Appendix H. The Pew Center on the States' Key Questions for States Considering PPPs[284]

This list of key questions for states to consider when exploring PPPs for was developed by the Pew Center on the States for the 2009 report *Driven by Dollars: What States Should Know When Considering Public-Private Partnerships to Fund Transportation.* According to the report, states considering PPPs should have clear, data-driven answers to the following 30 questions, divided into four categories. Note that these questions are relevant to both legislative and executive roles.

Examining the Options: The Decision-Making Process

1. Does the government have a clear sense of the funding gap in its infrastructure needs?
2. Have all revenue options been examined and compared, both with and without private-sector involvement?
3. Is there understanding and agreement about the goals of raising revenue and the ways in which dollars will be distributed among projects or needs?
4. Has the legislature adopted enabling legislation to signal its willingness to consider a concession agreement with the private sector?

Let's Make a Deal: The Deal-Making Process

5. Did the state complete appropriate due diligence prior to proposing a lease of the roadway?
6. If tolls will be increased, what is the likely effect on traffic patterns? If increased tolls on the leased road lead to more traffic on alternative roads, will the government have to spend additional funds to improve the non-toll roads?
7. Will safety on the statewide transportation network be adversely affected if travelers avoid the tolls by using alternative roads?
8. Is it unfair that current users get to enjoy the transportation system that future generations will be paying for through higher tolls?
9. Is one group of individuals being asked to finance the majority of the state's transportation needs? Is that equitable?
10. What are the economic and business implications for the state if the concession is allowed?
11. How does the proposal take into account the potential impact on congestion, pollution and land use?
12. Was the bidding process fully competitive?
13. What are the transaction costs associated with the deal? Are they reasonable?
14. What provisions for flexibility are written into the lease? Can the government and the private operator make choices related to level of service, maintenance, etc., to reflect changing circumstances?
15. What risks do the public and private sectors bear in the deal? Does the financial structure of the lease account for risks borne by the state or the private operator?
16. Does the party bearing the risk also have control that allows it to fix problems that arise related to that risk?
17. If the lease is awarded, can the state still build competing and/or complementary roads or transportation routes? If not, what are the long-term implications?

18. Is the process adequately and appropriately transparent, with sufficient involvement from the public and other stakeholders?

19. Do both the executive and legislative branches have access to the information they need to make a sound decision?

Show Me the Money: Financial Analysis

20. How does the proposed term of the lease compare to other concessions? Does the term make sense for the state's goals?

21. Should the state pursue a lease that maximizes the upfront payment or opt for a different model that might include revenue sharing?

22. Will the upfront funds from the concession be used to create a sustainable source of revenue for the future? If so, how far into the future will they last?

23. How should the revenue from the concession be spent? Who should decide?

24. How were the state's financial assumptions built? Are they reasonable?

25. How do tax treatment and borrowing costs affect the government and the proposed concessionaire's financial assumptions?

Who Will Mind the Store? Oversight and Service Provision

26. What mechanism for oversight does the lease set out? Is it strong enough to protect the state's interests?

27. Within the terms of the contract, has a level of service been determined? Is there a system to set and measure performance criteria?

28. Are there any penalties if the road fails to meet minimum standards? Are they large enough to discourage poor performance by the concessionaire?

29. What are the conditions for the state to buy back the lease from the private operator? What provisions are included in the deal in case of termination or default? Do they provide the state with sufficient flexibility?

30. What are the deal hand-back conditions? Will the state receive a road in the same, or better, working and financial order than at the start of the deal?