

American Federation of Labor and Congress of Industrial Organizations



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January 31, 2007

The Honorable Jon Corzine
Governor of New Jersey
P.O. Box 001
Trenton, NJ 08625

Dear Governor Corzine:

I am writing to urge you to remove the option of privatizing New Jersey's highways as a solution to the state's budget problems. The recent study by UBS identified the New Jersey Turnpike, the Garden State Parkway, and the Atlantic City Expressway as candidates for privatization. The state deficit is a concern to the working families of New Jersey, but privatizing public infrastructure as vital as the state highway system is the wrong road to take.

Privatizing New Jersey's highways will place a critical part of the state and the nation's transportation system in the hands of a private entity that is accountable to shareholders and investors, not voters and taxpayers.

The track record for toll road privatization does not bode well for New Jersey.

The recently privatized Indiana Toll Road and Chicago Skyway have both demonstrated that private operators stand to make massive profits on assets. The terms of the concession agreements for the Chicago Skyway's 99-year lease and the Indiana Toll Road's 75-year lease allow for exorbitant toll increases over the duration of the leases. While the states lost a long-term source of revenue, these publicly-built and maintained transportation systems were sold at bargain prices.

Public entities also run the risk of losing the ability to plan and control their transportation infrastructure. Highway privatization comes with no guarantee that the private operator will maintain the highway in the short term nor take responsibility for long term road and infrastructure improvements. In Orange County, California, maintenance on privatized toll roads has been severely neglected. Privatized operation has increased the traffic congestion it was meant to alleviate and created unexpected capital improvement costs for the local government, all while hamstringing local agencies through "non-compete agreements" that prevent the government from improving major public arteries.

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January 31, 2007

Almost all recent large-scale highway privatization has involved foreign-owned foreign-based companies. Assets as critical to our nation as the transportation infrastructure must not be turned over to foreign entities. That privatized highways are leased for decades, up to 99 years, makes foreign control of our highways even more egregious.


Furthermore, over 6,000 hard-working union members employed with the state's highway systems could be affected by privatization. In similar privatization moves, public employees have seen their fair wages and benefits disappear and their jobs downsized as corporate profits take priority over the public interest. These committed civil servants have played a vital role in creating and maintaining a safe transportation infrastructure and their jobs and income contribute to New Jersey's economy.

While the sale of the highways would pay down most of the state's deficit, the private owner – free from public input and accountability – will have decades of toll increases to extract massive profits at the expense of state residents, commuters, and civil servants workers. The purchaser gets a bargain at the expense of taxpayers.

A one-time windfall from privatization is outweighed by numerous concerns and risks. Privatizing New Jersey's highways involves losing a recurring revenue source. If New Jersey moves to privatize the Turnpike, the Parkway, and the Expressway, the state government would be abandoning the public's interest in the state's most valuable asset, the transportation infrastructure.

I ask you to commit to the infrastructure that the citizens of New Jersey have paid for and keep the New Jersey Turnpike, the Garden State Parkway, and the Atlantic City Expressway in public hands.

Sincerely,


John J. Sweeney
President

JJS/WS/mrt

c: President Gregory Junemann, IFPTE

**BOARD OF CHOSEN FREEHOLDERS
COUNTY OF HUDSON**

RESOLUTION

No. 60-2-2007

On Motion of Freeholder Board as a Whole
Seconded by Freeholder _____

**RESOLUTION AGAINST THE LEASE/PRIVATIZATION
OF THE NEW JERSEY TURNPIKE,
GARDEN STATE PARKWAY AND ATLANTIC CITY EXPRESSWAY**

WHEREAS, it has been proposed that the New Jersey Turnpike, Garden State Parkway and Atlantic City Expressway be either leased or sold to private operators; and

WHEREAS, a toll road privatization scheme is a one-shot gimmick that could last as long as 75 or more years; and

WHEREAS, a toll road privatization would result in trucks leaving the toll roads creating a nuisance and safety hazard on our local roads; and

WHEREAS, many of these contracts include "no compete" clauses, which could prevent improvements on competing roadways such as Routes 1 and 9, Routes 130, 295, 206 and 287; and

WHEREAS, the 2-miles of New Jersey Turnpike passing through the Elizabeth corridor have been deemed by the Department of Homeland Security as the most dangerous in America due to the close proximity of gasoline storage containers and pipelines, chemical facilities; the Linden power station, the New Jersey State fiber optic network, rail lines that transport various hazardous chemicals, the ports and the Newark Liberty International Airport; and

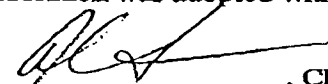
WHEREAS, a toll road privatization could result in a weakening of our State's safety and security.

NOW, THEREFORE, BE IT RESOLVED by the Board of Chosen Freeholders of the County of Hudson, that:

1. This Board strongly opposes the sale or lease of the New Jersey Turnpike, Garden State Parkway and Atlantic City Expressway.
2. A copy of this resolution be sent to the Governor of New Jersey and the members of the New Jersey State Legislature.

Freeholder	Aye	Nay	Abst.	N.P.	Freeholder	Aye	Nay	Abst.	N.P.
Ciotti	X				O'Dea	X			
DiDomenico				X	Rivas	X			
Dublin	X				Rivera	X			
Fitzgibbons	X				Chairman Liggle	X			
Loopy	X								

It is hereby certified that at a regular meeting of the Board of Freeholders of the County of Hudson held on the 8 day of Feb A.D. 2007, the foregoing resolution was adopted with 8 members voting in the affirmative and 0 in the negative.


Clerk

Before the
**Assembly Transportation and Public Works Committee
New Jersey Assembly**

Statement of

THE AMERICAN TRUCKING ASSOCIATIONS, INC.

On

TOLL ROAD MONETIZATION PROPOSALS

**Tim Lynch
Senior Vice President**

February 15, 2007



Driving Trucking's Success

**The American Trucking Associations, Inc.
2200 Mill Road
Alexandria, VA 22314**

Chairman Wisniewski and members of the committee, thank you very much for allowing the American Trucking Associations¹ to testify on this critical and timely topic. The trucking industry is the linchpin of New Jersey's and the nation's freight transportation system. The industry hauls 69 percent of the country's freight by volume and 84 percent by revenue². In addition, the trucking industry plays an important role in the movement of intermodal rail, air and water freight.

