CRS Insights

Indiana Toll Road Bankruptcy Chills Climate for Public-Private Partnerships

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On September 21, 2014, the private operators of the Indiana Toll Road, ITR Concession Company (ITRCC), filed for bankruptcy. The filing is just the latest in a series of events that is leading Congress to reassess the role of private investment in transportation infrastructure.

Factors in the Bankruptcy

The Indiana Toll Road concession is one of the best-known examples of a public-private partnership (P3), an arrangement between the public and private sectors in which a private entity takes on responsibilities and risks in the construction and operation of infrastructure in return for an economic reward. ITRCC has operated the 157-mile toll road since 2006, when it paid $3.8 billion in cash to obtain a 75-year lease concession from the Indiana Finance Authority, a state agency. Opened in 1956, the toll road, part of Interstate 80/90 (**Figure 1**), had previously been operated by the state. The ITRCC agreed to operate, maintain, and make improvements to the expressway in return for the right to collect tolls on cars and trucks. One risk ITRCC agreed to accept, and the public sector sought to transfer, was traffic demand risk and the accompanying revenue risk.

Figure 1. Indiana Toll Road

Source: Indiana Toll Road Concession Company.

According to the ITRCC's court filing, bankruptcy was precipitated by much lower traffic than expected and unfavorable interest rate swaps that added to the company's debt. Primarily because of the severe economic recession which began in 2007, but also possibly because the company raised toll rates on trucks, traffic was almost 11% lower in 2013 than it was in 2007. In 2013, ITRCC paid $193 million to service its debt while revenue was only $158 million.

The toll road remains open to traffic. Prior to filing for bankruptcy, ITRCC arranged with its lenders and creditors to sell the lease or to restructure its debts, and it has assured the state that it will continue to operate the toll road until a new operator is found. A new operator of the toll road will have to be approved by the Indiana Finance Authority.

The Indiana Toll Road is not the only transportation P3 to run into difficulties. Three facilities newly built by private companies under concessions from a government agency, the South Bay Expressway in San Diego, CA, the Pocahontas Parkway in Richmond, VA, and SH-130 in Texas, have faced financial restructuring or bankruptcy after traffic volumes failed to live up to expectations.

Implications for Policy Makers

These financial problems have not stopped the creation of P3s in highway transportation. The private sector, however, has become much more reluctant to risk its own money on estimates of future demand, a reluctance that is likely to be reinforced by the problems with the Indiana Toll Road lease. Instead, private sector partners considering long-term investments in highways now often seek to be compensated by "availability payments" from state and local governments rather than by tolls. These are payments contingent on a facility being available to the standards specified in a P3 contract.

In a toll road or bridge P3 with availability payments, responsibility for project funding ultimately stays with the public sector, which bears the loss if too few motorists pay the tolls charged to cover the cost. This might make some P3 deals less attractive to the public sector. P3s may also lose allure if future bidders respond to the failure of the Indiana Toll Road by reducing the amount they are willing to pay for long-term lease concessions of existing assets.

Private investment is not the only reason for pursuing P3 deals. Some of the other potential advantages include lower construction and maintenance costs, shorter project delivery time, and better project quality. But the financial problems of the Indiana Toll Road concessionaire provide more evidence that P3s could be of only limited help in solving the transportation funding problems facing federal, state, and local governments. The same point was made in the September 17, 2014, House Transportation and Infrastructure Committee's Special Panel Report on Public-Private Partnerships, which found that "P3 projects have the potential to address only a small portion of the Nation's infrastructure needs."