

**“AN EXAMINATION OF THE FAIR MARKET VALUATION ANALYSIS OF INTERSTATE 80”
POLICY COMMITTEE HEARING ON NOV. 18, 2009**

NOTES FOR TESTIMONY OF BRIAN F. CHASE

Introduction

Thank you Rep. Smith for the invitation to meet with you today and the other members of the House Republican Caucus to discuss the various legal and transportation policy issues related to the potential tolling of Interstate 80.

To introduce myself, I have worked for both government agencies and private partners on infrastructure finance and development in both the United States and abroad. I have a strong interest in transportation policy and projects that improve passenger and freight mobility and enhance U.S. economic competitiveness.

I do not have a particular ideological bias with respect to the tolling of I-80 and I am not what one former public official has referred to as a “PPP panacista.” In fact, I’ve written articles for Stanford University and others that are critical of asset monetization deals of the type that was proposed by Governor Rendell for the lease of the Turnpike to a private partner.¹

I am here only in an individual capacity as someone who wants to offer some observations and suggestions based on my experience in this area.

Experience

Infrastructure Consultant (2009-Present)

Now working for the World Bank and the Asian Development Bank on developing legislation and government programs designed to facilitate private sector participation to help improve the delivery of infrastructure and public services.

Also advising Castalia LLC, a small infrastructure finance and economic consulting firm specialized in improving the value and efficiency of infrastructure and public services.

Am actively working with public pension funds to facilitate their further investment in U.S. infrastructure programs and projects.

¹ Brian F. Chase, *PPPs in the United States: Evolving Market and New Opportunities*, Collaboratory for Research On Global Projects Working Paper No. 53, STANFORD UNIV. (Sept. 2009), available at: http://crgp.stanford.edu/publications/working_papers.html.

Vice President, The Carlyle Group (2006-2009)

Focused on developing investment opportunities for the firm's \$1.1 billion infrastructure fund and its investors, including public pension funds. Primarily focused on government-owned toll roads, transit systems, high-speed rail, water and wastewater treatment plants, ports, airports, flood control facilities, border-crossing infrastructure and ancillary assets related to the foregoing.

While at Carlyle, closely followed Governor Rendell's Pennsylvania Turnpike lease proposal, but did not actively participate in the bid process. Did, however, respond to the Turnpike Commission's Request for Expressions of Interest on the Mon-Fayette Expressway project.

Attorney, Nossaman (2003-2006)

Nossaman is a national law firm specializing in infrastructure finance and development with projects in more than 25 U.S. states and in many foreign countries. It is best known for its work on behalf of government agencies such as the U.S. Department of Transportation and state departments of transportation that are interested in utilizing private investment to improve publicly-owned infrastructure assets.

- Advised the Virginia Department of Transportation in connection with the \$611 million Pocahontas Parkway concession project involving Transurban and DEPFA Bank. This transaction was included in the financial valuation analysis of proposed rentals for I-80 as prepared by Provident Capital Advisors.
- Advised the Virginia Department of Rail and Public Transportation in connection with the negotiation of a Design-Build Contract and other project documents for the design, permitting, financing and construction of the Dulles Corridor Metrorail Project.
- Advised the Georgia Department of Transportation on the evaluation of several multi-billion dollar unsolicited proposals it received from the private sector under that state's public-private initiatives legislation. One project included an attempt to convert a 39-mile highway into a toll road.

Provident Capital Advisors

There are several problems with Provident Capital Advisors' market valuation of the proposed lease rentals payable to PennDOT by the Turnpike Commission. These problems include:

The issuer of the opinion does not appear to be independent. In July 2009, Provident Capital Advisors was engaged by McCormick Taylor, a Turnpike Commission consultant. The Turnpike Commission, however, is the ultimate client and likely paid for this opinion to be prepared either directly or indirectly. Under these circumstances, it would have been more appropriate for the FHWA to have hired its own consultant to do this analysis, possibly paid for by the Turnpike Commission. Alternatively, PennDOT could have done this analysis before it entered into the lease with the Turnpike Commission.

