

36 Commuting Solutions

Public-Private Partnerships (P3s) In Transportation

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About Snell & Wilmer L.L.P.

- A full-service law firm with offices in Colorado, Arizona, California, Nevada and Utah
- Active in planning, structuring and representing parties in transportation infrastructure and P3s throughout our footprint, nationally and around the globe



Snell & Wilmer L.L.P. and P3s

- We represent concessionaries, project team members (including contractors, investors, lenders, etc.) and public entities in implementing P3 projects
- We help our clients manage the risks and responsibilities that come with being involved in P3s

What is a P3?

- Partnership (contract) between public and private sectors to deliver a service or facility for public use
- Each party shares in risks and rewards, specifically negotiated to the issues of the specific project and role
- Many different models and applications

P3 Models: Transportation

- Public entity usually still owns the project
- Agreement between public entity and “concessionaire” or consortium of private entities to design, build, finance, operate & maintain project
- Private partner collects user fees/tolls from the public
- Structure depends on risk allocation between partners

P3 Transportation: Concessionaire Role

- Usually selected for a period of decades
- Can provide additional private equity for the project and obtain commercial debt
- Eligible to use federal financing tools (e.g. private activity bonds) akin to those used by public agencies that lower cost of loans
- May be eligible for public subsidies if available

P3 Transportation: Availability Pay Model

Using Availability Payments

- Public entity pledges periodic payments to design-build-operate-maintain concessionaire
- Payments often tied to construction or performance milestones and may be capped
- Private partner assumes less risk than real-toll, but still may be required to front costs
- Used when tolls/fees not expected to cover project costs

P3 Transportation: Real Toll Model

Relying on Tolls and Fees

- Design-build-operate-maintain concessionaire agrees to rely primarily on tolls and fees for funding operations, and assumes the risk of insufficiency
- Public partner may provide construction grants or limited revenue guarantees
- Public partner may demand revenue sharing if the project generates more tolls/fees than expected

P3 Transportation: Availability Pay

Example – The Eagle P3

- \$2.2 billion bus and rail project:
 - Includes \$1b in federal grants, \$280m TIFIA loan
 - \$486m from private sector (including private activity bonds and equity)
- 34-year agreement (2010-2044)
- RTD owns assets, sets fares, retains revenues
- RTD makes capped construction payments, then annual service payments based on performance milestones (e.g. station availability, on-time trains)
- Concessionaire assumes risk of going over-budget or experiencing performance failures

P3 Transportation: Real Toll Example – Capital Beltway (I-495) in N. Virginia

- \$2.1 billion road tolling and bus transit project:
 - Two new lanes in each direction
 - Dynamic, congestion-priced electronic tolls
 - HOV-3/vanpool/bus transit: travel toll-free; first time transit used on this corridor
 - Replacement of aging infrastructure/bridges, new bike/pedestrian facilities (\$260m)
- Private sector: \$1.5b, including \$589m TIFIA loan; \$589m private activity bonds; \$349m private equity
- Public sector: \$409m state grant (and others)
- Dollars matter: 80-year concession agreement with heavy private investment

P3 Transportation: Real Toll Example – Capital Beltway (I-495) in N. Virginia

- New lanes opened in November 2012
- First time TIFIA used for High Occupancy Tolling lanes
- TIFIA interest payments start in 2018; loan repayments 2033-2047
- Excess revenues are shared with public sector and must stay in corridor for transit/pedestrian enhancements
- \$1.1b in toll user fees expected (assumes 4x users compared with cash tolls)
- Concessionaire assumes risk for any deficiency in toll revenues
- HOV-3 compliance monitored by technology

P3 Transportation: Issues with Past Projects

- Lower toll revenues: even if private sector assumes risk, there is always a risk of bankruptcy of special-purpose entity
 - Southern Connector Toll Road in Greenville, S.C.
 - Southern Bay Expressway in San Diego, Calif.
- Reorganization/debt restructuring may be needed
 - But public loans (e.g. TIFIA) may be devalued
 - Bond underwriters may view projects as more risky, increasing cost of debt and cost of project
 - Ownership of assets/project may change
 - Toll amounts may need to increase beyond public expectations

Conclusion

Please Contact Me With Any Questions

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