Ohio Turnpike Lease: A Framework of Decision Variables

Overview
The prospect of leasing the Ohio Turnpike has been proposed by many Ohioans in recent years. In 2011, Ohio Governor John Kasich announced that his administration is considering a long-term lease of this key east-west route in northern Ohio. This issue is complex, involves many stakeholders, and would represent a significant change. As northwest Ohio’s regional planning organization, the Toledo Metropolitan Area Council of Governments (TMACOG) has a keen interest in facilitating a robust consideration of the issues surrounding Ohio’s Turnpike lease proposal. Our purpose is to provide a flexible tool for discussing the advantages and disadvantages associated with leasing or not leasing the Ohio Turnpike.

Several fact scenarios could emerge depending entirely upon the details of the lease terms. Rather than adopt a position in support or opposition of the lease concept at this stage, it seems prudent to develop a framework of lease decision variables in order to facilitate the exploration and evaluation of various lease arrangements. This framework is a work in progress that is the result of a review of numerous sources including media reports regarding the Ohio Turnpike, Federal Highway Administration of the US Department of Transportation, and other analyses. While there are several domestic and international toll lease examples to draw from, the neighboring experience in Indiana is highly relevant. Details of Indiana’s toll road lease are summarized and presented to provide a point of reference.

What is a Lease?
A lease is not a sale. In the case of a toll road asset a lease (or concession) is an agreement between a public entity and a private investor (concessionaire). The public retains control of a leased public asset by virtue of the lease terms. When a public entity enters into a lease arrangement it essentially forms a public private partnership (PPP), sometimes termed privatization. PPP initiatives are motivated in part from the inability of public sources of funding to keep pace with inflation and with costs such as infrastructure maintenance and expansion needs. A lease may involve a large initial payment which is invested in order to generate additional interest earnings. A lease may also establish revenue sharing arrangements. There are several other types of lease provisions that will be explored in greater detail below. To predict the consequences of a lease, it is helpful to understand the many ways these provisions can be crafted.

Stakeholders
Owing to the ubiquitous nature of the turnpike and its influence in Ohio there are many stakeholders grouped below in no order of priority.

- Commercial toll payers including small firms and independent operators as well as large firms with facilities in near proximity to the turnpike such as United Parcel Service, FedEx, etc.
- Turnpike corridor municipalities and other public entities (i.e., utilities) directly adjacent to or significantly affected by the turnpike.
- Ohio citizens, the traveling public.
The Ohio Turnpike
The Ohio Turnpike was built during the 1950s as a toll revenue supported expressway. Below is a list of attributes as reported in the annual report of the Ohio Turnpike Commission. This is followed by a list of items that would typically be incorporated in a lease. This list is based on the content of Indiana’s concession—not the specific details of the terms, but its broad components. Both lists are supplied to support comparative analyses of the Turnpike and are not intended to be all-inclusive.

Basic Attributes
- Official Name: James W. Shocknessy Ohio Turnpike
- Length: 241 miles.
- Access Points: 31; Plazas: 7 pairs, one about every 30 miles.
- Traffic: In 2009, the total annual traffic consisted of 38.5 million passenger cars and 9.7 million trucks, for a total of 48.2 million vehicles. In terms of number of miles there were over 2.7 billion miles driven on the turnpike; 68 percent of which was by passenger cars.
- Administration: A nine member Ohio Turnpike Commission (OTC) as described in Ohio Revised Code, Chapter 5537, and a six member Turnpike Legislative Review Committee as described in ORC 5537.24. According to a report by the Legislative Service Commission, “OTC is not a state agency and is not appropriated money from any state funds included within the transportation budget or main operating budget.” (Lee, 2007).
- Tolling System:
  - After years of no changes to toll rates, the OTC raised rates in the 1990s to pay for improvements to the road and service plaza modernization. In 2004 toll rates were reduced for trucks.
  - E-ZPass system introduced in October 2009 and the vehicle classification systems were changed to be more compatible with electronic tolling systems in other states.
  - Currently the discounted rate for 2 axle class is 4.25 cents per mile. For the 5 axle class discounted rates range from 11.2 - 13.2 cents per mile. Rates are scheduled to increase in 2012 to 4.67 and 12.5 – 14.5 respectively.
- Staffing: A voluntary separation plan was offered to toll collectors in November 2009 (just after introduction of the electronic tolling option). There are approximately 567 full-time, nonsupervisory, field employees in the Commission’s Toll Operations and Maintenance Departments and approximately 265 part-time, nonsupervisory, field employees in the Toll Operations Department who are represented by the Teamsters Local Union No. 436. Through March 31, 2010, 47 full-time and 79 part-time toll collectors have enrolled to participate in the program.

