

**GAO**

Testimony

Before the Subcommittee on Energy,  
Natural Resources, and Infrastructure,  
Committee on Finance, U.S. Senate

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# HIGHWAY PUBLIC- PRIVATE PARTNERSHIPS

## Securing Potential Benefits and Protecting the Public Interest Could Result from More Rigorous Up-front Analysis

Statement of JayEtta Z. Hecker, Director  
Physical Infrastructure Issues





Highlights of [GAO-08-1052T](#), a testimony before the Subcommittee on Energy, Natural Resources, and Infrastructure, Committee on Finance, U.S. Senate

## Why GAO Did This Study

The private sector is increasingly involved in financing and operating highway facilities under long-term concession agreements. In some cases, this involves new facilities; in other cases, firms operate and maintain an existing facility for a period of time in exchange for an up-front payment to the public sector and the right to collect tolls over the term of the agreement. In February 2008 GAO reported on (1) the benefits, costs, and trade-offs of highway public-private partnerships; (2) how public officials have identified and acted to protect the public interest in these arrangements; and (3) the federal role in highway public-private partnerships and potential changes in this role. The Senate Finance Committee asked GAO to testify on this report and to highlight its discussion of tax issues. GAO reviewed the experience of projects in the U.S. (including the Chicago Skyway and Indiana Toll Road agreements), Australia, Canada, and Spain.

## What GAO Recommends

This testimony makes no new recommendations. In February 2008, GAO recommended that Congress consider directing the Secretary of Transportation, in consultation with Congress and other stakeholders, to develop objective criteria for identifying potential national public interests in highway public-private partnerships, in order to allow the Department of Transportation (DOT) to play a targeted role in ensuring that national interests are considered.

To view the full product, including the scope and methodology, click on [GAO-08-1052T](#). For more information, contact JayEtta Hecker at (202) 512-2834 or [heckerj@gao.gov](mailto:heckerj@gao.gov).

# HIGHWAY PUBLIC-PRIVATE PARTNERSHIPS

## Securing Potential Benefits and Protecting the Public Interest Could Result from More Rigorous Up-front Analysis

### What GAO Found

Highway public-private partnerships provide potential benefits, such as sharing risks with the private sector, more efficient operations and management of facilities and, through the use of tolling, increased mobility and more cost-effective investment decisions. There are also potential costs and trade-offs—there is no “free” money in public-private partnerships and it is likely that tolls on a privately operated highway will increase to a greater extent than they would on a publicly operated toll road. There are also financial trade-offs. Unlike public toll authorities, the private sector pays federal income taxes and can deduct depreciation on assets for which they have effective ownership. The extent of these deductions and the amount of foregone revenue, if any, to the federal government is difficult to determine. Demonstrating effective ownership may require lengthy concession periods and, according to experts involved in the lease of the Chicago Skyway and Indiana Toll Road, contributed to the 99-year and 75-year concession terms on these two facilities, respectively. Experts also told us that in the absence of the depreciation benefit, the concession payments to Chicago and Indiana would likely have been less than \$1.8 billion and \$3.8 billion, respectively.

Highway public-private partnerships in the U.S. that GAO reviewed sought to protect the public interest largely through concession agreement terms prescribing performance and other standards. While these protections are important, governments in other countries, such as Australia, have developed systematic approaches to identifying and evaluating public interest and require their use when considering private investments in public infrastructure. Similar tools have been used to some extent in the United States, but their use has been more limited. Using up-front tools can also assist public agencies in determining the expected benefits and costs of a project and an appropriate means to deliver the project. Not using such tools may lead to certain aspects of protecting the public interest being overlooked.

