



# LEASING STATE TOLL ROADS: FREQUENTLY ASKED QUESTIONS

BY **PETER SAMUEL**  
PROJECT DIRECTOR: **ROBERT W. POOLE, JR.**

**W**ith many states leasing, or considering leasing, their major toll roads and turnpikes to private companies, concerned drivers are eager to learn more about the potential implications. This document is intended to answer some of the more common concerns and objections.

## Why are states leasing their roads and turnpikes?

Long term leases—also known as monetization, privatization, toll concessions or public-private partnerships (PPPs)—help taxpayers unlock some of the inherent value in tollroads lost under government ownership. The extra value can be gained by state or local government owners through upfront concession fees or in profit-sharing arrangements written into the concession contracts. These leases are an effective way of financing, managing and operating roads while minimizing taxpayer costs and risks. Public-private partnerships maximize the strengths of both the public and private sectors, offering taxpayers more efficiency,

accountability, and cost- and time-savings.

The major highway funding shortfall is a key reason governments are considering leasing their roads. A recent Federal Highway Administration report estimated that the annual capital investment in our highways totals \$68 billion, which is \$6 billion less than what's needed simply to properly maintain the condition of our highways and bridges. Moreover, an additional \$51 billion per year would be needed to improve and expand the highway network just to keep up with the increasing demand for auto and truck travel.

The existing state and federal fuel tax and highway trust fund system is unable to meet these investment needs. Neither Congress nor most state legislatures have increased fuel taxes to levels that would even offset increases in fuel efficiency and inflation, let alone fund needed road maintenance and increased travel demand. So increasingly, states are turning to toll finance and PPPs to begin to fill the transportation funding gap.

## Isn't it unwise for governments to cede control of roads to private interests?

States always maintain ownership of the roads in these deals. They are never sold. Under these leases businesses are being selected according to their expertise and their bids to take over the business functioning of toll roads under conditions laid down in a concession contract designed to protect the public interest.

Concession agreements are often several hundred pages long and may incorporate other documents (e.g., detailed performance standards) by reference. The public interest is protected by incorporating enforceable, detailed provisions and requirements into the contract to cover such things as:

- Who pays for future expansions, repairs and maintenance;
- How decisions on the scope and timing of those projects will be reached;
- What performance will be required of the private toll company (i.e., safety, maintenance, plowing, and many other requirements);
- How the contract can be amended without unfairness to either party;
- How to deal with failures to comply with the agreement;
- Provisions for early termination of the agreement;
- What protections (if any) will be provided to the company from state-funded competing routes; and
- What limits on toll rates or rate of return there will be.

## Aren't long-term leases just a quick fix?

Long-term leases are not just a quick fix; they offer the prospect of better service for the long as well as the short term. By putting the toll road in investor ownership, they bring the benefits of professional business management, greater operating efficiency, lower operating and maintenance costs, better customer service, less political patronage, access to



equity markets for capital, shareholders who will hold management accountable, opportunities for network economies by operating across state lines, and many other benefits.

[It seems that valuable assets are being sold at fire sale prices and big business stands to make trillions. Isn't it just a license to print money?](#)

Again, they aren't being sold. And in all recent cases governments have set minimum prices they are prepared to accept and have reserved the right to reject all proposals if none meets their expectation. The future profitability of these toll concessions remains to be seen. There are many people who think the toll road companies have paid too much. If the companies go broke, the concession is ended and the state gets the toll road back without any obligation to repay concession fees. It can then re-lease the toll road or run it itself. It is a win-win for the government.

In the case of the leases in Indiana and Chicago, the state was able to get a larger upfront payment from the private company leasing the road than they projected the road was worth under public management.

[Haven't we already paid for these roads with our taxes? They belong to the public. Why we should have to pay for them over again to a private entity?](#)

Most toll roads were financed with borrowings based on the prospective toll revenues and received little or no tax-based grant money. But in truth a road is never "paid for." It needs constant maintenance, periodic reconstruction, and occasional widening—and



many governments do not have the funds to meet these needs.

[Isn't there a risk that long-term leasing of toll roads will lead to fragmentation of the national highway system and the Interstates?](#)

It would be contrary to the interest of toll road companies to foster fragmentation. They need the best connections they can get to the rest of the highway system to get customers. The national highway system has always had diverse ownership and control. From the very beginning the Interstate highway system has been owned and operated by different state departments of transportation, cities, and independent state and bi-state and local toll road authorities and turnpikes. Private toll road operators have at least as much incentive as these public authorities to maintain connectivity and ease of use for drivers.