A seamless, reliable national network of highways is crucial to our industry's ability to deliver goods safely, rapidly and on schedule. Since deregulation and completion of the Interstate Highway System over the previous quarter century, the trucking industry has made continuous improvements that have allowed its customers to significantly reduce inventories and create manufacturing and supply chain efficiencies that have saved the U.S. economy billions of dollars, increased salaries, slowed consumer price increases and created innumerable jobs. Any disruption to the movement of freight on our nation's highway system will jeopardize these gains.

We believe that while private financing of highway infrastructure may play an important, yet limited role in addressing future transportation needs, certain practices may generate unintended consequences whose costs will vastly exceed their short-term economic benefits. In particular, we are very concerned about attempts by some states to carve up the most important segments of the highway system for long-term lease to the highest bidder. Mr. Chairman, New Jersey is now one of those states. On behalf of the United States trucking industry, I urge you to take all steps necessary to prevent these transactions from taking effect.

In recent years, some state and local governments have come to the realization that their highway assets may have value beyond these facilities' traditional role of providing a means of conveyance for people and freight. Due to overtures from mostly foreign investment firms, mayors, governors and other elected officials have concluded that locked up in these assets is a significant source of potential revenue that can be used to achieve various policy goals. Public officials from Kansas to New Jersey have been approached by investors seeking to take over toll roads in exchange for a one-time concession fee that can be worth billions of dollars.

While the discussions tend to center on financing concepts and the great public benefits from concession fee revenue, what often gets lost or ignored is the impact of these deals on the users of the toll facilities and on the general public. Chief among the concerns is the impact of toll road privatization on toll rates. Demand elasticity, the art and science of determining how high rates can increase before a significant number of users will abandon the toll road, is the private operator's chief method for deciding appropriate toll rates. Private toll road operators need not be concerned about the

¹ The American Trucking Associations is the largest national trade association for the trucking industry. Through a federation of other trucking groups, the industry-related conferences and its 50 affiliated state trucking associations, ATA represents more than 37,000 members covering every type of motor carrier in the United States.

² Global Insight, *U.S. Freight Transportation Forecast to...2017*, 2006.

social impacts of toll rates on low-income workers, or on the costs to businesses that depend on the highway for transporting employees, customers, goods or services. Nor do private operators care about the extent of traffic diversion to lesser quality, usually less safe, roads. Their sole concern is to maximize the toll road's profitability within the confines of the lease agreement and the law.

Supporters of privatization point out that toll rates are unlikely to increase substantially because customers will choose to simply migrate to toll-free roads. In some cases, this may be true – a reasonable toll-free alternative may be available. However, as is the case with the New Jersey Turnpike, on most major toll roads the only alternative may be a two-lane road with traffic lights and a significant amount of local traffic or, in the case of a toll bridge or tunnel, no alternative at all. Complicating the situation is a standard practice of including non-compete clauses in lease agreements, which prohibit or severely restrict improvements to competing roads.

Privatization boosters also point to caps on toll rate increases that have been a standard part of privatization agreements. However, the two major lease agreements that have been completed in the United States – the Indiana Toll Road and Chicago Skyway – have been accompanied by very large initial rate increases combined with caps on future increases that by some estimates could exceed six percent annually. Close examination of these deals reveals the extent of the problem and should serve as warnings about future privatization efforts

Indiana Toll Road

In 2006, the state of Indiana agreed to a 75 year lease with Cintra-Macquarie in exchange for a \$3.85 billion concession fee. Under the agreement, toll rates for a 5-axle truck increase incrementally from \$14.55 to \$32.00 in 2010 (all figures assume the truck traverses the entire length of the highway). On June 30, 2010 the lessee can increase toll rates by 8.2%, the rate of inflation (CPI) or the annual rate of change in national GDP/Capita, compounded over the previous 4 years. Since 1960, the annual average rate of change in GDP/capita was 6.2%. From 2004 to 2005, the increase was 5.4%. Assuming a 5.5% annual average, the toll rate for a 5-axle truck may therefore increase by up to 23.9%, or to a rate of \$39.64. Therefore, toll rates for a 5-axle truck may increase by about 172% over five years if the lessees decide to maximize toll rate increases.

The experience from toll rate increases on the Ohio Turnpike during the 1990s is instructive. When the Ohio Turnpike increased its truck toll rate to 17.6 cents/mile for 5-axle trucks, the result was massive diversion to alternate routes. The Ohio Department of Transportation found that a decade after the increase, growth in truck traffic on the turnpike was static, while truck traffic on parallel roads tripled. ODOT determined that these parallel routes had much higher accident rates. For example, U.S. 20, which saw a 267% increase in truck traffic, had a fatal accident rate that was 17 times higher than the Turnpike's rate. By 2010, the truck toll rate on the Indiana Toll Road is likely to be approximately 25 cents per mile, 42 percent higher than the Ohio Turnpike's toll rate at

its peak. The two highways are essentially the same route, and have similar alternatives. Therefore, it is reasonable to expect a level of diversion on the Indiana Toll Road that is at least as great as was experienced in Ohio.

The major difference between the states, of course, was that because the Ohio Turnpike Commission is a public authority, the Governor and Secretary of Transportation were able to make changes – including lowering truck toll rates and increasing speed limits – which attracted a substantial amount of truck traffic back to the turnpike. Because control of the Indiana Toll Road has shifted from public to private hands, addressing these types of issues will not be quite as easy, and the lessees will base all changes in their operations on the potential impacts on their profitability, and not on the impacts on the public welfare.

As bad as the situation may be under the 2010 toll rates, it may even get worse. Beginning on June 30, 2011, the lessees may use the same criteria identified for annual toll increases. Assuming an average annual 5.5% increase in GDP/Capita, the maximum potential toll rates for a 5-axle truck are:

- 5 years: 51.81
- 10 years: 67.71
- 20 years: 115.56

It has been suggested that these massive toll rate escalations are unrealistic because, as has been demonstrated on other facilities, including the Ohio Turnpike, raising the toll rate too high forces significant traffic off the highway. However, the lessee will set a toll rate to a level that maximizes profitability, not traffic. They have no interest in and no responsibility for what happens off the toll road. In fact, if Indiana wants to improve alternative routes or build bypasses to address traffic problems caused by diverted toll road traffic, the state will have to compensate toll road owners for loss of revenue. This creates a perfect scenario for the lessee: a portion of the revenue lost due to diversion of traffic as a result of high tolls will simply come back as compensation from the state, and the lessee profits additionally by avoiding maintenance and expansion costs that it would otherwise have borne had that traffic not diverted. The combination of state construction costs and compensation to the lessee could, over the course of a 75 year lease, even exceed the state's concession fee.