While direct federal involvement has been limited to where federal investment exists and while the DOT has actively promoted them, highway public-private partnerships may pose national public interest implications such as interstate commerce that transcend whether there is direct federal investment in a project. However, given the minimal federal funding in highway public-private partnerships to date, little consideration has been given to potential national public interests in them. GAO has called for a fundamental reexamination of our surface transportation policies, including creating well-defined goals based on identified areas of national interest. This reexamination provides an opportunity to identify emerging national public interests (including tax considerations), the role of the highway public-private partnerships in supporting and furthering those national interests, and how best to identify and protect national public interests in future highway public-private partnerships.

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July 24, 2008

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to testify on public-private partnerships and their role in the surface transportation system. As you know, America's transportation system is the essential element that facilitates the movement of both people and freight within the country. Nevertheless, the current federal approach to addressing the nation's surface transportation problems is not working well. Despite large increases in expenditures in real terms for transportation, the investment has not commensurately improved the performance of the nation's surface transportation system, as congestion continues to grow and looming problems from the anticipated growth in travel demand are not being adequately addressed. We have called for a fundamental reexamination of our surface transportation policies, including creating well-defined goals based on identified areas of national interest, incorporating performance and accountability into funding decisions, and more clearly defining the role of the federal government as well as the roles of state and local governments, regional entities, and the private sector.

The private sector has long been involved in surface transportation as contractors in the design and construction of highways. In recent years, the private sector has become increasingly involved in assuming other responsibilities including planning, designing, and financing. Under some of these arrangements, the private sector is being looked to not only to construct facilities, but also to finance, maintain, and operate facilities under long-term concession agreements—up to 99 years in one case. In some cases, this involves financing and constructing a new facility and then operating and maintaining it over a specified period of time. In other cases, this involves operating and maintaining an existing toll road for a period of time in exchange for an up-front payment provided to the public sector and the right to collect tolls over the term of the agreement.

We recently issued a report on public-private partnerships in the highway sector. For this hearing, you asked us to discuss this report—in particular, the financing and tax issues it raised. My remarks today are based on this February 2008 report<sup>1</sup> and focus on (1) the benefits, costs, and trade-offs

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<sup>1</sup>GAO, *Highway Public-Private Partnerships: More Rigorous Up-front Analysis Could Better Secure Potential Benefits and Protect the Public Interest*, [GAO-08-44](#) (Washington, D.C.: Feb. 8, 2008).

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to the public sector associated with highway public-private partnerships; (2) how public officials have identified and acted to protect the public interest in highway public-private partnerships; and (3) the federal role in highway public-private partnerships and potential changes in this role. We performed our work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We limited the term “highway public-private partnerships” to highway-related projects in which the public sector enters into a contract, lease, or concession agreement with a private sector firm or firms, and where the private sector provides transportation services such as designing, constructing, operating, and maintaining the facility, usually for an extended period of time. This definition included long-term concessions for toll roads in which the private sector firm(s) receives some or all toll revenues over the life of the lease or concession agreement with the public sector. There are numerous other types of arrangements classified as “public-private partnerships” that we did not include. For example, we did not include fee-for-service arrangements in which effective ownership of a transportation facility does not transfer to the private sector. We also recognize that there may be other forms of highway public-private partnerships. We did not include these types of public-private partnerships in the scope of our work, and the findings and conclusions of our work cannot be extrapolated to those or other types of public-private partnerships.

In summary:

- Highway public-private partnerships have resulted in advantages for state and local governments, such as obtaining new facilities and value from existing facilities without using public funding. The public can potentially obtain other benefits, such as sharing risks with the private sector, more efficient operations and management of facilities, and, through the use of tolling, increased mobility and more cost-effective investment decisions. There are also potential costs and trade-offs. There is no “free” money in public-private partnerships. They are potentially more costly to the public and it is likely that tolls on a privately operated highway will increase to a greater extent than they would on a publicly operated toll road. There is also the risk of tolls being set that exceed the costs of the facility, including a reasonable rate of return, should a private concessionaire gain

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market power because of the lack of viable travel alternatives. There are also financial trade-offs. Unlike public toll authorities, the private sector pays federal income taxes and can deduct depreciation on assets for which they have effective ownership for tax purposes. The extent of these deductions and the amount of the foregone revenue, if any, to the federal government is difficult to determine. Obtaining these deductions may also require lengthy concession periods. According to experts involved in the lease of the Chicago Skyway and the Indiana Toll Road, demonstrating effective ownership contributed to the 99-year and 75-year concession terms for the two facilities, respectively. Financial experts also told us that in the absence of the depreciation benefit, the concession payments to Chicago and Indiana would likely have been less than the \$1.8 billion and \$3.8 billion, respectively.