The identity of the issuer raises some credibility issues. Provident Capital Advisors did not exist until only a few short days before it was hired by McCormick Taylor to prepare its opinion. Before that, it was known as "Provident Healthcare Coalition L.L.C." and seems to have been engaged in some unrelated business since its formation in 2007. This fact undermines its credibility and public support for the tolling of I-80. How many opinions of this type has Provident Capital Advisors issued in the last several years and who were its clients that paid for it to prepare such opinions? Why wasn't a more reputable and experienced firm engaged to do this work, such as Houlihan Lokey?

The toll road facilities chosen for review appear to have been cherry picked to help reach a specific valuation result. North American toll facilities not selected for analysis by Provident during the 1999-present period include:

- Virginia's I-495 Capital Beltway HOT Lanes
- Florida's I-595 Managed Lanes
- A-30 in Montreal, Canada
- SH 130 Segments 5 and 6 in Texas

Even if these projects were deemed to have been inappropriate for inclusion, there should have been some discussion by Provident Capital Advisors concerning why these major (and more recent) PPP transactions were excluded from consideration.

Other Relevant Considerations

Based on my professional experience, I believe the Turnpike Commission's attempts to toll I-80 will fail for a variety of legal and policy reasons, including the following:

Public uncertainty over promised improvements. I am not aware of any interstate highway that has successfully been converted into a tolled facility. I-80 is not a good candidate because it is uncertain whether the Turnpike Commission will actually make the promised improvements to this facility according to the timeline that has been proposed—or even if all of those planned improvements are really necessary. Rather, the primary purpose of tolling I-80 is to support the ongoing operation of

urban transit systems without any enforceable promise being required of them to improve their performance in consideration for such financial support.

Ongoing criminal investigations. The FBI and Attorney General investigations involving the Turnpike Commission, as have been detailed by various news organizations, indicate that there have been significant ethical lapses among Turnpike personnel. Aside from representing a major distraction, these investigations are likely to further undermine public support for the tolling of I-80 unless and until the Turnpike Commission gets its own house in order with respect to its operation of the Turnpike system.

Sen. Fumo and his staff played a key role in developing legislation, Act 44, permitting the Turnpike Commission to maintain its current organization, which relies on I-80 tolling.

On October 21, 2009, Michael Palermo, who had been listed in the Fumo indictment as receiving payment from the Turnpike Commission for no documented work while caring for Senator Fumo's farm, pled guilty to fraud in U.S. District Court in Philadelphia. Who approved this contract at the Turnpike Commission and why was Palermo selected remains unclear?

Lack of Competition for I-80 Lease. The Turnpike Commission's proposal to lease I-80, as adopted in Act 44, was never subject to any third-party competition or an objective and independent analysis of its advantages and disadvantages. Under such circumstances, the general public is likely to doubt whether the Turnpike Commission's proposal was the best one that could have been developed.

The current structure of the I-80 lease does not encourage public pension fund investment and participation in solving Pennsylvania's transportation policy challenges. Public pension plans increasingly want infrastructure in their portfolios, and the I-80 lease structure fails to encourage this form of public re-investment in Pennsylvania's transportation infrastructure.

- Watson Wyatt recently estimated that in 2008 the top 10 managers in infrastructure alone managed \$72 billion on behalf of pension funds, up from \$43 billion in 2007.² Earlier this year Probitas Partners estimated that nearly 80 closed-end funds were in the market for over \$90 billion in additional commitments, with the majority of such investment to be targeted on brownfield assets in developed countries.³ State pension systems in North Dakota, California, Maine, Illinois, Alaska, Washington, Texas, New York and New Jersey have already made infrastructure allocations, and more states are likely to follow.⁴

² Siddharth Poddar, "Study: \$72bn managed by infrastructure investors in 2008," InfrastructureInvestor, July 8, 2009.

³ Probitas Partners, "Investing in Infrastructure, Summer 2009, at p. 19.

⁴ Nick Lord, "Into the Void," Project Finance Magazine, June 2009, at p. 39.

Final Observations

The Pennsylvania General Assembly should consider the following actions:

- Recommend that the FHWA conduct its own independent financial valuation of the Turnpike Commission's I-80 lease payments with the assistance of a reputable and experienced financial advisor.
- Pass enabling legislation to facilitate public pension plan investment in Pennsylvania's transportation system and pursue a programmatic approach that relies on value-for-money and cost-benefit analysis before significant transportation investment decisions are made.

Thank you for your attention and are there any further questions or comments?