Finally, the projected toll rates far exceed what is necessary to raise sufficient money for the operation, maintenance and improvement of the Indiana Toll Road. This means that toll road users will be forced to subsidize other state functions and enrich toll road investors, with little no benefit to themselves.

Chicago Skyway

The City of Chicago recently agreed to a concession agreement in which Cintra-Macquarie would take control of the highway for 99 years in exchange for \$1.8 billion. Concession revenue is to be used primarily to pay off city debt.

Macquarie-Cintra used similar toll escalation caps for both the Indiana Toll Road and Skyway deals. However, the availability of free alternatives may hold rates down. On the other hand, because the Chicago area is already very congested, an acceptable loss of traffic to the owners of the Skyway due to toll rate increases may have a negative impact on mobility on the alternative routes. Again, however, profit, not regional mobility or the larger public interest, is the owner's only concern. Therefore, by giving up control of this asset, the city has also given up the ability to incorporate it into a broader transportation strategy.

Toll rates will increase by 150% over the first 12 years of the lease and then are capped at about 6% (based on historical GDP/capita). Most Skyway users are Indiana residents, so there is little political impact from these increases and little recourse for users of the toll road other than to vote with their wallets and use an alternative route if possible. The toll increases are essentially a commuter tax, with the lessees and the city, not the payers of the tax, enjoying the benefits of the revenue.

It should be pointed out that the legislation recently introduced by Senator Lesniak would allow truck tolls to be escalated annually based on GDP/Capita. We estimate that if a private toll road operator chooses to increase toll rates by the maximum level allowed under this cap, within 30 years truck toll rates could rise by more than 500 percent. A truck traveling the length of the highway would pay between \$129 and \$141 for the privilege.

Beyond the concerns over toll rates, there are also questions about whether private toll road operators will act in the public's best interest. It is impossible to predict changing circumstances over the life of a lease, which tend to be long-term – up to 99 years in duration. Many of the facilities under consideration for private takeover are among the most critical links in our freight and military logistics chains. They are also important commuter and tourist arteries. The New Jersey Turnpike fits both descriptions. Will the private operators act in the public interest, even if it cuts into their bottom line? Given that their responsibility is to their shareholders, this is unlikely.

When other corporations act in a manner that is not perceived to be in the public's best interest, the free market tends to correct their behavior. In a situation where the corporation essentially has a monopoly, these market forces do not exist. When the free market fails, government must often step in to protect the public. ATA believes that when it comes to the long-term lease of critical highway infrastructure, it is necessary and appropriate for the government to take action to protect the long-term interests of the public. Mr. Chairman, we urge you reject privatization of New Jersey's valuable highway assets.

Proceed With Caution:
**Ground Rules for a Public Private
Partnership in New Jersey**

A Regional Plan Association White Paper

January 8, 2007

Regional ^{NJ CT}^{NY}Plan Association

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Regional ^{CT}^{NJ}^{NY}Plan Association

Overview

Governor Corzine and the New Jersey legislature are currently determining whether to pursue private investment in the State's transportation assets. These proposals, collectively known as public-private partnerships (PPPs), can have the effect of transferring control of public infrastructure systems – such as highways – to private entities. PPPs offer the potential to gain significant immediate financial gain, but usually rely on investors recouping their payment over time through toll collection and other revenue sources. Perhaps the most important aspect of these proposals is that they entail long-term fiscal consequences. The public must be well informed of the potential implications of any proposed asset sale or lease.

A PPP around a highway is not necessarily a good or bad proposition. The details of the agreement, contract or lease that establishes the partnership determine its value to the State, private investors, motorists, and New Jersey residents. PPP agreements are long and complex, requiring hundreds of hours of highly-skilled professional input and resulting from high level negotiations. PPPs also require enabling legislation at the State level. These agreements and legislation can contain the answers to some important questions, including:

- How much will tolls increase, and when?
- How will toll revenue be used, compared to the status quo?
- Will toll strategies be designed to help cut congestion and pollution?
- What happens if the road does not raise enough revenue, or the deal defaults? Are taxpayers at risk?
- How will windfall revenues be spent by the State?
- Will the new facility operator deliver superior transportation system performance?
- If corridor performance degrades over time, what remedies does the contract allow?
- How will important labor, environmental and related concerns be addressed?
- What are the land use impacts?

New Jersey residents, especially motorists, need to know the answers to these questions. The two largest and most recent PPPs in the U.S., for the Chicago Skyway and Indiana Toll Road, will be in effect for 99 and 75 years, respectively. The public should not assume that the private sector will act

in the public interest in its development of a contract with the government or in its management of toll roads. A PPP's structure should ensure that public and private interests align.¹

PPPs on toll roads work because future toll revenue is often worth more to private firms than it is to public entities, and private firms are willing to pay upfront for the opportunity to collect tolls in the future. Toll roads can be worth more to private firms primarily because they can potentially raise tolls more easily, and, in some cases, because they can reap substantial tax benefits. Private firms are insulated from a political climate that discourages raising tolls, and the ability to schedule and rely on future toll increases, even if such increases are modest, attracts investment into privately-operated toll roads. The key thing preventing the government from similarly capitalizing on future tolls is its political unwillingness to raise tolls or schedule regular toll increases. The second element that can increase the value of toll roads for private firms is tax ownership. Some private operators can account for depreciation of the asset, and such tax ownership keeps private firms' taxes low. Public authorities historically do not account for depreciation. A third factor that is occasionally mentioned is that the private sector can more efficiently operate toll roads. This factor is often overstated: the value of efficiency savings depends mostly on labor agreements, which may not change under private management. Regardless, efficiency savings are dwarfed by the enormous value of future toll increases.²

At present, the Turnpike and Garden State Parkway are operated by the New Jersey Turnpike Authority, a public authority headed by government appointees. This agency is responsible for the maintenance and operation of the roads, including toll collection. The Authority has a budget of approximately \$829 million.³ Most of its revenue is collected from tolls (approximately \$716 million), while the rest is collected from concession fees and miscellaneous sources. About half is spent on operating the roads (\$427 million), while the rest is spent on debt service (\$234 million) and 'interfund transfers' to various funds (\$168 million). Approximately \$22 to \$50 million of this supports State capital projects, including the Transportation Trust Fund.⁴ This funding source will need to be replenished if the Turnpike Authority can no longer make these payments to the State.

