

## Toll Road Update — March 2007

Recent developments in the toll road industry are summarized below. These developments are based on our March 2007 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. Please also contact us if you know of anyone else that would like to be on our distribution list.

Regards,

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*In the United States:*

1. Potential Moratorium on Texas PPPs: In Texas, increasing concern that there's not enough oversight of the Texas Department of Transportation's (TxDOT's) PPP program boiled over in a recent Texas Senate committee hearing, and has led to the introduction of Senate Bill 1267 which would establish a moratorium on PPP toll roads until September 2009. If adopted as law, the moratorium bill would (i) place a two year moratorium on the privatization of toll roads and (ii) establish a study group to evaluate the long-term affect of privatizing toll roads. The bill was filed on March 6, 2007 by Senator Robert Nichols and co-sponsored by 25 additional senators. In a press release regarding the bill, Nichols paid particular attention to competition penalties that limit Texas' ability build competing roads, the need to ensure predictable state buyback costs and the need to regulate the amount of tolls that private operators charge for use of PPP toll roads. The moratorium would apply to any comprehensive development agreement to be entered into after the effective date of the legislation, which would include, among others, the comprehensive development agreement to be entered into with respect to the SH-121 concession which was awarded on February 28, 2007 to Cintra (see below). On March 19, 2007 *P3Americas.com* reported that the Senate moratorium bill and a companion bill in the House each had enough support to pass with the two thirds majority required to override a veto by Governor Perry. The moratorium legislation would be effective immediately upon its adoption as law if passed by two thirds of the House and two thirds of the Senate, or on September 1, 2007 if adopted as law after passage by a smaller percentage.

The moratorium legislation was triggered in part by a recent state audit conducted by the Texas State Auditor's Office of the comprehensive development agreement executed in 2005 for the Trans-Texas Corridor TTC-35 project which found that, even though TxDOT is moving quickly to sign contracts with developers, "there is a lack of reliable information regarding projected toll road construction costs, operating expenses, revenue and developer income." Among the key findings of the audit was that weaknesses in TxDOT's accounting for project costs create a risk that the public will not be properly informed as to how much TxDOT is spending on projects and that the state's costs may be inappropriate. The audit also found reason to be concerned with the possibility that TxDOT would be required to forego concession payments in

the event of increases in financing costs, inflation or interest, and with the prospect that Texas may have to expend more public funds than expected for this project. The primary recommendations of the audit were to make all documentation related to PPP projects public and for the state legislature to take action to increase the availability and reliability of information.

2. Texas SH-121 PPP: Despite the potential moratorium, TxDOT recently recommended, and on February 28, 2007 the Texas Transportation Commission approved, the award to a Cintra-led consortium of a concession for SH-121 in Collin and Denton County, north of Dallas. The concession will be for 50 years and will be governed by a comprehensive development agreement to be entered into by TxDOT and the consortium. Cintra is already involved in Texas as the state's strategic partner for the TTC-35 Master Development Plan and as the concessionaire for the SH-130 (Segments 5 and 6) concession. The SH-121 concession requires the consortium to complete construction of the 25-mile SH-121 toll road and operate and maintain it through the 50 year concession period. In exchange, the consortium will be entitled to collect tolls on the road. Of the 25 miles of the toll road, 9.1 miles will be constructed by the state and the state will also turn over to the consortium 7.1 miles which are already operational. Construction completion is expected in 2011. The consortium is made up of a joint venture among Cintra, Ferrovia Agroman, W.W. Webber and a fund managed by JPMorgan Asset Management. According to the TxDOT press release, financial close is expected this summer. The U.S. Department of Transportation provided conditional approval in October for Texas to issue \$1.8 billion in Private Activity Bonds for the private developer of the SH-121 toll road project.

3. Missouri and Illinois Still Split over Mississippi River Bridge: Two new proposals have been put forward to reduce congestion on the Mississippi River crossings between St. Louis, Missouri and Illinois. Over the last several months Missouri has been pushing to build a new toll bridge, which is estimated to cost over \$900 million, as a PPP with a private sector company. Illinois on the other hand, concerned that the burden of the tolls would fall disproportionately on its residents who commute to St. Louis, has rejected any plans for a new bridge that would be paid for with tolls. Instead, Illinois has recommended that the states build a companion bridge next to the existing Martin Luther King Bridge, a project dubbed the Martin Luther King Bridge "coupler". In February, Missouri announced that a team led by Zachry American Infrastructure had submitted an unsolicited proposal to build a new 6-lane bridge as a PPP. Tolls would be charged to use the new bridge and would be higher during rush hours and for trucks. In response, Illinois has proposed to build the Martin Luther King Bridge coupler (which would add only 3 or 4 lanes) without any contribution of funds from Missouri. Under Illinois' plan the Martin Luther King Bridge coupler would be paid for with \$239 million from the federal government, \$261 million from Illinois and \$25 million from the East West Gateway Council of Governments, a bi-state metropolitan planning organization for the St. Louis area comprised of representatives from Illinois and Missouri. While it may be difficult for Missouri to turn down a "free" companion bridge, there is some indication that Missouri would like to consider Zachry's proposal as it provides more lanes and a longer term solution for the areas transportation needs.