- Highway public-private partnerships in the U.S. we have reviewed sought to protect the public interest largely through concession agreement terms prescribing performance and other standards. While these protections are important, governments in other countries, including Australia and the United Kingdom, have developed systematic approaches to identifying and evaluating public interest before agreements are entered into, including the use of public interest criteria, as well as assessment tools, and require their use when considering private investments in public infrastructure. For example, a state government in Australia uses a public interest test to determine how the public interest would be affected in eight specific areas, including whether the views and rights of affected communities have been heard and protected and whether the process is sufficiently transparent. While similar tools have been used to some extent in the United States, their use has been more limited. Using up-front public interest analysis tools can also assist public agencies in determining the expected benefits and costs of a project and an appropriate means to deliver the project. Not using such tools may lead to certain aspects of protecting the public interest being overlooked.
- Direct federal involvement in highway public-private partnerships has generally been limited to projects in which federal requirements must be followed because federal funds have or will be used. While direct federal involvement has been limited, the Department of Transportation (DOT) has done much to promote highway public-private partnerships, but comparatively little to either assist states and localities in weighing potential costs and trade-offs, or to assess how potentially important national interests might be protected in such arrangements. Given the minimal federal funding in highway public-private partnerships to date, little consideration has been given to potential national public interests in them. Highway public-private partnerships may pose national public

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interest implications such as interstate commerce that transcend whether there is direct federal investment in a project. The historic test of the presence of federal funding may have been relevant at a time when the federal government played a larger role in financing highways but may no longer be relevant when there are new players and multiple sources of financing, including potentially significant private money. We have called for a fundamental reexamination of federal programs to address emerging needs and test the relevance of existing policies. Such a reexamination provides an opportunity to identify emerging national public interests (including tax considerations), the role of highway public-private partnerships in supporting and furthering those national interests, and how best to identify and protect national public interests in future public-private partnerships. We believe DOT has the opportunity to play a targeted role in ensuring that national interests are considered, as appropriate, and have suggested that Congress consider directing the Secretary of Transportation to develop and submit objective criteria for identifying national public interests in highway public-private partnerships, including any additional legal authority, guidance, or assessment tools that would be appropriately required. We recognize this is no easy task—any potential federal restrictions on highway public-private partnerships must be carefully crafted to avoid undermining the potential benefits that can be achieved.

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## Highway Public-Private Partnerships Can Potentially Provide Benefits but Also Entail Costs, Risks, and Trade-offs

Highway public-private partnerships have the potential to provide numerous benefits to the public sector. There are also potential costs and trade-offs.

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### Potential Benefits

Highway public-private partnerships created to date have resulted in advantages from the perspective of state and local governments, such as the construction of new infrastructure without using public funding and obtaining funds by extracting value from existing facilities for reinvestment in transportation and other public programs. For example, the state of Indiana received \$3.8 billion from leasing the Indiana Toll Road and used those proceeds to fund a 10-year statewide transportation plan. As we reported in 2004, by relying on private-sector sponsorship and investment to build roads rather than financing the construction

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themselves, states (1) conserve funding from their highway capital improvement programs for other projects, (2) avoid the up-front costs of borrowing needed to bridge the gap until toll collections became sufficient to pay for the cost of building the roads and paying the interest on the borrowed funds, and (3) avoid the legislative or administrative limits that govern the amount of outstanding debt these states are allowed to have.<sup>2</sup> All of these results are advantages for the states.

