

# Protecting the Public Interest

## *The Role of Long-Term Concessions for Providing Transportation Infrastructure*

*presented to*

**USC Keston Institute for Public Finance  
and Infrastructure Policy**

*presented by*

**Iris N. Ortiz  
Cambridge Systematics, Inc.**

**March 28, 2008**

**Transportation leadership you can trust.**

**CAMBRIDGE**  
SYSTEMATICS



# Setting the Stage...

- **Based on study for USC Keston Institute for Public Finance and Infrastructure Policy**
  - **Published June 2007**
- **How do P3s enter the transportation scene?**
  - **Infrastructure is aging and needs rehabilitation**
  - **Expansion still needed in much of the country**
  - **Gas tax is flat – fuel economy promises declines**
  - **Citizens distrust government spending, but demand more**

# Heavily Publicized Windfalls

- **Free money?**
  - **Chicago Skyway**
    - \$1.8 billion – 99 years
  - **Indiana Toll Road**
    - \$3.8 billion – 75 years
- **Drivers of value in Chicago and Indiana**
  - **Mature facilities**
  - **Growth in toll rates unprecedented on the U.S. scene**
- **Me too!**

# Then ... the Backlash

- **Issues such as**
  - Did the private sector take us to the cleaners?
  - Could public sector do the same thing, but better?
  - Were concession terms too long?
  - What's being done with the money?
  - Toll increases!
- **Results**
  - Indiana election results
  - Texas “moratorium”
  - New Jersey and Pennsylvania looking at “public-public” partnerships
  - Florida taking a more measured and cautious approach

# The Research Question

**What information did decision-makers and the public have, and what information should they have to make informed decisions?**

# Research Process

- **Literature review**
  - Tracking newspaper articles and blogs
  - TollRoadNews.com – to set timeline of events
  - Hearings – House Committee of Transportation and Infrastructure
  - Public documents on long-term concessions
  - FHWA/TRB papers and reports
- **Limited phone interviews/e-mail communication**

# Events in the Spring 2007

## Legislators React

- **House T&I Committee Hearing (February 13, 2007)**
  - “PPPs – Financing and Protecting the Public Interest”
- **Texas – Moratorium on PPPs and SH 121**
- **Pennsylvania/New Jersey proposals**
- **Oberstar/DeFazio letter**

# Case Studies

- **Chicago Skyway**
- **Indiana Toll Road**
- **Texas**
- **Virginia**
- **Pennsylvania**
- **New Jersey**

# Chicago Skyway

- **\$1.83 billion, 99-year lease**
- **Toll escalation: maximum of 2 percent, CPI, or per capita GDP**
- **Uses of revenue – nontransportation programs**
- **No major opposition**
  - **Most traffic from out-of-state drivers**
  - **Heavy vehicles = 13 percent of traffic**
- **No revenue sharing**

# Indiana Toll Road

- **\$3.8 billion, 75-year lease**
  - Toll escalation similar to Chicago
- **Uses of revenue**
  - Outstanding toll road debt
  - “Major moves” – 34 percent of revenues allocated to counties where facility is located
- **Opposition – foreign origin of concessionaires**
- **Party-line vote in legislature and voter backlash**
- **“Limited compete”**
  - Compensation for revenue losses for new four-lane limited access highway within 10 miles

# Texas – SH 130

## Segments 5 and 6

- **First project-specific Comprehensive Development Agreement (CDA)**
- **\$25 million upfront payment, 50-year lease**
- **Revenue sharing and provisions on refinancing gains**
- **Compensation for revenue losses from competing highways**
- **Toll rate escalation based on gross state product**

# Texas SH 121

- **Private concessionaire selected during our study for CDA**
  - North Texas Tollway Authority (NTTA) submitted a competing bid after the fact
  - High-profile controversy in and out of the State
    - Highlighted many of the important issues and ideology surrounding PPP
- **Texas Transportation Commission directed by Legislature to accept NTTA's bid, and had to close by December 1, 2007**
- **\$2.46 billion upfront, plus \$737 million in lieu of annual payments; 50-year term; spent locally**
- **NTTA retains toll setting authority**