[Won't toll road leasing mean higher tolls?](#)

In some cases it may. Higher tolls aren't wrong if they reflect a higher level of service, if toll rates have previously been too low, or if there's inflation. Prices that are too low result in underinvestment and shortages. In some cases tolls have been set so low by government toll authorities in deference to a local constituency that they hardly cover the costs of toll collection. In the case of Indiana, the tolls on its toll road had not been increased for 20 years; thanks to inflation, the cost of collecting some of the tolls was greater than the amount of the toll payment.

Toll authorities owned by the government gener-

ally resist toll increases and commonly keep toll rates fixed for five to 15 years despite annual inflation of 3 or 4 percent each year. Then, when a financial crisis can no longer be avoided, governments often raise tolls by 30 or 40 percent in one shot. This is far more disruptive for customers than the commercial practice of raising tolls each year by a single digit percentage similar to the consumer price index. Most modern toll road leases place a cap or contractual limit on toll increases based on the CPI or growth in national productivity.

[Won't private companies just try to make a profit by raising tolls or reducing service?](#)

Lowering service would lose the toll company paying customers, which is the last thing a business wants to do. Higher tolls can also drive customers away if they aren't accompanied by reduced travel times and better service. While it is true that many drivers aren't able to be flexible about the route they take to work, there are always enough drivers with options to keep the toll company focused on service. Toll road companies have a strong incentive to increase profits by greater efficiency and enhanced service—by doing more with less. A more efficient toll road will benefit users.

[But couldn't a private company double tolls and make just as much money with half the traffic?](#)

The fear that public-private partnerships will lead to uncontrolled, sky-high tolls is unjustified. Most concession agreements to date specify an annual cap on toll increases using various inflation indices. It is important to note that those caps are ceilings; the actual rates a company charges will depend on market conditions. Before entering into any toll road project, a company would develop detailed traffic and revenue forecasts to determine how many vehicles would use the toll road at what price; too high a toll rate means fewer choose to use the toll road, which generally means lower total revenue. So the toll road must select the rate that maximizes total revenue. Over time, a company may choose to set the toll rate lower than



the caps provided in the concession agreement, especially at weekends, off-season or in recession years, to attract more drivers.

### [Why are these deals done behind closed-doors? Why have they been so rushed?](#)

They haven't. Diligence and transparency are important in toll road leases. The city of Chicago and the state of Indiana went through an exhaustive process of assembling and publishing the financial history and obtaining forecasts, hiring financial and legal advisers, soliciting expressions of interest, vetting potential concessionaires, requesting bids from bidders they had qualified, obtaining competing proposals, selecting their proposed partners, negotiating a detailed contract, and gaining necessary legislative support. They published materials on open Web sites, issued press releases, and—where there was a demand—spoke at public forums. Texas, Virginia, Oregon and other states granting toll concessions for new projects have done the same.

### [Isn't it dangerous to give private companies the power of eminent domain to seize private property?](#)

Toll road companies should not and have not been given the power to use eminent domain. In most places the law allows private developers of toll roads to request that the state use its existing eminent domain powers, if, when and where needed. In other cases the state acquires the land in the normal way it does for publicly operated roads and turns the right of way over to the concessionaire. Private developers tend to use eminent domain much less than state

governments because they prefer settling by negotiation to going to court. In at least two cases—the Dulles Greenway in northern Virginia and the Camino Colombia Toll Road in Laredo, Texas—the toll road developer settled all land purchases without using eminent domain powers. Private toll road concessions can mean less use of eminent domain powers.

### [Isn't this some kind of Wall Street ploy by the major investment banks to earn big commissions?](#)

Roads have to be financed, whether government toll authorities sponsor them or toll road companies do. Both public and private financings involve big commissions to the financiers who put together these transactions. Private transactions sometimes require smaller financing commissions than do the public equivalent because part of the money is private equity, and there is less need for large reserve funds. These services are paid for by the toll companies, who have every incentive to shop around for the best service and the lowest commission.

### [If there are ways to improve efficiency that a private business can see, why can't the state toll authority implement them itself and reap the profits?](#)

Government toll authorities operate under different rules, and have different incentives from private business. They cannot compensate management for large increases in efficiency so they cannot attract the best managerial talent. Management is usually politically appointed and changes with the party in power. Top managers are expected to be responsive to the governor of the day and other top elected officials. Operations are usually confined to the boundaries of one state—for example, the New Jersey Turnpike Authority can only operate in New Jersey—limiting career paths and the scope for using internal talent and expertise. Professional toll business people in the private sector can apply lessons learned elsewhere and deploy their top talent for difficult startups or problems that arise.

Government budgetary practices may not reflect the basic business principle that you have to spend

money to make money. Capital investment—for a new on-ramp or to install electronic toll collection—may generate new revenues, but government budget constraints may make it difficult to invest the needed sums in a timely fashion.

