Transportation Public Private Partnerships

Issues Relating to Protecting the Public Interest

presented to
National Conference of State Legislatures

presented by
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We’re on the Cusp of Something
But What is it?

- Infrastructure is aging and needs rehabilitation
- Expansion still needed in much of the country
  - Costs are escalating and projects take time to develop
  - Some view congestion pricing as a replacement for expansion
- “Read my lips” still resonates
- Gas tax receipts are flat or declining
- Citizens distrust government spending, but demand more
- Federal surface transportation program reauthorization (SAFETEA-LU) looming
- No easy answers
Background

- Heavily publicized “windfalls”:
  - 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
  - Others wonder if this is the silver bullet

- Trans Texas Corridor developer agreement
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 awarding of SH 121 concession to a public toll agency and statewide “moratorium” on PP
- Oberstar/DeFazio letter cautioning states about PPP
- New Jersey and Pennsylvania looking at “public-public” partnerships
- Others: a more measured and cautious approach
Public-Private Partnerships
What are We Talking About?

- Asset Sale
- Full Service Long-Term Concession or Lease
- Multimodal Agreement (Public-Public Partnership)
- Joint Development Agreement (JDA - pre-development)
- Transit-Oriented Development (TOD - post-development)
- Build-Own-Operate (BOO)
- Build-Transfer-Operate (BTO)
- Build-Operate-Transfer/ (BOT)
- Design-Build-Finance-Operate (DBFO)
- Design-Build-Operate-Maintain (DBOM)
- Design-Build with Warranty (DB-W)
- Design-Build (DB)
- Construction Manager at Risk (CM@Risk)
- Contract Maintenance
- Fee-Based Contract Services

Degree of Private Sector Responsibility and Risk
High
Low

Research and analysis

What information did decision-makers and the public have, and what information should they have to make informed decisions?
Private Participation Gets Confused with Other Decisions

Should users pay?  

Project selection and priority?

Private sector participation?
Obvious answer is “yes,” but... non-users benefit too!

How should users pay?

- Gas tax is a blunt proxy, but easy
- Tolls or broad mileage-based fees are complicated
  - Change to the status quo needs to be justified
  - “Other people’s money” helps the toll argument
  - Use of money an issue – project → corridor → transit → system
  - Congestion management – a mental stretch for most
Traditional process is tortuous

Public often perceives lack of transparency

P3 can seem to put project selection into private hands

• Interfere with local priorities

• Some argue that market forces are the best indicator of project need and priority, but...environmental and other factors demand a continued public role
Equity Issues
PPP or Otherwise…They’re Still the Same

- Current financing system
  - Is our current system of financing fair?
  - Who pays? Who benefits?

- Geographic equity
  - How fair is tolling on a local/regional basis?

- Income equity
  - How fair is tolling to disadvantaged communities?
  - What accommodations can or should be made?
Private sector participation?

First – agree on how we should pay!
- PPP and toll choices get confused

Dollars and cents are complicated
- Experts disagree

Ideological rhetoric is strong

Lack of public money and abundance of investment dollars

How can the private sector’s willingness to invest infrastructure be harnessed in the most publicly responsible way?
Emerging Themes

- Tolling policy needs to be separate from P3 policy
  - Toll versus tax decision
  - Toll escalation policy

- How should government decide whether or not to pursue PPP?
  - Valuation of alternative approaches
  - Appropriate risk transfer
  - Transparency and public participation
  - Unavoidable complexity of transactions
Emerging Themes (cont’d)

How should the public interest be protected?

- Public sector must ensure that private sector has the right motivations to protect public interest, while allowing return on investment
- Well tailored contract terms
- Monitoring

Perceptions about PPP can be a distraction from the real issues, e.g.:

- Non compete clauses
- Tolling and PPP are synonymous
- Public sector loses control
What’s Needed

- **Public discussion**
  - Public needs to perceive the problem to accept paying in any way
  - Government needs to look at how it makes decisions, spends money, and delivers
  - Outcomes will move the ball forward

- **Transparency about the real sources of money from different approaches**
  - All approaches cost money
  - No silver bullets

- **Keep the discussion civil**
For More Information

- USC Keston Institute Report
  - “Protecting the Public Interest in Long Term Concession Agreements”

- National Cooperative Highway Research Program:
  - “Key Elements for Public Sector Decision Making in Public Private Partnerships”
  - Coming this fall

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