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Should the Legislature Expand or Abolish the Pennsylvania Turnpike Commission?

Introduction

Fourteen months before the Japanese bombed Pearl Harbor, the Pennsylvania Turnpike opened for business on a 160-mile stretch from Carlisle to just east of Pittsburgh. The toll road's initial stage was a significant accomplishment hailed by politicians, truckers and motorists who could speed along the new road at 70 miles per hour.

On the drawing board at time was an extension to run east from Carlisle to Valley Forge, but the project was not completed until 1950 due to the intervention of World War II. During the 1950s, the turnpike boomed and by 1957, 460 miles of the road were open to traffic. Eventually the toll road would grow to more than 530 miles. This expansion paralleled the federal government's massive commitments to an interstate highway system during the Eisenhower Administration.

Unintended Consequences

Like most government programs hailed as entrées to a new age of progress, the accessibility and desirability of modern highways opened wide the door for, as economists put it, "the law of unintended consequences."

City dwellers—offered greater mobility than ever before—now had the opportunity to pursue what would become the "suburban dream." The idea of a home with a grassy yard away from the crowded confines of the city, within commuting distance of the workplace, became a reality. The G.I. Bill enhanced the possibility of home ownership for veterans.

The exodus from major cities and the development of suburbia began in earnest. Those with the desire and the wherewithal left Philadelphia, Pittsburgh, Erie and other urban centers on taxpayer-subsidized highways for taxpayer-subsidized interest rates on their new suburban homes. They left behind population-depleted cities. Philadelphia, for example, had a population of just over two million in 1950. Today it stands at about 1.4 million.

Over the ensuing years, the transition of America from an industrial to a service-based economy, and a number of social and economic factors, also drained large segments of the business community from major cities. Manufacturers, thanks to the new transit system, no longer had to locate their facilities near the waterfronts and railroads. The trucking industry boomed and railroads declined.

With a shrinking population in the cities, taxes on remaining citizens and businesses increased, hastening another wave of departures. More existing businesses left for lower tax climates.

In retrospect, the politicians, business leaders, and taxpayers, buoyed by the euphoria of the massive transportation system, appear to have overlooked or underestimated the costs of maintaining the elaborate network of roads, highways, and bridges.

For nearly two decades now, public officials have continued to warn about America's decaying infrastructure, but have done little more than the minimum to address repairs, maintenance, and modernization of the system.

The failure to address the problem is both financial and political. Massive amounts of new tax dollars from individuals and businesses would be needed to make the transportation system safe and modern. No politician wants to raise already high taxes for something as mundane and low-profile as highways, roads, and bridges.

The Pennsylvania Turnpike Commission: A Different Model

The Pennsylvania Turnpike was intended to operate on a different model. After the initial stage was completed with federal tax dollars from Roosevelt's New Deal programs, the turnpike was to become self-sufficient in terms of paying for itself via the tolls paid by users. The operation and management of the toll road was given to the politically appointed Pennsylvania Turnpike Commission (PTC).

With the authority to issue bonds for revenue, offer jobs to political supporters, family and friends, manage a virtual monopoly on motor transit across the southern tier of the state, set tolls and act in a nearly unilateral fashion, the PTC has become a powerful player in state politics and transportation management.

Today, the PTC oversees the operations of nearly 1,800 workers and approximately 500 managers on its 530-mile road monopoly. The highway handles about 188 million vehicles per year (about 13% of which are commercial vehicles). This is far cry from the 2.1 million drivers who used the original 160-mile stretch in 1941.

Politics plays a significant role in virtually any decision made by PTC management from whom to hire, the issuing of bonds and contracts to increases in toll rates. The turnpike had been called a haven for "pinstripe welfare" because of its hiring of bond counsel, managers and executives based on political ties.

Now, with the passage of Act 44 of 2007, the PTC will now play an even bigger role in funding, managing, and tolling the state's highways. This was not by original design, but a response from the PTC's fight for its very survival.

Act 44 of 2007: Funding for Roads, Highways, Bridges, and Mass Transit

In November 2006, Gov. Ed Rendell's Transportation Funding and Reform Commission released its final report, claiming that the Commonwealth would need an additional \$1.7 billion per year, in perpetuity, to maintain the state's current infrastructure and mass transit systems.

Gov. Rendell's budget proposal in February 2007 sought to fill the identified transportation funding need with an Oil Company Profits Tax and a leasing of the Pennsylvania Turnpike. However, neither proposal received a vote or was even given full consideration in the House or Senate.