# Texas Moratorium

## Senate Bill 792

- **2-year moratorium on PPP signed May 2007**
  - **Excluding certain areas – dubbed “Swiss cheese moratorium”**
- **Local toll agencies have “first shot” at new toll roads**
- **State can buy back profitable toll roads from private operators**
- **Created a legislative commission to identify “public policy implications of ... CDAs” and to develop recommendations to protect public interests**

# Virginia

## More Than 10 Years of Experience

- **Dulles Greenway**
  - Precursor of PPP legislation – unsolicited proposal
- **Pocahontas Parkway**
  - 63-20 Corporation – developer did not take revenue risk
- **I-495 Capital Beltway HOT lanes**
  - Concession agreement had just been signed at the time of the report
  - Financial close in December 2007
- **Comprehensive PPP legislation that has been amended in recent year as experience increases**

# Pennsylvania

## Evolving and Conflicting Ideas

- **Governor's initial idea to lease Pennsylvania Turnpike**
  - 48 “expressions of interest” received
  - Pennsylvania Turnpike Authority also responded
- **THEN, Act 44 authorized a 50-year concession between PennDOT and the Turnpike Authority**
  - Would monetize existing Turnpike asset and raise tolls
  - Would put tolls on I-80 (subject to Federal approval) to be operated by Pennsylvania Turnpike Authority
  - Initial Federal response was not encouraging
- **BUT, original Turnpike lease concept still being pursued by the Governor**
  - 14 teams responded to “request for qualifications”

# **New Jersey Reacts with Public-Public Partnership**

- **Initial study on potential for asset leases of all sorts, including toll roads**
- **New plan – “asset monetization” of Turnpike and Parkway that excludes private participation**
- **Legislature filed lawsuit to make study public**
  - **Administration claims study has not been finalized**
- **Details announced on January 8**
  - **Public Benefit Corporation**
  - **50 percent toll increase in 2010 and then every 4 years**
  - **\$37 billion in bond proceeds to pay off debt and pay for transportation improvements**

# Summary of Public Concerns and Potential Mitigations

# Main Crosscutting Themes

- **Public sector inexperience**
  - In-house expertise versus contracting experts
  - Conflict of interest
- **Use of upfront profits**
  - Transportation versus nontransportation uses
  - Short-term versus long-term needs
- **Unsolicited proposals**
  - Cherry-picking of profitable projects
  - Introducing competition

## Main Crosscutting Themes (continued)

- **Tolling policy needs to be separate from P3 policy**
  - Toll versus tax decision
  - Toll escalation policy
- **Angst over profit from highways**
  - Profit maximizing versus just getting by
  - Windfall profits are manageable through contracts
  - Can availability payment concepts yield savings without the angst?

## Main Crosscutting Themes (continued)

- **Length of concession agreements**
  - 50, 75, 99 years represent generations
  - European agreements tend to be much shorter
- **Noncompete/limited-compete clauses**
- **Operating and maintenance standards**
  - Will the private sector care?

# In Conclusion

- **Tolling policy separate from PPP policy**
  - Tolls not taxes
- **Profit from highways a new idea**
  - Private equity versus private debt
  - Manageable through contracts, but uncertain territory
- **Transparency**
- **Most concerns dealt through contract terms**
  - “Legacies of the past”

# What's Next?

- **NCHRP Synthesis, *Key Elements for Public Sector Decision-Making in Public-Private Partnerships***
- **Literature review and survey/interviews**
  - 50 states
  - Other individual/organizations
- **Summer 2008**

## For More Information

- **USC Report**  
<http://www.usc.edu/schools/sppd/keston/pdf/20070618-trans-concession-agreements.pdf>
- **Iris N. Ortiz, [iortiz@camsys.com](mailto:iortiz@camsys.com)**
- **Jeffrey Buxbaum, [jbuxbaum@camsys.com](mailto:jbuxbaum@camsys.com)**
- **Richard Little, [rglittle@sppd.usc.edu](mailto:rglittle@sppd.usc.edu)**