Highway public-private partnerships potentially provide other benefits, including the transfer or sharing of project risks to the private sector. Such risks include those associated with construction costs and schedules and having sufficient levels of traffic and revenues to be financially viable. Various government officials told us that because the private sector more reliably analyzes its costs, revenues, and risks throughout the life cycle of a project and adheres to scheduled toll increases, it is able to accept large amounts of risk at the outset of a project, although the private sector prices all project risks and bases its final bid proposal, in part, on the level of risk involved. In addition, the public sector can potentially benefit from increased efficiencies in operations and life-cycle management, such as increased use of innovative technologies.

Highway public-private partnerships can also potentially provide mobility and other benefits to the public sector, through the use of tolling. The highway public-private partnerships we reviewed all involved toll roads. These benefits include better pricing of infrastructure to reflect the true costs of operating and maintaining the facility and thus improved condition and performance of public infrastructure, as well as the potential for more cost effective investment decisions by private investors. In addition, through congestion pricing, tolls can be set to vary during congested periods to maintain a predetermined level of service, creating incentives for drivers to consider costs when making their driving decisions, and potentially reducing the demand for roads during peak hours.

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## Potential Costs, Risks, and Trade-offs

Although highway public-private partnerships can be used to obtain financing for highway infrastructure without the use of public sector funding, there is no “free money” in highway public-private partnerships.

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<sup>2</sup>GAO, *Highways and Transit: Private Sector Sponsorship of and Investment in Major Projects Has Been Limited*, [GAO-04-419](#) (Washington, D.C.: Mar. 25, 2004).

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Rather, this funding is a form of privately issued debt that must be repaid. Private concessionaires primarily make a return on their investment by collecting toll revenues. Though concession agreements can limit the extent to which a concessionaire can raise tolls, it is likely that tolls will increase on a privately operated highway to a greater extent than they would on a publicly run toll road. Tolls are generally set in accordance with concession agreements and, in contrast to public-sector practices, allowable toll increases can be frequent and automatic. The public sector may lose control over its ability to influence toll rates, and there is also the risk of tolls being set that exceed the costs of the facility, including a reasonable rate of return if, for example, a private concessionaire gains market power because of the lack of viable travel alternatives. In addition, highway public-private partnerships also potentially require additional costs to the public sector compared with traditional public procurement, including the costs associated with (1) required financial and legal advisors, and (2) private-sector financing compared with public-sector financing.

In addition to potentially higher tolls, the public sector may give up more than it receives in a concession payment in using a highway public-private partnership with a focus on extracting value from an existing facility. In exchange for an up-front concession payment, the public sector gives up control over a future stream of toll revenues over an extended period of time, such as 75 or 99 years. It is possible that the net present value of the future stream of toll revenues (less operating and capital costs) given up can be much larger than the concession payment received. Concession payments could potentially be less than they could or should be. Conversely, because the private sector takes on substantial risks, the opposite could also be true—that is, the public sector might gain more than it gives up.

Using a highway public-private partnership to extract value from an existing facility also raises issues about the use of those proceeds and whether future users might potentially pay higher tolls to support current benefits. In some instances, up-front payments have been used for immediate needs, and it remains to be seen whether these uses provide long-term benefits to future generations who will potentially be paying progressively higher toll rates to the private sector throughout the length of a concession agreement. Both Chicago and Indiana used their lease fees, in part, to fund immediate financial needs. Both also established long-term reserves from the lease proceeds. Conversely, proceeds from the lease of Highway 407 ETR in Toronto, Canada, went into the province's general revenue fund.