With no opposition on the "playing field" to fight for the Turnpike lease proposal, the PTC hired lobbyists and public relations firms in Harrisburg and Washington, D.C. in an attempt to thwart the governor's efforts to abolish the agency. In a masterful display of political judo, the PTC not only protected its fiefdom, but dramatically expanded it by 58% (from 537 miles to 848 miles) by placing Interstate-80 (I-80) under the Commission's control. With the power to toll I-80 and incur billions of dollars in bonded debt under Act 44 of 2007, the entire state of Pennsylvania's transportation systems was made heavily dependent on the PTC to help fund the other 39,530 miles under the control of PennDOT.

In short, Act 44 of 2007 is legislation of, by, and for the Pennsylvania Turnpike Commission. As Matthew Brouillette, president of the Commonwealth Foundation wrote in July, 2007:

The deal is a product of the Turnpike Commission and its patrons, by the Turnpike Commission and its lobbyists, and for the Turnpike Commission and its bond attorneys. These politically-connected and selected firms and attorneys stand to make tens to hundreds of millions of dollars from this backroom deal, money that will come straight out of residents' pockets.

Why was there the rush to push through such a critical and far-reaching piece of legislation? Waiting a few months would not have hindered the proposal's timetable. Toll increases on the turnpike and future tolls on Interstate 80 are not scheduled to go into effect until 2009, and bonds for immediate revenue could be issued later this fiscal year. If the Turnpike Commission's legislation is the best transportation policy for the commonwealth, it could have withstood the public scrutiny it would have received over the coming months.

Other major problems exist with Act 44, as well. The proposal's entire funding mechanism is based upon the premise of charging tolls on I-80. The Federal Highway Administration has stated that the federal government would not likely approve tolls there to pay for other roads or mass transit. What is Plan B if the Highway Administration prohibits the tolls? The answer: There is none.

*Finally, the tax increase on drivers using the turnpike and I-80 to subsidize mass transit systems in Philadelphia and Pittsburgh is in conflict with the strong recommendation from Gov. Rendell's Transportation Funding and Reform Commission. It stated in its November 2006 final report: "The Commission concludes that **no additional funding should be provided** for highways, bridges and transit unless a series of parallel actions are taken to reform funding structure and a number of transportation business practices." [emphasis added]*

What significant reforms have been enacted to merit additional funding to the tune of hundreds of millions of dollars more? None. Yet, by subsidizing the current system without significant reforms in operations, management, and labor, Act 44 only postpones the current financial crisis for another day; it does not solve it.

As predicted by Brouillette, Act 44 has many problems that remain unsolved, and strong opposition from the I-80 corridor that was either unexpected or underestimated.

No Limits on Toll Rate Increases

In addition to erecting toll booths on I-80, the revenue to be generated under Act 44 would require a 25% rate increase on tolls on the existing turnpike, as well as annual increases of 3%. However, as the details of Act 44 were further explored, Pittsburgh Tribune-Review noted that the legislation contains no restrictions on how high the PTC can raise tolls on either the turnpike or I-80.

Ironically, one of the PTC's talking points against leasing the turnpike is the fear of "skyrocketing tolls"—despite the fact that limits on toll increase are the rule in such agreements.

Federal Approval to Toll Interstate 80

Much of the funding for Act 44 is predicated on the tolling of I-80. However, the General Assembly has no authority to authorize the tolling since I-80 is a federal highway; it must receive approval from the Federal Highway Administration.

To date, the federal government has shown no inclination to approve the PTC's request. And if the application is denied, Act 44 will generate only \$450 million annually—less than one-fourth the identified need of \$1.7 billion.

Opposition to Tolling Interstate-80

Once residents, businesses and truckers along the I-80 corridor became aware of Act 44, political chaos ensued with protests being registered with state and federal lawmakers who represent the area.

Norman Rich, president and chief executive officer of Weiss Markets, noted that all 126 of Weiss' Pennsylvania stores are supplied from a distribution center in Milton, in the center of I-80, and that 57 of the stores are supplied via the I-80 route for a total of about 20,000 trips per year on the highway.

"If the (possible) I-80 toll proposal matches the Pennsylvania Turnpike rates, a round trip truck run from Milton to Stroudsburg would cost \$62," Rich said, in an example of the burdensome costs with which businesses along I-80 would have to contend.

