

Dr. William E. Thornton

Chairman, Alamo Regional Mobility Authority

Invited Testimony as prepared for Legislative Study Committee

on Private Participation in Toll Projects

July 22, 2008

Thank you Chairman Carona and members of the committee, for the opportunity to be with you today to discuss the role of public/private partnerships within the transportation arena and the importance of local involvement and control over the decisions made impacting regional transportation. Thank you also for holding this hearing in San Antonio and being here to witness the tremendous growth we are experiencing.

As members of the Committee may be aware, the San Antonio area has, for the last few years, been embroiled with the discussion, debate, and topic of potential private concessions for toll projects. As a community with no history of toll roads, and as a community with very few public assets and activities privatized, the concept of a concession project was met with decidedly mixed reviews.

From the Alamo RMA perspective, the initial concerns over the concession centered around the role and ability of the local toll project entity to be an active and involved party in the process. While the media has covered, in numerous stories and articles, the early tension which existed between the Alamo RMA and the Texas Department of Transportation upon the announcement, in 2005, that TxDOT had received an unsolicited

proposal, that tension was resolved by our successful efforts to forge a working relationship with TxDOT that afforded the RMA a meaningful role in the process by which the concession proposal would be analyzed.

While the San Antonio area will not be home to a concession project at this time, the experience, the dialogue started under the proposed concession of US 281 and Loop 1604, and the actions taken since those early conversations, have established the need for a more well defined process of roles and responsibilities in regards to the potential involvement of the private sector within toll projects.

Let me state, for the record, that while I do not believe a concession was the right approach for the first toll project in a community with no history of tolling, I am not opposed to private involvement, be in the form of financial contributions, construction, or even operations, of a toll facility, as long as local involvement is a cornerstone and the ultimate decision point within the process. Each region will have their own regional concerns and needs to address, and rather than have a prescriptive one size fits all approach to this topic, the framework and general principles should be codified within the law, but the final shape and form of the project should be a decision left to local toll project entities and the bodies which appoint them.

If we examine SB 792, you will note that while certain areas and projects within the state were carved out of the moratorium on private participation, San Antonio had a specific project, namely the 281 North project, placed into the moratorium for private concession.

This action allowed and enabled, with the right of first refusal granted in 792, the Alamo RMA to complete the market valuation process and assume responsibility for the development, financing, construction and operations of the 281 North project.

By empowering our local RMA to make the determination of the course of action to be taken on this project, whether it would be a design-bid build or design build project, we were able to undertake a public, transparent process, and secure, through a competitive process, a design build team with a national reputation.

Currently the Alamo RMA's primary project is adding tolled capacity to the US 281 corridor from Loop 1604 to the Bexar County line. Added capacity is desperately needed and tolling is the only feasible means of paying for the new lanes. I understand that during the public testimony portion of the Sunset Advisory Commission meeting on Tuesday, July 15, 2008, statements were made by at least one speaker concerning the 281 project, and in particular whether project constitutes a "conversion" of non-tolled lanes to tolled lanes. I would like to set the record straight on that issue.

State law is clear that if a roadway is reconstructed (to accommodate the addition of tolled lanes) and the number of non-tolled lanes is greater than or equal to the number of non-tolled lanes in existence before the reconstruction it is not a conversion. (Transportation Code, Sec. 228.201). In other words, the public must have access to the same number of non-tolled lanes as it had prior to the addition of the tolled capacity. The 281 Project meets this requirement. Currently there are 2 or 3 lanes of non-tolled

capacity in the corridor (depending on the specific location), and once the lanes are reconstructed and additional tolled capacity is added in the middle there will be at least the same number of lanes of non-tolled capacity available to the public. Given the importance of this issue the authority consulted with its legal counsel shortly after the passage of HB 2702 (in 2005) - the legislation which codified the conversion definition.

It is also worth noting that the condition of the non-tolled lanes after the addition of the tolled capacity will not be inferior to conditions as they exist today. To the contrary, there will actually be improvements to the non-tolled lanes, such as an overpass at the Redland intersection and additional turning lanes in heavily congested areas. Furthermore, conditions on the non-tolled lanes should improve as motorists elect to use the tolled lanes (thereby reducing the amount of traffic traveling the non-tolled lanes).

The need for additional capacity in the 281 corridor is critical. Currently the corridor is a functionally inefficient roadway, with the majority of intersections operating at or near a Level of Service "F", the lowest possible grade for traffic movement and management. From 9,500 cars a day in the 1980s to over 95,000 cars a day today, this roadway has also seen a dramatic increase in the number of fatality accidents. To simply leave the roadway as it exists today would put more drivers in jeopardy and would ensure further degradation and pollution of the environment and a continuing decline in the quality of life for residents who utilize the corridor for daily activities. At the same time there is very little public funding available for the project, leaving tolling as the only feasible option to pay for corridor improvements. While allegations have been made that

previously planned improvements could have been fully funded without tolling, delays in the project (caused, in part, by litigation over environmental issues initiated by TURF and others) and corresponding cost escalation (due to inflation in highway construction costs) has eliminated the possibility of paying for the improvements through traditional gas tax (i.e., pay-as-you-go) funding.