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## Financial Trade-offs

Trade-offs from the public perspective can also be financial, as highway public-private partnerships have implications for federal tax policy. Private firms generally do not realize profits in the first 10 to 15 years of a concession agreement. However, the private sector receives benefits from highway public-private partnerships over the term of a concession in the form of a return on its investment. Private-sector investors generally finance large public-sector benefits early in a concession period, including up-front payments for leases of existing projects or capital outlays for the construction of new, large-scale transportation projects. In return, the private sector expects to recover any and all up-front costs, as well as ongoing maintenance and operation costs, and generate a return on investment. Furthermore, any cost savings or operational efficiencies the private sector can generate, such as introducing electronic tolling, improving maintenance practices, or increasing customer satisfaction in other ways, can further boost the return on investment through increased traffic flow and increased toll revenue.

Unlike public toll authorities, private-sector firms pay federal income tax. Current tax law allows private sector firms to deduct depreciation on assets involved with highway public-private partnerships for which they have “effective ownership.” Effective ownership of assets requires, among other things, that the length of a concession agreement be equal to or greater than the useful economic life of the asset. According to financial and legal experts, including those who were involved in the lease of the Chicago Skyway in Chicago, Illinois, and the Indiana Toll Road, the useful economic life of those facilities was lengthy. The requirement to demonstrate effective asset ownership thus required lengthy partnership concession periods and contributed to the 99-year and 75-year concession terms for the Chicago Skyway and Indiana Toll Road, respectively. These financial and legal experts told us that as effective owners, the private investors can claim full tax deductions for asset depreciation within the first 15 years of the lease agreements.<sup>3</sup>

Determining the extent of depreciation deductions associated with highway public-private partnerships, and the extent of foregone revenue to the federal government, if any, from these deductions is difficult to

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<sup>3</sup>Depreciation is the accounting process of allocating against revenue the cost expiration of tangible property, plant, and equipment. Under straight-line depreciation, an equal amount of depreciation expense is taken annually over the life of the asset. Under accelerated depreciation, a depreciation expense is taken that is higher than annual straight-line amount in the early years and lower in later years.

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determine because they depend on such factors as taxable income, total deductions, and marginal tax rates of private-sector entities involved with highway public-private partnerships. Financial experts told us that in the absence of the depreciation benefit, the concession payments to Chicago and Indiana would likely have been less than the \$1.8 billion and \$3.8 billion paid, respectively.

However, foregone revenue to the federal government from tax benefits associated with transportation projects can potentially amount to millions of dollars.<sup>4</sup> For example, as we reported in 2004, foregone tax revenue when the private-sector used tax-exempt bonds to finance three projects with private sector involvement—the Pocahontas Parkway, Southern Connector, and Las Vegas Monorail—were between \$25 million and \$35 million.<sup>5</sup>

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## Highway Public-Private Partnerships Have Sought to Protect Public Interest in Many Ways, but Use of Public Interest Criteria Is Mixed in the United States

The public interest in highway public-private partnerships can and has been considered and protected in many ways. State and local officials in the U.S. projects we reviewed heavily relied on concession terms. Most often, these terms were focused on, among other things, ensuring performance of the asset, dealing with financial issues, and maintaining the public sector’s accountability and flexibility. Included in the protections we found in agreements we reviewed were:

- **Operating and maintenance standards:** These standards are put in place to ensure that the performance of the asset is upheld to high safety, maintenance, and operational standards and can be expanded when necessary. For example, based on documents we reviewed, the standards on the Indiana Toll Road require the concessionaire to maintain the road’s condition, utility, and level of safety including a wide range of roadway issues, such as signage, use of safety features such as barrier walls, snow and ice removal, and the level of pavement smoothness that must be maintained.
- **Expansion trigger requirements:** These triggers require that a concessionaire expand a facility once congestion reaches a certain level. Some agreements can be based on forecasts. For example, on the Indiana

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<sup>4</sup>GAO-04-419.

<sup>5</sup>According to DOT officials, these projects were financed through models different than the public-private partnerships that are were the focus of our February 2008 report.

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Toll Road, when service is forecasted to fall below certain levels within 7 years, the concessionaire must act to improve service, such as by adding additional capacity at its own cost.