The most important policy for addressing these and other complex issues raised by PPPs is full transparency. Only by fully disclosing details of the PPP and allowing sufficient time for analysis and public debate can New Jersey residents be assured that their best interests are being met, both now and well into the future. An additional, and equally important, recommendation of this paper is for revenue from a PPP to be spent responsibly. Expenditures should be structured to improve long-term fiscal stability, to prioritize the "user pay" principle that underlies transportation finance, and to restore the fiscal integrity of the Transportation Trust Fund and advance future transportation capital projects. A PPP, properly structured to protect the public interest, can greatly benefit the State's overall fiscal condition and economy by helping to fund NJ DOT's and NJ Transit's now-under-funded capital programs.

Magnitude and Potential

Since the Chicago Skyway was leased to a private consortium in January 2005, transportation professionals, pundits and others around the country have observed that private investment in toll roads is a growing trend.⁵ Goldman Sachs recently raised \$6.5 billion for its new infrastructure fund.⁶ The Indiana Toll Road was leased to a private consortium in 2006, and there are numerous other

transportation projects involving increasing private sector participation throughout the U.S. Twenty-one states have now passed legislation enabling privatization of transportation assets.⁷

The State of New Jersey is now actively investigating the possibility of entering a PPP. The State has retained UBS Investment Bank to produce a series of reports evaluating State assets toward this end, and the initial report was released on November 15, 2006. The report does not explicitly recommend privatizing any specific asset, rather it inventories major State assets, describes different types of PPPs, and discusses how windfall revenue should be spent. The next phase of the UBS evaluation will discuss in depth how some of those options could be structured. UBS recommends the State choose a "Pathfinder Project" to get a large PPP underway quickly.

UBS examined 16 assets that could be subject to a PPP. Their potential for a PPP was ranked against a set of criteria such as the opportunity to increase net revenue production, improve operating performance and lower operating costs, and create additional business through alternative uses. Project size, security and safety management issues, non-commercial risk, and social impact were also considered. The 'best' assets for a PPP were the State Lottery and Atlantic City Expressway, followed by the Turnpike, Garden State Parkway, and others. In terms of 'market readiness,' the three highways again surfaced as the highest ranked assets. For the Turnpike and Parkway, UBS recommends forecasting traffic and revenue over a "minimum 50 year investment horizon."⁸ It does not estimate dollar values of assets but ranks them by value; as expected, the Turnpike is the most valuable asset examined.

There are several types of PPPs that could be used for the highways. PPPs are almost never outright sales of assets, conveying ownership entirely to a private party as has been the case with privatization of water and other utilities in the U.S. PPPs for transportation infrastructure are more likely to fall within a range of private participation, from an operating lease or management contract, to a long-term concession lease such as the ones used in Chicago and Indiana, to an initial public offering or trade sale where the asset is sold but the State may continue to participate by owning shares. As of the writing of this white paper in late December 2006, the structure of a PPP under consideration in New Jersey is unknown. The long-term concession has a track record in the U.S.⁹, however New Jersey's transportation assets are at an unprecedented scale for a concession in the U.S., and a new, unique PPP structure may be devised for this case.

The revenue that could be raised through a highway PPP could vary considerably depending on the structure of the deal and its terms for toll increases, labor agreements, competing facilities and other issues. One news report stated that a Turnpike PPP can raise at least \$10 billion.¹⁰ Since the structure of the PPP is not known, it is impossible to determine whether that is a reasonable number. A long-term concession lease would probably bring in much more from the private sector: in Indiana and Chicago, the government signed leases with a private consortium of firms (Macquarie Infrastructure Group and Cintra Concesiones de Infraestructuras de Transporte, known as Cintra-Macquarie) giving it the right to collect tolls for 75 and 99 years, respectively, in exchange for a lump sum fee. In the case of Chicago, the fee was \$1.83 billion, and in Indiana it was \$3.85 billion. Given that the Turnpike alone raises 5.3 times more toll revenue than the Indiana Toll Road, a long-term concession PPP for the Turnpike is potentially enormous. In fact, the New Jersey Turnpike has the highest revenue flow of any tolled facility in the U.S.¹¹ An alternative PPP structure, such as a shared ownership arrangement, could also potentially raise a significant sum, although probably less than a long-term concession.

	Toll Revenue, 2004	Lease Term	Amount Paid for Lease
Chicago Skyway	\$40 million (approx)	99 years	\$1.83 billion
Indiana Toll Road	\$95 million (approx)	75 years	\$3.85 billion
New Jersey Turnpike	\$507 million	n/a	n/a
Garden State Parkway	\$209 million	n/a	n/a
Atlantic City Expressway	\$57 million	n/a	n/a

Many of the policy concerns associated with PPPs are the same regardless of PPP structure.

