

Toll Road Update — February 2006

Recent developments in the toll road industry are summarized below. These developments are based on our February 2006 research. If you would like any additional information regarding this research or if we can be of any assistance to you, please let us know.

Regards,

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In the United States:

1. New York PPP Legislation: In January, New York State Governor George Pataki introduced PPP enabling legislation as part of his 2006-2007 Executive Budget. The legislation would authorize the New York State Department of Transportation, the New York State Thruway Authority and the Metropolitan Transportation Authority to use PPPs to finance state transportation projects. Under the proposed legislation, public and/or private entities would be able to acquire, design, finance, construct, improve, operate and maintain transportation facilities, provide transportation services, and impose user fees for the use of the facilities or services, but the imposition of any fares, tolls or other charges to transportation facilities would be limited to those facilities that currently impose user fees, are newly constructed, or increase capacity. (See Part L of the Governor's Memorandum of Support at: <http://publications.budget.state.ny.us/fy0607artVIIbills/TEDConsBMwtoc.htm#partLsum>). Governor Pataki previously introduced legislation for PPPs in January 2005, but that legislation was never advanced by the legislature. One project which has been noted as a potential PPP is the Tappan Zee Bridge, which is over 50 years old and is approaching the end of its useful life. On September 29, 2005, New York State Thruway Authority, MTA Metro-North Railroad and New York State Department of Transportation recommended that six options be considered for the redevelopment of the bridge as part of an ongoing environmental review process. The options range in estimated cost from \$500-700 million (no build option) to \$12-14.5 billion (new bridge, highway improvements and commuter rail line option). See: <http://www.tzbsite.com/newsroom/pressrel/2005/2005-09-29-tzb-review.html>

2. California PPP Legislation: On January 10, legislation was introduced in California's Assembly and Senate that would authorize PPP highway projects. The relevant portion of the legislation would authorize the department of transportation to enter into "comprehensive development lease agreements" with private entities for toll road projects. Solicited and unsolicited proposals would be accepted and the facilities would be leased to the private entity for no more than 80% of the project's useful life or 99 years, whichever is shorter. The legislation contains a provision permitting competing state roads which is not surprising following California's experience with the SR-91 Express Lanes, and while comprehensive development lease agreements would be able to provide for reasonable compensation to a developer for losses related to a competing road, compensation would be unavailable where the competing road is (i) part of certain regional transportation plans, (ii) a safety project, (iii) an improvement resulting in incidental capacity increases, (iv) additional HOV lanes or conversion of existing lanes to HOV lanes or (v) projects outside the boundaries of

the lease. California had PPP legislation in the past pursuant to which two PPP projects were developed, but the legislation expired in January 2003. Subsequent attempts to authorize PPP toll road projects have stalled in the legislature.

California's proposed PPP legislation is being introduced as a key element of a larger infrastructure bond package, which Governor Arnold Schwarzenegger described in his state of the state address at the beginning of January. (For a description, see: <http://www.dot.ca.gov/docs/strategicgrowth/SummaryofGovernorsStrategicGrowthPlan-GoCalifornia.pdf>). The legislation calls for \$6 billion of transportation bonds to be issued in 2006, another \$6 billion in 2008 and \$12 billion in 2012. For the 2006 bond issuance the legislation provides that proceeds may be used to support PPP agreements, including project debt and equity financing. In addition, certain transportation infrastructure projects are to be allocated \$1 billion of the 2006 bond issuance on the condition that such projects procure matching funds of not less than four times the state contribution, which may be provided by private entities (eligible projects include highway access to ports and intermodal facilities and truck corridor highway improvements, including dedicated truck facilities and truck toll facilities). The 2008 bond issuance would have similar provisions. Some Democratic leaders have criticized the bill - they would like to see more affordable housing, urban renewal and hospital renovation instead, and lawmakers from both parties want more information about where private roads will be built.

3. Texas PPPs: At a January 17 workshop entitled "Launching the Next Generation of CDA Projects," the Texas Department of Transportation (TxDOT) announced that it will be launching two new PPP projects over the next three to four months. The first project is the development of the I-69 Trans-Texas Corridor, which is Texas' portion of the planned 1,600-mile national highway running from Canada to Mexico (the Texas portion would run approximately 650 miles from Texarkana/Shreveport in the north to Mexico in the south). The RFQ for the TTC-69 project is expected in March. The second project TxDOT announced is the SH-161 toll road, which will be an extension of SH-161 west of Dallas from SH-183, north of Dallas to I-20 south of Dallas through the cities of Irving and Grand Prairie. The RFQ for the SH-161 project is expected in May.