- Revenue-sharing mechanisms: These mechanisms require a concessionaire to share some level of revenues with the public sector. For example, on one Texas project, if the annual return on investment of the private concessionaire is at or below 11 percent, then the state could share in 5 percent of all revenues. If it is over 15 percent, the state could receive as much as 50 percent of the net revenues.

While these protections are important, governments in other countries, including Australia and the United Kingdom, have developed systematic approaches to identifying and evaluating public interest before agreements are entered into, including the use of public interest criteria, as well as assessment tools, and require their use when considering private investments in public infrastructure. These tools include the use of qualitative public interest tests and criteria to consider when entering into public-private partnerships. For example, a state government in Australia uses a public interest test to determine how the public interest would be affected in eight specific areas, including whether the views and rights of affected communities have been heard and protected and whether the process is sufficiently transparent. These tools also include quantitative tests such as Value for Money and public sector comparators, which are used to evaluate if entering into a project as a public-private partnership is the best procurement option available.

While similar tools have been used to some extent in the United States, their use has been more limited. For example, Oregon hired a consultant to develop public-sector comparators to compare the estimated costs of a proposed highway public-private partnership with a model of the public sector's undertaking the project. According to the Innovative Partnerships Project Director in the Oregon DOT, the results of this model were used to determine that the added costs of undertaking the project as a public-private partnership (given the need for a return on investment by the private investors) were not justifiable given the limited value of risk transfer in the project. While this study was conducted before the project was put out for official concession, it was prepared after substantial early development work was done by private partners. Neither Chicago nor Indiana had developed public interest tests or other tools prior to the leasing of the Chicago Skyway or the Indiana Toll Road.

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Using up-front public interest analysis tools can assist public agencies in determining the expected benefits and costs of a project and an appropriate means to undertake the project. Not using such tools may lead to certain aspects of protecting public interest being overlooked. For example, concerns by local and regional governments in Texas helped drive statewide legislation requiring the state to involve local and regional governments to a greater extent in future highway public-private partnerships. Elsewhere, in Toronto, Canada, the lack of a transparency about the toll rate structure and misunderstanding about the toll structure of the Highway 407 ETR facility was a major factor in significant opposition to the project.

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## Direct Federal Involvement with Highway Public-Private Partnerships Has Generally Been Limited, but Identification of National Interests in Highway Public-Private Partnerships Has Been Lacking

Direct federal involvement in highway public-private partnerships has generally been limited to projects in which federal requirements must be followed because federal funds have or will be used. At the time of our February 2008 report, minimal federal funding has been used in highway public-private partnerships. While direct federal involvement has been limited, the administration and the DOT have actively promoted highway public-private partnerships through policies and practices, including the development of experimental programs that waive certain federal regulations and encourage private investment. For example, until August 2007, federal regulations did not allow private contractors to be involved in highway contracts with a state department of transportation until after the federally mandated environmental review process had been completed. Texas applied for a waiver to allow its private contractor to start drafting a comprehensive development plan to guide decisions about the future of the corridor before its federal environmental review was complete. These flexibilities were pivotal to allowing highway public-private partnership arrangements in both Texas and Oregon to go forward while remaining eligible for federal funds. The Federal Highway Administration (FHWA) and DOT also promoted highway public-private partnerships by developing publications to educate state transportation officials about highway public-private partnerships and to promote their use, drafting model legislation for states to consider to enable highway public-private partnerships in their states, creating a public-private partnership Internet Web site, and making tolling a key component of DOT's congestion mitigation initiatives.

