



**School of Policy, Government,
and International Affairs**

RESEARCH QUESTIONS

- (1) What factors have influenced U.S. highway P3 renegotiations?
- (2) Does the U.S. market demonstrate distinct characteristics with regard to renegotiation drivers?

METHODOLOGY

Out of 18 cases of U.S. P3 highways that faced renegotiations, six cases were chosen for analysis.

Geographically, two are from the West coast (California), one from the Midwest (Indiana), and three from the East coast (Virginia).

The six projects span two decades (1993 to 2015) and vary across design characteristics, road length, financial closure date, opening date, renegotiation initiator (public vs. private), renegotiation objective, and renegotiation outcome.

Table 1. US P3 Highways and Renegotiations

State	P3 Highways	P3 Highways with renegotiations	Cases Under Analysis
Alaska	1	-	-
California	4	2	2
Colorado	2	1	-
Florida	13	1	-
Georgia	1	1	-
Indiana	2	1	1
Massachusetts	1	-	-
Michigan	1	1	-
New Mexico	1	1	-
North Carolina	1	-	-
South Carolina	1	1	-
Texas	10	4	-
Virginia	6	5	3
TOTAL	45	18	6

FOUR RENEGOTIATION DRIVERS

CONTRACT COMPLEXITY

- Renegotiation occurs to adapt to unexpected complexities of the project.

EXOGENOUS SHOCKS

- Renegotiation occurs to adapt to unexpected exogenous events that affect benefits of participants.

OPPORTUNISM

- Renegotiation occurs to extract rents, taking advantage of the incompleteness of the contract.

WINNER'S CURSE

- Renegotiation occurs to diminish the losses of the bid winner when it had unrealizable expectations.

HIGHLIGHTS

- A broad definition of contract renegotiation is used to understand what drives it in the U.S.
- In six U.S. cases, the main drivers were contract complexity and exogenous shocks.
 - There is little support for the winner's curse as relevant renegotiation driver.
 - There is insufficient evidence that private sector opportunism is a driver.
- U.S. capital market and bankruptcy laws may diminish private sector opportunism.

BROAD SCOPE

RENEGOTIATIONS

- Modification to the P3 concession contract.
- Analysis includes: defaults, bankruptcies, and buy-outs.

RELEVANCE

- All are potential outcomes of same drivers: a contract modification may avoid defaults, bankruptcies, and buy-outs. The inverse is also true.
- Two U.S. institutions potentially play an important role shaping incentives for renegotiations: Chapter 11 bankruptcy process and an active capital market.

CASE STUDIES - HIGHLIGHTS

DULLES GREENWAY

- Owners defaulted on debt.
- Negotiations with Virginia related to speed, tolls, additional investment and increased concession period (1995-2004, 2013).
- Buy-out by Macquarie Infrastructure Group (MIG).

POCAHONTAS PARKWAY

- Non-profit 63-20 corporation to raise tax-exempt revenue bonds.
- Buy-out by Transurban LLC before it went bankrupt (2006).
- Concession period is extended. Investment increases. Electronic tolling.
- Transurban USA writes off its equity.
- Operations are transferred to DBi Services (2014).

ELIZABETH RIVER CROSSINGS

- Toll opposition as existing tunnels to fund the construction of expensive tunnels.
- VDOT sued and taken to the Virginia Supreme Court – ruled in favor of VDOT.
- Tolls delayed and eliminated after reimbursements (2012, 2014, and 2015).

INDIANA TOLL ROAD

- Four bidders – winner is \$1 billion above the closest bid.
- Toll freezes, reimbursements, changes in investment obligations (2006-2010).
- Bankruptcy in 2014.
- Buy-out by IFM Global Infrastructure Fund for \$5.7 billion.

SOUTH BAY EXPRESSWAY

- Environmental permits were transferred to the private sector.
- Project opens up in an area hardly hit by the subprime mortgage crisis.
- Bankruptcy and exits it in 2011.
- Buy-out by SANDAG.

SR 91 EXPRESS LANES

- Highly profitable project.
- Traffic demand was increasing. Attempts to breach contract by public sector.
- Buy-out by OCTA to eliminate non-compete clause.

FINDINGS

Table 2. Case studies and circumstantial evidence on renegotiation drivers

Case Studies	Contract Complexity	Exogenous Shocks	Opportunism	Winner's Curse
Dulles Greenway (DG)	Novelty.*	Recession.* Unemployment	Political contestability. Private partner previous experience.	na
Pocahontas Parkway (PP)	Novelty.*	Recession.* Unemployment	Political contestability. Private partner previous experience.	na
Elizabeth River Crossings (ERC)	Technical complexities. Political environment.*	na	Political contestability. Private partner previous experience.	na
Indiana Toll Road (ITR)	Novelty	Interest rates.* Unemployment	Private partner previous experience.	na
South Bay Expressway (SBX)	Novelty.* Technical complexities.* Risk transfer.* Institutional capacity. Political environment.*	Recession.* Unemployment. Material costs.	Private partner previous experience.	na
SR 91 Express lanes (SR91)	Novelty.* Institutional capacity.	na		na

NOTES: * likely driver
na = not applicable

DISCUSSION

MAIN RENEGOTIATION DRIVERS

- The primary renegotiation drivers appear to be contract complexity (i.e., procurement process novelty, intricacies of incomplete contracts, like risk allocation) and exogenous shocks (i.e., outside opposition, macroeconomic shocks).

WEAK EVIDENCE

- The available evidence provides little support for the winner's curse.
- Evidence remains unclear regarding public and opportunism.

US INSTITUTIONS AND OPPORTUNISM

- US institutional framework may discourage private opportunism.
- Chapter 11 Bankruptcy Law favors the continuation of the operation rather than creditors. An active capital market allows to find private operators in case of problems with incumbent operator.
- U.S. public agencies were willing to let their private partners' default or file for bankruptcy when facilities perform poorly.

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