Transparency

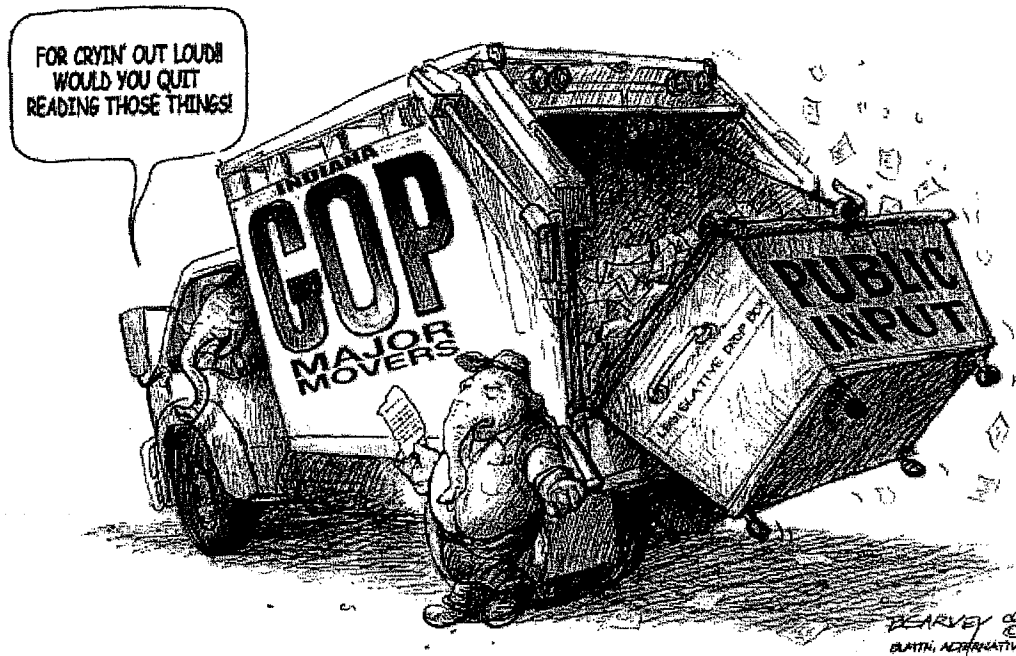
A PPP is a partnership, not a wholesale transfer of ownership. Both public and private sector entities need to be involved at all stages, and that includes New Jersey residents. The government's main responsibility in the partnership is to ensure the public interest is heeded. Even under private control, new challenges – for example, around new tolling technology – may require the public sector to again act as a partner.

In Indiana, public opinion against the PPP was often articulated as a distrust of foreign companies and a fear that tolls would become very expensive. There were also equity concerns that residents near the privately-operated toll road would have to pay more while the money was spent on roads in other parts of the state. A lawsuit was filed claiming the lease was unconstitutional, but was defeated in the Indiana Supreme Court. Legislators had less than one month to vote on the Major Moves bill, and the vote was held 10 days after the \$3.85 billion bid was announced.¹² Governor Mitch Daniels boasted that the bid process only took 117 days¹³, while opponent legislators claimed more time was needed to fully understand the implications of the lease, which was for 75 years.

New Jersey will need to pass enabling legislation prior to adopting a PPP, and there should be substantial public input and debate on this legislation.¹⁴ Enabling legislation can establish what information must be publicly disclosed. The State should not rush a decision, nor should it boast about speediness in making the deal. The public should have sufficient time to analyze and understand the details of the PPP, and to ensure its best interests are being met by its government signing the contract. Legislative hearings and town hall meetings could be an important part of this process.

The State must embrace a policy of procedural and substantive transparency as it pursues a PPP. The public should be privy to the implementation process and the details of the agreement before a PPP is adopted. Full transparency will also require public knowledge of how toll road revenue is being spent today, so that the public can assess what changes might occur under a PPP. The Governor should, as a first step toward transparency, make public recent financial statements for the New Jersey Turnpike Authority specifically detailing how much the Turnpike has supported the

State General Fund and Transportation Trust Fund in recent years, and other uses of interfund transfers.



This cartoon by Brian Garvey illustrates the perception that those in favor of the 'Major Moves' campaign to privatize the Indiana Toll Road did not adequately listen to public concerns.

Specific elements of a PPP that the public should know about early – affecting tolls, land use, asset maintenance, risk and expenditure – are detailed below.

Tolls

Toll Increases

Depending on the PPP structure, the amount of future toll increases can be specified or left to the private sector's discretion. Both the Chicago Skyway and the Indiana Toll Road have specified toll schedules that limit the average or maximum toll collected. In the case of the Skyway, a static schedule lasts until 2017; in Indiana, it lasts until 2010. After those dates, with a few variations in each lease, the agreements call for increasing tolls each year based upon the greatest of three calculations:

- A given percent minimum,
- The rate of inflation, or
- The rate of increase in the per capita nominal gross domestic product.

This methodology can present risks under certain economic conditions. If high rates of economic growth are not matched by increasing wage rates among middle and lower income groups, then those groups may be subject to higher toll rates while their disposable income is static or shrinking.

For example, in 2004 the U.S. economy added 2.2 million jobs and produced strong growth in corporate profits, yet wages for the average worker actually fell.¹⁵ Under similar conditions, and with a toll schedule determined as it was in Chicago and Indiana, toll rates would grow faster than incomes. New Jersey may or may not follow this precedent when it establishes its future toll schedules. Regardless of the specific toll schedule proposed, there should be public discussion of this important element of the PPP.

The ability of, and any incentives for, private road operators to use variable tolls is another key element, and should be part of the public debate. The Chicago Skyway allows the operator to raise tolls above the toll rate caps for vehicles with three or more axles at times of congestion. The SR-125 PPP toll road in California provides flexibility for toll rates to vary by various classes of vehicles, vehicle occupancy levels, times of use and section of roadway, but sets a limit on the overall rate of return by the private partner. A PPP may or may not have contract incentives built in that impact whether these emerging high performance traffic management strategies are implemented in New Jersey.

It is in the public interest to disclose any proposed future toll rate increase schedules and maximum rate frameworks prior to finalizing the PPP. The public should have sufficient time to analyze and comment on the details of the toll provisions, contract incentives, and performance objectives before they become fact.

Electronic Tolling

As electronic tolling technology progresses, it is increasingly possible to manipulate toll levels to control levels of congestion and traffic. In less than 20 years, it is likely that a large proportion of private vehicles will have built-in devices that allow for fully-automated road pricing, data collection and information sharing among drivers.¹⁶ If a New Jersey highway is under a long-term PPP agreement, these new technologies will emerge while some roads are controlled by private entities. It is difficult to predict what challenges road operators may face in light of new road pricing technology. On the one hand, PPPs are often made inflexible regarding road operation and maintenance to ensure performance standards are met, while on the other hand, increased flexibility may be necessary to best respond to new challenges posed by changing road pricing technology. This is a trade-off the public should be aware of, and a discussion that needs to be part of the debate around PPPs. There may be ways to write more effective long-term performance objectives into contracts that will better respond to the opportunities and challenges posed by changing road pricing technology and emerging high performance transportation corridor operation strategies.

It is important that private partners are held to the same or higher standards of traffic management and privacy that the public would demand from its government.

