CoPIRG
Standing Up
To Powerful Interests

Privatization and the Public Interest

Principles for Public-Private Partnerships (PPPs) for Transportation Projects

Transportation funding is a growing issue in Colorado as politicians and transportation officials grapple with funding challenges resulting from a decline in the value of the state's gas tax, uncertainty around federal transportation funds, shifting travel trends, and pressures from the state's growing population. Increasingly, state and local officials are looking at new kinds of arrangements between the public and profit-seeking corporations to provide upfront financing for transportation projects, including toll roads and transit lines.

Though these privatization deals seem to offer elected officials a "quick fix" which promises to increase value in our transportation network, they can pose long-term threats to the public interest and can ultimately be more expensive than traditional financing.

Recent toll road privatization projects have generated debate. Toll road privatization takes two forms: the lease of existing toll roads to private operators and the construction of new roads or additional lanes by private entities. In both instances, private investors may be granted the right to raise and collect toll revenue or may be granted steady government payments in exchange for bringing in private funding to construct, operate and maintain the new or existing road.

By creating privatized roadways, officials can hand over significant control over regional transportation policy to corporations that are accountable to their shareholders rather than the public. Additionally, the economics of these deals are such that the upfront concession payments might not match the long-term value of the higher tolls or long-term government payments that will be borne by future generations.

Therefore, whether it is toll roads or other types of PPP transportation projects, it is critical that public officials ensure that the public gets the value, efficiency and safety it deserves from potential new privatized assets in its transportation network. Government officials and the public must ask tough questions and evaluate privatization proposals rigorously to ensure that any such deals benefit the public interest.

Principles for Privatization

<u>Any proposed privatization of a public asset should be done with goals in mind that extend beyond maximizing the upfront payout or the desire to get a project built.</u> Specifically, there are five principles that governments should use in evaluating privatization proposals:

(1) The public should retain control over decisions that affect the broader public interest.

Governments invest in infrastructure with broad public interest goals in mind. Any deal to privatize a public asset must ensure that the public retains control over uses of that asset that affect the broader public interest. Public control can be lost if a deal imposes financial costs for the exercise of that authority, creating serious obstacles to making policy in the public interest. Privatization deals should not give private entities broad powers for "compensation" when private operators believe public policies have infringed on their revenues. For example, private toll road deals have sometimes prohibited states and cities from constructing or improving other nearby roadways, adding commuter rail along the highway, or have required lower speed limits at nearby competing free roads. Deals to privatize city parking meters have sometimes forced cities to pay steep compensation when other buildings have been allowed to offer parking services, or when street festivals, street repairs, or too many disability parking permits have threatened to reduce private meter revenue. In addition, PPPs must be held to high standards for safety and upkeep to ensure profits are not pitted against the public interest.

(2) The public must receive fair value so future revenues are not sold off at a discount.

Public officials—particularly during times of budgetary stress—face extreme pressure to meet their budgets without raising taxes or cutting services. Long-term public-private partnership deals can provide a quick fix, delivering an immediate infusion of funds or construction of a new asset, while deferring the consequences until well after current public officials leave office. That is why it is critical that there be close scrutiny of the terms of privatization deals to ensure that the public gets fair value for the asset and any user or contracting fees that a private operator may be allowed to collect. Independent, third-party valuation of the asset must compare the value for the asset on the open market with the value of keeping the asset in public hands with the same fees or revenue opportunities that the deal would grant to the private entity. It is also important that privatization be compared with other options—including the status quo and monetization of future revenue without a transfer of ownership—so that decision-makers can choose among several viable options for achieving their goals.

(3) Any deal lasting longer than 30 years must be approached with additional caution due to uncertainty over future conditions and because the risks of a bad deal grow exponentially over time. Special protections must accompany such long-term deals.

Multi-generational time frames—such as 50, 75 or 99 years—are common in privatization agreements because they allow private companies buying or leasing public assets to gain preferential tax treatment and cash in on long-term revenue streams. However, these terms can bind future generations to the consequences of decisions made by today's political leaders in unintended ways. We don't know how future driverless cars or new technology for embedded road sensors, for instance, will change best practice for managing toll highways. Deals will inevitably fail to anticipate future technologies and other challenges. The public should be able to change the terms of long term deals without undue financial penalty – including the ability to end a public private partnership before the end date if the public desires. Deals exceeding a few decades should give the public opportunities at regular intervals to exit a deal while compensating costs. In the latter years of an asset privatization deal, private operators will have a diminishing motivation to invest in an asset. Longer-term deals should therefore include strong provisions such as escrow accounts to ensure that private operators continue to prioritize ongoing modernization, upkeep and repair of an asset even though those investments will make less and less sense to their bottom line.

(4) There must be complete transparency to ensure proper public vetting of privatization proposals.

The process of privatizing an existing public asset or agreeing to build a new privatized asset must take place in the open from beginning to end. The public should be aware of every step that is taken in pursuing a privatization proposal—from the initial hiring of consultants to the solicitation of proposals to the selection of a winning bidder. The selection of vendors should take place according to a jurisdiction's open bidding laws, and there should be a strong presumption that all information gained during the process be made public. Legitimately proprietary information such as traffic analysis studies may be restricted for a few years from general public disclosure, but some public entity rather than the companies themselves must judge what documents deserve to be treated as proprietary. In general, the public's right to know should trump business confidentiality. There should also be a proper amount of time allotted, including time for public hearings and ample time for review of the proposed agreement, before a privatization agreement is finally approved. Once a privatization deal is under way, the operations, financing and subcontracting should be no less subject to public record disclosure rules than if the project asset was fully public.

(5) There must be full accountability in which the governmental body must approve both that a deal be negotiated and the terms of a final deal.

Governmental bodies, often legislatures or city councils, must be involved at two stages of the privatization process—the decision to solicit bids under particular terms and the acceptance of a final deal. It is not good enough for governmental bodies to approve the authority to solicit bids and then avoid being counted in terms of their position on a final deal. In other words, officials who are accountable to the public must have the ability to both shape the terms under which assets may be privatized and to approve the final deal that is presented to them. Transparency during this process is especially critical to avoid both corruption and the appearance of corruption, thereby helping to assure public legitimacy for any deal.

When consumers are cheated or the voices of ordinary citizens are drowned out by special interest lobbyists, CoPIRG, the Colorado Public Interest Research Group, speaks up and takes action. We uncover threats to public health and wellbeing and fight to end them, using the time-tested tools of investigative research, media exposés, grassroots organizing, advocacy and litigation. CoPIRG's mission is to deliver persistent, result-oriented public interest activism that protects consumers, encourages a fair, sustainable economy, and fosters responsive, democratic government.

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