For our first toll project, to have a publically operated, financed and owned project, is paramount to demonstrate the positive benefits for our community. We are able to build today the foundation for an economic engine for the future of transportation within our region.

The additional changes made to state law by SB 792 in the last session, including requiring any concession payments to remain in the region in which the concession project is to be located, also helps provide an additional funding mechanism to enable serious discussions and actions on multi-modal transportation networks, without having to turn to ever limited Federal and State dollars.

As the Alamo RMA undertook the market valuation process several key items became crystallized, and Terry Brechtel, our Executive Director will speak to those points during her testimony. However, the most important factor, in my opinion, was that even under a private sector model, the 281 North project, and the interchange at 281 and Loop 1604, would still have required a public subsidy to be constructed.

This subsidy need was identified utilizing the model employed by TxDOT and their consultants. Given the nature of our community, and specifically, the unfamiliarity with tolling, the market valuation process produced a much different result than the Dallas area's results and eventual public sector concession by the North Texas Tollway Authority for the rights to operate SH 121. As RMAs are start up agencies, the exact comparison of benefits between the private sector and public sector may not be truly applicable.

Since the successful conclusion of the market valuation process, and our subsequent award of a design build contract, the Alamo RMA stands ready, today, to begin providing needed congestion relief within our community, on a roadway which, for the past three...almost four years, has been the subject of much discussion, dialogue and debate, principally centered around the very question of the role and ability of the private sector to deliver a project under the concession model.

Pending impacts and public / private partnerships

As we move forward with the development of projects, the current cuts being faced both at the federal and state level, are having direct impacts upon project feasibility. While most projects in Bexar County will need some form of equity to be toll viable, the uncertainty of long term funding severely impacts the ability of the Alamo RMA to provide a dedicated capital improvement program.

Finding a role for public / private partnerships, be it with financial investments to leverage additional resources, or even the outsourcing of collections and customer service, may be one of the ways to promote additional projects. The empowerment offered to local communities under SB 792 and primacy has been a crucial element in ensuring the role of the locally controlled RMA in procuring and developing the 281 North project as a publically financed, operated and controlled project. This empowerment, in turn, has been a crucial element in securing local support and public acceptance for the area's first tolled roadway.

But, without additional flexibility to capture and leverage the full potential of revenue from start up toll projects, our region may suffer from delayed delivery of needed infrastructure. In this regard, TxDOT needs, with legislative oversight, to have the flexibility necessary to leverage additional funding. Similar to what Ron Marino from Citigroup presented during his testimony before the joint meeting of the Senate Transportation and Homeland Security Committee with the Senate Finance Committee, a leveraging public corporation, operating as an investment arm of the State of Texas, can help ensure lower toll rates, higher bond ratings, and a lower overall cost of capital, in line with the strength of HCTRA and NTTA, as well as TTA, within the bond market.

In light of the current condition of the market, and the economic uncertainty the nation is experiencing, any assistance in securing a stable bond rating, and stable financing, is a tremendous benefit to the state as it will allow more projects to be developed, with an accelerated time table, when relief can do the most good for our communities, instead of

spending years and decades planning and hoping for funding relief which, often times, is out-of date by the time the roadway is open.

Conclusion

Thank you for the time to be with you today, and to offer into the record this testimony.

We at the Alamo RMA look forward to working with each of you and your staff members in this interim and in the next regular session to find ways to address and overcome the transportation challenges and obstacles facing us in San Antonio and Texas.

By working together, and by recognizing that the solution will take multiple approaches and multiple partners, we can indeed make a difference for the long-term future of our great state.

Terry M. Brechtel

Executive Director, Alamo Regional Mobility Authority

Invited Testimony as prepared for Legislative Study Committee

on Private Participation in Toll Projects

July 22, 2008

Chairman Carona and members of the study committee, thank you for the opportunity to be with you today to discuss the potential roles of private participation within toll projects. As Dr. Thornton discussed, the Alamo RMA has, since our inception, been involved in the dialogue, and debate over the possibility of private concessions for public infrastructure.

While there has been an enormous amount of attention paid on the development of the 281 North project, the ending of the concession procurement for US 281 and Loop 1604, which had been very controversial, went largely unnoticed within our community. As you may recall, the concession proposal was tendered to TxDOT (not the RMA) in 2005, and the community expressed some reluctance at TxDOT developing through a concession projects which the RMA was initially going to deliver locally. In some respects this was a foreshadowing of the "primacy" debate of the last legislative session, but ultimately we were able to negotiate an acceptable working relationship with TxDOT.

From that experience, however, I can say that confusion does exist over the term "CDA".

While we use it to mean Design / Build, as is the case with the 281 North project, the

public, and indeed most current legislation, does not offer a distinction between a concession CDA or the other variations a CDA can take, which imposes conflicting process and standards in the implementation of the legislation. In our experience a design/build CDA encompasses the required design and construction features of the CDA definition, whereas other types of CDAs may add requirements for a private contractor to finance, operate, and maintain a project for a number of years. It is these additional features and long-term contractual relationship that result in a concession arrangement, but the distinction between those arrangements and a design/build contract is lost in general references to a CDA.