Future Transportation and Land Uses

PPPs can restrict use of the highway right-of-way for any purpose other than how it is used now, as a toll road. While this may not seem like a problem today, it is difficult to predict how the corridors now served by highways may be best used in 20, 50 or 99 years. Perhaps a lane devoted to bus rapid transit will be necessary, along with stations and related infrastructure. Along the highway, expanded multimodal options might benefit the public most, such as park-and-ride facilities, or new car sharing facilities. If a PPP agreement prevents these new facilities from being built, it will have a

lasting, and potentially negative impact on land use in a state already suffering from the effects of sprawl. There are also opportunities currently open to the public sector that may be lost under a PPP. For example, the Turnpike Authority may have the ability to install cell towers, wind or solar energy production facilities along the highway. A PPP may change who controls these assets and what uses are allowed, potentially producing a sizable opportunity cost for the State.

A PPP may also determine how and when the highways are widened. There are currently plans to widen the Turnpike and Parkway. A PPP agreement could put the private sector in control of decision-making about this. A PPP might include terms that ensure road widening will only be pursued if it is shown to be more cost-effective than contracting for improved public transportation, ridesharing, and taxi services in the corridor and investing in other travel demand management strategies, including time-of-day tolls. Or the public might lose its ability to influence the proposed widening because of a PPP.

A PPP may also restrict certain land uses in other parts of the state. This was the case when the private sector invested in Route 91 in Orange County, California. Route 91 was an existing highway in a congested section of southern California. In 1995, a private firm won a contract to build a 10-mile High Occupancy Toll lane (HOT lane) on the existing highway. It agreed to operate the HOT lane and collect tolls on it. The firm paid \$126 million for the right to collect tolls. The contract included a non-compete clause precluding the State DOT from building or expanding competing freeway lanes. Public pressure forced the State to make improvements on other SR 91 lanes. To do so, the State had to buy back the HOT lane for \$208 million in 2003. (The HOT lane itself is a success, with traffic volume and revenue steadily increasing.)¹⁷ Since the SR 91 buyout, few public agencies have been willing to agree to the type of rigid non-compete clause included in the original SR-91 contract. On certain types of projects, the 2005 federal SAFETEA-LU transportation law Section 1604(c) would bar such non-compete agreements. Nonetheless, this remains an issue of which the public should be aware.

In addition, a private firm operating a single highway may not consider the network effects of its road pricing: its toll schedule may be set up to increase its profits while moving some traffic on to local roads, costing the State and localities more in the long run due to increased local congestion and damage done by trucks to local roads.

To avoid tying the hands of government with respect to investing in roads or transit facilities, a PPP should permit future alternative uses for the right-of-way and avoid any overly-restrictive non-compete agreements. It should specify whether the private entity gains any development rights along the highway. These features may result in less windfall revenue for the State in the short term, however it is in the best public interest in the long term.

Asset Operations, Maintenance and End Condition

Level of Service

Operations and maintenance should either remain at status quo or improve as the result of a PPP. This includes making sure New Jersey's highways have a high level of service for traffic flow, snow removal, accident clearance, service station operations and all other functions of the highway system that the public relies on, as well as sufficient funds available for bridge maintenance, resurfacing, and

other capital expenditures.¹⁸ A private firm may not necessarily operate the road with the goal of maximizing mobility or easing congestion, unless specific performance standards are established. As electronic toll collection grows more advanced, this issue will become more important.

The first step toward ensuring that operations and maintenance are upheld or improved is to evaluate the current state of maintenance and operations of the asset. The November 2006 UBS asset evaluation report calls for the State to establish the operating standards and safety requirement of the roads and a monitoring organization if it is to proceed with a PPP for any of the highways.¹⁹ The rating agency Standard & Poor's also holds that PPPs should require independent engineers and technical advisors to evaluate asset quality.²⁰ Standard & Poor's promotes life cycle costing, which requires that sufficient cash be available for capital expenditure throughout the life of the contract. UBS also notes the level of capital expenditure necessary as an issue for consideration. The State's progress toward these goals should be known to the public.

Once the current levels of service have been documented, the State can help ensure its mobility goals are met by using carefully-drafted performance standards in a PPP. Such stringent operating and maintenance standards can also lead to a lower windfall for the State; lengthier, more complex contracts can also take longer to draft leading to higher transactions costs for the State. Nonetheless, the State should approach this aspect of the PPP with the long-term public interest in mind. Performance standards should be written in to the contract, and public oversight should be allowed and provided to ensure that the private partner is operating the road in a manner that will optimize statewide mobility, protect the environment and sufficiently maintain the road.

Environment

A PPP can potentially raise, and must not be permitted to lower, environmental standards for highway operation. In late December 2006, the Sierra Club and other groups spoke out against a potential PPP in New Jersey, noting that environmental standards might not be sufficiently met by the private sector. They gave the example of salting the roads in the winter: seeking to maximize profits over time, a private operator may choose to use less expensive products that damage the environment.

To avoid this, a PPP agreement can employ various means to ensure environmental performance standards are met through the duration of the contract, including making environmental standards enforceable as part of environmental approvals, developing incentive-based performance contracting agreements, and considering such instruments as performance bonds, funding set-asides, and enforceable contingency measures.²¹ The expansion of Los Angeles International Airport is proceeding under a Community Benefit Agreement that provides one example of how such frameworks can be designed and negotiated.²²

Labor

Public authorities in this region are usually restricted to hiring relatively higher wage, union labor. If private operators are permitted to lower the number of staff or hire non-union employees, the windfall revenue to the State may be increased. However, this may conflict with State labor policies, lead to public disapproval, and potential litigation. Again, a State policy of full disclosure early on can help lead to an optimal result. Explicit labor policies should be built into the PPP, which will, in turn, be reflected in the amount the State receives from the transaction.

End Condition

The condition of the road if and when it is returned to the public should also be protected. The Chicago Skyway contract has a provision to ensure the road is maintained toward the end of the 99-year contract. The provision requires that 10 years prior to the end of the contract term the firm must provide a letter of credit equal to the highest gross revenues of the prior 10 years.²³ Similarly, a PPP in New Jersey should protect the end condition of the highways in question.

Performance, operation, maintenance, environmental and labor standards on the asset in question should be publicly monitored and disclosed prior to finalizing a PPP. A PPP should require status quo or higher standards. A PPP should include language to ensure the highway is returned to the public in top condition when the PPP ends.