Commissioners in Harris County, Texas have authorized studies to help determine whether the county should sell, lease or maintain its ownership of the Harris County Toll Road Authority, which operates 83 miles of toll roads in the Houston area (revenues exceed \$300 million per year). Studies are being done exploring a sale to a public entity, a sale to a private entity and a long term lease. The studies will be completed in the spring with a decision due from the County commissioners by June. Harris County requested proposals for the potential privatization in October 2005.

TxDOT also announced that the IH-820/SH-183 project has been cancelled because of the timing of the environmental approvals process and the financial feasibility of the project. Four bidders had been shortlisted for the project and the project was only cancelled after consultation with the bidders, internal discussions and further analysis. At the January 17 workshop a Texas official said that the project would most likely be restructured and the request for proposals would be re-issued at some point in the future.

4. Indiana Toll Road Privatization: On January 24, Governor Mitch Daniels announced that a Macquarie/Cintra consortium won the Indiana Toll Road concession. The consortium offered \$3.85 billion for a 75-year lease of the 157-mile toll road. A Macquarie/Cintra consortium also operates the Chicago Skyway (which connects to the western terminus of the Indiana Toll Road) under a 99-year lease awarded last year for \$1.83 billion. According to press releases, Macquarie and Cintra propose to invest \$385 million each over nine years and to borrow the remaining 80% of the concession price. The Governor has proposed that \$2.8 billion from the bid would be used on Indiana transportation projects over the next 10 years while \$850 million would be put in a trust fund for future projects. Before the contract for privatizing the Indiana Toll Road can become final, Indiana's legislature must approve a bill authorizing the lease. On February 1, Indiana's House of Representatives approved the bill by a vote of 52 to 47, primarily supported by Republicans. The bill is now in the hands of the Republican-dominated Indiana Senate. This bill would also grant the Governor of Indiana the authority to develop the planned extension of Interstate 69 between Indianapolis and Evansville as a PPP tollway.

5. Florida PPPs: The Tampa-Hillsborough County Expressway Authority has issued a public notice that it plans to develop as a PPP the East-West Road connecting New Tampa communities with downtown. The Authority plans on hosting a workshop and meeting with potential bidders on March 2. (See <http://www.tampa-xway.com/bids/documents/AD.doc>). If the road is built as a PPP it would be a first for Florida. The project involves 3.1 miles of new limited access alignment including an interchange (at I-275), and the majority of the road would be built on structures for environmental reasons. According to the interim executive director of the Tampa-Hillsborough County Expressway Authority, the Authority must reduce the cost of the \$140 million project by about 20 percent to make it feasible. Tampa City Council member Shawn Harrison explained that partnering with a private company is the only way to advance the project, which has been discussed for twenty years but never moved forward because of financing issues. According to a report from *P3Americas.com*, the state is reported to be considering six other PPP toll road projects, which may include C.R. 951 and the Colonial Expressway in Lee County.

6. Missouri PPP Bridge: Missouri may move forward with a new-build PPP toll bridge. The Missouri legislature is considering legislation introduced on January 23 that would allow the state to contract with a private entity to finance, develop and/or operate a toll bridge over the Mississippi River, connecting St. Clair County in Illinois to downtown St. Louis in Missouri. A report regarding the feasibility of implementing this project as a PPP concluded that charging a \$2 toll on the approximately \$900 million bridge would generate enough revenue to cover the current \$600 million funding gap. The bridge is intended to reduce congestion on an already existing bridge. One potential obstacle is that the proposed legislation requires Missouri to enter into an agreement with the Illinois Department of Transportation and Illinois officials have indicated that they oppose tolling the bridge.

7. Illinois Tollway Privatization. Illinois may be considering privatizing the Illinois Tollway. The idea was raised by a state senator, Jeff Schoenberg, who apparently suggested to the state legislature 15 years ago that Chicago lease the Chicago Skyway. Schoenberg said that the Illinois Tollway is now more attractive than ever for investors and that the proceeds could be used to match \$3 billion in available federal matching funds that the state is not currently taking advantage of. The state would need to pass enabling legislation authorizing the privatization and Schoenberg has asked the state Attorney General to look into the legal issues associated with the defeasance of the Tollway's existing debt.

