

DMN: Dallas area may be first to see state's new plan to fund toll roads

12:25 AM CST on Monday, November 23, 2009

By MICHAEL A. LINDENBERGER / The Dallas Morning News

mlindenberger@dallasnews.com

AUSTIN – Lawmakers might have left the Capitol earlier this year without getting much done when it comes to transportation. But they were clear on one point: They wanted the Texas Department of Transportation out of the business of building privately financed toll roads.

The Texas Legislature beat back attempts to extend the authority for so-called comprehensive development agreements – 50-year contracts with private companies that agree to build roads in return for toll revenue – and the department's ability to enter into the contracts expired Aug. 31.

But less than six months later, state highway bosses may have found a loophole. And the Dallas area, already home to more toll roads than anywhere in Texas, probably is the place where they will try it first.

Last week in Austin, Texas Transportation Commission members told staff to submit plans by January for how to fast-track a roughly \$4 billion expansion of Interstate 35E between Dallas and Denton. Officials say the project is a prime candidate for a new kind of financing that they concede looks a lot like the private toll deals ruled out by the Legislature.

"We've got to use all of these innovative ways of building highways or we won't be building," said commission member Ted Houghton of El Paso in an interview Friday. "It's a fact of life. If you want us to build roads, then we are going to move forward using these kinds of tools."

The tool in question is called pass-through toll financing, and is different, though not very, from the private toll deals lawmakers have put on ice.

Here's how it works: A private company, usually backed by a group of banks and other investors, agrees to use its own money to build a state road, usually with the help of at least some tax dollars. In return for the new road, Texas promises to make payments to the firm based on the level of traffic it attracts. The more vehicles that "pass through," the bigger the payment the private company will receive.

Officials say such deals involving big toll roads could last 30 years or more. So far, though, pass-through financing has only been a way for Texas to pay for a handful of smaller free roads. The per-vehicle payments simply pay back the investment by the private company, or in some cases a local government, and are not passed on to drivers in the form of tolls.

But that's set to change, as highway officials eye using pass-through financing to deliver big toll projects in North Texas and elsewhere. Doing so will require some changes in the department's rules, but is entirely within the department's authority, said John Barton, assistant executive director of the Department of Transportation.

First up? Most likely the expansion of I-35E into a mixed road with both tolled lanes and free lanes, much like the LBJ Freeway will be once the Spanish firm Cintra rebuilds it over the next five or six years.

Option to delay

The department had planned to rebuild I-35E as a privately financed toll road using a comprehensive development agreement until the Legislature failed to extend the law that made that possible. Now it sees its choices as either delaying the work for a decade or more, or using the pass-through financing to get construction started in as soon as two to three years.

Though the deals are structured differently – in a pass-through deal, private firms take on less risk, and state payments are subject to a cap set by contract – they will come across as very similar to drivers, and to many others who opposed the deals known as comprehensive development agreements, or CDAs.

"These deals look very much like a CDA, and I want to make sure you understand that," executive director Amadeo Saenz of the [Transportation Department](#) told a Senate hearing in El Paso this month. "We're getting a lot of push from Denton and Dallas County [to complete more projects there]. I want to be forthright and maybe say, 'Be careful what you are asking for.' If you look at a private pass-through model project, it is very similar to a CDA. You are using a private firm to bring equity to the project."

Sen. [John Carona](#), R-Dallas, took that in stride, conceding that the agency had been woefully underfunded by the Legislature in recent years, and had to explore all of its options. But he lashed out at Houghton when he said the department also would be willing to shop a major Tarrant County toll project to private investors, if only the [North Texas Tollway Authority](#) first would relinquish its rights to the road.

"The community is not at all excited about you coming in and building toll roads," Carona said. "NTTA builds our toll roads. ... We don't want you running toll operations in North Texas. The Legislature has been very clear."

Houghton said Friday, "That's fine. That's a choice they can make." The trouble, he said, is that NTTA doesn't have the money to build the \$1.8 billion toll project, known as the Southwest Parkway/Chisholm Trail project.

NTTA has confirmed it could need \$1 billion in tax dollars or other help to keep its promise to build that road.

