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Plan to Toll I-80 Will Need Major Overhaul to Gain Approval

It would appear that unless the Federal Highway Administration operates in a manner similar to the Pennsylvania Gaming Control Board—that is to say with only nominal regard for the laws it carries out—then permission to toll Interstate 80 must be deemed a remote possibility any time soon. It has been over seven months since the Highway Administration (FHWA) responded by letter (December 12, 2007) to the October 13, 2007 joint application from PennDOT and the Turnpike Commission to toll I-80 under the Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP).

To date the two state agencies have not responded to the FHWA letter that pointed out major deficiencies in the application and asked for much more information and raised issues that could be fatal for the application. It is fascinating that the FHWA, a Federal agency, reviewed the state's application and responded within two months. The state is obviously finding it extremely difficult to prepare an adequate response to the FHWA's concerns.

And little wonder. The FHWA letter is extraordinarily critical, to the point of almost being dismissive. Bear in mind that the ISRRPP program is set up for the purpose of reconstructing and rehabilitating Interstate highway corridors that could not otherwise be adequately maintained or functionally improved without the collection of tolls.

The FHWA letter makes an exceedingly pointed remark in the first "item" to be addressed by PennDOT and the Turnpike Commission; "The application does not sufficiently describe the planned reconstruction and rehabilitation project." Planned improvements should be specified and cost estimates provided. Further, the Lease and Funding Agreement requires the Turnpike Commission to maintain the physical characteristics of the facility at a level comparable to the quality as of the conversion date. The FHWA wants to know "how does this reconcile with the required reconstruction and rehabilitation requirements of the ISRRPP."

Clearly, the problem here is that tolling I-80 is not about reconstruction and rehabilitation; it's about generating revenue to be used by PennDOT to repair other roads and bridges and provide funds to subsidize mass transit systems. Indeed, the FHWA raises the issue in a stark manner. Referring to the lease payment to PennDOT "...we have seen various figures in newspaper articles ranging up to \$400 million. Please

provide the amounts of the payments and explain how the PTC (Turnpike Commission) can maintain the required lease payments and still meet the reconstruction and rehabilitation needs of I-80.”

And in the same vein the letter continues; “Please reconcile the statement made in the application that the toll revenue will only be used for I-80 with section 9.5 of the lease agreement, which provides that toll revenue will be used for the entire Turnpike System.” And, to make sure there is no misunderstanding, the letter further asks; “Does section 9.5 of the lease agreement contemplate the use of I-80 toll revenues to pay debt that is not related to I-80 improvements and maintenance and operating expenses?” Finally, and possibly a mortal blow for the application came in the following request; “Please explain how the amounts of any payments from the PTC to PennDOT made using I-80 toll revenues were derived and are properly considered operating costs.”

Without doubt, these questions and requests will be very hard for the two state agencies to respond to in a way that accurately and honestly reflects the intent of Act 44 and the subsequent Lease and Funding Agreement between the PTC and PennDOT while at the same time bringing the application in line with the requirements of the ISRRPP. The recent and obviously hurriedly put together plans by the Turnpike Commission to spend \$2.5 billion over the next ten years on I-80 reconstruction and improvements will divert a large fraction of the toll revenue that will then not be available for other purposes called for in Act 44—unless of course the tolls are set much higher than originally anticipated.

Two other major sticking points are to be found in the FHWA letter. First, Section 1216(b)(4)(C) of TEA-21(the Transportation Equity Act for the 21st Century) requires that; “The State plan for implementing tolls on the facility takes into account the interests of local, regional, and interstate travelers.” Based on the FHWA request for details as to how plans to implement a toll has taken all those interests into account, the Federal agency was not impressed with the efforts by the application to explain how the interests of travelers were being considered. Surely, the outcry emanating from businesses and residents who use I-80 regularly certainly suggests that their interest were not given due consideration.

Second, TEA-21 requires “An analysis demonstrating that the facility could not be maintained or improved to meet current or future needs...” In that regard, the FHWA warns that absent a definitive analysis of current and future needs and proposed improvements it is not possible to determine compliance with TEA-21 requirements. In a comment that must have been written with a certain amount of incredulity, the FHWA says; “We are aware that in recent years PennDOT has transferred Interstate Maintenance (IM) funds to other Federal-aid programs, rescinded funds, and currently maintains a large balance of unobligated IM funds.”

In other words, the FHWA wants to know why tolls are needed for I-80 when federally granted Interstate Maintenance funds are not being used for the purpose intended. That one will be very difficult to answer in an honest way that will bolster chances for getting permission to toll I-80.

To summarize, the FHWA has raised serious and possibly fatal questions and objections to the application for tolling I-80. Clearly, they see through the intent of the leasing of the highway to the Turnpike Commission and levying tolls. The purpose is not reconstruction and rehabilitation. Rather it is to raise money for other road projects and mass transit. There is not a scintilla of doubt that the ISRRPP was intended only for facilitating needed reconstruction and rehab where the only mechanism for obtaining the necessary funds was to toll the road.

This tolling of I-80 process was a hurriedly enacted and fast-tracked implementation sham. The proponents are obviously hoping that powerful elected officials in Washington will shepherd the application process through to approval notwithstanding the legal and ethical issues. Unfortunately, that may still happen. After all, Allegheny County has a tunnel project underway that is massively over its original budget and could never have been approved on its merits. It required extraordinary pressure from members of the Pennsylvania delegation to keep the project alive despite all the changes and enormous cost overruns that had occurred even before the first shovel of dirt was moved. In the I-80 tolling case it is likely that elected officials from the Southeast and Allegheny County will be pushing hard for the tolling plan to guarantee the funds promised under Act 44. Thus, it would be unwise to rule out an eventual approval no matter how farfetched the arguments used to obtain it.

If Congress wants to change the law, so be it. The tolling project might get approved under new statutory language. But unless and until that happens, the current plan to toll I-80 should be viewed as a non-starter as far as permission from the FHWA is concerned.

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