Standing Committee on Transportation

Hearing on Public-Private Partnerships

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Public-private partnerships (P3s), which may include leasing some of New York's roads to private, for-profit entities, may seem like a viable solution to the state's infrastructure problems, but they come with many inherent risks. While these partnerships may provide a much-needed infusion of funding to the state, it would be the highway users who ultimately pay the bill. And, almost without exception, it is the trucking industry which ends up carrying the heaviest burden.

In New York State, trucks deliver nearly 90 percent of the total manufactured goods which we all rely on to live and work. The efficient movement of these goods is critical, and a well-maintained, affordable infrastructure is essential.

Consider this: If all retail rental space in a metropolitan area was sub-standard, that area would have difficulty attracting businesses to locate there. Similarly, if retail rent costs suddenly jumped in every building in that area, additional costs to those retailers would be passed on to every customer, making that metropolitan area less attractive to consumers. New York's infrastructure is no different.

The state's highways and bridges are the workplace of the trucking industry. An inferior workplace cannot attract business, or keep business. The deteriorating state of New York's highways and bridges is well documented, which is a deterrent to those considering doing business in New York, and a potential factor for those considering leaving the state. Compounding the problem, New York ranks first in tolling in the nation, collecting 30% of all the nation's tolls. The privatization of New York's infrastructure could serve to increase that percentage.

There is a good argument to be made that because trucks and goods movements in general are critical to the success of both the public and private sectors of the economy, the trucking industry should be protected from paying a disproportionate amount in use taxes and fees. Unfortunately, the opposite is true. Trucks in New York pay 32 percent of all highway taxes and fees, despite only accounting for 8 percent of the miles traveled on New York roads. This places New York-based trucks second only to Oregon in federal and state taxes and fees paid, and 29 percent above the national average. Again, additional costs passed on to highway users as a result of the privatization of New York's infrastructure could make the situation worse.

In a 2008 report to Congress, the United States Government Accountability Office acknowledged that, "Highway public-private partnerships have resulted in advantages for state and local governments, such as obtaining new facilities and value from existing facilities without using public funding." While this is true, they also warned that "there is no 'free' money in public-private partnerships." In short, when it comes to such deals the saying "the devil is in the details" is very fitting.

It is important to remember that private investors in P3s ultimately care about the bottom line. They are not interested in mobility, and profits will always take priority over the public interest because they are obliged to provide shareholders with the maximum return on their investment.

With that in mind, it is essential that any P3 which is entered into for the improvement of the state's infrastructure, include very specific contractual obligations regarding the long-term plans for maintenance, costs to the public, and realistic projections about future traffic patterns and additional infrastructure use which may result from improvements.

Contracts should include explicit parameters regarding what sort of maintenance is required over the life of the lease, the condition in which infrastructure must remain, specific criteria for measuring the condition and safety of the infrastructure and a plan for government oversight to ensure contractual obligations are being met. Equally important in any P3 agreement is the authority for the government to enforce obligations set forth in a contract.

In the United States, 75-99 year leases are most common among P3s. As the contract will likely "outlive" the individuals involved in the original agreement, the lease should be viewed as a sale. Therefore, in addition to explicit parameters regarding tolling and maintenance, provisions in a contract must address the transfer of the asset to another investor, the government's ability to regain control of the asset or end the agreement, should the private investor fail to meet their obligations, and a process for amending the agreement.

Any P3 entered into should also address the financial burdens to be placed on the motoring public. Toll rates should be set at a level that covers only the costs of construction, reconstruction, maintenance and operation of the associated facility, plus a reasonable return on investment. Differences in toll rates among vehicle classes should be minimal with justification for variances included.

Details regarding anticipated facility usage must also be considered before entering into P3s. Contracts which bound the government by "estimated" traffic flow could require them to divert traffic to the privatized facility, as was the case with the Cross-City Tunnel in Sydney, Australia. In that case, the government closed an alternate route to force traffic onto the privatized route, to meet traffic projections. Similarly, agreements must not include non-compete clauses which would prohibit the state from constructing a competing facility should the need arise. And without question, it is imperative that any P3 which is entered into include provisions that would prohibit the creation of a tolled lane or facility which is mandatory for use by trucks.

Financially, the establishment of P3s raises significant questions. First, if a lease payment is made to the state, where will that money go? Proceeds derived from a sale or lease of a facility should be used exclusively for highway investments on un-tolled facilities. Considering that only one-third of all funds collected for the Dedicated Highway and Bridge Trust Fund in New York have actually gone toward capital projects, the state's management of a similar "dedicated" fund is questionable, at best. Facility customers should not be required to subsidize unrelated government functions. Second, will a rebate be offered for highway use taxes and fees collected for travel using privatized facilities, considering they will likely be ineligible for public funding? Collecting taxes on a privatized facility which cannot be used to improve that facility, while the facility is paid for by users in another manner is simply double-dipping. Third, would a prohibition exist on a private party imposing its own restrictions or special fees on vehicle configurations (e.g. oversize/overweight vehicles) and commodities (e.g.

hazardous materials)? These vehicles already pay permit fees to the state, which would also constitute double-dipping.

It would be prudent for the Standing Committee on Transportation to thoroughly examine two recent P3s in Indiana and Chicago, before considering the future of such agreements in New York.

According to the Government Accountability Office's 2008 report, the Chicago Skyway has been operated and maintained by the city of Chicago Department of Streets and Sanitation since it was built in 1958. It is a 7.8 mile elevated toll road connecting I-94 (Dan Ryan Expressway) in Chicago to I-90 (Indiana Toll Road) at the Indiana border. In October 2004, it was leased to a private concessionaire under a 99-year lease for about $1.8 billion.

The Indiana Toll Road stretches 157 miles along the northern border of Indiana. It opened in 1956 and was operated by the Indiana Department of Transportation from 1981 through 2006, when it was leased to a private company under a 75-year lease. Indiana received $3.8 billion from the lease.

According to a January, 2011 report issued by New York State Comptroller Thomas DiNapoli, "Although market conditions could limit toll increases, the fact remains that the public partner has no input in the decision once toll increases are guaranteed by contract to the private partner. Note that while actual tolls for passenger vehicles increased 254 percent from the opening of the [New York State] Thruway through 2009, had the tolls been privatized and had they increased at the maximum allowable rate under the Skyway and Indiana Toll Road contracts, they would have increased a total of 2,514 percent."

In its June 1, 2009 Final Report, the New York State Commission on State Asset Maximization recommended the formation of a Board to "enable a consistent framework through which to assess the merits of proposed asset maximization projects [P3s]" and "ensure that asset maximization projects are not undertaken as a means of selling State assets to close budget gaps or outsourcing State workers." In light of the considerable concerns surrounding the establishment of P3s, this recommendation seems prudent and would be recommended by the New York State Motor Truck Association, prior to any further discussions regarding infrastructure improvement through public-private partnerships.