4. Georgia's BIG Idea: Georgia is considering a \$22 billion, 10-year transportation funding plan, which would be based on a statewide 1-cent sales tax increase and which calls for certain major projects to be funded through private investment and PPPs. The Bold Initiative for Georgia, or "BIG Idea" as it is called, would raise \$22 billion through the sales tax increase to build new roads, widen and repave old roads, pave dirt roads and subsidize public transit, including the MARTA rail and bus system in Atlanta. In addition, under the plan Georgia would also look for private investment and PPPs to pay for about \$22.7 billion worth of toll road projects in the Atlanta area. One potential PPP covered by the BIG Idea is a \$6.8 billion east-west toll road that would be built north of Atlanta (the increased sales tax would provide \$2.5 billion for this east-west toll road and the PPP would be expected to provide for the rest). The road would run north of where the failed Northern Arc project was to have run and is supported by the manufacturing community in northwest Georgia who currently have to drive south to Atlanta to ship their goods northeast to east coast markets. Another project proposed by the BIG Idea as a PPP is a \$6.2 billion tolled tunnel connecting Georgia 400 with I-675 through downtown Atlanta. In addition, as part of the BIG Idea, tolled lanes could be considered for most metro Atlanta area interstates, at an estimated cost of \$12 billion. An alternative to the BIG Idea is also being considered by the state legislature which would provide for regional transportation plans to be based on regional increases in sales and gas taxes. The increases in the sales tax proposed by the plans would require a public referendum prior to approval. For more information on Georgia's transportation needs visit: <http://www.whatsthebigidea.us/>

5. Tennessee PPP Legislation: Tennessee's state legislature is considering a bill which would allow the state to develop toll roads and enter into PPPs with the private sector. The bill was introduced in both houses of the state legislature on February 8, 2007 and is currently in committee in both houses. The bill states that the legislative intent is to authorize tolling as an additional and alternative method for funding or financing highways and transportation facilities and that the Tennessee Department of Transportation (TDOT) "is given full authority to enter into contracts, agreements or understandings with private parties ... for the purpose of developing or operating a tollway or toll facility, or any part thereof," including design-build or design-build-operate contracts, and leases, licenses, franchises, concessions or other agreements. Such private entities would be entitled, pursuant to an agreement with TDOT, to set and collect tolls and receive other toll revenues. The bill was introduced in the Tennessee House by Phillip Pinion (Democrat) and in the Tennessee Senate by Diane Black (Republican).

6. Mississippi PPP Legislation: PPP toll road legislation has made its way through the Mississippi Senate and House and a final draft of the legislation is currently being negotiated by a joint Senate and House conference committee. If passed, the bill would allow state entities to contract with private companies for the purpose of designing, financing, constructing, operating and maintaining one or more new toll roads or toll bridges in Mississippi. Solicited and unsolicited proposals would be permitted. Tolls would not be allowed on currently free roads and toll roads would only be allowed "at and along such locations where an alternate untolled route exists". In addition, contracts entered into with the Mississippi Transportation Commission may require the private company to pay a percentage of all tolls it collects to the Mississippi Department of Transportation.

7. Hawaii Interested in PPP: *P3Americas.com* recently reported that Hawaii is gauging private sector interest in a \$700 million, 22-mile toll road to be built on the island of O'ahu between Honolulu and Kapolei via the H-1 Freeway and a newly double decked Nimitz Freeway. Hawaii's deputy transportation director for highways, Brennon Morioka, recently stated that Hawaii is "very serious about moving ahead with such partnerships," and according to the *Honolulu Advertiser* has indicated that the state could be ready to enter into a partnership agreement within the next 18 months.