Risk of Default

PPPs are based on long-term traffic and economic forecasts. Over-estimations are possible, and private firms could find themselves with insufficient revenue to repay investors. This could lead to the government buying back roads, or higher tolls and poorer management if permissible. The structure of the PPP will determine which party bears the risk of default.²⁴

It should be clear to the public, prior to finalizing the PPP agreement, what would happen in the event of default.

Ground Rules

To protect the public interest, the State should abide by two overarching ground rules as it pursues a PPP in the coming weeks and months. These rules can assure the public that a PPP benefits the State's fiscal condition and safeguards the future mobility of its residents. The rules are **Full Disclosure and Fair Expenditures**.

Ground Rule #1: Full Disclosure

A PPP for the Turnpike, Parkway, and/or Atlantic City Expressway could easily represent a new level of private investment in public assets and will require a new level of accountability. A PPP would not be business as usual for the State, and the State should use the opportunity to raise the bar for transparency. An appropriate level of transparency will entail full disclosure. To achieve it, the State should accomplish the following:

- Disclose what will be lost that might need to be replaced with other government funding if revenue from the asset is no longer collected by a public agency.
- Disclose the current performance, operation, maintenance, environmental and labor standards on the asset in question.
- Disclose the full text of any contract used to establish the PPP.
- Early on, disclose the future allowable toll schedule, including starting toll rates, and the degree to which variable tolls may be used in the future to help manage congestion and performance.

- Disclose any non-compete agreements or other contract language potentially impacting the expansion of other transportation infrastructure.
- Disclose the performance, operation, maintenance, environmental and labor standards that the private sector will be held to, and how the contracts will ensure high performance operation and management of the affected corridors.
- Hold legislative hearings and town hall meetings on the subject, and allow sufficient time for meaningful public input and legislative review.
- Disclose transactions costs, including fees to investment banks, financial advisors, lawyers and other professionals retained by the public sector to analyze and craft the PPP.

Ground Rule #2: Fair Expenditures

The State should spend any revenue from a PPP according to three principles:

- Prioritize the “user pay” principle that underlies transportation finance,
- Ensure the future of State’s transportation capital program, and
- Improve long-term fiscal stability.

Depending on how the PPP is structured and when it is adopted, there is a strong chance that most or all of the revenue to be reaped from a PPP could be spent by the current governor and State legislature. This presents an opportunity and also a risk. There could potentially be a temptation to use windfall revenue for short-term purposes – for example, for unsustainable tax cuts, or to cover recurring expenditures for only a few years. Instead, all expenditures that result from a PPP should be devoted to long-term improvements in the State’s transportation network and the long-term fiscal condition of the State. This approach precludes short-sighted expenditures such as temporary tax relief.²⁵

First and foremost, the State should use any windfall and ongoing revenue from a PPP to restore fiscal health to New Jersey’s underfunded transportation system. This reflects the “user pay” principle that underlies transportation finance: transit fares and tolls are used for transportation infrastructure upkeep and capacity expansion. Cross-subsidies between auto fees and public transit are used to reduce congestion, optimize efficiency in the transportation system and reduce air pollution. The lump sum from a PPP represents future toll payments made by motorists in the State. Spending the windfall on anything other than transportation would amount to redirecting toll money toward other purposes.

The transportation system should not receive any less revenue as a result of a PPP than it would under current policies, and additional revenue should be used first to restore the fiscal integrity of the Transportation Trust Fund and support NJ Transit and NJ DOT capital programs. The NJ DOT and NJ Transit capital plans cost \$3.2 billion per year to support. They include a plethora of congestion-fighting, smart growth projects vital to the economic growth of the region. Half of this is funded by the New Jersey Transportation Trust Fund, which is caught in a spiral of unsustainable levels of debt issuance. The Trust Fund has tied up future motor fuel and other transportation-related tax revenues to such an extent that there are no resources for capital programs after the current 5-year plan is expended. After 2012, the State will have no choice but to raise new revenues for transportation, even though gas taxes and other taxes and fees will still be collected from

residents.²⁶ The first priority for any revenue realized from a PPP should be to restore integrity to Trust Fund and advance needed transportation capital projects.

If the revenue realized by the State is more than sufficient to address these needs, then any remaining revenue should be dedicated to improving the State's long-term fiscal health, such as by retiring some of the State's general obligation debt. This will enhance the State's ability to address a range of future needs, from infrastructure investments to competitive tax rates.

Governor Corzine has described the State of New Jersey as on a "new path toward fiscal responsibility."²⁷ A PPP can help move the State further along that path, if revenues are used fairly and if it is structured to protect a broad range of public interests.

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About RPA

Regional Plan Association (RPA) is an independent regional planning organization that improves the quality of life and economic competitiveness of the 31-county, New York-New Jersey-Connecticut region through research, planning and advocacy. Since 1922, RPA has been shaping transportation systems, protecting open spaces, and promoting better community design for the region's continued growth. We anticipate the challenges the region will face in the years to come, and we mobilize the region's civic, business and government sectors to take action.

RPA is examining the issue of public private partnerships because of its potential long-term, regional impacts. New Jersey is not alone in investigating the potential for a PPP. There has been discussion of PPPs for the Tappan Zee Bridge and other major assets in New York State, and Connecticut may re-consider tolling and private investment in transportation infrastructure. Pennsylvania's governor has also expressed interest in a possible long-term concession for its toll road.

Recent New Jersey Reports

In July 2005, RPA released a study entitled "Putting the Trust Back in the New Jersey Transportation Trust Fund," that brought to the public's attention the severity of the transportation funding shortage for both capital and operating expenses. In November 2005, RPA released a follow-up report, "Reform, Revenue, Results: How to Save New Jersey's Transportation System," identifying an action plan to avert an impending transportation catastrophe in New Jersey, including specific revenue sources that should be utilized to raise the billions of dollars needed to support the transportation network each year. These two reports were products of a collaboration with the AAA Clubs of New Jersey, Tri-State Transportation Campaign, the Edward J. Bloustein School of Planning and Public Policy and the Alan M. Voorhees Transportation Center at Rutgers University. RPA has also helped frame the debate around property tax reform in New Jersey, producing three reports since October 2005. The first challenged gubernatorial and legislative candidates during the election season to address the implications of tax reform on land use and its related issues of congestion, open space protection, housing production and economic development. The second described a series of criteria to assess property tax reform proposals and ranked some of the leading ideas of the day. The third recommends a package of property tax reforms that will have the maximum benefit for land use, housing affordability, equity and fiscal discipline in the years to come.