Lease Particulars
- Value: TBD; In public statements Governor Kasich indicates a price tag of about $3 billion to net approximately $2.5 billion after retiring the outstanding debt. According to Turnpike Commission’s 2009 Annual Report, toll revenue is $187.3 million. Total revenues were $209.3 million; total expenses were $199.7 million, resulting in an increase of net assets by $9.6 million.
- Length of Lease: TBD, 75-year and 99-year lease examples exist.
- Lease Authority: According to one analysis HB 114 and HB 153 enables the state to engage a turnpike lease, “While the state Controlling Board would be required to approve any lease contract, the approval of the entire General Assembly would not be necessary, under the terms of Kasich’s proposal.” (ACEC Ohio).
Lease Proceeds:
- Upfront concession fee;
- Geographic distribution;
- Use restrictions (i.e., funds be used for transportation purposes);
- Creation of a Trust Fund and its details;
- Control of other revenues (i.e., billboard, utility, etc.).

Toll Rate Provisions: degree of control on maximum rate of increase; caps; timing of increases; use of toll revenues (i.e., priority to debt service, operations and maintenance over distribution to equity interests).

Toll Road Corridor: traffic calming provisions on parallel routes; definition of competing highways and restrictions on expanding.

Operating Standards: Specifications, policies, procedures, and processes that apply to operation, maintenance, rehab, capital improvements of the turnpike.

Minimum Level of Service: defining and outlining procedures and timetables to address improvements to areas below the minimum.

Traffic Study: establishing a schedule and other terms.

Law Enforcement Arrangements: level of patrols and budget to state police;

Service Plazas: location, maintenance, selection of vendors.

Reporting, Auditing, and Inspections: Regarding safety, environmental, financial Insurance Requirements.

Definitions regarding what constitutes prior notice, adverse actions, delays, defaults on behalf of both the state and the concessionaire.

Remedies for defaults: for example to address concerns about roadway maintenance, conflict resolution procedures.

Restrictions on transfers of Concessionaire interest.

Dispute Resolution.

Toll Road Oversight Board: number members and composition.

Other: Potential federal legislation regarding public-private partnerships.

Indiana Turnpike Highlights
Indiana was the first state to execute a long term lease of an existing toll road in the US. The Indiana Turnpike leased to Statewide Mobility Partners LLC (SMP), a limited liability company between Cintra Concesiones de Infraestructuras de Transporte SA and Macquarie Infrastructure Group (known as ITR Concession Company, LLC or ITRCC).

Basic Attributes
- Official Name: Indiana East-West Toll Road
- Length: 157 miles.
- Access Points: 21 with 10 travel plazas.
- Traffic: For fiscal year 2001 there were just over 43.3 million passenger cars and 9.1 million commercial vehicles for a total of about 52.5 million combined.
- Tolling System:
  - Discounted rates for 2 axle class enrolled in electronic “i-Zoom” program are significant at 2.6 cents per mile and 4.6 cents per mile without discount. For 5 axle vehicles the discount is minor and rate is 19.1 cents per mile. For full rate schedule see [https://www.getizoom.com/tollRates.do](https://www.getizoom.com/tollRates.do)
- Staffing:
  - At the time of lease, all existing employees interested in employment must be interviewed, those not hired offered opportunities elsewhere in state government (See: [http://www.csg.org/knowledgecenter/docs/infra/sn0604TollRoadsTip.pdf](http://www.csg.org/knowledgecenter/docs/infra/sn0604TollRoadsTip.pdf))
Lease Particulars

- Value: $3.8 billion—the accepted bid provided in October 2005. Toll revenue was almost $84.9 million in 2004 and was used in the RFP published in September of 2005. ITRCC took in $149.6 million in 2009 (Benman, 2010). Several observers concur that Indiana toll rates (per mile) are about in the middle of the pack relative to toll rates on other toll roads in the nation.

- House Bill 1008 enabled the agreement between ITRCC and Indiana Finance Authority (IFA) which was completed in June 2006.

- Length of Lease: 75-years.

- Lease Proceeds:
  - Upfront concession fee was $3.8 billion.
  - Geographic distribution: toll road corridor counties receive 34% of net proceeds (after $750 million subtracted to retire outstanding bonds). “The 34% of net proceeds includes all planned state highway projects in the counties, county-by-county distributions of $40 million each and $120 million for the Northwest Indiana Regional Development Authority in Lake and Porter counties. Toll Road counties also will share in a statewide distribution, over two years, of $150 million in motor vehicle highway funds.” (Indiana Toll, 2006).
  - $500 million “Next Generation” trust fund established with interest tapped every five years for transportation projects. Original interest target was 5.25 percent.
  - ROI: limits are placed on the return on investment to ITRCC.