Another critic of Act 44 and a veteran of years of funding battles for the state's infrastructure is state Rep. Rick Geist, a Blair County Republican, who has been the Republican Chairman of the House Transportation Committee for more than a decade. Upon Act 44's passage, Rep. Geist said:

We have a massive transportation infrastructure problem in Pennsylvania that must be addressed, but... (Act 44) is absolutely the wrong approach to fixing the problem. We've chosen to go \$11 billion into debt and give unprecedented power to the Pennsylvania Turnpike Commission... I see this as an irresponsible deviation from the pay-as-you-go philosophy that Pennsylvania has followed to pay for transportation.

The Lease Option

The Rendell Administration explored long term leasing of the turnpike throughout 2007. The plan would implement a Public-Private Partnership (P3), whereby the state would contract and partner with a private sector company to operate and maintain the turnpike for an extended period of time. In exchange for the right to collect tolls and manage the road, the state would receive an upfront lease payment. P3s are well known internationally and are starting to crop up around the United States. Most recently, the Indiana Turnpike and the Chicago Skyway entered into P3 agreements.

Based on the winning bid of \$12.8 billion, the Rendell Administration estimated that leasing the Pennsylvania Turnpike could generate as much as \$1.1 billion annually—increasing in subsequent years—for the state's transportation infrastructure needs.

No Need for the Turnpike Commission?

A P3 agreement for the Pennsylvania Turnpike would eliminate the need to toll I-80. It would also seem to eliminate any need for the Pennsylvania Turnpike Commission, as the lease contract could be managed by PennDOT.

But, as former President Ronald Reagan once said, "The closest thing to eternal life in this world is a government program." Or, in this case, a government commission. That is certainly the case for the PTC, which not only staved off its extinction, but in an adept move of political judo it expanded its power with the passage of Act 44 of 2007.

Although the lease option remains a possibility, the clear advantage belongs to the PTC by the simple fact that Act 44 is not a proposal, but an existing law. Therefore, the Commission is not only free to attempt to bring about the tolling of I-80 and increase turnpike tolls to fund the transit infrastructure problem, it has

been directed to do so by the governor and the General Assembly. The PTC must comply with the law and is therefore incurring more debate and proceeding with plans to toll Interstate 80.

Since the passage of Act 44, however, it is clear a number of legislators, particularly from the central and northern parts of the state, have “seen the light” of P3s after “feeling the heat” over their support of I-80 tolling. Now that the state has received an offer of \$12.8 billion to lease the Turnpike for 75 years, the same lawmakers who passed Act 44 would have to repeal it and completely change policy directions.

Governor Rendell, despite having signed Act 44 into law, prefers the lease option; and he has used tax dollars to pay his old Philadelphia law firm, Ballard, Spahr, Andrews and Ingersoll nearly \$2 million since March of 2007 to consider P3 on the turnpike. This, of course, is the same law firm that paid the governor \$250,000 during 2001-2002 when he was running for election to the office the first time. By his own admission, Governor Rendell says he did “very little” during his time with the firm.

It is not only the PTC that has doled out no-bid contracts and engages in “pinstripe patronage.” Law firms and bond attorneys have made, and will make, millions of tax dollars and bond fees on either the tolling of I-80 or the P3 proposal.

The battle between Act 44 supporters and those seeking a private revenue generating alternative for the state has become increasingly hostile since the passage of Act 44.

Battling on TV and in the Courtroom

The PTC, a state sanctioned monopoly, governed by political appointees, has spent more \$300,000 statewide advertising campaign to inform Pennsylvanians about the benefits of the PTC and the turnpike. “Let’s make sure we keep it Pennsylvania’s turnpike,” PTC Executive Director Joe Brimmeier says in one commercial.

Brimmeier is clearly playing to the fears of some Pennsylvanians that something that is “theirs” is going to be sold and that a foreign management company may wind up managing the turnpike in a P3 deal.

The ads, which Brimmeier admitted to a KDKA-TV reporter amount to a message of “Let’s not sell the turnpike,” are disingenuous at the least. They play to the misguided and parochial notions that Pennsylvanians actually “own” any of the government operations for which they have paid and that “foreigners” are taking over the country.

Cronyism and Corruption

It is difficult for the PTC to erase the cloud of cronyism, patronage, making of employees, lavish personal expenditures and monopolistic practices that has been part and parcel of the organization since even before the 1940 opening of the toll road to drivers. In the private sector, it is called a “corporate culture.”

