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TEXAS: FROM BAD TO WORSE ON TOLLING AND P3S

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In its 2017 session, the Texas legislature enacted new laws aimed at curtailing the use of tolling and P3s. First, they declined to approve any of the 18 projects proposed by Texas DOT as P3s—in effect, a two-year moratorium (since the legislature meets only in odd years). Second, they prohibited TxDOT from investing any state equity in P3 projects, allowing it only to make loans to concessionaires (which, of course, would make financing more difficult). This was in addition to promises from Gov. Greg Abbott that new monies approved by voters in 2015 (Propositions 1 and 7) and that none of that funding would be used for tolled projects.

TxDOT and local officials in much of the state fought to save these projects, most of which involved express toll lanes, such as those already providing congestion relief in Austin, Dallas, and Fort Worth. The Texas Transportation Commission and TxDOT developed a work-around that would use the new monies generated by Propositions 1 and 7 for the general-purpose lane portions of such projects and retain conventional P3 financing for the priced lanes.

Dubbing that an “accounting trick,” grass-roots pop-

ulist groups in early November demanded that Gov. Abbott rein in the Commission and TxDOT. Ten days later, the governor issued a statement that while TxDOT is doing a good job on congestion-reduction, “We want them to do that in a way as I promised, and that is without adding more toll roads.” Since the governor appoints all the members of the Transportation Commission, they voted unanimously on December 14th to remove all toll projects from the 2018 Unified Transportation Program. At least for now, that kills planned megaprojects to add express toll lanes to I-35 East in Dallas, I-35 through Austin, and many others.

The irony in these actions is the stunning success of the P3 express toll lanes projects in Dallas and Fort

NTE Segments 1-3 and LBJ Express Financial Highlights

Private Capital, Maintenance & Income Tax Payments Total \$13.64 Billion

Expenditures on rehabilitation of existing highways, construction of new lanes, and maintenance of both toll and toll-free lanes over time for three Cintra concessions in the Dallas-Fort Worth region:

Capital Expenditure	2010-2018	\$5.34 Billion
Subsequent Capex	2016-2062	\$1.94 Billion (NPV@5%=\$448M)
Maintenance	2010-2062	\$2.86 Billion (NPV@5%=\$770M)
		Total \$10.14 Billion
Shareholder Equity		\$1.52 Billion
Private Activity Bonds		\$1.29 Billion (issued 12/09, 6/10, 9/13)
USDOT TIFIA Debt		\$2.03 Billion
TxDOT Investment		\$1.12 Billion

Shareholder Income Tax Payments Back to the Public Sector
Estimated Net Present Value @5% to 2062 = \$3.5 Billion

Source: Cintra December 2017

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Worth. The North Tarrant Express has reduced congested time in the general-purpose lanes by 60-73%, while increasing average speed by 10-15%. Similar congestion reductions are being achieved on the LBJ project in Dallas. These results falsify the propaganda from populist groups such as TURF and Texans for Toll-free Highways.

For example, in their November 8th call for the governor to take action, their coalition called express lanes unaffordable for the “working class,” claiming that an average \$5 toll each way (\$50/week) would cost \$135,000 over a person’s lifetime. But that is not how most people use express toll lanes. Figures from NTE and LBJ show that most users’ bills average between \$5 and \$15 per month. Regular commuters on those expressways choose the toll lanes for some trips and average \$35 per month. And as we see on express toll lanes around the country, on LBJ and NTE only 15% of the cars are luxury brands; Toyota, Ford, and Honda are the most common vehicles.

TURF and its allies also claim that Texans don’t want more toll lanes. They also present all new projects as if they force drivers to pay tolls, when in fact all of these projects add new capacity to congested corridors, leaving motorists free to choose whether the time savings and reliability are worth the price for any given trip. That should undercut the constant repetition of these group’s favored term: “toll taxes.” They use this loaded phrase all the time, and it has been parroted by Tea Party legislators that these groups helped elect. But it’s a lie. There is a large legal history on the difference between a toll (a user fee) and a tax (government revenue), most recently reflected in a unanimous decision of the Virginia Supreme Court in 2013.

As for the alleged unpopularity of tolled projects, that, too, is a lie. One year after NTE’s completion, 70% of users of the overall highway (GP+ETL) gave it a favorable rating. And users of the LBJ rated that corridor even higher one year after project completion, at 76%. Local officials in Austin, Dallas, Houston, and elsewhere support continued use of tolling and P3s for much-needed congestion-relief projects. Liberty County officials and citizens strongly support the toll-financed completion of the last 50 miles of the Grand Parkway, the Houston metro area’s outer beltway. In Montgomery County, north of Houston, there is major support for completing the 249 Tollway. And officials in the DFW Metroplex are agonizing over how to complete the majority of the long-planned network of express toll lanes—without either tolling or P3 procurement—as are Austin residents and officials desperate for long-term congestion relief on I-35 through downtown.

Fortunately, there is a ray of hope in Texas. A pro-tolls/pro-P3 group, Texans for Traffic Relief (TTR), was unveiled in November, headed by lobbyist and former conservative activist David White. Its website supports utilizing all available resources to fund roadway projects, empowering local communities to decide how they want projects done, ensuring that taxpayers are protected in the event of a P3 project bankruptcy, and opposing the tolling of existing roadways. TTR applauded a decision of the State Republican Executive Committee to include language regarding tolling on the March Republican primary ballot.

To be effective, TTR and its allies need to present a positive case for toll-financed P3 projects. That includes not only much-needed congestion relief but also the importance of drawing large amounts of private capital into the Texas highway system. Two under-appreciated benefits of P3 projects are financial. First, under the revenue-sharing provisions built into Texas P3 agreements, if tolled projects do better than projected, TxDOT will garner increasing shares of gross toll revenues in the out years. Second, to the extent that these projects are profitable, they will pay state and federal corporate taxes. Cintra estimates that on the NTE and LBJ projects, the net present value of such tax payments (through 2062) is \$3.5 billion.

But in addition, proponents need to counter the propaganda of TURF and its allies. These include false or misleading assertions such as:

- Tolls are taxes;
 - Guaranteed profits at taxpayer expense;
 - Taxpayer bailouts in case of bankruptcy;
 - Most of the funding is from government, not investors;
 - Loss of “sovereignty” over highways;
 - Express toll lanes create scarcity of road space;
- and,
- Unaffordable tolls.

Many of the legislators enacting anti-toll and anti-P3 provisions evidently believe such assertions. Unless they are countered effectively, there is little chance of a resumption of P3 projects in Texas. ■