8. North Carolina PPP: Private sector companies recently approached the North Carolina Turnpike Authority (NCTA) about a potential PPP to rebuild the Yadkin River bridge on Interstate-85 between Charlotte and Greensboro, and at the end of February the NCTA approved a study of the feasibility of tolling a portion of I-85 to finance this project. Public funding is not expected to be available until 2014 at the earliest to rebuild this bridge, which may cost as much as \$350 million or \$400 million.

9. Alaska Receives Proposals for Knik Arm Bridge: Two groups have submitted proposals to Alaska's Knik Arm Bridge and Toll Authority (KABATA) to design, build, finance, operate and maintain the Knik Arm Bridge project under a 55 year concession. According to *Project Finance Magazine*, the first group consists of Bouygues, URS, ARUP, USKH and Entrix and the second group consists of Macquarie, Kiewit, Manson, Parsons, Golder Associates and VMS. The deadline for submitting proposals for the toll bridge concession was March 13, 2007. An RFP is expected in June if the statements of qualification are approved.

10. National Coalition Opposes Toll Roads: A group of influential national highway organizations sent a letter to the U.S. Secretary of Transportation on February 8, 2007 setting forth their opposition to the U.S. Department of Transportation's support of privatizations and PPPs. The coalition, which calls itself Americans for a Strong National Highway Network, is composed of the American Trucking Associations, the American Automobile Association (AAA), the American Highway Users Alliance, the National Association of Truck Stop Operators, the Recreation Vehicle Industry Association and the Owner Operator Independent Drivers Association. The coalition noted that while they "support exploring new approaches to fund the nation's roads and bridges, [they] remain concerned that PPP initiatives, implemented in isolation from an overarching transportation strategy, could have a detrimental impact on the Interstate Highway System's safety and efficiency." Among the concerns cited by the coalition were private sector profits, detrimental non-compete provisions, double taxation of road users and diversion of state compensation for non transportation uses. The coalition, which is made up of trucking and consumer groups that are often at odds on

other issues, is expecting to “forcefully engage” the federal government as the federal government proceeds towards the next highway funding bill. Bill Graves, the president and CEO of the American Trucking Associations and former Governor of Kansas, stated that “Leasing our highways is essentially a dismantling of the nation’s interstate highway network ... and the United States cannot maintain a national highway network if key segments are sold or leased to the highest bidder.” An editorial written by Bill Graves regarding PPPs is available at:

[http://www.pittsburghlive.com/x/pittsburghtrib/opinion/columnists/bumsted/s\\_494721.html](http://www.pittsburghlive.com/x/pittsburghtrib/opinion/columnists/bumsted/s_494721.html).

*Outside the United States:*

11. Czech Republic PPP: The Czech Republic is set to tender a 36-year concession for the 30-kilometer segment of the D3 Motorway running between Tabor and Bosilec, which is intended to provide an improved connection between the city of Prague and South Bohemia. The concession will include the construction, financing, operation and maintenance of two new sections of the road, the 16.3-kilometer D307 section and the 14.3-kilometer D308 section. The concessionaire will be compensated through an availability fee payment scheme combined with a shadow toll. The procuring agency is the Ministry of Transport of the Czech Republic. The D3 Motorway is part of the E55 international road connecting Scandinavia in the north with Italy and Greece in the south. The procurement process is expected to kick off in July 2007 and run through June 2008.

12. Hungary PPP: The Hungarian Ministry of Economic Affairs plans to employ a PPP to extend the M6 Motorway between Dunaújváros and Pécs in the south of the country near the border with Serbia. Hungary would like for this 180-kilometer section of the M6 Motorway to be completed by 2010 because Pécs has been designated a 2010 European Capital of Culture by the European Union. According to the Minister of Economic Affairs, János Kóka, Hungary would pay the concessionaire an annual standby fee for 25-30 years. The tender is expected to be published in April and Hungary would like to have an agreement signed by November 2007 so that construction could begin before the end of the year.

13. Montenegro PPPs: The Government of the Republic of Montenegro recently published a request for expressions of interests to provide consulting services to undertake a feasibility study of two potential highway PPPs in Montenegro. The first highway to be covered by the study is the approximately 170-kilometer Bar-Boljare highway which runs to the Serbian border, and the second highway is the approximately 110-kilometer Adriatic-Ionian highway. According to Montenegro’s request for expressions of interest, the feasibility study will “identify the optimal technical, environmental, economic, [and] financial solution [for] the upgrading of the two corridors” and “[will] provide an indication as to the potential contribution of the private and public sectors in each scenario and review and comment on the PPP legislation currently in force.” It has been reported that tenders may be released for the two concessions later in 2007.

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