Public/Private Partnerships

In 1989, the Legislature approved AB 680 (Baker), which authorized Caltrans to enter into contractual agreements with private entities for the construction and operation of toll roads. Four privately financed demonstration projects were authorized in order to "augment or supplement public sources of revenue" because "(p)ublic sources of revenues to provide an efficient transportation system have not kept pace with California's growing transportation needs." The measure was part of a five-bill package of legislation designed to provide more resources for the state's transportation network.

Under the legislation, a private entity would "obtain an exclusive development agreement" for 35 years to construct a toll road facility and "lease the facility from the state and charge tolls sufficient to retire the private investment in the project, operate and police the facility, maintain the facility, retire any outstanding bonds issued in support of the facility, and to make lease payments to the state."

Supporters of the measure saw it as a potentially innovative way to address the problem of traffic congestion, and they further contended that private roadways could serve as an important component of the state highway system. To date, however, the only such facility that has been constructed is the Orange County Express Lanes facility on Route 91. Inaugurated in 1995, and operated by the California Private Transportation Company (CPTC), the 10-mile Orange County toll road was constructed for $139 million and is located on the median of the 91 Freeway. (A toll facility on Route 125 in San Diego County is currently under construction and is expected to be completed later this year. This two-stage project consists of constructing about 12.5 miles of new highway alignment from Route 905 near the international border to Route 54. Route 125 will open initially as a four-lane highway with the south 9.3 miles operated as a toll road. The project calls for the ultimate construction of a six to eight-lane highway plus possible future carpool lanes and/or transit facilities in the median.)

The 91 Tollway generated substantial controversy due to a particular clause that prohibited Caltrans from granting similar franchise rights to third parties or developing any public transportation facility within an "Absolute Protection Zone." The Absolute Protection Zone was comprised of the area 1-1/2 miles on either side of the centerline of the toll road facility. This restriction, commonly referred to as the "non-compete clause," was deemed necessary to protect the venture's profitability. The practical effect, however, was to preclude Caltrans from making improvements to increase the capacity of the "free" lanes on Route 91, causing intolerable traffic congestion on those lanes. By allowing the Orange County Transportation Authority (OCTA) to "buy out" the toll lanes from CPTC, AB 1010 – Correa (Chapter 688, Statutes of 2002) effectively repealed the non-compete clause and facilitated at least the improvement of Route 91, if not the establishment of parallel transportation corridors. (The franchise rights to the Route 91 Express Lanes were ultimately acquired by OCTA from CPTC for $207.5 million.) AB 1010 also prohibited Caltrans, subsequent to January 1, 2003, from entering into any new agreements with private entities to construct and operate toll facilities.

Advocates for public-private partnerships contend that the projects' most significant time and cost savings result from their innovative financing. By restructuring project financing and borrowing funds, it is argued that public-private partnerships can cut many years off of a project's delivery timeline. Proponents also argue that innovative project management may reduce the amount of time it takes to finish a project, often savings months if not years.

California has experimented with other toll roads arrangements in Orange County with mixed results. The Transportation Corridor Agencies (TCAs) operate 51 miles of public toll roads in Orange County on Routes 73, 241, 261 & 133. The first segment, Route 73, opened 10 years ago. That segment, however, did not generate a level of revenue that sufficient to maintain its operation and had to be bailed out by the TCAs.

The newer TCA toll roads have been considered more of a success. More than 280,000 motorists use the toll roads each weekday, who otherwise would travel neighboring freeways and streets. The roads were built with private funds from tax-exempt non-recourse bonds. These bonds were sold to private investors, and state and local taxpayers are not liable for debt payments. These facilities were among the first major transportation facilities in the nation to be financed with no federal dollars and very little state revenue. The Transportation Corridor System is a public agency governed by 21 locally elected officials representing 18 cities and 3 county supervisorial districts.

Public and legislative concerns have arisen over whether these toll facilities constitute "Lexus lanes," created for those privileged enough to pay a toll on a daily basis, while lower income workers must tolerate congestion and poor road conditions. Some studies seem to indicate, however, that the lanes attract a number of middle-income drivers who calculate that the tolls are worth the time they save from being caught in traffic.