RPA publications and more information about our work in New Jersey are available at www.rpa.org.

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OLSaideATR

From: r neveil [grnmaple@verizon.net]
To: OLSaideATR
Cc:
Subject: Re: Assembly Transp. & Public Works Meeting of 02-15-07
Attachments:

Sent: Sat 2/10/2007 6:07 PM

Assemblyman John Wisniewski, Chairman
Re: Committee Meeting of 02-15-07

Dear Assemblyman Wisniewski:

Unfortunately, due to illness, Citizens Against Tolls will not be able to have a representative at the above meeting however we fully support your position against monetization of toll roads and othe public assets. In support of our position following is a news release which was sent to the media earlier this week.

News release from Citizens Against Tolls:

"Our governor and legislators appear to be moving blindly ahead to monetize roads and other public institutions in spite of massive public opposition to these proposals," declared Ray Neveil, President of the grassroots group Citizens Against Tolls (CAT). "The main attraction to the politicians is the quick availability of funds to retire billions of dollars of past debt thus relieving elected officials of their nresponsibility to find a business-like solution to fund state operations," continued Neveil. Instead of saving money, monetizing will only add to overall costs for such things as complex legal fees, the costs of raising large sums of money for the pirchase, plus interest, taxes (Will the :purchaser pay taxes?) and the mere fact that the public will lose control of public assets for 75 years! In effect we are passing the problem along to our grandchildren's children while our Governor and legislators rejoice over a quick but costly fix instead of solving the real budget problem now. Citizens should not tolerate such shenanigans, concluded Neveil."

END OF RELEASE

I can be reached on 732 918-9184

Raymond G. Neveil, Citizens Against Tolls

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OLSaideATR

From: Mark Wismer [markw@marine-trans.com]
To: OLSaideATR
Cc:
Subject: Monitization of Highways
Attachments:

Sent: Fri 2/9/2007 11:35 AM

Dear Maureen McMahon, Committee Aide;

I want to add my voice to those raised against the sale of the state's transportation infrastructure for a, short-term, infusion of capital at the expense of increased costs spread over a substantial time period.

In addition to the cost being forced onto the taxpayers using the roadway; we all face the additional cost of goods and services as the increased transportation cost is passed onto the consumer.

Working in the transportation field, I am well aware that a percentage of rising costs cannot be passed through immediately and another percentage cannot be passed along. The margins of transportation companies is already less than what is needed to grow and develop efficiencies. Increasing the toll cost will force traffic to utilize parallel, non toll, roadways adding to the detriment of of taxpayers declining quality of life.

--

Mark Wismer
Safety Director
Marine Transport, Inc.
(908) 232-1400 xtn 114
markw@marine-trans.com

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OLSaideATR

From: jim@jimfo.com [jim@jimfo.com]
To: OLSaideATR
Cc:
Subject: the possible sale or lease of the State's toll roads
Attachments:

Sent: Tue 2/13/2007 4:13 PM

TO: MEMBERS OF THE ASSEMBLY TRANSPORTATION AND PUBLIC WORKS COMMITTEE

Do you listen to the public anymore? Do you read the papers? You have no public support on this issue. Please, do not sell New Jersey 's assets for quick cash. This will hurt us in the long run. This will mean money flowing out of NJ (and possibly even the USA). This is a tremendously bad idea, and shame on you for considering it.

If you can not balance this year's budget without resorting to these one-time gimmicks, it stands to reason that you won't be able to balance it next year either. What you are going to sell next? This will even be bad for NJ's credit rating (...what are you going to borrow against if you sell off all our assets?). Stop the gimmicks and start balancing.

This irresponsible behavior has to end. Each gimmick you rely on makes the state's long-term financial situation worse. I think the Star Ledger referred to it as a "Death Spiral". It's almost like our legislators don't care what happens in NJ after they leave office (...as long as they are getting their well padded pensions).

Frankly, I don't want to be around when the bill comes due, and I apologize to the future generations who get stuck with it (with the exception of all the government officials guilty of padding their pensions). I am this close >> to looking for a life in another state, and every day the newspapers give me more reasons to leave. I have lived in NJ my entire life, and I would prefer not to leave my elderly parents, but your irresponsible taxing, borrowing, and spending are forcing me out of my home.

Again, our voices cry out in unison on this issue: Do not sell our assets. If you don't believe me, put it to a vote - Should NJ: 1) Sell Assets, 2) Raise Taxes, or 3) Reduce spending and corruption to balance the budget? (...And make no mistake, double and triple padded pensions reek of corruption).

...It would be a landslide.

- James Padykula
 - 42 Highview Ter., Dover, NJ 07801
 - 973-328-1028

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OLSaideATR

From: Scott L. Turner [sturner@hmhttc.com]
To: OLSaideATR
Cc:
Subject: Leasing of toll roads
Attachments:

Sent: Fri 2/9/2007 10:43 AM

Two questions:

Why is it that the private sector would consider leasing the toll roads? Because they can turn a profit. Why can't the Authority turn a profit? Mismanagement.

Is this any surprise to anyone out there. Leasing or selling the toll roads would be a major mistake because the State would only squander the revenues on more social programs in a very short time span, and we will be no better off in five years than we are now. Only then, we will not have the ability to control two of the State's largest assets.

Simple, rewrite the charter and completely restructure the toll road authorities from the ground up. When you get to the top, dismiss all of those extremely overpaid board members. Give me two years with both Authorities and I can turn a profit. I guarantee it, that however is not a reality.



Scott L. Turner

HMHTTC Response Inc.

President, CEO

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ADDITIONAL APPENDIX MATERIALS
SUBMITTED TO THE
ASSEMBLY TRANSPORTATION AND PUBLIC WORKS COMMITTEE
for the
FEBRUARY 15, 2007 MEETING

Submitted by Assembly Transportation and Public Works Committee:

John Wisniewski, "Too big a risk in leasing toll roads," *The Star-Ledger*, January 16, 2007.

Bradley Abelow and Kris Kolluri, "State won't rush ahead blindly in toll road lease study," *The Star-Ledger*, January 22, 2007.

Bradley Abelow and Kris Kolluri, "State asset privatization: All forks in the road to be thoroughly explored," *The Times*, February 6, 2007.