page)

[www.fhwa.dot.gov/innovativefinance/index.htm](http://www.fhwa.dot.gov/innovativefinance/index.htm)

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## FHWA's Innovative Finance Primer

[www.fhwa.dot.gov/innovativefinance/ifp/ifprimer.pdf](http://www.fhwa.dot.gov/innovativefinance/ifp/ifprimer.pdf)

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## FHWA and Tea-21

[www.fhwa.dot.gov/tea21](http://www.fhwa.dot.gov/tea21)

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## Government Finance Officers Association

[www.gfoa.org](http://www.gfoa.org)

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## The Heritage Foundation

[www.heritage.org](http://www.heritage.org)

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## International Council of Shopping Centers

[www.icsc.org](http://www.icsc.org)

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## The National Association of Bond Lawyers

[www.nabl.org](http://www.nabl.org)

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## National Association of Counties (NACo)

[www.naco.org](http://www.naco.org)

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## National Conference of State Legislatures

[www.ncsl.org](http://www.ncsl.org)

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## National Cooperative Highway Research Program

[www.innovativefinance.org](http://www.innovativefinance.org)

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## National Council for Public-Private Partnerships

[www.ncppp.org](http://www.ncppp.org)

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## Reason Public Policy Institute: Privatization

[www.privatization.org](http://www.privatization.org)

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## School Construction News

[www.schoolconstructionnews.com](http://www.schoolconstructionnews.com)

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## Transportation Infrastructure Financing Alternatives

[www.wsdot.wa.gov/partners/tifa](http://www.wsdot.wa.gov/partners/tifa)

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## ABOUT NAHB

The National Association of Home Builders is a Washington-based trade association representing more than 235,000 members involved in home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction.

Known as “the voice of the housing industry,” NAHB is affiliated with more than 800 state and local home builders associations around the country.

NAHB’s builder members will construct about 80 percent of the more than 1.56 million new housing units projected for 2007, making housing one of the largest engines of economic growth in the country.

For more information about Smart Growth, please visit [nabh.org](http://nabh.org).

Learn more at [nabh.org](http://nabh.org).