8. Kansas Turnpike Valuation: Reports have estimated that leasing the Kansas Turnpike, a 236-mile toll highway running from Kansas City, Kansas to the Oklahoma border south of Wichita, could be worth \$300 million to \$3.15 billion to Kansas depending on the term of the lease and the schedule for increasing tolls. The idea of leasing the Kansas Turnpike drew criticism from certain local lawmakers and transportation officials including Senator Les Donovan, Chairman of the Kansas Senate Transportation Committee and a member of the Kansas Turnpike Authority, who according to a local paper hopes the state doesn't spend much time on this "rabbit trail". Kansas lawmakers considered privatization of the Kansas Turnpike in 2003 to raise revenue without raising taxes and in 1992 Reason Public Policy Institute of California valued the highway at \$900 million. Kansas does not currently have legislation authorizing PPP transportation projects.

9. Colorado Legislative Setbacks. Colorado's Senate recently passed a bill that would overturn an existing state law allowing private developers to condemn land for private toll roads. The bill is currently being considered by the House. Under the proposed legislation, a private developer would only be permitted to condemn land if it partnered with the Colorado Department of Transportation in the building of the toll road under consideration. Last year Governor Bill Owens vetoed a similar bill. The current measure was introduced in large part as a reaction against the proposed Front Range Toll Road which would be a private toll road running approximately 210 miles from Pueblo to Fort Collins. A bill was also recently introduced in the Colorado House, which would prevent the Colorado Department of Transportation or any other toll road operator from employing mechanisms that force additional traffic onto toll roads including the installation of traffic signals and reduced speed limits which encourage drivers to use toll roads rather than free roads. A companion bill was also introduced that would prohibit private companies who are engaged in building and operating toll roads from implementing such mechanisms to force traffic onto the toll roads. Tom Norton, the Executive Director of the Colorado Department of Transportation, recently noted that while private companies have expressed interest in PPP toll roads in Colorado, the real obstacle preventing their implementation is political risk.

Outside the United States:

10. India Signs Three Concessions: India recently signed three concession agreements for sections of the North-South corridor of National Highway 7 in Tamil Nadu. The concessions, which are part of India's National Highway Development Project, are for the conversion of sections of the national highway to four lanes. The concessionaire for the first section is L&T Krishnagiri Thopur Toll Road Private Limited and the concessionaires for the second and third sections are SPVs owned by Reliance Energy Limited. Reliance Energy will convert two national highway sections into four-lanes on a build-operate-transfer basis. Both of Reliance Energy's concessions are for 20 years. The first concession relates to a 33.5 km long, high-traffic density section of the Namakkal-Karrur Section of NH-7 and the second concession relates to a 53.0 km long section of the Dindigul-Samyannallur section of the NH-7. The concessionaires will recover their investments through tolls and subsidies. India plans to have private companies bid for toll-road concessions to improve 10,000 km of main roads and to widen the highways that link India's main cities. India may also privatize its airports and port operations.

11. Philippine PPP Toll Road: The Malaysian firm MTD Manila Expressway signed an agreement with the Philippine National Construction Corporation and the Philippine Toll Regulatory Board for a concession to rehabilitate, widen and extend the 30-kilometer South Luzon Expressway. The International Finance Corporation, a lending unit of the World Bank, has agreed to provide an initial \$50 million for the project and may then raise another \$50 million together with other banks. MTD will collect tolls to recover its investment and repay the loans, and the Philippine government is not providing any revenue guarantees. While there is no general law allowing private developers to operate toll roads in the Philippines, a lack of funding has forced the state-owned PNCC, which is the only entity with the right to operate toll roads in the country, to contract with MTD. MTD Capital, a construction company listed on the Bursa Malaysia, also operates a toll road in Sri Lanka.

12. Kazakhstan PPPs: According to Kazakhstan's Minister of Transportation and Communication, Askar Mamin, Kazakhstan is actively looking to engage private investors in the construction of toll roads. The Minister expressed interest in new roads that would link the eastern and western regions of the country (which is just shy of four times the size of Texas) and the Ministry has hired a western company to perform a comprehensive feasibility study of all toll road projects in the country. Kazakhstan does not have a history of operating toll roads.

13. Holland PPP Road: The construction phase of Holland's first PPP road project is complete and the Transport Minister has noted the country's progress toward increased private sector involvement in infrastructure projects. Construction of the 9-km A59 motorway was led by Fluor, Royal BAM Group and Boskalis and was financed by ING and Bank Bederlandse Gemeenten.

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