Recent highway public-private partnerships have involved sizable investments of funds and significant facilities and could pose national public interest implications such as interstate commerce that may transcend whether there is direct federal investment in a project. For

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example, both the Chicago Skyway and the Indiana Toll Road are part of the Interstate Highway System; the Indiana Toll Road is part of the most direct highway route between Chicago and New York City and, according to one study, over 60 percent of its traffic is interstate in nature. However, federal officials had little involvement in reviewing the terms of either of these concession agreements before they were signed. In the case of Indiana, FHWA played no role in reviewing either the lease or national public interests associated with leasing the highway, nor did it require the state of Indiana to review these interests. Texas envisions constructing new international border crossings and freight corridors using highway public-private partnerships, which may greatly facilitate North American Free Trade Agreement-related truck traffic to other states. However, no federal funding had been expended in the development of the project. Given the minimal federal funding in highway public-private partnerships to date, few mechanisms exist to consider potential national public interests in them. For example, FHWA officials told us that no federal definition of public interest or federal guidance on identifying and evaluating public interest exists.

The absence of a clear identification and furtherance of national public interests in the national transportation system is not unique to highway public-private partnerships. We have called for a fundamental reexamination of the nations surface transportation policies, including creating well-defined goals based on identified areas of national interest, incorporating performance and accountability into funding decisions, and more clearly defining the role of the federal government as well as the roles of state and local governments, regional entities, and the private sector. Such a reexamination provides an opportunity to identify emerging national public interests (including tax considerations), the role of the highway public-private partnerships in supporting and furthering those national interests, and how best to identify and protect national public interests in future public-private partnerships.

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## Concluding Observations

Highway public-private partnerships show promise as a viable alternative, where appropriate, to help meet growing and costly transportation demands. The public sector can acquire new infrastructure or extract value from existing infrastructure while potentially sharing with the private sector the risks associated with designing, constructing, operating, and maintaining public infrastructure. However, highway public-private partnerships are not a panacea for meeting all transportation system demands, nor are they without potentially substantial costs and risks to the public—both financial and nonfinancial—and trade-offs must be made.

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Highway public-private partnerships are fairly new in the United States, and, although they are meant to serve the public interest, it is difficult to be confident that these interests are being protected when formal identification and consideration of public and national interests has been lacking, and where limited up-front analysis of public interest issues using established criteria has been conducted. Consideration of highway public-private partnerships could benefit from more consistent, rigorous, systematic, up-front analysis. Benefits are potential benefits—that is, they are not assured and can only be achieved by weighing them against potential costs and trade-offs through careful, comprehensive analysis to determine whether public-private partnerships are appropriate in specific circumstances and, if so, how best to implement them.

Despite the need for careful analysis, the approach at the federal level has not been fully balanced, as DOT has done much to promote the benefits, but comparatively little to either assist states and localities weigh potential costs and trade-offs, nor to assess how potentially important national interests might be protected in highway public-private partnerships. We have suggested that Congress consider directing the Secretary of Transportation to develop and submit objective criteria for identifying national public interests in highway public-private partnerships, including any additional legal authority, guidance, or assessment tools that would be appropriately required. We are pleased to note that in a recent testimony before the House, the Secretary indicated a willingness to begin developing such criteria. This is no easy task, however. The recent report by the National Surface Transportation Policy and Revenue Study Commission illustrates the challenges of identifying national public interests as the Policy Commission's recommendations for future restrictions—including limiting allowable toll increases and requiring concessionaires to share revenues with the public sector—stood in sharp contrast to the dissenting views of three commissioners.<sup>6</sup> We believe any potential federal restrictions on highway public-private partnerships must be carefully crafted to avoid undermining the potential benefits that can be achieved. Reexamining the federal role in transportation provides an opportunity for DOT, we believe, to play a targeted role in ensuring that national interests are considered, as appropriate.

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<sup>6</sup>*Transportation for Tomorrow*, National Surface Transportation Policy and Revenue Study Commission, Dec. 2007.

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Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or other Members of the Subcommittee might have.

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## GAO Contact and Staff Acknowledgment

For further information on this statement, please contact JayEtta Z. Hecker at (202) 512-2834 or [heckerj@gao.gov](mailto:heckerj@gao.gov). Individuals making key contributions to this testimony were Steve Cohen (Assistant Director), Bert Japikse, Richard Jorgenson, Carol Henn, Matthew Rosenberg, and James White.

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