- Toll Rate Provisions: Tolls were raised just before the hand-off because they had not been raised since 1985. The amount of rate changes can vary according to a specified schedule until 2011. Beginning on June 30, 2011, the following language set out the toll increase formula; essentially allowing tolls to rise in pace with the inflation rate of the previous calendar.
  - “For purposes of this Schedule, ‘Subsequent Applicable Percentage Toll Increase’ means the greater of (a) two percent (2%) or (B) the percentage increase of the [Consumer Price] Index or Per Capita Nominal GDP, whichever is greater, measured from January 1 to December 31 for the calendar year immediately preceding the Tolling Measurement Date. For purposes of this Schedule ‘Tolling Measurement Date’ shall mean June 30, 2011 and each June 30 thereafter.” (Schedule 7.1 of the Indiana Toll Road Concession and Lease Agreement, 2006).
  - Cars in the i-Zoom program will not see an increase until 2016.
  - The ITRCC must give the state 90 days notice and the public 60 days notice of any pending toll changes.”

- Toll Road Corridor: Competing Highway is defined as built by on behalf of state and at least 20 continuous miles of which is within 10 miles of the toll road. US 20 shall be considered competing if on or before the 55th anniversary of the closing date, it is expanded or improved so that it becomes a comparable highway (comparable highway means a divided four or more lane controlled access interstate).

- Operating and Maintenance Standards: Snow and road kill removal, pavement conditions etc.

- Capital Improvements: Traffic study schedule and minimum level of service definitions.

- Law Enforcement Provisions

- Toll Road Oversight Board: A 10-member board oversees ITRCC.
**Infrastructure Improvement Trend in Indiana**

According to Indiana Department of Transportation, “Between 2001 and 2005, prior to Major Moves, the state averaged nearly $750 million for construction per year; of that $750 million, an average of nearly $250 million per year was spent on new construction while an average of approximately $500 million per year was spent on preservation projects. With $11 billion being invested from 2005-2012, INDOT is now averaging over $1.5 billion in construction dollars annually.” (See: http://www.in.gov/indot/7039.htm).

Another source notes that in 2011 Indiana is proceeding with several major projects, unlike other states which are focusing more on maintenance and preservation during this period of economic and funding uncertainty. “But at least one state is bucking the trend of holding back: Indiana is moving ‘full steam ahead,’ says DOT Commissioner Michael B. Cline, who notes that fiscal 2011 will be a record highway construction year, totaling about $1.6 billion. Indiana is in the midst of a 10-year, $12-billion highway program called ‘Major Moves,’ which Gov. Mitch Daniels (R) initiated in 2005. Of the program’s $12-billion total, $2.6 billion comes from the 2006 lease of the Indiana Toll Road. Other funding sources include federal and state aid as well as interest on the toll-road lease proceeds, says state DOT spokesman Will Wingfield.” (Ichniowski, 2011).

**Discussion**

The prospect of leasing a public asset to a private sector partner creates several changes. Many of these are summarized by Buxbaum and Ortiz.

- Tolls may track more closely to inflation than taxes.
- Equity stake (as opposed to the traditional bond holder stake) may produce better private sector incentives to efficiently and effectively operating a toll road. Concerns about excessive profits can be limited through the lease terms.
- Private sector operators may or may not be better able to deliver at a lower cost that the public sector.

These analysts are quick to point out that the pros and cons to the lease question are far from settled. They call for objective and thorough analysis “of all viable approaches” and note that “each state or region will need to determine for itself the proper balance between competing objectives when it comes to delivering an effective transportation system.” (Buxbaum & Ortiz, 2007).

During the 2006 Ohio gubernatorial race, candidate Ken Blackwell proposed privatizing the turnpike for $4-6 billion. The economic climate of 2011 is vastly different. Another apparent difference is that Blackwell called for using the lease proceeds to fund not only transportation programs, but also Ohio-wide programs for energy development, higher education scholarships, K-12, and so on—something that has not been so far proposed by Governor Kasich. Despite these differences, a 2006 analysis of the Blackwell plan by Ellis & Hill retains some relevance. Ellis and Hill express doubt that a long-term lease is viable from the point of view of the lessor/concessionaire on the premise that private companies have overpaid. The only way a concessionaire will recoup this is through decreased maintenance or increased tolls. Although both of these can be controlled for in the lease terms, the authors note that enforcement of remedies and default are time-consuming legal and political battles (Ellis & Hill, 2006).

**Summary Comments**

The Kasich announcement has generated much interest. Although some individuals and organizations have come out in opposition, others are supportive of the concept of PPPs so long as they are based on well-crafted agreements.
The details of an Ohio Turnpike lease are as yet unknown. Given the range of possibilities, TMACOG has not taken a formal position at this time. Instead we wish to facilitate a general discussion the advantages and disadvantages associated with leasing or not leasing the Ohio Turnpike. TMACOG is interested in a focused consideration of how such a lease would be structured. Our hope with this approach is to arrive at a sound decision which best serves the interests of our region and all stakeholders.
Sources