### Has public opinion been ignored?

In the case of Indiana, there was a good deal of public opposition to the lease, but it certainly was not ignored. Gov. Mitch Daniels attended hundreds of meetings on the subject and made adjustments to the draft concession agreement in response to criticism. The enabling legislation was debated at length in the legislature, which voted—admittedly by a small margin—in favor. In Chicago, the Skyway lease was not controversial—and the public is happy with the private operator. Similarly in Virginia, with the Pocahontas Parkway lease, there was little criticism. In Pennsylvania there is bipartisan support for leasing the turnpike. There is vigorous debate now in Texas and New Jersey. In Texas, much of the debate or controversy has centered around Texas DOT’s tolling of roads recently financed with tax dollars, questions of whether wide swathes are needed, and foreign ownership—not so much the issue of private sector involvement.

### Are these leases being pushed by right-wing ideologues?

To the contrary, they are being promoted by practical public officials intent on finding new funding for transportation or coping with high levels of debt they inherited from their predecessors. Upfront concession fees can provide states with funds they can use to meet urgent transportation needs or pay off state debt, reducing future interest and repayment obligations. Mayor Richard Daley of Chicago, Gov. Edward Rendell of Pennsylvania, and Gov. Jon Corzine of New Jersey are all centrist Democrats. Other prominent Democratic supporters include former California Treasurer Kathleen Brown and former Congressman Dick Gephardt. Labor and centrist governments in Australia,



Canada, Britain, France and other countries have pursued long-term leasing or concessions.

### Won't the politicians just squander the billions they get from the lease?

They'd better not. Given the intense spotlight being shone on toll road leasing, it is unlikely the proceeds will be squandered. In Chicago the proceeds were used to retire city debt and set up a rainy day fund, with a small amount going to fund social services. In Indiana all of it was used to fund a major 10-year highway investment program called “Major Moves.” In Pennsylvania the proposal is to use the lease proceeds to fund urgent road and transit improvements. In New Jersey, draft enabling legislation provides for the proceeds to be used to reduce the state’s enormous debts, the interest on which is a major drain on taxpayers.

### Aren't there other ways of involving private enterprise in toll roads without large upfront payments to governments and nothing for taxpayers beyond that?

The state (or county or city) has flexibility in how it negotiates the lease payments. Texas and Virginia have both negotiated long-term leases which provide for a smaller upfront payment but a 50/50 profit share beyond a set rate of return. In Europe, concession agreements have been crafted which provide annual payments with no upfront fee. In Australia, the bidding on one particular project was not based on the size of the concession fee but on the lowest toll rates.

For a state entering into a concession deal, there are two key trade-offs between upfront payment versus ongoing lease revenues over the life of the agreement: (1) current capital needs versus long-term needs, and (2) a “sure thing” (upfront payment) versus some risk as to what future revenues may be. There is no right answer; each state must weigh the trade-offs involved with each individual project.

### [Isn't it a fatal flaw of toll road leases that the state loses control of the public highways?](#)

The state still owns the roads and continues to exercise general control through the terms of the concession agreement: the requirements for service, negotiated provisions for widening and other improvements. Politicians do lose the ability to make politically motivated management appointments and to steer maintenance and construction contracts to favored firms. Many would say that is a benefit.

### [Isn't 50+ years far too long to lease valuable roads? State governments are committing future generations when they cannot predict what the needs will be.](#)

Changing circumstances will probably require revisions to the leases. That is why all concession agreements have detailed provisions to permit changes during their term. Concession agreements lay down procedures for negotiating changes and arbitrating disputes, and employing independent parties to make fair financial estimates. The only limit to changes in the terms of the concession is normally that neither side—public nor private—should be disadvantaged financially by the changes.

State governments regularly make commitments that impact taxpayers for longer than 50 years. Bonding for infrastructure and changing pension benefits are two examples. Because the capital costs for major infrastructure projects are so high, it is necessary to finance them over long periods of time.

### [Non-compete clauses in concession agreements prevent the construction or improvement of parallel roads, preventing competition. Isn't this bad?](#)

Nearly all self-financing toll roads, whether government or privately owned, need some protection from tax-financed alternative roads. This is akin to the world trade rules that limit European governments subsidizing Airbus. Just as Boeing cannot be expected to sell in competition with a heavily subsidized Airbus, so toll roads cannot be financed if taxes are used in unrestricted fashion to provide equivalent parallel service free of charge.

Clauses designed to protect toll road operators from the construction of new, parallel “free” roads have evolved over the years. The earliest approach—an outright ban on alternative facilities—proved to be flawed, unnecessary and unpopular, giving rise to modern agreements that include a much wider definition of what the state may build: generally, everything in its current long-range transportation plan. And for future roadways a state might build that are not in its existing plan and which do fall within a narrowly-defined competition zone, the current approach is to spell out a compensation formula for any damage done to toll revenues.