If that's the case, Houghton said, why not let the state take it on, and see what kind of deal it could strike with a private firm that would compete for the opportunity?

Competition

"Competition does amazing things," Houghton said. "It really causes the people across the table to sharpen their pencils."

Instead, Carona wants TxDOT to guarantee NTTA's loans to help it lower its costs, something the department has already offered to do on another area toll road, State Highway 161.

"I get the impression that you don't want to work with NTTA," Carona told Houghton in El Paso.

Houghton replied that his agency wants NTTA to flourish, but that guaranteeing both loans could cost the state as much as \$40 million a year for many years to come.

On Friday, he said the department will not backstop the loans on both projects.

"NTTA has some decisions to make," he said. If it wants the credit enhancement on Southwest Parkway, then it can't have it on State Highway 161, he said. In the end, if NTTA can't afford to do Southwest Parkway, then it should let it go, he said.

Transportation Commissioner Bill Meadows of Fort Worth, a powerful advocate for the Southwest Parkway project, said Friday that negotiations over how to structure the credit enhancement have resumed in earnest, and could be headed for a breakthrough.

If the negotiations fall through and NTTA can't build the Southwest Parkway, then TxDOT will consider using pass-through financing to find a private partner who can, but only with NTTA's permission, he said. "We'll have to put every option on the table. This isn't easy. It's a billion-dollar hole they are trying to fill."

No matter what happens with the long-running talks with NTTA, Saenz said his agency is determined to seek new solutions for Interstate 35E. And he is meeting with lawmakers to give advance warning that the department is proceeding with a new way of building privately financed toll roads

"I brought this up in El Paso and said it last month in Fort Worth. I don't want to get beat up on this, but I am getting a lot of pressure ... to move this project forward," Saenz said. "I am a problem solver, and we do have a way to get these projects done."

ROAD FINANCING

Under a comprehensive development agreement:

- A private firm enters into an agreement with the state to use its money, possibly with some public involvement, to build a road.
- In exchange, the firm gains the right to collect tolls on that road for as long as 50 years.
- Deals can involve large upfront payments to the state for the right to collect tolls.
- The company shoulders the risk of profit or loss based on the accuracy of traffic projections, construction-cost estimates and other factors.

Under a pass-through financing deal:

- A private firm enters into an agreement with the state to use its money, possibly with some public involvement, to build a road.
- Deals typically are for shorter periods of time than CDAs – 20 to 30 years as opposed to 50.
- The state agrees to pay the private firm for each vehicle that uses the road, within a maximum and minimum range.
- The state receives toll revenues, which are used to make pass-through payments.
- The state retains most of the risk.
- The deal can be used for free or toll roads.

AT A GLANCE: PRIVATE TOLL ROADS

Some private toll roads in Texas:

LBJ FREEWAY: It's a free road now, but Spanish road firm Cintra will begin rebuilding it as a mix of free lanes and tolled lanes beginning mid-2011 or sooner. The \$2.1 billion project will take five years, but once completed, drivers will have a choice: Sit in traffic on the free lanes or pay tolls that could reach \$1 a mile to take the tolled lanes.

NORTH TARRANT EXPRESS: Another hybrid project, the state of Texas committed hundreds of millions of dollars toward this \$2 billion effort. But the work will be done by a team led by Cintra, which will cover the rest of the costs, and collect tolls for 50 years. Construction begins next year and the highway will open by 2015.

INTERSTATE 35E: Not yet a toll project, but with the Transportation Department strapped, the only way this highway will be widened anytime soon will be if toll lanes are added. State officials say the only way it will be able to afford to build it anytime soon will be to partner with a private firm. Once funding is resolved, construction could begin within two to three years.

STATE HIGHWAY 130: In Austin, Cintra paid \$25 million upfront as part of a deal struck in 2007 that gives it the right to build and operate a 40-mile stretch of the highway from Austin to Interstate 10 near San Antonio. The state gets a cut of the tolls and avoids costs estimated at well over \$1.5 billion. Construction is under way and the road could open as soon as 2012.