Even today, PTC Chairman Mitchell Rubin is under investigation by the federal government as part of the 139-count federal indictment of Rubin’s patron, State Sen. Vincent J. Fumo. Fumo is slated to go on federal trial in the fall of 2008 for multiple counts of defrauding Pennsylvanians. The indictment alleges that Mr. Rubin provided no work product in return for a contract with the Senate Democratic Appropriations Committee, which Sen. Fumo chaired until he was indicted.

“Neither the Senate nor (Rubin’s) firm possess any documentary evidence, such as notes or reports, showing he or his firm ever provided any research analysis (or) recommendations on legislative matters or

anything related to constituent services...(Rubin) did little or no actual Senate work at all,” according to federal investigators.

According to TollRoadNews.com, an industry news outlet, PTC Executive Director Joe Brimmeier is also familiar with taking care of friends and family with public positions and contracts. The outlet reported in April of last year that Mr. Brimmeier’s son is an assistant director of regional operations with no prior experience or qualifications. It also reported that Mr. Brimmeier has a cousin working in the central office and another cousin is a plumber in the turnpike’s maintenance division. A nephew is a communications field technician and Mr. Brimmeier has also funneled legal cases to a sister’s law firm. Another sister, who is an architect, has worked plaza designs for the PTC.

The Pittsburgh Post-Gazette and the Pittsburgh Tribune-Review both reported Mr. Brimmeier also arranged a \$220,000 turnpike contract for another close associate of Sen. Fumo, Michael Palermo, but the turnpike “has no records reflecting that any work was ever performed (by Mr. Palermo),” according to the Fumo indictment.

The PTC is, and has been, expending millions of toll dollars to underwrite its inefficient operations, wine-and-dine lawmakers and friends and continue a long history of political patronage, contracts and favors. Despite several private lobbying firms hired by the PTC to make its case in Harrisburg and Washington, D.C., the organization has an historical problem with both its activities and its actions that make it a worthy candidate for elimination.

The Options

State Sen. Jane Orie, an Allegheny County Republican, believes the PTC should be closed down and its duties picked up the Pennsylvania Department of Transportation (PennDOT). She has introduced legislation to that effect, though with the political roots so deeply grounded in the PTC it may be a quixotic quest.

Given the gravity of the state’s decaying infrastructure problems, it appears state government, the governor and General Assembly are faced with four options to address the state’s transportation needs.

One is following through with Act 44, hoping the Federal Highway Administration approves the tolling of Interstate 80, and proceed with turnpike business as usual, though on a much grander scale than in the previous seven decades.

A second option is to enter into a Public-Private Partnership that can conceivably produce a more efficient and well-maintained turnpike, while providing the state with billions of private dollars upfront for the lease and enough money to pay for the repair and maintenance of the Keystone State’s transportation network without tolling I-80.

The third option is to increase taxes on gasoline at the pump or in the form of higher vehicle fees. However, this option is rarely politically viable.

The final option is to do nothing, even if the federal government refuses to permit the tolling of I-80, and then hope the state’s infrastructure holds up at least until a new administration is forced to deal with the problem.

Conclusion and Recommendations

The Turnpike Commission is expending millions of toll dollars to underwrite its inefficient operations and perpetuate “pinstripe patronage.” Starting a toll war will not lead to economic prosperity or fix a broken system. Don’t buy into the PTC’s latest marketing burp that “this is not your father’s turnpike.”

It’s time to extend the efforts to reform state government by eliminating the Turnpike Commission, and collapse and consolidate its functions into the Pennsylvania Department of Transportation. A bill introduced by Sen. Jane Orie, (R-Allegheny County) in April, 2007 would do away with the Pennsylvania Turnpike Commission and assign turnpike operations, maintenance, and reconstruction responsibilities to the Pennsylvania DOT.

While Penn DOT may not be the permanent parking lot for the PTC, it can provide interim and public oversight.

The next course of action is to develop in a comprehensive and proactive plan to address Pennsylvania’s commercial, public, and mass transportation challenges. The plan and support staff could be funded by subtracting and redirecting appropriations for the Commission by the amount they spend annually to lobby the legislature. A working group modeled on initiatives sponsored by the Public Utility Commission, and consisting of regulatory stake holders, policy makers and private shareholders, should be empowered to draft a plan of action for Pennsylvania to meet its infrastructure obligations, transportation requirements, and future needs. Obviously, statewide public input hearings are a necessary component.

And when the plan is complete, the public will actually have an opportunity to view the document, and comment on an invoice before it becomes a financial albatross.

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About the Authors

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