Two recent long-term lease transactions provide a useful illustration. For the Chicago Skyway concession, there were no protections from competition for the private-sector lessee. For the Indiana Toll Road, the concession agreement set up a narrow competition zone alongside the toll road (within 10 miles). The state may add short, limited-access parallel roads (e.g., local freeways), but if it builds a long-distance road within the competition zone, there's a formula for compensating the private sector for lost toll revenue.

### [Why are so many private toll road companies foreign companies?](#)

Until recently the United States had used only public-sector agencies to build and operate toll roads, so there has been no opportunity for the industry to grow in the U.S. Foreign countries have been using transportation public-private partnerships for decades, so it makes sense that foreign firms would be the most experienced toll road providers. A respon-



sible state government will take experience and track record into account when choosing a private firm to operate a roadway.

As the U.S. market matures, we are starting to see the emergence of domestic toll road companies. Already, joint ventures between U.S. and global companies are bidding on public-private partnerships projects—Fluor/Transurban, Zachry/Cintra, Kiewit/Macquarie, JP Morgan/Cintra to name several recent examples. Likewise, U.S. financial institutions have been creating multi-billion-dollar infrastructure investment funds, so these deals will soon be tapping U.S. capital in a major way.

It's important to remember that even deals which only involve foreign companies are very good for the U.S. economy. Attracting billions of dollars in global capital and expertise to modernize America's vital highway infrastructure is a large net gain for this country. Further investment in our transportation infrastructure makes the U.S. more competitive in the global marketplace.

[In the post 9/11 world, wouldn't we be safer if the government or U.S. companies—as opposed to foreign companies—were managing U.S. infrastructure?](#)

In an age of terrorism, fears of “foreign control” are often expressed. Wherever their shareholders reside, toll road companies have a strong self-interest in robust security and safety. Their financial viability depends heavily on the toll road remaining open and functioning without interruption. Further, foreign firms are subject to the same legal and regulatory security requirements as any domestic firm or public

agency. Concession agreements usually provide for state police to do their policing on the road, as before. Security vetting of employees can be implemented, and improved surveillance systems made part of the concession agreement.

[Aren't toll road leases more monopolization than privatization? The service plazas all go into the control of a single owner at the expense of many small businesses along the route.](#)

Concession agreements can provide for the service plazas to be included, or they can be excluded. If they are included in the concession agreement, there can be provisions requiring competitive franchisees.

[Aren't toll leases a disaster for workers who will be put out of work?](#)

If workers are getting reasonable labor-market wages and working conditions, they are likely to be offered work by the private toll company, since they have valuable skills and local knowledge. On the Indiana Toll Road about 85 percent of state workers were offered jobs by the company. If workers are paid well above the going rate for labor due to featherbedding of labor unions, as was the case at the Chicago Skyway, then certainly it will be unlikely workers will keep their jobs at the inflated pay rates. They will have to settle for normal wages or find new jobs. Also, government toll authorities are steadily shedding staff themselves as electronic toll collection reduces or eliminates toll booths. The New Jersey privatization legislation provides generous—some think too generous—compensation for toll road workers.

[Haven't the interests of the consumer been forgotten?](#)

Toll road companies have to give top priority to serving the needs of customers in order to generate high usage of their toll roads. When the Spanish/Australian group took over the Chicago Skyway, they made an intense effort to improve management of toll lanes at peak times and to better match toll collector

staffing to traffic. Then within several months, they implemented electronic toll collection, something the city had not been able to accomplish in years. As a result of these two actions, lines and delays at the toll plaza have been largely eliminated, and more traffic is being attracted to the tollway from competing free roads. The company is pushing ahead quickly on reconstruction of a large section of the 40-year-old elevated structure. Government toll authorities are often in the awkward position of having to balance delivering value to their customers with political pressures.

## ABOUT THE AUTHOR

**Peter Samuel** is a senior fellow in transportation studies at Reason Foundation and author of “Should the States Sell their Toll Roads” [www.reason.org/ps334.pdf](http://www.reason.org/ps334.pdf). He also publishes TOLLROADSnews at [www.tollroadsnews.info](http://www.tollroadsnews.info)

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### Transportation Planners and Officials

[Amy Pelletier](#)

Outreach Director

(949) 444-8703

[Amy.Pelletier@Reason.org](mailto:Amy.Pelletier@Reason.org)

[Robert Poole](#)

Director of Transportation Studies

(310) 292-2386

[Robert.Poole@Reason.org](mailto:Robert.Poole@Reason.org)

### Government Officials

[Mike Flynn](#)

Director of Government Affairs

(703) 626-5932

[Mike.Flynn@Reason.org](mailto:Mike.Flynn@Reason.org)

### Media

[Chris Mitchell](#)

Director of Communications

(310) 367-6109

[Chris.Mitchell@Reason.org](mailto:Chris.Mitchell@Reason.org)

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