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Privatizing Rest Stops Allows States to Serve Motorists and Increase Revenues

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With many states facing budget deficits, rest stops on interstate highways—which require significant sums to maintain but provide no revenue to the state—are on the chopping block. To save $12 million a year, Virginia closed 18 of the state's 42 rest areas. Georgia, Arizona, Vermont, Louisiana, New Hampshire, and Maine have also closed or will close some of their rest areas for the same reason. More states are likely to join in as state revenues continue to fall.

While these rest stop closures have caused negative controversy for state officials, there are a number of no-cost ways to keep them open. Some of the potential solutions could yield substantial revenues to the state transportation departments as costly liabilities are transformed into valuable assets.

Obsolete Federal Laws. The rest areas located on interstate highways built after 1956 are rather Spartan affairs, consisting of little more than a parking lot, restrooms, a picnic area, and perhaps some vending machines. The reason for the limited services is that existing roadside businesses were concerned about the diversion of traffic (and customers) onto the new interstates. To protect their interests, a new federal law was enacted mandating that "the state will not permit automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the interstate system."[1]

Fifty-three years later, most of these protected businesses have disappeared, replaced by national chains, which benefit from this archaic protection at the expense of convenience and safety for motorists and truckers. The U.S. Department of Transportation (USDOT) justifies the continued prohibition by noting, "The absence of commercial services means motorists can stop without any pressure to make purchases."[2]

In contrast, the toll-financed, limited access highways built prior to the enactment of the federal highway program in 1956 had already commercialized their rest stops with gas stations and restaurants. When these existing highways were rolled into the interstate system after 1956, their areas were grandfathered and, thus, not subject to the prohibition. In this regard it should be noted that the recent contract between the Carlyle Group (a private equity firm in Washington, D.C.) and the state of Connecticut to takeover, rebuild, enhance, and manage 23 of the state's rest stops involves areas that pre-date the federal prohibition and were already commercialized, albeit at a poor level of service under state management.[3]

As a result, the difference between the pre- and post-1956 systems is striking. Anyone traveling on Interstate 95 knows firsthand the dramatic difference between Virginia's public rest areas and the privatized ones in Maryland, Delaware, Pennsylvania, and New Jersey.

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In all cases, the many consumer benefits are coupled with benefits to the states' taxpayers, because the private-sector concessionaires pay rent to the state for the privilege of leasing the space. In Pennsylvania, food concessionaires pay to construct their facilities and then transfer ownership of the buildings to the state in return for lower rent. Financially, the contrast is striking: Pennsylvania earns $60 million a year from fuel sales alone, while Virginia plans to "save" $12 million a year by shutting down 18 rest areas.

Although current federal law prohibits states with post-1956 interstates from privatizing/commercializing their rest areas, there are a number of remedies available to keep the rest areas open and/or convert them from tax users to revenue generators.

- *Amend the Law.* One way around the prohibition is to amend the existing federal law to provide an exemption for a state or to strike the prohibition all together. In response to Virginia's rest stop problem, Congressman Frank Wolf (R–VA) introduced an amendment to allow for the privatization of the state's rest stops.

  Wolf lost the vote in subcommittee. According to a *Washington Post* report, the fast-lobby "pressured members of the subcommittee to leave well enough alone so as not to kill the McDonald's and Wawa franchisees with strategic locations just off some of the exit ramps of Virginia's federal highway system."[4]

- *Ignore the Law.* With a legislative remedy blocked, at least for now, Virginia might simply ignore the prohibition and begin the process of commercialization without a formal federal approval.

  Many states (with California being Exhibit A) repeatedly ignore federal rules they believe contrary to the state's interest, and the federal government often ignores the affront. Virginia ignored the USDOT's prohibition against single-occupant hybrid access to designated HOV lanes, and the USDOT remained silent. Significantly, President Obama has been an active party to the process of ignoring inconvenient federal laws, instructing Attorney General Eric Holder, for example, not to enforce federal laws against marijuana sales and use where such sales are permitted by state law. Although motorists and truckers do not have the trendy cachet of pot smokers, a precedent has been set, and setting a new one for rest stops should be on the President's agenda.

- *Redirect Federal Money.* Alternatively, states might want to devote some of the money they receive from the "Federal Enhancement Program," to keep the rest stops open. The enhancement program is carved out of the federal highway trust fund and provides federal money that can be spent only on 12 eligible purposes, including tourist and welcome centers.[5] States have mostly used this program for earmarks of questionable value, but there is no reason these substantial resources could not be shifted to rest stops.[6]

A Solution Pending? During his successful campaign, Governor-elect Bob McDonnell of Virginia promised that he would reopen the rest stops within 90 days of taking office in January 2010. His transition staff is working on the issue and probably considering some or all of the above ideas, as well as some new ones. How he does this could serve as a model for other states suffering under the heavy hand of the federal government and its efforts to protect corporate privilege.

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1. Carole Feldman, "On the Road, but No Place to 'Go,'" *Free-Lance Star* (Fredericksburg, VA), October 10, 2009, p. C-5.
2. *Ibid.*
3. Michael Corkery, "For Carlyle, a Clean Deal," *The Wall Street Journal*, November 23, 2009, p. C3.
4. Amy Gardner, "Potty Politics, Part II," *The Washington Post*, July 20, 2009, at *http://voices.washingtonpost.com/virginiapolitics/2009/07/potty_politics_part_ii.html* (December 7, 2009).
5. Included in the list is "Scenic or Historic Highway Programs Including Tourist and Welcome Centers." See *http://www.virginiadot.org/projects/resources/EligibilityTAB.pdf* for eligibility details.
6. See *http://www.virginiadot.org/business/prenhancegrants.asp* for a detailed list of what the Virginia Department of Transportation intends to waste its money on.

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