As the second RMA in the state, and the first to have to address and work through the potential of a private concession, the Alamo RMA is intricately aware of the myriad of options available to structure and examine the benefits of potential private involvement within the public infrastructure environment.

During our experience with the potential concession on US 281 and Loop 1604, the Alamo RMA worked closely with the Texas Department of Transportation on the development of a "shadow bid" for the purpose of predicting the value a private consortium would assign to a concession. While the working relationship with TxDOT and local toll project entities has since been codified into law in the form of the market valuation process and corresponding primacy rights granted to RMAs and other local toll project entities under SB 792, without the commitment of TxDOT and specifically the leadership and our local district staff, the Alamo RMA would not have been able to

complete the first market valuation in the state for the 281 North project building upon the foundation of the "shadow bid" for the proposed concession project.

The process showed, however, that including the interchange at 281/ 1604, along with 281 to the Bexar / Comal County Line, would require a subsidy from the public sector under the aggressive private sector model to even be feasible. However, our board of directors has committed, in numerous forums, to re-invest into the regional transportation system, and that type of re-investment is specifically anticipated in our governing legislation. As my board reminds us, mobility is a key component of why we are in existence.

It is important to recognize that, for the majority of RMAs across the state, we are not in the same position to leverage the system as mature tolling community in the Dallas and Houston metropolitan areas.

Pending impacts and public / private partnerships

Finding a role for public / private partnerships, be it with financial investments to leverage additional resources, or even the outsourcing of collections and customer service, may be one of the ways to promote additional projects. A concession will not be right for every project, and in San Antonio our community has been clear about the desire not to have a concession on the initial projects undertaken by the Alamo RMA. The empowerment offered to local communities under SB 792 and primacy has been a crucial

element in ensuring the role of the local regional mobility authority in procuring and developing the 281 North project as a publically financed, operated and controlled project. This empowerment, in turn, has been a crucial element in securing local support and public acceptance for the area's first tolled roadway.

But, without additional flexibility to capture and leverage the full potential of revenue from start up toll projects, our region may suffer from delayed delivery of needed infrastructure. In this regard, we would recommend the Committee to examine closely the ability of private participation within the financing and leveraging role to help accelerate needed transportation projects.

The Central Texas RMA has been a pioneer in this area, and we are following their approach with interest. Additionally, the role of gap financing, of credit enhancements, and other private sector innovation as far as project delivery should be examined carefully and closely to not only ensure the highest benefit for the state and region, but also to ensure there will be interest from the private sector in engaging in what can be, at times, very long term patient investments.

In light of the current condition of the market, and the economic uncertainty the nation is experiencing, any assistance in securing a stable bond rating, and stable financing, is a tremendous benefit to the state as it will allow more projects to be developed, with an accelerated time table, when relief can do the most good for our communities, instead of

spending years and decades planning and hoping for funding relief which, often times, is out of date by the time the roadway is open.

So how do we overcome these obstacles and change these perceived weaknesses to strengths?

Solutions

First, we need to be creative in how we find solutions. We need to be willing to explore ideas outside of the absolute world of public finance or the absolute world of private finance. We need to find a way to be able to take the best of both of these worlds and create a new way forward, which recognizes the need for public transparency and, in some form, the aggressive mindset of private investment to help achieve project completion.

Allowing for pension fund investments, for example, or the creation of a quasi public / private corporation to issue debt and serve as a gap financier would be beneficial to creating new opportunities and equity partnerships within the transportation field in Texas.

Additionally, we would encourage funding mechanisms to provide market rate financing without the high coverage requirements needed for credit ratings and bond insurance and

the possibility of establishing a funding mechanism that provides loans with lower coverage requirements, no bond rating, and no bond insurance.

We would encourage funding mechanisms to provide a TIFIA version within Texas. Specifically, we would encourage this committee, as part of the recommendations from the interim charges, to explore legislation which would allow a portion of the \$5 billion in general obligation bonds approved by voters in November of 2007 to be utilized to create a revolving fund for continual investment within the Texas transportation system. Ideally, this state version of TIFIA would allow for direct loans, guarantees and possibly line-of-credit extensions to assist with financing for projects across the state.

These items, when used properly, can help ensure RMA success in the financial aspects of our projects and provide the necessary mechanisms to help address the growing congestion problems in our major metropolitan areas, as well as in some of the fastest growing regional areas of our state.

Conclusion

We need to continue to ensure local control and local leadership on these sensitive transportation projects. While coordination is needed for the statewide systems, and we need to ensure constant standards across the state, local leadership priorities for relief may differ from the statewide vision, and we need to ensure that we can balance both of

those concerns to keep our regions moving forward and to keep the economy of Texas thriving, especially in light of recent national concerns.

Thank you for the time to be with you today, and to offer into the record this testimony.

We at the Alamo RMA look forward to working with each of you and your staff members in this interim and in the next regular session to find ways to address and overcome the transportation challenges and obstacles facing us in San Antonio and Texas.

By working together, and by recognizing that the solution will take multiple approaches and multiple partners, we can indeed make a difference for the long-term future of our great state.